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Floor Debate
April 06, 2009

[LB35A LB54 LB98A LB98 LB111 LB121 LB121A LB136 LB136A LB145 LB158 LB164 LB195 LB202 LB202A LB237 LB238 LB246 LB292 LB292A LB294 LB300 LB328A LB328 LB355 LB361 LB374 LB375 LB385 LB464A LB464 LB483 LB494 LB497 LB511 LB547 LB547A LB549 LB601 LB601A LB620 LB675]

SENATOR ROBERT PRESIDING []

SENATOR ROBERT: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifty-sixth day of the One Hundred First Legislature, First Session. Our chaplain for today is Senator Gloor. Please rise. []

SENATOR GLOOR: (Prayer offered.) []

SENATOR ROBERT: Thank you. I call to order the fifty-sixth day of the One Hundred First Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record. []

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

SENATOR ROBERT: Thank you. Are there any corrections for the Journal? []

CLERK: I have no corrections, Mr. President. []

SENATOR ROBERT: Any messages, reports, or announcements? []

CLERK: Mr. President, one item: Communication from the Governor. (Read re LB483.) That's all that I have, Mr. President. (Legislative Journal page 937.) [LB483]

SENATOR ROBERT: Thank you, Mr. Clerk. We will now proceed to the first item on agenda, Select File. []

CLERK: Mr. President, the first bill, LB158, no Enrollment and Review amendments. Senator Flood would move to amend with AM951. (Legislative Journal page 906.) [LB158]

SENATOR ROBERT: Senator Flood, you're recognized to open on AM951 to LB158. [LB158]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. We last left this issue on February 4 on a very close vote as it pertained to the idea of providing certain rights to police officers. You remember, we had a very good debate at that time. This bill introduced by Senator White does adopt the Peace Officer Discipline Procedures Act. I'm pleased to say what should happen between General and Select

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has happened in this case. Today I present to you AM951, which is an amendment that has the support of the Nebraska League of Municipalities, the Nebraska Association of County Officials, the Nebraska Sheriffs Association, and the Nebraska Fraternal Order of Police. All of these groups have been working to resolve their differences regarding the bill and this is the result of the parties' agreement. I'm going to walk you through the amendment for a second here. This amendment completely strikes all of the language in the green copy of LB158. In essence, the amendment becomes the bill. Section 1 requires city councils of cities of the second class to adopt by ordinance rules and regulations governing the removal, demotion, or suspension of any police officer. Subsection (2) spells out what the ordinance must look like, such as procedures for removal, demotion, suspension, and procedures for acting on written accusations. These procedures include provisions for giving notice and copy of written accusations to the police officer, the police officer's right to have an attorney or representative retained by the police officer present with him or her at all hearings or proceedings regarding the written accusation, the right of a police officer or his or her attorney or representative retained by the police officer to be heard and present evidence, and the right of the police officer as well as the individual imposing the action or their respective attorneys or representatives to record all hearings or proceedings regarding the written accusation. Subsection (3) of Section 1 states that this section does not apply to a police officer during his or her probationary period. Section 2 does the same thing as Section 1 except it applies to villages in Nebraska. Section 3 would make changes to the statute regarding the rights of deputy sheriffs found in Section 23-1734. Section 4 is based on Section 12 of LB158 as introduced. It provides protections for a police officer's personal financial records. Section 5 is formerly Section 13 of the green copy with minor changes and has to do with the release of photographs of peace officers who are the subject of investigations. Section 6, in Section 14 of LB158, again with minor changes, and relates to the filing of disciplinary actions in personnel files. Section 7 is formerly Section 15 of LB158 and prohibits retaliatory actions against police officers by reason of the peace officers' exercise of rights under this amendment. And finally in Section 8, this requires cities of the first class and all county sheriffs to adopt a peace officers' bill of rights similar to what is required for cities of the second class and villages in Sections 1 and 2 respectively. This amendment represents a compromise that has been agreed to again by the League of Nebraska Municipalities, Nebraska Association of County Officials, Nebraska Sheriffs Association, Nebraska Fraternal Order of Police, and other interested parties, including it has the support of the bill introducer, Senator Tom White, who I'm sure will talk to you in a moment. The last thing I want to say on this amendment is that if there's any concern that this will infringe or in any way disrupt the current bargaining agreement or the contract in place in the cities of the metropolitan and primary class, namely, Omaha and Lincoln, there is no intention in this amendment of interfering in any way in those situations, and I would hope that any concerns that you may have would subside following that affirmative statement that it doesn't apply there. I will work with senators if that concern is raised. But with that, I would ask for your support of AM951. Thank you, Mr. President. [LB158]

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SENATOR ROBERT: Thank you, Senator Flood. Members, you have heard the opening to AM951 to LB158. Those senators wishing to speak, Senator White, you are recognized. [LB158]

SENATOR WHITE: Thank you, Mr. President. I do fully support this amendment. It is a compromise and I cannot express in full my appreciation to Senator Flood and his office for working this out. This is not a small matter. I am profoundly convinced that if you want fair, honorable, reasonable, responsible, and responsive law enforcement, you must treat them in that way; that if you want professionals who are well trained, who treat their duties seriously, they need to be treated as though their rights are important too. This is a huge step forward. Is it everything that I would have hoped for? Absolutely not, but then things in the political realm seldom are. It is, however, an absolute clear statement to our police officers of how important their jobs are, how terribly important their obligations to protect our rights are, and an acknowledgement that they are citizens with rights as well. With that, I ask the body to please adopt the amendment. I think it is a good movement. As I understand it, by the by, it is a floor, not a ceiling. It allows the city councils and the counties to adopt rules that at least have certain fundamental rights protected. If you are in a city like Omaha or Lincoln that have actually higher levels of protection and need to, to be certified, this doesn't stop that. It doesn't apply to those cities in the first instance, but if you had a city that wanted to get a certification, they could adopt standards that are greater than this and that is an internal city matter. I thank you for your attention and again ask for your support for this amendment. [LB158]

SENATOR ROBERT: Thank you, Senator White. Senator Lautenbaugh, you are recognized. [LB158]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I wonder if Speaker Flood would yield to a question. [LB158]

SENATOR ROBERT: Senator Flood, will you yield to a question? [LB158]

SPEAKER FLOOD: Yes, I will. [LB158]

SENATOR LAUTENBAUGH: Thank you, Senator. As you understand the amendment, when does the right to counsel kick in, at what stage in a complaint process? [LB158]

SPEAKER FLOOD: I'm going to find the exact location before I speak. Following a written accusation, it's found on, let's see, page 2 of the amendment, line 11, (b) there, inside the text it states, "the police officer's right to have an attorney or representative retained by the police officer present with him or her at all hearings or proceedings regarding the written accusation." So let's assume an incident happened on Friday

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night, chief or the supervisor receives the information about the incident, notifies the officer in writing about the situation, and the police officer at that time has the opportunity to bring an attorney with him or her to discuss this matter with the supervisor if the disciplinary action that could result of that would meet the criteria outlined in the amendment, which would obviously be removal, demotion, or suspension by the agency. [LB158]

SENATOR LAUTENBAUGH: Is there any investigation or anything that can go on between when the written complaint is received and when written notice is given to the officer in question? [LB158]

SPEAKER FLOOD: Well, I think under this amendment the investigation can take place. Let's say something happens on Friday night, it's an incident involving excessive force, for instance. The agency has the ability to contact witnesses to find out what's going on and then, once they have a basis for what they think could be an accusation, they place that in writing. But before they can get the officer's side of the story, he or she has the right to counsel. So nothing in this amendment would prevent an agency from doing the basic work or listening to the complainant and finding out from other officers at the scene what occurred. [LB158]

SENATOR LAUTENBAUGH: Can the investigating entity contact the officer in question prior to giving a written notice of complaint? [LB158]

SPEAKER FLOOD: Not if it is, on the face of the incident, a situation where the officer will be demoted, suspended, or removed from his or her position. [LB158]

SENATOR LAUTENBAUGH: So at that point the investigation would be confined to just asking others who might have knowledge without contacting, if you will, the target of the investigation? [LB158]

SPEAKER FLOOD: Yes. And a situation may arise where the incident doesn't rise to the level that someone would be suspended, removed, or demoted. They would be talking to the officer if additional facts come to light. As soon as those facts come to light, they cross that threshold. If additional disciplinary action, the officer would then have the opportunity, would have to be provided a written copy of the accusation, and then have a right to have an attorney there if that's the path that it goes down following the additional facts that are learned. [LB158]

SENATOR LAUTENBAUGH: Thank you. [LB158]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. [LB158]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB158]

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SENATOR ROBERT: Thank you, Senator Lautenbaugh and Senator Flood. Senator Gay, you are next and recognized. [LB158]

SENATOR GAY: Thank you, Mr. President. Would Senator White yield to a few questions? [LB158]

SENATOR ROBERT: Senator White, will you yield to a question from Senator Gay? [LB158]

SENATOR WHITE: I will. [LB158]

SENATOR GAY: Thank you, Senator White. Senator White, I was glancing through the amendment and Senator Flood mentioned there are other parties involved, League of Municipalities. Was NACO involved? [LB158]

SENATOR WHITE: You'd have to ask Senator Flood. [LB158]

SENATOR GAY: Okay. [LB158]

SENATOR WHITE: Largely these occurred in his office under his auspices, not through me. [LB158]

SENATOR GAY: But you're comfortable with this amendment though? [LB158]

SENATOR WHITE: I am comfortable that this amendment is a great step forward. I'm comfortable that it is the most that can be achieved given the current political situations and, therefore, I fully support it. Would I have drafted it differently in some areas? Certainly, but that's the nature of compromise. [LB158]

SENATOR GAY: Okay. On this, does this just deal with police officers, not sheriff's deputies? [LB158]

SENATOR WHITE: No, sheriff's deputies too. It requires the sheriffs to adopt similar rules. [LB158]

SENATOR GAY: Okay. And then I will ask Senator Flood then on who is involved in the drafting this. [LB158]

SENATOR WHITE: And that is one of the major compromises, Senator, is it allows the cities and the sheriffs to set their own internal policies rather than us doing it here saying what it shall be. I mean that, from my point of view,... [LB158]

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SENATOR GAY: Yeah. [LB158]

SENATOR WHITE: ...that is one of the things we gave up. [LB158]

SENATOR GAY: Well, if they have their own policies, that was my next question, Senator White, was if you know this, if you don't, Senator Flood, I'll ask him. But a city of the second class is what, how big is that, I mean, what does that? [LB158]

SENATOR WHITE: I don't know the exact deal. [LB158]

SENATOR GAY: Okay, I'll ask Senator... [LB158]

SENATOR WHITE: I think it's...Senator Flood probably has that. [LB158]

SENATOR GAY: I'll give it to Senator Flood. And then also, does League of Municipalities have a committee or NACO that's going to go help the smaller communities then? [LB158]

SENATOR WHITE: I don't know about their internal organization, but I suspect what will happen is one or two cities will develop a model program and they'll share it, like they do anything we do. [LB158]

SENATOR GAY: Yeah, okay. Thank you, Senator White. Would Senator Flood yield to a few questions? [LB158]

SENATOR ROBERT: Senator Flood, will you yield to a question from Senator Gay? [LB158]

SPEAKER FLOOD: Yes, I will. [LB158]

SENATOR GAY: Thank you, Senator Flood. Those were the questions. What is a city of the second class? And then when you were meeting, I assume, I just want it on the record, that League of Municipalities usually would, and NACO as well, would usually form a template policy, I assume, that people would follow. Would you answer those two? [LB158]

SPEAKER FLOOD: Sure, Senator Gay. A city of second class is a city of less than 5,000 citizens. Really, the sheriff issue that you raised is important here because originally, as I had the amendment drafted, the county board would be promulgating the procedures that would have to be put in place. And the sheriffs agreed to the amendment after it was made clear that the actual sheriff of the county would put into place his or her own procedures. So it would be up to the...and that's fine with me because they're independent and elected officers of the county. So the sheriff in

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Lancaster County, the sheriff in Polk County will put the procedures in place. And quite honestly, a lot of these agencies, especially in Lancaster, Sarpy, and Douglas, they have this in place, but in smaller counties the sheriff himself or herself would have to put this in place. [LB158]

SENATOR GAY: Yeah, and absolutely. And I don't want to...I mean I could speak for a larger county, the sheriffs, and then we have five communities in Sarpy County, of course, and they all are large enough, most, to have their own written policies and what you're saying, those already would be helpful. But those communities or agencies that don't have these policies would have a template they could follow so it's not a huge burden to implement this. Because some of those do get quite complex as far as personnel policies and I know you need...they take a long time to develop. So as long as you're comfortable that the League of Municipalities and NACO would be helpful, because that's a big task for a small agency, especially if it's a community of 5,000 or less. [LB158]

SENATOR ROBERT: One minute. [LB158]

SENATOR GAY: I supported the original bill and I'm going to support this amendment as well. But I do think it's important that we make sure that there's help out there for these smaller communities because you're asking them to do a fairly complex deal, and they have limited budgets and personnel as well. So I commend you in putting this together and I look forward to supporting it. Thank you, Mr. President. [LB158]

SENATOR ROBERT: Thank you, Senator Gay. Senator Utter, you are next and recognized. [LB158]

SENATOR UTTER: Thank you, Mr. President. Good morning, colleagues. I wonder if Senator Flood would yield to a question, please. [LB158]

SENATOR ROBERT: Senator Flood, will you yield to a question? [LB158]

SENATOR FLOOD: Yes. [LB158]

SENATOR UTTER: Senator Flood, as I look at this bill and certainly as I looked at the earlier bill, this looks to me like this is a mandate that the Legislature is passing back to the cities and villages of the state. And particularly in the case of Hastings, which is one of the cities that I represent, they already have their Civil Service Commission. And I guess I'm just questioning the real need for doing this and for creating one more mandate that we're going to pass from this body back to the cities and the counties and in some instances will probably increase their costs. [LB158]

SENATOR FLOOD: Well, thank you, Senator Utter. Obviously, cities like Hastings have

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a procedure in place for a good reason to run an orderly agency and department. The reason I think this is a necessary step, and I think law enforcement, by and large, agree, if you have a police officer in a small community that writes somebody a DUI ticket that happens to be connected to the village board or the second-class city board or a councilman of some sort, you'll see sometimes retaliation takes place against the officer simply enforcing the laws of the state of Nebraska. We asked a lot of police officers. We especially asked a lot of police officers in small communities where they sit next to sometimes those that they ticket in church on a regular basis. I think there should be some basic protections afforded to law enforcement officers in the state that perform the duty. They don't write the laws of the state. They don't even write the laws of their village or city. But they should have some basic protections so that they can work and practice their craft without fear of retribution. And a lot of times there's a reason police officers in small towns don't last very long, and I would argue that sometimes that reason is that they get sideways with the leadership of the community. You know, if you're ticketing a bar owner for serving beers at 1:35 in the morning following the alumni tournament in a small town, that doesn't go over very well, I would imagine, but that's the law of the state and the law of the state needs to be respected and it needs to be followed. And I think that what we did here is a significant departure from the onerous provisions of the original green copy of the bill. This amendment tailors the basic duties that...or basic protections that have to be afforded. And if you'll note, this is all on the cost of the officer. He or she can have an attorney if they're going to get removed, suspended, demoted, with or without pay. So you're putting the onus on the officer to not only hire an attorney, which in most cases I would bet they don't do, to bring their own recording device. But if you don't do any of this at the end of the day, you know, you could still be facing a unlawful or illegal or inappropriate termination. It doesn't...it's not like that without these protections the officer still doesn't have a basis to sue. I think this is a better way to put those protections in the statute so we all know what we're dealing with. [LB158]

SENATOR UTTER: Thank you, Senator. [LB158]

SENATOR ROBERT: Thank you, Senator Utter and Senator Flood. Senator Lautenbaugh, you are next and recognized. [LB158]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I do rise in support of this amendment and I think it is a good compromise and way of going forward. I, too, have local control concerns, second only to Senator Karpisek, I'm sure. And I am a traditional supporter of local control, but I think this is necessary to provide some continuity. There were some concerns at the...well, in some of my departments, if you will, about what this would do. And in reviewing the amendment, I think this amendment addresses a lot of the concerns that some of the smaller municipalities had. I think it is a good thing to do. It's a good thing to go forward with. While it does provide some minimum standard for the localities to observe, I think it is not onerous and

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definitely doable and worth doing, and I applaud the parties that worked on the compromise amendment and I urge your approval. [LB158]

SENATOR ROBERT: Thank you, Senator Lautenbaugh. Senator White, you are recognized. [LB158]

SENATOR WHITE: Thank you, Mr. President. Senator Utter made a great point. You know, is this going to be an additional expense and burden to the small towns? And that is a real concern. I would say that in fact, though, it will save them money. One of the real problems we regularly hear in Urban Affairs is the cost of educating and training a police officer and then, as soon as they get the experience, they leave. They go to a bigger city. Now, part of that is pay and that's always going to be a struggle. But also, I've talked to a number of police officers, part of it is a professionalism in a department. They want the opportunity to work in a more professional, predictable environment, and therefore, I believe, this has a reasonable chance of actually saving money in that it will encourage young men and women who go into the police departments in smaller communities to stay there. They start seeing a career path and they start seeing a structure that would support them. And they...at least that's part of my hope in doing this. And so I, again, urge everyone to strongly support the amendment and please vote for it. Thank you. [LB158]

SENATOR ROBERT: Thank you, Senator White. Seeing no other lights on, Senator Flood, you're recognized to close on AM951. [LB158]

SPEAKER FLOOD: Thank you, Mr. President. I believe the amendment speaks for itself. I think in the spirit of compromise this place works best when we sit down around the table after we see the issues so well articulated on General File, and I appreciate everyone's work on this, and thank Senator White for agreeing to the amendment. Thank you, Mr. President. [LB158]

SENATOR ROBERT: Thank you, Senator Flood. Members, you have heard the closing of AM951. The question before the body is, shall AM951 be adopted? All those in favor vote yea; opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB158]

CLERK: 41 ayes, 0 nays, Mr. President, on the adoption of Senator Flood's amendment. [LB158]

SENATOR ROBERT: AM951 is adopted. [LB158]

CLERK: I have nothing further on the bill, Mr. President. [LB158]

SENATOR ROBERT: Is there anyone wishing to speak on LB158? Seeing none,

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Senator Nordquist. [LB158]

SENATOR NORDQUIST: Mr. President, I move LB158 to E&R for engrossing. [LB158]

SENATOR ROBERT: Members, you have heard the motion. Shall LB158 move to E&R for engrossing? All those in favor signify by saying aye. Opposed, nay. LB158 does advance. Mr. Clerk, next item on the agenda, Select File, 2009 senator priority bills, Fischer division. [LB158]

CLERK: Mr. President, Senator Nordquist E&R amendments, first of all, on LB121. (ER8032, Legislative Journal page 732.) [LB121]

SENATOR ROBERT: Senator Nordquist. [LB121]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB121. [LB121]

SENATOR ROBERT: Members, the question before the body is, shall the E&R amendments be adopted to LB121? All those in favor signify by saying aye. Opposed, nay. The amendments are adopted. [LB121]

CLERK: Mr. President, Senator Wightman had printed AM862, but I have a note he wishes to withdraw AM862. [LB121]

SENATOR WIGHTMAN: And substitute AM928. [LB121]

CLERK: Mr. President, Senator Wightman would move to amend with AM928. (Legislative Journal page 879.) [LB121]

SENATOR ROBERT: Senator Wightman, you're recognized to open on AM928 to LB121. [LB121]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the Legislature. To refresh the body's memory with regard to LB121, that was a bill brought to provide for the re-assumption of the assessor's office duties, assessment duties by nine counties who, from various of dates from about 1997 to 1999, had the assessment function removed at the county level and taken over by the state of Nebraska. LB121 seeks to provide that the state would eventually no longer provide that function, and that the counties, those nine counties, would re-assume the assessment functions. That was heard on General File. And at the time of General File, Senator Janssen proposed an amendment, AM663, that would require the counties have one year longer. The original bill, LB121, provided that that assumption would take place over a three-year period to provide for a softer landing, and that during that period of time they could reimburse the

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state of Nebraska for providing that function. And as a result of AM663, which was passed by this body, that was lengthened to a four-year period. So that then was extended from three to four years, so the county has the option to reassume the assessor function starting in fiscal year 2010-2011 with mandatory assumption starting in fiscal year 2013-2014. The state currently performs the assessment function for, as I said, nine counties or the counties of Dakota, Dodge, Garfield, Greeley, Harlan, Hitchcock, Keith, Saunders, and Sherman Counties. There was a good deal of discussion during General File debate with regard to various concerns of the county. And as a result of promises made during that debate, we have filed AM928 which will address some of the concerns and most of the concerns that were heard on General File. At our meeting, we met with the senators who are affected and at our meeting we discussed three broad issues: one, discussion as to whether or not the state would be willing to transfer the state personal property used in creating this, or providing this function of state assessment and that included furniture, equipment, and personal property; two was discussion of issues relating to the detail of the transfer of benefits, such as sick leave of state employees and vacation time that became county employees; and three, discussion of the issues concerning the election of new county assessors. AM928 addresses the first two issues. On issues concerning the election of a new county assessor, the staff met with the staff of the Secretary of State's Office, Election Division. The Election Division staff is of the opinion that the current provisions of LB121 are workable and consistent with current election laws. No change to the language of LB121 is required on the election issue and AM928 does not address that issue. It does, however, clearly address the first two issues. On page 2, line 6 to 8 of AM928, it provides that the state will transfer to the reassuming county any and all furniture, computers, and other equipment and property used by the state to perform the county assessment function, other than motor vehicles. And I might add that there were no motor vehicles transferred to the state at the time that the state assumed these functions. On page 1, the revised Section 10 addresses questions concerning the transfer of benefits such as sick leave and vacation time of the state employees that become county employees. We met with the senators representing the counties that would be required to reassume the assessment functions and it was decided that, rather than attempt to work out the multiple issues involved with the transfer of the value of accrued sick leave and vacation hours from the state system to the county system, it would be clearer and cleaner just to have the state pay or cash out the value of the accrued benefits from vacation and sick leave directly to the employee. So under AM928 there would be compensation made at the time of the transfer of the employees directly to the employees. Under subsection (2) the employee is provided protection and retains credit for years of service, but additional benefit accruals for the employee must meet the applicable county's retirement. So that employee would start anew at the time that the county assumed these functions. Under subsection (3), the employees' insurance coverage is protected with the requirement that any waiting period be waived and that any preexisting condition clause is waived if the employee of...if the transferred employee has health insurance under the state's health insurance plan or under a

