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Floor Debate
February 04, 2010

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LB730 LB762 LB797 LB806 LB832 LB836 LB865 LB867 LB873 LB911 LB946 LB1053
LB1068 LB1073 LB1103 LR112 LR312]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twentieth day of the One Hundred First Legislature, Second Session. Our chaplain for today is Senator Wallman. Would you all please rise.

SENATOR WALLMAN: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Senator Wallman. I call to order the twentieth day of the One Hundred First Legislature, Second Session. Senators, please record your presence. Please record, Mr. Clerk.

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

PRESIDENT SHEEHY: Are there corrections for the Journal?

CLERK: I have no corrections.

PRESIDENT SHEEHY: Messages, reports, or announcements?

CLERK: Enrollment and Review reports LB650A and LB705 to Select File. Banking, Commerce and Insurance Committee chaired by Senator Pahls reports LB730 to General File with committee amendments attached, signed by Senator Pirsch as Vice Chair of the committee. And appointment letters from the Governor to the Crime Victim's Reparations Committee. Those will be referred to Reference for referral to standing committee for confirmation hearing. And that's all that I have, Mr. President. (Legislative Journal pages 443-444.) [LB650A LB705 LB730]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will proceed to the first item under General File, LB725. [LB725]

CLERK: Mr. President, LB725 was introduced by Senator Fischer. (Read title.) Introduced on January 6 of this year. Referred to the Transportation and Telecommunications Committee. The bill was advanced to General File. There are Transportation Committee amendments pending. (AM1630, Legislative Journal page 376.) [LB725]

PRESIDENT SHEEHY: Senator Fischer, you're recognized to open on LB725. [LB725]

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SENATOR FISCHER: Thank you, Mr. President and members. I did give you an opening yesterday just before we adjourned, but to recap, the purpose of LB725 is to provide a definition for fertilizer and agricultural chemical applications and distribution equipment and to provide exemptions from brakes, brake lights, and turn signal requirements for those vehicles. Contact has been made with the Federal Motor Carrier Safety Administration to make sure that this bill would not take the state of Nebraska out of compliance with federal regulations. Thank you, Mr. President. [LB725]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You've heard the opening to LB725. As was stated, there is a committee amendment from the Transportation and Telecommunications, AM1630. Senator Fischer, you're recognized to open. [LB725]

SENATOR FISCHER: Thank you, Mr. President. The committee amendment, AM1630, does add a new section to the bill. It is amended to create an exemption from carrying a registration certificate with the fertilizer trailer. And instead, the registration certificate will be kept at the principal place of business of the trailer's owner. The main purpose of this is that these trailers really don't have any place to carry a registration certificate on them, and the trailers include gooseneck applicators or trailers designed and used exclusively to carry or apply agricultural fertilizer or agricultural chemicals and they have a gross weight of less than 20,000 pounds. Thank you, Mr. President. [LB725]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the opening of AM1630 to LB725. Members requesting to speak: Senator Stuthman, followed by Senator Gloor. Senator Stuthman, you're recognized. [LB725]

SENATOR STUTHMAN: Thank you, Lieutenant Governor, members of the body. I support this amendment and I support the bill. I think that it is the appropriate thing to do because of, you know, what could happen out there, you know, with the issue of having brakes and stuff like that on this equipment. The equipment is generally pulled by a pickup which does have the lights and the brakes, you know, on that part of the equipment, so I think this is very appropriate and we need to pass this bill and the amendment. Thank you, Lieutenant Governor. [LB725]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Gloor, you're recognized. [LB725]

SENATOR GLOOR: Thank you, Mr. President and members of the body. I wonder if Senator Fischer would yield for a question. [LB725]

PRESIDENT SHEEHY: Senator Fischer, would you yield to Senator Gloor? [LB725]

SENATOR FISCHER: Yes, I will. [LB725]

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SENATOR GLOOR: Senator Fischer, I apologize, I was unable to be part of the initial presentation of this yesterday. The genesis for this, did it come about as a result of some public safety concerns that originally came up or is this something that we're trying to avoid problems in the future for those individuals who trailer these vehicles? [LB725]

SENATOR FISCHER: The concern for this bill came up because of some, I would state it as confusion on the part of the State Patrol. They felt with the way current statute was, that these applicators had to have brake lights, had to carry registration with them. And as you know, these are...applicators are owned by businesses who then provide them for farmers to hook on to their pickups, to their tractors, to take out to their fields. And so we felt it was necessary to clarify this and make it easier for those folks in agriculture and the businesses to basically maintain a practice that they have always done through the years. [LB725]

SENATOR GLOOR: Thank you, Senator Fischer. I think of all the times that I have seen these vehicles, trailers, more often than not out in a field, not on a road, and the reasonableness of this seems pretty straightforward. I would, therefore, rise in support of both AM1630 as well as LB725. Thank you, Mr. President. [LB725]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Seeing no additional requests to speak, Senator Fischer you're recognized to close. Senator Fischer waives closing. The question before the body is on the adoption of AM1630 to LB725. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB725]

CLERK: 37 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB725]

PRESIDENT SHEEHY: AM1630 is adopted. We will now return to floor discussion on LB725. Seeing no request to speak, Senator Fischer, you're recognized to close. [LB725]

SENATOR FISCHER: Thank you, Mr. President and members. Thank you for adopting the amendment to the bill and I would ask your kind consideration to advance LB725 to Select File. Thank you, Mr. President. [LB725]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the closing. The question before the body is on the advancement of LB725. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB725]

CLERK: 41 ayes, 0 nays, Mr. President, on the advancement of LB725. [LB725]

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PRESIDENT SHEEHY: LB725 advances. We will now proceed to LB762. [LB762]

CLERK: LB762 originally introduced by Senator Pahls. (Read title.) The bill was introduced on January 6 of this year, at that time referred to the Banking, Commerce and Insurance Committee. The bill was advanced to General File. At this time I have no amendments, Mr. President. [LB762]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator McCoy, you're recognized to open on LB762. [LB762]

SENATOR MCCOY: Thank you, Mr. President, members of the body. I rise this morning to introduce LB762 to the body on behalf of Senator Pahls as a member of the Banking, Commerce and Insurance Committee. LB762 would create a more flexible rule in our statutes to be applied by the Department of Banking in determining whether a business or other organization can use the word bank or a derivative of the word bank in its title or description of its business activity. LB762 would amend statute, Section 8-113, which currently provides that no individual, firm, company, or association other than a bank, building and loan association, savings and loan association, or savings bank shall use the word bank or any derivative of the word bank as any part of a title or description of any business activity. Section 8-113 also currently contains an exclusive list of exceptions to which this blanket prohibition does not apply. If a business or other organization cannot fit itself into one of these exceptions, it is subject to the blanket prohibition even if there is no reasonable likelihood that the public would be confused by its use of the word bank. The current list of exceptions has been amended in 2004, 2005, 2007, and also in 2009. LB762 would add a new general rule that the blanket prohibition on the use of the word does not apply, again, does not apply if such use is unlikely to (1) mislead or confuse the public, or (2) give the impression that the business or association is lawfully organized and operating as a bank or other financial organization. Enactment of this new standard should reduce the need for the Legislature to keep reopening this section of statute in order to create yet another exemption, if such a need arises. Last year, for example, LB32 enacted a new exception for businesses which sponsor incentive-based solid waste recycling programs which issue reward points or credits to persons for their participation in the program. A New York Company called Recycle Rewards wanted to do business in Nebraska under the trade name, Recycle Bank. That name violated the blanket prohibition and none of the specific exceptions were applicable. That necessitated the enactment of LB32 even though it was incredibly unlikely that anyone would confuse a recycling business with a bank. The new general rule in LB762 would allow a little wiggle room in the blanket prohibition. If you wanted to start up a business called the Left Bank Bistro, for example, or the Bank Shot Pool Hall, the current law could possibly trip you up. However, the new general rule would mean that the Department of Banking would not have to take action against you because it is unlikely the public would be misled or confused into thinking that a bistro or pool hall is a bank. Finally, Section 8-113 currently provides an exception

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from the blanket prohibition on use of the word bank for Section 501(c)(3), organizations. LB762 would not disturb the Section 501(c)(3) exception except to provide that it would not apply if the organization provides or arranges for financial services. Section 501(c)(3) organization should engage in charitable and similar activities and should not act as fronts for financial operations. This addresses the matter that gave rise to the introduction of LB88 which is currently on Select File. Under the bill, the Section 501(c)(3) exceptions would still apply to the intended organizations, for example, food banks, blood banks, eye banks, etcetera. Of course, organizations such as these would be benefited by the new flexible general rule in the bill as well. LB762 would provide for some reasonable flexibility in the administration of the law governing use of the word bank without allowing for confusion of the public. It would also eliminate the need for the Legislature to keep reopening this section to add yet another exception year after year. I also want to thank the committee staff that's been instrumental in putting together this particular piece of legislation and bringing the parties, necessary parties together, including the banking department, to make this possible. And I would urge advancement to Select File of LB762. Thank you, Mr. President. [LB762 LB32 LB88]

PRESIDENT SHEEHY: Thank you, Senator McCoy. You've heard the opening to LB762. Members requesting to speak: Senator Pirsch, followed by Senator Harms and Senator Hansen. Senator Pirsch, you're recognized. [LB762]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I rise in support as the Vice Chairman of the Banking, Commerce and Insurance Committee. This bill has...that Senator Pahls introduced, has been well-vetted. No opponents appeared at Committee. The vote had no "no" votes, and so I think that it is an important bill and, though maybe not great in scope. So I would urge you to vote yes on this bill. Thank you. [LB762]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Harms, you're recognized. [LB762]

SENATOR HARMS: Thank you, Mr. President and colleagues. Would Senator McCoy yield to just a question, please. [LB762]

PRESIDENT SHEEHY: Senator McCoy, would you yield to Senator Harms? [LB762]

SENATOR MCCOY: Yes, I would. [LB762]

SENATOR HARMS: Senator McCoy, I rise in support of this bill. I just have one question. I noticed in the committee statement that Robert Hallstrom spoke in favor as a proponent for it. But I noticed that the representative from the Department of Banking and Finance, Nebraska Department of Banking and Finance was neutral. That always

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catches my attention because sometimes neutral is really not neutral. Could you give me some idea about what his testimony was like and why he was in the neutral category? [LB762]

SENATOR McCOY: Yes, thank you for that question, Senator Harms. And the director, John Munn, came in an informational role in this discussion as we went through this to provide information. They were fully in the loop as the committee staff worked on this legislation, as Senator Pahls worked on this, and as we dealt with it in the hearing, and they are supportive of this measure. [LB762]

SENATOR HARMS: Okay. Well, thank you, Senator McCoy. Thank you, Mr. President. [LB762]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Hansen, you're recognized. [LB762]

SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. I rise in support of this bill too. We talked about this last year and it seemed like something logical needed done and I think this is a logical step in this progression of giving some authority. Would Senator McCoy yield for one quick question? [LB762]

PRESIDENT SHEEHY: Senator McCoy, would you yield to Senator Hansen? [LB762]

SENATOR McCOY: Yes, I would. [LB762]

