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Floor Debate
February 12, 2008

[LB106 LB395A LB624 LB632 LB722 LB744 LB747 LB761A LB763 LB782 LB791
LB804 LB855 LB873 LB879 LB925 LB1063 LR239]

SENATOR STUTHMAN PRESIDING

SENATOR STUTHMAN: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twenty-third day of the One Hundredth Legislature, Second Session. Our chaplain for today is Pastor Jimmy Shelbourn from the First Presbyterian Church of Beatrice, Nebraska, Senator Wallman's district. Would you please rise.

PASTOR SHELBOURN: (Prayer offered.)

SENATOR STUTHMAN: Thank you. I call to order the twenty-third day of the One Hundredth Legislature, Second Session. Senators, please record your presence. Mr. Clerk, please record.

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

SENATOR STUTHMAN: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SENATOR STUTHMAN: (Doctor of the day introduced.) Thank you, Mr. Clerk. We will now proceed to the first item on the agenda.

CLERK: Mr. President, with respect to the first item, one announcement if I may. The Banking Committee has selected LB855 as its priority bill, one of its priority bills. (Legislative Journal page 575.) [LB855]

Mr. President, the LB763 by Senator Avery. (Read title.) The bill was introduced on January 9, referred to Government, Military and Veterans Affairs. The bill was advanced to the floor with committee amendments. The Legislature discussed the issue yesterday, Mr. President; committee amendments were adopted. At this time I have no additional amendments pending to LB763. [LB763]

SENATOR STUTHMAN: Senator Avery, would you give us a brief recap as to where we left off yesterday and we'll continue from there on. [LB763]

SENATOR AVERY: Thank you, Mr. President. I will be happy to do that. LB763 is a bill to create a task force to study the revitalization of Centennial Mall, which is, as you know, the seven-block entryway to the front of the Capitol. Membership on the task

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force is varied and broad. It is needed to get maximum input on ideas for design and how to fund the revitalization. It will require minimal, minimal expenditure of resources. The fiscal note says that the expenditure will be nominal. The mall is part of the historic plan for the Capitol designed by Bertram Goodhue and should be restored. I repeat that it will not cost a lot of money--nominal. Just briefly let me sum up some of the questions that were raised yesterday. A question was raised about the proliferation of task forces. I will not argue against that. Certainly there seems to be a growing number of these. I'm not sure that voting against this bill is going to solve that problem. Maybe we need to take a broader look at this rather than a microlook at one bill. Other questions were raised about maybe some other organization that could do this. I believe that we have too many scattered responsibilities for the environs. What we need to do is to concentrate the effort on this particular problem, and that's what this bill seeks to do. I will be available to answer any questions that any of my colleagues might have. I would urge you to advance this to Select File. Thank you, Mr. President. [LB763]

SENATOR STUTHMAN: Thank you, Senator Avery. Those wishing to speak are Senator Langemeier and Senator Gay. Senator Langemeier. [LB763]

SENATOR LANGEMEIER: Mr. President, members of the body, thank you. I rise to continue my opposition to the forming of another committee, and I want to walk you through, you all, through the time line here just so everybody has kind of got a grip on this. If we move this on to Select and Final Reading and we pass it and the Governor signs it, it goes into law July 17. The Governor has 90 days to appoint this task force. Granted, a number of these people are real easy to come up with--the mayor; I mean some of these are real easy and quick to get. But he's got 90 days to form this group, so that means he has till October 17. And then on October 17 they could all start meeting for 45 days till this conclusion of this task force December 31. It's not a lot of time. My suggestion today is, the mayor of Lincoln can get this group together probably by Friday of this week, and then they could meet all they want all summer long and prepare the report that they could mail to all of us and we will deal with it in the appropriate manner we deal with all the other reports that we get. So with that, I just want to express my opposition to LB763. I think the mayor's office and these groups...I'm in the process of getting kind of mission statements for each one of these groups and I would say the...most of them would overlay in a pretty identical fashion. So I think it's crucial that we don't form another group, even though this one is only going to be alive for 45 days, potentially. That is why I oppose LB763. Thank you, Mr. President. [LB763]

SENATOR STUTHMAN: Thank you, Senator Langemeier. Senator Gay. [LB763]

SENATOR GAY: Thank you, Mr. President. Would Senator Avery yield to a few questions? [LB763]

SENATOR STUTHMAN: Senator Avery, would you yield to a question from Senator

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Gay? [LB763]

SENATOR AVERY: I will. [LB763]

SENATOR GAY: Senator Avery, yesterday you had mentioned, when I was listening to your opening, I think it was, about...do you envision this to be that you talked about private donors possibly helping, if this would pass, that they would refurbish this. What do you envision when you talked about private donors? [LB763]

SENATOR AVERY: Thank you, Senator Gay. I actually talked with the director of Lincoln City Parks and Rec Department, Lynn Johnson, and I know that the City Parks and Rec Department has a very active and a foundation with a significant track record of raising private money. I talked with Mr. Johnson about the possibility of this being a privately funded project, and he believes that that is very possible. I did also, Senator Gay, mention yesterday that there had been an effort...just before I took office last year, I talked with some people who wanted to form an art project to raise money. This would have been a project that would have featured The Sower, and have a competition of different art projects and station them throughout the city much the way we did the Tour de Lincoln a few years ago, which was enormously successful. They have not gotten back to me, but I think that is a possibility. There are a number of ways in which the private sector could pay for this. And I notice that Lynn White is...Lynn Johnson is interested in, as soon as we finish with some of the fund-raising for Antelope Park, they would go immediately to fund-raising for Centennial Mall. Thank you. [LB763]

SENATOR GAY: Thank you, Senator. Then I guess I remember when those fountains were open years and years ago, and then it was the maintenance. I assume maintenance and financial, fiscal realities set in and assume that's why they had to shut many of those down. Would this...and I guess it's a study group just to see what would be adoption. So is the fountain idea the main idea or are you open for different suggestions on...? You know, would it all be fountains, would it be a series of different...? How do you envision that this would be or is that what the group is supposed to do? [LB763]

SENATOR AVERY: I think that the task force would be empowered to consider all options. It could be repairing what we have, which would mean restoring those fountains to functional status. It could be a total new design, which probably will cost more money. But I think that any task force is going to come up with a number of different recommendations, and then I suppose there would have to be some choices made as to which ones we would go with. And I think that the availability of viable financing alternatives would be a part of that discussion. There is some interest in totally redesigning the mall, but at minimum it needs to be restored and repaired. And, as you mentioned, there were six functioning fountains in the original design; only two still work. And two of those have been filled...two of the ones that are not working have been filled

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in with dirt. [LB763]

SENATOR GAY: Thank you, Senator. Senator, I would agree. I think when I walk on that mall, and we do have our state buildings along there, many of the state...these are state buildings that run up and down that mall, and I think it was a partnership--I don't know this for sure but maybe you could enlighten us--that the state was a part... [LB763]

SENATOR STUTHMAN: One minute. [LB763]

SENATOR GAY: ...of this design. But as we look at it now, when I walk that, that is definitely in need of repair. So something needs to be done, whether it be the city of Lincoln; if they're the ones responsible for that, I think they need to step up. So I encourage your...I know what you're saying and your idea. If we can work out some of the kinks here, I think it's a good idea and the state should be involved in helping refurbish that Lincoln Mall area. Thank you, Mr. President. [LB763]

SENATOR STUTHMAN: Thank you, Senator Gay. Senator Avery, you are recognized. [LB763]

SENATOR AVERY: Thank you, Mr. President. I'm glad Senator Gay brought up the issue of the partnership between the state and the city of Lincoln. I would refer you to statute Section 90-304(2). This is in reference to the Nebraska State Capitol Environs District, the beautification projects, participation, and procedures. Subsection (2): "The city of Lincoln and the county of Lancaster are hereby empowered to expend their respective funds to participate singly, with each other, and with the State of Nebraska, in the planning, construction, and maintenance of all manner of special lighting, landscaping, decorative walkway, fountain, and any other beautification projects in the Nebraska State Capitol Environs District." That is in law. The law does permit this. In fact, I would read that to imply that the law encourages this kind of partnership. As I said yesterday, Lincoln is unique. It is the capital city. Lincoln belongs to the entire state. These magnificent buildings that we have constructed as monuments to state government are buildings that we all take pride in, and they belong to the entire state. And this gateway to the main entrance to this Capitol is an important part of that, and I believe that we have to take into account the need to do something about this, and I think most of us can recognize that need. I think the discussion today is not about the need but about how we want to do it. I would suggest to you that the best way to do this is to collect the various organizations and various commissions and various people who are interested in and have some expertise in and the ability to bring to bear to this question the best knowledge and the best ideas. And I think that is best performed by a revitalization task force. So I, with that, Mr. President, I will end my comments and listen to the debate and answer any questions. [LB763]

SENATOR STUTHMAN: Thank you, Senator Avery. Senator Carlson, you are

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recognized. [LB763]

SENATOR CARLSON: Mr. President, members of the Legislature, I want to commend Senator Avery for his efforts concerning this project. As with many things, someone needs to take charge and start a course of action to accomplish a worthwhile goal, and so, Senator Avery, I thank you for doing this. But I do have a question that I'd like to ask of Senator Avery, if he would yield. [LB763]

SENATOR STUTHMAN: Senator Avery, will you respond to a question from Senator Carlson? [LB763]

SENATOR AVERY: I will. [LB763]

SENATOR CARLSON: Senator Avery, do you hope that this goes into effect, the task force is named, the task force meets, the task force completes its recommendations, comes to a conclusion, so that budget action, if necessary, could be a part of the two-year state budget to be approved in the 90-day session in 2009? [LB763]

SENATOR AVERY: I do not anticipate that there will be any request for state money in the next biennium. In fact, it's going to be my insistence--and I'm sure that the task force will talk to me--it's going to be my insistence that we concentrate the fund-raising or concentrate the funding on private contributions. The time line that you raise could be problematic. It was also raised by Senator Langemeier. But if you give me 33 votes, it's my understanding of the rules that that then qualifies this for an emergency clause which would mean that it would have to be signed immediately and go into effect immediately. So that's my plea for 33 votes, Senator. [LB763]

SENATOR CARLSON: Okay. Thank you for your response to that question, and I'm asking it not in light of thinking that a emergency clause is necessary because we've had a deterioration over a long period of time and we need to have a good solution, well thought out, that's the right thing to do, so I don't see that solution coming overnight. But again, I appreciate your efforts and I think that Senator Langemeier brings up some good reservations, I guess, about the timing of this and going forward. But thank you for your answer and thank you for the testimony. [LB763]

SENATOR STUTHMAN: Thank you, Senator Carlson and Senator Avery. Senator Schimek, you are recognized. [LB763]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members of the body. I apologize being off the floor for a committee session, an Exec Committee Session of Judiciary Committee, and so I haven't heard everything that's gone on before here this morning, but I would like to just rise to say that this has been a longstanding problem. There have been attempts in the past to find a mechanism or a way to address the

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eyesore that is on Centennial Mall. And I don't know how many of you have walked that mall, but it is in despicable shape. It is, you know, people could trip and fall over the loose pavement and bricks and so forth. I think that we definitely need to do something about it. And I support this bill wholeheartedly. It's not going to cost us a lot of money. It is going to focus some attention on this problem again, and there hasn't been focus for a long, long time. I think that a task force properly motivated can get something done, can figure out a way to come up with the financing, and that's one of the charges, as you noticed in the bill itself, that the task force will consider and analyze possible design options and consider funding strategies. And I think you just heard Senator Avery say what he hopes to do is to find a way to have private money raised to do something with this. But I remember in the past there's been discussion about whether the state should be involved in this at all. If I'm recalling right, Senator Avery, the city itself paid for Centennial Mall originally, but it is as much a state responsibility, in my opinion, as it is a city responsibility, because it does help set off our Capitol and the University of Nebraska, and I would encourage you to give this task force a chance to work and to put these plans together. With that, Mr. President, I thank you very much. [LB763]

SENATOR STUTHMAN: Thank you, Senator Schimek. Senator Chambers, you are recognized. [LB763]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'm going to call this a Loran Schmit bill. It doesn't help anybody, it doesn't hurt anybody, it doesn't do anything, it doesn't cost anything much. So why do it? Some people will say that's a reason to do it, because it doesn't cost much. There is developing a proliferation of task forces. I won't be here after this session to try to put a cap or a lid on that practice, but it is not a good path to embark upon, in my opinion. I would like to ask Senator Avery a question or two or three or four or more. [LB763]

SENATOR STUTHMAN: Senator Avery, would you respond to a numerous amount of questions from Senator Chambers? [LB763]

SENATOR AVERY: With pleasure. [LB763]

SENATOR CHAMBERS: Senator Avery, this task force bill, if it becomes law, does not require any cooperation between the state and Lancaster County or the city of Lincoln. Is that true? [LB763]

SENATOR AVERY: It does not; however, Senator, there are statutes that do require that cooperation. I read one earlier, I think before you came to the floor. [LB763]

SENATOR CHAMBERS: I heard that. I'm talking about what this bill itself does. [LB763]

SENATOR AVERY: It does not. [LB763]

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SENATOR CHAMBERS: If that is statutory, this bill is not necessary for the purposes of those statutes, is it? [LB763]

SENATOR AVERY: That is correct. This bill does not require cooperation. However, it does set up a commission that includes representatives from the state and the city. [LB763]

SENATOR CHAMBERS: This bill does not say what the report that is delivered to the Governor and the Legislature shall contain, does it? [LB763]

SENATOR AVERY: It does...it does contain language to...that requires the commission to look at certain things and to file a report. I would submit to you that if you're going to study certain items relating to the mall, that your discussions would have to be in that, and recommendations would have to be in that report. [LB763]

SENATOR CHAMBERS: But, Senator Avery, there's nothing in the bill that says what the report shall contain, does it...is there? [LB763]

SENATOR AVERY: No. You're correct. [LB763]

SENATOR CHAMBERS: Okay. There is nothing mentioned with reference to any recommendations by this commission or this task force. Is that true? [LB763]

SENATOR AVERY: It is implied, Senator. [LB763]

SENATOR CHAMBERS: Senator... [LB763]

SENATOR AVERY: But I don't know of any task force that it's been said, you must recommend this. [LB763]

SENATOR CHAMBERS: Senator Avery, is there anything in the bill...does the bill use the word "recommendations"? [LB763]

SENATOR AVERY: It does not. [LB763]

SENATOR CHAMBERS: So this task force need not have any recommendations in its report, whatever the report may contain. Is that true? [LB763]

SENATOR AVERY: That is true, but it would be silly for them to meet and consider alternatives but not have any recommendations, don't you think? [LB763]

SENATOR CHAMBERS: If we were in court I'd move...I'd ask the judge to strike that as

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being nonresponsive. [LB763]

SENATOR AVERY: (Laugh) [LB763]

SENATOR CHAMBERS: Senator Avery, there is nothing that would prevent this task force from submitting a report that says the task force met, period. [LB763]

SENATOR AVERY: Correct. [LB763]

SENATOR CHAMBERS: That could be the report. [LB763]

SENATOR AVERY: That is correct. Or they could say that nothing needs to be done, which would be (inaudible). [LB763]

