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Floor Debate
April 08, 2019

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SCHEER: I call to order the fifty-fifth day of the One Hundred Sixth Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

SCHEER: Thank you. Are there any corrections for the Journal?

CLERK: I have no corrections.

SCHEER: And are there any messages, reports, or announcements?

CLERK: Mr. President, I have neither messages, reports, nor announcements at this time.

SCHEER: Thank you. Senator Howard, for what purpose do you stand?

HOWARD: A point of personal privilege.

SCHEER: Please proceed.

HOWARD: Thank you, Mr. President. Good morning, colleagues. The Health and Human Services Committee has conducted a series of agency briefings this session to educate the committee and the Legislature as a whole regarding the functions of the department. The Health and Human Services Committee along with Senator Stinner and the Appropriations Committee will be holding an additional briefing on the state's Medicaid expansion plan this Thursday at 1:30 p.m. in Room 1510. As you know, the department unveiled the general provisions of its plan last Monday, and the Health and Human Services and Appropriations Committee members have additional, more detailed questions about the plan, particularly in regards to budgetary impact and plan implementation. Both committees have provided questions to the department already in an effort to streamline the process and make sure we can have the most productive dialogue on Thursday. This will be invited testimony only and we have asked the department to

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bring all the appropriate people needed to answer the questions the committee members have asked. Any senators interested are welcome to attend. We'll save the first two rows in front for the senators, and again, the briefing will be held at 1:30 in Room 1510 on Thursday. Thank you, Mr. President.

SCHEER: Thank you, Senator Howard. Mr. Clerk, first item.

CLERK: Mr. President, General File this morning. Senator Howard offers LB556. (Read title.) Introduced on January 22, at that time referred to the Health and Human Service Committee, advanced to General File. There are committee amendments pending, Mr. President.

SCHEER: Thank you, Mr. Clerk. Senator Howard, you're welcome to open on LB556.

HOWARD: Thank you, Mr. President. Today, I present to you LB556, a bill that changes provisions relating to data, interstate sharing and other general cleanup language within our prescription drug monitoring program statutes. This bill is my personal priority bill, and it was advanced from the committee unanimously. LB556 had no opposition or neutral testimony. I want to share with you some of the history of the Prescription Drug Monitoring Program and also the reasons why I'm personally so passionate about this program. So most of you know this story, but just for the record I'll say it again. My sister, Carrie, was an incredibly bad driver, and she kept on getting into these like minor fender-bender accidents. She would get sort of whiplash and then she had back pain, and then the back pain got worse, and then a doctor finally recommended that she have a spinal fusion which was something that I had never heard of, and the physician actually said that she was the youngest person he had ever performed a spinal fusion on. When she was in the hospital she was given morphine, and then when she left the hospital, she was given an enormous bottle of Oxycontin. And this was the early 2000s so this was well before we knew what Oxycontin was. She immediately became addicted. She was never diagnosed with a substance use disorder because there was a lot of shame and stigma around addiction at the time. She would get better and then she would relapse, and then she would get better and she would relapse. And about ten years ago she had gotten better. We were planning her wedding. We had picked out her wedding dress and then she passed away. She'd been doing really well and then she went to a dentist and had a root canal and he sent her home

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with Oxycontin again. And five months later she was gone. In the five months before she died she very successfully doctor shopped across Omaha and was given 4,500 pills, multiple prescriptions, almost 5,000 pills a month before she passed away from an overdose. So now I'll just talk about the history of opioid legislation in the state of Nebraska because that's quite a bit easier, isn't it? All right. So my mother started the first Prescription Drug Monitoring Program, potentially the first one in the country, in this state in 2011 with LB237. In 2014, Senator Lathrop, my neighbor, passed LB1072 that actually allowed the state of Nebraska to pursue grants and other funding to operate the Prescription Drug Monitoring Program. Up until then only general funds were allowed to run the program, which meant that it was very limited. And for those of you who aren't familiar with the Prescription Drug Monitoring Program, essentially it is a method for providers and dispensers, so prescribers and dispensers, to be able to see what medications are going out the door to an individual. It prevents doctor shopping which is when somebody who is addicted to prescription pain medications goes to multiple doctors and multiple pharmacies. Carrie was incredibly smart. She would match a doctor to a pharmacy. And it shares the information with exclusively individuals who are HIPAA protected, which means that if you are following patient privacy, then you are able to see this information and provide better care to your patients. Currently, our PDMP, or Prescription Drug Monitoring Program is housed within our health information exchange, which is an electronic highway for our electronic health records, which means that all of my health records are in Omaha, but if I get into an accident in Kearney, say when I'm doing the Nebraska Passport or something like that, the Kearney physician is able to see my medical records from Omaha. When my-- we had to take my father-in-law to the emergency room, and he's in a nursing home, and so when we took him to the emergency room he couldn't remember what meds he's on because he has Alzheimer's. And so, we said, do you mind if you look into the Prescription Drug Monitoring Program so that you know what medications he's on. And they looked and they had all the information they needed. So in 2015, I passed LB471 that solidified Nebraska's PDMP as the first of its kind to be run through the state health information exchange, and the provisions in LB471 prohibited opting out. Previously individuals could say I don't want my information in the PDMP. It included all dispensed prescriptions, it added veterinarians because it turns out they also have the ability to dispense narcotic pain medications, and then it ensured that it would be accessible at no cost to prescribers and dispensers. And it also captured cash-pay patients which was one of those loopholes where drug seekers would use cash to pay for their prescription. In 2013, LB223

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passed by the Legislature to add requirements for veterinarians, require training to access the PDMP and tightened confidentiality and privacy provisions. Throughout this process, we have worked with all the entities who make this program function from pharmacists and the prescribers to the Nebraska Health Information Initiative where the PDMP is housed. And earlier this summer, a group of stakeholders reached out to me about some of the challenges they were facing on the operation side of the PDMP and this group consisted of hospitals, NeHII, some insurance companies, and then I'll talk about what the bill itself does. Some of it is just cleanup so we're clarifying some of the patient identifiers within NeHII, so I'm Susan Howard, but it gets entered as Sue Howard, we'll be able to figure out that you're the same person based on birth date. It adds a requirement for gender and specific patient identifiers such as a telephone number, or if you have a driver's license number to help with patient matching. It adds a requirement for the number of refills. It has some provisions for data sharing and security by NeHII and the department, so every year we've added more privacy provisions because this is something that we want medical information to be held private in the state of Nebraska, and we want them to work with the department. We are allowing managed care entities and the director of Medicaid and long-term care to access the PDMP and this authorization is recommended by federal legislation that would continue to provide dollars to the PDMP. The big thing-- the big two things in this that I'll note, and these are specifically part and parcel to our federal funding, so right now this program is exclusively federally funded, is we need to have interstate operability. This means that in the state of Nebraska we're one of the last PDMPs that doesn't share their data with other states. So someone can go to Iowa, fill a prescription that is housed in their PDMP and then they come to Nebraska, they fill a prescription, and it's housed in our PDMP and the two aren't talking to each other. With this interstate operability provision, we'll be able to continue receiving necessary grant funds for the program. And then finally, this is what the physicians are really excited about. We are allowing the PDMP to interface directly with the electronic health records. So right now, when you go to the doctor they'll look up your electronic health record and then they have to go into a separate screen to look at the Prescription Drug Monitoring Program. We are going to allow them to interface directly with the electronic health records so all of your data is in the electronic health record. We believe this will save physicians time and will begin to encourage physicians to check the PDMP more regularly because we're anticipating the federal government to start mandating a check for physicians. LB556 also

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houses LB557, which is Senator Lindstrom's bill, in the committee amendment. And so now, Mr. President, if I may, could I open on the committee amendment?

SCHEER: If you wish. You have two minutes left. It's up to you.

HOWARD: Well, once we move to the committee amendment, I'll yield the rest of the time to Senator Lindstrom.

SCHEER: Thank you, Senator Howard.

HOWARD: Thank you.

SCHEER: Senator Lindstrom, you have 1:40.

LINDSTROM: Thank you, Senator Howard. Thank you, Speaker. My bill LB557, into LB556 with the amendment, amends the definition of practitioner to include a prescriber or healthcare provider who is substituting for another prescriber or healthcare provider so long as they are a member of the patient's care team and under the direct supervision or in consultation with their primary prescriber. For example, if my doctor is out of the office and another doctor is covering their shift, they would not be required to have the conversation with the patient if they are authorizing a refill of the prescription. Number two, changes to the first and third prescription to 60-day look back instead of the--

SCHEER: One minute.

LINDSTROM: --first and third incident of a prescription request, the provider looks back to see if the patient has a prescription in the last 60 days. This was recommended because prescriptions aren't always given in person, therefore, if we-- would be more efficient to look back at the patient's chart to indicate dates of refill rather than the number of times the medication has been prescribed. The 60-day look back aligns more simply with the patient's electronic health record and aligns with the federal definition of what constitutes an opioid-naive patient or someone who is more at risk of addiction and could benefit from additional education provided in LB931 from

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2018. The bill includes an exemption for hospice and palliative care or for a cancer diagnosis and was recommended at the request of doctors treating these patients. And lastly, AM383 moves these sections of statute to the Uniform Credentialing Act and out of the criminal code. I would also like to note that AM246 was presented at the public hearing and would exclude veterinarians and facilities that do not prescribe medications for humans. That amendment was accepted by the committee and included the explanation of the amendment, of the committee statement. I want to thank Senator Howard for prioritizing her bill and the inclusion of LB557. And I'd like to thank the members of the Health and Human Services Committee for their commitment to addressing the prescription drug abuse and finding solutions for a state to combat this epidemic. I would urge the body to adopt AM383 and the underlying bill. Thank you.

SCHEER: Thank you, Senator Howard and Senator Lindstrom. (Visitors introduced.) As the Clerk noted, there is a committee amendment. Senator Howard, would you like additional time for the committee amendment? She waives from that. We'll go directly to the queue. Senator Arch, you're recognized.

ARCH: Thank you. I just want to compliment Senator Howard for bringing this bill and for her continuing to seek ways to improve the PDMP. And the one thing in particular that I appreciated about this bill is that it-- while originally I think it was designed to help transparency in the prescribing of narcotics it-- with this bill it now moves to a different level, and that is with an electronic medical record interface possibilities, you're going to be able to now in a clinic quickly look up the medications that the individual is on. There is something that is required for all joint commission hospitals, accredited hospitals, and that is something called medication reconciliation. Sometimes when a patient comes in and you say, well, what medications are you on, they may forget. Oh, yeah, that right, I take one of these as well, and that particular medication conflicts with the medication that the physician is about to prescribe. And not knowing that information, of course, can cause some serious issues with that patient. So the ability to interface with the electronic medical record where they don't have to go back out and take a look at the outside PDMP, but it's right there in their system, they can continue with medication reconciliation with a full understanding. And then sometimes, you, of course, will query the patient and you'll ask, well, are you still taking this particular prescription and they'll say no. Good news is that information then will become available to all other physicians that will

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be treating that patient at a later date. So that being said, the other-- of course, the provision in there for HIPAA in making sure that this information is available to physicians, but unless you have a reason for going in and taking a look at that particular record that would be a violation of HIPAA. And so it is for those that are treating that patient, those that have a reason, a medical reason to go in involved in the treatment of that patient, and so there's protections for this information out there, but I think it's a good bill, and I stand in strong support of it. Thank you.

SCHEER: Thank you, Senator Arch. Senator Kolterman, you're recognized.

KOLTERMAN: Good morning, colleagues. Thank you, Mr. President. I just rise to support this legislation that Senator Howard, Senator Lindstrom put together. They worked hard on this in continually looking ways to improve the situation. At the same time, I'd like to compliment NeHII. They're miles ahead of everybody else in the country as it pertains to how we monitor these programs, and they're nationally recognized. Deb Bass started that program not many years ago, and she retired a couple years ago. Now Dr. Jamie Bland, who is a physician, and Kevin Borchert, pharmacist, continue to do an admirable job. So with them working closely with Senator Howard, Senator Lindstrom and other people involved, HHS, I believe that we have a win-win situation. I would encourage you to support AM383 and LB556. Thank you.

SCHEER: Thank you, Senator Kolterman. Senator Ben Hansen, you're recognized.

B. HANSEN: Thank you, Mr. Speaker. I, too, also want to echo Senator Arch's comments about the thanking Senator Howard for bringing this bill and I think because of her work over the last six-plus years, and with others, that we've been pretty preemptive in the opioid crisis in Nebraska. I think that's why we have one of the best, lowest rates in the nation with opioid overuse. And so I want to thank her personally. I just have one question for her if she'd yield to a question, please.

SCHEER: Senator Howard, would you please yield?

HOWARD: I would be happy to.

