

Transcript Prepared By the Clerk of the Legislature  
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Floor Debate  
February 11, 2009

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[LB7 LB20 LB28 LB32 LB47 LB48 LB52 LB53 LB55 LB74 LB88 LB92 LB102 LB110A  
LB113 LB135 LB142 LB151 LB170 LB184 LB201 LB202 LB204 LB331 LB379 LB669  
LR22]

PRESIDENT SHEEHY PRESIDING []

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twenty-fifth day of the One Hundred First Legislature, First Session. Our chaplain for today is Pastor Rick Johnson from St. Paul Lutheran Church in DeWitt, Nebraska, Senator Wallman's district. Would you all please rise. []

PASTOR JOHNSON: (Prayer offered.) []

PRESIDENT SHEEHY: Thank you, Pastor Johnson. I call to order the twenty-fifth day of the One Hundred First Legislature, First Session. Senators, please record your presence. Please record, Mr. Clerk. []

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

PRESIDENT SHEEHY: Are there corrections for the Journal? []

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

PRESIDENT SHEEHY: Any messages, reports, or announcements? []

CLERK: Your Committee on Judiciary, chaired by Senator Ashford, reports LB669 to General File, LB47 to General File with amendments, and LB170 indefinitely postponed. Hearing notices from Appropriations Committee; a series of notices from the Government, Military and Veterans Affairs Committee; and a series of notices from the Judiciary Committee, all signed by the respective Chairs. New resolution, LR22 offered by Senator Pirsch; that will be laid over. And I have an amendment to be printed to LB74 from Senator Pirsch. That's all that I have, Mr. President. (Legislative Journal pages 437-445.) [LR22 LB47 LB74 LB170 LB669]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will move to the first legislative bill under General File. []

CLERK: LB52, Mr. President, a bill introduced originally by Senator Fischer, relates to veterans service offices. It was introduced on January 8, presented to the Legislature yesterday. Senator Fischer opened on the bill. There are committee amendments pending, Mr. President. (AM109, Legislative Journal page 331.) [LB52]

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PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Fischer, you are recognized to open on LB52. [LB52]

SENATOR FISCHER: Thank you, Mr. President and members. I'll just give you a very brief recap of this bill that we were discussing yesterday when it was time to adjourn. This suggested change in the county veterans service officer candidates, who are the people are able to fill that position, was brought to me by constituents. And it's...the change opens up the pool. That's basically what this bill does, the change opens up the pool. In current statute, those that are able to fill this position would have to serve during wartime dates, as they are explained in statute. This bill opens it up to any veteran who has served on active duty and...who has served honorably on active duty, and I think that's an important change. It does open up that pool of our honorable veterans who are able to serve in this position and help other veterans receive the services that they deserve at the county level, and help them work through all the red tape that sometimes accompanies those services in order for them to receive the benefits that they have earned in their service to this country. Thank you, Mr. President. [LB52]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator Pirsch, would you like to give us a recap on AM109 to LB52? [LB52]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. Again, I'll read some of the talking points on the committee amendment to LB52. The amendment changes the qualifications for personnel, except clerical and special help, of the county veterans service officers to allow such persons to be discharged or otherwise separated with the characterization of general, which means under honorable conditions, discharge. This is the current job qualification for these positions, and the committee amendment reinstates that qualification. With the committee amendment, the job qualifications for the county veterans service officers, the members of the county veteran service committees, and the personnel of the county veterans service office are changed from wartime status to a status of anyone who has served on active duty. The committee believes that the argument made for expanding who is eligible to be a county veteran service officer also applies to other county positions. The committee also felt that the job qualifications relating to discharge from the service for these positions should not be changed. Therefore, the current discharge requirements remain in place. For county veteran service officers, an honorable discharge is required. For members of the county veterans service committees and the personnel of the county veteran service offices, a general, which means under honorable conditions, is required. The committee advanced the bill as amended an 8 to 0 vote. I urge your adoption of the committee amendment and the underlying legislation. Thank you. [LB52]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Are there members requesting to speak? Senator Gloor. [LB52]

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SENATOR GLOOR: Thank you, Mr. President and members of the body. I rise in support of AM109 and LB52. I am a wartime veteran; served during Vietnam and am classified as a wartime veteran. I will tell you that I had...and was at no greater risk than perhaps driving down the German Audubon, and I joined hundreds of thousands of wartime veterans who also were no more at risk than people who served and came in perhaps a year later when they no longer could be classified as wartime veterans. It seems to me that a fluke of timing should not give me preferential treatment when it comes to filling a position like this, and I would feel comfortable speaking on behalf of many of my fellow veterans who also served during wartime but were not in harm's way, by way of saying that they also would not see that they felt a reason for preferential treatment, certainly not over people who served in Panama, Grenada, other places where they were in harm's way and yet are considered peacetime veterans. This is a very commonsense approach towards rectifying what is an increasing problem in finding appropriate and skilled veterans to fill these positions, and I urge the body to vote for both AM109 and LB52. Thank you. [LB52]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Senator Fischer, followed by Senator Pirsch. Senator Fischer. [LB52]

SENATOR FISCHER: Thank you, Mr. President and members. I just wanted to tell the body that I do support the committee amendment. It does clarify a part of the bill that the committee thought needed to be clarified. And with that, I would urge your support of the amendment. Thank you. [LB52]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator Pirsch. [LB52]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. And I appreciate Senator Gloor's comments and feelings on the matter, but one of the other things I think needs to be stressed, the underlying reason here is that with regards to these important positions who service vets, there are many such positions that there just is a lack of applicants for and, therefore, veterans are not being served. And so that's...I think you have to look at one of the primary guiding motivations of this, is we want to make sure that the promises that we made to our veterans, that we're going to be able to have these offices filled so that we can meet those promises. And so I think that's important to stress. Thank you for your time. [LB52]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Are there additional members requesting to speak on AM109? Seeing none, Senator Pirsch, you're recognized to close. [LB52]

SENATOR PIRSCH: I'll waive. [LB52]

PRESIDENT SHEEHY: Senator Pirsch waives closing. The question before the body is

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on the adoption of AM109 to LB52. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB52]

CLERK: 41 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB52]

PRESIDENT SHEEHY: AM109 is adopted. We'll now return to floor discussion on LB52. Are there members requesting to speak? Seeing none, Senator Fischer, you're recognized to close. [LB52]

SENATOR FISCHER: Thank you, Mr. President and members. Thank you for the vote on the amendment. I think that clarifies the intent of the bill. I would like to reiterate that this proposal has been presented to the county veterans service officers of Nebraska, the Nebraska Veterans Council, as well as two American Legion posts within my legislative district, and they have all voted to recommend changing the requirement for the position of county veterans service officer. I think, as I said, this will open up the pool of our veterans who are able to serve in this position. I would ask you to advance the bill. Thank you. [LB52]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the closing. The question before the body is on the advancement of LB52. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB52]

CLERK: 42 ayes, 0 nays, Mr. President, on the advancement of LB52. [LB52]

PRESIDENT SHEEHY: LB52 advances. Next item under General File. [LB52]

CLERK: LB151 introduced by Senator Stuthman. (Read title.) Introduced on January 9, referred to the Judiciary Committee, the bill was advanced to General File. There are Judiciary Committee amendments pending, Mr. President. (AM49, Legislative Journal page 335.) [LB151]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Stuthman, you're recognized to open on LB151. [LB151]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. LB151 is a cleanup legislation. It amends Sections 28-456.01 so that sales and purchase limits of pseudoephedrine are 3.6 grams per 24 hours. The Legislature changed the sales and purchase limits to 3.6 grams per 24 hours in 2007 under LB218 to mirror the federal law. This section was accidentally missed, and this clarifies that portion of it. LB151 also removes exemptions in the law for ephedrine, its salts, optical isomers as a Schedule IV drug. This includes the exemption of ephedrine that is sold as a dietary supplement. Currently, such supplements can be sold in quantities less than 25 milligrams over the counter, as long as they are properly labeled as a dietary

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supplement. It has been discovered that some stores have been selling these dietary supplements without the proper labeling and in large quantities. Ephedrine is also a key component in the production of meth. In summary, LB151 cleans up a section of law that was missed in 2007 and also promotes consumer and patient safety. Thank you, Mr. Lieutenant Governor. [LB151]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. You have heard the opening to LB151. As noted, we do have a committee amendment. Senator Lathrop, you're recognized to open on AM49 from the Judiciary Committee amendment. [LB151]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good morning. AM49 to LB151 is an amendment that was brought to the committee by Senator Stuthman and reflects a compromise between the Nebraska Pharmacists Association and Wyeth Pharmaceuticals to provide the continued availability of three products that contain ephedrine as over-the-counter products. The committee agreed that these three products should still be available over the counter to Nebraska consumers under certain restrictions. The three products that would still be allowed for sale over the counter are: Primatene tablets, Bronkaid Dual Action tablets, and Pazo Hemorrhoidal Ointment. The new restrictions contained in the amendment are similar to the restrictions that are currently in place for sale of pseudoephedrine-based products which are purchased over the counter. AM49 requires the following restrictions apply: items are stored behind the counter or in an area not accessible to customers or in a locked case so that customers need assistance from an employee to access the drug product; the products are sold by a person 18 years or older in the course of his or her employment to a customer 18 years of age or older with the following restrictions placed on the customer--number one, no customer shall be able to purchase, receive, or otherwise acquire more than 3.6 grams of ephedrine during a 24-hour period; number two, no customer shall purchase, receive, or otherwise acquire more than 9 grams of ephedrine based during a 30-day period; and the third restriction on customers is the customer shall display a valid driver's license, state identification card, military identification card, alien registration card, or a passport as proof of identification. Those are the amendments to Senator Stuthman's LB151. Thank you. [LB151]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You've heard the opening from the Judiciary Committee on AM49. Members requesting to speak are Senator Fulton, followed by Senator Stuthman. Senator Fulton. [LB151]

SENATOR FULTON: Thank you, Mr. President. I rise in favor of AM49 and also the underlying bill. I want to take this opportunity to talk a little bit about the pharmacists whose practice and lives will be impacted by this bill. Full disclosure: my father-in-law is a pharmacist, I have a sister-in-law who's a pharmacist also. And these bills, when we put them forward, it's important to have the input of those who it will directly affect. So I did see that the pharmacists came in and testified in favor, but I wonder if Senator

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Stuthman would yield to a question. [LB151]

PRESIDENT SHEEHY: Senator Stuthman, would you yield to questions? [LB151]

SENATOR STUTHMAN: Yes. [LB151]

SENATOR FULTON: Senator, do you recall the testimony that the pharmacists brought forward? I assume they came and testified in favor, but did they express any reservation about, you know, the ongoing changes in law that will affect their practice and their profession? [LB151]

SENATOR STUTHMAN: I do not completely recall what their testimony was, but I think one of the issues that the Pharmacy Association was concerned about was the fact that there has been some...this ephedrine used as a dietary supplement, and that it was improperly labeled, and this was a concern that they had. And so they wanted this, you know, to be placed behind the counter also and they were very supportive of that. The fact is that, you know, also the issue of ephedrine, you know, is a product that you can make meth out of, but it takes larger quantities of it. So they felt that, you know, this is something that needs to be addressed because we had addressed the fact that meth labs were being established out in the rural areas, and we wanted to address that problem. And I think since we have passed that bill, LB218, several years ago, the fact is there are very few meth labs currently being...having to be...being addressed and having to be cleaned up. [LB151]

SENATOR FULTON: Okay. Thank you, Senator. Great example: An entire profession that's come to the table, recognizing that a policy decision made by the state is going to affect...though it's going to affect that profession and the way they conduct their business, the hassles or the incumbrances that our policy decision has on that profession was acceptable to them. So hats off to the pharmacists because I know that when we change the law, and now we're coming back to make slight changes again, it does affect the average everyday work of a pharmacist. But they've come to the table, they've recognized that this is a piece of policy that's going to make our society better, so hats off to the pharmacists. If Senator Stuthman would like the remainder of my time, I know he's after me, I'd yield that. [LB151]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Stuthman, 2 minutes. [LB151]

SENATOR STUTHMAN: Thank you, Mr. President, and thank you, Senator Fulton. One of the things that I would also like to add is, you know, the Nebraska Pharmacy Association, you know, they have to do additional work by placing it behind the counter and do the fact of checking and making sure that these individuals haven't purchased more grams of pseudoephedrine or ephedrine. And it does create a little bit more of a

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problem for these pharmacists, but I think they realize the fact that what they're doing is for the betterment of the health of the people in the communities, and I really respect those individuals for doing that. So with that, I do support the amendment by the Judiciary Committee and I would ask for your support in passing this bill. Thank you, Mr. President. [LB151]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Stuthman, you're also next in the queue. [LB151]

SENATOR STUTHMAN: Thank you, and I will not take much time. I did make my comments at the end of the last time that was given to me by Senator Fulton. So I would just ask the body for your support and hopefully we can pass this. This is just another step in trying to help, you know, with the safety and welfare and the health of our people in the state of Nebraska. So I request that you hopefully pass this bill forward, pass the amendment, and hopefully pass the bill. Thank you, Mr. President. [LB151]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Seeing no additional members requesting to speak, Senator Lathrop, you're recognized to close on AM49. Senator Lathrop waives closing. The question before the body is on the adoption of AM49 to LB151. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB151]

CLERK: 37 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB151]

PRESIDENT SHEEHY: AM49 is adopted. Are there members requesting to speak on LB151? Seeing none, Senator Stuthman, you're recognized to close. Senator Stuthman waives closing. The question before the body is on the advancement of LB151. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB151]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB151. [LB151]

PRESIDENT SHEEHY: LB151 advances. (Doctor of day and visitors introduced.) We will now continue to proceed to the next item under General File. [LB151]

CLERK: Mr. President, LB88, introduced by Senator Pahls. (Read title.) Introduced on January 8; referred to the Banking, Commerce and Insurance Committee; the bill was advanced to General File. At this time I have no amendments to the bill. [LB88]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Pahls, you're recognized to open on LB88. [LB88]

SENATOR PAHLS: Good morning, Mr. President and members of the body. LB88 would amend Sections 8-113 of the Nebraska Banking Act which currently provides that

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no individual, firm, company, corporation, or association other than a bank, building and loan association, savings and loan association, or savings bank shall use the word "bank" as any part of its name or as a description of its business activity. Section 8-113 contains a list of entities to which the restriction does not apply, including organizations which are described in Section 501(c)(3) of the Internal Revenue Code. LB88 would narrow this Section 501(c)(3) exception to food banks and blood banks. This would make the 501(c)(3) exception more certain rather than wide open in its application. A food bank or a blood bank is wholly unlikely to be confused in the minds of the public with a financial institution. When the 501(c)(3) exception was added in 2004, food banks and blood banks were cited as a rationale for it. Again, LB88 would tighten up the language of the 501(c)(3) exception to be in line with the original intent behind it in 2004. Thank you. [LB88]

PRESIDENT SHEEHY: Thank you, Senator Pahls. You have heard the opening to LB88. Members requesting to speak, Senator Rogert. [LB88]

SENATOR ROBERT: Thank you, Mr. President. I wondered if Senator Pahls would yield to a question, please. [LB88]

PRESIDENT SHEEHY: Senator Pahls, would you yield to questions? [LB88]

SENATOR PAHLS: Yes I would. [LB88]

SENATOR ROBERT: Senator Pahls, can you illustrate the difference in this bill and LB32 we heard a couple of days ago? [LB88 LB32]

SENATOR PAHLS: The bill that we heard a couple of days ago, LB32, actually opened up the exemptions and allowed...and we voted in to let a recycling company use the name. This one actually goes in the reverse; it tightens up this particular section dealing with 501(c)(3). [LB88 LB32]