SENATOR CHAMBERS: If they don't submit a report, what is the penalty provided? [LB763]

SENATOR AVERY: Well, I suppose the penalty would be the same as any task force that is charged with reporting or issuing a report that failed to do so, and I'm not exactly sure what that would be, but these are people... [LB763]

SENATOR CHAMBERS: Your Honor, I ask that that be stricken as nonresponsive. (Laugh) That is stricken. Senator Avery, answer the question as put to you by Senator Chambers. [LB763]

SENATOR STUTHMAN: One minute. [LB763]

SENATOR CHAMBERS: Thank you, Your Honor. Senator Avery, here is the question repeated. Let me let you go ahead and give your answer... [LB763]

SENATOR AVERY: Well,... [LB763]

SENATOR CHAMBERS: ...as extensively as you want to on that point, because I don't want to seem to be cutting you off. [LB763]

SENATOR AVERY: Well, task forces are comprised of people who hold office, many of them. They are sworn to uphold the law when they take the oath of office. This will be a law. It is my knowledge or at least my experience that we have never had any punitive actions attached to any of these task forces. I have served on some of these, and in the process of doing so, we took our work very seriously. We met frequently. I never submitted a voucher or any claims for reimbursement. I don't think we spent any money on that Vote Nebraska Initiative Task Force I was on. I notice Senator Lautenbaugh served... [LB763]

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SENATOR STUTHMAN: Time. [LB763]

SENATOR AVERY: Is that time, sir? [LB763]

SENATOR STUTHMAN: Yes. [LB763]

SENATOR AVERY: Thank you. [LB763]

SENATOR STUTHMAN: Thank you, Senator Chambers and Senator Avery. Senator Chambers, you are recognized. [LB763]

SENATOR CHAMBERS: Thank you. My light had gotten turned off. I had turned it on. I'd like to ask Senator Avery to engage in a bit more discussion, if he's willing. [LB763]

SENATOR STUTHMAN: Senator Avery, are you willing to respond to Senator Chambers? [LB763]

SENATOR AVERY: Yes, sir. [LB763]

SENATOR CHAMBERS: Senator Avery, I know that there is no penalty if the task force submits no report. The point of everything that I have said is to establish that no real duties are placed on anybody of a kind which have to be carried out. Everything is voluntary. Since you mentioned that you'd never submitted a voucher for anything when you served on various task forces, I would like to call your attention to page 2 which says, beginning in line 21, "Members shall be reimbursed for their expenses pursuant to sections 81-1174 to 81-1177." What expenses are envisioned? [LB763]

SENATOR AVERY: If one has significant travel to get to meetings of the task force, that would be a reimbursable expense. [LB763]

SENATOR CHAMBERS: Do those...I didn't look at those statutes that are referenced. Do they put a restriction on how much travel a person can be reimbursed for or the nature of the travel? [LB763]

SENATOR AVERY: I do not think so. [LB763]

SENATOR CHAMBERS: So somebody or even the task force could decide to go to Hawaii to study how these malls are handled in Hawaii or Wyoming or Kansas or any place else, not that they would, but it's open-ended enough for them to do that if they chose to and they would be reimbursed? [LB763]

SENATOR AVERY: Their charge is to study the history of what has gone on in other

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capital cities. [LB763]

SENATOR CHAMBERS: So they could go. [LB763]

SENATOR AVERY: There's no implication that they would have to travel there to study that history. [LB763]

SENATOR CHAMBERS: But they could under this, right? [LB763]

SENATOR AVERY: I suppose they could; could actually not even meet, for that matter. [LB763]

SENATOR CHAMBERS: But they could go--you're very evasive--they could go to these other places if they needed to, these other states. [LB763]

SENATOR AVERY: I would be very disapproving of that. I don't...I don't expect that would happen, and I suspect you don't either. [LB763]

SENATOR CHAMBERS: Senator Avery, what is the meaning of "environs"? [LB763]

SENATOR AVERY: Environs means, the euphemism for that or let me say a synonym would be the surroundings. [LB763]

SENATOR CHAMBERS: Now how are the environs of other state capitol buildings going to be reviewed without being in those environs or surroundings? [LB763]

SENATOR AVERY: Most states, such as Nebraska, have documents that show photographs. I mean, I have a study here that was done by an intern that shows the condition of Centennial Mall in great detail. Be happy to share that with you. But most states do provide the visuals, along with their studies and documents describing what they have. Usually they can even produce the original designs. [LB763]

SENATOR CHAMBERS: But "environs" would be different from an original design,... [LB763]

SENATOR AVERY: No. [LB763]

SENATOR CHAMBERS: ...photograph... [LB763]

SENATOR AVERY: Not necessarily. [LB763]

SENATOR CHAMBERS: ...or whatever? [LB763]

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SENATOR AVERY: Not necessarily, because many of these original designs do include the environs of the state capitols. [LB763]

SENATOR CHAMBERS: So you say that a design is the same as environs. [LB763]

SENATOR AVERY: No. [LB763]

SENATOR CHAMBERS: The environs of that mall are the same as a photograph of that mall. Is that what you're saying? [LB763]

SENATOR AVERY: What I'm saying is that environs have designs as to how the environs are laid out and how they...and what their physical appearance will be: aesthetic, spiritual dignity, or whatever it is they're trying to achieve. And most states,... [LB763]

SENATOR CHAMBERS: Senator Avery,... [LB763]

SENATOR AVERY: ...like this state, we do have documentation as to what it will look like. [LB763]

SENATOR STUTHMAN: One minute. [LB763]

SENATOR CHAMBERS: Senator Avery, if a perfect representation of you were made possible by means of a digital photograph, is that photograph Senator Avery or is it a representation of Senator Avery? [LB763]

SENATOR AVERY: It's a representation, and often it is too clear as to what I really look like. (Laugh) [LB763]

SENATOR CHAMBERS: (Laugh) And you're not a bad looking fellow. In fact, if we had a movie being made, I think you could be there just for your appearance alone. The environs would not be the same as a representation of the environs, in my view. That's all I will ask you right now. It would not be the same as the environs. [LB763]

SENATOR STUTHMAN: Time. [LB763]

SENATOR CHAMBERS: Thank you, Mr. President. [LB763]

SENATOR STUTHMAN: Thank you, Senator Chambers and Senator Avery. Senator Chambers, you may continue. This is your third time. [LB763]

SENATOR CHAMBERS: Yes. And I don't think it would be necessary for me to say more on this bill. If the body is of a mind to start creating task forces willy-nilly, ad hoc,

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on whim, this would probably be as good a place to begin making that blunder as any other. You couldn't make the blunder on behalf of a better person than Senator Avery. You might could make the blunder on behalf of a person who is as good as Senator Avery, but you will not find one better. If we were trying to establish who the best person is, Senator Avery might not be first, some would say, but he certainly wouldn't be second, I will say. There are different ways of saying things. You want to get to eight--three plus five, four plus four, nine minus one. There are different ways to express an idea. I am not opposed to Senator Avery or what he is attempting to do as far as something about that mall, but I am opposed to the creation of this task force. If he can get 33 votes, more power to him. And I think he probably had indicated that he would want the emergency clause so that this could get underway as soon as possible and leave as much time as possible between when the task force is started and the December 1 date by which their report is due. All of what Senator Avery is talking about in this bill can be done without the bill. If it was mandating that the state do something about that mall, or mandate some kind of cooperation between Lancaster County and the state, not necessarily that I would agree with that, but a bill of that kind enacted into law would be an act that carries some meaning. This carries no meaning. It does not require any cooperation between the state and anybody, or anybody and the state. It is a wish, a hope, a prayer, that's all. And the Legislature, in my view, should do that kind of thing by means of a resolution rather than creating a statute. The statutes should be reserved for matters other than good advice, suggestions, or the statements of hope. If you have a law which has active ingredients, as they say when they're talking about medication, a law which, if put on the books, is going to result in action being mandated and there being a mechanism to coerce that action if necessary, that partakes of the nature of what legislation should be, in my opinion. If all we're offering is good advice or hopes, that can be done by way of a resolution. I will not vote for this bill. And that's all that I will have to say on it this morning. Thank you, Mr. President. [LB763]

SENATOR STUTHMAN: Thank you, Senator Chambers. Senator Avery, you are recognized, and this is your third time. [LB763]

SENATOR AVERY: Thank you, Mr. President. The worst thing that can happen to anybody in this body is to have Senator Chambers oppose your bill. It didn't take me very long to learn that. However, I do not believe he is doing it in a meanspirited way. I think he's raising some legitimate questions. What I am attempting to do here is to bring together informed, interested parties who can bring experience and knowledge to bear on what I think is a need. The likely recommendations from this task force, and I do expect recommendations, will have lasting effects on the State Capitol's appearance. I felt that this responsibility should not be placed with a single government entity or organization. My real fear is that without a task force that can actually bring experienced people together who have an interest in doing something about the mall, that we might not get anything done for another decade or two and that we'll look down the road or we'll look back and we'll see that the mall is in worse shape and will begin to reflect

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badly on this building. I believe that there are currently various organizations that have been discussed that might be able to do this. They have not. They have scattered responsibilities. I want to bring these scattered groups together with similar interests but scattered responsibilities, bring them together, collect them and coordinate them in one concentrated effort to meet this need. I share Senator Chambers' concern about the proliferation of task forces. I am suggesting that if we want to do something about that proliferation then let's take a broad look at it. Let's not pick one task force or a second task force because others will be coming before us this session. Let's do it in a comprehensive, rational way, and let's not begin with this bill. Thank you, Mr. President. [LB763]

SENATOR STUTHMAN: Thank you, Senator Avery. Seeing no other lights, Senator Avery, you are recognized to close. [LB763]

SENATOR AVERY: Thank you, Mr. President. I might say I'm a little bit surprised that this generated so much debate, but I do think that the issues raised are important ones. I just want to iterate that what we all know, the Centennial Mall is a mess. It is not ADA compliant. Broken sidewalks, nonfunctional fountains, bushes overgrown, planters that have split open, trees are down with...and some of these trees have plaques donated by people to commemorate a loved one's death and life. I just think that this is something we need to do. I do believe it is better to concentrate the combined efforts of talented people who have expertise in the area to come up with the best ideas, and I hope that you will advance this to Select File. I am sure that there may be some amendments that we will see on Select File if it gets to that point. I thank you for that, Mr. President. [LB763]

SENATOR STUTHMAN: Thank you, Senator Avery. You have heard the closing on LB763. All those in favor vote aye; all those in opposition vote nay. Senator Avery, for what reason do you want to be recognized? [LB763]

SENATOR AVERY: I request a call of the house, please. [LB763]

SENATOR STUTHMAN: There's been a request for a call of the house. All in favor of a call of the house vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB763]

CLERK: 30 ayes, 0 nays, Mr. President, to place the house under call. [LB763]

SENATOR STUTHMAN: The house is under call. All senators report to the Chamber and record your presence. And all unauthorized personnel please leave the Chamber...just the floor. Senators Heidemann, Lathrop, Harms, Pankonin, and Adams, please return to the Chamber and record your presence. Senator Pankonin, please record your presence; please come to the Chamber. Senator Pankonin, please return to the Chamber. Senator Avery, all members are present. How do you want to proceed

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with the vote? [LB763]

SENATOR AVERY: I request a roll call, Mr. President. [LB763]

SENATOR STUTHMAN: Senator Avery has requested a roll call vote. Mr. Clerk, please call the roll. [LB763]

CLERK: (Roll call vote taken, Legislative Journal pages 575-576.) 20 ayes, 13 nays, Mr. President, on the motion to advance. [LB763]

SENATOR STUTHMAN: The motion to advance fails. Thank you, Mr. Clerk. I do raise the call. Mr. Clerk, items for the record? [LB763]

CLERK: Thank you, Mr. President. A Reference report referring a gubernatorial appointee to standing committee for confirmation hearing; hearing notice from Natural Resources. And a new resolution: Senator Loudon offers LR239; that will be laid over. And that's all that I had, Mr. President. (Legislative Journal pages 576-577.) [LR239]

SENATOR STUTHMAN: Thank you, Mr. Clerk. Mr. Clerk, we will proceed to LB744. [LB744]

CLERK: LB744, Mr. President, a bill by Senator Aguilar. (Read title.) Bill was introduced on January 9 of this year; at that time referred to the Government, Military and Veterans Affairs Committee. The bill was advanced to General File. I have no amendments pending at this time. [LB744]

SENATOR STUTHMAN: Thank you, Mr. Clerk. Senator Aguilar, you are recognized to open. [LB744]

SENATOR AGUILAR: Thank you, Mr. President and members. LB744 was heard before the Government Committee on January 24. There was no opposition to the bill and it was advanced on a 7-0 vote of the committee. Under the bill, the Department of Administrative Services is authorized to lease state property to the federal government or political subdivisions of the state. The state will only lease to these other units of government if the space isn't needed for state purposes. Also, the state will use the same system of charging local and federal agency as it does for its current tenants. The charges include enough to cover operating costs, including routine maintenance and repair costs, and an amount to fund building renewal projects and other repair projects. Currently, the state is able to use the process under the Vacant Building and Excess Land to lease property to the federal government or political subdivisions, but changing the statute to allow the state to enter into such agreements is an easier solution. When the state has a vacant space in a state building, it would like to be able to have that space filled with other government entities. State agencies frequently partner with local

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and federal agencies, so it will be mutually beneficial to have both agencies within the same property. Thank you for consideration of this bill, and I urge you to advance it to Select File. Thank you, Mr. President. [LB744]

SENATOR STUTHMAN: Thank you, Senator Aguilar. Senator Chambers, you are recognized. [LB744]

SENATOR CHAMBERS: Thank you. Mr. President, I'd like to ask Senator Aguilar a question or two. [LB744]

SENATOR STUTHMAN: Senator Aguilar, will you respond to Senator Chambers? [LB744]

SENATOR AGUILAR: Certainly. [LB744]

SENATOR CHAMBERS: Senator Aguilar, there is no limit in this bill as to the use to which the federal government can put this space it leases other than what might apply to any other entity or agency leasing state property. [LB744]

SENATOR AGUILAR: That is correct, Senator. [LB744]

SENATOR CHAMBERS: And it also says to political subdivisions. Is that in the bill itself? I'm trying to stay caught up. I saw where it said they could lease it to the federal government? Oh, I see: "to the federal government or political subdivisions." It is in the bill. And there is not that much new language, but I wanted to be sure in my haste that I didn't forget anything. What is the status of the occupancy of state buildings that would make this bill desirable? And the reason I asked that, I see where the Department of Administrative Services supports the bill. Did they testify that they have vacancies which the federal government or political subdivisions might be interested in leasing? For what reason did they give? [LB744]

SENATOR AGUILAR: Yes, they do. This more or less just...and they do that now, but this would streamline the process a little bit for them. [LB744]

SENATOR CHAMBERS: So they can right now lease to the federal government or to political subdivisions? [LB744]

SENATOR AGUILAR: Yes, they can, under a different process. But this one, like I said, putting it in statute would allow the state to enter into these agreements, is a much easier solution for them. [LB744]

