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Floor Debate
March 23, 2010

[LB160 LB297 LB317 LB403 LB563 LB709 LB727 LB742 LB763 LB764 LB800A LB801 LB820 LB836 LB840 LB842 LB843 LB861 LB862 LB879 LB882 LB899 LB918A LB919 LB931 LB935 LB937 LB937A LB943 LB948 LB950 LB952 LB956 LB961 LB984 LB1002 LB1014 LB1018 LB1036 LB1048A LB1048 LB1051 LB1079 LB1084 LB1087 LB1090 LB1091 LB1094A LB1094 LB1106 LB1106A LB1109 LB1109A LR83 LR284CA LR292 LR297CA LR374 LR375 LR376 LR377 LR378 LR379 LR380 LR381 LR382 LR383 LR385 LR386 LR387 LR388 LR389 LR390 LR391 LR392 LR393 LR394 LR395 LR396 LR397 LR398 LR399 LR400 LR401 LR402 LR403 LR412 LR413 LR414 LR415 LR416 LR417 LR418 LR419 LR420 LR421 LR422]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the forty-sixth day of the One Hundred First Legislature, Second Session. Our chaplain for today is Pastor Don Owen, Word of Life Church, Columbus, Nebraska, Senator Stuthman's district. Please rise.

PASTOR OWEN: (Prayer offered.)

SPEAKER FLOOD: Thank you. I call to order the forty-sixth day of the One Hundred First Legislature, Second Session. Senators, please record your presence. Mr. Clerk, please record.

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

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

CLERK: I have no corrections.

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

CLERK: Your Committee on Enrollment and Review reports...

SPEAKER FLOOD: (Gavel)

CLERK: ...LB317, LB935, LB1090, LB1091, LB1106, LB1106A as correctly engrossed. Enrollment and Review also reports LB1048, LB1048A, LB861, LB800A, LB961, and LB563 to Select File, some of which have Enrollment and Review amendments. Two gubernatorial appointments. Both of them will be referred to Reference for a referral to a Standing Committee for confirmation hearing. Senator Dierks offers LR412. That will be laid over. Senator Langemeier offers LR413 calling for an interim study. That will be referred to the Executive Board. That's all that I have, Mr. President. (Legislative Journal pages 979-986.) [LB317 LB935 LB1090 LB1091 LB1106 LB1106A LB1048 LB1048A

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LB861 LB800A LB961 LB563 LR412 LR413]

SPEAKER FLOOD: Thank you, Mr. Clerk. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR374, LR375, LR376, LR377, LR378, LR379, LR380, LR381, LR382, LR383, LR385, LR386, LR387, LR388, LR389. I also sign LR390, LR391, LR392, LR393, LR394, LR395, LR396, LR397, LR398, LR399, LR400, LR401, LR402, and LR403. Before we move on to the first item on the agenda, two items I'd like to share. (Doctor of the day introduced.) At this time, I'd like to recognize Senator Rich Pahls for a point of personal privilege. Senator Pahls. [LR374 LR375 LR376 LR377 LR378 LR379 LR380 LR381 LR382 LR383 LR385 LR386 LR387 LR388 LR389 LR390 LR391 LR392 LR393 LR394 LR395 LR396 LR397 LR398 LR399 LR400 LR401 LR402 LR403]

SENATOR PAHLS: Thank you, Mr. Speaker. And like I say, I'm back. Maybe not totally 100 percent. But I do want to thank the body because I did receive a lot of nice thoughts and prayers, and I appreciate that. And I have found a new way of looking at life and looking at people because I've had the opportunity, after being in the hospital for quite some time, of having a newfound respect for the health profession. And I also have a newfound respect...as you can see I do...it affected my lungs so I'm a little bit out of breath easily, some of the senators who stepped up to the plate. I happened to have the opportunity to be Chair of a great committee. They stepped up to the plate and also the leadership under Senator Pirsch, and I appreciate that. But another thing that I also appreciate is a number of the senators who did offer to help my staff. And that...I mean, not at all related to banking, and I do see that that does make this a better body. And I...just another couple things. I want to show you how we have really...we reach way beyond this body. Because the number of the people that I met over this last several months, or two months, just to give you an idea, the doctor who I have a lot of respect for right now--and I call him these really scientific names like "My Kidney Doctor." He is a personal friend of Senator Cook; a cousin of Senator Dubas--I'm on dialysis three times a week, which will come to an end here after a month or two--a cousin of hers. One of the nurses in the hospital went to school with the Speaker's wife. And it is...there are a number of people that we are connected. And, of course, I had asked them what they thought of you, and it was positive. (Laughter) And I said positive things about you. Again, I want to thank you. And like I say, my road to recovery is on its way. For awhile it wasn't, but I did make the turn. And I just say, bear with me for awhile, because like I told my staff this morning, if I'm standing and all of a sudden I stop, that means I fell asleep, because like I say, the strength has not all come back. But this has given me a new look on life and hopefully I will treat people better maybe than I have in the past and be more reflective on some of my thinking. Again I thank you. (Applause)

SPEAKER FLOOD: Thank you, Senator Pahls. We now move to the agenda, General File 2010 senator priority bills, Council division. We begin with LB709, Mr. Clerk. [LB709]

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CLERK: LB709, a bill introduced by Senator White. (Read title.) The bill was introduced on January 6 of this year, at that time referred to the Business and Labor Committee. It was advanced to General File. There are Business and Labor Committee amendments pending, Mr. President. (AM1824, Legislative Journal page 807.) [LB709]

SPEAKER FLOOD: Senator White, you are recognized to open on LB709. [LB709]

SENATOR WHITE: Thank you, Mr. Speaker. Members of the Legislature, sometimes we get an opportunity to make a change in state government that though we change the way government works, what we really change is the way government relates to the citizens and businesses in this state. And if we're very serious about having a positive, vibrant economy where people want to do business here, LB709 will give you all an opportunity to help advance that. Let me explain what LB709 is in general. This is a bill in the simplest form requires the agency of the state of Nebraska as part of their normally held hearing process before they issue a regulation to specifically consider a topic in that process. Now, understand, it does not require new hearings. It simply requires that the agencies as part of the hearings address this: Ask themselves and allow the citizens of this state to comment on how much of a burden that proposed regulation as it is proposed puts on small businesses and whether we can achieve the aim of the law, the underlying law, in a more efficient, less costly manner. It's very simple. The agencies have to have a notice, they have to ask small businesses to comment. They need to take into account what small businesses say. Can we achieve what we want to achieve in a less burdensome, less expensive manner? And then they need to, if it's possible, reasonably implement that. If they don't do that, this law would give small businesses the opportunity to go to our court system and ask that the agency be ordered to look at the regulation again and actually abide by the intent and meaning of the law. Why small businesses? In front of you are two handouts. And I know we get many of these, but I think these will really help focus your thoughts on this particular bill and how much it will mean for the state of Nebraska. There are two fact sheets in front of you. If you look at those two sheets, the first is a list of states that have actually enacted some type of small business regulatory flexibility act. There are only six states and the district...two territories in the District of Columbia that have not enacted some measure or some version of this bill. Nebraska, unfortunately, is one of them. So the first point from that handout is, this is not pioneering legislation, folks. This is something that's been battle-tested in state legislatures across the country, it's been found to be very useful in helping government be more responsive, less rigid, more efficient. The second fact sheet is a description from the SVA and it talks about why it is important for small businesses to actually have some consideration. The bottom line is cost. Small businesses pay a lot more per employee, which is the best way to judge their relative overhead to comply with regulatory burdens than do big business. Our jobs are created in small business, folks. If we really want to feed the golden goose, if we really want to attend to it and care for it, we have to be very careful that as we pass regulations and

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laws and we govern our state, we are especially sensitive to these small businesses. The burdens that they're carrying are really quite large, and this bill is designed to listen to their concerns and hopefully to reduce those burdens, at the same time, not sacrificing our commitment to things like a safe workplace or a clean water or clean air. But what it does is require bureaucrats, bureaucrats to listen to business people who might say: Yeah, I agree. We need that water cleaned, but I can do it for less with less money and get a better result if you'll look at it this way. That's what this law requires. It requires an open mind on the part of our bureaucrats. Now, there are obviously some folks that don't like it. As you get to the fiscal note, you can see their discontent and I want to talk about that because it's an important issue. I really believe as we advance this bill, if it goes to Select File and there's an A bill, we should kill the A bill and still pass the law. What we are asking our various agencies and the employees of those agencies to do is what they should be doing anyway. We are putting into law that fact that they should listen to the citizens to the second house, they should listen to the small businesses, they need to carry out the dictates of the law. But there are a lot of ways to Rome, many roads lead to Rome and we need to pick the most efficient, least burdensome, and least costly. Now, you will see a fiscal note of over half a million dollars for the Department of Revenue alone. We had a fiscal note that was larger and we made changes in the agency, in the committee amendments to reduce that substantially. I have to applaud the Department of Environmental Quality. They came up with concerns. They worked constructively with me, my staff, with the committee, and we made changes that I think took care of a lot of their problems with the bill. I will say this: In the end, it's something that's really just basic raw decision. We have bureaucrats saying this is too much trouble and too expensive for us to consider carefully how much trouble and expense and burden we're putting on businesses we regulate. You know, I came to this body, and I think most of you do from my knowledge of you, thinking I served the people. I never came with the impression I was going to serve our agencies or our bureaucrats. It is a hard job to be a service in an agency. I don't want to knock their job, but the idea that taking care of people and being responsive to business when they come up and say: I'm in trouble. I think this regulation will really hurt my business. Can't we do this a different way? The idea that that is too burdensome and too expensive I find deeply objectionable because it tells you now we're no longer servants of the public, we have the attitude we're the masters of the public and that is upside down. We may indeed have to, as we all do, sometimes make decisions that hurt people, that hurt business, but we have to do it for the common good. What I don't like is the idea enshrined in our bureaucracies that the people exist to be ruled, that the bureaucracies are entitled to make decisions without review, to make decisions without the humility of listening to the citizens they're governing, listening to the citizens who actually know their business better than any governmental agent could, and listen to them and embody what they have to say about the best method to have a civil, safe society, one that has a clean environment, good workplaces, all the things that we're concerned about, but one that does it not by ruling from on high, by seeking cooperation and discussion so that we can do it in the most efficient, most cooperative, most friendly

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method possible. And if we do that, we will be the most efficient, and that is what this bill is about. I really look forward to the debate. I thank you for your attention on this bill. I think it has a real opportunity to improve the quality of life for all Nebraskans. Thank you, Mr. President. [LB709]

SPEAKER FLOOD: Thank you, Senator White. There are committee amendments. Senator Lathrop, you're recognized to open on AM1824. [LB709]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good morning. AM1824 makes two changes to the green copy. It removes the Small Business Regulatory Board, and (2) the definition of rule or regulation is amended to correspond with the definition found in the Administrative Procedures Act. Both the amendment and the bill advanced with a 7:0 vote. I ask for your support of AM1824. And while I'm at the mike, I'm just going to make a brief comment about the bill itself. I think this is long overdue in the state of Nebraska. The reality is that small businesses create the jobs; they will be the engine that drives our recovery in this state; they're the ones that employ the people and pay the taxes that we use to run the state of Nebraska. It is important, it is important that state government be sensitive to the needs of small business, that we act in a way that accomplishes the state's purpose and at the same time is sensitive to the needs of small businesses so that we are not creating burdensome regulations that are ineffective, inefficient. I think Senator White's bill, while he calls it not earth-altering or earth-shaking or plowing new ground, the reality is, it's long overdue in this state. It is appropriate that the Business and Labor Committee put this bill out, which we've done. I think it's good for small business and I would encourage your support of both AM1824 and LB709. Thank you. [LB709]

SPEAKER FLOOD: Thank you, Senator Lathrop. Mr. Clerk, are there any additional amendments at this time? Seeing none, we now turn to debate on LB709 and AM1824. We begin with Senator Giese, followed by Senators Price, Gay, and White. Senator Giese, you are recognized. [LB709]

SENATOR GIESE: Thank you, Mr. President and members of the body. I rise in support of LB709, which is my priority bill. As Senator White has already pointed out, Nebraska's small businesses are struggling to deal with costs associated with government red tape. LB709 seeks to lessen the burden felt by small businesses by requiring state agencies to examine the economic impact of regulations on small businesses and consider less burdensome alternatives when possible. The bill also sets up judicial review of agency compliance with rule making procedures and requires period review of existing regulations to ensure that they are not excessive. Nebraska is just one of six states that has not implemented some form of regulatory flexibility either by statute or executive order. According to a 2005 study by the U.S. Small Business Administration, small businesses with fewer than 20 employees spend nearly \$1,400 more dollars per employee annually to comply with government regulation than

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businesses with more 500 employees. In 2006, the U.S. Census Bureau reported that small businesses accounted for 96.8 percent of Nebraska businesses and that 85.6 percent of Nebraska businesses had fewer than 20 employees. While LB709 will reduce the adverse impact of regulations on all small businesses, the bill will have a profound effect in Nebraska's rural communities where small businesses serve as the backbone of our local economies. Earlier this session, the Legislature choose not to advance Senator Dubas's LB297 which would have created a linked deposit program to assist beginning farmers and small businesses. While our current budget situation makes it virtually impossible to offer financial assistance to help Nebraska's small businesses recover from this recession, the least we can do is make sure that state agencies have to think twice before passing debilitating regulations that further crippling businesses struggling to keep their footing. LB709 will help small businesses throughout the state, ensuring that they do not bear the brunt of proposed rules and regulations. I would encourage the body to advance the bill to Select File. [LB709 LB297]

SPEAKER FLOOD: Thank you, Senator Giese. (Visitors introduced.) Continuing with discussion. Senator Price, you are recognized. [LB709]

SENATOR PRICE: Thank you, Mr. Speaker, members of the body. Again, welcome to another week at the legislative workroom. On this bill before us, LB709 and AM1824, I rise in support of what's trying to be done but I would challenge some of the numbers and the way they are presented to the body. First of all, we see that anybody at any time if they perceive that there's going to be an adverse effect to their business, they may, you know, challenge it. That probably be Section 3, page 3, line 3, and where you can also get a judicial review. Now, if you're in a small business world...and I have been fortunate enough to own a small business and work in them. When I say small, I mean really small. Well, and we definitely had less than 20 employees. And I would challenge some of these numbers. These numbers, again, are an average. I think that a small business that scoops ice cream versus one that's a machine shop, you're going have a whole different set of parameters. You have OSHA guidelines that are more of a burden on you because you're dealing with things that could remove fingers and eyes and cause grievous bodily harm. So I would ask the body to watch out and look at that. The other thing is that was a question for me, when I look at these facts...let's talk about numbers here. When we talk about the numbers there where we see a corporation over 500 people versus under 500, well, gosh, if you only have 20 people and you have to do the same costs and you have over 500, it does seem rather simple arithmetic that you would...you know, the cost burden would be different. So I'm not very sure what they're talking about what these numbers are attesting to. These numbers are just pulled out and I'm sure they're accurate for what they say they are, but I don't think they reflect that ten-person operation, maybe, that's doing a dairy operation or maybe those eight people who are a day-care facility. So I would caution the body to look at that. The fiscal note is rather a problem here and we'll have to see. And as Senator White said, we may have to not vote for that and vote for the bill. But I'll be interested in listening to the

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debate and the commentary that people have. But I'd also like to make sure that everybody understands, what they talk about here in the handout is the federal, federal guidelines. Well, I don't know how much affect we have on federal guidelines, but it would be an interesting thing to say that we can, as a state, say we're not going to adhere to federal guidelines or we're going to turn an eye or we're going to let a process be modified to accommodate a small business. I mean, with recent things here on the federal level, it is interesting to hear that now small business and the free market should drive things, and that government should get out of the way and not be making decisions for people. It is rather ironic that on this day we would have that being told to us for small business and other areas we have decided it's not that important. Thank you, Mr. President. I yield back my time. [LB709]

SPEAKER FLOOD: Thank you, Senator Price. Senator Gay, you are recognized. [LB709]

SENATOR GAY: Thank you, Mr. President. I do have questions, too, on the bill. I think that the concept, probably everybody supports that, the Small Business Regulatory Flexibility Act. Who could not like that? It's a good, good concept. My concern is a little bit, we are the ones as a Legislature who quite honestly goes out and creates some of these exact things we're talking about. So are we really going to say to ourselves, all these great ideas we have for small business, let's check the cost of what it is to the small business? What I've seen over the years has been we ask more and more of the small businesses, and now we're going to go say, well, what's the cost of it? To me it's a little late. I don't know how you go...I think that's something that we should do every time you introduce a bill, what's the cost of it, and I'm sure senators do that when they introduce the bill. The idea that now we pass another law to say that we're going to go and now fix all these burdens we've placed on small businesses sounds very good and I am supportive of that and I support what Senator White is trying to get at. I question on how this is going to work, though, as I see the fiscal note and I just started looking at the bill and I know we will have a good discussion on this. But I hope this isn't something...if we pass it, how does it really work though and how would it affect small businesses? So that's the point where we go in this discussion and I hope we have a good discussion on it that we can start addressing. With that, I'd like to ask Senator White a few questions. [LB709]

SPEAKER FLOOD: Senator White, will you answer a few questions from Senator Gay? [LB709]

SENATOR WHITE: Certainly. [LB709]

SENATOR GAY: Thank you, Senator White. Senator White, truly I think this is a good concept, it's something that we could all agree with. But just the other day, we were doing a contractor bill and I had questions on that about how we're going to...it's the

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1099s and some of those things, the concept is very good. That's going to cost people money to do. But where... [LB709]

SENATOR WHITE: You mean the misclassification bill? [LB709]

SENATOR GAY: Yeah, misclassification. [LB709]

SENATOR WHITE: Right. [LB709]

SENATOR GAY: But then if I go back probably, there's a lot of bills that we could say, well, we're asking them to do this, that, and the other thing. Every business is going to say: Hey, I don't want to do that. It's going to cost me money to do that. [LB709]

SENATOR WHITE: Um-hum. [LB709]

SENATOR GAY: I've got to now hire someone. But I guess how do you implement this idea is where I'm going to go? And like I say, I'm not...I want to hear the answer. [LB709]

SENATOR WHITE: Sure. [LB709]

SENATOR GAY: I'm not fighting you on this, but how does this actually work in reality? [LB709]

SENATOR WHITE: Well, first thing, Senator, I really appreciate your questions. They're good questions. The best thing I can tell you is 44 states have this and it's working. Okay. So the first and most important aspect is, this isn't the first time it's been done. It's been done successfully in all these states. This is modeled after the Small Business Administration's proposed bill, and that is an agency highly responsive and attuned to small businesses. And it is supported by the National Federation of Independent Business who I want to thank for their incredible help on this. So what I would tell you is, we can talk about our duty on our level when we're passing an overall law. And I know you and I both listen carefully to any business interest, any special interest says this is going to have a real impact on my ability to do business in this state. I take that into account on every vote. Well, what we do, remember, is we draw big outlines here. And then a lot of these laws get passed and they go to the agencies and they color in. And all this bill does is require that those agencies extend the same respect and courtesy that I know you do to anybody who might be hurt by a law or helped by a law in trying to judge the cost-benefit analysis. And what it allows small businesses to do, for example if we said for cattlemen, feedlot operators, we don't want more than X fecal matter...you know, you shall not put fecal matter in the rivers and streams and for a lot of good reasons, obviously. Nobody wants it in our steams, it causes all kinds of environmental problems. Well, an agency could write a law saying, okay, you've go to have this ditch...

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[LB709]

SPEAKER FLOOD: One minute. [LB709]

SENATOR WHITE: ...it's got to be lined with plastic, you've got to this, this, and this, and then you're okay, or they might instead say, okay, that's what we're going to do. But this would say, okay, cattlemen, we've got to get to this level where we're really eliminating fecal matter in our waterways. What are some effective ways? And the cattlemen may say, well, I live on a hillside, so my problem is different than the guy on the flatland. Why don't you just rather than say you have to do this and build this structure, say you can choose from structures but you're held responsible that there shall be no fecal matter coming in. We don't care how you get there, just get there. And that's an example that in environmental controls has become much more prevalent. Agencies have said less, "build this structure" and more, "solve the problem and if you can do it cheaper, you know, let us know and we'll share it with other people." [LB709]

SENATOR GAY: And our time is running out but I'm going to ask you other examples of how this would work. [LB709]

SPEAKER FLOOD: Time. [LB709]

SENATOR GAY: Thank you. [LB709]

SPEAKER FLOOD: Thank you, Senators. Senators White, you are next and recognized. [LB709]

SENATOR WHITE: I would like to continue the dialogue with Senator Gay if he wishes. [LB709]

SPEAKER FLOOD: Senator Gay, do you wish to continue? [LB709]

SENATOR GAY: Yes, thank you. Thank you, Senator White. Senator White, the idea you said something though that if enforcement of this act, though, if we would not fund it though, then what are we ultimately doing? Because on some of those matters, they're going to have to go say...I think it says a public hearing you have to take account. How do we enforce this? [LB709]

SENATOR WHITE: Well, first of all, we don't, the small businesses do. The small businesses are given rights under this act against the agencies. So if they don't...if they feel they've been ill-used in the regulatory process, they have a right to go to court to ask the regulatory agency to reconsider it. Okay. And second in terms of having hearings, we have to have them anyway. So you can't promulgate these kind of regulations under our system without a hearing anyway, so the hearings are there. I

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know Senator Price was concerned about the expense of notification. The notification expenses are overwhelmingly there and the hearing costs are there, but it just says that: Look, this is a regulation that we know affects a lot of small businesses. Hey, small businesses pay attention. We're going to...in this area, we're going to regulate on this. Come and sit down and talk to use. And all it requires is the agency to solicit their input, listen in good faith, and take it into account, but it doesn't say: Don't do the law, don't enforce the law. [LB709]

SENATOR GAY: At that point, though, if you have a grief with an agency and you can do that currently, how can we force an agency though? Ultimately then, okay, I have a grief on my feedlot...and we probably shouldn't use it for an example because I know nothing about that, but I have a grief. I don't like it. And the department says, tough luck. You know, it's a federal standard, blah, blah, blah. Where do you go though and what does this do? Where's my... [LB709]

SENATOR WHITE: Okay. Well, first of all, this doesn't apply to federal standards. That is... [LB709]

SENATOR GAY: Which is many. [LB709]

SENATOR WHITE: ...one of the things in the amendment because we have no ability to affect federal standards. Okay. But let's say I am a cattleman. Okay. And I say you right now have a specific fix to stop runoff into a creek along the side. In the way my ground lies, I can do it a lot cheaper a different way. Your regulation should allow me as a cattleman and any cattleman to find another way of complying with the law if it cost less money. So as a regulatory, then I would say is, you shall do this and you deemed compliant or if you have another method that you are sure will work and you want to put you money in that but it will reduce or eliminate the fecal contamination and you can do it for less money, have at it. We don't care how you get there so much as we care about the result. And so there are ways to regulate that allow business flexibility in how they go about complying with the law, and that's what I really want to encourage. I want our regulatory processes to work collaboratively with our businesses to get to the result we want and every business could be different a little. Now, if a businessman says, look, my grandpa put manure in that creek and I'm going to keep doing it, too, and I'm not going to do anything, he's done. There's no relief here at all. But if you've got an agency says, you're going to build a concrete dike and I don't care if you like it or not and I don't care if it makes sense here or I don't care if you could do it for a fifth of cost and reduce less pollution doing it, you got to put that concrete dike up. That's what this law is meant to get at. [LB709]

SENATOR GAY: Okay. At that point I find a better way to build a mousetrap or in this case, a containment system. How do I then go say, you know what? You're wrong, regulator from the state of Nebraska. Here's how I can do this. I can make it work. The

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guy still says, nope. Here's our...how does...where does he fix this? [LB709]

SENATOR WHITE: What happens then? [LB709]

SENATOR GAY: Yeah. [LB709]

SENATOR WHITE: So the...well, of course the regulators makes the decision and they write down, they say, no, we're not going to do it. And then if I and other cattlemen... [LB709]

SPEAKER FLOOD: One minute. [LB709]

SENATOR WHITE: ...say, look, this isn't reasonable. We want to have clean streams too. They can file a lawsuit in district court. The court goes back, takes a public hearing document that they're going to have anyway, reads what they had to say, reads the regulation giving deference to the regulators, says, you didn't even listen. These guys all gave you a way to get what the Legislature wanted, what the law's intent is for a fraction of the cost and you just didn't listen. That's not acceptable. Go back and do it again. And they ordered the agency to do it again. Now, the beauty of this is, the agency is not going to want that. They're going to listen and it tells them you better listen, otherwise you could end up in court having your work reviewed. [LB709]

SENATOR GAY: Don't they have that right, right now to go to court and say it? [LB709]

SENATOR WHITE: Not under this basis. They do not have a right to say... [LB709]

SENATOR GAY: Not under the current law. [LB709]

SENATOR WHITE: No, the court will not give you the right, right now as, let's say, a cattlemen. [LB709]

SPEAKER FLOOD: Time, Senators. Thank you, Senators. We now continue with discussion. Senator Sullivan, you're recognized. Senator Sullivan is followed by Senators Hansen, Gay, Utter, White, Hadley, and Wallman. Senator Sullivan. [LB709]

SENATOR SULLIVAN: Thank you, Mr. Speaker. As a small business owner, I fully recognized...well, first of all, I stand in support of LB709 and the accompanying amendment. As a small business owner myself, I'm fully aware of the regulatory burden, and it's heavy,... [LB709]

SPEAKER FLOOD: (Gavel) [LB709]

SENATOR SULLIVAN: ...especially for small businesses. And quite frankly at the end of

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the day, meeting all those regulatory stipulations, it does nothing for your bottom line. And oftentimes those regulations are applied across the board irrespective of your size. And at times we feel quite frankly that the small business is paying for the sins of the larger businesses and yet have to meet that regulation in the same fashion. That being said, I see Senator Lathrop up there, so maybe I'll defer my questions to Senator White if he would yield. And he's not there either. (Laugh) [LB709]

SPEAKER FLOOD: Senator White, will you yield to a question from Senator Sullivan? [LB709]

SENATOR WHITE: I will. [LB709]

SENATOR SULLIVAN: Okay. Thank you, Senator. Since Senator Lathrop isn't at the mike, do you know, now, as the amendment stands right now, the review board would be stricken, is that correct? [LB709]

SENATOR WHITE: Correct, correct. [LB709]

SENATOR SULLIVAN: And why was that done? [LB709]

SENATOR WHITE: Well, because it was unduly cumbersome, it became an issue as to whether or not the Legislature started, as we looked at it, crossing the line from being the Legislature into the executive branch. In other words, you know, we've got that line where we get to legislate but they get to execute, and whether or not the question of that review board in that situation was crossing the line, also cost. [LB709]

SENATOR SULLIVAN: Tell me a little bit more too. You gave the example of a cattle producer working in this situation, but I know that this is...as I said, being a small business owner myself on the main street of a community, can you talk a little bit about how this would play out with a small business that might employ...maybe be in...well, another profession? Can you give me some examples on that? [LB709]

SENATOR WHITE: Oh, sure, I'll try. Let's take an example of the small...well, let's take the contractor, misclassification bill. All right. That has to be implemented. All right. And you have to now classify your workers appropriately or else. They're going to set regulations on that. If, for example, they said you must set the...you must tell us what their employee is one month before you hire them, you know, or the start date, and you have to have this in and you have to have these reports, and it's very expensive to do that. And the small businessman or woman could go: Look, I already have to do quarterly tax reports. Can I incorporate this as part of the quarterly tax reports? It will cut down a lot of headache and paperwork for me to make it as part of that report. And then let's say if it's Department of Revenue is enforcing that says: No, we just want separate reports. Well, why? Because we just want them. Well, at that point the small businesses

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could say, why on earth are you doing that? You know, I mean, I'm sorry it's convenient for you as a bureaucrat, but this law says you're supposed to take into account the burden you're putting on me and my reporting requirements on when these people were hired and what their classification is, and this makes much more sense for me, my accountant to do it in this situation. It just simply requires that they listen to you as a businessperson on the record, that they take that into account. And if they don't follow some general effort to accommodate you in a reasonable manner by still upholding the basis of the law, then you and other small business owners could band together, file a lawsuit, and say to the court: We could have saved a lot of money and it wouldn't have hurt the law one bit and they wouldn't even listen to us. So hopefully...I was talking to Senator Hansen before I was called to the mike, he said, you know, the ag is very good and responsive, I think as I understand what he had said. [LB709]

SPEAKER FLOOD: One minute. [LB709]

SENATOR WHITE: And that's great. That's what we should be. But in those cases when we're not, you know, our agents, our bureaucrats are not, this law gives protection. [LB709]

SENATOR SULLIVAN: Well, the concept is good. It's actually common sense to me that those who are going to be regulated would have a seat at the table in terms of having some input of how those regulations play out. And I would hope that in the whole scenario that there would be a good-faith effort so that some decisions and changes would be made before it would end up in the courts. So with that in mind, I, again, offer my support for this legislation. Thank you. [LB709]

SPEAKER FLOOD: Thank you, Senator Sullivan. Senator Hansen, you are recognized. [LB709]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. Would Senator White yield for a couple of questions? [LB709]

SPEAKER FLOOD: Senator White, will you yield to a question or two from Senator Hansen? [LB709]

SENATOR WHITE: Certainly. [LB709]

SENATOR HANSEN: Senator White, I know we were talking back here before your call to the mike before. I just have a few basic questions. I read in the bill and wanted to actually explain what a small business was. And then your handout said that small businesses amount to about 93 percent of state's businesses and that they are independently owned. Are they also able to be family corporations? [LB709]

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SENATOR WHITE: I'm sorry, I couldn't hear that, Senator. [LB709]

SENATOR HANSEN: Are they also considered...would family corporations be small business? [LB709]

SENATOR WHITE: Depending on number of employees, yes. [LB709]

SENATOR HANSEN: Okay. And just on employees, partnership is the same answer then? [LB709]

SENATOR WHITE: Yes, absolutely. [LB709]

SENATOR HANSEN: Okay. [LB709]

SENATOR WHITE: I mean, the intent of this bill...and if there's a hole in it, Senator, we'll fix it, the intent of this bill is to get any business entity or enterprise that has a small number of employees under the coverage. [LB709]

SENATOR HANSEN: Okay. I know you've made some remarks in the past about large businesses and I'll explain one business and it should fall under your umbrella of the small business. We have a feedlot in North Platte that feeds between 85,000 and 90,000 head of cattle. I have no idea how much their yearly income is or their income, but it's larger than most rural banks, their income and outgo of those, but they have way less than 500 employees. They probably have more like 30 employees, very efficient small business. And I think that's the backbone of our business in Nebraska. The director of DEQ testified in the committee as an opponent in this and Mike Linder and also Ann Frohman with the Department of Insurance. And then when I look on the fiscal note, the DEQ lists quite a sizeable fee increase, and did he give you any idea why that would be high, especially in the Department of Environmental Quality? [LB709]

SENATOR WHITE: Yeah, and we believe we took care of most of that complaint with the amendment, at least that's my understanding, Senator, and I'll be interested in working and moving it forward if we haven't. One of their concerns was they issue these guidelines for compliance. Their advisory is on, okay, how could you comply with this water law, this dust deal, and they were afraid they'd have to review everyone of those and rewrite it. And we made it clear in the amendment they don't. That's not a regulation. That's a letter from the agency telling people: Look, this is how we see the regulation, this is what you can do to make sure you're not running afoul of it. So they don't have to review all of those, and that was a big part of their objection. What this does then is allows us to focus on new regulations, on old regulations that would require they be reviewed every five years but actually ten years because each agency can postpone it up to four more. So that's what's going on I think primarily with DEQ. They were really helpful and worked well with us and, you know, that helped the bill get

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better. [LB709]

SENATOR HANSEN: Okay. I just want to let you know and the rest of the body that DEQ works very closely with agriculture now, animal agriculture. They inspect any herd more than 300 head. I think they may even inspect less than that. You have to ask for an inspection. They come out and inspect, and then you pay them a fee. But when we have an accident, if there is a spill into the waters of this state...and this goes back not to DEQ on a state level but it goes back to EPA. And EPA sets those guidelines; DEQ has to follow those guidelines. And now we have clean water, clean air, and the next thing coming down the pike is dust. And this is dust from a feedlot, this is dust from a county. [LB709]

SPEAKER FLOOD: One minute. [LB709]

SENATOR HANSEN: ...county road. It doesn't matter where the dust comes from, from a combine, combining corn. They want to regulate all those small particles of anything that reaches the air or the water, so. But DEQ in the past in Nebraska has been fairly easy to work with, but if you make a mistake, if you do anything by accident or/and especially if you do something purposefully, they will come after you and they'll come after you hard. The only recourse you have is to go back to court. Their fines normally, if it's an accident or not, they start at \$25,000 a day fine and you have to go to court to get any restitution, so. Thank you, Senator White. Thank you, Mr. President. [LB709]

SPEAKER FLOOD: Thank you, Senator Hansen. Senator Gay, you are recognized. [LB709]

SENATOR GAY: Thank you, Mr. President. I'd like to ask Senator White a few questions. [LB709]

SPEAKER FLOOD: Senator White, will you yield to a question from Senator Gay? [LB709]

SENATOR WHITE: Oh, yes, I will. [LB709]

SENATOR GAY: Thank you, Senator White. Senator White, you talked about all the other states have this. I'm at the point here, the paperwork reduction act was a good example of the federal government was going to save us all and have to do less paperwork. I've never seen...and I don't know if anybody else has some good examples of where that worked. We do things not so much on paper anymore but through our PCs, but we still have more regulations to follow. It just happens to be on the PC now and we have them sign more paperwork in the financial business. Okay. But I guess on this is, is I'm still looking for on these other states that have this, how have they then taken because I'm still to the point now, the judicial review process, I have to go all to

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the point, and most small businesses at this point don't want to go. You're an attorney, but most of them are saying, I don't want to get a lawyer, I'm just going to do this. Judicial review, will this nullify the agency's ability to enforce anything? And then won't it just get...where does the small business really get the benefit here because now I got to go hire an attorney which is now going to cost me more to go fight something? I don't know. I'm trying to...can you expand on that? Where's this... [LB709]

SENATOR WHITE: Yeah, absolutely, Senator. First thing I'd say is the judicial review is like having a police officer down the street with a radar gun. Okay. You don't actually need to be pulled over, given a ticket, and hauled into court to modify your behavior. The fact that he's down there with the radar gun encourages everybody to hold their speed down and drive more responsibly. So a large part of the judicial review is there, Senator, not because you're going to have to challenge every one. I doubt that you do. You won't, you just won't. But it's there like the police officer at the bottom of the hill with a radar gun to warn agencies: don't think you're immune, don't be arrogant. If you really do something bad, people can take you in, you can have your work reviewed in a court which isn't good for anybody, and you got to defend it, and the court may say you didn't treat people appropriately under the law. That will prohibit 99 percent of what we're talking about. Second is, the small business that actually goes to court doesn't have to do it alone. You know, if for example...and by the way, I wanted to point out, Senator Hansen, I used the feedlots because I'm not picking on an agency with a history of problems, just the opposite. That's an agency that has been exemplary in working with industry to make it work well, so that way it took the emotion out of it. This shouldn't be aimed at any one agency. But what happens is the Independent Cattlemen or the Cattlemen's Association or Farm Bureau or the Farmers Union or all of them together could join together and bring the lawsuit on behalf of their various members. [LB709]

SENATOR GAY: Okay. Well, that's a good example. We'll change the subject matter then to financial services industry because I do see Director Frohman was opposed to this in the Department of Insurance. And so NAFA, what you're saying is Nebraska or the National Association of Insurance and Financial Advisors could get together at their meeting and say, you know what? That new state regulation, not federal, that new state regulation is a bunch of bunk. Let's get together and go protest this as group instead of individually. That's where you're saying the enforcement... [LB709]

SENATOR WHITE: No, actually largely not because those are not going to be people who meet the qualifications of a small business. [LB709]

SENATOR GAY: Well, I know... [LB709]

SENATOR WHITE: You know, most of the big companies, let's say if you're selling City Group and they don't like this regulation and they're selling an investment, first of all, it's federally regulated so we can't do anything on federally regulated stuff. Second, the

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impact has to fall on a small business group. And if you're talking about big insurance policies, things like that and they don't like the regulation of the... [LB709]

SPEAKER FLOOD: One minute. [LB709]

SENATOR WHITE: ...insurance policy, you wouldn't even come into the scope of this act. [LB709]

SENATOR GAY: Have any say...insurance is state regulated and there's insurance policies they can sell, there's other things. [LB709]

SENATOR WHITE: Right. [LB709]

SENATOR GAY: What I'm saying, many small groups, one-, two-, five-member financial advisors get together and now it's a state regulation or something like that. It's mainly federal, I agree. Is Section 5, and I got my light hit again... [LB709]

SENATOR WHITE: Senator, I'm having trouble hearing you. [LB709]

SENATOR GAY: Is Section 4 on the green copy still in effect here where it says: the establishment of less stringent compliance or reporting requirements, less stringent schedules or deadlines for compliance, and the simplification of compliance or reporting requirements, is all that in there still? [LB709]

SENATOR WHITE: Yes, yes, and that is in there. And that is where examples of...for example, you've got a small four-person business group, right, and the agency says you shall report weekly. And they say, look, that's killing us, can't we make it monthly? It does... [LB709]

SPEAKER FLOOD: Time, Senators. [LB709]

SENATOR GAY: New chapter. [LB709]

SPEAKER FLOOD: Thank you, gentlemen. Senator Utter, you are recognized, followed by Senators White, Hadley, Wallman, Carlson, and Gay. Senator Utter. [LB709]

SENATOR UTTER: Thank you very much, Mr. President. Good morning, colleagues. I'm wondering if Senator White would yield to a question or two. [LB709]

SPEAKER FLOOD: Senator White, will you yield to a question from Senator Utter? [LB709]

SENATOR WHITE: I'd be pleased. [LB709]

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SENATOR UTTER: Thank you, Senator White. First, let me just state that... [LB709]

SPEAKER FLOOD: (Gavel) [LB709]

SENATOR UTTER: ...that feel like every business, big or small, should be able to operate without unnecessary impediments put in place by our government, no question about that. And certainly what we're targeting in this particularly piece of legislation small business, being against that would be like being against motherhood and apple pie and I would definitely agree with that. Senator White, I have some real concerns about the fiscal note. [LB709]

SPEAKER FLOOD: (Gavel) [LB709]

SENATOR UTTER: And particularly in view of the situation that we're faced with right now and with the situation that we're going to be faced with next year or it appears like we're going to be faced with next year, a fiscal note that approaches a million dollars in total each year attracts my attention. And I'm wondering if you can address the fiscal note for me, please. [LB709]

SENATOR WHITE: Yes, absolutely, Senator Utter, and thank you for those questions. The first thing I would point out is I have serious issues with this fiscal note and the actual cost. If we are telling these agencies you must initiate public hearings, you must do this, then I could see the cost of that fiscal note being that or higher, but we're not doing that. What we are saying to them is, in the course of your public hearings, you must take this into consideration. That's one point. So I often feel, and I think all senators do, that whenever we put out a bill, the bureaucracy says: Well, if they don't like it or it's more burdensome, it's just going to cost too much in step by fiscal note. That's one point. So I have serious issues about it. But second and more importantly I would say this to you, Senator Utter. If it costs a million dollars for this state to take into account the burden and the cost and whether they can put less burden or cost on our small businesses, get to the result the same way but do it in a more efficient, less burdensome way, what's that save us in terms of the economy? What kind of prosperity are we going to have? What kind of taxes are we going to generate? See, to me the idea that it's too expensive to think about the cost and expense and heartache and just discouragement of starting your own business that regulation can have, that it's too expensive for us to consider that is just objectionable, this comes to a real fundamental where are you at in the bottom line of what role government plays in the public life. Does government get to tell you how it's going to be or does government have to work with you to get to a better future cooperatively? And all this bill tells and warns every agency, you better work in good faith cooperatively. These people running these businesses are good people, they're honorable people, they've got troubles, and you need to listen to their troubles and try to find a good way to have clean air, to have safe

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workplaces, to have honest accounting on employees, to get your taxes filed in a reasonable place at a reasonable expense. And that's all it's really doing, Senator. It's telling our agencies and our bureaucracies, you better listen, you must listen. And on the small businesses, I realize what you're saying and I agree with it, but I can tell you they're more... [LB709]

SPEAKER FLOOD: One minute. [LB709]

SENATOR WHITE: ...more vulnerable. They are just more vulnerable to being driven out of business by abusive regulation than a bigger business that has more resources to fight it. [LB709]

SENATOR UTTER: Well, I think we're just about out of time, but I still think that we have to pursue the actual real cost of this bill. Not saying that this is not good legislation and not saying that this isn't something that needs to be considered, but it could be our lack of revenues and the fact that we're cutting state agencies may make it difficult to consider right now. Thank you, Mr. President. [LB709]

SPEAKER FLOOD: Thank you, Senator Utter. Senator White, you are recognized. [LB709]

SENATOR WHITE: Thank you, Mr. President and I'd like to follow up on what Senator Utter had just said. I understand your concern, Senator Utter, I really do. But I would tell you this: Absolutely the first thing that we have an obligation to consider without regard to cost is whether we're being responsive and cooperative with small business because we're not going to find our way out of this fiscal hole just by avoiding any costs. The question ought to be: Are these costs (1) real, which I doubt. I don't think they're as significant as they say, but if they are, do we generate more tax revenue from a happy, contented, successful, small business environment than we cost, than it costs us? But if nothing else, I would tell you, Senator, the concept that every bureaucrat is a public servant, that every issue must be looked at from the citizen who is ultimate authority. Now, citizens have to give so we can have a better common good, but we need always to work hard to make it as easy as possible to comply with the law. The consent of the governed, which is what our whole democracy is built on. We govern with the consent of the citizens is implicit in this bill. Do we mean that? Do we mean that when you walk into a bureaucrat's office and you talk about the problem your business is having and you say, is there a better way we can do this so I can prosper? Do we enshrine that saying to that bureaucrat, you better listen, you better listen because that is the ultimate authority in here? And while we may not be able to satisfy them and while we may have to take them something they want and not give it to them or we may have to order them to do something they don't want to do, we are going to do it with humility and caution and care. That's the essence of government in my view, good government. The worst is the idea that a bureaucrat can just issue a rule and be like, huh, good luck, go fight it.

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That is the worst climate we can have. So even if this has expense, Senator, this is a bottom-line, rock-bottom principle deal. Government answers to the people or does government rule the people? And for me, there's no question. I don't care what it costs. I want our government to be cooperative to recognize its proper role in society. We are not a dictatorship. We are not some kind of abusive bunch of super-educated bureaucrats who know better than our citizens. We are here to try to figure out a path together to a safer, healthier, more prosperous future. And if that means that some bureaucrats, if they cross the line, get pulled into court and have to eat their work and go back and redo it, I think that's altogether healthy. And while I don't like the expense and I think in many cases it's not going to be that expensive because as the Department of Environmental Quality, according to Senator Hansen who would know because he owns a feedlot, the DEQ is already doing this, then this isn't going to bother them one bit. But if we have those cases where some agency isn't responding this way, this is what we need to make sure that they abide by the first principle of Nebraskans. The government exists to serve the people not the opposite. Thank you, Mr. President. [LB709]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Thank you, Senator White. (Visitors introduced.) Continuing with discussion on AM1824 offered to LB709. Those wishing to speak, we have Senator Hadley, Wallman, Carlson, Gay, Mello, Nelson, and others. Senator Hadley, you're recognized. [LB709]

SENATOR HADLEY: Thank you, Mr. President, members of the body. I would like to follow up a little on what Senator Utter was talking about. The agencies have come up and there's approximately a million dollar General Fund expenditure they estimate in each of the next two years. And I guess I just have a concern because we've sat and when we're done with the budget, we'll have cut the state agencies about 10 percent right now and we turn around and give them this regulation. We're talking about not passing the A bill, so there would be no money involved in this. Would Senator White yield to a question? [LB709]

SENATOR LANGEMEIER: Senator White, would you yield? [LB709]

SENATOR WHITE: Oh, absolutely. [LB709]

SENATOR HADLEY: Senator White, I think this is a very good concept and I understand it, but are we effectively giving an unfunded mandate to our own administrative branch of government if we pass this and do not pass the A bill? [LB709]

SENATOR WHITE: Oh, it's a mandate. It's a mandate, Senator, that says, treat citizens and small businesses with respect. Accomplish the ends of the bill, but listen, let them

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know and listen to what they have to say to see if you can get there on a less expensive, less burdensome manner. That's all we're saying. They already have to have the hearing, Senator. You know, it's like saying it's more expensive to think about new information. [LB709]

SENATOR HADLEY: But basically what they're... [LB709]

SENATOR WHITE: The most expensive thing is to not think. [LB709]

SENATOR HADLEY: But basically what they're tell us, though, there's about a million dollars that they think it's going to cost them and I guess it's just a concern to me that we're saying this is the mandate, we want you to do it, and we want you basically to take it out of your hide the same way the federal government is doing to the state and the times the state does it to cities. [LB709]

SENATOR WHITE: Well, that...that... [LB709]

SENATOR HADLEY: So I'm not talking about the underlying bill. I think it has a lot of...it's appropriate and it's something we need to look at, but I'm just concerned that we're not funding them to do it correctly. [LB709]

SENATOR WHITE: Let me talk about that, Senator. First of all, I would tell you that if what we are saying to these folks is in the course of your hearing, please carefully notify and listen to small businesses, I don't see where there's any additional expense, I really don't. If you can identify for me exactly where there's more expense in listening to small businesses, and then taking their complaints and concerns and ideas into account when you write your regulation. What we're saying is, they're saying, well, that's harder than I have to do now. Now I just get to write the regulation, I don't have to listen to them. Well, I would tell you right now, they're not doing their job. And as far as whether it's workable or timely, 44 states have this, Senator, 44. If we're in competition--and we are--with those states for a good business climate to get that work here, to get that prosperity here, to have the tax revenues. [LB709]

SENATOR HADLEY: Well, I guess... [LB709]

SENATOR WHITE: ...be known for a friendly, workable bunch of bureaucrats will do more for us than a tax cut. [LB709]

SENATOR HADLEY: Well, I'm just concerned and I understand the bill and I support the underlying concept. My only concern is the fiscal note. Thank you, Mr. President. [LB709]

SENATOR LANGEMEIER: Thank you, Senator Hadley. (Visitors introduced.)