SENATOR ROBERT: Okay. So this says that there's only two 501(c)(3) organizations that are allowed to use the word "bank" in their name at all? [LB88]

SENATOR PAHLS: In this...right, in what I am proposing. [LB88]

SENATOR ROBERT: Okay. So if, per se, there's...you know, I was doing some searches around and there are some other things that are called banks, could be like an eye bank, a Cryobank. Now, if the title of the place was...they couldn't use the word "bank" in their name in that type of a thing? [LB88]

SENATOR PAHLS: This bill would tighten up just to affect these two organizations. [LB88]



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SENATOR ROBERT: What purpose are we squeezing that down, I guess, for? [LB88]

SENATOR PAHLS: Well, one of the reasons why this came about is, just to let you know, a couple of years, the Nebraska Alumni Association, what they did is they worked with a group of banks and they started what they call their Alumni Banking Center. Now, they were a nonprofit organization, but they actually were promoting financing a financial organization. And that's where there is...you can see where the rub is. [LB88]

SENATOR ROBERT: Sure. Absolutely. Well, you know, I see the reason why we want to tighten it up, but I think there's a few other organizations that might be interested in getting in on this. Just kind of looking it up, you know, on-line, I found tissue bank, ligament bank, piggy bank, organ bank, Tyra Banks, Cryobank, eye bank, and word bank. And then we've got...you know, I sent a possible amendment around the other day that talked about...for cattle, for Senator Hansen. He wanted to know if he could have a semen bank for his breeding operations. Would those operations possibly be able to be included in this bill if we found a need for it? [LB88]

SENATOR PAHLS: With the intent of this legislation, that would limit just to these two organizations. [LB88]

SENATOR ROBERT: Okay. Well, that's what I just wanted to know, if we were...you know, I wanted to find out what our purpose was and if we had some opportunity, if some other things came up that we want to be able to get in there, we could maybe squeeze them in there. [LB88]

SENATOR PAHLS: Right. Again, if we would want to add other organizations, we would have to amend them into this. [LB88]

SENATOR ROBERT: Okay. Thank you, Senator Pahls. Thank you, Mr. President. [LB88]

SENATOR PAHLS: Yes. [LB88]

PRESIDENT SHEEHY: Thank you, Senator Robert. Are there additional members requesting to speak on LB88? Senator Hansen. [LB88]

SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. We talked the other day about the same section of the law, and I would like to ask Senator Pahls some questions. [LB88]

PRESIDENT SHEEHY: Senator Pahls, would you yield to questions? [LB88]

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SENATOR PAHLS: Yes, I would. [LB88]

SENATOR HANSEN: Senator Pahls, when we talked about LB32 the other day, we talked about one company that had, in my opinion, had gone around the law and used the word "bank." They asked permission to use the word "bank" and were denied and then went ahead and used it. Is that correct? [LB88 LB32]

SENATOR PAHLS: The general...you know, I would generally agree with what you said. [LB88]

SENATOR HANSEN: And now today we use the two other groups that are non...well, they're nonfinancial units for one thing. [LB88]

SENATOR PAHLS: Yes. [LB88]

SENATOR HANSEN: But they're also nonprofits, and they asked permission to use the word "bank." Is it exactly the same, between LB32 and LB88, is it exactly the same statute that we're talking about? [LB88 LB32]

SENATOR PAHLS: Right. We are dealing with the same statute, but we are actually in LB32...we opened it up to allow not one company but any recycling company that wanted to use the word "bank" in their operation. [LB88 LB32]

SENATOR HANSEN: Any recycling company that wants to use the word "bank," is that what you just said? [LB88]

SENATOR PAHLS: Yes. [LB88]

SENATOR HANSEN: Okay. The examples that Senator Rogert used are, you know, certainly making a point and it was a point that I was trying to bring out when we talked about the other bill that dealt with the same statute, that there are other entities that use the word "bank" and they have nothing to do with the financial institutions of the state of Nebraska. I don't know where we need to put them, but I don't think we need to put them in this statute because that list is going to get rather long, it's going to get lengthy, and it's going to...it seems to me it's going to dirty up the financial institution language on the use of the word "bank." [LB88]

SENATOR PAHLS: Well, anything that we would want to add would clarify. You know, it's that simple. This is...when the Banking Department takes a look at this 8-113 and there is a question, they would look down and see this qualifies, this qualifies, this does not qualify, etcetera. [LB88]

SENATOR HANSEN: Would the Banking Department only be interested in financial

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institutions that use the word "bank" that may or may not be legal in the state of Nebraska? [LB88]

SENATOR PAHLS: Well, they would look to see how the word "bank" is utilized. [LB88]

SENATOR HANSEN: If given enough time, I think Senator Rogert and I are going to come up with quite a lengthy list. Do you want to put each and every one of them in this, LB88? [LB88]

SENATOR PAHLS: I do understand your concern, I truly do, and I would be willing to work with you on Select File and see if we could not come to a group or a list that would be...the body would see that would be appropriate. If not, then the bill would not move off Select File. But I am willing to work with the two of you to see...and I think we ought to involve the Banking Department and, of course, my office and other people involved in this to see if we could come to some agreement, because as I said, it's the word "shall use the word bank" as any part of its name or as a description of its business activities. Then we have the exceptions. And I think we all understand the power of the word "bank" or that activity, and we do want to make that clean and clear. And any exemption that we put in it, we would want to make sure that everyone understood the rationale behind deciding on that group or organization. And I'd be willing to sit down with at least the two of you who have indicated you have some... [LB88]

PRESIDENT SHEEHY: One minute. [LB88]

SENATOR PAHLS: ...concerns about limiting it just to the two, to food bank or blood bank. But just to reiterate, that was the reason why this amendment was put in 2004. I actually even talked to the senator who was involved in that. [LB88]

SENATOR HANSEN: Senator Pahls, would you take maybe another section of the bill, put it toward the bottom with a list of the exceptions, and we list...just have that list of exceptions and then we add to that every year? [LB88]

SENATOR PAHLS: Right. [LB88]

SENATOR HANSEN: Eye banks, food banks, blood banks, sperm bank. [LB88]

SENATOR PAHLS: Right, because every year, let's say there was a new organization that said, hey, we belong in that, they would come to our committee or to our office and say, hey, we would like to have a bill put forth. And we would put a bill forth, and the bill would move on its merits. I mean, that would to me seem logical because we may not get the whole list of organizations that you want in it. But I think the intent... [LB88]

PRESIDENT SHEEHY: Time, Senator. [LB88]

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SENATOR HANSEN: Thank you, Mr. President. [LB88]

PRESIDENT SHEEHY: Thank you, Senator Hansen. Thank you, Senator Pahls. Additional members requesting to speak: Senator Rogert, followed by Senator Pirsch. Senator Rogert. [LB88]

SENATOR ROGERT: Thank you, Mr. President. I wondered if Senator Pahls would yield to a question. [LB88]

PRESIDENT SHEEHY: Senator Pahls, would you yield to questions? [LB88]

SENATOR PAHLS: Yes, I would. [LB88]

SENATOR ROGERT: Senator Pahls, I'll let you continue your explanation, what you were having with Senator Hansen. I've got a question. Does this need...how many times has an issue like this been brought up as long as you've been here? [LB88]

SENATOR PAHLS: The issue that causes to come to light, I might say, is when the Alumni Association started what they call of the Alumni Bank. [LB88]

SENATOR ROGERT: Right. [LB88]

SENATOR PAHLS: And there was some concern...keep in mind, that was a not-for-profit organization, but it was also basically to some degree you might say they were into the banking business. [LB88]

SENATOR ROGERT: Doing some banking. [LB88]

SENATOR PAHLS: So that was probably the issue. [LB88]

SENATOR ROGERT: Has it been discussed or brought up the fact that maybe we don't need to handle this? Could we possibly leave this up to the Department of Banking? [LB88]

SENATOR PAHLS: Yes. In my discussion, that was what I was going to continue with my discussion. That may be one of the conclusions, that if we do move this to Select that I would talk to the various parties and say, maybe this is an obligation that the department needs to grasp and they would make that decision by looking at the statute. That may be one of the solutions. [LB88]

SENATOR ROGERT: Yeah. I agree. You know, I see that having to come back year in, year out if there are...sometimes somebody may need that exemption right away, and

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we know how this place works. [LB88]

SENATOR PAHLS: Yes. [LB88]

SENATOR ROBERT: They may or may not get it for two or three years because we just don't get to it. [LB88]

SENATOR PAHLS: Yes. [LB88]

SENATOR ROBERT: It might be something that we should discuss and put it into the paragon of the Department of Banking. [LB88]

SENATOR PAHLS: Yes, and I agree with it, and that's why I'm saying if we move this on and if we could not come to a conclusion on what would be best...what we believe the body would accept, I would say that we need to put it on hold and I would need to revisit this next year. [LB88]

SENATOR ROBERT: Great. Thank you, Senator Pahls. I'll give you the rest of my time, if you wish, but I'm done. [LB88]

PRESIDENT SHEEHY: Three minutes, Senator Pahls. [LB88]

SENATOR PAHLS: I just think, after listening to the comments this morning, I think that we can make this bill have some attributes that would be probably acceptable for the body. I'm asking you to move this bill to Select File. I will meet with the individuals who brought up some questions, and will meet with the Banking Department, see if we cannot get something ready to go this year. If not, it would stay on Select File until this would be resolved. [LB88]

PRESIDENT SHEEHY: Thank you, Senator Pahls. We have Senator Pirsch, followed by Senator Hansen, and Senator Carlson. Senator Pirsch. [LB88]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I appreciate the conversation going back and forth. With respect to Senator Hansen, I think Senator Rogert's question about the two bills--don't they touch on the same statute, couldn't they have been encapsulated within the same bill, or could the committee have brought them together in an amendment--absolutely, they certainly do and we could have. I think that we did...kept them separate because they were introduced separate to cure two separate types of potential harm, and we thought that presenting the issues in separate format would help, would make sure that there wasn't confusion and that we could present the specific issue in isolation. And so it's just for ease of presentation to the body, but you certainly could present those together in one bill because they do affect the same statute. It's kind of an unusual year because on any normal year you don't get

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a whole lot of new uses of the term "bank" in such that they're back before the Banking Committee. It's kind of an oddity that we'd have two. Most years I don't think there's any. Do other states do it differently? Senator Rogert, I appreciate your question, Senator Hansen as well. Could you put in statute more general language, something to the effect of any use of the term "banking" which the Department of Banking itself tends to find confusing or misleading to the public shall be prohibited? You could use that type of language, that generalized type of language, and in fact it is utilized in other states. That's their approach. We in Nebraska have utilized for awhile now a different approach, which is to give the specific types of the usage of the term "bank" which is prohibited, and we do that I think for a reason. When you just give specific type of guidance, don't use "bank" in a bad way, that generalized type of prohibition, it tends to leave parties who are interested in utilizing the term "bank" in Nebraska not...with a definition that is not as precisely defined. Everyone may come to the conclusion, well, you know, I don't think my use of the term "bank" is confusing or misleading, and so they go forward with that. And so it tends to promote, in many cases then, unnecessary litigation. And so I think in Nebraska we've recognized that the new potential uses of the term "bank" are so few in number and occur so infrequently that there's really no harm in addressing them on a case-by-case basis over the years, and I think that's been what we've experienced here. And so I think it's an oddity that we do have two of these in the same year. With respect to the value of addressing them on a case-by-case specific basis, it gives the reader of laws, the people who are looking at utilizing the laws, a great more detail, a more specific guidance as to whether or not they can in fact utilize that term "bank." And we don't need to go through needless litigation and the Department of Banking doesn't need to keep addressing this on a more frequent basis. So just a little bit of the underlying policy trade-off in going with the paradigm that we do go with in Nebraska. And with that, I would yield the balance of my time. Thank you. [LB88]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Hansen. [LB88]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I'd like to get a little more audience participation, so I'd ask Senator Gay if he would yield. [LB88]

PRESIDENT SHEEHY: Senator Gay, would you yield to questions? [LB88]

SENATOR GAY: Yes, I would. [LB88]

SENATOR HANSEN: Senator Gay, in the Health and Human Services Committee, it was either last year or the year before when we were talking about stem cell research, someone came up with the idea of banking cord blood. Do you remember that discussion, that bill? [LB88]

SENATOR GAY: Yeah. I remember parts of that discussion, yeah. [LB88]

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SENATOR HANSEN: (Laugh) They used the word "bank" in that too. I mean, when you collect blood from umbilical cords to be used as stem cell research, they call that a bank. Does this...and you served on the Banking Committee before too. Does this...should this be an exclusion? [LB88]

SENATOR GAY: Well, it would be an exclusion if we decide it is, I suppose, in this debate. But, yeah, the term "bank" or...that was used quite frequently during those discussions. And as far as a year or two ago, I had the bank bill as well and this is just an expansion of that, I guess. So we will decide what the body...but that wasn't an easy bill, not to get off the subject, but now we're opening it up quite open though. But, yeah, the term, Senator Hansen, what you're getting through initially was, yes, that was used quite frequently during those discussions. [LB88]

SENATOR HANSEN: Thank you, Senator Gay. I'd like to ask Senator McCoy a question. [LB88]

PRESIDENT SHEEHY: Senator McCoy, would you yield? [LB88]

SENATOR McCOY: Yes, I would. [LB88]

SENATOR HANSEN: Senator McCoy, do you serve on the Banking Committee,... [LB88]

SENATOR McCOY: Yes, I do. [LB88]

SENATOR HANSEN: ...Banking, Commerce and Insurance Committee? I'm sorry. Okay. I was reading the Committee on Committees' report and I was pretty sure you were. How do you see an exclusion for all the profit, for-profit, the nonprofit entities being in the banking statute? Do you have any feeling on that one way or another? [LB88]

SENATOR McCOY: Well, it's certainly something we could take a look at. I think you bring a valid point as to some of the entities that both you and Senator Rogert have mentioned. [LB88]

SENATOR HANSEN: Could you explain your take on the company...that LB32, even though it's not the bill that we're talking about today but it is in the same statute, same banking statute, could you explain to me what happened...chronologically what happened with that company and why the Banking commission (sic) was involved in that? [LB88 LB32]

SENATOR McCOY: I'll certainly do my best to address that. I think Senator Pahls mentioned it earlier when you asked him about it that. The company in question, as you

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mentioned, asked to use the name "bank" and then (inaudible)... [LB88 LB32]

SENATOR HANSEN: Senator McCoy, who did they ask? [LB88 LB32]

SENATOR McCOY: That would be the Banking commission (sic). [LB88 LB32]

SENATOR HANSEN: Okay. [LB88 LB32]

SENATOR McCOY: And when they asked to use the name "bank," they were denied, is my understanding, then subsequently paid a fine. And then at that time, in the intervening time had some equipment, mainly carts with the name printed on them, manufactured. And then has come back subsequently and asked to continue to use the same name that they use in 22 different states. [LB88 LB32]

SENATOR HANSEN: And what was the name on the carts? Have you seen the carts? [LB88 LB32]

SENATOR McCOY: Yes, I have. Actually, we have neighbors to either side of us that have the carts, Recycle Bank. [LB88 LB32]

SENATOR HANSEN: Recycle Bank. And what is their purpose? It's certainly for profit then, and how do they profit by using the word "bank"? [LB88 LB32]

SENATOR McCOY: Well, I think that the profit there would be that the contents are weighed and a portion of that is given back to the individual homeowners that have these carts, and a portion is paid back in the form of gift cards, and I assume obviously a profit is derived by the company. [LB88 LB32]

SENATOR HANSEN: Do the gift cards need to be picked up at a bank? [LB88 LB32]

PRESIDENT SHEEHY: One minute. [LB88 LB32]

SENATOR McCOY: Not to my understanding. [LB88 LB32]