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comparable health insurance plan. Other changes in AM928 can be fairly described as technical clarifications suggested by the Department of Revenue and the Nebraska Association of County Officials. One of the problems that was seen was that 25 percent of the value of accrued sick leave, since it was not accrued at that time, since the employee was continuing in the service of the county, needed to be reconciled with another section of law that limits this benefit only to state employees who retire or die prior to retirement age. And so there is a provision that eliminates the possibility that could be considered a gratuity. With this, this concludes my opening remarks. I would urge the adoption of AM928 to LB121. I do believe that it addresses most of the issues that were raised. One of the concerns of the nine counties that were involved was that they would only get credit for 25 percent of the sick leave. Somebody might, during the first year, have a sickness that required a good deal more time than that. And so that was one of the concerns that we addressed or are addressing by AM928. So again, I urge the adoption of AM928 to LB121. Thank you, Mr. President. [LB121]

SENATOR ROBERT: Thank you, Senator Wightman. Members, you have heard the opening to AM928 to LB121. Senators wishing to speak: Senators Giese and Sullivan. Senator Giese, you're recognized. [LB121]

SENATOR GIESE: Thank you, Mr. President and members of the body. I rise in support of AM928 and want to thank Senator Wightman for his work on the underlying bill, LB121. But I just want to caution the members that I just hope that this not is a precedent that the state of Nebraska is establishing is that we start programs and then we cannot back these programs with funding that the counties have then signed on to do, which I believe the nine counties that originally signed up for this program are being punished by the state now that we cannot fund their program. So although I support the amendment, I do not support the underlying bill. Thank you, Mr. President. [LB121]

SENATOR ROBERT: Thank you, Senator Giese. Senator Sullivan, you are next and recognized. [LB121]

SENATOR SULLIVAN: Thank you, Mr. President and members of the body. I, too, want to thank Senator Wightman for working with me on this bill before Select File because he had indicated that he would and he followed through on his intentions. The amendment, I believe, does provide protection for the current employees in terms of protecting the value of their vacation and their sick leave, but it does not guarantee that they'll have their jobs after July 1, 2012. It also makes the transition just a little easier for the counties involved because they get to keep some of the office equipment that they have had in their offices with the assessor functions. So that being said, I think that the transition will be made easier with this amendment. However, I also need to echo what Senator Giese said because a few years ago when the state made this offer, the offer was made to all 93 counties, there were 9 counties that took advantage of this. The state made a commitment to them and now, quite frankly, I believe it's reneging on its

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commitment. Thank you very much. [LB121]

SENATOR ROBERT: Thank you, Senator Sullivan. (Visitors introduced.) Seeing no other lights on, Senator Wightman, you are recognized to close on AM928. [LB121]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I do feel that AM928 addresses most of the issues that were raised, those that can be addressed, and so I do urge your support for AM928. Thank you, Mr. President. [LB121]

SENATOR ROBERT: Thank you, Senator Wightman. Members, you have heard the closing to AM928, the amendment to the E&R amendments. The question before the body is, shall AM928 be adopted? All those in favor vote yea; opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB121]

CLERK: 44 ayes, 0 nays, Mr. President, on the adoption of Senator Wightman's amendment. [LB121]

SENATOR ROBERT: AM928 is adopted. [LB121]

CLERK: I have nothing further on the bill, Mr. President. [LB121]

SENATOR ROBERT: Are there members wishing to speak? Seeing none, Senator Nordquist. [LB121]

SENATOR NORDQUIST: Mr. President, I move LB121 to E&R for engrossing. [LB121]

SENATOR ROBERT: Members, the question is, shall LB121 advance to E&R for engrossing? All those in favor signify by saying aye. Opposed, nay. LB121 does advance. Next item, Mr. Clerk. [LB121]

CLERK: LB121A, Senator, I have no amendments to the bill. [LB121A]

SENATOR ROBERT: Senator Nordquist. [LB121A]

SENATOR NORDQUIST: Mr. President, I move LB121A to E&R for engrossing. [LB121A]

SENATOR ROBERT: Members, you have heard the motion. The question is, shall LB121A move to E&R for engrossing? All those in favor signify by saying aye. Opposed, nay. LB121A does advance. Next item, Mr. Clerk. [LB121A]

CLERK: Mr. President, LB111. Senator Nordquist, E&R amendments. (ER8033, Legislative Journal page 763.) [LB111]

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SENATOR ROBERT: Senator Nordquist. [LB111]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB111. [LB111]

SENATOR ROBERT: Members, you have heard the motion. The motion is to adopt the E&R amendments for LB111. All those in favor signify by saying aye. Opposed, nay. The amendments are adopted. [LB111]

CLERK: I have nothing further on the bill, Senator. [LB111]

SENATOR ROBERT: Senator Nordquist. [LB111]

SENATOR NORDQUIST: Mr. President, I move LB111 to E&R for engrossing. [LB111]

SENATOR ROBERT: Members, you have heard the motion. Shall LB111 move to E&R for engrossing? All those in favor signify by saying aye. Opposed, nay. LB111 does advance. Next item, Mr. Clerk. [LB111]

CLERK: Mr. President, LB300. Senator, I have E&R amendments. (ER8034, Legislative Journal page 763.) [LB300]

SENATOR ROBERT: Senator Nordquist. [LB300]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB300. [LB300]

SENATOR ROBERT: Members, the question is the adoption of the E&R amendments to LB300. All those in favor signify by saying aye. Opposed, nay. The amendments are adopted. [LB300]

CLERK: I have nothing further on LB300, Senator. [LB300]

SENATOR ROBERT: Senator Nordquist. [LB300]

SENATOR NORDQUIST: Mr. President, I move LB300 to E&R for engrossing. [LB300]

SENATOR ROBERT: Members, the question before the body is, shall LB300 move to E&R for engrossing? All those in favor signify by saying aye; opposed, nay. LB300 does advance. Next item, Mr. Clerk. [LB300]

CLERK: Mr. President, LB54. Senator, I have no amendments to the bill. [LB54]

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SENATOR ROBERT: Senator Nordquist. [LB54]

SENATOR NORDQUIST: Mr. President, I move LB54 to E&R for engrossing. [LB54]

SENATOR ROBERT: Members, the question before the body is, shall LB54 move to E&R for engrossing? All those in favor signify by saying aye. Opposed, nay. LB54 does advance. Mr. Clerk, Select File, 2009 committee priority bills, Cornett division, first item. [LB54]

CLERK: Mr. President, first bill, LB361. Senator, first of all, I have Enrollment and Review amendments. (ER8036, Legislative Journal page 797. [LB361]

SENATOR ROBERT: Senator Nordquist. [LB361]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB361. [LB361]

SENATOR ROBERT: Members, the question before the body is, shall the E&R amendments for LB361 be adopted? All those in favor signify by saying aye. Opposed, nay. The amendments are adopted. [LB361]

CLERK: Senator Avery would move to amend with AM966. (Legislative Journal page 938.) [LB361]

SENATOR ROBERT: Senator Avery, you're recognized to open on AM966. [LB361]

SENATOR AVERY: Thank you, Mr. President. Good morning, colleagues. You may remember that LB361 allows additional public entities, such as counties and those created under the Interlocal Cooperation Act and others, to use electronic voting devices to record roll call or voice votes of the governing body. This amendment, AM966, merely adds learning communities to this list, allowing them to use electronic voting devices. The learning community coordinating council that we created for the metro area is a very large body with 18 members. Being able to use electronic voting devices will provide greater efficiency for the council. I would urge you to give this serious consideration and approval. Thank you. [LB361]

SENATOR ROBERT: Thank you, Senator Avery. Members, you have heard the opening to AM966, the amendment to the committee amendments. Are there members wishing to speak? Seeing none, Senator Avery waives closing. The question before the body is, shall AM966 be adopted to the committee amendments? All those in favor please vote yea; all those opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB361]

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CLERK: 34 ayes, 0 nays, Mr. President, on the adoption of Senator Avery's amendment. [LB361]

SENATOR ROBERT: AM966 is adopted. [LB361]

CLERK: I have nothing further on the bill, Senator. [LB361]

SENATOR ROBERT: Senator Nordquist. [LB361]

SENATOR NORDQUIST: Mr. President, I move LB361 to E&R for engrossing. [LB361]

SENATOR ROBERT: Members, the question is, shall LB361 move to E&R for engrossing? All those in favor signify by saying aye. Opposed, nay. LB361 does advance. Next item, Mr. Clerk. [LB361]

CLERK: Mr. President, LB202. I have no Enrollment and Review amendments. Senator Fischer would move to amend the bill with AM778. (Legislative Journal page 839.) [LB202]

SENATOR ROBERT: Senator Fischer, you're recognized to open on AM778. [LB202]

SENATOR FISCHER: Thank you, Mr. President and members. LB202 provides for electronic titles and the filing and release of liens. Under current law, that is accomplished either by mail or in person at the courthouse where the vehicle will be located. Upon implementation of this law, these functions can be accomplished electronically without a trip to the courthouse. Upon reviewing the provisions of LB202, interested parties noticed that even though current law allows a lien or release to be filed in any county, an application for title may only be filed in the county where the vehicle will be located. This is normally not a problem since the owner of the vehicle is usually located where the vehicle will be titled. For licensed dealers, however, this can present a problem since dealers often sell vehicles that will be located in other counties. They often are compelled to travel to the other county in order to apply for title and have the required lien attached. AM778 would allow a licensed dealer to make that application in the most convenient county, saving the time and the expense of travel. This change will help solve the problem for the time between now and the implementation of the electronic title and lien system. The proposed amendment applies only to licensed dealers and there is no objection to this change by either the Department of Motor Vehicles or the County Officials Association. Thank you, Mr. President. [LB202]

SENATOR ROBERT: Thank you, Senator Fischer. Members, you have heard the opening to AM778 to LB202. Are there members wishing to speak? Seeing none,

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Senator Fischer waives closing. The question before the body is, shall AM778 be adopted to LB202? All those in favor please vote yea; opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB202]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of Senator Fischer's amendment. [LB202]

SENATOR ROBERT: AM778 is adopted. [LB202]

CLERK: I have nothing further on the bill. [LB202]

SENATOR ROBERT: Are there any members wishing to speak? Seeing none, Senator Nordquist. [LB202]

SENATOR NORDQUIST: Mr. President, I move LB202 to E&R for engrossing. [LB202]

SENATOR ROBERT: Members, the question is, shall LB202 advance to E&R for engrossing? All those in favor signify by saying aye. Opposed, nay. LB202 does advance. Next item, Mr. Clerk. [LB202]

CLERK: LB202A. Senator, I have no amendments to the bill. [LB202A]

SENATOR ROBERT: Senator Nordquist. [LB202A]

SENATOR NORDQUIST: Mr. President, I move LB202A to E&R for engrossing. [LB202A]

SENATOR ROBERT: Members, the question before the body is, shall LB202A move to E&R for engrossing? All those in favor signify by saying aye. Opposed, nay. LB202A does advance. Next item, Mr. Clerk. [LB202A]

CLERK: LB328. Senator, I have Enrollment and Review amendments. (ER8038, Legislative Journal page 813.) [LB328]

SENATOR ROBERT: Senator Nordquist. [LB328]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB328. [LB328]

SENATOR ROBERT: Members, the question before the body is, shall the E&R amendments be adopted to LB328? All those in favor signify by saying aye. Opposed, nay. The amendments are adopted. [LB328]

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CLERK: I have nothing further on LB328, Senator. [LB328]

SENATOR ROBERT: Senator Nordquist. [LB328]

SENATOR NORDQUIST: Mr. President, I move LB328 to E&R for engrossing. [LB328]

SENATOR ROBERT: Members, the question before the body is, shall LB328 move to E&R for engrossing? All those in favor signify by saying aye. Opposed, nay. LB328 does advance. Next item, Mr. Clerk. [LB328]

CLERK: LB328A. Senator, I have no amendments to the bill. [LB328A]

SENATOR ROBERT: Senator Nordquist. [LB328A]

SENATOR NORDQUIST: Mr. President, I move LB328A to E&R for engrossing. [LB328A]

SENATOR ROBERT: Members, the question before the body is, shall LB328A move to E&R for engrossing? All those in favor signify by saying aye. Opposed, nay. LB328A does advance. Next item, Mr. Clerk. [LB328A]

CLERK: Mr. President, LB620. Senator, I have no amendments to the bill. [LB620]

SENATOR ROBERT: Senator Nordquist. [LB620]

SENATOR NORDQUIST: Mr. President, I move LB620 to E&R for engrossing. [LB620]

SENATOR ROBERT: Members, the question before the body is, shall LB620 move to E&R for engrossing? All those in favor signify by saying aye. Opposed, nay. LB620 does advance. Next item, Mr. Clerk. [LB620]

CLERK: Mr. President, LB164. Senator, I have no amendments to the bill. [LB164]

SENATOR ROBERT: Senator Nordquist. [LB164]

SENATOR NORDQUIST: Mr. President, I move LB164 to E&R for engrossing. [LB164]

SENATOR ROBERT: Members, the question before the body is, shall LB164 move to E&R for engrossing? All those in favor signify by saying aye. Opposed, nay. LB164 does advance. Mr. Clerk, Select File, 2009 senator priority bills, Lautenbaugh division, first item. [LB164]

CLERK: Mr. President, LB292. Senator, I have Enrollment and Review amendments.

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(ER8041, Legislative Journal page 815.) [LB292]

SENATOR ROBERT: Senator Nordquist. [LB292]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB292. [LB292]

SENATOR ROBERT: Members, the question is, shall the E&R amendments be adopted to LB292? All those in favor signify by saying aye. Opposed, nay. The amendments are adopted. [LB292]

CLERK: I have nothing further on LB292, Senator. [LB292]

SENATOR ROBERT: Senator Langemeier, you're recognized. [LB292]

SENATOR LANGEMEIER: Mr. President, members of the body, I turned my light on back before LB164, but we slipped by that. I just want to bring up one thing on LB164, is we talked about extending that sunset five years. It currently expires in 2011. And the members of my class, which there's just six of us left that were here when LB312 was passed and none of us were here when LB775...I take that back, Senator Cap Dierks was here back when LB775 was passed. My concern is, is that we sunset these out, nobody when that sunsets, none of that six class members will be here. This whole body will be made up of individuals that never had anything to do with LB775 or LB312. So I want to add just a caution to the wind for you all to study that issue very well because when that sunset comes up, you're going to be asked to expand it or continue it for years to come at that time, and there will be none of us that will be here when that comes up. So I just want to add some caution to that. I had looked at shortening that sunset down, but it would only be able to extend it one year and I thought one year was a little short for an extension. And so that's all I wanted to address, is I think we all need to make sure that you all look very close at those programs as we do put sunsets in and the new classes with term limits continue to change things. With that, thank you, Mr. President. [LB292 LB164]

SENATOR NORDQUIST: Thank you, Senator Langemeier. Are there other members wishing to speak? Seeing none, Senator Nordquist. [LB292]

SENATOR NORDQUIST: Mr. President, I move LB292 to E&R for engrossing. [LB292]

SENATOR ROBERT: Members, the question before the body is, shall LB292 advance to E&R for engrossing? All those in favor signify by saying aye. Opposed, nay. LB292 does advance. Next item, Mr. Clerk. [LB292]

CLERK: Mr. President, LB292A. Senator, I have no amendments to the bill. [LB292A]

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SENATOR ROBERT: Senator Nordquist. [LB292A]

SENATOR NORDQUIST: Mr. President, I move LB292A to E&R for engrossing. [LB292A]

SENATOR ROBERT: Members, the question is, shall LB292A advance to E&R for engrossing? All those in favor signify by saying aye. Opposed, nay. LB292A does advance. Next item, Mr. Clerk. [LB292A]

CLERK: Mr. President, LB547. I have E&R amendments, first of all, Senator. (ER8039, Legislative Journal page 815.) [LB547]

SENATOR ROBERT: Senator Nordquist. [LB547]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB547. [LB547]

SENATOR ROBERT: Members, the question before the body is, shall the E&R amendments to LB547 be adopted? All those in favor signify by saying aye. Opposed, nay. The amendments are adopted. [LB547]

CLERK: Mr. President, Senator Adams would move to amend with AM865. (Legislative Journal page 939.) [LB547]

SENATOR ROBERT: Senator Adams, you're recognized to open on AM865. [LB547]

SENATOR ADAMS: Thank you, Mr. President and members of the body. What this bill did, if you recall, we have \$1 million in lottery money that is within a program for teaching loan forgiveness. And what LB547 did was to create a second category for loan forgiveness for graduate students. And the distribution of that money, as I described to you during General File, there's \$1 million, \$100,000 of it would go to administration, \$600,000 would go to the graduate program, \$300,000 to the undergraduate loan forgiveness program. Since that time, one of the things that I heard on the floor during General File is, are you sure there's going to be enough there for undergraduate. And what I have done in this amendment is to actually find another \$100,000 for the undergraduate program. And the way we would do that is, we will find the administrative costs within that broader program of lottery dollars and we don't think it will be \$100,000. We think it's going to be closer to the \$75,000 range and it can be found within the broad category of the education innovation dollars that are lottery dollars. And then we can take \$100,000 that we thought were going to be administration, put them towards the undergraduate loan forgiveness program, and leave the other \$600,000 for graduate. That's the context of the amendment, Mr.

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President. [LB547]

SENATOR ROBERT: Thank you, Senator Adams. Members, you have heard the opening to AM865. Those wishing to speak, Senator Hadley, you're recognized. [LB547]

SENATOR HADLEY: Mr. President, members of the body, I stand in support of AM865. The University of Nebraska at Kearney does a very good job of using this money for undergraduate students. So I am very...I did talk with Senator Adams about it and I very much appreciate his help in making sure that we do still support the undergraduate students in this program. So I thank you, Senator Adams, and I yield my time back. Thank you. [LB547]

SENATOR ROBERT: Thank you, Senator Hadley. (Visitors introduced.) Are there any other members wishing to speak? Seeing none, Senator Adams you're waiving closing on AM865. The question before the body is, shall AM865 be adopted? All those in favor vote yea; opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB547]

CLERK: 36 ayes, 0 nays, Mr. President, on the adoption of Senator Adams' amendment. [LB547]

SENATOR ROBERT: AM865 is adopted. [LB547]

CLERK: Mr. President, Senator Fulton would move to amend AM946. (Legislative Journal pages 939-940.) [LB547]

SENATOR ROBERT: Senator Fulton, you are recognized to open on AM946. [LB547]

SENATOR FULTON: Thank you, Mr. President, members of the Legislature. When we were on General File debate of this bill, I popped my light on and came up to commend Senator Adams and I continue to commend Senator Adams. This is a bill which focuses on teachers and it provides some relief for teachers in accredited or approved schools. And I pointed out that we have...within his bill there's a provision, a special provision, for teachers that teach in schools in a poverty area, which I think is very good policy bringing some encouragement to teachers to teach those children who go to a school in a poverty area. And it applied to public and private schools in nonpoverty areas, but I recognize that it didn't apply to private schools in poverty areas. And so that's what this amendment would do. It would allow a teacher who is teaching in a private school that is situated in a poverty area to qualify for this special benefit. Senator Adams...I've been talking with Senator Adams on this. He doesn't oppose the amendment. I would just ask that the body adopt this amendment and we could make for a consistent application of this policy for all teachers in Nebraska. Thank you, Mr. President. [LB547]

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SENATOR ROBERT: Thank you, Senator Fulton. Members, you have heard the opening to AM946, the amendment to the committee amendments. Those wishing to speak, Senators Nordquist and Wallman. Senator Nordquist, you're recognized. [LB547]

SENATOR NORDQUIST: Thank you, Mr. President. I rise in strong support of AM946. We're not talking about a large number of schools here. I have a list that was provided through the Department of Education. We're looking at Jesuit Middle School, All Saints in Omaha, Holy Name in Omaha, Sacred Heart, Assumption, Guadalupe, St. Richard's, St. Andrew's School, and St. Augustine Indian Mission School. These are schools with great needs and we...the teachers that go to serve there, I think in these very challenging areas, deserve the access to the additional loan forgiveness. Thank you. [LB547]

SENATOR ROBERT: Thank you, Senator Nordquist. Senator Wallman, you are next and recognized. [LB547]

SENATOR WALLMAN: Thank you, Mr. President. I urge you to support this amendment also, and thank Senator Fulton. Private schools as well as public schools teach all spectrum of children and all spectrum of incomes. So I think this is a very good amendment, and thank Senator Adams for this bill, and God bless the teachers. Thank you, Mr. President. [LB547]

SENATOR ROBERT: Thank you, Senator Wallman. Senator Nantkes, you're recognized. [LB547]

SENATOR NANTKES: Thank you. Would Senator Fulton yield to some questions, please? [LB547]

SENATOR ROBERT: Senator Fulton, will you yield to a question? [LB547]

SENATOR FULTON: I would, yes. [LB547]

SENATOR NANTKES: Good morning. Thank you, Senator Fulton. I was...just wanted to have a little dialogue about this so I could fully understand the intent of your amendment and how it impacts the underlying legislation. I guess at first blush, I would be hesitant to support tax dollars being sent to a private entity and employees of a private entity in that regard, and that's what the intent of your amendment is. Is that right? [LB547]

SENATOR FULTON: It's not so much the private entities. It's for the teachers that are employed in such entities, Senator. [LB547]

SENATOR NANTKES: So basically this would send tax dollars or state dollars to teachers who teach at private, nonpublic entities. Is that right? [LB547]

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SENATOR FULTON: Yes, Senator, and that actually is...yeah, that's true. It's not just my amendment though. That's actually part of the underlying bill also. [LB547]

SENATOR NANTKES: And, Senator Fulton, could you explain to the body, are private schools regulated in the same manner that public schools are? [LB547]

SENATOR FULTON: Within the confines of this bill, I think that it would be fair to say yes. These are for approved or accredited schools in Nebraska. If there is a private school that is not approved or accredited, then it would not fall under the purview of this bill. [LB547]

SENATOR NANTKES: Senator Fulton, wouldn't you agree that there is a separation between church and state in our constitutional framework that we operate within? [LB547]

SENATOR FULTON: I would. I don't know how that applies to teachers specifically, but maybe you can delineate what your concern is. Are you concerned that if certain teachers teach in private schools they should not be afforded the benefits of this bill? Would that be your concern? [LB547]