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Continuing discussion on AM1824. Senator Wallman, you're recognized. [LB709]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I, too, like this legislation. Senator White, a friend of mine, he decided to go to a different state because of rules and regulations and this wasn't about DEQ, it was other things. So bureaucrats, if you're appointed, we don't always listen to the people. We should be servants of the people whether we're senators or work in DEQ or wherever we work. And air quality, all these things, some small businesses started in my area, it was a nightmare for all the paperwork for them to get going. And so if we can make this any more friendly, just a little bit, that's what we should do. So I support this amendment plus the bill and I'd yield the rest of my time to Senator White. [LB709]

SENATOR LANGEMEIER: Senator White, 4 minutes 10 seconds from Senator Wallman. [LB709]

SENATOR WHITE: Thank you so much, Senator, and thank you for your support on this bill. Let me tell you, you have no idea...well, actually you probably do. Talk to small businesses and ask them about horror stories of how hard it is not just to compete in the market, but to cope with the different bureaucracies and level of government. I mean, you have to deal with the city, the county, the state, various state agencies, perhaps you have to deal with the federal government on a lot of issues as well. And all this bill does is says to our bureaucrats, be sensitive, listen. If you can do it cheaper, if you can get it done for less, then you are obligated under law to do that. That's all it is. It is simple, good policy. Now, the problem is in an operation as large as this state even though the vast majority of our employees are good at their jobs and are well-meaning and well-intended, you will always have few who regularly or just in an isolated incident will make decisions in a way that isn't in the best interests of the state or the people they're intended to regulate. It happens. This law simple says, that's not acceptable. And I understand concerns about cost, I really do. But I have to tell you what is not acceptable is the hundreds of millions of dollars in cost in this state caused by regulation, billions, much of which could be lessened and the burden could be lessened, not hurting the public safety, not hurting the public good one jot or one iota. So much of effective government is being willing to sit down, listen to what the person who's being affected has to say, understand what that person's concerns are, see if you can accommodate their concerns and still advance the public good that you need to advance. If we do that in a cooperative atmosphere, we have a very successful government. Every time we don't do that, we fail and our failures often are a broadcast far more broadly and heard far more readily than our successes. A businessperson who comes to Nebraska and finds an intransigent bureaucracy that doesn't care about his or her problems is likely to look for greener pastures. And, you know, 44 states, 44 states are making it work right now and there are going to be greener pastures, and that is not what Nebraska is about. And the beauty of this bill, I think, in many areas we're already doing it informally. But when we don't, we need... [LB709]

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SENATOR LANGEMEIER: One minute. [LB709]

SENATOR WHITE: ...to give a legal remedy to the people who have been aggrieved so that they can right the wrong, so they can know that in Nebraska if you're abused by a bureaucrat, you have a remedy. Now, it's not one you're going to want to take usually, as Senator Gay says, because it's expensive. But if it's bad, you and your fellow businesspeople, you can take that on and then you can turn back to what business should really be about--competing in the marketplace and creating wealth that is reasonably devoted to helping all people live a better life. And that's what we really want. So when you worry about the cost, ask yourself one question: What is the cost to our business community if we don't do this? That's the unspoken fiscal note and I will tell you it is hundreds of times higher than the fiscal note on the paper in front of you. Thank you, Mr. President. [LB709]

SENATOR LANGEMEIER: Thank you, Senator White and Senator Louden (sic). Those still wishing to speak, we have Senator Carlson, Gay, Mello, Nelson, Price, and others. Senator Carlson, you're recognized. [LB709]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. Listening to Senator White, to you, this morning, I appreciate some of the things that you have said and certainly it comes home to me that government is supposed to be responsive not oppressive, not dictatorial, and those are good words. I think many of us would say that this weekend, we witnessed one of the biggest violations of that, perhaps in the history of the United States Government. We got something shoved down our throats that most of us don't want and I think there's abuse through what will be the increased cost of what was done this weekend. Now, Senator White, I got that in but I would like to address a question to you if you would yield. [LB709]

SENATOR LANGEMEIER: Senator White, would you yield? [LB709]

SENATOR WHITE: Certainly. [LB709]

SENATOR CARLSON: Senator White, we're talking about small business here and on page 2, at the bottom of page 2, starting in line 24, goes into page 3, "Small business means a business entity, including its affiliates, that is independently owned and operated and employs fewer than 500 full-time employees or." Okay. Now, I didn't see "or," so that probably answer..."has gross annual sales of less than \$6 million." And you've talked a little bit about agriculture this morning. But I did a little penciling and I think a feedlot that might have 3,000 head of cattle in it, turned it over three times during a year is going to have gross sales in the area of \$9 million and probably two or three employees. So the "or" in there would still classify them as a small business, would that be correct? [LB709]

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SENATOR WHITE: No, it would de-qualify them. I mean... [LB709]

SENATOR CARLSON: Well, this said... [LB709]

SENATOR WHITE: Well, yeah, it would be "or." It's in the disjunctive--I'm sorry--not the conjunctive. Yes, it still qualifies them because they have fewer than 500 employees and then they're independently owned and operated. Now, if for example Cargill owned a feedlot, that would not qualify. [LB709]

SENATOR CARLSON: No, no, I understand. [LB709]

SENATOR WHITE: But if it was your neighbor that did and he had 400 employees and he had sales of \$100 million, he would still be a small business for the purposes of this act. [LB709]

SENATOR CARLSON: So in defining it as... [LB709]

SENATOR WHITE: Oh, I'm sorry, it's under 20 employees. [LB709]

SENATOR CARLSON: Was that with the amendment? On page 2... [LB709]

SENATOR WHITE: Oh, no. I'm sorry. It's 500, you're correct. I'm sorry. [LB709]

SENATOR CARLSON: Okay, 500 which would include the vast majority of businesses in the state of Nebraska. There would be some exceptions like you're talking about that have entities elsewhere, and your bill is meant to be of help to those businesses. And so there can be still a fairly high degree of annual sales and still a business can qualify under your bill. I thought I was going to have you explain it a little bit further but I think that clarifies it. Thank you. Thank you, Mr. President. [LB709]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Gay, you're recognized. [LB709]

SENATOR GAY: Thank you, Mr. President. I was glad that the amendment removed the Small Business Regulatory Review Board. To me, I think small business people have more to do than be on another board and review this. As I listen to this, I mean, 49 senators in here of course are for small business. I'm sure it was on everyone's campaign materials, whatever, so everyone is for that. The fact is I think what we're doing is just replacing a feel-good law. This is something we should be doing. If a small business has a complaint, they come to a state senator, the senator calls the board or whatever it is, if it's Ag Board or a financial board or whatever and you interact. What I'm a little concerned with on this green copy, if we're having the departments then go look

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at agencies and after...on page 5 if this is still in the bill: Not later than four years after the effective date, each agency shall review all rules and regulations, make a recommendation whether it's needed or not. That is the Legislature's prerogative, not a board's. And then down further in Section 2: Rules and regulations, effective date of this act shall be reviewed within five years after the final publication. A lot of these are done by the Legislature many times, and the departments can't even enforce what we have in law now. So many times when I hear complaints on Health and Human Services or whatever the case may be, it's because they haven't even done what we told them to do. So the Legislature is the one who decides what should be law or what should not be law. It's up to you and this body to decide to bring a bill that has new regulations or whatever the case may be. In my four years, I haven't brought one bill that requires new regulations as far as I know. And many of you, you know, look at yourselves a little bit before we do this. I think this is an unnecessary bill the more I hear. I still don't hear where it's going to be enforced and where a true small business owner can come and say: Hey, I've got a problem, make it go away. Big department in the state that I know nothing about, make this go away. It doesn't happen that way. Legislators help fix things, that's why you're elected to do this. So in fairness to Senator White, though, I'm going to ask him one question, and then I'm going to yield him the balance of my time. Senator White, in the other 40-some states, give me a concrete example of where this is working and how it works? [LB709]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Senator White, will you yield to a question from Senator Gay? [LB709]

SENATOR WHITE: Yeah. I would say to you, Senator, it's working in all those states in varying degrees. The Small Business Administration fully supports, said this is what we need to produce and improve business climate. The National Federation of Independent Business fully support this bill because they're aware it works in other areas. You know, it's like ask me, Senator, okay, where does cancer prevention work, show me one case. Well, you don't have cancer prevention. I mean, it's kind of like trying to pick out the whole universe working across the country. But what I would tell you is, Senator, that with regard to it being a feel-good bill, no, it's an act-good bill. Telling our bureaucrats, act good. And I don't know of your experience, but I have called agency after agency not even being able to get basic information much less get them to change their course. I think if a senator was able to do that, Beatrice homes would not have occurred the way it occurred. We would not have lost \$25 million a year in federal money. People would have picked up the call and I know senators did. Sometimes agencies just don't listen and it's worse with term limits. Now, nobody is going to stop a senator or a constituent from calling a senator and saying: Look, I'm having a horrible problem with the Department of Revenue; they're insisting on this. I don't get it. Can you call them? Well, of course. Nobody is going to...nothing in this stops that. What this says, though, is if we

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try that course and we can't get this agency to even be polite enough to listen and consider... [LB709]

SPEAKER FLOOD: One minute. [LB709]

SENATOR WHITE: ...what we say, then we'll get a court to make them. And that's not feel good. And in terms of the number of the regulations, we can work on that if it's too fast, but I would tell you right now, one of the biggest problems we have, we don't pass regulations in this body ever. We don't regulate. Those are only agencies that regulate. We need to institute as an institutional principle, review old laws, review old regulations and see if they make any sense. It absolutely needs to happen. I mean, my good friend Senator Carlson and I had quite the waltz over who had to pay for removing vegetation from rivers because of an old law that probably didn't make sense in light of environmental concerns. But this tells those agencies, look, things change. There's a new method of controlling air pollution. It's a lot cheaper but you're still saying... [LB709]

SPEAKER FLOOD: Time, Senators. [LB709]

SENATOR WHITE: ...we have to use the old one. [LB709]

SPEAKER FLOOD: And, Senator Gay, that was your third time. Senator Mello, you are recognized. [LB709]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. I also rise in support of AM1824 and LB709. And in part the main reason why I support this bill is just the general common sense that comes with what LB709 is intended to do. In checking some of my facts here a little bit, it's come to my attention in talking with the Fiscal Office is that currently right now in statute there is no requirement for state agencies to review rules and regulations after they've already been signed by the agency and the Governor. So rules and regulations that might have been signed into law 40 years ago under no statutory requirement is required to be reviewed. That in itself should show us that we need to take some of the authority that's been given to the Legislature and review what is happening in our state government. I know my friend and colleague Senator Utter has reiterated multiple times over the last two years of the need to start to review every aspect of our state government. LB709 does that and it does it from a small business perspective. Now, in that same vein, it's my understanding that rules and regulations are reviewed when there is a statute change that would effect those rules and regulations. So in that same vein as what I just stated, some rules and regulations are reviewed, but they're only reviewed if there's a statutory change made by the Legislature. I think what Senator White is looking to accomplish in LB709 is something that we have to address this year because the fact of the matter is this: There will be new rules and regulations that will be promulgated by the passage of new laws that we are currently debating in this Legislature. If we do nothing on LB709, there is no small

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business perspective placed on these new rules and regulations, thus, it is business as usual in our state government. Now, that is something that I would propose to the body to look at on Select File of looking to see if there's a way to make this work with the concerns of a fiscal note. First off, I don't believe that the complete fiscal note is accurate because I generally share the belief that state agencies should already be doing this through the rules and regulations process. Now, I think there's a compromise that should be available to the body to consider which is maybe we look to do LB709, possibly, with new rules and regulations that come through so that it's not a burden for all state agencies to review all rules and regulations through a small business lens. Maybe we have them do it through new rules and regulations in the immediate, then possibly ask state agencies over a period of time as new rules and regulations are continually looked at with the passage of new laws in statute changes that they start to impact past rules and regulations. [LB709]

SPEAKER FLOOD: (Gavel) [LB709]

SENATOR MELLO: So over a period of time, we will get the desired effect of what LB709 does which is changing our rules and regulations to ensure that they take into account small business perspective in regards to the adverse economic impact that some rules and regulations have. I think that is a very common-sense perspective to take on what some members of the body are raising in regards to a fiscal note of an undue burden on state agencies to review their rules and regulations. There's a way to do this without a fiscal note. And I think Senator White and I think supporters of this bill understand and appreciate the fact that we need to do something on this issue. If that's something we have to look at on Select File, I'm more than... [LB709]

SPEAKER FLOOD: One minute. [LB709]

SENATOR MELLO: ...willing to sit down and work with anyone who wants to work on this possible compromise. I think the main point, though, is where Senator White is trying to lead us of reviewing our rules and regulations, it needs to be done. I just think that with the people who have concerns about the fiscal note, let's take a step back and see if there's a way to make this happen without a fiscal note because I do also agree that agencies, various state agencies throw numbers out when they don't want to do something. It happens in the Appropriations Committee all of the time. My good friend and colleague Senator Heidemann knows this is an issue I deal with on a daily basis. Agencies come in, they don't want to do something so they throw a fiscal note up to try to kill the issue in committee or try and kill an issue before it hits the floor. That's what happens, that's what happens in our democracy. It's what happens in our state government. It's imperative of the Legislature to use our legislative priority...prerogative, I'm sorry... [LB709]

SPEAKER FLOOD: Time, Senator. [LB709]

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SENATOR MELLO: Thank you, Mr. President. [LB709]

SPEAKER FLOOD: Thank you, Senator Mello. Senator Nelson, followed by Senators Price, Fischer, Pankonin, White, Mello. Senator Nelson, you are recognized. [LB709]

SENATOR NELSON: Thank you, Mr. President, members of the body. I rise not yet in support of this bill. I have some questions. I agree with Senator White, I agree with Senator Mello in the concept here of what we are trying to accomplish in this bill and the need for passing this on and requiring this of the various agencies. I do have a couple of questions for Senator White, if he will yield. [LB709]

SPEAKER FLOOD: Senator White, will you yield to a question from Senator Nelson? [LB709]

SENATOR WHITE: Certainly. [LB709]

SENATOR NELSON: Thank you, Senator White. Thank you, Mr. President. You mentioned, Senator, that there are 44 states that already have parts or all of this legislation in effect. Is that correct? [LB709]

SENATOR WHITE: Yes, and my understanding is, Senator, they're all more or less based on the SBA model, which is the actual basis of ours. [LB709]

SENATOR NELSON: But do we know what the fiscal impact or what the costs are to these various states? Do you have any data on that? [LB709]

SENATOR WHITE: I do not, Senator. [LB709]

SENATOR NELSON: Okay. I'm...as a member of the Appropriations Committee, I'll tell you what my fear is. I think...and let me ask you one more question, Senator, if you'll yield. [LB709]

SENATOR WHITE: Yeah, certainly. [LB709]

SENATOR NELSON: Is it my understanding that you want to pass this bill and not pass the A bill? [LB709]

SENATOR WHITE: Well, Senator, actually I would tell you right now, I cannot verify that A bill and this is a real issue, folks. We have right now a debate being driven by a number thrown up by people who have never testified in front of all of us, they've never defended the number, they cannot identify one thing that they have to buy, one thing that they have to do that they shouldn't already be doing. So what we're saying is that

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any agency doesn't like a bill, they just throw a large number on it and we won't act. I can tell you right now I'll defend an honorable fiscal note if you can tell me what we're doing, if we were buying new things, if we were extending a new program, if we were hiring new people necessarily, but this bill does none of that. [LB709]

SENATOR NELSON: Well, let me ask you some specific questions then along that line. I note that on page 3, in line 7, that we are requiring that they solicit public comment from each small business that might be affected. Is that presently being done? [LB709]

SENATOR WHITE: Yes, they have to do a notice and they have to list public comment on any regulation. This simply tells them... [LB709]

SENATOR NELSON: But a little... [LB709]

SENATOR WHITE: ...make an effort to look at small businesses and contact them. That can be an e-mail. [LB709]

SENATOR NELSON: A little farther down, though, they have to state the potential adverse economic effect and a lot of other things. Do they presently have to do that now? [LB709]

SENATOR WHITE: No. I think what this is, Senator, it's, for example, if I've got a new regulation that requires, as we looked at, that all tax returns in an amount over X dollars must now be done electronically,... [LB709]

SPEAKER FLOOD: (Gavel) [LB709]

SENATOR WHITE: ...they must make a reasonable effort to look for businesses and let them know, you know, by a paper, attention: small business, the notice says, you may be affected by a regulation requiring that you file your taxes solely by computer; comment, public hearing and comment at this time. That's it. [LB709]

SENATOR NELSON: Well, and that's happened to a certain extent. You may recall I've had some issues with the Department of Revenue on that, specifically with small CPA firms and things that were going to have to go to additional expense. And what... [LB709]

SENATOR WHITE: Exactly, Senator. That's exactly right, and they shouldn't do that. [LB709]

SENATOR NELSON: But here...so the agency can act for that and they can ask for it and hold a hearing, but what it boils down to is that, all right, it's going to cost some of these firms some money but look at what I'm saving in this agency by the reduced

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number of FTEs and part-time personnel. So what do you think their decision is going to be? [LB709]

SENATOR WHITE: Well,... [LB709]

SENATOR NELSON: That's a rhetorical question. Let me move on just a little bit... [LB709]

SPEAKER FLOOD: One minute. [LB709]

SENATOR NELSON: ...since we only have a minute. I have to believe that if we're going to require these agencies to do a review within four years of past promulgated rules and then also within five years of those made after the effective date, there are going to have to be additional people hired. And what's going to happen is, if we don't pass an A bill and we just say this is a good thing for you to do, we're going to see them come back to Appropriations Committee the next year and say, I need \$200,000 to carry out these requirements. And there we are. What do we do? We're going to be faced with spending more money to do some of these things. So I'm concerned about the fiscal impact. I'm not quite satisfied on how this is going to work. I will continue to listen and I appreciate your response, Senator White. Thank you, Mr. President. [LB709]

SPEAKER FLOOD: Thank you, Senator Nelson. Senator Price, you are recognized. [LB709]

SENATOR PRICE: Thank you, Mr. Speaker, members of the body. I'm sitting here listening to the debate and I've come up with about five points. First thing I would ask is this legislation would say you shall consider. What does shall consider mean? We're back to jumbo shrimp, you know? Yes, I'll think about it but I don't know that there's an action there. Where the action comes in is when it gets before a judge. Just because someone should consider, then we're going to a judge, and I have a sinking fear that one could throw a wrench into the works there and really stop activities of the state and the county or wherever this is going to be challenged at. My next point on that would be it says about...if a rule has...or regulation has an adverse impact. What is adverse? Is adverse I don't get a threshold return if my ROI isn't where I want it to be? I could say I was adversely affected by a rule because my profit margin has gone down from 16 percent to 15 percent. So the question is, and I'll use the analogy of football that many people would be familiar with, the coach is on the sideline, a play goes on, he doesn't know if the call made by the referee was right so they grab that red flag and they throw it on the field and you get a booth review. And in that booth review, a lot of things are going on and lucky enough in football the clock stops and everybody is still going on, we're in this little tableau, if you would, while we wait for an answer. But what happens to the state if we have a challenge flag thrown out and we were in the middle of a

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project or we're getting ready to do one? What happens to the state? What happens to the people that are impacted by this decision? They're living their lives. They're trying to run their businesses and all of a sudden we've put a hold on this because somebody says, I have an adverse impact. We don't really have a very good definition on adverse, so I'd be really concerned about this. Because, ladies and gentlemen, when you're out there in business, for those of you who haven't had the joy and the privilege of owning your own business, it isn't all sugar and spice and everything nice. Competition is tough and people will do many things to get an advantage over another company. So if I have a company that can turn out more widgets per hour based on a new machine I just put \$200,000 in, and you can on a CNC machine from a machine shop or pick-and-place machine if you were doing something like with building real-time embedded controls and circuit boards, you can buy a higher quality, greater output machine and another company can go in and say, hey, I don't like a rule and now I'm going to put the kibosh on this by throwing the red flag. You're out the dollars you've invested, all because someone has a perceived impact of a rule, and yet you are out there trying to do good business with yourself. And I think that that would be of grave concern. Now, I'd also like to know, when you think about this, too, I want everybody to know, when we do this there is more than the cost to the agency. There is a cost to the state because we are holding things up. [LB709]

SPEAKER FLOOD: One minute. (Gavel) [LB709]

SENATOR PRICE: Thank you, Mr. President. And the last thing I would say is that in lost time and increased costs we have a problem. And would Senator White yield to a brief question? [LB709]

SENATOR WHITE: (Microphone malfunction) Yes, I'd be (inaudible). [LB709]

SENATOR PRICE: Thank you, Senator White. The question I have for you is can you point to a rule or regulation in...that you think would be a okay thing in the OSHA standards or maybe can you give support to this in relationship to like a workers' comp rule? [LB709]

SPEAKER FLOOD: Senator White, will you yield to a question from Senator Price? [LB709]

SENATOR WHITE: Certainly, I will. [LB709]

SENATOR PRICE: So again on workmen's comp rules, is there a rule there you think that we should...a lesson for a small business that we don't do for large businesses? [LB709]

SENATOR WHITE: No, Senator, what I would say to you is, for example, if you look on

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page 4 of the bill, that's the guts of the bill right here and what it says is when the Department of Labor is looking at a different work comp rule, for example, might be reporting of the job classifications of the people you're working in, it might be different compliance... [LB709]

SPEAKER FLOOD: Time, Senators. Thank you, Senator Price. Thank you, Senator White. Senator Fischer, you are recognized. [LB709]

SENATOR FISCHER: Thank you, Mr. President and members of the body. As I read this bill and as I listened to debate, I thought it was deja vu all over again. We have this in law already. Senator Bourne, in 2005, introduced LB373 and I chose it as my priority bill. It was truly bipartisan. Senator Bourne, Schimek, Fischer, Flood, and Byars were the sponsors of that legislation. I'd like to read to you part of my opening on that bill and I think you'll agree that current law covers what Senator White is trying to apply just to businesses. Current law allows any, any citizen in this state to question a rule or regulation and outlines the procedure that is there for the process to take place, and it is a simple process that is in law currently that businesses can also take advantage of. To quote from my opening back in 2005, I chose LB373 as my priority bill because I feel this is a very important bill that with a few minor changes can make a big difference in a body of law that has little oversight. I'm sure you've all heard the phrase that agencies are the fourth branch of government. There is more than some truth to this statement. Agencies have tremendous power when it comes to adopting and amending rules and regulations that can have a huge impact on the average citizen. The problem with these rules and regulations is there are not enough checks on the agency's power in the adoption process. I understand that the Governor's Office must approve the rule, the Attorney General must okay its constitutionality and statutory authority, and that the Secretary of State must certify its form, but what about the underlying policy of the law? How does the Governor know what it's supposed to be? Who checks to make sure this rule or regulation is what the people want and that it is good policy for the state of Nebraska? From what I remember from junior high civics class, that is the duty of the Legislature. Nothing against the Governor, the AG, the Secretary of State, but I don't feel comfortable with the rule and regulation process as it stands now and I feel LB373 is a good step in the right direction. We have this law in place. We have the process in place. To my knowledge, this is sad to say, I don't believe it's ever been used. I don't believe any citizen has ever come before the Exec Board. I don't believe any business has ever come before the Exec Board. I was excited to choose this as my first priority bill when I came down here to the Legislature because that was something that was important to me, to have accountability by government and that extended to agencies. We put that in place in 2005. No one, to my knowledge, has taken advantage of it. As I said, that includes citizens, that includes businesses. I believe Senator Gay was the one who made the comment on the mike earlier during our debate on this that that's part of our job as senators when we get complaints, when we have citizens who have problems in dealing with different agencies, that we made calls, that we go to those agencies, that

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we do our work for our constituents to address their concerns, to get answers for them. We can't always get solutions but we can at least get answers. The process is in place. So not even addressing the fiscal note, and I don't think we need to continually bash how fiscal notes are arrived at in this Chamber. It's a process that's been used for many, many, many years, before any of us were here. [LB709]

SPEAKER FLOOD: One minute. [LB709]

SENATOR FISCHER: But not even talking about the fiscal note on this bill and how high it is, we don't need it. We don't need the bill. We have the law. Thank you, Mr. President. [LB709]

SPEAKER FLOOD: Thank you, Senator Fischer. Senator Pankonin, you are recognized. [LB709]

SENATOR PANKONIN: Thank you, Mr. President, members of the body. I just want to say I think we've had a good discussion this morning. I do appreciate Senator White bringing this bill. In my legislative district, the statistics are amazing. Of the private employers that's, 0 to 19 employees, that's 85 percent of the employers in my legislative district. So small business is critically important. But even more so I've had personal experience. It will be 35 years this month, within three days, that my father died and I left graduate school to take over a small business. We're still in that area of 14, 15 employees. And we added a new employee yesterday morning and excited about that, but it took about two hours of paperwork and I hope I got everything right between the I9, W-4, just on and on, and going through the safety checklist and checking the CDL and the drug test that we need to get set up on. And these regulations for a small business are, you know, I think most people want to make a good-faith effort to do everything correctly, but it is a challenge because we can't afford to have one person be the compliance person in a business that has 15 employees. My wife, myself, our son, we try to do our best to follow everything and sometimes you get that feeling of I don't even know what I don't know of all the potential regulations. So I think having an advocate and this concept is important. As has been said, it's unfortunate that we've got the fiscal note that we have, and in the times we have, that that is a problem, but I think this is an idea that has validity and it's, if nothing else, a good discussion because it is a challenge to try to do the right things and comply with everything that's out there. It takes a lot of time away from the basic goals of your business to try to comply and it would be nice to know that there is a process in place looking out for these small businesses. I took over a business that was already successful. I cannot imagine the challenge of starting up one and trying to understand everything that you have to comply with, and I think it is a detriment for business creation. And if we make it harder and harder, there will be fewer people willing to do it, besides the financial risk, the time you have to spend, and then knowing that there's so many ways you can trip up on regulations. So I thank Senator White for bringing it. Don't know what I'm going to do

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exactly. I think the committee amendment obviously was a good move, but in our times, with the cost issue, it's problematic. But I appreciate the discussion and the concept. Thank you, Mr. President. [LB709]

SPEAKER FLOOD: Thank you, Senator Pankonin. Senator White, you are recognized. This is your third and final time. [LB709]

SENATOR WHITE: Thank you, Mr. President. And I thank you, Senator Pankonin, thank you, Senator Fischer. Any time I can walk in Senator Fischer's footsteps, I know I'm on the path to glory and goodness. (Laughter) And she said that was the first step, and that's what it was. It was the first step. But this bill is not duplicative of her effort. I would, however, be deeply interested in what the fiscal note was on Senator Fischer's bill and if we're already doing it, if this bill is already in place, then there should be no fiscal note at all. But let me tell you why this bill is not a duplication. I have spent my life, literally my life since I was a small boy, in courtrooms watching my father and other attorneys work, then going to law school, then trying cases for a quarter of a century. [LB709]

SPEAKER FLOOD: (Gavel) [LB709]

SENATOR WHITE: One area I really do know and do understand, since I grew up in the household of a judge, is the legal profession and how judges work. And I can tell you that what this bill does is not just give any individual the standing, which means the right to file a lawsuit, it tells the judge in the case of small businesses what to look for so the judge then isn't asked to be some cowboy out there just willy-nilly taking on bureaucrats. What this bill specifically states, in the case of a small business, they have to be notified of the hearing. That's fundamental due process, folks. That's the minimum standard. Let the people who are going to be affected have a chance to come and talk. Give them a place they can talk and hear them and listen. That's the hearing part. But it says then to the agencies, this is what you must do. You must listen to them and you must consider in your regulation, based on the comments you received, is there a way we can achieve the goal of the law with less stringent compliance or reporting requirements for small businesses? So a judge now has something to say: Well, look, they had a heck of an idea, agency, they don't need to report on a daily basis; you have no basis to say that reporting once every six months isn't enough. The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses, small businesses have capital issues that larger businesses often do not face. If you're acting at a new regulation that's going to... [LB709]

SPEAKER FLOOD: Senator White, please stop. The house will come to order. We cannot hear the speaker at this time. There are too many conversations happening. Please keep your conversations to a minimum. Senator White, you will be restored the time that this interruption cost you. The Chair apologizes. You may continue. [LB709]

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SENATOR WHITE: Thank you for your courtesy, Mr. Speaker. What the bill does, if you really want to look at it, it's on page 4, it tells a judge what to look for. It tells an agency what to look for so the judge has a basis of framework to find out if the bureaucrats are doing their job. It says on the schedule, timing of a schedule, if a small business says: look, guys, there is a capital crisis right now; can we postpone this two years so that we can restructure our finances, get the loans in place to do this, or look, agency, right here in Engineering Today, it says there is a breakthrough of a new way to control, for example, sound pollution, which recently happened, believe it or not. Bose headphone/earphones, they have industrial applications. We can comply. If you wait one year, there will be a method that costs a twentieth and more effective to deaden the sound. Can we wait one year until the technology is available? We know it's there but it's not yet readily available. Can we wait one year? That's all we're asking. Small business has a right to ask. And a judge can look at that and say, that's not unreasonable, why didn't you take that into consideration? The old muffler system costs you \$1 million; this new setup will cost you \$20,000 and it does better. Now, they're not available yet... [LB709]

SPEAKER FLOOD: One minute. [LB709]

SENATOR WHITE: ...but they will be soon. What this bill does that Senator Fischer's bill did not do, states to a judge and to the agents in the various agencies, what are we expecting of you as an agency to recognize your power and use restraint. That gives a judge a guideline to effectively intervene in a limited way on a real basis on which he or she is clearly authorized/instructed by the Legislature to do it. That's what this does. That's why it's different. It specifically tells them what to look for and how to do it. Now Senator Fischer if right, this bill has no cost and it does no harm, but I can tell you as an attorney, I can tell you as a person who intimately knows judges, this bill gives them the ability to function as a member of the judiciary... [LB709]

SPEAKER FLOOD: Time, Senator. [LB709]

SENATOR WHITE: ...to carry out the law. Thank you, Mr. President. [LB709]

SPEAKER FLOOD: Thank you, Senator White. Again, a reminder: I would ask you to keep your conversations to a minimum and certainly use a very low, whispering voice when discussing matters with your colleagues. Senator Mello, you are recognized. [LB709]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. To continue the conversation we were having prior to, and I'll yield the rest of my time to Senator White when I'm done, it's imperative for the Legislature to use our prerogative to do exactly what Senator White was just describing, which is to provide the necessary

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oversight over state agencies when dealing with rules and regulations regardless if it's a small business issue or any other issue for that matter. Senator Nelson asked some questions in regards to an Appropriations perspective of what will we do when an agency comes back, if LB709 passes, what will we do if a state agency comes back and says, we need more funding to do this? The simple fact is this: We say no. You should already be doing this. The simple fact is you should be already trying to integrate this concept and this perspective into what you're doing with rules and regulations because it is the imperative aspect of the Legislature to provide accountability, through the Appropriations process, to ensure state agencies do what we ask them to do. That's simply what LB709 does. So I discredit, discount the aspect that we're going to be stuck in a situation, by passing LB709, that bureaucrats and state agencies are going to come back and say, we need more money; we can't do our rules and regs process by taking a perspective on small businesses and the adverse economic impact that this rules and regs might have on them we can't do without more money, we just can't do that. Through the last year and a half I've seen state agencies can do that. They can do it if they're prodded and if they're pushed to do that. The simple fact is we've not done our job to push them hard enough to make government work more efficient, more transparent, and more accountable in the process. With that, Mr. President, I yield the remainder of my time to Senator White. [LB709]

SPEAKER FLOOD: Senator White, 3 minutes 8 seconds. [LB709]

SENATOR WHITE: Thank you, Senator Mello. And my fellow senators, I am so grateful to Senator Fischer. I have a copy of the fiscal note of her bill which was really a good start, but there's some substantial differences. I think I've already described some. But this fiscal note, we need to really focus on this because it's not just about this bill, guys. It's about whether agencies play games with us in trying to dictate the flow of legislation and debate through the use of fiscal notes. And while it may be my oxen being gored today, it most certainly will be yours tomorrow or the next day. Here's what the fiscal note said back then, and this is LB373. For the most part, the cost of changes in LB373 should not be significant. There could be some additional costs in staff time for agencies to comply with the additional information in Section 1, but the agency responses would indicate the amount would not be significant. There could be some additional staff time in printing costs for the Executive Board--and in LB373, when you read it, you'll see it allows an aggrieved citizen to complain to the Executive Board--in terms of providing all current materials to the primary sponsors, as well as committee Chairs, but such amounts would not likely...would likely not be great. An unknown in terms of additional costs is the impact of handling potential complaints about rules and regulations. While it's likely that any fiscal impact would be minimal, it depends on the number of complaints filed. Now, how you can have that fiscal note in an honorable, up-front process on something that Senator Fischer says is already accomplishing the purpose of the Small Business Regulatory Flexibility Act, and have a million dollars in the Small Business Regulatory Act...Flexibility Act is a mystery among great mysteries, one we

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should call in Houdini to solve, because they are the same principle. Now, there's a couple of primary differences and this is why this is the next logical step for Senator Fischer's... [LB709]

SPEAKER FLOOD: One minute. [LB709]

SENATOR WHITE: ...altogether honorable effort. There is no judicial review in LB373. That's where the teeth are. Second, there is no clear articulation of what is a basis of a well-founded complaint; in ours there is. It tells the business, it tells the bureaucrat, it tells the judge, when we're regulating here on small businesses, we're going to look at those specific provisions outlined in page 4. There is no good reason that any probusiness senator should be opposed to this bill, none. This bill has worked in other states, it's proven. This bill is essential to a healthy business climate. And if we mean what we say about a smaller, more responsive, more efficient government, this is the point of the spear, folks. This is where we should start to really function on this issue. We can make the state better. [LB709]

SPEAKER FLOOD: Time, Senator. Thank you, Senator Mello, Senator White. Senator Stuthman, you're recognized. [LB709]

SENATOR STUTHMAN: Question. [LB709]

SPEAKER FLOOD: The question has been called. Do I see five hands? I do see five hands. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB709]

CLERK: 27 ayes, 1 nay, Mr. President, to cease debate. [LB709]

SPEAKER FLOOD: Debate does cease. Senator Lathrop, you are recognized to close on the Business and Labor Committee amendment, AM1824. Senator Lathrop waives his opportunity to close. Is it my understanding you wish to waive your opportunity to close on AM1824? [LB709]

SENATOR LATHROP: No, I'll make a brief close. [LB709]

SPEAKER FLOOD: Okay. [LB709]

SENATOR LATHROP: We've had a good debate this morning on AM1824 and LB709. I think it's...what we have heard is that small businesses drive our economy and that they need some relief from big government. We oftentimes hear people talk about big government, criticize big government, talk about how big government is causing problems for small businesses, and that small businesses have difficulty working in that environment. I think LB709 goes a long ways towards addressing the concerns of small

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business. AM1824 improves the bill and I would encourage your support of both AM1824 and LB709. [LB709]

SPEAKER FLOOD: Members, you've heard the closing on AM1824. The question before the body is, shall AM1824 be adopted? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB709]

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB709]

SPEAKER FLOOD: Committee amendments are adopted. Mr. Clerk, items for the record? [LB709]

CLERK: Mr. President, your Committee on Enrollment and Review reports they've examined and reviewed LB1109 and LB1109A and report those to Select File. Enrollment and Review also reports the following bills correctly engrossed: LB727, LB742, LB763, LB836, LB879, LB882, LB919, LB937, LB937A, LB943, LB956, LB1018, LB1036, LB1051, LB1087, LR284CA, and LR297CA. Senator Louden would like to print an amendment to LB1002. New resolution: LR414 by Senator Avery; that will be laid over. (Read LB918A by title for the first time.) And I have a Reference report referring certain gubernatorial appointees to standing committee for confirmation hearing. (Legislative Journal pages 987-992.) [LB1109 LB1109A LB727 LB742 LB763 LB836 LB879 LB882 LB919 LB937 LB937A LB943 LB956 LB1018 LB1036 LB1051 LB1087 LR284CA LR297CA LB1002 LR414 LB918A]

And Senator Hansen, Mr. President, would move to recess the body until 1:30 p.m.

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. We are in recess until 1:30. (Gavel)

RECESS

SPEAKER FLOOD PRESIDING

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

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

SPEAKER FLOOD: Thank you, Mr. Clerk. Do you have items for the record?

CLERK: Senator Pirsch offers LR415, Mr. President, that will be laid over. And Senator

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Haar has an amendment to LB1014 to be printed. That's all that I have. (Legislative Journal pages 992-998.) [LR415 LB1014]

SPEAKER FLOOD: Thank you, Mr. Clerk. We now proceed to the first item on the agenda. Again, I will remind the body that please keep your personal conversations to a minimum. And use a very low tone of voice when discussing matters with your colleagues so that we may hear those presenting on the microphone. We begin with LB801, Mr. Clerk. [LB801]

CLERK: LB801, a bill by Senator Fulton. (Read title.) Introduced on January 8 of this year, referred to the Judiciary Committee. The bill was advanced to General File. There are committee amendments. (AM1972, Legislative Journal page 802.) [LB801]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Fulton, you're recognized to open on LB801. [LB801]

SENATOR FULTON: Thank you, Mr. President. Members of the body, good afternoon. LB801, as amended by the committee, affords greater protection to Nebraska consumers. It modernizes our outdated Uniform Deceptive Trade Practices Act to better protect consumers against pyramid schemes and the unwitting distribution of personal information through peer-to-peer file-sharing programs while allowing legitimate Nebraska businesses to better engage in free enterprise. The language of LB801 relating to pyramid promotional schemes is based on model legislation of the Council of State Governments and similar bills have been passed into law in at least five other states to date. Our 40-year-old language regarding chain distributor schemes neither affords prosecutors with adequate clarity nor provides Nebraska's nearly 90,000 legitimate direct sellers with adequate protection. Section 1 of the bill more precisely defines pyramid promotional schemes to exist when one enters into an agreement to receive a financial benefit that is based on the recruitment, primarily on the recruitment of others to participate in the plan. Legitimate direct sellers, on the other hand, derive a financial benefit based on an agreement to purchase goods, services, or intangible property. LB801 provides additional protection for participants and legitimate direct-sales businesses by prohibiting the purchase of an excessive amount of inventory and requiring businesses to repurchase marketable inventory at commercially reasonable terms from the seller if the business relationship ends. Presently, the Deceptive Trade Practices Act also fails to address the deceit implicit in certain peer-to-peer Internet file-sharing programs. LB801, similar to a bill that has passed the House this year, requires that users be provided conspicuous notice that files shared through such programs will be made available to the public and require the user to opt-in prior to the program being able to access the participant's computer. LB801 also provides greater uniformity by specifying a preponderance of the evidence standard in bringing a private deceptive trade practice suit. Furthermore, LB801 gives the Attorney General additional tools to protect consumers that include being provided with a notice

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of a private right of action brought under the Uniform Deceptive Trade Practices Act so as to provide parties with awareness of what the consumers are experiencing and what companies are doing without necessarily intervening in the case and, secondly, the ability to issue cease and desist orders against any person engaging in a deceptive trade practice. Concluding, the provisions of LB801 are designed to modernize the Uniform Deceptive Trade Practices Act so as to enable protection of Nebraska consumers against deceptive trade practices, like pyramid promotional schemes and injury through peer-to-peer file-sharing while protecting legitimate Nebraska businesses. I respectfully urge the advancement of LB801 and the amendment which is soon to follow. Thank you, Mr. President. [LB801]

SPEAKER FLOOD: Thank you, Senator Fulton. We now have Judiciary Committee amendments, AM1972. Senator Lathrop, as Vice Chair of the committee, you're recognized to open on AM1972. [LB801]

SENATOR LATHROP: Thank you, Mr. President. And, colleagues, good afternoon. I'm introducing AM1972 to LB801. LB801 would amend the Uniform Deceptive Trade Practice to distinguish illegal pyramid schemes from legitimate direct selling businesses. The committee amendment would reverse the changes made in the bill to the statute of limitations for civil actions under the UDTPA back to within four years from the date of the purchase of the goods. It would also remove language added by the bill which made it a violation of the UDTPA to submit a document containing false statements to federal, state and local governments. Finally, it would reinstate current law on the recovery of costs and attorney fees in civil actions under the UDTPA. The bill would have allowed for recovery of actual damages. Those are the committee amendments. I would encourage your support of AM1972 and the underlying bill, LB801. Thank you. [LB801]

SPEAKER FLOOD: Thank you, Senator Lathrop. Members, you've heard the opening on AM1972. There are no lights on. Senator...Senator Pirsch, you are recognized. [LB801]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Lathrop might yield to a quick explanation of just the committee amendment, if Senator Lathrop might yield. [LB801]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Pirsch? [LB801]

SENATOR LATHROP: Sure. [LB801]

SENATOR PIRSCH: I appreciate that. And I may pose this question or may properly be posed, I guess, to Chairman Ashford. [LB801]

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SENATOR LATHROP: Yeah, I might add that I was standing in for Senator Ashford and he's since arrived. [LB801]

SENATOR PIRSCH: Oh, very good. Well, then if Senator Ashford would yield to a...just a general explanation of the removal of the statute, it would remove the change to the statute of limitations. Just exactly, and I don't mean in detail form, but is that with...just how that would affect the nature of the change. [LB801]

SPEAKER FLOOD: Senator Ashford, will you yield to a question from Senator Pirsch? [LB801]

SENATOR ASHFORD: Well, it was an amendment...thank you, yeah. It was an amendment from the Attorney General and it goes back to the original statute of limitations that was in the original law. It would have expanded that and went back to the original...existing... [LB801]

SENATOR PIRSCH: Okay. Well, I appreciate that explanation and I don't have any further follow-up questions based on that. Thank you. [LB801]

SPEAKER FLOOD: Thank you, Senator Pirsch. Senator Gay, you are recognized. [LB801]

SENATOR GAY: Thank you, Mr. President. I'd like to ask Senator Fulton a question. [LB801]

SPEAKER FLOOD: Senator Fulton, will you yield to a question from Senator Gay? [LB801]

SENATOR FULTON: Yes. [LB801]

SENATOR GAY: Thank you, Senator Fulton. Senator Fulton, just a...I'm a little unfamiliar with...I understand where you don't want people to sell a bunch of goods they can't sell. I understand that. On the computer part of this, though, explain what that means? I'm not very...I guess, I shouldn't say that, I'm fairly computer literate. But what's going on in the computer world that they're in this bill? What's out there that we're trying to fix? [LB801]

SENATOR FULTON: Okay. There are what are called peer-to-peer sharing programs, which originally, I mean, technologically here's the history behind it. They were utilized to share files, pictures maybe, music, what have you. Sometimes when one clicks on an Internet site a program can be downloaded to one's computer, which is a peer-to-peer file-sharing program. And that could be utilized to disseminate ones personal information without ones knowledge. There's nothing in place that disallows that. And so

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what we're doing here is to give some authority statutorily to the Attorney General to disallow that and we're providing a mechanism by which people could utilize one of these programs, but they would have to do so consciously and by way of their own volition. [LB801]

SENATOR GAY: Okay, thank you. And then on the shelf life, is it up to the Attorney General's Office to determine what's a reasonable shelf life and how much inventory somebody should or should not purchase? [LB801]

SENATOR FULTON: The...what constitutes reasonable shelf life? [LB801]

SENATOR GAY: Yeah, yeah. [LB801]

SENATOR FULTON: Can you point to me where you're at now? [LB801]

SENATOR GAY: As I was looking through here I kind of saw that. But how do they determine, is it through a complaint process that somebody turns into the Attorney General's Office that, hey, I've been ripped off on a... [LB801]

SENATOR FULTON: Well, it wouldn't...I would be able to answer with more certainty if I knew exactly where it was in the bill you're referring to. But this isn't designed to make a reference or a referral to the Attorney General's Office with respect to the Uniform Deceptive Trade Practices Act. It provides for a, you know, a mechanism, a private recourse to the judicial system. But there's no requirement that this...that the Attorney General be, how do I say it, the Attorney General does not have to become involved. The requirement is that it be reported to the Attorney General so that he is aware of any litigation or judicial activity with respect to the Uniform Deceptive Trade Practices Act. So, no, the decision on what reasonable is, is not made by the Attorney General's Office. If that...does that answer your question, Senator? [LB801]

SENATOR GAY: Well, I was looking at page 4 on the inventory, goods and services including company-produced promotional material, sales aids and all that. I thought what this bill was trying to do, I guess, as I'm trying to understand it, would be regulate that you're not getting some kind of...well, deceptive practices, that we're not selling something that can't reasonably be sold and then now I'm stuck with a bunch of goods or product. [LB801]

SENATOR FULTON: That's what we're trying to avoid. So inventory loading is... [LB801]

SENATOR GAY: Yes. [LB801]

SENATOR FULTON: ...the term that we have assigned to this. [LB801]

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SENATOR GAY: Yeah. [LB801]

SENATOR FULTON: And that would be disallowed, that would be disallowed under this bill. And the definition, there is somewhat of a subjective measure in here, but it's the definition of reasonable. And we've gone through that on this floor, you know, he who decides what reasonable is, is your question. It's not the Attorney General who gets to decide that, that would be something that gets decided during the course of action that we've provided for in the bill. [LB801]

SENATOR GAY: Okay, through a complaint that, hey, I got talked into this scheme, I'm going to call it, or whatever... [LB801]

SENATOR FULTON: Right. [LB801]

SENATOR GAY: ...and I had to buy 25,000 widgets and now all of a sudden, gee, no one wants to buy these. And now I'm stuck. So during the course of process, I guess, the court decides that then or...? [LB801]

SENATOR FULTON: If there is a claim filed then that's where the court would be making a decision. [LB801]

SENATOR GAY: Okay. [LB801]

SPEAKER FLOOD: One minute. [LB801]

SENATOR FULTON: So we've provided a statutory...something objective in the statute. And if there's a claim filed then yes it would go through a judicial process. [LB801]

SENATOR GAY: Yeah. [LB801]

SENATOR FULTON: But we're simply making it known in the statute. [LB801]

SENATOR GAY: We're just giving the general public a better way to... [LB801]

SENATOR FULTON: Yes. [LB801]

SENATOR GAY: ...to file a complaint and actually see it resolved. [LB801]

SENATOR FULTON: Yes. [LB801]

SENATOR GAY: All right. [LB801]

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SENATOR FULTON: Yeah. As it stands right now, if we didn't make any changes, there could be complaints filed against what I would consider legitimate businesses like, you know, Amway or Arbonne or some of these other, oh, multilevel marketing businesses, which are legitimate. Right now if we didn't change anything it's conceivable that those businesses would be in jeopardy. And so that's why this has been brought forward to better articulate what is meant by a pyramid scheme. And that's where that definition that you're referring to... [LB801]

SENATOR GAY: Okay. [LB801]

SENATOR FULTON: ...comes into bearing. [LB801]

SENATOR GAY: All right. Thank you, Senator Fulton. Thank you, Mr. President. [LB801]

SPEAKER FLOOD: Thank you, Senator Gay. (Visitor introduced.) Senator Pirsch, you are recognized. [LB801]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Fulton would yield to a question or two. [LB801]

SPEAKER FLOOD: Senator Fulton, will you yield to a question from Senator Pirsch? [LB801]

SENATOR FULTON: Yes, I would. [LB801]

SENATOR PIRSCH: Is it the case with this legislation that there was earlier legislation passed that restricted certain business operations or made it illegal and, I think, that we're overreaching, in the bill's opinion, and needed to be greater...more greatly clarified. Is that what is embedded in part of this bill, is that... [LB801]

SENATOR FULTON: Senator, it probably would be more accurate to say that there was legislation brought forward, but it was 40-some years ago. And so by bringing this legislation forward we're utilizing terminology which is more understandable to people today. So I think the term before was chain distributorship scheme, that really doesn't...a lot of people don't even understand what that is. And so we bring forward antipyramid schemes. So, yes, there was legislation that was put forward 40 years ago. And it could be construed as too far-reaching today. But that was not the intent of the legislation back then. I think this is more a result of the chronology, 40 years later and it's time to update the law, that's basically why we brought this bill forward. [LB801]

SENATOR PIRSCH: Thank you very much. Is this...so, I guess, in addressing this, bringing the law forward, in your terminology, is that also wedded to a different, I mean,

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there are a couple of ideas embedded in this bill. Another one deals with file-sharing programs? [LB801]

SENATOR FULTON: Yes, that is also in the bill. [LB801]

SENATOR PIRSCH: Okay. And is that kind of a case, obviously in the advent of the Internet and greater access people have to, you know, virtually everything you have on your computer drive, hard-drive and whatnot. Is that...the other part of this bill, is that designed to address, make sure that through accessing, allowing, you know, you access the Internet for one purpose and inadvertently allow others, you know, through that highway into your computer and into things that you would ordinarily not want them to have. Is that what this bill is addressing? [LB801]

SENATOR FULTON: Yes. This is...that could be construed as another part of this bill. But it all falls under the category of uniform deceptive trade practices. So if one is clicking on a Web site and a file-to-file sharing program is downloaded onto your computer which could communicate your data to another URL or to another domain or to another computer, that would be classified as a deceptive trade practice, unless, unless that entity which originates the file-to-file sharing program accesses by way of volition the intent of that person who is downloading the program. So that's why it falls under the category of uniform deceptive trade practices, because right now it can happen without ones knowledge. So we're providing the mechanism in the statute, under uniform deceptive trade practices, which more clearly articulates or actually it's stronger than that, disallows that practice. [LB801]

SENATOR PIRSCH: Is this to address what is commonly called spyware or malware instances where outside entities are...is this to remedy that? [LB801]

SENATOR FULTON: That could be a...I'm trying to be technically accurate here. That could be a definition of malware or spyware or "badware" or whatever you want to call it. But we're being specific by articulating file-sharing program. [LB801]

SPEAKER FLOOD: One minute. [LB801]

SENATOR FULTON: So that could take the form of...malware is broader than what a file-sharing program is. So we have not integrated malware or spyware, any of those other terms. We have articulated file-sharing programs. [LB801]

SENATOR PIRSCH: So this would articulate that any time you have file-sharing certain prerequisite statement...or would you, you know...indicating that you will be sharing this information, do you consent, must first proceed that, is that correct? [LB801]

SENATOR FULTON: Yeah, it's on page 11 of the green copy, lines 16 through 23.