SENATOR HANSEN: I wouldn't think so either. Okay. Thank you, Senator McCoy. Appreciate that explanation of LB32. But now we're back on LB88 where we're going to enter several new words of "bank." I need to ask a lawyer, is there any lawyers here that would know anything about forming a corporation? I'm looking for a show of hands. Senator White is on the phone. What my question is, and I'll ask it of Senator...oh, Senator Nelson. There we go. Would Senator Nelson yield, please? [LB88 LB32]

PRESIDENT SHEEHY: Senator Nelson, would you yield? [LB88]



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SENATOR NELSON: Yes, I will. [LB88]

SENATOR HANSEN: I'm sorry, Senator Nelson. I didn't...from the back of the room I don't know everyone's back of their head yet, so. Senator Nelson, when a company forms whether... [LB88]

PRESIDENT SHEEHY: Time, Senator. [LB88]

SENATOR HANSEN: Thank you, Mr. President. [LB88]

PRESIDENT SHEEHY: Thank you, Senator Hansen. Senator Carlson, followed by Senator Pahls. Senator Carlson. [LB88]

SENATOR CARLSON: Mr. President and members of the Legislature, I will yield a portion of my time to Senator Hansen, and if there's some left, I'd like to have it back. [LB88]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Hansen, 4 minutes, 45 seconds. [LB88]

SENATOR HANSEN: Thank you, Senator Carlson. Would Senator Nelson yield again, please? [LB88]

PRESIDENT SHEEHY: Senator Nelson, would you yield? [LB88]

SENATOR NELSON: Yes, again, I will. [LB88]

SENATOR HANSEN: Senator Nelson, if a company either in the state or out of the state wants to form a company similar to Recycle Bank, do they have to record that name with the Secretary of State? [LB88]

SENATOR NELSON: They would be well advised to do that if they want to protect themselves and not have somebody else use their name. So generally, someone comes to an attorney and say, this is what we want to do, we want to incorporate whether we're on a profit or nonprofit basis. I, as an attorney, would check with the Secretary of State to see if that name or trade name has been recorded. And if it is available, why, I would let the client know that. [LB88]

SENATOR HANSEN: In the Secretary of State's Office, on that application for that name, is there a description of the business involved too? [LB88]

SENATOR NELSON: Is there a what? [LB88]

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SENATOR HANSEN: A description of the business. [LB88]

SENATOR NELSON: Not necessarily. You can talk in very general terms. I guess for the most part you try to identify the primary thing that you're going to do with that business, but then you generally expand it into...and all other nature and types of work that would be related and fall within these general terms. [LB88]

SENATOR HANSEN: So if Recycle Bank Company that came from out of state, if they would list their name with the Secretary of State just to protect that name, would that not list recycling as their major form of business, recycling of glass or paper or... [LB88]

SENATOR NELSON: You're saying they used the term...they want to use the term "bank" as part of that name? [LB88]

SENATOR CARLSON: Yes, yes. [LB88]

SENATOR NELSON: Yeah. I would say that, yes, they would want to describe the basic thing that they're doing and, if it's recycling, they would start with that. [LB88]

SENATOR CARLSON: Thank you, Senator Nelson. Senator Carlson, do you want your time back now? I'll put my light on. Thank you for the yield. [LB88]

PRESIDENT SHEEHY: Senator Carlson, just over 2 minutes, 30 seconds. [LB88]

SENATOR CARLSON: Thank you. If Senator Rogert would yield to a question, I'd appreciate it. [LB88]

PRESIDENT SHEEHY: Senator Rogert, would you yield to a question? [LB88]

SENATOR ROGERT: Yes. [LB88]

SENATOR CARLSON: Senator Rogert, in your earlier testimony you said something about these kinds of requests possibly being handled in the Department of Banking and not in the Committee on Banking and Insurance. Is that what you indicated? [LB88]

SENATOR ROGERT: Well, I meant...yes, rather than bring it in front of us time and time again, maybe give the authority, and maybe the authority may already exist, to the director of Banking. [LB88]

SENATOR CARLSON: Okay. We're running a little bit short on time, but kind of restate what you said, would you? [LB88]

SENATOR ROGERT: Well, my question was--I put my light on--my question was,

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should this be coming before the body every time we have an exception that they're trying to get granted or should we just give the authority to the director of the Banking Department? [LB88]

SENATOR CARLSON: Okay. Now, that sounds like a commonsense thing to me that would make things flow a little more smoothly, but it's... [LB88]

SENATOR ROBERT: Yeah, and actually, Senator Pahls and I, we agreed to talk about it between now and Select... [LB88]

SENATOR CARLSON: Okay. [LB88]

SENATOR ROBERT: ...and if we decide that that's what we're going to do, we're just going to kill it. [LB88]

SENATOR CARLSON: Okay. Thank you, Senator Rogert, and if...I'll try to do this without running out of time, I'd address Senator Pahls, if he would yield. [LB88]

PRESIDENT SHEEHY: Senator Pahls, would you yield to questions? [LB88]

SENATOR PAHLS: Yes, I would. [LB88]

SENATOR CARLSON: This is simply a question. On the discussion that's taken place this morning, we have a couple of options. And you've indicated you'd like to pass this on to Select File and then deal with some of these issues between now and then, which is a possibility. The other is to... [LB88]

PRESIDENT SHEEHY: One minute. [LB88]

SENATOR CARLSON: ...bracket the bill until like March 1 and take care of these things so that it's not a problem on General File, and I'm not saying one way or the other. Would you be opposed to that? [LB88]

SENATOR PAHLS: The reason why I would like to have it move on Select on File, if we cannot come to an agreement it will not move off Select File. So that's the approach I would like to have. And as I have indicated, I'm willing to sit down with the senators who have some questions whether like we should decide how this is approached year-by-year, who should or should not be included in this amendment. I'm willing to do that. That's to me is something that we can handle. And if it's a larger issue than that, then I would suggest to the group that I need to and my staff and I need to take a longer view of this issue and come back at another time. [LB88]

PRESIDENT SHEEHY: Time, Senator. [LB88]

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SENATOR CARLSON: Thank you. [LB88]

PRESIDENT SHEEHY: We have Senator Pahls, followed by Senator Hansen. Senator Pahls. [LB88]

SENATOR PAHLS: Thank you, Mr. President and members of the body. Again, I'm trying to point out I do think we have a core issue here to work with, and I'm not in disagreement with what Senator Rogert or Senator Hansen said they have some concerns about what is or what is not in the 501(c)(3) exemptions. I think we can work that out. We can see what the department has to say and other people who are involved in this. To me, this seems like it's an issue that we can iron out this year and we can do it before it hits...comes back to us on Select File. That's what I'm just asking for, is the ability to do that. And again, if we cannot, you know the bill will go nowhere. It's that simple. And again I want to go back to...it seems like we were trying to put LB32 and LB88 together, and I still would like to keep them separated. And just to let you know, Senator Hansen, you had some questions about Recycle Rewards, which is a company, and they came to Nebraska to set up business with one of our local companies to go forth with this recycling program. They did file with the Secretary of State. They were told they could not do this. Their attorneys read the statute and said, no, that's not an issue. So on the advice of their attorneys, they went ahead and did that. And subsequently they were fined and they had to pay for the investigation, and they were directed to seek legislation that would allow them. And that's the reason why that bill was brought forth. And they do...they work with many of the municipalities and they do have a program, as I said when we first started on that bill, you can go...seems like I'm getting together here, but I do want to clear that up. They do have a typical recycling, they reward people. You can check in some of these things, there's Sears, there are a number of...PETCO, Target. I just cannot remember all of them. So they do have that program. And just to let you know, I think sometime this month in Milford, they have...they're going to be working with the school system there and they're giving \$1,500 for what they did on recycling. So they are an organization that is giving back to the community. Now, back to the current bill, I am ready and willing to sit down and discuss this with those people involved and I think we can resolve those issues. And if not, you know it will not move off Select File. Thank you. [LB88 LB32]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Senator Hansen, this is your third time. [LB88]

SENATOR HANSEN: Thank you, Mr. President. My third time, I better make the best use of it as I can. But it comes back to what I asked some of the questions of Senator Nelson. If a company is formed and uses the word "bank" and they talk to the Secretary of State, it should be a red flag that the Banking Department needs to look at that business. If they would have looked at that business in Omaha that started up, Recycle

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Rewards Bank--I think that's the full name of it now, Recycle Rewards Bank--what do they do? They recycle, you know, people's trash, people's refuse. Then they wouldn't have gone up there and inspected it, the people wouldn't have had to ask the question, can we use this in the name. The word "bank" is so broad that whenever you accumulate anything and then disperse it, that can be used as a bank. Senator Rogert came up with some examples. That list is going to get longer and longer. And I think that this...I hate to see the banking statutes where using the term "bank" be restricted to financial institutions. I think the Banking commission (sic) should look at these daily entries on the Secretary of State's Web site and see what the companies are, go back and, you know, there's thousands and thousands of businesses and I'm sure some of them would like to use the word "bank" because accumulate and disperse something, I don't know what but something. We formed a corporation, a family corporation a few years ago, and our accountant said, just go out and look at your operation, become familiar with something, and then come back in and let me know the name, we'll run it in the Secretary of State. So I went home and I looked, and we had Hereford cows and they're red and white, we have red Gelbviehs and they're red, and then we have red Angus. So the similarity of what I work with everyday I came up with the name Red, Inc. I took that back to my accountant and he wouldn't run it through the Secretary of State. He didn't think a company should be called Red, Inc. We're in red ink now, but we don't want to be there all the time. That's what a company does when they form in the state of Nebraska. I just don't see...and, Senator Pahls, I don't want to work on this between General and Select File. I think it ought to be killed now and then...and rethink the whole thing. Because if we start listing every exclusion to the word "bank," I think it's going to mess up the banking statutes and I really don't think that's necessary in this state. We've got a list now, that list is going to do nothing but grow, and I just don't think it's a good idea. Thank you, Mr. President. [LB88]

PRESIDENT SHEEHY: Thank you, Senator Hansen. We have Senator Pirsch, followed by Senator Pankonin. Senator Pirsch. Senator Pirsch. [LB88]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I appreciate Senator Hansen's concerns. Just to help assure him, this particular bill has...law has been on the books in Nebraska since the year 1921. And so it has, you know, in 88 years you can see there hasn't been a torrent and a coming back to the Legislature and using up our time with...on a yearly basis of this new creation and this new creation of utilizing the term "bank." Like I said, this is kind of an odd year that we would come with a couple of bills. I don't think they're very major in scope. I don't think that they're going to...that they mark the advent of a time where we are going to be deluged by an onset of companies that are going to be utilizing the term "bank." Hasn't happened in 88 years. This has been the same paradigm that we've used the last 88 years. There's a couple of bills that affected it this year. Could they have been put in one bill? They could have, yes. Ease of presentation, probably better that we separate them out and consider each--one was restricting, one was expanding. But this is by no means, I think,

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something that is going to be, in terms of volume, any more than it has been the 88 years it's been in existence overly burdensome in terms of number of bills coming forward. I think with respect to Senator Hansen's remarks, I think he's concerned about better enforcement mechanisms when he talks about should the Secretary of State's Office, upon, you know, being informed that there's an organization or incorporation of an entity, a business entity in Nebraska that's utilizing the term "bank," shouldn't they be looking at then the substance of that? Well, whatever the rule that we have is, I mean, that deals with enforcement and really doesn't deal with what's at issue here, which is what should be our...the type of rule we have? Should it be a specific listing, as Nebraska has had, of this particular thing is accepted, this particular thing is accepted, this particular thing is accepted, which isn't that long of an exception list, or should we move to a more general statute that just says, the Department of Banking shall prohibit any and shall enforce and make sure that there is no use of any...that there can be no use of the term "banking" which is confusing or misleading? And that's very...just a general guidance it gives to the world then. It doesn't define what is confusing or misleading or list specific types of use of the word "banking" which are prohibited. And so what we have is a more...because this thing doesn't occur...I mean, occurs so infrequently over the 88 years, I think it's okay to have a short list of those few things that are excepted. We're not opening up the flood...I mean, if we opened up the flood gates...it happened 88 years ago, we haven't experienced a flood at all. I don't think that's likely at this point. But I do appreciate his concern. I think with regards to his question about enforcement, he may have a really good point. Perhaps the Secretary of State's Office...and I don't know though if that would include then having to include hiring additional personnel or an additional duty... [LB88]

PRESIDENT SHEEHY: One minute. [LB88]

SENATOR PIRSCH: I think the banks themselves have a vested interest in policing the use of the term "bank." If somebody puts up a billboard, say, Payday Advance or something, and starts calling themselves "bank," Payday Advance Bank or Cash...you know, Cash Now Bank, you know, the banks are going to be...they have a vested interest/skin in the game in policing that and contacting the department. You know, I don't think that we need to rely on...and I think they do that very fastidiously now. They're very zealous in their guarding of the term "bank." So I don't think we need, you know, to necessarily hire new personnel when we're talking about enforcement, but that's something we can certainly talk about in the future. So with that, I thank you. [LB88]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. We have Senator Pankonin, followed by Senator Sullivan. Senator Pankonin. [LB88]

SENATOR PANKONIN: Thank you, Mr. President, members of the body. I'm going to keep this real short, to the point, what I think the bottom line is here. Obviously, there's

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some questions that have come up today about this issue and I think they're legitimate questions. This word "bank" has generic meaning and it has value. It has brand value for the industry. That's why the industry and the department take this very seriously because of the brand value that's been built up over many years of what this word means. And I think Senator Pahls will work on this sincerely between General and Select. My advice is to vote it on, and I think we'll have productive work on this issue done between the first and second round of debate. And I trust that he will pull the bill or, if we can't come up with a better solution, he'll work with all those involved. But I do hate to see this go another year without some further discussion and possible resolution of this issue that has come before us. So that's going to be my vote on this issue and I hope you do likewise. Thank you. [LB88]

PRESIDENT SHEEHY: Thank you, Senator Pankonin. Senator Sullivan. [LB88]

SENATOR SULLIVAN: Thank you, Mr. President and members of the body. I rise in support of LB88 and would offer just a cautionary note, because if we intend to ultimately make this list of exemptions more inclusive, I think that there will be then...that opens up the opportunity for even more groups, more entities wanting to be included, and eventually there will be some groups that really do want to use the word "bank" in their activities and start to conduct what might be considered to be some financial activity that really shouldn't be under the guise of calling themselves a bank. So I would prefer that LB88 stand as it is. Thank you. [LB88]

PRESIDENT SHEEHY: Thank you, Senator Sullivan. Senator Lautenbaugh. [LB88]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I, too, rise in support of this bill. And normally I'm not a big fan of passing something on to General File, when so many people have so many problems with it, with the promise that we'll fix it in some way, but this is one of those bills where I don't see the risk is very great. I trust Senator Pahls to keep his word and either come to terms with everyone or let this thing go. And timing being what it is, if we don't pass this on now, if we bracket it, we may never get back to it is my fear. So I'm hopeful that we will trust Senator Pahls, take him at his word, and just move this on to Select File and let him address the problems that have been pointed out today. Thank you very much. [LB88]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Are there additional members requesting to speak on LB88? Seeing none, Senator Pahls, you're recognized to close. [LB88]

SENATOR PAHLS: Thank you, Mr. President, members of the body, also for the discussion that we've had today. I think it's making us do a little bit more thinking, and I can assure you that if we pass this on I will make every effort possible to make this bill come out where people are satisfied with it; if not, it will not come out. Thank you.