SENATOR HANSEN: Senator McCoy, in your opening did you use the term wiggle room? (Laughter) I think that might be historic, if that was true. Did you use the term wiggle room? [LB762]

SENATOR McCOY: I believe that I did, if my memory serves me correct, Senator Hansen. [LB762]

SENATOR HANSEN: And that's a yes, for sure? [LB762]

SENATOR McCOY: Yes, it is. [LB762]

SENATOR HANSEN: Okay. We now can all use the term wiggle room now? (Laughter) [LB762]

SENATOR McCOY: Those would be my words, Senator Hansen. [LB762]

SENATOR HANSEN: That's what I wanted to hear. Thank you, Mr. President. (Laughter) [LB762]

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PRESIDENT SHEEHY: Thank you, Senator Hansen. Seeing no additional requests to speak, Senator McCoy, you're recognized to close on LB762. Senator McCoy waives closing. The question before the body is on the advancement of LB762. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB762]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB762. [LB762]

PRESIDENT SHEEHY: LB762 advances. We will now proceed to LB708. [LB762 LB708]

CLERK: LB708 introduced by Senator Stuthman. (Read title.) Introduced on January 6 of this year. Referred to the Revenue Committee for public hearing, advanced to General File. At this time I have no amendments, Mr. President. [LB708]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Stuthman, you're recognized to open on LB708. [LB708]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. LB708 changes the date that an entity must apply for a tax exemption from August 1 to July 1. County Board of Equalizations must hold a hearing and review the application by August 15. Such hearings must require a ten-day notice and it must be given to the applicant and such notice must be published in the local paper. Some county boards only meet once a month which makes holding such hearings by the 15th of August very difficult due to the ten-day mandatory notice that needs to be published. This change would allow county boards that meet only once a month the time needed to publish the mandatory ten-day notice and allow time for the applicant to receive such notices. I will also give you the illustration of what happens in county boards that meet twice a month. Let's say an applicant applies for a tax exempt status. The last day to apply, like this coming year, would be August 2. The County Board of Equalization meets on August 10. A lot of them meet on the second and fourth Tuesday of the month. On the August 10, the County Board meets and considers it and authorizes the county clerk to advertise a notice of hearing. Since the county only has one newspaper, a weekly newspaper, and the deadline for the newspaper is on Friday, the 13th of August, and with that 15-day limit the last day to have a hearing would be on August 15. But since it only gets publicized, you know, after it is in that local paper, the weekly paper, and it was given to the paper on August 13, the notice of a hearing was in the paper on the 18th of August. And then the County Board of Equalization would meet, you know, on the 24th. But with a ten-day notice, and it is published in the paper on the 18th, that would mean that it would be the 28th. So they will not have the opportunity to act on it on their regular meeting on the fourth Tuesday, on the 24th. So the soonest they could act on it would be in September 14. And that doesn't allow them enough time. They can't get that done within that ten-day notice period, and that it has to be addressed by

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August 15. So this gives the county boards, you know, an opportunity to have one more month to deal with it. So we're changing, you know, the deadline for the application for exempt status from August 1 back a month to July 1, and I would ask for your support. Thank you, Mr. President. [LB708]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. You have heard the opening to LB708. Seeing no requests to speak, Senator Stuthman, you're recognized to close. Senator Stuthman waives closing. The question before the body is on the advancement of LB708. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB708]

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB708. [LB708]

PRESIDENT SHEEHY: LB708 advances. We will now proceed to LB806. [LB708 LB806]

CLERK: LB806, a bill by Senator Campbell. (Read title.) Introduced on January 8 of this year. Referred to the Revenue Committee. The bill was advanced to General File. At this time I have no amendments to the bill, Mr. President. [LB806]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Campbell, you're recognized to open on LB806. [LB806]

SENATOR CAMPBELL: Thank you, Mr. President. LB806, the purpose of the bill is to remove obsolete language. LB806 came from the Lancaster County Assessor, Register of Deeds Office. And I would like to provide some history on the discussion on the greenbelt property valuation designation, particularly as it pertains to the 25th Legislative District and my two predecessors. The original legislation for greenbelt was introduced by Senator Jerry Warner and a major revision in the law was introduced by Senator Ron Raikes. Senator Raikes' legislation repealed the recapture portion which had forced the landowner to pay the difference between what he or she paid in ag-land valuation and what the land sold for development. Our family was affected by recapture when we owned land at 84th and Holdrege to raise trees and were annexed by the city and had to immediately pay the recapture fee. The repeal of the recapture portion of the greenbelt was an excellent step in the history. When that was done, there were two small sections that are contained in LB806 that were not repealed. They are obsolete language. I see this as a housekeeping bill as it removes those two references and would clean up the recapture portion of the greenbelt. And with that, Mr. President, I will finish my remarks. [LB806]

PRESIDENT SHEEHY: Thank you, Senator Campbell. You have heard the opening to LB806. Member requesting to speak: Senator Stuthman, you're recognized. [LB806]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I

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do support this bill, Senator Campbell's bill. I think it is time to get that obsolete language out of the statute. But the issue that I'm going to try to raise here this morning is the fact that when land is taken from, let's just say, agricultural purposes, and purchased by someone that has an exempt status and that ground is put into an exempt status. Let's just say, airport authorities, the city, municipal well fields, and illustrations like that. The issue and the concern that I have is that ground really is still agriculture ground. And the reason I say that is because that it is leased out for high lease payments and it raises a commodity that's in competition with everybody else in the area but that property does not pay a penny of sales tax to the school...not sales tax, property tax, to the schools, to the entities, to the county. There is no tax generated on that. Now, I had submitted a bill a couple of years ago on that to try to get that changed. I was unsuccessful. It was declared that the main purpose of that ground was for visibility of an airport. A well field was for the fact that they had to maintain that the types of chemicals that were put on the ground, you know, were not getting into the ground or into the groundwater. And I truly support that. But they felt that it was the incidental use of that property was agriculture, leasing it out for someone to raise corn, 200 bushel corn, which is in direct competition with the 200 bushels of corn across the road. The equipment used to raise that crop on that tax exempt property utilized the roads, utilized everything else, that the property owners pay taxes for. And that is my issue with that. I think we need to look at that in the future. I have no problem with it being tax exempt. The issue that I have is, what is the use of the ground after it is purchased by an entity like an airport authority, a municipality, and they buy it for the protection of what they want to use it? But let's leave it that way. Let's not get in competition with products that are raised on it that pay the taxes, because it is in direct competition with those. So with that, I will say I do support Senator Campbell's bill. Thank you, Mr. President. [LB806]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Carlson, you're recognized. [LB806]

SENATOR CARLSON: Mr. President and members of the Legislature, I, too, am in support of LB806, but I take this as another opportunity to bring to the body concern that I think is important enough to mention and talk about once in a while. If we look across the farmland in Nebraska and the acres that we have as irrigated farmland, those are certainly the most valuable agricultural acres. Therefore, those acres pay the highest property tax throughout the state. And there are legitimate reasons for moving a piece of property from irrigated farmland to dryland. That should be at the decision of the property owner and that's certainly, sometimes, in the best interest to everyone and permissible. It can go to grassland. It can go to some kind of an easement. Perhaps, a permanent easement. And it can even go to an entity that does not pay tax, does not pay property tax as Senator Stuthman has referred to. There's a big difference, a huge difference, in a community between an irrigated acre in the property tax paid and one that is paying no tax. Some of the counties in the state of Nebraska, I believe, have excessive acres in the tax-exempt category. Not necessarily by plan or design but it's

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gravitated that way over the years. It makes it very difficult for those landowners who have irrigated land because they have to pick up the slack when a piece of property goes from being fully taxable property taxwise to not being taxable. Clay County is a good example. They have a lot of acres in Clay County that provide no property tax at all. So the other property owners in that county end up footing the bill. And I don't have a good answer to that but I think as things come before us and perhaps before committees that have to do with moving land to a nontaxable position, we better be very careful in how we assess those circumstances and the decisions that we make. But I am in support of LB806. Thank you, Mr. President. [LB806]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Seeing no additional requests to speak, Senator Campbell, you're recognized to close on LB806. Senator Campbell waives closing. The question before the body is on the advancement of LB806. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB806]

CLERK: 40 ayes, 0 nays, Mr. President on the adoption of the motion to advance the bill. [LB806]

PRESIDENT SHEEHY: LB806 advances. We will now proceed to LB873. [LB806 LB873]

CLERK: LB873, a bill by Senator Giese. (Read title.) The bill was introduced on January 11 of this year, at that time referred to the Revenue Committee. The bill was advanced to General File. I have no amendments pending at this time, Mr. President. [LB873]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Giese, you're recognized to open on LB873. [LB873]

SENATOR GIESE: Thank you, Mr. President, members of the body. LB873 is a cleanup measure designed to eliminate a duplicative tax that is currently sent to owners of personal property. Because a similar notice is not sent for real property taxes, this additional notice can be confusing to taxpayers who own both real and personal property. In 1998, the property tax calendar was revised so that delinquency dates for both real and personal property taxes were harmonized. As a result of this revision, first-half property taxes are due on April 1 for counties with populations over 100,000 and on May 1 for all other counties. Similarly, second-half property taxes are due on August 1 for counties with populations over 100,000 and September 1 for all other counties. Existing law requires that county officials must send notices of real and personal property taxes prior to January 1 each year and also requires additional notices for owners of personal property. By striking the requirement that county treasurers send additional notice to personal property owners who have not paid their first-half property taxes, LB873 also has the potential to save counties money. For example, the Buffalo County Treasurer, who testified at the hearing, estimated that her

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office could save approximately \$2,500 per year. Given the potential cost savings and the fact that the current notices have created some confusion, I would urge the body to advance LB873 to Select File. Thank you. [LB873]

PRESIDENT SHEEHY: Thank you, Senator Giese. You've heard the opening to LB873. Member requesting to speak: Senator Fulton, you're recognized. [LB873]

SENATOR FULTON: Thank you, Mr. President. Good morning, colleagues. Would Senator Giese yield to a question, please? [LB873]

PRESIDENT SHEEHY: Senator Giese, would you yield to Senator Fulton? [LB873]

SENATOR GIESE: Yes. [LB873]

SENATOR FULTON: Senator, as it stands right now, the county treasurer is required to mail a notice to a delinquent account, to a taxpayer who owes. At this point, he's required, correct? [LB873]

SENATOR GIESE: Correct. [LB873]

SENATOR FULTON: Okay. If we were to expunge the language here on the green copy...but, let me, if I could, here's my concern. I'll just...I'll cut to my concern. Line 3 in the green copy, "The county treasurer may, at anytime prior to January 1 of each year, send a notice to each person on the personal tax roll and each person owing real estate taxes on" etcetera, etcetera. The operative word in line 3 is "may". The only point at which the county treasurer is required to notify someone that he owes back taxes is in line 10, and we would be striking that language. So if we were to move this bill forward, the counties would not be required to notify someone that he owes back taxes. Am I reading that correctly? [LB873]

SENATOR GIESE: Senator, they're required to send that elsewhere in statute. [LB873]

SENATOR FULTON: Okay. So there is another place in statute where...so, I mean, the concern here is that average citizens may not have seen this bill was up and, therefore, would not have testified. But someone has to...if I owe taxes, if I've missed something, someone has to tell me that I owe, and so there is some place in statute where the county is required to notify someone who owes taxes that indeed he's delinquent. [LB873]

SENATOR GIESE: Okay. Senator, if I could just...in my notes here, and I will just read you, included in this same section of the statute but not stricken by LB873 is the requirement that notice contains a statement that unless entire taxes paid by April...or excuse me, September 1, a distress warrant will be issued. That's in current statute.