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[LB801]

SENATOR PIRSCH: Okay. Are those basically the substance of the bill or are there other what you feel are important parts of it as well? [LB801]

SENATOR FULTON: Those are the main parts of the bill. There's also the provision, provides a mechanism by which one can file a claim. And it sets that the epistemological, I won't get in, preponderance of the evidence is that standard by which one would bring that claim. [LB801]

SPEAKER FLOOD: Time, Senator. [LB801]

SENATOR PIRSCH: Thank you. [LB801]

SPEAKER FLOOD: Senator Nelson, you are recognized. [LB801]

SENATOR NELSON: Thank you, Mr. President, members of the body. I'd like to ask a question or two of Senator Fulton, if he will yield. [LB801]

SPEAKER FLOOD: Senator Fulton, will you yield to a question from Senator Nelson? [LB801]

SENATOR FULTON: I will. [LB801]

SENATOR NELSON: Thank you, Senator Fulton. There's a lot more in the green copy here than appears on the committee's statement. I'm looking at the bottom of page 4, Section 12 there. It talks about inventory loading. And then again, I think, on...and inventory repurchases. Just so we can understand this a little bit, does this involve sale of securities? I mean, does that come under, do I understand this that someone who wants to sell securities for a company then has got to buy all this promotional material? And what do we mean by overloading here and repurchasing if they do quit their representation? Could you just give us an example or two of where things are going awry here in this process? [LB801]

SENATOR FULTON: Okay. Well, I don't know, your first question about securities, I don't know how to answer that specifically. [LB801]

SPEAKER FLOOD: (Gavel) [LB801]

SENATOR FULTON: What we are targeting here is inventory loading. So, for instance, I have seen schemes and I think others have probably seen these, too, where you have to buy a certain amount of a product. And we are saying that that's fine so long as it's not a requirement. So this is page 4 at the bottom, inventory loading means that the

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plan or operation requires or encourages its independent sales persons to purchase inventory in an amount which exceeds that which the sales person can expect to resell. So that would be the definition of inventory loading. And inventory loading would be disallowed. So I'm not going to name specific products, but I have seen where you have to buy a certain amount of a given product in order to become one of the distributors of this product. And we are saying there has to be some reasonable expectation that these can be resold. And if there's not, then there should be some inventory repurchase program. [LB801]

SENATOR NELSON: So the problem now is that there's this overloading. But the person above you, I guess, in the pyramid scheme does not have to repurchase that or take it back if you decide that this isn't working for you, you aren't making any money at it. Because my recollection is, for instance, pyramid scheme perhaps involving jewelry or the sale of jewelry or something like that, and the more you sell then the more points you get as an agent or a promoter, is that it? That's what we're talking about, this type of pyramid scheme where everything flows downhill so to speak? [LB801]

SENATOR FULTON: That could be. But when we're talking about inventory loading, it's even...it's more specific than that. It's that you...in order to become a distributor or a seller of this product, you have to first buy a whole bunch of this product, which it's not reasonable to expect that one would resell. [LB801]

SENATOR NELSON: Okay. And if you were part of this, then the person above you said, Senator Fulton, you go out and you find six people to distribute this and you load them up with this material. And then the problem right now is that if those six people aren't successful and they want to get out of it, they're stuck with all this inventory. Is that what we're... [LB801]

SENATOR FULTON: That is a problem. There is...so, yes, that is a problem, part of which is addressed in this bill. The other part, Senator, which might actually...this might shine more light upon the necessity of this bill. If the means of deriving profit for an individual is premised primarily upon the recruiting of other sellers,... [LB801]

SPEAKER FLOOD: One minute. [LB801]

SENATOR FULTON: ...that's a problem, that would be disallowed. If it's...if your money is made based on recruiting, there has to be a good or a service or some intangible property that would have to be sold. So it's not...that would be encompassed under this bill also. So that would work in conjunction with the inventory loading. Does that help at all? [LB801]

SENATOR NELSON: Yes, that's helpful. That gives, I think, give this body a little better idea of what we're dealing with here and what we're trying to prevent and solve. Thank

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you, Senator Fulton. Thank you, Mr. President. [LB801]

SPEAKER FLOOD: Thank you, Senator Nelson. Senator Pirsch... [LB801]

SENATOR PIRSCH: I will waive. [LB801]

SPEAKER FLOOD: ...has waived his opportunity. There are no other lights on. Senator Lathrop or Ashford, you are recognized to close on AM1972. [LB801]

SENATOR ASHFORD: Thank you, Mr. President. I'd just answer Senator Nelson's questions, first question involving securities or other types of transactions which aren't considered as maybe inventory in the normal sense would be covered...will be covered by this bill. The...in conclusion, I think, the comment, the discussion has been complete enough. The changes are relatively technical in the committee amendments relating to the statute of limitations and court costs and attorney fees, those types of changes that the committee felt were more in line with current civil litigation. And with that, Mr. Speaker, I would urge the adoption of the amendment. [LB801]

SPEAKER FLOOD: Thank you, Senator Ashford. Members, you've heard the closing on AM1972. The question before the body is, shall AM1972 be adopted? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB801]

CLERK: 35 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB801]

SPEAKER FLOOD: Committee amendments are adopted. [LB801]

CLERK: I have nothing further, Mr. President. [LB801]

SPEAKER FLOOD: We now return to discussion on LB801. There are no lights on. Senator Fulton, you're recognized to close on LB801. [LB801]

SENATOR FULTON: Thank you, Mr. President, members of the body. I'll just close briefly. If you'll check the committee statement, there were no opponents, there were no opposing...there were no nay votes. Those companies that would be affected or that could conceivably be affected came and testified in support. So we have a listing of those on the committee statement. We worked collaboratively with the Attorney General's Office. And if there are any other questions, I'd be glad to answer them off the microphone and even on the microphone if we want to go that way on Select File. The Attorney General's Office has been very helpful also, so there can be questions answered there. I just now ask or your green vote on LB801 such that we can move this forward to Select File. Thank you, Mr. President. [LB801]

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SPEAKER FLOOD: Thank you, Senator Fulton. Members, you've heard the closing on LB801. The question before the body is, shall LB801 advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB801]

CLERK: 42 ayes, 0 nays, Mr. President, on the advancement of LB801. [LB801]

SPEAKER FLOOD: LB801 advances to E&R Initial. Mr. Clerk, we now proceed to the next item on the agenda, LB1094. [LB801 LB1094]

CLERK: LB1094 by Senator Lathrop. (Read title.) Introduced on January 21 of this year, referred to the Judiciary Committee. The bill was advanced to General File. There are Judiciary Committee amendments, Mr. President. (AM1953, Legislative Journal page 803.) [LB1094]

SPEAKER FLOOD: Senator Lathrop, you're recognized to open on LB1094. [LB1094]

SENATOR LATHROP: Thank you very much, Mr. President and colleagues. I'd like to begin the introduction of LB1094 with a little background that might serve you as I explain the bill. It is...it addresses a concern that I find in my practice. It is somewhat unique to people that do personal injury litigation and so a little bit of background may be helpful. When people have been involved in some kind of calamity, typically an auto accident, could be medical malpractice, it could be a lot of different things, but something that would give rise to a personal injury claim, the greatest share of those people are living paycheck to paycheck. So that when they suffer an injury that takes them out of work and they don't have a disability policy, they go through their savings quickly, as most people would. They make the house payment for the next month, they make the utility payments, they go as far as they can and in about a month's time, very frequently, these people run out of their savings, yet they're still not back to work. The first place they typically turn to for help is family. They'll talk to family and family will typically loan them money while they're out of work and while they have a litigation or some type of a claim for their injury pending, and pretty soon they wear out their family. Then the landlord wants to be paid, and typically the landlord might wait a month, or the bank may be...may work with them for a month on their mortgage payment. But after they've been off work, and we're typically talking about someone with a serious injury, after they've been off work for three months now they're having problems. They're not paying the utilities, they have no way to buy groceries, they can be looking at being thrown out of their apartment. And here's the problem that they face. Generally, they'll have an attorney representing them. The rules of ethics prohibit a lawyer from advancing money for living expenses to a client. So I can...and I've had this happen, I'm sure Senator White has, too, someone will come in and say they're about to throw me out of my apartment, put me on the street, I can't make the rent, I can't pay the utilities, and I'd be happy to loan them the money but the rules of ethics prohibit it. In fact, I can't

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even guarantee a loan at the bank so that they can go get money to make it until their case is resolved. Banks will typically not loan somebody money on the strength of a future claim for injuries. That leaves these people with no place to go and that is how the nonrecourse civil litigation industry began. This industry began in response to a need by people who have been hurt, whose income has been interrupted, and who have no place to turn, no place to turn to, to pay the rent, to pay the utilities, to stay in their house while they wait for an injury claim to be resolved. You've seen these businesses advertise on TV, they say, if you've been in an accident, they're about to throw you out of the apartment, call us, we'll help you out and we'll give you some funding to help you make it until you can resolve your injury claim. Here's the thing, they're unique, they're not a bank, they don't charge interest. And if there is no recovery, because they've taken an assignment to secure the money they advance, here's how the system works and what they do. Somebody who's about to get thrown out of their apartment calls up one of these places and they say, I'd like to borrow money from you until my injury case is over, can you help me? And they'll usually help them. And frankly, most of these are \$2,000 or \$3,000 kind of advances, they're not big advances, they kind of help you through until your case is over with, pay the rent sort of advances. So we're talking about a couple, \$2,000, \$3,000, \$4,000, generally. The nonrecourse civil litigation provider will take an assignment. So they loan \$2,000 and in exchange they take an assignment of part of the proceeds of the injury settlement. The part that makes this unique, two things that make it unique, one is that if the litigation doesn't pan out these guys have to go away, they don't get paid back. So that's the nonrecourse part of what they do. If the personal injury case, for whatever reason, doesn't pan out, these folks are not paid back. In exchange for the fact that they are looking at more risk than a bank would that gets paid back under any circumstance, they charge more and they charge a lot more. It can be 30 or 40 percent. So someone who is advanced \$1,000 promises to pay about \$1,300, \$1,400 back out of their settlement. My own personal view of these groups is I discourage clients from using them. I tell them, do not...go borrow from anybody you can before you have to use them. But the reality is sometimes there is no other place to turn to. As I said when I began, these nonrecourse civil litigation outfits have been operating the state for probably ten years. There is absolutely no regulation of the industry in the state of Nebraska right now. What LB1094 does is it sets a standard for who can do this in Nebraska, what their contracts must include, and what they can do and not do, and it provides an opportunity for the person who is borrowing the money to cancel the contract within five days. The bill sets out safeguards so that there is no misleading the consumer before they enter into one of these transactions. As I said, if it were interest, it would be in the 30 or 40 percent range, so it is important that when a consumer enters into a nonrecourse funding agreement that they go in fully aware of what they're getting into. It requires that it be done with a lawyer's advice and help. It requires that the contract contain provisions that are in bold print that set out what the interest rate would be if it were calculated as a bank might calculate interest. It requires or allows for five days grace period where a consumer can withdraw from the transaction. It also requires that those who do this kind

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of work register with the Secretary of State and that the Secretary of State go through a process to determine who the good actors are in this industry from the bad actors. The good actors have to demonstrate that they are financially able and that they are going to follow the terms. They have to have a registered agent and put up a bond to determine or to ensure that if they engage in some kind of deceptive or bad practice that there is a fund available from which to make a recovery. That is the sum and substance of the bill. I will tell you that there are people in my profession who would like to see more regulation of this industry. The reality is there is none right now. I believe that LB1094 is a good start towards the regulation. We've also added one more feature to the bill and that last feature is this, that we've asked these companies to tell us what their activities are in the state of Nebraska annually. The Secretary of State is then going to provide a report to the Legislature and the Judiciary Committee in particular to tell us how many of these loans are they making, how much money did they advance, how many times were they...did they not recover back what they've advanced, and how much did they charge consumers in the state. I believe, with the additional information that we will receive as a consequence of the requirements in LB1094, we will be in a better position to say, what is this industry about and does it require any further regulation. LB1094 is a significant step towards sorting out the good actors from the bad actors, providing for a measure of... [LB1094]

SPEAKER FLOOD: One minute. [LB1094]

SENATOR LATHROP: ...thank you, providing for a measure of protection for consumers in the state. And I would encourage your support of LB1094. Thank you. [LB1094]

SPEAKER FLOOD: Thank you, Senator Lathrop. We now turn to discussion on AM1953. Senator Lautenbaugh, followed by Senators Hadley, Wightman, and Nelson. Senator Lautenbaugh. It is my understanding we have not done the Judiciary Committee amendments. Senator Ashford, you are recognized to open on AM1953. [LB1094]

SENATOR ASHFORD: The last committee amendment I did I thought was so brilliant, you probably thought that applied to all committee amendments into the future. (Laughter) But I will respond to this committee amendment, which is an excellent committee amendment, by the way. And I want to commend Senator Lathrop for all his work on this bill. Actually, this is extremely important litigation. And it's a matter those who are involved in litigation know, this is an issue that is extremely important to the average Nebraska citizens who deals in the court system. And it, without question, fills a significant need. LB...or the committee amendments to LB1094 and AM1953 would replace the definition of "consumer" with "a person residing or domiciled in Nebraska or who elects to enter into a transaction under the act, whether it be in person or over the Internet, by fax or by any other electronic means and who has a pending legal claim and

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is represented by an attorney at the time he or she receives a nonrecourse civil litigation funding." So it more clearly defines a person. The amendment would add provisions requiring the Secretary of State to request certain documents before a registration applicant to use...from a registration applicant to use in determining the companies character, fitness, and financial responsibility. The Secretary of State must request the following documents: first, a copy of the company's articles of incorporation, articles of organization, certificate of limited liability or other organizational documents; and two, proof of a surety bond or irrevocable letter of credit equal to double the amount of the largest funding in the past calendar year or \$50,000, whichever is greater. Relatively technical amendments, Mr. Speaker, but I urge their adoption. Thank you. [LB1094]

SPEAKER FLOOD: Thank you, Senator Ashford. Members, you've heard the opening on AM1953. We now return to discussion of AM1953. We begin with Senator Lautenbaugh, you are recognized. [LB1094]

SENATOR LAUTENBAUGH: Thank you, Mr. President. And if you're sure it's time, I'm willing to proceed. I would rise in support of this bill. I am a cointroducer along with Senator Lathrop. This is an area that I think regulation is needed and that's not something I admit lightly. But I do understand the problems. I think Senator Lathrop ably explained them. And I will...I do rise in support of the bill. And I understand Senator Hadley is next in the queue and if he would like my time, I would yield it to him. So I'd yield my time to Senator Hadley. [LB1094]

SPEAKER FLOOD: Senator Hadley, you are yielded 4 minutes 20 seconds. [LB1094]

SENATOR HADLEY: Thank you, Senator Lautenbaugh, Mr. President, members. Would Senator Lathrop yield to a question? [LB1094]

SPEAKER FLOOD: We do not permit yielding. You're on Senator Lautenbaugh's time. [LB1094]

SENATOR HADLEY: Oh, all right. Okay, okay. [LB1094]

SPEAKER FLOOD: You may do that on your time. [LB1094]

SENATOR HADLEY: I'm sorry, I'm sorry. With that, I will wait until my time comes up which is next. (Laughter) [LB1094]

SPEAKER FLOOD: You are now recognized, Senator Hadley. (Laughter) [LB1094]

SENATOR HADLEY: Thank you, Mr. President, members of the body. Would Senator Lathrop yield to a question? [LB1094]

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SPEAKER FLOOD: Senator Lathrop, will you answer a question from Senator Hadley? [LB1094]

SENATOR LATHROP: Yes, I will. [LB1094]

SENATOR HADLEY: Senator Lathrop, Just so I understand this. Is this...are these companies...is this a contingency loan? I guess, are they...does the person have to pay back the company whether or not they win the judgment or not? [LB1094]

SENATOR LATHROP: They only have to pay if they make a recovery sufficient to cover what has been advanced or what they're due to pay back. [LB1094]

SENATOR HADLEY: Okay. Secondly, I'm assuming in most of these cases that the attorneys would take it on a contingency fee also. Would that be correct? [LB1094]

SENATOR LATHROP: That would be almost universally true. [LB1094]

SENATOR HADLEY: Can you give me an approximation of what percentage would these fees that these companies...how much would they give the people involved? Is there, I guess, or does it depend I suppose. [LB1094]

SENATOR LATHROP: It depends. But let me just give you an example because I will tell you that I've been involved in maybe two or three of these transactions that clients have had to go through while I was representing them. So an example may be that they would be advanced \$1,000, and in eight months time they've have to pay back \$1,400. [LB1094]

SENATOR HADLEY: Okay. So is basically...I would guess that basically the bill is to make sure that these companies aren't gouging these people through interest and penalties, fees and such as that. Is that the primary purpose? [LB1094]

SENATOR LATHROP: Yes. We're not telling them how much they can charge though. And because, unlike a bank, a bank is going...you have an obligation, if you borrow money from the bank you have to pay the bank back regardless of your circumstances, unless you go through a bankruptcy. Here the nonrecourse civil litigation funding organization takes it on the likelihood or the probability that the plaintiff will make a recovery, and from that recovery they'll be reimbursed. If that case goes to pot for some reason, and there are a lot of reasons they do, let's say that somebody on the defense discovers that the guy has actually had a similar injury a month ago, a month before the car accident, some reason that the case goes to...goes south on the plaintiff and the plaintiff's lawyer, these people don't make a recovery. So that's the nonrecourse piece. No recovery, they don't get their money back let alone the premium they charge for loaning it to you. [LB1094]

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SENATOR HADLEY: Okay. Thank you, Senator Lathrop. I would stand in favor of LB...AM1953 and LB1094 because anytime Senator Lautenbaugh and Senator Lathrop are on the same side on a legal issue I think the body needs to vote for it. Thank you. (Laughter) [LB1094]

SPEAKER FLOOD: Thank you, Senator Hadley. Senator Wightman, you're recognized. [LB1094]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I would have some questions of Senator Lathrop if he would yield. [LB1094]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Wightman? [LB1094]

SENATOR LATHROP: Yes, I would. [LB1094]

SENATOR WIGHTMAN: Now, Senator Lathrop, you indicated that the bill contains no limit on interest rate and nor is there any attempt to regulate interest rates under the bill. Is that correct? [LB1094]

SENATOR LATHROP: That's true. [LB1094]

SENATOR WIGHTMAN: I would assume that a great deal of research probably goes into the part of any lender that makes this loan in determining the validity of the case and what the chances of recovery are. Is that correct? [LB1094]

SENATOR LATHROP: That's true. I believe that these outfits have lawyers familiar with this kind of work that would look through the circumstances, the liability, the damages, and the insurance coverage that's available to determine is this a good bet or is it not a good bet. [LB1094]

SENATOR WIGHTMAN: So if it's not a good bet, are there any companies out there that would likely make that loan even if they could charge 100 percent? [LB1094]

SENATOR LATHROP: No. If it was not...if there was...let's say there's a question about what color the light was at an intersection collision, you'd likely not find them...that's what we call a liability fight. You'd likely not find them advancing money in a difficult liability circumstance where payment is questionable. [LB1094]

SENATOR WIGHTMAN: So would it be fair to say, Senator Lathrop, that most of these loans are probably made where the amount of damages is an issue more than whether liability is an issue? [LB1094]

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SENATOR LATHROP: I would say that's typically true. [LB1094]

SENATOR WIGHTMAN: So I assume it's a pretty fine line in crafting this legislation because you can drive away the only possible source of funding sometimes. Is that correct? [LB1094]

SENATOR LATHROP: That's true. Instead of regulating what they can charge, we've tried to make sure that the consumer knows what kind of transaction they're getting involved in, what they're going to have to pay back so that they can do this informed. [LB1094]

SENATOR WIGHTMAN: Thank you, Senator Lathrop. I do support the legislation. I think we do need some means of regulation and I think this is an attempt to regulate it. And that regulation has got to be somewhat moderate, I think, in its scope because if we don't we won't have anyone that will perhaps fund this legislation. And many maybe good cases will be settled way too cheaply. Thank you, Mr. President. [LB1094]

SPEAKER FLOOD: Thank you, Senator Wightman. Senator Nelson, you are recognized. [LB1094]

SENATOR NELSON: Thank you, Mr. President, members of the body. I do, in looking through this bill, stand in general support of it. But I would like to address a question or two to Senator Lathrop. [LB1094]

SPEAKER FLOOD: Senator Lathrop, will you take a question from Senator Nelson? [LB1094]

SENATOR LATHROP: Yes, I would. [LB1094]

SENATOR NELSON: Thank you, Senator Lathrop. Years and years and years ago when I did a little bit of personal injury, I had an instance where something like this would have been very, very helpful. I had a client that was just absolutely strapped. And as you say, there was no way that I could advance anything. And on the other hand, we had a defense firm that just took forever to finally resolve the matter. I'm looking at page 4, starting with line 4 there is section (c). And I will say that someone made reference to the fact this was to prevent gouging. But who's to determine what's gouging and what is a legitimate return for a company that's putting a lot at risk here? So I think your answer is, Senator Lathrop, if you would yield, that there's no attempt to regulate the charge itself of whether we call an interest or a charge. Is there anybody that can interfere and say this is not reasonable, a reasonable charge? [LB1094]

SENATOR LATHROP: I think after we get done with LB1094 and putting the

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disclosures into the agreement, it would be difficult to say I didn't know what I was doing when I entered into the agreement. [LB1094]

SENATOR NELSON: Right. [LB1094]

SENATOR LATHROP: You'll see in the bill that these transactions are only going to happen in those instances where the plaintiff is represented by a lawyer. [LB1094]

SENATOR NELSON: Right. [LB1094]

SENATOR LATHROP: The lawyer has to sign off on it and acknowledge that the lawyer has explained the significance of the agreement and has agreed to withhold the money and pay it to the nonrecourse. So you're exactly right. We're not saying what they can charge, we can't regulate that or I suppose we could but we're not. We're making sure that it's very clear at the front side of this what they're getting into. [LB1094]

SENATOR NELSON: Does the attorney representing the client have any ability to recommend or not to recommend doing this or is it solely up to the client to make the decision? [LB1094]

SENATOR LATHROP: This bill doesn't address that. I will tell you my own practices, I discourage people from doing this. I encourage them to talk to families, to talk to any other resource they can before they go to one of these because what they have to pay back on the loan is considerable. And these are typically a loan of last resort. [LB1094]

SENATOR NELSON: Have you, as an attorney, had any experience with one of these firms coming to the client and say, look, you can continue litigation here, but they've offered a really good settlement, why don't you go ahead and take it despite your attorneys device. Has that ever happened? [LB1094]

SENATOR LATHROP: These people will not interfere with my relationship with my client. So if there's an offer, I don't have to call these guys up and say, listen, I think the case is worth \$12,000, there's an offer of \$10,000, you've loaned money on this thing, I'm just kind of letting you know where it's at. I don't have any duty as the lawyer representing the person that enters into one of these agreements to keep them updated, to seek their advice. And they have no control over the case whatsoever. It still remains between the plaintiff and their counsel. [LB1094]

SENATOR NELSON: Right. But they are prohibited here from contacting the client without your knowledge and saying, you really ought to settle this. Is that correct? [LB1094]

SENATOR LATHROP: I think that's right. [LB1094]

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SENATOR NELSON: Okay. And you as an attorney cannot accept any fees from any of these companies for referring this matter to them. You have to stay out of that altogether. Is that correct? [LB1094]

SENATOR LATHROP: That's exactly right. [LB1094]

SENATOR NELSON: Right. [LB1094]

SENATOR LATHROP: And I think that's an important provision in the bill. [LB1094]

SENATOR NELSON: All right. Do these firms have to be incorporated in the state of Nebraska or just registered... [LB1094]

SPEAKER FLOOD: One minute. [LB1094]

SENATOR NELSON: ...with our Secretary of State? [LB1094]

SENATOR LATHROP: They have to be registered here. And it's a process where they provide information to the Secretary of State, who can make some determination as to whether or not they... [LB1094]

SENATOR NELSON: Um-hum. [LB1094]

SENATOR LATHROP: ...should be doing business in the state or are they one of the bad actors. [LB1094]

SENATOR NELSON: Um-hum. [LB1094]

SENATOR LATHROP: And there are a handful of them out there that are that should not be permitted to do business in the state of Nebraska. [LB1094]

SENATOR NELSON: All right. So, basically, if I understand you, what the bill does it just throws up all sorts of things that would have to appear in writing for the prospective client here who wants to get this money so they're just fully apprised of what they're entering into. [LB1094]

SENATOR LATHROP: That's exactly right. [LB1094]

SENATOR NELSON: All right. Thank you, Senator Lathrop. Thank you, Mr. President. [LB1094]

SPEAKER FLOOD: Thank you, Senator Nelson. There are no other lights on. Senator

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Ashford, you're recognized to close on AM1953. [LB1094]

SENATOR ASHFORD: Thank you, Mr. Speaker. And, again, the committee amendments are very technical. The substance of the bill has been aptly explained by Senator Lathrop. So I would just urge the adoption of the committee amendments. [LB1094]

SPEAKER FLOOD: Members, you've heard the closing on AM1953. The question before the body is, shall the committee amendment be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB1094]

CLERK: 28 ayes, 0 nays on adoption of committee amendment. [LB1094]

SPEAKER FLOOD: Committee amendments are adopted. Returning to discussion on LB1094. There are no lights on. Senator Lathrop, you're recognized to close. [LB1094]

SENATOR LATHROP: Thank you, Mr. President, colleagues. I think the discussion has afforded the members of the Legislature an opportunity to understand the problems and the dilemmas that face someone who has been hurt and cannot work and has a personal injury claim. The difficulties they have making it from the point at which they have been hurt to the point at which they might have a settlement eventually and the place for nonrecourse civil litigation funding in that process. It is a lender of last resort. They charge a great deal of money for the money they advance. I've called it a loan. It's not a loan, it's actually an advance from which they take an assignment in the proceeds. This is a good step towards making sure the consumers in the state are apprised of the nature of the relationship they are entering into with the nonrecourse civil litigation folks. I would appreciate your support of LB1094. Thank you. [LB1094]

SPEAKER FLOOD: Thank you, Senator Lathrop. Members, you've heard the closing on LB1094. The question before the body is, shall LB1094 advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB1094]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB1094. [LB1094]

SPEAKER FLOOD: LB1094 advances to E&R Initial. We now proceed, Mr. Clerk, to LB1094A. [LB1094 LB1094A]

CLERK: LB1094A by Senator Lathrop. (Read title.) [LB1094A]

SPEAKER FLOOD: Senator Lathrop, you're recognized to open on LB1094A. [LB1094A]

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SENATOR LATHROP: Thank you, Mr. President, colleagues. This...I think it takes \$1,500 out of a cash account to make this all happen, money well spent. I appreciate your support of LB1094A. Thank you. [LB1094A]

SPEAKER FLOOD: Thank you, Senator Lathrop. Members, you've heard the opening on LB1094A. There are no other lights on. Senator Lathrop, you're recognized to close. Senator Lathrop waives closing. The question before the body is, shall LB1094A advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB1094A]

CLERK: 33 ayes, 0 nays, Mr. President, on the advancement of LB1094A. [LB1094A]

SPEAKER FLOOD: LB1094A advances to E&R Initial. Mr. Clerk, we now proceed to the next item on the agenda, LB842. [LB1094A LB842]

CLERK: LB842 by Senator Lautenbaugh. (Read title.) The bill was introduced on January 8, referred to the Judiciary Committee. The bill was advanced to General File. At this time I have no amendments to the bill, Mr. President. [LB842]

SPEAKER FLOOD: Senator Lautenbaugh, you're recognized to open on LB842. [LB842]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. Simply put, under existing law, currently the county attorney in each individual county would handle a grand jury investigation if an individual dies of natural causes while being apprehended or in custody. However, if the individual dies from any other cause of death--suicide, gunshot, etcetera--a special prosecutor must be appointed to handle the grand jury investigation and proceedings. As you can imagine this represents, when it happens, a substantial cost to the affected county. What this bill does, very simply is remove the requirement for a special prosecutor and provide that in all instances the county attorney would handle the investigation. I believe that this could amount to savings in the hundreds of thousands of dollars at least in the case of Douglas County alone, and if we've had one theme this session, it has been that we need to realize what we must do as government and we need to stop doing the things that we may like to do but realize we can't afford to do anymore. And that's just as true at the county level as it is at the state level and that was the main reason and, well, from where I'm sitting since I'm the one that brought it, the only reason for introducing this bill. I'd be happy to take your questions and I would urge the approval. [LB842]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. Members, you've heard the opening to LB842. There are no lights on. Senator Nelson, you are recognized. [LB842]

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SENATOR NELSON: Thank you, Mr. President, members of the body. Would Senator Lautenbaugh answer a question or two? [LB842]

SPEAKER FLOOD: Senator Lautenbaugh, will you yield to a question from Senator Nelson? [LB842]

SENATOR LAUTENBAUGH: Yes, I will. [LB842]

SENATOR NELSON: Thank you, Senator Lautenbaugh. I just had an opportunity to read the committee statement and I just want to make sure I understand this that we're doing...are we doing away with special prosecutors in this instance altogether or are we requiring a county attorney as a substitute, therefore, to have a certain amount of experience or anything of that sort in handling these grand jury investigations? [LB842]

SENATOR LAUTENBAUGH: We are in general doing away with the special prosecutor entirely and putting it back on the county attorney to do the investigation and prosecution. [LB842]

SENATOR NELSON: Is there any problem with that as far as the county attorney having a conflict of interest in that particular county in connection with law enforcement? [LB842]

SENATOR LAUTENBAUGH: Generally I would say no but if there is, the county attorney, I assume, would withdraw and we would have a special prosecutor in any event. [LB842]

SENATOR NELSON: So one could be appointed in that instance? [LB842]

SENATOR LAUTENBAUGH: Yes. [LB842]

SENATOR NELSON: All right. Thank you, Senator Lautenbaugh. Thank you, Mr. President. [LB842]

SPEAKER FLOOD: Thank you, Senator Nelson. Senator Pirsch, you're recognized. [LB842]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Lautenbaugh might yield to a question or two. [LB842]

SPEAKER FLOOD: Senator Lautenbaugh, will you yield to a question from Senator Pirsch? [LB842]

SENATOR LAUTENBAUGH: Yes, I will. [LB842]

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SENATOR PIRSCH: Now, the area of law that's being amended here then that's not...was this in statute then for a while? [LB842]

SENATOR LAUTENBAUGH: I believe it has been this way for probably five or six years but I could be off on that number. [LB842]

SENATOR PIRSCH: Okay. And it would apply to all jurisdictions, right, not just selected counties? I'm just trying to wrap my arms around the scope of it... [LB842]

SENATOR LAUTENBAUGH: Yes. [LB842]

SENATOR PIRSCH: ...right? Okay. [LB842]

SENATOR LAUTENBAUGH: I'm sorry, I didn't mean to interrupt, Senator Pirsch. [LB842]

SENATOR PIRSCH: No, that's okay. [LB842]

SENATOR LAUTENBAUGH: Yes, there's no geographic restriction on this. [LB842]

SENATOR PIRSCH: Okay. I would yield the balance of my time to Senator Lautenbaugh if he would like it. [LB842]

SENATOR LAUTENBAUGH: Thank you, Senator Pirsch and really I appreciate the yield but I have nothing more to add on it. I'll just continue answering questions as they are asked. [LB842]

SPEAKER FLOOD: Thank you, Senators. Senator Wightman, you're recognized. [LB842]

SENATOR WIGHTMAN: Thank you, Mr. President and colleagues. If Senator Lautenbaugh would yield to a question or two, I would like to engage in some conversation. [LB842]

SPEAKER FLOOD: Senator Lautenbaugh, will you yield to Senator...or will you take a question from Senator Wightman? [LB842]

SENATOR LAUTENBAUGH: Yes, I will. [LB842]

SENATOR WIGHTMAN: Thank you. Senator Lautenbaugh, one of the problems I have is...and I may well support this, but in small counties I see the issues being considerably different than they are in Douglas County, for example, in that it seems to me that

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county attorney's using law enforcement officers as witnesses on almost every criminal case develop a pretty close relationship with the law enforcement officers. And, of course, we're talking about someone who is killed while being apprehended, I think, is that correct on these jury cases? [LB842]

SENATOR LAUTENBAUGH: Well, not necessarily. It could be any death from other than natural causes in custody. I mean, it could be a suicide, it could be anything that is just not natural causes while in custody. [LB842]

SENATOR WIGHTMAN: Okay. But the situation still applies that the county attorney frequently is...whether during custody and under the charge of the county sheriff or whoever else, that would be about the only possible officer in small counties at least that would have charge of the custody, would it not be the county sheriff? [LB842]

SENATOR LAUTENBAUGH: Presumably, if the county were small enough. [LB842]

SENATOR WIGHTMAN: Possibly state patrol on a short-term basis. [LB842]

SENATOR LAUTENBAUGH: Yes. [LB842]

SENATOR WIGHTMAN: Do you think this creates any problems with regard to county attorneys in a rather close relationship with these law enforcement officers who may have charge of the custody? [LB842]

SENATOR LAUTENBAUGH: Well, I don't think it would create a problem per se but if the relationship were close enough, I suppose the county attorney could always recuse him or herself as always if, you know, say it was a relative or something, not a death in custody but another matter involving a relative, the county attorney would have to step aside. This could be analogous to that, but I would point out that if this burden would fall particularly heavy on a smaller county with a smaller tax base, if a special prosecutor did have to be appointed in every one of these instances. [LB842]

SENATOR WIGHTMAN: And I understand that. I'm just thinking that the complex situation may be much more likely to exist in a smaller county than it does in, for example, either Douglas or Lancaster County. [LB842]

SENATOR LAUTENBAUGH: I would think that would be true of any criminal prosecution in any small county. [LB842]

SENATOR WIGHTMAN: Thank you, Senator Lautenbaugh. Thank you, Mr. President. [LB842]

SPEAKER FLOOD: Thank you, Senator Wightman. Senator Council, you are

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recognized. [LB842]

SENATOR COUNCIL: Yes, thank you, Mr. President. I rise in opposition to LB842 and my opposition is based on the fact that the current legislation was designed to provide transparency and to provide the public with a sense of an independent review and investigation of any situation where an individual died while in custody or while being apprehended by law enforcement. The bill in addition to eliminating the need for the appointment of a special prosecutor also eliminates the provision that required the special prosecutor to use law enforcement from outside of the area where the actual death occurred to provide a level of independent investigation and review. The bill also eliminates the requirement that if there is a death of an individual while being apprehended or in custody, that the investigation of that death be considered an ongoing investigation until such time as the matter is presented to the grand jury. I think this bill goes far beyond any effort to provide some cost savings to the county attorneys' offices. What it actually does is eliminate that level of transparency in terms of the confidence of the public that in such cases there will be a truly independent investigation and prosecution if the evidence shows it of any law enforcement official who is found to have acted outside of his or her authority or exceeded their authority or used excessive force in their authority, and that the special prosecutor as well as this independent group of law enforcement investigators provides that buffer. And as Senator Wightman was indicating, I mean it's not just small communities where there is a relationship, a rather strong relationship between law enforcement and the county attorneys. I mean that's across the width and breadth of this state. The county attorneys depend upon law enforcement with most, if not all, of their criminal prosecutions and the concern is that the county attorneys would be placed in positions where they would have to perhaps second guess the extent to which they would aggressively pursue an investigation of law enforcement in the event of a death for fear or concern that it would affect their relationship and their ability then to aggressively pursue other criminal investigations. I think that current law protects both law enforcement and the county attorneys because the county attorneys don't have to be involved. They don't raise the specter of any conflict of interest or any favoritism being shown to law enforcement and law enforcement has the benefit of having an independent investigation and examination of their conduct. For those reasons, I don't see the necessity in altering the current state of the law at all and I would urge the body to vote against LB842. [LB842]

SPEAKER FLOOD: Thank you, Senator Council. There are no other lights on. Senator Lautenbaugh, you're recognized to close on LB842. [LB842]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And briefly, any time you have law enforcement involved as a potential defendant, there's going to be that concern. I recognize that. But I would point to in Douglas County alone there have been recent successful prosecutions of police officers involved in wrongdoing that did not include deaths in custody. So I'm not sure why the distinction

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needs to be made here but I do know that when it does arise under these circumstances, as I indicated in my opening, the cost is substantial. And at some point, I believe we either have to be able to trust our county attorneys to behave according to the rules that govern them and the rules that govern all attorneys and if there is a conflict of interest, step aside. But there is nothing in my mind unique about the circumstance that this law covers that makes it any different than if a police officer is accused of stealing and the county attorney prosecutes him or if a police officer is accused of some misconduct, as occurred in a prostitution matter a while back, and the county attorney successfully prosecuted. We have ample evidence of our county attorneys upholding the law and if we didn't, we would have problems beyond what this underlying law sought to address. And with that, and without laboring the point, I would urge your approval of LB842. [LB842]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. Members, you've heard the closing on LB842. The question is, shall LB842 advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB842]

CLERK: 32 ayes, 2 nays, Mr. President, on the advancement of LB842. [LB842]

SPEAKER FLOOD: LB842 advances to E&R Initial. Mr. Clerk, items for the record. [LB842]

CLERK: Thank you, Mr. President. LR416 is offered by Senator Campbell. That will be laid over. LR417, LR418 by Senator Dubas. Those will be laid over. LR419 by Senator Pankonin, interim study will be referred to the Executive Board. That's all that I have. (Legislative Journal pages 998-1001.) [LR416 LR417 LR418 LR419]

SPEAKER FLOOD: Thank you, Mr. Clerk. We now move on to the next item on the agenda, 2010, the committee priority bills, on General File, the Christensen division. We begin with LB862. Mr. Clerk. [LB862]

CLERK: LB862 is a bill by Senator Christensen relating to Natural Resources. (Read title.) The bill was introduced on January 11, at that time referred to the Natural Resources Committee for public hearing. The bill was advanced to General File. I do have committee amendments, Mr. President. (AM2004, Legislative Journal page 768.) [LB862]

SPEAKER FLOOD: Senator Christensen, you're recognized to open on LB862. [LB862]

SENATOR CHRISTENSEN: Thank you, Mr. President. Colleagues, first I would like to thank Senator Langemeier and the members of the Natural Resources Committee for making LB862 a committee priority bill this session. I appreciate their continued

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attention to water issues throughout Nebraska, especially their commitment to helping local officials and their communities find solutions to the water management needs. I will not speak to the green copy as introduced but to the committee amendment, AM2004, which becomes to the bill and I support. First, I would like to be very clear that this is not a new tax but a clarification and improvement to existing occupation tax that has recently been upheld by a constitution...as constitutional on all three challenges to its constitutionality. This is still being challenged again, into the next, it's been filed on. And we still have currently the same language in here that was also found unconstitutional by the same district court, different judge, on a previous case dealing with another lawsuit. So there's still question here whether the language is still constitutional. LB862 as amended by the committee amends Section 2-3226.01 and 2-3226.05 which authorizes river flow enhancement bonds and occupation tax on the activity of irrigation on agricultural lands. These sections were enacted in 2007 with the passage of LB701. The committee amendment, AM2004, does three things. First, it provides for a process and cooperation between Natural Resource Districts in a fully appropriated basin and Department of Natural Resources to qualify for the authority to bond and levy an occupation tax. Second, our current law allows for the occupation tax in Section 2-3226.05 to pay for river flow enhancement bonds authorized in 2-3226.01 for the repayment of state financial assistance in Section 2-3226.07. The committee amendment would, in addition, allow the occupation tax to pay for all or part of qualified projects in Section 2-3226.04, whether or not bonding is used. This allows flexibility for the NRDs when doing smaller qualified projects, they can choose to bond or to use cash to pay for projects. Third, LB862 as amended by committee is also needed to clarify an eligible NRD which has multiple river basins within jurisdiction as defined in Section 2-1504 shall confine the occupation tax levy to a relevant river basin affected by an IMP adopted according to Section 46-715. We're going to be looking through this discussion on water of whether surface people should be exempted or not with amendments that are coming. And you're going to have to decide whether to accept these amendments or not. And I think in how you accept these make a difference in who you put the blame on for decreased streamflows. If you look at what has caused streamflows to decrease, it's a multifaceted situation. Ground water has been a part of it. Surface water usage decreases streamflows. Vegetation management. I encourage people to go back and look at the Bureau of Reclamation site when the dam projects at Swanson, Harlan County, Red Willow, Medicine Creek, these projects were built you can look on their Web site and you'll probably look a mile to see one tree. Vegetation has changed. Vegetation uses water. The more available it is, the more it will use. Where surface...or ground water tables are high along streams, they use the maximum that plant will use. Terraces, another way of holding water away from the streams, which was paid for by government projects, which prevents soil erosion, which has achieved its objectives to stop erosion, to stop runoff of our soils, and at the same time held back water. No-till farming. I challenge you to look at the University Web site on no-till. The amount of water that is saved by trash on the ground. Many people call no-till farming trash farming. If you think about it, you leave all the wheat stubble out

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there or all the corn stalks, all of the wheat or soybean stubble, when water falls, it hits it, it stops it, more of it soaks in, less runs off. Take different soil types. The difference if you got clean soil, disked, plowed, so that there's no trash on it, the University will say anywhere between .2 to .75 inches of precipitation will soak in before it seals over and runs off, with trash farming, up to 4 inches, and these are measurements per hour. If you can get up to four inches per hour to soak in, I ask you, how many rains larger than four inches per hour do we have? No-till or trash farming to me is the number one reason streams don't flow like they used to. Dams, they're another one. You've probably heard me pick on my dad a number of times. He's got a 300-acre of pasture he can hold back 400 acre-feet. Literally if all of the dams filled, which I've never seen them all fill at one time, he could hold back maybe 1,000 acre-feet of water. Is that right? No. But that's how good a job we have done conserving water which reduces streamflow which has affected surface irrigators. I'll be real clear. I have 46 acres of surface irrigated. I have 20 acres of ground water irrigation. To take one of the amendments offered would make me money. But that's not what I'm after here. Not looking to take care of myself. I'm looking to do what I believe is best for the district and what is best for the district is either you need to go back in and tax every one of these, entities, surface, dams, ground water, terraces, no-till, everything, or you need to use...go to who is using the actual irrigation water, which is both surface and ground water. So as we get into this, I expect we'll have a lot of debate on this bill. I'm open to your questions. I think this is very important that we get this clarified for the state of Nebraska and I'm looking forward to discussing this with anybody, and looking at advancement of this bill. Thank you.
[LB862]

SPEAKER FLOOD: Thank you, Senator Christensen. There are committee amendments to LB862. Senator Langemeier, you are recognized to open on AM2004.
[LB862]

SENATOR LANGEMEIER: Mr. President and members of the body, Senator Christensen kind of opened on this. I don't know what I can add to as I go through my notes in his discussion. As he stated, it requires to use the occupation tax with AM2004, which becomes the bill, LB862. NRDs will be required to do a new integrated management plan to deal with a number of issues. And in that integrated management plan, I'm going to talk a little bit about how that process happens. As an NRD creates their integrated management plan and starts their public hearing process, they have to submit that DNR. As Senator Christensen said, DNR becomes a gatekeeper. They have to approve and work together to create an integrated management plan. And part of that process, the NRD has to demonstrate to DNR that they have a use for an occupation tax, they have a use to use this money. And it's limited to four things, the purchase or the lease of surface water, the purchase or the lease of management of administration of canals, reservoirs, and constructed irrigation equipment, vegetation management, as well as river flow augmentation. And so there are a guideline of what they would use this money for. They have to deal with the issues of how they're going to use it. And with

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that, you've heard the opening and we're ready for questions. I would ask for the adoption of AM2004 to LB862. [LB862]

SPEAKER FLOOD: Thank you, Senator Langemeier. There are amendments to the committee amendment. Mr. Clerk. [LB862]

CLERK: Mr. President, the first amendment to the committee amendment, Senator Harms, AM2197. (Legislative Journal page 882.) [LB862]

SPEAKER FLOOD: Senator Harms, you are recognized to open on AM2197. [LB862]

SENATOR HARMS: Thank you, Mr. President and colleagues. This is a simple amendment and here's what it does. On page 3, line 6, after "of" insert "ground water" and line 7 after "per" insert "ground water" and in line 20 after "irrigated" insert "and certified by the district as ground water irrigated." The reason that I bring this forward is that this bill as it's drafted today without this legislation has expanded the NRDs' responsibility. Up to this point, the NRDs' responsibility have been strictly ground water. By this bill the way it is written today, expands it into surface water. We've expanded that without any specific hearing in regard to that specific responsibility. This is a huge change in our water policy and I think it's something that we need to have direct discussion about and we need to be...clarify just exactly what the purpose of this is. When you look at this bill, the bill LB862 was introduced because the Republican River Basin folks were concerned or the NRDs were concerned that that existing law, which was LB701 which Senator Christensen talked about, which created this tax several years ago, would be determined as a closed class, that it would be unconstitutional. Well, the district court of Lancaster County on March 15 said no, that it wasn't, that it could be dealt with. And what I'm concerned about is that, what's going to happen here if we do not approve this amendment or that we accept this bill as it is written. What Senator Christensen is wanting to accomplish will not happen because we will be back into the court system arguing and debating whether this bill, again, is constitutional or not, because I can tell you that I know the surface irrigators were going to pursue this and all they ask for is a fair opportunity to have a hearing on this, on the fact that we want to expand the responsibility of the NRDs. Up to this point, it's been to deal with specifically underground water. Underground water that quite frankly was never under control that caused the problem that we have today, caused the debates we're having today in regard to water. And that's what the NRDs' responsibility have been. And now we want to expand it, now we want to move it another direction that I don't think is appropriate at this point. I think the very simple issue of this is, approve this amendment and we can go on with our business, have a hearing or send this bill back to the committee and ask for a study committee to review this and to be involved in it. You need to bring both sides together. This is going to drive a wedge deeper than what you can imagine between surface and ground water people. And I don't think we should do this. I think this can be resolved very simply by giving them the fair opportunity to

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discuss this. Now, I've already heard the argument, well, you could have come to the hearing, John. Well, I tell you what, I talked to the folks about that. And what they have said is, they were informed that this bill or any bills that dealt with water were not going to come out of the Natural Resource Committee. That, in fact, they would go to a committee. And there would be no priority. That's why they didn't come. And so what I'm really concerned about is in fairness here, we really need to address this issue, and my thoughts are that this is not the appropriate way to go and I would ask you to support this amendment. Thank you, Mr. President. [LB862]

SPEAKER FLOOD: Thank you, Senator Harms. You've heard the opening on AM2197 to AM2004. We now turn to discussion on the same. We start with Senator Carlson, followed by Senators Christensen, Schilz, Sullivan, Loudon, Lathrop, Langemeier, and Stuthman. Senator Carlson, you are recognized. [LB862]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. First of all, I am in opposition to AM2197 from my good friend, Senator Harms. And I think that Senator Christensen has a pretty good response to what his concerns are and I'm going to leave that for him and I'm going to talk a little bit more about the bill itself. The occupation tax. I never thought that I would plead for a tax but I am today. I think that LB862 is essential to address the challenges in the Republican Basin and it may be just as important to challenges in the Platte Basin in the very near future. Many that even come from Senator Christensen's district and my district believe that the situation on the rivers is a state matter and should be paid for by state dollars. I don't disagree. But those of you that are listening, let me ask you a question. We have a challenge in a river basin and it takes dollars to try and meet that challenge and solve that problem. If we were to, here today, in LB862, asking this Legislature for millions of dollars to address a problem that we say is serious and needs to be taken care of now, what's your answer? I know what your answer would have to be: We don't have the money. So with the financial picture of the state today, that just doesn't work. Now, a lot of people in my district and again in Senator Christensen's district will come to us and say this is a state obligation, let the state pay. And again, I don't disagree with that. But if we let the state pay, we also let the state make all the rules. That's the way our system works. And those rules will not be allocating dollars to solve a problem. Those rules will involve stiff regulation. So without the occupation tax, we can only sit and wait and hope. And one of the things that I strongly believe we cannot sit and wait for is what's called a water-short year in the Republican Basin in our challenge of a compact with Kansas. A water-short year is a drastic year. A water-short year without things in place to address it and prevent it involve serious, serious consequences to everybody who lives in the Republican Basin, a great effect on income, a great effect on income and sales taxes, and in that regard it's a great effect on the state of Nebraska. Now I believe that the occupation tax can provide dollars to help the basin avoid a water-short year. That's one of the ways that the occupation tax can be used. It can be used for vegetation control. We've already seen the effects of that. It's been very, very important. It's been

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instrumental in keeping us away from a water-short year to this point. But avoiding the water-short year is important to the surface water irrigators... [LB862]

SPEAKER FLOOD: One minute. [LB862]

SENATOR CARLSON: ...just as it is to ground water. Vegetation control is important to surface water irrigators just as it is to ground water. It could be used to recharge ground water. Recharging ground water restores water to the stream. That's important to surface irrigators just as it is for ground water. It might be used to lease surface water. It might be used to set up something to augment streamflow to avoid the water-short year. That's important to surface as well as ground. It may be used to buy acres to retire irrigation permanently. It might be used for fair compensation to surface and ground water irrigators when that's appropriate. This is an important matter. This is an important bill. Both ground and surface water have a part in it. I would ask that you vote against AM2197 and vote for the underlying amendment and bill. Thank you, Mr. President. [LB862]

SPEAKER FLOOD: Thank you, Senator Carlson. Senator Christensen, you are recognized. [LB862]

SENATOR CHRISTENSEN: Thank you, Mr. President. To address the issue that this is not an expansion of tax, surface was included. I ask you to go to the green copy, page 4, line 1 says the district may levy an occupation tax upon the activity of irrigation of agricultural land within such district on an annual basis, not to exceed \$10 per acre, the proceeds of which will be used for the purpose of repaying the bonds. You jump on down to line 15: Acres certified (sic) by the county assessor as irrigated shall be subject to such district occupation tax unless, on or before July 1, 2007, or on or before March 1 in each subsequent year, the record owner or irrigation...whoops, that's new language...certifies to district of nonirrigation status. And then if you go into the lawsuit settlement, which I have a copy back here, the plaintiffs argue, however fail to acknowledge that the challenged statutes provided landowners the choice to apply for an exemption from the occupation tax when certified that they have not irrigated their cropland. Acres classified by the county assessor as irrigated shall be subject to a district's occupation tax unless, on or before these dates that I read you earlier, March 1 in each subsequent year, the record owner certifies district nonstatus of such acres, the availability of such exemption demonstrates the imposition that occupation tax is contingent upon the landowner's decision to maintain irrigated or nonirrigated cropland. If you go...let's see, I guess that's the same one. But I can tell you from personal experience, I paid occupation tax on my surface irrigated land, I can tell you my family did and I can tell you everyone did. There's been a number of people that have been frustrated over having to pay that occupation tax on surface irrigation. But the fact is, we set it up that way in 2007. It's not a new tax. It covers no new acres. It is a continuation of the same thing that LB701 was in 2007 and we have not expanded the ability to tax