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[LB88]

PRESIDENT SHEEHY: Thank you, Senator Pahls. You have heard the closing. The question before the body is on the advancement of LB88. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB88]

CLERK: 38 ayes, 1 nay, Mr. President, on the advancement. [LB88]

PRESIDENT SHEEHY: LB88 advances. Next item under General File. [LB88]

CLERK: LB184 is a bill introduced by Senator Louden. (Read title.) Introduced on January 12, referred to Natural Resources, the bill was advanced to General File. At this time, I have no amendments, Mr. President. [LB184]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Louden, you're recognized to open on LB184. [LB184]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. Today I bring before you LB184, a bill to authorize the Department of Natural Resources to administer the riparian water rights. Currently, there are two kinds of water rights: appropriated water rights, and riparian water rights. Appropriated water rights are given by the Department of Natural Resources if there is water available in a stream. In April of 1895, the state decreed that appropriated water rights would be used to allocate water in streams. It was decreed that the Department of Natural Resources or its predecessor would make arrangements and determine priorities of rights to use the public water of the state. Nothing was mentioned who was to make arrangements to determine for riparian water rights. Under the riparian rights principle, all landowners whose property is adjacent to a body of water have the right to make reasonable use of it. If there is not enough water to satisfy all users, allotments are generally fixed in proportion to frontage on the water source. These rights cannot be sold or transferred other than with the adjoining land, and water cannot be transferred out of the watershed. In this instance, LB184 sets out that the riparian rights are to be used to water livestock. The Hat Creek Basin at the present time is the only place in Nebraska where riparian water rights have been awarded. As stated in the bill, the court system must be the one to award riparian rights. This was done in the 1960s in the Hat Creek Basin. At that time nearly 50 years ago, it was agreed to have the Department of Natural Resources administer timing of the flow of the water right. They did so until an upstream rancher sold to a person from out of the area. That person declared that the department didn't have the authority to administer riparian rights. The Department of Natural Resources agreed that statute does not give them the authority, and consequently riparian water rights holders had to return to the court and secure a court order to restore the rights to receive a stream flow to water livestock. I have introduced LB184 to authorize the Department of Natural Resources to administer riparian water



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rights when these rights have been awarded by the court system. As stated in the bill, in order to have riparian water rights, a court must find that the tract of land in question borders a natural stream, came into private ownership prior to April 4, 1895, and was not separated from the land contiguous to the stream at any time. My understanding is that as the law is written now, it is a duty of the sheriff to administer any court order decree relating to these water rights. During the hearing, there was testimony in favor of the bill and as a neutral, but no testimony in opposition to the bill. And I would ask that you vote to advance LB184 to Select File at this time. Thank you, Mr. President. [LB184]

PRESIDENT SHEEHY: Thank you, Senator Louden. You have heard the opening to LB184. Are there members requesting to speak? Senator Lathrop. [LB184]

SENATOR LATHROP: Thank you, Mr. President. I would ask that Senator Langemeier yield to a question, if he would. [LB184]

PRESIDENT SHEEHY: Senator Langemeier, would you yield to questions? [LB184]

SENATOR LANGEMEIER: Yes. [LB184]

SENATOR LATHROP: Senator Langemeier, I have never practiced law in the area of water rights, so I'm going to...you're the Chair of the Natural Resources Committee and this came from your committee. Is that right? [LB184]

SENATOR LANGEMEIER: Yes. [LB184]

SENATOR LATHROP: Okay. I just want to ask you some questions just so that I can better understand the bill and understand what we're doing and what we're not doing, and then I'll see if I agree with you. Why don't you start by telling me what a riparian water right is so that I don't start off assuming it's one thing and find out it's another. [LB184]

SENATOR LANGEMEIER: I'm going to read you a little portion and I, too, have never litigated anything, so that's my disclaimer to the start. I can't even win fights with my three-year-old kid. Riparian rights are attached to a parcel of land, and that parcel of land has to be in private ownership, and it had to be prior to 1895, actually April 4 of 1895. And you cannot change the size of your parcel of land to have those riparian water rights. For an example, Senator Louden gave a pretty good example of his district and he's the only one out there that has one, is as that water flows down the stream, it has to be left in the stream, it can't be diverted. Typically it's for livestock watering. And so what happened in this case is an individual went and dammed that up, and so there's no other water out there for watering of livestock. And so that's how you get the riparian right. If I...let's say I owned a piece of ground continuously...well, I can't, I'm not old

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enough, but my family has owned it and we haven't changed the size of it, whatnot. I could still make a claim to a riparian right in this basin. [LB184]

SENATOR LATHROP: Does the riparian right allow me to put my irrigation equipment in the stream and pull water out of it? [LB184]

SENATOR LANGEMEIER: In some states they're doing that. These riparian rights are for...you cannot divert the water from the stream. You can use it as it flows through and you can ride a canoe down it. Well, there's not that much water in this basin, but you could ride a canoe down it, you could have your livestock water from it, but you can't divert it. You can't even go get it...well, I guess you could bring a little home for domestic use, but nothing else. [LB184]

SENATOR LATHROP: But I can't...this riparian rights have nothing to do with irrigating. [LB184]

SENATOR LANGEMEIER: Right. This is a right to make that water flow through your property for, in this case, livestock use. [LB184]

SENATOR LATHROP: Okay. Here's my next question, it looks like 46-226 was a one-paragraph statute before this amendment,... [LB184]

SENATOR LANGEMEIER: Yes. [LB184]

SENATOR LATHROP: ...and that statute basically said the department, which is the Department of Natural Resources, will have authority to make proper arrangements for determination of priorities of right. So the department was doing this before. [LB184]

SENATOR LANGEMEIER: No. The department...riparian rights go back to what we call common law prior to...well, you know this. I'm preaching to the choir. [LB184]

SENATOR LATHROP: I understand common law. [LB184]

SENATOR LANGEMEIER: But this goes before statute. So the court was the only one that could administer a riparian right, and then they controlled it. So if you had a problem, you always had to go to the court for remedy. And so then the sheriff went and delivered to your neighbor the issue. DNR has the right within the statute that you read for surface irrigation, and other in-stream flow rights that they give out. They determine senior appropriation, junior appropriation. So what we're allowing them to do is once you go to the court and you get the court order that says you have this right, then now DNR can handle it on a daily basis to make sure the flow is there so you don't have to continue to go back to court. [LB184]

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SENATOR LATHROP: Okay. So we start out with an idea that the Department of Natural Resources administers or, as in the first paragraph... [LB184]

PRESIDENT SHEEHY: One minute. [LB184]

SENATOR LATHROP: ...in what used to be the law before this proposed amendment, the department was authorized to figure out and sort out and have a system for sorting out riparian rights in the water. [LB184]

SENATOR LANGEMEIER: Not in riparian rights. That's why the court system was in. So that's what Senator Loudon is asking us to do, is to let DNR then not make that determination. You still have to go to court to get a riparian right. [LB184]

SENATOR LATHROP: Okay. [LB184]

SENATOR LANGEMEIER: DNR cannot grant that. [LB184]

SENATOR LATHROP: So you go to court and now I have my...but we're also saying...and this is where I don't understand, maybe we're dealing with different kind of water rights all in one statute and I'm misusing terminology. But it looks like in the first paragraph they're authorized to deal with water rights, and then in the amendment we're talking about things that the department may and cannot do. In other words, it looks like we're setting a priority here. [LB184]

PRESIDENT SHEEHY: Senator Lathrop, you're...we're just moving to your next 5 minutes. [LB184]

SENATOR LATHROP: Okay. [LB184]

SENATOR LANGEMEIER: The goal is this, is not to set a priority to give...there's no clear court case that says riparian has a right over some other type of use. We're just talking about the administration of a riparian right, giving that to DNR so then they can go enforce the court order to who has the riparian right. [LB184]

SENATOR LATHROP: Let me ask it differently. Paragraph (2)(b) says, the department may close surface water appropriations for riparian rights only when the riparian right is used for watering livestock in the streambed. What are we fixing there? [LB184]

SENATOR LANGEMEIER: I don't have... [LB184]

SENATOR LATHROP: And then the next sentence says, "Surface water appropriations for livestock watering shall not be closed." [LB184]

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SENATOR LANGEMEIER: Sure. [LB184]

SENATOR LATHROP: It looks like they're the same thing. [LB184]

SENATOR LANGEMEIER: Yeah. I'd like to get a copy of what you have there. Oh. I guess I have this. This is the old language that's within that bill. The intent of a riparian right is as we have an upstream...in this case you have an irrigator that wants to dam up the water and use it for irrigation, which a riparian right would make sure it still has the right to flow through my ranch to irrigate my livestock. Many of these ranchers don't have any other type of water other than this riparian right in the stream, and Senator Loudon, Hat Creek, as it flows through to meet that obligation. And I'll review your question here a minute. [LB184]

SENATOR LATHROP: While you're looking at that, let me tell you what my concern is. Last Friday the Supreme Court ruled that our LB701 fix was unconstitutional. The court concluded, as I read the opinion, that we cannot use property taxes, which is what LB701 does, to solve our obligation to Kansas. And the court concluded, and I'm not sure, it may have been the way packaged LB701 and we'd be to blame for that, but the court concluded that LB701 was a fix of a state problem and we used local property taxes to do it, and that's unconstitutional. So I expect that...and you can tell us, you're Chair of Natural Resources, but I expect we will be dealing with or may well be dealing with the Republican River Valley again. I want to make sure that what we're doing in Senator Loudon's bill isn't closing the door to any option available to the state to address water rights and the limitation on those rights by the Department of Natural Resources as a part of any new fix that we need to craft in the wake of the court's decision. That's sort of a question. Maybe it's more of a statement. I just told you why I'm concerned about it. And so are we...let me just ask you this. Are we closing the door to any of our options that we may need available to us as a Legislature in dealing with the consequences of the Supreme Court's decision last week regarding LB701? [LB184]

SENATOR LANGEMEIER: No. [LB184]

SENATOR LATHROP: And are we just dealing with a narrower use of the river, which is watering animals? [LB184]

SENATOR LANGEMEIER: Exactly. What we're doing is we're adding more authority to DNR for the implementation of a riparian right. DNR is... [LB184]

SENATOR LATHROP: And the riparian right, just so that I understand it, it doesn't have anything to do with irrigating. [LB184]

SENATOR LANGEMEIER: Right. [LB184]

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SENATOR LATHROP: Is that right? [LB184]

SENATOR LANGEMEIER: Right. [LB184]

SENATOR LATHROP: So it's not about the guy who sticks his equipment into the Republican River and draws water out to water the corn. This is just somebody who wants to use the water as it passes by to water his livestock. [LB184]

SENATOR LANGEMEIER: Correct. [LB184]

SENATOR LATHROP: Or to take some water into the house and boil. [LB184]

SENATOR LANGEMEIER: There you go. [LB184]

PRESIDENT SHEEHY: One minute. [LB184]

SENATOR LATHROP: That's all we're doing. [LB184]

SENATOR LANGEMEIER: Right. And there is no... [LB184]

SENATOR LATHROP: And we're not limiting our options whatsoever with respect to any fix that we may need to craft in the wake of the Supreme Court's decision. [LB184]

SENATOR LANGEMEIER: No, and we wouldn't want to do that. [LB184]

SENATOR LATHROP: I agree. Okay. Thank you. [LB184]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Louden. [LB184]

SENATOR LOUDEN: Thank you, Mr. President. Are there any other lights on? [LB184]

PRESIDENT SHEEHY: No, there are not. [LB184]

SENATOR LOUDEN: May I use this as my closing then? [LB184]

PRESIDENT SHEEHY: Yes, you may. [LB184]

SENATOR LOUDEN: Okay. As the questions that Senator Lathrop ask, and of course his was concerned about are we doing something in some of the other rivers systems that would affect this, at the present time, you have to remember, a riparian right can only be issued by the court and it has to be in land that was privately owned before...in April of 1895, so there are some very narrow guidelines and riparian has been just for domestic use. And as this bill states, it's for watering livestock. And as they've

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mentioned in the one part about the appropriation, I think it was the sentence about the watering of livestock in the streambed, and that surface water appropriations for livestock watering shall not be closed. And that's, when you think of it, is commonsense. If someone has an appropriation upstream to water livestock, you can't close that appropriation that's designated for watering livestock just to have a riparian rights to water livestock below stream. So most of this is common law and that's the reason it's commonsense, when you figure it out. It's done in very few areas that...where there is a scarcity of water. There also has to be...when it gets into the court system to decide this, they have to decide whether or not other water is available, such as drilling wells. So most of your areas in other parts of the state, there are very few areas that there isn't ground water available. So that is always taken into consideration when someone takes this into court. In order to win their court case, they have to show that there is not any other water available. And that's the reason in the Hat Creek Basin that's the system up there. There are very few wells. There in the sixties when they had the Great Plains Conservation effort by the federal government there was a lot of cost share to put in pipelines in those areas. But in the areas that there was live water, as they say, flowing through, they didn't put a pipeline in because it was so hard to find wells to serve the pipelines. I think some of those pipelines are about 25 miles long, and some of them are only served by one well. So it's a very precarious situation up there. As you get into other areas in the Chadron area, a lot of those people haul water in the summertime when the creeks dry up, so it isn't something that is taken lightly in that area. And this is what this is all about. When it was decreed in the sixties, I believe it was, that they would get the riparian rights, it was agreed to let the Department of Natural Resources administer those rights. In other words, they would release the water from some of the appropriated rights in the fall of the year when there was cattle down on these streams. And people like that got along for nearly 50 years like that until it was...a new owner came into the area and decided that the Department of Revenue (sic) actually didn't have authority to do that. And as they looked in the statutes, they didn't, so that was challenged. So this is what it's all about. It gives them just the authority to administer the rights, doesn't change anything different than what rights were already there. With that, I would ask for you to advance this to Select File. And thank you, Mr. President. [LB184]

PRESIDENT SHEEHY: Thank you, Senator Loudon. You have heard the closing. The question before the body is on the advancement of LB184. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB184]

CLERK: 37 ayes, 0 nays, Mr. President, on the advancement of LB184. [LB184]

PRESIDENT SHEEHY: LB184 advances. Mr. Clerk, do you have items for the record? [LB184]

CLERK: I do, Mr. President. Thank you. Your Committee on Enrollment and Review reports LB53, LB28, LB48, LB204, LB331, LB135, LB32, LB7, LB55, LB20, LB102, and

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LB201 to Select File, some of those having Enrollment and Review amendments attached. That's all that I have, Mr. President. Thank you. (Legislative Journal pages 445-448.) [LB7 LB20 LB28 LB32 LB48 LB53 LB55 LB102 LB135 LB201 LB204 LB331]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll continue with items under General File. []

CLERK: LB379 is a bill originally introduced by Senator Haar. (Read title.) The bill was introduced on January 16 of this year, referred to Natural Resources. The bill was advanced to General File. At this time, I have no amendments to the bill, Mr. President. [LB379]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Haar, you're recognized to open on LB379. [LB379]

SENATOR HAAR: Mr. President, members of the body, LB379 extends the scrap tire grant program which was set to expire on June 30 of this year. This bill extends the program until June 30, 2014. The scrap tire grant program sets aside \$1 million from Waste Reduction and Recycling Initiative (sic) Fund. No new money is required. The money for this actually comes from the \$1 per tire when you buy a new tire. LB379 advanced from the Natural Resources Committee without any "no" votes and had no opposition at the hearing. The scrap tire recycling program has been very successful and has had projects all around the state. Projects include scrap tire cleanup and collection. The tires are then used to make roads, playground equipment, and other items such as park benches. I urge you to support LB379 as an effective and important recycling program that cleans up the state as well as prevents mosquitoes and provides resources. Thank you. [LB379]

PRESIDENT SHEEHY: Thank you, Senator Haar. You've heard the opening of LB379. Members requesting to speak are Senator Fulton, followed by Senator Pirsch. Senator Fulton. [LB379]

SENATOR FULTON: Thank you, Mr. President. Would Senator Haar yield to a question? [LB379]