SENATOR NANTKES: Well, that's absolutely my concern. I fully support a individual and a family's right to choose private education. If that's the best fit for their family and for their viewpoint, I think that's fantastic and that choice should always be honored and respected. But particularly, as you know, during difficult economic times, when we already have serious concerns in terms of funding public school teacher salaries, retirement, and classroom needs, the diversion of any sort of public funds, whether they be through lottery or through state tax dollars, to private unregulated schools in many regards is particularly troubling. And I wondered if you had any thoughts about that. [LB547]

SENATOR FULTON: Well, Senator, this is not directed to private schools. It's directed to teachers, the teachers which are employed in a private or public school as long as that school is approved or accredited in the state of Nebraska. So this isn't, this isn't the movement of money toward any school. It's a movement of money to a teacher. So just to be clear, that's the difference here. [LB547]

SENATOR NANTKES: But to be clear that your amendment would expand who is eligible for this program to teachers teaching in private schools, the original bill is focused on public school teachers, right? [LB547]

SENATOR FULTON: No, that's not true. The original bill is focused on both public and private, any approved or accredited. It's just that those that exist in a poverty area were

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not envisioned in the original bill and so my amendment simply expands to those public or private in a poverty area. Okay. So there's a difference. This was included, envisioned in the original bill, LB547. [LB547]

SENATOR NANTKES: All right, thank you, Senator. [LB547]

SENATOR ROBERT: Thank you, Senator Nantkes and Senator Fulton. Senator Nordquist, you are recognized. [LB547]

SENATOR NORDQUIST: Thank you, Mr. President. First, Senator White corrected me. St. Richard's School, they announced that this is their last semester. They're closing, so I just wanted to clarify that for the record. And also the teachers at these private schools are currently eligible at the current level, the \$2,500 loan forgiveness. I think the bill ups it to \$3,000. The bill allows them to be eligible for that. This amendment just makes them eligible for the enhanced loan forgiveness that is given to teachers that teach in high need, extremely high need, high poverty areas. I'd appreciate your support of the amendment. Thank you. [LB547]

SENATOR ROBERT: Thank you, Senator Nordquist. Senator Wallman, you're next and recognized. [LB547]

SENATOR WALLMAN: Thank you, Mr. President. Again, I'd urge support of this. And as far as public versus private, folks, public schools are saving you tax dollars. If it wouldn't be for private schools in Lincoln, Nebraska, we'd have to build more schools. And so we ought to be open to helping this out just this little bit. And again, I want to thank Senator Fulton. Thank you, Mr. President. [LB547]

SENATOR ROBERT: Thank you, Senator Wallman. Senator...seeing no other lights on, Senator Fulton, you're recognized to close on AM946. [LB547]

SENATOR FULTON: Thank you, Mr. President. I'll just be very brief. I'd...this is LB547. It's focused on teachers. I think it's a great idea. It's something that we as a state can speak to award teachers. The bill originally envisioned teachers in approved or accredited schools, which was public or private schools. When it came to poverty areas, the private schools...teachers who teach in a private school weren't envisioned within poverty areas for the increased loan forgiveness, and this amendment would make for a consistent application, so I ask your support. Thank you, Mr. President. [LB547]

SENATOR ROBERT: Thank you, Senator Fulton. Members, you have heard the closing to AM946. The question before the body is, shall AM946 be adopted? All those in favor vote yea; opposed, nay. Have all those voted who wish? Mr. Clerk, please record. [LB547]

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CLERK: 32 ayes, 2 nays, Mr. President, on the adoption of Senator Fulton's amendment. [LB547]

SENATOR ROBERT: AM946 is adopted. [LB547]

CLERK: I have nothing further on the bill, Mr. President. [LB547]

SENATOR ROBERT: Senator Nordquist. [LB547]

SENATOR NORDQUIST: Mr. President, I move LB547 to E&R for engrossing. [LB547]

SENATOR ROBERT: The question before the body, members, is shall LB547 advance to E&R for engrossing? All those in favor signify by saying aye. Opposed, nay. LB547 does advance. Next item, Mr. Clerk. [LB547]

CLERK: LB547A. Senator, I have no E&Rs. Senator Adams would move to amend the bill with AM895. (Legislative Journal page 940.) [LB547A]

SENATOR ROBERT: Senator Adams, you're recognized to open on AM895. [LB547A]

SENATOR ADAMS: Thank you, Mr. President, members of the body. I'll make this very quick. What the adjustment does to the A bill is merely reflect what I described to you at the opening of that amendment. It takes the \$75,000 in administrative fees of this and pulls it out of the Education Innovation Fund, which is also lottery dollars, rather than the specific scholarship program, which frees up \$100,000 additional money to go into the undergraduate side. Thank you, Mr. President. [LB547A]

SENATOR ROBERT: Thank you, Senator Adams. Members, wishing to speak? Seeing none, Senator Adams waives closing. You've heard the opening and closing to AM895. The question before the body is, shall AM895 be adopted? All those in favor vote yea; opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB547A]

CLERK: 35 ayes, 0 nays, Mr. President, on adoption of Senator Adams' amendment. [LB547A]

SENATOR ROBERT: AM895 is adopted. [LB547A]

CLERK: I have nothing further on the bill. [LB547A]

SENATOR ROBERT: Senator Nordquist for a motion. [LB547A]

SENATOR NORDQUIST: Mr. President, I move LB547A to E&R for engrossing. [LB547A]

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SENATOR ROBERT: Members, the question is, shall LB547A advance to E&R for engrossing? All those in favor signify by saying aye. Opposed, nay. LB547A does advance. Next item on the agenda, Mr. Clerk. [LB547A]

CLERK: Mr. President, LB355. E&R amendments first of all, Senator. (ER8042, Legislative Journal page 829.) [LB355]

SENATOR ROBERT: Senator Nordquist. [LB355]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB355. [LB355]

SENATOR ROBERT: Members, the question is the adoption of the E&R amendments to LB355. All those in favor signify by saying aye. Opposed, nay. The amendments are adopted. [LB355]

CLERK: Mr. President, the next three amendments. Senator Stuthman's AM840. I have a note you want to withdraw that, Senator. [LB355]

SENATOR STUTHMAN: Yes, I want to withdraw those because those were to the green copy and not to the E&R, and I want to...and I will refile amendments. [LB355]

CLERK: So, Mr. President, with respect to Senator Stuthman, he would like to withdraw AM840, AM841, and AM842. Mr. President, the next amendment I have to the bill, Senator Avery, AM965. (Legislative Journal page 940.) [LB355]

SENATOR ROBERT: Senator Avery, you're recognized to open on AM965. [LB355]

SENATOR AVERY: Thank you, Mr. President. Is this the one that would eliminate cigarette smoking? [LB355]

SENATOR ROBERT: Yes. [LB355]

SENATOR AVERY: All right. Thank you, Mr. President and colleagues. We heard a lot of talk on General File about how this is so narrowly defined and narrowly structured that it would only apply to cigar bars. I'd suspect that, as I said before, that that is not the case. And I am offering this amendment to make it extremely clear that what we're doing with LB355 is, in fact, creating a very narrow, exceptionally narrow, cigar bar exception to our statewide smoking ban. By not allowing cigarette smoking in a cigar bar, you are, in fact, making it a cigar bar. Otherwise, it is just a bar where people go to smoke cigarettes and drink alcohol. And I believe that defeats the intent of this bill, as Senator Lautenbaugh has said many times. And I think that's really his intent. His intent

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is to create narrowly defined cigar bars and nothing else. So to truly protect and create a cigar bar exception, it seems to me that we would want to prevent creating just any bar from becoming a cigar bar. And if you remove cigarette smoking, then I think that would do that. I'm not a smoker, but I do know smokers and most smokers who smoke cigarettes really don't like cigars. And many of the cigar aficionados, aficionados think that cigars are gross. I don't necessarily think they're gross, but I do think that they create a hazard to the people who work in these bars. I'm convinced that this is a loophole and that if we don't narrow it even more, we're going to find out later on that we made a mistake. I've received a number of different communications from bar owners who are pleading that we not pass this bill. I have here a communication from a bar owner in Hastings who relates that he spent a great deal of time and money to build new areas in his sports bar, including a covered outdoor room to accommodate smokers legally, and thereby reduce our losses by creating a comfortable space for my smoking customers, this all in anticipation of the June 1 ban. Now even before the ban goes into effect, you are attempting to change the law to accommodate a certain business, certain businesses in the state. I can assure you that if LB355 is passed, you will have many other businesses, veterans' organizations, keno operators, horse track operators, and other business owners coming out of the woodwork asking for exceptions as well. Last year the Legislature explained that they passed the statewide smoking ban to protect the health of employees in all businesses throughout the state, and I agree with that. But by passing LB355, the Legislature will be telling their constituents that the health of employees who work in cigar bars, or wherever else you may decide to allow smoking, is not as important as the health of employees who work elsewhere in the state. I think that's very well stated. So if we are willing to narrow this a bit more by eliminating or barring cigarettes smoke, I think that the original intent of Senator Lautenbaugh's bill would be much more easily obtained. Without it, these will just become general smoking bars that sell alcohol. Thank you, Mr. President. [LB355]

SENATOR ROBERT: Thank you, Senator Avery. (Visitors introduced.) Members, you have heard the opening to AM965, the amendments to the E&R amendments. Those wishing to speak: Senators Lautenbaugh, Stuthman, and Utter. Senator Lautenbaugh, you are recognized. [LB355]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I do rise in opposition to this amendment and let me explain why. This is a very clear enforcement problem and I don't know how to make it any plainer than that. You're asking the people who are proprietors of cigar bars to explain to patrons that you can smoke cigars in there but not cigarettes. Leaving aside that that is their choice now if these bars were open, a cigar bar owner could choose not to allow cigarettes. The thing to keep in mind here is that smoke is smoke is smoke. We explained this on General File. As Senator Avery also pointed out, that cigar smokers don't want to smell cigarette smoke, cigarette smokers don't want to smell cigar smoke, but here's the kicker. Here's the thing that no one is, you know, apparently seizing on, at least a few of us aren't

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seizing on. Cigar bars deal with that by having adequate ventilation so that all of the smoke or a huge amount of the smoke is removed from the room, efficiently and quickly. So you're not talking about a room full of smoke or cigar bar patrons wouldn't go there because they don't want to smell other cigars other than their own, much less cigarettes. And ventilation works regardless of what kind of smoke you're talking about. So we're in the circumstance here of trying to protect cigar bar patrons from cigarette smoke or cigarette smokers who go to cigar bars from cigarette smoke, but not cigar smoke, and the employees from everything, apparently. Well, just from cigarette smoke apparently. Senator Avery read a communication that he received from the gentleman who apparently developed some outdoor seating to accommodate the smoking ban. That's fine. He has to do that because he can't qualify as a cigar bar. Based upon, as we define it, with the percentage of revenue, he will never be a cigar bar. He cannot go this route to allow smoking so he will have to accommodate his patrons in that way. To refresh your recollection, cigar bar is very narrowly defined, based upon the committee testimony we had, to a percentage of revenue not from cigarettes but from cigars and related products, but not cigarettes, specifically not cigarettes. So in that circumstance, the gentleman who wrote to Senator Avery would not be a cigar bar owner. And there aren't going to be many cigar bar owners for the reasons we spoke about at length on General File. We keep coming back to the health of the employees. Understand we already have an exception in the law for smoke shops. Apparently we just don't care about their employees. We just made a statewide policy decision that smoke shop employees, to heck with you. Now, I don't believe that's the case. I think we probably looked at it and said, well, that's why smoke shops exist. They probably have ventilation. You have to make a reasonable exception. Cigar bars are the same deal and nothing else is. Keno parlors are not the same deal. Race tracks are not the same deal. Pool halls are not the same deal. No one can say, hey, we built this place so that we would have smoking. That's just not the reality of it. They didn't enter the business specifically to be a place to have smoking. Pool hall can say, well, we did put in ventilation for that. Fine, but you're still just a pool hall. I sympathize with you but this bill doesn't provide you any relief nor should it. And we're hearing the same argument again, how are we going to deal with, you know, the next exception that comes? Well, I'll throw out a suggestion. Say no... [LB355]

SENATOR ROBERT: One minute. [LB355]

SENATOR LAUTENBAUGH: ...because you don't have to accept the next exception. And I would again suggest that the places I'm talking about are uniquely defined and uniquely qualified for this purpose. So I would ask you to reject the amendment. It doesn't make a lot of sense to protect cigar smokers from cigarette smoke and cigarette smokers from cigarette smoke in cigar bars, etcetera. We've already taken cigarettes out of the stream of revenue so, if you think about it, if a cigar bar has a bunch of cigarette smokers sitting around, they're going to be purchasing other items and working against the revenue percentage that the cigar bar owner needs. So it's at least possible

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the cigar owner himself might say, no, we don't want cigarette smokers here. That would be a concept known as freedom of choice, I guess, for the owner of the business, something that I don't think we should discount lightly and sometimes we do. Again, I would urge you to vote against the amendment. [LB355]

SENATOR LANGEMEIER PRESIDING []

SENATOR LANGEMEIER: Thank you, Senator Lautenbaugh. Senator Stuthman, you're recognized. [LB355]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I do support this amendment, Senator Avery's. I think it's a good idea. But there is one thing that I've been really doing a little concentration on over the last few days, the fact that it's an issue of secondhand smoke. Now, I think it was stated and during the testimony or when it was on General File the fact that cigar smokers don't inhale, but I think other people do inhale the cigar smoke. Whether it's cigars or cigarettes, it's still tobacco smoke. And in my opinion, it's a health issue. I really think it's a health issue. We passed LB395 a year or so ago, and we gave the people the opportunity to work with the smokers, allowing them to have a place outside of the establishment where the public probably wouldn't be. They'd be in open air and the fact that they weren't in a confined building that would have the fact that a lot of people would be breathing that secondhand smoke. There's so many things, effects of secondhand smoke. And the fact that cigar smoking, you know, it does, it does affect a person just as a cigarette. I don't think I've seen any, any results of people that breathe secondhand cigarette smoke or secondhand cigar smoke. It's secondhand tobacco smoke and it does have an effect on people. It affects them in many ways. I think, I think, we as state legislators should be concerned about the health of the public. And I think we have a bill that is just going to go into effect June 1. I think this is a bill that is good, good for the public, very good for the public. It's a health issue. Why do hospitals have their whole campus smoke free? They initially didn't go that route. They initially went with just the hospital. Then it got to be where everybody just stepped outside and smoked their cigarettes or their cigars right outside on the premise, and it got very, very unsightly in those areas for people coming to the hospital. Cigarette butts thrown all over the place, someone had to clean those up. And I think this is the issue why the hospital associations went to a smoke-free campus. And they're trying to get their individuals that smoke trying to quit smoking. I think there are many instances where associations like the hospitals, you know, try to encourage them to quit smoking. Why do they do this? Because it's a health issue. I think they even offer programs for the individuals to attend so that they can quit smoking. In my opinion, if we allow...if we allow this bill, this cigar bar bill to pass, we have just created just a little exemption, what they say, but when we allow something like that to happen... [LB355]

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SENATOR ROBERT: One minute. [LB355]

SENATOR STUTHMAN: ...it's no more a level playing field. There's going to be ways to get around it and I think that's the issue. There's going to be a way that they can get around it because of the amount of revenue that has to be generated from cigar products. I do realize that they've taken the cigarette portion out of it already, but it really...it really is something that I think can be addressed later on and that's why I do support this amendment, the fact that if you're not going to have the cigarette sales in it then let's not allow cigarette smoking in there. Because the main issue that we're dealing with in this one is we're trying to create an exemption for cigar bar, and if we're going to name a cigar bar, you know, then it should be the cigar. [LB355]

SENATOR ROBERT: Time. [LB355]

SENATOR STUTHMAN: Thank you, Mr. President. [LB355]

SENATOR ROBERT: Thank you, Senator Stuthman. Those wishing to speak: Senators Utter, Avery, Dierks, Friend, and others. Senator Utter, you're recognized. [LB355]

SENATOR UTTER: Thank you, Mr. President and colleagues. I rise in support of Senator Avery's amendment. I, frankly, can see no reason, if it is truly a cigar bar and if as Senator Lautenbaugh proclaims that it...the cigar bars wouldn't allow cigarette smoke anyway, why it should be in the bill, I think. To paraphrase what Senator Lautenbaugh's famous quote was, smoke is smoke, is smoke, is smoke, I would say to you that smoke is cancer, is cancer, is cancer. And regardless of whether as a cigar smoker you inhale it or not, somebody is inhaling that smoke. This is not a personal freedom issue, folks. This is an issue that relates to health and to serious health problems and I, frankly, think that we need to pay close attention to that aspect of it. The other thing that is beginning to bother me about this whole matter is the fact that we are tailoring this bill, supposedly, for just a few, less than ten, maybe three or four or five or six privileged people in Nebraska that can open a cigar bar. And now I just ask you to consider the wisdom of doing that as opposed to the impact of our entire bill. And we're starting to nibble holes in this bill right after...before it even goes into effect. And I would...I would have to caution the body against beginning to allow these holes to be nibbled. I will tell you that the next day after we discussed this bill and advanced it, there were groups in Nebraska that were already trying to figure out ways they could gain the next exemption. And Senator Lautenbaugh says it's easy, just say no. And I say to you, it is easy, just say no to LB355. Thank you. [LB355]

SENATOR ROBERT: Thank you, Senator Utter. Senator Avery, you are next and recognized. [LB355]

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SENATOR AVERY: Thank you, Mr. President. Senator Lautenbaugh opposes this amendment. But he actually did think highly of it at one point because he sat down with me and we talked about the possibility that he might offer this very same amendment if I would support the underlying bill. We could not reach agreement on that, but I am a little bit puzzled as to why the bill is so bad now when it wasn't so bad at that time. If we really want to create a narrow exception to the smoking ban so that we can create, in fact, a cigar bar, then let's not allow smoking cigarettes. Let's only allow smoking cigars. I have a constituent who owns several bars, both here and in Lincoln, and he called me to express his concern that this bill would require him to split his bars in two, and somehow create a cigar bar in one part and a noncigar bar in the other. This would be a great expense. He did not like the statewide smoking ban and I heard a lot about that at the time. He was one of the most vociferous opponents of the statewide smoking ban but he adapted to it. His business has flourished since then. But the fact is that he sees this hole or loophole as an unevening of or unleveling of what now is a level playing field. And he's concerned that he won't be able to compete because all of his smokers who want to smoke and drink at the same time are going to be fleeing his business to cigar bars. So he feels compelled now to go to the added expense of doing something to become more competitive. And he owns bars in both Omaha and in Lincoln. I believe that there are a number of other objections we could raise. For example, I have here another e-mail from a businessman in Omaha who opened up an insurance agency in a strip mall and right next door was...not when he opened his agency was there a cigar lounge but soon after he was in business a cigar lounge opened next door. Within just a few months you could smell the cigar smoke, you could see a slight haze, and at the end of the day he and his employees went home smelling like smoke and quite uncomfortable with that situation. As time went on, the cigar lounge increased its business and this person's insurance business now had a thick cigar haze in the building, so they had to start working with the door open. They wore heavy sweaters to keep somewhat warm. Families that would come in to buy insurance would complain about the smoke and the smell of it. And in some cases the mother would leave the father inside to discuss business and take the kids outside to avoid the smoke. This is what we're talking about, folks. We're talking about opening up a loophole. We're talking about undermining and eroding what was one of the best things we did last year... []

SENATOR ROBERT: One minute. [LB355]

SENATOR AVERY: ...and I think that is a mistake. This amendment does not undermine the intent of LB355. It tightens it up. It narrows it. It's reasonable and I think we should pass it. Thank you. [LB355]

SENATOR ROBERT: Thank you, Senator Avery. Senator Dierks, you are next and recognized. [LB355]

SENATOR DIERKS: Thank you, Mr. President and members of the Legislature. I did

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not support this legislation out of committee. I will not support it now. I will support the amendment only because I think it makes a terrible bill a little bit better, not good enough to support. I've had enough experience in my coursework as a veterinarian. Our pathology studies were similar, almost alike, those pathology studies that medical doctors take. The fact is, we use the same textbooks in a number of our courses. And I recall one day when one of our professors brought in a lung from a cadaver of a human being that died from pneumonia, lung pneumonia. That lung was as black as Senator Rogert's jacket. There was no way it could function. I don't think people have any idea of what happens to that lung tissue because you can't see it from the outside, but it's there, folks. And with this legislation we're just like the camel getting his nose under the tent to open up more legislation just like it. I urge you not to support LB355. Thank you. [LB355]

SENATOR ROBERT: Thank you, Senator Dierks. Those wishing to speak, Senators Friend, Lautenbaugh, Haar, and Stuthman. Senator Friend, you're recognized. [LB355]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. Earlier in the session I helped to vote this out of the committee. I voted yes out of committee. If committee members remember correctly that one of the concerns that I had, and voiced those concerns, is that we needed to draw...and I actually had talked to Senator Lautenbaugh about it, too, in passing, needed to draw as narrow an exception or an exemption as we possibly could. I haven't spoken to this issue and, you know, hold your applause. I haven't spoken, I haven't spoken to this issue this session. There's a reason. I've heard this issue every year since I've been here and it's kind of refreshing to hear others', you know, views on the subject matter, every year, seven years. This is the seventh. If I were a king of this mystical place we call smokeville, I would have done...I would do to smoking what we would do to alcohol in smokeville and every other...every other regulated product. You can use it here, here, here, and here, but we're going to watch you and we're going to regulate it, and we're going to make sure you do it according to the way we want it done. Because that's what we did last year, isn't it? Except we have a legal product and we told everybody don't use it and we continue to tell them don't use it, but we're going to tax the heck out of you until you're bleeding out of every orifice. The Omaha City Council and the mayor and everybody, in their infinite wisdom, a few years ago decided to ban it in the city of Omaha. Well, the city of Omaha is not the whole state. So what ends up happening is, if a guy wants a cigarette and he wants to have a cigarette after he eats, all he has to do is leave the city of Omaha to do it. Now how fair is that to the people that are residing and trying to do business in the city of Omaha? Thank you, city council. In their infinite wisdom, these guys continue to beat their chests and act how great they are about how they don't have to raise property taxes. Then they'll turn around and blame everybody in this Legislature for doing what they had the guts not to have to do. Okay. Give me a break. Here's why this amendment is not a bad idea. Same principle: If I'm sitting in a bar, if I'm sitting in a bar and I want to have a cigarette while I'm drinking or a cigar or anything else while I'm