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on to anyone new and that's why I made my statement in my opening, this is not a new tax, just new language to clarify how you apply for the occupation tax. So at this point, I think I'm going to quit and address any additional questions as they come. Thank you. [LB862]

SPEAKER FLOOD: Thank you, Senator Christensen. Senator Schilz, you're recognized. [LB862]

SENATOR SCHILZ: Thank you, Mr. President. Members of the body, good afternoon. I guess I'd just like to start by saying, you know, serving on the Natural Resources Committee and going through this and having some history on water issues and what's happened, I have to stand in opposition to AM2197 and here's why. I look at this situation and this is a situation that we've been dealing with for quite awhile, even back to when the Water Policy Task Force was formed and the negotiations were happening there. And a lot of what happened within those negotiations and the subsequent law, LB962, that came from that were done with all the best intentions and all the best foresight that we could have. The one area that we were never able to get accomplished was funding for what we believed needed to happen to help LB962 move forward. We're still battling that issue today--how do we fund these sorts of situations where it's just hard to find any conclusion? And here's the real question. You know, if we don't find a funding source for this area and we have a water-short year, lives are interrupted. People will be shut down and then we'll have to figure out what to do next. And if you look around, many of the folks that are within the basin or within an area that needs help like this have stepped up and said, you know what, I think this is something that we need to do. Now who should be involved in the solution? That's the next question. And I can tell you this. We passed a bill awhile back that got us all started down this path called LB108, and LB108 said surface water and ground water are connected. We understand that. We know that. We see the science in that. And I bring to you today that we are not going to solve this problem separately. We're not going to be able to. It's going to have to be solved together, both surface and ground water and everybody in between, and that's a lot of the reason why I think this is beneficial to everyone. These types of actions will help surface water users as well as ground water users. I don't think that any of us want to stand up here and say, at least I don't, and say that all well water irrigators that are affecting the streams should be shut off. I don't think we want to do that and I think that if we manage things properly going forward, I'm not sure that we'll need to do that on a large scale or in vast numbers. And so what I'm telling you today is that LB862, like Senator Christensen said, does not impose a new tax. What it does is it helps clarify and simplify what goes on so that these folks can use this for the solutions that they're going to need to make sure that we don't have to...or the state of Nebraska doesn't come in and shut wells off for people that are working to make a living today. And with that, I will thank you very much. [LB862]

SPEAKER FLOOD: Thank you, Senator Schilz. Senator Sullivan, you are recognized,

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followed by Senators Louden, Stuthman, Hansen, Harms, Haar, and others. Senator Sullivan. [LB862]

SENATOR SULLIVAN: Thank you, Mr. President. I rise actually with some questions as I'm trying to figure out what I think is quite a complicated issue when we talk about water policy. So for starters, I'd like to ask Senator Christensen if he would yield. [LB862]

SPEAKER FLOOD: Senator Christensen, will you yield to a question from Senator Sullivan? [LB862]

SENATOR CHRISTENSEN: Yes. [LB862]

SENATOR SULLIVAN: Senator, I know that in your early comments you said I'm not going to refer to the green copy but rather to the committee amendment, but I'd like to start with your statement of intent where you mentioned that mandatory measuring controls, well metering, are essential to accurately managing water within a district. So my first question is, I assume with surface water irrigation they know how much they use, but with ground water, is this requiring mandatory well meters? [LB862]

SENATOR CHRISTENSEN: In my district we have required meters on every ground water well. [LB862]

SENATOR SULLIVAN: So, in other words, you can actually measure the amount of ground water... [LB862]

SENATOR CHRISTENSEN: Fully measure, yes. [LB862]

SENATOR SULLIVAN: ...that is being pumped. But that's not the case in all NRDs? [LB862]

SENATOR CHRISTENSEN: That is correct. [LB862]

SENATOR SULLIVAN: Earlier, you identified, too, that this occupation tax could be used on a variety of different projects, and you lumped into three categories, but could you be a little more specific on the types of projects that could be funded with this tax? [LB862]

SENATOR CHRISTENSEN: Sure. Under section 2-3226.04 it says, proceeds, a bond pursuant to this section shall be used to pay...used to pay or refinance the cost of (1) acquisition by purchase or lease of water rights, (2) pertaining to surface water, including surface storage rights' respect or buying the surface water to deliver to Kansas or compliance in any district; (3) vegetation management, as Senator Carlson's original bill to clean out streams; or (4) for augmentation of river flows which might be bringing

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imported water in or might be pumping water from one area and putting it to this stream, which is called a retiming issue. [LB862]

SENATOR SULLIVAN: Would this actually allow NRDs to purchase reservoirs and canals that belong to irrigation districts? [LB862]

SENATOR CHRISTENSEN: If there was a willing buyer and seller, yes. [LB862]

SENATOR SULLIVAN: And how do they arrive at that? [LB862]

SENATOR CHRISTENSEN: Well, it would have to come up to...one of them would have to approach the other one and then they'd have to agree to a price and then it would have to be just a signed contract to execute the deal, which would have to be approved by Bureau of Reclamation. It wouldn't be a simple process. [LB862]

SENATOR SULLIVAN: Okay. Getting back to the occupation tax, if an irrigator is actually...gets to be delinquent on his occupation tax, what's the process? Can the property actually be foreclosed on by the NRD? [LB862]

SENATOR CHRISTENSEN: Not by the NRD but...well, yes and no. What it does, it goes on to your property tax so the county assessor would actually do the foreclosing, just like on property tax, following the same rules, yes. [LB862]

SENATOR SULLIVAN: So there would actually then be a lien on the whole property or...? I'm not quite following you. [LB862]

SENATOR CHRISTENSEN: Yeah, there would be a lien put on the property just as if you didn't pay your property tax. [LB862]

SENATOR SULLIVAN: Okay. Thank you very much. [LB862]

SPEAKER FLOOD: Thank you, Senator Sullivan. Senator Louden, you are recognized. [LB862]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I rise in support of AM2117 (sic) and I will point out to you why. First of all, when it's pointed out here that they can already, that it isn't a new tax, and that's somewhat erroneous. It isn't a new tax for the three Republican River NRDs but it is a new tax for the rest of the state if it's implemented, if LB862 is implemented, and it will give the NRDs the rest...over the rest of the state authority to have bonding authority, which they don't have now. What they fail to point out is in your green copy, as they've mentioned, they use it and they struck the language on page 2 there in line 6 that "includes a river subject to an interstate compact among three or more states and that also includes one

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or more irrigation districts." There's only one compact in the state of Nebraska that includes three or more states and that's the Republican River Compact down there, and that law...this...these statutes were put into place in 2007 so that the Republican River NRDs down there could go ahead and probably get some funding and they wanted to buy water so they didn't have to cut their pumping restrictions down so much. Nobody wanted to say that. I finally got them to admit it after about two years. But figure out how many acre-feet of water they bought and figure out how many acres they irrigate and they didn't have to cut their pumping restrictions down by about two inches. So that was the reason that was put into place back then. Now, the courts decided or decreed that the wording wasn't exactly unconstitutional. It was the fact that they were using a property tax to buy that water to take care of their...the compact settlements with Kansas, the amount of water that Nebraska was supposed to turn over to Kansas. And with that, that's what got that LB701 in trouble on that part. Now, then the people filed a lawsuit about the occupation taxes. The judges found that that occupational taxes is constitutional so now they have an occupation tax down there. And what brought this bill about was it was trying to draw something up for fear that the courts would find in favor of those that were filing the lawsuits. Instead, they didn't. And then right now at the present time there really isn't any necessity for this legislation to go forwards. The NRDs in the Lower Republican and the Upper Republican, Middle Republican, all of those NRDs still have their occupation tax in force. If they want to have this tax, that's fine with them. But what we're doing now is sucking all the rest of the state into this same process. Now, do you feel that you want to add a property tax to everybody else in the state of Nebraska? Now, this isn't...a occupation tax isn't a tax on...property tax on everybody. It won't be a tax on residential homeowners in towns or businesses in towns. It will be just a tax on the agricultural land and, preferably, it will be the irrigated agricultural land, which Senator Harms's amendment up here would waiver out the surface irrigated land. It would still allow a occupation tax all over any other NRDs in the state of Nebraska. So you have to pay attention to what we're doing here. You are increasing the property tax. That's putting it on there. [LB862]

SPEAKER FLOOD: One minute. [LB862]

SENATOR LOUDEN: Now if you have a tax levy, which NRDs do have a tax levy, they got 4 cents and if they fully, got their integrated management plan, are fully appropriated, they have an extra 3, so they're around 7.5 cents. That goes on all of the residential owners, business owners, and the whole bit, and that's what brought the lawsuit about down in the Republican River. There was some of the people that lived in those towns felt that they didn't...they shouldn't be the ones paying for some of that water and that's what brought that lawsuit forwards. I think we have to be very careful here on what we're doing and I think either...we either bring forward Senator Harms's amendment or else an amendment that I have following, but one of these amendments needs to go along with this thing in order to keep from sucking the rest of the state into the problems. And as you saw the picture they circulated around, looked like maybe two

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landowners down in the Republican River were fighting over the water. So if you want the rest of the state to look like that (laugh), why, I think you better...we better have this amendment here to stay away from something like that. With that, I support AM2197. [LB862]

SPEAKER FLOOD: Thank you, Senator Louden. Continuing with discussion, Senator Stuthman, followed by Senators Hansen, Harms, Haar, Langemeier, Schilz, Christensen, and others. Senator Stuthman. [LB862]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I would like to ask Senator Christensen a question. [LB862]

SPEAKER FLOOD: Senator Christensen, will you yield to a question from Senator Stuthman? [LB862]

SENATOR CHRISTENSEN: Yes. [LB862]

SENATOR STUTHMAN: Senator Christensen, the issue that I had is similar to what Senator Louden was just discussing. In this bill, is there anything in there that would give all of the NRDs of the state of Nebraska bonding authority? [LB862]

SENATOR CHRISTENSEN: If they would apply for the process. Do you want me to take time on your light to explain that or I can do it on mine later? [LB862]

SENATOR STUTHMAN: Go right ahead. [LB862]

SENATOR CHRISTENSEN: Okay. If another entity would like to have the occupation tax and bonding, first, the NRD is going to have to vote to do that and apply to DNR for a new IMP. Then DNR is going to have to agree to the new IMP and then the NRD has to have a public hearing, locally in their NRD, just like we do on a new bill here introduced the first ten days. Then the NRD has to vote to approve this and implement this, and they would qualify. But what you got here is DNR becomes the gatekeeper, as well as your local NRD is a gatekeeper, to allow this to apply to the NRDs that actually need this. [LB862]

SENATOR STUTHMAN: Okay. Senator Christensen, you stated that there would be a public hearing and the fact is that the NRD would vote to do this. Is that the NRD board or is that the voters in that NRD district? [LB862]

SENATOR CHRISTENSEN: It's the NRD board. [LB862]

SENATOR STUTHMAN: It's the NRD board. So in other words, immaterial of the hearing process, the NRD board could enforce this or could have bonding authority in

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that designated NRD district. Correct? [LB862]

SENATOR CHRISTENSEN: Anybody that's in the fully overappropriated could apply for it, yes. [LB862]

SENATOR STUTHMAN: Okay, that is the biggest concern that I have with this bill, is the fact that several years ago we debated the Papio NRD and that was with that storm water issue that we had there, and we allowed them the authority to bond, but it was we allowed them, that NRD only, to bond. And now we're coming with another one and another one and another process, and that is what is very disturbing to me, that once the foot is in the door that there's a possibility that, you know, there could be projects done like the one that Senator Sullivan talked about, you know, buying a larger recreational project or some private irrigation things, that they could purchase that and, by the direction of the board, they could establish the bonding authority and take over on it. And then the rest of the individuals in that NRD would be paying. There would be a tax on that. So that is the issue that I'm very much concerned about, is allowing...you know, in other words, I think within a couple years all of the NRDs will be allowed to have bonding authority. I don't want to see that at the present time. So I will listen to the discussion here and hopefully this takes a little time so that we can really think this thing through as to what we want to be allowed for the whole state as far as bonding authority of the NRDs. Thank you, Mr. President. Thank you, Mr. President. [LB862]

SPEAKER FLOOD: Thank you, Senator Stuthman. Senator Hansen, you are recognized. [LB862]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I want to step back just a little bit and explain what an IMP is. It's an integrated management plan. A few weeks ago, we passed Senator Fischer's bill that any NRD in the state can come up with an IMP or an integrated management plan to take care of their water situation so they have everybody's need fulfilled. And I think that was a good idea. The Republican River Valley and the three NRDs--the Upper, the Middle, and the Lower--all have integrated management plans in place now. Originally, all NRDs that were fully or overappropriated, as designated by DNR, had to come up with an IMP and they had stakeholder meetings, and within these stakeholder meetings they had irrigators, they had public power, they had cities, villages, golf courses, lawns are certainly a use and recreation, probably some others, but they had a wide variety of stakeholders come up with these IMPs. They would write an IMP, they'd write a portion of the IMP, send it to the DNR down here in Lincoln, they'd look at it, and make changes, send it back. The local NRD would accept those changes. They'd write another portion; the process continued. The DNR in Lincoln, the Department of Natural Resources, had a huge hand in writing these IMPs. It was not solely up to the NRD. The Department of Natural Resources, ever since its founding, was the ruling body of surface water irrigation. I think that through this process of IMPs across the state, of all the river valleys that are

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fully or overappropriated, NRD is taking on...or DNR rather, I'm sorry, DNR is taking on a larger and larger hand in the fact that ground water and surface water are connected. I have constituents in my district in Lincoln County that are in both the Twin Platte NRD and the Middle Republican NRD that would like to see NRDs abolished, turn it all over to the state. I don't like that idea. I think the idea of local control is still better than state control. And of the senators that are missing in the body today, when we get to looking for ways to raise money to implement the Platte River Improvement Program, and it may not be a compact but it was signed by three states: Colorado, Wyoming, and Nebraska, and the Interior...and the Department of the Interior. It includes all the tributaries to the North Platte, the South Platte, and then they come together in Lincoln County and form the Platte River. But I just want to run real quickly over the senators in this body that are going to be impacted by the legislation that we passed down here to address the Platte River implementation or Improvement Program: Senator Harms, Senator Schilz, myself, Senator Wightman, Senator Hadley, Senator Gloor, Senator Dubas, Senator Stuthman, Senator Langemeier, senators that are in Sarpy County that the river touches, and then south of the river is Senator Pankonin, Senator Price, and Senator Cornett. This is all driven by the Endangered Species Act. There must be water in the river for three species: the pallid sturgeon at the Platte's...at the mouth of the Platte... [LB862]

SPEAKER FLOOD: One minute. [LB862]

SENATOR HANSEN: ...where it enters into the Missouri River, and then further west the piping plover and the least tern. This is what's driving all this. Unfortunately, we are going to have to come up with funding mechanisms to pay for this. In my district alone, they're talking about idling 22,000 acres of irrigated corn land, some of the most productive land in the state, just because of endangered species. Right, wrong, or indifferent, that's the law of the land today. I stand opposed to Senator Harms's amendment. I do support the Natural Resources Committee's amendment and the underlying bill. Thank you, Mr. President. [LB862]

SPEAKER FLOOD: Thank you, Senator Hansen. Senator Harms, you are recognized. [LB862]

SENATOR HARMS: Thank you, Mr. President, colleagues. Senator Christensen, would you yield? [LB862]

SPEAKER FLOOD: Senator Christensen, will you yield to a question from Senator Harms? [LB862]

SENATOR CHRISTENSEN: Yes. [LB862]

SENATOR HARMS: Senator Christensen, you realize in this debate or this discussion

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that my concern is not with the Republican River Basin. Do you understand that?
[LB862]

SENATOR CHRISTENSEN: Yes. [LB862]

SENATOR HARMS: Okay. Because I believe that when I supported this tax, occupational tax, when it came forward I pushed in the Appropriations Committee to make sure that this should occur. When Senator Carlson brought forth his concerns about vegetation, I stood up on this floor and supported it. So my argument is not with the Republican River nor is it with the good things that we're doing, Senator Carlson, which my good friend has done with vegetation. It's been marvelous. What I am concerned about and I will continue to come back to this question and that is, Senator, do you believe that we are not expanding this tax? Do you actually believe that when we go out to western Nebraska or wherever we go that that's not some form of an expansion of tax to the farmers and to the water? Because they already take care of themselves. The surface irrigators already pay their fees and their assessment and they take care of their own projects. They don't need any more bonding at this point or bonding. So what are your thoughts about that? [LB862]

SENATOR CHRISTENSEN: Well, I understand your comment. Potentially it opens it up to more NRDs. They got to go through them things I mentioned earlier. And as far as the surface people, yes, they do pay. They're paying on a bond to pay for their dam projects, for the building of the canal systems, things this way. But they also didn't have the development cost of the well, the pump, and the underground to get it to the end of the field that they needed that the surface guys had through their current situation. So it just comes down to whether you believe there is benefits coming from this bill, as Senator Carlson talked about, helping surface people in this the same as it does ground water. And any time any of us use water, it affects the streamflow and that's the point I'm coming on to apply to everybody. But as far as your comment of potentially expanding, yes. [LB862]

SENATOR HARMS: Senator, do you believe that this amendment in any form or manner would harm the Republican River Basin? You've already...when they've already been...it's already been proven in the courts, at least at this point, that this thing is not closed, that it's not unconstitutional, that it is going to be open, so do you believe that that's going to harm...this amendment would actually harm the very thing that we're trying to solve, which is the Republican River issue? Do you believe this amendment would harm that? [LB862]

SENATOR CHRISTENSEN: What it would do is drive a further wedge between my surface and ground water people by...because they've currently both been paying. Now it would come back and only be on ground water. So my concern would come in there too. We already have a strained relationship. We could drive a wedge further. [LB862]

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SENATOR HARMS: Senator, when we approved this and we battled this on the floor the first time, was there... [LB862]

SPEAKER FLOOD: One minute. [LB862]

SENATOR HARMS: Pardon me, Mr. President? [LB862]

SENATOR CHRISTENSEN: It was 1 minute. [LB862]

SENATOR HARMS: One minute did you way? [LB862]

SPEAKER FLOOD: You have 1 minute left, 50 seconds now. [LB862]

SENATOR HARMS: Oh, thank you. Thank you, Mr. President. You're very gracious and kind today. (Laughter) Senator, when we debated this, was that concern several years ago? I never heard this concern come up several years ago. We were looking for any source of funds we could to bail the Republican River Basin out. Isn't that correct? [LB862]

SENATOR CHRISTENSEN: That is correct. [LB862]

SENATOR HARMS: So why all of a sudden then has this concern come forward? [LB862]

SENATOR CHRISTENSEN: Well, because some people had to pay the occupation tax and didn't get water. I think there was a misinterpretation of the intent of it and maybe some rules that were drafted that maybe shouldn't have been that didn't allow the exemption, and that's also something I'll visit with shortly here about, intent of some variance language. [LB862]

SENATOR HARMS: Thank you, Mr. President and colleagues. [LB862]

SPEAKER FLOOD: Time, Senator. Thank you. Senator Haar, you are recognized. [LB862]

SENATOR HAAR: Mr. President, members of the body, I would like to rise in opposition to AM2197 and favoring AM2004 and LB862. I've learned a lot in my two years on the Legislature and I've learned a lot about water, but there's a lot I have to learn and so I still look to those people who I feel whose opinion I can trust and who put a great deal of time into this, and in this case it's both Senators Carlson and Christensen I think are...have put a great deal of time and work into this. They're willing to shoulder the burden for constituents to solve some of their own problems. And I've been very

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impressed by that. Also in our committee is Senator Schilz, of course, and also Senator Langemeier and also Senator Fischer, and all these people with a great deal of experience with water are coming out in terms of LB862 and AM2004, and so I also am going to support those two and oppose AM2197. And I'd like to yield the rest of my time to Senator Carlson, if he wishes. [LB862]

SPEAKER FLOOD: Senator Carlson, 3 minutes 30 seconds. [LB862]

SENATOR CARLSON: Thank you, Mr. President. Thank you, Senator Haar. I'm simply going to repeat again those things that I really believe both surface and ground water irrigators benefit by through the occupation tax, and in the Republican Basin one of those is avoiding the water-short year which is death to the basin, financial death. And if we don't have a way of funding things so that we can prevent that water-short year, it really is the death penalty on the Republican Basin. Vegetation control, recharging the ground water, and that is so important, it's going to become more and more important as we go along, doing things to allow and encourage ground water recharge. It's very, very important in the state and this could be a part of that. And then the possibility of fair compensation when appropriate, there has to be a source of compensation or for compensation, and I'm realistic enough to realize that that's not the state of Nebraska at this point, and I don't know how many years before that could be a possibility. So really appreciate your support of AM2004 and the underlying bill, but not AM2197. Thank you, Mr. President. [LB862]

SPEAKER FLOOD: Thank you, Senator Carlson. Senator Langemeier, you are recognized. [LB862]

SENATOR LANGEMEIER: Mr. President, members of the body, I rise in opposition to AM2197 and, again, in support of the committee amendment and LB862. And I want to expand on a little conversation Senator Harms and I had earlier, is first of all with LB701, the occupation tax was on ground water and surface water users, so it's already on. We had a court ruling that said that it's constitutional. That is being challenged but I would argue that anything we do in this body for the rest of our term here regarding water will be challenged. It's a very hot topic that Senator Carlson...or, excuse me, Senator Christensen offered a very depictive picture of hostility. I think you're going to have that with water, no matter what, into the future. Now, in regards to some earlier discussion Senator Loudon and Senator Harms brought up as well, and I appreciate the feedback and I appreciate their attempt here, but I still think as we talk about water use in...with the use goes an occupation tax on that use, whether it's surface or whether it's ground. That makes it fair in the particular basin and so I think that's pretty important. Now, in regards to this expanded out to the state, I would argue that with LB701 and the occupation tax there are means to expand that out into the state. We had a court ruling that says it is constitutional and it is expandable, and I would concur with that. I think that was a wise decision. Now, so why do you have LB862? LB862 and the amendment

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to it, AM2004, changes how more people can use the occupation tax. I will give that to you. That is very true. But I think it's very important that we make sure there's a clear path to allow additional uses. Now, that path doesn't have to be easy and it doesn't have to be easy to get through that process to be able to use it, but I think we have to make sure it's a clear and usable path and I think that's what we're doing with AM2004. The other component in this is, as Senator Stuthman talked about, the bonding. I think it's crucial to know in LB701, when the original occupation tax was passed, it was required that you bond for these projects, then use the occupation tax as a means to then pay off the bonds. With the adoption of LB862 and the amendment, it would allow NRDs to gather the occupation tax, then use that money directly for augmentation in the four previously noted options to stay in a compliance mode. So with that, I rise in opposition to AM2197 and ask for your adoption of AM2004 and LB862. Thank you. [LB862]

SPEAKER FLOOD: Thank you, Senator Langemeier. Senator Louden, you are recognized. [LB862]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As our discussion has come around, I think it was pointed out that there is a bill already in the process, and I think it's on Final Reading, that would allow NRDs to have an integrated management plan without being fully appropriated or overappropriated. Up until that bill goes through, in order to get an integrated management plan, the NRD or the DNR, Department of Natural Resources, had to declare them fully appropriated or overappropriated. So now that sets it up so that any of the NRDs around the state of Nebraska can implement this tax. It's a tax. That's the only way you can describe it. It's going to be up to \$10 an acre on irrigated ground. And I agree, if the Lower Republican, Middle Republican, Upper Republican NRDs want to handle it that way, which they already have the power to do it in original statutes, it's still right there and that was found constitutional. They can go ahead and work with their occupation tax the way they have been doing. Now, as they've talked about some of the enhancement flows that need to be done down there, that's something that's probably pretty much just in that Republican River Basin. The Republican River Basin is a huge drainage basin in that part of Nebraska and Kansas and Colorado. It's a little bit different in the Platte River Basin because we have a larger basin to cover from. It comes...it actually starts up in Colorado. Now, the Platte River Recovery Program is not a compact. That's an agreement between three states and the Department of Interior, so that's something altogether different. So we really haven't found a way yet to fund that. And I'm amazed that you want to fund that by sticking it on irrigated farmers, and this is what you're doing. You're actually putting it on irrigated farmers. We pay lip service to what we want to do about property tax and try to control property tax, and yet you're all standing around here supporting a bill that will put a property tax on irrigated farmers. Now, it won't put it on everyone; it will put it on irrigated farmers. My ranchland won't pay any occupation tax but, I tell you what, my neighbor that has a circle pivot will certainly pay

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an occupation tax if he's trying to grow alfalfa. So it will...it goes clear all over. Any of those circle pivots that are in the Sandhills, if that NRD in that area decides to have an integrated management plan, which the Upper Niobrara-White does now, they would be all set up to have this bonding. And when I've talked to some of them people, what they want to do is use that money to retire irrigated ground that they shouldn't have allowed to be...have wells drilled on to start with. And this is some of the problems you're going to have, what you're going to use that money for. It isn't going to be used to augment necessarily river flow unless they intend to purchase water rights or purchase wells along the Niobrara River and, in those places, most of that land is commingled. You either irrigate it with a circle pivot and ground water or else you have surface water, it's one or the other. What I would wonder, if Senator Christensen would yield for a question, if he would, please. [LB862]

SPEAKER FLOOD: Senator Christensen, will you yield to a question from Senator Louden? [LB862]

SENATOR CHRISTENSEN: Yes. [LB862]

SENATOR LOUDEN: How much of your land down in the Republican Basin is commingled? In other words, how much of that surface irrigation also has ground water irrigation potential on it? [LB862]

SENATOR CHRISTENSEN: It varies NRD to NRD. There is...I'm not even sure of the percentage that's surface. It's probably... [LB862]

SPEAKER FLOOD: One minute. [LB862]

SENATOR CHRISTENSEN: ...only about 10 percent, and then probably 30-40 percent of that is commingled, as I understand. [LB862]

SENATOR LOUDEN: Out of your irrigated. In other words, there's not really a significant amount of surface water irrigation down in that district, would be my understanding. And in the area out in western Nebraska, we have like the Fort Laramie-Gering Irrigation District. There's very little of that is commingled so they have no ground water. Now, if it's commingled, I'm having a problem with if you want to have it as an occupation taxes. But I think we have to be very careful on how we're doing this thing and I can't believe that we're standing here trying to figure out a way to increase someone's property taxes. Thank you, Mr. President. [LB862]

SPEAKER FLOOD: Thank you, Senator Louden. Senator Wightman, you are recognized. [LB862]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. As has been discussed

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here, we have a district court ruling. I think both Senator Christensen and Senator Langemeier have indicated that's probably going to be challenged, almost certain to be challenged by a Supreme Court appeal or an appeal to the Court of Appeals. With that, I would, if Senator Langemeier would yield to a question, I'd like to ask him a question. [LB862]

SPEAKER FLOOD: Senator Langemeier, will you yield to a question from Senator Wightman? [LB862]

SENATOR LANGEMEIER: Yes. [LB862]

SENATOR WIGHTMAN: Senator Langemeier, as we've talked about, the occupation tax has been challenged in the court. So far, it's been found constitutional by the Lancaster County District Court and I think you've indicated it will be challenged almost certainly on an appeal to the Supreme Court. Is that correct? [LB862]

SENATOR LANGEMEIER: My comment was I think anything we do with water in the Legislature is going to be challenged in some form or fashion. [LB862]

SENATOR WIGHTMAN: I'd also ask, in light of the recognition of the connection between ground water and surface water, both by our courts and by the Legislature, isn't it very likely, and it probably goes without saying in light of your previous comment, that if we disconnect ground water and surface water and we make this apply only to ground water, that that's likely to be challenged in the courts? Is it not? [LB862]

SENATOR LANGEMEIER: I think it is and I think that argument...the argument...that is not the argument before us. That is an argument to who is part of the problem and that's not what we're arguing today. Some would say let the surface water out because they're not part of the problem. You know, I would argue that any time you divert water out of a natural stream, use it in some other form and then let the excess overflow back to the river, there's less going in that came in, and so is that part of the problem? Maybe. [LB862]

SENATOR WIGHTMAN: Thank you, Senator Langemeier. We are talking, however, about bonds and occupation tax to pay those bonds, is that correct, in this particular legislation? [LB862]

SENATOR LANGEMEIER: Correct. In this piece of legislation with AM2004, takes away the requirement that you have to bond first, then use the occupation tax to pay the bond. It would allow you to collect the occupation tax and do a project directly. [LB862]

SENATOR WIGHTMAN: So it could be levied in advance. Is that correct? [LB862]

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SENATOR LANGEMEIER: Correct. [LB862]

SENATOR WIGHTMAN: Thank you, Senator Langemeier. With that, I'd yield the rest of my time, if he desires it, to Senator Christensen. [LB862]

SPEAKER FLOOD: Senator Christensen, you have 2 minutes. [LB862]

SENATOR CHRISTENSEN: Thank you, Senator Wightman. I might just touch on a little bit of what Senator Stuthman said earlier with the NRDs approving this process and expanding. That's a fact that the NRDs are locally elected so the decision is made locally and they also have to have that DNR approval, Department of Natural Resources. That is the two key steps or gatekeepers in this process of applying or to have this further expanded to other NRDs in this process. Thank you, Mr. President. [LB862]

SPEAKER FLOOD: Thank you, Senator Christensen. Senator Schilz, you are recognized. [LB862]

SENATOR SCHILZ: Question, please. [LB862]

SPEAKER FLOOD: The question has been called. Do I see five hands? I do see five hands. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB862]

CLERK: 25 ayes, 2 nays, Mr. President, to cease debate. [LB862]

SPEAKER FLOOD: Debate does cease. Senator Harms, you are recognized to close on AM2197. [LB862]

SENATOR HARMS: Thank you, Mr. President and colleagues. I would urge you to support AM2197. The concern that I have, as I said earlier, is truly expanding that tax base. Not only that, I think when we get to the end of this, no matter what takes place, most likely is going to be challenged in the courts. And for what Senator Christensen would like to accomplish, I'm afraid it's just going to delay it again in the future and we're not going to be able to get to the Republican River Basin issues. But I would urge you to...you've heard the debate and I would just urge you to support it because I think it's important. Thank you, Mr. President. [LB862]

SPEAKER FLOOD: Thank you, Senator Harms. Members, you've heard the closing to AM2197. The question is, shall AM2197 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB862]

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CLERK: 6 ayes, 22 nays, Mr. President, on the amendment. [LB862]

SPEAKER FLOOD: AM2197 is not adopted. Mr. Clerk. [LB862]

CLERK: Senator Louden would move to amend the committee amendments with AM2200. (Legislative Journal page 883.) [LB862]

SPEAKER FLOOD: Senator Louden, you're recognized to open on AM2200. [LB862]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. This is a simple amendment and what this does is reinstate the situation like it was before we introduced the bill. It puts it back and reinstates the stricken language and strikes the language that was put in there, and that goes back to it would be a river subject to an interstate compact among three or more states, and that would take care of the Republican River Basin. I have no problem with it. They've been working at this situation. They have their occupation tax in place. They know how much it's costing them. They have river flow work going and they do buy surface water, and that's what they wanted to do was buy surface water from some of the irrigation...surface irrigation districts in the area, mostly because those surface irrigation districts don't have enough water to be of any value for irrigation. So they found out that they can sell this water and probably make more money by selling the water than they can by trying to grow crops. Besides the fact that a lot of that land is commingled. In other words, they have ground water irrigation potential or they probably have their irrigation wells to go along with it, so they don't completely rely on the surface water. But this is something that was designed in LB701 in 2007. In fact, I was around when we wrote the language. I was Chairman of the committee when we wrote that language for LB701. At that time, there were several bills all put into that. The original LB701 was gutted and it was several bills put into it. I think, if I remember correctly, Senator Carlson's, I think it was, LB458 was probably put into it as part of the bill in order to get some vegetation enhancement in there, because at the time it had quite a fiscal note, and that was all put in together. I think it was a \$4 million fiscal note on the vegetation management. All those are things that have worked well. They bought some water. Up until then, the state of Nebraska was buying water and sending down the river in order to come in compliance with Kansas. In fact, they found out when they released some of that water out of the dams that there was so much vegetation in that Lower Republican River that the water actually hardly got to Kansas and was smeared out all over the ground. So that was some of the first places they did vegetation management, and in the meantime we had more rainfall and we haven't had to buy water since then. But at that time, it was times when they bought over \$3 million worth of water, I think maybe two different times. So this is...what we do, we go back to what we have been doing. I feel that LB862 is probably premature. You still have lawsuits going on about it that will probably be challenged. The ruling the other day that found it constitutional, it may be challenged, but until that's been settled I don't see any point in going further or forwards with LB862.

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That was the reason I brought up the amendment that I have here, is AM2204...or AM2004, the amendment would take care of what we do with the future of it. It would be AM2200, is the number of the amendment that goes on to that. It would reinstate the stricken language. I think this is something that would take care of it. It would put it to one side for the time being and I don't see any reason that we go full-bore with what we're trying to push forwards here. This is something, and I say I talked with the Farm Bureau, as I've noticed some of the people that are supporting this bill, and I can't believe that the Farm Bureau is supporting this thing when you're talking about a property tax on all the...on all the irrigated land in the state of Nebraska, and that's exactly what we're doing. Farm Bureau is supporting that. I've mentioned here a couple or three years ago that we perhaps, in order to fund that water, water cash fund or that has to be in place there in order to do some work on that Platte River Recovery Program, that probably we'd be further ahead to put some kind of an excise tax on ethanol, and the Farm Bureau come unhinged about it because they thought that was piling on farmers. So I ask you, when you have an occupation tax on just the irrigated ground in the state of Nebraska, if that isn't piling on the farmers I don't know what you would call it. Now, this is going to affect all the people that have irrigation wells. When you drive down Interstate 80 and see the circle pivots there, every one of those people are probably going to be paying a \$10 occupation tax, whether they want to or not. Now, does that make a difference if you're over there around York or Aurora? Is that...how much effect does that have on the Platte River where you are from there, how much effect does that have on the Republican River? But nonetheless, you will be contributing to that fund. So somewhere along the line we have to decide how we're going to fund some of that, but I don't think an occupation tax on all the irrigated ground in Nebraska is the answer because we can, with the bills that are going through now, with the bill that's in Final Reading, it sets it up so that any NRD can have an integrated management plan, you're setting it up so that everybody, any NRD, can have an occupation tax and that, no matter how you cut it, that's what it is. At the present time they can get, if they're fully appropriated, they can get an extra 3 cents. If they're not fully appropriated then they don't get that extra 3 cents, but they can sidestep it if they've got an integrated management plan and have an occupation tax. So it has...you have to pay attention here what you're trying to do. And like I've said before, I can't believe that we're standing here today this afternoon discussing on how we're going to stick it on a bunch of irrigated farmers. Thank you, Mr. President. [LB862]

SPEAKER FLOOD: Thank you, Senator Loudon. Senator Stuthman, you are recognized as we begin discussion on AM2200, followed by Senators Loudon, Christensen, Sullivan, and Hansen. Senator Stuthman, you are recognized. [LB862]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. As I stated before when I had time to speak on the floor was the fact that my concern of the bonding authority, which in my opinion, you know, this does have an effect and this bill has similar effects of it. But I want to bring you back to what we discussed last year. We

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had a bill, I think it was LB160, and it was that Papio Creek Watershed bill and allowing just that NRD the chance that they could bond for that flood control project. Well, some of the information that I've gathered over the last couple hours was the fact is, you know, how much did they bond for, what did they use the money for, was it used for that project in and of itself. Well, the way I understand, they bonded for \$12.5 million or something like that and 35 percent of that bond, those dollars, was used on that Papio flood project. Some of the rest of the money was used for the rebuilding of the levee by Waterloo because of the fact of flooding, which possibly is worthy of that, for that money. Also, there was another project and it was built in Dakota County. It was the Pigeon/Jones Dam, recreation dam that was up there. And most interesting part of it is, is I remember distinctly discussing the Papio flood project and the amount of ground that they was going to utilize for that project and the fact of their buffer zone around the project but, come to find out, they bought an additional 120 or 130 acres for recreational purposes also. So, you know, this isn't just used for the flood control project. There is, you know, additions to that, and that is controlled by the board of the directors of that Papio NRD. So those are the issues that I have a concern about because there are a lot of taxpayers, you know, that, in my opinion, will never benefit, you know, from that extra levy for that, those projects. And that is very disturbing to me because those property owners with the farmland, you know, way upstream, you know, are paying for the project that has a recreational addition to it, you know, which, in my opinion, you know, is not part of the flood control project. It's part of that recreation part of it, you know, that additional land that was purchased for that. So I just wanted to get some of that into the record as to, you know, what had taken place because I know there was a lot of debate on that bill last year. The main thing was, is that we only allowed that NRD to have that bonding authority and it's interesting to find out, you know, as to, you know, where was the money utilized, how much money did they generate through taxation of all the real estate property owners in that watershed district from way at the top end to way at the bottom end. So with that, thank you, Mr. President. [LB862 LB160]

SPEAKER FLOOD: Thank you, Senator Stuthman. Senator Louden, you are recognized. [LB862]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I've stated on the opening of this, that what this amendment does is put it back about like we were when we first started. I really didn't see as there was a need for this bill to go forwards, especially after the ruling by the courts here the other day. This isn't something that we have to do right away. We can have some time to do it. If this is...amendment is brought on, you can still go ahead and do whatever they want to in the Republican River area and still wait and see what the courts rule on that stuff. They can still go ahead and do some of their bonding and some of their...raise their funding that they want to do if they want to buy it. At the present time, they have enough rain so there isn't any problem so I don't know why we're getting in a hurry about doing this. There seems to be plenty of rain at the present time, you still have time to see where

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the courts are going to come down on this if there is a problem. The Supreme Court didn't find that this language was unconstitutional with what was put in there with the compact had to be with a three-state compact. There can be other compacts. This isn't the only compact the state of Nebraska is involved in. There's a two-state compact between Wyoming and Nebraska on the Niobrara River, but that doesn't include the three-state compact as there are in statutes. Now, that could be enhanced. If you wanted to have a three-state compact, you could have one between South Dakota, Iowa, and Nebraska on some of the flow in the Missouri River. There's other places and that's...my understanding is the reason the court didn't find it unconstitutional, because there can be other compacts set up. It just so happens that there isn't. The difference is in order to have a compact you have to have it ratified by Congress and that's...therein is where the difference between agreements and compacts are. The Platte River Recovery Program is an agreement so we don't have to consider a compact or that doesn't have anything to do with this bill if you have the amendment on it. As a new bill comes on, then most of them people up and down that Platte River will probably pay for it. Now, if you want to put all of the expense on the irrigators up and down there, then I guess that's what the Legislature will do. As the saying goes, we will certainly be raising a property tax on the irrigators. There are other ways to pay for some of that Platte River Recovery Programs. There can be excise taxes on products that are made. An excise tax at least comes from money that comes from outside of the state of Nebraska usually, whereas an occupation tax is on the citizens that live there. It's on the production side of what you're trying to do. So I think as we go forwards with some of this stuff, we have to watch what we're doing. This has to be something very important to people and if you figure it up for up to a \$10 occupation tax, what that can amount to for a lot of the people across the state of Nebraska, and especially in the areas where we've been trying to do something about property tax relief. Seventy-five million dollars was put out for property tax relief for the last few years. With a blink of an eye and a push of a button here, you can erase all of that in a few minutes, and this is exactly what can be done. The \$75 million that the state of Nebraska puts up for property tax relief will be gone in an instant if you put in this occupation tax that we have before us today. I would ask that you vote for this AM2200 and put it back just like it was before. There isn't any hurry to get this done. I think this is something we need to go. This is what I...the reason I adopted the amendment, I filed it the other day, and I still support that and I think this is the right way to go. Thank you, Mr. President. [LB862]

SPEAKER FLOOD: One minute. Thank you, Senator Loudon. Senator Christensen, you are recognized, followed by Senators Sullivan, Hansen, and Harms. [LB862]

SENATOR CHRISTENSEN: Thank you, Mr. President. I want to clarify one thing that Senator Loudon stated a little bit ago about being a property tax or maybe I misunderstood him. This is not a property tax and the court found it to be an excise tax that can be up to \$10 per acre assessed by locally elected officials. But AM2200 is no more than a kill amendment. It nullifies the bill. He could have bracketed it, he could

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have IPPed it, done the same thing as what this amendment does. I stand opposed to this. What this bill allows us to do right now is to plan ahead and he has asked why hurry. I guess I get tired of this body having to crisis manage. I like to plan for success and plan to succeed and that's what this bill allows us to do, is get a plan in process, get things done, move forward. I stand opposed to AM2200 and ask that you vote against it. Thank you. [LB862]

SPEAKER FLOOD: Thank you, Senator Christensen. Senator Sullivan, you are recognized. [LB862]

SENATOR SULLIVAN: Thank you, Mr. President. I continue on my quest for questions to be answered. I was going to direct them to Senator Langemeier but apparently he ducked out so my senator of choice would be if Senator Carlson would yield for a few questions. [LB862]

SPEAKER FLOOD: Senator Carlson, will you yield to a question from Senator Sullivan? [LB862]

SENATOR CARLSON: Yes, I will. [LB862]

SPEAKER FLOOD: Thank you. [LB862]

SENATOR SULLIVAN: Thank you, Senator. Senator Louden's amendment actually begs the question, why was the three-state compact deleted from the committee amendment? [LB862]

SENATOR CARLSON: Well, one of the questions in the original LB701 had to do with closed class and we're interested in just doing away with that as a concern and we believe that this bill does that. [LB862]

SENATOR SULLIVAN: And am I correct in assuming, I think Senator Hansen alluded to it earlier, that if you combine what we're doing with LB764 and, if passed, then LB862 actually allows all NRDs in the state to issue bonds and levy an occupation tax. Is that correct? [LB862 LB764]

SENATOR CARLSON: That would be correct. [LB862]

SENATOR SULLIVAN: NRDs currently have levying authority right now. Is that not enough to accomplish the projects that they feel need to be accomplished? [LB862]

SENATOR CARLSON: It's not enough in the Republican Basin and I think the time is going to come pretty quickly when it's not enough in the Platte Basin as well, even with the cooperative agreement. So, no, under current levy, it doesn't allow some of these

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projects that I think in the future need to be done. [LB862]

SENATOR SULLIVAN: Thank you very much. Oh, I see Senator Langemeier there. I wonder if he would yield for some questions. [LB862]

SPEAKER FLOOD: Senator Langemeier, will you yield to a question from Senator Sullivan? [LB862]

SENATOR LANGEMEIER: Yes, I would. [LB862]

SENATOR SULLIVAN: Thank you. Now I am to see what I want to ask you. I think when we were discussing LB764, I raised some questions with Senator Fischer, in part because in my district I have a lot of irrigation districts. And so, quite frankly, they are wondering about the impact of this legislation on them. One question: Does this give any NRDs eminent domain over irrigation districts? [LB862 LB764]

SENATOR LANGEMEIER: No. [LB862]

SENATOR SULLIVAN: Does it give them the opportunity to...I think maybe I asked this question before in a different way, but will they in some way control irrigation districts with this legislation? [LB862]

SENATOR LANGEMEIER: No. [LB862]

SENATOR SULLIVAN: What about the occupation tax with reuse? I think it was you that mentioned that they have...this legislation would enable NRDs to have bonding authority and then levy the occupation tax to pay off those bonds. Does this...is this kind of like a revolving door that the occupation tax would maybe never go away because they're always paying off bonds? [LB862]

SENATOR LANGEMEIER: If they choose to bond this for a larger project that takes considerably more time, yes, they could allow the use of the occupation tax to pay off that bond for however long they've done it. The intent of LB701, and that was on a year-to-year basis, to meet the needs that are current in a water-short year or a bigger project might be something that permanently does an augmentation that allows us for long-term sustainability within a compact. So, yes, it could be used for the length of a bond, yes. [LB862]

SENATOR SULLIVAN: And while they have the levying authority with the occupation tax up to, what, \$10 an acre? [LB862]

SENATOR LANGEMEIER: Up to \$10. [LB862]

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SENATOR SULLIVAN: But that's...I mean it could vary. [LB862]

SENATOR LANGEMEIER: Yes. Yes, and I don't believe any of the Republican's used it up to \$10 as of yet. [LB862]

SENATOR SULLIVAN: And getting back to the relationship between irrigation... [LB862]

SPEAKER FLOOD: One minute. [LB862]

SENATOR SULLIVAN: ...irrigation districts and NRDs, is it possible for a member or a board member of an irrigation district to run for a seat on the NRD? [LB862]

SENATOR LANGEMEIER: Yes. [LB862]

SENATOR SULLIVAN: In this whole process, as I've said, I believe water policy can be very complicated. I admit I'm still learning. I am a huge proponent of local control but I also feel that at that local control there are varying interests. I'm just in my quest for answering and getting definitions about what this legislation entails. I just want to make sure that everybody has a voice at the table. Thank you, Mr. President. [LB862]

SPEAKER FLOOD: Thank you, Senator Sullivan. Senator Hansen, you are recognized. [LB862]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I do want to make a public apology and an err of omission that I left Senator Carlson off with a list of senators that have reaches of the Platte River, and he has at least 30 miles of Platte River to represent. And I do know that he's done some of the basic...the riparian vegetation removal in that stretch of the river and it's a great place to get off the interstate and look at what's been done in that plan. Would Senator Christensen please yield for a question? [LB862]

SPEAKER FLOOD: Senator Christensen, will you yield to a question from Senator Hansen? [LB862]

SENATOR CHRISTENSEN: Yes. [LB862]

SENATOR HANSEN: Senator Christensen, how many hours do you suppose you've spent in the Republican Basin trying to come up with alternatives, coming up with options on how to fund the water problems in the Republican Basin? [LB862]

SENATOR CHRISTENSEN: I don't know that I could even make a good estimate because I've had even meetings that I've called, went out and done on my own with different NRD members and boards and calling the groups together, as I did a year ago

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that you attended and stuff. So I've spent days at it. [LB862]

SENATOR HANSEN: I've spent quite a few hours but not near as much as you and Senator Carlson have, I know that. Can you give us kind of an update of the progress that you've come to before introducing LB862, and what are the choices that we have to...across the state and in the Republican River Valley of what...how do we raise the money to take care of the problems that have occurred, whether it be from conservation measures from the federal level or riparian vegetation or water use? [LB862]

SENATOR CHRISTENSEN: Well, what has made this probably a critical issue to me is the fact that my concern that we would go down a road of economic destruction. And then, when we had meetings this summer, when DNR come out with option one, their first option being shut off everybody within two and a half miles of a river, stream, and tributary any time we're in a water-short year, and the NRD said that wasn't a viable option so they come back with two more. One was the Lower Republican, 3.6 inches; the Middle, 4.8; the Upper, 5.9. And then...or 1 percent reduction in pumping each year here forward with everything shut off at a mile and a half within a river, stream, or tributary. Would have an economic disaster upon my district. It would close schools. It would kill businesses. It would end up shifting TEEOSA dollars to the west. And so it come down to either the state can step up and help fund this thing, we can get an occupation tax in here. We should have a combination of them two or the state is going to pay one way or the other. The state is either going to pay between the economy being killed and shifting TEEOSA dollars to the west or they can help put some money out here to address these issues so that we can go forward in the district. Because the economy, if you take my area down to 3.6 inches, where I grew up at Arapahoe, I'm going to irrigate a third to half of my acres, depending upon the year, or my yield goal is going to drop drastically. And so it's going to be a huge economy killer and hard on my school districts. [LB862]

SENATOR HANSEN: Thank you. And part of the state plan, too, that I have... [LB862]

SPEAKER FLOOD: One minute. [LB862]

SENATOR HANSEN: ...thank you...that I object to is that in a water-short year, in September, October, they're going to say you're not going to get any water next year. Can you tell me how a farmer in the Republican Valley and in the Platte Valley can go out of business for one year? [LB862]

SENATOR CHRISTENSEN: It's impossible. Your pivot payments continue. Your land payments continue. Your machinery payments continue. And now the only thing you can do is maybe let off a hired hand. Then you got to find on in another year. It would be very inconsistent. [LB862]

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SENATOR HANSEN: It was amazing to me to stand in one of those meetings down in the south of my district, in the southern part of my district, and say...and have someone tell me that they would rather pay an occupation tax than go out of business, and it's at the rate of about 70 percent of the people in that...in that stretch of the river. We've not gotten that far in the Platte River for sure, but I do think that we need this possibility, this occupation tax, that we can...that we can raise money in the Platte River to... [LB862]

SPEAKER FLOOD: Time, Senator. [LB862]

SENATOR HANSEN: Thank you, Mr. President. [LB862]

SPEAKER FLOOD: Thank you, Senator Hansen. Senator Harms, you are recognized. [LB862]

SENATOR HARMS: Thank you, Mr. President and colleagues. Senator Christensen, would you yield just for one question, please? [LB862]

SPEAKER FLOOD: Senator Christensen, will you yield to a question from Senator Harms? [LB862]

SENATOR CHRISTENSEN: Yes. [LB862]

SENATOR HARMS: Senator Christensen, authorizing the natural resources districts to further assess an occupational tax on those water users' lands with really no clear direction in regard to the reinvestment of those taxes on any project works has me concerned about the fact that this could be very well challengeable. What are your thoughts in regard to that aspect? [LB862]