PRESIDENT SHEEHY: Senator Haar, would you yield to a question? [LB379]

SENATOR HAAR: Yes, yes. [LB379]

SENATOR FULTON: Senator, I don't think I have a problem with this bill. But on the fiscal note I wonder if you could provide an explanation. LB379 could impact the type of grants approved from the Waste Reduction and Recycling Incentive Fund. But it would not change the total amount of expenditures. So what this is...this isn't going to change

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the expenditure, you know, by way of the Legislature or the overall Cash Fund expenditure. But perhaps it would limit other grants that could be made within the purview of this fund. Can you explain what some of those other grants might be? [LB379]

SENATOR HAAR: Actually, I can't, I'm sorry. [LB379]

SENATOR FULTON: Okay. [LB379]

SENATOR HAAR: But the point I would make at this is that the recycling of the tires comes entirely from the \$1 tire...you know, \$1 you pay for every new tire you buy. So there is no new spending in it. In the past, I believe what that is referring to, there's been some other monies expended to actually use these scrap tires. For example, they crumb them up, they put them into small pieces and then use them in roads and so on like that. [LB379]

SENATOR FULTON: Okay. [LB379]

SENATOR HAAR: So in the past some of the money has been used, for example, to build playground mats and those kinds of things. But the money for the recycling itself comes from that \$1 per tire. [LB379]

SENATOR FULTON: Okay. That would be the only...thank you, Senator Haar. That would be the only apprehension I have with this. I was just reading through the fiscal note and not being terribly familiar with this program, I do recall that we had a bill, I think it was Senator Louden had a bill on this last year, and we've talked about this in another bill we had this year. So my assumption is that the only way that grants that are funded presently...well, put it this way. Grants that are funded presently by the Waste Reduction and Recycling Incentive Fund would be competing now with the extension of the sunset that we have done for this tire grant. So I'm just curious what those other programs would be. If Senator Haar can get that information later on, that would be great. I think this is...LB379 is okay, but that is a concern anyway. So thank you, Mr. President. [LB379]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Pirsch. [LB379]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Haar would yield to a quick question. [LB379]

PRESIDENT SHEEHY: Senator Haar, would you yield to questions? [LB379]

SENATOR HAAR: Yes. [LB379]



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SENATOR PIRSCH: Well, thank you very much for coming forward with this legislation, the debate here today. Just a question; I'm trying to familiarize myself with the program. [LB379]

SENATOR HAAR: Sure. [LB379]

SENATOR PIRSCH: This program was set up originally when, the initial date, if you know offhand. If you don't know, that's fine. [LB379]

SENATOR HAAR: Well, and I can't answer that one either. I just know that it, you know, expires this year. [LB379]

SENATOR PIRSCH: Sure. [LB379]

SENATOR HAAR: My understanding, it's about a four-year grant. [LB379]

SENATOR PIRSCH: Very good. And the total dollars raised as a result of this \$1 fee that's collected on the sale of new tires, what is that in the aggregate, the total amount raised approximately every year, if you know? [LB379]

SENATOR HAAR: We're talking about, about \$1 million. [LB379]

SENATOR PIRSCH: About \$1 million. [LB379]

SENATOR HAAR: Yeah, yeah. [LB379]

SENATOR PIRSCH: Okay. And is the...I take it, was this initially set up because the...obviously, used tires have a usage and can be recycled in some manner, as you pointed out. I think they're making Astroturf out of it now... [LB379]

SENATOR HAAR: Right. [LB379]

SENATOR PIRSCH: ...and for landscaping and whatnot. Is...was this fund created because the use of these, I guess, there's a difference between...there's a spread between the amount that the people who would utilize these recycled tires are willing to pay for it; it doesn't quite meet the cost to them of going out on their own and recycling, I mean, picking up and picking up the tires and utilizing them. Is that why we're kind of subsidizing the industry, correct? [LB379]

SENATOR HAAR: Right, yeah. And, for example, there were 37...last year there were 37 scrap tire events which were awarded \$663,000, collected and removed 6,500 tons of scrap tires. [LB379]

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SENATOR PIRSCH: How many tons was that? [LB379]

SENATOR HAAR: Six thousand five hundred and ninety-three tons of scrap tires. [LB379]

SENATOR PIRSCH: Okay. And so the...when you look at the overall picture in utilizing or having these recyclers then take those 6,593 tons of tires out of what may be littered along the state, that overall it's a cost savings to the state to help encourage these industries then to pick them up and reutilize them and recycle them for AstroTurf and whatnot. Is that... [LB379]

SENATOR HAAR: Right. Yeah. Well, as I said earlier, it helps abate mosquito problems. For example, on my own property, when we moved into it in 2000 there was a huge pile of old tractor tires and everything. So it gets rid of those tires that otherwise would probably end up in landfills. So I think the additional savings here is that you're actually saving, you know, landfill space. And using this as...instead of just looking at it as something you're throwing away, you're using it as a resource. [LB379]

SENATOR PIRSCH: Okay. So when you overall look at those three factors--the mosquitoes, the landfill space that's saved, and the lack of then littering of the tires to the tune of 6,593 tons--you're saying that that outweighs the cost of the program, the \$1 million to the state. [LB379]

SENATOR HAAR: Right, yeah. And actually, again the...for this particular recycling project for the tires, it's paid for by a fee. Every time we buy a new tire,... [LB379]

PRESIDENT SHEEHY: One minute. [LB379]

SENATOR HAAR: ...you pay \$1 per tire, and that's what pays for this. [LB379]

SENATOR PIRSCH: Okay. Well, I really appreciate your explaining a little bit of the history of the program. And it sounds like it is a very worthwhile program for the state to continue. So I'll support this bill. [LB379]

SENATOR HAAR: Thank you. [LB379]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Stuthman. [LB379]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I would like to ask Senator Haar a couple of questions. [LB379]

SENATOR HAAR: Sure. [LB379]

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PRESIDENT SHEEHY: Senator Haar, would you yield to questions? [LB379]

SENATOR HAAR: Yes, thank you. [LB379]

SENATOR STUTHMAN: Senator Haar, this grant is to, hopefully, take care of a lot of the scrap tires. Do you feel that this grant program that's been so successful in the past has addressed the total need of money to take care of all of the scrap tires that are available in communities? [LB379]

SENATOR HAAR: Well, the answer to that is just several days before we could get bills in, one of the primary persons who lives in my district, her name is Becky Vandenberg, called me and said, did you know this is going to expire. And I asked her that same question. I said, have we gotten rid of all the tires? And she said, by no means. And this group, for example, even went down to Hallam after the tornado and picked up tires all over the place and recycled them. But she said that we don't have to worry about running out of used scrap tires. [LB379]

SENATOR STUTHMAN: When these grants are given to communities...and I know we have them in my community, in Columbus. You know, they'll have a certain time frame when you can bring your scrap tires to the Agricultural Park there and then they're hauled away. Does...is there a group, and I don't...I'm not aware of this, but I wanted to ask that question. Is there a group that's conducting the scrap tire days? Are they being subsidized or is the city or the village making money off of this? [LB379]

SENATOR HAAR: The program is run by volunteers. And when you dump off the scrap tires, like they do out on Highway 6 there at Sapp Brothers, that's all done by volunteers. And as far as I know, nobody else makes money off of this particular program. [LB379]

SENATOR STUTHMAN: And those funds are given to a community to conduct or have that scrap tire cleanup day? [LB379]

SENATOR HAAR: Yes. Yeah. [LB379]

SENATOR STUTHMAN: What type of...where these tires are sold to or who purchases these tires or where do they go after they have this cleanup day? [LB379]

SENATOR HAAR: Right. Okay, first of all, some of them are converted into what they call crumb rubber, which is tiny little bits of rubber. And that's been used in various ways in Nebraska. For example, 20 miles of road last year were made of rubber-modified asphalt. So one of the things this goes into is making roads. David City actually uses it, the crumb rubber, the little pieces, to put into their landfill to cover various layers. You know, you put down a layer of stuff sort of as a cover. And then they'll put the next layer

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of garbage and then a cover. So David City has been using that. And then there is a company that actually turns these into park benches and picnic tables. And then they also turn them into these little mats that you find on playgrounds, and some of the money has gone to that. [LB379]

SENATOR STUTHMAN: Um-hum. But, Senator Haar, when these tires are collected and then they have to be hauled to a site, you know, that does that, the shredding of the tires or the processing of them,... [LB379]

SENATOR HAAR: Right. Yeah. [LB379]

SENATOR STUTHMAN: ...is that part of the grant money to deliver them to that site? [LB379]

SENATOR HAAR: Yes. Yeah. [LB379]

SENATOR STUTHMAN: Or does that site...does that site purchase some of those tires? Those are some of the questions that I have. [LB379]

SENATOR HAAR: Sure. [LB379]

SENATOR STUTHMAN: I mean, what is this grant money really utilized for, you know? [LB379]

SENATOR HAAR: Okay. [LB379]

SENATOR STUTHMAN: Yes, we're having the cleanup days, which is good,... [LB379]

SENATOR HAAR: Uh-huh. [LB379]

SENATOR STUTHMAN: ...but does the community get the money for that? Do the contractors that...do they purchase these tires or... [LB379]

PRESIDENT SHEEHY: One minute. [LB379]

SENATOR STUTHMAN: ...or is the community responsible, because they have received this grant money, that they have to deliver the tires to South Dakota or Kansas or wherever it's at? [LB379]

SENATOR HAAR: Oh. Oh. Okay. Sorry, I didn't understand quite... [LB379]

SENATOR STUTHMAN: No, that's perfectly okay. [LB379]

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SENATOR HAAR: Yeah, it's used, according to what I've been told, it's used for the collection and removal so, for example, to haul all those tires to a place where they're processed, money goes into that and into some of the collection costs involved with the tires. [LB379]

SENATOR STUTHMAN: So the collection cost would be, you know, utilizing a place and as far as staffing of it or having people hired and paying them, you know, to receive these tires. [LB379]

SENATOR HAAR: Yeah. [LB379]

SENATOR STUTHMAN: Would that be part of it? Because I know there is some stipulations as to which ones you can bring there. And, you know, hopefully there is nothing else dumped off with a load of tires. [LB379]

PRESIDENT SHEEHY: Time, Senator. [LB379]

SENATOR STUTHMAN: Thank you, Mr. President. [LB379]

SENATOR HAAR: Yes. Yeah. [LB379]

PRESIDENT SHEEHY: Senator Fulton. [LB379]

SENATOR FULTON: Would Senator Haar yield to another question? [LB379]

PRESIDENT SHEEHY: Senator Haar, would you yield? [LB379]

SENATOR HAAR: Yes, yes. [LB379]

SENATOR FULTON: Why was this sunsetted in 2009? [LB379]

SENATOR HAAR: The sunset was simply inserted to see if the program was working, if it would make a difference. And that's also why we're including the new sunset, so that it comes around again to make sure that we still have enough tires to recycle and that the program is being effective. [LB379]

SENATOR FULTON: Now part of the bill...part of this bill has...and this is not the part...this is existing statute,... [LB379]

SENATOR HAAR: Uh-huh. [LB379]

SENATOR FULTON: ...grants awarded for fees. So this is page 5, line 11, so we're in subsection (5) here: Grants awarded from fees collected under (6) may be renewed for

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up to a five-year grant period. So if there is a request for a...and so these are five-year grant periods. [LB379]

SENATOR HAAR: Okay. [LB379]

SENATOR FULTON: Page 3 of the bill says that...page 3, line 15, this is for new scrap tire projects only. So if one applies for this grant in this year,... [LB379]

SENATOR HAAR: Uh-huh. [LB379]

SENATOR FULTON: ...then we are saying that that grant will be effectual for the next five years. But if someone applies for the grant next year... [LB379]

SENATOR HAAR: Aha, I see what you're...yeah. [LB379]

SENATOR FULTON: Can you explain, do we have a problem here? If someone...so what I'm reading is that a new project that gets applied for in the year 2010 would be disallowed because it would not be able to be a five-year grant. I know I'm getting into the minutia of these things, but I don't have a full familiarity with this. And so... [LB379]

SENATOR HAAR: (Laugh) No, these are good questions. And we didn't see what you're seeing there. I mean, we just didn't catch it. The sunset may indeed interfere with the grant time, is what you're saying. [LB379]

SENATOR FULTON: Yeah, it seems to me that... [LB379]

SENATOR HAAR: And we'll look a that. [LB379]

SENATOR FULTON: ...these are five-year...if the grant is approved for a five-year period and only a new project can be applied for within the section that you're seeking to change of this bill, then we would, in effect, be precluding anyone who requests...any grants requested after the year 2009. I could be completely off, but just on its face that's what it seems that this bill does. [LB379]

SENATOR HAAR: Yeah. Yeah. It certainly does. Thank you for bringing that to our attention and we'll iron that out. [LB379]

SENATOR FULTON: Okay. I can talk with you off the mike. Thank you, Senator Haar. Thank you, Mr. President. [LB379]

SENATOR HAAR: Yeah. [LB379]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Are there additional members

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requesting to speak on LB379? Seeing none, Senator Haar, you're recognized to close. [LB379]

SENATOR HAAR: Mr. President, members of the body, thank you for your questions. Once again, being a new senator and somebody brings you a bill within a few days of the deadline, we didn't see some of the small problems with the bill and we'll get those ironed out. But the large overall goal of this, and it's been successful, is to reduce all those scrap tires that we generate when we get new tires or that we find all over the state in piles. Thank you very much. [LB379]

PRESIDENT SHEEHY: Thank you, Senator Haar. You have heard the closing. The question before the body is on the advancement of LB379. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB379]

CLERK: 37 ayes, 0 nays, Mr. President, on the advancement of LB379. [LB379]

PRESIDENT SHEEHY: LB379 advances. Next item under General File. [LB379]

CLERK: LB142 by Senator Hansen. (Read title.) Introduced on January 9, referred to the Agriculture Committee, the bill was advanced to General File. There are committee amendments, Mr. President. (AM56, Legislative Journal page 352.) [LB142]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Hansen, you are recognized to open on LB142. [LB142]

SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. LB142 closes a loophole in the existing Nebraska Brand Committee statute that deals with the transfer or lease of a registered brand. This bill prohibits the recording of a brand unless the lienholder of the livestock that are owned or acquired by the brand owner has consent to...of the sale, the assignment, or transfer of the brand, or the brand owner makes a notarized written statement that no lien or security interest in the livestock owned or acquired by the brand owner exists at the time of the proposed assignment. LB142 also increases the fees for recording of the transfer of the brand from not more than \$35 to not more than \$50. A bank in my area was defrauded by a customer of the bank who leased a brand to a third party. A bank...or the bank in my district performed its due diligence by inspecting the cattle that were in question and found them to be in the care and being fed by their customer and carrying the customer's brand. When this customer defaulted on his debt to the bank, the bank attempted to recover the possession of the livestock collateral. The bank was then subject to the burden of proving that the cattle were branded with a brand which had been leased to a third party and that the cattle were actually owned by the bank customer. The Nebraska Bankers, the Nebraska Cattlemen, and the Nebraska Brand Committee all agree that this bill is very much needed to close the loophole that ensures that a fraudulent act like this will

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not happen again. I urge you to accept LB142. And there are committee amendments, as the Clerk said. Thank you, Mr. President. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Hansen. You've heard the opening to LB142. As noted, there is a committee amendment from the Agriculture Committee. Senator Carlson, you're recognized to open on AM56. [LB142]