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drinking or, frankly, eating and watching a basketball game tonight, I can't do it. But if a bill like this passed without this amendment, not only can I go have a cigarette at a cigar bar but I can probably watch the game if the guy has got a TV over his bar. The only thing I probably couldn't do is eat. I'd have to sneak my own peanuts in or something of that nature. The bottom line is, this goes...and I didn't think I was going to say this, this goes to exactly what I was talking about when this bill came out of committee. I want as narrow exemption as you can possibly find. Let me repeat, if I'm sitting in a bar tonight to watch the basketball game, I cannot smoke a cigarette. If a bill like this were in place, if the law were enacted... [LB355]

SENATOR ROBERT: One minute. [LB355]

SENATOR FRIEND: ...I could nudge my friend and say, you know what, I've got three packs of cigarettes here and I feel like smoking while I drink, so I'm going over to that cigar bar. And by the way, the game is on and there are...there are vents. I don't have to smell the secondhand smoke. I just have to breathe my own. You see the weird part about all this? We're doing the same thing the city council did in Omaha. That's what irks me and the fact of the matter is, he's not...Senator Lautenbaugh is not denying it. I told him I had a concern about cigarettes. Look, I'm voting for this bill, okay, because it's drawn a nice exemption. However, I don't think there's anything wrong with AM965. I'll...look, I'll just leave it at that. Thank you, Mr. President. [LB355]

SENATOR ROBERT: Thank you, Senator Friend. Senator Lautenbaugh, you're recognized. [LB355]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. Maybe I wasn't clear before in my prior comments. I did not say cigar bar owners would not allow cigarette smoking. I said it was their choice. Perhaps they would not allow it because cigar smokers don't necessarily enjoy cigarette smoke. Probably wouldn't smell it anyway with the ventilation. Now, I'm not going to apologize for suggesting that we leave something up to the option of the business owner because last I checked they're supposed to have some control over their places of business. It's their investment. It's their nickel, and who do we think we are? This is very similar to arguments we've had in the past, but I'm hearing the same things so I'm finding myself saying the same things. And when I hear Senator Utter say that this makes it possible for a privileged few, that just reminds me that Senator Utter wasn't in the committee hearing when the privileged few talked about how they're losing tens of thousands of dollars because of what the city of Omaha did last year. We're putting these places out of business. We're helping when our ban comes into effect. The city started the ball rolling. Privileged few? Who wants to sign up for that privilege, for us to put them out of business? Who's going to be next? That's not a line that's going to be very long until we do the next thing. Privileged few, trying to take back a little bit of what we shouldn't have taken away in the first place makes these people privileged. Who are we and what have we become that that is how

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we look at this? You want to run your business your own way after investing in it to make it a cigar bar with ventilation, the humidior, etcetera, etcetera, all the stuff you've heard ad nauseam, and we're calling you a privileged few. Come bow before us and we may let you operate a business in Nebraska. And, yes, there are other groups trying to figure out exceptions, and we should tell them no. I have an amendment coming that's going to deal with some of this, too, that I'm not going to get into now. And, yes, if I sound a little angry that's because I did float the concept with Senator Avery last week: Hey, if I took cigarettes out of this would you guys get off of this bill? And, of course, the answer is no because the people pushing this amendment aren't interested in making a better bill and aren't interested in negotiating. They're interested in saying no, no, no, with this amendment somehow making it somehow worse for the business owner because we might be allowing a privileged few to make a profit in this state. And I'll be honest about it. How soon do you think I'm going to try to negotiate anything with Senator Avery again if we're going to stand up here and talk about it? I've had negotiations with lots of you on lots of topics. I'm not going to stand here and talk about them now, but I'm also not going to leave myself open to that kind of thing: Well, you liked the amendment last week. No, I didn't like this amendment last week. I was just trying to stop a few persistent senators from holding this thing up. And when I went to the people, the privileged few, as we're calling them now who operate this kind of business, they said, do you know how hard it would be to enforce this, to run around at 11:00 at night and say, hey, don't smoke that cigarette, just smoke a cigar? We're putting people in that crazy spot. And to say this is some sort of a public health issue, I've talked about the ventilation, that doesn't seem to do the trick with people. I've talked about the fact that we're only talking about a few places so no one is forced to work there. That doesn't do the trick with people. On General File I talked about the fact that cigar smokers in general, if anyone would care to be honest about the medical evidence, you don't inhale these things. Ask a doctor if you smoke a cigar once or twice a week, you're going to have any health problems. [LB355]

SENATOR ROBERT: One minute. [LB355]

SENATOR LAUTENBAUGH: The honest nonzealots will tell you no. They tell me no. It has the virtue of being the truth. That's why you're probably not going to hear it from the people you usually hear all this on this issue. Regarding Senator Avery's example of the insurance agency, that was not next to a cigar bar. That was next to a smoke shop, and these people have been working with GASP in bringing these statements to you. What he didn't tell you is that the place...there was a code violation in the place where all of the ceilings were connected and that the smoke shop has been closed and they're renovating it to put an actual fire wall between the businesses. So again, it's not a business we're talking about. It's not a business that would be affected by this bill and it's being rectified anyway as a landlord-tenant issue would be. But yet we're hearing about it on the floor as part of the ball of distracting facts that the opponents bring up to this bill. [LB355]

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SENATOR ROBERT: Time. Thank you, Senator Lautenbaugh. Senator Haar, you are next and recognized. [LB355]

SENATOR HAAR: Mr. President, members of the body, I'd like to read you an e-mail from one of my constituents. Dear Senator Haar: Please support the current statewide smoke free law passed last year as LB395 and let it go into effect without any exemptions. I support the current law and would like it to be given a chance to work. Thank you for your support. I think that's real clear and plain. At least the people of Lincoln voted to have a smoke free environment and I think that's the way it should be. Now I will support AM965. I think it's an improvement to a bad bill as Senator Dierks already said. And it seems just real simple to me, if we're talking about cigar bars, that it's limited to cigars and it should be in the law. To me it clarifies and, like I said, makes a bad bill a little bit better. Thank you. [LB355]

SENATOR ROBERT: Thank you, Senator Haar. Senator Stuthman, you are next and recognized. [LB355]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. As Senator Friend had stated, you know, he had heard this for seven years. Yes, I've heard it for seven years too. But I think during those seven years we did come upon an agreement, we passed a bill, LB395, that dealt with the smoking, made it a very level playing field. And I think we allowed it to have another year to take into effect, mainly because of bar owners to establish a place, you know, to allow people that frequent the bars that they could go outside in the open, a place for them that if they wanted to smoke they could smoke. Most generally in those areas it would be very, very, very much ventilated because it would be in the open air and the fact that very little secondhand smoke would be smoked...I mean, ingested by other individuals. And it would have been just the individuals that would have been smoking would have been in the area, and they would have been maybe witnessing some secondhand smoke. I think, I think it's a health issue. It's a secondhand smoke. There's been numerous conversations about the fact, you know, with alcohol and everything, everything like that, legal products. But this legal product...and I respect the people that want to smoke. That is their right. But the issue to me is the secondhand smoke. I have never heard of any disease problems or any heart diseases or lung problems with secondhand alcohol. That never does occur. But it's the secondhand smoke. There's so many health reasons because that, because we shouldn't be breathing that secondhand smoke. First of all, we shouldn't be smoking, in my opinion. As was stated, you know, it was good to smoke a cigar, you know, maybe every couple of weeks or maybe once a week smoke a cigar, and that may be true, that may be true, and the fact that they do not inhale. But maybe where there's cigars are being smoked, people must put the mask on or just not breathe until they get with...get out of the range of that secondhand cigar smoke so they don't have to inhale it. Now if other people have to inhale secondhand cigar smoke, why

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doesn't the person that's smoking the cigar inhale it? Why don't he inhale it immediately if it's so good for him? But they say they don't. I think this is an issue that we have to address and it's a fact of, it makes it...we have tried to make it a level playing field. We talk about businesses, putting them out of business, worrying about putting people out of business. Well, I'll tell you in my opinion that if we allow, you know, a cigar bar here and a cigar bar here and another establishment that meets the guidelines of the 10 percent of cigar products being sold in there, they will allow the smoking then. It will be...then it will be putting people out of business because the majority of people will just flock to those places then to smoke the cigarette, no, excuse me, not the cigarette, just the cigar. [LB355]

SENATOR ROBERT: One minute. [LB355]

SENATOR STUTHMAN: And I think that is the issue, in my opinion. The fact of, if we allow this there's going to be ways that businesses are going to meet the criteria that is established in this LB355. The walk-in humidors, I mean, that could be it's just a humidity controlled area with a door on it. That's all that is. And I think we're not creating a level playing field by allowing certain organizations, certain little niche market to allow the smoking happening there. I just think that it's a smoking, secondhand smoke issue, it's for the health of people, and I haven't read yet, in my opinion, and I've done a lot of research, the fact that your lungs are better off smoke... [LB355]

SENATOR ROBERT: Time. [LB355]

SENATOR STUTHMAN: Thank you, Mr. President. [LB355]

SENATOR ROBERT: Thank you, Senator Stuthman. Senator Wallman, you are next and recognized. [LB355]

SENATOR WALLMAN: Question. [LB355]

SENATOR ROBERT: The question has been called. Do I see five hands? I do. The question before the body is, shall debate cease? All those in favor vote yea; opposed vote nay. Mr. Clerk, please record. [LB355]

CLERK: 26 ayes, 3 nays to cease debate, Mr. President. [LB355]

SENATOR ROBERT: Debate does cease. Senator Avery, you're recognized to close on AM965. [LB355]

SENATOR AVERY: Thank you, Mr. President. This amendment is a little bit like truth in advertising. If we really want to create a narrow exception for cigar bars in the statewide smoking ban, then let's make it cigar bars. Bar cigarettes, then you have that narrowed,

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narrowly defined exception that we talked about on General File and we've been talking about this morning. This is not unreasonable. It simply removes cigarettes from the cigar bars and creates a true standalone cigar bar and not something else. I urge you to support this. Thank you. [LB355]

SENATOR ROBERT: Thank you, Senator Avery. Members, you have heard the closing to AM965, the amendments to the E&R amendments. All those in favor vote yea; opposed vote nay. Senator Avery, for what purpose do you rise? [LB355]

SENATOR AVERY: I request a call of the house and roll call vote. [LB355]

SENATOR ROBERT: Members, there has been a request for a call of the house. All those in favor vote yea; opposed vote nay. Mr. Clerk, please record. [LB355]

CLERK: 36 ayes, 0 nays, Mr. President, to place the house under call. [LB355]

SENATOR ROBERT: Members, the house is under call. Senators, return to the Chamber and record your presence. All unauthorized personnel please leave the floor. Senator Lathrop, Senator Heidemann, will you check in? All members are present and accounted for. Mr. Clerk, there's been a request for a roll call vote. Call the roll. [LB355]

CLERK: (Roll call vote taken, Legislative Journal page 941.) 25 ayes, 19 nays, Mr. President, on the amendment. [LB355]

SENATOR ROBERT: AM965 is adopted. Items for the record, Mr. Clerk. And I raise the call. [LB355]

CLERK: Mr. President, I do have items. Your Committee on Judiciary, chaired by Senator Ashford, reports LB145 to General File; LB237, General File; LB238, General File; LB494, General File. Transportation, chaired by Senator Fischer, reports LB497 to General File; Judiciary, LB374 to General File with amendments, LB375 to General File with amendments; and Revenue, chaired by Senator Cornett, LB385 indefinitely postponed. I have a confirmation hearing report from the Judiciary Committee. Mr. President, there will be a meeting of the Revenue Committee at 1:45 in Room 2022; Revenue at 1:45. Name adds: Senator Gay would like to add his name to LB675. (Legislative Journal pages 942-948.) [LB145 LB237 LB238 LB494 LB497 LB374 LB375 LB385 LB675]

Priority motion: Senator McGill would move to recess the body until 1:30 p.m. []

SENATOR ROBERT: Members, you have heard the motion. The motion is to go to recess until 1:30 this afternoon. All those in favor signify by saying aye. Opposed, nay. We are at recess. []

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RECESS []

SENATOR NELSON PRESIDING []

SENATOR NELSON: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Mr. Clerk, please record. []

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

SENATOR NELSON: Thank you, Mr. Clerk. Do you have items for the record? []

CLERK: Just one: A reminder the Revenue Committee will meet at 1:45 in Room 2022. That's all that I had, Mr. President. []

SENATOR NELSON: Thank you, Mr. Clerk. We will proceed to the first item on this afternoon's agenda. Mr. Clerk. []

CLERK: Mr. President, LB355 discussed this morning. Senator Lautenbaugh, you have the next amendment, Senator, AM891. I have...I understand, Senator, you want to withdraw AM891 and offer, as a substitute, AM981. Is that right? [LB355]

SENATOR LAUTENBAUGH: That's not correct, Mr. Clerk. At this time I'd prefer just to withdraw it. [LB355]

CLERK: Senator, I'm sorry, so withdraw AM891? [LB355]

SENATOR LAUTENBAUGH: Yes. [LB355]

CLERK: Okay. [LB355]

SENATOR NELSON: There is a request to withdraw AM891. All in favor say aye. All right, AM891 is withdrawn. [LB355]

CLERK: Mr. President, the next amendment I have to the bill, Senator Utter, I have AM968, Senator, in front of me. (Legislative Journal page 949.) [LB355]

SENATOR NELSON: Senator Utter, are you recognized to open on AM968. [LB355]

SENATOR UTTER: Thank you, Mr. President and members of the body. AM968 is a relatively simple amendment to this bill and, in moving this bill along with the admonitions of Senator Lautenbaugh that it be kept very simple, this is a simple

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amendment. And what this bill does is prohibit anyone under the age of 19 years of age from entering a cigar bar and, with that, there's not much to be said. But I think it does tighten up the...it does tighten up the parameters of the cigar bar thing and certainly would prohibit anyone with young children from dragging them into a cigar bar while he enjoyed his stogie. And so, with that, I present that amendment. Thank you very much. [LB355]

SENATOR NELSON: Thank you, Senator Utter. Are there others wishing to speak? Senator Karpisek, you are recognized. [LB355]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I really didn't rise for this amendment. I don't have a real problem with this amendment. The reason I hit my light was from this morning when a few people got my blood boiling again, so I should have just shut it off. However, since I have the floor maybe I'll say a few words. Senator Stuthman, could he answer a few questions, please? [LB355]

SENATOR NELSON: Senator Stuthman, will you respond to questions? [LB355]

SENATOR STUTHMAN: I will try. [LB355]

SENATOR KARPISEK: Thank you, Senator Stuthman. I just have to go back. You keep talking about the level playing field, which I said if I heard that one more time I would have to say something, and you said it three so I thought I'd have to help out. Was there not a level playing field before this smoking ban went in? [LB355]

SENATOR STUTHMAN: Well, Senator Karpisek, before this smoking ban, when it would...will go into effect, no, there was not a level playing field. [LB355]

SENATOR KARPISEK: Why not? [LB355]

SENATOR STUTHMAN: Because of the actions that the Lincoln City Council took. [LB355]

SENATOR KARPISEK: Okay. Before theirs. [LB355]

SENATOR STUTHMAN: Before theirs? [LB355]

SENATOR KARPISEK: Right. [LB355]

SENATOR STUTHMAN: Before there was any action taken about banning smoking? [LB355]

SENATOR KARPISEK: Yes. [LB355]

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SENATOR STUTHMAN: Yes, it was probably a level playing field at that time. [LB355]

SENATOR KARPISEK: Okay. So now we're changing state law so Lincoln and Omaha can have a level playing field. [LB355]

SENATOR STUTHMAN: We're trying to make it so that the whole state has a level playing field and the issue, in my opinion, is we are establishing a level playing field for the betterment of the health of the people in the state of Nebraska. [LB355]

SENATOR KARPISEK: Are there any other jobs that you would say that maybe they stand...where they're at work they also have breathing concerns, maybe welders or people working in sewers or all those sort of things? [LB355]

SENATOR STUTHMAN: I am not aware of anything, but the issue is, you know, yes, these people work in those conditions but I'm sure that, you know, if the people that are working in the sewers, in that area of the utilities of the community, I don't think the public is frequenting that very often. [LB355]

SENATOR KARPISEK: No, but we said it's a health for the employees, right? [LB355]

SENATOR STUTHMAN: Yes, it's a health for them employees. [LB355]

SENATOR KARPISEK: How about a hog barn? Do you think a hog barn is a good place? Is there any dust floating around in there? [LB355]

SENATOR STUTHMAN: There are some hog barns that do have some dust flowing in them but, you know, those individuals that work in there, they wear the masks and they get along okay with the wearing of those masks. Some of them wear higher quality masks than other ones but they, you know, they take all the precautions into consideration. There are a lot of people that work in these hog units that they are, but they are ventilated and, yes, there is some dust particles in there and those dust particles I would like to remind you the fact that they are created because of the hair, the hair on these animals and the rubbing of the hair creates the dust particles. [LB355]

SENATOR KARPISEK: And how about ammonia? Is there any ammonia in there? [LB355]

SENATOR STUTHMAN: As far as ammonia in hog units, if they're not ventilated correctly, yes, there is some ammonia in there but not nearly as bad as, in my opinion, the ammonia created by the chicken barns. [LB355]

SENATOR KARPISEK: Okay, then let's talk about chicken barns if you want to go there.

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They have people that work there, right? [LB355]

SENATOR STUTHMAN: Yeah. [LB355]

SENATOR KARPISEK: I think you know where I'm going here, Senator Stuthman. [LB355]

SENATOR STUTHMAN: Yes. [LB355]

SENATOR KARPISEK: And I just want to say, you know, if you don't want to work there, I haven't come out to your farm to look at your hogs. I haven't helped you do your chores... [LB355]

SENATOR NELSON: You have one minute. [LB355]

SENATOR KARPISEK: ...because I don't want to, because then I might go home smelling like hogs. You know, I heard that come up again today. People go home and then their clothes smell like cigar smoke. Again, just what I said, that's the bottom line here--they don't want to smell like smoke. We can say that it's health--and again, I'm not going to say secondhand smoke is good for you--stay the heck out of there. When...when can private business do anything? We're stepping way over the line here. I don't want to...I don't want to go back and get the whole smoking ban issue going again. I lost. Fine. But I'd...so then let's just get off of that whole thing and let's talk about these amendments and this bill. Thank you, Mr. President. [LB355]

SENATOR NELSON: Thank you, Senator Stuthman. Thank you, Senator Karpisek. (Visitors introduced.) Senator Lautenbaugh, you're next. [LB355]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I rise against another amendment. Very simply put, as I understand it, you can buy tobacco products at 18, but if this amendment passes you cannot physically enter the building to buy the tobacco products. And once again, I believe we go way too far. Senator Karpisek was dead on. I mean there's a point at which we have to stop and ask ourselves, and I realize that a lot of you didn't have the benefit of the committee testimony, but if you are believing that there are cigar bars out there where people are sitting there with their children, smoking cigars, you've never been to a place like this. I would submit that most of the people in cigar bars probably go there to get away from their children at all, not speaking from personal experience. I have to admit I'm just speculating a little right there. (Laughter) But aside from that, can we at last acknowledge, for the love of God, that cigar bars don't traffic in plutonium? It is cigarette smoke and cigar smoke. What level of exposure is dangerous to children? I mean, I have a son with asthma. I have mentioned this before. It's on me to not take him in a place with smoke, and that seems pretty basic. So now we're making a...offering this

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amendment to tweak this statute further, this bill further, to remind people who don't know that it probably isn't a good idea to take your kids to the bar in the first place, to not take them to a bar with cigar smoking going on in it because of some risk that we think will happen. If maybe they spend their formative years, in their entirety, in the cigar bar, some health harm could arise. We're at a point where this is fairly absurd, I would submit again. Once again, I believe you can buy tobacco products at 18. With this amendment, you can't physically enter the building to buy the products, though. And maybe that's the intent, that maybe we should just be doing an outright ban. But we had an amendment this morning that I fought hard and I lost. So now we're not even talking about cigarette smoke in cigar bars. We're talking about just cigar smoke and we're saying that people should not be able to bring their kids in there. At a very basic level, they don't anyway, but there's a point at which you just have to say, oh, come on, enough is enough. And if this amendment doesn't make you say, oh, come on, enough is enough, I'm not really sure what will. Thank you. [LB355]

SENATOR NELSON: Thank you, Senator Lautenbaugh. Senator Fischer, you are next. [LB355]

SENATOR FISCHER: Thank you, Mr. President and members. I've tried not to rise and speak to this bill but Senator Karpisek is just way too much fun and I have to join in. For four years we fought the smoking ban on this floor. And you've all heard the story about how it passed. Some of us still remember that and some of us are still not happy with how that happened. With the smoking ban discussion, as I remember it, what we talked about was this level playing field. And I'm like Senator Karpisek. Every time I hear that on this bill, I'm about ready to scream because the whole discussion was not about health. The whole discussion was a level playing field. The whole discussion was when Lincoln and Omaha didn't have a smoking ban, they were in here fighting a statewide smoking ban. When they got a smoking ban, because that's what their citizens decided on or their city council decided on, then they wanted the rest of the state to be under that for this level playing field because, in Lincoln, businesses were losing customers who were going to Denton, who were going to Emerald, who were going to Waverly and, oh my goodness, we had to get a level playing field. It was about business. It was not about health. That's over. That's done. We have a smoking ban in this state now. But to listen to those same arguments on a cigar bar bill is almost beyond belief. I agree totally with Senator Lautenbaugh. This bill is a cigar bar bill. There are no loopholes in it. Read the bill. We have spent so much time on this, we have spent so much energy on this, let's move on, let's pass the bill that Senator Lautenbaugh has before us. It addresses a very small segment of our population. This does not affect the general public. If people choose to go in a cigar bar, hey, guess what, there's going to be cigar smoke. Please defeat these amendments. Let's pass this bill and let's move on to what's important for the state. Thank you. [LB355]

