

Transcript Prepared By the Clerk of the Legislature
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Floor Debate
May 08, 2009

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LB422 LB445 LB447 LB488 LB494 LB498 LB501 LB531 LB542 LB545A LB561 LB626
LB633 LB671A LR112]

SPEAKER FLOOD PRESIDING []

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the seventy-fifth day of the One Hundred First Legislature, First Session. Our chaplain for today is Senator Sullivan. Please rise. []

SENATOR SULLIVAN: Good morning. Yesterday was the national day of prayer, the government proclaimed holiday...excuse me, not a proclaimed holiday but a proclaimed day offered to all Americans regardless of religion to celebrate their faith through prayer. As Christians, prayer is a touchstone of our lives. It's at the very heart of who we are and what we do. Whether public or private, prayer is our hope-filled searching out to God and our subsequent struggle to discern God's response. So in that spirit, let us pray. (Prayer offered.) []

SPEAKER FLOOD: Thank you, Senator Sullivan. I call to order the seventy-fifth day of the One Hundred First Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record. []

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

SPEAKER FLOOD: Thank you, Mr. Clerk. Are there any corrections for the Journal? []

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

SPEAKER FLOOD: Thank you. Are there any messages, reports, or announcements? []

CLERK: Mr. President, your Committee on Enrollment and Review reports they've examined and reviewed LB626 and recommend that it be placed on Select File; LB263, LB392, LB561, and LB545A, all on Select File, some of which have Enrollment and Review amendments attached. Enrollment and Review also reports the following bills correctly engrossed: LB60, LB94, LB129, LB208, LB209, LB278, LB389, LB422, LB445, LB447, LB488, LB498, LB501, LB531. Mr. President, I have a series of reports received in the office, available for member review; and a communication from the Board of Educational Lands and Funds; and finally, the report of registered lobbyists for this week. That's all that I have, Mr. President. (Legislative Journal pages 1387-1392.)
[LB60 LB94 LB129 LB208 LB209 LB263 LB278 LB389 LB392 LB422 LB445 LB447
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SPEAKER FLOOD: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda, Select File appropriation bills. We will begin with LB671A. [LB671A]

CLERK: Mr. President. Senator Nordquist, I have no amendments to LB671A. [LB671A]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB671A]

SENATOR NORDQUIST: Mr. President, I move LB671A to E&R for engrossing. [LB671A]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB671A is advanced to E&R for engrossing. Mr. Clerk, LB342A. [LB671A LB342A]

CLERK: Yes, sir, Mr. President. LB342A. Senator, I have no amendments to the bill. [LB342A]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB342A]

SENATOR NORDQUIST: Mr. President, I move LB342A to E&R for engrossing. [LB342A]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB342A is advanced to E&R for engrossing. Mr. Clerk, we now proceed to LB97A. [LB342A LB97A]

CLERK: LB97A. Senator, there are E&R amendments pending. (ER8119, Legislative Journal page 1329.) [LB97A]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB97A]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB97A. [LB97A]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB97A]

CLERK: I have nothing further on the bill, Senator. [LB97A]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB97A]

SENATOR NORDQUIST: Mr. President, I move LB97A to E&R for engrossing. [LB97A]

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SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. LB97A is advanced to E&R for engrossing. Mr. Clerk, LB246A. [LB97A LB246A]

CLERK: LB246A. Senator, I have no amendments to the bill. [LB246A]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB246A]

SENATOR NORDQUIST: Mr. President, I move LB296A (sic) to E&R for engrossing. [LB246A]

SPEAKER FLOOD: Senator Nordquist, did you mean to say LB246A? [LB246A]

SENATOR NORDQUIST: LB246A to E&R for engrossing. [LB246A]

SPEAKER FLOOD: Members, you've heard the motion. The question is, shall LB246A advance to E&R for engrossing? All those in favor say aye. Those opposed say nay. LB246A is advanced to E&R for engrossing. Members, please find your seats in preparation for Final Reading. Mr. Clerk, we now proceed to Final Reading, LB188E, where the first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB246A LB188]

CLERK: 40 ayes, 0 nays, Mr. President, to dispense with the at-large reading. [LB188]

SPEAKER FLOOD: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB188]

CLERK: (Read title of LB188.) [LB188]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB188E pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB188]

CLERK: (Record vote read, Legislative Journal page 1393.) 45 ayes, 0 nays, 4 excused and not voting, Mr. President. [LB188]

SPEAKER FLOOD: LB188E passes with the emergency clause attached. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB188. Mr. Clerk, we now proceed to Select File special order, LB187. [LB188 LB187]

CLERK: Mr. President, LB187. Senator Nordquist, I have Enrollment and Review amendments. (ER8109, Legislative Journal page 1289.) [LB187]

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SPEAKER FLOOD: Senator Nordquist for a motion. [LB187]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB187. [LB187]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The E&R amendments are adopted. [LB187]

CLERK: Senator, at this time I have no amendments to the bill. [LB187]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB187]

SENATOR NORDQUIST: Mr. President, I move LB187 to E&R for engrossing. [LB187]

SPEAKER FLOOD: Members, you've heard the motion. Senator Karpisek, you are recognized. [LB187]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. Would Senator Pankonin yield, please? [LB187]

SPEAKER FLOOD: Senator Pankonin, will you yield to a question from Senator Karpisek? [LB187]

SENATOR PANKONIN: Yes, I would. [LB187]

SENATOR KARPISEK: Thank you, Senator Pankonin. Can you tell me about the sunset provisions in LB187, please? [LB187]

SENATOR PANKONIN: Senator Karpisek, thank you for that question. It is important to note that although LB187 has a five-year sunset on the provisions, there is also a strong possibility that the employee/employer contributions may need to be increased depending on investment returns over the next couple of years and the resulting actuarial valuation. It's important to note that we may have to revisit this depending on how the markets recover. [LB187]

SENATOR KARPISEK: Thank you, Senator Pankonin. Thank you, Mr. President. [LB187]

SPEAKER FLOOD: Thank you, Senator Karpisek. Members, as stated earlier, you've heard the motion to advance LB187 to E&R for engrossing. All those in favor say aye. Those opposed say nay. LB187 is advanced to E&R for engrossing. Mr. Clerk, we now proceed to LB9. [LB187 LB9]

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CLERK: Mr. President, LB9. Senator Nordquist, I have E&R amendments, first of all. (ER8099, Legislative Journal page 1260.) [LB9]

SPEAKER FLOOD: Senator Nordquist for a motion. [LB9]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB9. [LB9]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The E&R amendments are adopted. [LB9]

CLERK: Mr. President, I have an amendment to the bill, but I have a priority motion. Senator Pahls would move to bracket LB9 until June 4, 2009. [LB9]

SPEAKER FLOOD: Senator Pahls, you're recognized to open on your bracket motion. [LB9]

SENATOR PAHLS: Thank you, Mr. President, members of the body. As I read today's paper, it says, "State tax receipts plunge for April." That tells me that we have some problems, and I think part of the problem is us. And what I'm referring to is our attitude about sales tax-exemptions. I just want to put a few things in perspective. As I take a look at our budget, approximately every year it runs around \$3 billion, \$3.5 billion starting this year and onward until it does increase. Let's fixate a little bit on the word \$3 billion. That's how many tax-exemptions that we do every year. And just, again, I want to say the power of those exemptions, if we would do away with those exemptions we'd have no property tax, we'd have no yearly auto tax, and we'd have no corporate tax if we so chose. If we didn't want to do that, the Governor wants to do...lower income tax, we could do that or we could reduce sales tax to less than 2 cents. We have a number of options, and that's what I hope we will focus on in the future. I would ask if Senator Cornett would yield. [LB9]

SENATOR ROBERT PRESIDING []

SENATOR ROBERT: Senator Cornett, will you yield to a question? Senator Cornett, will you yield to a question, please? [LB9]

SENATOR CORNETT: Yes. [LB9]

SENATOR PAHLS: Senator...and, people, I have discussed this with all of the senators, so I'm not trying to set anybody up. I'm just asking for clarification. As I take a look at today's green copy, could you explain to me, under Final Reading, the sales tax-exemptions? [LB9]

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SENATOR CORNETT: I do not have the green copy with me. [LB9]

SENATOR PAHLS: Well, on your... [LB9]

SENATOR CORNETT: Yeah. All right. [LB9]

SENATOR PAHLS: Under Final Reading I see LB420. As I go across those columns, they are in parenthesis. What does that tell me? [LB9 LB420]

SENATOR CORNETT: That that is a deficit. [LB9]

SENATOR PAHLS: So in other words, the potential is the money that we will not receive. [LB9]

SENATOR CORNETT: That is money that we have not been receiving in the past. When they do a fiscal note, what they do is...what we did in these bills and the amendment that is being attached to it is these were things that were already being exempt or we felt were already being exempt. The Department of Revenue went in and reevaluated the statutes and determined that we needed clarification in the language to make sure that those businesses were eligible for the exemption which they had been receiving in the past which new rulings said that they might not be eligible for. And so what we did was go in and clarify the language so the Department of Revenue had clear guidance in regards to what was exempt and what wasn't exempt. By doing that, they generate the fiscal note based on the revenue they would have collected based on their new interpretation. An example of that is Senator Adams' mineral oil bill. We have not taxed the mineral oil sprayed in grain elevators in the past. That bill was passed a number of years ago. [LB9]

SENATOR PAHLS: I would prefer, though, you stick with the numbers here. And the reason why I'm doing that is I just wanted to take a look at LB420. As you go across, why does that increase? It increases from \$1.8 million to \$2,300,000. I'm just trying...I have been told the reason why that will increase is because there will be new clinics opening up in the urban areas. That's probably one reason why that would increase. I'm just...is that doable? Is that acceptable? [LB9 LB420]

SENATOR CORNETT: I'm sorry. I thought you were referring to LB9 specifically, not LB420. My apologies. LB420, we had taken a policy stance in this state that we do not tax healthcare. We looked...the Department of Revenue was looking at the hospitals that were exempt and weren't, and we found that there were hospitals that technically weren't exempt even though that was our policy. So we redrafted and redefined the statute so it clearly reflected the policy the state had taken in regards to taxation of nonprofit healthcare. And that fiscal note is the money that would have been generated if we did not change the existing law. [LB9 LB420]

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SENATOR PAHLS: Okay. And then, again, also with the upcoming one as you go through the Select File, LB9, it's the same thing. [LB9]

SENATOR CORNETT: Correct. [LB9]

SENATOR PAHLS: Okay. [LB9]

SENATOR CORNETT: And I apologize. I thought we were speaking about LB9. [LB9]

SENATOR PAHLS: No, no, no. Thank you. I appreciate your help there. And another point...thank you, Senator, because I do want to make sure the people understand that that loss will occur even though they have been...they said nonexempted in the past. Let's take a look at another issue. There have been 14 bills that have been brought to the Revenue Committee. And I have to be honest with you as I take a look at the bills that are hitting the floor, they are from what I call the individuals who are the keepers of the money. I see the senators who bring them to the floor are either from Revenue or Appropriations, so that also does concern me a little bit. Another thing I want us to think about is every time we add a new exemption, it grows. I had my staff go back 40 years just to show you how a new exemption that was not on the books before, those exemptions in the past 40 years have grown to over \$353 million. That's not talking about all the other ones that keep expanding, like LB9 would. Now, I want to address a little bit the bill that Senator Cornett talked about. I've had a discussion with the Department of Revenue. This would be a new exemption because there's no...if we pass this, this would be a new section of the law. Now, the confusion has been...in the past, the equipment was exempt. Initially, the oil was thought as a component part of the grain. But since 2000, the Department of Revenue has said that's not a factor. This did cause some confusion, and as I read over the testimony in the hearing, the attorney said that we have not been paying those taxes. I talked to the Department of Revenue. They said in some cases they were, some of the co-ops were paying and some were not. And the Department of Revenue, to their credit, took some of the blame because it was confusing. But it is not confusing now. The Department of Revenue said this is something that we need to tax. The attorney for the co-ops said, nope. So that's why there's a little bit of this going on. And the only point that I'd like to bring out is earlier I was critical of the Department of Revenue because I said every year they do not make recommendations. But I'm finding out every time they do try to go in there and take a look at those statutes, we are ready to pass a new law eliminating what they are trying to do. I think that should be a concern of ours if we continue to do that. Again, my feeling is this year is a tough year because we have, as I said, 14 bills. There were 30 sponsors or cosponsors of those bills, so I think this is an uphill climb. I'm just basically trying to set the stage for next year. But, again, on LB9 I hope Senator Adams can explain, we have a bill with approximately \$39,000. Now, we have an amendment which eventually would be over \$400,000, so look at the fiscal note. [LB9]

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SENATOR ROBERT: One minute. [LB9]

SENATOR ROBERT: Again, I want to point out for '09-10 that bill would be \$308,000; '12-13, that would have arrived to the figure of \$425,000. That is being attached to a bill that we passed or are in the process of passing which would be basically in the \$30,000s. So the amendment is a very powerful cost to the future. And keep in mind, this is a new section. We will be creating a new section. I hope that Senator Adams can explain that to us, and I thank you. And, Mr. President, I'd like to pull my objection. [LB9]

SENATOR ROBERT: MO49 is withdrawn. [LB9]

CLERK: Mr. President, Senator Adams would move to amend the bill with AM1217. (Legislative Journal page 1230.) [LB9]

SENATOR ROBERT: Senator Adams, you're recognized to open on AM1217. [LB9]

SENATOR ADAMS: Thank you, Mr. President, members of the body. Help. Very simply, help. The Department of Revenue is asking for help, grain elevator operators, the co-ops are asking for help. They're asking for you right now to make a decision that clarifies language. Here's the problem: In the statute, it says, and I quote: Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or the consumption in this state of property which will enter into and become an ingredient or a component part of property manufactured, processed, fabricated. In order to suppress the dust that comes out of grain elevators, elevators across this state, whether owned by cooperatives or otherwise, have been using mineral oil for years. The mineral oil is applied to the grain, it becomes a component part of the process, and it has not been taxed. It has not been taxed until recently. And only recently has it been taxed and then on a very sporadic basis. Some entities have been audited and they've had to pay sales and use tax on the mineral oil, others have not. And there is serious question as to whether or not this simple component, the mineral oil that's used to suppress the dust, is supposed to be taxed. The co-ops have their interpretation. The Department of Revenue, I have been in discussions with them, they want clarification as well as to what to do in this case. When you look at the fiscal note, it's revenues in part that have not yet been collected because they don't know what to do. So what this amendment is asking you to do is to clarify once and for all that the mineral oil that's used to suppress the dust on grain in these elevators across the state is a component part and, therefore, should be exempt from sales and use tax. We need the clarification. It's that simple. Thank you, Mr. President. [LB9]

SENATOR ROBERT: Thank you, Senator Adams. Members, you have heard the opening to AM1217 to LB9. Members wishing to speak: Senators Hadley and Pahls. Senator Hadley, you're recognized. [LB9]

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SENATOR HADLEY: Mr. President and members of the body, I served on the Revenue Committee. For everything that you see coming to the floor, there was 10-20 things that we turned down, everything from exempting retirement pay for everybody who was retired in the state of Nebraska to exempting sales tax on items, the primary reason being that Kansas, South Dakota, Iowa, Colorado, Iowa, Wyoming, somebody did it so we should do it. I think we try to do a very diligent job of holding down items that were brought to the floor. The ones we did bring to the floor I will defend. I classified them as two types and I happen to be involved with one type and I think Senator Adams is involved with the other type. To me, the first type is where we have what we feel was an existing policy that we wanted to clarify for the state. And the Revenue Department rightly was going to basically implement a tax that we felt was opposite that policy, and that is what LB420 that Senator Pahls talked about. If you want to tax nonprofit health clinics, that is a policy issue. And I agree it's a great...we had that discussion when we were here, when we passed LB420 on from General to Select and Select to Final Reading. Secondly is the amendment that Senator Adams is bringing. It specifically talks about in our tax code what items we will tax and what items we will not. Now, it may be an interpretation of whether something becomes a part of the final product, but what are we going to err on? Are we going to err on double taxation? Because if you tax it and it becomes a part of the final product and we turn around and tax it again, you're taxing the tax. And I think what AM1217 does, it clarifies how we feel as a body that this particular process fits into that category of being a part of the final product and we do not tax those items that become a part of the final product. So I stand in favor of AM1217 and LB9. Secondly, we do write fiscal notes. We've got to have a standard for writing fiscal notes. If you'll look at the fiscal note, the fiscal note is always written not that we weren't collecting the tax, it's as if we had been collecting the tax and what we will lose. That is how the note is written. Theoretically there should be a zero or very close to zero impact on the bottom line on these types of things if the Revenue Department has truly not been collecting this revenue. They might have been collecting some of the revenue, a little of the revenue because they started to audit these things. But that's what we're talking about here. I agree with Senator Pahls. We have talked about needing to overhaul, to take a long, hard look at the exemptions and why we have them. But when we do that, we have to do it from a sound tax policy basis. And a sound tax policy basis is not Kansas does it, and that's primarily what we heard in the Revenue Department this year...Revenue Committee, and we turned every one of those down. [LB9 LB420]

SENATOR ROBERT: One minute. [LB9]

SENATOR HADLEY: I urge you to support AM1217. I urge you to support LB9. Thank you, Mr. President. [LB9]

SENATOR ROBERT: Thank you, Senator Hadley. (Doctor of the day introduced.)

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Returning to discussion, Senator Pahls, you are recognized. [LB9]

SENATOR PAHLS: Thank you. I would just like to clear up a couple of issues. The Department of Revenue decided in the year 2000 that this should be taxed. Their interpretation was that this should be taxed. Now, during that process there was some confusion, but there were co-ops paying the tax. And they have known this, all of them, for the past two years. Now, right now the attorney is pushing the issue. There is an impasse. But these are the direct words from the department head yesterday. The department head is not moved by their argument. Dust-suppressant oil is not currently exempt. They are not confused. They are not confused. They say, this is the way it is, and those are the direct words from the person who is in charge of the Department of Revenue. There's no confusion. You have the attorney on the other side says, no, no, no. It's like it's an argument. Yes, we will make that decision today. Again, the fiscal note shows that is a significant amount even if it drops. What I'm saying is we are attaching an amendment to a bill that had basically what I call a minor fiscal note. You could buy part of that, the wood and the corn, because that is a natural product. That is a product of our state and we have other issues that that could fall in. It could fall into that one section. This is a new section. This is not a section that they would put in with something else; this is a new one. Just want to make sure that we all understand the Department of Revenue says, should not be exempt. They are not confused. It's the other side who are arguing. Let's go back. The Department of Revenue have been working on this since the year 2000. They have been collecting it from some. Thank you. [LB9]

SENATOR ROBERT: Thank you, Senator Pahls. Senator Wightman, you are next and recognized. [LB9]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. Certainly Senator Pahls has a strong argument that we need to revisit all of the sales tax-exemptions, all of the income tax-exemptions as well, and that ought to be part of a bigger study. So, you know, I'm not questioning that. Right now, we're looking at a matter of fairness. First of all, LB9 concerns the burning of fuel for the dehydration of alfalfa products, and for years they had used natural gas, maybe some had used propane, might have been a small use of electricity, but mostly natural gas. And I stated earlier when we had the bill on General File that finally natural gas became so expensive that it became almost a prohibited activity, prohibitive activity I should say. And then they started sun curing it, leaving it out in the sun. And so the alfalfa cubes were not nearly as green colored because they were left out and they became kind of yellow colored. And so all of the fuels that were used in this were all fossil fuels; they were all exempt. Now, here all of a sudden we were using wood and wood products and it was cheaper. We were burning up a waste material that could be used. But the Department of Revenue were saying, well, technically it didn't fit within the law as it was written previously. And so LB9 was brought to level the playing field so that nonfossil

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fuels would be accorded the same advantage of the fossil fuels. In all fairness, Senator Adams came to me in advance. We were designated a Speaker priority bill on LB9. His bill was not, but it had been voted out, as Senator Hadley told you a few minutes ago, to General File. There was a good deal of similarity between the two bills because his involved the use of mineral oils to hold down the dust in elevators to try to curb elevator explosions that all of us have heard about from time to time. I thought there was a lot of similarity. It's true his has a bigger fiscal note. I think Senator Pahls earlier in his debate talked about it having a fiscal note of \$400,000. Senator Adams has told you that has been greatly reduced and it's about \$122,000. So it was a difficult decision, but I stand here in support of AM1217. I think that it is very similar, involves very similar activities to what we're talking about in LB9. I'm fully cognizant of the fact that it does have a much larger fiscal note and that may be a problem to some. But I think, as Senator Hadley told you, a lot of thought were given to these. That was voted out of committee. And so I urge you to support AM1217. Thank you, Mr. President. [LB9]

SENATOR ROBERT: Thank you, Senator Wightman. Those wishing to speak: Senators Cornett, Price, Adams, Pahls, and Utter. Senator Cornett, you're recognized. [LB9]

SENATOR CORNETT: Thank you, Mr. President and members of the body. Let's move away from what we're exempting and look at the underlying tax policy. Generally we exempt clarifying components. The sales tax rule is generally you exempt the components used to produce a product so that cost isn't passed on to the consumer. If you look at it there, when Senator Pahls was talking about LB9 which is exempting corn and wood, it is an input to the final product. If you look at the mineral oil, it is an input to the final product. When he talked about the fact that the...Doug Ewald, head of the Department of Revenue, said that there is no misunderstanding in this. In the last two years he is correct. But here is the problem: For years it was interpreted that they were exempt. Then we went through a process of some auditors believing they were exempt and other auditors not exempting them, so some people being taxed, some people not being taxed; some tax preparers thinking they were exempt, other tax preparers knowing they weren't exempt. What we have done with these bills is clarify what the original intent was--to exempt component parts. Now, I completely agree with Senator Pahls and we have discussed this many times on the floor that over the course of the next year we need to look at what we tax and how we tax in this state. But I do not believe that it is fair to have laws on the books and auditors interpreting those laws differently. We either tax people equally for the same product or we don't tax them. The original intent was not to tax component parts. Therefore, we clarified the language in this bill that mineral oil would not be taxed at this time. I am not saying that when we go and we look at how we tax and do a tax study that we will not change that. I am saying that we are clarifying what we have in statute now based on what people believed they were being exempt from. Thank you. [LB9]