SENATOR CARLSON: Mr. President and members of the Legislature, the amendment to this bill is an instance where, I think, it's a little bit unusual. Many times the financial institutions want to put requirements on that, in a sense, assign more responsibility to the person borrowing money. In this case it really adds some responsibility to the financial institutions to get the information that they want for the brand committee and I think that it makes sense. In the original bill, before an owner could sell, transfer, assign, or lease a brand, which is acceptable by law, they either had to have written consent by the lienholder for the owner to sell, assign or transfer or a written statement under oath by the owner that there is no lien on the livestock that carry the brand. Under the amendment, it is the responsibility of the lienholder to notify the brand committee that there is a lien on the livestock. And then if there is a request to the brand committee to transfer that brand, they've got notification there's a lien on the livestock and they wouldn't allow the transfer to take place. And I think that that makes the law a little clearer, a little more friendly to the brand committee and to the owners that are trying to transfer or sell on a legitimate basis. So I would ask for your support of AM56. Thank you. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Carlson. You have heard the opening of AM56, amendment from the Agriculture Committee to LB142. Members requesting to speak are Senator Stuthman, followed by Senator Loudon, and Senator Hansen. Senator Stuthman. [LB142]

SENATOR STUTHMAN: Thank you, Mr. Lieutenant Governor. Members of the body, I would like to ask Senator Hansen a couple questions. [LB142]

PRESIDENT SHEEHY: Senator Hansen, would you yield? [LB142]

SENATOR HANSEN: Yes, I would. [LB142]

SENATOR STUTHMAN: Senator Hansen, are we talking about the brand or are we talking about the liens of the brand holder? [LB142]

SENATOR HANSEN: Mainly the transfer of the brand and the use of that brand by a third party. [LB142]

SENATOR STUTHMAN: So in other words, if...let's say if I've got cattle in a brand area



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and I have them branded, but I'm leasing those cattle out to an individual that's in a brand area, explain to me the process that this bill would address in that situation. [LB142]

SENATOR HANSEN: It wouldn't address anything. If you retain ownership of the cattle and you just take them out of the brand...into the brand area, you'd be asked to have them inspected going in and coming back out. Has nothing to do with this bill. [LB142]

SENATOR STUTHMAN: It has nothing to do with the item of the brand, in other words. [LB142]

SENATOR HANSEN: Not as much as it does on who the money was lent to and if that borrower of the money on the cattle transfers those cattle in another brand, if they rebrand the cattle for a third party. [LB142]

SENATOR STUTHMAN: Okay, Senator Hansen, I'll give you another illustration. Let's say that I would purchase cattle from a brand area, from a...not in a brand area; some of them are branded, some of them are not branded, some of them are branded that are not coming from a registered brand area. And I commingle those cattle and I happen to sell those to Lexington to the slaughter plant. Does that slaughter plant, you know, they check the brands. And if I don't have all of those brands identified on...from the purchase sheets that I have purchased these animals from, how does that...how does that...this bill reflect the situation with the packing plant in Lexington that's in a brand area? And they require statements of...purchase statements from individuals from brand areas and recorded brands and individuals from nonbrand areas that are commingled. How does this address that? [LB142]

SENATOR HANSEN: It wouldn't address that at all, Senator. [LB142]

SENATOR STUTHMAN: It won't address that as all as far as a lien? [LB142]

SENATOR HANSEN: No, it's a...I'm sorry. It's your responsibility to show that you had ownership of those cattle when they were coming into the brand area, as if you were taking them to the Tyson plant in Lexington, like you said. [LB142]

SENATOR STUTHMAN: But say somewhere down the line the people that I had purchased the animals from, you know, that banker had a lien on them, and they didn't...that lien wasn't addressed, wasn't paid for to the bank. Could that bank that originally had the lien on those cattle that I purchased and he they would find out that they were sent to Lexington and sold there, could that individual bank, you know, request that those animals were under his lien? [LB142]

SENATOR HANSEN: I think they would, Senator. But as long as a brand wasn't

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transferred, this bill doesn't address that. But I know where you're coming from, that if you buy cattle that are unbranded...and there is no requirement in the state of Nebraska that cattle have to be branded. Those are just nonbranded cattle coming into the brand inspected area and they are listed as such. And then it's up to the bank... [LB142]

PRESIDENT SHEEHY: One minute. [LB142]

SENATOR HANSEN: ...to find out whether you took those cattle without...or that you resold cattle that a bank had a lien on. This bill should not...I mean, it's covered under law now but it doesn't...this bill does not change that. [LB142]

SENATOR STUTHMAN: Okay, thank you, Senator Hansen. I do also have an issue with raising the fees. And I will discuss that in another time that I'm allowed. Thank you, Mr. Lieutenant Governor. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. (Visitors introduced.) Additional members requesting to speak on AM56 from the Agriculture Committee is Senator Louden, followed by Senator Hansen, and Senator Stuthman. Senator Louden. [LB142]

SENATOR LOUDEN: Thank you, Mr. President and members. I think this amendment, AM56, I'll certainly support because I think it improves the bill considerably, which it really is the whole, you might say, the guts of the bill, I guess, being as we're talking about livestock. As I look at the thing, and mostly what it's about is the transfer of...whether or not the brand committee can transfer a brand. And all they want is some kind of instrument to show that there isn't a lien on the cattle that those brand carried. I'd like to ask Senator Hansen a question, if he would yield, please. [LB142]

PRESIDENT SHEEHY: Senator Hansen, would you yield to questions? [LB142]

SENATOR HANSEN: Yes, I will. [LB142]

SENATOR LOUDEN: Senator Hansen, is that correct that what this is all about is that the brand committee can...has to have notice before they can transfer a brand of whether or not there's any lien on the cattle? That they... [LB142]

SENATOR HANSEN: That's true. And in the amendment, and I agree with you and I have my light on to say that the committee amendment improves the bill because it's the bankers, it's the banking industry, that will notify the brand committee that there's been a transfer. They will ask the lienholder, have you transferred a brand? That's part of their due diligence and that's something new. According to LB142, as originally written, it was the duty or the responsibility of the person who was transferring the brand to make sure that everybody in the loop knows that that brand was transferred. Now it's the responsibility of the lienholder. [LB142]

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SENATOR LOUDEN: And that's mostly to show whether or not, when someone wants to transfer or sell a brand, whether or not it's carrying anything, it doesn't have a clear title. It's no different than a clear title for a lien on a car or anything else. And that's what this is all about. [LB142]

SENATOR HANSEN: That's correct. That brand is personal property. And we need to have it so we can sell it, transfer it, anything like any other personal property. [LB142]

SENATOR LOUDEN: And then the part where they're raising it from \$35 to \$50, that's just raising the limit. That doesn't necessarily mean they're going to charge \$50. Is that correct? [LB142]

SENATOR HANSEN: That's correct. I did check with the Nebraska Brand Committee. In the year...their fiscal year starts July 1, so in '06-07 they had 755 transfers; in '07-08 they had 803. The big majority of those were either \$25 or less, and the less goes down as far as to \$1 for okaying a transfer. [LB142]

SENATOR LOUDEN: Yeah. Now do you know how many of those...did they say how...were there very many of those transfers that included the cattle with the brand? [LB142]

SENATOR HANSEN: I don't know that. [LB142]

SENATOR LOUDEN: Or were those mostly just someone selling their brand that...or... [LB142]

SENATOR HANSEN: Leasing a brand, yes. [LB142]

SENATOR LOUDEN: Or turning it over to a relative or something like that. Thank you, Senator Hansen. [LB142]

SENATOR HANSEN: Um-hum. [LB142]

SENATOR LOUDEN: With the amendment on there, I certainly support the amendment. And I would support the bill as amended. So I think the Agriculture Committee did a very good job on this because I'd read this bill early on and I was somewhat dubious about it. But I think they've done a very good job of tightening it up and making it work. Thank you, Mr. President. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Hansen. [LB142]

SENATOR HANSEN: Thank you, Mr. President. I just want to reiterate to Senator

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Carlson, the Chairman of the Ag Committee, who explained the amendment, he did a good job. And it takes the responsibility away from strictly the owner of the cattle who transfers a brand and puts it on the responsibility...adds a part of due diligence to a bank to ask if that brand has been transferred. That's all I had, Mr. President. Thank you. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Hansen. Senator Stuthman. [LB142]

SENATOR STUTHMAN: Thank you, Mr. Lieutenant Governor, members of the body. I would like to engage in a little conversation and ask a couple questions of Senator Hansen. [LB142]

PRESIDENT SHEEHY: Senator Hansen, would you yield to questions? [LB142]

SENATOR HANSEN: Yes, I will. [LB142]

SENATOR STUTHMAN: Senator Hansen, I will say that I'm in support of the amendment, that I will say. I'm very supportive of that. A question that I had with that is, is you were stating the fact that how many dollars and the transfer of the brand. Did that mean individuals that sold their brands and the name when the individual sold the brand? And there are a lot of times when individuals, elderly people, you know, have quit ranching, quit farming and have no need for the brand and they've got a brand that is in real demand because of the way the brand is. Would that...is that really what that is only included or is that just transferring the fact that an individual has purchased cattle, he doesn't want to rebrand them, and he buys that brand and he registers that on those individual cattle? [LB142]

SENATOR HANSEN: Your second scenario was right. If a person sells a brand, that's different. And usually the brands that are sold are either sold at auction or reassigned through the brand committee because people don't renew their brand. There's hundreds of brands every year that aren't renewed, those come up on a sheet of paper, you know, on a Web site or wherever that they are for sale. But most brands...this bill deals with the transfer of a brand. If, in your scenario, that if you buy some cattle, don't want to rebrand them, put in a different feedlot for a feeding period, that that feedlot owner can lease you a brand, transfer his brand to those cattle, and then that has to be recorded because they're not the third party's cattle. They're still the person who took out the loan on the cattle. [LB142]

SENATOR STUTHMAN: So in other words, Senator Hansen, if I purchased 100 cows out of Montana and I did not want to rebrand them and get another brand on their hide, could I get that brand transferred on those 100 animals. [LB142]

SENATOR HANSEN: I don't think you'd want to transfer a brand from...where was the

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state, Montana? [LB142]

SENATOR STUTHMAN: From Montana. [LB142]

SENATOR HANSEN: From Montana. You'd just want to have them brand inspected on the way through the state and just have that be their brand. That's the brand...and you own it, but those aren't carrying your brand. As long as you have that piece of paper, it shows that you're not committing fraud. [LB142]

SENATOR STUTHMAN: Okay. Another question that I have for you, Senator Hansen, is the fact of it is your intent to change the limit on the fee from \$35 to \$50. I have some concern about that and I will discuss that. I do have an amendment up later on after we pass the amendment. And I'm very supportive of this amendment. Thank you, Mr. President. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Janssen, followed by Senator Sullivan. Senator Janssen. [LB142]

SENATOR JANSSEN: Thank you, Mr. President, members of the body. Clearly, not my area of expertise here. In going through the bill, the thing I wanted to look at was what Senator Stuthman just referred to. The thing I do take issue with or want a further explanation for, and I'll ask Senator Hansen to yield to answer my concerns, is the fee increase. From what I've heard, they're not currently using this fee increase, they wouldn't be using this, so I don't see the need to put in statute a fee, or I call them taxes, at this time, if it's not needed. I think it's up to the commission to come back to this body and show us that there is an actual need for the fee increase at the time. And I'll be very interested in seeing Senator Stuthman's amendment to this later on, and I think I'd probably be supportive of it from the sounds of it. But if you could just explain...if Senator Hansen would yield to a question. [LB142]

PRESIDENT SHEEHY: Senator Hansen, would you yield? [LB142]

SENATOR HANSEN: Yes, I will. [LB142]

SENATOR JANSSEN: And the question is, I guess, could you justify the fee or have they justified the fee increase? And I'll sit down and yield the balance of my time to Senator Hansen. [LB142]

SENATOR HANSEN: Thank you, Senator Janssen. Last time this was increased was 2002, and I'm not sure what it was increased from up to \$35. So it's been seven years and that cycle, that fee increase cycle, has not been changed. They did go through several years ago and changed quite a few of their fees, some were statutory, some were not. But they did...they have, you know, it's just like every other agency, they're

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having trouble meeting their budget so they asked for an increase in this fee. And it's up to \$50, it's not, you know, not \$50. So as I said, they do between 700 and 800 transfers per year, as low as \$1 per transfer. So this is just...it's certainly not housekeeping, but it is in their fee cycle to look at after seven years. And this was suggested by the Nebraska Cattlemen. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Janssen. Thank you, Senator Hansen. Senator Sullivan. [LB142]

SENATOR SULLIVAN: Thank you, Mr. President and members of the body. I rise in favor of not only the amendment but also the legislation. But I just want to make sure that we're accomplishing what we want to accomplish. So I would ask if either the introducer of the amendment, Senator Carlson, or Senator Hansen would rise for a question. [LB142]

PRESIDENT SHEEHY: Senator Carlson... [LB142]

SENATOR SULLIVAN: Well, I'll ask the question and, I guess,... [LB142]

PRESIDENT SHEEHY: ...Senator Hansen. [LB142]

SENATOR SULLIVAN: Do I understand correctly that it's incumbent upon the lender to notify the brand committee that a lien exists and that it's not incumbent on the brand committee to search out whether or not a lien exists when there is a transfer wanting to take place? [LB142]

SENATOR CARLSON: That is correct. [LB142]

SENATOR SULLIVAN: So that being said, it is possible that the original problem that was brought to light by Senator Hansen still could happen if a lending institution failed to notify the brand committee that a lien existed. [LB142]

SENATOR CARLSON: Well, I think that's entirely possible. But this certainly allows lending institutions to notify so that they don't get in that position. And I think that that's fair and it puts the brand committee in a position where they can feel better about, in fact, request a transfer is going to be a legal transfer. [LB142]

SENATOR SULLIVAN: All right. I just was looking for possibly a way to shore it up even more by putting some additional responsibility on the brand committee to make sure that, in fact, a lien does not exist before they transfer the brand. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Sullivan. Are there additional members requesting to speak on the Agriculture Committee amendment, AM56? Seeing none,

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Senator Carlson, you're recognized to close. [LB142]

SENATOR CARLSON: Mr. President and members of the Legislature, thank you for the discussion and the questions that have been asked concerning this amendment. I think that your support of it will put something in place that allows a financial institution to be more secure in its position as a lienholder. I think it allows the brand committee to have more confidence in the transfer that is requested of them, that it's a legal transfer. And it doesn't put a lot of additional responsibility on the owner of the brand. And so I would thank you for your discussion and ask you for your support of AM56. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Carlson. You have heard the closing of AM56, amendment to LB142. The question before the body is on the adoption of AM56. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB142]

CLERK: 36 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB142]

PRESIDENT SHEEHY: Committee amendment, AM56, is adopted. Mr. Clerk, do you have an amendment filed on your desk? [LB142]

CLERK: Mr. President, Senator Stuthman would move to amend with FA11. (Legislative Journal page 448.) [LB142]

PRESIDENT SHEEHY: Senator Stuthman, you're recognized to open on FA11. [LB142]

SENATOR STUTHMAN: Thank you, Mr. Lieutenant Governor, members of the body. My floor amendment is to the bill and it, on page 2, line 17, it would strike "\$50" and reinstate the "\$35." Why am I doing this? I think now is not the time that we increase fees because of the economic conditions. I think it's something that we shouldn't do. Senator Hansen stated, you know, maybe they're not up to that \$35 yet and it just would allow them not to go over \$50. I think we had a long debate here several days ago with Game and Parks and the fees that they could charge from the \$13 to the \$21. And it was stated that, you know, they couldn't go over that but they couldn't go more than that 6 percent per year, and I think people were fairly well satisfied with that part of it. But the fact is it was an increase, it was an increase. The perception was that we were raising the fees. It's the same situation that we have with what we have right now and this is what I'm trying to address. And I would like to ask Senator Langemeier a question, please. [LB142]

PRESIDENT SHEEHY: Senator Langemeier, would you yield? [LB142]

SENATOR STUTHMAN: Senator Langemeier, you were with the Game and Parks, with the Natural Resources. And you came back after we had decided to raise the fees and