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[LB873]

SENATOR FULTON: Okay. So that...there is a requirement in place. So we won't have a situation where individuals owe taxes and are not aware that they have missed a date. There is some requirement that the county makes it known to an individual that you owe back taxes. [LB873]

SENATOR GIESE: You are correct. [LB873]

SENATOR FULTON: Okay. I would have gotten to this a little earlier to you but I was catching up as we're moving bills along, and if there are any further concerns I will deal with them on Select File. But I can vote for this as it is right now, and I'll probably talk to you a little bit later if that's all right. Thank you, Mr. President. [LB873]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Members requesting to speak on LB873 we have Senator Wallman, followed by Senator Cornett. Senator Wallman, you're recognized. [LB873]

SENATOR WALLMAN: Thank you, Mr. President and members of the body. Would Senator Giese yield to a question? [LB873]

PRESIDENT SHEEHY: Senator Giese, would you yield to Senator Wallman? [LB873]

SENATOR GIESE: Yes. [LB873]

SENATOR WALLMAN: Thank you, Senator Giese. Most counties, mine, you have a pretty severe penalty if you don't pay that property tax on time, so I would say, I don't see how we could save any money here. Would you yield (laugh) to that question? [LB873]

SENATOR GIESE: Yeah. Senator Wallman, the county that came and testified just by eliminating having to send out this additional notice would save them approximately \$2,500-a-year and that's only one county. So I think that we've done a lot to...the counties are burdened even more so now, so I think this is a...this was brought by the counties, this bill, and this is a potential cost saving idea for them. So I think anything we can do to help them is a plus. [LB873]

SENATOR WALLMAN: Okay. Thank you. I'll see what...I'll listen some more. Thanks. [LB873]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Cornett, you're recognized. [LB873]

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SENATOR CORNETT: Yes, I just want to clarify some of the questions for Senator Giese that he has received. This bill was brought to Senator Giese and the Revenue Committee at the behest of NACO. What it is, is eliminating redundant language and redundant notification. They will receive notification...they receive notification when their taxes are due and they receive notification when they are delinquent. This is regarding notification before they actually become delinquent. Thank you. [LB873]

PRESIDENT SHEEHY: Thank you, Senator Cornett. Senator Stuthman, you're recognized. [LB873]

SENATOR STUTHMAN: Thank you, Mr. Lieutenant Governor and members of the body. I'm not totally clear on this yet and I would like to ask Senator Giese a question. [LB873]

PRESIDENT SHEEHY: Senator Giese, would you yield to Senator Stuthman? [LB873]

SENATOR GIESE: Yes. [LB873]

SENATOR STUTHMAN: Senator Giese, on...in the bill it states that sending notice to each person on the personal tax rolls, for each person owing real estate taxes on mobile homes, cabin trailers, manufactured homes, or similar property, assessed and taxed as improvements to leased land. So we're really not dealing with...are we dealing with real estate taxes? [LB873]

SENATOR GIESE: No. This is personal property tax, no real estate taxes. [LB873]

SENATOR STUTHMAN: So in other words, these are your personal property taxes just the same as an individual with real estate and you have your equipment, your farm machinery, and stuff like that, as a personal tax. And explain to me, again, what you're really attempting to do with this bill? Just to save the second notice or what? [LB873]

SENATOR GIESE: Yes, Senator Stuthman, that's what it does. It saves counties that additional cost of sending out those notices which confuse some of the property owners and the taxes that they owe. This deals with just personal property tax and is not to be confused with real estate. But they send it out now and there is confusion when they get the bill that they think that this deals with real estate and it doesn't. So it would just save that additional notice that the counties are required to send out now that deals with specifically personal property tax. [LB873]

SENATOR STUTHMAN: Yes, Senator Giese, there's a separate statement as far as your personal property tax and your real estate tax. [LB873]

SENATOR GIESE: That's correct. [LB873]

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SENATOR STUTHMAN: And this just deals with your personal property tax statement. [LB873]

SENATOR GIESE: Correct. [LB873]

SENATOR STUTHMAN: And that...what time of the year does that come out? [LB873]

SENATOR GIESE: That is due on September 1, I believe, Senator Stuthman. [LB873]

SENATOR STUTHMAN: So the personal property tax is due on September 1, not on May 1 and September 1? [LB873]

SENATOR GIESE: The second half is due on September 1. [LB873]

SENATOR STUTHMAN: Okay. So what are we really doing now as far...sending another notice? I have never received a second notice on when your personal property tax was due. But I am very aware of the fact that if you're one day late, you know, or ten days late, it's 10 percent of the tax and if it's past that it's like 50 percent of your taxes is what the penalty is. And...does the county treasurer have to send out a notice? [LB873]

SENATOR GIESE: They are required to do that now. What this does, Senator Stuthman, would eliminate the notice between the first due date and the second due date. And that's where the confusion is now, if there is any confusion with... [LB873]

SENATOR STUTHMAN: But, Senator Giese, do they have to send out that second notice? [LB873]

SENATOR GIESE: They are required to now. [LB873]

SENATOR STUTHMAN: They are required to by statute now. [LB873]

SENATOR GIESE: Right. [LB873]

SENATOR STUTHMAN: And what this is...what you're attempting to do is that they don't have to send that second notice. [LB873]

SENATOR GIESE: That's correct. [LB873]

SENATOR STUTHMAN: Okay. Thank you, Senator Giese. [LB873]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Wightman, you're recognized. [LB873]

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SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I have a few remarks and then I would see if Senator Giese would yield to some questions. First of all, I think when Senator Stuthman is talking about 10 percent and 50 percent penalties, those aren't for failure to pay after the tax has been assessed. It's my understanding, and I've been involved in those from time to time, that's for a late assessment. So if you don't go to the assessor's office or fill out your schedule of property within the required time, then there's a 10 percent if you're...and I can't give you the time period, you're 10 percent if you're up to 30 days perhaps late, and then it's 50 percent if you go beyond that period of time. So those are two different requirements, one with regard to filling out the assessment schedule, the other one for being delinquent. The delinquent, I think, draws interest just like real estate taxes. With that, I would ask Senator Stuthman, or excuse me, Senator Giese if he would yield. [LB873]

PRESIDENT SHEEHY: Senator Giese, would you yield to Senator Wightman? [LB873]

SENATOR GIESE: Yes, I will. [LB873]

SENATOR WIGHTMAN: And I know you've indicated, Senator Giese, that the counties would save a lot of money. On the other hand, sometimes the counties are a little strapped for cash when people are late paying, and maybe when economic times are a little tougher and the county isn't taking in the money because people weren't paying on time. I assume that happens from time to time where the counties are a little strapped for cash. Is that correct? [LB873]

SENATOR GIESE: Oh, I would agree with that. [LB873]

SENATOR WIGHTMAN: So there...I'm assuming even though you take out the requirement that these notices be sent out, the counties would still, in their discretion, be able to notify delinquent taxpayers. Is that correct? [LB873]

SENATOR GIESE: Yeah. Yes, I would agree with that, Senator Wightman. [LB873]

SENATOR WIGHTMAN: One of the things that always concerns me and we see this a lot on delinquent real estate taxes and I realize I'm talking real estate taxes here rather than personal property taxes, is that I think in most counties, a taxpayer gets his initial bill for taxes and then he's never, ever received a bill again, as far as I know, in most counties, until those taxes are being sold. And then the only time he would see it is when it's published in the paper, the newspaper, which they're required to do before they sell the delinquent taxes. Sometimes it almost seems to me that maybe it would be worth the money to notify people from time to time. And I've also seen this in a few instances where a property changed hands at a late date and the change has not been made on the county records whether it be the...usually, it would be at the register of

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deeds but it doesn't get filed with the assessor's office on time and the tax bill gets sent to the wrong party. And I've known that to happen on exchanges that take place late in the year. So I probably will support the bill but I think sometimes the counties might be better off to spend some additional money and notify people of the delinquent taxes. Maybe it should not be a requirement, which does get into a rather considerable expense. Thank you, Senator Giese. Thank you, Mr. President. [LB873]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Fulton, you're recognized. [LB873]

SENATOR FULTON: Thank you, Mr. President, members of the body. I won't go long. That area of statute, I've been able to get some more information, 77-1701. And I'll tell you that I'm going to consume this and think about this a little bit. I don't know that this is too big of a deal, but the concern is in the green copy that we have what's left, we have a permissive and a mandate. The mandate is being stripped from the law leaving only the permissive. And so if indeed we have an area of statute which already requires that a notice be sent to delinquent tax...people who owe taxes, they're delinquent, then the question is, why is it that we still need to keep this permissive language in LB873? So anyone who's tuned in, that's what the concern here is. I don't think it's too big of a concern. It's something that can be solved on Select File, but let the record show that it's Revised Statute 77-1701 that should assuage my concern. Thank you, Mr. President. [LB873]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Seeing no additional requests to speak, Senator Giese you're recognized to close. Senator Giese waives closing. The question before the body is on the advancement of LB873. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB873]

CLERK: 36 ayes, 0 nays, Mr. President, on the advancement of LB873. [LB873]

PRESIDENT SHEEHY: LB873 advances. We will now proceed to LB667. [LB873 LB667]

CLERK: LB667, a bill by Senator Sullivan. (Read title.) Introduced on January 21 of last year, at that time referred to the Agriculture Committee. The bill was advanced to General File. There are committee amendments pending, Mr. President. (AM1575, Legislative Journal page 385.) [LB667]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Sullivan, you're recognized to open on LB667. [LB667]

SENATOR SULLIVAN: Thank you, Mr. President and good morning, colleagues. LB667 is the first step to resolve issues with Nebraska's fencing laws. I introduced LB667 at the