SENATOR NELSON: Thank you, Senator Fischer. Senator Stuthman, you are

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recognized. [LB355]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I, just in listening to the words of a person that I really respect here on the legislative floor, Senator Fischer, and I don't want to get to the point where she starts screaming, because it sounds like it's getting very, very close. But I really think it's a health issue. It is a health issue. Secondhand smoke is a health issue. And I think it's a fact of the public places where people go and they are a public place and the fact that they want to breathe clean, fresh air, and it's for the public to go to enter these. Senator Karpisek questioned me on some of the hog units or the poultry units and stuff like that. I will tell you, those hog units are not public places. They are a private place. And maybe a bar is a private place but then how come all the public is allowed to enter into there? People don't come to hog units as a public and enter therein. Yes, there are people working in there but there are precautions taken, you know, for the dust. I do work in those hog units. I don't work in them as much as I used to, but I used to be in them almost all the time. Maybe that's why I'm short. Maybe it stunted my growth. But I'll tell you, it didn't come from smoking. I think, you know, there are so many things with secondhand smoke and if it didn't bother the people, if it wasn't a health effect, why are the hospitals going smoke free on the campus? I mean that's...some of the campuses are 240 acres. I mean, if you want to smoke you've got to...well, you get your exercise, too, by walking out across the road in a cornfield and smoking. But we don't want those cigarettes dropped in the cornfield because it could catch fire. I just have the issue of the fact that we are just allowing a little crack to be opened up that will maybe cater to a couple of these cigar bars. But I think the only difference between a bar with a Class C liquor license, whether you want to call it a cigar bar or not, is the fact that only 10 percent of their annual sales has got to come from cigars or cigar products. I mean, that's just a little bit. I don't even know why we're even calling it a cigar bar because 10 percent? You just as well call it a Budweiser bar or something like that, the one that sells the most booze in there. But we're trying to carve out and identify a cigar bar and I have some real problems with that. I think, I think, in my opinion, it's a fact, you know, that it is not good for your health and I think we need to dwell on that, that of the health issue. Yes, I would like to see that...the fact that... [LB355]

SENATOR NELSON: One minute. [LB355]

SENATOR STUTHMAN: ...no one would maybe smoke, but since it's a legal product and you can smoke, I respect that. But the fact is it's the secondhand smoke. Now if you had a chimney going straight up or something like that where it could get out into the air and have the real winds like we had Saturday night then, you know, it wouldn't probably be a problem. With that, I do support this amendment. Thank you, Mr. President. [LB355]

SENATOR NELSON: Thank you, Senator Stuthman. Speaker Flood, you are

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recognized. [LB355]

SPEAKER FLOOD: Thank you, Mr. President. Members, a quick announcement and reminder: Today at 5:00 p.m. is the deadline to have consent calendar bills requests into my office here on the second floor; a reminder that if you do ask that a bill be considered for consent calendar it has to also, by 5:00 today, in writing, have the authorization of the committee Chair that the committee had its hearing in front of. So 5:00 is the deadline, that's today, and we will hopefully have all of those in form sometime next week and you will certainly have notice, as provided in the rules, prior to the consideration of consent calendar. Again, the deadline is 5:00 p.m. today. Thank you, Mr. President. []

SENATOR NELSON: Thank you, Speaker Flood. Senator Gloor, you are recognized. [LB355]

SENATOR GLOOR: Thank you, Mr. President. I have not been heard of on this issue. I think everybody understands my concern about issues around public health. But Senator Fischer talked a little bit about Omaha and, as much as I would tell you that I also choose not to be responsible for her raising her voice, would also say her voice in any timbre, high or low, soft or loud, would be lovely to hear and very persuasive. But since she brought up Omaha, it's worth pointing out that Nebraska sought a city ordinance to enact their own Clean Air Act, which was found invalid by the Nebraska Supreme Court because it was in violation of Article III, Section 18 of our constitution which provides, in part, the Legislature shall not pass local or special laws in any of the following cases, that is to say granting any corporation, association or individual any special or exclusive privileges, immunities or franchises, whatever. That I believe is known as a closed class, which is what I believe we are talking about under LB355. I would like to reference the testimony of Senator Lautenbaugh himself and I quote: I mean, look at how many cigar bars existed before we had the ban--a half a dozen. I don't know that it's reasonable to say a lot of other places are going to spend the money on a walk-in humidifier and try to meet these revenue rolls. So the Auditor is not going to be the busiest man on the senate payroll, I'm thinking, for this level of activity. I think Senator Lautenbaugh himself doubts that this is an open class, and that would be my argument, not a health one but a legal one. Clearly, this is outside my normal zone of comfort but I feel so adamantly about how this exemption is wrong and now I feel strongly that it is also unconstitutional because it provides for a closed class. I, myself, have had discussions with my staff about things that I would like to do that I am...have been pointed out to me are closed classes, not legal, not appropriate, not fair, not due process. Thank you, Mr. President. [LB355]

SENATOR NELSON: Thank you, Senator Gloor. We are discussing AM968. Those in queue are Senators Karpisek, Coash, and Howard. Senator Karpisek, you are recognized. [LB355]

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SENATOR KARPISEK: Thank you, Mr. President, members of the body. Did a little research on the Internet just to look up clean air hog lots and I want to tell everyone that I am not going to go after hog lots but I can never find a very good comparison here to cigarette smoke but I think I found something, well, a little bit interesting. A recent study by the University of North Carolina researchers found that people living near large hog farms suffer significantly higher levels of upper respiratory and gastrointestinal ailments than people living near large cattle farms or in nonlivestock areas. An Iowa study found that neighbors of hog facilities had respiratory problems similar to those of workers in hog confinement operations, which included bronchitis, asthma, upper air inflammation and flulike illness. Well, so now what do we do? Those people around that hog lot are sick. I suppose it doesn't say cancer but what the heck, why not call it? Those things probably cause cancer if they do it enough. My whole point is that we're trying to put something on business owners. Senator Stuthman finally even said that he thought maybe a bar was a private business, no different than his hog farm. He said it's funny that they come there. That's because the people are invited there. If Senator Stuthman wants to send out something to charge people to come look at his hogs, then I suppose that he better make sure that everybody has a mask on and does all these sort of things. I just disagree with going after someone who owns their own business. Again, I'm not trying to get the farmers riled up. I've been one. I feel that I am one. I'm trying to make a comparison here. Everything we do, folks, is not good for our health. My next thing I want to look up is car exhaust. Can't imagine that's real good for us either, but how are we going to get away from that? I don't know. Again, my point is, if you don't like it, just stay out of it. I don't understand why that's so hard. What on earth does one bar have that another one doesn't have that people just think they need to go into there? There are nonsmoking bars. They were in Lincoln before. They were across the state. The smoking ban is going to take their niche away. I don't know. I guess not all businessmen on this floor and women agree, but I feel that a person's business is their business. We went from saying that people who work there, we're worried about the workers; well, no, well, we are but we're also worried about other things. I still will say the bottom line is people don't want to go home smelling like an ashtray. Can't say as I blame them. So then just don't go. I don't know if you own a business it is not anyone's right to enter that business. This is just a small part carved out. Hopefully we can keep some businesses going. Telling you, folks, I think when this...the whole smoking ban comes in, it's going to hurt, especially rural Nebraska. I know already it's going to be, oh, that had nothing to do with it, the economy was going down already. [LB355]

SENATOR NELSON: One minute. [LB355]

SENATOR KARPISEK: Thank you, Mr. President. I can see that already. It's going to happen. That will be the excuse. I hope that isn't the case but I am very afraid that that is going to happen. I can see a lot of people staying home. Maybe more will go to eat. The money isn't in the food, folks, we all know that. If you don't know that, go talk to one

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of your local bar owners or restaurant owners. I'm sure they'll tell you. Thank you, Mr. President. [LB355]

SENATOR NELSON: Thank you, Senator Karpisek. Senator Coash, you are next and recognized. [LB355]

SENATOR COASH: Thank you, Mr. President. Call the question, please. [LB355]

SENATOR NELSON: The question has been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye, and those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB355]

CLERK: 25 ayes, 6 nays to cease debate, Mr. President. [LB355]

SENATOR NELSON: Debate does cease. Senator Utter, you are recognized to close on your amendment. [LB355]

SENATOR UTTER: Thank you, Mr. Chairman and ladies and gentlemen. I just rise one more time to express my sincere opinion that this is a health issue and this is an important...it's an important bill for the...for everyone in the state of Nebraska. I think that this amendment that limits the number of...the age of people that can enter a cigar bar is also an important issue. And I know that the consensus is that nobody would drag their children into a place like this and I think that, by and large, that's probably right, but it just as well say that in this legislation. I'm going to ask you to support this amendment but I also will reaffirm that I still stand opposed to LB355. Thank you. [LB355]

SENATOR NELSON: Thank you, Senator Utter. You have heard the closing on the amendment. The question is, shall the amendment be adopted? All those in favor vote aye; all those opposed vote nay. Senator Utter, you are recognized. [LB355]

SENATOR UTTER: Call of the house, please. And also would like a roll call vote. [LB355]

SENATOR NELSON: Thank you, Senator. There has been a request to place the house under call. The question is, shall the house go under call? Record, Mr. Clerk. [LB355]

CLERK: 31 ayes, 0 nays, Mr. President, to place the house under call. [LB355]

SENATOR NELSON: The house is under call. Senators, please record your presence. Those senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Ashford, will you check in? Senator Coash, will you check in? Senator Council, please check in. All members are present. We've had a request for a roll call vote. Will

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the Clerk please call the roll. [LB355]

CLERK: (Roll call vote taken, Legislative Journal pages 949-950.) 20 ayes, 22 nays, Mr. President, on the amendment. [LB355]

SENATOR NELSON: The amendment, AM968, is not adopted. The call is raised. Mr. Clerk. [LB355]

CLERK: Mr. President, the next amendment I have to the bill is by Senator Avery, AM798. [LB355]

SENATOR NELSON: Senator Avery, you are recognized to open on AM798. [LB355]

SENATOR AVERY: Thank you, Mr. President. In light of the success of my amendment AM965 this morning, I have decided, in the interest of building good will with Senator Lautenbaugh, to withdraw this amendment. [LB355]

SENATOR NELSON: AM798 is withdrawn. Mr. Clerk. [LB355]

CLERK: Mr. President, Senator Gay, AM976. (Legislative Journal page 950.) [LB355]

SENATOR NELSON: Senator Gay, you are recognized to open on AM976. [LB355]

SENATOR GAY: Thank you, Mr. President. This is a simple amendment that earlier I had said I'd try to make it a better bill. I still, even after the amendments that we're listening to, I think this helps clarify things. This would remove "cigarettes," that you can even sell cigarettes in a cigar bar. I do believe that we're looking for a bill, that the sponsors are looking for a bill that would allow a narrow exception to the smoking ban. The opponents are looking for not one break in the smoking ban. I do believe that of all the people that can sell cigarettes now, this would very...this would clarify very well that you can't sell cigarettes. You can sell cigars, other tobacco products, which could include pipes and things like that, pipes for smoking tobacco. But that's what this does. This just removes the cigarettes from the things you can sell. I know there's discussion earlier on what percent of the cigars and cigarettes shall be apportioned, 10 percent. It was lowered from 15 to 10 percent. This would still maintain you'd have to have 10 percent of your sales be from cigars, not cigars and cigarettes. So it's a simple language, removes "cigarettes." Thank you, Mr. President. [LB355]

SENATOR NELSON: Thank you, Senator Gay. Senator Howard, you are recognized to speak. [LB355]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I had originally put my light on to speak in support of Senator Utter's amendment, but it also

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would apply to the amendment we now have before us. I've listened to the debate on this issue and I don't believe you can consider this legislation without discussing the ramifications of the health risks, especially to children. We know too much to ignore this risk. This is isn't 1945 when military personnel were issued unfiltered cigarettes by the government as a reward for service. Cigarette smoke in any form is detrimental and, in fact, is devastating to health, especially to a child's health. Firsthand smoke harms the smoker; secondhand smoke harms those around the smoker, especially children. This is fact. Politics won't change this. Yes, we have a responsibility to make legislation that affects the rights of the business owner. We have passed laws to regulate kitchen cleanliness in restaurants and we legislate fire restrictions in theaters and, yes, we have the responsibility to enact legislation to protect our citizens, especially children, from those individuals who feel that their rights supersede all others. Thank you. [LB355]

SENATOR NELSON: Thank you, Senator Howard. (Visitors introduced.) Senator Janssen, you are recognized. [LB355]

SENATOR JANSSEN: Thank you, Mr. President, members of the body. Sitting here, listening to this debate, I was just going through my Chamber Viewer. Just going to go through a number of amendments: AM805, AM974, AM961, AM977, AM978, AM979, AM976. There's more. Change the percentage, change the age, change what can be smoked, where it can be smoked, heck, maybe even how it can be smoked, maybe even in a chicken coop with ammonia. I don't know. Been pretty silent on this whole debate but I'll tell you one thing that all these amendments have in common with an amendment that I put forward earlier in this session--not a damn one of them has had a public hearing. And where's that outcry? I yield the balance of my time to Senator Lautenbaugh. [LB355]

SENATOR NELSON: Thank you, Senator Janssen. Senator Lautenbaugh, you are recognized. [LB355]

SENATOR LAUTENBAUGH: Thank you, Mr. President, Senator Janssen. I do rise in opposition to this amendment and I would just ask the body to think where we are. Under the state law, there's an exception for tobacco shops, so you can smoke cigarettes in a tobacco shop and you can sell cigarettes in a tobacco shop, but now you can't smoke cigarettes in a cigar bar because that would be too dangerous, apparently. Now we're being asked to say...and we can't count cigarettes towards the revenue to become a cigar bar, by the way. Now we're telling these places that you can't even sell cigarettes--a legal product that's available everywhere, but you can't sell them in a cigar bar. This again goes too far. I didn't support saying you couldn't smoke cigarettes in a cigar bar. I still think that's patently absurd to say that. I've talked about the ventilation but the people in opposition to this aren't listening anyway to those points so I'm not going to go down that road again, but how much sense does it make to say you cannot even sell cigarettes? Is there secondhand sales tax that's going to affect our children if

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they're in a bar where cigarettes are sold? I don't think so. We are going down the road of regulating these businesses to the point of nonexistence. This bill was brought to save some businesses, not a closed class because there is still possibility of entry. My prior point was there won't be a lot of these because there weren't before. And my point was you cannot create demand for cigars beyond what existed before. So we cannot legislate that there should be 20 of these because no one...there wasn't demand for 20 of these before. So I'm assuming, based upon the reality we had, that that's what will be the case after this. We've tightened it up so much that we're not going to now, especially without the ability to even smoke cigarettes, there's not going to be a rush to do this. There's not going to be a keno parlor that wants to be a cigar bar. There's not going to be much of anything else other than people sitting around, smoking cigars and probably pipes in these locations. Now we're going to tell these small businessmen, like the one in Benson who I had to make the call to at lunchtime and say, I'm sorry, you won't be able to let the people that buy cigarettes from you smoke cigarettes. And he said, that's going to make it hard on me. And I said, I know it's going to make it hard on you, but you're one of the privileged class because you're in business so we don't apparently like you over much. But he said, it's going to be hard on me. And I said, I know it's going to be hard on you. So now our solution is to go tell this guy down in Benson, well, we'll fix it for you; you can't sell the cigarettes either. When does it stop? When does it stop? I hope it stops here. I didn't like the fact that you took cigarettes out but you did, so please think where we are. We're at the point where people, demonstrably adults, can gather, you have to be over 18 to purchase this product, you have to be over 21 to drink and all you can do is smoke cigars and pipes. Well, as you might have noticed, there's not a huge contingent of 18-, 19-, 20-year-olds running around with cigars. It doesn't happen. This is as narrow as narrow can be, especially with the fact that people can't smoke cigarettes. This guy complaining about his beer garden he built out in Hastings to comply with the ban, well, it's a good thing, he's going to need it. And he might lose the cigar business to the indoor cigar bars because we all know how many of those there were out in Hastings, in Kearney, in Clay Center and God knows where else. There were none, none. How many do you think there are going to be when this bill passes? None in those places. [LB355]

SENATOR NELSON: Time, Senator Lautenbaugh. Senator Campbell, you're recognized. [LB355]

SENATOR CAMPBELL: Thank you, Mr. President. I'm going to use this opportunity, because I had my light on earlier, to ask if Senator Lautenbaugh would entertain a question. [LB355]

SENATOR NELSON: Senator Campbell. Senator Lautenbaugh, will you entertain a question? [LB355]

SENATOR LAUTENBAUGH: I absolutely will. [LB355]

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SENATOR NELSON: Senator Campbell. [LB355]

SENATOR CAMPBELL: Thank you, Mr. President. Senator Lautenbaugh, your office has been particularly helpful and I know you have also, because our office has been fielding questions from people trying to interpret what this means, and I hope this is the last question that we may have for you and I really have appreciated your clarification. The question came in this morning from a bar owner in Lincoln wanting to know, he understood the clarification that you could not go from a cigar bar into an adjoining restaurant and have food and clearly understood that, but thought that for the record we ought to make very clear, make sure that no one can do the reverse, that you can't have some place where they're serving food and an adjoining area is a cigar bar so they can take the food into the cigar bar, is really the question. [LB355]

SENATOR LAUTENBAUGH: It has to do with the definition of a licensed premises, and I think I know the gentleman of which you speak and I thank you for the question. And I apologize, it was not my intent to be helpful previously but I will here and I will take all of your questions, of course, Senator Campbell. You know that. As I understand, it would be the difference between the two premises, so they would not be licensed to do the reverse, as I understand it. [LB355]

SENATOR CAMPBELL: Okay. [LB355]

SENATOR LAUTENBAUGH: I mean I don't think there's a rule in any event that prohibits people from carrying food into any bar that doesn't serve food, even if they're not licensed for such. I'm just...I'm not aware of anything like that. [LB355]

SENATOR CAMPBELL: Okay. And I very much appreciate that, Senator Lautenbaugh, and your office has been helpful and you've always answered every question. I think it's important to note that we do have a lot of businesses out there that are asking questions. They tend...they went ahead and prepared for what they thought was one thing that was going to happen and now there's been another bill introduced, and I think to some extent that has caused the questions. I certainly do not support the bill; will be supporting the amendment because I feel that any way that we can very, very, very narrowly put the bill in its best shape would be in the best interests. Thank you. [LB355]

SENATOR NELSON: Thank you, Senator Campbell. We are discussing AM976. Those in queue are Senators Lautenbaugh, Wallman, Nantkes, and Gay. Senator Lautenbaugh, you are recognized. [LB355]

SENATOR LAUTENBAUGH: Thank you, Mr. President. And I'll be brief. Once again, I'm just going to try to bring this home. I've already tried to call or had to call a small businessman in Benson and say, I'm sorry, you'll have to be able to tell your patrons

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that they can't smoke cigarettes in your cigar bar. And he said, how do I enforce that; am I going to be set up by antismoking activists, etcetera, etcetera? I said, I don't know but that's the way it is and that's the hand we're dealt. Now I'm going to have to call this guy back and tell him, by the way, we're messing with your livelihood just a tad more today and you can't sell cigarettes anymore that you currently sell. Don't make me do that. Don't make me make that call. Please think about what we're doing here. Please think about it and vote no on this amendment. Thank you. [LB355]

SENATOR NELSON: Thank you, Senator Lautenbaugh. Senator Wallman, you are recognized. [LB355]

SENATOR WALLMAN: Question. [LB355]

SENATOR NELSON: The question has been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB355]

CLERK: 25 ayes, 6 nays, Mr. President, to cease debate. [LB355]

SENATOR NELSON: Debate does cease. Senator Gay, you are recognized to close. [LB355]

SENATOR GAY: Thank you, Mr. President. I just wanted to say initially this is not a stalling amendment or anything like that. I said on General File that I wanted to make a bill better. I'm not supporting the bill either, but this is not a stalling amendment. The reasoning I come with this amendment was because we've lowered the threshold. We took out that you can't sell cigarettes to meet the threshold from 15 to 10 percent. You can't smoke cigarettes in the place so what you're doing, you're selling cigarettes and saying you can't smoke them here. To me, it doesn't make sense so that's why I wanted this out. Earlier on General File we talked about a humidor. They can range from \$2,000 to \$80,000, so we're making an assumption that no one ever will try to open a cigar bar in the state. That's the assumption that I'm hearing, I guess, and it's unfortunate because I was going to ask Senator Lautenbaugh a few questions on this and now we're voting on an amendment. So I feel a little bit bad about this and I'm debating whether to even go for a vote here. But the idea, though, to narrow this down, if you're selling cigarettes, that was the question for the body, should we then sell cigarettes in a cigar bar? And I think it's a legitimate question that we need to answer because many of us have a concern that we're opening up a little bit of a problem. We've seen that done, words make a difference here, where you leave out something or you add something and then all of a sudden you have unintended consequences. This was done to clarify exactly what a cigar bar is because I kept hearing...in my mind, I have an idea what a cigar bar is. I was going to ask Senator Lautenbaugh exactly why you need the sale of cigarettes to make a cigar bar work, but I didn't get to that point. So at this point we're

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still going to vote on this amendment but that was the idea. So the question you need to ask yourself and...is, should we sell cigarettes at a place that doesn't allow you to smoke them? It doesn't add to their revenue production. But all the other places that sell cigarettes and have alcohol you call a bar and I'm just concerned. There's a lot more bars out there than cigar bars and that we would see some kind of exception to the rule and then all of a sudden we did get some unintended consequences come our way. But I guess at this point we will vote on this amendment and that's where we're at. If we want to narrow it down later or change it along the proceedings, we can do that. But like I say, I know there are other amendments and Senator Janssen had talked about that. This in no way was a stalling amendment. This is a legitimate amendment I had questions on and I think we need to answer as a body. With that, I'd ask for your support. Thank you, Mr. President. [LB355]

SENATOR NELSON: Thank you, Senator Gay. You've heard the closing on the amendment. The question is, shall the amendment be adopted? All those in favor vote aye, and those opposed vote nay. Senator Gay, for what purpose do you rise? [LB355]

SENATOR GAY: Mr. President, I'd like a call of the house and a roll call vote. [LB355]

SENATOR NELSON: There's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed say (sic) nay. Record, Mr. Clerk. [LB355]

CLERK: 37 ayes, 1 nay, Mr. President, to place the house under call. [LB355]

SENATOR NELSON: The house is under call. Senators, please record your presence. Those senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Janssen, please check in. All members are present. There has been a request for a roll call vote. Mr. Clerk, please call the roll. [LB355]

CLERK: (Roll call vote taken, Legislative Journal pages 950-951.) [LB355]

SENATOR NELSON: Record, Mr. Clerk. [LB355]

CLERK: 16 ayes, 24 nays, Mr. President, on the amendment. [LB355]

SENATOR NELSON: Thank you, Mr. Clerk. The amendment fails. We raise the call. [LB355]

CLERK: Mr. President, Senator Stuthman would move to amend, AM979. (Legislative Journal page 951.) [LB355]

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SENATOR NELSON: Senator Stuthman, you are recognized to open on your amendment, AM979. [LB355]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. Amendment...Mr. Clerk, should it be AM977? [LB355]