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SENATOR ROBERT: Thank you, Senator Cornett. Senator Price, you are next and recognized. [LB9]

SENATOR PRICE: Thank you, Mr. President, members of the body. I would yield my time to Senator Pahls, if he would like the time. [LB9]

SENATOR ROBERT: Senator Pahls, 4:50. [LB9]

SENATOR PAHLS: Thank you, Senator Price. Senator Cornett, you did hit a good note with me when I heard you say the word, this may not be here forever, that we are going to be reviewing some of these. You won a little bit of me over on your side on that point. Again, I want to point out, laws do change. We do make different decisions. And in the year 2000, the Department of Revenue said, hold on, this is not exempt. It took a while for everybody to get on board. The last two years that's been very clear. They have made that clear. This is not something that should be misunderstood by those people who use mineral oil. They are fighting the fight to say, oh, no, we want to go back. This will be the same type of issue that we will be dealing with in the future. There will be lobbyists who will be lobbying us on every item that we want to remove. It's a fact of life. What is happening now...and if we do what I think the good Senator Cornett said we probably will be doing in the future is that we will be reviewing these. That is one of the things that I want us to do. But the pressure is going to be intense because a lot of times people do not want to give up things not realizing if they give that up, it will have more money available that could reduce other taxes for them, hoping to get people to look at the big picture. But I still want to say, as of yesterday...and I'm going to read that one more time, the department has not been moved by their argument. This dust-suppressant oil is not currently exempt. This is not a confusion. The attorney on the other side wants to bring that note forth to us. And as I said before, I was critical a couple of weeks ago of the Department of Revenue because I was...by reading that they do not make any recommendations, where that hasn't happened for a number of years, I said, whoa. Then it dawned on me every time they do do something, make a change, we fight it off, we give in. I know this is a tough issue. As I said earlier, with 30 senators signing on to tax-exemptions it's certainly going against--pardon the expression--the grain. I want us to take a serious look at this. I know that I'm fighting an uphill battle here, but if I can get the good Senator Cornett to sort of smile at me, saying that she is going to help review some of these, she is winning me slowly. And it's a nice smile, so she is really making my day because we do need to take a look at these again. Take a look...I was not fighting the bill. I'm fighting the amendment. I think the bill...I have no problem with using wood and corn because that does make sense. Every tax-exemption by itself feels good. It's hard to argue. Two weeks ago, I had somebody from my district who is in the advertising business said, we need a sales tax-exemption on some of the things he does because people are going across into Council Bluffs with the same project and they get a sales tax-exemption on it. [LB9]

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SENATOR ROBERT: One minute. [LB9]

SENATOR PAHLS: He does a lot of work, and you know how in the advertising business all you have to do is send the...from your computer over across the water and they can make the material there. And he says that's what's happening to him. You know, that sounds like that has merit, but when does it stop? When does it stop? Again, the argument that we're hearing today, be prepared next year to hear the same argument that we are hurting individuals. And I'm saying look at the bigger picture. You do away with some of these exemptions, the taxes will flow in a different direction. Some of these co-ops actually may gain if they did not have pay...I'm assuming they pay property tax, I'm assuming they pay some other kind of taxes. That may be a benefit to them or their employees if we reduce income taxes. It's not like we're taking everything away and they will not get anything. And if nothing else, we are taking money from General Fund. [LB9]

SENATOR ROBERT: Time. [LB9]

SENATOR PAHLS: Thank you. [LB9]

SENATOR ROBERT: Thank you, Senator Pahls. Senator Adams, you're next and recognized. [LB9]

SENATOR ADAMS: Thank you, Mr. President. Senator Pahls, some of what he says is right. I sit on the Revenue Committee. I lost track somewhere in the last weeks of hearings of how many different bills we were hearing where everybody was asking for a sales or an income tax-exemption. And we kidded ourselves in committee about having an imaginary red button up there and when people came up, we kind of pushed it and said, no, no, no. Why? Well, I can speak for myself, (a) trying to protect the revenue base of the state, and secondly, some of them just didn't make good tax sense. Now, my smile isn't going to help Senator Pahls. We do need to look at all of these things, and we need to have a rationale. If we're going to be granting the exemption, we need to have a rationale for doing it, and we don't have that. It's very, very random. That aside, here we are on this. The Revenue Committee, after IPPing bunches of other sales tax-exemptions and tax credits, moved this one out, not because it's a new exemption but, rather, it needs final clarification. The head of the Department of Revenue in the last two years, go get it. Senator Pahls is right. The attorneys for the co-op council have said, no, you're misinterpreting the statute. The commissioner believes otherwise. But let's take into consideration all the years that this has been in effect and this mineral oil has not been taxed and now it is. And during this interim period of time, some of it's been collected, some of it has literally been rebated back from the state to elevators. It's confusion. It's confusion. And Senator Pahls is probably right. The commissioner believes that it ought to be taxed, but I think the commissioner also believes that he needs final clarification on this once and for all, which, by the way,

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is the prerogative of this body, nobody else. We decide. We decide. And what I believe is that at this point we have an essential component which complies with the statute--that mineral oil that is applied to the corn. And we need to make a decision once and for all so that those auditors when they go out, some of them aren't giving back rebates while others are collecting; so that Commissioner Ewald is either right or wrong; it's over, it's done, we have made the decision. What I'm asking the body to do is to clarify it, and the clarification I believe is to include the mineral oil as an essential component. We have been doing that. We have been doing that. Thank you, Mr. President. [LB9]

SENATOR ROBERT: Thank you, Senator Adams. Senator Pahls, you are next and recognized. [LB9]

SENATOR PAHLS: Thank you. I'm still working on the smile from the Senator Cornett saying that we will be taking a look at some of the issues next year. Again, I want to point out, since the year 2000 this has been an issue. There has been some confusion. It's interesting why we become the experts of saying what is and what is not when people who work in that field, the Department of Revenue who are looking at these, they suddenly are not the experts. And I agree, we have the power to make those changes or otherwise we all ought to go home. What this points out to me, be prepared in the future for those of you, when we bring up something such as this, the power of the people on the other side of the glass that they are going to place on us. The same arguments that are given to us today will be given to us in the future. I'm not so concerned about this today, to be honest with you, because I think we need to take a fresh start. But again, for those of you who take a look at the General Fund and you see it slowly, slowly going away is because we are slowly, slowly giving exemptions. And as I said earlier, this is a new one. We are starting a new section and I have a feeling that we will start a new section. But hopefully in the future we will take a look and say, time to stop, time to reflect and not let the power of those individuals who want to keep those exemptions, because we know it's going to be intense. But I have a feeling that I'm gaining today from members of the Revenue Committee that they are ready to play that game next year to take a look at some of the things that we have done in the past. Let's say we did them in '67, hmm, may have changed by then. Most of you were not around in '67, just a few of us were. If you were around, you were mighty young. So times have changed. As I said, we went back to '79 and just new exemptions from '79 been over \$350 million. And that continues to grow, and this bill or this amendment along with the bill will help it grow all the more, at least this amendment will help. The other, the original bill, that actually has a section already going to which is \$119 million just right now. So again, if you cannot see what I call the light on this bill, I'm hoping for the light, for the sun to shine, not to sunset necessarily, but the sun to shine on our next session with the help of the Revenue Committee because I'm willing to do my part. If I've not given that impression, I'm already started in hoping that I can work with the Revenue Department to help with the taking a look at tax policy. And to be honest with you, I've

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had people from the outside in dealing with tax policy, are willing to sit down with me this summer and probably to give me...to make me a little smarter on tax policy because I'm impressed with their qualifications. Again, I thank you for listening to some of my concerns today. [LB9]

SENATOR LANGEMEIER PRESIDING []

SENATOR LANGEMEIER: Thank you, Senator Pahls. Senator Utter, you're recognized. [LB9]

SENATOR UTTER: Thank you, Mr. Chairman, ladies and gentlemen of the body. It is I, the grumpy old man in the back of the Chamber. And to good old Senator Pahls I want to say that I understand what he's saying and I think he's right on. I don't see the issue that's before us in AM1217 and LB9 as the issue that represents an additional exemption. Frankly, these were items that were not being taxed previously. But I do agree with Senator Pahls that this state does need to take a close look at tax-exemptions that are granted to everybody, not only sales tax-exemptions but also income tax-exemptions. I think that we have done a really good job of eroding our tax base. And as a member of the Revenue Committee, I think my fellow committee members will agree that I have been pretty stingy this year in granting exemptions that will cost the state revenue, particularly in this year in which we were having difficult economic times anyway. So I do rise in support of LB9 and AM1217 based on the fact that I think it's a clarification of rules for the Department of Revenue. It's a matter of continuing the exemption that has been already in effect for the types of fuels, the biofuels that are represented by LB9 and certainly the mineral oils that are represented in AM1217. And so I would urge the body to support these two amendments. I think they're important, they're important to our state, and they're important to clarify confusing language that exists in Revenue Department regulations. And I think this once and for all will clarify it at some time down the line when we develop a tax policy for exemptions, which I think this state sorely needs. They may not survive that scrutiny when that time comes, but it is the right thing to do today. Thank you, Mr. President. [LB9]

SENATOR LANGEMEIER: Thank you, Senator Utter. Senator Carlson, you're recognized. [LB9]

SENATOR CARLSON: Mr. President and members of the Legislature, I am in support of Senator Wightman's bill, LB9, and Senator Adams' amendment, AM1217. I will compliment Senator Pahls, however, because I do believe that his concerns have merit. I admire his courage for bringing this forward because whenever you do, realistically he's paddling upstream and it's difficult to deal with. I think the critical question is, what really is the impact of the removal of a sales tax-exemption? Who does it affect? Who does it hurt? Who does it unfairly put in a position or a spot they can't recover from?

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And my concern is that many of these involve agriculture. And in agriculture we have those who produce and we have those who manufacture. And if you take a pivot manufacturer, they buy inputs, they buy supplies, they make the pivot, they set the price. If they have a sales tax-exemption removal, they compensate for that in how they set their price. Now, contrast that with the grain farmer and the livestock producer. They cannot set their price in the finished product, so they lose an exemption. They have increased input costs. They cannot set the price. That's different. I think the Department of Revenue comes at it from a different perspective. They're not worried and concerned as to how this affects the people that lose the exemption. Naturally, they ought to be more concerned about how does it affect the amount of revenue that's coming in or that's not coming in. But this whole issue is worthwhile to debate, it's worthwhile to consider, but let's make sure our decisions don't unfairly affect those who have no possibility of recovering from the effect. And, Senator Pahls, if this is a study that is conducted in the interim, which I think is a good idea, I would encourage you to include ag producers in any study that's done along these lines. Thank you, Mr. President. [LB9]

SENATOR ROBERT PRESIDING []

SENATOR ROBERT: Thank you, Senator Carlson. Senator Pahls, you are next and recognized. This is your third time. [LB9]

SENATOR PAHLS: Thank you, Mr. President. I will not belabor the point. As I hear people stand up and say the idea behind some of my proposals has merit, that is what I'm expecting to hear, that is what I'm wanting to hear. My idea is not to stop the bill or the amendment. It is to speak to it. Because I think this year we're rolling in that direction. I'm concerned about next year. And if we go back and take a look at some of these exemptions, this may be one of them. And I do agree, we do need to give the Department of Revenue some direction. What I'm also saying is when they do do something, because we do have a new leader in there trying to make things better for the state of Nebraska, we ought to also listen to that opinion. That is what they're all about. If not, let's do away with the Department of Revenue. If we are going to dismiss their opinion of making a change, apparently we don't need them. I know I'm being a little facetious there, but. We do need to take a look, as I said, with all of them. My intent is not to stop the bill or the amendment. It's to get people to start listening and thinking about next year. And I can assure you, Senator Carlson, when we work this summer, every individual or every group that wants to be part of the process, we'd like to have them at the table because we want to make this a fair exchange or a fair look at tax policy. And the thing I want to point out, if you lose in one area on a tax-exemption, you may gain in another. I know this is not going to happen, but if we do away with all of the exemptions, we would not have property tax or we could do away with income tax. It's not like we're doing away with...we're taking all the exemptions away and nothing is given back. And keep in mind what we exempt, in one year, that is our budget for that year. So that's why some of these things, even though they would hit certain groups, we

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need to take a look at because I do know the agriculture group, they are concerned about things such as property tax and income tax, and in some cases, corporate taxes. Keep in mind we could do away with all of that. If nothing else, we could reduce the rate below 2 cents on sales tax. Think how that would have people starting to think. But to do some of these things you need to probably get on board and say...instead of saying, no, right now, at least take a look. And that's what some people are saying, no, I do not want to make a change. I'm asking let's open it up, discuss it. Already Senator Stuthman over here came up with a good reason why something should be exempted. I said, well, if he would have...if that comes to the floor and he would discuss it, he probably would change some people's minds. Again, my idea behind this right now is not to stall the bill or the amendment. Thank you. [LB9]

SENATOR ROBERT: Thank you, Senator Pahls. Those wishing to speak, Senators Louden, Pankonin, Price, and Stuthman. Senator Louden, you are next and recognized. [LB9]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I stand fully supporting of AM1217 and LB9, since I was on the Revenue Committee and voted that out of committee. This isn't something that we were doing going against the wishes of anyone. This is a clarification for what the Revenue Department was doing, and that's their job, is to find ways that taxes need to be collect. So we didn't have any problem with that. It was simply a clarification. I would say, though, as Senator Pahls was saying, everybody would stand up and support his claim for a tax study and a sales tax basis for your taxes, then I would say that I am against that. As I came down here about seven years ago, Senator Redfield introduced a bill that would have a 2-cent sales tax on everything that was taxed and that was supposed to cure everything. Nobody could figure out how you were going to take that sales tax money and fund your counties because it would be something similar to what you're doing with your state aid to education right now. So some of the counties that don't have a sales tax base, don't have retail sales in their counties wouldn't get probably anything out of it and they would be relying on other counties with the sales tax for revenue. Also, over the years we've had the Syracuse study. That came up here a few years back about eight years ago. That information is still out there. That can be brought up and used again. There's nothing wrong with that Syracuse study information. The deal was that some of it was never implemented that was anticipated in the study. Two years ago, we had the Tax Policy Commission, and Senator Pahls was a member of that commission. That information is out there. And then here in the last couple of weeks or so, there was an article in the paper about then Governor Tiemann, he's living in Dallas now, about 80-some years old, and they were talking to him about he was the one that lost the governorship because he introduced the sales tax. And at that time, he mentioned that if he was going to have a sales tax, you had to have an income tax also because it was considered...sales tax is a regressive tax on poor people. And so they had to have an income tax so that the sales tax would not be quite so regressive to poor people that

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spend most of the money. At that time, we had it on groceries and that was finally taken off. We found out that that didn't work. So over the years we worked a tax system that probably works quite well for Nebraska for the population base that we have in Nebraska now. To have another study I think it's mostly because some of you haven't been around here when we've had those studies. But when you get done, you find out that you probably will come up with about the same system that we have now. And that's always been about a third sales tax, a third property tax, and a third income tax. Now, that works quite well for the state over, but usually there's some of these counties that it doesn't work quite well because they either don't have the income tax or they don't have enough retail sales to make up the difference. And, also, when I think Senator Pahls mentioned in 1967 some of us were very young, yes, I considered myself young then. I was 31 years old in 1967 and I'd already been ranching for 14 years, so I remember quite well when the sales tax came on and what we paid sales tax on and what we didn't pay sales tax on. You want to remember that Nebraska is an agriculture producing state. That's where we get most of our income and that's what really drives Nebraska, is the ag commodities that are exported out of Nebraska. And whenever you put a sales tax on something that you use to produce a commodity that you are going to export... [LB9]

SENATOR ROBERT: One minute. [LB9]

SENATOR LOUDEN: ...you are regressive on what you're trying to do and you do have a problem with your economic development if you tax what you're trying to export. You can tax what you import or you can tax what you made on the money while it was here. But when you start taxing things that you export, then you do have a problem. And with that, I certainly support AM1217 and I support LB9. Thank you, Mr. President. [LB9]

SENATOR ROBERT: Thank you, Senator Louden. Senator Pankonin, you are next and recognized. [LB9]

SENATOR PANKONIN: Thank you, Mr. President, members of the body. I'm standing up, talk a little bit about this issue. I'm in favor of AM1217, LB9. But I just wanted to mention a little bit about sales tax-exemption and it is a complicated issue, but I want to remind people that it's not quite as simple as to say, well, just because other states grant them we shouldn't or whatever. And I want to just use a personal example. As many of you know, I'm in the farm equipment business. I'm 15 miles from the Iowa border, and how we line up with other states is important and it affects employment in businesses and the people they employ and jobs. And so there's a lot of other things that go into it besides just sales and property tax. For example, I'm a Case IH dealer. My John Deere dealer in my county is closing at Plattsmouth, Nebraska, moving across the river to a Glenwood, Nebraska (sic), address, and they will not then have sales tax on parts, telling our mutual customers we're moving over there and one of the reasons is so that you won't have that tax burden. So from a competitive standpoint, it puts you

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at a big disadvantage. And if you look at...we've already seen it on the small tractor market, Iowa doesn't have tax on those machines; we do. People go over there, supposed to pay the use tax, doesn't happen. And so there's more to it than maybe meets the eye. And as Senator Carlson has said, it does affect employment, it affects businesses that are viable in the communities that...because of a competitive disadvantage. In today's market, a 5-6 percent change in the price is huge and makes people go further. That's just the way the market works, so I think we have to be careful. When every state around us doesn't have sales tax on items and we do, what it does to our local businesses, old employment, the investment, the other taxes that those businesses pay, employment taxes, income taxes, local property taxes, that all goes away. We got to look at the net effects of these exemptions, what they mean to the overall strategy of our economic development in our state. So I welcome a study, but I think we have to be very careful of looking at just the residual effects because it's not quite as simple as we do away with exemptions and then we don't have property taxes. That's a wonderful world, but not a realistic one, in my opinion. So I just wanted to get on the record on that. I haven't really joined in on this discussion, but I think we'll be talking about it more in the future. But I am supporting AM1217 and LB9. Thank you. [LB9]

SENATOR ROBERT: Thank you, Senator Pankonin. (Visitors introduced.) Returning to discussion on AM1217 to LB9, Senator Price, you are next and recognized. [LB9]

SENATOR PRICE: Thank you, Mr. President and members of the body. I sit here, listen to the discussion, the discourse, and I was struck by I suspect you would call it irony. We, as individuals and individual taxpayers, would love to see our tax burden lessened, whether it's on our property taxes and our income taxes. And Senator Pahls is working towards that. But yet the other side of us is the part where business and those of us who are involved in business in one way or another, and I would submit that all of us, in one way or another, at least if not primarily, secondarily, are involved in business. And the business side of us says, no, we want tax breaks for business. And here we are, set up in a struggle, a dichotomy of existence. We want one thing and we want the other thing, and we can't give one thing and we can't give the other and we struggle. And it keeps going around and around. And I applaud what Senator Pahls has done in stimulating the body to doing something. I really hope this does engender action beyond words. But make no mistake about it, there will be collateral damage experienced by those senators who choose to have the gumption to actually do something to change this status quo. Ladies and gentlemen, our tax base is like an ice skate. You have to understand that. We tax so few things so, therefore, we have to tax them more. It's not a complicated scenario there. And this state runs around on an ice skate and it's very precariously balanced. And when you go back and you talk to your constituents, your constituents for sure as homeowners, property owners, parents, people working hard to make a living, they will say, give us a break. And our business owners will say, do not harm us and take away business. It's going to get ugly before it gets better and I hope

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that the rest of the body will have the fortitude to follow through and not make these empty words and platitudes surrendered to the microphones and the airwaves to satiate the moment. Thank you, Mr. President. [LB9]

SENATOR ROBERT: Thank you, Senator Price. Senator Stuthman, you are next and recognized. [LB9]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I've been listening to the debate and, first of all, I want to just say that I do support LB9 and Senator Adams' amendment. I truly support that. But in some of the discussion and the debate that we've been having this morning and the information that's been discussed is the fact that, you know, if we could have more sales tax and eliminate a lot of the exemptions it would help with the property tax. That's not going to happen. Property tax is assessed locally, collected locally, and spent locally. That's what property tax does. That's on the local level. Sales tax and income tax is what funds the government, funds the state. Yes, it may have some impact on property taxes. If the state gives back to the local communities, the local villages, the local towns, the local counties some of the sales tax that they collect, gives that to them in, in fact, that they could reduce property taxes, then it will happen. But that's not going to happen very easy. Even if there's a lot of the exemptions taken away and a lot of more sales tax dollars are collected, it's not going to affect the property tax. We just as well get that out of our mind already that that is not going to make very much difference as far as property taxes are concerned. So with that, I do support the amendment and the bill. Thank you, Mr. President. [LB9]

SENATOR ROBERT: Thank you, Senator Stuthman. Senator Council, you are next and recognized. [LB9]

SENATOR COUNCIL: Yes, thank you, Mr. President. One of the by-products out of lengthy and thorough debate is it gives rise to questions. Senator Cornett, would you yield to a question, if she's available? [LB9]

SENATOR ROBERT: Senator Cornett, will you yield to a question? [LB9]