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request of the Nebraska Cattlemen. Their members, many of whom are my constituents, have been experiencing great difficulty in resolving fence issues since the passage of LB108 in 2007. Now, I wasn't a member of this body in 2007 so I can't give you an in-depth history of the bill. However, it was intended to resolve ongoing problems with fence viewer committees, county clerk complaints about responsibilities that weren't related to their primary job, and to simplify fence dispute resolution. LB108 completely repealed the fence viewer provisions and also relieved county clerks of duties in fence disputes. Today, a landowner must file a civil claim in county court to force an adjacent landowner to pay his share of the cost of a division fence. Landowners have the option of assignment to mediation to facilitate a mutual agreement on their obligations. The mediated agreement is an enforceable obligation by court order. If mediation isn't successful, the court allocates responsibility in obligation. One of the problems with our current law is that it does not define just proportion for all fence disputes. In addition, it draws a distinction based on whether the fence is used to restrain livestock, and it also draws distinction based on zoning. Although not intended, LB108 actually created ambiguities in the application of the law and problems for the courts in determining what, if any, portion of a division fence each landowner is required to pay for. As amended by the Agriculture Committee, LB667 is the first step in what needs to be done to ensure that Nebraska's fence laws apply fairly to all landowners and, more importantly, are easily interpreted by the courts. It does not solve every problem, believe me. And it is not intended to solve every problem. The committee amendment, which Senator Carlson will present shortly, represents an agreement resulting from LR112, a 2009 interim study on fence laws. Over the past six months, several meetings were held with stakeholders and ag law experts about what should be done to update and clarify the fence statutes. Included in these meetings were the Nebraska Cattlemen, Independent Cattlemen of Nebraska, Nebraska Farm Bureau, the University of Nebraska, staff from the Department of Agriculture, and others. Each stakeholder group has different interests, so their suggestions and problems varied. But ultimately, we agreed on the solutions contained in the Ag Committee amendment which becomes the bill. It does the following: (1) it includes legislative intent language establishing the public interest and benefit in requiring adjoining landowners to contribute to the construction and maintenance of all division fences. (2) it defines just proportion as an equal burden for each landowner unless otherwise specified in statute or by agreement of the parties. (3) it defines the specific type of wire fence, that is the standard fence for purposes of this bill, which is the wire fence described in Section 34-115(5). And (4) it strikes Section 34-102(3) and eliminates references to the different types of agricultural land use and zoning. The passage of LB108 in 2007 added geographical or zoning distinctions in determining landowner responsibility for division fences. This section is actually being removed now because it creates ambiguity about where the responsibility for division fences fall. I encourage you to adopt the committee amendment and advance LB667 to Select File. The committee amendment resolves the most pressing issues and gives us a fencing statute that works. This completes my opening. Thank you. [LR112 LB667]

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PRESIDENT SHEEHY: Thank you, Senator Sullivan. You have heard the opening to LB667. (Visitors introduced.) As noted, there was an Agriculture Committee amendment, AM1575. Senator Carlson, you're recognized to open. [LB667]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. As Senator Sullivan explained, LB667 was introduced last session and the issues it brought up were examined in greater detail over the summer in LR112. The primary purpose of the committee amendment is to insert a definition of just proportion to reinstate a historical understanding that the fence law assigns an equal burden for the construction and maintenance of a division fence between properties. The amendments prescribe that just proportion means an equal allocation either of the portion of the actual fence to be physically constructed and maintained or an equal contribution to the cost. And equitable contribution is one that results in an equal burden of construction and maintenance. This is qualified to provide that the assumption of equal burden for fencing does not apply where landowners privately agree to some other arrangements or if a specific statute assigns a different level of responsibility to the one or both parties. For instance, state statutes currently impose higher fencing responsibilities on railroads, and in some cases, assign specific fencing responsibility to Game and Parks Commission on segments of bike trails. The committee amendment strikes Section 3 of 34-102 which specifies that the shared duty for division fences applies to adjacent landowners only if the properties lie in an agriculturally zoned area or if agricultural use occurs on both adjacent parcels in all other areas. It was a purpose of this insertion to reinforce that the public benefit of the compelled contribution is not necessarily tied exclusively to the constraint of livestock. Conflicting land use intrusion imposes cost and difficulties on agriculture. New landowners may be less tolerant of trespassing livestock and other agricultural activities. New residential neighbors may introduce children, pets, activities, and other potential liabilities for farming practices that introduce an increased need for clear demarcation of boundaries and physical separation of properties. Finally, the committee amendments clarify that the fencing standard to which landowners are held is a fence as defined in Section 34-115. The current law provides that in the event of the landowners...in the event the landowners do not agree to the standard of fencing, the fence shall be a lawful fence as defined in fence law. This fencing standard is consistent with widely held understandings and current practice. The bill itself was voted unanimously out of the committee, 8 to 0, and the AM1575, likewise, was advanced on an 8 to 0 vote. I would ask for your adoption of the committee amendment and the underlying bill. Thank you. [LB667 LR112]

PRESIDENT SHEEHY: Thank you, Senator Carlson. You have heard the opening of the Agriculture Committee amendment, AM1575, to LB667. Members requesting to speak: Senator Rogert, followed by Senator Stuthman, Senator Pankonin, Senator Wallman. Senator Rogert, you're recognized. [LB667]

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SENATOR ROBERT: Thank you, Mr. President. I wondered if Senator Sullivan would yield to a question. [LB667]

PRESIDENT SHEEHY: Senator Sullivan, would you yield to Senator Rogert? [LB667]

SENATOR SULLIVAN: Sure. [LB667]

SENATOR ROBERT: Senator Sullivan, did you call us out for making a mistake in 2007? [LB667]

SENATOR SULLIVAN: I'm sorry, what did you say? [LB667]

SENATOR ROBERT: Did you say there's been problems since we enacted this law in 2007? [LB667]

SENATOR SULLIVAN: Yes. (Laughter) [LB667]

SENATOR ROBERT: Will you reexplain that to me? If I'm going to get called out, I want to know what we did. [LB667]

SENATOR SULLIVAN: Well, a couple of things. Interestingly enough, this...I probably hadn't been elected two weeks when a farmer came in to...from my district and said, what happened to the county fence viewing board? This is the way we settled fence disputes. And that's what you did in...we're you here in...I think you were here in 2007. [LB667]

SENATOR ROBERT: Yes. [LB667]

SENATOR SULLIVAN: You got rid of the county fence viewing board. [LB667]

SENATOR ROBERT: Yes. [LB667]

SENATOR SULLIVAN: ...which was a board that was to be established or assigned by the membership of...which was to be assigned by the county clerk. The county clerks were having difficulty finding people to serve on that board and they really didn't feel it was their responsibility. So you got rid of the fence viewing board and essentially said, fence disputes had to be resolved in court. Well, in addition, the other thing that the statute made it a little cloudy was that you made reference to those disputes if they're...if it had to do with agricultural land. Well, as Senator Carlson indicated in his introduction on the amendment, we're getting various different kinds of land uses in the rural areas and we needed some clarification as to that. So those are some of the things we're trying to correct by LB667, if that helps. [LB667]

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SENATOR ROBERT: Thank you, Senator Sullivan. And I remember when we did move that law and I remember we got a few questions as to exactly the process that we were going to be creating in order to settle those disputes. Thank you very much. Mr. President, would Senator Hansen yield to a question, please. [LB667]

PRESIDENT SHEEHY: Senator Hansen, would you yield to Senator Rogert? [LB667]

SENATOR HANSEN: Yes, I would. [LB667]

SENATOR ROBERT: Senator Hansen, I imagine you have a few miles of fence on your ranch, is that true? [LB667]

SENATOR HANSEN: Yes. [LB667]

SENATOR ROBERT: Can you tell me what today we would be helping solve by passing this legislation on today? [LB667]

SENATOR HANSEN: Okay. A legal fence is already in the law, so we know what the minimum fence is and it's usually a four-wire fence. On our operation if we do cut pastures in half or quarter and rotate them around, we just use three-wire fence. But for your next-door neighbor, the law says that you have to have a four-wire fence. And in the construction of a new four-wire fence between neighbors, this amendment to Senator Sullivan's bill would say that you take equal responsibility for that fence, both in construction and in maintenance. And that's the way, most of the time, we do business out there anyway. [LB667]

SENATOR ROBERT: Thank you, Senator Hansen. Members, I just wanted to point out what we're doing here today with this fence law. We're solving some issues that we may have left a little murky a couple years ago and I thank Senator Sullivan for bringing the issue. Thank you, Mr. President. [LB667]

PRESIDENT SHEEHY: Thank you, Senator Rogert. (Visitors introduced.) Continuing floor discussion on AM1575. Members requesting to speak: Senator Stuthman, followed by Senator Pankonin, Senator Wallman, Senator Hansen, and Senator Loudon. Senator Stuthman, you're recognized. [LB667]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. First of all, I want to thank Senator Sullivan for bringing this issue up, because I think when the bill was passed a couple years ago, I had some real concerns about it and some real problems with it when it was brought up that if an individual had some property and he had livestock and someone else bought some property and didn't really need a fence there, housing developments develop out in the country, and then he did not have to supply any funds, did not have to put a fence in or anything like that. And in

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my opinion it used to be in statute, you know, you had to contain your livestock, you had to keep them in or keep them out. So that's why there had to be the fence for both individuals. If you didn't have any livestock but you wanted to keep them out of your property, you had to have a share in the fence cost. So I think this really clarifies the issue that, you know, who has to...who is responsible for the fence and the property owners are responsible for it. You know, there can be an agreements made with property owners that the individual that has a small acreage or something, has no equipment to build a fence, and he can pay for his portion of the fence and have the other property owner, you know, put in the fence. And I truly agree with the legal definition of a legal fence, you know, four barbwire, every post, every rod, every 16-and-a-half feet. So I think that's very important because it does create a problem in a lot of areas when land is sold to an investor and the investor has no intent, you know, to run livestock or anything there and he doesn't want to put out any money for a fence. So this does clarify it and it is in statute then as to who is responsible and I think each property owner should be responsible for their portion of the fence. Thank you, Mr. President. [LB667]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Pankonin, you're recognized. [LB667]

SENATOR PANKONIN: Thank you, Mr. President. I first want to say I stand in support of the amendment and the underlying bill and I want to thank Senator Sullivan, the Agriculture Committee, and Agriculture Committee staff for working on this issue. My legislative district is changing, has a lot of mixed use. Portions of Sarpy, most of Cass, and a portion of Otoe County where there are a lot of acreages and a lot of people moving in that might want a few head of livestock or horses and this fence law has been an issue. I've had constituents that have asked about it and have been involved at some of the meetings that the Agriculture Committee had on this issue and I just appreciate the work that has been put in and I think it's a step forward, continuing issue from the standpoint of these things can change over time, but I think what we've done is a good thing and I want to thank all involved. [LB667]

PRESIDENT SHEEHY: Thank you, Senator Pankonin. Senator Hansen, you're recognized. [LB667]

SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. I, too, want to stand and thank Senator Sullivan for bringing this bill. I know she worked hard on it during the interim and had a lot of group meetings with a lot of different interests. And there are different interests in this bill and especially the amendment that Senator Carlson described from the Ag Committee. There are different uses for different fences and I explained to Senator Rogert, you know, when you're talking about cattle, is one thing. Cattle and cattle being neighbors are one thing but there are alternative livestock, there's alternative wildlife that we talk about, too, and they require different fences. And