CLERK: Well, Senator, I have them in reverse order so LB979 is first, followed by AM978, followed by AM977. That's how they were filed. [LB355]

SENATOR STUTHMAN: Okay. I apologize for that. AM979, on page...line 24, strike "ten" and insert "fifty-one" percent. One of the reasons I have placed that on is the fact that if this is a legitimate cigar bar, I think their primary income should be from cigars and that is why I placed it at 51 percent. I think that is a goal that should be attained if we want to allow a cigar bar to have smoking in that bar. It was originally said, you know, we're just trying to just make it so that just a very, very few, you know, could attain this goal and allow smoking in that bar. And I think the 51 percent is an attainable goal. Fifty-one percent of their gross revenue should be coming from cigars if that is what they want to be identified as. I had put this in earlier. I had that in earlier on General File and I felt that I wanted to move it on to Select File. But I think it's a health issue and I continue to dwell on that. I think if we are looking ahead as far as the state is concerned in the health of our people in the state of Nebraska, I think we should keep that in mind, you know. Should we be concerned about the health of our people in the state? I am very concerned about that. I think I want to read you some of the information that I have, you know. Worldwide, tobacco use causes more than 5 million deaths per year. Current trends, if we don't turn...if this trend doesn't turn around, there will be 8 million deaths by 2030. Smoking is the leading preventable cause of death in the United States and we lose about 443,000 deaths per year. One out of five annually comes from smoking, and that's a pretty good number. On the average, smokers die 14...no, 13 to 14 years earlier than nonsmokers. I think that is something that we have to consider. Annually, smoking costs more than \$193 billion, \$97 million...\$97 billion in lost productivity and \$96 billion in healthcare expenditures. Smoking harms nearly every organ of the body, causing many diseases and reducing the health of smokers in general. Of those, like I had stated, one out of every five deaths each year in the United States is caused from some smoking illness. Cancer is the second leading cause of death and was among the first disease casually linked to smoking. Smoking causes about 90 percent of lung cancers in men and about 80 percent of lung cancers in women. I mean these are some of the facts and I really think that we have to keep that all in mind. But my main issue on this is the fact that if the business claims to be a cigar bar then I feel that their primary income has got to come from the sale of cigars, and I respect that. If they want to have a cigar bar and sell the cigars and if they want to have the smoking in there, then 51 percent of their income should...their total revenue should come from cigars. That is why I have placed that in there. I know we went from 15 percent or 20 percent to 15 to 10, and I think...I think this is an issue where, you know,

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10 percent, they say you can hardly ever attain that 10 percent. I don't think that's a large amount. But another issue that I have and that is the fact of, you know, there are no rules and regulations set at the present time by the Liquor Commission. You know, what are going to be the rules and regulations? When will this 51 percent or the 10 percent, whatever is voted upon if this bill would pass, when does that take effect? When does a cigar bar owner have to submit the fact, the business plan? Does there have to be any proof, prior proof, of their sales of tobacco products in comparison to their alcohol? I think this is leaving it wide open. Are they going to put it on a trial basis? A business plan says, yes, I can meet it; they only get 9 percent, what are you going to do then? Are you going to shut the bar down or are they going to lose their Class C liquor license? These are all questions that I have. I mean we haven't seen anything as to what's going to happen. What about the business owners right adjacent to a cigar bar? Have they got any recourse as far as the smoke that enters into their bar, into their business place? Say you have a beauty salon on one side and a restaurant on the other side or any other kind of a business. That is a concern of mine. I think...I think this is something that we need to address. I do. I'm very much in favor of the fact that we got to make this, you know, so that it deals with what it initially is trying to deal with and the fact that if it's going to be a cigar bar then let's make it a cigar bar. Let's have their income, their primary income, be the majority of their income. And I'm only asking for 51 percent in this amendment and I think that can be attainable if you really want to have a cigar bar. So with that, I would ask for your support on this amendment. Thank you, Mr. President. [LB355]

SENATOR NELSON: Thank you, Senator Stuthman, for your opening on AM979. (Visitors introduced.) We are discussing AM979 to LB355. Senator Wightman, you are recognized. [LB355]

SENATOR WIGHTMAN: (Inaudible). [LB355]

SENATOR NELSON: All right. Is there anyone else wishing to speak? Senator Stuthman, you are recognized to close on your amendment. [LB355]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I just feel there must not be any interest in this, in this amendment, because no one has punched their light and wants to talk about it. Maybe we've talked about the issue enough already today, but I don't think so. I think we need to talk about it a little bit longer. I just felt that, you know, the 51 percent would be a starting place, you know. Yes, it moved from 15 down to 10, but I totally opposed the 10 percent because they say, you know, it's hard to even attain the 10 percent. Well, if we're serious about this, let's make them set a goal so that they have to sell, you know, so many cigar products. So that is where I'm coming from and at this time, Mr. President, Mr. Clerk, I would ask to remove this amendment. [LB355]

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SENATOR NELSON: AM979 is withdrawn. Thank you, Senator. [LB355]

CLERK: Mr. President, the next amendment I have to the bill, Senator Stuthman, AM978. [LB355]

SENATOR NELSON: Senator Stuthman, you are recognized to open on AM978. [LB355]

SENATOR STUTHMAN: I would ask that this one be removed. [LB355]

SENATOR NELSON: AM978 is withdrawn. Mr. Clerk. [LB355]

CLERK: Mr. President, the next amendment I have, Senator Stuthman, AM977. (Legislative Journal page 951.) [LB355]

SENATOR NELSON: Senator Stuthman, you are recognized to open on AM977. [LB355]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. This amendment I'm very serious about. This amendment, on page 9, line 22 of the E&R amendments, would strike "cigar" and insert the word "smoking." And why do I...why do I feel this is important? Because we've got it narrowed down already to no cigarettes being smoked in there, no...there's got to be 10 percent of the gross sales from cigar products, but let's really concentrate on what is this. Is it a cigar bar when only 10 percent of the sales have got to come from cigars or is it a bar that has smoke in it from cigars? It's a smoking bar. It allows smoking in this bar where they only have to make 10 percent of their gross revenue has got to come from the sale of cigars. So it's a smoking bar. With LB395 we don't have smoking bars. There are no smoking bars after June 1 of this year. It's a workplace smoking environment. So it's a place, the bill that we have, LB395, is a bill that there will be no smoking in bars over the state of Nebraska. So if we create this little bit of an exemption, it is a smoking bar. I think...I think let's name it what it really is because this is a bar that allows smoke in it. It's cigar smoke which some people claim, you know, really doesn't hurt a person, but I think let's be serious about what we want to...what we want to name this bar that allows...yes, it allows cigars to be purchased in there but only 10 percent of the gross income comes from the cigars. And I would imagine probably 10 percent of the people in the bar, you know, maybe won't even buy their cigars in the bar. They'll bring their cigars in. But they may buy them in there. But the main thing is the fact that it's going to be a smoking place for people that are in this bar. So I think...I think...I think this is an issue that we have to...have to deal with. It's not an issue of cigars. It's an issue of smoke. It's an issue of smoking, is we're allowing a Class C liquor license to allow smoking in the bar. And whether it's cigar smoke or tobacco smoke, I mean, or cigarette smoke, to me, that's immaterial. It's still smoke. So with that, I would ask for your support. I feel that we

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should address the situation on what we really want it to be. Do we want it to be a cigar bar or do we want it to be a smoking bar? Yes, maybe it can be a smoking cigar bar. Maybe I should have just put the word "smoking" in there or a cigar smoking bar. But I think...I think we should deal...address the idea what we really want it to turn out to be. So with that, I'd ask for your support on this amendment. Thank you, Mr. President. [LB355]

SENATOR NELSON: Thank you, Senator Stuthman, for your opening. Senator Louden, you are recognized. [LB355]

SENATOR LOUDEN: Thank you, Mr. President and members. As I was looking at this amendment and looking at the bill, I was wondering if Senator Stuthman would yield for a question. [LB355]

SENATOR STUTHMAN: Yes. [LB355]

SENATOR NELSON: Will you yield, Senator? [LB355]

SENATOR LOUDEN: On line 9, when you put in there "smoking" and take out "cigar," now does that mean they can smoke pipes in it or did it mean they can smoke pipes before or what effect does that have on the whole bill? [LB355]

SENATOR STUTHMAN: Well, it...according to the E&R amendments that we have right now, cigar bar does not address pipes or anything like that and so mine doesn't address that either. All I'm doing is changing the "cigar" to the "smoking" and I suppose it...we made it now no cigarettes smoked in there, so I suppose a pipe would be allowed to be smoked in there too. [LB355]

SENATOR LOUDEN: Okay. In other words, the way it's written, it just restricts cigarettes. It doesn't restrict other kinds of smoking paraphernalia or anything like that? [LB355]

SENATOR STUTHMAN: No, in my opinion, it doesn't because all I am doing with my amendment is changing the word "cigar" to "smoking." [LB355]

SENATOR LOUDEN: Okay. I was just curious to wondering if this changed the way the bill was intended then by changing that wording was all, and if you say it doesn't then that's fine for me. Thank you, Senator Stuthman. And thank you, Mr. President. [LB355]

SENATOR NELSON: Thank you, Senator Louden. Thank you, Senator Stuthman. No one else is waiting to speak so, Senator Stuthman, you are recognized to close on AM977. [LB355]

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SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I will attempt to maybe correct an issue that I tried to address with Senator Loudon, is the fact that he was talking about pipes being smoked in there. But I think...I think tobacco that goes into pipes is mostly...I'm not sure because I don't smoke. I don't smoke pipes or anything like that. But most generally, the product going into the pipes is more or less like cigarette product, like a tobacco, but I'm not sure. I think it could be...could go either way. But what I'm trying to address is the fact that I wanted to change the name from cigar bar to a smoking bar because I think that is the main issue. The people that are going to participate at these cigar or smoking bar will go there to smoke, smoke the cigars. They will sit there and have a drink and smoke their cigar. Because, you know, any other place they can't smoke in it. You know, they can go to a bar and have a social drink. But in this bar, which, in my opinion, will be a smoking bar...you can maybe name it whatever you want to. Maybe cigar is okay or the smoking bar, but in my opinion, realistically, it's a smoking...it's an area what's going to allow smoking for the public in their establishment. But now maybe, you know, sometimes the people that, you know, have cigars chew half of them to start with and smoke the other half. But it's still an issue of the smoke for the public which, in my opinion, is a health issue. So with that, I would ask for your support on this of changing it from "cigar" to "smoking." Thank you, Mr. President. [LB355]

SENATOR NELSON: Thank you, Senator Stuthman. You've heard the closing on AM977. The question is, shall the amendment be adopted? All those in favor vote aye, and those opposed vote nay. Has everyone voted who cares to? Record, Mr. Clerk. [LB355]

CLERK: 5 ayes, 26 nays, Mr. President, on the amendment. [LB355]

SENATOR NELSON: The amendment fails. Mr. Clerk. [LB355]

CLERK: Mr. President, the next amendment I have is Senator Lautenbaugh, AM981. (Legislative Journal page 951.) [LB355]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I count this amendment as keeping a promise I made on General File. It does add in the provision that there is a \$1,000 nonrefundable fee for places wishing to obtain a cigar bar license. It provides that you cannot sell discounted liquor in conjunction with a cigar, meaning you cannot say you'll get two drinks free or half off if you buy a cigar, to address one of the other concerns. And it emphasizes that the rule-making and enforcement powers are with the Liquor Control Commission and that you are to report to the Liquor Control Commission. I believe this is a modest tightening up and sort of keeping some of the promises I made on General that this would be narrowly drawn. With cigarettes removed, I think...from what you can smoke on the premises, I think I almost withdrew this amendment entirely because there's just no danger at all of these

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places proliferating to a wide degree. But that said, I think I...this is something I said I would do and so here it is. It's...I would call it a cleanup amendment with really the new thing being the \$1,000 nonrefundable fee and the fact that there's a prohibition against giving discounts of alcohol sales in conjunction with cigars or tobacco products in order to boost the revenue to the 10 percent. I think it's a good amendment, it's a good tightening up and I'd ask for your support. [LB355]

SENATOR NELSON: Thank you for your opening on AM981, Senator Lautenbaugh. Is there anyone wishing to speak on or against this amendment? Senator Stuthman, you are recognized. [LB355]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I would like to ask Senator Lautenbaugh a question or two. [LB355]

SENATOR NELSON: Senator Lautenbaugh, will you yield to a question or two? [LB355]

SENATOR LAUTENBAUGH: Yes, I will. [LB355]

SENATOR STUTHMAN: Senator Lautenbaugh, as far as the 10 percent is concerned, what type of rules and regulations are they going to make? When is it going to be established? When are they going to have to prove that they sold 10 percent of their...their sales came from cigars? And is it going to be a business plan, when they anticipate that they're going to sell that? Is it going to be on a yearly basis? Is it going to be from the prior year or are we going to be allowing them to allow this smoking in the bar the day that they submit their business plan on their expected returns? [LB355]

SENATOR LAUTENBAUGH: As I indicated on General File, that will largely be up to the Liquor Control Commission. This amendment simply tightens that a bit to say that you have to report up front and as needed all information that the Liquor Control Commission requires to verify this. In order to avoid the closed class concerns of Senator Gloor, there has to be a possibility for entry so there would have to be a startup phase where the Liquor Control Commission would come out, presumably verify inventory or whatever it is that would do to say, yes, this is going to be a going concern for cigar bar purposes and require verification of the revenue more often than annually. But we specifically, as I indicated on General File, avoided telling the Liquor Control Commission how to do it because, at a very basic level, we're entrusting them with making rules, as we do in so many other areas, and they are the experts in the field. [LB355]

SENATOR STUTHMAN: Senator Lautenbaugh, with these rules, what is expected or is there going to be a startup date on this or is this going to take effect, if this bill would be passed, is it going to take effect in, you know, January of 2010? Is it going to take effect January then or is it going to be sooner than that? You know, it does take time for rules

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and regulations to be adopted and passed and then, you know, a reporting period. So what do you anticipate as far as an opening date or ribbon-cutting date for a smoking bar? [LB355]

SENATOR LAUTENBAUGH: As soon as possible. [LB355]

SENATOR STUTHMAN: As soon as possible. So you mean, in other words, it could almost be as soon as the bill was passed? [LB355]

SENATOR LAUTENBAUGH: It would have been last week if it were up to me, Senator. [LB355]

SENATOR STUTHMAN: Okay. Thank you. Thank you for those answers. Those are the concerns that I also am...consider. The fact that, you know, I don't think the Liquor Commission, you know, is going to work on this hastily, but you never know. Depends upon who's pushing them. But the fact is, you know, are they going to set something up that it takes place almost immediately so they can have their smoking arena then? So with that, thank you, Mr. President. [LB355]

SENATOR NELSON: Thank you, Senator Stuthman. Thank you, Senator Lautenbaugh. Senator Avery, you are recognized. [LB355]

SENATOR AVERY: Thank you, Mr. President. I have one question for Senator Lautenbaugh, if he would yield. [LB355]

SENATOR NELSON: Senator Lautenbaugh, will you yield to a question from Senator Avery? [LB355]

SENATOR LAUTENBAUGH: Yes, I will. [LB355]

SENATOR AVERY: I understand this amendment would prevent a cigar bar owner from discounting alcohol sales. Is that correct? [LB355]

SENATOR LAUTENBAUGH: In conjunction with cigar sales. [LB355]

SENATOR AVERY: In conjunction. [LB355]

SENATOR LAUTENBAUGH: I mean the owner could still have, presumably, sales or specials on drinks but they cannot be tied to the sale of a cigar for the purpose of inflating the revenue from cigars. [LB355]

SENATOR AVERY: I like that amendment. But let me ask you this. Would it still be possible for the owner of one of these bars to inflate the price of cigars in order to pump

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up the 10 percent threshold that we've been talking about? [LB355]

SENATOR LAUTENBAUGH: I suppose they could charge \$100,000 for one cigar and they'd be done for the year based upon the revenue experiences of most bars, but once again, and I can't underline this enough and I won't do more than I need to here, we cannot repeal the laws of supply and demand in this body. [LB355]

SENATOR AVERY: I agree, nobody is going to buy \$100,000 cigar, not even you, but I'm sure that no bar owner would do that but it would be possible to take a \$2 cigar and sell it for \$5 with the understanding that you are in a privileged position here if you really do want to smoke and drink in the same facility. So I can see that happening and that would, in fact, be a way to inflate one's threshold receipts or revenue in order to meet that threshold. And that seems to me to be something that one might see quite frequently if we pass this bill and I'd like to see this kind of amendment added to yours. I'm not going to offer it at this point, though, however. Thank you. [LB355]

SENATOR NELSON: Thank you, Senator Avery and Senator Lautenbaugh. Senator Utter, you are recognized to speak. [LB355]

SENATOR UTTER: Thank you, Mr. President. Would Senator Lautenbaugh yield for just a question, please? [LB355]

SENATOR LAUTENBAUGH: Absolutely. [LB355]

SENATOR NELSON: Senator Lautenbaugh, will you yield? [LB355]

SENATOR UTTER: Senator Lautenbaugh, I notice on page 9, I just have a question and I'm sure this has been answered before... [LB355]

SENATOR LAUTENBAUGH: Sure. [LB355]

SENATOR UTTER: ...and I apologize for asking the question again, but it says 10 percent or more of its gross revenue from the sale of cigars and other tobacco products and tobacco-related products, except from the sale of cigarettes. What are the other tobacco products and tobacco related? Are we talking about chewing tobacco and all of those things would help meet this 10 percent threshold? [LB355]

SENATOR LAUTENBAUGH: While I'm not aware of any place that sells them, yeah, we took out cigarettes specifically because there was the buy-the-carton concern that we discussed a week or two back but, yeah, as amended, yes, that's how it reads. [LB355]

SENATOR UTTER: Is that a change? I didn't look back at the other part. Is that...was...is that the identical language that was in your original bill or have we added

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that? [LB355]

SENATOR LAUTENBAUGH: Actually, that's language as amended on General File when we took out the cigarettes. [LB355]

SENATOR UTTER: Thank you, Senator Lautenbaugh. Well, I guess I have no further questions. Thank you, Mr. President. [LB355]

SENATOR NELSON: Thank you, Senator Utter. Thank you, Senator Lautenbaugh. No one else is in line to speak. Senator Lautenbaugh, you are recognized to close on AM981. [LB355]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I would ask you to support this amendment. I think they're valuable, on the one hand, technical changes, on the other hand, changes that tighten up the procedure and the number of cigar bars there will be. I'm sorry, I thought someone was signaling me across the Chamber and I was mistaken so I lost my train of thought there for a moment. Please vote green, simply put. [LB355]

SENATOR NELSON: Thank you, Senator Lautenbaugh. You have heard the closing on AM981 to LB355. The question is, shall the amendment be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB355]

CLERK: 32 ayes, 0 nays, Mr. President, on the adoption of Senator Lautenbaugh's amendment. [LB355]

SENATOR NELSON: Thank you, Mr. Clerk. The amendment is adopted. [LB355]

CLERK: I have nothing further on the bill, Mr. President. [LB355]

SENATOR NELSON: The question before the body is the advancement of LB355. Is there any discussion? Seeing none, Senator Nordquist for a motion. A machine vote has been called for. [LB355]

SENATOR NORDQUIST: Mr. President, I move LB355 to E&R for engrossing. [LB355]

SENATOR NELSON: LB355 has been moved for engrossing. All in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB355]

CLERK: 28 ayes, 16 nays, Mr. President, on the advancement of LB355. [LB355]

SENATOR NELSON: LB355 is advanced to E&R for engrossment. Mr. Clerk. [LB355]

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CLERK: Mr. President, the next bill, Senator Nordquist, I have Enrollment and Review amendments. (ER8047, Legislative Journal page 883.) [LB511]

SENATOR NELSON: Senator Nordquist. [LB511]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB511. [LB511]

SENATOR NELSON: All in favor of moving the E&R amendments to LB511 say aye. Opposed, nay. [LB511]

CLERK: I have nothing further on the bill, Mr. President. [LB511]

SENATOR NELSON: Senator Nordquist. [LB511]

SENATOR NORDQUIST: Mr. President, I move LB511 to E&R for engrossing. [LB511]

SENATOR NELSON: Is there any discussion on this? All in favor say aye. Opposed, same sign. [LB511]

CLERK: Mr. President, the next bill, LB464. Senator, I have no amendments to the bill. [LB464]

SENATOR NELSON: Senator Nordquist. [LB464]

SENATOR NORDQUIST: Mr. President, I move LB464 to E&R for engrossing. [LB464]

SENATOR NELSON: LB464 has been moved for advancement to E&R for engrossing. All in favor say aye. All opposed say nay. It...LB464 shall advance. [LB464]

CLERK: LB464A, Mr. President. I have no amendments to the bill, Senator. [LB464A]

SENATOR NELSON: Senator Nordquist. [LB464A]

SENATOR NORDQUIST: Mr. President, I move LB464A to E&R for engrossing. [LB464A]

SENATOR NELSON: All in favor of moving LB464A for engrossing say aye. Opposed, nay. LB464A shall advance to E&R. Mr. Clerk. [LB464A]

CLERK: Mr. President, General File, LB98, is a bill originally introduced by Senator Carlson. (Read title.) Introduced on January 10 of this year, at that time referred to the Agriculture Committee for public hearing. The bill was advanced to General File.