SENATOR CORNETT: Yes. [LB9]

SENATOR COUNCIL: Yes, thank you, Senator Cornett. As I've been listening to the debate and reading both the original...re-reading the original bill and the amendment, the question that came to mind is, how is the tax-exemption granted? Is it at point of sale? And if that's the case, how do you determine whether the 50 percent threshold is met? [LB9]

SENATOR CORNETT: Let me check on that real quick. [LB9]

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SENATOR COUNCIL: Okay. [LB9]

SENATOR CORNETT: Thank you. I just wanted to clarify that so I didn't misspeak. It is at the time of audit that they are determining the amount that has been used and then the tax owed. [LB9]

SENATOR COUNCIL: Okay. So they don't pay...so that I can get this correct, they don't pay sales tax on the initial purchase and it's not until, what, they file a... [LB9]

SENATOR CORNETT: Until they file their return. [LB9]

SENATOR COUNCIL: They file their income tax return, and then they can make a claim for the fuel sales tax-exemption? [LB9]

SENATOR CORNETT: Correct. [LB9]

SENATOR COUNCIL: And at that point, they have to provide some documentary evidence establishing that more than 50 percent of those purchases were for the stated uses in the... [LB9]

SENATOR CORNETT: Were used for that, not... [LB9]

SENATOR COUNCIL: Okay. [LB9]

SENATOR CORNETT: Yes. [LB9]

SENATOR COUNCIL: They were used for that. [LB9]

SENATOR CORNETT: Correct, more than 50 percent. [LB9]

SENATOR COUNCIL: Okay. And you mentioned audit. How does one audit that? [LB9]

SENATOR CORNETT: Well, we had another bill that...very similar to this that the Revenue Committee passed out dealing with the electricity used for grain drying. And the grain elevators, actually, a number of them went back and retrofitted the elevators specifically for meters on the elevators so they could determine whether 50 percent or...it was 51 percent were use, for use and electricity. [LB9]

SENATOR COUNCIL: Uh-huh. [LB9]

SENATOR CORNETT: So the elevators are having to provide documentation of how much is used in this product and that they have to show versus the amount produced. [LB9]

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SENATOR COUNCIL: Okay. The reason I ask you the question, I mean, gasoline is one of the fuels. And an individual purchased a hundred...a thousand gallons of gasoline and says that 51 percent of it was used in a process for which it is exempt from sales tax. I'm just how do you... [LB9]

SENATOR CORNETT: Each exemption would have to provide different documentation. Like I said, with the electricity they actually...a lot of the elevators went and retrofitted the elevators with special meters to show how much was used in the elevator versus the rest of the facility. I do not know how they determine how much is...what that...I know that it's 50 percent. I do not know what the department requires in regards to documentation to meet that 50 percent. [LB9]

SENATOR COUNCIL: Okay. And is it per fuel or can one combine fuels and combine their gasoline purchases with their propane purchases? [LB9]

SENATOR CORNETT: I believe it's per fuel. [LB9]

SENATOR COUNCIL: Okay. [LB9]

SENATOR CORNETT: But that is, again, something I would need clarification on, but I believe it is per component. [LB9]

SENATOR COUNCIL: Okay. Thank you. [LB9]

SENATOR ROBERT: Thank you, Senator Council. Senator Friend, you are next and recognized. [LB9]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. I believe I'm probably the last one in the queue, but I wanted to explain something real quick. Members, if you looked at Senator Adams' underlying bill, which was actually LB233, I voted against sending this out of the Revenue Committee. Now, it has nothing...there are six or eight plants out there and Senator Adams is right, they need help, they've got a problem. And it could jeopardize their business if we don't provide this exemption. It really could. But my argument or my thought process was far more macro than this. Just because we're solving the problem with AM1217, and we are solving their problem, at least to a degree, just because we're solving the problem with AM1217 for these seven or eight plants that are out there doesn't mean we're solving the macro problem, the big picture problem and that is this: The Department of Revenue...the Governor's Office, Department of Revenue, anybody that makes these decisions can go in and look at our statutes and look at the definitions of what a product is and say, we should have been taxing this product. We weren't, but according to state law we can and we will because it's appropriate. A fundamental reading of our statutes indicates to us that this is a

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product and it is codified as such in our state law. Just because we haven't taxed it doesn't mean...if I'm driving home from Lincoln today and I'm driving 100 miles an hour, just because nobody catches me doesn't mean I'm not breaking the law. The analogy might not totally fit here, but the point is this: Just because the Department of Revenue hadn't touched it doesn't mean it can't. So we solve the problem here, but what's the next problem that's going to rear its ugly head? Mark my words, again, I say this a lot, but mark my words, there will be a problem that rears its ugly head until...and Senator Pahls has brought out on several occasions what he believes is the answer to that problem and that is to level the playing field all the way across, and then start picking them off and saying, well, yeah, you know, nonprofits, I guess you do require this exemption because we don't want, you know, dual taxation or whatever the case might be. My answer--and, again, maybe I'll have that sometime in the future, hopefully--is to say we need better definitions of what products are. We need better definitions of what services are. We need better definitions of what a use tax is. We need the Department of Revenue to be able to analyze something quickly, and we need to have them be able to say, no questions asked, we know what the sales tax code means. Right now, analysis by paralysis, that's what we're dealing with. Look, I'm going to vote to advance this bill because it's the right thing to do under our circumstances, I believe. I voted not to move Senator Adams' bill out of committee because I was making a statement. Our sales tax code is messed up, and it's messed up because we don't have proper definitions and it's messed up because we are not giving good reasons for the types of...in the long run, the types of exemptions that we're providing. We're going to give an exemption here. Who's going to be the next that asks for one? Who knows? [LB9 LB233]

SENATOR ROBERT: One minute. [LB9]

SENATOR FRIEND: Thank you, Mr. President. [LB9]

SENATOR ROBERT: Thank you, Senator Friend. Seeing no other lights on, Senator Adams, you're recognized to close on AM1217. [LB9]

SENATOR ADAMS: Thank you, Mr. President, members of the body. When we sat in Revenue this year and we looked at all those exemptions, and we wrestled with should we grant them or not, Senator Friend's hit on a key point, we can look at them in two ways. Yeah, we ought to, based on this feels good, this looks good, lobby thinks this is a good one, this particular interest group that's asking for it is one that I have some favor with. Or you can look at them purely, as best you can, from an objective standpoint and say, what's proper tax policy and should we grant the exemption? But before you're going to do that, you probably ought to just wipe the slate clean, define the criterion under which you're going to grant an exemption and get that clarified objectively first, then start taking them one at a time and say, this one fits, this one doesn't. We need to do that. We're not there yet. We're right here, right now. This item

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that has been in statute since 1967 is now being interpreted differently and it needs clarification. And that's what I'm asking you, body, to clarify the fact that this mineral oil, which is part of the process, ought to be exempt. Thank you, Mr. President. [LB9]

SENATOR ROBERT: Thank you, Senator Adams. Members, you've heard the closing to AM1217, the amendment to LB9. The question before the body is, shall the amendment be adopted? [LB9]

SENATOR HADLEY: Record vote. [LB9]

SENATOR ROBERT: There's been a request for a record vote. All those in favor vote yea; opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB9]

CLERK: (Record vote read, Legislative Journal page 1394.) 39 ayes, 0 nays, Mr. President, on adoption of the amendment. [LB9]

SENATOR ROBERT: AM1217 is adopted. [LB9]

CLERK: I have nothing further on the bill, Mr. President. [LB9]

SENATOR ROBERT: Returning to discussion, are there any members wishing to speak? Seeing none, Senator Nordquist for a motion, please. [LB9]

SENATOR NORDQUIST: Mr. President, I move LB9 to E&R for engrossing. [LB9]

SENATOR ROBERT: Members, you have heard the motion. All those in favor say aye. Opposed, nay. LB9 does advance. Next item on the agenda, Mr. Clerk. [LB9]

CLERK: Mr. President, LB494, no E&Rs. However, Senator Wightman would move to amend. Senator, AM1244. (Legislative Journal page 1280.) [LB494]

SENATOR ROBERT: Senator Wightman, you're recognized to open on AM1244. [LB494]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. When this bill was on General File and during the debate, we discussed near the close, and I spoke to the issue, that it seemed to me that we were taking an awfully big step and I think at that time we were moving from a Class III misdemeanor to a Class I or Class IV felony. I wouldn't have had so much concern if that had been a Class I misdemeanor perhaps before, but I think there's a wide range of offenses that could apply. And so what this AM1244 does is merely change what would have been classified as a Class IV felony to a Class I misdemeanor. Now that makes quite a difference because under a Class IV felony, the penalty...and I don't have it in front of me right now, but I think it's \$5,000

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fine, up to five years in the penitentiary or both. We would be changing it if AM1244 is passed to a Class I misdemeanor, which would be up to one year in jail, \$1,000 fine or both. My reason for this is that there's a wide range of offenses. If we're looking at a person who harbors a mean dog, a vicious dog intentionally, and there certainly are such people that do that with the idea they probably would like to have them attack somebody there. Some of them are hermits, some of them are people who just don't fit very well in society, and then there are a number of other people that have a dog that maybe is a family dog and could very well have had that first bite as Senator McCoy's LB494 provides, well, I think it provides as a result of Senator Coash's amendment to that bill, but it would require one incident before they could be charged under LB494 and be charged with a felony. But there's such a wide range of offenses that might qualify, and a wide range of circumstances that it seemed to me that it's unfair that that become a Class IV felony. So what AM1244, as I said, makes that first offense a Class I misdemeanor rather than a Class IV felony. I believe Senator McCoy is in agreement with regard to the amendment. And then the second offense would become a Class IV felony. That second offense isn't dog specific, so to speak. It doesn't have to be the same dog. It could be a different dog. Because my opinion is that if you have one dog like that, you get another dog that does the same thing, that probably you fit within the category that maybe deserves a penalty for a Class IV felony. I think on probably the way it would be written, either dog would be entitled to a second bite before the owner would be charged under LB494 if it was amended by AM1244. So this is my amendment. I urge your support for the amendment because I think that a Class I misdemeanor certainly fits the act much more closely than a Class IV felony would. Thank you, Mr. President. [LB494]

SENATOR ROBERT: Thank you, Senator Wightman. Members, you've heard the opening to AM1244 to LB494. Those wishing to speak: Senators McCoy and Nelson. Senator McCoy, you're recognized. [LB494]

SENATOR McCOY: Thank you, Mr. President and members of the body. I do stand in support of Senator Wightman's amendment, and I think that Senator Nelson will speak in a moment. And Senator Wightman had some very good observations on General File when we talked about this bill making sure that we're assessing the correct penalties for this and the appropriate level of response. And I do stand in support of this amendment. I think the overall goal is still achieved with this piece of legislation and that is to let Nebraskans know that there will be serious penalties for not maintaining personal responsibility and responsibility of possessions, in this case, canines. So I do stand in support of the amendment. Thank you, Mr. President. [LB494]

SENATOR ROBERT: Thank you, Senator McCoy. Senator Nelson, you're recognized. [LB494]

SENATOR NELSON: Thank you, Mr. President, members of the body. I will be very

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brief. I stand in support of Senator Wightman's amendment, AM1244, to LB494. I think he covered the subject pretty well. I had...I also had some concern about the severity of the penalty the first time around and I think imposing a misdemeanor penalty that will assess a fine of \$1,000, plus up to one year in prison, will serve very well as a warning that it better not happen again, otherwise it will be a felony. And I want to thank Senator McCoy for his support of this amendment and so I would ask you to vote green on Senator Wightman's amendment. Thank you, Mr. President. [LB494]

SENATOR ROBERT: Thank you, Senator Nelson. Senator Wallman, you're next and recognized. [LB494]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Would Senator Wightman yield to a question? [LB494]

SENATOR ROBERT: Senator Wightman, will you yield to a question from Senator Wallman? [LB494]

SENATOR WIGHTMAN: Certainly. [LB494]

SENATOR WALLMAN: Thank you, Senator. If I have a dangerous dog sign on my property, will this affect me in any way, this law? [LB494]

SENATOR WIGHTMAN: Well, it may be, assuming that the person was a trespasser, it might be a defense. I doubt it but I think if you harbor a dog that is likely to attack someone that comes into your house, I don't think the fact that you have the dangerous dog will be a defense. [LB494]

SENATOR WALLMAN: Thank you. You know some people do have signs up, a dangerous dogs. And some people have them up in junk yards. I don't know how I'm going to vote on this, but I don't like dangerous dogs myself because I will put them down myself. But some people keep them and they have signs up and you can tell when you drive your truck on the place, you'd better not get out of the car. But little children, that's a different story. Thank you, Mr. President. [LB494]

SENATOR ROBERT: Thank you, Senator Wallman. Senator Lathrop, you're next and recognized. [LB494]

SENATOR LATHROP: Thank you, Mr. President. I've been involved in this issue and so I thought it would be appropriate for me to stand up and talk about AM1244. I think it's a good improvement to the bill. We made some changes in the Judiciary Committee to Senator McCoy's underlying LB494--those were intended to avoid the little yippy dogs, is what we called it over there in Judiciary Committee--and I think probably overlooked the whole proportionality, where does this fit in, in relationship to other crimes that we've

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created and that we have on the books. And I think Senator Wightman's amendment is an improvement and probably puts the penalty for this offense where it belongs. With that, thank you. [LB494]

SENATOR ROBERT: Thank you, Senator Lathrop. Senator Council, you're next and recognized. [LB494]

SENATOR COUNCIL: Yes, thank you, Mr. President, and thank you, Senator Lathrop. That's the reason I had pushed my light to speak, is the proportionality issue. And we had discussed it briefly in the committee and kind of gave it a short shrift because we were looking at so many other bills in the committee where we were enhancing penalties or increasing sentences. But I applaud Senator Wightman for recognizing the disproportionality of the punishment involved in this situation. And in response to my seatmate, Senator Wallman, prior to Senator Wightman's amendment, even if he had a dangerous dog sign all around his property, the fact that he had that sign was an admission of his knowledge that the dog was dangerous. And without this amendment, he would have been subject to a felony prosecution and being tagged with the label of felon for the rest of his life. So we need to be very conscious of all the bills that come before us that provide for enhancement of penalties or the initial imposition of penalties, particularly those where we're changing misdemeanors to felonies or initiating felonies in the first instance. We have to be ever cognizant of the fact that our correctional facilities can only hold so many inmates and we have to be conscious of that fact when we begin to increase penalties. So I urge the body to support AM1244. [LB494]

SENATOR ROBERT: Thank you, Senator Council. Senator White, you're next and recognized. [LB494]

SENATOR WHITE: Thank you, Mr. President. Would Senator Wightman yield for a question? [LB494]

SENATOR ROBERT: Senator Wightman, will you yield to a question? [LB494]

SENATOR WIGHTMAN: Certainly. [LB494]

SENATOR WHITE: Senator Wightman, I don't even own a dog, and I certainly have been around enough scary dogs to appreciate the intent of this legislation. But I am concerned about businesses, secured facilities that use trained guards, properly restrained behind fences, and what this bill has for them. I mean if, for example, you have, if not a junkyard you have a research facility, something else, and you use guard dogs, and they are trained to attack. I mean, they are dangerous if you go into them. Someone climbs the fence with the intent of stealing or something else and the dog attacks them, is that a crime as you understand this bill? [LB494]

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SENATOR WIGHTMAN: Well, of course, I wasn't too much involved in the drafting of the bill itself, I wasn't at all involved, and so I'm really only looking at the penalty with my amendment. You know, I would think that there might very well be a defense in that instance, but still, it's difficult for me to look at the statute and see where that would be a defense. [LB494]

SENATOR WHITE: Thank you, Senator. Would Senator Lathrop yield to a question? [LB494]

SENATOR ROBERT: Senator Lathrop, will you yield to a question? [LB494]

SENATOR LATHROP: Yes, I would. [LB494]

SENATOR WHITE: Yeah, Senator, the same question. I'm just concerned. There is a legitimate place for guard dogs in society. I mean, we've just dealt with police dogs and they have a legitimate place as well. Would this bill criminalize the activity of using a guard dog in that situation? [LB494]

SENATOR LATHROP: Great question. And that is one of the things that we did with this bill in Judiciary Committee, is we provided for a couple of exceptions, one is if you're a trespasser. So if somebody jumped the fence or came onto your property and you fit the definition of a trespasser, even if it's my dog staked out in the backyard, if I want to have a pit bull there and somebody trespasses, this is not a crime. The other that we put in there related to if you are tormenting the dog. Those were actually recognized exceptions to the dangerous dog statute in the first place and by amendment we made those applicable to Senator McCoy's new crime. [LB494]

SENATOR WHITE: So if I understand it right, both are not crimes in the first instance. They're definitionally excluded? If I have a guard dog... [LB494]

SENATOR LATHROP: I think that's right and my hesitation is whether or not it is not a crime in the first instance or whether it's a defense, and that I can't...I'd have to look at the bill one more time. [LB494]

SENATOR WHITE: And that is, for ladies and gentlemen of the body, that's an important distinction, one that has a great deal of impact. If it is definitionally excluded as a crime, you can't be charged. You don't have to hire an attorney. You don't get hauled down to court. You don't have to face a jury trial. If it is instead an affirmative defense, you can properly be charged, you can be properly hauled down in court, you will have to hire an attorney, and you have to prove the circumstances that exempt you from the crime. That's a huge difference. On a practical level, it can mean the difference of a family bankruptcy or not, because you may be charged and facing criminal charges and the expense of that. So it is an area that's important to me. I'd like it to be clarified.

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We do need laws protecting people but, on the other hand, we need to craft laws carefully so that we don't criminalize behavior that's not criminal in any normal sense, nor should we expose those folks to being drug through the judicial system and the criminal law system unnecessarily. So I would much prefer and I'm hopeful that it is definitionally excluded as a crime as opposed to being an affirmative offense. Thank you, Mr. President. [LB494]

SENATOR ROBERT: Thank you, Senator White. (Visitors introduced.) Returning to discussion, those wishing to speak on AM1244: Senators McCoy, Wightman, and White. Senator McCoy, you're recognized. [LB494]

SENATOR McCOY: Thank you, Mr. President. Senator White brings up some excellent points and as a...some additional information to that conversation that we've been having off the microphone, the exclusions to that would be in...and Senator White brought up some great points. If you have a guard dog in a case of a facility, certainly its protection against being defined as a dangerous dog in the case of trespass or of a dog that's being tormented by someone or a police dog. The defense of part of that would be if your canine was in the possession of someone else at the time that such an instance occurred. But I certainly would be happy to yield the balance of my time to Senator White, if he would so choose to further talk about this. [LB494]

SENATOR ROBERT: Senator White, 4 minutes, 10 seconds. [LB494]

SENATOR WHITE: Thank you, Mr. President. Thank you for that courtesy, Senator McCoy. I am much comforted. I've reviewed the language with Senator Lathrop, and so I have no problem with this bill or the amendment and I will vote for it. But I do urge the body to consider the nuances of the language that we pass. The simple difference between an affirmative defense or an exclusion as a crime literally can be the difference between destroying a life by making them go through a whole criminal process or not. And so it's tedious some times, but it is important. And I thank you for those explanations. [LB494]

SENATOR ROBERT: Thank you, Senators White and McCoy. Senator Wightman, you're next and recognized. [LB494]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I do thank Senator White for his distinction and he asked if it really eliminates the crime or whether it's a defense, and I've been reading the language more carefully, which I should have done before. And it does seem to me that it eliminates it as a crime altogether because the crime is harboring the dangerous dog and it's taken out of the dangerous dog definition and, when it is, it seems to me that he's not committed a crime at all. I think this may also be an answer to some of Senator Wallman's questions, although it's certainly not going to cover them all. Because if you have a dog that is so vicious that

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when somebody comes on the property he's going to bite a small child, I think it would be very difficult to come within this exception in that instance. So I think if you're harboring a dangerous dog and somebody comes in and he's not a trespasser, whether he's a social visitor, an invitee--and I know that means probably something only to the attorneys that are in this body, but there's a difference of the status of someone coming onto your property--but I think he's almost going to have to be a trespasser or willfully and intentionally trespassing in order to avoid the criminal action that this particular act provides and the amendment would keep intact. Thank you, Mr. President. [LB494]

SENATOR ROBERT: Thank you, Senator Wightman. Senator Wightman, there are no other lights on. You are recognized to close on AM1244. [LB494]

SENATOR WIGHTMAN: Thank you, Mr. President. I would be very brief. I'd just say that I believe from all of the comments that have been made that the AM1244 makes the crime...makes the punishment fit the crime more clearly than it would have under LB494, so I urge you to vote in favor of the AM1244. Thank you. [LB494]

SENATOR ROBERT: Members, you have heard the closing to AM1244 to LB494. The question before the body is, shall the amendment be adopted? All those in favor vote yea; opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB494]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of Senator Wightman's amendment. [LB494]

SENATOR ROBERT: AM1244 is adopted. [LB494]

CLERK: Senator Cornett would move to amend, AM1203. (Legislative Journal page 1209.) [LB494]

SENATOR ROBERT: Senator Cornett, you're recognized to open on AM1203. [LB494]

SENATOR CORNETT: Thank you very much, Mr. President. I just wanted to remember...or remind the body that this is the amendment that we heard last week for exempting veterinarians from liability for reporting suspected abuse. Since that time, we have come to an understanding that the amendment is...the language is appropriate as "shall." I know that Senator Lautenbaugh is going to get up and speak to his offered amendment last week in regards to "may." I do want to thank both Senator Lautenbaugh and Senator McCoy, and I guess more than both, but Senator Carlson also for working together with me on this bill. I urge the body to pass this amendment. It does allow the veterinarians to report suspected abuse. Thank you. [LB494]