SENATOR CHRISTENSEN: Well, this tax must be spent for the four river flow enhancement ideas that's listed under the bonding language. It can only be used for the purchase or lease of water rights, surface or ground water; for the purchase of retirement or acres, retirement ground water/surface; vegetation management; and augmentation flows. They are the only four things this money can be used for. [LB862]

SENATOR HARMS: Thank you, Mr. President. I wonder if Senator Langemeier would yield for a question. [LB862]

SPEAKER FLOOD: Senator Langemeier, will you yield to a question from Senator Harms? [LB862]

SENATOR LANGEMEIER: Yes. [LB862]

SENATOR HARMS: Senator Langemeier, when we were visiting off mike, we were

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talking a little bit about maybe trying to...I'm sure this probably will pass but also trying to get different groups together and have some discussion on a study committee. Are you still...could you help me better understand what you were referring to there in regard to this issue? [LB862]

SENATOR LANGEMEIER: What I would like to do...and we've always talk about interim studies and I'm not a real fan of interim studies, and I've brought that up on many occasions, because we just sit there and we hear testimony and then we hear testimony and we hear testimony. With the wind bill, we created LR83, which is a little different. We brought people together in kind of a group setting. Senator Carlson has a bill to start a task force within the Republican. I think that we can expand that, well, not particularly that, but we can continue that kind of discussion with surface irrigators, ground water irrigators into the future and we need to work on that this summer because at some point we have to bring these people together. We've got to have a solution long term that currently we just aren't getting there. [LB862 LR83]

SENATOR HARMS: Well, thank you. That's really what I was after, was the long term. I know when I had an opportunity to observe what you did with wind energy, I think it was great. You brought a lot of different diverse groups together. You managed it really well and I think out of it came a great product and I'm hoping that, even though this bill will probably pass, that we can still go back and look long term because that's...this is going to come back and I think we could head this thing off. And if we can have the kind of discussion you did when you did the wind energy, I think we'll resolve lots of issues. [LB862]

SENATOR LANGEMEIER: I think one advantage we have here is, is if you're going to implement the occupation tax, you have to go in and change your integrated management plan, which with the Platte's, they already have an integrated management plan in place so they have to go back and start over to allow this to be used within theirs if they ever wanted to do that. I think that buys us some time this summer to try and work on some solutions. I don't mind. I spent almost 64 nights last year in Kearney at the Kearney...stayed the night at Kearney this last summer, whether it was wind or water discussions, and I think that will continue over this next summer. With a short session, we have a little more time to do that. [LB862]

SENATOR HARMS: I think that would be helpful for the people that I represent in western Nebraska, the surface irrigators, to be able to have that. And I would encourage them to participate in this because... [LB862]

SPEAKER FLOOD: One minute. [LB862]

SENATOR HARMS: Thank you, Mr. President. I think it's really important and particularly the way that you handled a very diverse group with the wind energy would

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really bring a lot of different people to the table. I believe long term you'll resolve the issue. So I thank you for that and your willingness to do that because I know it takes a lot of your time. I appreciate what you're doing here. I do support AM2004 or AM2200. I think it is an important thing to return it back to where it originally was and I support what the senator is doing, and I would urge you to support that. Thank you, Mr. President. [LB862]

SPEAKER FLOOD: Thank you, Senator Harms. Senator Louden, you are recognized. [LB862]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As we've talked about this, when they said that it isn't a property tax, there's no way, shape, or form that you can describe it anything but a property tax. It's going to be up to \$10 an acre on property and this is what it is. It's quite obvious that it will be a property tax. When we talk about the Platte River area and also the Republican River area and everybody is wringing their hands and said, oh, a water-short year and we'll have to shut them down and everybody will go broke and they won't have any schools or anything, that isn't entirely correct. At the present time, their rainfall down in that country is higher than what it is in western Nebraska, and yet they have a water allotment from pumping that's somewhat higher than some of the people that are using water in western Nebraska. We have farmers out there that are working around irrigating with 9 inches of water or so and they get probably somewhere's around 12 or 13 inches, up to 14 inches of rain water. My understanding is, is down in the Lower Republican, in those areas, they're up over 20 inches, somewhere's around 23-24 inches of water, so they do get more rain water. And so when they talk about they have to have that irrigation and they have to have...at one time not too many years back their allocation was 13 inches and they were wondering why the river was going dry. They probably didn't need that much water to grow their crops with the farming practices we have now. In other words, it's been pointed out in western Nebraska they have done with less. Surface water irrigators, their allotment was cut down between eight and nine inches several years ago. They were able to farm with that amount of water and some of them...some of those years we had around 12 inches or less of rainfall. So it can be done. Part of the reason we have this problem in the Republican River was, if anybody remembers when Kansas and Nebraska first got into that lawsuit, I think there was a Don Stenberg that was Attorney General at that time and the Lower Republican was getting ready to put a moratorium on well drilling and he pointed out to them that if they did that, that would cause him...be harder for him to win his lawsuit, so they took the moratorium off. And in the process, there were several...there were hundreds of wells drilled in that time frame, and this is something that they have to look back. I've seen some places where they wanted the people to go back or use that area, and I don't have the numbers for sure, but it was somewhere's something like the 2001 or 2000 year of amount of wells that were in, in those years. Any of them that were drilled after that would be shut down. So there are other ways of doing this without shutting down the whole country. When you

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talk about what they're going to do and whether it will break the country, those people were farming long before they ever had irrigation, for that matter, and now that they do have some irrigation it can be worked out. In Upper Niobrara-White up there, they have an allotment that's probably up around 15 inches. Now, I think they're lowering it down to around 13, which they've used there, and the way they're setting it up, you can probably have an allotment for about five years' time and you can use it up in one or two years or you can use it over a period of years. So there are better ways to manage your water than what's been going down, rather than wringing your hands and having to go buy water. They found if they buy the water, they don't have to do anything with their irrigation allotments, and so this is what's been bringing this forwards. I still say that there's no need to hurry this bill through. We can go back to where we were. We've got time through the summer. At the present time, it looks like there's plenty of water... [LB862]

SPEAKER FLOOD: One minute. [LB862]

SENATOR LOUDEN: ...that will be taking care of the situation through the summer, so I don't see where we need to get this bill brought that much forwards and I would ask that you support AM2200. Thank you, Mr. President. [LB862]

SPEAKER FLOOD: Thank you, Senator Louden. Senator Wallman, you are recognized. [LB862]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Would Senator Louden yield to a question? [LB862]

SPEAKER FLOOD: Senator Louden, will you yield to a question from Senator Wallman? [LB862]

SENATOR LOUDEN: Yes, I would. [LB862]

SENATOR WALLMAN: Thank you, Senator. Last year or was it the year before, we discussed the Papio River Basin. Remember that? [LB862]

SENATOR LOUDEN: Yes. [LB862]

SENATOR WALLMAN: And didn't we put a narrow limit on that, just that basin? [LB862]

SENATOR LOUDEN: Theirs...they have bonding authority over there but I think they can pay off that bonding authority with a levy. And a tax levy is quite a little bit different than an occupation tax. A tax levy would be taking care of...would be...I guess payment would be helped with all the big skyscrapers in Omaha and everybody else. That's the difference between occupation tax and a tax levy. [LB862]

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SENATOR WALLMAN: Thank you. And, you know, I've said I would support Senator Christensen's water bill and I still will, but I still think Senator Louden's amendment here makes sense because...and it scares me when they expand it to every river basin. Thank you, Mr. President. [LB862]

SPEAKER FLOOD: Thank you, Senator Wallman. Senator Carlson, you are recognized. [LB862]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I'm going to make a brief comment about this while idea of the occupation tax and some concern that other NRDs are going to be able to use it. Let's go back to the fact that even though we're asking for it, I don't like the occupation tax. Nobody likes it, but it becomes a matter of you do what you have to do in order to survive and in order to guarantee that you can have funds to solve a problem. So I think that other NRDs are going to be very careful about employing an occupation tax. It's a last resort, but at the present time that's important to have in the Republican Basin. I am asking you not to vote for AM2200 but then I would continue to ask for your support for AM2004 and the underlying bill, LB862. Thank you. [LB862]

SPEAKER FLOOD: Thank you, Senator Carlson. There are no other lights on. Senator Louden, you're recognized to close on AM2200. [LB862]

SENATOR LOUDEN: Thank you, Mr. President, members of the body. I would ask for a call of the house before I start my closing, if you would, please. [LB862]

SPEAKER FLOOD: (Gavel) There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB862]

CLERK: 26 ayes, 0 nays, Mr. President, to place the house under call. [LB862]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. All personal handheld communication devices, please place them in the drawer. The house is under call. Senator Louden, you may continue as we continue to have senators check in. Senators Karpisek, Wightman, Cornett, Dierks, Lathrop, Mello, Giese, Ashford, Avery, and Karpisek, please return to the floor and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Louden, your time is running. You have 4 minutes and 47 seconds. [LB862]

SENATOR LOUDEN: Thank you, Mr. President. As I pointed out, there isn't any big

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rush in order to get this legislation through. Right now it's raining, been wet down in there. We got floods all over the country, so there isn't any question about whether or not you're going to have a crop this year, probably going to have a crop down there. The language that was brought up in...that was stricken from LB862, I'm reinstating that stricken language. There's nothing wrong with that language. That language wasn't found unconstitutional. [LB862]

SPEAKER FLOOD: (Gavel) [LB862]

SENATOR LOUDEN: What was found unconstitutional is the fact they were levying a tax on the whole system down there in order to pay for something that the state of Nebraska was liable for. So the language isn't unconstitutional. And I have no problem with what they're doing in the Republican River. They can go ahead and do that at the present time. There's nothing to stop them from going ahead and doing this with the language that we have in statute. It's already been in statute. What you are doing, you are striking the language that was including language that would allow all the NRDs to do that. And you may not think that they want to do that. But let me tell you, I've just been through about seven or eight years of wars over consolidating schools and getting rid of Class I districts, so I know what boards can do. Boards can close them up and we pass legislation to help them out. And I think Senator Adams can attest to what we've been doing with trying to keep these small schools open out in these areas. So board members doesn't necessarily mean that they're going to vote against having this occupation taxes. At the present time, I've already talked to some NRDs that are willing to do that because they want to get some money in order to retire irrigated acres that they felt that they shouldn't have allowed to irrigated to start with. So what they're trying to do is find some money in order to cover up some of the problems that they started before. I don't think this is something that has to be done now. And I do believe that this amendment is something that should go onto the Natural Resources Committee amendment and also onto LB862. With that, I close. And, Mr. President, I would ask for a roll call vote. [LB862]

SPEAKER FLOOD: Thank you, Senator Louden. You've heard the closing on AM2200. Senator Louden has requested a roll call vote. The question is, shall AM2200 to AM2004 be adopted? All those in favor...Mr. Clerk, please read the roll in regular order. [LB862]

CLERK: (Roll call vote taken, Legislative Journal pages 1001-1002.) 5 ayes, 39 nays, Mr. President, on the amendment. [LB862]

SPEAKER FLOOD: AM2200 is not adopted. I do raise the call. Returning to General File discussion on AM2004. There are no lights on. Senator Langemeier, you're recognized to close. [LB862]

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SENATOR LANGEMEIER: Mr. President, members of the body, I thank everybody's attendance through this discussion. And I'd ask for the adoption of AM2004 to LB862, it does become the bill and I think it puts us on the right path to the use of the occupation tax. Thank you. [LB862]

SPEAKER FLOOD: Thank you, Senator Langemeier. Members, you've heard the closing to AM2004. The question is, shall AM2004 be adopted? All those in favor vote aye, all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB862]

CLERK: 41 ayes, 2 nays, Mr. President, on adoption of committee amendments. [LB862]

SPEAKER FLOOD: AM2004 is adopted. We now return to discussion on LB862. Seeing no lights on, Senator Christensen, you're recognized to close. Senator Christensen waives closing. The question before the body is, shall LB862 advance to E&R Initial? All those in favor vote aye, all those opposed vote nay. Record vote has been requested. Have all those voted who care to? Mr. Clerk, please record. [LB862]

CLERK: (Record vote read, Legislative Journal page 1002.) 43 ayes, 3 nays, Mr. President, on the advancement of LB862. [LB862]

SPEAKER FLOOD: LB862 advances to E&R Initial. Mr. Clerk, items. [LB862]

CLERK: Thank you, Mr. President. Resolution, Senator Gay, LR420, that will be laid over; LR421 by the Retirement Committee and LR422, both calling for interim studies. Your Committee on Judiciary, chaired by Senator Ashford, reports LB840, LB843, LB984 to General File, and LB1084 to General File with amendments. And Senator Utter, an amendment to LB952; Senator Adams, to LB952 to be printed. That's all that I have, Mr. President. (Legislative Journal pages 1003-1005.) [LR420 LR421 LR422 LB840 LB843 LB984 LB1084 LB952]

SPEAKER FLOOD: Thank you, Mr. Clerk. Continuing on our agenda, we now move to General File, 2010 committee priority bills, Cornett division. We begin with LB950. [LB950]

CLERK: LB950 offered by the Retirement Systems Committee. (Read title.) The bill was introduced on January 14 of this year, at that time referred to the Retirement Committee for hearing, advanced to General File. There are committee amendments, Mr. President. (AM2087, Legislative Journal page 872.) [LB950]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Pankonin, as Chair of the Retirement Committee, you're recognized to open on LB950. [LB950]

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SENATOR PANKONIN: Thank you, Mr. President, members of the Legislature. LB950 was introduced at the request of the Nebraska Public Employees Retirement System. LB950 makes a number of technical and clarifying changes to the state administered retirement plans. LB950 clarifies in the county, state, and school employees retirement plans that a disability must have occurred while the member was a participant in the plan. In the county employees retirement plan, it makes a correction to the age after which a county plan member who is retired by disability could be required to have a follow-up disability examination. The age is changed from 65 to 55. Age 55 is the normal retirement age, so once a person reaches this age there is no reason to required continued examination to confirm an ongoing disability. Retirement-related LB403 provisions are inserted into the deferred compensation plan, county employees, judges, State Patrol, school employees, and state employees retirement acts. LB403, which was introduced and passed by the Legislature in 2009, provides in part that a person is not authorized to participate in a state-administered retirement plan if he or she is a noncitizen or not lawfully in the United States and may not receive retirement benefits pursuant to such plan. Language is also stricken in several sections of the County and State Employees Retirement Act prohibiting the use of forfeiture funds to pay administrative costs for the defined contribution and cash balance plans. Use of forfeiture funds is explicitly enumerated in Section 23-2319.01 of the County Employees Retirement Act, and Section 84-1321.01 of the State Employees Retirement Act. Forfeiture funds are employer contributions deposited to plan member accounts that are forfeited by plan members who cease employment before vesting occurs. Definitions in the School Employees Retirement Act are amended to clarify when termination occurs and who qualifies as a temporary, regular, part-time, and substitute employee. The School Employees Retirement Act is further amended to clarify which Department of Education employees may elect to become members of the School Retirement Plan and which employees are automatically enrolled in the State Employees Retirement Plan. Thank you, Mr. President...Madam President. [LB950 LB403]

SENATOR COOK PRESIDING

SENATOR COOK: Thank you, Senator Pankonin. As the Clerk stated, there are amendments from the Retirement Committee. Senator Pankonin, you are recognized to open on the committee amendment. [LB950]

SENATOR PANKONIN: Thank you, Madam President and members of the Legislature again. AM2087 amends provisions in the School Employees Retirement Act as follows: it clarifies that temporary and substitute employees are not plan members. It clarifies that termination for retirement purposes will not have occurred if a member subsequently provides service for an employer participating in the School Retirement Act within 180 days after ceasing employment, unless such service is voluntary or substitute service provided on an intermittent basis, or for the Department of Education

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in a certificated position. The Public Employees Retirement Board may also determine that a termination was not a bona fide separation from service. It clarifies when an employee working part-time becomes a regular employee and must begin contributing to the retirement plan. A part-time employee becomes a regular employee if he or she works an average of 15 hours per week within each calendar month, of at least three calendar months of a plan year. In addition, LB899 as amended has been incorporated into the committee amendment. LB899 was introduced by Senator Nordquist. It continues state annual level dollar payments to the judges, State Patrol, and school employees retirement defined benefit plans for purchasing power cost of living adjustments through the end of fiscal year 2012-2013. Under current state law, these payments would have sunsetted at the end of fiscal year 2010-2011. Extending the sunset in these plans gives the Retirement Committee and the Legislature an opportunity to review these plans in total and look at funding sustainability issues. The extension will also grant us additional time to determine what is happening with the economy and the impact on the plan's investment returns. Thank you. [LB950 LB899]

SENATOR COOK: Thank you, Senator Pankonin. Those wishing to speak on the committee amendment are Senator Ashford. [LB950]

SENATOR ASHFORD: Thank you. And I'm not sure I understood all of what Senator Pankonin said. But I know it's all good, because I don't know if those of you who were listening to NPR this morning heard Senator Pankonin talk about the retirement system in Nebraska in relationship to the mess that Kansas is in. And Nebraska being one of the few states in the country that has a solvent retirement system, primarily, as Senator Pankonin mentioned, because of him. No, that isn't true. (Laughter) Senator Pankonin didn't really say that. He alluded to it but he didn't say it specifically. But I just want to commend Senator Pankonin for representing us, as Senator Stuthman did so well on the safe haven. When we get in the national press it's always good to acknowledge the contributions of our colleagues. And so I commend Senator Pankonin and the Retirement Committee, throughout the years to put Nebraska in the position that it is in, in its retirement system. Thank you, Madam Chair. [LB950]

SENATOR COOK: Thank you, Senator Ashford. Next wishing to speak is Senator Gay. [LB950]

SENATOR GAY: Thank you, Madam President. I'd like to ask Senator Pankonin a question. [LB950]

SENATOR COOK: I'm sorry, what did you say? [LB950]

SENATOR GAY: I'd like to ask Senator Pankonin a question. [LB950]

SENATOR COOK: Thank you. Senator Pankonin, would you yield to a question from

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Senator Gay? [LB950]

SENATOR PANKONIN: Yes, I would. [LB950]

SENATOR GAY: Thank you, Senator Pankonin. And also, thank you for your work on the Retirement Committee. I know it's a challenging time for you and your committee. And this is a cleanup bill. Just a quick question. When we talked about the forfeiture of funds, that must be a new idea to take the funds that are...can you explain forfeiture funds and that they're being used just to fund some administrative cost? [LB950]

SENATOR PANKONIN: Well, Senator Gay, as you know, forfeiture funds happen when someone hasn't reached their complete vesting. So some of those funds get returned. And we did have some clarification to a couple of sections of the statute so that it would make it clearer. I can even read from the statute if that would help you. If I may do that, I'll read real quickly what we're doing. [LB950]

SENATOR GAY: Sure. [LB950]

SENATOR PANKONIN: The funds shall be used to meet expenses of the state employees retirement system of the state of Nebraska, whether such expenses are incurred administering the member's employee account or administering the members employer cash balance account when the funds available in the state employee's defined contribution retirement expense fund or state employees cash balance retirement expense fund, makes such use reasonably necessary. I think this just clarifies what we can do with some of those forfeiture funds. [LB950]

SENATOR GAY: And before you could never do that and this just clarifies that. How much money are we talking about in those funds, do you know? [LB950]

SENATOR PANKONIN: If it's just a redundant provision, as far as the amount of money I couldn't tell you. [LB950]

SENATOR GAY: All right. Well, I think it's a good use of those funds and I was just trying to educate myself a little bit on it. But I assume, you know, this does happen when these people don't get their funds. [LB950]

SENATOR PANKONIN: Okay. [LB950]

SENATOR GAY: And it's kind of...now, they can't come back then and say, hey, you now, like unclaimed property and say, hey, by the way, I guess I was owned \$2,000 maybe. Once they give it is it still the law that it's done or can they come back and try to retrieve this money? [LB950]

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SENATOR PANKONIN: I think that's what the word forfeiture means, Senator Gay, you've forfeited it. And that's part of the plan documents and the plan. Legal counsel, Kate Allen, has told me it's less than \$1 million, so it's not a huge amount but it is...does help in the administration of the funds. [LB950]

SENATOR GAY: Yeah, I assume that's proper. Thank you, Senator Pankonin. [LB950]

SENATOR COOK: Senator Pankonin, you are next in the queue. [LB950]

SENATOR PANKONIN: Thank you, Madam President. I just wanted to respond to Senator Ashford, those kind comments. And as I told him in the hall earlier, he was excited about hearing this on the radio this morning and that's great. And I just want to explain to the members, we did have kind of a national reporter from NPR come up and do the story. And he couldn't understand, he thought Kansas and Nebraska would be very much alike in their culture and politics and that sort of thing and why there would be such a huge difference. And as I explained to Senator Ashford, this has very little to do with me but it has a lot to do with generations of legislators, including himself who was here in earlier times, and folks like Herb Schimek who has worked with the educational plan and who has devoted a big part of his career to making sure our plans are soundly funded and under a sound foundation. So I think it's become a tradition in this state that is an important one and one that I think folks that are new to the process will want to continue. Also have an excellent committee. Senator Nordquist has background in this area, so there are a lot of people involved. And I just want to encourage this body, not only with this bill but we're going to have some future challenges, we're not as in dire straits as other states, according to the Pew Report. But we will have to work hard and probably spend some money to keep these plans in the top tier. So and I also appreciate Senator Gay's questions. And with that, if there's no other comments, we hope that we can pass this amendment and the bill. Thank you. [LB950]

SENATOR COOK: (Gavel) Thank you, Senator Pankonin. Senator Utter, you are recognized. [LB950]

SENATOR UTTER: Thank you very much, Madam President and colleagues. I'm wondering if Senator Pankonin will yield to a question please. [LB950]

SENATOR COOK: Senator Pankonin, would you yield? [LB950]

SENATOR PANKONIN: Yes, I would. [LB950]

SENATOR UTTER: Senator Pankonin, I'm not sure I fully understand the reason for the amendment and the two-year extension. Can you help me with that? [LB950]

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SENATOR PANKONIN: Senator Utter, I'm going to...if I could take a couple minutes probably to explain there's some background there. This fund came about in 1996, I think it was, so it's been going for 15 years. And it was an agreement at that time. There was some money that had gone into a salary fund for teachers. And so it was put into this fund to help support the cost of living and the adjustments to that type of a program. And as you've heard from the introduction of Senator Nordquist had introduced this bill to extend that for...it could have been extended actually and not had a sunset. But we decided to incorporate it into the committee bill and extend it for a couple of years. As we look at the entire systems sustainability, and I'm sure this topic will naturally come up against because of the two-year extension in the sunset. [LB950]

SENATOR UTTER: Thank you. Senator Pankonin, is there any additional costs that will accrue to the state as a result of this extension? [LB950]

SENATOR PANKONIN: Senator Utter, we have been spending this money. It has varied in a range from \$5.6 million, I think, to about \$7 million, so it's in that range. And so it will be a cost that we have incurred and will continue past...if we pass this amendment and bill, past '11 and to...could be as far as '13, unless it's looked at in between. [LB950]

SENATOR UTTER: So it would...so am I understanding that we would incur additional expenditures of \$10 to \$13 million? Is that...am I following you right? [LB950]

SENATOR PANKONIN: It's a set amount by formula and it is in that range that you're talking about, I think it's closer to \$12 million, but it does go on for a couple more years. We've been paying it for the last 15. [LB950]

SENATOR UTTER: And if we didn't extend it then the money wouldn't...then we wouldn't incur that expenditure is... [LB950]

SENATOR PANKONIN: It's about \$5.6 million a year, as I'm getting the current information. Well, that's problematical because this supports some COLAs that we are obligated to. So it probably would have still been an obligation or it very well could be. And so that's why we're going to extend it to look at the whole system. [LB950]

SENATOR UTTER: Okay, thank you, Senator Pankonin. I'll give you the rest of my time that I have left, if you... [LB950]

SENATOR PANKONIN: Well, I'll just enumerate a little... [LB950]

SENATOR COOK: You have 2 minutes. [LB950]

SENATOR PANKONIN: ...little further to say it does extend the status quo. We know

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that this is part of the piece of the puzzle that we'll be looking at over the next biennium as we look at the budget and where we're at on these issues. [LB950]

SENATOR COOK: Thank you, Senator Pankonin. Senator Heidemann, you are recognized. [LB950]

SENATOR HEIDEMANN: Thank you, Mrs. President and fellow members of the body. I just wanted to stand up briefly and say that if you look at the committee statement, I did actually vote no on LB950. I actually want to clarify that a little bit. I do not have a problem with LB950 whatsoever. I do have a little bit of a problem with AM2087 though because that was originally LB899. And I had questions on that bill and that's the reason that I wasn't able to support it coming out. And if Senator Pankonin would yield to a few questions and maybe just a little bit of a dialogue, maybe just to let everybody know and get a little bit more of a comfort level what is in the amendment and what we're doing here and how it all transpired, I would appreciate it. [LB950 LB899]

SENATOR COOK: Senator, will you yield? [LB950]

SENATOR PANKONIN: Yes, I will. [LB950]

SENATOR HEIDEMANN: Senator Utter asked some questions. And just to clarify a little bit more, I think the dollar amount that goes into this is it \$6.8 million a year? [LB950]

SENATOR PANKONIN: I... [LB950]

SENATOR HEIDEMANN: Okay, I think \$6.8 million, I just heard somebody say that includes Omaha. [LB950]

SENATOR PANKONIN: Right. [LB950]

SENATOR HEIDEMANN: But...and this was supposed to sunset. Correct? [LB950]

SENATOR PANKONIN: Yes, it was. It would have sunsetted in '11, except the Omaha portion would not have. [LB950]

SENATOR HEIDEMANN: Was not, and I understand that. So it would be a smaller portion from the \$6.8 million, excluding the Omaha part. My question to you then would be if these plans were actuarially sound and if we would sunset this, this would show a savings of the same amount, correct? [LB950]

SENATOR PANKONIN: That would be true, yes. [LB950]

SENATOR HEIDEMANN: So as we go on the next couple of years and look at this and

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assist sustainability of these plans, this is an important point. And this is probably where I had the trouble with because if these plans were actuarially sound this year, and we would sunset it, we would show a savings of millions of dollars a year, correct? [LB950]

SENATOR PANKONIN: If they were actuarially 100 percent, yes. [LB950]

SENATOR HEIDEMANN: At this point in time they are not actuarially sound because of the downturn in the market and others things that occurred in the economy. And I understand that. If this was given in a point of time, say in 2007, we actually would show a savings then of over \$5 million a year. [LB950]

SENATOR PANKONIN: That's true. [LB950]

SENATOR HEIDEMANN: Because at that time they were actuarially sound. I appreciate it, Senator Pankonin. I am not going to be adamant about this by any means, but I think it's important that we know what we're doing in AM2087. And I understand that over the next couple of years we're going to look at this, without a doubt. Hopefully, I'm still part of the Retirement System Committee and I will be part of that discussion. And I think we need to look at the sunset part of it, not only, I'm going to throw a shot across the bow right now, not only for what's going to be sunsetted now but for the Omaha system. I think we need to look at a broader picture. And I think not only on this part of it but actually at a broader picture about sustainability of defined benefit plans in the state of Nebraska. And if we want to move forward with defined benefit plans I don't have a problem with that to be right truthful. But we need to make sure that down the road, time and time and time again I've been in this body for six years now and this is the second time that I am part of a Legislature that had to put money into the defined benefit plans to make them sustainable. And I don't know if this is something that we want to do time and time again in the state of Nebraska. [LB950]

SENATOR COOK: One minute. [LB950]

SENATOR HEIDEMANN: With that, I appreciate it. Thank you, Mrs. President. [LB950]

SENATOR COOK: Thank you, Senator Heidemann. Next wishing to speak on committee amendment, AM2087, is Senator Gay, followed by Senator Pankonin. [LB950]

SENATOR GAY: Thank you, Madam President. I just wanted to talk on the amendment a little bit more as I pulled up LB899. And I think the difference being made up by the state has been an ongoing process. And I was listening to the debate between Senator Heidemann and Senator Pankonin and I agree. But, I guess, on this...and I'm going to vote for the amendment and the bill because I think that's what we need to do at this time. And I trust the judgment of the committee. This is something that they can't

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change overnight and just change the rules of the game midstream, so I do support both and I just wanted to go on record. But I'd like to ask Senator Pankonin a question or two. [LB950 LB899]

SENATOR COOK: Senator Pankonin, would you yield to a question? [LB950]

SENATOR PANKONIN: Yes. [LB950]

SENATOR GAY: Thank you, Senator Pankonin. Senator Pankonin, as I was reading LB899 much of this \$5.6 million is going to the school and the state program, then judges, State Patrol. And I don't have a problem with that. But, I guess, the question is, if you're on the Retirement Committee are your hands tied a little bit? Aren't these in contract negotiations? Do you have to wait for contract negotiations to be done before you can change this? I assume we have a commitment through some negotiation or how do we change this even if you wanted to change that we are picking up the difference? [LB950 LB899]

SENATOR PANKONIN: Senator Gay, this is a funding provision instead of a benefit provision. So, you know, we do have some discretion. But it obviously was something that went...had tradition when it had for 15 years. And so we're maintaining the status quo. I think Senator Nordquist, your seatmate, can tell you that as we go ahead, you know, this was his bill, that he knows from working in this committee and this area and in the staff position beforehand that as we head into the new biennium is usually when we look at these situations. We did have, as you well know, an uptick in the market. And so we came back to where we weren't...we initially had some money the state was going to put in during the interim. But we didn't have to because of the market coming back. So as we go forward over the next biennium this will be one of the things that will be on the table to be discussed about whether we continue funding at this level. [LB950]

SENATOR GAY: And I see in the future, on the fiscal note, that into the 2014-2015 you're talking about \$40.3 million. And the numbers are huge as you look into this. And I know, you and I talked quite a bit about funding levels and what percent you're going to use to fund, whether it's 7, 8, I saw some as high as 8, 8.5 percent. And that's unsustainable probably with this market. [LB950]

SENATOR COOK: (Gavel) [LB950]

SENATOR GAY: So I know this adjusts and I know it's a long-term movement. But, I guess, down the road would it be the...should there be both participants helping if there's a shortfall, both participants instead of just the state making up the difference? [LB950]

SENATOR PANKONIN: Senator Gay, that has been the tradition in Nebraska. That's

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one of the reasons that, as Senator Ashford brought up earlier, that our plans, even though, as Senator Heidemann has indicated, we are not 100 percent on the education fund, we are on the judges fund but that's a smaller one. And we're at like 86 percent on the education one at the end of the year. So we know going forward, but Senator Nordquist can also verify that this has been the tradition in Nebraska, that employees have stepped forward. We were one of only three states through 2009 to have all our participants contribute more to their plans, the troopers, the judges and the employees or the educational plan. So it is significant that we've had participation in getting new funds in from the employee groups. [LB950]

SENATOR GAY: Okay. Well, thank you for that clarification. I know, you know, that's one thing, this committee is very important committee. I know as it goes along the numbers are very big. And I appreciate your work again. I said that and I support this and I support the amendment. I'm just kind of clarifying maybe some of the problems that may be kind of looming on the horizon and just... [LB950]

SENATOR COOK: One minute. [LB950]

SENATOR GAY: ...kind of wanted to get a feel for how you're...how we're starting to move towards that. But I also appreciate it. And I think it's, you know, unfortunately it's one of those things. But employees and employer have to probably when you want a defined benefit or a cash balance or whatever you want to do, both have to participate. And sometimes unfortunately when the market doesn't help you out as much you got to both do that. So again, I support the amendment and the bill and thank you for your leadership on this. Thank you, Madam President. [LB950]

SENATOR COOK: Thank you, Senator Gay. Senator Pankonin, you are next and last in the queue. You may...do you wish to close during this portion? [LB950]

SENATOR PANKONIN: Madam President, I will close with this. I just wanted to mention that AM2087 does consist of some other clarifying and technical changes to our system, basically an education part, besides LB899. So there is more there than just LB899. But we think this is the important policy for our system at this time. We know as we move into the next biennium we will be looking at all these factors because it is an important financial risk and commitment by our citizens and the participants in the plans. And I know this body has a past record and will have, I'm assured of that in the future to be responsible with these plans. And I want to thank Senator Nordquist for introducing LB899 and working with me and others to craft an idea into this amendment that works for the short-term, knowing that we will be working on sustainability in the long-term on every...at every opportunity. So with that, I'll close. Thank you. [LB950 LB899]

SENATOR COOK: Thank you, Senator Pankonin. Members, you have heard the closing on the committee amendment. The question is, shall the committee amendment

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to LB950 be adopted? All those in favor vote aye; all those opposed please vote nay. Have all those voted who care to? Record, Mr. Clerk. [LB950]

CLERK: 33 ayes, 1 nays, Madam President, on the adoption of the committee amendments. [LB950]

SENATOR COOK: The amendment is adopted. [LB950]

CLERK: I have nothing further on the bill, Madam President. [LB950]

SENATOR COOK: We now proceed to discussion on LB950 on its advancement to E&R Initial. Seeing no lights, Senator Pankonin, do you wish to close? [LB950]

SENATOR PANKONIN: I'll waive closing. [LB950]

SENATOR COOK: Senator Pankonin waives closing. The question is, shall LB950 advance to E&R Initial? Have all those voted who care to? Record, Mr. Clerk. [LB950]

CLERK: 38 ayes, 0 nays, Madam President, on the advancement. [LB950]

SENATOR COOK: The bill advances. Items for the record. [LB950]

CLERK: Thank you, Madam President. Amendments, Senator Nordquist, to LB1106A; Senator Sullivan to LB931. And I have a hearing notice regarding confirmation hearings by Judiciary. That's all that I have. (Legislative Journal pages 1005-1007.) [LB1106A LB931]

SENATOR COOK: Thank you, Mr. Clerk. We will proceed to General File, LB1079. Senator Cornett, you are recognized to open. (AM2164, Legislative Journal page 878.) [LB1079]

SENATOR CORNETT: Thank you, Madam President and members of the body. I would prefer to open on the committee amendment, with your permission. The committee amendment rewrites the bill. [LB1079]

SENATOR COOK: Thank you, Senator Cornett. Senator, you're recognized to open on the committee amendment. [LB1079]

SENATOR CORNETT: Thank you, Madam President. The committee amendment is a bill that deals with the Tax Equalization and Review Commission. Over the past six years in the Legislature, every year the Revenue Committee has had bills regarding TERC and interim study after interim study. And this started before I was in office. TERC was established to be a taxpayer friendly means for a taxpayer to go in and

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protest their valuation. We have heard time and time again that TERC is not taxpayer friendly. TERC, in response to that, brought us part of this bill. And we'll be discussing the different sections that TERC brought, that the committee has brought, and then one section that, if you look at the following amendment to the bill, that we are removing from the committee amendment. The real property tax protestors, a right to meet with a person, with the county board of equalization or a referee, that is something that the committee is looking at. And we base that on how well Lincoln has done with the referee system for protests. And let me explain what that section does. For real property tax valuation protests before the CBOE, Section 1 of the amendment as a new subsection that would require each protestor to have an opportunity to meet in person with a county board of equalization or referee appointed under this to provide information relevant to the protested parcel valuation. It requires the county board of equalization to meet, to review and decide written protests beginning on or after June 1 and ending on or before July 25 of each year in counties with a population of greater than 100,000. The part of the bill that we...the following amendment will eliminate is the time line within a taxpayer can file an appeal with TERC. We had originally looked at extending that. But because of concerns in regards to certifying for schools, we determined that we're going to pull that from the bill. The other change that we are looking...the amendment does is something that TERC brought to us in response to the length of time and the complaints that people...the length of time that it took to get a TERC hearing and a decision. TERC came to us with the idea of a single commissioner hearing. This is Section 7 of the bill. The amendment permits but does not require the TERC to conduct single commissioner hearings to help manage its caseload. TERC's chairperson would be empowered to designate an appeal for a single commissioner hearing upon the request of the party to appeal or in such other manner as may be provided by TERC rules and regulations. The provisions of Section 7 are a comprehensive set of rules for conducting a single commissioner TERC hearing which would be limited to protests involving a parcel of real property with a taxable valuation of \$1 million or less, such as determined by the county board of equalization. Such hearing would be informal. The usual common law and statutory rules of evidence would not apply, and the single commissioner conducting the hearing would be required to consider and use all matters presented at the hearing in making his or her determination. This came about because a lot of people complained TERC is not taxpayer friendly. This was an idea that came from TERC saying if we could meet with them on a one-on-one basis, we feel we could eliminate and solve a lot of the problems. The second part of this is that if the taxpayer does not feel that the single commissioner has met their needs, they are able to appeal to the full TERC commission. A party...any party to a single commissioner hearing can, before the hearing, elect in writing to have the appeal heard by a panel of TERC commissioners and the TERC commissioner conducting the hearing could at any time designate the appeal for hearing by a panel of TERC commissioners. Documents necessary to establish jurisdiction would constitute the record of the proceeding by a single commissioner, but no recording of the hearing for a single commissioner would be made. Any party to such hearing could appear through an authorized representative

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who would not have to be a licensed attorney at law because the hearing would not constitute the practice of law. A request for a rehearing before the full TERC commission of a determination made by a single commissioner must be made as provided in the bill in Section 7 of the amendment. To coordinate the provisions of the statute with the provisions of amendment authorizing single commissioner hearings, one provision requires the full TERC commission, on application made within 30 days after the order to grant a rehearing, a determined de novo any decisions of orders made by a panel of TERC commissioners or by a single TERC commissioner, except an order dismissing an appeal or petition for failure of the appellant or petitioner. Pardon me. Section 8 of the amendment exempts single commissioner hearings from the requirements of Section 77-5016 through 1 through 12, which govern the conduct of TERC hearings, including among other things the rules of evidence, cross examination of witnesses, and standard of review. To make this very simple, the single commissioner hearings were an idea brought to us by TERC to allow them to meet with people face-to-face, one-on-one and resolve their disputes in a much less formal manner. They would not need to be represented by an attorney. They...if it was an elderly person, their child or guardian or a friend could represent them. The real issue that you're going to hear today, and Senator Campbell has been wonderful to work with on this, we don't see eye-to-eye on it and we're going to be discussing the issue, is the burden of proof. Changing the burden of proof in a real property tax evaluation heard by TERC, one would allow the TERC to dismiss an appeal or cross appeal if there's no evidence showing that the county board of equalization's order, decision, determination, or action appealed from is erroneous, require TERC to affirm the CBOE's order, decision, determination, or action unless evidence before TERC shows the CBOE's order, decision, determination, or action was unreasonable, arbitrary, or unlawful. The CBOE's order, decision, determination, or action determining taxable value is unreasonable or arbitrary if a different taxable value is proven by greater weight of the evidence. Currently, TERC is deciding these cases based upon a standard called clear and convincing, and members of the committee who are attorneys are going to discuss the clear and convincing standard versus the greater weight further in the discussion. The Legislature enacted TERC to be a taxpayer friendly place. And we have heard that they are too formalized, that the burden of proof is too high. We as a Legislature, when we formed TERC, did not establish the clear and convincing language. That was done by a court case that followed the establishment of TERC. It was not in our language. That case we will discuss further on the mike was J.C. Penney v. Lancaster County Board of Equalization. We, with this bill and with changing the standard or the burden of proof, are going back to what the body originally intended and was a taxpayer friendly means for appealing an evaluation. With that, I will close on the committee...or I will stop talking on the committee amendment and be willing to answer questions. [LB1079]

SENATOR COOK: Thank you, Senator Cornett. Mr. Clerk, there's an amendment to the committee amendment? [LB1079]

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CLERK: Madam President, Senator Cornett would move to amend the committee amendments with AM2269. (Legislative Journal page 1008.) [LB1079]

SENATOR COOK: Senator Cornett, you're recognized to open on your amendment to the committee amendment. [LB1079]

SENATOR CORNETT: Thank you, Madam President and members of the body. This is what I spoke about in the opening. We are removing or striking Sections 3 and 9. This would...this section would have allowed the county board of equalization to change the value of a parcel of real property after August 20 and before October 1. We are removing this as a concession to the counties and to the schools who felt that this was difficult at best for certifying valuation. I would appreciate the body's support in removing this section from the committee amendment. Thank you. [LB1079]

SENATOR COOK: Thank you, Senator Cornett. Those wishing to speak on the amendment to the committee amendment are Senators White, Hadley, Gloor, Adams, and Campbell. Senator White, you're recognized. [LB1079]

SENATOR WHITE: Thank you, Madam President. Members of the body, I want to talk generally about this bill and why it's come up. For now in my fourth year in the body, I have served on the Revenue Committee. And there is no agency of government, with the possible exception of Health and Human Services, that has, in my experience, raised the ire and the level of complaints that we have received over TERC. This is an incredibly volatile area and the public is understandably upset, although they can't always tell you why they're upset, but they sense rightly that when they go to TERC the cards are so stacked against them that it's not even a fair hearing, it's not even a fair chance. And they're right. This bill goes into a lot of technical legal issues and we can go through those at length. And I can talk to you about the issues and I can talk to you about why they're there and why in fact they're not fair. But I would ask you this since it's basketball season, imagine if your basketball team came onto a competitor's court, they had the home court advantage, and that's what we're doing with TERC to begin with, because you're appealing government to government. And you think you're going to have a fair game and have a chance to play your game, to prove your points, and get a fair result. And the first thing the referees tell you are, yeah, well we get five players but you guys get two. And you say, what? Yeah, we get five and you get two that's the rules of fairness. That's the burden of proof in this bill. The government, the assessors set a value on your property and they say, here's our value. You go to the assessor and you say, please, you're wrong. And the assessor says, nope, not going to listen to you, go to TERC. As soon as you appeal to TERC the first thing out of the gate, although it's not really understood by most taxpayers, is you have to prove that assessor was wrong, not by 51 percent more likely than not, but by clear and convincing evidence. And I am telling you, folks, as a trial lawyer who's tried hundreds of cases, good luck proving anything by a clear and convincing proof in a civil context. You know, we ought to just

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be more realistic and tell the public, hey, there is no appeal. Because, in effect, by saying clear and convincing evidence, you've so stacked the deck that it's like having two basketball players play against five on a foreign court. You're not going to win, you're just not going to the vast majority of time. And so this is a bill that is very important on fundamental fairness for the citizen coming into contact with government, having a meaningful appeal. It also talks about a great backlog of appeals and what we need to do to quiet those appeals down, to make sure that our citizens, while they'll never like taxes and they'll always like property taxes the least of all, they recognize that with respect to their fellow citizens they've been treated fairly. They had a chance on a level playing field to state their concerns and try to convince someone that they were dealt with wrongly, that they weren't told to come in and you got to sit down and play ball on a rigged game, we're really going to give you a level chance. This bill goes a long way towards actually carrying out the original intent of the creation of TERC... [LB1079]

SENATOR COOK: One minute. [LB1079]

SENATOR WHITE: ...which was a fair, understandable playing field for taxpayers. Now why is that so important in the larger sense? I will tell you right now I think one of the great downfalls of California, our most populace state, was the taxpayer revolt which was brought on, I think, by a system that stopped being responsive to the concerns and fears of its citizens. And when Proposition 13 came through and when it change it, it destroyed what was at that point probably the best public education system in the country and probably the best in the world. And that came about because rather than deal with anger and frustration straight-up and honorably, it got easier for the bureaucracy just to stuff it and shove it and put it back and bottle it up. And then it exploded. That's what happens. And that would be a disaster for our citizens, for our taxpayers... [LB1079]

SENATOR COOK: Time, Senator White. [LB1079]

SENATOR WHITE: ...and for our school children. Thank you, Madam President. [LB1079]

SENATOR COOK: Senator Hadley, you're recognized. [LB1079]

SENATOR HADLEY: Madam President, members of the body, I stand in favor of AM2269, AM2164, and LB1079. If you go back and look at a little of the history of this, years ago these disputes were taken to district court. And the courts basically said they wanted to get out of it. So we set up a system where we felt it would be appropriate to solve these disputes, and they are disputes, and we set up TERC. And it took on kind of a semblance of a court situation. I think we're evolving. I hold...I don't think the problem is TERC itself, it's the rules that we've given them to work with. I think it's important that

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we look at those rules and that we do the right thing. When we held meetings this year on revenue, we heard a lot about property taxes. We heard both the fact of the assessment and the mill levy. The assessment people want a fair assessment and they want a way of appealing that. I would agree entirely with Senator White that a lot of people just want someone to listen to them when they have a concern about their property valuation. I think we need to look at that and implement these amendments and LB1079. I want to talk specifically about the one commissioner ruling. I liken this a lot to the idea that we have a small claims court. It's been very successful, it's used in all the states. And the reason we use that is so that people with smaller amounts of claims can go and be heard without getting involved with attorneys, without getting involved with the legal procedures, have their case heard, adjudicated, and then a decision given. I think that's what that part of this bill does with the one commissioner hearing. I think it gives a chance for people to come in and to be listened to without having to have an attorney there to make their case. So I would encourage people to vote for AM2269, AM2164, and LB1079. I would yield the remainder of my time to Senator Cornett, if she wishes it. [LB1079]

SENATOR COOK: Senator Cornett, do you wish to take the time? [LB1079]

SENATOR CORNETT: Yes. How much time do I have remaining? [LB1079]

SENATOR COOK: You have 2 minutes 32 seconds. [LB1079]

SENATOR CORNETT: Thank you. The big question on this bill, and I have heard again and again is the majority of the body and the majority of the lobby has no issue with the single commissioner hearing and the mediation portion of the bill. We have removed the extension of the deadline. The real debate is going to come down to the burden of proof. The way it is currently established, and I am just going to read a quote here from someone, that the answer to the question is the county assessors desperately want the square corners of the law to continue to be a one way street, a state that has been designed and constructed largely by court-made rules which were inherited by TERC from the practice in courts of law, so that it traverses the battlefield at a tilted angle and which places the assessors at the top of the hill, which forces the taxpayer to fight an uphill battle against the assessor. It secures a position atop of a hill and forces you to fight an uphill battle in everything when the books are stacked against you. Conscious lawmakers know that the only way to ensure a fair fight between taxpayers and the taxing authority include assessors and county boards of equalization is to level that battlefield or that playing field. [LB1079]

SENATOR COOK: One minute. [LB1079]

SENATOR CORNETT: We have heard quite a bit of rhetoric about how this is going to cause a change in valuation. If the county boards are doing their jobs, this is still greater

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weight of the evidence. We are not...they will still have the home team advantage going in, but the taxpayer will be able to be treated more equally or more fairly because taxpayers a lot of times do not take an attorney to their county board of equalization meeting when they protest. They do not have the right tools. TERC was supposed...set up to be taxpayer friendly so they wouldn't have to hire an attorney. And we've heard time and time and time again that TERC is actually more formalized now than going to court was in the past. Thank you. [LB1079]

SENATOR COOK: Thank you, Senator Cornett and Senator Hadley. Next to speak are Senators Gloor, Adams, Campbell, Haar, Dierks, and others. Senator Gloor, you are recognized. [LB1079]

SENATOR GLOOR: Thank you, Madam President. I wonder if Senator Cornett would yield to some questions. [LB1079]

SENATOR COOK: Senator Cornett, will you yield? [LB1079]

SENATOR CORNETT: Yes. [LB1079]

SENATOR GLOOR: Thank you, Senator Cornett. Help me understand, if you would, this isn't an area where I feel I have a lot of expertise, so I'm looking to fill in some gaps in my knowledge base. How many commissioners are there on the TERC? Do we know? Four? And so we'd be putting...and am I correct in my assumption that each of those four then are volunteering to serve in some capacity in a single commissioner hearing? [LB1079]

SENATOR CORNETT: Yes. TERC brought us this. And I have to compliment them. They have been very wonderful to work with, particularly Commissioner Wickersham in regards to this issue. [LB1079]

SENATOR GLOOR: The area where I have some hesitancy is that no one likes to get bad news, nobody likes to deliver bad news. So good for the TERC members, commission members agreeing to serve on a one-to-one more or less, single commissioner hearing panel. But why do they think that this wouldn't be adding to their workload? Would in fact diminish it, Senator Hadley talked about this being somewhat like small claims court. I'm not sure that's the case. My experience is people who don't like their valuations are pretty cranked up. And if they don't hear what they like to hear from the single commissioner hearing, I would think they would take advantage of the ability to go before the full commission. Was that talked at all by the TERC members when they came with this? [LB1079]

SENATOR CORNETT: It was and the TERC commission...the single hearings will have a decision. If they don't like the decision they can obviously appeal that. But it is a

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one-on-one face-to-face where we here have heard in the hearings and in the interim studies that taxpayers don't frequently understand where the valuations came from. They want someone to listen to their side of the story, that they have three bathrooms, instead of two bathrooms, that their property is not as well kept or not to the same standard as the property they're being valued against. The commissioners really believe that this will give them that face-to-face time and will reduce the backlog that they have currently. [LB1079]