SENATOR CHAMBERS: If this bill does not pass--and I'm not saying I'm opposed to it--if this bill does not pass, what could not be leased to the federal government which

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under this bill could be leased? [LB744]

SENATOR AGUILAR: I'm not aware of anything, Senator. [LB744]

SENATOR CHAMBERS: So we don't really need the bill. [LB744]

SENATOR AGUILAR: Well, I don't think they would have brought it if they didn't think they needed it. You know, as I said earlier, yes, they can do it now, but this really streamlines the process for them. [LB744]

SENATOR CHAMBERS: Senator Aguilar, I'm not trying to be difficult and I'm not trying to ask trick questions. How would putting this language into the statutes streamline a process if they can already do this? If they can't do it and this makes it possible, I see it entirely differently. [LB744]

SENATOR AGUILAR: Staff tells me that the vacant land process part of it is much more difficult without this bill. [LB744]

SENATOR CHAMBERS: Vacant land? And what would the federal government want to do with that, with vacant land? Has the federal government expressed an interest in leasing some land which currently they cannot lease from Nebraska? [LB744]

SENATOR AGUILAR: I'm not aware of any specific land. [LB744]

SENATOR CHAMBERS: (Laugh) But there is some vacant land and the federal government wants to get their paws on it? [LB744]

SENATOR AGUILAR: We're trying to find the answer for that right now, Senator. [LB744]

SENATOR CHAMBERS: Okay. Then I'm...while we're trying to get the answer, I'm going to make a few comments so that we won't just be in silence, although some people might prefer that there be silence. A lot of times bills seem very innocuous, and upon examination they turned out really to be that way. But in the time that I have left here, I'm going to continue to try to avoid cluttering the statutes with language which is not necessary. If this bill makes it possible for the state to do something which is beneficial to the state and the people, which without this language could not be done, then I would... [LB744]

SENATOR STUTHMAN: One minute. [LB744]

SENATOR CHAMBERS: ...see it differently. But if this can be done, I really don't see the need for the language. The report of the committee does not indicate that anybody

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from the federal government testified for the bill, so I have to presume that the desire to do this is on the part of the state, not the federal government. And the state sees an advantage or a benefit from this that we're doing, and I haven't been shown that benefit yet. So if I am shown that benefit, then some of the concerns that I have expressed will probably evaporate. Thank you, Mr. President. I'm going to turn off my light. Senator Aguilar may have an answer for us. [LB744]

SENATOR STUTHMAN: Time. Thank you, Senator Chambers and Senator Aguilar. Senator Carlson, you are now recognized. [LB744]

SENATOR CARLSON: Mr. President and members of the Legislature, I would like to address a question to Senator Aguilar, if I could disrupt his conversation with Senator Chambers. [LB744]

SENATOR STUTHMAN: Senator Aguilar, would you respond to a question from Senator Carlson? [LB744]

SENATOR AGUILAR: Yes, I will. [LB744]

SENATOR CARLSON: Senator Aguilar, under current situation, if the Department of Administrative Services goes through the process, however more difficult, and leases this property to the federal government, there would be something paid for that lease. That's correct, right? [LB744]

SENATOR AGUILAR: Yes, it would. [LB744]

SENATOR CARLSON: And where does that money go? [LB744]

SENATOR AGUILAR: I'm sure it would go to General Fund. [LB744]

SENATOR CARLSON: I...and I ask that as a question. I don't know. Does it go to...back into the General Fund, or does it go into a fund that can be used further by the Department of Administrative Services? [LB744]

SENATOR AGUILAR: You know, I'm not positive of the answer, but DAS is on their way down to answer Senator Chambers' question, so I can get that more accurately for you at that time. [LB744]

SENATOR CARLSON: Okay. Now to follow up on that, then with the bill, if there's a lease fee paid now, the bill doesn't really change that. So I guess that's why the A bill doesn't show any effect. Would that be correct? [LB744]

SENATOR AGUILAR: That's right. And the costs that they would lease to political

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subdivisions or the federal government will be commensurate with what they're charging existing tenants right now. [LB744]

SENATOR CARLSON: Okay. I'm trying to look for a positive cash flow here that would be improved, but there really isn't one. With the bill, the passage of the bill doesn't really offer the opportunity for improved lease payments, because they already exist. [LB744]

SENATOR AGUILAR: Not improved, but if we're talking about vacant property, you know, of course they're going to have an increase in income. [LB744]

SENATOR CARLSON: So maybe there could be an increase in income with the passage of the bill. [LB744]

SENATOR AGUILAR: Yes. [LB744]

SENATOR CARLSON: Okay. I think that's an important point. Thank you. [LB744]

SENATOR AGUILAR: Thank you. [LB744]

SENATOR STUTHMAN: Thank you, Senator Carlson and Senator Aguilar. Senator Chambers, you are recognized. [LB744]

SENATOR CHAMBERS: Mr. President, members of the Legislature, there's kind of a folk song about John Henry. He was a steel-driving man, and as everybody knows who is familiar with the legend at all, he took a hammer in each hand and he drove spikes that would help them lay tracks. So he was doing such a good job that one of the stanzas or verses says: The Captain said to John Henry, I'm gonna bring me a steam drill around; I'm going to bring the steam drill out on the job; I'm going to plow that steel on down, Lord, Lord, I'll plow that steel on down. So then there are a few more verses. Then it comes to the showdown. The man who invented the steam drill, he thought it was mighty fine. The steam drill...John Henry drove 15 feet but the steam drill only made 9. John Henry said to the Captain, looky yonder what I see, hold and choke, your drill done broke; you can't drive steel like me. Now we have a train on the track. It's trundling down the track, Senator Carlson. The braking mechanism has been burned out. It's going to become a runaway train. Somebody must stop that train. There is no Superman, and it didn't say that Superman would stop trains, as far as I know. He was faster than a single bullet. He could leap tall buildings with a single bound. Then look up in the sky, it's a bird, it's a plane, it's Superman, and all the little children would go up in a shout. Well, this bill I am analogizing to a train that might become a runaway. I understand from the information that I've been given, and it was not given to me from the standpoint of its being exhaustive, there is a process in place for dealing with vacant buildings and land. I do not see from that information why we need this legislation. If this process that exists in the section of statute that is being amended by this bill is to

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replace the other, then we ought to repeal the other and let this take its place. If it is not going to repeal the other and that there's an interrelationship between the two, I should think the appropriate place for amending would be that section of statute that deals with vacant buildings and vacant grounds. Now I'm not going to say this is an end run around anything, but I do not see why we need to build a new process if one is already in place and we are not going to amend that existing process. In my lack of awareness and knowledge about that existing process, let me give an example which is not designed to portray what that existing process is, but by way of example, the statute says that if there is a building vacant, if there is land vacant, it's not being used by the state, there is no imminent use to be made of it by the state and it is available for leasing, the federal government or a political subdivision may lease that land. If there is enough to meet one of these entities' interests and land remains left over for that purpose, then both may lease land, the federal government and the political subdivision. [LB744]

SENATOR STUTHMAN: One minute. [LB744]

SENATOR CHAMBERS: If that's the existing law, I would like to ask Senator Aguilar a question or two, if I may. [LB744]

SENATOR STUTHMAN: Senator Aguilar, would you respond to a question from Senator Chambers? [LB744]

SENATOR AGUILAR: I will. [LB744]

SENATOR CHAMBERS: Senator Aguilar, do you have an answer for us now? [LB744]

SENATOR AGUILAR: I do not. We're having a hard time getting a response from DAS. May I ask you a question? [LB744]

SENATOR CHAMBERS: You certainly may. [LB744]

SENATOR AGUILAR: Would you object terribly to allowing this to go to Select File while I work on getting you a satisfactory answer? And if not, then, you know, the whole thing will just go away, I'm sure. [LB744]

SENATOR CHAMBERS: I've got my light on. Let me contemplate that for a minute. So I will wait until I'm recognized to speak again. [LB744]

SENATOR STUTHMAN: Thank you, Senator Chambers and Senator Aguilar. Senator Chambers, you may continue, and this is your third time. [LB744]

SENATOR CHAMBERS: I'm aware. Members of the Legislature, I don't make more money than anybody on this floor. Why, oh why, are you requiring me to look at these

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little, innocuous bills and become a bad fellow? I'm going to say, like Senator Friend: I know people don't like me; I want people to like me; I go home and I look in the mirror and I say, why does nobody like me? Well, I know why you don't like me (laugh), and really it doesn't matter. But can...? Somebody is going to have to do this kind of work. Because a piece of legislation may not be a blockbuster, because it does not on its face generate a lot of hostility from one group or another, because it doesn't even seem to be controversial, it nevertheless should be subjected to analysis. This, I think, is worthy of our consideration. We are doing something in the nature of establishing a policy, as I see it, but if we're not establishing a policy because it's already in place, we don't need this bill. If we want to enact legislation regulating medical care for human beings, we could put it under statutes that relate to medical care being given to mammals with four feet, or in other words, animals. And we could abolish the distinction between human animals and animal animals, and say we're just talking about medical care to any living creature which is a part of the animal kingdom, which is a part of the animal kingdom represented by fauna rather than flora. And, by the way, that's not a singing group, flora and fauna, but it might be a good name, Senator Carlson. We wouldn't do that, though, but if we chose to, we could say no animal shall be accorded medical or healthcare treatment in a way that is negligent or detrimental to such animal. Animal includes any member of the animal kingdom. We have two statutory schemes that we're dealing with. This bill amends one of them. Another one exists someplace else and we don't know what it is, but I want to know what it is. I want my education to be improved. And if that is done, I've already said I will not object to the bill, but I have to be shown that it is necessary to achieve a purpose that is beneficial to the state and the citizens. I'm not even interested in making something convenient for the federal government or a political subdivision. That can be a side benefit. But I'm a state senator. I'm not a U.S. senator. I'm not a county board member. I don't belong to a village board or a city council. So if nobody else is interested in these bills, I am compelled to take an interest and ask questions about those aspects of it of which I'm ignorant. And at this point I'm floundering in ignorance. I want my ignorance to be removed. I'm seeking enlightenment. I want somebody to teach me. I wish Senator Wightman would do the job,... [LB744]

SENATOR STUTHMAN: One minute. [LB744]

SENATOR CHAMBERS: ...but Senator Wightman may be situated as I am. He's not a member of this committee. Senator Avery is not going to help me this morning because he's still mad at me. Senator Adams kind of takes a low profile on everything. Senator Aguilar is valiantly helping, trying to help. Senator Karpisek is trying to figure how to keep his sausage operation going on a \$12,000-a-year salary. Senator Lautenbaugh, he ought to tell me. Senator Pahls ought to tell me. Senator Rogert ought to tell me. But they all sit in silence and they do not want to inform their ignorant brother on this subject which they have considered and understand well enough to present it to all of us. So I guess I'll just have to remain ignorant because nobody will help me. [LB744]

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SENATOR STUTHMAN: Time. [LB744]

SENATOR CHAMBERS: Thank you, Mr. President. [LB744]

SENATOR STUTHMAN: Thank you, Senator Chambers. Senator Carlson, you are recognized. [LB744]

SENATOR CARLSON: Mr. President and members of the Legislature, in listening to Senator Chambers, and Senator Aguilar's suggestion that this be voted to Select File and he'll work on the issue between now and then, whether it is to go to another statute and amend that or whether it is to work on the present bill, I don't know. I would encourage Senator Aguilar, as he prepares for Senator Chambers, I'm going to vote for this to Select File, reason being he alluded to the possibility that there can be some increased revenue by making this change. And so if that would be a part of the research that's done between now and Select File, that would help me and, I would think, several others. Thank you. [LB744]

SENATOR STUTHMAN: Thank you, Senator Carlson. Senator Friend, you are recognized. [LB744]

SENATOR FRIEND: Thank you, Mr. President. Members of the Legislature, I haven't learned that much from Senator Chambers but I did learn one thing, that I stand corrected. I don't care if anybody out here likes me. If I want a friend, I'll go get a dog. Actually, I have two dogs at home and they seem to like me. So you want me to be sincere about this? I've set that thought process aside. He's right. I don't know if anybody out here likes me. I don't care. When I went home last night, my dog jumped into my lap. Thank you, Mr. President. [LB744]

SENATOR STUTHMAN: Thank you, Senator Friend. Seeing no other lights, Senator Aguilar, you're recognized to close. [LB744]

SENATOR AGUILAR: Thank you, Mr. President and members. And I would like to go forward with this and advance it to Select File. And I will assure the body that I will get the answers Senator Chambers came up with, as well as Senator Carlson. This is, you know, this is a good bill and DAS needs it, thinks they need it anyway. We'll confirm that later on down the road. I would just ask members to go ahead and advance this to Select File, if they will. [LB744]

SENATOR STUTHMAN: Thank you, Senator Aguilar. You have heard the close. Members of the body, all in favor vote aye; all opposed vote nay. Mr. Clerk, please record. [LB744]

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CLERK: 26 ayes, 1 nay, Mr. President, on the advancement of the bill. [LB744]

SENATOR STUTHMAN: The bill is advanced. Mr. Clerk, next bill. [LB744]

CLERK: Mr. President, LB747 is a bill introduced by Senator Aguilar. (Read title.) The bill was introduced on January 9; at that time referred to the Government, Military and Veterans Affairs Committee. The bill was advanced to General File. I have no amendments at this time, Mr. President. [LB747]

SENATOR STUTHMAN: Thank you, Mr. Clerk. We will now hear the opening. Senator Aguilar. [LB747]

SENATOR AGUILAR: Thank you, Mr. President and members. In 1998, the Legislature passed a bill allowing certain governmental units to enter into energy financing contracts. An energy financing contract is an agreement between an energy service company and governmental unit to implement energy conservation measures in an existing facility in exchange for a portion of the energy cost savings produced. Some examples of energy conservation measures include insulation of a building, repair of heating or air-conditioning system, or installation of energy recovery systems. The governmental units which are authorized to use these contracts include schools, community colleges, municipalities, counties, or a department or agency of the state of Nebraska. Current law requires that the payments on the contract is limited to 15 years. LB747 would allow a longer period of time to recover the cost savings produced and extends the period to 30 years. A longer period of time is now appropriate because modern conservation measures, such as renewable energy technology, have a longer life expectancy and payback time. There was no opposition to this bill at the hearing and it was advanced on a 7-0 vote. Thank you for your consideration of this bill, and I'd urge you to advance this to Select File. Thank you, Mr. President. [LB747]

SENATOR STUTHMAN: Thank you, Senator Aguilar. You have heard the opening on LB747. Senator Chambers, you are recognized. [LB747]

SENATOR CHAMBERS: Mr. President, members of the Legislature, the last bill I analogized to a train. This one, by its number, takes care of what it would be--a 747. Now you all know that if you're in a Piper Cub, it's a little plane that just zips around here and there like a water bug skimming over the water. It can make a turn on a dime, so to speak. But if you're in a 747, it moves faster than a Piper Cub, but if it's going to make a maneuver, if it's going to turn, it takes a lot more distance, and it has to do it a lot more slowly because of the momentum, the velocity, and such things as that. I want to ask Senator Aguilar a question or two. Senator... [LB747]