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I'll give you some examples. If you have cattle on one side and buffalo on the other side, it takes a different fence. And that person that desires or chooses to graze the buffalo on the other side is going to have to take a little bit more responsibility, I would think, to build that fence up high enough to keep those buffalo in. Elk require an extremely tall fence because they're extremely tall animals and they're used...if they are raised in captivity, it takes quite a fence. Emus and ostriches are another. These are alternative crops, or alternative livestock for profit. And then we come down to one that always raises a problem. If we have acreages that raise horses and then we have that neighbor using that land for another purpose if it's grazing livestock, horses don't do well against a barbed-wire fence even if they're raised around the barbed-wire fence, they still don't get along with that barbed-wire fence as well as cattle do. And then we get to the alternative livestock that Senator McCoy would probably be more interested in and those would be the goats and the sheep. And then what we really worry about there is that a four-wire fence will not keep out goats and sheep because there is wiggle room in that fence. And the wiggle room is definitely a problem. So the neighbors on either side of that fence have to realize that they're going to have to get together and build a fence to keep the smaller animals out. What about a...this is a question I have for Senator Sullivan if she would yield. [LB667]

PRESIDENT SHEEHY: Senator Sullivan, would you yield to Senator Hansen? [LB667]

SENATOR SULLIVAN: Yes, I will. [LB667]

SENATOR HANSEN: Thank you, Senator Sullivan. If a person on the outskirts of town would have a orchard, a small orchard or a small vineyard and they do want to keep out people, they want to keep out livestock or not, if they choose to just have a small orchard and the neighbor has alternative livestock or any type of domestic livestock, what would they do in that case? [LB667]

SENATOR SULLIVAN: Well, the first thing, irrespective of any sort of legislation is to have the conversation between the two landowners because we hope that that's where all of communication and disputes first...well, to stop an ultimate dispute, starts. Then beyond that, the discussion has to take place of, well, we need a division fence and you go off the division fence and that are the parameters that you have to stay within. And if that landowner, let's see, the livestock owner wants to make sure that the livestock are contained on his property, then he may want to have a certain type of fence built that ensures that. So the communication starts there and if there's a disagreement, then, I guess, it ends up with the one individual indicating in writing to the other individual what the fence is that they're going to build. If that ends up in disagreement, then the one landowner builds his fence and then can require the adjacent landowner to share in the construction cost of that fence. Does that help? [LB667]

SENATOR HANSEN: Thank you, Senator...that really describes the need for

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cooperation and communication between those two landowners and it's certainly a problem. And I know last summer you heard thousands of examples. And another example was brought up that if there is an existing legal fence and someone wants to exceed that legal fence, the responsibility should be for the owner who desires above and beyond that legal fence. One... [LB667]

PRESIDENT SHEEHY: Time, Senator. [LB667]

SENATOR SULLIVAN: Right. [LB667]

SENATOR HANSEN: Thank you. Thank you, Mr. President. [LB667]

PRESIDENT SHEEHY: Thank you, Senator Hansen. Thank you, Senator Sullivan. Members requesting to speak on AM1575: Senator Louden, followed by Senator Dierks, Senator Krist, Senator Wallman, and Senator Hansen. Senator Louden, you're recognized. [LB667]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I've looked this amendment over, the amendment to the bill which actually strikes the bill, I see it's probably a good idea. I question since I've been on a fence viewing board one time whether there's anything that helps us further the project along at all. It mostly describes on what we think should be done. Would Senator Sullivan yield for questions? [LB667]

PRESIDENT SHEEHY: Senator Sullivan, would you yield to Senator Louden? [LB667]

SENATOR SULLIVAN: Yes, I will. [LB667]

SENATOR LOUDEN: As I look the bill over, is there anything in here that really compels anyone to do anything? I mean, is there a penalty if it isn't done? And have you taken out the part where you can go into district court if someone doesn't follow these guidelines? [LB667]

SENATOR SULLIVAN: As I said in my earlier comments, if the communication dissolves and there is a disagreement on the fence that needs to be built, first of all, the parameters are always the standard fence, the four wire, barbed-wire fence with the posts 16-and-a-half feet apart. And the landowners have to share in the cost of that. Okay. So there's a dispute and they can't resolve it. A complaint or...the contact needs to be initially made in writing by the person who wants to build the fence to the other landowner indicating to them that they are going to build this fence. And then if they don't hear a response, they can go ahead and build the fence. And then the law will say that the adjacent landowner has to share in the cost of building that standard fence. If he or she won't do it, then it can be...the original landowner files a complaint. And this is

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in the current statute, I believe. And the complaint is filed in county court. There's an actual form that is filed. And, I think, a certain lapse of time takes place, a certain fee has to be filed, and then it goes to court. And the first step there is that the landowners have the option of going to mediation, either through the courts or, I think, through the Department of Agriculture. I'm not sure where, one of the...either one of those places. [LB667]

SENATOR LOUDEN: Yeah, now... [LB667]

SENATOR SULLIVAN: Yes. [LB667]

SENATOR LOUDEN: ...what I'm wondering in there, is there anything in there that if this other landowner refuses to build that fence, is the cost of that construction levied against the property tax, such as a mechanics lien or something like that? [LB667]

SENATOR SULLIVAN: No. [LB667]

SENATOR LOUDEN: Okay. Because that was in some of our fence laws before and I wondered did...and part of that on how fences are constructed, that's in that 34-115 and you're working in 34-102 mostly just talks about on some of the ways they have to be done and the people are supposed to go ahead and decide how they can do that, is that correct? [LB667]

SENATOR SULLIVAN: Yes. [LB667]

SENATOR LOUDEN: Okay, but there's nothing in any of this amendment or this bill that you're bringing forwards that really actually forces anyone to do it. They still have to go into court and go through that route in order to get somebody to repair their fence or build a new one or whatever if that's what the person wants done, is that correct? [LB667]

SENATOR SULLIVAN: You're absolutely right. You know, the reality of it is, this is not going to avoid disputes between landowners. What it tries to do is, if there is a dispute on division fences between landowners, it clarifies how the judge can interpret what needs to be done by the landowners involved. [LB667]

PRESIDENT SHEEHY: One minute. [LB667]

SENATOR LOUDEN: Okay. Thank you, Senator Sullivan. And I think this bill is all right. It doesn't hurt anything and it doesn't do a great deal, but it's probably something (laugh) that it can clarify, perhaps clarify, some of the statutes in here. But when it comes to working with fences, and I've been around quite a lot of it, usually your problem comes in is where small, around the edges of town someplace, is they move

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out into ranch country or some place like that and the question is, who's going to build a fence and what kind of a fence will they build? And, of course, if...or if someone comes in with a vine, a grape industry or something like that and they want to have a better fence than a four-wire fence, which is in statute, because there are other kinds of fences, pole fences and that sort of thing described in statute. So I'll vote for the bill. [LB667]

PRESIDENT SHEEHY: Time, Senator. [LB667]

SENATOR LOUDEN: Thank you, Mr. President. [LB667]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Dierks, you're recognized. [LB667]

SENATOR DIERKS: Thank you, Mr. President, members of the Legislature. I've been involved with these fence laws for about 20 years and it seems like we just keep working on them. And I think we've come up with a pretty good compromise on this bill of Senator Sullivan's. And I have to say a special thank you to the Chairman of the Ag Committee and also his legal counsel. I think they've done yeomen work putting this together. I should tell you that when we did the elk legislation, and I think that was back in the late 1900's or maybe the first part of 2000-2001, we stipulated in that legislation what the fence law would be for people who were going to be raising elk. Senator Hansen mentioned that, but I think that's in the elk statutes. And I think that one of the things this legislation does, it takes away some of the stuff we've been trying to do that didn't work. For instance, the fence-viewer thing and asking the county clerks to appoint people to do this. It just didn't work. They just couldn't find people that would accept that appointment. I would recommend the body accept this amendment and the bill as well. Thank you. [LB667]

PRESIDENT SHEEHY: Thank you, Senator Dierks. Senator Krist, you're recognized. [LB667]

SENATOR KRIST: Thank you, Lieutenant Governor, colleagues. I wonder if Senator Hansen would yield for a question. [LB667]

PRESIDENT SHEEHY: Senator Hansen, would you yield to Senator Krist? [LB667]

SENATOR HANSEN: Yes, certainly would. [LB667]

SENATOR KRIST: I'm taking some notes and I was wondering, is wiggle room a hyphenated word? [LB667]

SENATOR HANSEN: I'd say it all one word. (Laughter) [LB667]

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SENATOR KRIST: Thank you. I want to thank my colleagues on the rule side and I mean this sincerely. I knew nothing about fences before this dialog and you learn something new every day. Thank you, Senator. And I yield the rest of my time to Senator Lautenbaugh. [LB667]

PRESIDENT SHEEHY: Senator Lautenbaugh, you're yielded just over 4 minutes. [LB667]

SENATOR LAUTENBAUGH: Thank you, Mr. Speaker. Thank you, Senator Krist. I do want to say that I stand wholeheartedly with Senator Sullivan on this and endorse all of her comments. I wasn't here in 2007 either and I don't know what they were up to back then, but I'm glad she's here to help clean it up and I'll help however I can. So I urge you to advance this bill. [LB667]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh, Senator Krist. Members requesting to speak on AM1575: Senator Wallman, followed by Senator Hansen, and Senator Wightman. Senator Wallman, you're recognized. [LB667]

SENATOR WALLMAN: Thank you, Mr. President. Would Senator Pankonin yield to a question? [LB667]

PRESIDENT SHEEHY: Senator Pankonin, would you yield to Senator Wallman? [LB667]

SENATOR PANKONIN: Of course, I would to Senator Wallman. [LB667]

SENATOR WALLMAN: Thank you. Senator Pankonin, in regards to trails in your area, I think you have some, is...you have trouble with fencing in that area with pastureland or farmland? [LB667]

SENATOR PANKONIN: Senator Wallman, I don't know of, particularly like fences with livestock getting on a trail or that sort of issue. There's been issues with the fences about who's responsibility it is to keep the weeds down and there's been some questions on that as we have looked at trails legislation. But I don't know of any complaints that I've heard of about livestock maybe getting on a trail or people having a problem with that, but thanks for the question. [LB667]

SENATOR WALLMAN: Well, we had one farm we had a pasture once, the trail people did fix the fence, a good fence. And which I appreciate Senator Sullivan's bill and amendment and I support this bill. Thank you. [LB667]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Hansen, you're

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recognized. [LB667]

SENATOR HANSEN: Thank you, Mr. President. I was wondering if Senator Carlson would yield to a couple of questions. [LB667]

PRESIDENT SHEEHY: Senator Carlson, would you yield to Senator Hansen? [LB667]

SENATOR CARLSON: Yes, I will. [LB667]

SENATOR HANSEN: Thank you, Senator Carlson. I know last year during the interim we talked a lot about fences and there were a lot of examples and some of them were a little far-fetched, but some of them aren't. And I would give you one example and see if this...what your reaction to it is. This is another one that's on the outskirts of any town in the state of Nebraska, that a family is there, and they have a chain-link fence to keep the dogs in and maybe their kids in, too, but there's a chain-link fence. Another person buys another property next to them and wants a privacy fence, and they want the privacy fence to be sure they keep their kids out and they don't want a viewing of them in the pool or hot tub or something. So how would a neighbor handle that, that the legal fence they thought they went above and beyond when they put the chain-link fence in, but now the next neighbor wants a privacy fence? So explain, if you would, that example, which will happen. [LB667]

SENATOR CARLSON: Okay. Senator Hansen, let me go back. Where is this located? Inside city limits or outside? [LB667]