SENATOR GLOOR: Thank you, Senator Cornett. I'm probably going to be supportive of this, given the route that it took to come to us. But I still have my doubts. At least as relates to my experiences with our board of equalization, there has been a lot of sharing of this information. People don't like to hear bad news. And their hearing becomes selective when things are being told to them that they don't want to hear. The TERC, I think, is being very magnanimous in its willingness to serve in that roll, but naive if they think, I believe naive, if they think that some of the same arguments that are being made to them weren't arguments that were heard and discussed at the local county level. My worry here would be that all we're doing is setting up another layer of hearings with additional work that goes along with that and in the final analysis not really reducing the overall workload, not serving the mediation level, not serving the small claims court component that we would like to. I need to think further about this. But my concerns, obviously, are we've added a layer to the bureaucracy and perhaps aren't solving anything as a result. Thank you, Madam President. [LB1079]

SENATOR COOK: Thank you, Senators Gloor and Cornett. Senator Adams, you are recognized. [LB1079]

SENATOR ADAMS: Thank you, Madam President, members. I don't know that I'm going to shed much light on this for anyone. But maybe I can walk through some of my mental process as a member of the Revenue Committee and you can find some compatibility. When I got onto the Revenue Committee, this was one of the first issues we started dealing with. And as a relative newcomer, I sat there and I wanted to make sure I understood the details of this whole process from beginning to end. We heard a lot of testimony. And the testimony was from TERC commissioners to citizens to county officials, county assessors that have to deal with this, county attorneys that have to deal with it. And I had no real position on it because I needed to learn. And I sat back and I listened. And after two years of listening to this and getting where we're at today, I can't honestly stand here today and tell you that I am 100 percent behind everything that's up here because I'm still listening to county officials, who make very legitimate arguments, I'm listening to groups on the other side, and I remember our long Exec Sessions on this very subject for two years, trying to figure out where to go. The county officials raised genuine concerns, they raised concerns about the burden of proof, they raised concerns about the time line that Senator Cornett is addressing right here. And I certainly do support that. From the standpoint of political subdivisions, particularly schools, I am

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concerned with the value gets set and they build budgets, that we need to give them that little bit of assurance. And you know what, I'm going to digress for a moment and talk about this amendment because more, I think, than an adjustment in local political subdivisions budgeting processes here, there's something much bigger happening. What this amendment is, it's an example of what Senator Cornett, as committee chair, and the staff of the Revenue Committee have done to try to shape a bill to bring here. It has been a constant, I believe from my observation, dialogue between county officials, TERC commissioners and everybody trying to come up with language that gets over everybody's issues. And we all expect that, we hope for that. But there are times when we're just simply going to have to make a policy decision and knowing that somebody, some party on one side of this or the other isn't going to be happy. This most recent amendment, AM2269, is an effort on the part of Senator Cornett to say, all right, look, let me address yet another issue that county officials have with this time line and political subdivision. We're doing that here. Support that amendment. There are other things in this bill, the single commissioner TERC, I think that has value, that has value. If you have less than \$1 million worth of property, you don't want to go hire an attorney and go into a quasi judicial matter. To be able to sit down with somebody with that expertise and say, here's my case, where do I stand on this thing? I can't afford to go out and hire and do battle. Now maybe the farm manager, I may be the retired citizen that has 40 acres out here or I've got a business in downtown York or Broken Bow, wherever it is, and... [LB1079]

SENATOR COOK: One minute. [LB1079]

SENATOR ADAMS: ...I don't want to go clear to TERC. This gives me an avenue right there. County officials are not all happy with that. So you got the time line, you got the single commissioner, you got the burden of proof. There's a lot of stuff wrapped up in this. And it really is an effort to get over all of that. And bottom line, what you are looking at here is a wrestling match between, as I see it, the taxpayer and the system of evaluating that land and the appeal process. And therein lies the county officials over here. And that's the decision that you're going to have to make as you go down this road. I think most of this bill, with the amendments, is in pretty good shape. I wrestle with the burden of proof. That's my biggest issue on this. And again, Senator Cornett's amendment here... [LB1079]

SENATOR COOK: Time, Senator. [LB1079]

SENATOR ADAMS: Thank you. [LB1079]

SENATOR COOK: Next in line to speak is Senator Campbell, followed by Senators Haar, Dierks, Stuthman, Cornett, and others. Senator Campbell, you're recognized. [LB1079]

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SENATOR CAMPBELL: Thank you, Madam President. And I would like to indicate to the body that I certainly have appreciated the working relationship with Senator Cornett as we have exchanged opinions on what is in this bill. And I certainly stand to support the amendment that Senator Cornett is putting forward. Where we're going to differ is on the next amendment you're going to talk about. But I really appreciate Senator Cornett's willingness to hear what the problems were behind this portion of the bill. And I had great concerns, not about the single TERC, because I felt that they brought that forward, but my concern had to do with the settlement period and the time lines. Having watched boards of education trying to figure out what's the levy, what's the value, what am I doing, when are you going to have that information, and back and forth. And the other part that really concerned me in the settlement portion was I was too afraid that after a period of time we would really not know what the value was for the other political subdivisions. So I much appreciate the effort that Senator Cornett has gone through to bring forth this amendment. And I certainly do support here amendment. Thank you, Madam President. [LB1079]

SENATOR COOK: Thank you, Senator Campbell. Senator Haar, you're recognized to speak. [LB1079]

SENATOR HAAR: Madam President, members of the body, I have some questions about how this is going to affect budgets. So would Senator Campbell yield to a question? [LB1079]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Senator Campbell, would you yield? [LB1079]

SENATOR CAMPBELL: Yes, certainly. [LB1079]

SENATOR HAAR: Having been a county commissioner and working with looking at budgets based on land value and so on, what's the potential impact to counties, do you think, to county taxpayers? [LB1079]

SENATOR CAMPBELL: You know, Senator Haar, I think that probably the greatest impact is going to come when we discuss the burden of proof issue and the standard of review. And so perhaps if you don't mind, I'm going to hold your question until we get there. [LB1079]

SENATOR HAAR: Okay. [LB1079]

SENATOR CAMPBELL: Because this portion of it, I think, that yes, the counties will attend the hearings. But their greater work will come in a change in the burden of proof. [LB1079]

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SENATOR HAAR: Okay. Well, I'll reserve my questions then and talk to Senator Campbell later. Thank you. [LB1079]

SENATOR LANGEMEIER: Thank you, Senator Haar. Senator Dierks, you're recognized. [LB1079]

SENATOR DIERKS: Thank you, Mr. President, members of the Legislature. This is my seventh year on the...let's see, three and four, seven years on the Revenue Committee. And as I reflect, we've been dealing with the TERC issue every one of those seven years. And I would like to tell you that I really think this is a work in progress and we'll be dealing with it again next year. But I think we made some excellent progress here. And I'm just pleased with what we've done. I think we've spent a lot of time with it. And one of the things that I mentioned once in the committee was that most of the time we hear from our citizens the difficulties they have with TERC. And the TERC people come and tell me that themselves. And I've told them, well, you've had some successes, why haven't we heard about them? I mean, they've had some people that have been satisfied with what happened. But the ones we hear about are the ones that are not satisfied. So I'm not sure we ever satisfy all of them. I'd just like to tell you what equalization is as far as taxing is concerned. That's a commonly used expression for the requirement contained in the Nebraska Constitution that property must be valued uniformly and proportionately. It means that property owners have a right to have their property valued at the same relative standard when compared to actual or market value. It does not mean that all property in a class or subclass is to be valued at the same dollar amount. For example, if similar houses are valued at 100 percent of their market value based on data available to the assessor they are equalized, even if the valuations are not the same dollar amount. This recognizes a variety of factors, such as location could cause very similar properties to have different market values based on the actions of the buyers and the sellers. So you see, there's a certain amount of nebulous stuff that goes into these determinations. For agricultural property, for instance, required to be assessed at 75 percent of market value, if the data available to the assessor indicates that property of the same class has a fair market value of \$1,000 per acre in one part of the county, and \$500 an acre in another part of the county, the correct valuations for these properties would be at 75 percent would be \$750 per acre for the \$1,000 per acre stuff and \$375 for the \$500 per acre stuff. Although not valued at the same dollar amount, these properties are equalized because they are both assessed at the same standard, 75 percent of fair market value. With that, I'm going to close and I'm thankful for the conversation. I think we're getting to some important points. And like I said to begin, I think, we're dealing with a work in progress. And I'm very confident that we will win the game if we keep working at it. Thank you, Mr. President. [LB1079]

SENATOR LANGEMEIER: Thank you, Senator Dierks. Senator Stuthman, you are recognized. [LB1079]

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SENATOR STUTHMAN: Thank you, Mr. President, members of the body. This bill is of real interest to me, serving on the county board of supervisors in my county and going through eight years of valuation protests that were scheduled every ten minutes for three and a half days, visiting with individuals that were protesting their valuations. I think one of the most important things is the fact that people that protest their valuations, you know, have the opportunity to go to the assessor and see, you know, why their valuation is set at a certain rate, giving those people the opportunity to hopefully try to get that settled before they have to go to the board of equalization on the county level. And at the hearing of the county board, board of equalization, you know, we tried to work with people, you know, if they have good proof, you know, that their value is too high, you know, we take that into consideration. But most generally, you know, the fact that the assessor values the ground, you know, in proportion to sales in the community, in the area, the recent sales. And that's the method that we have for the valuation right now. The concern that I have, you know, with parts of this bill is the fact this one-to-one, face-to-face meeting. Is that because people are so upset with meeting with the whole commission? Are they...do they feel intimidated by the fact that the whole board is there and they don't feel that their views are heard and that they don't recognize, you know, the evidence that they're bringing there? Maybe it's because of the members that are on the commission. You know, that could always be a possibility. But one of the things that in doing some of the research on this bill is the fact that, you know, out in some of the smaller communities I don't think they have, you know, major problems because individuals meet with the board of equalization, which is the county board. But in some of the larger communities and larger counties, like Douglas County and Lancaster County, the information that I have, research, is the fact that they have put into their budget a fiscal note, if this bill passes, that it will probably cost Lancaster County estimates \$240,000, Douglas County \$250,000 to \$500,000 that it's going to cost. Where does this money come from? That is a property tax increase. I know we in the legislative body, you know, don't have that much control over property tax because property tax is assessed locally, collected locally and spent locally. So that is there. I think we got to really be cautious here that if we pass something here and one of the biggest issues that people are concerned about is property tax increase. In my opinion, this bill very likely could be a property tax increase because, according to the county assessors, you know, they feel they're going to have to do more work. And by doing more work they're probably going to have to hire another individual in the assessor's office to work with that. I think also one of the most important things is the fact that when individuals protest their valuations the thing that I respected the most was when individuals came to the board... [LB1079]

SENATOR LANGEMEIER: One minute. [LB1079]

SENATOR STUTHMAN: ...of equalization as individuals and protested and gave us the facts, that meant volumes to the board when we decided whether to go with the

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assessor's value or to go with their recommendation. We did have a few individuals that, you know, took their valuations to the TERC board and we did have some that did win on the TERC board. And they were really glad that they went to the TERC board. But the one thing that you must keep in mind is the fact that if you're going to put more workload on the county assessors because of this bill to have this burden of proof, you know, identified it's going to be a property tax increase. And that is one of the main issues that I have with this. [LB1079]

SENATOR LANGEMEIER: Time. [LB1079]

SENATOR STUTHMAN: Thank you, Mr. President. [LB1079]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Those wishing to speak, we have Senator Cornett, Rogert, Dubas, Howard, Gay, and others. Senator Cornett, you're recognized. [LB1079]

SENATOR CORNETT: Thank you. What I want to stress is, yes, you're hearing from your county boards but we've been hearing from the taxpayers. Your county boards are a handful of people. We're talking about the majority of the population that is not happy with how we are handling property taxes in this state. I want to be very clear on how these valuations occur. The county assessors use computerized mass appraisal techniques that were...initially assigned market value to real property. A computerized assisted mass appraisal, or CAMA for short, is a generic term for any software package used by a government agency to help establish real estate appraisals for property tax calculations. As one county assessor stated it, the problem for the assessors with LB1079 is that lowering the burden of proof is huge. The result could be greater equalization issues for the assessors which already adds to their workload. They're not talking about fairness to the taxpayer. Currently, a taxpayer can go to TERC and show that they are right in protesting their valuation and show that their valuation is not correct. But they have to reach a standard called clear and convincing, which is a much higher standard. So it doesn't matter currently what they bring, it matters the level that they have to prove. And the county board coming into it has a stacked deck against the taxpayer. Senator White, are you available for a question? [LB1079]

SENATOR LANGEMEIER: Senator White, would you yield? [LB1079]

SENATOR WHITE: Yes. [LB1079]

SENATOR CORNETT: Could you please explain to the body the difference between the standards of clear and convincing... [LB1079]

SENATOR WHITE: Um-hum. [LB1079]

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SENATOR CORNETT: ...and greater weight and what that will mean to the taxpayer?
[LB1079]

SENATOR WHITE: Absolutely. If the people who are interested in this, and it's a complicated area, though the individual concepts are simple enough, if you took a piece of paper and on the far left, all right, on the far left of that piece of paper you said, more likely than not 51 percent, and think of scales, you got one ounce more you win, okay? That is the burden of proof that generally prevails in all civil matters. All right? And then on the other end of the paper, all the way to the right, you put, and I'm going to...people will dispute the actual percentage, but I would tell you 95 percent, you put 95 percent certain. That's beyond a reasonable doubt, that's the criminal standard. We're not going to take somebody's liberties away unless, beyond, not any doubt, but a reasonable doubt, they have...the prosecutor has proven that they violated the law and they deserve punishment, that's the far right end of it. Then somewhere around well over half-way, maybe three-quarters of the way on that piece of paper put clear and convincing evidence. Now, what that means is a lot of different languages from different people. But that is far higher than what is the normal burden of proof, a preponderance of the evidence or 51 percent more likely or not. Clear and convincing evidence is a big fence to jump. Now, here's what is really frustrating from my point of view of why we use this. My father was a district judge, then he was on the Supreme Court, then Chief Justice of the Supreme Court. And I asked him about that he just kind of laughed and he said, because we hated hearing these appeals. [LB1079]

SENATOR LANGEMEIER: One minute. [LB1079]

SENATOR WHITE: We hated it, and we knew if we put that standard high enough they wouldn't appeal. Well, I get that but I don't accept it. Because in every other area, if they're going to grab your property for eminent domain, if they're going to sue you for a violation the government's got the burden of proof. Now in this case the government acts, so we're going to give them the benefit of the doubt, that's fine. But I can think of almost no other situation where a citizen must prove by clear and convincing evidence, when the government wants to take some of their property, some of their tax money that they're wrong. I don't...I can't think of another one. Now, maybe it's out there but I can't think of it. And that effectively makes the idea that there's really a hearing process that's meaningful, a review process a joke. We would be far more honest in our government... [LB1079]

SENATOR LANGEMEIER: Time. Thank you, Senator White and Senator Cornett. Senator Rogert, you're recognized. [LB1079]

SENATOR ROBERT: Thank you, Mr. President. Good evening, members who are left in the Chamber anyway. This is, I'm going to agree with Senator Dierks, this is one of those things that I've only been here, this is my fourth year, but we've always got a

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couple of bills on it and there's always a fight. Get lobbied on both sides about how something needs to be changed with TERC. And, Senator Cornett, I'll have some questions for you in a bit. But it always comes to me that it seems like TERC is overburdened for whatever reason, that possibly it's not doing what it was intended to do when it was initiated in 1996. And it concerns me that me as a homeowner goes through the same process for appeal as a massive multimillion dollar corporation that owns commercial properties with all kinds of lawyers, all kinds of money, and all kinds of know with all to get through the system where I don't. It's considerable to me that Senator Fischer would have to go through the same process as Ted Turner who owns thousands of acres and have all kinds of money and this time to process. I'm hearing that TERC is two years behind on its process. Senator Cornett, will you yield to a question, Mr. President? [LB1079]

SENATOR LANGEMEIER: Senator Cornett, would you yield? [LB1079]

SENATOR CORNETT: I'd be happy to, Senator Rogert. [LB1079]

SENATOR ROBERT: Senator Cornett, what...is that...can you tell me what the time line of TERC is? Are they behind? How long does it take to get through the system if you appeal today as a \$10 million piece of property to get through TERC and get your judgment? [LB1079]

SENATOR CORNETT: It can be a number of years from what we understand. As a matter of fact, that is one of the things that we heard repeatedly is that a lot of times taxpayers haven't had the result of their first appeal. And they have pending second and third appeals. [LB1079]

SENATOR ROBERT: Okay. Thank you, Senator Cornett. So it seems to me that TERC isn't working. And will this help it? I don't know. The county officials say it will send more things to TERC and it could be even further delays. The folks tell me on the other side that this will streamline the system, it will help people get moving through it. So, you know, the other thing is do I think my county officials are doing things to hurt my property tax...property owners in my district? No. Do I think my assessor is doing everything in their power to the best of their ability? Yes. Is that enough? Apparently not. I hear that Douglas County this year had 10,000 appeals. How can a process like this possibly handle this type of problem? So I went and I looked at the commission's schedule for hearings for March, and there's 44 hearings being scheduled for March. That's a total of 520-some odd a year. Well, that seems to me like if you've got 93 counties, that's about ten apiece or less. You know Douglas County had 10,000. They're all obviously not all going to go to TERC but a considerable percentage of them will. So something needs to be done. If this is what needs to be done, I'm willing to take a look at it and listen to it. Although I am concerned about adding additional cost to my small counties that have limited budgets and they're already struggling to pay for the

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things that they're trying to do now. So I step cautiously into this arena and I ask everybody to do the same. But I'll yield the rest of my time to Senator White, if he so wishes, Mr. President. [LB1079]

SENATOR LANGEMEIER: Senator White, 1 minute 13 seconds. [LB1079]

SENATOR WHITE: Thank you very much. Thank you, Senator Rogert. And let me talk about one of the things that being argued in the lobby. Very good, very honorable, respectable lobbyists are working this issue at this time. And one of their arguments is, gee, it's going to hurt, pick your favorite governmental activity. It's going to hurt counties, it's going to hurt roads, it's going to hurt schools, it's going to hurt mental health, whatever you want pick it. Because after all it will cause a tax shift and people will be appealing it. And here's what is really troubling about that and this is really another one of those gut issues. If the assessment is right and fair, nothing changes. And if it's not what we're saying is we're building our institutions of government on an unfair, knowing it's an unfair system and knowing that some taxpayers are literally getting cheated. And we don't want to look too hard at it. And any time you want to build government on a system that is predicated on not looking at the honest mistakes or the problems, you are building... [LB1079]

SENATOR COOK PRESIDING

SENATOR COOK: Time. [LB1079]

SENATOR WHITE: ...castles on sand. [LB1079]

SENATOR COOK: Thank you, Senator Rogert and Senator White. Next to speak, Senator Dubas, followed by Senators Howard, Gay, Wightman, White, and others. Senator Dubas. [LB1079]

SENATOR DUBAS: Thank you, Madam President. Good evening, colleagues. I rise to echo a lot of the sentiments that have already been put forward. This is a complex issue. It's an issue that has been visited and revisited many, many times. And I am supportive of anything that can make this process friendlier for taxpayers. I've talked to taxpayers who have appealed their valuations and I know that this is kind of an intimidating and frustrating process. But I cannot dismiss the concerns that have been brought to my attention by our county officials, by my county officials. These people are elected officials. They're elected by the residents of that particular county. They're the frontline workers, they're the ones that have to, you know, deal with these numbers and these issues on a regular basis. And so anything that we do that puts any additional burdens on their ability to work in this process ultimately impacts our taxpayers too. Anything that...you know, just from my local, my home county, in one year they had three cases, the amount of time that was spent on those cases was pretty excessive

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from what I understand. They spent well over a month preparing for the TERC hearing. They had to have all of their evidence, all of their numbers backed up. They had to have six copies of everything ready to prepare for the hearing, mailing those reports and the work that they'd done, plus the county had to pay mileage and any other expenses that the county assessor needed in the course of those hearings. So this isn't something that, you know, that has no cost to it at the local level. So as the comments Senator Rogert made, I would definitely be in agreement with. This is something we need to keep looking at. But it isn't just strictly a taxpayer issue or strictly a county issue. These very definitely match up and we can't talk with one without talking about the other. But I would have some questions for Senator Cornett, if she would yield, please. [LB1079]

SENATOR COOK: Senator Cornett, will you yield? [LB1079]

SENATOR CORNETT: Yes. [LB1079]

SENATOR DUBAS: Senator Cornett, I'm not quite clear yet on this request for a single person meeting with the TERC commissioner. Is this an actual hearing that the taxpayer would ask with the TERC commissioner? [LB1079]

SENATOR CORNETT: It is an actual face-to-face meeting that does not follow the rules of evidence. There's no record of the hearing. But the taxpayer is able to show his side of it, doesn't have to be represented by an attorney. It's an informal hearing. And the TERC commissioner will offer a judgment at the end of the...you know, they will receive at the end of that a decision. If they do not like that decision, after they have went to the mediation at the county board level under the bill, and then the single commissioner hearing they still are then able to file for a full TERC commission hearing. [LB1079]

SENATOR DUBAS: Okay. So if a taxpayer would meet in this single...meet with this single TERC commissioner and the commissioner agreed with what the taxpayer presented, then what would happen? [LB1079]

SENATOR CORNETT: I'm sorry, if they agree? [LB1079]

SENATOR DUBAS: If the TERC... [LB1079]

SENATOR CORNETT: Either side is able to appeal to the full TERC. So if the county did not agree with and/or the taxpayer did not agree with it they could appeal to the full TERC. [LB1079]

SENATOR DUBAS: So when would this commissioner get the county side of the (inaudible). [LB1079]

SENATOR CORNETT: Both sides are present at that...can be present at that hearing.

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[LB1079]

SENATOR DUBAS: Okay, so they could be there together. [LB1079]

SENATOR CORNETT: Yes. [LB1079]

SENATOR DUBAS: But you said this isn't a recorded hearing? [LB1079]

SENATOR CORNETT: No. The thing that we were hearing time and time again is the average taxpayer, the elderly person that, you know, gets an evaluation that they don't understand, when they go to TERC it has become so formalized... [LB1079]

SENATOR COOK: One minute. [LB1079]

SENATOR CORNETT: ...that they have to have an attorney present with them. And all of the rules of evidence are in place. With this they'll be able to bring the printout of what they think their house should be valued at, the county will bring their side, and they can sit down with the commissioner and look at the different documents that are presented to determine which...where the greater weight of the evidence is. [LB1079]

SENATOR DUBAS: So the decision that this single commissioner would make, is it a binding decision? [LB1079]

SENATOR CORNETT: It is not binding. [LB1079]

SENATOR DUBAS: It is not binding. [LB1079]

SENATOR CORNETT: They can go to the TERC commission for the binding decision. [LB1079]

SENATOR DUBAS: Okay, thank you very much, Senator Cornett. [LB1079]

SENATOR COOK: Thank you, Senator Dubas. Senator Howard, you are recognized. [LB1079]

SENATOR HOWARD: Thank you, Madam President and members of the body. I agree that appealing your valuation can be a pretty daunting process. And I also have the experience that when houses in my neighborhood sell, I can pretty much expect my property valuation to go up accordingly. I have some concerns about this and have received a number of e-mails, one of which...one e-mail said that in trying to make this more user friendly and easier, this has resulted in making this easier for commercial owners and not so much for the individual taxpayers, which results in the homeowner taxpayer picking up the slack. And in looking at the committee statement, I see that in

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addition to Senator Cornett presenting the bill, the only other person to speak as a proponent was the lobbyist for the Nebraska Association of Commercial Property Owners. And not to say that that's necessarily bad, but it makes me kind of think twice about what was said in this e-mail and I see that that was the only proponent that came in. If Senator Cornett would yield to a question or two. [LB1079]

SENATOR CORNETT: I'd be happy to. [LB1079]

SENATOR COOK: Senator Cornett, would you yield? [LB1079]

SENATOR CORNETT: I would be happy to. [LB1079]

SENATOR HOWARD: Thank you. Well, maybe you can help me better understand. Do you see that as...do you see this as a problem or could this be correct in that this makes it easier for the commercial owners to appeal and puts the burden back on the...in the homeowner taxpayer? [LB1079]

SENATOR CORNETT: If you read the bill from all the way through, there is a cutoff of a million dollars in regards to whether they are able to go to the single commissioner hearing and the mediation process. We did that to be taxpayer friendly. And yes, it change the burden of proof for all appeals because that was what the original intent was, was to be taxpayer friendly. We are looking at a burden of proof that is greater weight of the evidence. It doesn't matter if you're a homeowner or if you're a business, if you are correct in protesting your valuation, you should be found in the right. Why...there is no reason...I mean, other than the fact the counties would be grabbing for money--and I hate to say that--to uphold an unjustified tax...increase in taxes. [LB1079]

SENATOR HOWARD: Well, I understand that, but in thinking back in appeals that have been successful, to name one business that certainly has always gotten their property value reduced is Nebraska Furniture Mart, who has the power to come in with a strong legal team and present, I'm sure, a very convincing argument which the average homeowner taxpayer wouldn't be able to have on their side. Do you see any disadvantage with this? [LB1079]

SENATOR CORNETT: No. We have the standard down to greater weight for that taxpayer you're talking about. For the elderly person, for the person that cannot afford an attorney, similar to the standard for small claims court, if you prove you are right, you were found to be right. The counties do not have anything to worry about if they are doing their jobs. [LB1079]

SENATOR HOWARD: Let me, while I have you hear on the mike, let me ask you for just a little clarification on another issue as well. In reading through the bill, there is a section...this is Section 8. In the written copy it's on page 13, if that's helpful. [LB1079]

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SENATOR CORNETT: Of the amendment or the bill, Senator Howard? [LB1079]

SENATOR HOWARD: Well, this is the amendment. [LB1079]

SENATOR CORNETT: Okay. [LB1079]

SENATOR HOWARD: Briefly what this says is, "The commission may dismiss an appeal or cross appeal if there is no evidence to show that the order, decision, determination, or action appealed from it is erroneous. The order, decision, determination, or action appealed..." [LB1079]

SENATOR COOK: One minute. [LB1079]

SENATOR HOWARD: Thank you. "...from shall be affirmed unless the evidence presented before the commission establishes that the order, decision, determination, or action was unreasonable, arbitrary, or unlawful." Can you give me a picture, a definition of what unlawful would be? [LB1079]

SENATOR CORNETT: One example would be, say, for instance, in the state we have ag land valuation set at 75 percent. If you had an assessor set that valuation higher than that, that would be unlawful. If there was some type of misconduct in regards to bribery of a county board member, that would be unlawful. [LB1079]

SENATOR HOWARD: I don't recall that ever happening, but I suppose this is, what, put in as a fail-safe? [LB1079]

SENATOR CORNETT: Yes. [LB1079]

SENATOR HOWARD: All right. Well, thank you for that information. Thank you. [LB1079]

SENATOR COOK: Thank you, Senators Howard and Cornett. Senator Gay, followed by Senator Wightman, White, Wallman, Gloor, and others. Senator Gay, you are recognized. [LB1079]

SENATOR GAY: Thank you, Madam President. I'm going to get to the...I do think there are certain things in this bill, I agree with Senator Adams, that I think the one-on-one appeal to direct to somebody on the TERC makes some good sense to get through some of these backlog of cases. I think that makes sense on anything under a million dollars. I think there's some good things here. Senator Cornett talked about the main part of this bill that most of us are probably struggling with is the difference between clear and convincing standard versus just a regular burden of proof. And I've asked

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several people, lawyers and others, about what does that mean to me, I guess. But we're talking about tilting the scales to just 51 percent, and you win your case. A little bit, and Senator Stuthman is over there and I may ask him a question on...when you're on a board of equalization... [LB1079]

SENATOR COOK: Senator, will you yield? [LB1079]

SENATOR STUTHMAN: Yes. [LB1079]

SENATOR GAY: Well, Senator Stuthman, I'll ask you right now. But I guess you've been on this board of equalization. When you were on there, did you know really at the time, we're you going by the standard of clear and convincing standard or were you using your best judgment? [LB1079]

SENATOR STUTHMAN: We utilized the assessor's best judgment according to respectful sales. [LB1079]

SENATOR GAY: Okay. And then would Senator Campbell yield to a question? [LB1079]

SENATOR COOK: Senator, will you yield? [LB1079]

SENATOR CAMPBELL: Yes, certainly. [LB1079]

SENATOR GAY: Senator Campbell, the same to you. You've been on a board of equalization for many years. Were you using a clear and convincing standard or best judgment? [LB1079]

SENATOR CAMPBELL: My understanding of what we're going to be looking at when we get to the next amendment is on the burden of proof you have to look at the language. It's the case law that's been set up and I certainly agree with Senator White that the case law, over time, has been set up on clear and convincing when you go to TERC. And therein is what we're going to really be looking at in the next amendment. As a county commissioner, when I sat on the board of equalization I certainly knew that was the standard. [LB1079]

SENATOR GAY: I'm not so sure I did, and I was on there for 12 years as well. But the fact of the matter is, once you've gone through the board of equalization, through your referees, kicked it up to the TERC, or somebody wants to appeal to the TERC for \$25, they're either made and they're upset with your original decision. We probably upheld the assessors on residential property 98, 99 percent of the time because it was a fairly easy trying to do. Here's the house. I'm familiar with the neighborhood. Doesn't make sense. There were times when it's like, well, the guy didn't look at my basement; isn't

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even finished and they show it is. Well, it's pretty obvious there. But on these complex cases when they're kicked up to the TERC board, and I'm not going to name, but a large business that's very unique that was just named, it's very difficult for a local county official to say, yeah I know exactly on the income approach or whatever you're going to look at, it's very complex. So now we kick it up to the board of equalization. I'm not so sure though, and I'm kind of trying to debate where we're at, that just a regular standard, to be held to that higher standard maybe doesn't make sense to me at this point. Are we afraid that we're...the lost revenue? Or what's going on here? If you're wrong, you're wrong. These are supposed to be experts. That's all they do for their full-time job, all year long. They're appointed on six-year terms, the board of equalization members, and that's what they look at. Now, we're unique, I think. Us and another state are the only ones that have this board of equalization. I was looking at an amendment to get rid of the board of equalization, quite honestly, but you can't because there's a constitutional...it's a constitutional position here that was created. But I'm not so sure that we have to go to a higher standard when we move it up. I just think a regular standard that you're either right or you're wrong, and somebody is making a judgment in their best case. This higher standard, I'm not so sure, especially for an individual taxpayer is probably wrong. If somebody sends in and they feel they've been not fully heard at the county level, they're then going to the board of equalization. [LB1079]

SENATOR COOK: One minute. [LB1079]

SENATOR GAY: I think they should get a standard hearing. We talked about earlier, it is weighted, I think, against the taxpayer tremendously. Even when you go into a county, the county hearing, it's weighted against you. They're intimidated. They go up in front of a...they usually go to a referee in a bigger county. Then they go to the board and they've got to convince a board of five commissioners who, all day, and maybe for several days, have been hearing the same case over and over again, and usually it's just nope, nope, nope. And on the hard cases, the county is probably--and I shouldn't be saying this but I probably...I believe this--I think they say, well, let's send this to the professionals, which would be the TERC board because we just don't know. Or you can make a decision and get it appealed by your county assessor, which has happened many times to me. I ruled in favor the taxpayer, no, you're wrong. We're going to go appeal it. So the county assessor actually appealed to the board of equalization to prove a point. We won some, we lost some. I don't think everybody loses at the board of equalization. But I guess when we weigh this standard, why it should it be so much... [LB1079]

SENATOR COOK: Time, Senator. [LB1079]

SENATOR GAY: Thank you, Madam President. [LB1079]

SENATOR COOK: Senator Wightman, you are recognized. [LB1079]

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SENATOR WIGHTMAN: Thank you, Madam President, colleagues. I am supportive of most of the bill. I'm still not sure where I am and I'm going to ask some questions later with regard to the burden of proof as to whether it should be a greater weight of the evidence or should be clear and convincing proof. I will say that frequently on appeals it is a higher standard of proof than the greater weight of the evidence or the preponderance of the evidence. So that's not unusual on an appeal. On the other hand, as Senator Gay said, we have county boards looking at this that probably are not that familiar with what the burden of proof is, in the first place. And I guess at this point I don't know with regard to the county board. I think probably that they are the greater weight of the evidence, but I don't even know that for sure as to what their burden of proof is before the county board of equalization. So I might ask Senator Cornett of that if she can tell me, if she would yield? [LB1079]

SENATOR COOK: Senator Cornett, will you yield? [LB1079]

SENATOR CORNETT: Yes. [LB1079]

SENATOR WIGHTMAN: Senator Cornett, when a taxpayer appears before the county board of equalization, what is their burden of proof at that point, if you know? [LB1079]

SENATOR CORNETT: I don't...I believe that their burden of proof is they really, the county board...they bring in their documents and a lot of times they come without any paperwork showing what their evaluation should be because they don't understand the process. And I don't honestly know what the actual burden of proof at the county board level is, but I can check for you on that. [LB1079]

SENATOR WIGHTMAN: But probably it is the greater weight of the evidence. But I'll ask Senator White that question if he knows. Senator White, do you know, when a taxpayer goes before to the board of equalization, what his standard of proof is? [LB1079]

SENATOR WHITE: May I? [LB1079]

SENATOR COOK: Absolutely. [LB1079]

SENATOR WHITE: You know, it's not clear that I'm aware of, Senator. I mean, I don't know that the courts...since the burdens of proof at the various level have not been clearly set by statute, at least that I'm aware of...on TERC, it's clear and convincing evidence. [LB1079]

SENATOR WIGHTMAN: Right. [LB1079]

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SENATOR WHITE: On the board of equalization, the county sitting as a board of equalization...that means, you know, what the levels are. Generally, I think, it becomes kind of what each county by county determines it is. I think most people as a matter of just fairness, if you're not trained in the law, (laugh) which is kind of an indictment, would say, look, it is more likely or not, you know, and I'll listen. There's arguments from both sides but I think his are a little better than yours, so I'm going to go with him. That's what I think is, in fact, the de facto burden of proof. Now, in Douglas County, we're not even getting to do that, you know, Senator. [LB1079]

SENATOR WIGHTMAN: Senator White, I would agree, and I appeared before the county board of equalization and I guess I'm not even sure what the burden of proof is. You go in and I think it probably is. Maybe Senator Campbell, if she would yield, would know the answer to that question. [LB1079]

SENATOR COOK: Senator, will you yield? [LB1079]

SENATOR CAMPBELL: Yes, I would yield, but I would ask if the senator would repeat the question, please? [LB1079]

SENATOR COOK: Would you please repeat the question? [LB1079]

SENATOR WIGHTMAN: Yes. My question is, you know--leave the TERC board out of it at the present time--what is the burden of proof when a taxpayer goes in and appeals his tax valuation in front of the county board of equalization? [LB1079]

SENATOR CAMPBELL: Thank you very much for that question. And what I want to say to my colleagues here is that what we need to understand is that the county board of equalization and the assessor have one job to do. They're over here, they're looking at what the value is, they're looking at the equalization factor, which I'm going to talk a lot about later. But they have a job to do. And once they get done with their job... [LB1079]

SENATOR COOK: One minute. [LB1079]

SENATOR CAMPBELL: I'm sorry. [LB1079]

SENATOR WIGHTMAN: Thank you, Madam President. One minute, did you say? [LB1079]

SENATOR COOK: One minute. [LB1079]

SENATOR WIGHTMAN: Obviously, I am probably not going to get an answer to that. Senator Stuthman might be the only one standing who might know the answer to that, but I don't know if he does. I hate to take my minute but I will. If he will yield, I'll ask him

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that question. [LB1079]

SENATOR COOK: Senator Stuthman, 40 seconds. [LB1079]

SENATOR STUTHMAN: Yes. [LB1079]

SENATOR WIGHTMAN: Senator Stuthman, my question is when a taxpayer appears before the county board of equalization, what's the standard of proof? Is it the greater weight of the evidence or the preponderance of the evidence, or does anybody in this body know? [LB1079]

SENATOR STUTHMAN: Well, in my opinion, I don't think we took that into consideration when we made adjustments or listening to the assessor. [LB1079]

SENATOR WIGHTMAN: Do you think that, going in, that what the county assessor was fixing as that valuation probably bore more weight than any other piece of evidence? [LB1079]

SENATOR COOK: Time, Senator. [LB1079]

SENATOR STUTHMAN: Yes. [LB1079]

SENATOR WIGHTMAN: Thank you, Madam President. [LB1079]

SENATOR COOK: Next to speak, Senators White, Wallman, Gloor, Stuthman, Cornett, and others. Senator White, you are recognized. [LB1079]

SENATOR WHITE: Thank you, Madam President. Let me run through some things that might be of some help. In a normal jury trial, let's say you have a dispute with your neighbor, you would walk in. If you're filing the suit, you would have the burden of proof. That means if you don't show up, if you don't bring in evidence, you lose. That's called the burden of production; it's part of burden of proof. But beyond that, you have to persuade by more than 51 percent that your version of the events are more likely accurate than your neighbor's. So the jury says, yeah, you know, they both had points but I think the plaintiff, he had the burden of proof; I think he carried it; I think that's more likely than not so we're going to find for the plaintiff. That's what most Americans would call a level playing field. And when you're at that level, then that level of inquiry stops. So if you're still unhappy...if I'm still unhappy, I'm the neighbor and I appeal, now I appeal to the court, to the Supreme Court, and I say I'm unhappy that this was wrong...here's where it gets a little complicated. There are two burdens of proof. In terms of whether if it was a "he said, she said" and the jury found she said it, that is a fact question. Then if there's any competent evidence, any evidence properly in there--some witness was allowed to testify I heard her say it--she said it. Then that's

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enough to sustain that part of a jury verdict. Okay? So at that point, you know, it's not quite but it's the equivalent of clear and convincing evidence. There basically has to be an absence of evidence to support the jury's verdict on a factual issue. A factual issue, by the way, would include the value of your property: What is the value of this property? But on a legal question--legal question--it is not that way. On a question of law it is just the opposite. There is no presumption at all. The court just looks at the issue, clean, and says: Was the district court right in interpreting that law, yes or no? So in the case of a jury verdict on factual questions, there's a higher standard on an appeal from a judgment after a trial, and that's also true if the judge is acting as the jury. But on legal questions that doesn't exist. Here's the problem with TERC: There's no real trial. There's never really a jury trial. There's never really a situation where we sit down, even in small claims court context, and in a friendly way say, hey, what's your beef; put on your story, you put on your story; and now we'll decide. We never have that base finding. That's what TERC was supposed to be. Instead, what we have said is, whatever the assessor and the county board of equalization does, we are going to treat it like it's absolutely right unless you can convince us otherwise by clear and convincing evidence. And what is, to me at least, unfair is there is a presumption for a thousand years in our tradition that juries are the ultimate authority. We give them great deference; they are the citizens enacted and embodied to be the government. So when they make a decision, if they do it lawfully; if the judge gave them the right instructions; if the law was right, we're going to greatly defer to them. But that has never been, by tradition, the standard that we should give to a bureaucrat making a decision in a political context. So, I mean, I am really pained. I mean, I have friends out there who are very concerned this is going upset school financing and other things. And to those friends, I would tell you this: If we do not have a system that the taxpayer, the homeowner, the property owner,... [LB1079]

SENATOR COOK: One minute. [LB1079]

SENATOR WHITE: ...the businessman, believes is fair and is level playing field, then you are creating a bigger massive political problem down the line. And I will tell you right now, with the recent inflation in homes and property values and ag values, that bubble is building. That pressure is building and we must assure our citizens that, yes, property taxes are onerous but it is fair, and give them a fair hearing. That's where safety is. That's where good government is. And if we...if our assessors do their job in the first place, we have nothing to fear of our budgets. And if they didn't, we should not base the fisc of the state on dishonest appraisals. Thank you. [LB1079]

SENATOR COOK: Thank you, Senator White. Next to speak, Senator Wallman. [LB1079]

SENATOR WALLMAN: Thank you, Madam President, members of the body. Burden of proof. I'm one that sat in the courthouse a couple days, appealing with a good friend

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and neighbor of mine. We had proof this thick, existing land sales. That was supposed to be one of the issues: existing land sales and where you were situated. So we checked surrounding counties. This is pretty dramatic when your county board sets authority to hear your protest and they go through page after page after page what you went through on the computer at nights finding existing land sales which you can get on the computer. And it just about blows my mind why we need a county assessor. Get it on a computer, figure it out. Insurance companies, they have your house on your computer. They have everything. So the county assessor has to be a licensed real estate agent. And I don't know about the TERC board. I'd like to ask Senator Cornett a question. [LB1079]

SENATOR COOK: Senator, will you yield? [LB1079]

SENATOR CORNETT: I would be happy to. [LB1079]

SENATOR WALLMAN: Does the board have to have a real estate license, do you know? [LB1079]

SENATOR CORNETT: They have to complete...if they haven't completed classes in appraisals ahead of time, they have to complete classes within a year of being appointed, I believe is the deadline. [LB1079]

SENATOR WALLMAN: Thank you. [LB1079]

SENATOR CORNETT: It's so many continuing education hours, basically. [LB1079]

SENATOR WALLMAN: And I'd like to ask Senator Stuthman a question. [LB1079]

SENATOR COOK: Senator, will you yield? [LB1079]

SENATOR STUTHMAN: Yes. [LB1079]

SENATOR WALLMAN: If I appeal my property to the TERC board, do I have to pay a fee? [LB1079]

SENATOR STUTHMAN: You have to pay an initial fee. I think it's \$25. [LB1079]

SENATOR WALLMAN: No matter how many acres I have? [LB1079]

SENATOR STUTHMAN: It's just a fee per appeal. [LB1079]

SENATOR WALLMAN: Thank you. And I think the reason this is, the property values are going up and can maybe be going down in some instances, so we're depending a

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lot on property taxes. And when we say we're not going to raise income and sales tax, folks, we're shifting the taxes to property owners, homeowners, small business owners, and farm owners. Farm owners now, you probably read in the paper, we're going to pay more and more and more of school taxes. And it's going to...like Senator White said, it's a big bubble ready to burst. So we have to expand our tax burden--I mean base--or cut back dramatically what we're doing as a state. And it's up to us to decide what we're going to do. But farmers are getting angry, small businesspeople are getting angry, because of the cost. And Senator Karpisek and I had cosponsored a bill relating real estate values according to income, and so...like Kansas has. So your property values are not just guaranteed going up according to existing sales. Eastern part of Nebraska, and I suppose in Senator Stuthman's area, land is going up. And so it has nothing to do with income. It just, that's the way it is. And as long as the farmers make money, but the thirties came along and there's a huge landowner in my area that got started this way, by buying foreclosed property-owned farmers because it was dry weather. So farmers are scared about these taxes. Small business owners are scared about these taxes. And when you live along a border state that has a lot less taxes, I hear it all the time. I hear it from Missouri, I hear it from Kansas. One of my good friends, he's pulled up stakes and went to Missouri. He's got all his land for sale in Nebraska. So it is happening. And myself, too, I'm going to stay in Nebraska. I've been a Nebraskan ever since I was born. But we have to figure out a more fair way to tax. And the TERC board, they're going to be overloaded. Our county board made a motion... [LB1079]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: One minute. [LB1079]

SENATOR WALLMAN: ...to lower the taxes 10 percent. Only two voted for it. And I thought it was right on the money, but it didn't pass because there's so much pressure on county boards, school districts, do not lower property tax. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Wallman. Continuing with discussion on AM2269, Senator Gloor, you're recognized. [LB1079]

SENATOR GLOOR: Thank you, Mr. President. I want to talk about Robin Hood for a minute. But before I do, I forgot my parliamentary manners. In my comments a few minutes ago I forgot to thank Senator Cornett and the Revenue Committee for all the work they've put into this. Clearly, this has been worked on a lot, vetted as much as is possible. Clearly, not just the Revenue Committee but others amongst us have been involved in this discussion, and it has helped me get comfortable supporting AM226 (sic). But I want to go back to my comments to ask my fellow members to keep in mind that we have been told the TERC is not taxpayer friendly. I think we would all agree that the Sheriff of Nottingham was not taxpayer friendly. But after that, we have to resolve,

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or resolve to ourselves, that any time you try and carry out the difficult, unpopular but necessary functions of government, you're going to be dealing with something that is unpopular. And any attempts to make it more popular and that comes to tax collecting, that comes to setting tax rates, is putting lipstick on a pig. And my caution to the members as we talk about this, now and in the future, is making it at any less unpopular is a difficult, difficult issue to undertake. Putting different levels in the equalization, the tax setting process--single commissioner hearings being one--is a worthy attempt but I wonder in the final analysis if all we're doing is putting lipstick on a pig. Not to diminish the effort that's gone into this. I have said that I would support AM2269 and I will. But for future thought as we go through this, this is going to be an attempt to make something that is highly unpopular a little less unpopular. I think it's the best that we can hope for. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Gloor. Senator Stuthman, you are recognized. [LB1079]

SENATOR STUTHMAN: Thank you, Mr. Speaker and members of the body. When we was discussing this a little while ago and my experience with the county board, you know, in my opinion, the counties do not use the burden of proof in the fact of setting the values. I don't think that does occur. But I, in listening to Senator Cornett...and I would like to ask Senator Cornett a question, please? [LB1079]

SPEAKER FLOOD: Senator Cornett, will you yield to a question from Senator Stuthman? [LB1079]

SENATOR CORNETT: Yes. [LB1079]

SENATOR STUTHMAN: Senator Cornett, in the portions of this bill it states, you know, that an individual can appeal to one individual commissioner of the TERC board and have a face-to-face meeting. Is that correct? [LB1079]

SENATOR CORNETT: Yes. [LB1079]

SENATOR STUTHMAN: Okay. Is the county assessor also at this meeting? [LB1079]

SENATOR CORNETT: Senator Campbell asked that question earlier. Yes, they can be if they choose to be. [LB1079]

SENATOR STUTHMAN: Okay. But... [LB1079]

SENATOR CORNETT: It would be the same as of appearing in front of the TERC. [LB1079]

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SENATOR STUTHMAN: Okay. But in my opinion, if it's just one individual of the TERC board, what value is this to the person appealing it? [LB1079]

SENATOR CORNETT: Senator Stuthman, when...Senator Gloor just talked about, you know, you're not going to make something popular that's as unpopular as collecting taxes. And we are not trying to inhibit tax collection. What we are trying to do is make it so the taxpayer can go in without an attorney at these single commissioner hearings and present their evidence in a nonthreatening environment where they do not have the rules of evidence and they do not have to have an attorney to do that. [LB1079]

SENATOR STUTHMAN: But Senator Cornett, when this individual goes to this individual commissioner of the TERC board and gives his reasoning why he feels the county board did not adjust his valuation correctly, and the individual commissioner says, yes, yes, I think they should have listened to you, and that would be not having the county assessor there, but then isn't the individual going to have to appear before the whole board, anyway, of commissioners of the TERC board? [LB1079]

SENATOR CORNETT: It depends...are you...you lost me a little bit. If they, the single commissioner finds in favor of the appellant, correct, is what you're saying? [LB1079]

SENATOR STUTHMAN: Yes. [LB1079]

SENATOR CORNETT: Then the county board has to determine if they feel they have the evidence to win at the full TERC, and then either side can appeal to the full TERC board. So that depends...that is a decision by either side. If someone doesn't like the decision, then, yes, they could appeal to the board. But this gives them a face-to-face, able to sit down and explain how their property was evaluated, to them,... [LB1079]

SENATOR STUTHMAN: Okay. [LB1079]

SENATOR CORNETT: ...and a decision is given. [LB1079]

SENATOR STUTHMAN: Okay. And then the single commissioner gives the appellant a decision on how he feels, correctly? As... [LB1079]

SENATOR CORNETT: They receive, I believe, written notification in regards to it. I don't think they give it at the time. [LB1079]

SENATOR STUTHMAN: Okay. [LB1079]

SENATOR CORNETT: I would have to look again at the technical language. [LB1079]

SENATOR STUTHMAN: So, in other words, the way I understand this, when you meet

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face to face and the commissioner says, yes, yes, Mr. Appealer, I agree, I think you're right and the board of equalization is wrong, and then what happens to the one that's doing the appealing? Does he go back to the county board? Does he...I'm trying to figure out, in my opinion, this face-to-face thing is going to create more problems because he meets with him, individually, face to face. [LB1079]

SPEAKER FLOOD: One minute. [LB1079]

SENATOR STUTHMAN: ...agrees or don't agree. And if he agrees, he still don't get his valuation changed to what he thinks it is. And he either has to go back to the county board...and the county board, I'm sure, is not going to agree with the one that's doing the appealing, so he's going to have to appeal it again to the full board of commissioners of the TERC because the final decision comes down from, in my opinion--and you can correct me if I'm wrong, Senator Cornett--the final decision, if the county board doesn't agree with him on the second chance, the final decision is made by the board of commissioners of the TERC board, and then there will have to be another...that will be addressed in the second appeal process that this individual has to go through. Correct? [LB1079]

SENATOR CORNETT: That is basically the way it is now when it goes to the Court of Appeals. The taxpayer or the county board, if they don't like the decision, currently can appeal up to the... [LB1079]

SPEAKER FLOOD: Time, Senator. [LB1079]

SENATOR CORNETT: ...the Court of Appeals. [LB1079]

SENATOR STUTHMAN: Thank you. [LB1079]

SPEAKER FLOOD: Thank you, Senator Stuthman. Senator Cornett, you are recognized. [LB1079]

SENATOR CORNETT: Thank you, Mr. Speaker and members of the body. What I want to stress on this bill is the fact that we are looking at doing what the original intention of TERC was, and that is to be a place where a taxpayer can go and have his side or her side of the story heard in a nonthreatening environment. Over the course of the years, since TERC was enacted, through courts' decisions it has become more and more formalized, until you cannot go as an individual, without representation, and reasonably expect to win. The only people that win at TERC now are the people that can afford attorneys. We want to put control back in the hands of the taxpayer. We are not saying that the taxpayer should have their taxes reduced if there is not evidence to that effect. We are simply saying that the county board has to prove their case. I had one letter, e-mail, and we've all received them from county board members and county assessors.