SENATOR STUTHMAN: Senator Aguilar, would you respond to a question from Senator Chambers? [LB747]

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SENATOR CHAMBERS: Senator Aguilar, I see where a systems outfit supported the bill--Johnson Controls, Inc. Do they enter these contracts with school boards and other governmental agencies? [LB747]

SENATOR AGUILAR: Yes, they've been doing that for years. [LB747]

SENATOR CHAMBERS: And I see where the school, the Nebraska Association of School Boards, also spoke in favor of the bill. [LB747]

SENATOR AGUILAR: Yes, they did. [LB747]

SENATOR CHAMBERS: Will the contract cost the taxpayers any more if it's paid off in 30 years than it would if it were paid off in 15 years? [LB747]

SENATOR AGUILAR: I don't believe so. The school districts, for instance--let's use them as an example--are actually able to save money with the money...with the funds, that they are actually almost reimbursed by the energy companies. [LB747]

SENATOR CHAMBERS: And how does the energy company reimburse them? [LB747]

SENATOR AGUILAR: Well, not in a cash manner, but, you know, they can actually document the savings that schools will achieve because of these new systems that they put in. And that number will be applied to the...actually, the payment as far as paying for the equipment that is installed. [LB747]

SENATOR CHAMBERS: And the law does say currently that one of these companies that enters into one of these contracts has to provide "a performance bond to the governmental unit in an amount equal to one hundred percent of the total cost of the contract to assure the company's faithful performance." And in addition to that, "The...company shall also supply a guarantee bond equal to one hundred percent of the guaranteed energy savings for the entire term of the contract. For purposes of this section, total cost means all costs associated with the design, installation, modification, commissioning, maintenance, and financing of all energy conservation measures contemplated under the contract." So if there is this bond, the governing body cannot lose anything based on the company's failure to perform. The bondholder...I meant the bonding company would take care of that. [LB747]

SENATOR CHAMBERS: That's correct, Senator. [LB747]

SENATOR CHAMBERS: Suppose the entity with which the contract is made does not make the payments over that 30-year period. What happens then? Is there liability that attaches? Let me give you an example. If a school district enters one of these 30-year

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contracts and that school district is abolished, who is responsible to make the payments on that contract, the state or just whom? [LB747]

SENATOR AGUILAR: I'm going to have to have some help on that, Senator. [LB747]

SENATOR CHAMBERS: Okay. Is Senator Raikes here? I don't see Senator Raikes. Senator Wightman might know because he knows everything. [LB747]

SENATOR LANGEMEIER PRESIDING [LB747]

SENATOR LANGEMEIER: One minute. [LB747]

SENATOR CHAMBERS: But you just have to ask him. I'd like to ask Senator Wightman a question or two. [LB747]

SENATOR LANGEMEIER: Senator Wightman, would you yield? [LB747]

SENATOR WIGHTMAN: Yes, I will. [LB747]

SENATOR CHAMBERS: Senator Wightman, I read that other language to indicate that the company's obligation is covered by these bonds, so if the company goes out of business or doesn't perform, the governmental subdivision or entity is going to be protected. But now what happens if the company stays in business, the company is performing and able to form, but the school district goes out of existence? What...who then pays what is owed to the company under the contract? [LB747]

SENATOR WIGHTMAN: I think there might very well be a default at that point and that the company might lose its... [LB747]

SENATOR CHAMBERS: The company might lose? [LB747]

SENATOR WIGHTMAN: That would be my understanding, but... [LB747]

SENATOR CHAMBERS: Okay. But there's no way that under a contract which does not implicate the state, that the state or anybody else could be made liable. [LB747]

SENATOR WIGHTMAN: I see no possible way that the state of Nebraska... [LB747]

SENATOR LANGEMEIER: Time. [LB747]

SENATOR WIGHTMAN: ...could be liable. [LB747]

SENATOR LANGEMEIER: But your light is next. You can continue on your next time.

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[LB747]

SENATOR CHAMBERS: Thank you. And Senator Wightman gave the answer that I thought was probably appropriate, but I wanted it to be stated. And the reason I selected Senator Wightman, he is an attorney, he is knowledgeable in this area, so I wasn't suggesting that through osmosis he just knows everything. He has worked hard to obtain the knowledge that he has. So I don't have any problem with the bill, but it just seems to me...let me ask Senator Carlson a question. [LB747]

SENATOR LANGEMEIER: Senator Carlson, would you yield? [LB747]

SENATOR CARLSON: Yes, I will. [LB747]

SENATOR CHAMBERS: Senator Carlson, if I'm going to buy a car and I'm going to pay installments on it and the contract says that I will pay off the car in four years, or I can get a contract that will say the price of the car remains the same but I can pay it off in eight years, will I pay more under the eight-year contract in fees and everything else than I'd pay under the four-year contract? [LB747]

SENATOR CARLSON: Yes, you will. [LB747]

SENATOR CHAMBERS: Okay. [LB747]

SENATOR CARLSON: Unless it's an extreme difference in interest rate. [LB747]

SENATOR CHAMBERS: Okay. And now I'd like to ask Senator Aguilar a question or two. Thank you, Senator Carlson. Senator... [LB747]

SENATOR LANGEMEIER: Senator Aguilar, would you yield? [LB747]

SENATOR AGUILAR: Yes. [LB747]

SENATOR CHAMBERS: Senator Aguilar, when this contract is written, then the school system or whichever entity is entering such a contract, it will be known by the lawyer for that entity that more is going to be expended over a 30-year period than would be expended over a 15-year period under that contract. Would you agree with that? [LB747]

SENATOR AGUILAR: Yes, I would. [LB747]

SENATOR CHAMBERS: But if I understood you correctly, there are savings that will be realized that will somehow prevent the entity from being indebted to a greater amount under the 30 years than under the 15. Is that what you're saying? [LB747]

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SENATOR AGUILAR: You stated that correctly. [LB747]

SENATOR CHAMBERS: Okay. And that has worked. Is that what you're telling me?
[LB747]

SENATOR AGUILAR: Yes, they've been...like I said, they've been doing that for years now and it works that way, and school districts are, you know, very happy with that scenario. This just takes it out a little further, and knowing that the equipment now lasts a lot longer, and, of course, it's more expensive in this day and age. [LB747]

SENATOR CHAMBERS: Uh-huh. Okay. Thank you. That's all I have, Mr. President.
[LB747]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Speaker Flood, you're recognized for an announcement. [LB747]

SPEAKER FLOOD: Thank you, Mr. President, members. A quick announcement: Tomorrow we're going to begin on LB823 from the Legislative Performance Audit Committee, and the second bill on the agenda that I anticipate us getting to is the statewide smoking ban as proposed by Senator Johnson. We will move to that on Final Reading tomorrow morning and most likely remain on that for the balance of the week. Thank you, Mr. President.

SENATOR LANGEMEIER: Thank you, Speaker Flood. Returning now to floor discussion on LB747, there are no lights on. Senator Aguilar, you are recognized to close on LB747. [LB747]

SENATOR AGUILAR: Thank you, Mr. President and members. As I stated earlier, you know, this extension of the time frame for these contracts to be in place is supported by the school district. They see it as a good thing, as a savings, and I would encourage everybody to advance this to Select File. Thank you, Mr. President. [LB747]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. You have heard the closing on the advancement of LB747. The question before the body is, shall LB747 advance? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB747]

CLERK: 25 ayes, 0 nays on the advancement of LB747. [LB747]

SENATOR LANGEMEIER: LB747 does advance. Mr. Clerk, next item on the agenda, LB722. [LB747 LB722]

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CLERK: Mr. President, LB722 by Senator Engel. (Read title.) Introduced on January 9 of this year, at that time referred to the Revenue Committee. The bill was advanced to General File. I have no committee amendments pending, Mr. President. [LB722]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Engel, you are recognized to open on LB722. [LB722]

SENATOR ENGEL: Okay. Mr. President, members of the body, LB722 changes the method used to impose an excise tax on tobacco products, which are defined in the bill as products primarily intended for chewing. LB722 was advanced to General File on a 5-0 vote, with no committee amendments. If LB722 sounds familiar to you, you may recall that last year I introduced LB106, which, as amended by the committee amendments, was very similar to LB722. Now the only difference is, this year we struck provisions requiring products weighing less than one ounce to be taxed on a minimum basis, a minimum of 65 cents, and so what we're doing now, we're prorating that so that brings a little more fairness into the bill. And we moved cavendish from tobacco products to smoking tobacco, as it is a pipe tobacco that is smoked. Now LB722 divides tobacco products which are all currently taxed at 20 percent of the wholesale price into two groups: smoking tobacco, which includes tobacco products intended primarily for smoking, as cigars, cheroots, stogies, periques,...I mean not cavendish, and granulated, plug cut, crimp cut, ready rubbed, and other tobacco prepared in such manner as to be suitable for smoking, except cigarettes; and tobacco products, which are tobacco items primarily intended for chewing--that's snuff, snuff flour, plug and twist tobacco, fine cut and other chewing tobacco, shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing. Smoking tobacco would continue to be taxed at 20 percent of the wholesale price, whereas tobacco products will be taxed at a rate of 65 cents per ounce. Fractional parts of an ounce would be taxed proportionately at the same rates. Now cigarettes are taxed by the pack. This bill does not change the way that cigarettes are taxed. Such tax is governed by a different section of statute, 77-2601 and 77-2602. Although I do not endorse the use of tobacco products, I do support a fair tax system. Cigarettes are taxed by the pack, yet chewing tobacco is taxed on an ad valorem basis. This method gives an unfair tax advantage to the less expensive brands of chewing tobacco, which are growing at a faster pace than name brand products. The industry has realized this tax loophole and has taken advantage of it by developing the lower-end quality product. Therefore, also...although this less quality product is less expensive, it is also artificially cheaper due to the way we tax the product. However, the harm caused by either tobacco is essentially unrelated to its price as all tiers of chewing tobacco contain virtually the same amount of nicotine, and much of the effect of this ad valorem tax is merely to encourage more consumption of the inexpensive brand. While all states collect excise taxes on products such as gasoline, beer, wine, spirit, and cigarettes, these taxes are imposed on a unit or volume basis--a gallon of gas, a liter of wine, a barrel of beer, or a pack of cigarettes. Chewing tobacco, however, is one of the

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few products that are subject to an ad valorem excise tax or a tax based on price. Excise taxes, unlike sales taxes, are intended to tax consumption. Twelve states have a weight-based tax for chewing tobacco, of which six states have just switched from the ad valorem tax in the last 18 months. Last year, the Governor vetoed LB106 after it was passed by the Legislature, due to an amendment that was added on the floor to increase the tax rate of tobacco products from 65 cents to \$1.05 per ounce. The Governor stated in his veto message that he could have supported the bill if the tax rate was at the 65-cent level, as he felt that it provided for the equitable treatment of tobacco products. However, he could not support the \$1.05 tax rate per ounce and viewed it as an unnecessary tax increase. I urge you to consider the merits of taxing tobacco products by weight, a method that would be easy to administer, as the weight is already listed on the cans, and much fairer as it is based on consumption, not on an arbitrary price. To me, this is an equity issue. There will always be competition, regardless, because there will always be the higher and lower priced, but that should be left up to the free market. So I do urge your support for advancing LB722 to Select File. Thank you. [LB722 LB106]

SENATOR LANGEMEIER: Thank you, Senator Engel. You have heard the opening on LB722. The floor is now open for discussion. Those wishing to speak, Senator Lautenbaugh, you're recognized. [LB722]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I was wondering if Senator Engel would yield to a question? [LB722]

SENATOR LANGEMEIER: Senator Engel, would you yield? [LB722]

SENATOR ENGEL: Yes, I would. [LB722]

SENATOR LAUTENBAUGH: Senator, is it fair to say the practical effect of this is to raise the cost of the lowest-priced snuff items, if you will, tobacco items? [LB722]

SENATOR ENGEL: Would you repeat your question then, please? [LB722]

SENATOR LAUTENBAUGH: Is it fair to say the practical effect of this is to raise the cost of the lowest-priced snuff, if you will? [LB722]

SENATOR ENGEL: That's part of it, but I think it's an equity issue because what they're taking advantage of...and I think this is a war between tobacco companies. I'm not in that war. I don't...I could care less about promoting tobacco products and I don't favor one company over another. But the thing is, when the one, like on a lower-end price of a can of this snuff, say it sells for 49 cents, the tax on it is about 2 cents, where on a \$3 box of Skoal, so to speak, I think that's, what, \$3.01 or something like that; the tax on that is 60 cents. So it actually costs...the tax is higher on that particular box than it is for

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you buy the whole can earlier. So I think it's just a fairness issue. As far as I'm concerned, let's start off with an even tax base and let the market prevail as far as how they market their product and the price they charge for it. [LB722]

SENATOR LAUTENBAUGH: Okay. Thank you. I'll yield the rest of my time. [LB722]

SENATOR LANGEMEIER: Thank you, Senator Lautenbaugh. Senator Stuthman, you're recognized, followed by Wightman and Chambers. [LB722]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I have a real, real concern with the fact that we're trying to attempt to change the policy that is in place, the ad valorem tax, and go to a weight tax. And I think the thing that really concerns me is the fact that the higher-priced chewing tobacco, which now is paying a larger percent of tax because it's based on the dollar amount. The people that don't utilize the higher-priced chewing tobacco probably can't afford it; a lower class of people; and that those people probably purchase the Longhorn or Red Man chewing tobacco. Their price, if this is adopted, is going to drastically be increased. And the way I understand it, in some of the information that I have received, some of these cheaper-priced ones at the current time, if this is adopted, the tax on that is going to increase over 300 percent--300 percent. And actually, on the price of that probably the cheaper of the cheapest, half of the price that the individual is going to pay is going to be for taxes, where the other one, the higher-quality chewing tobacco, probably the better chewing tobacco for those who choose to chew, which I don't, I think they're not going to be paying as much tax. I look at it also as a situation of the quality and the price and then the amount of tax, and I'll use the illustration of a person that can only afford a cheaper, used pickup truck. Probably pays a thousand dollars for it. He pays tax on that thousand dollars. The person that can afford a big 4-wheeler truck, probably costs \$35,000, his tax is going to be a lot greater. I would hate to see the fact that we would change the taxing method on vehicles and would be taxed by weight. Probably the two illustrations that I've illustrated on probably weigh about the same. Probably the cheaper one would be a little bit lighter. I just think that we're going at this in the wrong way. I think we have a policy in place that we are accustomed to, and it generates revenue. The ones that can afford the higher quality of chewing tobacco, yes, they will be paying a little bit more. The ones that are the cheaper-priced chewing tobacco won't be paying as much tax in comparison to the higher quality. I just think that there's something behind this that they're trying to get the consideration of quality not involved in the taxation of it. I'm going to listen to the debate but I am not sold on this. I'm not...I don't smoke, I don't chew tobacco. I just think that once we change this, we're going to have the higher-quality,... [LB722]

SENATOR LANGEMEIER: One minute. [LB722]