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pulled all of that back out. What was the reason why you pulled that all back out, the increase in fees? [LB142]

SENATOR LANGEMEIER: My personal belief on those fees is it wasn't the time to do it. And full disclosure and all those that I stripped out of that bill, I missed one more, so there's going to be one more amendment to make sure we get them all out. So that bill will be back too. [LB142]

SENATOR STUTHMAN: And the reason you had just stated was the fact that now is not the time to be raising fees. Is that correct? [LB142]

SENATOR LANGEMEIER: Well, the majority of those fees weren't going to go into effect until 2012. And so if they're not going to go into effect for a number of years, probably today was not the day, in my opinion, to set that path. [LB142]

SENATOR STUTHMAN: But in other words, if they weren't going to go into effect until 2012, you know, we could have passed it and it would have had no effect up until that time. Correct? [LB142]

SENATOR LANGEMEIER: Very well. But I would comment on the same argument you had at that time. It's a perceived perception that we're raising the fees. [LB142]

SENATOR STUTHMAN: And thank you, Senator Langemeier. And I think that's the situation that I'm concerned with, the fact that, you know, we're going to be raising fees. Yes, this maybe won't affect a lot of people and it probably is a situation that people aren't concerned with. And it's a situation where they can't go over that amount. But it's the same situation we were dealing with, with the Game and Parks and raising of those fees in the permits. So I think, in my opinion, there is no need, you know, to change this from \$35 to \$50. I think it's the time that we need to tighten our belts, we need to make sure that other agencies, you know, are not allowed to, you know, increase their fees in times when we're in a situation like we are right now. So I would ask your support on this amendment because I do not think it's the right time to be increasing these fees. I think if there's a need for it in the future and economic times do get a lot better then I would support something like this. But at the present time I would ask that you support my amendment. Thank you, Mr. President. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. You've heard the opening of FA11 to LB142. I would like to take this opportunity to welcome a guest to the Legislature this morning. We have former Senator Vickie McDonald, from District 41, here, located under the north balcony. (Applause) We will now resume to floor discussion. Members requesting to speak are Senator Friend. [LB142]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. I don't



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know whether we're going to do this the entire session or not. We can. I did my share, you know, on the Game and Parks bill. But I guess I was trying to make a point on that. And Senator Stuthman obviously has, you know, every right to draw a parallel here. But I've read this and nothing is ever as black and white as we're trying to make it. And one of the things that I brought up...just alluded to just a minute ago, if we're going to do this all session and take these things and use them as political footballs, then let's call it what it is. I wanted to make a couple of points. There are differences, and I said this on the Game and Parks bill. I'll go back and try to find the transcript. There are...I had these conversations with Pat Bourne years ago. There are differences between fees and taxes. But the interesting part about the Game and Parks bill, to a lot of those folks that utilize those, they were taxes. You might as well have called them that because it was to them, they had no choice. Do the people have a choice to involve themselves in these transfer fees or not? The answer is no, if they want to keep doing business. You see there is a parallel here, but it's not as clear-cut as we can make it every time we have one of these things out on the floor. There's a cost of doing business. Should it be \$50, should it be \$35, like Senator Stuthman is asking for? That discussion is going to have to come from the people that it actually hits. But there is a...but one of the points that I wanted to make, and maybe it should be the final one, is last week when we were dancing around on Game and Parks and what they were trying to do, I thought that we were lacking all kinds of marketing data, excuse me, market data. What do you do to people when you crank fees up that high? Are they going to just decide...they have the ability to just decide I'm not going to partake in that particular event, piece of...you know, form of entertainment, whatever they...you know, hunting, fishing, whatever they call it. They have that choice. You can...I would feel better about this amendment if he changed this wording from "fee" to "tax" because then, you want to use it as political football, by all means, use it as such. But the people that do business in this area, they don't have any choice. Either that or they just bag it and say we're not going to pay this transfer fee anymore, we're not going to be in the business anymore. Well, I think where Senator Stuthman, if he's going wrong anywhere here is he's trying to make the parallel with Game and Parks. Can't do it, it's apples and oranges. Some of the people have...my point and my problem with the Game and Parks situation is people have a choice and they're going to run, they're going to flee and we're going to lose money on the whole situation. These people that take advantage of this transfer fee are not going to flee. They're going to look at it as a tax and they're going to go, got to pay it, it's a cost of doing business. That would be my guess. [LB142]

PRESIDENT SHEEHY: One minute. [LB142]

SENATOR FRIEND: I'm hearing not necessarily, though. So I'm anxious to hear that. The point is we're trying to make a parallel to Game and Parks, I don't think we want to do that out here. And the final thing that I wanted to say is I don't think we want to make a political football out of every fee that comes up here. We've got about 50 of them. Do we want to do that? Do we want to vote against every one so we can use it as a political

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football two years down the road? You know what? Use it against me. I'm going to take every one individually and decide whether it's worthwhile as a cost of doing business. Do we want government to operate? Is it absolutely necessary to raise this fee at this particular time? Do we have enough numbers that indicate that the fee should be raised at this particular time? I mean, we just started this discussion. [LB142]

PRESIDENT SHEEHY: Time, Senator. [LB142]

SENATOR FRIEND: Thank you, Mr. President. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Friend. Senator Janssen, followed by Senator Stuthman, and Senator Friend. Senator Janssen. [LB142]

SENATOR JANSSEN: Thank you, Mr. President and members of the body. I rise in support of FA11 and the basic reason being I have no problem calling taxes fees. Fees are taxes. That's what they are. I have no problem putting them in bills. I don't want to play political football with them, as Senator Friend has suggested. But what I do want to do is, before anybody comes to me and says I want a fee increase, I want it to be justified. And how that was justified this morning is we want to have the ability to raise it to this, but we're not using it right now and we may not use it. But then it was asked again, and I was like, well, maybe they want to keep it solvent or the funds still there, maybe they want to, which makes me think they do need it. So I just want an honest answer and justification that the fee is needed to \$50. That's all I ask. I have no problem raising a fee if it's needed to keep a sustainable program going. I just want the accountability on it to tell me why it needs to be done. With that, as it stands, I don't feel that I have gotten the reason or the accountability up to the point that it needs to be raised to \$50, so I would support FA11. Thank you. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Janssen. Senator Stuthman. [LB142]

SENATOR STUTHMAN: Thank you, Mr. Lieutenant Governor and members of the body. I would like to engage in a conversation and ask a couple of questions of Senator Hansen. [LB142]

PRESIDENT SHEEHY: Senator Hansen, would you yield to questions? [LB142]

SENATOR HANSEN: Yes, I would. [LB142]

SENATOR STUTHMAN: Senator Hansen, in your bill, what was in present language, it says, "The fee for recording such an instrument shall be established by the brand committee and shall not be more than"...it was \$35, and you put in \$50. This deals with the recording of the fact of the lienholder and transferring the brand. Is that correct or can you explain that or clarify that to me? [LB142]

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SENATOR HANSEN: Well, that's correct, Senator. And the fee itself seven years ago was \$15. And seven years ago they raised it from \$15 to \$35, just as part of the regulatory agency that covers branding of cattle and inspection of branding of cattle in the western two-thirds of the state. And this is a cost of doing business. After seven years they look at it and they say, this would help, you know, if we could charge as much as \$50. But they probably won't because they do a majority of them for \$25 or less now. I don't know what the instances would be if they would charge \$35, the full \$35. I'm sorry, I don't know the answer to that, Senator. [LB142]

SENATOR STUTHMAN: But, Senator Hansen, are you stating that in order to register a brand right now it's \$35? [LB142]

SENATOR HANSEN: No. [LB142]

SENATOR STUTHMAN: What is the cost of registering a brand? [LB142]

SENATOR HANSEN: It's more than that, but I don't know what it is. [LB142]

SENATOR STUTHMAN: Okay. [LB142]

SENATOR HANSEN: To reregister our brand every four years, I think it's \$75. And it's probably more than that the first time. [LB142]

SENATOR STUTHMAN: Okay. But this dollar amount only deals with the recording of such an instrument established by the brand committee, and that is the recording of the transfer of a brand to an individual because of the animals being in his possession while they're being fed in a feedyard? [LB142]

SENATOR HANSEN: That's right. [LB142]

SENATOR STUTHMAN: And at the present time that's \$35? [LB142]

SENATOR HANSEN: Up to \$35. [LB142]

SENATOR STUTHMAN: Up to \$35. Can you tell me what it really is? [LB142]

SENATOR HANSEN: Anywhere from \$1 to \$25 is most of them, but there evidently is an instance where they can go to \$35. And I'm sorry, I can't explain that today. [LB142]

SENATOR STUTHMAN: Okay. Senator Hansen, the...really is the fee for recording the instrument, and that's what this really deals with. It has nothing to do with recording of the brand or getting a brand or anything like that. It's the fee for recording an instrument

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by the brand committee because of what was addressed just above it as far as the lienholders. Correct? [LB142]

SENATOR HANSEN: That's correct. [LB142]

SENATOR STUTHMAN: So...but you don't know if it's \$35 right now. I think recording of an instrument in the court or the courthouse, you know, there is a set fee on that. And maybe I could...maybe I would like to address that to...Senator Wightman, would you answer a question, please? [LB142]

PRESIDENT SHEEHY: Senator Wightman, would you yield to a question? [LB142]

SENATOR WIGHTMAN: I will. [LB142]

SENATOR STUTHMAN: Senator Wightman, and you're very knowledgeable of laws, estates. What does it cost to record something in the courthouse? [LB142]

SENATOR WIGHTMAN: Well, if you're talking the register of deeds office, it's \$5 a page at the present time, \$5.50 if you've got indexing. There's an indexing fee on top of the recording fee, that depends on how many sections or how many blocks of land or lots of land. There's a 50 cent per entry with regard to the indexing fee. But \$5 is generally the recording charge itself. [LB142]

PRESIDENT SHEEHY: One minute. [LB142]

SENATOR STUTHMAN: Okay. So, Senator Wightman, the practical sense of it is, is that a recording fee at a courthouse would be \$5. [LB142]

SENATOR WIGHTMAN: That's correct. [LB142]

SENATOR STUTHMAN: Okay, thank you, Senator Wightman. That is what I'm concerned with. You know, they're recording the instrument and they want to charge \$50 for it. You know, maybe it only costs \$5 to record this, and then is the brand committee trying to make, you know, another \$45 on that? That is the issue. And I think since it was already in law that it was not more than \$35, that's why I think we should keep it there just because of economic times. And if times get a lot better, I could support, you know, raising it to a different thing. But I think the fact is that I can't get a clear answer as to what they're charging right now for the recording of such an instrument. Thank you, Mr. President. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Additional members requesting to speak on FA11 to LB142: Senator Friend, followed by Senator Wightman, and Senator Dierks. Senator Friend. [LB142]

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SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. A couple of years ago I remember that this Legislature actually increased the corn checkoff. And I had just gotten, that's actually more than a couple years ago, it was probably four years ago. And I had just gotten done, maybe three or four days before that, I don't remember, it was close to the budget time, just railing, you know, that a tax increase, I mean, typical Mike Friend, you know, visceral, you know, yelling type of thing. You've all heard it. So I voted for the corn checkoff. Most of my rural friends are saying, well, this is...we need...we need to do this and we need to do it in order to operate. I mean, there are certain things that we have to do that frankly, Mike, you know, sitting over there in your corner of Omaha, you don't understand yet. Let's discuss it, blah-blah-blah. We went down the road. I voted for a corn checkoff. I had two people come up to me and say, thanks for voting for a tax increase for me--political football. This was after...this was a year and a half after we took a sales tax code and decided this is where we're going to go to get \$350 million and bilk everyone in the state or everyone that we can that doesn't have a strong lobbying interest. I guess what I'm saying here is that Senator Stuthman can do this all morning, that's fine. What he fails to tell you is it's quite possible that three weeks from now he can be going out and seeking a fee increase on something that he finds very attractive because it affects his business and it affects the operating expenses of the people that affect his business. I'm not saying he's being hypocritical. I've done it, I've seen it. I voted for a corn checkoff and I had two people come up and tell me, thanks for increasing my taxes. All I'm telling you is it's not black and white. You look at this bill. You figure out what Senator Hansen is trying to do with it. You figure out what Senator Carlson was saying about it a little earlier. You read between the lines and you try to figure out if it's the right policy for ranchers, if it's the right policy for farmers, if it's the right policy for Nebraska. Senator Stuthman can easily ask the question, is this fee necessary. He's not going to get the answer he needs, and then he's just going to assume it's not. I didn't get the answers I needed the other day on Game and Parks, partly because they're not a code agency. You know what they can do? They can turn around and tell us, we don't need to give you any information because it's all cash funding. Tap you on the head and say, that sounds great, Senator, you just go ahead and do your job; give us the authority to go ahead and set the rates the way we want them set or set the fees the way we want them set, and you just go ahead and go deal with bigger issues; we'll handle the Game and Parks type of stuff. I'm not being condescending to Game and Parks. I'm telling you they don't want us to know what they're going to do, when they're going to do it, or anything else. Would you? Would you want a Legislature like us overseeing everything that you are trying to accomplish with your fee structure? Absolutely not. It's human nature. (Laugh) The point is this, finally: Let's figure out what this bill does. Let's figure out why it's going up to \$50. [LB142]

PRESIDENT SHEEHY: One minute. [LB142]

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SENATOR FRIEND: Senator Stuthman can say all...till he's blue in the face that this is the wrong time to hike fees. I said it the other day till I was blue in the face. Different subject, different time, different issue, different organization, different operating expenses, different reasons for doing it, that's all I'm trying to say. Had a really interesting discussion with Senator Dubas about five minutes ago off the record, Senator Hansen as well. Those are good discussions to have, folks. Thank you, Mr. President. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Friend. Senator Wightman. [LB142]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I've been out of the Chamber during a portion of this discussion. If Senator Hansen would yield to a question or two, I'll try to inform myself. [LB142]

PRESIDENT SHEEHY: Senator Hansen, would you yield? [LB142]

SENATOR HANSEN: Yes, I will. [LB142]

SENATOR WIGHTMAN: Senator Hansen, can you tell me what all is paid out of the brand recording fee that we're talking about raising from \$35 to \$50? [LB142]

SENATOR HANSEN: Only, Senator, only deal with the transfers of brands. And a transfer of a brand, they do about 700 to 800 every year. And this is the office expense that they see that they are accumulating. They take that much time every year to record only the transfers, and this is all that this deals with. Has nothing to do with brand inspection or new brands or renewals of brands, just the transfers of brands that occur in the brand inspection area. [LB142]

SENATOR WIGHTMAN: And was there a discussion in committee as to what the amount of this increase would be or was this just proposed by the proponents of the bill? [LB142]

SENATOR HANSEN: It was proposed by the proponents of the bill, but we just have to go back seven years ago when they raised the limit from \$15 to \$35, no more than \$35. Seven years ago it was \$15. Now the cost of business is going up. If they wait and come to the Legislature, as they should, for an increase, it's going to take a whole nother bill. They saw this opportunity to raise it to not more than \$50. But right now they're charging \$25 for...that's the major, the upper side of what they're charging now. But the cost of doing business for any of these regulatory agencies is going up. And if they need to charge more, they won't charge more unless they warrant it through staff time and expense to the office. [LB142]

SENATOR WIGHTMAN: So right now they're charging \$25, even though the

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authorization is for \$35? Did I hear you correctly? [LB142]

SENATOR HANSEN: Correct. And it is as low as \$1, too, for very simple transfers. [LB142]

SENATOR WIGHTMAN: And, I guess, what you're telling me is that brand inspections are paid out of a brand inspection fee that is separate from this fee. Is that correct? [LB142]