SENATOR ROBERT: Thank you, Senator Cornett. Members, you have heard the

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opening to AM1203 to LB494. Those wishing to speak: Senator Lautenbaugh, you're recognized. [LB494]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. We did have a disagreement over this a week or two ago on whether or not we should be requiring the veterinarians to report suspected abuse in exchange for immunity or whether or not we should allow them to report abuse in exchange for immunity. I preferred merely allowing them, not requiring them to. We had a disagreement on that. I've been convinced that the groups that this will affect do not wish to fight the issue further because they would rather have the immunity. There was a group that I became annoyed with a couple of weeks ago and I won't even...I don't even recall. I think it was the Visiting Nurses Association or something like that. And I won't even go into that. I'm just going to say that while the nurses and I may disagree in the future, the fight on this is over. I wasn't wrong, of course, (laughter) but...and I'll yield the rest of my time to Senator Lathrop. [LB494]

SENATOR ROBERT: Senator Lathrop, 3:45. [LB494]

SENATOR LATHROP: Thank you, Senator Lautenbaugh, and I assume you've yielded the time because my mother, God rest her soul, was a nurse. Thank you. No, I appreciate your gracious words today and let's move the amendment. Thank you. [LB494]

SENATOR ROBERT: Thank you, Senator Lathrop and Senator Lautenbaugh. Senator Dubas, you are next and recognized. [LB494]

SENATOR DUBAS: I do rise in support of this amendment and know there's been a great deal of work that's gone into getting it to where it is today, so I do support the amendment. But I would like to ask Senator McCoy a question not related to this amendment but just to the underlying bill, if he would yield. [LB494]

SENATOR ROBERT: Senator McCoy, will you yield to a question? [LB494]

SENATOR MCCOY: Yes, I would. [LB494]

SENATOR DUBAS: Thank you very much, Senator McCoy. You and I have had a little bit of dialogue just dealing with dangerous dogs and I know your intent, your bill's intention is specifically related to dogs who have seriously injured humans, but we already had current dangerous dog statute and I've had some issues in my district with dogs attacking dogs. So just kind of for some clarification and for the record, I'd like to ask you some questions relating to dogs attacking other dogs or other domestic animals. And I think if I'm reading current statute correctly, there is a definition for dangerous dogs and that does include inflicting any injury on a domestic animal. Is that

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your understanding of current statute? [LB494]

SENATOR McCOY: Yes, it is. [LB494]

SENATOR DUBAS: And so if a dog that doesn't have a previous history of attacking animal or human viciously attacks another dog, can they be confiscated on that first attack or do they have to have another attack to be determined dangerous? [LB494]

SENATOR McCOY: If you don't mind elaborating on what you mean by confiscated in light of... [LB494]

SENATOR DUBAS: Can the dog...it references...it uses, I think it uses that word in the statute where animal control authority can come and take the animal from the owner. [LB494]

SENATOR McCOY: That is my understanding under existing statute. [LB494]

SENATOR DUBAS: Okay. That's...I just wanted some clarification so that I can speak with my constituents, and I appreciate your work on this issue. Thank you. [LB494]

SENATOR ROBERT: Thank you, Senator Dubas and Senator McCoy. Senator Carlson, you're next and recognized. [LB494]

SENATOR CARLSON: Mr. President and members of the Legislature, I, too, will support AM1203. I do have a question for Senator Cornett, if she would yield. [LB494]

SENATOR ROBERT: Senator Cornett, will you yield to a question? [LB494]

SENATOR CORNETT: Yes. [LB494]

SENATOR CARLSON: Senator Cornett, in your summary now you just said that this amendment allows an animal healthcare professional to report a suspected incident of abuse or cruelty. Is that correct? [LB494]

SENATOR CORNETT: They have to report it if they suspect there is abuse, the way the amendment is drafted. [LB494]

SENATOR CARLSON: And I heard you say this allows them; this really requires them, and that's... [LB494]

SENATOR CORNETT: Yes, I'm sorry. I misspoke. [LB494]

SENATOR CARLSON: Okay. [LB494]

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SENATOR CORNETT: It requires them to report abuse. That is the trade-off for the exemption for liability for reporting said abuse. [LB494]

SENATOR CARLSON: Okay. Thank you, Senator Cornett. I do support AM1203. [LB494]

SENATOR ROBERT: Thank you, Senator Carlson, Senator Cornett. There are no other lights on. Senator Cornett, you're recognized to close on AM1203. [LB494]

SENATOR CORNETT: Thank you very much, Mr. President. I just want to urge the body to support the amendment to LB494 and, again, thank everyone involved in working out an agreement on this. Thank you. [LB494]

SENATOR ROBERT: Members, you have heard the closing to AM1203. The question for the body is, shall AM1203 be adopted on LB494? All those in favor vote yea; opposed vote nay. Have all those voted who wish? Mr. Clerk, please record. [LB494]

CLERK: 31 ayes, 0 nays, Mr. President, on adoption of Senator Cornett's amendment. [LB494]

SENATOR ROBERT: AM1203 is adopted. [LB494]

CLERK: I have nothing further on the bill, Mr. President. [LB494]

SENATOR ROBERT: Returning to discussion on LB494, Senator Hansen, you're recognized. [LB494]

SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. Senator White brought up some good points, I guess, because we're talking about people who trespass and then they get bit, and that's probably a good defense. But out in the country we have dogs, almost everybody has a dog, it's a family member almost, and they're protective. They're protective of the family and they're protective of their area. We have dog-on-dog fights; they're protecting their territory too. Is this...could I ask Senator White a question? [LB494]

SENATOR ROBERT: Senator White, will you yield to a question? [LB494]

SENATOR WHITE: Yes. [LB494]

SENATOR HANSEN: Senator White, I don't know the trespassing laws per se on animals, but we do have, you know, we have cows get out, we have horses get out, we have dogs that maintain our...you know, they help maintain the integrity of our property

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from people who do trespass. But we do have kids that cut corners on yards on their way to town or way to school, from their house to school. That would be...is that legally a trespass? [LB494]

SENATOR WHITE: You know, I...to be honest with you, I don't know what level the intent is, meaning do they have to knowingly come on the property that's not theirs? I can't answer that for you, Senator. I think one of the interesting questions is though, if a dog comes into another dog's territory, is that a defense? Because as you point out, dogs are very territorial. That's just their nature and they'll defend it. So those are questions that are excellent for which I have no answers. [LB494]

SENATOR HANSEN: One final question, I guess. Would you use that as a defense that the trespassing...anyone who is in a person's yard, say, even a fenced yard, even a four-foot tall fence, if they...if someone had to get in there to retrieve a ball. Would that be a trespass? Could you use that for a defense in a (inaudible). [LB494]

SENATOR WHITE: You know, I don't know. I mean, there's a...it's kind of a competing doctrine. Obviously, you have your land, but there's also an invitation rule meaning that...you know, I mean, if you come up to my front door and knock on the door, you're not trespassing. You may be selling me something I don't want but my door is there. I don't have it posted. I don't have it marked. I don't have a gate. And, you know, you're welcome to come up and knock on the door. So in that case, I guess, it wouldn't be trespassing. I don't know for sure though, Senator. They're excellent questions. They're technical legal questions I haven't looked at in a long time. [LB494]

SENATOR HANSEN: Okay. Thank you. Could Senator McCoy ask a...or I'd like to ask him a question, if I could, rather. [LB494]

SENATOR ROBERT: Senator McCoy, will you yield to a question? [LB494]

SENATOR McCOY: Yes. [LB494]

SENATOR HANSEN: Senator McCoy, is there anything in your legislation that would require any literature, any notice, any signs be posted, not a dangerous dog but we have a strong-willed dog; we have, don't come on this property because if you get bit, it's your own fault? [LB494]

SENATOR McCOY: That's a great question, Senator Hansen, and no, there's not in the bill as it's in the form it's in now. I would, however, point out that it already is in existing statute that it would need to be a willful trespass in order for the exemption to apply as far as dangerous dog. So that does kind of play into the discussion that you and Senator White had a moment ago. [LB494]

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SENATOR HANSEN: I think that, you know, if we're getting more and more of these dangerous dogs, and it seems like we are, and people are worried about their protection, that we need to address that. "Beware of the dog" may not be enough anymore. Maybe a posting of something like "dangerous dog may be in the area." I don't know, Senator McCoy, but I think we need to look at that to strengthen your bill. Whether you bring it back next year or what, but I think that needs to be in there. [LB494]

SENATOR ROBERT: One minute. [LB494]

SENATOR HANSEN: Thank you, Mr. President. [LB494]

SENATOR ROBERT: Thank you, Senator Hansen. Senator Wightman, you're next and recognized. [LB494]

SENATOR WIGHTMAN: Thank you, Mr. President. I did think I might try to address some of Senator Hansen's concerns and I certainly agree with Senator White that there's a very fine line between somebody who is a trespasser, maybe comes onto the property legally, and a social guest, and we got into all of those distinctions in law school. Most of us haven't looked at them real recently and it's probably a fluid part of the law that changes from time to time anyway. When you really look at the statute, it pretty much says that it's got to be a willful trespass but then it goes on to say, or any other...comes on and commit any other tort which is a pretty broad...my guess is that a child walking upon it is not going to be considered a trespasser unless he is taunting the dog or is on there to do something other than just walk across the property. I think you owe the protection, you probably had to...and I don't think any amount of language that we put in the act is totally going to cure that problem. But I think it is aimed at maintaining and keeping dangerous dogs on the property that you probably have an idea could commit this type of an act or inflict this type of damage, and I don't think all of the language in the world is going to cure all of the problems that we may have in this regard. So with that, I just thought that I would point out that this is not a very clear area of the law probably. Thank you. [LB494]

SENATOR ROBERT: Thank you, Senator Wightman. Senator Karpisek, you're next and recognized. [LB494]

SENATOR KARPISEK: Thank you, Mr. President. Would Senator White yield, please? [LB494]

SENATOR ROBERT: Excuse me? Yes, will you yield? [LB494]

SENATOR WHITE: Yes. [LB494]

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SENATOR KARPISEK: Thank you, Senator White. You were talking about trespassing. So if someone would come into your house uninvited, that would be trespassing? [LB494]

SENATOR WHITE: That's pretty clear. I mean the doors are closed and they come into the house, that's the assumption. But the closer question is, you have an open walkway. They walk up, it's your land. They walk up and they knock on the door. At that point, are they trespassing? [LB494]

SENATOR KARPISEK: Well, wouldn't it be something like you're responsible for your sidewalk, the safety of your sidewalk? You own it but it's also for public use. [LB494]

SENATOR WHITE: Well, the public sidewalk use is the public sidewalk. I mean the walkway up to the door. Usually the public sidewalk is a public thoroughfare so they're definitely not trespassing there. [LB494]

SENATOR KARPISEK: Okay. So now what if you would go to a business while it's open? Obviously not trespassing, correct? [LB494]

SENATOR WHITE: Yeah, you're considered a business invitee and it is assumed that they have invited the public in. [LB494]

SENATOR KARPISEK: And what if that business was closed? [LB494]

SENATOR WHITE: If you go up to it and you knock on the door and you're on their property to discover if it's open or closed, probably you are not. You're probably considered a business invitee to the point that businesses want people to come up and try to come in. I mean, that's the point, to sell you stuff. [LB494]

SENATOR KARPISEK: But if they would actually go into the business, it's not their right to be in that business. [LB494]

SENATOR WHITE: No, absolutely. I mean, if they actually forced entry, it's breaking and entry. It's past trespass. [LB494]

SENATOR KARPISEK: Thank you, Senator White. I was just trying to make a point on another issue but I do appreciate your statements. I'm trying to get at the point that a business is not open to the public and they are invited in the same as a house. Thank you, Mr. President. [LB494]

SENATOR ROBERT: Thank you, Senator Karpisek. Senator Wallman, you're next and recognized. Senator Wallman waives. Seeing no other lights on, Senator McCoy, you're recognized to close on LB494. [LB494]

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SENATOR McCOY: Thank you, Mr. President, members of the body. I very much appreciate the discussion this morning as it relates to the two different amendments that have now been adopted to the underlying bill. And I would like to take a second to thank a number of senators that have been involved in this, particularly, Senator Ashford and Senator Lathrop, and also with the recent amendments, Senator Wightman and Senator Nelson have been instrumental in, what I believe, putting together a very solid piece of legislation that is worthy of adoption that really strengthens the penalties for dangerous dogs. I believe, as I said when I introduced the bill on General File, that Nebraskans appreciate and put a high value on personal responsibility. And I think this legislation, as it relates to dogs, speaks to that. And I believe that, hopefully, at the end of the day with this legislation we've made most particularly our most vulnerable citizens in Nebraska, our children, safer. And that was the core intent of this. And with that, I would urge the body to support and advance LB494. Thank you, Mr. President. [LB494]

SENATOR ROBERT: Thank you, Senator McCoy. Members, you've heard the closing to LB494. The question before the body is, shall LB494 advance to E&R Initial? All those in...we are on Select File. Senator Nordquist for a motion. [LB494]

SENATOR NORDQUIST: Mr. President, I move LB494 to E&R for engrossing. [LB494]

SENATOR ROBERT: Members, you've heard the motion. All those in favor say aye. Opposed, nay. LB494 does advance. Mr. Clerk, next item on...do you have items? [LB494]

CLERK: I do, Mr. President, thank you. The bill read on Final Reading this morning was presented to the Governor at 9:22 (re LB188). Senator Sullivan offers LR112, an interim study, be referred to the Executive Board. Amendments to be printed: Senator Mello, LB633; Senator Howard, LB63; Senator Gay, LB160. That's all that I have, Mr. President. (Legislative Journal page 1395-1397.) [LB188 LR112 LB633 LB63 LB160]

SENATOR ROBERT: We will now proceed to General File, 2009 Speaker priority bills. Mr. Clerk. []

CLERK: Mr. President, LB542, a bill offered by Senator Campbell relating to dental assistants, provides for rules and regulations regarding education, preparation, and training. Bill was presented yesterday. Senator Campbell opened on her bill, Mr. President, and then offered, as an amendment thereto, AM1224. That amendment is pending. (Legislative Journal page 1246.) [LB542]

SENATOR ROBERT: Senator Campbell, would you like to reopen on LB542 and AM1224? [LB542]

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SENATOR CAMPBELL: Yes, thank you, Mr. President, I would. I'm going to start out the discussion this morning, because last night on the way home I kept thinking how, how can I make this simple, how can I make this direct, how can I speak to my colleagues, and I went back and thought about my college roommate who came from Gothenburg. And as we traveled to and from work or to and from Gothenburg to see her folks, she would have a little ditty or a little phrase or, you know, trying to teach me something, and in the course of that one of her favorite expressions was, you know, Kathy, you have the emPHASis on the wrong syLLAble. Today I hope we can keep focused on what the emphasis is in this bill. The emphasis of LB542 is the question that comes to us, the Legislature, from the department, its Board of Health and its Board of Dentistry, and that is, does the department and its two boards have the authority to put education and training to a duty of a dental assistant? The Legislature has authorized numerous boards and a process to go with them to put forward rules and regulations that govern professional organizations and particularly in healthcare. The department thought they had this authority. What is being given to you in a handout is the letter that came from the Attorney General's Office saying you can list the duties of the dental assistant but you do not have the authority to put education and training. The department thought for a number of years that they had that and, in fact, in only 2 instances in the nearly 20 duties that would come to a dental assistant have they put education and training--1 in 1973 and 1 in 1997. Some of you have said to me, could you go back and just negotiate this? You can spend six months or six years. The question here is not between the dentists, the dental assistants, and the dental hygienists. The question before the Legislature is, does the department have the authority? They thought that they had it. It came into question. Now that concern is before this body. So you can support the dentists, you can support the hygienists, you can support the assistants. That's not the issue. The issue is, does the department have that authority? And with that, Mr. President, we'll go on with the bill. [LB542]

SENATOR ROBERT: Thank you, Senator Campbell. Members, you have heard the opening to LB542 and AM1224. Members wishing to speak: Senators Gloor, Hadley, Gay, Campbell, and Carlson. Senator Gloor, you're recognized. [LB542]

SENATOR GLOOR: I've had about...thank you, Mr. President. I've had about everybody talk to me about this bill involved in dentistry except the tooth fairy and there was a rustling in my room last night that had me suspicious that I was going to hear from he or she. We come to this body with preconceived notions and one of my preconceived notions had to do with on what specific topic would I field a tremendous amount of pressure from people who were serious about lobbying. I thought it might be over property tax or education or maybe a consumption tax of some kind. I did not think it would involve my teeth. There has been an awful lot of activity and information, but I appreciate Senator Campbell's getting us back to the issue of we have organization entities set up in the state to help govern the quality of care provided in a number of areas, including health, including specifically dentistry in this case, and they are asking

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us to give them the tools to appropriately do the job that they volunteer their time to do. And so for her to come back and remind us where we're at on this is, in fact, the right tenor to start out this discussion and debate, wherever it may go today. There may be efforts to try and delay this, to bracket it. Sooner or later we're going to have to make a decision on it because this particular body needs some help and guidance from us one way or the other, one way or the other. And so as this debate goes on today, I would ask people to keep in mind that if this is not the year to make this decision to help out the Board of Dentistry, will next year be any better? Will there be a lot of people who got actively involved in this who decide to undertake career changes and get out of dentistry who won't be back here next year, the year after that? At some point in time we'll have to make a decision and provide this guidance. It's what we're here to do. It's appropriate for us to do this, as uncomfortable as it may be. And I do not think I agree, in talking with Senator Campbell and others involved in this, that it will be any easier for us or any less heated next year or the year after. Please keep that in mind. Thank you, Mr. President. [LB542]

SENATOR ROBERT: Thank you, Senator Gloor. Senator Hadley, you're next and recognized. [LB542]

SENATOR HADLEY: Mr. President, members of the body, Senator Gloor, there is a dentist in Kearney who goes by "Tooth Fairy," but she didn't call me. She's the only one that hasn't called me about this issue. I have been lobbied a lot. I have some concerns and I want to listen to the debate as it goes on. A long time ago, when we first started talking about this, I actually sent out, put on your desk, a thing that's called "State Designated Dental Shortage Area--General Dentistry." Over half the counties in Nebraska are designated as a dental shortage area, meaning they don't have the dentists that they need. My concern on this bill has to do with the education part of it. I am concerned that we turn over the requirements for education to this board and I'm concerned that we will end up with some kinds of rules and regulations requiring formal training. Now that may be okay, but in a lot of areas of the state where we have trouble even getting dentists to, if we suddenly now require people to go off, get education and then come back, that can be a problem. Would Senator Campbell yield to a question? [LB542]

SENATOR ROBERT: Senator Campbell, will you yield to a question? [LB542]

SENATOR CAMPBELL: Yes, Mr. President, I would. [LB542]

SENATOR HADLEY: We had talked off the mike and I told her I was going to ask her this question. Senator Campbell, do you see that as any kind of problem that we will end up with some kind of educational requirements where it will make it tougher for dentists to get dental assistants in these dental shortage areas? [LB542]

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SENATOR CAMPBELL: Senator Hadley, I want to go back again to the focus of what this bill does, and it says do they, the Board of Dentistry, as an advisory board, keep that in mind, as they advise the Board of Health and the Medical Director, do they have the authority to put education and training in place. As I understand this, I think each duty that might come for a dental assistant would have to be reviewed by those boards and then a recommendation made. Again, I want to remind you that among the almost 20 duties of a dental assistant, only 2 in the history, 1973 and 1997, has education been put or attached to that duty. [LB542]

SENATOR HADLEY: Thank you, Senator Campbell. Well, I...a handout that Senator Campbell gave me was from the AHEC program office at UNMC and, Senator, education most employers require applicants to have completed when your diploma or certificate program. I guess I am...I just...I have not been lobbied so hard I think on anything on both sides. I have dentists who have called me and said, Gaylen, this is a great bill, you need to pass it. I've had dentists who have called me and said, Gaylen, this is going to hurt me because I'm, you know, my dental assistant, I train my dental assistants at my chair side, they've done a great job; I have trouble, I live in a rural area. I've had...I have to say, though, the hygienists have been on one side. They haven't shifted. But I've had dental assistants on both sides. So this is...it's an interesting bill because I certainly have been lobbied on both sides on this issue. So again, I want to sit back and listen to the debate and hear, but I am concerned about rural Nebraska and healthcare. One of our biggest problems in Nebraska, rural Nebraska, in healthcare is getting people access to education, access to training, and then getting them back where we need them. [LB542]

SENATOR ROBERT: One minute. [LB542]

SENATOR HADLEY: Thank you, Mr. President. [LB542]

SENATOR ROBERT: Thank you, Senator Hadley. Senator Gay, you are next and recognized. [LB542]

SENATOR GAY: Thank you, Mr. President. I wanted to just weigh in a little bit on this and support Senator Campbell. I do support the amendment and the bill and I'll give you a couple reasons why. She had worked very diligently to try to bring the parties together and she had mentioned earlier, I agree, this is one of these issues where we need to make a decision and move forward. I don't think we could ever get them to agree at some point. Now I look at this a little bit as a public safety issue. She had a handout about duties of dental assistants the Board of Dentistry can create, but we can't tell them what to train for. So we can do part of the puzzle but not the other part. This came upon us because of the Attorney General's Opinion that was handed out that you cannot...that we didn't have this authority. She's trying to correct an inadvertent problem that we thought we had...we could control. So this is...I would say it's a cleanup because