SENATOR STUTHMAN: ...the most expensive chewing tobacco, paying a smaller

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amount of tax. Yes, it's still going to be on the weight; if it's changed it goes on to the weight. But I'm really concerned about changing it, and if we go to a legislative change, anytime we need to raise the dollar amount of revenue that is needed, we're going to have to do it legislatively, where now, when the price goes up from, say, \$3 a can of Skoal to \$8 a can of Skoal, the revenue will increase as the price had increased. And that will come...it will just come. The revenue will take care of itself because the price goes up. If the price goes up and the people consume less, the revenue will be going down, and it will have an effect on our budget. Thank you, Mr. President. [LB722]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. (Visitors introduced.) Returning to floor discussion on LB722, those wishing to speak, we have Wightman, Chambers, and Engel. Senator Wightman, you're recognized. [LB722]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I would like to ask a few questions of Senator Engel if he would yield. [LB722]

SENATOR LANGEMEIER: Senator Engel, would you yield? [LB722]

SENATOR ENGEL: I'd be happy to. [LB722]

SENATOR WIGHTMAN: Senator Engel, can you tell us other instances? You had mentioned cigarettes taxes, I think, are taxed by the package, is that correct, and not by the price? [LB722]

SENATOR ENGEL: That's right. [LB722]

SENATOR WIGHTMAN: So that, in effect, it's a tax, other than a sales tax, which would automatically increase with the price--this tax. It would not increase according to the price. It would be based only upon the weight or the container. [LB722]

SENATOR ENGEL: That's true. [LB722]

SENATOR WIGHTMAN: Can you tell...? Not having chewed or used these tobacco products, do the cans--I know you buy them in cans--are they identical weight depending upon whether it's cheaper chewing tobacco or a higher-priced chewing tobacco? [LB722]

SENATOR ENGEL: At the current time they're all 1.2 ounces. That could vary, but we offered that in the amendment here as far as whether it be prorated if it's less than 1.2 ounces. Right now, as far as I understand, they're all 1.2 ounces. [LB722]

SENATOR WIGHTMAN: Senator Engel, can you help me on determining...or helping me be aware of what items right now are charged on a weight or container? We talked

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about cigarettes. What...? Obviously, gas is taxed in that manner, is that correct, by the gallon? [LB722]

SENATOR ENGEL: Well, gas is on...gas is by the gallon. Beer is by the gallon. Alcohol is by the gallon...I mean, by the volume, rather. And I listed several of those here in the...and then wine, etcetera. There's several items like that, that are taxed by the...I don't have a list of all of them, but that's an example. [LB722]

SENATOR WIGHTMAN: Does it appear to be outside of gas, most of those that we would consider to be a sin tax perhaps? [LB722]

SENATOR ENGEL: I suppose that's how...how you consider what (laugh) a sin is. [LB722]

SENATOR WIGHTMAN: Okay. There are some sins that are illicit or illegal, and I guess we don't tax those, is that correct? [LB722]

SENATOR ENGEL: Not that I'm aware of. (Laugh) [LB722]

SENATOR WIGHTMAN: (Laugh) Okay. I think there may be a distinction here between items...and Senator Stuthman mentioned automobiles. These are almost necessities of life. Gas is a necessary of life, and yet it is taxed on a volume. So I think there is a distinction here, and some of that may go to societal interests and perhaps curbing the use or not encouraging the use. I'm going to listen to the rest of the debate, but it sounds to me like there may be some practical distinction for distinguishing taxes on these so-called sin items from other items that are, in fact, necessities of life and necessary for everyone to purchase. Thank you, Mr. President, and thank you, Senator Engel. [LB722]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Senator Chambers, you are recognized. [LB722]

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, this is an educational morning for me, so I'm going to let Senator Engel be my mentor this morning. Senator Engel, would you answer a question or two? [LB722]

SENATOR LANGEMEIER: Senator Engel, would you yield? [LB722]

SENATOR ENGEL: I will certainly try. [LB722]

SENATOR CHAMBERS: Senator Engel, currently there is an ad valorem system for establishing the tax on these various products other than cigarettes, is that true? [LB722]

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SENATOR ENGEL: That's true. [LB722]

SENATOR CHAMBERS: For those of us who don't know what that means because we're not members of the Revenue Committee, would you tell us briefly how an ad valorem system operates? [LB722]

SENATOR ENGEL: An ad valorem system operates on the price of the product. [LB722]

SENATOR CHAMBERS: So if at the wholesale point the price raises, then the ad valorem tax would raise automatically. [LB722]

SENATOR ENGEL: Yes, sir; um-hum. [LB722]

SENATOR CHAMBERS: And this Legislature need do nothing; nobody need do anything. That's automatically built into an ad valorem system. [LB722]

SENATOR ENGEL: That's correct. [LB722]

SENATOR CHAMBERS: Under the system that we would have with this bill if we adopt it as you're presenting it, the ad valorem system would go, and the price at wholesale could increase but no additional revenue by way of taxation taxes would come to the state. Is that true? [LB722]

SENATOR ENGEL: That's correct, too, and that's the way it is with cigarettes also. That's separate but that's the way they do it with cigarettes too. [LB722]

SENATOR CHAMBERS: But we're not dealing with cigarettes. [LB722]

SENATOR ENGEL: Right, we're not. We're not. You're right; you're right. [LB722]

SENATOR CHAMBERS: Okay. We're dealing just with your bill, because you've explained very clearly to even the densest of us that cigarettes are not in this equation at all. But to get right to the point, if we go from an ad valorem system to this system, tax money which automatically increases as the price at wholesale increases would no longer automatically come to the state. Is that accurate? [LB722]

SENATOR ENGEL: That is true. [LB722]

SENATOR CHAMBERS: So even if in the short run there might be more money derived in taxes under the system in this bill, eventually the state is going to suffer a loss in revenue under the system put in place by this bill. Is that accurate? [LB722]

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SENATOR ENGEL: Well, I can...if I could on your time or I've got my light on too, I can answer it later, but the thing is, we had the A bill, the fiscal note, on that, and they figured for about the first ten years you would see an increase in taxes, and after that there is the possibility that it could go down to below what it is, but that's...it's in the fiscal note there, as... [LB722]

SENATOR CHAMBERS: And Senator Engel, being the thorough person you are, in other states that have gone to a system like this, the states have experienced a loss in tax revenue after a period of time, isn't that an accurate statement? [LB722]

SENATOR ENGEL: That I cannot verify. [LB722]

SENATOR CHAMBERS: Okay. Well, I'm going to state it as a fact, and I would stand to be corrected, but I doubt that anybody could contradict what I'm saying without misrepresenting the facts. That's all I will ask you at this point, Senator Engel. Members of the Legislature, time can be reckoned in various ways. It is relative. If you consider time from the standpoint of infancy to adolescence, to the infant and then moving up the scale a little bit, adolescence could seem a long way away. To the youngsters in the balcony, as young as they are, looking from where they are to the time when they will be at my advanced age, which is I'll admit to 70 years old, that's a long way off. But then if we compare it to the age of Senator Engel, then Senator Engel's age from mine, seems a long way off, going in the other direction. If we compare it to the life of the earth... [LB722]

SENATOR LANGEMEIER: One minute. [LB722]

SENATOR CHAMBERS: ...then it's nothing. If we compare it to the age of the universe, it's not even a nano-blink of the eye. As state officials, we don't just look at the time that we're in office, which will be a maximum of eight years if you serve two consecutive terms, we look at what is going to be the state's circumstances farther down the line. And farther down the line, this bill is going to cost the state, and I'm not in favor of that, but my time is up. Thank you, Mr. President. [LB722]

SPEAKER FLOOD PRESIDING [LB722]

SPEAKER FLOOD: Thank you, Senator Chambers. Senator Engel, you're recognized. [LB722]

SENATOR ENGEL: Mr. Speaker, members of the body, I'd like to, first of all, mention to Senator Chambers that I used to fly one of those little Cub airplanes. And you're exactly right; they can zoom down and they can zoom up. And I hope this stays on top. (Inaudible), you know, every plane will come down eventually, it's just how you bring

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them down, whether...and so I hope we bring this down the way I would like to see it, so thank you. And then secondly, I'd like to respond to Senator Stuthman's comments. He mentioned about the cigarettes, you know, (inaudible), but as far as the cheap...he talked about the cheaper brand of snuff, people would be paying more for that than they were before. But the thing is, with cheaper brands of cigarettes, you have cheaper brands of cigarettes, they all pay the same tax. So, I mean, it's in...so in one area you charge the same tax, and this is, as far as I'm concerned, is an equity issue. And then another thing as far as the sales tax. Also I think sometimes we get confused with excise taxes and sales taxes. You still have the sales tax on top. This is...the excise tax is separate from the sales tax. So that is still...sales tax is still charged on all of these products. So that's just for clarification. And then as far as the income, like I say, as far as the A bill, it looks like for the next ten years it would be...it would hold itself. In fact, it would be a few more dollars the first few years. I think \$1.67 million the first year, 2008-2009; and 2009-2010, \$1.5 million, so it will eventually diminish, but it is a few more dollars those first years. Another thing, too, by raising the price of this 49-cent snuff, and like I say, it has just as much nicotine as anything else, and so you raise the...put the tax on it, that's 65 cents an ounce; we'll raise it up over a dollar. But the thing is, that could discourage some of these young kids from trying this stuff, you know, because, I don't know, first of all, like I think I mentioned last year, I tried that twice in my life, and I was never man enough to use it. One time I got almost three blocks from where I took it before I had to stop the car. That's how it affects me. So I'm not man enough to chew on that stuff. And so it's not...and like I say, I don't smoke, so I'm not promoting tobacco products in any way. To me, this is strictly an equity issue, and that's the way I'm trying to sell this. And so down the road, ten years from now, if you're not getting the proper amount of taxes, then you can do like you do on cigarettes or whatever; you can raise the price. Hopefully, if we're doing our job in Nebraska, trying to discourage use of all tobacco products, cigarettes and snuff, someday you won't have to worry about this tax. You shouldn't have anything to tax. So, I mean, we worked...we talk with kind of forked tongues here in the Legislature. We want people to quit smoking, for instance, but we want to raise the tax. So we want the money but we don't want them to use it, the product. So just a matter of...and then, of course, there is a no-smoking bill coming up here shortly, or this week, I understand. And so we're discouraging people and then we're also encouraging them on the other side of our mouth. So with that I do think this is a fair bill. That's why I brought it and not for any other reasons. I think it's an equity bill. Everybody starts off on a level playing field, and then from then on up let the market prevail, and that's the way it should work in our society. So with that I turn the rest of my time back to the Chair. Thank you. [LB722]

SPEAKER FLOOD: Thank you, Senator Engel. Senator Carlson, you're recognized. [LB722]

SENATOR CARLSON: Mr. Speaker and members of the Legislature, I'm going to start out by trying to steal a little bit of thunder from Senator Chambers. I don't smoke and I

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don't chew. / This is really nothing new. / If I started I would risk my life. / I would probably end up without a wife. (Laughter) Senator Engel has introduced this bill on the basis of fairness, and we talk about at some point in time a weighted-based method would probably result in a revenue loss, so the ad valorem method acts kind of like a sales tax. And it keeps revenue current with inflation or at least helps in that direction. I think Senator Stuthman brings up a good point about raising the price on lower-quality products, and it probably keeps some people from being able to use them. In the interest of public health, that's probably not bad, but in the interest of losing freedom of choice, it's a negative. So this is a rather serious matter. I'm enjoying the testimony this morning and will continue to listen. Thank you. [LB722]

SENATOR LANGEMEIER PRESIDING [LB722]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Stuthman, you are recognized, followed by Senator Chambers. [LB722]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I'm trying to put this in my mind as to what's going to happen in the future as far as revenue received from this tobacco, the smokeless chewing tobacco. And I think the system that we have right now where when the prices go up and everything else is going up, we generate more revenue. This is just a natural occurring thing that happens when the prices go up, and it brings in more revenue. We have a Revenue Committee, and they are so happy when more revenue comes into the state of Nebraska. I think that if we go to a weight-based, and what we're attempting to do here in the legislative body is we're trying to get people to quit chewing tobacco and quit smoking. So what happens when people start to quit chewing tobacco? The weight goes down. The amount of tobacco, chewing tobacco sold, is decreased. So if we have established a tax on the weight-based, and our intention here is to lower that amount of chewing tobacco utilized by the members of the state of Nebraska, that tax revenue would be going down. And that's a thing that we have to keep in mind. I did receive a letter this morning from the wholesalers, stating that weight-based method would be negative to receipts in future years, only if we didn't change the amount, and the legislative body would have to change the percentage of tax on the weight-based method. This appears to have happened in other states. So I think we have a system right now, in place, that when prices go up, our revenue goes up. It's just a natural, and it's something that we want to happen. If the consumption goes down, which we want it to go down, those manufacturers will increase the price because of their costs even if the amount sold is less. You know, when the amount sold isn't as great as it has been in the past, the prices are going to go up; then our revenue will go up. So we have the golden egg right here. We've got it. I don't think we should break it. Thank you, Mr. President. [LB722]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator Chambers, you are recognized. [LB722]

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SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, Senator Carlson had a very clever little rhyme. I wish I had thought to do it, except that I don't have a wife so I would have had to say you all will lose your wives, and I don't want to be that presumptuous. I'd like to ask Senator Engel a question or two if he is willing to answer. [LB722]

SENATOR LANGEMEIER: Senator Engel, would you yield? [LB722]

SENATOR ENGEL: Yes. [LB722]

SENATOR CHAMBERS: Senator Engel, if you know, how long has the ad valorem system been in effect? [LB722]

SENATOR ENGEL: Oh, that I don't know. It's been quite some time, I'm sure. [LB722]

SENATOR CHAMBERS: Okay. [LB722]

SENATOR ENGEL: Probably since taxes were invented in Nebraska, I imagine. [LB722]

SENATOR CHAMBERS: Okay. So that being true, the market that the tobacco sellers of every variety work under have operated under the ad valorem system--those which are affected by it now,... [LB722]

SENATOR ENGEL: That's true. [LB722]

SENATOR CHAMBERS: ...haven't they? [LB722]

SENATOR ENGEL: Yes. [LB722]

SENATOR CHAMBERS: Well, it seems to me that the market is going to function on the basis of an established reality that has been there long enough to be considered to be more or less a permanent part of how these businesses are going to be taxed. Would you agree with that, in general? [LB722]

SENATOR ENGEL: In general, I would. I think there's specifics. [LB722]

SENATOR CHAMBERS: Okay. Now, what we are being asked to do with this bill is tip the market and not let the market function as it's functioning now, by putting in a new tax system. That's what I want to focus on. We're not just talking about the price of snuff or the lower-end products. We are changing a tax system under this bill, isn't that true? [LB722]

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SENATOR ENGEL: It depends on your definition of tipping. I think, again, I'm working on the fairness issue. [LB722]

SENATOR CHAMBERS: Let's take it a step at a time then. We are changing a taxing system, aren't we? [LB722]

SENATOR ENGEL: That we are; yes. [LB722]

SENATOR CHAMBERS: We're throwing out one, the ad valorem, and putting in another, the one under this bill where we talk about "by weight." [LB722]

SENATOR ENGEL: That's right. [LB722]

SENATOR CHAMBERS: Would you agree? [LB722]