SENATOR HANSEN: Outside. [LB667]

SENATOR CARLSON: Okay. So you have the chain-link fence which is probably more expensive than the legal fence. [LB667]

SENATOR HANSEN: Correct. [LB667]

SENATOR CARLSON: And they have a desire for...what term did you call the fence? [LB667]

SENATOR HANSEN: Privacy fence. [LB667]

SENATOR CARLSON: Privacy fence, which is also probably more expensive than the legal fence. There's nothing that would prevent the new landowner from putting up that privacy fence. And if the existing landowner didn't like it, then again we're probably back into, maybe, the legal system to settle that. I can't see that in the example you give there's not going to be a legal fence built because neither one of them wanted that. [LB667]

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SENATOR HANSEN: Above and beyond a legal fence, both fences are. But that will happen in all the housing additions that are going out into the rural areas, I mean, just someone get out of town. And then the other example, of course, would be that they go out of town and they have a few horses or they have a few sheep or a few goats or an ostrich or something like that, and that they have to maintain a fence to keep in and then cooperating with their neighbors. But I think the question that Senator Loudon has is certainly a valid one. Where's the next step? What do you do for the next step? In the process, can't quite agree on that fence, now what do we do? [LB667]

SENATOR CARLSON: I think that the only solution then is the legal system. And if there can't be mutual agreement, it's going to...if either party then wants to take it into the legal system and try and settle it, that would be the way. And that's part of the reason we have our system, I guess. [LB667]

SENATOR HANSEN: Thank you. On the amendment on line 6 on page 1, it said that, Such benefits are not confined to historical or traditional societal benefits that accrue to the proper constraint of livestock, but also the suppression of civil disputes, public and private nuisances and so on. But societal benefits I would read as good fences make good neighbors. And I think that's true anywhere in the state of Nebraska. Thank you, Mr. President. [LB667]

PRESIDENT SHEEHY: Thank you, Senator Hansen. Senator Wightman, you're recognized. [LB667]

SENATOR WIGHTMAN: Thank you, Mr. President. I...first of all, I do support the bill. I think it is better than what we have had in the past, what we passed, apparently in 2007. I do have a couple of questions, if Senator Sullivan would yield. [LB667]

PRESIDENT SHEEHY: Senator Sullivan, would you yield to Senator Wightman? [LB667]

SENATOR SULLIVAN: Yes, I would. [LB667]

SENATOR WIGHTMAN: Senator Sullivan, as I understand the original bill if both adjoining landowners had livestock then it would have been proportional, but proportional would always be determined to be equal as long as there was a legal fence or less if the parties could agree upon it. Is that correct? [LB667]

SENATOR SULLIVAN: Yes. [LB667]

SENATOR WIGHTMAN: And I think the committee amendment then changes that so if one person had a quarter section of pivot land and that adjoined a large tract of pasture

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land, it would still be proportional even though one of them was not a livestock operator. Is that right? Not only proportional but equal. [LB667]

SENATOR SULLIVAN: Yes, you're right, exactly. [LB667]

SENATOR WIGHTMAN: Under your bill, there might have been some question as to whether it would have been proportional would have meant equal unless they were both livestock owners? [LB667]

SENATOR SULLIVAN: Exactly. You're right on. [LB667]

SENATOR WIGHTMAN: Okay, so about the only time that it would be anything other than equal would be if it required if one of the parties had an operation that was requiring something higher than a legal fence or greater expense than a legal fence, is that correct, then there might be a question? [LB667]

SENATOR SULLIVAN: Well, that's true. But we always defer then, if we pass this legislation, to the standard fence. And so you can construct a different fence that's different than the standard fence, but as far as the cost of construction and maintaining, it will always be determined according to the standard fence. [LB667]

SENATOR WIGHTMAN: Okay, that was my understanding. And the committee amendment did broaden the scope of the equal...that proportional means equal, I guess. Is that correct? [LB667]

SENATOR SULLIVAN: Yes. [LB667]

SENATOR WIGHTMAN: And I do support the bill. Thank you for the explanation, Senator Sullivan. Thank you, Mr. President. [LB667]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Seeing no additional requests to speak, Senator Carlson, you're recognized to close on the Agriculture Committee amendment, AM1575. [LB667]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. Appreciate the comments and the debate that has gone on this morning. And it's a good indication that if we have something that we think is as simple as a fence law, there's still quite a few of you that are interested in it. And that's good for the Ag Committee, I think, to observe. I think this law definitely does some things that are positive. It takes away a possible legal argument over proportionality. We don't argue about 30 percent, 70 percent, 40 percent, 60 percent, it's 50-50 in statute. Secondly, it takes away argument, to a large degree, about cost because it's equal on a legal fence as defined by statute. And then we still have the legal process for those to enter into when

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someone...when neighbors can't come to a mutual agreement or understanding or the one who is responsible for a portion of the cost, half the cost, refuses to comply. We have the legal process. With that, thank you for your discussion. And I ask you for your support of AM1575 and the underlying bill, LB667. [LB667]

PRESIDENT SHEEHY: Thank you, Senator Carlson. You have heard the closing. The question before the body is on the adoption of AM1575 to LB667. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB667]

ASSISTANT CLERK: 38 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB667]

PRESIDENT SHEEHY: AM1575 is adopted. We will return to floor discussion on LB667. Seeing no additional requests to speak, Senator Sullivan, you're recognized to close on LB667. [LB667]

SENATOR SULLIVAN: Thank you, Mr. President. I'll be quick. But Senator Hansen so eloquently said, good fences make good neighbors. And that's what we're trying to help accomplish. However, we won't end all disputes over division fences with this statute. If what we're trying to do is clarify the statute so that when there are disputes regarding division fence it makes it easier to resolve. So I thank you for your discussion and debate this morning. And I encourage the body to advance LB667. [LB667]

PRESIDENT SHEEHY: Thank you, Senator Sullivan. You have heard the closing. The question before the body is on the advancement of LB667. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB667]

ASSISTANT CLERK: 37 ayes, 0 nays on the advancement of the bill, Mr. President. [LB667]

PRESIDENT SHEEHY: LB667 advances. We will now proceed to LB711. [LB667 LB711]

ASSISTANT CLERK: LB711 was introduced by Senator Dierks. (Read title.) The bill was read for the first time on January 6 of this year, referred to the Education Committee. That committee reports the bill to General File with no committee amendments. [LB711]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Dierks, you're recognized to open on LB711. [LB711]

SENATOR DIERKS: Thank you, Mr. President, members of the Legislature. I'm pleased to bring LB711 to the floor today. LB711 is a bill that I introduced regarding unified

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school districts. In 1998, I worked with the former Chairwoman of the Education Committee, Ardyce Bohlke, who introduced the bill that created unified school districts. I made that bill my priority bill that year. The concept behind this year's bill, LB711, is to help rural communities who are struggling in difficult economic times to keep their individual identities, while encouraging them to cooperate and unify with other school districts. There are two parts to LB711. One part removes the court system as the place to resolve disputes between school districts who are trying to unify but are unable to agree to the terms within the first three years. It allows the school districts to negotiate through interlocal agreements on the terms of the withdrawal instead of the court system. This change would continue to encourage struggling schools to try to unify and allow them to withdraw in a more direct and economically feasible way if they just cannot agree on the terms of unification. The other part of the bill removes two subsections from the current statute. These two subsections were not part of the original bill passed in 1998, and established the court system as a place to go if schools could not unify during their first three years. They also prohibited school districts from forming new unified districts after April 3, 2008. The concept behind this bill is simply to try to help rural school districts who are struggling with their diminishing populations, yet want to keep their children close to home. I truly believe in the concept of school unification and want to do what I can to help rural Nebraska at the same time. Thank you for your attention today. I hope that you will look favorably on LB711 and the ideas behind it. With that, Mr. President, I'd like to give the remainder of my opening to Senator Adams. [LB711]

PRESIDENT SHEEHY: Senator Adams, you're yielded 7 minutes 40 seconds. [LB711]

SENATOR ADAMS: Thank you, Mr. President. Thank you, Senator Dierks. Members of the body, this bill, which would in effect recreate the opportunity for schools in Nebraska to enter into unified systems, if we pass this in effect what we are doing, if you'll excuse the analogy, we're allowing smaller schools who have a great deal of pride and want to maintain their individual identity to enter into a period of engagement that may result, down the road, in a marriage, the ugly word consolidation. We did away with this concept a couple of years ago because of some of the financial incentives that were in the current law or in that language that really perverted what was working. There's no financial incentives in this bill. It simply says that schools, individual school districts that are neighbors with one another, that if they want to unify together, maintain their individual identities, and get to know one another, maybe get to like one another, maybe get beyond some of the issues that keep schools from eventually merging together, we're going to give them that opportunity. The way a unified system is structured is relatively simple. Let's say that hypothetically we have five school districts that agree they want to form a unified system. Those five school districts maintain their individual identity, they maintain their boundaries, they maintain their school buildings, they maintain their staff, they maintain and elect their board. But if they agree to the unification, they create an overriding board made up of members of the local individual

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systems and there is a common levy. And where have we heard that before? There's a common levy that is levied by the overriding board, is collected by that board, and is used in a systemwide budget that includes all of the schools within that system. In time one would anticipate sharing of administration, maybe the reduction of some administration, the sharing of teachers, the school district that can't hire the band teacher, maybe there's one just seven miles down the road that can be used. In some of the unified systems that we have currently in existence there's the sharing of sports teams. Sometimes that's the biggest hurdle at all. If you can get them to share a sports teams, down the road there may be even greater sharing in a school system. The language also in this bill, and Senator Dierks has correctly pointed it out, allows school districts to enter into an interlocal agreement right up front to say this is what we're going to do, and if we dissolve, this is how our liabilities and assets will be distributed ahead of time. There is no committee amendment. The bill was clean coming in. I'll tell you quite candidly, when I was first approached by Senator Dierks and some superintendents from rural Nebraska that said, would you consider it, we had a lengthy meeting in my office. And my biggest concern was, conceptually I like this, my biggest concern was can we eliminate the problems that we had last time that caused us to want to do away with this? I think we've eliminated them. Is it perfect? No, no. Does it create an opportunity for rural schools to form a kind of system where they share, where they have a common levy, a common board yet maintain their identity and see if down the road they might actually consolidate? This creates that opportunity for them. And frankly, as a state, and this is what I wrestled with throughout the month of December and January in preparation for this, I struggled to find the downside. And I think that the benefit far outweighs the cost in this. Thank you, Mr. President. [LB711]

PRESIDENT SHEEHY: Thank you, Senator Adams. Thank you, Senator Dierks. You have heard the opening to LB711. Members requesting to speak: Senator Adams, followed by Senator Price, Senator Sullivan, Senator Harms, and Senator Pirsch. Senator Adams, you're recognized. [LB711]

SENATOR ADAMS: Thank you, Mr. President. Mr. President, I'm going to stop. I didn't anticipate that Senator Dierks was going to give me that much time. I appreciate that. So I'll turn my light off. [LB711]

PRESIDENT SHEEHY: Thank you, Senator Adams. Senator Price, you're recognized. [LB711]