SENATOR HANSEN: Entirely separate at the rate of 75 cents per head when they're inspected. [LB142]

SENATOR WIGHTMAN: Okay. So how many brand inspectors are there across the state? Do you have any idea? [LB142]

SENATOR HANSEN: Not as many as there were 15 years ago. We...they have downsized that agency just like a lot of them. And the inspectors are just, I mean, they're running their tails off from 1st of September through the, you know, April, May. And then when cattle are in the pasture there is nothing to inspect so they don't inspect much in the summertime. And that's what we got into trouble with, and it's a reoccurring problem that brand inspectors don't have a lot to do in the summertime. But they do in the wintertime. There are full-time inspectors, there are full-time investigators, and there are also part-time brand inspectors that will go to a sale, a livestock market and work extra. This is instead of paying overtime to the inspectors. They do hire...at the very highest time of the year when cattle are going through livestock markets they will hire temporary help. And they are trained and they're called... [LB142]

SENATOR WIGHTMAN: Almost all of them are part-time jobs, aren't they, Senator? [LB142]

SENATOR HANSEN: No, the brand inspectors, the ones that they have, and I think that...it seems like the number of 111 comes to mind. And that may include the investigators too. It's a full-time job, except for the summertime when there is nothing to be inspected. But they do, they're on call, you know, 24 hours a day. And they only inspect in the daylight hours. But they can be... [LB142]

PRESIDENT SHEEHY: One minute. [LB142]

SENATOR HANSEN: ...called in the evening and say we're going to ship cattle out of, you know, from here to there and they're going out of the brand area or they're just being sold. They do inspect in the summertime, too, so it's a full-time job. Some times they're much busier than others though. [LB142]

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SENATOR WIGHTMAN: Senator, I see the Nebraska Cattlemen supported this. And that did include the increase of the brand recording fee? [LB142]

SENATOR HANSEN: That's where it came from. [LB142]

SENATOR WIGHTMAN: Thank you, Senator Hansen. Thank you, Mr. President. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Dierks. [LB142]

SENATOR DIERKS: Thank you, Mr. President and members of the Legislature. I just want to stand to offer support to Senator Hansen and his bill that he's offering on behalf of the Cattlemen. The fees that Senator Stuthman is talking about are all part of running an organization. I can recall one time when I was the veterinary inspector at the Burwell Livestock Market. One of my very good friends there was a brand inspector. We worked cattle together every night after the sale. He'd help me vaccinate and I'd help him brand. Those nights got over usually around 2:00 or 3:00 o'clock in the morning. I became very close to this inspector. And I met other inspectors that were just as hardworking. One day he came to me and he said, you know, I've been offered a job and I think I'm going to take it because it's a better paying job than what I'm getting here as a brand inspector. About two months before that another one that I had known had done that. He quit being a brand inspector because he got a better job being a ranch manager, better paying job. So I went home and I called every member of the brand committee and told them what was happening. I said, if you don't get a pay increase for those people, we're going to be losing some of the best brand inspectors in the country, and that is not good for the industry. And they raised the fee...the salaries for those brand inspectors. And they raised the fee for me to pay for the brand inspection. I think that's part of the cost of doing business. I'm going to object to...I'm not going to support Senator Stuthman's amendment because I think this was brought to us by the Cattlemen, they know what the cost is and they're willing to pay it. So I'm going to vote no on the Stuthman amendment and hope the rest of you will, too, and we can get this bill passed for the Cattlemen of Nebraska and for Senator Hansen. Thank you. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Dierks. (Visitors introduced.) Additional members requesting to speak on FA11 to LB142, we have Senator Stuthman, followed by Senator Carlson. Senator Stuthman, this is your third time. [LB142]

SENATOR STUTHMAN: Thank you, Mr. Lieutenant Governor, members of the body. As Senator Fred stated...Senator Friend had stated that this is not...it's apples and oranges. I think that is very true. But I think what we're debating here on the floor is we're not talking about the same situation. And it really interests me to the fact that people are thinking that this...the increase in freeze and the branding and everything like that, I respect the brand inspectors. I respect everything that the brand committee is



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doing and I think they're doing a wonderful job. The issue that I have is the fact that this only has to do with the fee for recording because just above that we have the fact...the issue with the liens, with the liens or security of animals that are fed in a feedyard somewhere. Has nothing to do with checking the brands or anything like that because it states here, and it's plain and clear, "The fee for recording such an instrument shall be established by the brand committee and shall not be more than \$50." And I'm trying to bring that down to \$35. This is for recording the instrument. It does not state anything in there, the fee can be increased to inspect the brand, to give the brand inspectors more money. The fee charged to...as I run into the situation every fall when the cattle that we get out of the brand area, I have to pay the inspection of that brand inspector to come and inspect those cattle. I respect all of that. But we're not dealing with that situation right here. And I would like to also state this instrument shall give notice to all third parties of the matter recording in the instrument and shall be acknowledged by a notary public and any other qualified...any officer qualified under law to administer oaths. That has nothing to do with the brand inspector at Burwell or Ericson. This only deals with the recording of the instrument and the charge to record the instrument in a public place to make sure that there is an existence of lien or security. That's what I'm trying to establish. It has nothing to do with brand inspections. Yes, there may be a brand inspection to see that that brand, you know, is in that lot where it's designated. I think this issue is with the fact of recording. And if someone can tell me that the recording fees and the notary public costs more than the \$35 then I would be acceptable to it. But I have no idea, I have no idea what it's costing right now and this has been done in the past. So that's the issue that I have. As I had stated, you know, I truly respect everything that the brand committee is doing, but no one has told me what is it costing today to record that. I got information from Senator Wightman. He says the recording is \$5. That's a long way from \$35, long way from \$50. Maybe the cost of a notary public, maybe they charge \$40. I know they do charge something... [LB142]

PRESIDENT SHEEHY: One minute. [LB142]

SENATOR STUTHMAN: ...to make their signature, but I don't think it's a large amount. It could be \$10, very possible, because they have to go through a process to be a notary public. So with that, I think that the issue that we're trying to debate is something that we need to be very cautious with, is the fact that we're just allowing them to charge a different amount...up to a different amount when we really don't know what they're charging right now at the present time. And I think maybe if we could get that information, you know, I'd be willing to accept that. But right now I do not know. And in my opinion, the way...the bill that we have right now, when it's in existing legislation, you know, it's just the recording of the instrument. Thank you, Mr. President. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. (Visitors introduced.) Senator Carlson. [LB142]

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SENATOR CARLSON: Mr. President and members of the Legislature, before I make additional remarks concerning FA11, the current transfer fee being charged by the brand committee is \$25. So that's \$10 short of the \$35 current limit. And they have asked for the limit to be raised to \$50. I want to try and explain why I would support their request for the increase. In the report dated June 30 of 2008, the total income for the brand committee was \$3.99 million; the total expenditures were \$3.85 million. So if you look at a cash account it could easily have over \$3 million in it and it looks like they don't need any increase for anything. But when you take in \$3.99 million and you spend \$3.85 million, you're getting reasonably close to the need for additional revenue. Currently, the inspection fee, which brings in the bulk of the \$3.99 million, \$2.76 million came from inspection fees, and those are currently at 75 cents an animal, 75 cents a head. Out of the \$3.99 million, from transfer certificates, which is what we're talking about in this bill, the total income is \$22,600. So out of a total income of \$3.99 million, \$22,600 came from the area that we're talking about. So you can take one of two approaches. That's such a small amount out of the total amount of income, what are we arguing about it for? Let's forget about it. And that may be true. On the other hand, I kind of look at this as a management technique on the part of the brand committee, and they're trying to manage things carefully and they would like this ceiling raised. They're seeing numbers are down and income is going to be down. However, out of the total amount in their budget it's not a big item. But at this point I would tend to not favor Senator Stuthman's amendment and ask for support on the bill as submitted with the amendment we passed earlier. Thank you. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Wallman. [LB142]

SENATOR WALLMAN: Thank you, Mr. President. I would yield my time to Senator Stuthman. [LB142]

PRESIDENT SHEEHY: Senator Stuthman, 5 minutes. [LB142]

SENATOR STUTHMAN: Thank you, Lieutenant Governor, members of the body. I would like to engage in a little conversation with Senator Carlson, if he would answer any questions. [LB142]

PRESIDENT SHEEHY: Senator Carlson, would you yield? [LB142]

SENATOR CARLSON: Yes. [LB142]

SENATOR STUTHMAN: Senator Carlson, first of all, I want to thank you for that information that you did give in your last statement. And the fact that \$22,000 is what's raised currently, you know, at \$25. Twenty-five dollars is what they're currently charging, right,... [LB142]

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SENATOR CARLSON: Correct. [LB142]

SENATOR STUTHMAN: ...for the transfer of that instrument. And they can, at the present time, go up to \$35, which is a \$10 increase. They can do that presently, can't they? [LB142]

SENATOR CARLSON: Yes, they can. [LB142]

SENATOR STUTHMAN: Well, why wouldn't we just leave it at the \$35 then and then allow them to go to the \$35, if needed, which they can? And then at that time, you know, increase it if there is a need at that time. I'm, you know, really concerned with, you know, trying to allow them to, you know, raise it another \$15, from \$35 to \$50, when they are only asking \$25 at the present time. Would you say that the \$22,000 that they raise on that is just a small portion of their income, which you did state? [LB142]

SENATOR CARLSON: It is a small portion of their income. [LB142]

SENATOR STUTHMAN: But in the amount of dollars that they have taken in, \$3.99 million and they've spent \$3.85 million, so they do have a, in my opinion, a profit of \$140,000. And \$140,000 profit of a group like that today, I think, is sure good enough in economic times. The concern that I really have is why are they asking for an increase now when they can increase it another \$10 already? They can almost increase it another 40 percent and then they're up against the lid. Senator Carlson, I thank you for your information but I would...could you tell me how long have they been on that \$25? Do you have any information there? [LB142]

SENATOR CARLSON: I don't have any information there. And I might add that this has tweaked my curiosity enough that between now and Select File I'm going to try and find out what the actual reasoning is for this request for an increase and have that available. [LB142]

SENATOR STUTHMAN: Thank you, Senator Carlson. The concern that I have also is the fact that, you know, in these economic times and the cattle, you know, are not very profitable at the present time. Cattle are losing in the feedyard anywhere from \$150 to \$350 a head. And, you know, if we have to pay a little more here and little more there that just compounds the problem. I think this is a situation where we could wait a couple years before we increase the limit on it because they're not to it right now. It just seems like now we're getting close, we're \$10 away, we're at \$25, we can go to \$35, but why don't we ask for \$50 limit? And I don't think the cost of recording instruments are going to increase very much in the time to come. And the fact is I don't think... [LB142]

PRESIDENT SHEEHY: One minute. [LB142]

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SENATOR STUTHMAN: ...there is going to be any increase in the numbers wanting to have these instruments transferred, as far as the brand recording of those cattle that have been transferred into a feedyard and stay with that brand. So I would ask that you support the amendment. I think this is not the time to increase it and it's not the time to give them the opportunity to double from where they're at today, and I think that they...I think we should be thinking about that. They still have room; they can go maybe several years. They can maybe go five years before they get up to the \$35. So thank you, Mr. President. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Carlson. [LB142]

SENATOR CARLSON: Mr. President and members of the Legislature, I want to address Senator Stuthman. Senator Stuthman,... [LB142]

PRESIDENT SHEEHY: Senator Stuthman, would you yield? [LB142]

SENATOR STUTHMAN: Yes. [LB142]

SENATOR CARLSON: Well, you don't really need to say anything, you just need to listen. You win. So I'm going to tell you I'm going to vote for your amendment. And between now and Select File I'm going to find out the real reason for that request of an increase. And I may file an amendment to restore the increase on Select File. Thank you. [LB142]

PRESIDENT SHEEHY: Thank you. Thank you, Senator Carlson. Are there additional members requesting to speak on FA11 to LB142? Seeing none, Senator Stuthman, you're recognized to close. [LB142]

SENATOR STUTHMAN: Thank you, Lieutenant Governor, members of the body. I just think that this is not the time, you know, to increase the fee because the fact is they're at \$25, they could go to \$35. They have opportunities to raise it, but they want to raise it up to \$50. If there comes a time when recording of fees double or increase, then I think there is a need for it. But I will agree that Senator Carlson, if he finds that between now and Select File that there is a need for it and a real reason for it, I will agree upon that. But at the present time, I think we should restore it back to the \$35. Thank you, Mr...and I would ask for your support on this amendment. And I would thank you, Mr. President. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. You have heard the closing of FA11 to LB142. The question before the body is on the adoption of FA11. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB142]

CLERK: 12 ayes, 23 nays, Mr. President, on the amendment. [LB142]

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PRESIDENT SHEEHY: FA11 is not adopted. We'll now resume to floor discussion on LB142. Members requesting to speak, Senator Friend. [LB142]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. I really don't know if anybody has dropped off an adjournment motion up there yet but this bill will not advance until someone does because I will talk until someone does. And here's what I'm going to talk about--whatever I want. LB142, it's pretty clear to me now, is a political football. Well, I can play politics as well as anybody else. Here's what I'm going to do tomorrow if this is the first thing up on the agenda. This isn't a threat. It's a promise. I'm going to eliminate the fee. I'm going to get rid of it. There's going to be an amendment that eliminates the fee. And I want to see everybody out here who thinks that this is a bad time to raise fees. I want to see the vote, including Senator Stuthman. It's a bad time to raise fees, I agree, I totally agree. I was on the record last week saying that I was against raising Game and Parks' fees. So if this is up tomorrow morning first thing, I'm going to have an amendment that strikes it, gets rid of it. There will be no transfer fee. And I'm going to vote for it. And then I'm going to look at my rural colleagues and I'm going to say, I did it because I'm playing political football on LB142. And I can go to "Grover" Nordquist, and I can go to the Club for Growth, and I can go to all these people and say, look what I've done. I can rattle my saber. I can say I'm a Reaganite but I'm not a hypocrite. Sorry about that corn checkoff a few years ago. I better apologize. Is there a point to this? No. Do I need one? No, I don't. I am going to do what I think is right now. This has turned into a political football, that's great. And the funny thing is I love politics. So if we want to draw lines, we want to draw up a division, we want to get partisan, we want to play the game, I'll play it. I'm as good as anyone out here. LB142 will fail if my amendment succeeds, won't it? Will it? Probably. I don't care. Senator Hansen cares a lot. My friends in the rural communities care a lot too. Enough of my snide remarks, right? I want to see where this debate goes, I really do, because there's going to be, again, there's going to be 20 items out here. Is this redundant? Oh sorry, folks, it's redundant. There's going to be 20 items out here this year that raise fees to one degree or another. Whatever it is, court fees, Game and Parks' fees, vehicle licensing fees, look on our agenda. There is a bill by Senator Fischer that affects fees soon. Let's play games on every one of them. Okay. I'm not mad. I'm happy to do it. And again finally, this is not a threat. It's not that hard to draft up the amendment. I will strike whatever Senator Stuthman just tried to do. Let's get it on. Thank you, Mr. President. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Friend. Mr. Clerk, do you have items for the record? [LB142]

CLERK: I do, Mr. President. Your Committee on Transportation, chaired by Senator Fischer, reports LB202 to General File; LB92, General File with amendments. Banking Committee, chaired by Senator Pahls, reports LB113, General File with amendments.

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Hearing notices from the Appropriations Committee and Business and Labor. New A bill. (Read LB110A by title for the first time, Legislative Journal pages 449-451.) [LB202 LB92 LB113 LB110A]

And, Mr. President, a priority motion: Senator Karpisek would move to adjourn until Thursday morning, February 12, at 9:00 a.m. []

PRESIDENT SHEEHY: You have heard the motion to adjourn until Thursday, February 12, 2009, at 9:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned. []