SENATOR ENGEL: That's true. [LB722]

SENATOR CHAMBERS: And the ad valorem system...your bill, if it's adopted, is going to favor one segment of the market, and that's why our dear lobbyists came in and supported the bill. Isn't that true? [LB722]

SENATOR ENGEL: Well, like I told you, where I got this idea was not from the lobby... [LB722]

SENATOR CHAMBERS: But, but, but, if you don't mind. [LB722]

SENATOR ENGEL: Well, okay, I'll answer it. [LB722]

SENATOR CHAMBERS: Okay. [LB722]

SENATOR ENGEL: Ask your question again then, please. [LB722]

SENATOR CHAMBERS: Okay. The bill, as presented, is going to favor one segment of the tobacco market, and that is why their lobbyists came in to speak for the bill. Is that true? [LB722]

SENATOR ENGEL: Well, I think we have them speaking for and against. [LB722]

SENATOR CHAMBERS: But those who are speaking for it will be favored by the bill, is that true? [LB722]

SENATOR ENGEL: I'm assuming that; yes. [LB722]

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SENATOR CHAMBERS: Have you ever seen a lobbyist hired to testify against the interests of that lobbyist's principal? In other words, have you ever heard a lobbyist come here and say, I'm representing the car dealers and we want to put in place a law that's going to hurt the car dealers? Have you ever seen that done? [LB722]

SENATOR ENGEL: I don't think they would ever be hired for that. [LB722]

SENATOR CHAMBERS: Thank you. So we know that these lobbyists are hired by a segment of the tobacco industry that will be favored by this bill, so we are being asked to step in and alter the way the market operates right now, aren't we? [LB722]

SENATOR ENGEL: We are asked to step in; yes. [LB722]

SENATOR CHAMBERS: Okay. You said something awhile ago about letting the market operate, but you mean after this bill is put in place and the segment that's going to benefit from it has benefitted, then we let the market go from that point and continue benefitting them forever. [LB722]

SENATOR ENGEL: I believe in a level playing field, and then let the market prevail. That's what I'm... [LB722]

SENATOR LANGEMEIER: One minute. [LB722]

SENATOR CHAMBERS: Thank you. That's all I'll ask Senator Engel at this point, but I'm not through. The field is level now. Everybody knows the field. Everybody knows the rules. Everybody has played under the rules. The state has derived revenue through an ad valorem system of taxation. We're being asked to change that system to benefit one segment of the tobacco industry, which I'm not prepared to do. I don't want the Legislature to have to come back here and change the rates when you've already got a system that has worked forever--forever. And the only reason we're being asked to change it is to benefit one particular segment of the industry. I have my light on, which will be my third time and I'm aware of that, but I'll stop for now. And thank you, Mr. President. [LB722]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Engel, you are recognized. [LB722]

SENATOR ENGEL: Thank you, Mr. President and members of the body. As far as the lobbyists, I know we all have dealt with lobbyists. I have dealt with them 15 years, Senator Chambers have dealt with them 38 years, and they do represent certain interests, and they always have and they always will. They have something to sell and they try to sell it, of course, in favor of their clients whoever the clients might be. But the

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thing is, this particular bill was not brought to me by anybody out here in the lobby. It was at the American Legislative Exchange Council from the Commerce and Economic Development Task Force that I was a member of, and that's where this came about back there, and so that's where I got the idea. And I found out that they do have lobbyists here in Nebraska, and I'm working with one lobbyist that I very seldom ever work with on anything else, because we've always been on different positions, on different issues. So that's not the point. A lobbyist did not talk me into this at all. But they are working for their clients, there's no question about that. They all do that. And as far as I'm concerned, I think lobbyists are worth their weight in gold, and most of them are up-front with you, and if they're up-front with you, they have information you can use and get information from the other side, and then make your own decision, what you feel in your heart is right, and that's how I've always done it. I've never felt I was overly influenced by any of them, and I don't plan on it the rest of my career here, the short period it's going to be. So that's not the point. To me, from the beginning, from the beginning is like...it's kind of a Jeffersonian principle: Let the free market prevail. But let's start off and keep things on an equal basis as far as the equal playing field. And that's what this is all about from the beginning as far as my...how I feel about it, and that's why I'm coming back to the bill again this year, because last year it went through the Chamber, but when they raised the extra 40 cents on the tax last year, since Senator Chambers did that, which is fine, and those outside said, well, let's try it. Well, the Governor vetoed it, and I never did like raising that 40 cents, because then that is...that wasn't my point here was to raise taxes. It wasn't to raise taxes, it was just to put everything on a level playing field. So that's kind of where I'm at on this and that's where I'll remain, and so I would appreciate your support for the bill. Thank you very much. [LB722]

SENATOR LANGEMEIER: Thank you, Senator Engel. Senator Stuthman, you are recognized. [LB722]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. It has come to my attention that we have a tax in place right now where we have a real concern about trying to generate enough revenue, and that is the tax on fuel. The price of fuel has gone up from \$1.79 to \$3.29. The tax stays the same. The cost of doing, building infrastructure, you know, increases because of the cost of that, and the fact that people are not consuming as many gallons as they have in the past when the prices were lower. So our tax in that current situation are based on the gallon. So the volume is down. Our revenue is down. We can't build roads anymore. We can only maintain the roads that we have. And I think we have a proposal in front of us, what would base a tax on a percent of the wholesale price of fuel, and I'm very supportive of that. But here we're going the other direction. We're going to go back to the weight and tax it on that. And like I had just spoke before, we're trying to get people to not chew as much. And what does that mean? That means less consumption. Less consumption means less tax, less revenue. So I think we're totally going in the wrong direction, in my opinion, so I

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think we should very...let's think about this very seriously. And I'm thinking about the revenue generated, which we are very concerned about. Senator Ray Janssen of the Revenue Committee is trying to get as much revenue as possible. So I think we need to take a serious look at this, and I'll continue to listen to the debate, but I am in opposition to this. Thank you, Mr. President. [LB722]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator Chambers, you are recognized. [LB722]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, there used to be a tobacco commercial on the radio, first, and they would have an auctioneer auctioning these various tobaccos, and it would always be sold to American. They always won the auction. These are the kind of bills that result in a sort of auction. I do not think, for light and trivial causes, a taxing structure system should be cast aside to benefit one element of the industry that is being taxed. Senator Engel keeps talking about the market. We are being asked to change the dynamics of the market. Now, I'm going to start the auction. I'm going to put an amendment up there so that on page 4, in line 1, instead of taxing at 65 cents per ounce, it would be 95 cents. I bet they don't like that, but that's the price they'll pay for changing the taxing system. And even if we did that, I don't think it would be a good bill. Why are you going to alter a system that you can put on automatic pilot? Senator Engel has flown airplanes. I'd like to ask Senator Engel a question. [LB722]

SENATOR LANGEMEIER: Senator Engel, would you yield? [LB722]

SENATOR ENGEL: Yes. [LB722]

SENATOR CHAMBERS: Senator Engel, if I understood you correctly, you have flown airplanes before, correct? [LB722]

SENATOR ENGEL: Yes, I have; um-hum. [LB722]

SENATOR CHAMBERS: If you were in a large airplane and your eyesight was not what it needed to be in order to navigate by sight, but you had instrumentation which would be such that if you put it on what they call automatic pilot, that plane will virtually fly itself. [LB722]

SENATOR ENGEL: That's true. [LB722]

SENATOR CHAMBERS: Which would you rather have, a plane which must be operated by you manually, meaning that what you see and what you can do is going to determine how that plane flies, or it has the level of technology which will allow it to virtually fly itself? [LB722]

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SENATOR ENGEL: I did not have an instrument rating, so I enjoyed the flying the way I was flying. [LB722]

SENATOR CHAMBERS: If you had a very large aircraft and there were 150 passengers, each of whose life is depending on you flying that craft safely and getting it to its destination and back on the ground safely, and let's say that fog is beginning to enshroud the airport where you're going to land, would you want to be able to have instruments that can fly that plane, or you want to do it all by sight? [LB722]

SENATOR ENGEL: Well, you would be a fool not to want the instruments. Yes, I would want the instruments. [LB722]

SENATOR CHAMBERS: I agree. Now, Senator Engel, we currently have a tax system which is on automatic pilot, don't we, with the ad valorem system? [LB722]

SENATOR ENGEL: That's... [LB722]

SENATOR CHAMBERS: We don't have to do anything and it functions in the way it was designed, by raising additional revenue as the price of this substance being taxed rises. Isn't that true? [LB722]

SENATOR ENGEL: That part is true; yes. [LB722]

SENATOR CHAMBERS: So since this is your bill and you want to change it to another system, let me apply it to myself. I believe the ad valorem system works. It is on automatic pilot, and I would be foolish to give it up for a system that does not work that way, a system which is going to require the Legislature to keep tabs on how much revenue is being brought in from these products, and then alter the rate periodically. [LB722]

SENATOR LANGEMEIER: One minute. [LB722]

SENATOR CHAMBERS: Each time that point is reached we know pressure will be brought to bear. Those who are taxed have a right to do so. But in the interest of efficient operation of a system, if it works, why break it? This bill not only would break it, this bill would destroy it. Forget about tobacco, because if I had my way I would tax it so high nobody would want to smoke it, but I'm looking at the method by which we tax, and also by doing this you're interfering with the market to favor one part of it over the other. Thank you, Mr. President. [LB722]

SENATOR LANGEMEIER: Thank you, Senator Chambers. (Visitors introduced.) Mr. Clerk, items. [LB722]

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CLERK: Mr. President, the Committee on Judiciary, chaired by Senator Ashford, reports LB804 to General File. A new A bill, LB761A, Senator Avery. (Read LB761A by title for the first time.) Enrollment and Review reports LB791 and LB925 to Select File. And a communication from the Governor. (Re LB632.) (Legislative Journal pages 577-578.) [LB804 LB761A LB791 LB925 LB632]

Mr. President, with respect to LB722, Senator Chambers would move to amend with FA176. (Legislative Journal page 579.) [LB722]

SENATOR LANGEMEIER: Senator Chambers, you are recognized to open on your floor amendment. [LB722]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, if you turn to your gadget if you have any interest, you will see what the amendment would do. On page 4, in line 1, the current language says, "The tax on tobacco products shall be sixty-five...", and then it continues on the next line, "per ounce," and so forth. I would change that "sixty-five" to "ninety-five." We need to make this change if we're going to sell out. Make them pay us something. They can afford it. I'd like to ask Senator Engel a question. [LB722]

SENATOR LANGEMEIER: Senator Engel, would you yield? [LB722]

SENATOR ENGEL: Senator Chambers, yes. [LB722]

SENATOR CHAMBERS: Senator Engel, who is going to ultimately pay this tax, regardless of the amount? [LB722]

SENATOR ENGEL: The consumer. [LB722]

SENATOR CHAMBERS: Right. So what difference does it make to the people who testified on this bill, either for or against, whether the amount is 65 cents or 95 cents? [LB722]

SENATOR ENGEL: I don't necessarily want to penalize them any more than making it fair, and that's... [LB722]

SENATOR CHAMBERS: No, I'm...what I'm asking is what difference would it make to those who testified either for or against the bill, since it is not going to impact them directly in any case? [LB722]

SENATOR ENGEL: I think you would have to ask them. I don't know. [LB722]

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SENATOR CHAMBERS: But they shouldn't have any reason to be opposed to it since it doesn't affect them, should they? [LB722]

SENATOR ENGEL: Well, that's a matter of conjecture I guess. [LB722]

SENATOR CHAMBERS: If they were interested in the welfare of the public, they wouldn't sell their product, would they, since it kills so many people? [LB722]

SENATOR ENGEL: Well, actually you're right there, as far as if we didn't have tobacco we'd be better off. But we do and it's legal...it's a legal, so what are we going to do? [LB722]

SENATOR CHAMBERS: But here's what I'm getting at. The sellers of these products are not selling them to benefit the public, are they, since it's killing people? [LB722]

SENATOR ENGEL: I have never said that and I don't... [LB722]

SENATOR CHAMBERS: No, no. I'm just saying that we know that that's not why they're selling. [LB722]

SENATOR ENGEL: Yeah. Right. They're selling it to make a profit. [LB722]

SENATOR CHAMBERS: Since they are interested only in getting as much money as they can for their product, and they are not the ones who ultimately are going to absorb the amount of a tax, it shouldn't make them any difference how much the tax is, should it? And if it does, why would it, since they don't have to pay it, ultimately? [LB722]

SENATOR ENGEL: Well, from that viewpoint, no, it shouldn't. [LB722]

SENATOR CHAMBERS: Okay. So since those who are opposed to the bill have no reason to be opposed to my amendment, are you going to support my amendment? [LB722]

SENATOR ENGEL: No, I will not. [LB722]

SENATOR CHAMBERS: Tell me why, if you don't mind, Senator Engel. [LB722]

SENATOR ENGEL: Well, I would be more than happy to, Senator Chambers. Last year, when the bill was passed by the Legislature here and it went to the Governor, and you added 40 cents to the tax, which brought it up to \$1.05, which is 10 cents more than you want to do with this amendment, and the veto message came back that he would have considered signing the bill if it would have come through as it came out of committee. And that was with the 65-cent tax. So that's why I am going to stick to that because it's

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the first time I ever had a bill vetoed, and that really didn't have any heartburn over that because I didn't like the idea of raising it that much either. So, but I just don't like to go through the process again and have another bill vetoed. I would like to have this bill passed. [LB722]

SENATOR CHAMBERS: Then if the alternatives or the options are these, raise the tax to this amount and I leave the bill alone, or run the risk of our going on and trying to kill it, which would you rather do? [LB722]

SENATOR ENGEL: Well, I would rather just totally leave it alone, but beings you might not want to do that, I guess we just have to carry on. [LB722]

SENATOR CHAMBERS: All right. Thank you, Senator Engel. I knew that would have to be...would likely be his response. Members of the Legislature, I'm going to say it again and again and again...I'd like to ask Senator Karpisek a question or two before I say it again and again and again. [LB722]

SENATOR LANGEMEIER: Senator Karpisek, would you yield? [LB722]

SENATOR KARPISEK: Yes, I would. [LB722]

SENATOR CHAMBERS: Senator Karpisek, my amendment would raise the amount or the rate of this tax to 95 cents per ounce rather than 65--an increase of 30 cents per ounce over what's in the bill. Will you support my amendment? [LB722]

SENATOR KARPISEK: No. [LB722]

SENATOR CHAMBERS: Senator Karpisek, are you in favor of this bill? [LB722]

SENATOR KARPISEK: Yes. [LB722]

SENATOR CHAMBERS: Do you mind telling me why? [LB722]

SENATOR KARPISEK: Why I am in favor of the bill? [LB722]

SENATOR CHAMBERS: Yes. Why are you in favor of throwing away a taxing system which works, for one that ultimately is going to result in a net loss of revenue to the state? [LB722]

SENATOR KARPISEK: I guess I don't know that it will create a tax loss. But I think that it should be taxed per weight, not per...or per can; I'm sorry. [LB722]