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Committee amendments were considered and adopted. When the Legislature left the issue last week, pending was Senator White's floor amendment, FA25. (Legislative Journal page 928.) [LB98]

SENATOR NELSON: Senator Carlson, you are recognized to reopen briefly on LB98. [LB98]

SENATOR CARLSON: Mr. President and members of the Legislature, LB98 is a bill to allow for the extension of the efforts to remove invasive vegetation from the streambeds of our rivers in the state, particularly the Republican River and the Platte River. We have been doing this for a year and a half. Results have been very, very beneficial. The hearing that we had to extend this effort from LB701 through LB98, there were 20 positive testimonies and no negative. The bill was advanced from committee by unanimous vote. And here we are discussing this bill. So I appreciate your listening, appreciate your attention and look forward to continued discussion. Thank you, Mr. President. [LB98]

SENATOR NELSON: Senator White, you are recognized to reopen on FA25. [LB98]

SENATOR WHITE: Thank you, Mr. President. Ladies and gentlemen, let me remind you where the debate had ceased. Senator Carlson has brought a bill with an admirable goal, it is to clear invasive, largely foreign species out of the riverbeds of this state. In order to continue that effort, he has asked that we as a state extend \$2 million in order to continue to spray and otherwise remove vegetation. I objected based on the fact that there is a statute that has been in place in the books and records as a law since 1911 that put the obligation to clean the riverbeds on land that you own on the adjoining landowner. And not just says you must do it, it tells you when you must do it. It's very specific. Now debate is not just about what you say but it's about what you hear. I heard a couple of very interesting comments. Senator Schilz and Senator Christensen raised some very good points last Friday. Senator Christensen said that he tried to go into the riverbed with equipment to clean it out and he was threatened with going to jail. Senator Schilz said, you know, maybe what we need to do is relook at this thing and repeal the law that says the landowner has to go into the riverbed. I think those are both admirable observations that are worthy of being discussed. I think that one of the things that we are doing and I think, as term limits, we are likely to do more and more often is to pass legislation without reviewing carefully what exists on the books or how they interact; that not looking carefully at a whole broad problem leads us to do things that in the individual case would look positive, but may not make sense in the overall case. As an attorney, one of the obligations in the Legislature is to make sure that we have a coherent body of laws. I find it staggering and, in fact, shameful that we have a state statute that orders landowners to do something that they also could get thrown in jail for if they attempted to do it. That is not an acceptable state of affairs wherever you fall on this issue. But it does indicate the need for careful, considered, sometimes extended debate on issues

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so we can look for other possible consequences. My amendment would put back on the adjoining landowners the cost of cleaning out the river. Senator Louden made an excellent point. Senator Louden said, Senator White, yeah, maybe irrigation has something to do with it, maybe management of the river has something to do with it, but the dams that the state and the federal government put on these rivers halted the natural scouring effect of spring floodwaters, and they are primarily responsible for this. An excellent point that needs to be looked at: Where should the cost of cleaning out our rivers come from? Should it be on the general taxpayer? Should we have a law that says it should be self-help on the adjoining landowner? I would indicate to you that the time of 1911, where we can tell a landowner, go clean out a riverbed, is past; that bringing a big tractor and a disk in to disk up weeds that threaten to close off the channel would put at risk things like the least tern, the plover, various different water fowl that nest on the shallow sandy banks of the Platte. Digging a riverbed too deep to channel water too much can ruin the habitat for the cranes. Cranes need a level of water deep enough that they can wade in and deep enough to keep predators from being able to easily sneak up and get them. At the same time, it can't be too deep or they can't use the water. So the riverbed is ecologically very sensitive. We also don't want landowners just picking any herbicide they want to go spray for the weeds in the riverbed. That's a good way to lose your entire fishery, it's also a good way to lose a lot of the predators that live on fish. So what we have is not just a simple unrelated bill, let's get rid of weeds. We have a complex interplay of federal, state and local laws. We have to face the fact that times have changed since 1911. But we can't just throw money at the issue and say, well, it's completely divorced from the responsibility of the adjoining landowner. I cannot pay for this bill because...vote for this bill because I do believe that the adjoining landowners, especially in areas heavily irrigated alongside of things like the Republican River Valley, they have made enormous amounts of profit on land that was very inexpensive because it wasn't deemed suitable for real cropping, for real crop farming. It became suitable only because the nitrates, the fertilizers put on. And the enormous amount of water, a public property--not their's mind you, ours--was utilized by them beneficially and it made them a lot of money. I've got no objection to people making a lot of money. I have no objection to irrigation, just the opposite. But I do have a problem, whether it's Wal-Mart not paying its people enough and giving them insurance, dumping the cost of business off onto the taxpayer, and I have a problem if bad farming practices are dumping...unfairly dumping costs of doing business back on the taxpayer. Senator Louden's point is particularly there, a lot of this is on the state. I have no problem debating that. But what I am not going to do, and I had told this to Senator Carlson, in light of the good points that Senator Schilz had made and that Senator Christensen had made, I am not going to filibuster this. I am not going to throw up amendment after amendment. I am, however, going to ask each and every member of this body to recognize a couple of points. One is this is a lot more complicated and it's a lot less simple than this bill makes it appear, a lot less. Number two, we have a whole new business strategy at work in this state and that is we're going to do business, we're going to eat the expenses we can, and we're going to dump costs off onto the taxpayer

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whenever we can. Now those points I won't give up. Given the situation, I will not vote for this bill. I hope that the body and I hope Senator Carlson thinks about adding a component. As Senator Hansen had so strongly recommended, he said, well, maybe we clear it up this time, then we hold adjoining landowners responsible for maintenance. He had mentioned that in debate--an excellent point. We need those views exchanged among each other so that we can do a lot better job than we have, because we're going to just jam one more law on top of a body of laws that already makes no sense. That a state senator could be threatened with jail for following a state law is inexcusable. With that, Mr. Clerk, I will withdraw my amendment. Thank you. [LB98]

SENATOR NELSON: Thank you, Senator White. FA25 is withdrawn. [LB98]

CLERK: Mr. President, the next amendment I have to the bill, Senator Wallman, AM963. (Legislative Journal page 930.) [LB98]

SENATOR NELSON: Senator Wallman, you are recognized to open on AM963. [LB98]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I am a farmer and I did vote to pass this out of committee because I think issues like this, it is not a committee amendment, it's a state deal. And so I had lunch with a constituent and I have property that...some of it is in the Lower Platte. So they got helicopters mapping the land. It tells me how deep the aquifer is, and it's on my dime and whoever owns property in the Lower Platte. And so they have weed authorities there. And I talked to one of the weed superintendents and he's a grant manager of the Lower Platte. He's a nice fellow. And he also takes care of the riparian vegetation management. And he's the chair of Streambed Ownership. And they have been working on and are working still on developing recommendations on streambed ownership, whose management responsibility it is. So their conclusions are...the preliminaries, county assessors. Their offices should have up-to-date owners of record for streambeds so that landowners may be informed of their responsibilities and, if necessary, to force the issue. And secondly, the landowner streambed responsibilities need to be clarified and the role of weed management areas, NRDs, and the state spelled out. We have weed managements, we have NRDs. They have authority to do things. Do they have enough money? I don't know. But here's the streambed situation especially on the Republican River, which I've been up and down. I've watched some farmers farm like they did 100 years ago. You don't see any stocks. You see all bare ground, silt going to the riverbed. That's not my fault. That's not Senator White's fault. Then you want me to clean out the streambed with tax dollars. So...and he had relatives that had some land sprayed and he's very happy, but no ownership because he didn't have to pay anything, absentee ownership. Of course somebody rents the land. So we have to improve and work on...this is important legislation, folks. We're controlling our riverbeds, like Senator Carlson said. I admire him and Senator Christensen. They've done lots of work on this. It's not an easy, simple answer. It will never be an easy, simple answer. So we shouldn't be tying grant

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money up to three to four to five years, how it works. That's my opinion. And if matching is required for state grants, so wouldn't you think it would be desirable to allow flexibility to match it, match provided by landowners and cash in-kind service from others? This would allow your weed management areas to leverage funding from the landowners. If I own land in a river valley, trust me, folks, it's worth a lot more than the hill country. And so the Lower Platte just got a \$60,000 grant from NDA, so matching will be \$20,000 from the landowners. That's in my weed district, NRD. So that's from the Douglas County line to the west county Platte line. So the responsibilities of the landowners, which are outlined in Section 31-224 might serve as a starting point but lacks the necessary details that would make it happen. A government entity needs to be directed to provide oversight, overall guidance, assistance, enforcement, long-term maintenance of our streambeds. That will require landowner responsibilities. NRDs, Department of Natural Resources responsibilities, they should work with weed management areas, they should be alert to streambed obstructions, assist with developing plans of action, providing coordination of landowner efforts, and enforcing landowner responsibilities if necessary. I can't put a dam in my streambed without approval, even though it may not be a very large stream. So the vegetarian (sic) management task force, they're working on recommendations for legislative changes to provide for the long-term health of our riparian areas. So if it was felt desirable you'd think recommendations for streambed vegetation management responsibilities would be added, charged to the task force plans and policies to achieve such goals and objectives including recommendations for streambed vegetation management responsibility. Responsible, I had coffee with a bunch of my fellow farmers, retired businessmen. You know what kind of wracking they gave us as a Legislature? It wasn't very good. Everything from smoking to assessments on schools, to drugs, everything, big government. Most of us run on local control. Do we like...should like to keep our backyards clean. I think I'll pull my amendment because I, too, do not want to filibuster anything as they worked so hard on this. But I want to bring your attention to responsible. If I own property, we just passed county ordinances, can't park junk vehicles, stuff like this, so responsibility is important for us who have land along rivers because it's worth more, it will sell a lot more. And then we expect checkoff dollars to pay for it, property taxes on homeowners and dryland farmers to pay for this? I'll tell you, when this bill passed, the water bill, LB701, there were...it was never brought to a vote of the people. It was a vote of this legislative body. And I'd like to ask Senator Christensen (sic) a question, if I may please. Senator Carlson, would you answer, please? [LB98]

SENATOR CARLSON: I'll certainly try. [LB98]

SENATOR NELSON: Senator Carlson. [LB98]

SENATOR WALLMAN: Thank you, Senator Carlson. In regards to five years, you want to just extend it for this money. You said the product was guaranteed for five years. Does that sterilize the ground for five years? [LB98]

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SENATOR CARLSON: The product is guaranteed for the vegetation it takes care of for five years. [LB98]

SENATOR WALLMAN: So the ground is sterile for five years? [LB98]

SENATOR CARLSON: No, the vegetation that it touched, it takes care of that for five years. [LB98]

SENATOR WALLMAN: Thank you. Thank you, Senator Carlson. Thank you, Mr. President. [LB98]

SENATOR NELSON: Thank you, Senator Wallman, for your opening on AM963. Those waiting to speak are Senators Price, Wallman, Carlson, McCoy, Haar, and Stuthman. Senator Price, you are recognized. [LB98]

SENATOR PRICE: Thank you, Mr. President. In talking with Senator Wallman, I believe he's going to...I believe he wanted to withdraw AM963. [LB98]

SENATOR NELSON: You want to... [LB98]

SENATOR PRICE: Yes. How would you like me to proceed, Mr. Clerk? I'd like to yield the remainder of my time to Senator Wallman. [LB98]

SENATOR NELSON: The...AM963 has been withdrawn. And so we are now speaking on advancement of LB98. Senator Price. [LB98]

SENATOR PRICE: Thank you, Mr. President, members of the body. That just shows you how collegial we are, we can get along there and I appreciate that. I was just going to rise in strong support of LB98 and the issue that we've covered that Senator White and all the rest of the body here who have been talking on this bill have raised up surely have unearthed a proverbial Gordian's knot that we need to untangle at some point in time, but that we not get caught up right now and lose the advantage of two years of work. It's very important that we go forward and work and continue to work and capture the gains we have made so far. We've already seen that there is a tremendous upside on fiscal impact to the state, let alone the ecological and agricultural impact we can have here. And with that, Senator, I would like to yield the remaining time I have to Senator Carlson, if he should like to take it. [LB98]

SENATOR NELSON: Senator Carlson, you're recognized. [LB98]

SENATOR CARLSON: Mr. President, members of the Legislature, and thank you, Senator Price. And, Senator Nelson, am I next on the light as well? [LB98]

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SENATOR NELSON: Senator Wallman is next, and you are after Senator Wallman. [LB98]

SENATOR CARLSON: Okay. Okay, thank you. How much time do I have? [LB98]

SENATOR NELSON: You have 3 minutes and 42 seconds. [LB98]

SENATOR CARLSON: Okay. First of all, I'd like just to state that I appreciate the action taken today by Senator White and by Senator Wallman. And Senator White and I have had a conversation. I am not opposed whatever to revisiting the law that is in effect, and perhaps there's two of them that could be looked at. I think that's entirely appropriate. And before we have a knee-jerk reaction to changing law, we need to study it, we need to look at it, see what the ramifications are, and I'm not opposed to that at all. I think that in addressing questions such as this, first of all, we have to identify what is the problem; secondly, who caused the problem? That's not a simple matter as we address what LB701 and now what LB98 wants to do in removing the invasive vegetation from the streambeds of our rivers. The third thing we need to consider is, in looking at the changing of a law, who benefits most from the solution to the problem. And then, of course, the next question would be, who should fix the damages? Who should pay to fix the damages? Those are legitimate questions. I'm grateful that these amendments have been withdrawn. I think that, as written and had they gone through, it would have made it very, very difficult. I think it's so important that we as the Legislature maintain as many freedoms as we can so that year by year, session by session, problem by problem we, through the committee process and the hearing process, we listen to a problem, we consider a bill. The committee votes the bill forward to the floor, we debate the bill on the floor, and then we have the freedom to make a decision whether to appropriate funds to help solve a problem that's been identified. That's certainly what happened two years ago with LB701 and the removal of the vegetation. And I think that we want to be able to continue that kind process. And so we've operated this way for years with the laws that are on the books. That doesn't mean that they can't be revisited, reconsidered,... [LB98]

SENATOR NELSON: One minute. [LB98]

SENATOR CARLSON: ...appropriate changes made. In the meantime, there have been many good projects completed. And the law as it now exists in relationship to noxious weeds was effective in what we did on the Republican. It was necessary to get the cooperation of the landowners, 168 out of 170 landowners signed on and cooperated in the eastern part of the Republican River. That was key to the success. And part of it was the threat of what could happen if they didn't buy into this and didn't cooperate. County had the authority to go out and remove those invasive vegetation and charge them for it. It was effective. So we need to keep that in mind as well. I have some other

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thoughts. I think I'll wait until my light comes on. Thank you, Mr. President. [LB98]

SENATOR NELSON: Senator Carlson, your time has expired, but you are up. You have 5 more minutes. [LB98]

SENATOR CARLSON: Oh. Mr. President and members of the Legislature, we can talk about a law not being perfect. We can talk about it needing some work. Until we reach that point where we know what the real change ought to be, we should proceed as we have in the past. And I would say the result of what we did is very, very commendable. Two thousand five and two thousand six were years which we were short on water being delivered to Kansas. We don't even try and say otherwise. Kansas tried to sue us for \$72 million. To a large degree, as a result of the legislation in LB701, with the work that was done in 2007, late 2007 and 2008, we went from a deficit in water to Kansas, in 2008 we made up 80,000 acre-feet to Kansas. I think that most of that was the result of the removal of vegetation. And Kansas has now taken its claim for \$72 million to the state of Nebraska down to \$9 million. I think they're still high, but that's \$63 million difference. What did it cost us to do the work that we did that I think is largely responsible for that response from Kansas? About \$2.5 million on the Republican River. And every group that has an interest in the river has been very, very positive in their response to the work that was done. That was reflected in the positive testimonies to the hearing on LB98. They're appreciative of what's been done, and what's been done was good for the people of the state of Nebraska. And so we need to continue that work. And that's why I've asked for a sunset date of four years ahead, to 2013, for the work of the Vegetation Task Force. Part of that involved observing what the five-year guarantee is doing. Part of that is to enable us to determine what a maintenance program is, to not fall back on what we've gained. And the basic understanding is that the maintenance program is going to be in the hands of the landowners. In the meantime, every group that's interested in the river has gained. I'm proud of what the Legislature decided two years ago. I'm proud of the work that the Vegetation Task Force has accomplished and I know it's the right thing to do to continue the work in a time when General Fund dollars are very, very difficult to come by. And so in LB98 we've asked for a cash transfer from the Noxious Weed Fund, the buffer strip cash fund to be used in this project. We are asking the Department of Ag to apply with Natural Resource Conservation Service, NRCS, for federal dollars that appear to be available to help in this. [LB98]

SENATOR NELSON: One minute. [LB98]

SENATOR CARLSON: We've asked for the Department of Ag to go through the normal grant process request from the Environmental Trust, which they will do. And that puts us in a good position to have a favorable response from the Environmental Trust, none of these coming from the General Fund. So again, I appreciate this body listening and would ask that you support LB98. Thank you. [LB98]

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SENATOR NELSON: Thank you, Senator Carlson. Those wishing to speak are Senators Haar, Sullivan, Wightman, Wallman, and White. Senator Haar, you are recognized. [LB98]

SENATOR HAAR: Mr. President, members of the body, one thing that continues to amaze me about this Legislature, being a new person, is how much you all make me think, and the value of debate. It raises new issues at times, at times it clarifies, at times it obfuscates or confuses, and at times it brings up unintended consequences. So I've really appreciated this debate because, on the one hand, I find that I really want this very good work that was started through Senator Carlson's original bill to continue. I think if we don't continue with that work, we're backsliding and wasting some of our money. On the other hand, I think we have to seriously address Senator White's issues that he brought up, perhaps next year. And, Senator Carlson, I'm sure, being on the Natural Resources Committee where that bill is going to wind up is sort of like asking to put yourself through a bit of torture. But I think we'll take that up next year because obviously we don't want people living along rivers to be doing illegal activities of not taking care of the river. On the other hand, we don't want people going out now with their tractors and plowing up the riverbanks because it would destroy wildlife and so on. So I tend to support...I intend to vote for LB98, realizing that next year we have to look into the other issues that were raised and I will do that very seriously. Thank you. [LB98]

SENATOR NELSON: Thank you, Senator Haar. Senator Sullivan, you are recognized. [LB98]

SENATOR SULLIVAN: Thank you, Mr. President and members of the body. And I, too, like Senator Haar, have learned from this conversation that has taken place on this particular piece of legislation. But I've also received some communications from Nebraskans about weed control in this state that I found very interesting. In 1990, the state of Nebraska had over 3.9 million acres of noxious weeds, and there were only four weeds being designated as noxious. In 2008, the state of Nebraska had less than 1.5 million acres of noxious weeds, even with the addition of five new noxious weeds that were added to the list. In 100 years we as citizens have used this state and its waters in a variety of different ways. And so it's created a lot of different circumstances, noxious weeds being one of them. And in this communication that I received, this individual, he said, you know, weeds are spread by wind, wildlife, water, hay, equipment, recreation vehicles, and many other ways. So when it comes down to controlling them, it's not just...it can't only just be a landowner's responsibility, even though I'm very cognizant of any noxious weeds on my property, and I spend a good deal of time not only chopping out musk thistle but small cedar trees that seem to invade the pasture lands. But it becomes a partnership of private and, in this case, state dollars. But along the way I do have a question for Senator Carlson. I wonder if he would yield for some...for a question. [LB98]

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SENATOR NELSON: Senator Carlson, will you yield? [LB98]

SENATOR CARLSON: Yes, I will. [LB98]

SENATOR SULLIVAN: Senator, in this conversation or this communication that I received from this individual, he happened to be a county weed superintendent. And he indicated that the Nebraska Department of Agriculture is actually considering cutting its budget that would eliminate one or two of the regional inspectors for the noxious weed program. My question is, is it feasible, possible that any of these funds that are being used to treat noxious weeds in riparian areas can be used to help salvage some of these positions that obviously do some good work in this state? [LB98]

SENATOR CARLSON: Senator Sullivan, that's a good question. I'd say unfortunately through the years the noxious weed program ends up at the bottom of the totem pole when it comes to funding. Now I think what has been accomplished in the last two years is going to be a help because much has been done, a lot of people recognize it. The negative effects of this invasive vegetation is a lot better known today than it was two years ago. And by the fact that we will be continuing to work on this and keep it out front long-term I think it's going to be helpful in the noxious weed program. But you know what kind of position we're in, in the state, as far as General Fund dollars are concerned. And I think if we didn't do this, it would be much worse for continuing efforts and the dollars just aren't there. And I hope, I hope that there's still an opportunity to cut back on what apparently could happen in the noxious weed program because it's critical, it's important. But the General Fund dollars aren't there. [LB98]

SENATOR SULLIVAN: So in other words, the dollars that would be designated through your legislation will be used mostly for the chemicals that will be used to destroy these weeds and also the contract labor that would be used to apply the chemical rather than any existing staff? Is that correct? [LB98]

SENATOR CARLSON: I think that's correct to a certain extent. And I don't want this to sound like the program is a chemigation program on invasive vegetation. It's a lot more than that. With the tree removal and the log jam removal and that kind of thing, they are dollars that are... [LB98]

SENATOR NELSON: One minute. [LB98]

SENATOR CARLSON: ...that we're...that are going in that direction. But it's true that the chemical that is used, there's a registration fee on that chemical. And that brings dollars back into the Buffer Strip Fund and that will continue to come in. And the more we do, the more comes in. [LB98]

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SENATOR SULLIVAN: Okay, thank you very much. [LB98]

SENATOR NELSON: Thank you, Senator Sullivan. Senator Wightman, you are recognized. [LB98]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I do rise in strong support of LB98. I think there are a lot of reasons why it would be very difficult for landowners to take responsibility for the removal of all of the vegetation that we're probably talking about under LB98. In many instances, and particularly in the Platte, I'm more familiar with that, there are a lot of restrictions in moving into the riverbed and really doing anything. As a matter of fact, many of the environmental groups, as part of their program to help endangered species and promote endangered species, have built sandbars that in many instances has impeded the flow of the river. It's not only the vegetation within the riverbed many times but vegetation along the side of the bed of the river that is taking up the water. With that, I would like to ask Senator Carlson a question, if I might. [LB98]

SENATOR NELSON: Senator Carlson, will you yield to a question? [LB98]

SENATOR CARLSON: Yes, I will. [LB98]

SENATOR WIGHTMAN: Now, Senator Carlson, I know one of the things that you hope in time, if not at the present time, to be able to do probably through LB98 and through prior legislation is to control some of the vegetation along the side of the river that are not even in the riverbed, is that correct, that are absorbing a lot of the water and, through that, impeding the flow in the riverbed? [LB98]

SENATOR CARLSON: That's true. But, Senator Wightman, I do take a different view on the streambed itself than I do the area, the riparian area outside the streambed. That gets into private property. And even though the property owner owns it all the way to the center of the stream, I keep going back to the fact the rivers are liquid highway. And whether you own land on the river or not, you have the right to be on that river and navigate it and, if I own the land, I can't do anything about that. And so I see it as a different responsibility in the streambed versus out on the...in the riparian area. Some cost-sharing there is more understandable to me than in the streambed itself. [LB98]

SENATOR WIGHTMAN: But on the other hand, if you're going to increase the flow in the river, you're not impeding the flow under the sections that Senator White has raised if you're talking about Russian olives and things that grow along the side of the river and yet absorb a good deal of the water that would normally flow in the river. Is that correct? [LB98]

SENATOR CARLSON: Well, it is. Russian olive is a good example of a tree that can

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exist about almost anywhere. But you get it near water and it's very, very...it takes a lot of water. And so in terms of keeping the stream flow up the further out you can go to take care of the Russian olive, the better off you are. But that's really not what was addressed in LB701 and now in LB98. [LB98]