SENATOR PRICE: Thank you, Mr. President, members of the body. Would Senator Adams yield to a question? [LB711]

PRESIDENT SHEEHY: Senator Adams, would you yield to Senator Price? [LB711]

SENATOR ADAMS: Yes. [LB711]

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SENATOR PRICE: Senator Adams, I'm sure you can see this from a mile away. My question on this bill, starting on page 2, paragraph 3, line 12, would this apply to learning communities or school districts within a learning community? [LB711]

SENATOR ADAMS: No. [LB711]

SENATOR PRICE: Pardon me again? [LB711]

SENATOR ADAMS: No. [LB711]

SENATOR PRICE: Thank you. I yield the balance of my time to Senator Adams, if he should choose to use it. [LB711]

SENATOR ADAMS: Thank you, Senator Price, that's all right. [LB711]

PRESIDENT SHEEHY: Thank you, Senator Price. Senator Sullivan, you're recognized. [LB711]

SENATOR SULLIVAN: Thank you very much, Mr. President and colleagues. I rise in support of LB711. And just a point of information. I have one unified school district in District 41 that's been in existence for 11 years and it's worked very well. It combines the school districts of Clearwater, Orchard, and Verdigre and helps them retain their own individuality in their respective districts, but helps them come together and work out educational arrangements for the benefits of students. It's no laughing matter and it's reality that we continue to see population decline in rural Nebraska. And school districts are struggling with how to handle that and still provide a quality education to the students. Just last night I was talking with someone from my district who said that there was going to be a community meeting to talk about combining sports in three different communities in my district. This very well, with LB711, could be the next step of their conversation. These are not easy decisions for these small towns. They've...they have their identity that in large part revolves around their school, they are proud of it. They are concerned about it when they are faced with decisions that might diminish the recognition of that school district in their community. So I think this allows them to start the conversation to realize some possibilities that might exist between and among them. So I urge your support of LB711. [LB711]

PRESIDENT SHEEHY: Thank you, Senator Sullivan. Senator Harms, you're recognized. [LB711]

SENATOR HARMS: Thank you, Mr. President, colleagues. I rise in support of LB711. Where I live, I think this is an opportunity for a lot of these small school districts to come together and not be penalized. If you go to the state Department of Education and you

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begin to look at their enrollment projections, it's either this year or next year enrollment projections in our rural America in Nebraska goes straight down for ten years. And the issue is still before us of what are we going to do with these rural schools? What options do we have for these rural schools? How are we going to provide equal access to quality education? The constitution requires us to provide equal access to quality education. And if something like this is not approved, in the future there will be litigation that will come forward on the basis that people in rural Nebraska are saying our children do not have access to equal...to equal access to quality education. This does give them that opportunity. It does give the schools an opportunity to blend, to have one board, one common levy, one superintendent. That's our only hope here. And I think this gives us the opportunity that we need to provide a quality education. I also worry a great deal about a lot of people have discussion when we want to start looking at the...bringing our rural schools together that we can do a lot of this through the computer. There's only so much you can do through technology. You still have to have a teacher, you still have to be able to blend these programs together. And I would thank Senator Dierks for bringing this bill forward. I think it's important for us, I think it will help us, and I think it's the opportunity for our rural schools to help themselves. So thank you, Mr. President and colleagues. [LB711]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Pirsch, you're recognized. [LB711]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I think my questions have been answered off the mike. And so I'll yield the time. Thank you. [LB711]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Seeing no additional requests to speak, Senator Dierks, you're recognized to close on LB711. [LB711]

SENATOR DIERKS: Thank you, Mr. President. And thank you, members, for the discussion. I just feel very strongly about this. I think that the reason for it in the first place was the same that it is today, that there's a need and an opportunity for people to maintain their identity, the identity of their communities and their schools. And it has worked, it has worked on Unified System Number 1, which Senator Sullivan talked about. This was the reason that I introduced it in the first place for Clearwater, Orchard, Elgin, and Ewing. And when we got the bill passed, it turned out that Ewing and Elgin decided that they didn't want to be involved, so Clearwater and Orchard did it and got Verdigre involved. It has worked very well. They had a seven-year commitment and they stuck with the commitment and now they're into their third year since that commitment. So it does work, we know that. And I'm just thankful for the opportunity to present it to the state again. Thank you. [LB711]

PRESIDENT SHEEHY: Thank you, Senator Dierks. You have heard the closing. The

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question before the body is on the advancement of LB711. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB711]

CLERK: 37 ayes, 0 nays, Mr. President, on the advancement of LB711. [LB711]

PRESIDENT SHEEHY: LB711 advances. Mr. Clerk, do you have items for the record? [LB711]

CLERK: I do, Mr. President. Your Committee on Enrollment and Review reports they've examined and engrossed LB190 and find the same correctly engrossed. Your Committee on Government, Military and Veterans Affairs gives notice of hearing; and Health and Human Services, notice of hearing, those signed by the respective chairs. Education Committee, chaired by Senator Adams, reports LB713 to General File with amendments. Judiciary, chaired by Senator Ashford, reports LB252 to General File with amendments. I have a new resolution. Senator Pirsch offers LR312, that will be laid over. A Reference report referring gubernatorial appointees to standing committee for confirmation hearing. And Senator Hadley would like to withdraw LB946. That will be laid over at this time, Mr. President. That's all that I have. (Legislative Journal pages 446-451.) [LB190 LB713 LB252 LR312 LB946]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Speaker Flood, you're recognized for an announcement.

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. A quick announcement as to our adjournment time today and our start time tomorrow. We're going to adjourn this morning at 11:15. We're going to adjourn this morning at 11:15, and we will start tomorrow with Final Reading at 10:00 a.m. Again, our start time tomorrow is 10:00 a.m. So 11:15 adjournment today and 10:00 a.m. tomorrow. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Speaker Flood. Mr. Clerk, we will now proceed to LB797. [LB797]

CLERK: LB797, Mr. President, a bill by Senator Langemeier. (Read title.) The bill was introduced on January 8 of this year, at that time referred to the Natural Resources Committee, advanced to General File. I have no amendments pending at this time, Mr. President. [LB797]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Langemeier, you're recognized to open on LB797. [LB797]

SENATOR LANGEMEIER: Mr. President, members of the body, thank you. LB797 would make the publication of the "Conditions Certain Report" discretionary instead of

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mandatory produced by the Power Review Board. The report is expensive and time-consuming and the Power Review Board and the NPA, which are all the public power associations, feel it's no longer necessary. In 1996, the Legislature passed LR455, which directed the Natural Resources Committee to perform a two-phased study to examine issues related to the competitiveness of public power in Nebraska. The first phase, the study to examine the history and the current statutes that revolved around Nebraska's public power electrical industry, was completed in 1997. Phase two the LR455 examined and evaluated the public powers industry and their competitiveness and whether or not they were as competitive as in our power rates as power industry within Nebraska. The phase two report provided a planning framework for Nebraska's center on condition certain approach to retail competitiveness. In 2002, the elements of the condition certain approach were incorporated into LB901, which directed the Nebraska Power Review Board to hold annual hearings concerning the benefits of retail competitiveness in the electrical industry in Nebraska following a number of steps. We're asking today, as we have gone through that report, we're now in 2010, ten years later, we have found every year as they produce this report it's extremely expensive. Within NPPD, it takes roughly 120 man hours of engineers to provide their information; OPPD is about the same; LES looks to 200 to 300 man hours to produce their information on their competitiveness. The Power Review Board then has hearings that nobody attends. Over the past ten years, people are content that we do have one of the lowest retail rates of power in the country, and so we are...public power is remaining very competitive and it's an asset to Nebraska. And what we're asking to do today is to remove, if you see the fiscal note it lowers the cost to the Power Review Board for...by about \$14,000 to not have to produce this piece of paper and this document that we each get in our office and, I would argue, nobody reads. And so we ask today that you take that from a mandatory requirement to a voluntary requirement by the Power Review Board. If somebody makes a request that they do it, the Power Review Board can look at that request and determine whether they want to do that report. So I'd ask for your support of LB797. [LB797]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. You've heard the opening to LB797. Seeing no requests to speak, Senator Langemeier, you're recognized to close. Senator Langemeier waives closing. The question before the body is on the advancement of LB797. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB797]

CLERK: 39 ayes, 0 nays, Mr. President, on the advancement of LB797. [LB797]

PRESIDENT SHEEHY: LB797 advances. We will now proceed to LB832. [LB797 LB832]

CLERK: LB832, a bill by Senator Fischer. (Read title.) Introduced on January 8 of this year, referred to the Natural Resources Committee, advanced to General File. I have no

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amendments to the bill at this time, Mr. President. [LB832]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Fischer, you're recognized to open on LB832. [LB832]

SENATOR FISCHER: Thank you, Mr. President and members. The purpose of LB832 is to repeal Section 66-1532 of the petroleum release remedial action statute that requires owners of new petroleum tanks at a site where petroleum tanks have not been previously located to obtain private insurance to cover the cost of any remedial action to the petroleum tanks of the site. In the late 1980's, the federal government came out with requirements that all owners of underground storage tanks upgrade their tanks to prevent and contain future releases. At the same time, they required owners of underground storage tanks to provide proof of \$1 million of financial responsibility to cover the cost of cleaning up a release. The insurance industry was not able to take on this liability because any existing sites more than likely already had some level of contamination. Since insurance carriers would not cover this liability, states formed leaky underground storage fund or LUST funds. The state requires that all owners, including those required to obtain private insurance pay nine-tens of a cent on gas and three-tenths of a cent on diesel to the LUST fund for the same coverage. In essence, current law requires these owners to pay two insurance policies for these petroleum tanks, one to private insurance and one to the state LUST fund. The requirement for private insurance in Nebraska, that of LB832, would eliminate...was passed in 2005 to begin moving petroleum tank owners away from fee-based fund and onto private insurance. Until all petroleum tank owners are able to clean up existing sites and go to private insurance collectively, they would like to use the fund as their sole means of proving financial responsibility. Currently, only ten owners are required to hold this private insurance. Thank you, Mr. President. [LB832]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You've heard the opening to LB832. Senator Cornett, you're recognized. Senator Council, you're recognized. [LB832]

SENATOR COUNCIL: Thank you. Senator Fischer, would you yield to a question, please? [LB832]

PRESIDENT SHEEHY: Senator Fischer, will you yield to Senator Council? [LB832]

SENATOR FISCHER: Yes, I will. [LB832]

SENATOR COUNCIL: Yes. In view of the recent debate over ensuring that others in the state aren't being held responsible for acts of others, is the payment in the underground leaking storage task force fund, whatever it's called. [LB832]

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SENATOR FISCHER: (Laugh) The LUST fund. [LB832]

SENATOR COUNCIL: Yeah. Is that at the same level...does that provide the same level of liability protection as a private policy of insurance? [LB832]

SENATOR FISCHER: I believe it does, yes. [LB832]

SENATOR COUNCIL: Okay. Because the concern is...I appreciate that the tank owners themselves having to bear that responsibility, but the purpose of the insurance is to protect others. And as long as the other fund that they are required to contribute to provides the same level of liability coverage, I support the legislation. [LB832]