SENATOR CHAMBERS: Well, if you have a tax system which now is going to

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guarantee, as long as this product is sold, a steady revenue stream to the state that will reflect increases in the price or value, the price of this product, why will you throw away that system for one based on weight, that you mentioned accurately, when it's been shown in other states that ultimately the state loses money, loses tax revenue under that system? Why do you want to take revenue away from the state? [LB722]

SENATOR KARPISEK: I guess I wasn't aware of that fact, Senator Chambers, but I liken it to a pack of cigarettes. They're all at the same rate. [LB722]

SENATOR CHAMBERS: Well, we don't want the tax money to go up in smoke just because the tobacco goes up in smoke, do we? [LB722]

SENATOR KARPISEK: No, Senator, you're correct. It just seems more fair to me. [LB722]

SENATOR CHAMBERS: If it's true that the system that LB722 would put in place would ultimately result in a revenue loss to the state, would you still support this bill that results in that? [LB722]

SENATOR KARPISEK: No, Senator, I could not support that. [LB722]

SENATOR CHAMBERS: If you're given information that you accept as being true, and that is the conclusion, you then would no longer support this bill, is that correct? [LB722]

SENATOR KARPISEK: That is correct. [LB722]

SENATOR CHAMBERS: Thank you. That's all I can ask of you, and it's up to me to get that information to you from a source that you will accept. I would like to ask Senator Raikes a question or two, since he is back there, the resident economist and expert on tax matters. [LB722]

SENATOR LANGEMEIER: Senator Raikes, would you yield? [LB722]

SENATOR RAIKES: Yes. [LB722]

SENATOR CHAMBERS: Senator Raikes, first of all, do you think there is anybody other than yourself who understands the school financial aid law? [LB722]

SENATOR RAIKES: Yes, I do, Senator. Probably many of you understand it much better than I do. [LB722]

SENATOR CHAMBERS: And you're being modest, of course. [LB722]

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SENATOR RAIKES: No, no. I'm just truthful. [LB722]

SENATOR CHAMBERS: Okay. Senator Raikes, are you aware that in other states that have adopted this method of taxing tobacco, have over a period of time reached a point where there was a loss in the amount of revenue compared to what they were taking in under an ad valorem system? [LB722]

SENATOR RAIKES: Yes. I didn't know about that, Senator, but it doesn't surprise me that that would be the case, because with the proposal as it is, there is a fixed tax per ounce or half ounce, I think, that doesn't change. So I think eventually the ad valorem, with inflation, would actually overcome that fixed amount. [LB722]

SENATOR CHAMBERS: Senator Raikes, do you support this bill? [LB722]

SENATOR RAIKES: I did...I voted it out of committee; yes, Senator. [LB722]

SENATOR CHAMBERS: No, I'm asking present tense, because (singing) that was yesterday and yesterday's gone. Do you now support this bill? [LB722]

SENATOR RAIKES: Yes, I support it. I do think that the provision of it that basically takes away the opportunity to sell tobacco at a very low price is the reason I support it. [LB722]

SENATOR CHAMBERS: Senator Raikes, if my amendment is adopted, will that go even further in the direction you want to go? I would raise that rate from 65 cents per ounce to 95 cents. Wouldn't that carry it even further in the direction that led you to support the bill? [LB722]

SENATOR RAIKES: Actually, that would, Senator. The question I would have to consider is, as to what extent is the per-ounce tax increased beyond what is reasonable. [LB722]

SENATOR CHAMBERS: Well, how do we determine reasonableness when we're talking about tobacco? What is reasonable for the tobacco industry, or just what? Where would the reasonableness come into play so that I understand your comment? [LB722]

SENATOR RAIKES: Well, one of the issues, I think, is the one you raised before in terms of revenue for the state. [LB722]

SENATOR LANGEMEIER: One minute. [LB722]

SENATOR RAIKES: At what point do you actually take in less revenue because of this change as compared to now? You know, I'm dodging a little bit the question you asked,

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how much? And I think the question you're asking is, is what is the reasonable price for someone to pay for a lower grade of chewing tobacco. [LB722]

SENATOR CHAMBERS: No, I'm asking what you mean when you say you're considering what's reasonable. Reasonable for whom? [LB722]

SENATOR RAIKES: Probably reasonable for both the consumers of the tobacco products and the state in terms of its taxing policy. [LB722]

SENATOR LANGEMEIER: Time. Thank you, Senator Chambers. Senator Engel, you're recognized. [LB722]

SENATOR ENGEL: Mr. President and members of the body, I'd just like to respond to a couple things, is my understanding is that most of the other companies that are involved in this, there's the right and the left and so forth, but they are also manufacturing a low-end product. So more and more low-end products will be sold in the future, and if that is the case, then you're going to see a decrease in your ad valorem tax the way it is now. So therefore, either way, I think there's one day you'll probably see a little less income. So what this projects out, about ten years, we're going to be okay as far as what our fiscal note says. So with that, I think we just have to...only Nostradamus and Senator Chambers can predict the future. I can't. And Nostradamus and he were born about the same time as what, from what Senator Chambers was telling me. In fact, they resemble each other. (Laugh) And that's a compliment, Senator Chambers; that is a compliment, because I do follow...I do like to read and listen to Nostradamus' predictions on the radio and on TV, and he has predicted a lot of things that have occurred. Of course, if you predict enough things, sometimes you are going to be right. We could even be right, you know. But that's not the particular point here, just to add a little conversation into the mix here. But the thing is, with Senator Stuthman mentioned...again, he mentioned the Revenue Committee are looking for ways to...for more revenue. But this came out of the Revenue Committee with no negative votes, so they have considered this bill. I mean, otherwise if it didn't get on the floor we wouldn't be discussing this right now, and it was heard before the Revenue Committee last year and this year. So again I'm just going to stick to my fairness deal as far as the bidding war here, 95 cents, and then maybe Senator Chambers would go to down 85 cents or maybe he'll go up to \$1.05. I don't know what he's going to do, you know, just like an auction. I have a brother that's an auctioneer, but I'm not. I spend too much time on the other side, raising my hand. This time I am not going to raise my hand. So with that I turn the rest of my time over to the Chair. Thank you. [LB722]

SENATOR LANGEMEIER: Thank you, Senator Engel. Senator Wallman, you are recognized, followed by Senator Chambers. [LB722]

SENATOR WALLMAN: Thank you, Mr. President and members of the body. Thank you,

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Senator Chambers, for bringing up issues which I have trouble with. We always seem to want cigarette money, tax money, change the formula. Why do we want to keep doing this? I think if it works the way it is, we shouldn't always be changing things. And so, you know, as you probably all well know, I have trouble with smoking bans forced out of this building, so I also have trouble with changing cigarette tax formulas or smokeless tobacco. It's been that way for years and it's worked for us, and that's all I have. Thank you. [LB722]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator Chambers, you are recognized. [LB722]

SENATOR CHAMBERS: Mr. President and members of the Legislature, Senator Engel indicated that Nostradamus and I were born about the same time. Well, that's not exactly true. When Nostradamus was in the first grade, I was in high school, and I used to chase him home and take his lunch money from him. (Laughter) Members of the Legislature, it may have been Sir Walter Raleigh, but I'm not sure, who was supposed to figure out how much smoke weighs. So he thought and he thought and he thought, and he came up with a way to make that determination. He took a quantity of tobacco and weighed it. Then he set it afire, and he weighed what remained. And the difference between what remained and what it weighed originally was the weight of the smoke. Now, who can show that that's not true? So if you want to find out how much smoke weighs, use the Sir Walter Raleigh method. And it might not be so bad if tobacco were burned in that fashion. But unfortunately, there are all types of deleterious chemicals which are taken into the system of the smoker. When it is exhaled, it becomes a problem for those who in a secondhand way will inhale those chemicals. But what we're talking about here is how that product is to be taxed. I'm wondering where all these fiscal conservatives are. I read some of the things that you all say when you're running for office. Since the office of state senator is not one that has a high profile, what a senator says in one part of the state may not be carried in another part of the state. But there are some who will describe themselves as fiscal conservatives. If you are interested in having stability and predictability in the tax system, why are you going to throw over a system that every entity affected by it understands from A to Z; understands the implications, the ramifications, and exactly how that entity will be affected by any change in the price of its product? How can you get a better system than that if you are going to tax? And you are going to tax. No argument has even been offered to show that the current system of taxing is more onerous, more complicated, more frustrating, than the one that is being put in place now if you adopt LB722 and enact it into law. I would like to ask Senator Raikes a question or two because he... [LB722]

SENATOR LANGEMEIER: Senator Raikes, would you yield? [LB722]

SENATOR CHAMBERS: Senator Raikes. [LB722]

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SENATOR RAIKES: Yes. [LB722]

SENATOR CHAMBERS: There was a fellow whose name I will not call because Senator Engel will be saying he and I are roughly the same age, but he foolishly went around with a lantern looking in the face of people, trying to find an honest man. And were he to have encountered you, he would extinguish his lamp and give up the ghost because his quest would have been completed successfully. Being the honest man that you are, being the knowledgeable person... [LB722]

SENATOR LANGEMEIER: One minute. [LB722]

SENATOR CHAMBERS: ...that you are, which of the two systems would provide more complexity and in some cases uncertainty, the current ad valorem system or this percentage per ounce system that LB722 would put in place? [LB722]

SENATOR RAIKES: Senator, I think I can refute both of your attributes by my answer to this question, or both of your proposed attributes to me, with this question. Maybe that should be my goal. I did support the LB722 coming out of committee. Now, you know, I did express some concern about the issue that eventually the revenue that the state would gain through this tax would...although it's more up-front, eventually it may turn the other way. That is a concern that I think needs to be addressed. Now, if you raise the tax, as is proposed in your floor amendment,... [LB722]

SENATOR LANGEMEIER: Time. Thank you, Senator Chambers. Senator Karpisek, you are recognized. [LB722]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. Would Senator Chambers yield? [LB722]

SENATOR LANGEMEIER: Senator Chambers, would you yield? [LB722]

SENATOR CHAMBERS: Yes, I will. [LB722]

SENATOR KARPISEK: Thank you, Senator Chambers. I wasn't really as engaged until you called me in, so I'm catching up. [LB722]

SENATOR CHAMBERS: Welcome. [LB722]

SENATOR KARPISEK: Thank you, and thank you for including me, by the way. So do you agree with the fiscal note, that it would raise revenue in the next nine or ten years? [LB722]

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SENATOR CHAMBERS: Well, it doesn't go nine. It maybe goes three or four. And you'll notice, the last two years that are mentioned, it's starting the descent at that point, and then maybe ten years out the turnaround will come. [LB722]

SENATOR KARPISEK: But it's still saying more than it would be under the current system. [LB722]

SENATOR CHAMBERS: As Senator Raikes said in his presentation, the up-front or the start will be more. But from there on, it's going to diminish until it reaches a point of a loss. [LB722]

SENATOR KARPISEK: Being the same as we have now. [LB722]

SENATOR CHAMBERS: Well, less. It's going to be less than what we have now. [LB722]

SENATOR KARPISEK: But do you think in that ten years, that if it does show not to be as good as these projections, it could be changed? [LB722]

SENATOR CHAMBERS: It can, but if those of us who are here now and can do the right thing are not going to do it but push it off on others, those who come along at that time are going to yield to the same forces and will not make a correction. We can prevent that, and prevention is better than cure, as you well know. [LB722]

SENATOR KARPISEK: You are right there, Senator. But it seems to me, in about the first ten years...five years, excuse me, we could increase maybe \$10 million. [LB722]

SENATOR CHAMBERS: Senator, that's why I was pointing out that when we speak of time, it's a relative thing. As policymakers for the state, we have to look beyond what might be considered the good years which can occur, to the point beyond when we know we're going to have to pay the piper, and we're not going to want to do it. But you and I won't have to because we won't be here, but somebody is going to be here, and if we can put the state in the present tense all the time, we should not do anything that's going to harm the state and its interests, as this bill will do. [LB722]

SENATOR KARPISEK: Well, I have a fact sheet that says North Dakota switched to weight-based in '01. The Legislature voted down a bill to repeal the weight-based method of taxation by a vote of 29-63 in February of '07. So, to me, if they were losing money or seeing that it wasn't going as well as anticipated, they would have gotten rid of the weight-based system. [LB722]

SENATOR CHAMBERS: Not necessarily. The tobacco industry is powerful and their lobbyists are powerful, as we will see when another bill comes up for our discussion.

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[LB722]

SENATOR KARPISEK: Tomorrow? [LB722]

SENATOR CHAMBERS: Well, I'm not Nostradamus on that. That's up to the Speaker. [LB722]

SENATOR KARPISEK: (Laugh) I think that Nostradamus was probably cheating off your notes when you lived together, but... [LB722]

SENATOR CHAMBERS: (Laughter) [LB722]

SENATOR KARPISEK: Senator Chambers, I guess I would say that ten years down the line this body may make chewing tobacco illegal, so we might as well get our goods now and not worry about it, then. [LB722]

SENATOR CHAMBERS: Well, that is the philosophy of the grasshopper... "grasshoppa." You should take into consideration the ant. Solomon said, "Go to the ant, thou sluggard; consider her ways and be wise." The grasshopper says the sun is shining, it's warm, there's plenty of food everywhere. But then autumn, fall, and then winter, and the grasshopper had no place to go, no food, and the grasshopper died. It seems to me you're saying that let the state adopt the grasshopper philosophy... [LB722]

SENATOR LANGEMEIER: One minute. [LB722]

SENATOR CHAMBERS: ...and do something, gain something now, but when winter comes have an empty sack, no coat, no shoes, and suffer the consequences. I'm not willing to put the state in that condition when we can predict that that's what's going to happen. [LB722]

SENATOR KARPISEK: And I appreciate your spin on that, Senator. I just feel that if we can do that now, to me the bill seems more fair. Base it on weight. If I...I remember this from last year, we talked about a gallon of gas, we talked about all different sorts of pieces that should all be the same. [LB722]

SENATOR CHAMBERS: Mel Allen was a guy who used to advertise White Owl cigars, and there was one of his commercials where he would say, pay me now, (puff of smoke), or pay me later. The state will pay, and we should not put in a system, in my opinion, that will cause that to happen, and LB722 will. [LB722]

SENATOR LANGEMEIER: Time. [LB722]

SENATOR KARPISEK: Thank you, sir. [LB722]

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SENATOR LANGEMEIER: Thank you, Senator Karpisek. Senator Chambers, you are recognized. [LB722]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, I would like to continue my discussion with Senator Karpisek if he is willing. [LB722]

SENATOR LANGEMEIER: Senator Karpisek, would you yield? [LB722]

SENATOR KARPISEK: Yes, I will. [LB722]

SENATOR CHAMBERS: Senator Karpisek, as a businessman, you are not going to live as long as the state is going to exist, so I'm going to deal with this in terms of compressed periods of time. Let's say we're looking at a year in your business. If you take all of the meat that you have and convert it to sausage, and you put all of your money into it, and you can make a lot of money in the first week of the year and then you're not going to have money the rest of the year, would you do that and hope that you make so much that you can prorate it over the rest of the year and have enough to operate on? Or would you more prudently spend your money, produce sausage, and sell it as the year goes by? That might be a poor example but it's the only one I can come up with to make the point I'm trying to make clear. [LB722]