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B. HANSEN: Thank you. So, if I remember right, the federal grant for this program ends August 1 of this year, correct?

HOWARD: Yes, August 31.

B. HANSEN: August 31. Okay, thanks. So can you explain maybe how we're going to get federal grants again after that or if they will be available?

HOWARD: Sure. So the CDC grants for opioids are rolling grants, which means that you apply while you're still on and then you roll into the next cycle. But one of the things that was holding us back from making sure that we were certainly going to get our September 1st new grant, was our interstate operability. So by passing LB556 and allowing for interstate operability, that should guarantee that the funding continues.

B. HANSEN: Good. Thank you. And I just want to stand up in support of this bill. I think it's a good bill which she and Senator Lindstrom have put together so I appreciate it very much. So I'd appreciate a green light on this bill as well. Thank you.

SCHEER: Thank you, Senator Hansen and Senator Howard. Senator Bostelman, you're recognized.

BOSTELMAN: Thank you, Mr. Speaker. I also stand in support of AM383 and LB556. I talked to Senator Howard off the mike and Senator Lindstrom both. I think the next step that needs to be taken in this area of opioid prescription, distribution, that is, it's in the palliative care of the cancer and the hospice care. I think that there's far too many opioids that are distributed to those patients. My brother as he fought cancer, he was given a lot of opioids. Far more than what he needed, and it was just more-- every time it seems he went in and sent home, here's more opioids, here's more opioids. Drawers full. Way too much. And I think that's the next step that would be a wise step for us to take a look at. Just take a look at is understand the need in those areas, but we also need to be wise about how we prescribe those medications, and they need to be prescribed at a rate that's actually used and needed by those patients, and not just something automatically given-- not that they do automatically, I don't want to say it that way, but we're just

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cautious because I know that they were-- he was prescribed far more opioids medication than what he would ever use, and I think that's something we need to be mindful of. That's something we need to take a look at to see how that can be addressed in the future. Perhaps next session that as we continue to look at opioids and prescribe those and the devastation it has in our communities with individuals, that we're careful that we prescribe to the need, but we don't prescribe to the disease, if that makes sense. So if the individuals need, we prescribe what they need and what they actually use and not just prescribe because we think this is what they may need. So with that, I would ask for your green vote on AM383 and LB556. Thank you, Mr. Speaker.

SCHEER: Thank you, Senator Bostelman. Senator Dorn, you're recognized.

DORN: I, too, stand in support of AM383 and LB556, but if Senator Howard would, I would like to ask her a question.

SCHEER: Senator Howard, would you yield again, please?

HOWARD: I would be happy to.

DORN: Thank you. I talked to her a little bit ago. How, when someone gets a prescription, how soon or when is that entered in this database? When are other physicians or other entities able to look at that?

HOWARD: I'm really glad you asked that question. So Nebraska captured everything that is dispensed, which means that everything that goes out the door from a pharmacy is what we capture, not what's prescribed, right? Which is a little bit different than other states, right? You may get a prescription, you might not fill it. So we capture everything that is dispensed, but we work in concert because we're sitting inside of our health information exchange. We work with the systems within the pharmacy, so some of those are called PBMs, or Pharmacy Benefit Managers, but those computer systems speak directly to our Prescription Drug Monitoring Program, so they are as close to real time as possible. So you pick up your prescription, it goes

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into their computer system, then it goes directly into the PDMP and presumably a physician would be able to access that data in as close to real time as possible.

DORN: Okay, thank you. Thank you for the explanation. One more quick question then. What about people that are able to look at this. Are dentists also involved with that?

HOWARD: Dentists are able to look at it. Originally when I was doing-- starting doing this work I thought dentists would give me sort of the most heartburn in having to tell us what they were dispensing and having to check the PDMP, but they were not. And I think part of it was because of my circumstances in that it was a dentist that had assisted my sister's relapse, but also because most dentists are now prescribing to a pharmacy. So most of them while they have dispensing privileges, most send their narcotics to a pharmacy anyway, and then they also have the ability to check the PDMP if they are-- have concerns about a patient.

DORN: Thank you. Thank you very much for those, and one other quick comment as someone that has family members involved in the medical field, they can tell you stories of patients that are very creative or very aware of the situation that's out there and what some of these restrictions we have in place. They are very able to adapt or they will try different things to continue to get some of this medication, and we need to make sure we are on top of this and doing things that we can and should do to help make sure that they're not able to. Thank you.

SCHEER: Thank you, Senator Dorn and Howard. Senator Hilkemann, you're recognized.

HILKEMANN: Thank you, Mr. Speaker. I rise in support of this legislation and the amendment as well. This dovetails well with a resolution that I-- or a bill that I brought. This is the first step. We need to-- this is --it's very important we begin coordinating all of the data, not only for drugs, but also for disease and illnesses and so forth. If we're ever going to come to starting controlling the cost of medications and the cost of medicine and the cost of treatment, this is a first step. And I've talked with Senator Howard. We've brought the-- we're working with NeHII. There's going to be an interim study during the course of the summer to work with this to even broaden what we can do, but this is a good first step. Thank you, Senator Howard, for bringing this, and this is one of those bills that we need to all get behind. Thank you very much.

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SCHEER: Thank you, Senator Hilkemann. Seeing no one left to speak, Senator Howard, you're welcome to close on AM383.

HOWARD: Thank you, Mr. President. This body has been an incredible leader, an incredible force in our country in addressing opioid overdoses. Nebraska is an anomaly. We are one of the only states, if not the only state in the last year, that actually saw a reduction in our overdose deaths, and it is because of the work that this body has done specifically. There's more to do. Senator Bostelman is absolutely right. We have-- last year we put on caps for minors, which meant that you couldn't prescribe more than a week's worth of a narcotic medication to somebody below the age of 18, but other states have put in caps for adults where you couldn't give them more than a month's worth or something like that. We know that what's coming is that providers, before they prescribe a narcotic, are most likely going to have to check the PDMP, and that's going to be tied to our federal funding, so we'll need to make modifications there. But one thing I'll sort of put on everybody's radar for next year is our statutes are littered with information about the PDMP. They're very proscriptive and so most likely, next year, in the future, we'll need to consider putting some of that oversight into an advisory committee instead of on us. Everything that's in there now is becoming very technical and very precise, and I'm not sure if that's really the direction that this body should go in per se. With that, just a personal note of thanks. This body has been a part of my family since Carrie passed away, since before then, and while I see us and we get very rancorous with each other and we fight with each other, just know that at the end of the day we are absolutely a family. That when I was at Carrie's funeral, the Governor sat behind me, and every single member of the Legislature was there, and they all came and spoke to me. The day I came home from Chicago, it was senators and it was lobbyists who were coming into our house and bringing boxes of food. It was Deb Fisher who would take my mom out to lunch on the anniversary. So don't ever think that it's sort of okay to fight with your brothers and sisters, but when we walk out of here, we are a family and we support each other, and this legislation, I hope, reminds us of that as we go into our long days and our hard days. So I appreciate the support on this bill. I appreciate the little love fest we had this morning because I think maybe we needed it on a Monday morning. So with that, thank you, Mr. President.

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SCHEER: Thank you, Senator Howard. The question before the body is the adoption of AM383 to LB556. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record.

CLERK: 44 ayes, 0 nays on adoption of committee amendments.

SCHEER: AM383 is adopted. Seeing no one left to speak, Senator Howard, you're welcome to close. She waives closing on LB556. The question before us is advancement of LB556 to E&R Initial. All those in favor please vote aye; all those opposed vote nay. Please record.

CLERK: 44 ayes, 0 nays, Mr. President, on the advancement of LB556.

SCHEER: LB556 is advanced to E&R Initial. Next item, Mr. Clerk.

CLERK: Mr. President, LB556A by Senator Howard. (Read title.)

SCHEER: Senator Howard, you're welcome to open on LB556A.

HOWARD: This A bill reflects the federal funding that we anticipate coming through August 31. It is exclusively federal funds and I would urge its adoption on the floor today. Thank you, Mr. President.

SCHEER: Thank you, Senator Howard. Seeing no one in the queue, you're welcome to close. She waives closing. The next question is the adoption of LB556A to E&R Initial. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record.

CLERK: 43 ayes, 0 nays, Mr. President, on the advancement of LB556A.

SCHEER: LB556A is advanced to E&R Initial. Next item, Mr. Clerk.

CLERK: Mr. President, LB570 is a bill by Senator Walz. (Read title.) Introduced on January 22, referred to the Health and Human Services Committee. The bill was advanced to General File.

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There are committee amendments as well as amendments to those committee amendments, Mr. President.

SCHEER: Thank you, Mr. Clerk. Senator Walz, you're welcome to open on LB570.

WALZ: Thank you, Mr. President. Good morning, colleagues. LB570 is a bill to amend statute 81-6122 regarding the creation of a plan by DHHS to provide services to qualify people with disabilities in the most integrated community-based setting as possible. This plan is commonly referred to as the Olmstead Plan. Originally the statute stated that DHHS was the only actor required to develop this Olmstead Plan. The problem is that Olmstead needs to be a statewide comprehensive plan, and all departments need to be involved in the creation of the plan. Thus far, DHHS has expressed difficulty in receiving investments from other departments to create this plan. That is why my bill, with the committee amendment, would require DHHS, the Governor's Policy Research Office, Department of Correctional Services, the Department of Economic Development, Department of Labor, and Department of Transportation and Education and the office of the state long-term care Ombudsman's office to work together to create this plan instead of relying solely on DHHS. This bill also adds the Commission for the Deaf and Hard of Hearing and the Commission for the Blind and Visually Impaired to the list of stakeholder advisory committee members passed with assisting in the review and development of the Olmstead Plan. The requirement to create a Olmstead Plan is already in state statute. The due date for its completion was December 15, 2018. Currently, DHHS is out of compliance with state law because we have no plan in place. This bill with AM970 would move the date back to November 1, 2019 bringing the department back into compliance and giving them more time. The original bill had June 30th of 2019 with the amendment moving it back to November 1, 2019, and I would like to say that we are currently working with DHHS on that date. The issue originally arose in 1999. In 1999, in a Supreme Court case where the justices determined that unjustified segregation and institutionalization of people with developmental disabilities is unconstitutional and a violation of Title 2 of the 1990 Americans with Disabilities Act. The court also held that states are required to create an Olmstead Plan designed to provide services in the most community-based setting as possible when (a), such services are appropriate, (b), the effective persons do not oppose community-based services, and (c), the community-based services can be reasonably accommodated. This Supreme Court decision was made in June of

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1999. We are quickly approaching the 20th anniversary of the decision and our state still does not have a plan in place. Not only does this leave our state open to litigation by the justice department, but we are allowing segregation of some of the most vulnerable individuals of our state. Under this bill the department would be allowed to hire or continue a contract with a consultant to complete this plan and determine whether benchmark deadlines and time frames are in substantial compliance with the strategic plan. Right now, DHHS has a contract with the Technical Assistance Collaborative, or TAC. TAC released a report last year expressing difficulty with a number of the problems this bill aims to solve. They also recommended the date of June 30th as an appropriate date when DHHS would have this plan completed. I felt that since we were working with other departments, and due to the request of the department, a later completion date would be warranted to give other departments time to be included. I would like to let you know that if we do not pass this piece of legislation to create and implement an Olmstead Plan, we are at risk of being sued, not only by the Department of Justice, but by individuals within the state that are being subject to discrimination. If it comes to this we will have to spend millions of dollars on attorney fees and have no control over the Olmstead Plan that we are required to implement. After working on this issue the past few years, I can tell you that we are not far off from this becoming a reality, especially after the conditions we saw during the tours of the state licensed care facilities. I think we are very much in danger of a potential lawsuit. If we pass this bill, we would have a plan that fits Nebraska's needs, as well as an active legal defense if we were to be sued. An Olmstead Plan is a far-reaching document. Not only does it consider individuals who are currently institutionalized, but also those who are at risk of being institutionalized and those who are segregated by the services and practices of the state. A good Olmstead Plan includes action steps on various areas of a person's life in their community. Some of the areas that need to be considered include housing to ensure people with disabilities are living in places where people both with and without disabilities live. Employment, providing jobs that offer competitive wages and are based on a person's interest and employ individuals with and without disabilities. Transportation that is accessible, reliable, and available to people with and without disabilities. Education, the ability to receive educational services in support in the same classroom as students with and without disabilities, and individual choice. To assure person with disabilities decides when, where, and with whom to live. The Olmstead Plan must include three different-- these different facets in life and must include the goals and steps to integrate people with disabilities into the community they choose. All of these parts are

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necessary and should be considered in the creation and implementation of the plan because they rely upon each other and all of these services are interwoven. Colleagues, while instituting federal guidelines in our state is extremely important, we also have the responsibility to defend the rights of Nebraskans with disabilities to be treated fairly and given the same opportunities of anyone else without a disability, the opportunity to succeed. The findings of the long-term care facilities was disturbing and disgraceful, and should not be acceptable. However, we found through our legislative resolution and the committee investigation that residents were being rotated from one terrible facility to another, and were not allowed the right to live in the most integrative settings with services that are community-based. This bill has the ability to guarantee an essential quality of life filled with protection from abuse and neglect, a life filled with dignity and respect readily available for all Nebraskans. I recently shared with you, all of you, a video on the Olmstead Plan, and I would encourage you to take a look at it if you haven't done so already. But I would like to share a quote with you from the video regarding the Olmstead Plan. Time passed, no plan came. We know it works, we know it is cheaper, we know people like it better, and we still haven't done it. Colleagues, we have the right leadership in place to get this done. We will work with DHHS and departments on any changes that are needed. This bill advanced from committee on a 7-0 vote. With that, I would ask for a green vote on the committee amendment, AM970, and this bill. This is the right thing to do. Please join me in supporting this bill. Thank you, Mr. President.

SCHEER: Thank you, Senator Walz. As the Clerk noted, there is a committee amendment from the Health and Human Services. As Chair, Senator Howard, you're welcome to open on AM470.

HOWARD: Thank you, Mr. President. Good morning, colleagues. AM470 replaces Section 2 in the green copy of the bill. Section 2 is amended to require the Departments of Economic Development, Labor, Transportation, Education, Correctional Services, the Governor's Policy Research Office and the state's Long-Term Care ombudsman as well as the Department of Health and Human Services to create an Olmstead Plan. The original bill required the department to collaborate with those other agencies but did not give those other agencies any authority or responsibility for the plan, yet without those agencies the state cannot complete their Olmstead Plan. Similarly, Section 2 is also amended to require the directors from the Division of Behavioral Health, Children and Family Services, Developmental Disabilities, Medicaid and

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Long-Term Care, Public Health, Correctional Services, Economic Development, the Commissioner of Education, the Commissioner of Labor, the Director, State Engineer and the State Long-Term Care ombudsman to convene a team to develop a strategic plan appointing and convene a stakeholder advisory committee, arrange for consultation with an independent consultant, provide a report to the Legislature by December 15, 2021, and every three years thereafter, and provide the completed Olmstead Plan. The amendment was passed unanimously by the committee and I would urge its adoption on the floor today. Thank you, Mr. President.

SCHEER: Thank you, Senator Howard. Mr. Clerk for a motion.

CLERK: Mr. President, Senator Howard would move to amend the committee amendments with AM1205.

SCHEER: Senator Howard, you're welcome to introduce AM1205.

HOWARD: Thank you, Mr. President. And this is merely to address the fiscal note. So this amendment has a reduction to the Legislative Council's current biennium appropriation of \$142,199. This amount gets returned to the Health Care Cash Fund in fiscal year 2019, freeing up the amount needed to cover the entire General Fund cost of LB570 from 2019 through 2022. The amendment, AM1205, adjusts the transfer into the Health Care Cash Fund to reflect these appropriations and changes. Basically, the Legislature didn't use its full appropriation in the Legislative Council's biennium, in the current biennium, and then those funds that weren't used previously will be used for this bill. Thank you, Mr. President.

SCHEER: Thank you, Senator Howard. Going to floor discussion. Senator Arch, you're recognized.

ARCH: Thank you. I stand in support of LB570 and the amendments. I just wanted to make one comment. I found it very interesting when we were doing the confirmation hearing for Ms. Dannette Smith as CEO of HHS, one of the questions we asked, because we had been in extensive discussions about the Olmstead Plan previously, was her experience with it in Virginia. And she had the other experience, and that was the Department of Justice came in to take a look

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at Virginia because the plan had not been developed. Being one of six states that remain without an Olmstead Plan, we definitely need to move on this, and I stand in strong support. And she does as well, by the way, as part of her confirmation hearing she made that very clear. Thank you.

SCHEER: Thank you, Senator Arch. Senator Murman, you're recognized.

MURMAN: Thank you, Mr. President. I stand in strong support of the bill and the underlying amendments and I thank Senator Walz for bringing this forward and Senator Howard for the amendments. I'm just going to speak a little bit to some personal experience. My family has had-- our daughter is 31 years old now. When she was about two years old she was diagnosed with a disorder called Rett syndrome. It's a neurological disorder, and she is totally disabled. She can walk with a maximum amount of assistance and communicate in a very limited way, mainly by eye gaze. She does have an eye gaze machine that she fairly, consistently makes choices using that. But our history goes back when she was about two years old we used a-- or we redeveloped, or actually used a therapy called option therapy. And it was a play-type therapy, and we invited family, friends, and neighbors to come in and play very intensely with Whitney. And in that way she had a lot of connections with friends and neighbors and others in the community, so we always did feel that was very important. And also at that time, we attended Rett-- International Rett Syndrome conferences, and the big thing back then, that was in the 1990s, was-- it was called inclusion at that time, and I don't know if that's the correct word now, but nationwide that's the word they used. And the important thing was to integrate girls with Rett syndrome with both in the education system and Health and Human Services and include them as much as possible with their peers. So-- and that's a lot of what this bill is attempting to do and I think that's very important. Another very important part of this, I think, is it's up to the individual as to, or the individual or their caretaker as to how much and how to be included or integrated into the community. And they can use their individual-- I think it's called the IPP program for that. And I think that's extremely important because, for instance, our daughter in using her eye gaze machine and the physical therapy and occupational therapy she receives and the one-on-one, hand-over-hand things that she does, it's very important to have a facility that they can go back to do those kinds of things. And the Nebraska weather is always very questionable. It's usually-- it's

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very seldom real nice like it is today. It's usually very hot, very cold, very windy, raining, storming, whatever, and if you're in a wheelchair--

SCHEER: One minute.

MURMAN: --it's very difficult for yourself or your caregivers to get out sometimes. So I think they need to be very flexible in how they do that, but I just want to speak in strong support of this bill and I think integrating in society with the Olmstead is a very important thing to do both for disabled and others as we spoke. Thank you very much.

SCHEER: Thank you, Senator Murman. Senator Bostelman, you're recognized.

BOSTELMAN: Thank you, Mr. Speaker. And I have a couple comments, but I will ask Senator Walz to yield and at the end of that and ask Senator Walz would yield to a question.

SCHEER: Senator Walz, would you yield?

WALZ: Yes.

BOSTELMAN: Senator Walz, you and I have talked off the mike as well as talking with Senator Howard a little bit about-- specifically some wording on AM470. I do support AM1205, AM470, and the underlying bill. What we're talking about is some specific language here, and we're right now we're requiring certain department heads to participate in this. And my understanding is we've talked that Director Smith, CEO Smith, has formed a very good working relationship with all of these departments now and feels that's not necessary, and this is an area that you'll be addressing when we go from General to Select that we're going to par back or pull back some of those requirements there, those requirements for those directors to participate, especially as we look now with what's going on in the state, is that correct?

WALZ: That's correct. It is a very comprehensive plan, but I have complete confidence that Director Smith also will be able to pull in the departments as needed and work with them.

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BOSTELMAN: Thank you. And that's my understanding, so I do continue to vote green on both AMs and underlying bill as we're going to address this going to Select File with our amendment to pull back a little bit of those requirements on some of those directors, especially on that need because there seems to be now that working relationship between DHHS and those other agencies and it's not needed at this point in time. So with that, I urge you to vote green and thank you. I yield the rest of my time back to the Chair.

SCHEER: Thank you, Senator Bostelman, Senator Walz. Senator Friesen, you're recognized

FRIESEN: Thank you, Mr. President. Would Senator Walz yield to some questions?

SCHEER: Senator Walz, would you please yield?

WALZ: Yes.

FRIESEN: So, my question is a little bit on the same line, only it's more specific. I was curious as to what the Department of Transportation and if you would talk a little bit about why they were included or why they could be taken out.

WALZ: Well, they were included because, again, Olmstead is a very comprehensive plan, and we want to make sure that transportation is accessible for people and that it is reliable and available to people who have disabilities and who do not have disabilities. And I know that you and I talked off the mike last week about this question as well.

FRIESEN: Because I think the Public Service Commission would probably be more relevant when you talk about those issues that I don't think, at least, unless you can show me otherwise, DOT really deals with any of those issues. As we did the LR this summer, you talked about getting them out into the most urban setting or more residential setting that we can get people into, but would you also say there's a need for more restrictive mental health facilities in the state?

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WALZ: That-- yes, I would. And I've talked with Senator Murman about this as well. I used to work for a couple organizations that serve people with developmental disabilities, and the Olmstead Plan, we would want to make sure that people who are most comfortable in-- that they are most comfortable in the most integrative setting. It is not going to work for everybody, but I think our goal should be that we always strive to make sure that people are in the most integrative settings because they're vulnerable and they're more likely to be abused or neglected in a setting that is not integrated and not community-based. That should be always our goal.

FRIESEN: Okay. Yeah, I appreciate where you're going, and I just-- seeing some of the clients of some of these long-term assisted living facilities it looked to me like there was a need again for some facilities that were a little bit more restrictive and more structurally set environment for them because currently, at least, there's a lot of need, I think, for different facilities than what are out there. Would that be a fair statement?

WALZ: Yeah, yeah. And, again, you know we want to make sure that those services are appropriate for that person.

FRIESEN: Okay. Thank you, Senator Walz, and I do support the bill and all the amendments. Thank you, Mr. President.

SCHEER: Thank you, Senator Friesen and Senator Walz. Senator Clements, you're recognized.

CLEMENTS: Thank you, Mr. President. Would Senator-- well, I just had a comment first. I was looking at AM470, page 3, line 6 says the plan is to be completed June 30, 2019, and I would think this bill may not even go into effect by that time. Now can we require them to have something completed that they're not mandated to do yet. Would Senator Walz answer a question?

SCHEER: Senator Walz, would you please yield?

WALZ: Yes.

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CLEMENTS: Would you-- do you think this may need to have an E-clause to make it effective sooner?

WALZ: Our plan is to work with the department and possibly move that date back to November so they have more time to bring in departments that they need and create an implemented plan.

CLEMENTS: And I think that would be a good alternative. That was going to be my next question whether it's possible to really delay that date. Do you plan to amend that on Select--

WALZ: Yes.

CLEMENTS: --to advance that June 30 date ahead?

WALZ: Advance, yeah, we'll amend it on Select.

CLEMENTS: All right. Thank you, that answers my question. I yield my time.

SCHEER: Thank you, Senator Clements and Senator Walz. Seeing no one left to speak, Senator Howard, you're welcome to close on AM1205.

HOWARD: Thank you, Mr. President. Just a reminder, this clarifies the fund transfer. We are utilizing funds that were layover funds from the legislative counsel's current biennium appropriation. We're putting them back into the Health Care Cash Fund which frees up enough funds to pay for this important work. I would urge it's adoption on the floor today. Thank you, Mr. President.

SCHEER: Thank you, Senator Howard. The question before us is the adoption of AM1205. All those in favor please vote aye; all those opposed vote nay. Have all those voted that wish to? Please record.

SCHEER: 39 ayes, 0 nays on adoption of Senator Howard's amendment to the committee amendments.

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SCHEER: AM1205 is adopted. Mr. Clerk.

CLERK: Senator Walz would move to amend the committee amendments with AM970.

SCHEER: Senator Walz, you're welcome to open on AM970.

WALZ: Thank you, Mr. President. AM970 would change the due date for the completion of the Olmstead act from-- the Olmstead Plan from June 30, 2019, to November 1, 2019. Once again, this is being done in order to give all the departments enough time to complete this plan. I would also like to reiterate that we will be passing the 20-year mark of the anniversary of the Supreme Court decision mandating the creation of this plan. There's some discussion on moving this date back even further by DHHS, so I do plan on meeting with Annette Smith on Monday, today, for further discussion. I would ask that you support this amendment. I would appreciate your support. Thank you.

SCHEER: Thank you, Senator Walz. Seeing no one in the queue, you're welcome to close on AM970. She waives closing. The question before us is the adoption of AM970. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record.

CLERK: 38 ayes, 0 nays on adoption of Senator Walz's amendment to the committee amendments.

SCHEER: AM970 is adopted. Seeing no further people in the queue, Senator Howard, you're welcome to close on AM470.

HOWARD: Thank you, Mr. President. Just a reminder, AM470 clarifies Section 2 of the green copy. It was advanced unanimously by the committee and I would urge its adoption on the floor today. Thank you, Mr. President.

SCHEER: Thank you, Senator Howard. The question before us is the adoption of AM470. Those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record.

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CLERK: 40 ayes, 0 nays on adoption of committee amendments.

SCHEER: AM470 is adopted. Seeing no one left in the queue, Senator Walz, you're welcome to close on LB570.

WALZ: Thank you, Mr. President. Very quickly, I just wanted to, first of all, say thank you to Senator Murman for standing up and talking a little bit about this bill. Thank you for being a dedicated father and a dedicated advocate for people with disabilities. This is about quality of life that we are helping to provide to citizens and everybody deserves the best quality of life that we can give them. Thank you again. I hope that I can see another green light or lots of green lights on passing this bill. Thank you.

SCHEER: Thank you, Senator Walz. The question before us is advancement of LB570 to E&R Initial. All those in favor please vote aye; all those opposed vote nay. Have all those voted that wish to? Please record.

CLERK: 39 ayes, 0 nays, Mr. President, on the advancement of LB570.

SCHEER: LB570 is advanced to E&R Initial. Next item, Mr. Clerk.

CLERK: LB570A, a bill by Senator Walz. (Read title.) I do have an amendment to the bill, Mr. President.

SCHEER: Senator Walz, you are welcome to open on LB570A.

WALZ: Thank you. This is the A bill for my bill, and I believe Senator Howard is going to explain that. Thank you.

SCHEER: Thank you, Senator Walz. Mr. Clerk.

CLERK: Senator Howard would move to amend with AM1206.

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SCHEER: Senator Howard, you're welcome to open on AM1206.

HOWARD: Thank you, Mr. President. As Senator Walz indicated, this amendment mirrors AM1205 that you just passed. It essentially clarifies that there were unused funds from the Legislative Council's set aside funds from the Health Care Cash Fund. We are returning them to the Health Care Cash Fund and then that will free up enough money to cover the A bill for LB570. So I would urge its adoption on the floor today. Thank you, Mr. President.

SCHEER: Thank you, Senator Howard. Open to discussion. Seeing none, Senator Howard, you're welcome to close. The question before us is the adoption of AM1206. All those in favor please vote aye; all opposed vote nay. Have all voted that wish to? Please record.

CLERK: 36 ayes, 0 nays on adoption of Senator Howard's amendment.

SCHEER: AM1206 is adopted. Seeing no one wishing to speak, Senator Walz, you're welcome to close on LB570A. She waives closing. The question before us is adoption of LB570A. All those in favor please vote aye; all those opposed vote nay. Please record.

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement on LB570A.

SCHEER: LB570A is advanced to E&R Initial. Mr. Clerk for items.

CLERK: Thank you, Mr. President. Amendments to be printed: Senator Lathrop to LB538. Enrollment and Review reports LB472, LB268, LB352 to Select File, some having Enrollment and Review amendments attached. And a new A bill. Senator Kolterman offers LB31A. (Read LB31A by title for the first time.) That's all that I have, Mr. President. Thank you.

SCHEER: Thank you, Mr. Clerk. Next item.

CLERK: LB445 is a bill introduced by Senator McDonnell. (Read title.) Introduced on January 18 of this year, at that time referred to the Urban Affairs Committee. The bill was advanced to General File. There are committee amendments, Mr. President.

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SCHEER: Thank you, Mr. Clerk. Senator McDonnell, you're welcome to open on LB445.

McDONNELL: Good morning, colleagues, and thank you, Speaker Scheer, for selecting LB445 as a priority designation for this session. As originally drafted, LB445 would require a city of the metropolitan class to provide an annual budget report relating to the use of any occupation tax levied and collected. The report would be required to include, but not be limited to, (1), the purpose of imposing such tax, (2), the amount of such tax collected, (3), an itemization of how such tax was expended or budgeted to be spent and, (4), the schedule or projected termination date of such tax. LB445 is truly about government transparency. I believe that transparency builds trust. This bill would make referenced information pursuant to any levied and collected occupation tax available to the public and the citizens who are paying for it. Nineteen of my fellow senators representing legislative districts throughout our state have chosen to cosponsor this legislation. Furthermore, it was repeatedly brought to my attention during these initial discussions that this policy change should not be limited only to a city of a metropolitan class, but instead it should be expanded upon to include statewide implementation. The hearing for LB445 was held before the Urban Affairs Committee on February 26. I appreciate the positive feedback, additional discussions as it relates to broadening the scope of the bill, and suggestions relating to a more user-friendly approach as various cities operate on different fiscal calendar years. Committee members voted unanimously to advance LB445 to General File accompanied by committee amendment, AM520, which replaces the bill. I will let Chairman Wayne elaborate on the details and merits of the amendment but would like to offer that AM520 provides a compromise among interested parties and includes statewide implementation to all classes of municipalities as originally suggested. I have only-- I have one additional amendment that was requested of me after the bill's advancement. AM641 simply extends the amount of days for providing the report from 60 days to 90 days after the end of the fiscal year making the process even more user friendly. I'd appreciate your support on LB445 as amended by the committee and AM641. Thank you.

SCHEER: Thank you, Senator McDonnell. As the Clerk noted, there is committee amendments from the Urban Affairs Committee. Senator Wayne, as Chairman, you're welcome to open on AM520.

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WAYNE: Thank you, Mr. President and members of the Legislature. Wow, today I look like the Easter bunny is because my daughter picked out my clothes today. She wanted me to be very bright, so I appreciate her for that. This committee amendment, AM520, is the white copy that replaces the bill. AM520 makes a series of changes that were negotiated between Senator McDonnell and the League of Municipalities. First, the amendment expands the reporting requirements of the bill from just cities of the metropolitan class to all municipalities. Second, the amendment provides the annual occupation tax report would be made separately from the municipal budget process. Third, the amendment requires that the report be posted on the municipalities Web site or made available for public inspection at a location designated by the municipality. And finally, the amendment requires that the report be provided no later than 60 days after the end of the fiscal year. I would ask for a green vote on AM520. Thank you, Mr. President.

SCHEER: Thank you, Senator Wayne. Mr. Clerk for a motion.

CLERK: Mr. President, Senator McDonnell would move to amend the committee amendments with AM641.

SCHEER: Senator McDonnell, you're welcome to open on AM641.

McDONNELL: As previously mentioned in my opening, not all cities operate on the same fiscal calendar year. The city of Omaha requested an extension to the reporting requirement deadline. AM641 changes the amount of days from 60 to 90 days. I would appreciate your green vote on this amendment.

SCHEER: Thank you, Senator McDonnell. Senator Groene, you're recognized.

GROENE: Thank you, Mr. President. I stand in full support of this LB445 and I did cosign it. I am a huge supporter of transparency in government. I always support any chance I can to help with such legislation. For example, in my district, we have a thing called the Golden Spike. The city put in an additional occupation tax on hotels to help pay for this venture which has been done by a private organization and the money goes from the taxpayers to this private

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organization to fund its construction and operation. It has been a point of contention with the taxpayers that-- of course it hasn't been as successful as promised, about like the Arch over Kearney. Promises made, but the tourists haven't showed up. It's a good place to take a fifth grade class to a bus trip to learn about railroads, but we have a lot of that. Anyway, transparency. As time goes by, as these kind of tourism things or ventures into places where government doesn't belong, people forget. And the money comes in and it rolls into the budget. I appreciate Senator McDonnell for doing this because always that report will be there. And where did you spend it, how much did you give them? Where is it going? Do we need it anymore? So thank you, Senator McDonnell, and I'm going to vote green on AM641, AM520 and LB445. Thank you.

SCHEER: Thank you, Senator Groene. Seeing no one in the queue, Senator McDonnell, you're welcome to close on AM641. He waives closing. The question before us is the adoption of AM641. All those in favor please vote aye; all those opposed vote nay. Have all those voted that wish to? Please record.

CLERK: 37 ayes, 0 nays on adoption of Senator McDonnell's amendment.

SCHEER: AM641 is adopted. Moving back to the queue, seeing no one waiting to speak, Senator Wayne is welcome to close on AM520. He waives closing. The question before us is adoption of AM520. All those in favor please vote aye; all those opposed vote nay. Have all those that wish to vote voted? Please record.

CLERK: 33 ayes, 0 nays on adoption of committee amendments.

SCHEER: AM520 is adopted. See no one wishing speak, Senator McDonnell, you're welcome to close on LB445. He waives closing. The question before us is advancement of LB445 to E&R Initial. All those in favor please vote aye; all those opposed vote nay. Have all those voted that wish to? Please record.

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB445.

SCHEER: LB445 is advanced to E&R Initial. Next item, Mr. Clerk.

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CLERK: LB222 was a bill introduced by Senator Albrecht. (Read title.) Introduced on January 14 of this year, referred to the Revenue Committee, advanced to General File. There are Revenue Committee amendments pending.

SCHEER: Thank you, Mr. Clerk. Senator Albrecht, you're welcome to open on LB222.

ALBRECHT: Thank you, President Scheer, and good morning, colleagues. Good morning, Nebraska. LB222 simplifies the administration of the Volunteer Emergency Responder Tax Credit Act which allows a \$250 refundable tax credit for volunteer emergency responders who meet certain criteria. I want to thank Speaker Scheer for prioritizing this bill. LB222 passed out of the Revenue Committee unanimously and did not have any opposition testimony at the hearing. Before discussing this bill, I'd like to go over some history first. In 2016, Senator Al Davis introduced LB886, the Volunteer Emergency Responder Incentive Act. This act created a \$250 refundable tax credit incentive for volunteer emergency responders to encourage the recruitment and retention of members in our volunteer emergency services across our state. LB886 had introduced the point system to track volunteer involvement and determine if the volunteer members qualify for the tax credit. The members points tracked by the certification administrator. The certification administrator is appointed by the volunteer department and approved by the department's governing body. The certification administrator notifies the volunteers if they qualify or do not qualify for the tax credit and sends a certified list of qualified volunteer members to the department's governing body. Then the volunteer department's governing body is directed to file the certification administrator's list annually with the Department of Revenue. Finally, the qualifying volunteer member is directed to check the appropriate tax credit box on their state tax return. LB886 allowed volunteer members that qualified to begin collecting the tax credit on their 2017 taxes, but for some unforeseen reason, the issue arose when they began to file. In some cases the governing bodies did not properly file the list with the Department of Revenue and in other cases the governing bodies did not file a list with the department at all. In multiple cases, the volunteer members were penalized and charged interest on their taxes and then burdened with calling the Department of Revenue to fix a mistake they did not make in the first place. Thus, LB222 which makes the changes to simplify the certification administrator's duties and the filing process to solve these unintended consequences. The bill directs the certified administrator to notify each volunteer member in July of each year

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of the points that he or she has accumulated during the first six months of the year. Before February 1 of each year, the certification administrator is directed to send written certification to each volunteer member of the points that he or she has accumulated in the previous year and whether the volunteer member has qualified for the tax credit. Qualifying volunteer members then directed to attach a copy of the certification to their state income tax return. LB222 removes the role of the governing body and directs the certified administrator to file the certified list of qualified volunteers with the Department of Revenue. The Department of Revenue will be able to cross reference the information on the volunteer's tax return and the certified list filed by the administrator. The Revenue Committee amended with AM424 which would provide that the certification administrator shall also send a copy of these certified list to the governing body of the governing body in addition to sending it to the Department of Revenue so that the governing body may also file it with their records. LB222 simply streamlines the procedure for administering the volunteer emergency responder and incentive tax credit and does not add any additional financial burdens on our state. LB222 will, hopefully, remove any unintended burdens caused by the original bill and continue to encourage and reward our hardworking volunteer emergency responders. Please vote green on LB222. Thank you.

SCHEER: Thank you, Senator Albrecht. As the Clerk noted, there are committee amendments from the Revenue Committee. Senator Linehan, as Chair, you're welcome to open.

LINEHAN: Thank you, Mr. President, and good morning, colleagues. AM424 makes certain that certification administrator will also send a certified list of volunteer members who have qualified as active emergency responders, active rescue squad members, or active volunteer firefighters to the governing body of the county, city, village, or rural, or suburban fire protection district. The copy of the certified list may be sent electronically or by mail. With that, I would ask for your green vote on AM424 and on LB222. Thank you.

SCHEER: Thank you, Senator Linehan. Seeing no one wishing to speak, Senator Linehan you're welcome to close on AM424. She waives closing. The question before us is adoption of AM424. All those in favor please vote aye; all those opposed vote nay. Have all those voted that wish to? Please record.

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CLERK: 29 ayes, 0 nays on adoption of the committee amendments.

SCHEER: AM424 is adopted. Senator Bostelman, you're recognized.

BOSTELMAN: Thank you, Mr. Speaker. I rise in support of LB222 and I want to thank Senator Albrecht for the work that she's done here. Over the interim this last year I did LR395, specifically looking at our volunteer firefighters across the state. Surveyed almost every one of them. Almost 400 surveys were returned which is unheard of and people returning surveys, this is one of the items that they all spoke-- no, won't say all, that we had a large response on, a frustration with this that needed to be fixed. Something needed to be done so I do believe that what Senator Albrecht is working on, what she's done, LB222 does help that situation considerably and I want to thank her for that and I encourage your green vote on the LB222 and I yield the rest of my time back to the Chair. Thank you, Mr. Speaker.

SCHEER: Thank you, Senator Bostelman. Senator Groene, you're recognized.

GROENE: I, too, want to applaud an Senator Albrecht for bringing this. I worked with Senator Davis four years ago when he created this credit. I'm very seldom in favor of tax credits, but I live in rural Nebraska, I've lived in small towns. Had a house fire myself. Those volunteer firemen are amazing. Those EMTs are amazing the amount of time they give, not just for the fires at three in the morning, the grass fires in the middle of the night as they go to their regular paid job during the day. They give a lot of time for training and \$250 to offset some of that cost is minor, but it's a nice pat on the back. But the problem with the original bill, there's no proof for these individuals when they file their state income taxes that they were a volunteer fireman. So now the way I understand it, it would be similar to a W2 form that the city or village will issue to the volunteer fireman, they staple it to their tax return and to show they qualify for the \$250 credit. It is not a day's pay for most firemen, but it is a pat on the back. Thank you, Senator Albrecht, and I stand in full support of LB222.

SCHEER: Thank you, Senator Groene. (Visitors introduced.) Returning to floor discussion. Senator Dorn, you're recognized.

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DORN: Thank you, Mr. Speaker. Colleagues, I also stand in support of LB222 and I want to thank Senator Albrecht very much for bringing this. I've been an active EMT for over 30 years and not that far from Lincoln, 30 miles we live from Lincoln. We are very fortunate in the city of Adams that we have Beatrice and Lincoln that have a qualified-paid people that they have. We are, though, like a lot of other rural EMT organizations, we are starting to not enough members. It takes way too much time. It takes way too much away from the family that we cannot get enough young people active and involved in this. I appreciate Senator Albrecht very much for bringing this back and clarifying some of this that this also now allows them to go a different route. One quick thing and I know when I was on the county board we had one city that brought three of them last year that the county board had to certify to meet this requirement. Everybody wanted to know why the county board had to do it. This clarifies this a little bit. It puts it back in what I call the local entities and I really appreciate Senator Albrecht for bringing that. Thank you.

SCHEER: Thank you, Senator Dorn. Senator Kolterman, you're recognized.

KOLTERMAN: Good morning, colleagues. I rise in support of this and thank Senator Albrecht for bringing it. I was a cosponsor of the original bill several years ago and Senator Watermeier and Senator Davis and I brought the bill and we thought it was a good idea then, but were just-- as I've talked to my volunteer firemen around my district, they would all tell you that it was very complicated and very hard to operate around, so I really appreciate the improvements that you're making and would encourage a green vote on this bill. Thank you.

SCHEER: Thank you, Senator Kolterman. Senator Chambers, you're recognized.

CHAMBERS: Thank you. Mr. President, members of the Legislature, I support this bill. It's not one that would even should show up on radar screen, so to speak, it is so innocuous, it is so reasonable that it's not the kind of bill that I deal with. I've stated, and it might sound like a boast, I believe my job is to serve a teaching function here. What I'm going to say is not an attack on Senator Groene, not a criticism or condemnation of what he said, but to underscore principle that I've been talking about all session. When the wolf is howling on somebody else's doorstep, then people in the rural areas generally don't care. People of a very stodgy narrow-minded religious

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bent will not care. But as Senator Groene pointed out, he generally is not in favor of these credits but he lives in a rural area, a small town, or however he phrased it, and therefore, he can look at this and see the value of it. I don't live in a small town. I don't live in a rural area. This does not benefit anything or anybody in the district I represent. I have tried to point out that we need to look at principles and not take that narrow-minded rural view point which is so evident on this floor in so many situations. The LGBTQ community is one that does require, in my opinion, some protection because we're talking about people who want to work. I heard Senator Lowe constantly talk about ex-convicts whose crimes involve drugs, just go out and get a job, plenty of work. Well, LGBTQ people want to work and he doesn't see a need to protect them. Tipped employees work harder than Senator Lowe and anybody else would have to do. Take insults, take slights, be treated like background noise or things, and still pretend to be very appreciative of this person who is laying out the insults. This body doesn't care about that. Those are working people. Obviously, they must work to take a job where there's so little in the way of compensation, so little regard and respect paid you as a human being performing a very necessary and essential function. So they don't care about work then. So SNAP, they don't care about. Let them go get a job when there is no work. Tipped employees, well they've got a job although it may not be a living wage. Then somebody who has a string of restaurants that his sister created and gave him a job, is one of the leaders against giving a living wage to people who make the operation of his activities and his sister's operation possible and the body goes along with it. There cannot even be a vote on that bill, cannot be a vote on the SNAP bill, cannot be a vote on the LGBTQ bill, but now all these others are coming. And I see an entirely different approach, an entirely different attitude, but unlike my colleagues who are narrow-minded, I'm not going to do something to hurt people just because they are unfortunate enough to have--

SCHEER: One minute.

CHAMBERS: --representatives in this body who in my opinion are not even working in the best interest of those who sent them here. I doubt that the people who sent them here would say, I don't think tipped employees should have a decent minimum wage. I don't think members of the LGBTQ community should be discriminated against even if they don't do anything other than be what they are. So, I'm showing by my conduct an example. And I can show it because I'm not religious. I don't go to any church, I don't belong to any religion, I don't belong to any political

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party, I don't belong to any organization, I belong to me. And as Popeye said, I always quote, I am what I am and that's all that I am. I have my light on one more time because it won't delay this bill and it's going to go as it should. Thank you, Mr. President.

SCHEER: Thank you, Senator Chambers. Senator Clements, you're recognized.

CLEMENTS: Thank you, Mr. President. I'd like to speak about this bill in favor of it from a tax preparer's point of view. This provision does not complicate tax preparation. I have worked with this credit in the past but I do agree EMTs have had difficulty proving to me that they qualify for the credit. And wanting to make sure the return is correct and I'm not doing anything fraudulent, I've had to ask for documentation. They really do a lot of work for their communities and they appreciate this recognition even though it does not cover their expenses of the volunteering they do. Louisville, in my district, volunteer fire and rescue Saturday night had their annual recognition dinner. One of their members said, oh, he forgot to file for this credit this year. Well, this bill would give him a form to bring to his tax preparer to remember to get the credit. Now he could still amend his return although it's going to cost him another fee to get that done. But I think this is a positive step and it does not create a burden to the tax preparation or the Department of Revenue. Thank you, Mr. President.

SCHEER: Thank you, Senator Clements. (Visitors introduced.) Returning to floor discussion. Senator Slama, you're recognized.

SLAMA: Thank you, Mr. President. I rise in support of LB222 and would like to thank Senator Albrecht for her work on this very reasonable bill. I'd also like to thank Senator Dorn for his service throughout the years and for all of our volunteer first responders, but also echo his concerns with the time commitment and the red tape it takes to become a volunteer first responder and to receive this tax credit. In our rural areas, we're simply running out of people to fill these roles and I think it's time that we as a body look towards loosening the requirements to allow more people to step into these roles in our small towns to ensure that when the call comes in that someone can respond. So I'll be bringing legislation towards that end next year but I'd like to thank Senator Albrecht for her efforts this year. Thank you, Mr. President.

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SCHEER: Thank you, Senator Slama. Senator Chambers, you're recognized.

CHAMBERS: Thank you. Mr. President, I've read editorials telling the Legislature and the legislators there should not under any circumstances develop what has been called a rural-urban split. That has got to happen. I'm looking at all the bills that come before us. I did not say every single one is analyzed, evaluated by me, but I'm looking at them, looking at the nature of them. Watching the attitude of the body. This Chamber is virtually full this morning, but when those issues come up that I think are important, the Chamber empties. But this is a rural issue. It's not controversial. So the senators sit here, maybe they're doing other work because you don't have to focus on this bill to be aware of what it does to make sure that you pay attention when time comes to vote so that you will vote for it. I've already said I intend to do that, but the very unanimity with which this bill is being discussed underscores what I consider to be the hardheartedness, the cruelty, the inhumaneness that characterizes this body. You cannot slaughter 20 innocent people as the Nazis did, then have a favorite dog as Hitler did, and treat that dog royally and say, well, at least he's kind to his animal. There is no equivalency there. But this is how people justify defending those they like and ignoring the plight of those they have no respect or regard for. Every bill that I've mentioned applies to human beings. Every person has human dignity that ought to be respected. Every person is entitled to the opportunity to earn a decent living, to procure shelter, have access to medical or healthcare. Those things are not of much concern to this body but they are of concern to me. I was just thinking over the weekend if somehow I could delude myself enough to join a religion, a religion that would erase my feeling of responsibility and obligation to people that I don't even know, to people who would hate me, who would do terrible things to me if they were not cowards. If I could be like Christians, then I could justify saying those people have a bad attitude toward me, so I'm going to make sure that their children and their household suffer. That, I cannot do being unreligious, being nonreligious. So maybe I ought start going to some of these prayer meetings I understand they have around here, Bible studies, and sit in on them and learn how to be hardhearted, unfeeling, unsympathetic, inhumane, and nevertheless, go home if I have children, look them in the eye, take them on my lap if they're small enough, play with them as I played with my children, and be happy that I have this home environment and not the environment that is deprived--

SCHEER: One minute.

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CHAMBERS: --and that I do everything I can to make sure it stays deprived. I know what I wanted for my children and I always made the presumption that everybody else would want the same for their children whether they do or not, but my focus would be on those children and the fact that circumstances ought to be created to the extent that they can be by somebody not a member of that family to make it possible for things to be at least available and accessible should the parents want to provide those things for their children. I don't see that on this floor. I probably never will see it, but no matter how hard I fight against these bills like something for big production, livestock, or crop people, I'll fight that tooth and nail because again I'm looking at the small people who are disregarded in the main by this Legislature. Thank you, Mr. President.

SCHEER: Thank you, Senator Chambers. Seeing no one left to speak, Senator Albrecht, you're welcome to close on LB222.

ALBRECHT: Thank you, Speaker Scheer. Again, also I'd like to thank Senator Bostelman, Groene, Dorn, Kolterman, Chambers, Clements, and Slama for supporting this and telling me how you all feel about it. As a young girl, my father probably spent more time at the volunteer station than he spent at home and I was very appreciative and grateful the older I got to know what he went through to take care of everybody in our particular district. He also served on the rural fire board and today, my husband serves on the Emerson Rural Fire District. And this bill was brought to my attention by not only those in my district, but I thank the gals in the office for taking the phone calls and the e-mails during the interim about how things were not working out the way they should have. So this is a good bill. This is a bill that Mr. Stilmock represents the volunteers and I'm quite certain that everyone now will know what they need to take to get their taxes done and I just want to salute all the volunteers in the state of Nebraska for what they do. I'd love to see a green vote on LB222. Thank you.

SCHEER: Thank you, Senator Albrecht. The question before us is the advancement of LB222 to E&R Initial. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record.

CLERK: 40 ayes, 0 nays, Mr. President, on the advancement of LB222.

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SCHEER: LB222 is advanced to E&R Initial. Mr. Clerk, next item.

CLERK: Mr. President, if I might, before that, an announcement, the Executive Board will have an Executive Session under the south balcony at 11:00, Exec Board, south balcony, at 1100. LB180 is a bill introduced by Senator Bolz. (Read title.) Introduced on January 11 of this year, referred to the Education Committee, the bill was advanced to General File. I have no amendments pending to the bill, Mr. President.

SCHEER: Thank you, Mr. Clerk. Senator Bolz, you're welcome to open on LB180.

BOLZ: Thank you, Mr. President. For many years in a row now, the Chamber of Commerce has identified work force demand as their priority issue. LB180 makes a small step towards addressing those needs by making a small change to the Community College Gap Assistance Program. The Community College Gap Assistance Program was created to pay the educational costs of low-income students enrolling in noncredit instructional programs that lead to recognized certifications, credentials, or skill levels in in-demand occupations and get participants into the work force quickly. Neither noncredit instructional programs nor very short-term, for-credit programs, instructional programs, are eligible for federal financial aid. In fiscal year 2017-2018, the program's first year, Nebraska's community colleges offered many approved programs across 12 categories of in-demand occupational categories referenced in Nebraska statute. As of June 30, 2018, 178 applicants had been approved to participate in GAP. The leading in-demand programs included transportation, warehousing and distribution logistics, and including construction. Healthcare services was also among the top of the list. LB180 expands the courses eligible for funding under the Community College Gap Assistance Program to include specific for-credit courses or short-term programs that lead to certifications, licenses, or skill levels equivalent to the noncredit programs. There are sufficient funds available to offer more students opportunities to pursue more training. This is a lottery-funded program. Currently, gap assistance is available for programs offered by a community college that are not offered for credit but are aligned with training programs' credentials that lead to a program awarding college credit, an associate's degree, a diploma, or a certificate in an in-demand occupation. LB180 expands course offerings to include specific for-credit courses or short-term programs that lead to certificates, licenses, or skill levels equivalent to the noncredit programs. Two examples

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include the certified nursing assistance programs and commercial driver's license programs. Again, there is funding allocated to these purposes sufficient to cover the additional programs added, and I would specifically like to thank the Education Committee that passed this bill out unanimously both this year and last year. We didn't get to it last year, so I'm pleased to be able to move it forward this year, and I would like to specifically thank Senator Groene for his support for career education and for this bill over the past two years, and would ask for your green vote. Thank you, Mr. President.

SCHEER: Thank you, Senator Bolz. Senator Crawford, you're recognized.

CRAWFORD: Thank you, Mr. President. I rise in support of LB180, and I thank Senator Bolz for her work on this project. This gap program has been a-- a very successful part of our work force development in the state, and this amend-- this change in the program to allow it to go towards programs that provide credit is-- makes it all the more useful for our-- our individuals in the state who are looking to improve and increase their credentials to get a new job, a job that pays more money. And it's very valuable for them to be able to be a part of these programs that actually offer these credentials, and so-- and also so that community colleges know that they can provide credentials for programs that are-- that are able to access these scholar-- these funds. So I thank her for her work on this. And we hear over and over again that work force is a key issue that is a concern to businesses in our state, and so this is a very critical program that provides dollars to people, to individuals who are looking to increase their skills to be a part of our work force. And again, I thank Senator Bolz for her work on this bill. I thank the Education Committee for their support of the bill and urge your support of LB180. Thank you, Mr. President.

SCHEER: Thank you, Senator Crawford. Senator Kolterman, you're recognized.

KOLTERMAN: Thank you, Mr. President. Good morning, colleagues. I, too, rise in support of LB180. I would be remiss if I didn't encourage people to support this bill. My first degree was from Southeast Community College, Milford campus. This is good legislation. Please vote green on this bill. Thank you.

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SCHEER: Thank you, Senator Kolterman. Senator Groene, you're recognized.

GROENE: Thank you, Senator-- or Mr. President. And I appreciate Senator Bolz's long, hard work on this. My first two years down here, I was on Education Committee and she brought this effort to use the lottery funds for people who work with their hands and to get a degree, and especially Senator Chambers in Omaha and Lincoln and the urban areas, that-- where they need welders, CNA nurses, truck drivers who bring the goods into the cities to-- so that the people can eat and exist. But this is-- this addition is good. The community colleges have been very frugal about the use of it to make sure it is used correctly, and they have not just thrown money around, put it that way. They have not used their allocation the last few years for the certificate court-- degrees. This is good. We need truck drivers. Truck drivers, a chauffeur license, are-- are an example, or somebody who wants to learn how to drive a truck can make a good wage out there in the transportation industry. Also, welding, not so much that you want to be a certified welder, because that does qualify, but you might want to weld in a local shop or-- or somewhere else that you need it for your-- your job overall. Or CNA nurses, the ones that work in our-- in our homes, our-- our assisted living homes, those folks usually, who are looking to upgrade what they can make and earn for their families, don't have the-- the financial backing to do it, and a little bit of help just to take that truck-driving course or that CNA course makes a big difference and it reemphasizes what community colleges are all about. Get a job, get a good-paying job, not to philosophize on life but to make a living. So I thank Senator Bolz for bringing this and I appreciate the committee voting it out 8-0. It needs to pass. These are trades that we need, we dearly need in Nebraska, and we need more individuals with access to do it. Thank you.

SCHEER: Thank you, Senator Groene. Senator Slama, you're recognized.

SLAMA: Thank you, Mr. President. I'd like to briefly add my support to LB180. Thanks, Senator Bolz, for bringing this bill. My parents are graduates of community colleges and so are my sisters-- so is one of my sisters, actually, so I know the importance of community college education and know the need for it in our state. So thank you, Senator Bolz, for your work to further incentivize this with LB180.

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SCHEER: Thank you, Senator Slama. Seeing no others in the queue, Senator Bolz, you're welcome to close on LB180. She waives closing. The question before us is adoption of LB180 to E&R Initial. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record.

CLERK: 43 ayes, 0 nays, Mr. President, on the advancement of LB180.

SCHEER: LB180 is advanced to E&R Initial. Next item, Mr. Clerk.

CLERK: LB23 was a bill originally introduced by Senator Kolterman. (Read title.) Introduced on January 10 of this year, referred to the Urban Affairs Committee, the bill was advanced to General File. There are amendments, Mr. President.

SCHEER: Thank you, Mr. Clerk. Senator Kolterman, you're welcome to open on LB23.

KOLTERMAN: Good morning again. Thank you, Mr. President. Today, I ask for your support of LB23 which amends the Nebraska Property Assessed Clean Energy Act, commonly known as PACE Act. We adopted this legislation originally in 2016 and it was amended again in 2017. The PACE Act allows cities and counties to authorize PACE financing within their jurisdiction for energy efficiency, water conservation, and renewable energy projects for commercial, agricultural, industrial, and residential property. PACE loans are nonrecoursed, long term, fixed rate, and are attached to the property with an assessment contract that stipulates the manner of repayment will be similar in status and priority to the property tax. Recognizing the-- that energy efficiency and water conservation measures have long-term saving payback, state and local governments across the country have enacted PACE programs, which allows these loans to be repaid through special assessments attached to the property, giving private capital providers the security they need to make long-term loans. The underlying mortgage holder, typically a bank, must provide written consent before a property owner can enter into a PACE loan. In Nebraska, First National Bank of Omaha, Great Western Bank, and Five Points Bank have-- have consented to commercial PACE loans. In order to use PACE, a city must pass an ordinance establishing a PACE district and the structure under which a PACE program is administered. Many municipalities collect administration fees and-- and there are no costs to state or municipal

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governments for these PACE programs. In 2018, Omaha approved applications for four commercial PACE projects and private capital lenders closed on loans for these projects totaling over \$35 million. Lincoln has approved its first PACE application for \$1.5 million loan, and closing is expected in the next several weeks. Bellevue has also passed an ordinance creating a PACE district. LB23, as amended by AM795, which Senator Wayne will expand on further, adds new public purpose language to the act, changes the classification of cogeneration and trigeneration systems from renewable energy resources to an energy-efficient improvement, and retains requirements that energy savings generated by a PACE project exceed the cost of the project but allows a municipality to weigh the requirements on a case-by-case basis. LB23 did not receive any opposition during the hearing and as amended by AM795, was supported unanimously out of committee. With that, I thank you and urge you to vote green on the amendment and the underlying bill. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Kolterman. As the Clerk stated, there are amendments from the Urban Affairs Committee. Senator Wayne, as Chair of the committee, you're recognized to open on the amendment.

WAYNE: Thank you, Mr. President, members of the Legislature. The committee amendment, AM795, is a white-copy amendment that replaces the bill. The green copy of the bill originally had opposition to two provisions. First, the bill originally would have authorized the use of PACE financing to retroactively finance energy efficiency improvements and renewable energy systems that were already in place. Second, the bill originally would have eliminated the requirement that the energy savings generated by a PACE project exceed the cost of the project, commonly known as savings-to-income ratio, or SIR. AM795 makes two primary changes. First, the amendment eliminates the retroactivity of financing provisions of the-- from the green copy. Second, the amendment retains the SIR-- SIR requirement but provides that municipalities may waive the SIR-- SIR requirement on a case-by-case basis. AM795 also makes several small technical changes. The amendment adds new public purpose language to the PACE Act. The amendment also changes the classification of cogeneration from trigeneration systems under the act from the renewable energy source to the energy efficiency's improvement. It simply moves the references from one section to another. I would ask that you vote green and adopt AM795. And, Senator Brewer, this is not a wind bill. It's just renewable energies. Thank you.

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WILLIAMS: Thank you, Senator Wayne. Seeing no one in the queue to speak, Senator Wayne, you're asked to close. Senator Wayne waives closing. The question is the adoption of AM795. All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk.

CLERK: 37 ayes, 0 nays on adoption of committee amendments.

WILLIAMS: The amendment is adopted. Seeing no one wanting to speak, Senator Kolterman waives closing on the advancement of LB23. The question is the advancement of LB23 to E&R Initial. Those in favor vote aye; those opposed vote nay. Have all voted? Record, Mr. Clerk.

CLERK: 39 ayes, 0 nays, Mr. President, on the advancement of LB23.

WILLIAMS: The bill advances. Mr. Clerk.

CLERK: Mr. President, our next bill, LB227. It's a bill introduced by Senator Hughes. (Read title.) Introduced on January 14. At that time referred to the Agriculture Committee. There are committee amendments pending by the Agriculture Committee, Mr. President. In addition, I have amendments to those committee amendments.

WILLIAMS: Senator Hughes, you are recognized to open on LB227.

HUGHES: Thank you, Mr. President. Good morning, colleagues. I bring for your consideration LB227. In 1982, the Nebraska Right to Farm Act was adopted. It protects farms, farm operations, public grain warehouses, and public grain warehouse operations from nuisance laws if they existed before a change in the land use or occupancy of the land on or about the locality of the existing operation. The reason behind LB227 is to more clearly define the intent of the Legislature and give additional guidance to the courts if a nuisance lawsuit is brought. LB227 makes it clear that a change in ownership, change in the size of an operation, conversion from one type of operation to another, enrollment in a government program or adoption of new technologies would not-- I repeat, not-- make it a nuisance. Farms and grain warehouses will still be required to use reasonable techniques to mitigate any effects of the change on neighboring properties, on the neighboring property of others. There is a lot of concern in the ag community

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today, especially in the more populated areas, because of urban sprawl. The idea of escaping city life and living in the country has become idealized because people are three or more generations removed from the farm. For this reason, many people that are moving into these housing developments, or building or buying acreages without being familiar with the realities of agriculture. Not fully knowing what to expect, they move in and are annoyed by the regular sights, sounds, and smells that accompany rural living and farm life. They are not following the advice of buyer beware, and they seek restitution for not doing their research and understanding what agriculture is really about prior to moving in. Agriculturists have made their livelihood farming because-- should not be penalized for their livelihood. Especially when they take all the necessary measures to prevent nuisances and follow all county zoning laws. Housing developments and acreages are popping up next to existing operations and the new residents don't really understand, fully understand the reality of living in the country next to an existing farm. This bill will not have any effect on current county zoning laws. If there's an expansion, current zoning laws and environmental regulations must still be adhered to. We are not trying to protect the bad actors. This bill is intended to protect those who are doing things the right way and want to grow and make changes to their farms without risking chance of a lawsuit. There's a lot of concern, I know you all have gotten a lot of emails, and I hear there are some phone calls coming in, that this is about "Big Ag." It is not about "Big Ag." It's about ag. Big, small, medium. We, we're seeing a concentration of agriculture because that is what keeps our food, our food prices cheap. But we want to keep as many people on the farm as possible. And this bill will help do that. One of the reasons that this bill is imperative is a small operation cannot afford to have the lawsuit. We have laws in place that protect us now. We're just asking for the opportunity to more clearly define what those laws are. I have an amendment to the committee amendment, and after the committee amendment was published, we listened to the concerns of those-- listened to the concerns that were expressed and we tried the to address them. AM1209 strikes, or in the committee-- strikes the "or" in the committee amendment and reverts to the first in time language. There are many, many laws that you have to abide by if you own property. Whether it's in town or in the country. And thinking about this bill, I went through just a few of those things that, if I want to make a change on my farm, these are the boxes I have to check before I can make that change, regardless of how close my neighbors are. There's county zoning. That's for livestock, that's for wind, that's for whatever the county, that's local control. There's also the Natural Resource Conservation Service, which is a federal agency. That says a lot about

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what I can do with my land. If you're a farm and you want to be in the farm programs or any of those types of things, they have a say what you do. If you're going to be in the livestock feeding business, you need to get permits from the Department of Environmental Quality, soon to be the Department of Energy and Environment, Environment and Energy, excuse me. There's also the ETJ, which if you live close to a municipality, that's the extraterrestrial jurisdiction that has to be adhered to if you're a livestock operation. And also there's Army Corps of Engineers. You know, I've had an issue on my farm where I wanted to clean out a waterway, I had to go to the Army Corps of Engineers in order to do that. So there's a lot of oversight that had to be adhered to before you can make significant changes on your farm. So with that, I'll wrap it up. I look forward to the discussion, and I would ask everybody to wait for my introduction of the amendment that replaces the bill and introduces the changes that I think will make it a very good piece of legislation. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Hughes. (Visitors introduced.) As the Clerk stated, there are amendments from the Ag Committee. Senator Halloran, as Chairman of the committee, you are recognized on the Ag Committee's amendment.

HALLORAN: Thank you, Mr. President, colleagues, Nebraskans. The committee amendment is a white copy amendment that strikes the original provisions and becomes the bill. The amendment omits Section 1 from the bill as introduced. The amendment retains the phraseology, farm or farm operation, and public and grain warehouse-- and public grain warehouse operations-- elsewhere in the bill. But rather than the shortened phrase, farm or public grain warehouse, as proposed in the original bill. Since the original terminology is kept, the revisions to define terms in state statute Section 2-4402 is no longer necessary. Secondly, the amendment clarifies the conjunctive and disjunctive intent of the new provisions inserted into state statute Section 2-4403 under Section 2 of the bill as introduced and Section 1 of the amendment. The Right to Farm Act codifies common law principles and nuisance actions that shield farming and warehouse activities from being held liable as a nuisance if the activity preexisted changes in surrounding land use and the activity was not a nuisance prior to the change in land use. As introduced, LB227 would have inserted two new conditions by which a farm or grain warehouse was shielded from nuisance liability, including if there was no significant change in having occurred and the operation has been in existence for more than one year or the operation

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employs reasonable measures to minimize dust, odors, etcetera. As written, if an operation met any one of these conditions, it was not a nuisance. The amendments retains the existent statutory nuisance shield as (1) of state statute Section 2-4403, so that if an operation proceeded later conflicting development it is not subject to a nuisance action. The amendment inserts (2) to describe a separate condition under which a farm or warehouse retains Right to Farm protection. (2) provides a that a fair or warehouse shall not be a nuisance if it has been in existence for one year. The change is not a significant change and includes the provisions of the original bill that excludes certain events from being considered significant changes. Additionally, the farm or warehouse must be in compliance with applicable laws and regulations, including zoning, and employs reasonable measures to suppress dust, noise, insects, and odors. LB227 is an attempt at fashioning a policy that recognizes that the ability of farming and warehouse operations to remain viable through growth, in adoption of innovations in crop and animal husbandry. It recognizes that growth and innovation of farming neighbors is part of the landscape of living in rural areas of the state. I would move the adoption of the committee amendment.

WILLIAMS: Thank you, Senator Halloran. Mr. Clerk, there is an amendment to the committee amendments. Senator Hughes, you are recognized to open on your amendment to the committee amendment.

HUGHES: Thank you, Mr. Chairman. Good morning again, colleagues. If you look at your computer and look at LB-- or, I'm sorry, AM1209, it is what I mentioned earlier where we took the concerns of what we heard from the bill and from the committee amendment and addressed those. And it's very simply, very simply, if you look on page 2, line 1, we talk about a significant change. And what the amendment does is constitutes, or tells what a significant change does not include. And that is line 4: The conversion from one type of farm to another. So if someone sues as a nuisance, they cannot be sued if they are making a conversion. Line 8 (b): A change in ownership or size is not grounds for nuisance. And participation in government programs, should you begin or cease enrollment in government-- or participation in government programs. And fourthly, the adoption of new technology are the four things that do not, I repeat, do not constitute a significant change should you make that to your farming operation or if you are a public grain warehouse. Thank you, Mr. President.

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WILLIAMS: Thank you, Senator Hughes. Turning to debate, Senator Lathrop, you're recognized.

LATHROP: Thank you, Mr. President and colleagues. I am standing in opposition to LB227. And I know what some of you may be thinking: Here comes the rural guy, this is the rural-- or an urban guy on a rural issue. Once again, Lathrop is going to stand up. This is between the rural people, why are you in the middle of this? I want you to know that the urban people have nothing to do with this bill. Right? This is the rural-rural issue. And the question today is whether or not we will effectively immunize people from a nuisance they create in their operations, preventing another rural person from bringing a claim to stop it if it becomes intolerable. The Right to Farm Act, as Senator Hughes indicated, was passed by this Legislature I think back in the '80s. And basically where the Right to Farm Act is currently, is that if I want to come out and buy an acreage near your operation, and let's say you feed 500 cattle in a pen, and their odors and flies and dust and things attendant with that operation, I can't move in or next door to your operation and then go, oh, my gosh, this is a nuisance. The flies are terrible and the smell is bad. The Right to Farm Act currently protects people from that. You should also understand, as we have a thoughtful debate on this topic, what the current law is. And I should distinguish nuisances from nuisance lawsuits. Nuisance lawsuits you might hear about are lawsuits that don't have any merit, right? They're the things where somebody brings a-- they're also called frivolous claims, right? A nuisance in the law that we're talking about here is something that makes the neighbor's house uninhabitable. OK? So think about that. If your house becomes uninhabitable, will you have a right to stop an operation that somebody started after you moved there? I think the door to the courthouse ought to be open for that person who bought land, who has lived on the property. They may be fourth-generation farmers and it's the next door neighbor who has created the nuisance. You should know that the reported cases on the subject of nuisance also understand that people that live in rural areas must expect to put up with farm and livestock conditions normally found in the area. So this isn't a situation, and we're not even talking about mild or the normal stuff, right? So when I drive through the country and I can smell cattle in a pen, that's normal. It's not until you get to a place where it is so strong, so adverse that a neighboring property owner can no longer live in their home. That's what we're talking about. And should somebody be immune if they make the neighbor's house uninhabitable? So the laws always recognize this: I can do what I want on my property and you can do what you want on your

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property. You have a right to peaceably enjoy your property and I have a right to peacefully enjoy mine. If the activities on your property interfere with my ability to peacefully enjoy my little corner of the world, and I didn't move into the area after you started that, then I have a right to say, hang on a minute--

WILLIAMS: One minute.

LATHROP: --I need to get to the courthouse and I need to stop it because I can't live with this stink, the flies, the rats, the conditions that you're creating on your property. There are a lot of different things that create a nuisance, and I'll have an opportunity today to talk about them. The most common, the most common typically is some type of a livestock operation where the smell of the manure, those ponds that are created near large confinements, where they confine cattle or hogs primarily, those are mostly the reported cases deal with those two. When that gets so bad that I can't go outside my house because of the smell and the flies, I can go to court right now, as long as I didn't move into the condition, and say, judge, you got to stop it. I'll talk more in the-- in additional opportunities that I have to--

WILLIAMS: Time, Senator. Thank you, Senator Lathrop. Senator Moser, you're recognized.

MOSER: Good morning, colleagues. I rise in support of both amendments and the underlying bill. I think that some of the objections to this bill feel-- appeal to the idea that this bill excuses all behavior by livestock providers, producers. One of the reasons that we can buy a chicken in the grocery store for \$1 a pound or a pork roast for \$2.50 a pound is because Nebraska farmers, American farmers are very efficient and they're able to provide food at a reasonable cost. And I believe that the gist of the bill is to say that the change in size or scope of an operation in itself does not necessarily create a nuisance. The producer still has to follow all the rules from the DEQ and the state as far as dust and smell and, and rodents or whatever. This is, I think, intended to just not provide a cause for action and not to excuse the actions of livestock producer, but just to avoid having lawsuits just on the basis that they may have changed from raising hogs to raising cattle or some other change. The change itself does not create a cause of action. If their behavior causes problems, I think then the courts are able to address those. I've see small producers of cattle. We had a pork plant, it was real small in one corner of the next section over

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from where my family lived. And sometimes in the summer when the wind was from the south, it was hard to, to be outside. But it wasn't because of what he was doing there, it's because he didn't do a good job of running his operation. They've made great strides in trying to control smells and dust and all those things. So I just wanted to make that point. You know, I don't think we're immunizing producers against any lawsuit. It's just, it eliminates a cause of action that may not be relevant, in my opinion. Thank you, colleagues.

WILLIAMS: Thank you, Senator Moser. Senator Chambers, you're recognized.

CHAMBERS: Thank you. Mr. President, members of the Legislature, if you read the language of this bill, it doesn't just talk about size, it talks about the type of operation. If I move in and my neighbor has row crops, that's one thing. And if my neighbor has done that for a year or more, then under this bill he can start a swine operation. He can build a feed lot operation, which he did after I moved in. This bill allows that. If your operation has been in existence for a year or more-- and it doesn't say you change by size or whatever, you can change to a different form, a different type. And I don't know how dumb these agriculturalists think everybody on this floor is and how all Senator Hughes has to do is wave the flag of agriculture and everybody is going to fall for it. See, I'm the one who will get those letters that you all don't get because you will not respond when there are families who are stunk out of their homes. They write to me. They say they can't go to the county board, they don't have enough money to go to court. And Senator Chambers, as usual, you're the only one I can come to. I get the letters. Why should they go to you when you help create the problem? So what these people who are going to jump up and defend this bill ought to do is look at what the language is. It says-- and I didn't hear, because I don't have the gadget, where a significant change definition had been altered. This is not a significant change. Conversion from one type of farm operation to another type. Not increase the size, another type. I'm tired of row crops. I'm going to deal with this big corporation and we're going to put a swine operation. We're going to go from farrowing, fattening, all of it, confinement, feeding, everything. And we'll also put in a cattle feeding lot. And that can be done under this bill. And as long as that person who's doing it now had been there for a year or longer, and at the time you moved in, that person was not subject to a nuisance lawsuit, then these changes I'm talking about can be made. That's why I'm talked about the hardheartedness. These people on this floor, some of them get farm payments from the government, handouts. They get

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money from big corporations like Smithfield. That's not for the little people. Smithfield is not for the little farmers. This bill is bad and it undermines everything that Right to Farming legislation was put in place for. It attempts to change supreme court decisions that were put in place to do what the Right to Farm legislation intended to do. So I look for and anticipate a lengthy, detailed discussion. And I'm going to participate in it. And I don't have to be a farmer to do this. See, if a farmer's slapping his wife around, I don't have to be a farmer to know that that kind of domestic abuse is wrong.

WILLIAMS: One minute.

CHAMBERS: I don't have to be a farmer to know that when you take some property and you do something on it that makes your neighbor's land uninhabitable, I don't have to be a farmer to understand that. You all must think I'm stupid from the city. But I think you're stupid to think that. But Senator Hughes is far from stupid. As we go on, I'm asking who brought this bill to him. He didn't write this on his own. But we'll have a chance to go into all of that. Thank you, Mr. President.

WILLIAMS: Thank you, Senator chambers. Senator Hilgers, you're recognized.

HILGERS: Thank you, Mr. President. Appreciate the conversation this morning. I look forward to engaging on it. I do think-- I'm operating on AM1209, I know Senator Chambers referenced the one-year, one-year issue. I think it's in LB227, that is not currently in the amendment. And I do, I do think that I agree with Senator Lathrop in so far as he has referenced in saying look, this is a rural issue and it's not urban-rural. And I also think that I look forward to a thoughtful discussion. I do want to slightly quibble with his phrasing, which is the question I don't think is whether or not we should immunize operations against a nuisance lawsuit. I don't think that's the question before us because the current statute already provides a level of immunity. And I know Senator Lathrop framed it in sort of the sense, well, as long as you're not-- if the operation is there first in time. But what that means is, colleague, under the current law, and I'll reference it, operators who are there first are immunized. They're already immunized. And so the question I think before us is whether or not that immunization or that protection should be expanded. Now, certainly to the extent that is expanding there is additional protections that are being granted. But

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I do think it's important to say, if the policy debate is whether or not these operations should be immunized at all, that is a question that has been answered to some degree already by previous Legislatures in the Right to Farm Act. The question is, should it be expanded? And I think it's important to talk about what AM1209 does, because it doesn't just sort of wholesale expand those protections. It does actually include some limitations. And if you look at the current statute, which is 2-4403. 2-2403-- 2-4403 pardon me, says that: there shall not be a public or private nuisance. And it essentially has one condition. And that condition is if the farm operation was there first. That's it. That's it. That's the current statute. Now, what AM1209 says, it does two things. It restricts in one way and it does expand it in another way. It does restrict, though. And I want to make sure that this is clear on the record. One, it requires, in order for that protection to be present, that operator actually has to use reasonable techniques to keep dust, noise, insects and odors at a minimum. That's lines 9-20 of AM1209. Those reasonable techniques, to limit the dust, noise, and insects, that's not in current statute. So first and foremost, that should be read as a restriction, a narrowing of the current immunization or the protection against the nuisance lawsuit that already exists. The second thing, and this is in (3) of AM1209 is that the farm operation: has to be in compliance with laws and regulations including zoning regulations of a local governing body. Again, as far as I can read the statutes, that is a restriction that does not already exist in statute. And so that part of AM1209, in lines 22-24, would be an additional restriction. Now, there are two ways, and Senator Lathrop and I think Senator Chambers have both referenced them, and I think we ought to be clear about the ways in which this would extend the current protections. And I think they're correct in characterizing it that way. One is, on lines 4-7 of AM1209, is the expansion that Senator Chambers referenced, which would be the expansion, the changing of the type of operation. And the second is, in lines 8-9, which is the size of the operation itself. But there are some other things that I just want to focus on that are included here. Just to set the framework of the debate as we have this discussion. Are another-- two other ways that, that the law puts out that says, you know, this won't be a substantial change. In other words, you won't lose your protection under current law if these things happen. And those things briefly are: a change in ownership; the adoption of new technology, that's (b) and (d); and then ©, which is the enrollment, reduction or cessation of participation in a government program by the farm or farm operation or public grain warehouse. So sort of taking a step and reframing this, in my view, taking a step back, much of this I don't think should be objectionable. Putting your additional restriction--

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WILLIAMS: One minute.