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I had one assessor that actually e-mailed me one sentence that said: Why should I have to prove I'm right? Where has Nebraska gone wrong in regards to the arrogance involved in assuming the taxpayer is wrong and putting the greater weight or greater burden of proof on the taxpayer to prove that they are right? We need to look at who we represent. We do not represent the county boards. We represent the people. Thank you. [LB1079]

SPEAKER FLOOD: Thank you, Senator Cornett. Senator Campbell, you are recognized, followed by Senators Price, Gay, Wightman, Utter, White, and Fulton. Senator Campbell. [LB1079]

SENATOR CAMPBELL: Thank you, Mr. President. And really I'm not going to start in on the burden of proof, but I just want to address several questions. And one of them goes back to Senator Wightman's question about what does the county board do and the board of equalization, and then what does that mean for TERC. Both of those entities, as I started to say, have a different duty and what they are supposed to do. They are not the same duty. They don't have the same presumption. They don't have the same burden of proof. In the county board of equalization, we do start out with the assessor's value and we do assume that that assessor's value is correct. What has happened in the 16 years that I served on the county board, and we dealt with 10,000 protests the first year I was on the county board, and we had a referee system. And in that system, the referee is meant to be an impartial person who does not favor either the assessor or the county board, and, in many cases, overturns the assessor if that information is brought forward by the taxpayer. The burden of proof that we have been alluding to, and certainly Senator White has talked about that as coming down on the case law, is what is at TERC. I would encourage my colleagues to take a look at the two sections that deal with burden of proof: what would be struck, and what would be inserted new. The duty, in my estimation, of TERC would change with going to greater weight, rather than saying was the county board of equalization and its decision unreasonable and arbitrary. There has been great concern on the floor about whether Mrs. Smith, who lives down the block, is really going to go to TERC. And I started taking a look at the appeals that went to TERC in 2007, and I looked at my own county. But I have to say, I also looked at Douglas. And in 2007, there were 918 residential appeals before TERC from Douglas County, and there were 321 commercial. It would appear to me that the Mrs. Smith and Mrs. Johnson and Mr. Campbell down the street are understanding how to deal with TERC and are coming forward with the burden of proof that we have established. The difference that you're going to see is in the amount of dollars that are reduced. They're going to be much higher, obviously, for commercials and business because there's higher value there than in the residential. But I would argue, colleagues, that we do have a system and we have established it and they are working through it. I think what Senator Cornett has tried to do with this amendment, with the one-on-one and the changing, makes TERC, at their suggestion, a little bit more friendly for someone to present their case. But I do not feel that the single individual citizen is

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not availing themselves of it because it's all being consumed by businesses or corporations. The data would not tell you that. [LB1079]

SPEAKER FLOOD: One minute. [LB1079]

SENATOR CAMPBELL: The corporations, however, are making their case because they have larger dollars to deal with. So I would hope that we would keep that in mind as we proceed through the debate. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Campbell. Senator Price. [LB1079]

SENATOR PRICE: Call the question. [LB1079]

SPEAKER FLOOD: The question has been called. Do I see five hands? I do see five hands. The question is, shall debate cease? All those in favor, vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB1079]

CLERK: 25 ayes, 3 nays, Mr. President, to cease debate. [LB1079]

SPEAKER FLOOD: Debate does cease. Senator Cornett, you're recognized to close on AM2269. [LB1079]

SENATOR CORNETT: Thank you, Mr. Speaker and members of the body. This is the amendment that removes the time line from the committee amendment. I don't believe there is anyone in opposition to removing the time line. Senator Campbell and I have discussed that extensively, as I have with other members of the Revenue Committee and Senator Adams. There was some questions whether it might affect the certification date for schools, so rather than deal with that issue this year, we as a committee agreed to remove that section of the committee amendment. I would urge the body to support the committee amendment AM2269. Thank you. [LB1079]

SPEAKER FLOOD: Thank you, Senator Cornett. Members, you've heard the closing to AM2269. The question before the body is, shall AM2269 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB1079]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of Senator Cornett's amendment to the committee amendments. [LB1079]

SPEAKER FLOOD: AM2269 is adopted. Mr. Clerk. [LB1079]

CLERK: Senator Campbell would move to amend the committee amendments with

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AM2274. (Legislative Journal page 1008.) [LB1079]

SPEAKER FLOOD: Senator Campbell, you're recognized to open on AM2274. [LB1079]

SENATOR CAMPBELL: Thank you, Mr. President. I'd like to start out my discussion of the burden of proof with a little discussion about the board of equalization. And whether you've ever been there as a taxpayer or you've watched your county board or not, I think there are a couple of points to keep in mind about the board of equalization which should help us lead to a discussion of the burden of proof. One of the most important things when I first went on the county board was a taxpayer said to me, you know, I want you to be fair and I only want to pay my fair share; I'm willing to pay my taxes but I want to pay my fair share. When you start looking at the property tax--and we are really tonight, I think, looking at the tax system. I mean, normally I would be putting on my business hat or my other hat, but tonight I'm putting on my former board of equalization hat, because I do see this as an important tax question. In looking at the property tax, an important part of it is the stability. The citizen and the taxpayer needs to know that there is some stability to it. And it is, without doubt, the undergirder of our local political subdivisions. There are two prongs in a property valuation. You look at the value of the property; and the second part is you look at the value, has it been fairly and properly equalized when considered with the assessment of all other property. And that's an important point as we go forward. It isn't just the value that the board of equalization should be looking at, but it also has to look at the equalization. To give you some idea when I was on the Lancaster County Board, we dealt with houses that were assessed in the millions, and we'd say, well, that ought to just be the value. But the referee would say to us, now wait a minute; the other coin to that is, is it equalized with other properties or class or division? That's what you're doing in the mass appraisal process. And I suspect that when you look at the burden of proof or the standard of review in relation to valuation protests, the higher standard of clear and convincing was set forth for a couple of reasons. I think it was set forth to assume that after going through the board of equalization and working with the assessor and, in some cases, with referees, that the counties were doing their work and their job. The second point was that the standard must rise higher than merely showing a difference of opinion, or as one person said, a flip of the coin. Is it 51 or is it 49? And I also think that the standard had to be reflective of the process. In other words, this is a process that we go through. It's not just a single, well, we're going to look at what the value was for that taxpayer. Our job is broader than that as a board of equalization and ascertaining if the county board of equalization was unreasonable or arbitrary. Valuation is not an exact science. And if anyone says that they can tell you exactly, they really haven't looked at how that works. So you say to yourself, what's going to happen if the standard of review is changed? And that's the issue that we hope that you will discuss this evening. I would put forward a number of reasons. First of all, I believe the number of protests to TERC will increase because you are now...and if you read that section, the new section, you're now looking at the greater weight and specifically on that value. It would seem to me that it will

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increase--and this has been alluded to, the cost for counties--because the county staff, your county assessor, your county attorney, is now going to be dealing with what I surely think will be more protests. Secondly, the issue will center on the value and not whether the process and methods were reasonable and not arbitrary. It will center on the value of this parcel. And those who bring in the greater weight will say that's what the value should be. Right now, that duty of TERC is worded differently. A number of you have talked about the Mrs. Smith or the Mr. Jones that lives down the street may not even get to TERC, and to some extent that may be true. They won't spend the \$50 to go. But I think a number of them will. But one of the most important things that you do as a board of equalization is that you try to keep in mind all of the Mrs. Jones and all the Mr. Smiths who may be coming, because your job is, again, to look at the total set of parcels in a county, as well as to looking at whether Senator Sullivan brought something forward and is protesting her value. Mr. Smith and Mr. Jones on Main Street are not always better off going to TERC. I believe that the individual taxpayer is always better off before their local boards. They can protest and give that information. But if they feel that that information has been unreasonably looked at or arbitrary in nature, they can go to TERC. And the figures would tell you that that individual would go. As time goes by, I believe that we will see lower valuations. If you start looking at what the figures have been done in TERC, and they have more protests, I think the valuation will go down. And that is what I'm sure you are hearing from some of your counties because of the worry that that decreases the tax base, and in some reflects, then comes back to a tax policy in terms of how we look at the importance of the property tax system. So my point here is that in the end, as a board of equalization member, I had to look at was I fair? Did I look at all the protests and take that into account? Were all the taxpayers paying a fair share? My concern here is equalization, but as more protests are there and the concentration becomes on a value, that we will lose the perspective of equalizing. And for your counties, that's very important: to keep that in balance. I'm looking forward to a very good discussion this evening. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Campbell. Members, you've heard the opening on AM2274 to AM2164. We now turn to discussion. We begin with Senator Gay, followed by Senators Wightman, Utter, White, Fulton, Pirsch, Adams, Cornett, and others. Senator Gay, you are recognized. [LB1079]

SENATOR GAY: Thank you, Mr. President. I was listening to Senator Campbell. She did a fine job explaining her amendment and I learned a lot on that, and she did correct me. And thank goodness, for 12 years I was doing the right thing. But the county board of equalization looks at a different standard than the TERC board, and she clarified that and I appreciate that. So now I want to talk about the TERC board then. If it's the equalization and review component of what a county does. So I assume...probably not many of us were here when this was created, maybe none of us. But to equalize the property taxes throughout the state on residential, commercial, or whatever the case may be, this was done so one county couldn't be extremely low and with all the aid

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formulas and some of those things, my assumption is this was created so that Box Butte County would look at property the same way as Sarpy County, as Platte County, as whatever the case may be. However, that could still be done. And what I'm going to listen for a little bit is, why to keep the unreasonable and arbitrary? To me, that's still a little bit of a standard. Those counties, I agree with Senator Campbell, you know best. I think the local commissioners or supervisors know best what's going on in their own county. However, there are cases in these cases where you get the multimillion dollar homes or a complex business. You just don't know. And you send it then...I think that's where the TERC comes in. They're more professional. They take in...it's a more standardized process. I don't...like I say, I wasn't a big fan of the TERC. I'm not so sure...I'm learning more about it and I'm getting a little bit more respect for them and so I shouldn't talk about that with something I don't know it. But I do know, at what point though would we send in that I go to a body of my peers or elected officials and they tell me, no, you know, you're in the mass appraisal system, by the way, because you can only do, in larger counties or any county probably, a certain section of that county. So unless it's really contrary or I got plain and convincing evidence and common sense, I'm going to rule probably in favor of the assessor. So it's stacked against the taxpayer a little bit on that matter. I then come, most of the things going to the TERC board then would be the complex cases that your local county could not figure out. That's the reason they go to the TERC board. You're going to get some people who just, I'm mad, I'm going to go on and do whatever. We can clarify that with the one-on-one situations in the appeals at the TERC board, and I think that's a good thing. But I guess if Senator Campbell would yield to one question or two. [LB1079]

SPEAKER FLOOD: Senator Campbell, will you yield to a question from Senator Gay? [LB1079]

SENATOR CAMPBELL: Yes, of course. [LB1079]

SENATOR GAY: Thank you, Senator Campbell. I'm going...in my head, though, just because we change this process, the mad rush of everybody now, throughout the state, saying, well, I'm going to go to the TERC board. I don't see that. Why do you think that would happen though? I don't see that. [LB1079]

SENATOR CAMPBELL: Senator Gay, I think that's going to happen because you are going to be at the greater weight in looking at that value. And I think there will be a number of people who will say, golly, I'm going to do this, because that standard of review is not, again, on whether the county board was reasonable or arbitrary...unreasonable and arbitrary. But the standard is now going to be different, and I think the discussion earlier that Senator White talked about...and he explained the difference in those burdens of proof. So I think you will have taxpayers step forward and avail themselves. I think you will have many more protests before TERC. [LB1079]

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SPEAKER FLOOD: One minute. [LB1079]

SENATOR CAMPBELL: And to some extent, I kind of worry about that, because this is a place that people have said is unfriendly. Now we're going to send more people there. [LB1079]

SENATOR GAY: Well, but the standard being different is they can say no just as well as anyone else. If they go in and they got the same data as the county boards who has already said no, chances are they're still going to say no. So I don't see the big rush, but maybe I don't know. So I wonder on that one. And then the cost to the counties to go protest all these. I wonder. I was talking to one of our local county people out in the hallway, and, you know, you don't have to go protest every single case. The counties don't have to come down on every homeowner and protest that case. I think they only come down and protest the bigger cases where there's large revenues at stake. But our time is running out, but I appreciate your introduction. I thought it was very well. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Gay. Senator Wightman, you're recognized. [LB1079]

SENATOR WIGHTMAN: Thank you, Mr. President and colleagues. I like the idea of having, that we discussed earlier and that we did just pass. It makes it easier to take it to the one-commissioner hearing. I think that probably will increase the number. I think Senator Campbell is absolutely right, that that's going...that may increase it more than changing the standard of proof...or burden of proof. But I think that is going to increase the number of protests that are filed because it is going to be looked upon as user-friendly. However, I have some opinions on that. And, of course, that's the one thing that we're allowed to have here is opinions. It's why we're being paid the big bucks, because we have opinions, I guess. But my opinion is that most of these people that go without an attorney in front of the one commissioner, one-member commission, are going to lose 80 or 90 percent of those cases, because the county is going to come in and they're going to have established comparability. They're probably going to have seven or eight comparable sales that they present to this one commissioner. The average person who comes in without an attorney is probably going to come in and talk about that his taxes are too high. And probably 80 or 90 percent of those cases are going to result in a decision against the taxpayer, and that's particularly true of the small taxpayer. I think the large taxpayer is probably going to hire an attorney, and I'm talking about the owner of an industrial building, the owner of a large commercial building. Probably going to come in, and we will have lowered the standard for them and they probably are going to win far more of the cases than they would have won had the standard of proof been higher. So I think in the long run the average taxpayer is going to suffer by what we're doing right here, and particularly lowering the burden of proof. Ninety percent of the taxpayers aren't going to appeal. The big industrial user or

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taxpayer is probably going to get his lowered. The big commercial taxpayer is probably going to get his lowered, in many instances. He's going to come in with comparability, going to be able to show that there's an economic obsolescence to the building and that you can't base it upon a square footage or anything like that because there's only one user for this building in the entire county. We have that out in Dawson County. We have Tyson that has about, I don't know, somewhere near \$25 million valuation. It only takes 250 individuals, \$100,000 homeowners to equal that \$25 million. And I think that we aren't going to have 250 appeals in a normal year, so if they can lower theirs 10 percent because the burden of proof is lower, or if a bank can lower theirs by 10 percent when it has a \$5 million valuation, or we have a number of industries within the county that have a probably a pretty good shot of lowering their valuation, if we lower the burden of proof I think the average taxpayer is going to pay more dollars. I truly believe that. I believe that most of the cases are going to be won by the big industry. And it sounds good on paper to make it more user-friendly, but I don't think that...I don't think in the end result we're going to see very many residential owners seeing a decrease in value. Most of them aren't going to appeal anyway. I would guess if 5-10 percent are about all that appeal in a normal year. Probably lower than that. Probably 2-5 percent would come closer. And if very many more than that do, I don't know how we're going to handle the number of appeals in the first place. So I'm still debating in my own mind. [LB1079]

SPEAKER FLOOD: One minute. [LB1079]

SENATOR WIGHTMAN: Right now, my thought would be probably that we'd be better off leaving the proof at clear and convincing proof...clear and convincing evidence, because I think that the big taxpayer, largely not residential taxpayers, certainly not in our area, are going to get the advantage of this, and the homeowner is going to be bearing probably increased taxes and have increased valuation...probably not valuation, but the levy is probably going to go up as the big industry or commercial property owner lowers their values. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Wightman. Senator Utter, you are recognized. [LB1079]

SENATOR UTTER: Thank you, Mr. President. Good evening, colleagues. This is obviously turned into a very complicated issue. And as I understand TERC, when they established TERC a number of years ago it was established to be an intermediary between the county board of equalization and the courts, and was supposed to relieve some of the pressures that the courts were feeling in terms of tax protests. I'm not sure that it's an attempt, the current bill I'm not sure is an attempt to make anybody more popular, and I'm not sure that that's the measure that we should be using. I think it's, in my mind, at least, it's an attempt to give the taxpayer a fair shot. Maybe not a more friendly shot even, but just a fair shot at having someone here, his idea of where his taxes ought to be if he feels aggrieved by what happened at the local level. I will say to

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you that I think that the fewer protests will be filed by anybody who, if they have an opportunity to talk to their assessor or they have an opportunity to talk to the county board of equalization or the referee if a county uses referees, that there's a pretty good shot of being able to reconcile whatever differences there are between the parties at that stage of the game. The idea of a single commissioner, frankly I think to the small taxpayer, and we're talking about the properties that are under a million dollars, the idea of being able to go to a single commissioner hearing and present the evidence that you have and get that result, I think that's going to take care of an awful lot of the protests at that stage of the game, if it's handled in a proper manner. Some of them are not going to be handled by the single commissioner. Obviously, there's some of them that may be not only go to the four-commissioner hearing, to the full commissioner hearing, the three-commissioner hearing, but may actually end up in the court. There's no question about that. When we get to this area of burden of proof, I've got to admit to you it's kind of like scrambled eggs in my mind, that are about six months old and turning purple around the edges. The burden of proof to an old country boy who is not trained in the law really becomes a complicated issue, to me. And I'm not sure that I understand, number one, the differences. Secondly, I'm not sure I understand how the impact of one burden of proof over another is going to give advantage to one person over another. So I'm anxious to listen to the debate with regard to burden of proof. In the end, I think our goal needs to be to make the process of appealing your taxes as fair as possible, at the local level, at the county board of equalization level, at the one-commissioner TERC hearing level, and on up the scale as far as you want to go with that. Fairness should be our goal in this thing. And certainly the other goal ought to be is to try and clear up this backlog of appeals... [LB1079]

SPEAKER FLOOD: One minute. [LB1079]

SENATOR UTTER: ...that have been generated and that have left TERC way behind in their work. And I think they are hopeful that the one-commissioner hearings will help reduce that backlog. So I'm hopeful that as we work through this thing, that the taxpayer ends up being the winner in this case, particularly as it comes to fairness and reasonableness as we face the taxing authorities. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Utter. Senator Fulton. Before you, is Senator White in the Chamber? Senator Fulton, you are recognized. [LB1079]

SENATOR FULTON: Thank you, Mr. President, members of the body. Haven't spoken on this until now. I've been listening and weighing, and there are pretty good arguments on both sides. I think I've come down to a position and I'll share that position with you. That position will cause me to be opposed to AM2274, in favor of AM2164, and then therefore LB1079. And here's why. It seems to me that TERC was originally set up...and I could be wrong about this so I'm interested in hearing if I am, TERC was set up for the benefit of the taxpayer because the taxpayer wasn't getting a fair shake with respect to

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his appeals. So we put forward TERC for the benefit of the taxpayer. And what has occurred, what I'm hearing is that the burden of proof tilts in favor of the counties and...or not just the counties, but in favor of the government entity and away from the taxpayer. So by moving the burden of proof down to a preponderance of the evidence, which isn't exactly the language, to a greater weight of the evidence, it seems to me that that is moving closer to favor the taxpayer, which is what TERC existed for in the first place. If TERC didn't exist to the benefit of the taxpayer, then I suggest we don't need TERC in the first place. So that's why I would be in favor of this, opposed to AM2274 and in favor of AM2164 and LB1079. Now, Senator Wightman brings up a really good point. What the upshot of this decision would be, so we would be contemplating the greater, the policy, what actually would end up happening, and he submits that we would have more appeals, and therefore, drive up the cost of local government. And the only ones who are likely to win are those who are well-healed such that they could win. That may well be the case. But I suggest that we aren't predicting that future. Our job as lawmakers is to make a process that is understandable and that is consistent. And when TERC was implemented, it was for the benefit of the taxpayer. So if we are saying that we cannot make any changes to the burden of proof, then we are saying that we have to leave this alone. And if we are saying that when leaving it alone, it benefits taxpayers, we're contradicting the very reason for this bill. Now, would anyone submit that TERC exists for the benefit of the taxpayers now? I have not heard that yet. And in the four years I've been here, TERC has been a four-letter word, if you will forgive me that. So it seems to me there has to be some change made by making the change in favor of the taxpayer by moving this down to a greater weight of the evidence. That's the appropriate way to go forward. If we don't and TERC exists without the benefit of the taxpayer, then I suggest we should just do away with TERC because that's what it was there for in the first place. And if it's not benefitting the taxpayer, if he's not getting his appeal heard fairly, if he is not on an even footing with respect to a burden of proof, then I suggest we shouldn't have TERC in the first place. So I'm going to oppose AM2274 and be in favor of AM2164. I'll listen to more of the debate, but I think that when we are making predictions as to what will happen, we have to bear in mind that our primary responsibility is to put forward a statute that respects the taxpayer, and I think that is exactly why TERC existed in the first place. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Fulton. Senator Pirsch, you are recognized. [LB1079]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I appreciate the conversation that has gone on thus far, and a lot of the questions that have arose are certainly things that I've, you know, gone through my mind as well. And I appreciate the attempt...you know, it's kind of a difficult concept to explain the concept of clear and convincing. It's almost easier to place it in terms of rankings of the various burdens of proof than it is to explain it and...but getting back to something that Senator Wightman had mentioned with respect to I think his feeling that it was appropriate to use the

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standard of clear and convincing with respect to the TERC because of his opinion, it has heightened standards, that is to say clear and convincing over a preponderance of the evidence, are utilized in an appeals type of situation. I wonder if Senator Wightman might yield to a couple of quick questions. [LB1079]

SPEAKER FLOOD: Senator Wightman, will you yield to a couple questions from Senator Pirsch? [LB1079]

SENATOR WIGHTMAN: Yes, I will. [LB1079]

SENATOR PIRSCH: With respect to that assertion, typically is it not true that when you say on appeal that the property valuation is kind of a special different animal than your normal appeal to a higher court? Is that...I mean, is that how you view it, Senator Wightman, as well? [LB1079]

SENATOR WIGHTMAN: Well, I think that some argument could be made that perhaps it's different than, say, a lower court, say a county court, in appealing that to a district court or to the Court of Appeals, in that maybe not as much consideration went into that decision perhaps. [LB1079]

SENATOR PIRSCH: Um-hum. Irrespective of...and just with regards to, I guess, a question I have as to fairness, just fundamental fairness, without respect to the question--and I'll give Senator Campbell, I would enjoy having her thoughts on this as well--just with respect to the standard of fundamental fairness. Now, there's two aspects of taxation. One, when we were talking of property taxes...one is the valuation and one is the tax levy that is set by the elected body that's imposing the tax. But just with respect to the valuation process, which...when you look at it, which do you...do you have an opinion as which standard would be fairer to impose in the abstract, notwithstanding the effects that it may have on counties, up or down? [LB1079]

SENATOR WIGHTMAN: You know, I guess it's hard to put it on a grounds of fairness, perhaps. Usually appeal, as you recognized, has a higher standard of evidence to overturn. And this is an appeal. There's been...for example, we get into the fact...and Senator Campbell, I think, got into that. There's a presumption in favor of the counties. Assessors figure when it comes to appearance before the county board. But I suppose if you looked at it, probably fairness comes in all sizes, Senator Pirsch. If you're looking at a fairness to the taxpayer, it's probably fairer that he have a greater weight of the evidence, a preponderance of the evidence. So if we're looking at being totally taxpayer-friendly, I think an argument could be made that maybe that is fairer to the taxpayer. [LB1079]

SENATOR PIRSCH: Oh, thank you. Well, and that's what I think is important... [LB1079]

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SPEAKER FLOOD: One minute. [LB1079]

SENATOR PIRSCH: ...because with the valuation--and I'll have to ask Senator Campbell on a different time--with regard to the valuation step of the two-pronged step, I think that that's what we should steer towards in what we set this burden as. We want to have the valuation set fairly, and might that cause, if we recalibrate it and it causes, it's different than what we've done before, might that cause a drop in the equilibrium and we'll have to get resituated? That could be. And, but again, the second prong, the ability of local property tax levying entities then to decide then based upon what the new fairer valuations are, I mean they always have that rate, so I don't think in the long term it doesn't matter if we were to set it at a lower standard of proof and that in the short term certain valuations were to fall to a fairer level. [LB1079]

SPEAKER FLOOD: Time, Senator. [LB1079]

SENATOR PIRSCH: Thank you. [LB1079]

SPEAKER FLOOD: Thank you, Senator Pirsch. Senator Adams, you are recognized. [LB1079]

SENATOR ADAMS: Thank you, Mr. President. I'm going to oversimplify for a moment because there's a lot more to this bill. But as I see it, at this point we're down to three basic things. Three basic things: asking a county official to have a face-to-face with the taxpayer; the single commissioner TERC informal hearing; and burden of proof. Those are the three things. I realize there's more to it. I made reference earlier to a balancing act. Here it is again, only now the focus is narrower. The balancing act, as I see it, is between fairness for the taxpayer, and also as I see it, trying to reduce the inordinate number of appeals in certain parts of the state, which in return should benefit the taxpayer. In light of that, then consider the face-to-face. I'm going to wager that virtually every county in here as a matter of ordinary daily practice has face-to-face with their taxpayer, the protesting taxpayer. Now if I'm a county assessor, I might look at this and say, oh, I have to? Well, if it becomes statute, yes. It's a shall, not a may. But aren't you already doing that? And then ask yourself, isn't that a reasonable thing to do, rather than a letter? A face-to-face? The single commissioner TERC. Think of the number of people who will stop, who will stop their protest because they're saying to themselves, I'm not going to face TERC, or I'm not going to hire an attorney to go face TERC, or I don't know what I'm up against and I don't understand rules of evidence in a quasijudicial matter. I'm not going to go there. So in this bill we create that intermediate step, again as a matter of fairness--call it courtesy if you want--to the taxpayer. Here's an opportunity to get a TERC-like hearing. It's informal. You don't have to bring an attorney. Just come in and a TERC commissioner is going to sit down and talk with you about the deal. And if you don't like it, the road is still paved to TERC. If the county board doesn't like it, the road is still paved to TERC. There it is. I think in doing those

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two things, we've made the system fairer, more comfortable for the taxpayer, and I'd like to think that most counties in the state can live with that. Now the burden of proof. And I still wrestle with this one, but here's my concern and I know that some of you have tried to put that to rest, but you haven't yet and I'm going to keep listening. The balancing act between trying to make this fairer for the taxpayer and at the same time reduce the number of appeals to an overburdened TERC, I'm not sure that we're going to reduce the burden...we're going to reduce the work load to TERC by lowering the burden, by lowering the bar. I'm just not convinced we're going to do that. I think probably there will be... [LB1079]

SPEAKER FLOOD: One minute. [LB1079]

SENATOR ADAMS: ...more appeals. And now have we further encumbered the system? Have we backed up more appeals? In which case, have we only gotten part of what we wanted? So the burden of proof for me, I still wrestle with. But I know which direction I'm leaning. And I think that this amendment restoring the standard of proof to where it's at right now and the rest of the components of this bill still go a long way to accomplishing what most of us believe ought to happen. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Adams. Senator Cornett, you are recognized. [LB1079]

SENATOR CORNETT: Thank you, Mr. Speaker and members of the body. I appreciate all the work that Senator Campbell has done and I want to thank my committee also. They have diligently worked over the last two years on this. What we brought forward in this bill was a combination of what we heard from TERC, from the taxpayers, and what we...and information we were able to gather. Senator Campbell's amendment removes lowering the standard of the burden of proof. What the Revenue Committee was doing when we put...lowered that standard, is we were listening to the taxpayer. We were listening to the county and we were listening to TERC. And we determined from all of their statements that the taxpayer had a higher standard to meet when they went in front of the TERC. Understand, voting for Senator Campbell's vote is a vote for your county officials and it's a vote against your taxpayers. This puts them on a level playing field in regards to protests. Senator Campbell talks about equalization. Equalization is done currently on a basis of what I referred to earlier as a shotgun mass appraisal system. It is a computer program. That doesn't mean it's right. If valuation does get lowered, then it should be lowered because the taxpayer has proven their valuation is incorrect. The county board members are saying that this will cause more appeals. I don't think so. That was part of the reasoning that the committee had in place for placing the mediation and the single commissioner hearings. If the county does their job and has the valuation set correctly for that property, whether it is an individual, whether it's your next-door neighbor, whether it's the little old lady down the street, or whether it's a

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business or a commercial property, if that valuation is correct, it will stand. If it is not correct, why should it stand? Just because the county decided it, that doesn't make it right, folks. Thank you. [LB1079]

SPEAKER FLOOD: Thank you, Senator Cornett. Senator Nelson, you are recognized. [LB1079]

SENATOR NELSON: Thank you, Mr. President and colleagues, members of this body. I am going to stand here in support of Senator Campbell's bill, or amendment rather, which...it's so dark here I can't see the number. I can't read that up there, so. And I'm going to do it for this reason. I think that we should keep the clear and convincing standard. Senator Adams has already covered pretty well what I intended to cover. I am in full agreement with the committee amendment that we ought to provide face-to-face meetings with the assessor or with the board of equalization. I think that's fair. It may be difficult in Douglas County. It may be more costly. But I've been through that before and I value the ability to go face to face and present your reasons and your evidence and the things that you think are most important to the referee or assessor. Secondly, I like the idea of having the single commissioner. And it seems to me with a single commissioner hearing, that if we modified that a little bit, that it also would be fair. I think that if the TERC chairman designates that in all cases anything with a value under \$1 million or below will be heard by a single commissioner, and we keep the standard as clear and convincing evidence, and the homeowner who has a house that's valued less than \$1 million wants to come before this single commissioner in an informal hearing, I think that they would still get a fair shake with the clear and convincing evidence, whether they brought an attorney with them or whether they wanted to present the evidence themselves if they knew ahead of time what the standards were and what they were going to have to prove. Now, maybe you could argue that only an attorney can understand that, but I think a lot of homeowners who have done their research would realize if they have a good case or not that was worth the trouble of going to a single commissioner. We might also want to provide that upon the finding of the single commissioner, that only the aggrieved person, only the person who brought that, the homeowner, could appeal if they cared to. Maybe we can't do that. If we don't provide for that, I have a feeling that when we're talking about a million dollars or less, that probably it would not be worthwhile for the county to take that on up to the TERC board. In the cases of the large commercial properties, they aren't going to go before a single commissioner. They're going to go up there with the attorney and they're going to present it before the full commission. I, too, share the fear that if we lower the standard and we just go by the heavier weight of the evidence or the preponderance, that we are going to simply have a lot of appeals. Maybe some of the homeowners will prevail, but it's going to be...what will happen, I think, is that the large commercial outfits will always prevail pretty much with that lower standard. I do have one question of Senator Campbell if she would yield. [LB1079]

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SPEAKER FLOOD: Senator Campbell, will you yield to a question from Senator Nelson? [LB1079]

SENATOR CAMPBELL: Yes, Mr. President. [LB1079]

SENATOR NELSON: You gave--thank you, Senator--you gave us some statistics saying that perhaps a little over, in Lancaster County, 900 homeowners appealed, and 340 or something, commercial. But you didn't tell us about the outcome. Do you know how many homeowners actually won under this system, or prevailed, as against the number of commercial people that prevailed? [LB1079]

SPEAKER FLOOD: One minute. [LB1079]

SENATOR CAMPBELL: Senator Nelson, I do not believe my statistics tell that and I do have a minor correction there. The figures that I was giving, the 918 residential to the 321, had to do with Douglas County, not Lancaster. [LB1079]

SENATOR NELSON: Oh, that was with Douglas. I'm sorry. All right, well... [LB1079]

SENATOR CAMPBELL: With Douglas. [LB1079]

SENATOR NELSON: Fine. [LB1079]

SENATOR CAMPBELL: But when you look at the total for that year...and I chose 2007 because most of the cases are closed. And in 2008 and 2009, there's a number of cases that are not closed. And to give you some idea, we would have very large corporate. Now we're talking like Penneys or Walmart or, you know, really large. And there would be situations where they would have protests year after year after year. And so they would come and say, well, our two years ago our protests still hasn't been settled. So I chose 2007 because I thought we'd be a little closer. [LB1079]

SPEAKER FLOOD: Time, Senators. [LB1079]

SENATOR NELSON: Thank you, Senator Campbell. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Nelson. Senator Stuthman, you are recognized. [LB1079]

SENATOR STUTHMAN: Question. [LB1079]

SPEAKER FLOOD: The question has been called. Do I see five hands? I do see five hands. The question is, shall debate cease? All those in favor vote aye; all those

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opposed vote nay. Have all those voted who care to? Mr. Clerk, please record.
[LB1079]

CLERK: 25 ayes, 9 nays to cease debate. [LB1079]

SPEAKER FLOOD: Debate does cease. Senator Campbell, you're recognized to closed on AM2274. [LB1079]

SENATOR CAMPBELL: Thank you, Mr. President, and I appreciate the conversation this evening on what I consider a very important tax question for all of us. And again I repeat, because this is the system that we use to undergird our local political subdivisions, I do think in answer to a question that was out there, by lowering the standard, yes, it will be easier to win, and that's why I do think that there will be more protests. I do think when you start talking about the average taxpayer, what is fair to the average taxpayer? What is fair to the average taxpayer, please keep in mind, is what is that valuation and what is that cost to them if the valuation goes down and their costs go up? In terms of increased protests, the average taxpayer is going to pay for that somewhere in increased property taxes and increased state aid we might be called upon. But somewhere along that line that taxpayer is going to pay for this. I truly believe that the steps that have been taken by requiring someone to have a face to face in that county is the most important thing that you can do for your taxpayers. And having that one-on-one, if they want to go visit with TERC, is the second one. I think Senator Adams was very clear about that. The TERC was set up as an intermediary so that folks would not have to go to district court. The question that several senators have posed is, is it fulfilling its task? That is probably not a question before us. But the idea was that TERC...that the taxpayer would not have to go from the county board of equalization all the way to the district court. Without a doubt, it seems to me that the question here is not that we prove something inaccurate. The counties spend a lot of time and effort in trying to say to the taxpayer, what do you think is inaccurate about your value? Can we look at that value? The referee in your large counties spend hours trying to do that and even in the small counties. When we go beyond that, we're trying to then determine at TERC was the county board of equalization, were they unreasonable. Were they arbitrary in looking at your information? Did they dismiss it? Did they not even look at it? I would hope that when you look at this you keep in mind all of the taxpayers in your district or in your county because in great sense that is what we're looking at here in terms of value as well as equalization. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Campbell. Members, you've heard the closing to AM2274 to AM2164. Senator Campbell, for that purpose do you rise? [LB1079]

SENATOR CAMPBELL: I would like a call of the house, please. [LB1079]

SPEAKER FLOOD: Okay. There has been a request to place the house under call. The

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question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB1079]

CLERK: 42 ayes, 0 nays, Mr. President, to place the house under call. [LB1079]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Coash, Senator Hansen, Senator Rogert, please check in. Senator Campbell, all senators are present or otherwise accounted for. How do you wish to proceed? [LB1079]

SENATOR CAMPBELL: I would like a roll call vote in regular order. [LB1079]

SENATOR CORNETT: Record vote. [LB1079]

SPEAKER FLOOD: The question before the body is, shall AM2274 be adopted? Mr. Clerk, please read the roll in regular order. [LB1079]

CLERK: (Roll call vote taken, Legislative Journal pages 1008-1009.) 25 ayes, 13 nays, Mr. President, on the amendment. [LB1079]

SPEAKER FLOOD: AM2274 is adopted. I do raise the call. Mr. Clerk. [LB1079]

CLERK: Mr. President, I have a priority motion. Senator White would move to reconsider the vote just taken. [LB1079]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator White, you're recognized to open on your motion to reconsider the vote just taken. [LB1079]

SENATOR WHITE: Thank you so much, Mr. President and members of the body. This is a very weighty, massive issue and, with all due to respect to my fellow senators and their desire to get home, we did not give this fair and full debate, nor did we give all issues on this critical amendment real consideration. This is an extremely important motion. It is an extremely important issue and the question is really this at its heart. The question is, are we going to hold out a very expensive agency, TERC, and hold it out to our citizens and say here is where you can come to get justice, here's where you can come to ask for a level playing field, here's where you can come to right wrongs, or are we going go to just say let's do away with it? Because I think the choice is that clear. Right now TERC does not offer a real remedy to the average citizen, to the average homeowner, to the average business owner. We pretend that we're giving people due process, we pretend that we're giving them a hearing, we pretend that it matters, but really we've cooked the result far in advance. And I would, and I look forward to some

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discussion on this because I do hope to ask Senator Campbell some questions and talk, but ask you this. If TERC isn't a real, real forum that really dispenses open and evenhanded justice, then why do we have it? We look for savings. And if TERC is not allowed to really look at the issue on an open mind, fairly weigh it, and give taxpayers real relief, then let's at least have the decency to do what we really...say what we're really doing and that is we're not going to give taxpayers a real hearing, we're not really going to consider it because, after all, your revenue, your money is more important than whether or not you individually have been treated fairly. We just want your money. Let's at least not be guilty of hypocrisy. Because right now, as a person who spent his life advocating for people in different forums across the country, TERC is not a fair forum. TERC is not really a fair hearing and it does more to bring disrespect on the institution of the state of Nebraska that we pretend to offer a remedy, we pretend to offer a forum that we know isn't real. We know to a substantial certainty the vast number of people who appeal to TERC will lose. Then why bother? It's a farce. It's like saying come to my home court and play basketball but I get five and you get two players on the field. That's not a contest. There's no glory in winning that kind of a fight. And there's a lot of shame in even having that as the terms of engagement. Now, I understand that our county governments are worried. I understand that our county governments want revenue and they're desperate for revenue and we've pushed down. And by the way, nobody has fought harder for, for example, county government on jail reimbursements, nobody has fought harder than I have. And I want you to know that I will continue to be honest in protecting county governments from unfair burdens being pushed on them from the state down, and I will say we need to be disciplined in our own house and not push our problems off down the line. But I will tell you right now, holding up an institution as fundamentally flawed, that has at its heart a lie and that lie is you can come here and receive justice when we all know, wink, wink, you got about the chance of the proverbial ice cube in Hades, that's just wrong. That's not Nebraska. That's just not who we are. So if that's really what we're about, if it's really about just getting revenue, if it's really about just getting money at any cost and damn what happens to the individual, then let's not lead them on. Tell them the truth. If you don't got the juice to work your county commissioner, you're toast. We are not going to have an impartial person removed from county politics who really can honestly look at the issue open-minded and make a clear and fair decision unhampered. We're not going to do that. We're going to deny that to you. Equalization, members of the body, equalization is a statistical analysis across the state--is this county generally valuating its property countywide at a value that is relatively close to its actual market value? We've even defined that in statute. That is a statistical analysis across the state. If the county is within that range, it's okay, we're done with equalization. Valuation is a story of individuals. Valuation is a story of why am I paying so much more than my neighbor. Valuation is a story of my neighbor's politically connected and I'm not. And the county commissioners go, (laugh) wink, wink, prove I'm really cheating you to a clear and convincing evidence standard; you can't do it; good luck. That's the story of valuation. Joseph Stalin once said, one death is a tragedy, a million is a statistic. Okay? Equalization is a statistic. Valuation is a

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case-by-case struggle with is this citizen being treated fairly. And for all what Senator Campbell says, I come back to this basic fact. If the assessors are doing their job reasonably well, we have nothing to fear. And if there is this feared flood of appeals, then I would tell you that can be solved a million ways but not by cooking the fairness of the court in which you appear. We can talk about an appeal fee. We can talk about an award of the actual costs of the litigation, not the law...not the lawyer's fees but the costs of bringing TERC in and that the loser would have to pay them. There are a million honorable, straightforward, honest methods that we can do to control unfair, uncontrolled appeals. But telling people the refs aren't fair, you can go up there but they're biased, wink, wink, is the worst thing we can do. If you walk in here, the motto says equality before the law, and I have heard and other people on the Revenue Committee have heard story after story of taxpayers in different counties across the state who are getting treatment more favorable than other similarly situated taxpayers and there's not a darn thing they can do about it, not really. Okay. Life is not fair. Some people are born healthy, some are born sick, some are born rich, some are born poor. Life is not fair. But you know what? Our courts are supposed to be. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator White. Turning to discussion on Senator White's motion to reconsider the vote last taken, we begin with Senator Campbell. Senator Campbell, you are recognized. [LB1079]

SENATOR CAMPBELL: Thank you, Mr. President. I certainly appreciate the votes of my colleagues to sustain the previous amendment and would hope that they would continue to do that. I understand what Senator White is questioning, but I do think if you look at the course of all of the discussion tonight from the original bill to the committee's amendment, we have raised a number of issues that are there. I do want to correct one point in my answer to Senator Nelson, and, Senator Nelson, when I gave you the figures for Douglas County of the people who protested from residential and commercial, those were people who prevailed. Now, I don't know the total that might have actually come forward, and I tried to find that for you. But I think the important point here is that I do believe that in our counties across the state, whether it's a small county or a large county, I believe that the county assessor and the county board is trying to do the very best job, and I really don't believe that there's across the state county officials that are going, wink, wink. I don't believe that. Wink, wink, that's what's going to happen to you. I do believe that the very best level for any taxpayer, whether it's a business or whether it's an individual, to talk about their valuation, the accuracies of it and how it is taken into context in the area that they are is at that local level, and I think it's an increasingly important point that we need to remember. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Campbell. Senator Loudon, you are recognized. [LB1079]

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SENATOR LOUDEN: Thank you, Mr. President and members of the body. Since I haven't weighed in on this, this evening on this bill, I will probably proceed to do so. Now, I don't know how many of you here in the room tonight have been to a TERC committee or filed a protest with them, but I've been there, been there and done that. And I tell you, when you go before the TERC committee, it isn't that easy. The county can go in there and they can present their case, and unless you can come with some evidence to show that they've made a mistake, they always find in favor of the county because that's the way it's set up. They find in favor of the ones that...the board of equalization, the ones that set the valuation. So having this language in there that it had to be greater weight of the evidence I think is quite important. Now, are we talking about there's going to be a lot more protests? I don't think so. I think when you have something like this you're probably going to get less protests, because I think when the counties do come forwards with their valuations they're going to have it right and they're going to be set up so there aren't any rooms for mistakes. We had a case in point, the county that I'm from. The county assessor decided to raise the valuation of all the farmstead land underneath the farmsteads on the whole county. The county board or the county commissioners decided that it was out of line, so they decided whether they would have to...what they could do about it. Come to find out, they had to go to the TERC committee if they wanted to change any of that. Well, by going to the TERC committee, they had to show where the assessor was wrong in raising that valuation that was in that property that...situated under the farmsteads. Consequently, they didn't...it didn't happen. Consequently, everybody's property value went up under there and, of course, your taxes went up. Whenever you raise the valuations the taxes usually goes up. I've never seen a time yet when the valuation went up that the mill levy went down. They say it's supposed to work that way but I've never seen it happen. So I think as far as changing this so that we have a greater weight of the evidence is rather important. I think this will level up the playing field a little bit. One thing, when the county presents their case, they won't...the county attorney won't quit and go home while the one that's appealing the valuation stays there and appeals their...and puts their case before the TERC committee. Because they will have to be there to see to it or to go ahead and probably have some rebuttal or something like that. Sure, it will probably make longer cases at the time but, I tell you what, there is going to be a lot more issues that will probably be settled before they ever get there. These are some places where I think the county board will be able to settle them because there will be some of the assessors that really won't want to go before the TERC committee with this. I think by having this in there, it will probably take some of the counties from be willing to let you appeal it to the TERC committee. At the present time, if they have a problem, they just point you towards the TERC committee and it's up to you to prove otherwise because they do have the inside track when it comes to that. So I would support this as I did and I would support the reconsideration motion because I think you have to pay attention to what we're doing here, because this is very important on your taxation and how it's valued the state over. [LB1079]

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SPEAKER FLOOD: One minute. [LB1079]

SENATOR LOUDEN: As we go forwards with this, the having the single commissioner in some of these areas where it's up to \$1 million I think was a very good idea to bring that forwards and do that. This cuts down their workload considerably. The way it was or used to be, they sometimes were two years behind and now they are getting their workload shortened up a little bit. So I think that part...I supported that. But I do support this greater weight of evidence and I think this is something that we need in the process. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Louden. Senator Pirsch, you are recognized. [LB1079]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Campbell might yield to a question or two. [LB1079]

SPEAKER FLOOD: Senator Campbell, will you yield to a question from Senator Pirsch? [LB1079]

SENATOR CAMPBELL: Yes, Mr. President. [LB1079]

SENATOR PIRSCH: Thank you. And our conversation was somewhat cut off and I had promised...I think I would find it useful, and as long as we're on the topic of fairness, to just kind of put the same question to you that I put to Senator Wightman, which was, in the abstract, which standard, because we have the choice of two--the clear and convincing, or the preponderance of the evidence--which of the two would you find more fair for a taxpayer to...I guess more fair to be the standard employed by the system? And then as I use that term "fair," I know that's capable of being interpreted in a number of different ways but I assume we're all using it in a sense to be more accurate, but perhaps I'm wrong. So however you'd like to answer that, I'd certainly appreciate hearing it. [LB1079]

SENATOR CAMPBELL: Senator Pirsch, I appreciate the question. And I would have to say that when you are looking and asking the question about burden of proof as a sole factor here, I would be one of those people that would say to you I don't think it's a sole issue. To me, what we're trying to look at here is a system and a process that we go through in setting property valuation, which we ultimately know then turns into the property tax system. I used to say to taxpayers all the time, the heart and soul of the property tax has first to start with the valuation. So for me to answer your question in isolation, I would have to say that I think the preponderance needs to be, on clear and convincing, what is the...how is the taxpayer treated in that process? [LB1079]

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SENATOR PIRSCH: Okay. And I apologize. You're saying that you believe the clear and convincing...that it could go either way or are you saying clear and convincing would be the fairer standard or that it's not enough to look to just at that one to decide, just at the burden of proof to decide whether something is fair to the taxpayer? Is that your... [LB1079]

SENATOR CAMPBELL: Correct. [LB1079]

SENATOR PIRSCH: Okay. [LB1079]

SENATOR CAMPBELL: I think you have to look at the whole system, Senator Pirsch, and you can't just isolate that one point. We've made great strides tonight in terms of the amendment that we put on the bill with the face to face and the one on one. I'm still very concerned that we keep that total process in place as I have put forward earlier. [LB1079]

SENATOR PIRSCH: Let me approach it from a different angle. What would be the greatest concern or concerns that would result with going to a preponderance of the evidence standard, in your estimation? [LB1079]

SENATOR CAMPBELL: My greater concern if we went to greater weight, the 51 percent? [LB1079]

SENATOR PIRSCH: Yeah. [LB1079]

SENATOR CAMPBELL: Well, it would come in several factors that I mentioned earlier and that is I do think you're going to have...you're going to have increasing protests at increasing costs to the county, and at some point in time I do think you are going to have less valuation to work with, and that begins to affect a lot of things on a local political subdivision. Cities, counties, school districts, how we may build the TEEOSA formula, all of that comes into play. [LB1079]

SPEAKER FLOOD: One minute. [LB1079]

SENATOR PIRSCH: Very good. I guess with respect to, and I had mentioned the two-prongs of the property tax, one of which is the valuation, the second is the rate at which the local property tax levying entity sets that at. So with respect...I'm having a hard time seeing, with regards to less valuation to work with, I think that can be remedied by the local property tax levying. The elected officials, if the valuations are somehow, in being made fairer, lowered to a different level, can that not be increased if the elected officials so decided to make it revenue neutral? [LB1079]

SENATOR CAMPBELL: I would guess the local elected officials will be faced with the

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question of do we raise those property taxes or not? Are we up against our levy or not? Do we then begin cutting services or not? [LB1079]

SPEAKER FLOOD: Thank you, Senator Pirsch. [LB1079]

SENATOR PIRSCH: Thank you. [LB1079]

SPEAKER FLOOD: Senator White, you are recognized. [LB1079]

SENATOR WHITE: Thank you, Mr. President. Would Senator Campbell be so kind as to yield to a series of questions? [LB1079]

SPEAKER FLOOD: Senator Campbell, will you yield to a series of questions from Senator White? [LB1079]

SENATOR CAMPBELL: Certainly, Mr. President. [LB1079]

SENATOR WHITE: Senator Campbell, is it right in your mind that one citizen pays more than their fair share as compared to a citizen, a neighbor perhaps right next door? Is that right or wrong? [LB1079]

SENATOR CAMPBELL: Senator White, when you look at the valuation process, that's one thing that we're looking at in terms of comparables. I would want to know does that...the neighbor house is comparable. Let's assume that it is. [LB1079]

SENATOR WHITE: Yeah. Yeah. No, I mean otherwise it wouldn't be more than their fair share. Two people have the identical property. [LB1079]