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the lobbying is always intense on these kind of issues when you talk about scope of practices and who's going to do what, so that is. The one thing, Senator Hadley, when we talk about this, on the Board of Dentistry, they need to...they don't want training so strict that they would harm themselves, but I think what they're saying, the way I kind of picture this, is we at least would like some say into that. Because a dental assistant, what they're doing, the dentist is liable for the actions they take. So they want some say into what...how the training works. Right now, I don't think it would hinder out in the rural areas that I can't get me a dental assistant. I think it would help and it would enhance, first of all, public safety. Because I think when we go into the dentist, I'm not so sure we know the difference between the dental assistant and the dental hygienist. I'm not so sure I do. But I just know, open up and I'm going to go to work, is okay. I assume they are trained, I assume. Under this, they aren't. And now we could tell them...the dentist can tell them, here's what you can do, here's your scope, but I don't know what kind of training they have. But I don't think they would be excessive on themselves, but we need to get something started. This summer I received numerous, numerous letters on the Health Department, maybe all of you did, I don't know, but on the 407 review process, which is a different issue than what this is. That was more of a should they be licensed and some of these things. This is strictly training. It's specific to that. So when we look at this, I think let's make a decision here. I think it is something we should make a decision on. If we don't, it will continue to come back again and again and again. And the lobbying is always strong on these issues. I had a...you know, this winter I was at a basketball game with a close friend and I know she's a dental hygienist and she was talking to me--you know, I've been hearing it for a long time, too, like many of you--but what she was explaining to me wasn't what was in this bill at all. So sometimes I think let's listen to Senator Campbell and Senator Gloor spoke and those of us that have listened to all these issues. There's some great hygienists out there, great assistants and great dentists. This is just sometimes they just can't agree and we need to make a tough decision. I don't think it's that tough of a decision, quite honestly. I think it's something we put in there and get done and make sure that they're trained to do their job. I don't think it will be excessive because I don't think industry likes to put excessive educational requirements on your staff. But I do think something needs to be done. So what they're asking is, give me the opportunity to set the training/education requirements. I don't think it will go over the top. Some people, on the other hand, might like it to go over the top because they're in the business of training dental hygienists and dental assistants and it'd be more business for them. So they'd still have the ability to do some training by chair side and all that. That's not the issue at this point. So I support the amendment and I support the bill. Thank you, Mr. President. [LB542]

SENATOR ROBERT: Thank you, Senator Gay. (Visitors introduced.) Returning to discussion, those wishing to speak: Senators Campbell, Carlson, Stuthman, Utter, and many others. Senator Campbell, you're recognized. [LB542]

SENATOR CAMPBELL: Thank you, Mr. President. I would like to go back to Senator

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Hadley's question and just look at the handout that we have provided. And I want you to know Senator Sullivan did not pay anything for us to hand this out from the AHEC group. They actually came forward and offered it. Senator Hadley, if you look under the dental assistant under the education, I think that may answer some of the question that your dentist had. Most employers require applicants to have completed a one-year diploma or certificate program, or a two-year associate program. Some assistants are trained on the job or through an apprenticeship program. LB542, in and of itself, would not change that, just plain and simple. What this bill says is to authorize the department to have education and training as a component of a duty and I think when they perceive that that duty impacts directly on patient care, when that...whatever that duty is. And there are two duties where that comes into play. And I hope that that addresses your question. The flip side of that gives you the education for dental hygienists. Keep in mind dental hygienists are licensed; dental assistants are not. The whole purpose of LB542 and my discussion particularly with members of the Board of Dentistry has to do with they thought that they had this ability until the letter arrived. We have given you the membership, on the flip side of that letter, for the Board of Dentistry, and I think it's important to look at that membership. It is made up of dentists, dental hygienists, members of the public, and members of our school...dental school faculty. This is the board that has advisory capacity to the department. They oversee the dental profession, just as we have numerous boards that we have put to stand in the stead of the Legislature and to regulate, put rules and regulations forward. That is exactly what the Board of Dentistry is to do. I see its composition as across the state and particularly with its chairman, Dr. Jacoby, who a number of you have probably visited with who lives in Bridgeport who understands very much what it is to be a rural dentist as well as to understand what it is to be a urban dentist. So I again urge my colleagues, keep the focus, the emphasis on what LB542 says and would do. Thank you, Mr. President. [LB542]

SENATOR ROBERT: Thank you, Senator Campbell. Senator Carlson, you're recognized. [LB542]

SENATOR CARLSON: Mr. President and members of the Legislature, I would like to address a question or two to Senator Campbell, if she would yield. [LB542]

SENATOR ROBERT: Senator Campbell, will you yield to a question? [LB542]

SENATOR CAMPBELL: Absolutely, Mr. President. [LB542]

SENATOR CARLSON: Senator Campbell, LB542 strictly involves dentists and dental assistants, or would we say that it strictly involves dental assistants? [LB542]

SENATOR CAMPBELL: LB542 involves the rules and regulations, Senator Carlson, of...that are set forward by the Board of Dentistry through the department. It can affect

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both dental assistants and dentists. [LB542]

SENATOR CARLSON: Okay. And it does not affect dental hygienists. [LB542]

SENATOR CAMPBELL: It does not. [LB542]

SENATOR CARLSON: Now I, like most people I think in this body, we've received a lot of communication. We've had a lot of contact from constituents, from groups representing dentists, dental assistants, and dental hygienists. And for most of us this is kind of an uncomfortable vote. It'd be easier to say, let's just have an interim study and forget about it. We're not probably going to do that. I don't think you want to do that. But I have a problem with understanding what the opposition is to giving statutory authority for the...it'd be the dental...be the dental board for responsibility for training and educational requirements for dental assistants. I don't understand why that should be a problem. Do you? [LB542]

SENATOR CAMPBELL: Obviously, Senator Carlson, I do not because I have tried to maintain a very single focus in what this bill is to do. I would like to say to my colleagues, I very much appreciate that you have had numerous phone calls and e-mails and a number of people talking to you. All three of the professional groups that are talking to you--the dental assistants, the dental hygienists, the dentists--these people are passionate professionals about what they do and the care of people and, frankly, if they weren't passionate about their profession all of us should begin to question that because they care for the people all across the state. Unfortunately, Senator Carlson, I think that the focus of this bill has been many issues on the fringe have been introduced in the discussion and that is why today I say to the colleagues, you can study this issue. I studied it for four months. We have put in enormous amount of hours, trying to track down documents. In the end I realize that the single focus of this has to do exactly with what you said and that is to give the authority to the department and its advisory boards. It is critical to understand that you can negotiate for six months or six years with those three groups, but in the end, the fourth group, the Board of Dentistry and the department, is really who's asking us this question. [LB542]

SENATOR CARLSON: Thank you, Senator Campbell. How much time do I have, Mr. President? [LB542]

SENATOR ROBERT: One minute. [LB542]

SENATOR CARLSON: Okay. I want to refer, because, Senator Campbell, you talked about education and most employers require applicants to have completed a one-year diploma or certificate program, or a two-year associate degree program, and some assistants are trained on the job. And you did say that this bill doesn't really change that. Is that correct? [LB542]

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SENATOR CAMPBELL: That is correct. [LB542]

SENATOR CARLSON: So that should maybe answer the concern that a dentist in Ong doesn't have to have a dental assistant travel a lot of miles or be in some kind of a program that it's not practical or possible because they can be trained on the job through an apprenticeship program, correct? [LB542]

SENATOR CAMPBELL: Correct. [LB542]

SENATOR CARLSON: Okay. Thank you, Senator Campbell. Thank you, Mr. President. [LB542]

SENATOR ROBERT: Thank you, Senator Carlson and Senator Campbell. Senator Stuthman, you are next and recognized. [LB542]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I have taken this very seriously as to how I'm going to approach this, but I'm very much undecided, mainly because of the fact that I've been visiting with the dentists, I've been visiting with the dental assistants, and I've been visiting with the dental hygienists, and they're not in agreement. It seems like each one of them are going in a direction...in a different direction. As you do notice the fact that I did...I was present and not voting in moving this out of the committee, and I'll give you the reason why--because we had a little bit more opposition than we had proponents of the bill. And I thought, you know, there isn't something...this is not clear-cut as to what we wanted to do here, you know. I really think that, you know, I would like to see them get together and bring a solution to us, but it seems like that isn't working out. But I have been called by several of the dentists, several of the dentists in my area, several dentists throughout the state of Nebraska, and those individual dentists are not even in agreement with this bill. Some say we need this; some say we could just get along with what we're currently doing at the present time. And that's kind of where I'm kind of leaning towards right now. You know, if we do nothing, maybe that ain't all bad. But I would really like to see the groups get together and bring us a solution to what they need and what they're willing to agree upon, and then if it's something that we need to put into a statute then we should do it. But if we can't...if the groups can't agree upon it then maybe we shouldn't be doing something because, in my opinion, if we put something into statute then one or the other groups are not going to be in agreement with it and it may hurt them. So I am undecided. In my opinion, I would sooner see this be bracketed, be...have an interim study on it. But I have a lot of times seen too many times when you have an interim study, you really don't get the answers either, in my opinion. So I don't know. I'm...I just sure wish that we could get the groups together and, in my opinion, what we have right now, status quo, I think we could live with that. Thank you, Mr. President. [LB542]

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SENATOR ROBERT: Thank you, Senator Stuthman. Senator Utter, you're next and recognized. [LB542]

SENATOR UTTER: Thank you very much, Mr. President. Ladies and gentlemen of the Legislature, I...actually, I'm overwhelmed right at the moment and I hope I don't get too emotional about this, but I want to tell you that your expressions of support and the ideas of representing dentists have been utterly gratifying. And I must admit that I, too, have been...have been inundated with lots of ideas about this bill from a dental hygienist, from dental assistants, from dentists, and I see them as all kind of members of the same family and they're coming to this body to ask us to referee a kind of a family feud. And I would much sooner see them come to this body actually with a solution and ask us to consider putting it into law. And just honestly, it really does seem kind of strange to me that the groups can't get...sit down and come to some kind of an amicable solution and they come and bring us a finished product that we can kind of take a look at. And obviously it is shaping up that maybe this can't happen, but I'm reminded of the situation that happened in Revenue earlier this year when the county commissioners and the cities of a county couldn't get together and, frankly, I'm not sure that this is the place where you come to get somebody to referee a family feud. And I, too, as Senator Hadley had mentioned earlier, am concerned about the availability, particularly in the rural areas, of the services that not only dentists but dental assistants and hygienists provide, that they are available to provide those services to our rural areas. I know that we are in a deficit position and so I don't think that we should do things that unduly complicate the providing of these services. But I'm really conflicted about this bill. I am getting, even as we speak, am getting messages from dentists and other folks back home suggesting what I should do on this bill, and I must admit it's a difficult situation that I'm going to listen to and hopefully be able to make up my mind when the bell rings. Thank you. [LB542]

SENATOR ROBERT: Thank you, Senator Utter. Those wishing to speak: Senators Council, Price, Harms, Sullivan, Dubas, and others. Senator Council, you are next and recognized. [LB542]

SENATOR COUNCIL: Yes, thank you, Mr. President. And I certainly appreciate Senator Campbell's opening on this subject because, as most of my colleagues have expressed, we've been lobbied on this issue from every angle. But I need to, I guess, place my approach to this issue in context and I approach this issue from my understanding of the reason this legislation is being introduced in the first instance. And it's my understanding that the legislation is being introduced in the first instance because there was a question as to whether the Board of Dentistry had any authority to promulgate rules and regulations regarding the education and training of dental assistants in this state. And it's my understanding that the Attorney General rendered an opinion that the current statute does not provide the Board of Dentistry with that authority. Well, as in the case of many legal issues, there are differing opinions and, quite frankly, I cannot understand

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why the Attorney General rendered the opinion that has been rendered. The current statute reads, at 38-1135: Any licensed dentist, public institution, or school may employ dentists (sic) in addition to licensed dental hygienists. Such dental assistants, under the supervision of a licensed dentist, may perform such duties as are prescribed in accordance with rules and regulations adopted and promulgated by the department with the recommendation of the board. Now "in accordance with" means "as outlined by," and if the department, with the recommendation of the board, can prescribe the duties that dental assistants can perform, I don't understand how the Attorney General opines that they can't prescribe the circumstances under which those dental assistants can perform those duties. And if the department, upon the recommendation of the board, says that the duties that they identify can be performed provided that a dental assistant has so many hours of on-the-job training or so many hours of education, it clearly falls within the language of the statute as it exists. Now earlier today, when we were talking about the sales tax-exemption, the question was, you know, why is that piece of legislation required? We were advised that it was required to clarify the intent, the intent being that corn and wood used in farm operations was exempt. Well, it is pretty clear from the reading of the current state of the law that the intent was that the department, upon the recommendation of the board, would prescribe the duties that dental assistants could perform as well as the circumstances under which those dentists' dental assistants could perform those duties, and certainly training and education would be circumstances under which dental assistants could perform the duties prescribed by the department... [LB542]

SENATOR ROBERT: One minute. [LB542]

SENATOR COUNCIL: ...upon the recommendation of the board. So it appears to me that the only thing that LB542 is designed to do is make it clear that the department, with the recommendation of the board, can prescribe not only the duties to be performed by dental assistants but the circumstances under which they can perform those duties, and that would include education and training. And clearly, the board is comprised of dentists and dental hygienists and they certainly can set forth whether on-the-job training satisfies the requirements to perform those duties that are outlined. So in my opinion, quite frankly, LB542 is only necessary because the current statute isn't being interpreted in accordance with its express terms. [LB542]

SENATOR ROBERT: Time. [LB542]

SENATOR COUNCIL: And so we make it clearer by the enactment of AM1224 and LB542. [LB542]

SENATOR ROBERT: Thank you, Senator Council. Senator Price, you're next and recognized. [LB542]

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SENATOR PRICE: Thank you, Mr. President, members of the body. Wow, talk about the lobbying effort. Know, today, even today, I cannot walk by M&Ms without thinking about the midwives. I don't know about you all, but they work really good. I saw someone...someone saw me with a bag of M&Ms and said, oh, the midwives were by again today. Well, now I get the same feeling here. I can't drive by a dental practice or brush my teeth without thinking about this issue we have before us. And it's not like the dental profession is the number one place people want to go. I mean how many of you all say, hey, let's all go hang out at the dentist today? What are you doing? I'm not doing anything. I'm going to go and see if I can get my teeth cleaned. Or it isn't like the profession doesn't sometimes suffer from people waiting till the last minute. When pain is your motivator to go to the dentist, you know, that just doesn't work well for a profession, you know? And now here we are in somebody's bailiwick, trying to work through these various issues. And I'm mindful, Senator Gloor and I were just talking and he told us in the last go-round about everybody is always trying to go up the food chain. There's always...and the person on the rung up is always kind of like kicking on the hands of the person behind them, as if they're trying to swallow them. You know, if you remember Dr. Seuss or something like that where you have one fish going to eat another fish, and then like another fish going to eat that fish, that's what's presented to us. That's what we're told to look at this like, this 407 scope change, you know? And sometimes I don't wonder, though, if it's more like the Flintstones and everybody has got their little feet and they're running on the car and trying to push the car, and we have the wrong analogies, the wrong word pictures in our head. Are we trying to move something forward, are we eating something else, or do we have the famous pushmi-pullmi (sic) going on here? And you could hear from all the conversation on the floor where even within the groups and the communities of interest we have different positions being proposed. Some want; some don't want; some adamantly don't want. And it does no one any good when you don't come organized to an event like this. I do call it an event because that's what we have here. We have an event. If we had some whips out there cracking and some clowns running around, we could have a three-ring circus. Think about it--three-ring circus there. Anyway, I'm listening to this and Senator Council, in her usual thorough manner, went through the items and articles, referred back to the fundamentals of what we're dealing with here, and I find myself in agreement that we may have to step in and make this decision. We may have to do it because we can't seem to have the professionals come together and have an understanding what they're trying to do. And I'm waiting to hear more discussion that talks about why is it such a problem to define what's being asked for? Ladies and gentlemen, when you have another person's hands in your mouth, how much more invasive can you almost be? And then they have sharp instruments in their hands. Are we getting more comfortable? Who all wants to go out with me and hang out at the dental clinic here later after we get out of here? [LB542]

SENATOR ROBERT: One minute. [LB542]

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SENATOR PRICE: Thank you, Mr. President. Again, sharp instruments in your mouth, people doing things there, I challenge you to find a way or why is anybody going to have a problem with laying out guidelines and guidance of how they're going to go about what they do. And with that, Mr. President, I'm finished for now. Thank you. [LB542]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Thank you, Senator Price. (Visitors introduced.) Continuing with discussion, those wishing to speak: Senators Harms, Sullivan, Dubas, Loudon, Fulton, and others. Senator Harms, you are recognized. [LB542]

SENATOR HARMS: Thank you, Mr. President, colleagues. I would have to agree that, of all the bills we've had this year, this is the one that I've received probably the most lobbying. And as of yesterday I thought I knew where I was going to be and overnight that has surely changed. I see nothing wrong, folks, colleagues, with education, with preparation and training. That's all this is about, that we're going to require what type of classes they're going to have, what their preparation is going to be. Do we realize that as we look at the future there will be very few jobs of the future in the new world global economy that you will not have to have some type of education beyond high school; that you'll have to be certified. Many companies already are requiring that. And these pages that are here, as they begin to move into their own career, they will have to have an education. They'll have to be degreed if they want to have anything at all in the future of a good job and preparation to have a family and be able to support it. So what we're seeing here shouldn't be anything unusual because that's the requirement. That's what we want in the future. Now I've had some discussions with some of my dentist friends and other people that said, you know, this might...would destroy maybe my business in rural Nebraska because we would send them off to school. This has nothing to do with that. Do you realize that you can get a doctor's degree through the Web through the University of Nebraska? You can get a master's degree through the University of Nebraska? Do you think we can't design a class or a program that they could take over the Web to meet these requirements? Education is fluid and movable and flexible, so don't fall into the trap about thinking that, gee, I'm going to send them off, they're going to have to go to school for a year and these young people will be in urban America, they'll never return to rural America. Sure, that's a great fear, but that doesn't have to be it. You can do it over the Web. You can do it in another form. What this is about is identifying the preparation of what people need to have for the future. What kind of skills and training do you want? What is the appropriate thing for us to do in treating these individuals who come to see us? I think it's important. I think we should have education. I think we should have training and these people should be skilled and they ought to meet minimum requirements by law, period. I think anything beyond that is not appropriate. Senator Campbell, would you yield just for one question, please? [LB542]

SENATOR CARLSON: Senator Campbell, would you yield? [LB542]

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SENATOR CAMPBELL: Yes, Mr. President. [LB542]

SENATOR HARMS: With your conversation that you were having previously with our Speaker up there, did I understand you to say that they would be able to do this on-job training? [LB542]

SENATOR CAMPBELL: Yes. And I was waiting for my chance to answer Senator Carlson... [LB542]

SENATOR HARMS: Okay. [LB542]

SENATOR CAMPBELL: ...because I do have a asterisk to that question. And I can respond now, if that's... [LB542]

SENATOR HARMS: Well, you're on my time. I just need to know if you can...now don't go away now. [LB542]

SENATOR CAMPBELL: I won't. [LB542]

SENATOR HARMS: I just...I just want to know that is in the making, that you could actually do that. You may have to take some other classes with that or do you know yet? [LB542]

SENATOR CAMPBELL: In the two that I identified for Senator Carlson, there is criteria there for education and training, and my guess is, is that, since 1973, the dental assistants have been able to cover that training in one form or another. [LB542]

SENATOR HARMS: Okay. [LB542]

SENATOR CAMPBELL: And I'm not sure that it can totally be done on the job, but I would assume that they have multiple ways to approach it. [LB542]

SENATOR HARMS: Okay. If they could do that on-job training with a supplement of other things through the Web, there's absolutely no reason why this would have any impact on anyone's business. [LB542]

SENATOR CARLSON: One minute. [LB542]

SENATOR HARMS: Well, thank you, Mr. President. I think it's important for us to understand that. And you know, the people behind the glass doors can lobby all they want, but it gets down to the decision we want to make here. I don't disagree with my colleagues when they say, you know what, we're refereeing here, they don't want to

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play in the sandbox. Well, we saw the same thing in the community college. They didn't want to play in the sandbox. Sometimes you just have to make the tough decisions and I think this is one. It's very clear in my mind, very...that I believe that they ought to be certified, whatever certification means and whatever the definition they want to give. They ought to be educated. They ought to have the right preparation in every office and we ought to be doing the same thing. The way it is today, it doesn't mean that what you're getting in Scottsbluff, Nebraska, and in Alliance, Nebraska, are the same. So at least we would know that the people that are working on us all have the same skills and the same certification, the same preparation and the same education. Tell me what's wrong with that? [LB542]

SENATOR CARLSON: Time. [LB542]

SENATOR HARMS: I don't see it. Thank you, Mr. President. [LB542]

SENATOR CARLSON: Thank you, Senator Harms and Senator Campbell. Senator Sullivan, you're recognized. [LB542]

SENATOR SULLIVAN: Thank you very much, Mr. President and members of the body. I, too, like many of you, have been lobbied very actively and thoroughly. I've heard from students who are in the dental hygienist program. They're concerned about their future, the quality of education, the quality of care that the citizens will be receiving. I've heard from a dentist who has practiced for ten years in rural Nebraska and is very much in favor of this legislation. When I'm weighing all of this at the end of the day, and eventually I'd like to ask Senator Campbell one simple question, but I'm mindful of my responsibility not only to the constituents in my district but to the citizens of this state. So I have one question, Senator Campbell, if you would yield. [LB542]

SENATOR CARLSON: Senator Campbell, will you yield? [LB542]

SENATOR CAMPBELL: Yes. [LB542]

SENATOR SULLIVAN: In your estimation, what impact will this legislation have on the dental care in not only rural Nebraska but statewide? [LB542]