SENATOR KARPISEK: And I do understand your point, Senator. I guess on that you're going to make the same amount of money all along, but, yes, spreading it out would be better. Now, if I could sell it for a dollar more a pound by switching to that method, I would probably do it all at once. [LB722]

SENATOR CHAMBERS: Now, let's say that you have a system in place now where you're able to operate and have a profit. You can count on it. There's been so many years you've operated that you can almost estimate pretty closely the amount of profit you're going to have if things go as they are. Would you change that system for one which is going to guarantee you more in the first, say, six months of the year, but then you're guaranteed to reach a point where you're going to make less for the rest of the year and from then on as long as you're under that system? [LB722]

SENATOR KARPISEK: I guess I...if I know I can change it in four months, five months, six months, then I would probably go with the greater. [LB722]

SENATOR CHAMBERS: But you're going to have to retool, and it's going to cost you to get back to where you were. You would stay where you are, wouldn't you. Yeah, you are a smart guy. [LB722]

SENATOR KARPISEK: Well, thank you. That's debatable. [LB722]

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SENATOR CHAMBERS: Well, then I think you're smarter than you know you are. [LB722]

SENATOR KARPISEK: I guess we're...I'm not drawing a great comparison on that. I do know where you're going, Senator. You're saying it's worked this long; why mess with it; we know what we're getting. [LB722]

SENATOR CHAMBERS: Yes. [LB722]

SENATOR KARPISEK: And I'm saying if we can maybe make it a little better, baby steps. [LB722]

SENATOR CHAMBERS: But aren't you saying, make it better until the wheels come off, then put the wheels back on, retool it, and try to bring it back to where you were before it reached the point of the wheels coming off? Isn't that what you're saying? [LB722]

SENATOR KARPISEK: Yes, Senator. Buy some new wheels better than the old ones. [LB722]

SENATOR CHAMBERS: And you think that that would be a good way for the state to proceed? [LB722]

SENATOR KARPISEK: No, because it does go longer. But I still think that we can retool and it won't cost that much. I guess I don't know what you mean when you say it's going to cost so much more ten years down the road. [LB722]

SENATOR CHAMBERS: You're not going to derive as much revenue. As you go forward with this per-ounce system, you're not going to derive as much revenue. Right now, because you don't have a fixed amount, when the wholesale price goes up, the ad valorem amount is added, and we automatically, as the state, derive more revenue. [LB722]

SENATOR KARPISEK: Correct. Inflation is not factored. [LB722]

SENATOR CHAMBERS: The price can go up, inflation can intervene, but you still get 65 cents per ounce in tax revenue no matter what else happens. Under the current system, you don't have to worry about changing the rate. [LB722]

SENATOR LANGEMEIER: One minute. [LB722]

SENATOR CHAMBERS: What you do is let the system that's in place now, follow the changes in the industry that's being regulated. As price goes up there, then the ad

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valorem amount increases proportionately, and the state gets that money. What could be better than that? And everybody is familiar with it. Everybody can incorporate that into how he or she makes business plans. [LB722]

SENATOR KARPISEK: So do you think that that's the way we should go on gasoline, too, Senator? [LB722]

SENATOR CHAMBERS: We're talking about this, but when we get to that I will tell you what my views are, and I don't say necessarily that what is being done in Nebraska currently is the best way to do it, since the tax is higher here than in maybe 50 or 49 of the other states. Well, not 50; 39. [LB722]

SENATOR KARPISEK: Fair enough. [LB722]

SENATOR CHAMBERS: Okay. [LB722]

SENATOR KARPISEK: It's your time. [LB722]

SENATOR CHAMBERS: Oh, and it's my time. How much time do I have left? [LB722]

SENATOR LANGEMEIER: Three seconds. [LB722]

SENATOR CHAMBERS: Thank you. [LB722]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Engel, you are recognized. [LB722]

SENATOR ENGEL: I wanted to talk...Mr. President and members of the body, I just want to keep sticking to where I was at. That equity issue, leave it where it's at. The Governor has more or less implied last year...he did imply he would have signed it the way it was. And I think it's a fairness issue, and I do want to talk to Senator Chambers off the mike about something here, and so with that I yield the rest of my time to the Chair. [LB722]

SENATOR LANGEMEIER: Thank you, Senator Engel. Senator Wallman, you are recognized. [LB722]

SENATOR WALLMAN: Thank you, Mr. President. I'm going to yield my time to Senator Chambers. [LB722]

SENATOR LANGEMEIER: Senator Chambers, 4:50. [LB722]

SENATOR CHAMBERS: Thank you, Senator Wallman. Thank you, Mr. President. And

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it may be fortuitous that you said 4:50, because now I'm thinking of raising that amount from the current 95 cents that I'm offering to \$4.50. I meant, things happen around here for a reason. Didn't you all feel a sudden warmth fill this Chamber just before the Chair spoke, and said 4:50? We're being given guidance. But I'm going to try to remain practical. I think this bill ought not to be enacted into law. I do not think we ought to change the method of taxation. Do you see how casually it's being done? Now, let's say that we were talking about increasing some kind of tax reduction for those who are as old as I am and may happen to own a house; people would be getting involved. But I think because this relates to an industry, the tobacco industry, people may say there is no need to join in the discussion. The reason I think it is important is because we're talking about a system of taxation that the state has had in place from time immemorial as far as taxes are concerned. Nobody can show that the system does not function as it was intended. There are not many things in state government or at the federal level which can have been in place as long as this method of taxation has been in place, and it continues, to this day, to have functioned as well as it did from its inception. Everybody affected by it understands it. There are no surprises. When they go to bed tonight and they wake up in the morning and drink their coffee--because they don't use their product, they know how devastating it is--drink their coffee, they know what to expect as far as the taxing of their product. They can look down the line as long as that system doesn't change, and know exactly how it's going to impact them. They may not know with exactitude the amount of dollars, but they know how that system is going to work and they can calculate at that moment, January 1 of that year, what the wholesale price is, and put any amount that they want into that equation and know exactly what their tax is going to be. They know how the system is going to impact them. And we're being asked by one element or segment of an execrable--I knew that would get some attention--industry, to tilt the market dynamics to benefit them. And all of these conservatives sitting around here who on other occasions who are going to talk about let the marketplace determine, let the market do this, let the market do that, and here you are radically altering the market dynamics, and you know it. [LB722]

SENATOR LANGEMEIER: One minute. [LB722]

SENATOR CHAMBERS: Whether you like the product or not is of no moment to me based on what I'm arguing. I'm looking at a tax system that works the way it was designed to work. When Senator Engel talks about a level playing field, if I am going to get onto that field--and it has been in that condition for the last 100 years, say--how once I'm on that field can I complain about the condition of the field when I knew what it was and chose to get on it? What I'm doing now instead of talking about a level playing field, tilt it in my direction. That's what Senator Engel is talking about. The field is such that everybody knows exactly what it is. They know every nook and cranny of this field. [LB722]

SENATOR LANGEMEIER: Time. [LB722]

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SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Wallman. [LB722]

SENATOR LANGEMEIER: Thank you, Senator Chambers and Senator Wallman. (Visitors introduced.) Returning to the discussion on FA176, there are no lights on. Senator Chambers, you are recognized to close on FA176. [LB722]

SENATOR CHAMBERS: Mr. President and members of the Legislature, I cannot allow this bill to move. If my amendment is not adopted, then I've got to offer another one. And if it is adopted, I still don't like the bill, but at that point I'd be willing to negotiate with...Senator Engel. I looked back there. My glasses had slipped down on my nose and I was looking without them, and I thought it was Nostradamus who had been reincarnated, but then when I raised them back up I saw it was Senator Engel. Members of the Legislature, if we raised this amount to 95 cents, why do I say I would negotiate with Senator Engel? Because he is not having his chain pulled by the tobacco lobby. He brought this bill, he said, because somebody else asked him to. Before I misstate that, I would like to ask Senator Engel a question. [LB722]

SENATOR LANGEMEIER: Senator Engel, would you yield? [LB722]

SENATOR ENGEL: Yes, Senator Chambers. [LB722]

SENATOR CHAMBERS: Senator Engel, what group did you say was interested in this bill being enacted in the present form? [LB722]

SENATOR ENGEL: The American Legislative Exchange Council. [LB722]

SENATOR CHAMBERS: Oh, that's not a state operation. [LB722]

SENATOR ENGEL: Well, 47... [LB722]

SENATOR CHAMBERS: That is a group of right-wing legislators who try to influence legislation on behalf of the tobacco industry, right? [LB722]

SENATOR ENGEL: That determines your connotation of who they are. There are 47 of us who belong to it, so. And by the way, I offered to you the opportunity to join and you didn't do it. [LB722]

SENATOR CHAMBERS: (Laugh) But the point is, they do tend to be right-wing, don't they, in their orientation? [LB722]

SENATOR ENGEL: Not really. They're conservatives but I wouldn't say they are totally

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right-wing, no. They're bipartisan. [LB722]

SENATOR CHAMBERS: Are they leftists? [LB722]

SENATOR ENGEL: (Laugh) No, they're not leftists either. [LB722]

SENATOR CHAMBERS: If they're not leftists then they're rightists, or "wrongists?" [LB722]

SENATOR ENGEL: Well, you're leftists; you're rightists; you're ambidextrous; you're all kinds of things, so we can play with that all day long, so. [LB722]

SENATOR CHAMBERS: Okay. But I thought you were talking about some kind of economic agency connected with the state. [LB722]

SENATOR ENGEL: No. No, it's the Commerce and Economic Development Task Force who is affiliated, a part of the American Legislative Exchange Council. [LB722]

SENATOR CHAMBERS: Okay. I misunderstood. You stated clearly what it was. I just misunderstood. Thank you. [LB722]

SENATOR ENGEL: Yeah. Right. [LB722]

SENATOR CHAMBERS: Members of the Legislature, I'm not going to let this bill move from General File today, and I'm going to talk to Senator Engel and see what he and I can arrive at in the way of an agreement. I know he's not going to agree with me; he thinks I might agree with him. And I believe in bringing hope. Let that hope be there; I don't want to kill hope aborning. But this bill is doing something which I think is so pernicious that it cannot be allowed to go forward without serious discussion, and I don't think there's been discussion long enough for it to qualify as having been serious, and it has not involved enough of my colleagues. If Senator Engel can persuade all of the senators to speak at least one time in favor of his bill, then I'll leave it alone. I would like to ask Senator Engel a question. [LB722]

SENATOR LANGEMEIER: Senator Engel, would you yield? [LB722]

SENATOR ENGEL: Yes, I will. [LB722]

SENATOR CHAMBERS: Senator Engel, do you think you can get all of the other senators except me to speak at least one time in favor of your bill in order to make me get off it and stop taking this time and we can consider other things? [LB722]

SENATOR ENGEL: Well, at least you give me a little latitude when you took you out of

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the mix. [LB722]

SENATOR CHAMBERS: Yeah. It would be unfair for me to remain in it. [LB722]

SENATOR ENGEL: But I would say that from what the conversation here on the floor... [LB722]

SENATOR LANGEMEIER: One minute. [LB722]

SENATOR ENGEL: ...I think you have someone right in front of you who probably wouldn't do that, so that would be quite a challenge but I'd be welcome to try it, but I don't... [LB722]

SENATOR CHAMBERS: Well, if I can get ten to speak against it, would you be willing to throw in the towel? [LB722]

SENATOR ENGEL: No. [LB722]

SENATOR CHAMBERS: Ten have not spoken against it yet. [LB722]

SENATOR ENGEL: No. [LB722]

SENATOR CHAMBERS: Senator Engel, have you ever gone to a casino? [LB722]

SENATOR ENGEL: To a what? [LB722]

SENATOR CHAMBERS: A casino. [LB722]

SENATOR ENGEL: Yes, I have. [LB722]

SENATOR CHAMBERS: Have you ever rolled dice in a crap game? [LB722]

SENATOR ENGEL: I did that one time. [LB722]

SENATOR CHAMBERS: And you don't...you probably didn't win, did you? [LB722]

SENATOR ENGEL: I certainly didn't. [LB722]

SENATOR CHAMBERS: Have you ever played blackjack? [LB722]

SENATOR ENGEL: Yes. Two times. [LB722]

SENATOR CHAMBERS: Do you win that regularly? [LB722]

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SENATOR ENGEL: Never. [LB722]

SENATOR CHAMBERS: Have you played that little wheel where the ball falls in the bucket when they stop it with their foot and you don't see it? [LB722]

SENATOR ENGEL: I did that one time too. [LB722]

SENATOR CHAMBERS: Did you win? [LB722]

SENATOR ENGEL: No. [LB722]

SENATOR CHAMBERS: I can see why you don't want to gamble. (Laugh) But on this bill, do you think there is any point where we can agree... [LB722]

SENATOR LANGEMEIER: Time. Thank you, Senator Chambers. You have heard the closing on FA176 offered by Senator Chambers to LB722. For what purpose do you rise? [LB722]

SENATOR CHAMBERS: A call of the house. [LB722]

SENATOR LANGEMEIER: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB722]

CLERK: 28 ayes, 2 nays, Mr. President, to place the house under call. [LB722]

SENATOR LANGEMEIER: The house is under call. Senators, please record your presence. All those senators outside the Chamber please return to the Chamber. The house is under call. All unauthorized personnel please leave the floor. Senator Synowiecki, Wallman, Christensen, and Heidemann, the house is under call. Please return to the Chamber. Senator Wightman. Senator Wallman is present. Senator Wightman, please return to the Chamber. The house is under call. All members are present and are accounted for. Senator Chambers, how do you wish to proceed on the vote? [LB722]

SENATOR CHAMBERS: Machine vote. [LB722]

SENATOR LANGEMEIER: There has been a request for a machine vote. You have heard the closing on FA176 offered to LB722. The question before the body is, shall FA176 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? There has been a request for a record vote. Mr. Clerk. [LB722]

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CLERK: (Record vote read, Legislative Journal page 579.) 1 aye, 22 nays, Mr. President, on the amendment. [LB722]

SENATOR LANGEMEIER: FA176 is not adopted. Mr. Clerk. With that I raise the call. Mr. Clerk, items. [LB722]

CLERK: Mr. President, Senator Pirsch would like to print an amendment to LB624; Senator Howard to LB782; Senator Johnson, LB395A. Senator Chambers, a motion to LB722. The Committee on Judiciary, chaired by Senator Ashford, reports LB1063 to General File with committee amendments attached. An announcement: The Education Committee will meet in Executive Session now in Room 1023; Education Committee upon adjournment. Senator Lautenbaugh would like to add his name to LB873 and to LB879 as cointroducer. (Legislative Journal pages 579-582.) [LB722 LB624 LB782 LB395A LB1063 LB873 LB879]

And I do have a priority motion, Mr. President. Senator Louden would move to adjourn until Wednesday morning, February 13, at 9:00 a.m.

SENATOR LANGEMEIER: You have heard the motion to adjourn until Wednesday, February 13, at 9:00 a.m. All those in favor say aye. All those opposed say nay. The ayes have it. We are adjourned.