SENATOR FISCHER: Thank you, Senator Council. And in essence, the private insurance would be on the new sites. And you would...my guess would be those sites are not the ones we need to worry about. Thank you. [LB832]

PRESIDENT SHEEHY: Thank you, Senator Council. Seeing no additional requests to speak, Senator Fischer, you're recognized to close. Senator Fischer waives closing. The question before the body is on the advancement of LB832. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB832]

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB832. [LB832]

PRESIDENT SHEEHY: LB832 advances. We will now proceed to LB911. [LB832 LB911]

CLERK: LB911, Senator Langemeier's. (Read title.) Introduced on January 12 of this year, at that time referred to the Natural Resources Committee. The bill was advanced to General File. I have no amendments pending at this time, Mr. President. [LB911]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Langemeier, you're recognized to open on LB911. [LB911]

SENATOR LANGEMEIER: Mr. President, members of the body, LB246, introduced by Senator Dubas, was passed into law last year and as part of that requirement was BioNebraska was to work on a study to look at the future of bioindustry in Nebraska. And in the negotiations of the contract, we found some other partners to put some money in. It delayed us in the start of our contract. And so what we're asking...what I'm asking you to do today is advance LB911. It changes the date that the report that BioNebraska has to have their report to us from June 30, it moves it three months to September 30, to give them some more time. In our negotiation, we found an additional \$30,000 which cut our expense to this project. And so it's a good product. And we just need to extend the date to adjust for that. And I'd ask for your support of LB911. [LB911]

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LB246]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. You've heard the opening to LB911. Seeing no requests to speak, Senator Langemeier, you're recognized to close. Senator Langemeier waives closing. The question before the body is on the advancement of LB911. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB911]

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB911. [LB911]

PRESIDENT SHEEHY: LB911 advances. We will now proceed to LB867. [LB911 LB867]

CLERK: LB867, a bill by Senator Karpisek. (Read title.) The bill was introduced on January 11 of this year, referred to the General Affairs Committee. The bill was advanced to General File. I do have committee amendments, Mr. President. (AM1638, Legislative Journal 399.) [LB867]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Karpisek, you're recognized to open on LB867. [LB867]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. LB867 amends Section 53-124 of the Liquor Control Act by increasing the shipping license fee from \$200 to \$1,000. There are currently 300, excuse me, 613 shippers with either a Class S shipping license, which is wine and spirits, or a Class T shipping license, which is beer. There are 504 wine and spirits shipping licenses, such Diageo, Kendall Jackson, and Constellation, and 109 beer shipping licenses, such as Miller, Coors Brewing Company, Anheuser-Busch InBev, and Boulevard. As you may imagine, other states have shipping license fees all over the place. At \$200, we are among the lowest; at \$1,000, we would be nearing the top. No one has testified against this bill at the hearing and it was voted out of committee with unanimous support. Currently, the state collects \$122,600,000 in shipping licenses, I've messed that up, let me do it again, \$122,600 in shipping license fees, I'm not used to that many zeros. And LB867 would increase that amount by \$490,400 to \$613,000. Thank you, Mr. President. [LB867]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. You have heard the opening to LB867. As stated, there is a General Affairs Committee amendment. Senator Karpisek, you're recognized to open on AM1638. [LB867]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. The committee amendment clarifies that the shipping license fees would go to the General Fund. The fees have long been going to the General Fund, but the State Auditor, in a recent audit of the Liquor Control Commission, recommended that the commission seek an Attorney

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General's Opinion as to where the shipping fees license should go. The Attorney General's Opinion stated that the shipping license fees should go to the school fund. Since the fees have been going to the General Fund, the committee felt that an amendment was needed to clarify that the shipping license fees are to continue to go to the General Fund. That is the extent of the committee amendment. Thank you, Mr. President. [LB867]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. You have heard the opening of AM1638 to LB867. Members requesting to speak: Senator Rogert, followed by Senator Howard. Senator Rogert, you're recognized. [LB867]

SENATOR ROGERT: Thank you, Mr. President. I wonder if Senator Karpisek would yield to a question. [LB867]

PRESIDENT SHEEHY: Senator Karpisek, would you yield? [LB867]

SENATOR KARPISEK: Of course. [LB867]

SENATOR ROGERT: I know there's a lot of zeros in this question, (laugh) but can you tell me how much money this is going to raise to the state of Nebraska? [LB867]

SENATOR KARPISEK: This would raise, if we kept the 613 shippers, if they went up or down, of course, it would be different, but it would raise (laugh) \$490,400. [LB867]

SENATOR ROGERT: A lot of zeros. [LB867]

SENATOR KARPISEK: A lot of zeros. Again, excuse me, I'm sorry, almost half a million dollars. [LB867]

SENATOR ROGERT: (Laugh) How long has it been since these shipper fees have been changed, Senator Karpisek? [LB867]

SENATOR KARPISEK: It has been a number of years, Senator Rogert. Right off the top of my head, you were in committee, maybe you remember, I... [LB867]

SENATOR ROGERT: I think it was sometime in the sixties? [LB867]

SENATOR KARPISEK: I think you are correct, I think it's been 40-some years. [LB867]

SENATOR ROGERT: So 40 to 45 years, and I think we were asking a company like Anheuser-Busch to pay \$200 a year, a massive, worldwide company to pay \$200 a year, to ship their stuff into our state. We're now deciding to raise it to \$1,000. It may seem like a little bit extensive of an increase, but I think if we're only going to come back

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to it every 40 years, we should go ahead and put it up there. I think you mentioned in committee that it was a little high and that maybe we should raise it just so we don't have to come back again, is that right? [LB867]

SENATOR KARPISEK: That is correct. And maybe some companies may not stay in and keep shipping here. We don't know that. But I just talked to Hobie Rupe with the Liquor Commission, and he said there are states around us that have looked at this issue lately. They have been going between \$750 and \$1,000. There are other states that are lower, but they haven't looked at theirs for a long time either. [LB867]

SENATOR ROBERT: And does this tax any of the...well, it's not tax, but does this fee apply to any of the companies that would be located in the state of Nebraska? [LB867]

SENATOR KARPISEK: No, these are only companies that would ship in from out of state. [LB867]

SENATOR ROBERT: So we're putting a fee on the folks that are outside of the state. [LB867]

SENATOR KARPISEK: Correct. [LB867]

SENATOR ROBERT: I think that's a great idea, members. Thank you, Senator Karpisek. I think we've been looking at ways to raise some revenue and not put an additional burden on the citizens of the state of Nebraska. This is a great way to go back and look at fees that have been in there for decades and unchanged. And this is a great way to raise a fair amount of money. And I appreciate Senator Karpisek and the Liquor Commission coming forward with this great proposal. Thank you, Mr. President. [LB867]

PRESIDENT SHEEHY: Thank you, Senator Rogert. Senator Howard, you're recognized. [LB867]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I, too, want to thank Senator Karpisek for his diligent work on this issue. He and I have had a number of conversations over the summer and into the fall and at the beginning of this session regarding this issue. There are serious liquor issues in District 9 that we're working diligently to address. This is the beginning. We have left this money on the table far too long. This is revenue that could have been coming into the state, and this has not been addressed previously. We are a bargain and it's time we charge a fee that's equal to what other states are charging for the delivery of liquor to this state. We are having more and more facilities, I'm thinking of Walgreen's and the CVS who are moving into Omaha and looking to request liquor license, and these are going to be more outlets for liquor. This is a problem. This is a beginning. I certainly thank Senator

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Karpisek and I'm glad I've had the opportunity to work with him on this. [LB867]

PRESIDENT SHEEHY: Thank you, Senator Howard. Senator Carlson, you're recognized. [LB867]

SENATOR CARLSON: Mr. President, members of the Legislature, I'd like to direct a couple of questions to Senator Karpisek, if he would yield. [LB867]

PRESIDENT SHEEHY: Senator Karpisek, would you yield to Senator Carlson? [LB867]

SENATOR KARPISEK: Yes, I will. [LB867]

SENATOR CARLSON: Senator Karpisek, what is the purpose of these licensing fees, shipping fee? [LB867]

SENATOR KARPISEK: It's someone like Anheuser-Busch InBev shipping their product into the state of Nebraska, so it's the state giving them the permission to ship their product into the state. [LB867]

SENATOR CARLSON: Thank you. But I'm looking here on the bill and it says, explanation of amendments, directs the shipper's license fees to the General Fund. So that's where these fees end up, in the General Fund? They're not there for cost of regulation? [LB867]

SENATOR KARPISEK: No, sir. They...the Attorney General's Opinion was that they should go to the school fund, the statewide school fund. However, they have been going to the General Fund for years. The amendment makes it clear that they would go to the General Fund. [LB867]

SENATOR CARLSON: Where does the Liquor Commission get its funds to conduct its regulation activities? [LB867]

SENATOR KARPISEK: I'm sorry, could you repeat your question? [LB867]

SENATOR CARLSON: Where does the Liquor Commission get funds to run its division, it's agency to regulate? [LB867]

SENATOR KARPISEK: They get their money from General Funds. [LB867]

SENATOR CARLSON: So really these funds go into the General Fund and then some of them end up back for regulation purposes with the Liquor Commission. [LB867]

SENATOR KARPISEK: In theory, it goes into the big pot and comes back out of the big

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pot. [LB867]

SENATOR CARLSON: Do you have any idea what the cost of the activities of the Liquor Commission are? And I'm asking this because does this amount of money come close to making it more like a cash fund that provides the dollars to operate the Liquor Commission? I don't have any idea what kind of a budget they might have. [LB867]

SENATOR KARPISEK: Their operating budget, Senator, is just under \$1 million. [LB867]

SENATOR CARLSON: So, in theory, this has gone from a hundred and some thousand to almost half a million, conceptually it's toward the operation of their agency, which makes it a little closer to self-sustaining. [LB867]

SENATOR KARPISEK: It does help in that regard. I have some other bills coming up later that I hope to talk about this money going to help. And I'll be specific about the White Clay issue. But, yes, that would be where that money would go. Again, into the big pot, out of the big pot. [LB867]

SENATOR CARLSON: Okay. Thank you, Senator Karpisek. [LB867]

SENATOR KARPISEK: Thank you, Senator Carlson. [LB867]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Mr. Clerk, do you have items for the record? [LB867]

CLERK: I do, Mr. President. Committee on Agriculture, chaired by Senator Carlson, reports LB865 to General File with amendments. Executive Board hearing is at noon as opposed to upon adjournment, is at noon today. Name adds: Senator Hadley to LB1053; Senator Coash, LB1068; Senator Coash, LB1073; Senator Heidemann, LB1103; Senator Utter, LB1103; and Senator Janssen to remove his name from LB836. (Legislative Journal pages 451-452.) [LB865 LB1053 LB1068 LB1073 LB1103 LB836]

And a priority motion. Senator Hansen would move to adjourn the body until Friday morning, February 5, at 10:00 a.m.

PRESIDENT SHEEHY: You have heard the motion to adjourn until Friday, February 5, at 10:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned.