

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
February 23, 2010

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SENATOR STUTHMAN PRESIDING

SENATOR STUTHMAN: Good morning and welcome to the thirty-first day of the One Hundred First Legislature, Second Session. Our chaplain for today is Pastor Perry Gauthier from the...he is the state director of the Capitol Ministries here in Lincoln, Nebraska, and he is a guest of Senator Christensen. Please rise.

PASTOR GAUTHIER: (Prayer offered.)

SENATOR STUTHMAN: Thank you, Pastor Gauthier. I will call to order the thirty-first day of the One Hundred First Legislature, Second Session. Members, please record your presence. Mr. Clerk, please record.

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

SENATOR STUTHMAN: Any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SENATOR STUTHMAN: Any messages, reports, or announcements?

CLERK: Your Committee on Urban Affairs, chaired by Senator McGill, reports LB969 to General File and LR297CA to General File and LB943 to General File with amendments. Banking Committee, chaired by Senator Pahls, reports LB1051 to General File. Senator Ashford, an amendment to LB817 to be printed. And I have notice of hearing from the Education Committee signed by Senator Adams. That's all that I have, Mr. President. (Legislative Journal pages 611-613.) [LB969 LR297CA LB943 LB1051 LB817]

SENATOR STUTHMAN: Thank you. Speaker Flood for an announcement.

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. As Senator Rogert recuperates, we are going to be passing over his bills today on the agenda. The following bills will not be taken up on today's agenda. They include: LB381, LB926, and LB817. Again, as Senator Rogert recuperates, we will not be taking up LB381, LB926, and LB817 on today's agenda. Thank you, Mr. President.

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SENATOR STUTHMAN: Thank you, Speaker Flood. Moving on to confirmation reports. Mr. Clerk.

CLERK: Mr. President, Senator Gay, as Chair of Health and Human Services, reports on two appointments to the Commission for the Blind and Visually Impaired.

SENATOR STUTHMAN: Senator Gay, as Chairman of the Health and Human Services Committee, you are recognized.

SENATOR GAY: Thank you, Mr. President. Health and Human Services Committee reports favorably on the reappointment of Nancy Oltman and Darrell Walla to the Commission for the Blind and Visually Impaired. The committee held a public hearing on Wednesday, February 10, 2010, to consider these appointments. Ms. Oltman and Mr. Walla both appeared in person and answered questions from the committee. The reappointments were approved unanimously by the committee. Nancy Oltman is a reappointment to this four-year term for the Commission of the Blind and Visually Impaired. Ms. Oltman lives in Hastings. She graduated from Hastings College and has worked 27 years at Mary Laning Memorial Hospital in Hastings.

SENATOR STUTHMAN: (Gavel)

SENATOR GAY: Thank you, Mr. President. She is currently retired. Ms. Oltman has served as an officer of the National Federation of the Blind in the local and state level. Darrell Walla is also a four-year reappointment on the Commission for the Blind and Visually Impaired. Mr. Walla lives in Omaha. He has 30 years of teaching experience in Nebraska schools. Mr. Walla earned a master's in education from the University of Nebraska-Lincoln. He has served as a board member for the Omaha Chapter of the National Federation of the Blind. He has also served as a mentor for blind teenagers. I ask for your confirmation of the reappointment of Nancy Oltman and Darrell Walla to the Commission for the Blind and Visually Impaired. Thank you, Mr. President.

SENATOR STUTHMAN: Thank you, Senator Gay. (Doctor of the day introduced.) Seeing no lights, Senator Gay, you're recognized to close. Senator Gay waives closing. The question before the body is, shall the confirmation report from the Health and Human Services Committee be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 614.) 37 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SENATOR STUTHMAN: The confirmation report from the Health and Human Services Committee is adopted. Mr. Clerk.

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CLERK: Mr. President, a second report from the Transportation and Telecommunications Committee. Senator Fischer reports on four appointments to the Board of Public Roads Classifications and Standards.

SENATOR STUTHMAN: Thank you, Mr. Clerk. Senator Fischer, as the Chairman of the Transportation and Telecommunications Committee, you are recognized.

SENATOR FISCHER: Thank you, Mr. President and members. The Transportation and Telecommunications Committee held confirmation hearings on Friday, February 19, for four appointments to the Board of Public Roads Classifications and Standards. All four appointees were appointed for terms which will run from January 27, 2010, until November 30, 2013. The board oversees annual construction planning and fiscal reporting for state and local highways, roads, and streets, as well as the application of minimum design, construction, and maintenance standards for functional classifications of public roadways. The standards ensure that each segment can safely handle the traffic pattern and volume it is expected to carry as part of a policy enacted in 1969 to provide for the efficient management, operation, and control of an integrated system of state and local highways, roads, and streets. The 11 members are appointed by the Governor to four-year terms subject to confirmation by the Legislature. The board is made up of three members from the counties, three from municipalities, two from the Department of Roads, and three lay members. The four appointees include: James Litchfield, a new appointment to represent municipalities under 2,500. Mr. Litchfield is currently employed with the city of Wakefield as the city administrator and the public works director. James Daws, a new appointment as a lay member to represent the first district. Mr. Daws is currently employed as president and owner of Daws Trucking in Milford. Barbara Keegan, a reappointment that represents the counties. Ms. Keegan is from Hemingford and is currently employed as a county highway superintendent. Randall Peters, a reappointment to represent the Department of Roads. Mr. Peters is currently employed with the Nebraska Department of Roads. All four appointees appeared before the committee and testified on their own behalf. The Transportation and Telecommunications Committee recommends these confirmations with six members in favor and two absent. Thank you, Mr. President.

SENATOR STUTHMAN: Thank you, Senator Fischer. Seeing no lights wishing to speak, Senator Fischer waives her opportunity to close. The question before the body is, shall those confirmation reports by the Transportation, Telecommunications Committee be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record.

CLERK: (Record vote, Legislative Journal pages 614-615.) 37 ayes, 0 nays, Mr. President, on adoption of the confirmation report.

SENATOR STUTHMAN: The confirmation report is adopted. Mr. Clerk.

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CLERK: Mr. President, the first bill for discussion this morning, LB689, a bill originally introduced by Senator Langemeier. (Read title.) The bill was discussed yesterday, Mr. President. When the Legislature adjourned for the day, I had no amendments pending. The motion is to advance the bill. [LB689]

SENATOR STUTHMAN: Thank you, Mr. Clerk. Senator Langemeier, would you give us an update as the discussion of yesterday, had...you had given your opening report, so will you give us a brief update? [LB689]

SENATOR LANGEMEIER: Yes, I will. Mr. President, members of the body, I bring to you LB689 that repeals the excise tax, the portion of the corn checkoff that was dedicated up...that is dedicated up until 2012 to promote the ethanol industry and the EPIC Fund. It was scheduled after 2012 to go into the Water Cash Fund. What I'm asking for you to do is let it expire in 2012, which it was supposed to do prior to the passage of LB701. I just want to add one little thing in here. I want to be clear, as there is still the portion of this is the corn checkoff that goes towards the promotion of the corn industry. We're not touching that portion of it. This is an additional three-fifths of a cent that has been collected for the promotion of the ethanol industry in Nebraska, and it was set to expire in 2012. It was extended with LB701. I'm asking you to take that extension off and let it expire in 2012. Thank you, Mr. President. [LB689]

SENATOR STUTHMAN: Thank you, Senator Langemeier. Senator Pirsch, you are recognized. [LB689]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Langemeier would yield to a question or two. [LB689]

SENATOR STUTHMAN: Senator Langemeier, would you yield to a question from Senator Pirsch? [LB689]

SENATOR LANGEMEIER: Yes. [LB689]

SENATOR PIRSCH: Thank you. And could I just confirm with you the reason by which this checkoff was created to begin with? What was the purpose originally? [LB689]

SENATOR LANGEMEIER: The checkoff was first started for the promotion of the corn industry, and then as the ethanol industry started to expand and look like a promising future, this portion was, again, added to the original checkoffs. So their first was a quarter of cent; this was an additional checkoff that was added at three-fifths of a cent to promote ethanol. It was...those promotions end all the payments, though, that have been made as of December 31, 2012. [LB689]

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SENATOR PIRSCH: And so the new use of these funds or the diverted use would be for what then? [LB689]

SENATOR LANGEMEIER: It would be for water, right. [LB689]

SENATOR PIRSCH: Okay. And is there a correlation? Are the...I'm sorry, the individuals who are contributing to the fund, then, these via the corn checkoff, are they statewide then? [LB689]

SENATOR LANGEMEIER: The corn checkoff affects every corn producer and grain sorghum producer in the state of Nebraska. And of that makeup, I've got some conflicting reports here, but roughly 60 to 65 percent of those are irrigators with the balance are dryland farmers,... [LB689]

SENATOR PIRSCH: Okay, so... [LB689]

SENATOR LANGEMEIER: ...statewide paying into it. [LB689]

SENATOR PIRSCH: So there's a very significant portion of individuals paying in the checkoff who are not irrigators then, correct? [LB689]

SENATOR LANGEMEIER: Correct. [LB689]

SENATOR PIRSCH: Okay. [LB689]

SENATOR LANGEMEIER: And as I said before, and I don't want to take too much of your time, but as we had this discussion before is the dryland farmers really aren't participating in farming activities relative to water. Now, personal water use, communities use of water, there's a relationship there, but the activity of raising a dryland crop is irrelevant to water. [LB689]

SENATOR PIRSCH: Yeah. And so there isn't a high correlation between the people who are using the resources of water and the people that are paying into the checkoff is what you're saying, there's the disconnect. [LB689]

SENATOR LANGEMEIER: Right. [LB689]

SENATOR PIRSCH: Okay. And should something not be worked out with respect to the water usage, that's going to come back when the roosters come home to roost and affect those people who do use water down the line if nothing is proactively taken care of, is that correct? [LB689]

SENATOR LANGEMEIER: Correct. If this is repealed, what we have is facing

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regulation, and so that's going to bring the ag groups and the irrigating community and all the uses of water to the table because we don't want to get to regulation. So you'll see a replacement into the future on this. [LB689]

SENATOR PIRSCH: Very good. Well, I do appreciate all your explanations and I do, based on those, support your bill because it seems like there's a vast disconnect between what this checkoff, first of all, was originated...supposed to do, it's mission, so to speak, and what it is now being proposed to do. And it is not a good tool to address...you know, to internalize the costs that are being created. And so on that basis, I do appreciate the bill and I will...I do support it. So thank you. [LB689]

SENATOR STUTHMAN: Thank you, Senator Pirsch and Senator Langemeier. Senator Wightman, you are recognized. [LB689]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I do intend to support LB689 but much like Senator Heidemann remarked yesterday, without a replacement in place, I do it with a lot of reservations. If Senator Langemeier would yield to a question or two, I would like to visit with him on the mike. [LB689]

SENATOR STUTHMAN: Senator Langemeier, would you yield to a question from Senator Wightman? [LB689]

SENATOR LANGEMEIER: Yes. [LB689]

SENATOR WIGHTMAN: Senator Langemeier, you and I have visited off the microphone and I know you have said that you feel that ag will come to the table, but you know as I do that most farmers are not really very receptive of having any replacement tax, that they really feel it's a state issue and the state probably should be picking up all the tab, is that a fair statement? [LB689]

SENATOR LANGEMEIER: I think that's a fair statement and I have to echo what you said before as you do this. This is...it's always a concern to remove one without another. [LB689]

SENATOR WIGHTMAN: Can you tell us any of the things that are being considered? I know that Senator Christensen has a bill that would create an occupation tax on all irrigated farmers, is that correct? [LB689]

SENATOR LANGEMEIER: Senator Christensen has a bill that would address...it's an occupation tax that would be for the use of irrigation within a particular...well, across the state for the use of water in irrigated agriculture, correct. [LB689]

SENATOR WIGHTMAN: Would this occupation tax vary substantially from the

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occupation tax that's presently before the court, I think, before the District Court of Lancaster County that we had for the Republican Valley? [LB689]

SENATOR LANGEMEIER: The current occupation tax that's out there that you mention that's in the court, it's being challenged on a closed class. I think we've resolved that with Senator Christensen's bill. I'm not sure I agree with the argument that the first was a closed class, but I'm really positive the second is not. [LB689]

SENATOR WIGHTMAN: Okay. So the closed class that you're talking about would have been just irrigated on the Republican River, is that correct? Was that the class that was... [LB689]

SENATOR LANGEMEIER: That's the challenge is that it's too narrow for those only in an area that can't be expanded. I think you'll see the new one is expanded out. And this may be a funding source for this exact type of water fund in the future too. [LB689]

SENATOR WIGHTMAN: Were there...Senator Langemeier, were there other challenges in that Republican River Basin issue other than just challenges on the basis of the closed class? [LB689]

SENATOR LANGEMEIER: The first challenge was, is the state cause and that was for the property tax portion and the Supreme Court upheld that and threw that out. And so that was the first challenge, this is the secondary challenge on closed class for the occupation tax. [LB689]

SENATOR WIGHTMAN: Is the occupation tax being challenged as being a tax by the state as well? Is that an issue in that lawsuit? [LB689]

SENATOR LANGEMEIER: Not to my knowledge. My knowledge is that the first challenge on that is, is that it is a closed class. [LB689]

SENATOR WIGHTMAN: Now, as I understand some of the other issues that have been discussed and maybe other sources of funding would be if perhaps consideration of tax on irrigation wells or inches of water pumped, is that correct? [LB689]

SENATOR LANGEMEIER: Those ideas have all been bantered around. Do you try...how do you narrow this down to agriculture? I would argue that some of this burden is still a statewide burden, but I think agriculture has to be a big player in it because they're a big player in water use in Nebraska. [LB689]

SENATOR STUTHMAN: One minute. [LB689]

SENATOR WIGHTMAN: And I agree with you that some of it is a statewide issue and

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that some of the cost probably will need to be picked up by the state generally, and the question is going to become how much and what the source of funding will be, I understand. [LB689]

SENATOR LANGEMEIER: I think if this bill moves from General File to Select File, those discussions are going to happen immediately. [LB689]

SENATOR WIGHTMAN: Thank you, Senator Langemeier. Thank you, Mr. President. [LB689]

SENATOR STUTHMAN: Thank you, Senator Wightman and Senator Langemeier. Senator Wallman, you are recognized. [LB689]

SENATOR WALLMAN: Thank you, Mr. President and members of the body. I, too, support this amendment, and we're all water users. I want to emphasize we're all water users. We...Senator Christensen and Tom...Senator Carlson have done a lot of work for their districts and it concerns taxes. And this is a state issue. You know, if we have state water rights, the state promoted irrigation, they promoted these canals and now you have...you know, you have to wonder what's happening to the valley that they have to pick up costs. Is the Blue Valley next? Is this next? Is this next? So I appreciate what they're trying to do and please vote for this bill. Thank you. [LB689]

SENATOR STUTHMAN: Thank you, Senator Wallman. Seeing no other members wanting to speak, Senator Langemeier, you are recognized to close. [LB689]

SENATOR LANGEMEIER: Mr. President and members of the body. And as I told Senator Wightman, the discussion to the future replacement for this will start immediately after this so we can prepare for the future to deal with water needs and this is an issue of the decade, so. I would appreciate your support in moving LB689 to Select File. Thank you. [LB689]

SENATOR STUTHMAN: Thank you, Senator Langemeier. You have heard the closing on LB689. The question before the body is, shall LB689 be advanced? Those in favor vote yea; those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB689]

CLERK: 44 ayes, 1 nay, Mr. President, on the advancement of LB689. [LB689]

SENATOR STUTHMAN: LB689 does advance. Mr. Clerk. [LB689]

CLERK: Mr. President, LB764 is a bill by Senator Fischer. (Read title.) The bill was introduced on January 6 of this year, referred to the Natural Resources Committee. The bill was advanced to General File. There are Natural Resources Committee

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amendments. (AM1751, Legislative Journal page 475.) [LB764]

SENATOR STUTHMAN: Thank you. Senator Fischer, you are recognized to open. [LB764]

SENATOR FISCHER: Thank you, Mr. President and members. Good morning. LB764 amends the Nebraska Groundwater Management and Protection Act to allow a natural resources district in a river basin that has not been designated as overappropriated or has not been determined to be fully appropriated to develop an integrated management plan jointly with the Department of Natural Resources. In my years serving on the Natural Resources Committee, I've listened to hours of testimony on how LB962 is not working, how current water management statute only provides regulation and moratoriums on new uses, and how the law doesn't foster proactive management. Last year, I introduced LB54 that provided a process for NRDs as they build out their IMPs. Could I have a gavel please, Mr. President? [LB764 LB54]

SENATOR STUTHMAN: (Gavel) [LB764]

SENATOR FISCHER: Thank you. Even after the passage of LB54, I continued to think about methods to manage our water resources while still allowing our committees to foster economic development. This interim I worked with various groups, including the Nebraska Association of Resources Districts and the Nebraska Farm Bureau, to craft LB764. I believe this legislation will provide the planning and management piece that is missing in LB962. If passed, this legislation will allow NRDs to proactively begin building plans to manage their water resources. Building individual and unique IMPs is the best method for addressing our state's water challenges. It will provide the information necessary for planning, conservation, development, management, and protection of our water resources. IMPs should be holistic plans that maximize the economic and environmental benefits of our ground and surface water resources, factoring in water quality and quantity, recreation, wildlife, and economic development. When building each plan, NRDs should thoroughly examine all options and how these options will affect the economy of their areas before implementing the plan. Ensuring that water is available for future power plants, irrigated agriculture, and municipal uses are just some of the economic factors NRDS need to consider. I worked with several groups prior to the committee hearing for this bill to fine-tune some of the components which are presented in the committee amendment. As you can see on the committee statement, the bill was voted unanimously out of committee and no one testified in opposition. I believe this bill is important and I am serious about working with all parties to ensure its success. It's important that we work together to build comprehensive IMPs unique to each basin to ensure that we fully develop our water resources while protecting them for future generations. Thank you, Mr. President. [LB764]

SENATOR STUTHMAN: Thank you, Senator Fischer. You have heard the opening on

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LB764. As the Clerk has stated, there are Natural Resources Committee amendments. Senator Langemeier, as Chair of the Natural Resources Committee, you are welcome to open on the AM1751. [LB764]

SENATOR LANGEMEIER: Mr. President and members of the body. The committee amendment offered in AM1751 to LB764 is very simple. It cleans up a couple of wording and takes out a deadline that's irrelevant for IMPs that are being created outside of a fully appropriated designation to mimic the intent of the bill. It also adds current language that has some unintended consequences and are removed and replaced in AM1751. So very technical cleanup to LB764. And with that, I'd ask for your adoption of AM1751. [LB764]

SENATOR STUTHMAN: Thank you, Senator Langemeier. You have heard the opening on Natural Resources Committee amendment. Senator Avery, you are recognized. [LB764]

SENATOR AVERY: Thank you, Mr. President. I wonder if Senator Fischer would submit to a question or two. [LB764]

SENATOR STUTHMAN: Senator Fischer, would you answer a question from Senator Avery? [LB764]

SENATOR FISCHER: Yes. [LB764]

SENATOR AVERY: Thank you, Senator Fischer. Would you mind just for my personal edification explaining what an integrated management plan is? [LB764]

SENATOR FISCHER: An integrated management plan, Senator Avery, is required of natural resource districts or NRDs once a basin has been declared fully or overappropriated. And what this bill would do is offer that option to other NRDs that are not fully appropriated so that they can work together with stakeholders in that region in order to proactively address the needs of their basin and recognize the stakeholders that are involved and the water resources in that basin. [LB764]

SENATOR AVERY: Thank you, Senator. So this would expand the authority of integrated management plans so that they can apply to river basins and streams before they are declared fully or overappropriated, is that correct? [LB764]

SENATOR FISCHER: I wouldn't use the term it expands the authority of the IMPs. I prefer that it offers that option to all NRDs so that they can begin working on a process to fully balance and develop their water resources. [LB764]

SENATOR AVERY: At the current time, it is IMPs are only created for fully or

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overappropriated basins, correct? [LB764]

SENATOR FISCHER: That would be correct. [LB764]

SENATOR AVERY: So this may not...this is not an expansion of an authority but it does allow for additional IMPs. [LB764]

SENATOR FISCHER: Yes. I think it's something positive that NRDs can look at doing in their own local area with regard to water resources. It's a positive step. It's a proactive step. It involves all the stakeholders in that basin and, I guess, facilitates those stakeholders in discussing the needs of the basin, the resources that are available and how they can work together in maximizing the uses of those resources while certainly protecting the resources in the basin and preserving what is currently available. [LB764]

SENATOR AVERY: I'm glad you mentioned stakeholders because I'm unsure as to how stakeholders are identified. Do you have any information on that? [LB764]

SENATOR FISCHER: Yes, I do, Senator. I have some notes on that. Currently, once a district is determined to be fully appropriated and that determination is made by the Department of Natural Resources not by a local NRD, it's made by the State Department of Natural Resources. Then the local NRD begins to identify entities that are considered stakeholders and should be considered stakeholders in that basin. They send out letters then asking the different stakeholders to participate. They set... [LB764]

SENATOR STUTHMAN: One minute. [LB764]

SENATOR FISCHER: Thank you, Mr. President. They set up meeting schedules so that they can begin the discussions with the various stakeholder groups. Those stakeholders are not listed in statute, and I would not support a stakeholder list being in statute because I think we need the flexibility within each NRD and within each basin on which parties need to be included. It's my understanding that the stakeholders in the district...I guess they usually include the usual suspects in an NRD. You have, of course, the local irrigation interests. You have community interests. You have wildlife and recreation interests. You have conservation interests. [LB764]

SENATOR STUTHMAN: Time. [LB764]

SENATOR FISCHER: Thank you, Mr. President. [LB764]

SENATOR STUTHMAN: Thank you, Senator Avery and Senator Fischer. Senator Carlson, you are recognized. [LB764]

SENATOR CARLSON: Mr. President and members of the Legislature. I stand in

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support of LB764 and the underlying amendment, AM1751. The wording of the bill is such that NRDs may plan and engage in IMPs and it's not dictated in "shall" language. I also agree that it does not expand the authority; that's really not the purpose. What it does is encourage forward planning. And I would say this, that very definitely in the state of Nebraska, irrigation wells are assets, they are not liabilities. We have wonderful, priceless, magnificent asset in our ground water, which in my opinion is far more valuable than oil or gas. But we must be good stewards of the asset that we have. We must take steps to assure that water is available and adequate for future generations and not just today. Many other states are in trouble concerning their ground water. We are not and we want to make sure that we stay that way so that in future years Nebraska and agriculture will be in a position to really take advantage of wealth and the ability to do business in a way that will bring far more tax dollars and revenue into the state of Nebraska than if we aren't good stewards of this valuable, valuable resource. So I thank Senator Fischer for bringing the bill and would ask for your support. Thank you. [LB764]

SENATOR STUTHMAN: Thank you, Senator Carlson. Senator Sullivan, you are recognized. [LB764]

SENATOR SULLIVAN: Thank you very much, Mr. President and members of the body. I rise in support of AM1751 and the underlying bill, LB764, but I wondered if Senator Fischer would entertain a couple of questions. [LB764]

SENATOR STUTHMAN: Senator Fischer, would you entertain a couple of questions from Senator Sullivan? [LB764]

SENATOR FISCHER: Certainly. [LB764]

SENATOR SULLIVAN: Thank you, Senator. Your conversation with Senator Avery clarified for me just who all is involved as stakeholders in the development of the IMP process. I just wanted to clarify that, in fact, the local irrigation districts are...do they fall into the category of stakeholders? [LB764]

SENATOR FISCHER: Yes, Senator Sullivan, in my estimation they do. In fact, thank you for the question because I need to clarify. In statute there are some broad categories of stakeholders that are listed and I believe that irrigation districts...yes, irrigation districts are listed in that broad category. [LB764]

SENATOR SULLIVAN: Okay. Very good. What happens under this bill in the scenario that a district would be determined to be fully appropriated? Does that change anything under this bill? [LB764]

SENATOR FISCHER: I don't know if I'm following your question, Senator. [LB764]

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SENATOR SULLIVAN: Well, I think there is something in the legislation that says this doesn't avoid the possibility of a basin becoming fully appropriated. [LB764]

SENATOR FISCHER: No, it would not. [LB764]

SENATOR SULLIVAN: Okay. As I said, I'm in favor of this legislation and I'm certainly in favor of the local control that is included with the NRDs developing the integrated management plan in a very proactive way in this scenario. But also I'm cognizant of the fact that, for example, in my district I have several NRDs and within one of those NRDs I have five irrigation districts with nearly 200,000 acres of land being irrigated by them in the district. They, at times, can be concerned that their local control will certainly be impacted by the decisions of NRDs as they develop an IMP. Granted, it's important, as Senator Fischer had said, that all stakeholders be at the table in the development of this IMP, but I think we just need to be aware that it is a challenge to involve everyone and that some decisions made at the local level may impact entities in different ways. But, again, I rise in support of this legislation. Thank you. [LB764]

SENATOR STUTHMAN: Thank you, Senator Sullivan and Senator Fischer. Senator Christensen, you are recognized. [LB764]

SENATOR CHRISTENSEN: Thank you, Mr. President. I'm in support of this bill and I want to quickly explain why I think this is a great bill to have to allow the NRDs to prepare these plans ahead of time. We're already fighting different areas that are overappropriated, that are fully appropriated that are still trying to get their plans put in place or change their plans to bring the state in compliance with compacts. And if we don't have this initial preplanning, we're always working behind the eight ball. We're always starting to plan once they're fully appropriated instead of starting these plans ahead of time. This just allows the local NRDs, if they choose to, to work with the DNR and the department, get their scientific input, get their structuring to have a plan to make sure they don't get into further regulation that will prevent the need of what I talked about yesterday, having to have the occupation tax, have to look at state funding and different approaches to handle water situations. We can't afford to have every district into this situation. We've got to learn from the past. This is a very proactive step forward to allow us to better manage the state's resources for the benefit of individual areas and the state. Thank you, Mr. President. [LB764]

SENATOR STUTHMAN: Thank you, Senator Christensen. Seeing no other senators wishing to speak, Senator Langemeier, you are recognized to close. Senator Langemeier waives closing on AM1751 of the Natural Resources Committee. The question before the body is, shall AM1751 be adopted to LB764? All those in favor vote yea; all those opposed vote nay. Mr. Clerk, please record. [LB764]

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CLERK: 37 ayes, 0 nays, Mr. President, on adoption of committee amendments.
[LB764]

SENATOR STUTHMAN: Committee amendments are adopted. Seeing no other senators wishing to speak, Senator Fischer, you are recognized to close on LB764.
[LB764]

SENATOR FISCHER: Thank you, Mr. President and members. I thank you for your support of the amendment and I hope you will also support the underlying bill. If a natural resource district or a basin becomes fully appropriated and they have participated and taken advantage of this option to begin or to even complete the integrated management planning process, that plan that they have can be amended to become their IMP when they are declared fully appropriated. I think that helps clarify it for Senator Sullivan. Also, a question Senator Sullivan had asking if this would preclude any NRD from becoming fully appropriated. You know, in a way I think it will because I think the people in the natural resource district, the board members along with all the stakeholders, will have been talking, will have been proactively planning, will have been addressing the needs of the district and also the concerns in that district and within that basin. And I think if they're able to do that, depending on weather of course but if they're able to do that, we might not see anymore fully appropriated basins because I think that the needs will be met and the resources will be managed. That's my hope for this bill, that the NRDs will take advantage of this, work with their stakeholders, work with DNR in coming forward with a good, solid management plan that addresses concerns in their local area. My last point, we hear a lot of talk about a statewide water plan and the need for a statewide water plan, and we can certainly debate that. But my view of this bill would be that if all the NRDs do take advantage of this option, if they do create IMPs that are specific to their area and address their needs, their local needs, and address the concerns of all the stakeholders, I think the state is on a very positive route to having a statewide water plan. And that statewide water plan would be all of these individual, integrated management plans. That's a possibility that we can certainly look at in the future. And with those comments, Mr. President, I would ask for the advancement of LB764. Thank you. [LB764]

SENATOR STUTHMAN: Thank you, Senator Fischer. You have heard the closing on LB764. The question before the body is, shall LB764 advance to E&R Initial? Those in favor vote yea; those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB764]

CLERK: 40 ayes, 0 nays, Mr. President, on the advancement of LB764. [LB764]

SENATOR STUTHMAN: LB764 does advance. Mr. Clerk for an announcement. [LB764]

CLERK: Mr. President, the Health Committee will have an Executive Session under the

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south balcony at 10:00. The Health Committee at 10:00. That's all that I have, Mr. President.

SENATOR STUTHMAN: Thank you, Mr. Clerk. Mr. Clerk.

CLERK: Mr. President, next bill, LB805, is a bill by the Transportation and Telecommunications Committee and signed by its membership. (Read title.) The bill was introduced on January 8 of this year, at that time referred to the Transportation and Telecommunications Committee. The bill was advanced to General File. There are committee amendments, Mr. President. (AM1913, Legislative Journal page 556.) [LB805]

SENATOR STUTHMAN: Thank you, Mr. President (sic). (Visitors introduced.) Senator Fischer, you are recognized to open on LB805. [LB805]

SENATOR FISCHER: Thank you, Mr. President and members. LB805 amends the reference dates found in the motor vehicle statutes that are governed by federal laws. The bill adopts the most recent version of the International Registration Plan or IRP, not IMP. Nebraska has been an IRP member jurisdiction since 1975. Membership in IRP allows trucking companies in Nebraska to pay registration fees in Nebraska for all the jurisdictions through which the company operates. The Motor Carrier Services Division of the department distributes the collected registration fees to other jurisdictions based on a pro rata share of the mileage that the carrier travels in each jurisdiction. Generally speaking, IRP has made registration of trucks traveling in interstate commerce more efficient for the industry. These amendments will allow Nebraska to follow IRP as it was revised on January 1, 2010. LB805 also updates references to federal regulations governing the operation of commercial motor vehicles and the issuance of commercial driver's licenses. The changes allow the DMV to follow the federal regulations as they exist on January 1, 2010. It is important for Nebraska to remain in compliance with federal laws in this area. If Nebraska fails to comply with these laws, the Federal Motor Carrier Safety Administration has the authority to withhold funding for Nebraska's Motor Carrier Safety Assistance Program and federal highway funds. Nebraska has also adopted the Federal Motor Carrier Safety Act. The emphasis of this act was placed on the states adopting uniform safety measures with the ultimate goal of a reduction in the number of commercial motor vehicle accidents. In order for the state to remain consistent and compliant with these federal requirements, it is necessary to update the commercial vehicle safety regulations annually. This update will enable the Nebraska State Patrol to continue enforcing updated Federal Motor Carrier Safety Regulations and Hazardous Material Regulations as they went into effect on January 1, 2010. Enforcement of these safety measures increases the likelihood the safety defects, commercial driver deficiencies, and unsafe motor carrier practices will continue to be detected and corrected. The bill also updates the references to federal regulations governing handicapped parking tags. Thank you, Mr. President. [LB805]

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SENATOR STUTHMAN: Thank you, Senator Fischer, for the opening on LB805. As the Clerk has stated, the Transportation and Telecommunications Committee has AM1913. And, Senator Fischer, as Chairman of the Transportation and Telecommunications Committee, you are recognized to open on this amendment. [LB805]

SENATOR FISCHER: Thank you, Mr. President and members. The committee amendment, AM1913, includes four bills that were introduced before the Transportation and Telecommunications Committee this session. LB761 restricts the eligibility of an employment driving permit to DUI first-time offenders. This bill was a direct result of a court case in which the court found that the employment driving permit language in the existing statute was not clear enough to prohibit a repeat offender from obtaining an employment driving permit. Because the current language is silent, the DMV had interpreted this to mean that it lacked authority to issue a permit to a repeat offender. The court mandated the DMV to issue a permit to a repeat offender with no wait period, thus giving favorable status over the first-time offender who is required to serve a 30-day no driving period. The bill makes it clear that an employment driving permit will not be issued for any person who has had an ALR revocation within the previous 12 years. This change limits the permit to DUI first-time offenders. LB808 is a clean-up bill to bring the Nebraska statutes into compliance with federal laws governing commercial motor vehicles and commercial driver licenses, and also remove an...excuse me, and also remove an obsolete provision of law. The bill amends the definition of farm vehicle to make it consistent with federal law. A recent federal audit found that Nebraska's language did not explicitly reflect the federal language of farm vehicle as required by federal law. Instead, the definition of farm truck was used as it applies to motor vehicle registrations. The bill brings Nebraska into compliance with the federal CDL exemption for operators of farm trucks but does not change the substantive law. A farm vehicle is not considered a commercial motor vehicle as it is not under the current exemption in Nebraska law. The bill strikes the requirements of an affidavit for a person applying for a duplicate or replacement CDL. Notarization for other duplicate and replacement licenses was eliminated ten years ago. This change will make the duplicate and replacement license process consistent for all driver license types. The bill makes it clear that the disqualification and revocation of commercial motor vehicle drivers for some serious offenses may occur in a private vehicle. The federal act requires the disqualification and revocation of a CDL for some serious offenses that occur while driving a private vehicle. An example of a serious offense under federal law is a conviction for drunk driving in a personal vehicle. The changes made in LB808 will give the DMV clear authority to revoke the CDL license of a CDL holder who commits a serious driving offense while operating a personal vehicle. Finally, LB808 adopts 49 CFR 392.9(a) as an authorizing provision of declaring of out-of-service order. In 2009, this provision was inadvertently left out of a reference to federal regulations that would ensure the state out-of-service definition mirrors federal regulations. The amendment rectifies that omission. LB819 provides for the treatment of an intersection with a power

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outage or malfunctioning traffic signals and eliminates a requirement for increasing speed limit intervals. The bill adds a new subsection that states the proper procedure when a control signal has malfunctioned or had a power failure. If there is no officer, flag person, or device directing traffic at the intersection, then it shall be treated as a multiway stop. This situation is not expressly addressed by current statute and may lead to confusion under the rules of the road. The bill also strikes the requirement that the speed limit of a highway may only be increased at 20-per-mile increments. Current state statute limits the difference between adjacent speed limits to no more than 20 miles per hour. This provision of law was meant to protect the public against possible speed traps by law enforcement. However, there is no such danger when the speed of a highway is being increased. The bill makes no change for reducing the speed limit along a highway and still requires a decrease of a maximum of 20 miles per hour. LB841 authorizes the DMV to release a digital image or digital signature to a law enforcement officer employed in an investigative position by a local agency. Last session, the Legislature passed LB372 that gave state and federal agencies who have a law enforcement officer employed the right to this information. The bill expands the release of information to a local agency that has a law enforcement officer on staff who is employed in an investigative position. And that concludes my opening on the amendment. Thank you, Mr. President. [LB805 LB761 LB808 LB819 LB841 LB372]

SENATOR STUTHMAN: Thank you, Senator Fischer. You have heard the opening on the Transportation and Telecommunications amendment, AM1913 to LB805. Seeing no senators wishing to...Senator Carlson, you're recognized. [LB805]

SENATOR CARLSON: Mr. President and members of the Legislature, I'd like to ask Senator Fischer a couple of questions if she would yield? [LB805]

SENATOR STUTHMAN: Senator Fischer, would you yield to a couple of questions from Senator Carlson? [LB805]

SENATOR FISCHER: Yes, I will. [LB805]

SENATOR CARLSON: Senator Fischer, one of the items in here caught my eye and I'd like to ask a question about it. It's on page 12, starting with line 13. And it's about a traffic control signal... [LB805]

SENATOR FISCHER: Senator Carlson, are you on the amendment? [LB805]

SENATOR CARLSON: Yes, I am. I'm on the amendment. [LB805]

SENATOR FISCHER: Thank you. [LB805]

SENATOR CARLSON: Okay. If a traffic control signal at an intersection is not operating

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because of a power failure, so first of all, this would only apply if there were traffic lights and not stop signs or anything, would that be correct? [LB805]

SENATOR FISCHER: Correct. [LB805]

SENATOR CARLSON: And just in looking at that, that would seem to me to be a pretty dangerous situation. Is there any kind of a...what's the goal in terms of time to get out and fix something like that that's not operating? Is there a regulation on that? [LB805]

SENATOR FISCHER: I don't believe there's anything in statute on that. It would be up to either the Department of Roads or, in the case of the city street, to the municipality. [LB805]

SENATOR CARLSON: Well, this may be something that they've got an internal procedure that they follow, but if you have...if you're used to a light and you come there and it's not there, then if you're...a local person probably understands that there used to be a light there and it's supposed to be functioning and I think maybe I would slow down and even stop because then it's supposed to become a four-way stop. [LB805]

SENATOR FISCHER: Correct. [LB805]

SENATOR CARLSON: But visitors that don't know that and nothing draws their attention to a light because it's not there, that is a dangerous situation. [LB805]

SENATOR FISCHER: I agree with you, Senator Carlson, and I would also assume that the...assume and hope that the state and any county or city or village realizes the liability involved when you have such a malfunction and would correct it as soon as possible. [LB805]

SENATOR CARLSON: Well, thank you for that. And then if you go to the next part starting with line 18, if a traffic control signal is not in service and the signal heads are turned away from traffic or covered with opaque material, then the preceding section doesn't apply, but that would make it even more important that there then be stop signs or caution signs or something there, otherwise it looks like a pretty dangerous situation. [LB805]

SENATOR FISCHER: I agree with you, again, Senator Carlson. When a traffic signal is covered, the stop signs will be up or a yield sign, caution sign. [LB805]

SENATOR CARLSON: When it's covered, there will be signs there then? [LB805]

SENATOR FISCHER: As you referred to that section, yes. [LB805]

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SENATOR CARLSON: Okay. Okay. Thank you, Senator Fischer. [LB805]

SENATOR STUTHMAN: Thank you, Senator Carlson and Senator Fischer. Seeing no other lights, Senator Fischer, you are recognized to close on AM1913. Senator Fischer waives closing. The question before the body is, shall AM1913 of the Transportation and Telecommunications Committee be adopted to LB805? All those in favor vote yea; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB805]

ASSISTANT CLERK: 37 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB805]

SENATOR STUTHMAN: The committee amendments are adopted. Seeing no other lights, Senator Fischer, you are recognized to close on LB805. [LB805]

SENATOR FISCHER: Thank you, Mr. President and members, and thank you for passing the amendment. As you heard in my opening on the amendment and the bill, the majority of this bill does deal with Nebraska's need to be in compliance with federal law and I would urge your advancement of the bill to Select File. Thank you, Mr. President. [LB805]

SENATOR STUTHMAN: Thank you, Senator Fischer. You have heard the closing on LB805. The question before the body is, shall LB805 advance to E&R Initial? Those in favor vote yea; those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB805]

ASSISTANT CLERK: 38 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB805]

SENATOR STUTHMAN: LB805 does advance. Mr. Clerk. [LB805]

ASSISTANT CLERK: Next bill, LB951 was introduced by Senator Avery. (Read title.) The bill was read for the first time on January 14 of this year. It was referred to the Government, Military and Veterans Affairs Committee. That committee reports the bill to General File with no committee amendments. [LB951]

SENATOR STUTHMAN: Thank you. Senator Avery, you are recognized to open on LB951. [LB951]

SENATOR AVERY: Thank you, Mr. President. LB951 is a bill that deals with military voters, persons living outside the United States, and other overseas voters. It is intended to implement the provisions of the federal Military and Overseas Voter Empowerment Act, which is known as MOVE, that was passed by the U.S. Congress in

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October of 2009. The MOVE Act requires, among other things, that states transmit ballots for early voting not later than 45 days before the election. Additionally, voter registration applications, early voting applications, and blank ballots must be made available electronically to military and overseas voters. The MOVE Act requires the Secretary of State to develop a free-access system by which overseas voters and military voters may determine whether his or her ballot has been received by the appropriate election official. Some of the provisions that are in the MOVE Act are already in law in our state, such as transmitting ballots for early voting 45 days before the election. LB951 puts into place additional requirements of the MOVE Act such as providing that members of the armed forces and overseas citizens and persons residing outside the country may indicate a preference for ballots and other election materials to be delivered by way of fax transmission or electronic mail. They can indicate this preference on the federal postcard application. If the person indicates such a preference, the county election official will accommodate the voters preference. Also, the Secretary of State must develop a process for members of the armed forces and people living outside the country to cast their ballot and check the status...let me restate that. The Secretary of State must develop a process for members of the armed forces and people outside the country who are casting a ballot to check the status of their ballot by way of the Internet or a toll-free telephone call. So now that will be a new provision for the state of Nebraska which we do not now do that would allow armed forces members and people living outside the country to check on the status of their ballot after they have cast it. According to the federal MOVE Act, these provisions need to be adopted by all of the states before the 2010 November general election, so we have to do it this year. The committee worked with the Secretary of State's Office in crafting this bill. It is our best effort to implement the provisions of the MOVE Act. I cannot promise you that we will not come back next year with some additional legislation because we may find that after we have had one year experience with this new system, we may need to refine the law. I don't expect that, not yet, but I just want to put you on notice that we might need to do that. If you have looked at the fiscal note, you will see that it will cost approximately \$80,000 for the Secretary of State to create the required Web site that would be necessary for people overseas to check on the status of their ballots. The Secretary of State and I have been working on this fiscal note. If you go to your computer, you will see that a revised fiscal note has been filed. We do not yet have hard copies for you, but there is an electronic version on your computer and you will see that at the bottom of that fiscal note, the Secretary of State indicates that funds are available from the Help America Vote Act to be utilized to cover this \$80,000. This is federal money. It is not state money. The original fiscal note suggested that the \$80,000 might have to come out of the General Fund. We have taken care of that. It will be federal money that has already been appropriated from the Election Administration Cash Fund. For this reason, the appropriation or any appropriation to address this bill's cost would not be necessary. It would come out of a cash fund source and it will be federal money. The committee advanced this bill on a 7 to 0 vote with one person being absent. There was no opposition to the bill at the

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hearing. One other comment. When the A bill comes before us, I will speak a little bit more about the fiscal note, but I want you to put your mind at ease now when you are preparing to vote on General File that it will not have a General Fund impact on the state. Thank you, Mr. President. [LB951]

SENATOR FISCHER PRESIDING

SENATOR FISCHER: Thank you, Senator Avery. (Visitors introduced.) You have heard the opening on LB951. Senators wishing to speak are, Senators Christensen, Gloor, and Fulton. Senator Christensen, you are recognized. [LB951]

SENATOR CHRISTENSEN: Thank you, Madam President. Would Senator Avery yield to a question, please? [LB951]

SENATOR FISCHER: Senator Avery, would you yield? [LB951]

SENATOR AVERY: Yes, I will. [LB951]

SENATOR CHRISTENSEN: When we're talking...I'm on page 5 of the bill, Section 2 there, when we're talking about people who have never resided in the United States, who are not registered to vote in any state, and whose parent is registered to vote, we're not talking military only, we're opening this up to anyone, correct? [LB951]

SENATOR AVERY: No, we're not opening it up to anyone. We're opening it up to U.S. citizens that live abroad, and in some cases children are born aboard, never lived in the United States. They reach the age where they can vote and wish to vote, then they are allowed to register in their parents home county, and then become eligible to vote. They're still citizens of the United States. [LB951]

SENATOR CHRISTENSEN: Correct, but they're not in the military or don't have to be in the military, correct? [LB951]

SENATOR AVERY: That's correct. [LB951]

SENATOR CHRISTENSEN: I guess where I'm coming from on this, Senator Avery, is I'm getting a little concerned about somebody that's probably working overseas, has never been to the United States, don't understand the United States, the policy and what...maybe not even fully understand what's going on over here now all of a sudden has the right to vote. If they're in the military, I'm all over it. They need to vote. They need to have the rights to vote. But I guess I'm a little concerned, you know, if this is somebody that's still living at home, going to school, I understand. If they're just someone that is overseas, working overseas, never been to the United States, I'm a little bit concerned about opening this up for voting. (Inaudible) [LB951]

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SENATOR AVERY: Well, then you would have concerns about the rights of citizenship in this country because citizenship in this country gives you the right to vote if you qualify with all the regulations. I might also indicate that the section to which you refer is already current law. [LB951]

SENATOR CHRISTENSEN: Well, I'm looking at underlying language, so assume it's new language on page 5, Section 2. But I understand the citizenship and being able to vote but I guess I'm a little concerned about someone that's not interested in being here. You know, I understand the part and I'm probably not going to try to hold this up over it, but I did want to ask questions on it. On a little different subject, when we're talking about the electronic, I assume, delivery of the ballot, how is the ballot counted? Can they resubmit it electronically, and electronic signature, or do they have to mail this in with their signature? [LB951]

SENATOR AVERY: I believe so. I believe that is possible. We've discussed a number of these issues in the Government Committee and we've discussed so many I can't exactly remember which one (laugh) was which. But I'm pretty sure that is currently an available option. [LB951]

SENATOR CHRISTENSEN: Because where I'm going to is page 7, and when we're talking about the person may indicate a preference on the ballot for other election materials to be delivered by fax transmission... [LB951]

SENATOR FISCHER: One minute. [LB951]

SENATOR CHRISTENSEN: ...or electronic mail, I guess I was wondering now how do they finish this vote? Do they mail this in? Do they turn around and do it on a computer, fax it back in? I guess I'm just concerned that we don't open ourselves up to any fraud. [LB951]

SENATOR AVERY: It's mailed, so. [LB951]

SENATOR CHRISTENSEN: Okay. Thank you, Madam President. [LB951]

SENATOR FISCHER: Thank you, Senator Christensen and Senator Avery. Senator Gloor, you are recognized. [LB951]

SENATOR GLOOR: Thank you, Madam President. I wonder if Senator Avery would yield to some questions. [LB951]

SENATOR FISCHER: Senator Avery, will you yield? [LB951]

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SENATOR AVERY: Yes, I will. [LB951]

SENATOR GLOOR: Senator Avery, do we have any idea on the numbers of potential voters we're talking about, both...and I recognize that some are armed forces and some are overseas voters? [LB951]

SENATOR AVERY: I can't answer that. I know that we have a number of deployments right now in Afghanistan and in Iraq, but I do not know the exact number. And I don't know how many citizens we have abroad, but I can tell you I experienced this once myself. I was a visiting professor at the University of Warsaw during a presidential election, and we...there were a number of Americans who were there and all of us were able to vote. At that time, though, you had to go to the embassy to vote. [LB951]

SENATOR GLOOR: And I, too, fit into that category of someone who had that opportunity when I was stationed overseas, knew the few Nebraskans who were also stationed at my air base and we put our heads together to find out if...and who knew anything about the candidates that we were expected to vote on. And it was a pretty simple process and I remember being impressed that our government and our state took the time to make sure we had access to ballots. But it would seem to me, and that's the reason I'm looking, that we may be dealing with far more armed forces members who fall under the early election component than overseas voters. Again, during the testimony and hearing, any guess as to whether that's true or not or is it (inaudible)... [LB951]

SENATOR AVERY: My guess is it is true. We may have some Nebraska nonresidents but Nebraska citizens who are retired and may be living in Panama or Costa Rica. There are a number of expatriates who do retire in foreign countries, and there are a number who reside abroad because of work obligations, but the vast majority of the people we're talking about here will be military, people who are deployed in hostile environments. [LB951]

SENATOR GLOOR: And I understand you're working on the fiscal note but, again, it's my understanding from what I've read and what you've said this would be, regardless of where the dollars come from, this would be a one-time set-up expense for the Web site and that there would not be year-to-year ongoing expenses associated with this? [LB951]

SENATOR AVERY: That is correct. [LB951]

SENATOR GLOOR: And you had mentioned checking on the status of their ballot. Just what exactly does checking on the status of their ballot mean? [LB951]

SENATOR AVERY: Verifying that the ballot was received. [LB951]

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SENATOR GLOOR: Okay. It doesn't allow them to go back in and... [LB951]

SENATOR AVERY: No, they can't. [LB951]

SENATOR GLOOR: ...check how they voted or make any changes on how they voted? [LB951]

SENATOR AVERY: No. [LB951]

SENATOR GLOOR: Okay. Final question for you, sir. As you're aware, right now anyone can go to the election commissioner's office to find out what absentee ballots have been sent out or early election ballots have been sent out on a daily basis. And if you're campaigning, that serves as a valuable opportunity for you to contact those same individuals to talk about your issue, your...whether it's a constitutional amendment, whether it's an elected officials position. Will this still allow that to happen, do you know? [LB951]

SENATOR AVERY: I don't think it changes that, Senator. [LB951]

SENATOR GLOOR: Okay. Thank you for your answer to those questions. I can't see any reason that I would not be supportive of LB951. And, again, when I was able to use this many years ago, found it a wonderful, wonderful service and a nice reaffirmation of the importance of our democracy and representative form of government. Thank you. [LB951]

SENATOR FISCHER: Thank you, Senator Gloor and Senator Avery. Senator Fulton, you are recognized. [LB951]

SENATOR FULTON: Thank you, Madam President. I stand in support of LB951. However, there's some thoughts that I want to make known here and I would...I will eventually ask Senator Avery to yield to a question. In fact, I'll do that now, if Senator Avery would yield to a question. [LB951]

SENATOR FISCHER: Senator Avery, would you yield to questions from Senator Fulton? [LB951]

SENATOR AVERY: Yes, I will. [LB951]

SENATOR FULTON: Okay. Thank you for the bill, Senator. This is something that is very important that we recognize those who are overseas who are U.S. citizens who have the ability and right to vote, who have the intention to vote but may not have the means, explicitly anyway. So I'm going to support this bill, but I would like to get your

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thoughts and I'd like to get this into the record for future...for the sake of posterity. If we were to enact this legislation to allow for an electronic...to capture the electronic media such that one can vote from places overseas, what would be the argument to disallow the utilization of electronic media for voting, indeed, for all of us here? [LB951]

SENATOR AVERY: Well, my personal opinion, Senator, is that we will get to that point eventually in this country. The technology is there and I suspect that you'll see it in your lifetime and mine. [LB951]

SENATOR FULTON: So would it be fair... [LB951]

SENATOR AVERY: I don't think this bill itself would have any effect on that. [LB951]

SENATOR FULTON: Okay, and I agree. The way I've read through and I think it's pretty clear who is targeted with the bill. My concern...and it probably isn't even a concern; concern is not the right word. It is the fact that we will be setting forward a precedent that I don't believe we will go back on. And I'm not saying...I want to be clear and say that I'm not saying that that is a bad thing, it could well be a good thing. Implementation of technology to help people is..that's what we do, and me personally, that's part of what my livelihood has been. But when we take this step, I think it is important to point out that this is a step that can't be undone. And indeed that which is true for those overseas with respect to the electronic media, anyway, is going to be true for those of us that are here also. So I think that we are in this stage of debate where we're willing to move legislation along, but I'm asking us to take a minute to stop and think about this. We are saying something about the future of voting by voting for this today. Senator Avery, I'll yield the remainder of my time. I think...do you follow what I'm saying here, Senator? [LB951]

SENATOR AVERY: I do. [LB951]

SENATOR FULTON: Okay. And I'm not saying that it is necessarily a bad thing, but somewhere down the road we are probably going to be utilizing the Internet to cast our ballots and there are some concerns that have been expressed with that now and concerns with regard to security of ballots. By taking this step today, somewhere down the road a simple argument...and here's the argument that will be made, if we can do this for people overseas, why can't we do it for our own citizens that are...for our citizens that are right here? That's an argument that one cannot...you can't argue against. What I'm saying here is that when we move LB951 forward, we're saying something about the future of voting in Nebraska. And if I could, I'll yield the remainder of my time to Senator Avery if he wants to respond. [LB951]

SENATOR FISCHER: Senator Avery, 1 minute 30. [LB951]

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SENATOR AVERY: Thank you, Madam President. Thank you, Senator Fulton. Actually what we're talking about here is making it easier for our military personnel and citizens who live abroad to vote and participate in the political process to the extent that that is possible from a remote location. We're not actually going beyond that. I believe, though, that Senator Fulton is right. We are probably going to face in the future the issue of electronic voting. [LB951]

SENATOR FISCHER: One minute. [LB951]

SENATOR AVERY: We already have mail-in ballots and that seems to work pretty well. I don't think that it would be such a stretch to imagine that we could go to electronic voting in the future. In fact, you might even see some legislation come out of the Government Committee in the next year or two that would deal with that. The whole issue here is making it possible for people who have the right to vote to do so and do so in a convenient manner. This bill does that, it doesn't do any more than that. It's not going to cost the state. I think that it's worth your consideration and I urge that you advance it to Select File. Thank you, Madam President. [LB951]

SENATOR FISCHER: Thank you, Senator Fulton and Senator Avery. Senator Krist, you are recognized. [LB951]

SENATOR KRIST: Thank you, Madam Chair. In response to Senator Christensen's request on new legislation as a matter of clarification, our counsel tells us that that looks like it's new, it's been reorganized. It is current law. So there shouldn't be any hesitation in knowing that that is currently in place. I trust being a member of the Government Affairs Committee (sic) and hearing the testimony from the Secretary of State that this is the right thing to do. His testimony was very clear and his staff's testimony very clear in terms of moving forward and providing the state follow through with the federal guidelines. And that's pretty important to remember here in this debate. It is a requirement. We need to make sure that this happens, not just from the state level but to comply with federal...the federal regulations. Is it good to have it easier for our overseas residents to vote, no matter who they are? Absolutely. In a wing of 6,000 people, the 55th Wing at Offutt, had potentially at any given time a third of their population deployed TDY with their very high-interest national mission. Think about that at the time of a presidential election and think about the problems of voting. And without going into any war stories, been there, done that, worn that T-shirt, it's difficult. This will make it less difficult. But I'm going to use the balance of my time to talk to you about a bit about IT. You see, if we had the IT network, the infrastructure, the capability to do all the things that we need to do, we'd be able to use our driver's license to do many things as a state ID. We'd be able to vote and enable...in response to Senator Fulton's concerns about setting precedent and moving forward, you bet. We need to do that. We need to enable it to be easier for people even here in the state, but we're not there yet. We have discussed just in this legislative session the deficiencies in the IT area that

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keep us from moving forward. So at some point in the future, we're going to have to have a discussion about breaking down the silos, getting the Government, the Transportation Committee, Madam Chair, and others together in talking about the connectivity that we need to ensure that actually voting, and I'm not saying voting over the Internet, but voting electronically will be a reality. Exercising our rights electronically and our privileges will be closer to reality. That's an IT issue. I know Senator Giese and I share a common belief that by taking the whiteboard and clearing it off and starting over and developing that infrastructure that is starting out five years from now with a strategic plan saying what are the 45 things I want to do that are IT related and then backing it off and potentially getting people like the Peter Kiewit Institute or other people who have done this before, we can solve a lot of those IT issues. And I don't think this is a total diversion from the subject, but I use this as a springboard to bring the issue up again. And thank you, Madam Chair. [LB951]

SENATOR FISCHER: Thank you, Senator Krist. Senator Lautenbaugh, you are recognized. [LB951]

SENATOR LAUTENBAUGH: Thank you, Madam President, members of the body. I do rise in support of this bill and let me explain why. For many of the reasons that have already been expressed so I'll be very brief on that, but I'm more interested in what this bill isn't. It is a mechanism by which those overseas will be able to participate in our elections, citizens overseas I can't stress enough, and I think that's important. And I think we should accommodate those voters and make sure their votes are heard or votes are counted and their voices are heard. But it's important to note what this bill does not do, and I would be inconsistent if I didn't stand up here and talk about some of the things that I've previously addressed regarding elections. I think it's important that for the vast majority of us we vote on election day and not before. Elections are a race. We call them races. Races have beginnings and races have ends. You don't get up in the middle of the Boston Marathon and say, oh, I think this person is going to win. I'm casting my vote now. You wait and see how it comes out. And I think our campaigns are organized, and rightly so, with the presupposition that there is a day on which we stand up and the votes are counted. And if we continue to blur that line and continue to accommodate people who without good reason would rather vote on a day other than election day, I think we're losing an important part of our process. This bill does not do that. This bill is an accommodation for our soldiers and others who are overseas and I support this bill. But as we move forward, attempts to do otherwise and attempts to really lessen the importance of election day voting we're going to have a longer conversation about. But this is not that bill, and I do support this bill. [LB951]

SENATOR FISCHER: Thank you, Senator Lautenbaugh. Senator Nelson, you are recognized. [LB951]

SENATOR NELSON: Thank you, Madam President and members of the body. I'd like to

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address a question to Senator Avery if he will yield. [LB951]

SENATOR FISCHER: Senator Avery, would you yield to questions from Senator Nelson? [LB951]

SENATOR AVERY: Yes, I will. [LB951]

SENATOR NELSON: Thank you, Senator. Just a point of clarification, when I'm looking at the summary of the purpose here, it says that members of the armed forces, overseas citizens, and persons residing outside the country may indicate a preference for ballots and other election materials and that it can be sent to them by fax or electronically. Now they're getting that material electronically then. Are they also voting electronically on this or are they printing them out and sending them back in the ordinary course that... [LB951]

SENATOR AVERY: They send them back as a mail ballot. [LB951]

SENATOR NELSON: As a mail ballot. All right. Okay. Yes, when Senator Fulton raised some of his concerns, I took a look at that and I didn't see anything in there that indicated they were going to vote electronically so I wanted to clarify that and I thank you for your answer, Senator. Thank you, Madam President. [LB951]

SENATOR FISCHER: Thank you, Senators Nelson and Avery. Are there other senators wishing to address the bill? Senator Avery, you are recognized to close. [LB951]

SENATOR AVERY: Thank you, Madam President. This bill brings us into compliance with federal law passed in October of last year. It deals with military voters, persons living outside the United States, and other overseas voters. It is not a tremendously significant bill in the sense that it doesn't do a whole lot more than what we're already doing in the state. The biggest difference is that it would require us to set up a new Internet Web site that would allow the voters who have requested these ballots and have voted allow them to check on the status of the ballot. That's basically what it does that we don't now do. And those of you who may not have heard what I had to say earlier about the fiscal note, we now have a revised note. It's on your computer. We will not be using state money to fund this. It is federal money and it comes from the Help America Vote Act. So with that, I would ask you to advance this to Select File. Thank you, Madam President. [LB951]

SENATOR FISCHER: Thank you, Senator Avery. You have heard the closing on the advancement of LB951 to E&R Initial. All those in favor vote aye; and those opposed vote nay. Have all those voted who wish to? Record, Mr. Clerk. [LB951]

ASSISTANT CLERK: 41 ayes, 0 nays on the motion to advance the bill. [LB951]

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SENATOR FISCHER: The bill is advanced. Mr. Clerk, we will proceed on General File. [LB951]

ASSISTANT CLERK: LB879 was introduced by Senator Cornett. (Read title.) The bill was read for the first time on January 11 of this year, referred to the committee on Revenue. That committee reports the bill to General File with committee amendments attached. (AM1798, Legislative Journal page 504.) [LB879]

SENATOR FISCHER: Thank you, Mr. Clerk. Senator Cornett, as Chair of the Revenue Committee, you are recognized to open on LB879. [LB879]

SENATOR CORNETT: Good morning, Madam President and members of the body. LB879 was introduced on behalf of the Nebraska Department of Revenue. It is the department's annual bill designed to strengthen or enhance various statutes governing tax administration and enforcement. In general, LB879 would do the following: Allow the Nebraska Department of Motor Vehicles and the Nebraska Department of Revenue to enter into agreements to disclose certain information to the Department of Revenue to assist in its carrying out of its duties. Allow the Nebraska Department of Revenue and the Nebraska Department of Labor to publish a list of delinquent taxpayers who owe taxes or fees, including interest, penalties, and costs in excess of \$20,000 for which a notice of lien has been filed in accordance with the Uniform State Tax Lien Registration and Enforcement Act and allow the list to be posted on the Web site of either department; exempt from statutory rules governing confidentiality of certain information, including confidentiality of tax return information, the disclosure of information to the Nebraska Department of Labor necessary for the administration of the Employment Security Law and Contractor Registration Act; create an additional penalty for nonfilers of withholding tax; authorize the Tax Commissioner to abate interest on motor fuel tax payments; simplify sales and use tax refunds for purchases made by contractors under the Nebraska Advantage Act; incorporate amendments made to the streamline sales and use tax agreement through December 31, 2009; and conform various administrative deadlines to the Administrative Procedures Act; and change the source of funding compensation for assistance and expenses of the office of the State Athletic Commissioner. Finally, there is a Revenue Committee amendment to the bill. Before that, because this is a very long, complicated bill, I'm going to break it down for everyone. LB879 would allow the Nebraska Department of Motor Vehicles and the Nebraska Department of Revenue to enter into agreements to disclose certain information such as name, address, and Social Security number of any individual whom a Nebraska operator's license, driver's license, or state identification card has been issued under the Motor Vehicle Operator's Act to the Nebraska Department of Revenue to assist the Department of Revenue in carrying out its duties. It would also enact a new statute allowing the Nebraska Department of Revenue and the Nebraska Department of Labor to publish a list of delinquent taxpayers who owe taxes or fees, including interest,

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penalties and cost, in excess of \$20,000 for which a notice of lien has been filed in accordance with the Uniform State Tax Lien Registration and Enforcement Act. The list can be posted on the Web site of either department and must include the name and address of the delinquent taxpayer and type and amount of fee or due, including interest, penalties, and cost. Senator White will be filing an amendment to this section of the bill that the committee does support. Section 3, well, it's not Section 3, the third area that we are going to look at is exempt from statutory rules governing confidentiality of tax return information to disclosure of information to the Nebraska Department of Labor necessary for the administration of the Employment Security Law and Contractor Registration Act. If the body remembers, we enacted two separate contractor registrations. Last year we merged those duties under the Department of Labor and authorized information sharing. We, at that time, did not, as an oversight, authorize the sharing back again so this is a cleanup of the contractor registration law. We also are creating a penalty for nonfilers of withholding tax. The amount of the additional penalty would be equal to the same penalty imposed under the current law for late filing of withholding returns, 10 percent of the total amount due excluding interest and other penalties. Authorize the Tax Commissioner to abate interest on motor fuel payments; simplify sales and use tax refunds for purchases made by contractors under the Nebraska Advantage Act. The refund would be based on 50 percent of that contract price. Exclude any land as the cost of materials subject to sales and use tax for rentals of tangible personal property by a contractor or repair person after the appointment as a purchasing agent of the improvement to real estate when such a property is incorporated into the real estate as part of the project. The refund would be based on the cost of materials subject to sales tax and use tax that were annexed to real estate for rentals of tangible personal property by a contractor or repair person after the appointment as purchasing agent of the taxpayer when the property is annexed into real estate as part of the project. The refund would be based on 50 percent of the contract price, excluding any land as the cost of materials subject to sales and use tax for rental or tangible personal property by a contractor or a repair person after the appointment as such a purchasing agent of the taxpayer when such property is both incorporated into and annexed to real property as part of the project. A claim for refund of sales and use tax must be...include a certain specified document. Those proposed changes would apply to all applications filed on or after three calendar months after adjournment of the 2010 regular legislative session. Annual update of the streamline...this also includes the annual update of the streamline sales and use tax agreement. LB879 would ratify the amendments made to the agreement through December 31, 2009, and includes provisions pertaining to date of incorporation, certification of certified service providers, and confidentiality of tax return information. Conform various administrative deadlines to the Administrative Procedures Act. It decreases various deadlines to 30 days. It is 60 days under current law. Change the source of funding compensation for assistance and expenses of the State Athletic Commissioner. The compensation of assistant and expense of the State Athletic Commissioner would be paid through the State Athletic Commissioner's cash fund. Such compensation expenses are paid through the

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Charitable Gaming Fund under current law. Amend revenue statute 9-1,101 so that certain gaming tax revenue derived from pickle cards, the Nebraska Lottery Act, county, city, and village lotteries will no longer be available for the use of the Charitable Gaming Division of the Nebraska Department of Revenue to administer and enforce the law governing the State Athletic Commissioner. Enact different operative dates for specified sections of LB879; repeal original statutes that will be amended and reenacted by LB879; and enact the emergency clause. I would urge the body to support the Department of Revenue's bill. And if you have any questions, I would be happy to answer that. [LB879]

SENATOR FISCHER: Thank you, Senator Cornett. You have heard the opening on LB879. As the Clerk stated, there are amendments from the Revenue Committee. Senator Cornett, as Chair of the committee, you are recognized to open on the amendments. [LB879]

SENATOR CORNETT: Thank you very much, Madam President, members of the body. The Revenue Committee amendment, AM1798, to LB879 in accordance with the wish of the Department of Revenue is an attempt to clarify sales and use tax refund provisions under the Nebraska Advantage Act that affect the purchase of tangible personal property by purchasing agents. The reason for the proposed change is that there is some overlap between the different types of tangible personal property that needs clarification. The committee amendment would amend Section 14 of LB879 to clarify the treatment of different types of tangible personal property. I urge the body to support the amendment and the underlying bill. [LB879]

SENATOR FISCHER: Thank you, Senator Cornett. Are there senators wishing to address the amendment? I see no one. Senator Cornett, you are recognized to close on the committee amendment. [LB879]

SENATOR CORNETT: I waive closing on the committee amendment. [LB879]

SENATOR FISCHER: Senator Cornett does waive closing. The question before the body is, shall the committee amendment, AM1798, be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who wish to? Record, Mr. Clerk. [LB879]

CLERK: 31 ayes, 0 nays, Madam President, on adoption of committee amendments. [LB879]

SENATOR FISCHER: AM1798 is adopted. Mr. Clerk. [LB879]

CLERK: Madam President, Senator White would move to amend the bill, AM1998. (Legislative Journal page 616.) [LB879]

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SENATOR FISCHER: Senator White, you are recognized to open on your amendment. [LB879]

SENATOR WHITE: Thank you, Madam Chair. Ladies and gentlemen of the body, I support the underlying bill. But there is one new concept in it that we need to carefully look at and consider, and that is the concept of literally using the Internet to announce people who are not paying their bills. It was used in the committee hearings as the wall of shame. If you have somebody who owes a lot of tax money and they're not paying it, then the Revenue Department can put their name up on the computer as basically a deadbeat. I have some hesitation on those, but I'll generally support it and I do support the bill. But I asked one thing: that before somebody's name goes up on that wall of shame they have every right to dispute the tax, both in the administration and then if they believe it necessary in the courts. We can have honest disagreements between taxpayers and the Department of Revenue that are made in good faith on both sides. And the way we've always handled that is those people can go into court and argue about it. So what this amendment will do is very simple. It says that nobody goes up on that wall of shame at all until they've either not appealed so they have no legal right to dispute the debt or they've gone through all the appeals process and the trials that they have and they've lost and they have no legal right to dispute the debt. The whole purpose of this is that a government bureaucracy can't say, well, you think you're going to take me to court? I'll show you. I'm going to put your name up on the wall of shame, watch what happens to your business for arguing with us about how much money you owe. That is really subject to abuse. And I really appreciated the Department of Revenue, the commissioner, they agreed. They think that that's appropriate. So I hope you will support this amendment. With this amendment, I can support the entire bill. Thank you, Madam President. [LB879]

SENATOR FISCHER: Thank you, Senator White. (Visitors introduced.) You've heard the opening on AM1998. Senators wishing to address the amendment are Senators Cornett, Carlson, and Stuthman. Senator Cornett, you are recognized. [LB879]

SENATOR CORNETT: Thank you, Madam President. I want to thank Senator White for bringing this amendment. We worked closely with him and the Department of Revenue. It was not anyone's intention that someone would be put on the Internet that had not reached the end of their legal recourse in the matter. This is simply intended for people that have exhausted all of their options in regards to filing appeals. Thank you very much, and I urge the body to support the bill. [LB879]

SENATOR FISCHER: Thank you, Senator Cornett. Senator Carlson, you are recognized. [LB879]

SENATOR CARLSON: Madam President and members of the Legislature. I would like

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to address a question to Senator White if he would yield. [LB879]

SENATOR FISCHER: Senator White, would you yield to Senator Carlson? [LB879]

SENATOR WHITE: Certainly. [LB879]

SENATOR CARLSON: Senator White, I talked to you a little bit about this and then I looked at it and I do have a question. [LB879]

SENATOR WHITE: Okay. [LB879]

SENATOR CARLSON: "Except that no such list of delinquent taxpayers shall include any taxpayer that has not exhausted or waived," now "or waived," how do you...is there a form? Is there something? How do you know that somebody has waived? [LB879]

SENATOR WHITE: Oh, no. What that language means, Senator Carlson, is, for example, if I've got 30 days to file an appeal from the Tax Commissioner's decision and I don't do it in that time, then I've waived it. [LB879]

SENATOR CARLSON: Okay. [LB879]

SENATOR WHITE: I no longer have a right to have access to either administrative or judicial review. It just says, you know, I can't...I mean, if I sit on my hands and I don't dispute this bill, then I owe it and that's fine with me. [LB879]

SENATOR CARLSON: Okay. That time element automatically takes care of the waiver. Thank you. [LB879]

SENATOR WHITE: Yeah, and it could be other things. For example, I can file an appeal and then the court will say, well, you have to have your brief in on this day and if you don't, your appeal will be dismissed. And I don't put my brief in on that time and so they say, well, you're not complying with our rules, it's dismissed. There's a number of different ways people can waive it, but those are the main ones. [LB879]

SENATOR CARLSON: Okay. Thank you, Senator White. Thank you, Madam President. [LB879]

SENATOR FISCHER: Thank you Senators Carlson and White. Senator Stuthman, you are recognized. [LB879]

SENATOR STUTHMAN: Thank you, Madam President. I would like to ask a question of Senator White. [LB879]

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SENATOR FISCHER: Senator White, would you yield to a question by Senator Stuthman? [LB879]

SENATOR WHITE: Certainly. [LB879]

SENATOR STUTHMAN: Senator White, in your amendment it states "delinquent taxpayer." [LB879]

SENATOR WHITE: Right. [LB879]

SENATOR STUTHMAN: Can you explain? Are we talking about real estate taxes? [LB879]

SENATOR WHITE: Generally there, as I understand it, Senator, this only applies to money owed to the state of Nebraska. And so that would not include property taxes. [LB879]

SENATOR STUTHMAN: Oh, okay. That clarifies it for me because I was...when I read on your amendment "delinquent taxpayers," you know, in the county system, a delinquent taxpayer there is a notification of the property that is delinquent, not the individual's name, but the property that is behind on paying the taxes. And I was just concerned with that and how we would identify all of those. But in other words, Senator White, you're saying this just is with taxes owed to the state. Is that correct? [LB879]

SENATOR WHITE: Correct, Senator. And I think that's in the context. You're right, it doesn't respond to it specifically but it's in the context of the statute, okay, taxes owed to the state. So it could be sales taxes, could be income taxes, it could be, you know, business taxes, withholding taxes, any kind of the taxes owed to the state. That's what it talks about. That whole delinquent property tax I think this has...this whole thing has no application to is my understanding. [LB879]

SENATOR STUTHMAN: Okay. I wanted a point of clarification and wanted to get that on the record. So thank you, Senator White, and thank you, Madam Chair. [LB879]

SENATOR FISCHER: Thank you, Senator Stuthman and Senator White. Senator Wightman, you are recognized. [LB879]

SENATOR WIGHTMAN: Thank you, Madam Chair, colleagues. I certainly agree with Senator White's amendment. I think that there are a lot of procedures that take place after an assessment of the tax. And many times...and sometimes it results that there's a finding that they do not owe the tax or do not owe part of the tax so I think the amendment is a good amendment. I think there are other instances in which there could be a waiver or consent. And in that regard I would ask a question of Senator White if he

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would yield to a question. [LB879]

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SENATOR CARLSON: Senator White, will you yield? [LB879]

SENATOR WHITE: Certainly. [LB879]

SENATOR WIGHTMAN: Senator White, in addition to the waivers you talk about, there also can be voluntary consents. Is that right? [LB879]

SENATOR WHITE: Absolutely. For example, you could have a dispute, Senator, and I could enter into a settlement agreement with the department and then not pay it, in which case, you know, if I made a deal and said, yeah, I'll pay that much and then I don't pay it, you know, at that point I deserve to go up on that wall. [LB879]

SENATOR WIGHTMAN: Right. Sometimes that consent is made with the understanding they don't have the money to pay it at that time, but will pay it in the future. [LB879]

SENATOR WHITE: Right. And I'd assume you'd set it out and say, I've got a year or two years to pay this or make payments. But if I violate that and I'm not doing it... [LB879]

SENATOR WIGHTMAN: Okay. Well, I do fully support the amendment. I think that the people's name should not appear on that list if there hasn't been a final determination of that tax. Thank you, Senator White. Thank you, Mr. President. [LB879]

SENATOR CARLSON: Thank you, Senator Wightman and Senator White. Senator Pirsch, you're recognized. [LB879]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I just would weigh in, in favor of the amendment as a member of the Revenue Committee. It just seems as we're looking at...in the name of fairness dealing with these, I guess, alleged debts that we want to make sure that we use a measure of due process and make sure that everyone has their day, not necessarily in court but a day of decision of a fair process to be heard. And so I think this amendment is in line with that, and so I'd ask you to support the amendment. Thank you. [LB879]

SENATOR CARLSON: Thank you, Senator Pirsch. There are no other senators wishing to speak. Senator White, you're recognized to close on your amendment. Senator White waives closing. The question is, shall AM1998 be adopted? All those in favor vote yea; all those opposed vote nay. Are there other senators wishing to vote? Record, Mr. Clerk. [LB879]

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ASSISTANT CLERK: 36 ayes, 0 nays on adoption of Senator White's amendment. [LB879]

SENATOR CARLSON: AM1998 is adopted. Mr. Clerk. [LB879]

ASSISTANT CLERK: Senator Cornett would offer AM1992. (Legislative Journal pages 616-621.) [LB879]

SENATOR CARLSON: Senator Cornett, you're recognized to open on your amendment. [LB879]

SENATOR CORNETT: Thank you, Mr. President and members of the body. What we are doing with this amendment is taking two other of the Revenue bills, one of them being a department bill and the other being our IRS Code cleanup bill and amending them on to LB879. This...the original bill numbers were LB1078 and LB878, and we are merging them into LB879. Both of those bills were advanced to General File by the Revenue Committee without any dissenting votes. First, let me explain LB1078, and I will be very brief on this one because it's basically IRS Code updates. LB1078 is the annual bill to update references to certain Nebraska statutes to the most recent version of the federal Internal Revenue Code as it exists on the effective date of this bill. The Revenue Committee voted unanimously to advance LB1078 to General File without any amendments and AM1992 would roll that into LB879. The second bill that we are rolling into LB879 was LB878 as advanced to General File by the Revenue Committee with an amendment that makes four changes to the bill in general. To make it more taxpayer friendly...the proposed changes make it more taxpayer friendly. LB878 has become known as the e-government bill. It is primarily intended to facilitate cost-savings for the various departments' needs. It sets forth a statement of legislative findings and the intent that the Department of Revenue implement a comprehensive and mandatory electronic filing and payment system for all state tax programs and fees administered by the department as deemed practical and necessary for proper administration of the Nebraska Revenue Act of 1967. And it authorized the Tax Commissioner to take action in implementing such an electronic filing and payment system. Included among its various provisions are the following: Requiring employers to submit IRS forms W-2, employees wage and tax statements, to the department on or before February 1, which is currently March 15 under the current law, following the end of the immediate preceding calendar year. Authorize the Tax Commissioner to require an employer to file IRS form W-2 with the department via authorized means of electronic transmission if the employer submits 50 or more IRS form W-2s to the department annually. The current law states 250 more or 250 or more filings. Authorize the Tax Commissioner to prescribe a form and content of an employer withholding tax return as the Tax Commissioner deems necessary for the proper administration of the Nebraska Revenue Act of 1967 for an employer who is required to file withholding tax returns quarterly and an employer who is required to file withholding tax returns annually because an

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aggregate amount required to be deducted and withheld by the employer for the entire calendar year is less than \$500 or the employer is allowed to file federal withholding taxes annually. LB878 also sets forth new language designated to coordinate any changes made by the bill with existing statutes that govern the filing and payment of employers' quarterly withholding tax return. It would also outright appeal Neb. Rev. Stat. 77-2769.02 which permits any taxpayer who must pay estimated income tax during the taxable year to choose to file the estimated tax return electronically and to choose to pay the estimated tax liability or receive a tax refund via electronic fund transfer. The changes made by the bill would be operative January 1, 2011. The Revenue Committee amendment has been incorporated into this amendment and would make the following changes to the original bill as introduced: It changes the dollar amount threshold that may be required...require certain taxpayers to pay any tax, fee, or penalty by means of electronic fund transfer. Specifically, the amendment would authorize the Tax Commissioner to require a taxpayer to pay any tax, fees, or other amounts required to be paid or collected by the Tax Commissioner by means of electronic funds transfer if the taxpayer paid a tax, fee, or liability in excess of \$5,000. We moved that limit up so we were not putting an undue hardship on the elderly or lower income filers. It is currently \$20,000 under the current law, and it would have been \$500 as introduced. We moved that to \$5,000 for a tax program in any prior year for that tax. It would exempt the individual income taxpayer from having to pay a \$100 penalty for failing to make a required payment by electronic fund transfer. The original bill was if the taxpayer did not file electronically, they would be fined. Our bill has changed it that they will not be fined except for individual income tax payments required where we upped that limit. Any person who fails to make a required payment by electronic funds transfer shall be subject to a penalty of \$100 for each required payment that was not made electronically. It would retain the Neb. Rev. Stat. Section 77-2794(e) as it exists under the current law. Specifically, it would strike the new matter that would otherwise be added to the statute by LB878, Section 3, the changes necessary to harmonize the language with that statute with the amendments rewrite of that subparagraph. It would rewrite the new subparagraph of the Neb. Rev. Stat. Section 77-2794(3) to provide that if the Tax Commissioner approves and implements an electronic form or method for filing a return, the return is not...if that return is not filed electronically and is filed by paper, no interest shall be allowed under this provision. With that, I urge the body to support the AM1992 which includes the IRS Code updates and the e-filing bill. Thank you very much. [LB879 LB1078 LB878]

SENATOR CARLSON: Thank you, Senator Cornett. Members, you've heard the opening on AM1992. The floor is now open for discussion. Senator Nelson, you're recognized. [LB879]

SENATOR NELSON: Thank you, Mr. President. Thank you, members of the body. I have a few questions I'd like to address to Senator Cornett if she would yield. [LB879]

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SENATOR CARLSON: Senator Cornett, would you yield? [LB879]

SENATOR CORNETT: Yes. [LB879]

SENATOR NELSON: Thank you, Senator Cornett. AM1992 was just filed this morning, was it not? [LB879]

SENATOR CORNETT: Correct. [LB879]

SENATOR NELSON: I'm just curious. Is there some reason why it couldn't have been presented as a separate bill? It's pretty comprehensive and there are a lot of things that you read to us, but it's pretty hard to keep track. Is there a reason for that why it was amended into this bill rather than presented in its original form that was looked at by the committee? [LB879]

SENATOR CORNETT: They are...particularly the IRS Code bill and the e-filing bill need to be passed this year, and your committee is only allowed two committee priorities. And they were for one other bill that we have...two other bills that we have. [LB879]

SENATOR NELSON: Well, AM1992 is a little more than an IRS bill. It has some mandatory provisions, does it not? [LB879]

SENATOR CORNETT: That's what I explained. The two bills that were rolled into the amendment were first LB1078, which is just an IRS Code update and then the second bill that was rolled into this was LB878, which is the e-filing bill which does have mandatory requirements in it. [LB879 LB1078 LB878]

SENATOR NELSON: Right. And this is an entirely new section, is it not, the mandatory filing? [LB879]

SENATOR CORNETT: We have mandatory filing for certain areas, but, yes, there are new sections included. [LB879]

SENATOR NELSON: All right. You discussed we're going from \$20,000 down to \$5,000. In other words, as I understand it, anyone who pays or has paid \$5,000 or less during any previous time of filing would not be required to file electronically. Is that correct? [LB879]

SENATOR CORNETT: Under the bill, if they have a tax liability of \$5,000 or more, they would be required to file electronically. If they have less than that liability, then they would not be required to file electronically. [LB879]

SENATOR NELSON: And this just... [LB879]

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SENATOR CORNETT: We're moving that, pardon me, we're moving that down from \$20,000 to \$5,000. [LB879]

SENATOR NELSON: I understand. All right. That's a pretty radical and let me say that Commissioner Ewald talked to me this morning right before we came to session so I had a little preparation for this. You may recall that when we dealt with this earlier I had some...in the last session I believe it was, I had some reservations about the requirements. And Commissioner Ewald has said, well, you know, they have leeway here and this can move slowly. But we're moving from \$20,000 down to \$5,000. That's a pretty radical move. How many taxpayers does that encompass there's going to bring into electronic filing? [LB879]

SENATOR CORNETT: What the original bill was, was moving that down from \$20,000 to \$500. The committee worked on bringing that amount up because we did not want to cause undue hardship on the elderly or lower-income filing. At that \$5,000 tax liability, we moved it to where you would be looking at about \$100,000 of income or more. [LB879]

SENATOR NELSON: And we are just talking about Nebraska state tax returns. This is not federal because a lot of people would be paying more taxes than that on a federal return. Is that correct? [LB879]

SENATOR CORNETT: Correct. [LB879]

SENATOR NELSON: All right. Referring to...I'm trying to find the place here in the bill or on the amendment rather, on page 4 or rather on page 3... [LB879]

SENATOR CARLSON: One minute. [LB879]

SENATOR NELSON: Thank you, Mr. President. At the bottom, Section 9 there, or subsection 9, "The Legislature hereby finds and determines that the development of a comprehensive electronic filing and payment system for all state tax programs" so that's all state tax programs, "and fees administered by the Department of Revenue is of critical importance to the state of Nebraska." Where is the critical importance here? This is a statement of intent on the part of the Legislature. [LB879]

SENATOR CORNETT: The critical importance is two things, sir. We are seeing declining revenues for the state which means shrinking budgets and part of the impetus for this bill was the fact that the Department of Labor or, pardon me, the Department of Revenue does not have any of its seasonal tax preparers so they are trying to move to an electronic e-system, comprehensively to save the department and the state money. It... [LB879]

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SENATOR CARLSON: Time. [LB879]

SENATOR NELSON: Thank you. [LB879]

SENATOR CARLSON: Thank you, Senator Nelson and Senator Cornett. Senator Wightman, you're recognized. [LB879]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. If Senator Cornett would yield to a question or two, I would like to engage in... [LB879]

SENATOR CARLSON: Senator Cornett, will you yield? [LB879]

SENATOR CORNETT: Yes. [LB879]

SENATOR WIGHTMAN: In certain instances, Senator Cornett, it sounds like there could be a \$100 penalty for not filing and also a forfeiture of interest. Is that your understanding of the bill? [LB879]

SENATOR CORNETT: It is my understanding of the bill, sir. The original bill included that there would be no interest, extending the date for which the state would have to pay interest on paper filings because they just can't process them. They don't have the people to do it. But they had dropped that number down to \$500 of tax liability. The committee looked at raising that amount for the people that have higher incomes, but which would increase the number of paper filings. But we have suspended the interest the state would pay because we do not honestly...can't determine honestly how long it will take to process paper returns. [LB879]

SENATOR WIGHTMAN: So as of now there would still be a forfeiture of interest plus the penalty. [LB879]

SENATOR CORNETT: No, there would not be a penalty. There would just be the forfeiture of interest. [LB879]

SENATOR WIGHTMAN: Okay. [LB879]

SENATOR CORNETT: That was the trade-off. [LB879]

SENATOR WIGHTMAN: Okay. [LB879]

SENATOR CORNETT: There will be no penalty because they are not receiving interest. We do not want to do a double whammy basically. [LB879]

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SENATOR WIGHTMAN: Okay. Well, I appreciate that. Also I'm guessing that most of these will come on individual income taxes as far as what the penalty might be applied on and you've got a \$5,000 threshold for that. Is that correct? [LB879]

SENATOR CORNETT: Yes. We set that \$5,000 threshold of tax liability based on that that would approximate \$100,000 in income. [LB879]

SENATOR WIGHTMAN: Okay. So...but it is a tax program, and could you tell me for sure what is meant by "any tax program for the previous year." Is that...is the income tax considered a tax program? [LB879]

SENATOR CORNETT: No. It would be things like sales tax. [LB879]

SENATOR WIGHTMAN: Okay. But the same penalty would apply, wouldn't it, on individual income tax if you had \$5,000 liability the previous year and you didn't file electronically? [LB879]

SENATOR CORNETT: I don't believe so. That is something I would have to check into. [LB879]

SENATOR WIGHTMAN: Okay. That would be sales tax rather than individual income tax. [LB879]

SENATOR CORNETT: I believe so, yes. [LB879]

SENATOR WIGHTMAN: But you would still be subject to the \$100 penalty if you didn't file electronically for the individual income tax. No? [LB879]

SENATOR CORNETT: You would not be subject to the penalty if you did not file electronically. We looked at the fact that you will not be receiving interest on your return as penalty enough. [LB879]

SENATOR WIGHTMAN: Okay. But if there was no interest due, say you filed electronically and you sent in \$5,000, you wouldn't be entitled to any interest in that instance, would you? [LB879]

SENATOR CORNETT: No, you would not. [LB879]

SENATOR WIGHTMAN: So then would the penalty apply? [LB879]

SENATOR CORNETT: If you made over...if you had over \$5,000 of tax liability, yes, the penalty would apply. [LB879]

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SENATOR WIGHTMAN: Now when you're talking tax program and, again, I don't know if that can include individual income tax, but a lot of people pay quarterly estimates. And I'm assuming on a tax program if the total is \$5,000, even though the individual quarterly estimate was only \$1,300 they would still be subject to the penalty or forfeiture of interest. I'm still not quite sure. [LB879]

SENATOR CORNETT: Actually, Senator Wightman, I misspoke. We've had a number of versions of this and my staff just corrected me. There will be no penalty, period. We will be looking strictly at forfeiture of interest. [LB879]

SENATOR WIGHTMAN: Okay. Now as far as a paid...someone who does returns and is paid for that,... [LB879]

SENATOR CARLSON: One minute. [LB879]

SENATOR WIGHTMAN: ...will they be subject to a penalty for each return filed if they don't file electronically? [LB879]

SENATOR CORNETT: Depending on the number of returns they file. We did that last year, and I believe it's 25. If you file more than 25 returns, you have to file electronically. [LB879]

SENATOR WIGHTMAN: A year ago it was 250 (inaudible). [LB879]

SENATOR CORNETT: Right, and that's where we talked about or when was a need, introduction of the bill we've lowered that number from 250 to 25. [LB879]

SENATOR WIGHTMAN: Thank you, Senator Cornett. Thank you, Mr. President. [LB879]

SENATOR CARLSON: Thank you, Senator Wightman and Senator Cornett. Senator Nelson, you're recognized. [LB879]

SENATOR NELSON: Thank you, Mr. President and members of the body. I had just another question or two before we ran out of time for Senator Cornett. [LB879]

SENATOR CARLSON: Senator Cornett, will you yield? [LB879]

SENATOR CORNETT: Yes. [LB879]

SENATOR NELSON: All right, thank you, Senator. Senator Wightman had pursued some things that I intended to, but gradually we're, for want of a better term, we're tightening the noose here and we've come from 250 down to 50 in the filing of certain

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returns and then also we're from \$20,000 down to \$5,000. Next year are we going to get down to zero on each of those? [LB879]

SENATOR CORNETT: Sir, I don't see next year but I imagine, as Senator Fulton mentioned earlier in regards to how people are going to be voting in the future, I imagine at some date everything will be done electronically. That date will not be next year. If you look at the current requirements from the IRS, they are much more strict than what we are imposing here. [LB879]

SENATOR NELSON: Well, I don't think as an individual taxpayer that the IRS requires that I file electronically at this time. Is that correct? [LB879]

SENATOR CORNETT: At this time I don't believe so, but they will be looking at that also from what I understand. [LB879]

SENATOR NELSON: Well, then we'll be talking to another Senator Nelson I guess on the national level. I understand that Commissioner Ewald has leeway here if there are people with undue hardships and circumstances that he can waive that, and I think that's good. And one more question, it appears to me that this is being done pretty much solely for the benefit of the department rather than the individual taxpayers in the state of Nebraska. [LB879]

SENATOR CORNETT: Let me state two things. When you said about the individual, the IRS not requiring the individual tax preparer to file electronically, no, but as of next year they are going to be requiring tax preparers that prepare more than ten returns to file electronically. And this is not being done solely for the benefit of the Department of Revenue. It is being done for a benefit to the state. We have cut their budget to be able to fund other programs to the point that we have a necessity to move towards electronic filing. [LB879]

SENATOR NELSON: My...thank you, Senator. My understanding is that this will permit the department to do away with their temporary employees processing these, and that's going to reduce the expenses of the department. Would that be correct? [LB879]

SENATOR CORNETT: This bill has nothing to do with reducing the work force for the Department of Revenue. [LB879]

SENATOR NELSON: Really? [LB879]

SENATOR CORNETT: There's nothing in here that says that they are reducing. [LB879]

SENATOR NELSON: There's nothing that says that, but by implication if there's a critical need here from the Department of Revenue, it must be because they want to

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save money. [LB879]

SENATOR CORNETT: That is true, sir. We have already reduced them. They do not have the temporary tax preparers now. [LB879]

SENATOR NELSON: It's my understanding there are still some temporaries that are used, especially during the rush of the filing of tax returns. [LB879]

SENATOR CORNETT: There are some but they have greatly reduced that number. And in the future, because of budget cuts, they will reduce them further. That is why they asked for the extension and then the eventual no interest on people that file with paper returns is because they cannot guarantee when those paper returns will be processed. [LB879]

SENATOR NELSON: I think your response to my question about what's critical about this was that we're losing revenue. Is that correct? [LB879]

SENATOR CORNETT: My response was because of declining revenues we have cut budgets throughout the state, including the Department of Revenue's budget. [LB879]

SENATOR NELSON: All right. So this move then is to, as far as I can see, is to further reduce the amount of the... [LB879]

SENATOR CARLSON: One minute. [LB879]

SENATOR NELSON: ...payroll that the department is going to have. Otherwise, what's the point? I mean why are we doing this? [LB879]

SENATOR CORNETT: The point is to save money and to streamline the tax process and the electronic filing does that. This is an age of computers and electronic filing. We have put amendments in the bill that should disqualify the elderly from having to file and the lower incomes that may not have access to a computer or a tax preparer. That was not the intent of the Revenue Committee. But we do feel that if you have the means you should be filing electronically to save money at this point. [LB879]

SENATOR NELSON: All right. Thank you, Senator Cornett. Thank you, Mr. President. [LB879]

SENATOR CARLSON: Thank you, Senator Nelson and Senator Cornett. There are no other senators wishing to speak. Senator Cornett, you're recognized to close on AM1992. [LB879]

SENATOR CORNETT: Thank you, Mr. President and members of the body. I do urge

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the adoption of AM1992. I know it does include two bills that were heard and amended in committee. And I urge the body to support the amendment and the underlying bill. Thank you. [LB879]

SENATOR CARLSON: Thank you, Senator Cornett. You've heard the closing on the amendment. The question is, shall the amendment be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB879]

ASSISTANT CLERK: 31 ayes, 0 nays on the adoption of Senator Cornett's amendment. [LB879]

SENATOR CARLSON: The amendment is adopted. We return to floor for discussion on LB879. Seeing no lights, Senator Cornett. [LB879]

SENATOR CORNETT: Thank you, Mr. President and members of the body. [LB879]

SENATOR CARLSON: Senator Cornett, I'm sorry. I'm going to interrupt you. Senator Nelson's light came on. I didn't see it. Senator Nelson, you're recognized. [LB879]

SENATOR NELSON: Thank you, Mr. President. Thank you, Senator Cornett. I find that I'm the only one asking questions, Senator, but I would ask if Senator Cornett would yield to a couple of questions here on the primary bill, LB879. [LB879]

SENATOR CARLSON: Senator Cornett, will you yield? [LB879]

SENATOR CORNETT: Yes, I would. I'm sorry, on LB879? [LB879]

SENATOR NELSON: Yes. [LB879]

SENATOR CORNETT: Yes. [LB879]

SENATOR NELSON: I really didn't have an opportunity before he went to the amendments. Number one, there on the statement of intent talks about the Department of Motor Vehicles furnishing such things as driver's license, Social Security numbers, and things of that sort to assist the Department of Revenue, and I'm paraphrasing. How is this assisting? What are we doing here with this? [LB879]

SENATOR CORNETT: With that section of the bill the department...it authorizes the Department of Motor Vehicles to share information about Nebraska driver's license with the Department of Revenue. This will allow the Department of Revenue to compare Department of Motor Vehicles records against our own income tax records and verify that Nebraska driver's are filing income tax returns in Nebraska. A similar project is also

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being looked at for Nebraska residents registering their vehicles out of state. The proposal would help supplement other efforts of the Department of Revenue in verifying the legitimacy of first-time tax filers and locating delinquent taxpayers. [LB879]

SENATOR NELSON: So it's a matter of locating delinquent taxpayers, not finding out whether they're filing tax returns or not. [LB879]

SENATOR CORNETT: Well, also to find out where they're filing tax returns. If you get a driver's license in the state of Nebraska, it will be able to determine if you are...they will be able to look at that to see if you are filing an income tax return like in South Dakota where there may be more friendly tax policy. [LB879]

SENATOR NELSON: Well, they're just simply going to be finding out, if I understand your response, that that particular individual who has a driver's license in Nebraska and is a resident of Nebraska is just not filing a tax return. [LB879]

SENATOR CORNETT: Correct also. If you have a driver's license in Nebraska, they'll be able to determine if you're filing an income tax return in Nebraska. [LB879]

SENATOR NELSON: Well, there are many people driving in the state of Nebraska that don't even come close to having to file a tax return because they don't make enough money. So where are we with that? [LB879]

SENATOR CORNETT: That is very true. It would simply be that they would look to see who is filing and who isn't filing. It's another method of being able to track down people that are not filing taxes. [LB879]

SENATOR NELSON: All right. Thank you very much for your response, Senator. Thank you, Mr. President. [LB879]

SENATOR CARLSON: Thank you, Senator Nelson and Senator Cornett. Are there others wishing to speak on LB879? Seeing none, Senator Cornett, you're recognized to close. [LB879]

SENATOR CORNETT: Thank you, Mr. President and members of the body. I urge the body to support LB879. It includes a number of very important aspects of the department bills and our IRS Code cleanup. Thank you very much. [LB879]

SENATOR CARLSON: You've heard the closing on the advancement of LB879. All those in favor vote aye; all those opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB879]

ASSISTANT CLERK: 34 ayes, 0 nays on the motion to advance the bill, Mr. President.

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[LB879]

SENATOR CARLSON: LB879 does advance. Mr. Clerk, next item. [LB879]

ASSISTANT CLERK: LB768 is a bill offered by Senator Stuthman. (Read title.) The bill was read for the first time on January 7, referred to the Government Committee, placed on General File with no committee amendments. [LB768]

SENATOR CARLSON: Senator Stuthman, you're recognized to open on LB768. [LB768]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. LB768 affects only the townships where the entire township board or a majority of the township board has resigned and no one was willing to be appointed to run for a seat on the township board. This bill is necessary because when a township board is inactive there is no one left to conduct the business of the township. This means the entire county picks up the tab to maintain the roads of one township because no one is authorized to touch the township funds levied in the inactive township. Subsections (1) and (2) start the process of terminating a township. In subsection (1), after a township board has become inactive the county board of supervisors shall hold a hearing to determine whether or not the...to determine whether or not to...whether or not to terminate the township. A notice shall be published in a newspaper of general circulation in the county for two weeks. A township board is inactive when two or more seats are vacant and the county board is unable to fill the positions in accordance with Section 32-567 for six or more months. In subsection (2), if no appointment is made to the township board within 30 days after the public hearing because no resident of the township has provided a written notice to the county board that he or she will serve on the township board. The county board may adopt a resolution to terminate the township board on the following June 30. If the resolution is adopted on or after June 1 but before June 30, the township board shall terminate on the following July 31. Subsection (3) allows for the county to use the inactive township funds to take care of the business of the township between the date of the public hearing and the date of termination of the township board. The business of the township shall be handled by the county board. No tax distribution shall be made to the township. Such funds shall be held by the county board in a separate township fund and disbursed only to pay outstanding obligations of the township board. All claims against the township board shall be filed with the county clerk and heard by the county board. Upon allowance of a claim, the county board shall direct the county clerk to draw a warrant upon the township fund. The warrant shall be signed by the chairperson of the county board and countersigned by the county clerk. Subsection (4) deals with the record retention and trying to close the loose ends. Upon termination of the township board, the county board shall settle all unfinished business of the township board and shall dispose of all the property under the ownership of the township. Any proceeds of such sale shall first be disbursed to pay any outstanding obligations of the

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township. The remaining funds shall be credited to the road fund of the county board. Any maintaining township board members shall, serving on that date of termination, shall deposit with the county clerk all the township records, papers, documents pertaining to the affairs of the township and shall certify to the county clerk the amount of outstanding indebtedness in existence of the date of termination. The county board shall levy a tax upon the taxable property located within the boundaries of the township to pay for any outstanding indebtedness. Finally, in subsection (5), this deals with putting the question before the voters whether to keep or terminate all townships within the county. If more than 50 percent of the township boards in a county have been terminated, the county board shall file with the election commissioner or county clerk a resolution supporting the discontinuance of the township organization of the county. What this does is this bill only deals with the township systems in the counties that have the townships, and it deals only with the townships that have an inactive board. And the main reason for this is because there is...if there is a board, they can handle the business like they've done in the past. If there isn't a board, the main issue is how does the county access those funds that have been levied against that township to maintain that township. Without this bill those funds are inactive, they cannot be accessed by the county board to maintain the operations of the township, otherwise the county has to pick up the whole bill for that designated township and that we don't want to see. So we need to pass this bill. And I...it was advanced out of the committee on a 7 to 1, the 1 was Senator Pahls and he was absent. So with that, I ask for your support. [LB768]

SENATOR CARLSON: Thank you, Senator Stuthman. The floor is now open for debate on LB768. Senator Avery, you're recognized. [LB768]

SENATOR AVERY: Thank you, Mr. President. This bill came to the Government Committee and we felt like it was an important bill because it does reflect an unfortunate reality in our state, and that is that many of these townships simply aren't functioning, they don't have enough people interested in running for the positions. There is also the unfortunate reality that many of our communities in the rural parts of the state are experiencing a slow hemorrhage of population and it's harder and harder for them to support these boards. What this bill does that's most important for us to realize is that it provides for an orderly process, a very orderly process for the dissolution of these boards. It's very important that that be stressed. The bill had the support of the Nebraska Association of County Officials. No one appeared at the hearing to oppose the bill. And the committee voted 7 in favor to advance it with 1 member absent. This is important legislation because without it we would continue the difficult task of dealing with these boards that don't no longer function and not having an orderly process for their dissolution. And I think that Senator Stuthman has done us a favor by bringing this forward. And it's good public policy and I urge you to support it. Thank you. [LB768]

SENATOR CARLSON: Thank you, Senator Avery. Those wishing to speak: Senators Gloor, Wallman, and Harms. Senator Gloor, you're recognized. [LB768]

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SENATOR GLOOR: Thank you, Mr. President. Members of the body. I wonder if Senator Stuthman would yield for a couple of questions, please. [LB768]

SENATOR CARLSON: Senator Stuthman, will you yield? [LB768]

SENATOR STUTHMAN: Yes. [LB768]

SENATOR GLOOR: Senator, there's a provision in this bill that says if more than 50 percent of the township boards in a county have been terminated, the county board will file a resolution supporting the discontinuance of the township organization. Could you explain to me what filing a resolution supporting the discontinuance...what that actually means. [LB768]

SENATOR STUTHMAN: In my opinion, what that means, and I will explain the process a little bit further, is if a county has townships and if there's over 50 percent of the townships have been terminated, you know, by the county board already, then in this here it's a resolution supporting the discontinuance of township organizations in the county. That resolution would be filed with the election commissioner to put it on the ballot. Since 50 percent of the townships have been discontinued already, the question for the voters would be, shall the board discontinue the township form of government for the other 50 percent of the townships? [LB768]

SENATOR GLOOR: Thank you, Senator. One other question comes to mind then. What is the current process for eliminating a township board or eliminating townships in general? [LB768]

SENATOR STUTHMAN: What...the current process, and I'm fairly familiar with this, is it goes to the vote of the county, the county is the one that vote on it. And it was on the ballot, you know, several years ago whether townships should be...township forms of government should be eliminated. And in the county, I know, our vote was not to eliminate them. But it was brought to the people at one of the elections in the past several years. [LB768]

SENATOR GLOOR: So to be clear, what we're basically doing is rather than continue the process of a county by county decision, we are in one fell swoop providing that opportunity statewide as a result of passing LB768. Is that a fair summation? [LB768]

SENATOR STUTHMAN: Yes, this is true. But the main issue with my bill is if there is a township that's inactive and the county still has the township form of government with seven active townships and one inactive, taxes have been assessed from the property owners to maintain that township. No one can access those funds to maintain that township if there is no county board to allow those funds to be utilized. And this is

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making it so that it is very easily and a process to access those funds and continue on.
[LB768]

SENATOR GLOOR: Thank you. I appreciate your helping clarify these issues for me.
[LB768]

SENATOR STUTHMAN: Thank you. [LB768]

SENATOR CARLSON: Thank you, Senator Gloor and Senator Stuthman. Senator Wallman, you're recognized. [LB768]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I, too, was a former chairman of the township board. And so we still have townships in my county. And I would like to ask Senator Stuthman a question, if he would respond. [LB768]

SENATOR CARLSON: Senator Stuthman, will you yield? [LB768]

SENATOR STUTHMAN: Yes. [LB768]

SENATOR WALLMAN: Thank you, Senator Stuthman. And as regard to indebtedness, you know, say my township is indebted, do you still put that on that township, that indebtedness on the mill levy? You know, as you realize, each township has a mill levy.
[LB768]

SENATOR STUTHMAN: Yes, Senator Wallman. The indebtedness of the county, and I will refer to it as let's say they bought a motor grader and they've got ten years to pay on that motor grader, that indebtedness continues to be an obligation of that township. And if that motor grader is sold or taken over by someone else, the value of that would be applied towards the indebtedness. But if the indebtedness wasn't satisfied with that, it would still be an obligation of that township. [LB768]

SENATOR WALLMAN: That was my concern here. And thank you, Senator Stuthman. Thank you, Mr. President. [LB768]

SENATOR CARLSON: Thank you, Senator Wallman and Senator Stuthman. Senator Harms, you're recognized. [LB768]

SENATOR HARMS: Thank you, Mr. President and colleagues. Senator Stuthman, would you yield? [LB768]

SENATOR CARLSON: Senator Stuthman, will you yield? [LB768]

SENATOR STUTHMAN: Yes. [LB768]

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SENATOR HARMS: Senator Stuthman, how many...when you brought this legislation forward, how many townships do we might have in Nebraska that might be in this kind of situation, that would actually have to use this law to help themselves? [LB768]

SENATOR STUTHMAN: I am not...I don't have that information as far as how many counties. It might be in my file. But I know there are a number of counties that have had townships go together, two townships form as one, one working board. But there are...well, if your county has a board of commissioners, it doesn't have townships. If your board is supervisors, controlled by supervisors, then that form of government is they have townships. [LB768]

SENATOR HARMS: I guess, I was kind of looking forward, is to think of this as really the trend that we're going to see in rural Nebraska because of people moving from rural to urban. Is that part of the issue we're confronted with? And want an orderly fashion to try to address that issue, is that what we're talking about, basically? [LB768]

SENATOR STUTHMAN: Yes, yes, this is very true, Senator Harms. Because of the fact that, you know, originally township form of government was the perfect scenario because of the horse and buggy days and you had your township halls. But we've moved away from that. And there were a lot of farms. Now there aren't near the farms out there anymore. And no one wants to take the position of being on a township board. And we're trying to have an orderly process so that these funds can be accessed and so that we can continue to maintain the roads even without a township government in a township that does not have anybody that is willing to serve on a township board. [LB768]

SENATOR HARMS: Well, thank you, Senator. I do support this legislation. In one way it's kind of sad because what we're actually seeing happening to our rural communities and we have to go to this, a manner to be able to help them. So I do support it. And thank you for bringing it forward. Thank you, Mr. President and colleagues. [LB768]

SENATOR CARLSON: Thank you, Senator Harms and Senator Stuthman. Are there other senators wishing to speak? Seeing none, Senator Stuthman, you're recognized to close on LB768. [LB768]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. You know, I urge you to support this legislation mainly because it creates a process where there is no one volunteering to serve or be appointed on a township board. And this does make it a process so that the funds can be accessed and so that the roads can be maintained in those townships for those residents that still live there. So with that, I ask for your support. Thank you, Mr. President. [LB768]

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SENATOR CARLSON: Thank you, Senator Stuthman. Members, you have heard the closing on the advancement of LB768. All those in favor vote aye. All those opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB768]

ASSISTANT CLERK: 38 ayes, 0 nays on the motion to advance, Mr. President. [LB768]

SENATOR CARLSON: The bill does advance. Next item, Mr. Clerk. [LB768]

ASSISTANT CLERK: LB799 was introduced by Senator Krist. (Read title.) The bill was read for the first time on January 8, referred to the Committee on Urban Affairs. That committee reports the bill to General File with committee amendments. (AM1556, Legislative Journal page 532.) [LB799]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Krist, you're recognized to open on LB799. [LB799]

SENATOR KRIST: Thank you, Mr. President and members of the body. I want to thank Speaker Flood for selecting LB799 as one of his Speaker priority bills for this session. As indicated on the committee statement, LB799 advanced from the Urban Affairs Committee unanimously 7-0 vote with no opposition or neutral testimony offered. I introduced LB799 on behalf of the Nebraska State Historical Society Foundation and the bill does two primary things. First, it repeals the obsolete and defunct Uniform Code for Building Conservation which is no longer recognized as the building code by any municipality or by the state of Nebraska. Second, it adopts the International Existing Building Code. It is the second point that I became interested in bringing this bill for your consideration. The International Existing Building Code is one of the family of building codes promulgated by the International Code Council, a membership association dedicated to building safety and fire prevention and develops the codes used to construct residential and commercial buildings, including homes and schools. Most U.S. cities, counties, and states that adopt codes choose the international codes developed by the International Code Council. The International Building Code recognizes broad-based principles that are intended primarily for new construction. It was adopted in 2003 as Nebraska's state building code, Nebraska Revised Statute 71-6403. However, property owners and code officials recognize that rehabilitation of older, historic buildings can be more difficult by conflicting more costly and inflexible code requirements intended primarily for new construction. The International Existing Building Code, IEBC, however, contains requirements intended to encourage the use and reuse of existing buildings, including historical buildings. The scope of the IEBC covers repairs, alterations, addition, and change of occupancy for existing buildings while achieving appropriate levels of safety by offering options to new construction requirements in the building code. The passage of LB799 would provide benefits to both cities and to the state. It would allow local governments the authority to adopt the IEBC if, if the jurisdiction chooses. It allows alternatives to the current state building code

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which is now aimed at new construction. It does not sacrifice life safety and does not supersede fire codes. Codes officials in Papillion, Hastings, Ashland, North Platte, and Valley currently use the IEBC as a guideline and with the passage of LB799 would now have the ability to formerly adopt the IEBC. The bill also would provide benefits to property owners, including reducing the cost of rehabilitation. It makes rehabilitation of existing buildings more feasible. It preserves and maintains existing building stock, and it contributes to the revitalization of older neighborhoods and commercial districts. In addition, there are special tax incentives, financing, and programs available to those performing these kinds of rehabilitations. These are aimed at historic preservation, housing and community development activities. Buildings such as rehab going on in midtown Omaha would gain from this benefit, as would some of our main streets in our smaller towns. As previously stated, I introduced this bill at the request of the Nebraska State Historical Society who I know has been working closely with the codes officials across the state. In closing, I want to thank the State Historical Society for their support, those who offered testimony at the hearing, my colleagues in the Urban Affairs Committee. And again, I thank Speaker Flood for designating LB799 as a Speaker priority bill. I ask for the advancement of LB799 to Select File following the adoption of AM1556 offered by the Urban Affairs Committee. Thank you, Mr. President, for your time. [LB799]

SENATOR CARLSON: Thank you, Senator Krist. As has been stated, there are amendments from the Urban Affairs Committee. And, Senator McGill, as Chair of the committee, you're recognized to open on AM1556. [LB799]

SENATOR MCGILL: Thank you, Mr. President, members of the body. This is a really simple amendment that Senator Krist brought to us as we were about to advance the bill out of committee. It simply takes out language that would have put the new rules under the purview of the Fire Marshal, just striking that. Otherwise, you know, Senator Krist made excellent comments about how important this bill is and how updating this code will really help all of our communities, I believe. With that, thank you, Mr. President. [LB799]

SENATOR CARLSON: Thank you, Senator McGill. You've heard the opening on AM1556. The floor is now open for debate. Seeing no one wishing to speak, Senator McGill. Senator McGill waives closing. The question is, shall AM1556 be adopted? All those in favor vote aye; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB799]

ASSISTANT CLERK: 30 ayes, 0 nays on the adoption of committee amendments. [LB799]

SENATOR CARLSON: The amendment is adopted. We return for discussion of the underlying bill, LB799. Senator Fulton, you're recognized. [LB799]

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SENATOR FULTON: Thank you, Mr. President, members of the body. The place is getting a little quiet, thought maybe we'd ask a question or two here. Would Senator Krist yield to a question? [LB799]

SENATOR CARLSON: Senator Krist, will you yield? [LB799]

SENATOR KRIST: Absolutely, thank you. [LB799]

SENATOR FULTON: Senator, the intention here is to implement the International Existing Building Code 2009 edition. Correct? [LB799]

SENATOR KRIST: Correct. [LB799]

SENATOR FULTON: Did anyone raise question as to whether there are provisions within the international code which are not specific locally? And the reason I ask, this has to do with this...I've heard this in the past and I also hold to this general principle of subsidiarity, those closest to an issue are most equipped to deal with it. And I know that that doesn't apply as an absolute, but I'm wondering if that has been addressed. This is an international building code which may not contemplate that which affects people at a local level, contractors, electricians, plumbers, etcetera. Could you comment on that as to whether that has been addressed in the international code? [LB799]

SENATOR KRIST: I'd love to and thanks for the question. Testimony to the fact that it does have extreme applicability to our local area speaks to the fact that Papillion, Hastings, Ashland, North Platte, Valley, and others are currently using those standards. This just helps them comply by allowing us to use it as a standard. So I think the local population, the small towns across Nebraska have looked at the code and said it applies to us. This is what we want. [LB799]

SENATOR FULTON: Okay. As a matter of uniformity then, we had not utilized the international code previously. Is that correct? Before this we were not using the international code. It was a uniform code that was national or is that state? [LB799]

SENATOR KRIST: The national code was...it was a national code and it has been abandoned because of the international code. And officially these municipalities and cities actually have been using the international code and are asking to make it an official code. [LB799]

SENATOR FULTON: Okay. [LB799]

SENATOR KRIST: That's the best answer I can give you. [LB799]

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SENATOR FULTON: Okay, good enough. Thank you, Senator Krist. Thank you, Mr. President. [LB799]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Thank you, Senator Fulton. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR317 and LR318. There are no other lights on. Senator Krist, you're recognized to close on LB799. Senator Krist waives his opportunity. The question before the body is, shall LB799 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. [LB799 LR317 LR318]

ASSISTANT CLERK: 33 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB799]

SPEAKER FLOOD: LB799 advances to E&R Initial. Mr. Clerk, items for the record. [LB799]

ASSISTANT CLERK: A series of items, Mr. President: Ag Committee will meet in Executive Session...will meet this afternoon in Room 2102 at 1:30 p.m. An amendment to be printed to LB888 from Senator Conrad; notice of committee hearing by the Rules Committee. Your Committee on Government reports LB742, LB948, LR284CA, and LR300CA to General File with amendments as well as LB980 and LR279CA is indefinitely postponed. Committee on Education reports LB1021 to General File with amendments. An amendment to be printed to LB1002 from Senator Loudon; new A bill from Senator Avery. (Read LB951A by title for the first time.) Your Committee on Enrollment and Review reports the following bills as correctly engrossed: LB226, LB512, LB579, LB643, LB711, LB723, LB746, LB787, LB848, LB867, LB890, LB891, LB892, and LB914. In addition to that, name adds: LB951 for Senator Cook and LB1014, Senator McGill, Mello, and Giese. (Legislative Journal pages 622-629.) [LB888 LB742 LB948 LR284CA LR300CA LB980 LR279CA LB1021 LB1002 LB951A LB226 LB512 LB579 LB643 LB711 LB723 LB746 LB787 LB848 LB867 LB890 LB891 LB892 LB914 LB951 LB1014]

Finally, a priority motion: Senator Lautenbaugh would move to adjourn until Wednesday, February 24, 2010, 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 February 24, 2010, at 9:00 a.m. (Gavel)