SENATOR WIGHTMAN: And I understand this is probably phragmites, but all of that long-term planning might deliver more water to the state of Kansas. Is that correct? [LB98]

SENATOR CARLSON: I think that's correct. [LB98]

SENATOR WIGHTMAN: Now...and...thank you, Senator Carlson. I would point out the Nebraska Constitution, Article XV, Section 5, provides that, "The use of water of every natural stream within the state of Nebraska is hereby dedicated to the people of the state for beneficial purposes subject to the provisions" of other sections of law. And, I guess, I would suggest that one person taking care of an obstruction in the river, through phragmites or whatever it is, would have little or no effect unless everybody upstream did that. It's just going to require a lot bigger effort than one landowner is going to be capable of. [LB98]

SENATOR NELSON: One minute. [LB98]

SENATOR WIGHTMAN: Now I know there's been suggestions that maybe all of that cost could be prorated among landowners. I think that would be a very difficult situation to handle. And we would not be able to meet our obligations to Kansas anywhere nearly as rapidly as we would by the state undertaking that project. Thank you, Mr. President. [LB98]

SENATOR NELSON: Thank you, Senator Wightman. Senator Wallman, you are recognized. [LB98]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. A few issues here about farm programs which are available to farmers along streambeds, it's called filter strips. And you get paid to the center of the stream. But then like it says, it's your responsibility to keep trees and stuff...if I put that in a filter strip, it's my responsibility, mine. Is that going to break the bank? Maybe I should leverage a weed authority. If we call invasive species, is that a noxious weed? How are we going to declare this? Is...are Russian olives a noxious weed or noxious tree? How about...I'd like to ask Senator Dierks a question. [LB98]

SENATOR NELSON: Senator Dierks, will you yield to a question? [LB98]

SENATOR DIERKS: Yes, I will. Yes. [LB98]

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SENATOR WALLMAN: Thank you, Senator Dierks. Now who pays for if you have...do you have trouble with cedar trees in your pastures? [LB98]

SENATOR DIERKS: Yes. [LB98]

SENATOR WALLMAN: Does the Weed Control Authority help you pay that? [LB98]

SENATOR DIERKS: I beg your pardon? [LB98]

SENATOR WALLMAN: Does government help you clean those out? [LB98]

SENATOR DIERKS: No. [LB98]

SENATOR WALLMAN: It's your responsibility, right? [LB98]

SENATOR DIERKS: That's correct. [LB98]

SENATOR WALLMAN: Thank you. So here's where we're going. I'm not saying get rid of the weed, get rid of the trees, have somebody else pay for it. That's where we seem to always like to do in government. And then we complain about government telling us what to do. But give us some money, it's okay. Somebody is paying for this, Environmental Trust. I hate tying up their money for five years. Maybe one year, a year at a time we can look at how it happens, how it happens, what the ramifications of what we're doing. Is this chemical going to be harmful to the environment down the road? Is it well tested? There's lots of issues when we use chemigation to clean out weeds. So I'm with Senator White, it's not my backyard, we have streams going through property. Do we have trees in there? Sure. Neighbors don't clean it out, it's a mess. But that's the way it is. But you clean out your own, it's okay. You have the benefit. The people along the rivers, the land is worth a lot more money. So do you pay for it with irrigation fees, the irrigators? Put an assessment on the pumps? I've heard people in the valley tell me that would have been a far better deal than what they got. Put an assessment on each well, 500 gallons a minute so much, 800 gallons so much. Put an assessed valuation on the water we use because we're mining the water. We're worried about Kansas, we don't know how much water these trees and species take for sure. We know they take water, we know they impede the flow of the water. That's a given. Weeds, but also weeds are a cleaner of the water, they're the soap and the wash cloths of the rivers, they clean the rivers, waterways clean the rivers. You have grass in there, they clean the river. So you can't have it every which way. So I'll be interested in listening to how this goes. Senator Carlson and Senator Christensen spent a lot of time on this. It's never easy working with water from the 1890s. Studied water issues on TV. In the 1890s they had water trouble. [LB98]

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SENATOR NELSON: One minute. [LB98]

SENATOR WALLMAN: Thank you, Mr. President. [LB98]

SENATOR NELSON: Thank you, Senator Wallman. Senator White, you are recognized. [LB98]

SENATOR WHITE: Thank you, Mr. President. I did not intend to speak on this again. I thought that I had reached an accommodation and an accord with Senator Carlson. But Senator Wightman raises concerns that are deeply troubling, deeply troubling. I mean it is one thing to say, okay, we build a dam, we're going to clean out this river. We've got a \$2,080,000 a year fiscal note, which nobody has talked about how we get that money. I've left that be. Now Senator Wightman seems to think that this is a precursor to the state paying to remove salt cedar and Russian olives all over, whether they're in a river bank or not. Now at that point how much more do we subsidize an industry? I mean, do we have an obligation as general taxpayers to go get salt cedar trees off in somebody's pasture? I mean if that's the intent and that's where we're going, we're back to square one because that is a huge unconscionable subsidy to landowners who have not minded their own store. Would Senator Wightman be kind enough to yield for a question? [LB98]

SENATOR NELSON: Senator Wightman, will you yield? [LB98]

SENATOR WIGHTMAN: I will. [LB98]

SENATOR WHITE: Senator Wightman, is it your intention or thought that this bill, as it exists or as it should be expanded, would require the state to pay for removal of salt cedar, Russian olives, other invasive species who do drink a lot of groundwater and the general taxpayer should pay that and not the landowner? [LB98]

SENATOR WIGHTMAN: I'm not suggesting that at all at the present time, certainly not under this legislation. But if we failed to meet our compact requirements of getting water to Kansas down the road, I'm not saying that that shouldn't be on the table. [LB98]

SENATOR WHITE: Well, Senator, again a camel's nose is well under the tent. I would say his head is under the tent. And the question is, Senator, if that's okay, how come we don't shut down the wells that are causing us to be short? Why should the taxpayer have to pay to remove trees so that an individual can make a greater profit pumping public water out of the ground but that person pays nothing? [LB98]

SENATOR WIGHTMAN: Well, I'm certainly not even suggesting that we do that at the present time. I think we have to have all the options on the table if we continue to have problems in providing the necessary water to Kansas. And certainly one of the

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possibilities might be shutting down the water. I'm hoping that isn't necessary. [LB98]

SENATOR WHITE: And so am I. But the idea that we endlessly dump the requirement on taxpayers, even the suggestion that the taxpayers first of all don't have a legal obligation now to clean this up, they don't, the law is clear, it belongs to the adjoining landowner. And we give that away because in my case I was persuaded by Senator Schilz and Senator Christensen, there's an environmental imperative in the riverbed and also there's dams. But now if people from these areas are seriously contemplating that we've got to go tend your land, when you going to come over and paint my house? [LB98]

SENATOR WIGHTMAN: I'm certainly not suggesting that at the present, Senator White. And...but I just think that obviously right now that doesn't deal with obstructions of the riverbeds and the streams which you were talking about earlier in both the statutory section and legislation. So some of that absorption of the flow from the riverbed has resulted from vegetation along the sides. There's nothing that says that that landowner has to do anything about that at the present time. [LB98]

SENATOR WHITE: Oh, contraire, Senator. I handed out Section 31-224. Every spring between the months of, let's see here, it's specifically stated, between March 1 and April 15 they have an obligation right now to clean all weeds out. And that's clear, they do now. Now we've talked about why that's an outdated law, I've conceded that. I was persuaded. But the problem is what we have here now is an increasing... [LB98]

SENATOR NELSON: One minute. [LB98]

SENATOR WHITE: ...attitude of right that you...if you have a business and you're rich enough and you can run it however badly you want but we get to push additional costs off on the taxpayer, it's wrong, it's wrong, it's wrong, it's wrong. Thank you, Mr. President. [LB98]

SENATOR NELSON: Thank you, Senator White. Senator Stuthman, you are recognized. [LB98]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I truly support this bill. I think we're going in the right direction. I do have some concerns with the fact that some of the statements were that, you know, that we own the ground...individuals own the ground to the middle of the river and they should take care of it. Well, they do not pay any taxes on that ground, what they own to the middle of the river. It's...it has no value as far as their tax statement is concerned. It's the same issue as a road right of way. You own it to the middle of the road. You don't pay any taxes on it but you do own the property. I think, you know, if we're going to be responsible for the fact of clearing the trees out of the river and allow people to do that or we're telling them

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that it is their responsibility, we're going to have a lot of different situations, different methods of the way they're doing it. Some of them will clean it out, pile it up so that the water don't come into their property, make a berm out of the brush. I just think that there's so many things that could happen that we will not appreciate and which really could harm the next property owner on the other side of the river. I think the issue should be changed in statute. I do respect the fact that Senator White has found that in statute. And I have long been a believer of that as far as county road right of ways are concerned. And I think there probably should be something done with that. But the fact here is that in the river, in the running streams of the state of Nebraska, and I know this for sure, that if an individual does some work, some project, some manipulation, removal of trees, or burning, or trees, or clearing it out, I'm sure the Army Corps of Engineers will be on them immediately. We do have a lot of situations, some in my district, where the river changes every time it floods. And a person's right of way, what it is thought to be in the middle of the stream, does change. So with that, I do support this bill. And I think this is the right direction to go. And I thank Senator Carlson for it. Thank you, Mr. President. [LB98]

SENATOR NELSON: Thank you, Senator Stuthman. Senator Wallman, you're next to speak. This is your third time. [LB98]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. We seem to want to take control of other people's property. If we pay for this with state dollars it should be our property. We can use it for economic development, put cabins along there because we paid to clean it up. Do we pay to cleanup, way up far away from the streambeds? Those farmers have maybe phragmites, maybe Russian olives, and Russian olives, I don't know how much water they take, but in the Great Depression or drought they were the only trees that survived in my area, Russian olives. Oak trees died, pine trees died, cedar, elm trees, everything died. My dad and my grandpa told me this. So Russian olives are a tough tree. I don't know how much water they take. But are we going down a slippery slope here by paying for this and paying for that, tying down Environmental Trust money? They have their own board, how to spend their money, and we're telling them how to spend their money in this body? That would bother me if I had enmity for trust issues, environmental issues. Killing vegetation by using strip money for streams seems kind of fishy. And what are we doing to the water? I don't know. They say it's safe. I haven't checked it. I know a person that lives along the Blue River. He said, no way in H would he, sorry Patrick, would he use that chemical on his riverbed. And he went...he's a knowledgeable person, he knows his chemicals far better than I do. I have a big book of chemicals, what I'm supposed to watch out what I do and the ramifications, what happens if you use too much or too little, too much can actually nullify the thing that it's supposed to do. So I voted this out of committee because I understand their concerns. But vote as you may. Thank you, Mr. President. [LB98]

SENATOR NELSON: Thank you, Senator Wallman. Senator Dierks, you are

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recognized. [LB98]

SENATOR DIERKS: Thank you, Mr. President, members of the Legislature. We've had a great discussion, I think. And I'm pleased with the way we're doing it. I've been very supportive of this legislation because I was privileged to be on the task force that was set up by LB701 two years ago. And I've seen what an effective job that we did. I don't suppose you could do any of these processes, these projects without having some unintended consequences. But when we started this process we were looking at a great big, heavy, multimillion-dollar fine assessed on our state by Kansas. And we have just about erased that fine and we've done it very, very cheaply. So I think that if there is some unintended consequences that's unfortunate. You know, I've been involved with this weed thing for years and years and years. I think 1953 we first started sprinkling some kind of a powder, my dad was doing it on some spurge on our ranch. That was 1953, and that patch of spurge is still there. It doesn't grow, but we keep it under control. So that's, what, 56 years we've been working on that patch of spurge. Since that time we've come up with some new control methods. We found a patch of spurge that was a fairly new patch last year. We put some biological controls on it that included some aphids, some beetles and there was even a hawk moth on those plants that we hadn't put there. It's specific for control of the spurge plant. So we're gaining. And when we started this thing, the spurge thing with the weed bill that we got passed in 1989, I believe, we were talking about ranches in Montana that had actually ceased in existence because they couldn't produce any grass. Thousands of acres up there that were completely covered with spurge and nothing would eat it. I guess they found out now that goats will. But at that time the cattle ranch had to close. So we've had some great successes, I think, with our weed districts and with our...the county weed district thing we set up back in '89. They've done a great job. And the way that we did that, we took some money from the dollars that were spent on herbicides. It's done a great job. I heard someone say a little bit ago, I think it was Senator Carlson, that the weed control effort sometimes falls to the bottom of the stack when it comes to funding. And if there's a need for budget cuts in the different districts, different organizations, the different agencies, sometimes the things we like most gets cut first. And that's the way it was with the weed bill. So we're still struggling for ways to keep this thing active. And I don't object to paying at all for my share of that cost. But I think what we're doing here with LB98 is absolutely essential. I don't think there's anyway you can dispute that. To me, it's a very, very important part of keeping ourselves clean and keeping the streambeds clean and keeping the state of Kansas out of our face with money charges. I support LB98, folks. I hope you will too. Thank you. [LB98]

SENATOR NELSON: Thank you, Senator Dierks. Senator White, you are recognized. [LB98]

SENATOR WHITE: Thank you, Mr. President. I'd like to just correct the record on a couple of key points. It is true that we've done an admirable job limiting our exposure to

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Kansas, and some of that unquestionably came from the good work of cleaning up the rivers, unquestionably. But it did not cause the massive amount of the savings. First, we, the state, bought a lot of water and shipped it down to the tune, I think, of \$8.5 million. And then when the escrow amounts didn't come through or the escrow...funds were escrowed and couldn't be released to the people who sold them, Senator Carlson came forward and asked this body to take General Fund money and pay it, and I fully supported it because we had promised to do that. The point of that one is we've been more than straight-up and fair with the landowners in the Republican River Valley. The biggest savings on Kansas' claim against us came because of good work by the Attorney General's Office. Kansas asked that we forfeit any profits we made from any water they claim we used rather than proving what they lost and how much money they lost. The Attorney General won a major battle and they deserve credit, they deserve credit for some good, solid, legal work that really did the biggest drop in the claim of damages by Kansas. Now does that mean we should stop doing this? No. I have told you my concerns with this. I agree on cleaning up the riverbed. I have a problem with transferring the fiscal responsibility for it to the general taxpayer. I also recognize, after talking to Senator Schilz, Senator Christensen, and Senator Carlson, that times have changed. We have environmental concerns that nobody even thought of in 1911 on how we treat our riverbeds. And I can live with that. And that's why I committed not to filibuster this and I won't offer another amendment. But when Senator Wightman refuses to back down from the thought that not only are we going to clean up the river banks, the riverbed, now we're going to move into everybody's pasture, I have a number of concerns. Number one, I have a worry about the taxpayer. That is not the business of the taxpayer to go, at general taxpayer expense, clean out those species so that some people can irrigate. One of the things is, for example, if you're going to do this by spraying--that's the only way you can practically do it--if I want to run an organic pasture and you come in and spray, you've just destroyed part of my business and my business plan. Do I have the right to demand you do it by hand? And this isn't an idle problem, folks. I have family who have a coffee plantation in Australia. My stepmother's brother and her nephews own the first coffee plantation in Australia. They were almost bankrupt when the state of Queensland just sprayed their plantation and destroyed the coffee trees. Okay? They just finally, years later were compensated. Now what you're talking about is socialism in an extraordinary degree. Not only does the state have to pay for it, the taxpayers, what are we going to do so a few people can irrigate? Are we going to say, everybody in the river valley has to give access from the air for spraying of herbicides on their property? And we're not going to put that out, out of hand. You know what? Stop it. If you're really, truly facing a crisis, if we're really talking about we got to get these rivers cleared, we'd be honorably talking now, not next year, now, about okay, is there going to be an ongoing obligation... [LB98]

SENATOR NELSON: One minute. [LB98]

SENATOR WHITE: ...for the land...adjoining landowners to pay to keep it clean? We

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talk about the environmental aspects. We talk about how the state has to do it and get the burden of the permits and not the individual landowner. We would talk about whether or not indeed it's fair to charge a corn checkoff fee for a guy that's in northern Nebraska who drylands to pay for water that we bought in the Republican River Valley to send to Kansas. But we're not talking about any of that because what we have here is the inertia of big business grabbing from the general taxpayer. And that's okay if we choose to do it in the individual case, if you have the votes. But what is incredibly objectionable is there's never enough, never enough, always take their money and then complain how you're interfering with our rights, even as they pump our water. Thank you. [LB98]

SENATOR NELSON: Thank you, Senator White. I'd like to recognize Speaker Flood for announcements at this time. [LB98]

SPEAKER FLOOD: Thank you, Mr. President. Members, good afternoon. Three quick things: First of all, the consent calendar deadline is 5:00 tonight. Remember, if you're submitting a bill for consent calendar, you have to have the approval of the committee Chair that had the hearing. Number two, I've had a lot of questions as to how we're going to proceed this week. We're going to continue with some Select File tomorrow and continue with General File in the afternoon or before, depending on how things go. Finally, we will be, just for your planning purposes as we head into a holiday weekend, adjourning at noon, no later than noon on Thursday. Finally, it is my intent to try and see if we can't get a vote on LB98 before we leave today. Thank you, Mr. President. [LB98]

SENATOR NELSON: Thank you, Speaker Flood. Senator Council, you are recognized. [LB98]

SENATOR COUNCIL: Yes, Mr. President, I'd like to yield my time to Senator Wallman. [LB98]

SENATOR NELSON: Senator Wallman, you're recognized. [LB98]

SENATOR WALLMAN: Thank you, Mr. President. Thank you, Senator Council. As we discuss these issues about socialism, democracy, all these things I talked about Saturday in the coffee shop. This is socialism at its best or worst. You can say it's our state's rivers, their river. We passed a bill to dump the problem on the Republican River Valley. Is it a state problem? Is it a valley problem? Is it Kansas' problem? No, it's our problem. Folks, Wyoming shuts off the faucet, Colorado shuts off the faucet, we won't have to worry about water. We better be careful. Has Kansas got a right for what they have coming? I don't know. Somebody signed a pact. Did they do it with a lot of knowledge? Did they do it with averages? No. But we signed the pact. Is this going to be a nuclear thing again? Don't talk to Kansas, they're our enemy. They're my neighbor, good people, good farmers, good cattle feeders, Senator Schilz, good people. Do they

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think we're using up their water? Yes. Do I think so? I don't know. But when we finance projects in certain areas with state funds, we do it in other things, we built canals, the farmers built canals. They shouldn't have to pay for those canals anymore, it should be off their tax rolls. If they can't use them, the cost should be done. Once we start these projects we added three years, five years, six years. It will be forever. Once we start this, folks, it will be forever. Thank you, Mr. President. Thank you, Senator Council. [LB98]

SENATOR NELSON: Thank you, Senator Wallman. There's no one else in queue to speak so, Senator Carlson, you are recognized to close on LB98. [LB98]

SENATOR CARLSON: Mr. President and members of the Legislature, I want to thank people for their discussion today. And certainly, to be honest about it, it's kind of uncomfortable to stand here and have people oppose what you're trying to do, but that's part of our process. And one of the things that I've certainly agreed with Senator White is that it's okay to look at what we've got in statute, what we've got in law and study it and see if there are any changes that need to be made. But I'll go back to the questions we need to answer as we approach this: number one, identify the problem; number two, try and identify who caused the problem and that's no simple matter; try and identify who benefits from the solution to the problem. And having determined those three things, then figure out who should pay to fix it. In the meantime, I appreciate the discussion on LB98. I am certain, without a doubt, that this is the right thing to do to continue this work. And we've spelled out what we'd like to do. And I would ask for your support for LB98. Thank you. [LB98]

SENATOR NELSON: Thank you, Senator Carlson. Members, you have heard the closing on the advancement of LB98 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB98]

CLERK: 35 ayes, 3 nays, Mr. President, on the advancement of LB98. [LB98]

SENATOR NELSON: LB98 advances to E&R Initial. Mr. Clerk. [LB98]

CLERK: Mr. President, LB98A. It's a bill by Senator Carlson. (Read title.) [LB98A]

SENATOR NELSON: Senator Carlson, you're recognized to open on LB98A. [LB98A]

SENATOR CARLSON: Mr. President and members of the Legislature, for the past two years, in 2007 and 2008, we had \$2 million in 2007, \$2 million in 2008 of General Fund dollars that were appropriated for the work that's been done. Going forward we're asking for a one-time transfer of \$500,000 from the Buffer Strip Incentive cash Fund to the Noxious Weed and Invasive Species Assistance Fund. We are directing the Department of Agriculture to apply for grant funds available from the Natural Resource

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Conservation Service, USDA NRCS, and we are directing the director of Agriculture to apply for grants from the Environmental Trust in the upcoming grant cycle that begins in September of this year for the dollars needed to continue this project with no General Fund dollars being requested. And I would ask for your support of LB98A. Thank you. [LB98A]

SENATOR NELSON: Thank you, Senator Carlson. You've heard the opening on LB98A. Senator White, you are recognized. [LB98A]

SENATOR WHITE: I'll waive. [LB98A]

SENATOR NELSON: Senator White waives. There being no one else in queue, Senator Carlson, you are recognized to close. Senator Carlson waives. So we will now vote on the advancement of LB98A. All those in favor vote aye; all those opposed vote nay. Have all voted who wish to? Mr. Clerk, please record. [LB98A]

CLERK: 34 ayes, 1 nay, Mr. President, on the advancement of LB98A. [LB98A]

SENATOR NELSON: LB98A advances. Mr. Clerk. [LB98A]

CLERK: Mr. President, items: a motion with respect to LB195 by Senator Gay to be printed. Senator Dubas has an amendment to LB246. New A bills. (Read LB601A and LB35A by title for the first time.) Revenue Committee, chaired by Senator Cornett, reports LB294 to General File. Enrollment and Review reports LB549, LB136, LB136A, and LB601 to Select File. Senator Coash would like to add his name to LB675 as cointroducer. (Legislative Journal pages 952-955.) [LB195 LB246 LB601A LB35A LB294 LB549 LB136 LB136A LB601 LB675]

And I do have a priority motion. Senator Flood would move to adjourn until Tuesday morning, April 7, at 9:00 a.m. []

SENATOR NELSON: Members of the body, you've heard a priority motion to adjourn until 9:00 a.m. tomorrow morning, April 7. All those in favor say aye. All those opposed, nay. We are adjourned. []