SENATOR CAMPBELL: Correct. [LB1079]

SENATOR WHITE: One of them is paying more than the others. Is that right, morally right? [LB1079]

SENATOR CAMPBELL: I would hope, Senator White, that it would not be. [LB1079]

SENATOR WHITE: Okay. So in other words, you'd agree that's morally wrong. We have an equal stake in the valuation of our property to pay our fair share, correct? [LB1079]

SENATOR CAMPBELL: Uh-huh. [LB1079]

SENATOR WHITE: So we agree on that first principle. Is that correct? [LB1079]

SENATOR CAMPBELL: Yes. [LB1079]

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SENATOR WHITE: Okay, let's go to the second principle. Do you agree then that one of the obligations of the state is to provide a process so someone who feels that they are being mistreated because they are paying more than their fair share, that that person should have a chance to have a neutral and impartial magistrate determine whether in fact they've been treated badly? Do you think that as a principle is something that we must have to make sure this country lives up to its ideals? [LB1079]

SENATOR CAMPBELL: Senator White, when I look at that issue in relation to what I saw on the board of equalization... [LB1079]

SENATOR WHITE: Um-hum. [LB1079]

SENATOR CAMPBELL: ...and the process there,... [LB1079]

SENATOR WHITE: Yes. [LB1079]

SENATOR CAMPBELL: ...that is why I think without hesitation the county said we will hire impartial referees. [LB1079]

SENATOR WHITE: And that's Lancaster County, correct? [LB1079]

SENATOR CAMPBELL: It is. [LB1079]

SENATOR WHITE: And were you aware that of the approximately over 10,000 appeals in Douglas County the vast majority never got to talk to a person? [LB1079]

SENATOR CAMPBELL: And,... [LB1079]

SENATOR WHITE: Were you aware of that, Senator? [LB1079]

SENATOR CAMPBELL: I'm sorry, I didn't mean to interrupt you, Senator. [LB1079]

SENATOR WHITE: No, that's quite all right. Were you aware that in Douglas County and in other counties they don't even get a hearing, much less a fair and impartial hearing? [LB1079]

SENATOR CAMPBELL: And, Senator White, that's why I stood in support of the amendment to do that. I totally understand that concern. [LB1079]

SENATOR WHITE: All right. Well, Senator, here's the concern. Your personal experience in Lancaster County, and I admire that everybody was in good faith and that is a tribute to the people who were on that board of equalization at that time. But we are

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a country or we are supposed to be a country of laws, not men. We don't and should not have to rely on whether or not we have honorable members of the board of equalization in place at that time. We set up laws so that we can protect the right that we not pay more than our fair share through a legal system. So the question I have is, your own personal experience is on the board of equalization that they treated people fairly, but there are counties where that does not happen. What would you say to those people, Senator? Because it is our duty to uphold the constitution, to protect due process, to ensure people are all held equal before the law. Now you now are aware that there are citizens out there who are paying more than their fair share on property as we've defined it and yet the system that you endorse will never allow them a chance to meaningfully protest that and really establish that. Do you think that, and this is the question: Is that in your mind equality before the law? [LB1079]

SPEAKER FLOOD: One minute. [LB1079]

SENATOR CAMPBELL: Do you wish me to proceed, Senator? [LB1079]

SENATOR WHITE: Yeah. Certainly. [LB1079]

SENATOR CAMPBELL: Senator, I believe that the system has been put in place. When I looked at the figures in 2007 from my county and from your county, with the present standard in place, 918 individual on residential received and got their appeal. If they...if the homeowner or the citizen goes to TERC and does not agree with that, they still have the option of going to district court. [LB1079]

SENATOR WHITE: Actually, you don't. Your sole appeal now is to TERC, you know, and the... [LB1079]

SPEAKER FLOOD: Time, Senator. Thank you, Senator White. Quick note regarding the agenda this evening: It is my intention to stay in session and adjourn only after LB1079 has been resolved one way or the other, provided that is before 11:59 p.m. So we will be staying until we resolve LB1079 on General File. We return to discussion, Senator Stuthman, you are recognized. [LB1079]

SENATOR STUTHMAN: Thank you, Mr. Speaker and members of the body. I've been listening to this debate for quite awhile. I'm very, very interested in this for the...mainly because of the fact that, you know, I was...served on the county board of equalization. And I think...and I think, in visiting with my assessor and the county board, the present ones right now, they say that they also feel that there's going to be more people that will appeal, you know, to the TERC board and, by doing that, it's going to be more of a burden on the county assessor and on the county board, mainly the county assessor in preparing the evidence of why she feels or the individual feels that their valuation should be set at a certain price. I'll give you some history as far as the areas of valuation that

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we had problems with of how to value it appropriately, and those were the homes that were the real pricey homes, the homes that were in the area of three-quarter million to a million and a quarter. And why did we have a problem with that? Is because there were no sales that we could use to value that property. The other issue that we had was the fact of some commercial properties that were valued at a price but there were not a lot of sales that we would compare to. Most generally, those properties did end up at the TERC board. They were appealed to the TERC board. And in my observation was the fact that in those larger commercial properties, in going to the TERC board with their attorneys and convincing the TERC board why they felt their value shouldn't be at a certain level, you know, they did get some adjustment. But some of those adjustments, in my opinion, were on properties that were, you know, several million dollars and maybe they got a quarter or a half a million dollar adjustment on it. That makes a lot of difference to the total valuation of the county. What does that do to the rest of the county? That raises the property tax on the rest of the county when you lower the valuation on individual property owners. And perception out there is when people get their valuation statements in the mail everybody says my taxes went up. Their valuation went up but it necessarily doesn't mean their taxes are going up. As Senator Louden had stated, taxes generally go up, but they don't go up as much with that additional valuation. It all has to do with how much money does the entity that is generating the revenue from taxation, how many dollars are they spending to run the operation? That's where we can have an impact on. The counties, the cities, the schools, those are the ones that you have an impact on as far as your property taxes, whether the value is \$1 million or \$2 million and it takes \$500,000 to run the operation, those are very low figures, but it's immaterial of what the value is because it's the levy on the value. And I really think that this bill, this bill is one that's going to raise property taxes. I only have 14 days left here... [LB1079]

SPEAKER FLOOD: One minute. [LB1079]

SENATOR STUTHMAN: ...but I feel that every green light on this bill will be an increase in property tax, and that's the way I feel. Because I haven't heard anything yet that's going to slow the process down, make it more convenient for property owners to get their valuations lowered. That's what we're talking about. But let's talk about the taxes, the taxes, what it takes to run an operation, like a county or a municipality or a school. That's the issue. If you want to get your...if you want to get your taxes lowered, you have to go to those individual organizations and say I'm willing to get along without a service. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Stuthman. Senator Fulton, you are recognized. [LB1079]

SENATOR FULTON: Thank you, Mr. President, members of the body. We are talking here about the standard, the burden of proof, the burden that falls on the taxpayer to

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make his case, and we've been talking about whether to move it from clear and convincing down to a greater weight of the evidence. Let's look at the other side of this. What if we were to change the burden of proof to be, you know, beyond a reasonable doubt, if that's what the next burden of proof is, so that we make it more weighted against the taxpayer or, in this case, to make it such that there has to be a higher degree of proof that indeed the taxpayer has been wronged? We would decrease the number of appeals, thus causing the amount of expenditure at the county level to go down, thus lowering property taxes. So if the primary goal of contemplating this bill is whether we will increase or decrease property taxes, then it seems to me to decrease property taxes we should increase the burden of proof for the taxpayer. Now that's not before us but it could be offered as an amendment. My point here is that if that is our primary goal then that's what we should be doing, is to be increasing the burden of proof. But I suggest that the primary goal of considering this bill and of voting this bill forward is to level the playing field on behalf of the taxpayer because I submit that, while we might be able to predict what could happen in the future, if we are certain about what will happen in the future, to be consistent we should increase the burden of proof, but we're not doing that. So I'm suggesting to you that what we are doing primarily here is on behalf of the taxpayer, and I know that that's a populace thing to say and that's going to play well among the majority of taxpayers, but I also think it's the right policy here. If indeed TERC exists, it exists for the benefit of the taxpayer. And if TERC is not benefiting the taxpayer, then we need to change it such that it is and here is an example. By moving the burden of proof down to a greater weight of the evidence, we give the taxpayer a better chance of winning his appeal. If we're not willing to do that and TERC is to remain as it is today, then I suggest we might as well get rid of it because I have not heard anyone here say that TERC is today of benefit to the taxpayer. That was how it was intended; that is not how it is today. Therefore, something has to change. So I'm going to vote in favor of this reconsideration. I'm hoping that the weight of our arguments have been persuasive such that we can move back to the original AM2164 put forward by the Revenue Committee, and I ask you to vote in favor of this reconsideration motion therefor. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Fulton. Senator Cornett, you are recognized, followed by Senators Nelson, Campbell, Council, White, and Dierks. Senator Cornett, good evening. [LB1079]

SENATOR CORNETT: Good evening, Mr. Speaker, and thank you. I rise in support of the reconsideration motion. I don't believe the body had enough time to fully consider Senator Campbell's amendment and what it does to the taxpayer. Senator Campbell is very correct when she said that the place that these should be resolved is at the county level. I would certainly not dispute that. The problem is we have counties that are not resolving it at that level, and then the taxpayer has to go to court...or to TERC and meet a standard that they can't meet, when they had no chance of a face-to-face meeting or even appearing in front of their county board. Again, I stress the fact that these...that the

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standard of review or burden of proof should be equal. If a taxpayer brings in documentation to prove that his valuation is overstated but cannot prove that it was done arbitrarily or capriciously and cannot reach that higher standard, that they should be able to have their tax...their assessment reevaluated. And I am not trying by any means to erode the valuation base of the counties. What I am trying to do with this bill and what the Revenue Committee was trying to do with this bill is support the taxpayers' rights. TERC was formed as a less formal, I repeat, less formal means of appealing a county board decision. And over the course of the years, due to court decisions, the first one being a case of Lancaster board...or J.C. Penney v. the Lancaster Board, it was decided that that...the courts decided what the standard should be, not this body. That standard was not in place when TERC was formed. TERC was meant to be a place where taxpayers could go to get relief. And I have to agree with Senator Fulton. If taxpayers are not going to get relief at TERC and they have to reach that higher standard and they have to have an attorney present with them, then we need to eliminate TERC and we need to go back to the old system of going straight to the court system, because TERC has evolved into something more complicated than it was ever intended to be and has put a standard in place higher than was ever intended to be and has made it impossible for the average taxpayer to go in front of them without an attorney present and reasonably expect to win. Thank you. [LB1079]

SPEAKER FLOOD: Thank you, Senator Cornett. Senator Nelson, you are recognized. [LB1079]

SENATOR NELSON: Thank you, Mr. President, members of the body. I am opposing the reconsideration and...although Senator White has made some very good points. I would like to address a question to Senator Cornett, if she would yield. [LB1079]

SPEAKER FLOOD: Senator Cornett, will you answer a question from Senator Nelson? [LB1079]

SENATOR CORNETT: Yes. [LB1079]

SENATOR NELSON: Senator, I may have missed this, but was this lowering the standard of proof, the burden of proof from clear and convincing to more probable than not, was that part of the original bill? [LB1079]

SENATOR CORNETT: Yes. [LB1079]

SENATOR NELSON: I don't see that on the committee statement. It looks to me like it came... [LB1079]

SENATOR CORNETT: I'm sorry, it was part of the Revenue Committee's amendment. I apologize. [LB1079]

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SENATOR NELSON: Right. [LB1079]

SENATOR CORNETT: There have been a number of amendments over the course of the last few years. [LB1079]

SENATOR NELSON: Was this even discussed during the hearing then of the original bill with the parties at interest? And I see that the TERC board was neutral on this. I doubt that they would have been neutral if this had been part of the hearing on the original bill, this question. [LB1079]

SENATOR CORNETT: Senator Nelson, you'd be wrong. [LB1079]

SENATOR NELSON: All right. Tell me why I would be wrong. [LB1079]

SENATOR CORNETT: Because TERC comes in and does not speak in favor or against a bill. They come in, in a neutral capacity and explain the good points, the bad points, and how it affects them. We had probably a three-hour discussion on exactly what the burden of proof was and that has went on over...we've had that discussion on burden of proof every year that I've been here. [LB1079]

SENATOR NELSON: All right. Then I stand corrected and I'm glad to hear that. Let me talk about TERC a little bit. And you have talked about this, so has Senator Fulton. Most of the complaints that I've heard about the TERC board is that it's simply too formal and too rigid, too bound up by rules of procedure which take forever, which require a lot of attorney time, a lot of petitioner time, and the upshot is not necessarily that the proponent or the petitioner doesn't win, it's just that it's expensive and takes a lot of time to do that. I'm going to take the position that if we go to the single commissioner and require that on cases under \$1 million and we see that according to what we have here that the common law and statutory rule should not apply and that the commissioners should consider and use all matter presented, it seems to me like that's going to be a more relaxed hearing in the nature of a small claims court, and it would seem to me that under those circumstances that the taxpayer is going to get a much fairer shake even though they do have to meet the burden of clear and convincing evidence. I'm heartened by the fact the statistics, and the correction that I heard from Senator Campbell, that over 900 homeowners, residential homeowners, prevailed in front of the TERC board. Now I don't know how many people actually appealed but I can't imagine it would have been more than 2,500 that the TERC board, under its present procedures, couldn't hear that many appeals in addition to the commercial appeals, and that tells me that a fairly hefty number of homeowners are prevailing in front of TERC even with the rigid rules, even with the clear and convincing evidence rule. And perhaps Senator Campbell may have more to say about that. At this point, as I stated before, I think we have fundamental fairness in face-to-face presentations at the county level in the board

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of equalization and the referees. We have the very good possibility of a single commissioner hearing which will be more informal and the single commissioner would probably be more receptive to perhaps a slightly... [LB1079]

SPEAKER FLOOD: One minute. [LB1079]

SENATOR NELSON: ...lower burden of proof, and then we continue with the higher burden of proof that we've already approved in the form of the amendment adopted that Senator Campbell presented. With that, I will cease. And I thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Nelson. Senator Campbell, you are recognized. [LB1079]

SENATOR CAMPBELL: Thank you, Mr. President, and I do apologize to Senator White. That's what happens when you're an old county commissioner. You forget what figure...you forget a few facts here and there, and I apologize because I shouldn't have answered so quickly to his question on the district court. I do want to say to my colleagues that if, in the end of all of this, we say to ourselves we have grave concerns about TERC and all of those questions, and I think that was raised earlier, then we come back next year and we introduce a bill that deals strictly with TERC and whether it's meeting its responsibilities as it was intended, and we go back and look at that. Tonight, what we're trying to look at is the whole system as we look at the taxpayer. We are not being unfair to the taxpayer by saying we are staying with the system at TERC of that higher standard. We're being fair to all of our taxpayers by looking at the total process and putting into place, making sure they have a face to face, if they want to come to TERC that they can see that person. But at some point a mere opinion, difference of opinion, between this 49 percent and 51 percent, a mere difference of opinion here, that is what we're going to choose on the weight? It's important to understand the total system, colleagues, and I do not think we are being unfair to the taxpayer. We are being very fair by saying we understand the total process, we understand what can happen with more costs to our county and what that ultimately means to the valuation that all of our political subdivisions have to live under. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Campbell. Senator Council, you are recognized. Senator Council. We do not see Senator Council. Moving forward, Senator White. Question has been called. Do I see five hands? I do see five hands. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB1079]

CLERK: 27 ayes, 0 nays, Mr. President, to cease debate. [LB1079]

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SPEAKER FLOOD: Debate does cease. Senator White, you are recognized to close on your motion to reconsider the vote last taken. [LB1079]

SENATOR WHITE: Mr. President, at this time I'd call the house. [LB1079]

SPEAKER FLOOD: Senator White, just so you know, your time continues to run. [LB1079]

SENATOR WHITE: In that case, I'll start making use of it, with your permission. [LB1079]

SPEAKER FLOOD: But because...and you are allowed to make use of it in one moment. You...we first have to deal with the request to place the house under call. Continue to let his time run. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB1079]

CLERK: 36 ayes, 0 nays to place the house under call, Mr. President. [LB1079]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Council, Pankonin, Avery, Heidemann, and Gay, please return to the Chamber and record your presence. Senator White, you have 4 minutes and 5 seconds. You may continue. [LB1079]

SENATOR WHITE: Thank you, Mr. President. Members, I want to talk to you about the due consideration that this deserves. I believe the question was prematurely called. I have talked to a number of members. Some of them didn't think they were voting for what they were. What this really is, though, is at the end, in my case, and I think Senator Cornett can tell you in her coming on six years, in my case four years, of ongoing struggle after struggle with problems on citizens not getting a chance at a fair hearing in front of TERC. This has been one of the ongoing problems that we deal with. And I know in your committees, each of you in your committees has a similar problem, some part of state government, some agency that's not doing their job in a way that at least minimize standards, at least give some level of satisfaction to the people who come to it for services from the state government. TERC has been that and more. Now TERC was set up at great expense. As we look through the costs of this thing, let us remind each other how much TERC costs us for one purpose--the taxpayers needed a place they could go free from local politics, beyond the county commissioner level that Senator Campbell has talked about so eloquently. She's talked about how it was fair in her experience, that they did a good job, they were honorable, and I don't doubt that one bit. But not all counties are the same and not all citizens have been given that fair shot. Many citizens haven't even gotten a hearing, particularly in Douglas County, but

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other citizens in other counties have felt that they've been victimized by local politics. And the whole point of TERC was to take that decision of whether I'm paying too much for my property and my neighbor is not paying enough for theirs out of the world of local politics. My neighbor, he's politically well connected. He works hard on campaigns. He's paying a lot less. I'm paying a lot more. I'm not popular politically. I'm not connected with these county commissioners. I don't get the same consideration. And even if a person who believes that is not well founded in their belief, one of the real principles of a fair judicial system is not only that you do justice but you appear to be impartial so you both must be in fact impartial but you must also appear to be impartial, because the appearance of impartiality is what builds the faith of the citizen in the government that they have elected and maintain with their vote, with their consent, and with their taxes. And what this is about is whether TERC is really going to provide that forum... [LB1079]

SPEAKER FLOOD: One minute. [LB1079]

SENATOR WHITE: ...free from local politics with a level playing field, no more, no less. Now we have issues about will there be an explosion of appeals. We can handle those. I will work with any of you on Select File to handle those legitimate concerns. We're happy to do it. But do not deny your fellow citizens the right to a free and impartial forum. It results in political chaos, and many of our fellow states are dealing with the outcome of that and I will tell my county officials that is sowing the wind, and if we continue to do it we will reap the whirlwind. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator White. The question before the body is, shall the Legislature reconsider the vote last taken as it pertained to Senator Campbell's amendment, AM2274? All those in favor of reconsidering the vote last taken vote aye; all those opposed vote nay. Senator White, for what purpose do you rise? [LB1079]

SENATOR WHITE: No purpose at all, Mr. President. (Laughter) [LB1079]

SPEAKER FLOOD: Please be seated. Mr. Clerk, please record. [LB1079]

CLERK: 25 ayes, 18 nays, Mr. President, on the motion to reconsider. [LB1079]

SPEAKER FLOOD: The motion to reconsider is successful. I do raise the call. Senator Campbell, would you please approach the Chair? I do raise the call. Senator Campbell, for what purpose do you rise? [LB1079]

SENATOR CAMPBELL: Mr. President, I would ask to withdraw this amendment and that it be resubmitted on Select File. [LB1079]

SPEAKER FLOOD: So ordered. AM2274 is withdrawn; will be refiled on Select File. Mr. Clerk. [LB1079]

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CLERK: I have nothing further pending to the Revenue Committee amendments, Mr. President. [LB1079]

SPEAKER FLOOD: Discussion continues on AM2164, the committee amendments to LB1079. Senator Price, you are recognized. [LB1079]

SENATOR PRICE: Thank you, Mr. Speaker, members of the body. Now with the withdrawal of that amendment, I really don't have a whole bunch to say other than I'm not going to miss an opportunity. (Laughter) The issue, though, that was at hand there that we talked about and had given me concern was it seemed to me that it was almost like a pass-the-buck thing with the whole TERC and the county, where the county...where the system was set up to basically give preferential treatment to the county's decision, so why wouldn't a county want to do it? And in talking with my good friend Senator Utter, as he was trying to counsel me and educate me on some things, it just seemed if his words of wisdom rang true in that if the TERC...or if the county...if 80 percent of their cases are never going to be overturned then it's in their interest to refer things to the TERC and that, if that number came down, you'd actually probably get less referrals and that...if you build back from that, is that the assessment practice is more accurate. And many of you know of my fixation almost on the assessment practice differences between Sarpy County and Douglas County, and I think that when you see that, when we have properties that are similar, I mean in Senator White's own analogy where you have two... [LB1079]

SPEAKER FLOOD: (Gavel) [LB1079]

SENATOR PRICE: ...similar homes and similar situations that are valued differently...now I understand it's across the counties but I think it's an egregious act that the same property can be in one county and in another county, right next door, just because Harrison Street is there, and the valuation practice is so different. And in hearings this year on my bill, what I was told was, well, there's that latitude for the difference in assessment practices. So I think this all gets down to a point that says if we do a more diligent assessment policy and practice, we'll have less cause for the citizens to have concern because they'll see that equalization acted out and in their bills they won't have to go to the county board of equalization as much because...and then the county board of equalization won't forward it because it's not in their best interests because they're going to win anyway. So with that, I'll yield back the balance of my time. [LB1079]

SPEAKER FLOOD: Thank you, Senator Price. Senator Haar, you are recognized. [LB1079]

SENATOR HAAR: Mr. President, members of the body, I have a question for Senator

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Cornett, please. [LB1079]

SPEAKER FLOOD: Senator Cornett, will you yield to a question from Senator Haar?
[LB1079]

SENATOR CORNETT: Yes. [LB1079]

SENATOR HAAR: If the county loses an appeal at TERC, can they go to a higher court or is that it? [LB1079]

SENATOR CORNETT: No, everyone has the ability to go to the court...or file to the Court of Appeals and nothing is changed, nothing in this bill changes that. [LB1079]

SENATOR HAAR: Okay. So would you say that in the case...let's say that there are these huge number appeals that involve large corporations. Would a county be more likely to take those to court if they lose in TERC do you think? [LB1079]

SENATOR CORNETT: Either side takes it to the Court of Appeals now, if you're talking a large dollar amount. [LB1079]

SENATOR HAAR: So eventually it kind of winds up in court anyway. [LB1079]

SENATOR CORNETT: Particularly for that. The higher the dollar, the longer those battles go on. [LB1079]

SENATOR HAAR: Okay. Well, in this whole process, and I'm changing my mind slowly I think, first of all, I'm really satisfied with the way Lancaster County does business because I had two appeals. One, I was on a greenbelt sort of thing and that went to TERC and I lost that. I didn't like that very much. [LB1079]

SPEAKER FLOOD: (Gavel) [LB1079]

SENATOR HAAR: But my other appeal was on the value of my house and actually Lancaster County had set up, you know, you could go and sit down and face an appraiser, a professional appraiser, one on one, and talk to them about the appeal, and that one actually I did win. So Lancaster County has a really good process and I appreciate that. But thinking about the other counties, it seems to me that if we go ahead with LB1079, then if valuations drop then I think counties have to really...the county boards have to really look and see if they're doing their job or not. And we could always come back and change it. We could always change the preponderance of evidence. But if we don't allow a lesser standard before TERC, I guess we'll never know whether it makes a difference or not. So I find myself changing in what I think and actually I will vote for AM2164 and LB1079. Thank you. [LB1079]

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SPEAKER FLOOD: Thank you, Senator Haar. Senator Carlson, you are recognized.
[LB1079]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I gave Senator White a vote to reconsider. While I was waiting to do that, a member came up to me and said, don't do that. Now I'd already said I would and around here we're only as good as what our word is, and hopefully I've got a reputation when I say I'm going to do something, I do it. Now having said that, that's all I told Senator White. I would vote for reconsideration. I will support Senator Campbell's amendment, AM2274, when it comes back on Select File. If that amendment is passed, I will then support LB1079. Until that's the case, I cannot support LB1079. I think of current practices that we have in our counties throughout the state. There is a mechanism for people to protest their taxes. It's not like we don't have something. May not be the best, sounds like there are problems with it, there is a mechanism. People can and they do protest their taxes and their valuation. In the counties that I represent, I think in every case those who protest have an opportunity to meet with the county board. They're not refused that meeting. I understand that's not always the case in Douglas County. But in this whole process and as we move forward, if there's a lower threshold of evidence there will be more protests. I heard Senator Stuthman say this earlier and I think that he's right on. So there are two negative things that occur. Out of these additional protests and those that are commercial, and business that have the wherewithal to bring an attorney that can represent them well, has probably a better chance of changing that valuation and, therefore, changing the amount of tax they pay. When that happens, the rest of them that didn't protest will end up paying more taxes unless it results in lower spending, which really is not a part of this process necessarily so that probably won't happen. And then there's going to be more expense for the county because when this goes forward the county has to represent themselves there. That's more money spent. So I will be supportive of AM2274 and conditioned on that whether or not I support LB1079. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Carlson. Senator Council, you are recognized.
[LB1079]

SENATOR COUNCIL: Thank you, Mr. President. I, too, voted to reconsider and I voted to reconsider in large part because I allowed myself to be drawn out of the Chamber and missed my turn to speak on AM2274. So I voted to reconsider. And if Senator Campbell brings back AM2274, at this point in time I'm inclined to support that. Let me tell you why. I have sat here for hours, like all of the rest of my colleagues, and listened to this debate and I don't think there's anyone in this body who is not concerned about providing taxpayers a fair and equitable avenue to protest their property tax valuations. I don't believe there's anyone in this body who's here with the intent of disadvantaging property taxpayers. But I have listened to the debate and one of the things that I do is

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read the language of the bills that are before us, and I have studied and studied and studied Section 6 of AM2164 and, quite frankly, I don't see the advantage that is purportedly being given to the property taxpayer and that's because the very first sentence of section (8) can be read in a variety of ways. If you look at the first sentence, it says, "The commission may dismiss an appeal or cross appeal if there is no evidence to show that the order, decision, determination, or action appealed from is erroneous." Now, I've had conversations off the mike and there are those who are supportive of AM2164 who have advised me that that...what that sentence means is if the person who is advancing the appeal presents absolutely no evidence, you know, just files an appeal and presents no evidence, then the commission has a right to appeal that. Well, I'm a firm believer, if that's the intent then the language should say it. Because as I read this language it says if the person files an appeal and the commission decides that they have not presented enough evidence or the correct type of evidence to show that the valuation is erroneous, the commission can simply dismiss the appeal. You only get to the standard of review on arbitrary and capricious if the commission doesn't dismiss the appeal in the first instance. Now, we've talked about which taxpayers will benefit from this. Now, the taxpayers in the district that I represent are going to be on the low end of the property valuation chain. They're not going to be the people who can afford to go out and hire legal counsel. They're not going to be the people who can go out and hire an independent appraiser. These are going to be the people who are going to come in before the commission and make oral statements regarding the condition of their property as compared to the condition of property around them. They may bring in some photos of their property now and some photos of their property a few years ago, and my concern is that under this language, the first sentence,... [LB1079]

SPEAKER FLOOD: One minute. [LB1079]

SENATOR COUNCIL: ...it appears to me that the commission makes the decision whether or not they have prevented...have they presented evidence to show that the valuation is erroneous. In my mind, if we're truly going to be addressing the property taxpayer and his or her ability to present a case, and that's to present a valid appeal, then the standard should be that their appeal shall be heard on the basis of whatever evidence they present. And then you start questioning the weight of that evidence. But clearly, it appears to me, and I admit that I may be wrong in my interpretation of this language, but if you look at the language that is being deleted,... [LB1079]

SPEAKER FLOOD: Time, Senator. [LB1079]

SENATOR COUNCIL: ...it essentially says the same thing. Thank you. [LB1079]

SPEAKER FLOOD: Thank you, Senator Council. Senator Stuthman, you are recognized. Senator Stuthman waives his opportunity. Senator Fischer, you are recognized. [LB1079]

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SENATOR FISCHER: Thank you, Mr. President and members of the body. I haven't spoken on this issue yet this afternoon or this evening, but I need to now. I supported Senator Campbell's amendment and I am disappointed, after passing it, that we had a motion to reconsider that also passed, and now we will wait until Select File to take up action on that amendment. Saying that, I will not support this bill at all. Without Senator Campbell's amendment, I cannot vote for the bill. Being from rural Nebraska, I've talked to a lot of you on the floor, we hear from our counties. We hear from our county officials and those county officials are taxpayers in our counties, and those are the people that I've heard from on this piece of legislation. They are against it. If we would have adopted Senator Campbell's amendment, they would have not been happy but they could have supported this piece of legislation. I haven't heard from any other taxpayers in my 13 counties on this. I think this legislation helps the person who can afford to hire an attorney have more protests before TERC. That's my view of what's going on here. I do not believe that this is going to help the regular person, the regular citizen, our regular taxpayer, the little guy. This is going to help the guy who's rich enough to hire an attorney, get his evidence together and be able to go before the TERC board even more often than they are able to do so now, costing our regular taxpayers, our regular citizens, the little guy who's paying their taxes in my 13 counties more money so this guy can go and protest more because he doesn't want to pay what he's been assessed for taxes. I'm not going to give this bill a chance to make it to Select File in the hopes that we'll get 25 votes again on Senator Campbell's amendment. We blew that chance. Nothing against Senator Campbell for the process that she is following on this, but I'm not going to take that risk of advancing this in the hopes that I can amend it to help my taxpayers have a bill that they can live with. I will not take that chance. I will not vote green. I will stop this bill now if I can, and I'm hitting red. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Fischer. Senator Karpisek, you are recognized, followed by Senators Price, Stuthman, and Campbell. Senator Karpisek. [LB1079]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I also have been quiet. I've been quiet all day. I hadn't hit my light all day. I haven't had a good day so I didn't even start, (laughter) but this one just made my day worse so I'm going to spread the cheer. I agree with Senator Fischer. I wasn't going to vote for the bill in the first place but I was going to at least feel better with Senator Campbell's amendment. Without the amendment, we've got a dogfight, folks. Now I care. I agree 100 percent with Senator Fischer that I think that this is for the corporations, the people that can afford it, the people that are going to come every time and protest everything that they own, and it's just going to bottleneck things up and then our counties are going to have to cave in, give, and they're going to have less money. I think that Senator Campbell's amendment was a very good compromise. The counties were going to say, fine, we'll do the face to face, we'll do that. I'm not huge on that. Where I'm from, everybody does get

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a face to face, so what good is it going to do? Without that amendment, I will also help Senator Fischer try to not move this bill forward. Again, I think that was a compromise. I think we've learned to compromise in here and I think that maybe if we would have moved it to the next round with that amendment, we may have been able to work something out in between, but I don't want to let this go to the next round and then hope that we're going to get 25 votes either. I understand keeping your word on a vote, but I think that that one, if you were in favor of that amendment, just snookered you. I think this is...it is a good idea. I think everybody can say people should be able to stand up, go in and have their day in front of the board. I think they can. I don't know that this helps the average common person go in and raise a stink about their property taxes. I do want to say, Senator Wallman did bring up the fact that I've tried to change how we do our property taxes for the last four years. Finally got an interim study on that. I think that we need to look at the whole process rather than just how we keep doing things and throwing more into it. I will not vote for the bill. I will not wait and hope that Senator Campbell's amendment comes back on. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Karpisek. Senator Stuthman, you are recognized. [LB1079]

SENATOR STUTHMAN: Thank you, Mr. Speaker and members of the body. First of all, I want to thank Senator Fischer and Senator Karpisek, you know, for their comments that we just heard. This is what I've been trying and attempting to do, you know, through the whole process because, you know, I've been involved with the protesters, and I really respect those people, and it gives them a time to vent as to what they think their valuation should be. But there are guidelines that assessors use to determine valuations and it needs to be consistent. In my county, bordering county that valuations are different, we take that into consideration. The values are not quite as high in bordering townships to other counties as they are in the area of the central part of our county. That's all taken into consideration. We have developed areas or regions where values are different with farmlands, with residential. And I really agree that the process that we have right now, you know, is working. The biggest issue that I had with this is the fact that the ones that got a lot of value in commercial properties have got the resources to hire attorneys to help them go to the TERC board in protesting their valuations. And, you know, a little change on a \$5 million or \$10 million commercial property or maybe a \$50 million commercial property, maybe a couple million dollars is only a small portion of that valuation of that property but that means a lot to the total valuation of the county. A lot of times the total valuation that is given in consideration to their protest of maybe decreasing it by \$1 million, that could be the same as ten houses that you take off the tax roll. That means a lot. Any time you take valuation off of a current valuation or a proposed valuation, it makes a difference on how many...what levy is assessed to the other property owners. And I will guarantee you that with this bill, if property is given a lower valuation, that the rest of the taxpayers in the county, unless those entities decide not to spend as much as the prior year, the taxes are going to go up on the rest of the

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individuals in the county. It's a property tax increase. And if I heard it once I heard it 50 times, the biggest and main issue, and this was addressed by Senator White, it was property taxes, property taxes, property taxes. Property taxes are assessed locally, collected locally, and spent locally, that's by the local governing bodies. We here in the Unicameral, in the state, our revenue is generated from income tax and sales tax. [LB1079]

SPEAKER FLOOD: One minute. [LB1079]

SENATOR STUTHMAN: And the only way that we can help with property tax is not to put mandates on local governments or have the state subsidize, or as I worked on for all of my eight years and that was county jail reimbursement and, as I see it right now, there ain't such a thing anymore. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Stuthman. Senator Campbell, you're recognized. [LB1079]

SENATOR CAMPBELL: Thank you, Mr. President. And I want to particularly thank my colleagues who certainly supported the amendment and then stayed with us on the reconsideration. I've been asked to comment about the bill and I understand those people that are saying, you know, we can proceed to Select and work on that. I would urge all of my colleagues in the body to look at the bill individually and say, is the bill now at that point where I want it to go forward? I indicated to Senator Cornett that I could not, in good faith and conscience, vote to proceed because I feel very strongly about the amendment I put forward. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Campbell. Senator Louden, you are recognized. [LB1079]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As we're talking about this part in, I think, on page 12 in the stricken language is what seems to be the center of attention at the present time, but if anyone has ever went before the TERC committee, you don't necessarily have to have a lawyer. I've been at TERC committee hearings when there was a fellow there that owned quite a little property in Rushville and he protested every piece of property he had. And he did it on his own and he probably didn't win a single case but, nonetheless, he was there doing his protest. So you don't necessarily have to have a lawyer. When I went to them different times, I've usually had a lawyer and it didn't make any difference. We didn't win the case either way. So whether you have a lawyer or not really doesn't make the difference. The difference is, is you have to prove that the valuation that they're using is the wrong valuation, and you have to really show that there's other properties of like value, of like properties that have a different valuation. That's usually very hard to do. So when we go before a TERC committee, it isn't whether the rich people are going to do it or the big

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boys or anything. The big boys can handle themselves right now so I don't think you have to worry about it. This was set up here, this is the first time that I know of that we've ever addressed anything and done anything about the TERC committee. And here we're going to reinstate the language that was already in there that the TERC committee has been working on. So really, this is probably the first chance we've had to halfway overhaul this whole system that goes by the TERC committee. Putting in one person or one commissioner working on a case with people is a big advancement. There are going to be protests around because as the seven counties that I represent, I represent part of Cherry County and Cherry County has had the highest increase in property taxes of any of them in my district. They've increased. Some of the ranchers claim that they've had their taxes doubled in the last eight years, and most of that has been because Cherry County has a low enough valuation or low enough mill levy that as their valuations go up they don't have to lower the mill levy. In fact, they can raise them and then, consequently, it raises their taxes considerably. Where you have Sheridan County, who's been maxed out for several years, so the only increase they get in taxes is by the increase in the valuation. Now, when you go with comparing land values between Sheridan and Cherry County, why, this is what you do before the TERC committee to try and show that your valuations are wrong or your tax load is incorrect. So there are areas there that there will be protests if it is set up so that people can go ahead and protest on their own. So I support this, this amendment. I think it's something that we have. It's the first time we've really worked to do anything to address some of the problems the TERC committee has faced. We've had discussion before. Today it's been mentioned that perhaps we should scrap it. It isn't necessarily so. There is a reason for the thing, and for what it was set up for it can be used. It was set up so that you didn't have to go into district court all the time in order to protest your valuation of your property, and that was the TERC committee. The problem was the thing has evolved around to where they not only judge some of the valuations but they also set the valuations in different instances. So consequently, you have the same people valuing the property, and they also have the same people sometimes judging whether or not their valuation is correct. So somewhere along the line this can be overhauled, and this is the first instance that we have had where we have done some work... [LB1079]

SPEAKER FLOOD: One minute. [LB1079]

SENATOR STUTHMAN: ...on the TERC committee and I certainly support this amendment and the underlying bill. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Loudon. Senator Wightman, you are recognized. [LB1079]

SENATOR WIGHTMAN: Thank you, Mr. President. Any time you get Senator Fischer and Senator Karpisek on the same side, that's amazing enough. And so I think probably

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they're where I'm going to be. I think Senator Council put her finger on one major issue on this, as we read on page 13. First all, it says, "The commission may dismiss an appeal or cross appeal if there is no evidence to show that the order, decision, determination, or action appealed from is erroneous." Then it goes on to say, "The order, decision, determination, or action appealed from shall be affirmed unless evidence before the commission establishes that the order, decision, determination, or action was unreasonable, arbitrary, or unlawful." Now, I suggest to you that that standard is about as far apart from the greater weight of the evidence as any burden of proof that I can imagine, and yet we turn right around and say, and I'll agree that the bill says that an order, decision, determination, or action determining taxable value is unreasonable or arbitrary if a different taxable value is proved by the greater weight of the evidence. But I think these are two totally different standards and I think we could find probably 100 cases that indicate that those two standards are nowhere near the same. I agree with Senator Carlson, Senator Karpisek, Senator Fischer, that I'm not willing to vote in favor of AM2164 and the underlying bill, LB1079, on the basis that Senator Campbell's amendment is going to be passed on Select File. So at this point, it would be my position that I will vote against both the AM2164 and the underlying bill. Thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Wightman. Senator Dierks, you are recognized. [LB1079]

SENATOR DIERKS: Question. [LB1079]

SPEAKER FLOOD: The question has been called. Do I see five hands? I do. I see five hands. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB1079]

CLERK: 27 ayes, 5 nays to cease debate, Mr. President. [LB1079]

SPEAKER FLOOD: Debate does cease. Senator Cornett, as Chair of the Revenue Committee, you're recognized to close on AM2164. [LB1079]

SENATOR CORNETT: Thank you, Mr. Speaker and members of the body. AM2164 holds the provision for mediation at the county level. This is because some of the counties, particularly Douglas County, were not able to have individual hearings for taxpayers. We feel that Lancaster County has been doing such a good job with this process that we based the language on that. They found that the majority of their cases are resolved at that level. It is a very workable system. The other part, the one single commissioner hearings were brought to us by TERC to relieve some of their backlog. They feel that the single commissioner hearing will give the taxpayer a face-to-face hearing with a TERC member and the county board with a third party involved with a lower standard of evidence required. If they do not agree, either side, they can go to a

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full TERC Commission. Only properties that are less than \$1 million are eligible for the single commissioner hearings. I've heard multiple times this evening, and I have to say that I'm verging on offended, that we've introduced this bill strictly for the commercial property owners. That was not the intent and that is not the intent of this bill. This is--and this is what we discussed in the committee--the way that a taxpayer can go to TERC and bring their evidence and show that they are valued too high and are able to present that evidence without a higher standard than was originally intended. I urge the body to support AM2164 and I have committed to Senator Council to work on the language. We have, unfortunately, when you get a group of attorneys working on language, you have a group of opinions and that is something that we will be working on between now and Select File. I have also committed to Senator Campbell I will work on the standard of review with her during that time period. We do need to find a way to make the system more friendly for the individual. Right now it's only friendly to the county. And I'm going to ask you a question. Who in here has heard from anyone, except from a county official, against this? Not many. Your counties are jumping up and down because they don't want to have to prove they're right and that's exactly the e-mail I got from one. Why do I have to prove we're right? Because it's the right thing to do for the taxpayer. With that, I'll close. [LB1079]

SPEAKER FLOOD: Thank you, Senator Cornett. Members, you've heard the closing to AM2164. The question for the body is, shall AM2164 be adopted? All those in favor vote aye; all those opposed vote nay. Senator Cornett, for what purpose do you rise? [LB1079]

SENATOR CORNETT: I request a call of the house. [LB1079]

SPEAKER FLOOD: A call of the house has been requested. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB1079]

CLERK: 42 ayes, 0 nays, Mr. President, to place the house under call. [LB1079]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those Senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Christensen, Senator Avery, please check in. Senator Cornett, all Senators are present or otherwise accounted for. All Senators are now present or otherwise accounted for. Senator Cornett, how do you wish to proceed? [LB1079]

SENATOR CORNETT: One quick thing. I wasn't going to point out that you weren't checked in. (Laugh) Roll call vote in reverse order, please. [LB1079]

SPEAKER FLOOD: Mr. Clerk, please read the roll in reverse order. [LB1079]

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CLERK: (Roll call vote taken, Legislative Journal page 1010.) 25 ayes, 18 nays, Mr. President, on the committee amendments. [LB1079]

SPEAKER FLOOD: The committee amendments are adopted. I do raise the call. We now return to discussion on LB1079 and its advancement to E&R Initial. Continuing with that discussion, Senator Price, you are recognized. [LB1079]

SENATOR PRICE: Thank you, Mr. Speaker, members of the body. In listening to the debate, I was trying to find a thematic thread there. I was struggling, you know, because as each side presents its case, obviously, you want to do it in the light that's best for your case. And I find no fault, obviously, with that. But here's where I do begin to wonder. When a party, whether it's a single dwelling or it's a commercial property, receives that tax notice and they disagree with it, they take it to the avenue they have at the county board. Now, the next point is, if the county board says no, and then they take it to the TERC. What is the fear if the...no matter who shows up at that hearing, it should be that the valuation was done, perhaps, improperly. The valuation...new information came up. I mean, sometimes when a valuation is done it's applied to your house, did they walk in your house, did they walk in the neighbor's house? You don't have that. So the question is, just because someone shows up with an attorney doesn't mean that the valuation should change. If that valuation was done properly, if the valuation was done adequately, then there won't be a change. So to intimate that by merely showing up with an attorney that you're going to argue and reduce the valuation, casts a very disparaging light on the professionals who are doing the job. Now, in the course of the hearing, if they're able to come up with some factual evidence to say why that valuation should be changed, then so be it. But to stand and argue to say the valuation will change merely because an attorney showed up. Na, that doesn't hold. And the question really then comes down to, why are they protesting? Well, if so many...if the argument is someone shows up with an attorney and the valuation changes and it's lowered, and it happens in so many cases, wouldn't you think you would need to do some training that the initial valuation wasn't done accurately and properly? That's the question people should be asking, whether the valuation changed in the county and the mill levy has to change. Those are all questions that come out afterwards. But if the job is done correctly from the beginning and someone protests it, your case is good. Why would you want to change the burden of proof anyway? If it's done accurately and it's done properly, why would you...(inaudible) someone you have to prove even more so or use a different level of proof. If it's done right, you have nothing to fear. If it gets reduced a lot of times, I think you would pull someone aside in the back office and have a little explaining session. And ask the question, why is it so different? Why are your valuations when protested always reversed or lowered? So I think the whole argument about people showing up with attorneys and valuations going down is more of a deflection from the issue. If a citizen should show up and present their case, either with an attorney or without, and the facts would bear out that the valuation was done wrong,

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then the change is made. If the facts don't bear out, it won't be made. Where is the fear in being... [LB1079]

SPEAKER FLOOD: One minute. [LB1079]

SENATOR PRICE: ...properly assessed? That's what I would ask you. And I would ask you, how will you look your citizens in the eye and say...the people that you represent and say, I didn't really have a concern over how the process was done. I just want to make sure we keep that revenue stream going. Thank you. [LB1079]

SPEAKER FLOOD: Thank you, Senator Price. Senator Stuthman, you are recognized. [LB1079]

SENATOR STUTHMAN: Thank you, Mr. Speaker and members of the body. It kind of caught my attention when Senator Price was saying that, you know, everyone that goes and protests their valuation, you know, they want to have it lowered. And that is true. That is the intent of the people that are protesting. They feel they're valuations are too high in comparison to whatever they feel. But I will tell you that even in a valuation protest to our Board of Equalization, which is our county board of supervisors, we have raised valuations on individual property. Why did we raise some of the property? We came to the decision on an individual protestor that protested dryland ground being valued too high. But in the process of checking, his ground was, for government purposes, was irrigated crop ground. And irrigated crop ground has got a different value than the dryland crop ground, the nonirrigated. So we went to the Farm Service Agency, got the amount of acres that he had certified as irrigated ground and receiving payments as irrigated ground, and if he's receiving payments as irrigated ground, it should be valued as irrigated ground. So we valued it as irrigated ground, even if there was no well on that property. Yes, I think that individual utilized water from a neighbor to establish his irrigated base. So it is...it is a system when we try to value property equally. But with the bill that we have before us right now, in my opinion and the experience that I've had with people that protest, it's the ones that have the larger dollar amount of valuation that feel that their valuation is not right. But it's very hard for the county board to assess some of that property whether it's four and a half million dollars or if it's four and three-quarter million dollars of value. And why is it hard to assess that property at that level? Mainly because of the fact that there's no sales that they can utilize for that. What they utilize for that is, you know, the size of the...the square footage of the building, what the building is utilized for. You know, how much revenue does it generate. All of that taken into consideration and, you know, is that property in an area where there is increased value in property in that area. And I think that's very, very important. But I have personally seen where those individuals appeal it to the TERC. Not always, but sometimes they do get it lowered. And I think that is because of the fact that there is an organized group that works with the individuals and makes a presentation, a convincing presentation as to why their property should be lowered. And

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maybe, it should be. [LB1079]

SPEAKER FLOOD: One minute. [LB1079]

SENATOR STUTHMAN: But I think with this bill and with the discussion of my local assessor, there's going to be a greater workload on the county assessor because the county assessor is the one that sets the valuation. Even if the individual appeals it to the TERC board, the county assessor has to give the reasons and has to defend her position and the county board's position as to why she has set the valuation there and why the board has agreed with that and not agreed with the lower valuation of the protestor. With that, thank you, Mr. President. [LB1079]

SPEAKER FLOOD: Thank you, Senator Stuthman. There are no other lights on. Senator Cornett, you are recognized to close on LB1079. [LB1079]

SENATOR CORNETT: Thank you very much. LB1079 has become the committee amendment and I want to reassure the body that we will be working on this between now and Select File. Senator Campbell and I are already speaking in regards to that. The other two underlying issues of the bill are very important. The mediation at the county level. Lancaster County has found a significant reduction in the number of people who are going to the TERC if they have a chance for a face to face. And the second is the single commissioner hearing. And we will be working on the language that Senator Council brought up. Again, we have a difference of opinion with the attorneys but we will work it out between now and Select, I promise her that. With that, I urge the body to advance LB1079 to Select File. But before I go for a vote, I would like to thank all of the members of my committee for all of their diligent work over the last two years on this bill. We have sat through hours and hours of mind-numbing discussion about burden of proof in the committee and in Executive Session. And I would like to thank my staff for all of the work they have done on this bill. Thank you. [LB1079]

SPEAKER FLOOD: Thank you, Senator Cornett. Members, you've heard the closing on LB1079. The question is, shall LB1079 advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Senator Cornett, for what purpose do you rise? [LB1079]

SENATOR CORNETT: Roll call vote or call of the house first. [LB1079]

SPEAKER FLOOD: And then? [LB1079]

SENATOR CORNETT: Roll call vote. [LB1079]

SPEAKER FLOOD: Okay. Thank you, Senator Cornett. There has been a request to place the house under call. The question is, shall the house go under call? All those in

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favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB1079]

CLERK: 38 ayes, 0 nays to place the house under call. [LB1079]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Lautenbaugh, Senator White, Senator Dubas, Senator Heidemann, please check in. Senator Lautenbaugh, please return to the floor. The house is under call. Senator Cornett, all senators are present or otherwise accounted for. The question for the body is, shall LB1079 advance to E&R Initial? Mr. Clerk, please read the roll. [LB1079]

CLERK: (Roll call vote taken, Legislative Journal pages 1010-1011.) 23 ayes, 18 nays, on the advancement. [LB1079]

SPEAKER FLOOD: LB1079 does not advance. I do raise the call. Mr. Clerk, items for the record. [LB1079]

CLERK: Mr. President, amendments to be printed: Senator Fischer to LB820; Senator Avery, a motion to LB948; Senator Hadley to LB952; Senator McCoy, LB952; Senator Fischer, LB952. Name add: Senator Janssen would like to add his name to LR292. (Legislative Journal pages 1011-1012.) [LB820 LB948 LB952 LR292]

And Senator Mello would move to adjourn the body until Wednesday morning at 9:00 a.m.

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. We are adjourned until 9:00 a.m. tomorrow morning. (Gavel.)