SENATOR CAMPBELL: I think this question from Senator Sullivan goes back to the question that Senator Stuthman might have asked in what happens if we do nothing. Senator Harms has addressed that very eloquently. The point being is that this authorizes education and training when it's deemed necessary for a duty of a dental assistant. And as we plan for the healthcare in the future of the state of Nebraska, we need to have this authority given to the department because education and training is important. I do not think that the department and its two boards are not going to weigh very carefully the balance between what happens in Omaha and what happens in

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Pierce, Nebraska, or Scottsbluff, and that really gets to what Senator Carlson was trying to ask. I think it's critical that they do have the authority for education for the future. [LB542]

SENATOR SULLIVAN: Thank you, Senator Campbell. And I think there's some key words there. We're not only talking about authority but we're talking about flexibility and, most importantly, responsibility to take care of the healthcare for the citizens of Nebraska. So thank you very much. [LB542]

SENATOR CARLSON: Thank you, Senator Sullivan and Senator Campbell. Senator Dubas, you're recognized. [LB542]

SENATOR DUBAS: Thank you, Mr. President, members of the body. I think what makes this decision difficult, and it has been expressed by other members of the body this morning, is we're hearing from people on both sides of this issue that we have a great deal of respect for. We know they're professionals. We know they work very hard in their jobs and are very knowledgeable with what they do. And so when you hear from professionals such as this but you're hearing very conflicting information, it is kind of hard to sort fact from fiction. So if Senator Campbell would yield to a question, I would appreciate that. [LB542]

SENATOR CARLSON: Senator Campbell, will you yield? [LB542]

SENATOR CAMPBELL: Yes, I will. [LB542]

SENATOR DUBAS: Thank you, Senator Campbell. I received one particular e-mail from someone who's very, very knowledgeable about this issue so it's not just someone who has an opinion. They definitely have the background and the understanding of their issue, and they raised a concern. The way they view this bill, they see the Board of Dentistry wanting to use LB542 as a way to hire untrained assistants, train them themselves, then bill Medicaid or insurance for procedures that should only be done by a dentist or a dental hygienist, and they don't see that LB542 does anything to ensure proper minimum standards. Could you help me respond to that particular (inaudible)? [LB542]

SENATOR CAMPBELL: Yes, that's an excellent question because I think other senators have also gotten that question. The rules and regs now clearly state that other dental auxiliaries, and by auxiliaries they mean assistants or techs or what other terminology, are not authorized, not authorized to perform any of the clinical services which may be performed by a licensed dental hygienist, pursuant to section da-da-da-da, or any of the clinical services which are prohibited to dental auxiliaries pursuant. I want to emphasize that this rule and reg protects the hygienists from just exactly that situation. [LB542]

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SENATOR DUBAS: So without LB542, we don't have the ability to put those things in place to create those standards or those requirements? [LB542]

SENATOR CAMPBELL: Without LB542, Senator Dubas, we could list the duties, the department could list all the duties for the dental assistant, but it could not put any education and training to them at all. [LB542]

SENATOR DUBAS: Thank you very much for that clarification. [LB542]

SENATOR CARLSON: Thank you, Senator Dubas and Senator Campbell. Senator Louden, you're recognized. [LB542]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I've listened to the discussion on this LB542 and the amendments that go with it, I've...as I've said, it's we're in here trying to referee and it has been something that's been brought up, I guess, many times. So as I look at it, I try and reduce the thing down to, I guess, common sense. And when I look at it, I wonder, well, what are we trying to do with this thing? And my observation is that we're trying to put in a job description for someone's assistant, and that's what it is, their assistant. We're putting in a job description for someone's hired help. Is that necessary? This is...a dental assistant is someone that a dentist hires to assist them and I'm sure he trains them to do exactly like he wants them to, bring his tools and particular ones that he needs. And so this is something that how do you put that in statute on what their qualifications would be? The other thing is that that assistant probably can't do any more than what that dentist's liability insurance would be willing to cover, so I think part of that is controlled by that. Why would anyone want to risk their liability insurance by putting someone in charge of something that would be of great risk? So this dental assistant probably does exactly what the dentist wants them to do and no more, no less. And so I'm wondering why we've even brought this forwards. There's somewhere that some of the people, are they concerned that there's someone interfering with their jobs? Because it's my understanding that the hygienists didn't bring this bill forwards. They were against it all along. Who has brought this bill forwards? The dentists are somewhat against it now with some of the different amendments. Some were for it, some are. So why are we having this discussion today? What are we trying to do here and whose idea was it to start with and where did it come from? Now is this some idea of just a few people or is this a consensus of several dentists? Is it a consensus of the hygienists? And I'm sure the dental assistants probably didn't have anything to do with it because I don't know if they're that well organized. So I guess, to me, this is probably what I would consider an exercise in futility. I don't think we're going to solve any problems. I think if we pass the legislation, it will probably compound some of the issues. So I don't see where we have anything to do with it. As far as I'm concerned, I don't think I will support the amendment or the bill because I don't see of any value added. The dentists at this time can seem to

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be getting along quite well with their assistants. In some of the rural areas, they usually hire someone that's probably got a little bit of medical knowledge. I don't know as it takes that much medical knowledge to be a dental assistant. It's someone that has to have some idea on what to do with some of the instruments and stuff that go with it. I don't...I think you can probably take any person, a dentist could, and probably train them to be their assistant in a short time. In fact, I've had some personal experience like that so I don't see that it's a big deal. I think it could be something that we don't need to get into. If they want to have regulations, then let them go back and get an agreement amongst all three parties involved and then they can come forwards with some regulations, if that's what they so desire. At the present time, I don't see what we're accomplishing here... [LB542]

SENATOR CARLSON: One minute. [LB542]

SENATOR LOUDEN: ...and I certainly don't support the amendment or the bill. Thank you, Mr. President. [LB542]

SENATOR CARLSON: Thank you, Senator Louden. Senators still wishing to speak: Senators Fulton, Friend, Pirsch, Campbell, Gloor, and others. Senator Fulton, you're recognized. [LB542]

SENATOR FULTON: Thank you, Mr. President, members of the body. I've had a chance to think about this and to talk with a good number of constituents, as you have, and I rise in support of AM1224 and LB542. Now I'd like to break this down and get some things into the record. I thought it would be informative to go to the existing statute. Oftentimes when we review the legislation before us, we will look at only those underscored words. It is oftentimes equally informative and illuminating to read existing statute. The existing statute: "The department, with the recommendation of the board, shall adopt and promulgate rules and regulations governing the performance of duties by licensed dental hygienists and dental assistants." That exists now. That authority exists now by force of statute. That which we are adding: "promulgate rules and regulations relating to the performance of duties by dental assistants which may include basic qualifications, education, training, and competency assessment of dental assistants." The reason why I think...the reason why I felt it important to explicate that, to get that into the record and to enunciate it, is because one of the concerns that I have gleaned in e-mails and in conversations with dental hygienists, with folks who are opposed to this bill, there is a concern that there will be an encroachment upon the dental hygienists' scope of practice. Now the arguments that have been given are the public safety will be compromised, the quality of dental care will be compromised. I have heard those arguments and, frankly, I do not see that within the scope of AM1224 and LB542; just doesn't exist. It could just as easily be argued that those compromises could occur under the existing statute which was aforementioned. So the logic that's being put forward I don't see, but I think the concern is that there will be an encroachment on

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one's scope of practice. Would Senator Campbell yield to a question? [LB542]

SENATOR CARLSON: Senator Campbell, will you yield? [LB542]

SENATOR CAMPBELL: Yes, Mr. President. [LB542]

SENATOR FULTON: Senator, I just want to...I'm going to make the record clear because I know there's a concern out there that this bill is about encroaching on the scope of practice of dental hygienists. Could you spend 30 seconds or so just responding to that concern? Is this bill to encroach on the scope of practice of dental hygienists? [LB542]

SENATOR CAMPBELL: Senator Fulton, I do not believe it does at all. I believe, and I don't know whether you were able to hear my response in terms of the regulation that is already in place that specifically addresses that you cannot put duties that the dental hygienists already have in place. [LB542]

SENATOR FULTON: Okay. [LB542]

SENATOR CAMPBELL: Dental hygienists also are licensed and I would...I have not seen anything, Senator Fulton, that would lead me to believe this. [LB542]

SENATOR FULTON: Okay. Thank you, Senator. The record ought to be crystal-clear this is not the intention. This is not what this bill envisions or nor the amendment. It cannot reasonably discern that this end is envisioned and, therefore, AM1224 and LB542, I believe, are appropriate. They do not do what those opposed to the bill believe it will do. These scope of practice issues can be contentious. I brought a bill three years ago having to do with pathologists and dermatologists, and three years later we had it on consent calendar and we've moved this bill forward, but it took three years to get there. These are contentious issues. We in the Legislature would like to have the professions play nice among one another because when we have to delve into issues, sometimes you don't like the result. [LB542]

SENATOR CARLSON: One minute. [LB542]

SENATOR FULTON: I'd like to yield the remainder of my time to Senator Pankonin. [LB542]

SENATOR PANKONIN: Thank you, Senator Fulton. Just to amplify what Senator Fulton was talking about on the other scope of practice issue, I was involved in that, being on Health and Human Services the last three years and sometimes these do take years and this one may fall in that category. If you notice on the committee statement, Senator Stuthman and I were present and not voting, and if there's a vote on this today that's

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going to be my stance. I think we do need to look at this a little bit longer. If it gets to a point a year or two down the road where we have to, then we do. But usually these things can be worked out over time and it's very difficult for us to get involved in some of these scope of practice issues when we're not professionals in that area or we're trying to determine what the right policy is. This one is a little different with some of the things we're considering, but that was why I voted the way I...or not voted in committee, and I won't today because I think we're too soon on the floor. I think the intention in my mind was that this bill would come out of committee and be talked about more, it wouldn't come to the floor. And as Senator Fulton used that strategy on... [LB542]

SENATOR CARLSON: Time. [LB542]

SENATOR PANKONIN: Thank you. [LB542]

SENATOR CARLSON: Thank you, Senator Fulton, Senators Campbell and Pankonin. Senator Friend, you're recognized. [LB542]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. Legislative generalities and legislative language generalities can cause mass confusion, and while I don't know that that's the specific problem with AM1224 or LB542, that's what I suspect is happening. Let's pretend the lobby isn't out there for a second. It's virtually impossible because this thing is, for lack of a better way to describe it, this thing has been crazy. The e-mail is flipping out right now. Everybody's e-mail is flipping out right now. But forget...let's pretend the lobby is not out there to deal with this subject matter and let's say that a bunch of legislators had to deal with it, right here, right now. And one of the questions that occurred to me, if you forget about the lobby for just a second and you do a little bit of research, and it's not that hard to do, is to try to figure out how much a dental assistant in the state of Nebraska, or let's just take Omaha--let's narrow it down to Omaha for my sake, if you'd bear with me--how much a dental assistant makes in Omaha compared to a hygienist, how much money they make. There is a difference. Now if you go to the language of this amendment and you say, well, so what, Mike, who cares, that's not the point, that's not the point. And you may be right when you say that. But I would submit this to you. There is a significant...not as...maybe not significant but there's a difference between what a dental assistant and what a hygienist can make. Now if you read this language, the department, in this amendment, the department with the recommendation of the board, shall adopt and promulgate rules and regulations relating to the performance of duties by a dental assistant...by dental assistants, which may include basic qualifications, education, training, and competency assessment of dental assistants. Now if I'm a hygienist--and I'm not trying to defend hygienists here, I really don't know--but if I am one, I'm reading this language and I'm going, I just took two years of education or three years or a year and a half or however long it took me to get through the particular program that I'm taking or that I just got through and I'm shaking. I'm going, wait a minute. In Omaha, a dentist may say, you know what, it's

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going to be a heck of a lot more inexpensive for me to put...and some dentists are going to say, well, that's crazy, that's nuts; hygienists do different things than dental assistants do. Well, right here in this language we're saying that we're going to give DHS and then we're going to give the dentists the ability to say can we crank this up a notch. What if I have a tooth extraction? The last time that happened to me, there was a hygienist in the room. They're helping that dentist. There wasn't a dental assistant. Would the qualifications and the education and the training include those difficult extractions that that dentist was going to perform? Now look, somebody may turn around right now and say, you know, after five minutes it's pretty clear that Friend doesn't know what he's talking about. Here's what I do know. This is what I know unequivocally. A dental assistant is not making as much money as a hygienist on average. That's fact. Now what do you want to do with that? Do you want to put really general language in a legislative statute that says... [LB542]

SENATOR CARLSON: One minute. [LB542]

SENATOR FRIEND: ...let's go ahead and let's create just enough doubt, just enough doubt that somebody may be able to do something with that as far as...the mass confusion is out there. Oh, gosh, I forgot I said let's forget about the lobby for a second. The mass confusion, forget about the lobby, the mass confusion is in here. I haven't heard anybody say, you know what, there's no...except for Senator Gay, and I like him a lot. He thinks he ought to move forward with this. You know what I would say if I was really a mean person? I'd say let's recommit this and let's let these guys get back to the table and let's let them all talk about how we can get over this hump. My thing is this is very general language in here and it's very difficult for me to say that the hygienists are wrong to be afraid of this language. I can't tell you that right now. [LB542]

SENATOR CARLSON: Time. [LB542]

SENATOR FRIEND: Thank you, Mr. President. [LB542]

SENATOR CARLSON: Thank you, Senator Friend. (Visitors introduced.) Senators still wishing to speak: Pirsch, Campbell, Gloor, Price, Gay, and others. Senator Pirsch, you're recognized. [LB542]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. And since I have a short time to speak and quite a lot, I think, to say, I'll try to run through this in a hurry. But I also have been contacted by a number of constituents on both sides of the issue and so I'm trying to, in my mind, frame the issue in the proper manner and understand what's at stake here. And I guess what I've heard thus far, and I'm just going to make some statements about what I appear to hear Senator Campbell saying, the proponent of this bill, and supporters of the bill and just ask her to confirm if that's her understanding, that LB...and I'll make some statements before I ask Senator Campbell if

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she'll yield. But with regards to the underlying bill, it seems as though from her statements that her view is that this is not a scope of practice issue, that this is...that the scope of practice this concerns is what the powers of the board, this board that we're talking about, can do, but that that...the issue here is restricted to the issue of can they require training. And that with regard to can the board designate the scope of practice for a dental assistant, that that is not addressed by this bill and that that's already a clearly settled manner that they can and no one disputes that. And so, first of all, I'd ask if Senator Campbell could just yield to a simple yes or no question. Is that... [LB542]

SENATOR CARLSON: Senator Campbell, will you yield? [LB542]

SENATOR CAMPBELL: Yes, I will. [LB542]

SENATOR PIRSCH: Is that an accurate statement about your position then, that this is not, in your mind, a scope of issue (sic) practice; that the scope...that the board already has that power clearly; that that's not largely...that that's not disputed? [LB542]

SENATOR CAMPBELL: The department has, through its rules and regs, on the dental assistant. [LB542]

SENATOR PIRSCH: Okay. [LB542]

SENATOR CAMPBELL: The duties there lay out the scope of practice, Senator Pirsch. I don't believe this conflicts with the scope of practice for the hygienists. [LB542]

SENATOR PIRSCH: Okay. So you don't believe that this bill is changing...attempting to change, to give a power to an entity that did not have the power there before regarding curtailing or expanding the dental assistant scope of practice, correct? [LB542]

SENATOR CAMPBELL: No. The difference here, Senator Pirsch, is that there is not called into question whether the department, through its two boards, can set the duties for a dental assistant. What has been called into question and what needs statutory authority from us is do they have the authority to set education and training. [LB542]

SENATOR PIRSCH: But that's a different thing than duties. And in my mind, duties equals scope of practice, correct? [LB542]

SENATOR CAMPBELL: Yes, I would say that. [LB542]

SENATOR PIRSCH: Okay. So we're talking about something that...and that's what I'm asking you. In your mind, is your bill affecting scope of practice or duties, or are you attempting in your bill to give the board for the first time an ability to regulate training, which would be, in your mind, separate and apart from duties or scope of performance?

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[LB542]

SENATOR CAMPBELL: Senator Pirsch, the key issue to your question there is when you said "for the first time." [LB542]

SENATOR PIRSCH: Okay. [LB542]

SENATOR CAMPBELL: That is not accurate. Remember that the department, through its two boards, has felt that it had the ability to set the duties... [LB542]

SENATOR PIRSCH: Oh, I see. Okay, so... [LB542]

SENATOR CAMPBELL: ...and the ability to set education. [LB542]

SENATOR PIRSCH: It's only through an Attorney General Opinion. The Attorney General holds the belief that you don't, but you believe the law, even notwithstanding that opinion, the law would allow. But the issue is training then that's in play, correct? [LB542]

SENATOR CAMPBELL: Correct. [LB542]

SENATOR PIRSCH: And not scope of practice/duties. [LB542]

SENATOR CAMPBELL: Correct. [LB542]

SENATOR PIRSCH: Okay. And that's what I'm getting at. I mean I'm hoping to isolate the issue. I think the fear on the other side... [LB542]

SENATOR CARLSON: One minute. [LB542]

SENATOR PIRSCH: ...as I understand it from perhaps the dental hygienists is that...and it might be ameliorated or taking away the fear if the...if it's a clear uncontested matter that scope of duties/performance of duties/scope of employment is not at issue here. It isn't going to be changed one way or the other. And so I'd be interested, and I'm running out of time here, I'd be interested in hearing from any senator in the body who could help shed light or anyone who believes that this is a scope of practice issue that would be changed. Now I understand the language in this AM1224 does utilize performance of duties, use that wordage, but I'm asking is that...I think Senator Campbell would say that just reiterates what the existing state of the law is. So other than her use of the words there, is this in fact involving or implicating scope of practice changes or is... [LB542]

SENATOR CARLSON: Time. [LB542]

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SENATOR PIRSCH: Thank you. [LB542]

SENATOR CARLSON: Thank you, Senator Pirsch and Senator Campbell. Senator Campbell, you're recognized. [LB542]

SENATOR CAMPBELL: Thank you, Mr. President. I want to...I've had an opportunity to clarify several questions and I want to just quickly clarify Senator Utter's question and that is, why don't we just have the three groups come together and then come back to the Legislature and then we decide? And I would say, whoa! Whoa! Whoa! Think about that. That's why we put into place professional boards to oversee and look at the rules and regs. If you as a Legislature want to start having every profession, every health profession come and you determine that, that's fine. The place for those three groups to put forward their ideas is in a very public process before the Board of Dentistry and ultimately the department. Thank you, Mr. President. [LB542]

SENATOR CARLSON: Thank you, Senator Campbell. Senator Gloor, you're recognized. [LB542]

SENATOR GLOOR: Thank you, Mr. President. Please, sir, I'd like to call the question. [LB542]

SENATOR CARLSON: The question has been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. [LB542]

SENATOR GLOOR: I'd like a call of the house. [LB542]

SENATOR CARLSON: There's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB542]

CLERK: 30 ayes, 2 nays to place the house under call, Mr. President. [LB542]

SENATOR CARLSON: The house is under call. Senators, please record your presence. Those senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Avery, Lathrop, and Stuthman, please return to the floor. The house is under call. Senator Gloor everyone is accounted for. How do you wish to proceed, a call-in vote or roll call? [LB542]

SENATOR GLOOR: (Microphone malfunction) Call-in votes. [LB542]

SENATOR CARLSON: Call-in votes are accepted. The question is, shall debate cease?

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CLERK: Senator Karpisek voting yes. Senator Avery voting yes. Senator Pankonin voting yes. Senator Flood voting yes. Senator Utter voting yes. Senator Wightman voting yes. Senator Hadley voting yes. Senator Giese voting yes. Senator Pirsch changing from yes to no. Senator Nelson changing from yes to no. Sorry, Senator Cook. Senator Cook voting yes. Senator Coash voting no. Senator Dierks voting yes. Thank you, Senator. Senator Dubas voting yes. [LB542]

SENATOR CARLSON: Record, Mr. Clerk. [LB542]

CLERK: 22 ayes, 6 nays, Mr. President, to cease debate. [LB542]

SENATOR CARLSON: Debate does not cease. We raise the call. We return to debate. Those wishing to speak: Senators Price, Gay, Fischer, and others. Senator Price, you're recognized. Senator Price waives. Senator Gay, you're recognized. [LB542]

SENATOR GAY: Thank you, Mr. President. That was eerily similar to another situation I've been in. (Laughter) I was getting nervous. Yeah, this is a difficult issue and if we need to continue debate we will, probably at another time, it looks like. But this is a issue I think we need to dig into--we're having a great debate, by the way--but I don't think it's one of those things that goes away. Forget the lobby. Talk to senators. Let's get some facts of what the bill does. I don't think this is...this isn't a bill, though, that puts dentists in rural areas out of business. It doesn't do that. It clarifies the training of what a dental assistant can do. And there are always underlining issues in any bill we do and this...any health bill where we deal with licensure and scope of practice and those things create that. This is not that. There was issues going on this summer that dealt with that and you probably heard from people on that. This is not that. This is a fairly simple bill, in my mind, but it is, when you add the outside influences and input in, it becomes much more of a challenge. But there's just certain bills, I think, and a lot of times we just need to think it through, make up our mind and move forward, and we have good legislation. I think if we continue on the discussion on this, to ask Senator Campbell and others and try to get some more information, we'll get the right outcome, whatever that may be. I happen to support the bill and the amendment, but whatever the wishes of the body may be, that's where we'll end up. So as we continue on debate and I think on the agenda we're moving on, any questions that could be answered I would hope we could ask our colleagues how does it work, because I do think there's been confusion been brought in. I've heard it from, like I say, friends in my own district of what the bill does and doesn't do. I can read exactly what it can do and I can interpret that. So I commend Senator Campbell for bringing this issue. I think it's important and look forward to more debate on it. Thank you, Mr. President. [LB542]

SENATOR CARLSON: Thank you, Senator Gay. Senator Fischer, you're recognized.

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[LB542]

SENATOR FISCHER: Thank you, Mr. President and members. Well, we're still going on the bill and I'm still getting e-mails and they're conflicting and they continue to be. And part of the concern is just the doubts and the confusion about what may happen. And I appreciate Senator Campbell's comments on that and that the bill, as she sees it, is just to address a concern, address a situation that came about because of an opinion by the Attorney General. However, those concerns are still out there. And comments that have been made on the floor today I think possibly have fueled some of those concerns. My good friend Senator Harms spoke about classes that are offered at community colleges and the training that can take place there and the importance of those training and education facilities that would be available for dental assistants and the improvements that would be for public safety. I don't argue with that. But does that mean we're moving in the direction to require dental assistants to attend those classes? Will that be interpreted by the Board of Dentistry, if they're looking at legislative intent, that we are going to require that; that we are not going to allow a dentist in their office to continue the training? Because my intent is, if this bill moves forward, that the dentist in that office provide the training, the dentist in that office monitor. I've heard from hygienists who said that they're giving training now. It's not the dentists, it's the hygienists who's giving training to a dental assistant. Who monitors that? Who decides what quality of training will be provided? The Board of Dentistry. How are they going to monitor it though? And if we don't have dental assistants that are required to have a license, how will that be monitored? The lady that cuts my hair has a license, but a dental assistant doesn't. I'm not ready, I'm not ready to move one way or the other on this and so, therefore, I appreciate Senator Pankonin's comments when he said as a committee member he wasn't ready to move forward. He and Senator Stuthman were present and not voting on that bill when it came out of committee. And as I understand Senator Pankonin's comments, his feeling was that when the bill was moved out of committee that it was to send a message to the groups to get together and meet. I understand Senator Campbell has met with those three groups individually--the dentists, the assistants, and the hygienists--but they haven't met as a group together. So I, as of right now, I'm going to take Senator Pankonin's advice--he'll be happy to know that I'm listening to him and taking his advice on this--and be present and not voting. Because I think we need to bring these groups together. If there's... [LB542]

SENATOR CARLSON: One minute. [LB542]

SENATOR FISCHER: ...this much confusion on the floor, which there has been on comments made by all of you today, then we know there's confusion at home. We need to clarify the issue and if that takes more debate, so be it. Thank you, Mr. President. [LB542]

SENATOR CARLSON: Thank you, Senator Fischer. Members of the Legislature, it is

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12:30 and, according to our schedule, we will pick up with the schedule for 12:30. (Visitors introduced.) Mr. Clerk, next item. Mr. Clerk for an announcement. [LB542]

CLERK: Thank you, Mr. President. Your Committee on Transportation reports LB181 to General File with amendments, and Senator Carlson has an amendment to LB224 to be printed. (Also, Senator Dierks has an amendment to LB241, Legislative Journal pages 1398-1401.) [LB181 LB224 LB241]

Mr. President, LB218, a bill by Senator Cornett, relates to state aid. (Read title.) The bill was discussed yesterday, Mr. President. Committee amendments offered by the Revenue Committee were adopted. When the Legislature left the issue, Senator Giese had pending his amendment, AM802. (Legislative Journal page 872.) [LB218]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Cornett, would you take a couple of minutes and review LB218 before we proceed? [LB218]

SENATOR CORNETT: Thank you, Mr. President and members of the body. LB218 is a bill that merges three separate state programs to offer aid to counties, one being jail reimbursement and the other two being state aid to counties that don't receive jail reimbursement or receive other forms of reimbursement. Over the past few years, we have had an ongoing argument in the Legislature in regards to funding jail reimbursement. In the five years that I've been here, we have not had a stabilized funding mechanism that was fair for all counties who house prisoners. We offer LB218 as a method to offer counties a stabilized funding mechanism that they can depend on throughout the year. The thing that we heard most often when it came to the jail reimbursement part is we can't count on whether we're going to get our money or not. It depends on when we have a prisoner. And I made the comment yesterday that someone had likened trying to fund jail reimbursement as trying to beat a dead horse across the finish line. I don't believe that we are going to fund jail reimbursement to the level it should be and have moved away from that idea and have looked with Senator Heidemann over the course of the interim on a way to offer counties a stabilized aid formula. LB218 is based on valuation and, therefore, has an automatic growth factor built in for the counties. I urge the body to support LB218. Thank you very much. [LB218]

SENATOR CARLSON: Thank you, Senator Cornett. Senator Giese, you have opened on AM802. Would you summarize your amendment? [LB218]

SENATOR GIESE: Thank you, Mr. President and members of the body. Yesterday we had a good discussion on the history of the jail reimbursement program. As Senator Gloor pointed out, there was a jail reimbursement statute on the books as far back as the 1960s, but it was based on appropriations to the program. We didn't fund them then and we are not funding it now. Counties are frustrated because they don't know if claims

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they make for jail reimbursement will be paid or not. But if you talk to your county officials and ask them what they want done about jail reimbursement, the answer is fully fund it, not eliminate it. The only reason most counties are supportive of LB218 is because they believe that they will get a better deal. The new formula would combine jail reimbursement with two other programs and set a floor and a ceiling for funding county property tax relief, but it should be no surprise that the money currently in the three programs would only reach the floor. In familiar fashion, the counties that had been promised that there will eventually be more money put into the LB218 formula, the question I have to ask the body is this: If we are saying that we can come up with more money for LB218 in a few years, why don't we just put that money into the jail reimbursement instead? AM802, by removing the jail reimbursement program from the LB218 formula, would allow the Legislature to finally move in the right direction instead of the wrong one with jail reimbursement. Under the current jail reimbursement statute, counties are only reimbursed \$35 a day when the actual cost of housing a state prisoner is at least twice as much. I am not advocating that we should be paying these costs in full, but at least we owe the counties the \$35 a day that we promised them. While there are some rare examples of programs going away and then being refunded, we shouldn't kid ourselves. If LB218 passes in its current form, jail reimbursement will likely go away forever. I would urge the body to at least consider the possibility of keeping our promises to counties and vote in favor of AM802. Thank you. [LB218]

SENATOR CARLSON: Thank you, Senator Giese. The floor is now open for debate on LB218 and AM802. Those wishing to speak: Senators White, Hansen, Hadley, Cornett, and Fischer. Senator White, you're recognized. [LB218]

SENATOR WHITE: Thank you, Mr. President. I would like to make a couple of points and then perhaps ask Senator Cornett a question. First of all, the first point is that we have an ongoing potential constitutional crisis. I don't think there's any reasonable doubt that if a prisoner is a state prisoner then the state has the obligation to pay those expenses. The Supreme Court of this state recently reminded us in the Republican River controversy that we cannot use local taxes, property taxes, to defray state obligations; can't do it. Well, a state prisoner--depending on however you define it, at some point they're state prisoners--is clearly a state obligation. Senator Wightman was quite interested in what is a state prisoner or not. I had defined it in my view, which is a restrictive view. A state prisoner begins to be a state prisoner as soon as a jury returns a conviction on a crime that can be punished by a term of incarceration in the penitentiary. That's how I understand it. Certainly other counties understand it more broadly. Soon as you are charged with a crime that could result in incarceration in a state facility, some counties will claim that to be a state prisoner. I personally don't accept that, but what no one can deny is that at some point in time these people become state prisoners and we are not doing our constitutional duty in supporting them. Instead, we're trying to force it down to property taxes, and that's wrong. It's bad budgeting, it's not transparent government, and it's unfair to the counties and the

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property taxpayers. Now would Senator Cornett yield to a question? [LB218]

SENATOR CARLSON: Senator Cornett, would you yield? [LB218]

SENATOR CORNETT: I'd be happy to. [LB218]

SENATOR WHITE: Senator Cornett, how much is being funded into LB218 in the next two years? What's the funding for it? [LB218]

SENATOR CORNETT: In the next two years, zero. [LB218]

SENATOR WHITE: And that...doesn't that strike you, Senator Cornett, as an awfully poor beginning? I mean we are here because, in large part, we've never kept our promise about paying for our prisoners. We now substitute to the counties a promise to make a funding mechanism available in years to come and we open up our performance of that promise by not giving it a nickel. Why would the counties believe we are any more capable or willing to fund LB218 than we were the jail reimbursement? [LB218]

SENATOR CORNETT: We are funding jail reimbursement in the other two county aid formulas over the next two years. Part of the reason for the delay for the implementation of LB218 is the counties that have to reabsorb the cost of county assessors. [LB218]

SENATOR WHITE: So the intention is that the county assessors that we took back, that function of those nine counties, we will take that money and put it into this program? [LB218]

SENATOR CORNETT: Not only that, the counties that are having to reabsorb the county assessors are also ones that were not faring as well as other counties under LB218, and we are trying to hold them as harmless as possible. [LB218]

SENATOR WHITE: And that gets...thank you, Senator Cornett. And that gets back to the next major issue I have with LB218. LB218 does not fairly distribute money. It does predictably distribute whatever money we choose to put in there but the first uncertainty, of course, is whether we'll put any money into it, which we're not for two years, and that makes me wonder whether this isn't premature. If we don't have the money to fund it, why get rid of the other programs? Second, we are going to be putting money into counties regardless of whether or not they have emergency situations. If, for example, and we've gone through this before, a county gets a small... [LB218]

SENATOR CARLSON: One minute. [LB218]

SENATOR WHITE: ...a small amount of money initially from the LB218 but then has a

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catastrophic crime occur, it will have deep financial problems and we will not be in a position to help nor should it expect us to help them discharge that in terms of housing their prisoners. Yesterday Senator Cornett was quite proper to point out to me off the mike that there are prosecution and defense funds that are partially available to partially offset those costs. But the housing of the prisoners always came through this policy. There's no good reason at this time to get rid of the jail reimbursement. It's not necessary. We are not funding LB218 and there's no sense in repealing the jail portion of this now except one--political cover. Not paying our bills for jail reimbursement points out to the public that we're not doing our job honorably, and that... [LB218]

SENATOR CARLSON: Time. [LB218]

SENATOR WHITE: ...is not something we should pass a law to hide. [LB218]

SENATOR CARLSON: Thank you, Senator White and Senator Cornett. Speaker Flood for an announcement. [LB218]

SPEAKER FLOOD: Thank you, Mr. President. Good afternoon, members. It is my intention to have the Legislature resolve, one way or another, LB218 today, and you might wonder why. The primary reason is that Senator Cornett will not be able to be in the Legislature next Monday and Tuesday and, to accommodate the direction we're going in the schedule, I would like to stay in session today until we resolve LB218. Thank you, Mr. President. []

SENATOR CARLSON: Thank you, Speaker Flood. Senator Hansen, you are recognized. [LB218]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I missed the discussion yesterday. I got to feeling kind of ill yesterday and I figured if I was going to get that flu that's going around that I wanted to be in my own pen. Other than that, I did watch some of the discussion on the television and got to appreciate the streaming of that video, which is good. Kept up with some of the debate in between my winks. So after coming back today and looking at the chart that Senator Giese provided, I think there's some real inadequacies in this. We're giving...we're talking about jail reimbursement, replacing jail reimbursement, yet we're giving to counties that don't have jails. We're taking money away from counties that have huge jails. There's something wrong with this. I've got...last year when Senator Aguilar and I were working on the jail reimbursement bill, I looked up some old transcripts and according to this, in 1997, on their LB180 of 1997, they called for approximately \$20 million to fully fund jail reimbursement. It's never been there, never been close. There was a time that it was increased from the \$3.9 million a year but then it's gone back to it and we can't get budged off of that. I think that the whole idea of giving aid to counties is fine but I don't think we need to do it in the reference of jail reimbursement because this, the sheets

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that Senator Giese handed out, it's not doing that. It's increasing aid to counties and not addressing the problem that we have here. I think that I have told the NACO lobby that I would be in favor of this, without really studying these sheets, and after studying them, after talking to some other people, I can't support this legislation because it's not based on what the underlying idea was, which is jail reimbursement. Thank you, Mr. President. [LB218]

SENATOR CARLSON: Thank you, Senator Hansen. Senator Hadley, you're recognized. [LB218]

SENATOR HADLEY: Mr. President, members of the body, I think Senator Friend yesterday touched on some issues that I'd like to touch on. There are a lot of things that we do not fund fully. We have sat here and we passed a budget this week where we didn't fund the K through 12 TEEOSA. We're going to work on that next week but we know we're not going to fund that fully. We have provider rates. I talked earlier about psychiatric hospital where it costs them \$600 a day for a patient and the state reimburses at \$400 a day. You talk to the university and they will tell you, while there's not a formula, we do not fully fund the university to the level they would like. Those three areas take up about 75 percent of our budget: Health and Human Services, K through 12, and higher education. Would Senator Giese yield to a question? [LB218]

SENATOR CARLSON: Senator Giese, will you yield? [LB218]

SENATOR GIESE: Yes, I will. [LB218]

SENATOR HADLEY: Senator Giese, if jail reimbursement was fully funded, I believe it would be about 8...a little over \$8 million a year to the state. We're putting in \$3.9 million right now, which would mean an increase in state funding required of \$4.1 million. We just passed a budget. We have three choices: raise taxes, reallocate, or use part of the surplus. What would be your recommendation if we were to fully fund? Where would you find the \$4.1 million next year to fully fund the jail reimbursement? [LB218]

SENATOR GIESE: Well, Senator Hadley, I appreciate your question. With the budget being done, I think that the \$3.9 million is the most money that we're going to have. And I would stress to you that we have been underfunding the jail reimbursement program because the money that we have had, that money is gone after about six months to reimburse our jails. So even the money that we do have is gone in half the time and these counties that come back and want the reimbursement, there's no money there. [LB218]

SENATOR HADLEY: I understand that. But I guess my point is that we talk a lot, and it's easy to talk about, that we should be funding K through 12 ed, the TEEOSA formula at 100 percent, we should be funding Health and Human Services at 100 percent, we

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should be funding higher education at 100 percent, we should be funding jail reimbursement at 100 percent. But the money has got to come from some place. Either we tax ourselves at the state level to find the money or we tax ourselves at the local level. So if you want to move jail reimbursement, that part that they're funding right now in the counties, if you want to move it to the state level, fine, we can raise either income tax or we can raise sales taxes. That's what we've got to do. Thank you. [LB218]

SENATOR CARLSON: Thank you, Senator Hadley and Senator Giese. Senator Cornett, you're recognized. [LB218]

SENATOR CORNETT: Thank you. What I would like to do is speak to the Giese amendment specifically and what it does and how it harms counties that do not receive jail reimbursement currently. Under the proposed bill, LB218, we set the floor at .75 of the evaluation (sic). His amendment puts the remain...keeps the \$3.9 million for jail reimbursement going to jail reimbursement. First problem with that is that only helps the larger counties that house prisoners at the beginning of the year. It does not help the smaller counties that end up with a prisoner towards the end of the year. It does not help counties that do not house prisoners and it actually harms them by lowering the floor in the amount of aid that they would receive under the formula. We keep talking about we need to pay our bills. Senator Hadley brought up a very good point. If we fully fund jail reimbursement, what are we going to take away from? Who are we going to take away from? It has not been funded over the \$3.9 million or \$3.9 million, and because of that and the way the structure is set up under jail reimbursement, there are counties that are winners and counties that are losers. LB218 takes jail reimbursement out of the picture. It offers counties a stabilized funding mechanism that they can budget for over the years. We keep talking about local control. We are sending the money to the county boards and allowing them to use it in where they need it. I would strongly recommend that we defeat the Giese amendment because it does harm the counties that do not receive jail reimbursement and it does not address the issue of the fact that jail reimbursement is not a dependable source of funding for counties. NACO also does not support the Giese...under the Giese amendment. Thank you very much. [LB218]

SENATOR CARLSON: Thank you, Senator Cornett. Senator Fischer, you are recognized. [LB218]

SENATOR FISCHER: Thank you, Mr. President and members. I would like to thank Senator Cornett for her explanation there of Senator Giese's amendment and I do agree with her. As I looked at it, I thought, yes, this will penalize definitely counties that do not receive jail reimbursement. If you remember yesterday when I went through my little history lesson on the jail reimbursement and the county property tax relief program and the aid to counties, the county property tax relief program was geared to counties that are in sparsely populated areas, the more rural counties. This state didn't fund that for four years, but I'm not up here saying we didn't pay our bills, and it's not...it wasn't

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funded at all, let alone not fully funded. We need to remember, it's not just jail reimbursement. We're not just talking about the jail reimbursement portion of what is a county aid bill here and what jail reimbursement is. It's county aid, aid to counties. That's what the county property tax relief program was, aid to counties, but the Legislature just didn't call it that. What LB218 is doing is merging those three programs into one, one that is easier for counties to understand. I was in the lobby. I understand that Douglas County and Lancaster County are fully supportive of LB218 and not supportive of the Giese amendment. I can tell you that my small counties would not be supportive of the Giese amendment either. But we're moving, under LB218, to a program that's going to be easier for counties to understand and prepare for with their budgets. I appreciated Senator Hadley's comments about how are we going to fully fund the jail reimbursement side of this or any side of the aid to counties that we currently have. I don't think Nebraska is in a position to be printing money. I don't think we're in a position to go into debt. We can't do those things as a state as they can at the federal level. Senator Hadley was correct in that we can raise taxes to do this, which means sales and income tax. There's a possibility to raise fees. We've had a lot of discussion on fees since the beginning of this session. I don't think that is popular. Or possibly we could have seen an amendment to the budget that would have increased the aid to counties. Well, our budget discussion is over and we didn't see an amendment to the budget that would address that, so that's not an option for us now either, which I would have been against at that point, by the way. So if we're not going to raise taxes and we're not going to do fees and we can't print money and we can't go into debt and the budget is over and we didn't see an amendment on that, it's not going to be fully funded the way it is. This is the fifth year I've talked about this. It's not been fully funded ever. That's because we didn't have the revenues, we didn't choose that as...aid to counties as a priority, whatever the reason. But what Senator Cornett is offering us is a formula that will help counties, help them in their budget planning... [LB218]

SENATOR CARLSON: One minute. [LB218]

SENATOR FISCHER: ...and we need to support it. Thank you, Mr. President. [LB218]

SENATOR CARLSON: Thank you, Senator Fischer. Those still wishing to speak: Senators Gloor, White, Karpisek, and Pirsch. Senator Gloor, you're recognized. [LB218]

SENATOR GLOOR: Thank you, Mr. President. I appreciate Senator Hansen's very direct, concise identification that what we've been talking about under LB218 would penalize counties that have jails. And my county, Dakota County, we have large jails. Unfortunately, we have a reality of a number of prisoners and a lot of those prisoners end up being state prisoners. And so we're back to this issue of the state paying its bills. I support Senator Giese's AM802 and I support it because we're talking about different expenses as far as I'm concerned. We're talking about expenses that came under the purview of aid to counties that dealt with property tax relief lids, and we're talking about

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jail expenses when we have real prisoners who have real expenses attached to them, who create crimes that have them ultimately be the responsibility of the state and looking for payment on that. And I would like to answer Senator Hadley's question about where we're going to get the money that he directed toward Senator Giese. I gave him a heads up that I might ask him a question. I don't think I will. I think I'll use myself as an example. But I would not walk around my district bragging about a savings account if I owed money to a lot of people. That would not be a wise thing to do. And yet, we have a reserve and we have appropriately, in many cases, taken credit for having a reserve. But part of the reason we have a reserve clearly is, in a few instances, we haven't been paying our bills. I mean some of that money we have in our reserves would not be there had we been reimbursing appropriately to the counties. I don't think that's difficult math. I think it's a cold, hard reality. Some of the money that's in that reserve is there because we haven't been paying our bills. And so where would I get the money? Maybe this is an appropriate use of those reserves to pay those counties who have actual expense as a result of taking care of state prisoners. It won't be huge, huge, tens of millions of dollars that drain the reserve, but it will get us at least square with individuals, with counties where we have obligations--something to consider. We at least should not be walking around taking credit for the same level of reserve that obviously is there because, in some cases, we have not been paying up. Thank you, Mr. President. [LB218]

SENATOR CARLSON: Thank you, Senator Gloor. Senator White, you're recognized. [LB218]

SENATOR WHITE: Thank you, Mr. President. I thought Senator Hadley made some good points, but let me tell you right now, Senator Hadley, I would support a further increase on lawsuit fees and charges to help fully fund jails. We did it to help pay for judges and judges are a necessary element of the justice system just as jails are. So I would have no problem doing that. I'm generally pretty much deaf on raising fees and taxes, but this is important because this is dollar-for-dollar property tax relief. We're kidding ourselves if we think that we're doing anything other than raising property taxes when we remove programs like this. What Senator Giese is talking about is true property tax relief for counties who encounter the expense of trying to keep their citizens safe, so I would find it quite happily in an increase of fees, if necessary. I think the public understands it. They support good, safe jails that judges are not forced to worry about if putting a dangerous person behind bars could bankrupt a county. They want us to have places for people who do not deserve to be in society and this bill goes backwards on that and it goes backwards on property tax. I think we need to have that jail reimbursement deficit staring us in the face. I think we need that to try to keep us honest in our relationships with the counties. At least now we know every year how far we failed them. When this bill passes, that marker will be gone. It's like a guy with a bad memory. It's sure a lot easier to break your promise and not pay your bills if your memory is bad and you don't have a conscience, and that's what the jail reimbursement bill has been for us--a conscience of promises we've made and broke. And I don't think

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that we should throw the conscience away. I think we ought to listen to the conscience. Therefore, I support AM802. I would find the money to fully fund jails and I would not abandon our counties in their efforts to try to control property taxes. Thank you. [LB218]

SENATOR CARLSON: Thank you, Senator White. Senator Karpisek, you are recognized. [LB218]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. This bill does concern me and maybe I'm just not understanding it. To me, if we just can't fully fund something so then we just get rid of it, I guess we don't fully fund the schools so maybe we should not give school aid. I guess I'm missing something here. I guess that if that's our solution to this, I (laugh) please off the mike come explain it to me if I'm completely wrong. But just because we can't pay for it, so then we just get rid of it. I also have a concern that I know right now the jail money goes to the counties and it does not have to go to the jail. I understand that. But I am concerned that at least if it's not kind of line-itemed, if it will go to the jail still. And I don't, again, understand enough to know if it helps or hurts. I mean, what I've heard so far is that it will help in planning, in scheduling, all those sort of things, budgets. I don't think that any county now would put the whole amount their budget because they know they're not going to get it. So I do have questions on this. I've been listening. I was in the Chair yesterday and so I paid more attention maybe than I normally do, and I still am not getting it. I see Senator Cornett coming so maybe she'll help me off the mike. I do have concerns. I think we all are wondering. I listened to Senator Hansen; I was down in my office. I am concerned that we need the jail funding. I feel they are state prisoners. I don't know, maybe if, the state prisoners, if they don't get paid for them maybe they can just turn them loose. Is that an option? I don't know, and I'm not trying to be facetious about it. I don't know. I think that we need to try to help the counties out. If they're state prisoners, we need to try to help them out. I realize there's a plan in here on how to do it. I don't know that I can support it right now, though. Thank you, Mr. President. [LB218]

SENATOR CARLSON: Thank you, Senator Karpisek. Senator Pirsch, you are recognized. [LB218]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator...well, looks like Senator Cornett has stepped out. I guess I will then see if she is available. Well, she is here on the floor. I wonder if Senator Cornett would yield to a question. [LB218]

SENATOR CARLSON: Senator Cornett, would you yield? [LB218]

SENATOR CORNETT: Yes. [LB218]

SENATOR PIRSCH: And this kind of ties into, I believe, some questions that had been

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asked previously with respect to the nature of the three programs that are in this bill, LB218, being combined into just, if you will, one ledger. And so specifically what's an issue with this amendment is...Senator Giese's amendment is the jail reimbursement aid program and whether to separate that one tabulation out of the equation with the other two, the other two parts of the equation being the county property tax relief program and the general aid to counties program. And I understand the general aid to counties program started in the 1970s, correct, with the...at the time they took the personal property away, is that...from the taxation rolls. Is that correct? [LB218]

SENATOR CORNETT: That is correct, Senator Pirsch. [LB218]

SENATOR PIRSCH: And when was the county property tax relief program... [LB218]

SENATOR CORNETT: I believe it was... [LB218]

SENATOR PIRSCH: ...enacted? [LB218]

SENATOR CORNETT: Oh, I'm sorry. [LB218]

SENATOR PIRSCH: No, no, go ahead. When was that enacted? [LB218]

SENATOR CORNETT: That was enacted in 1998 as part of LB695 which also created jail reimbursement. [LB218]

SENATOR PIRSCH: And the underlying concept behind the county property tax relief program, probably, the title probably speaks as to its...why it was created to...the concept was to utilize the state's income and sales tax to somewhat defray what was perceived as a high property tax at the time. Is that correct? [LB218]

SENATOR CORNETT: What the premise of all three bills were, were state aid to counties. [LB218]

SENATOR PIRSCH: Uh-huh. [LB218]

SENATOR CORNETT: And they were all implemented in that...for that reason, for the state to help the counties out. [LB218]

SENATOR PIRSCH: Right. But there's something unique about the other two. When you talk about jail reimbursement, you can calculate, it's...empirically or at least...you can argue about the figures but at least conceptually you can say this is the amount of costs that prisoners create for the counties and, therefore, the counties are asking for reimbursement. There's numbers that...hard numbers that you can...and you can argue about the numbers. But to back up, when you're talking about the other two, county

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property tax relief program and also general aid to counties, there's no...it's not a science. There's no hard numbers, are there, that would...I mean you are picking a number out of the air based on your view of what fairness means to you in helping the counties, correct? It's not for a specific reimbursement purpose. [LB218]

SENATOR CORNETT: Actually, the county property tax relief program is what Senator Fischer was talking about, that it's fairly complicated. It's aid...the distribution formula uses valuation per road mile as a capacity of measures and compares county ability to generate taxes per mile of road to a state effort level. That is an empirical number like jail cost reimbursement. We know the amount of roads we have. [LB218]

SENATOR PIRSCH: Were the reason these two other programs, besides jail reimbursement, but there were certain things, revenues, that were forgone, measurable revenues that were forgone by the counties, and so it was an effort by the state to make those up, those... [LB218]

SENATOR CARLSON: One minute. [LB218]

SENATOR PIRSCH: ...revenues? And that's just yes or no. [LB218]

SENATOR CORNETT: The first one was to make up revenues forgone. The second one was intended to provide tax relief for counties impacted by a lower statutory levy limit. [LB218]

SENATOR PIRSCH: Okay. But in both of those cases, can you measure the amount that the counties...could the county say, we can show you, illustrate to you in a dollar value, those amounts that we're forgoing because of this action the state is taking which necessitates the creation of these two funds? [LB218]

SENATOR CORNETT: Yes. [LB218]

SENATOR PIRSCH: So in those...in that respect, it's no different than the jail fund where it is specific amounts in all three cases that the state is forgoing then, correct? [LB218]

SENATOR CORNETT: Correct, Senator. [LB218]

SENATOR PIRSCH: I mean that the counties are forgoing. [LB218]

SENATOR CORNETT: Correct. [LB218]

SENATOR PIRSCH: Okay. So I guess that's why I'm wondering what the wisdom is in somehow narrowing out and saying, there's something peculiar about jail

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reimbursement program that we should separate it and keep it distinct from the other two. [LB218]

SENATOR CARLSON: Time. [LB218]

SENATOR PIRSCH: Thank you. [LB218]

SENATOR CARLSON: Thank you, Senator Pirsch and Senator Cornett. There are no other lights. Senator Giese, you are recognized to close on AM802. [LB218]

SENATOR GIESE: Thank you, Mr. President and members of the body. AM802 is a pretty straightforward amendment that would just take the jail reimbursement portion of LB218 out of that equation. One of the things I'd like to point out that Senator Hadley brought up earlier was that, yes, there are programs currently in the state that we are not fully funding. He mentioned the K-12 education program and a couple others. Yes, we are not fully funding those but we are not taking those away either, and that's what LB218 will do with the jail reimbursement program. So I ask the members of the body for your support on AM802 to take out the jail reimbursement part and let the counties have the money that's owed to them and that has been promised by the state. Thank you, Mr. President. [LB218]

SENATOR CARLSON: Thank you, Senator Giese. You have heard the closing on the amendment. The question is, shall the amendment be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB218]

CLERK: 7 ayes, 22 nays, Mr. President, on the amendment. [LB218]

SENATOR CARLSON: The amendment is not adopted. [LB218]

SENATOR PIRSCH: I have nothing further on the bill, Mr. President. [LB218]

SENATOR CARLSON: We return to discussion on the floor for LB218. Senator Pirsch, you're recognized. [LB218]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. And I appreciate, as I look at the component parts of what is being proposed, combining essentially three funding sources for counties that are, as we've discovered, based upon specific, measurable attempts to hold counties harmless. And so to the extent that we are able to place a number...and now, granted, we don't necessarily fully fund these but to the extent that we are able to place specific measurable numbers on these three funds and yet, through this LB218, what, as I understand it, and let me ask Senator Cornett if I have a good understanding of that, if she would yield to a question. [LB218]

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SENATOR CARLSON: Senator Cornett, will you yield? [LB218]

SENATOR CORNETT: I'd be happy to. [LB218]

SENATOR PIRSCH: So there are three component parts of what you're proposing in LB218. Instead of having three separate programs, put them together, combine them into one funding source, which the counties, certain counties, find attractive because at least they feel that it, as I understand it, that it will be more stable. Why would that be more...why would that, combining into one program, why would that be more stable over the course of time as the counties view it? [LB218]

SENATOR CORNETT: Senator Pirsch, we have moved away from the concept of all three mechanisms for funding relief to counties and we've moved to a formula based on valuation as compared to state valuation. So as a county's valuation grows, their funding grows. It has a floor in the amount that can be set...put into it and a ceiling in the amount that can be set into it, and it's set up that the counties know ahead of time, based on their valuation, what they will receive and there will be nine payments made throughout the course of the year to the individual counties. And let me be clear...clear up a misunderstanding when Senator White had earlier said that we don't have the money to fund LB218. We are funding the three county aid formulas that we have now to the level that we'd be funding LB218. We are holding off on the implementation so to give the counties time to...that are reabsorbing their assessors, the time to do that. [LB218]

SENATOR PIRSCH: Yeah. [LB218]

SENATOR CORNETT: Why jail reimbursement itself is undependable is because we have \$3.9 million allocated. Larger counties that house prisoners automatically get part of that money every year when they turn in their housing reimbursement. If you are a smaller county, you have not housed a prisoner until the second half of the year, there is no guarantee that you will receive money for that and there's no guarantee that you will receive money under the other two aid formulas. What we have done is thrown the other three ideas out, created a new idea that stabilizes aid funding to counties. [LB218]

SENATOR PIRSCH: Right. So I guess the question is, and I know there's a new idea, but does this in fact, in your opinion, just...you can say yes or no, does this lead to a more stable funding over time? Say 5, 10, 15 years from now can the counties plot this out in a more accurate way what they're going to expect? [LB218]

SENATOR CORNETT: Yes. [LB218]

SENATOR PIRSCH: Okay. And that's because you're saying that with one of the three

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components, the jail reimbursement component, that that fluctuated a lot more wildly than the other two components and that you're kind of taking away that fluctuation with this new...combining them into one and using a new valuation standard. Is that correct? [LB218]

SENATOR CORNETT: Correct. [LB218]

SENATOR CARLSON: One minute. [LB218]

SENATOR CORNETT: Correct. [LB218]

SENATOR PIRSCH: Okay. And...but in so doing, in moving to a more stable, predictable model over time for the counties, it may...the downside of that is it may tend to reflect the actual costs expended by the counties in the...that were the basis of the creation of these three programs, right? Jails...in other words, since we're moving to just valuation base, jail reimbursement, the actual costs expended by the counties may or may not be actually reflected then, correct, in those actual compensations from the state? [LB218]

SENATOR CORNETT: If I understand your question correctly, I believe you are correct. [LB218]

SENATOR PIRSCH: Okay. Okay. So there's a bit of a trade-off then and I just wanted to make sure that I understood that. The counties are saying we may have had more jail reimbursement under the old system where all three... [LB218]

SENATOR CARLSON: Time. Senator Pirsch, you may continue. This is your second time. [LB218]

SENATOR PIRSCH: Okay. Thank you. And again, the counties may be saying...certain counties may say, we may have, in actual dollars, had more coming to us if we had separated them into jail reimbursement, but because it fluctuates so under the current system where there's three, we'd rather just have one system based on valuation because we value the predictability of it more than the accuracy of the three systems. Correct? [LB218]

SENATOR CORNETT: Yes. [LB218]

SENATOR PIRSCH: Okay. All right. And...well, that's what I'm trying to establish in my mind and so I do appreciate the explanation. Is there any reason to think that moving to one program from three, combining three into one and using a different standard, this valuation standard, would somehow increase the rate...would result in an increase in the percentage of...essentially this is coming from state revenue so it's an expenditure,

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it's viewed as, by the state. Do we believe that by moving from three to one that that will somehow, over the course of time, result in an increased percentage of expenditures in this area? [LB218]

SENATOR CORNETT: Yes. Yes, Senator Pirsch. One of the compromises that we made with the counties is that there is a built-in growth factor. But that growth factor is controlled by the floor that is placed in there and the ceiling of the .0075 to the .001 or .0125. [LB218]

SENATOR PIRSCH: Well, the growth factor would be controlled by the ceiling... [LB218]

SENATOR CORNETT: Based on growth of counties. [LB218]

SENATOR PIRSCH: ...not the floor, right? [LB218]

SENATOR CORNETT: I'm sorry. [LB218]

SENATOR PIRSCH: That's the minimum. Yeah. And so the growth factor allows for what on the maximum percentage then? What is the maximum percentage that is allowed? [LB218]

SENATOR CORNETT: The maximum percentage, let me explain it to you. You take...say, for instance, a county has a 1 percent growth, all right? They have, compared to the state, they receive a 1 percent times the .0075, would be the lowest amount that they would receive on that growth, and the highest amount would be, if Appropriations determined that we had the money, could be up 1 percent times the .0125 if they have a 2 percent growth. [LB218]

SENATOR PIRSCH: Okay. [LB218]

SENATOR CORNETT: And that is so the funding grows with the expansion of the counties and the increase in revenue. [LB218]

SENATOR PIRSCH: Can I ask you this? Is this automatic or is this always going to be at the discretion of the Legislature to fully fund this expenditure in the future, this automatic growth? [LB218]

SENATOR CORNETT: It is automatic in that the minimum they can fund it at is the .0075. [LB218]

SENATOR PIRSCH: So further Legislatures, how would that work? They would be... [LB218]

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SENATOR CORNETT: It would... [LB218]

SENATOR PIRSCH: ...they would be required to fully fund that? [LB218]

SENATOR CORNETT: It would go to the Appropriations Committee and they could determine between the floor and the ceiling, between that .0075 and .0125, where they chose to fund aid to counties, but the minimum would be the growth factor times the .0075. [LB218]

SENATOR PIRSCH: Okay, and without...so if they wanted to, if they found that they didn't have the...a future Legislature didn't have the funds or wanted to change that, they would have to change the law then, is what you're saying? But without a change in the law, we're going to be on autopilot in terms of increasing the amount of funding, correct? [LB218]

SENATOR CORNETT: That is correct. [LB218]

SENATOR PIRSCH: Okay. And have we done any projections in terms of what that would mean in terms of actual dollars... [LB218]

SENATOR CARLSON: One minute. [LB218]

SENATOR PIRSCH: ...for the next three-, five-year period out or ten years? [LB218]

SENATOR CORNETT: (Inaudible) moment. [LB218]

SENATOR PIRSCH: Sure. [LB218]

SENATOR CORNETT: Yes. I'm sorry about that. I just wanted to make sure that I was correct in the projection of valuation growth. We are talking...the projection of valuation growth for the state is 3.5 percent over the next three years, so the amount of increase...you obviously tax based on that growth, the amount of increase in funding would be, minimum, .0075 times 3.5 percent. [LB218]

SENATOR PIRSCH: Okay. Well, I think, you know, I just wanted to draw to light the issue. And to the extent that others would like to comment on that, that's fine. Thank you. [LB218]

SENATOR CARLSON: Thank you, Senator Pirsch and Senator Cornett. Senator White, you're recognized. [LB218]

SENATOR WHITE: Thank you, Mr. President. Would Senator Cornett yield to a couple of questions? [LB218]

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SENATOR CARLSON: Senator Cornett, will you yield? [LB218]

SENATOR CORNETT: I would be happy to. [LB218]

SENATOR WHITE: Senator Cornett, are you taking the position that if this bill passes the Appropriations Committee must fund it; that they don't have the right as a new Legislature to say we simply don't have the money and we're going to put this money, instead, into education or something? [LB218]

SENATOR CORNETT: From...it is my understanding from Senator Heidemann and my legal counsel that we will fund it at the floor. Now obviously we are not bound as a Legislature in the future any more than we have been bound by the decisions of Legislatures in the past. And as we all know, laws can be changed, rules can be changed, and we...if we don't have the money, someone can change the floor. [LB218]

SENATOR WHITE: Well, the law right now says that we shall pay for jail reimbursement. We regularly break that. [LB218]

SENATOR CORNETT: I'm not disputing that. [LB218]

SENATOR WHITE: And we don't, by the way, fully fund schools either. [LB218]

SENATOR CORNETT: I am not disputing that, sir. [LB218]

SENATOR WHITE: Okay. So it's clear then this is just another promise. It's not a law. It's not a guarantee that it will be funded. It's just another promise. [LB218]

SENATOR CORNETT: It is a promise made by the Chair of Appropriations and the Chair of Revenue of this Legislature. [LB218]

SENATOR WHITE: Well, I have to tell you, I'm very concerned. First of all, Douglas County will lose \$980,000 a year under this proposal. Sarpy County makes \$145,000 a year. Is that correct? [LB218]

SENATOR CORNETT: That is correct, and Douglas County does not oppose it. [LB218]

SENATOR WHITE: Seward County loses \$40,000 a year. [LB218]

SENATOR CORNETT: And there are counties that gain. [LB218]

SENATOR WHITE: Okay. Well, and they only gain or they only lose that much if we keep our promises to fund at the levels we've said and there is no historical reason for

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anyone to believe that the next Legislature is going to be any better at keeping these promises than we've been at fully funding jail reimbursement. Thank you, Mr. President. [LB218]

SENATOR CARLSON: Thank you, Senator White and Senator Cornett. Seeing no other lights, Senator Cornett, you're recognized to close on LB218. [LB218]

SENATOR CORNETT: Thank you very much. I want to urge the body to support LB218. It does offer a stabilized funding mechanism for counties. The thing that I am encouraged by with particularly Douglas County, who is losing money under this, is they recognize the plight that the other counties have been in and are in full support of this measure. A lot of the senators that are getting up and speaking against this amendment are the ones that are...their counties are not faring as well because they have jails, but I don't see that that is necessarily fair to the counties that don't have jails. We are looking at moving to a stabilized funding mechanism for all counties throughout this state, whether they're small or large, a fair system where they don't have to compete to have prisoners at the beginning of the year and then lose out at the end of the year. I urge the body to support LB218 and, with that, I yield the remainder of my time to Senator Heidemann. [LB218]

SENATOR CARLSON: Senator Heidemann, 3 minutes and 50 seconds. [LB218]

SENATOR HEIDEMANN: Thank you, Senator Cornett, Mr. President, fellow members of the body. A lot of work has been put into LB218. The thought process has been going on quite awhile, as you can tell. I mean, we've had quite a bit of debate on this, which I think is important. A lot of good points have been brought up. I will say that some recent comments about fully funding, this will be in statute. I mean the Appropriations Committee cannot fund this unless we would change statute. So we are under an obligation, according to statute, to fund it at least at the floor, at the minimum. There's been other couple comments made that...about fully funding education. I will say, according to the formula, we always fully fund education. We have to. We might change the formula, but we always, always fully fund the formula on education. Getting back to LB218, there are some winners, there are some losers, but overall this is the fairest thing that we could come up with. When you get property tax, you do it by valuation. That's where property tax comes from. We come up with the conclusion, the fairest way that we could get aid to counties is the same way, is based it on valuation. The counties are going to know what they're going to get, there's growth in there. This is actually going to...there's going to be more aid. Where the last three programs that we will eliminate have been flat for year after year after year, there's actually growth in LB218 and that will be a good thing for counties. So I urge you to support and vote for the advancement of LB218. [LB218]

SENATOR CARLSON: Thank you, Senator Heidemann and Senator Cornett. You've

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heard the closing on the advancement of LB218 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB218]

CLERK: 30 ayes, 5 nays on the advancement of LB218. [LB218]

SENATOR CARLSON: LB218 does advance. Mr. Clerk, next item. [LB218]

CLERK: Mr. President, LB218A is a bill by Senator Cornett. (Read title.) [LB218A]

SENATOR CARLSON: Senator Cornett, you're recognized to open on LB218A. [LB218A]

SENATOR CORNETT: Thank you very much, Mr. President and members of the body. Because the body has adopted the delayed effective date on LB218, the changes in appropriation included in LB218A are no longer needed. With your permission, I would like you...I ask you to adopt the amendment that I have filed which zeroes out the A bill amount, basically guts the A bill. I would then like to have you move the amended A bill forward to Select File, along with the underlying bill. I understand this is the recommended practice, to keep A bills moving along with the bill. This is done should changes need to be made in both the bill and the A bill which accompanies that bill. With that, I encourage you to adopt the amendment to LB218A and advance LB218A and I waive the opening on the amendment. I think I've explained it. [LB218A LB218]

SENATOR CARLSON: Mr. Clerk for an amendment. [LB218A]

CLERK: Senator, AM1033 is the amendment I think you just described. (Legislative Journal page 1346.) [LB218A]

SENATOR CARLSON: AM1033 and, Senator Cornett, you waive your opening? Thank you. Floor is open for discussion. Seeing none, Senator Cornett, you are recognized to close on your amendment. [LB218A]

SENATOR CORNETT: Again, I urge the body to vote yes on the amendment and yes on the amended LB218A. Thank you. [LB218A]

SENATOR CARLSON: Thank you, Senator Cornett. You've heard the closing on the amendment. All those in favor vote aye; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB218A]

CLERK: 29 ayes, 4 nays, Mr. President, on the amendment. [LB218A]

SENATOR CARLSON: The amendment is adopted. We return to the floor on LB218A.

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Seeing no lights, Senator Cornett, you're recognized to close. She waives closing. You've heard the closing on LB218A. All those in favor vote aye; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB218A]

CLERK: 29 ayes, 7 nays, Mr. President, on the advancement of LB218A. [LB218A]

SENATOR CARLSON: LB218A does advance. Next item, Mr. Clerk. [LB218A]

CLERK: Mr. President, I have name adds. Senator Pirsch would like to add his name to LB94 and LB447. (Legislative Journal page 1401.) [LB94 LB447]

And I do have a priority motion, Mr. President. Senator Pahls would move to adjourn the body until Monday morning, May 11, at 10:00 a.m.

SENATOR CARLSON: You've heard the motion to adjourn. All in favor say aye. Opposed, the same. We are adjourned.