HILGERS: Thank you, Mr. President. Putting a restriction requiring an operation to have, take reasonable techniques, using reasonable techniques to control dust and noise and the like, I think that's very reasonable. We should agree on that. Also, requiring and saying that the farm operator, in order to take advantage of this immunity also has to comply with zoning regulations, restriction that doesn't currently exist. I think that's reasonable. And allowing operator to change the ownership, use technology, participate in a government program. None of those things-- those things provide clarity, in my view, to current protection under the law and don't seem objectionable. The two places where I, and where I guess this debate probably rightfully will focus, is whether we should extend existing protection for where the operation gets bigger. And if we should do this, under what circumstances if it gets bigger. And for the change of operation. But I do want to-- I think it's helpful to reset what AM1209 does, which is significantly different I think from LB227. And I look forward to this debate. I will try to find--

WILLIAMS: Time, Senator.

HILGERS: Thank you, Senator. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Hilgers. Senator La Grone, you are recognized.

La GRONE: Thank you, Mr. President. I was actually going to speak a lot to what Senator Hilgers just said, so I don't think I need to delve into that now. So with that, I'll yield my time to Senator Hughes.

WILLIAMS: Thank you, Senator La Grone. Senator Hughes, you are yielded 4:45.

HUGHES: Thank you, Mr. President. Thank you, Senator La Grone. I appreciate it. I guess I do want to take a moment to just address some of the concerns that have been expressed so far during this debate. I, I want to make it very clear that AM1209 does become the bill. So the things that were in the original copy, when we had the hearing, the committee addressed those concerns in their amendment. There were additional concerns that showed up after that. We

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addressed them in my amendment. So LB1209 [SIC--AM] does become the bill. So if you want to make sure what we're talking about, it is AM1209. County zoning regulations are very key in this argument. Of course the worst-case scenario of someone building a livestock feeding facility, you know, mainly hogs-- and I raised hogs when I was younger and I know they smell. I don't raise them anymore. But someone coming in and building a hog lot or beginning to raise hogs next to you is probably the worst absolute case scenario. But they can do that today if they meet the zoning laws. That's the key part of this, is the counties have put in place how many animal units you can have and how close you can be to an existing residence. You know, that's the protection. We're not asking for anything that's not already in place. Also we need to remember that reasonable techniques have to be used to control dust, to control odors, control insects. There are things that are in place now that weren't there, you know, 50 years ago. We're learning. We're being better at what we do. And as far as spreading the manure, I mean, the price of fertilizer is a significant cost to any farm operation. And being able to utilize that livestock waste on your land is imperative. And there are techniques that you use in order to do that that make it less offensive to the neighborhood. You know, there are times of the year that you don't apply that. There are times of the year you can't apply that. You know, you pay attention to which direction the wind is going to be blowing. You know, if you're close to a metropolitan area. You know, those are the things that are being done, because nobody wants to be a bad neighbor. In 1982, as I stated in my opening, Nebraska passed the Right to Farm Act. That was very important because even, whatever that was, 40 years ago, this body understood the importance of agriculture to this state. Agriculture is the number one industry. And we want to take steps to try and protect the investment that our number one industry is willing to do out of our own pockets for the benefit of every single Nebraska citizen. Not only to keep food prices low, but to grow our economy. That's the thing that Nebraska has, is we have land, we have water. You know, those are the things that you create wealth with. And the farmers in Nebraska have done a very good job of that as noticed in our budget. You know, if you look at the financial crisis that we're in right now--

WILLIAMS: One minute.

HUGHES: Thank you, Mr. President. The reason we got an extra 100-some million dollars for Medicaid was because our income is down. Why is that? Because agriculture is in the tank. We

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weren't getting that aid, that aid when agriculture was in good shape because we were making money. We were, the state was making too much money to get additional cost-share from the federal government. So farmers help poor people. There's no question about that. We pay our taxes right along with everybody else. And in some cases, we pay a lot more. The last thing I want to talk about is I can't emphasize that county zoning is the key here. You can't build a hog operation or a chicken barn or a cattle-feeding next to your neighbor.

WILLIAMS: Time, Senator.

HUGHES: Thank you, Mr. President.

WILLIAMS: Thank you, Senator Hughes. And you are next in the queue. You may continue.

HUGHES: Thank you, Mr. President. I kind of addressed everything that had been talked about to this point. But in reality, we narrowed this bill significantly, to give the courts the intent of the Legislature, of what we consider a nuisance and not a nuisance. Now, I know there is some concern of wind energy, of being a nuisance or not. We have had some epic battles on this floor. My first year, LB824, I'm glad Senator McCollister has come back. We can relive those battles. But if you recall, I don't like wind. But as I said on this floor, I'm not a friend, but I'm not an ally either-- or an enemy of wind. I understand the investment potential for the state of Nebraska. That's very clear. I don't-- I've fought Senator Brewer on his bills of excluding the Sandhills, because that's not good business. Do I want windmills next to my house? No. Do I have some land I'd love to see them on? Yes. I understand business. Those things come up. You know, we need to be not quite so parochial about those issues. When we had Senator Brewer's LB155 up and the balcony was full of people from Cherry County who were anti-wind, I made the comment on the floor: There's probably just as many or more people from Cherry County who want wind development. They chose not to show up. You go back and read the testimony, those were my exact words. And county zoning is key in that fight. Just like it is in this issue. When we get to rural Nebraska, those things come into play. If you live in the city, you have city ordinances, city zoning. You can't build a junk yard in the middle of town. You can't build an airport, you know, those types of things. And this is not any different than someone who has moved in next to the airport and then begins complaining about the airplanes. You know, this is

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first in right issues. And this is the number one industry in the state of Nebraska, and the agriculture industry carries the load for the state of Nebraska. And we're just asking for a little peace of mind to define the intent of what LB227 does, and explain what a significant change does not include. And that's a conversion from one type to another, a change in ownership or size, participation in government programs, or the adoption of new technology. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Hughes. Senator Briese, you're recognized.

BRIESE: Thank you, Mr. President. And good morning, colleagues. I rise in support of AM1209 and LB227. Thank you, Senator Hughes, for bringing this to you. The opponents of this talk of giving immunity to ag operations, and I think opponents worry too much. And why do I say that? Because this bill, at the end of the day, probably is not going to change existing law just a whole lot. Nuisance is essentially an unreasonable interference with one's quiet use and enjoyment of their property. And to successfully sue for private nuisance under the current law, the aggrieved party has to show the defendant's conduct and the conduct substantially interfered with their use and enjoyment of the property. It's an intentional and unreasonable. Furthermore they have to show causation and damages, if damages are the end result or what is being sought. But note that the aggrieved party bears the burden of proving those items, including the issue of reasonableness. And note that the issue of reasonableness hinges on whether the damage to the plaintiff outweighs the beneficial nature of the conduct of the defendant. The current Right to Farm statute that others have spoke of at 2-4403 gives some measure of protection for an existing operation. Essentially grandfathering in those operations. It allows an existing operation to say: I was here first, I wasn't causing a nuisance before you got here. If you move here, it's your problem. This expansion of the Right to Farm statute as per AM1209 allows the existing operation to expand. But note the language requires that operation to employ reasonable techniques to mitigate the negative effects. And so, Senator Lathrop, I would submit that the door to the courthouse is still open. And that's what should make this AM palatable to everybody involved here. You know, what's the practical effect? It means that the plaintiff in a nuisance lawsuit bears the burden of proving that interference with his or her property was unreasonable. Both under the existing Right to Farm law and the proposed expansion. And let's remember the Right to Farm provisions are essentially an affirmative defense to a nuisance lawsuit. The new

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language of AM1209 purports to expand that affirmative defense, and it would still be the defendant's burden to demonstrate that he or she fits within that language. In other words, if he or she is claiming the protection of the new language, it's going to be their burden to show that they have employed reasonable techniques to mitigate the effects. So now all of a sudden the defendant has the burden of demonstrating the reasonableness of his or her mitigation effects. So on one hand, you're going to have a plaintiff with a burden of demonstrating unreasonableness, and the defendant claiming the protection of the statute having the burden of showing his or her mitigation efforts are reasonable. I would submit that whether you have a jury trying to understand this exercise, or a judge who's a fact-finder, this is going to get blurred. And whether you're under the old statute or working with the expanded Right to Farm definition of AM1209, it's going to boil down to the reasonableness of the defendant's conduct. The importance of his or her enterprise, his or her efforts to mitigate, the cost of those mitigation efforts, and so on. So this doesn't change a whole lot. It's still going to boil down in most circumstances to a question of reasonableness. And so I disagree really with the current concerns of the opponents. I think this is good legislation and it's still going to leave the courthouse door open. It's not giving ag operations immunity. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Briese. Senator Wishart, you're recognized.

WISHART: Thank you, Mr. President. I rise with a lot of questions about AM1209. But before I do that, I wanted to say that I find it pretty hard to stomach this discussion when the very same Senators who are supporting LB227 are systematically going after wind energy. And I would look to LB700 as an example of that. That bill will make it very hard for a wind company to be able to develop in this state. So I'd like to ask Senator Hughes a question.

WILLIAMS: Senator Hughes, would you yield?

HUGHES: Of course.

WISHART: Senator Hughes, would you be willing to do an amendment to include renewable energy into LB227?

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HUGHES: What-- I guess I would need to see some language.

WISHART: OK. Is that something you would be interested in, you know, looking at agricultural-- so you're talking about grain and warehouses and livestock operations, and then also including renewable energy projects.

HUGHES: As being immune from nuisance lawsuits?

WISHART: As falling under the same changes as AM1207 seeks to do with these other kinds of operations.

HUGHES: I certainly-- I'll need to think about that for just a little bit. But on the surface, I don't think that's unreasonable at all. That if renewable energy facilities, sites, farms, whatever you want to call them, meet the county zoning regulations, then they should not be liable for lawsuits, for nuisance lawsuits.

WISHART: OK, thank you. And then another question I had on LB-- well, I'll say AM1209, because I know you've done a pretty large overhaul on LB227 as it was introduced. The question I have is I talked with another senator who voted in support of this, and one of the things she talked to me about was with technological innovations in agriculture there are actually ways that companies and the ag industry is able to address nuisances. So can you talk a little bit about how some of the innovations that are helping address the nuisances that we've been talking about, how our current law prevents those changes from happening?

HUGHES: I don't know that our current law prevents any of those changes from happening, those are just good business techniques. If you have-- and we'll talk about the worst-case scenario, livestock-feeding operation. I do know that there are certain times of the year, depending on-- and I apologize, I will find this out for you, whether it's a local zoning or a state, Department of Environmental Quality. But there are times of the year when you cannot apply manure. There are requirements as to the volume that can be applied to a, you know, so many pounds per acre, things like that. Those, those things have been honed over time with zoning regulations and input from-- at the county level, I believe, to make sure that, you know, you're

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not spreading manure when it's 102 degrees in the middle of August. You know, those type of things.

WISHART: And maybe I'm not asking this correctly. And again, this is because I, I am just starting to educate myself on this bill. But are there instances where a company is expanding or changing their practices in a way that will actually be in the long-term helpful for, for nuances, but because they're changing under our current law that could open them up to the risk of a lawsuit?

HUGHES: Well, there's always an effort at trying to mitigate the smells of agriculture, if you will--

WILLIAMS: One minute.

HUGHES: --from livestock lagoons, probably is the worst case. We're seeing a lot of now in the cattle feeding industry, where they are taking the manure and they are composting it, which makes it a more concentrated fertilizer, makes it so there's less tons to haul. It is a better product. Things like that. You know, there was no composting on an industrial scale, if you will, you know, 30 years ago. Whereas today that is becoming very popular. So there are a lot of techniques, there's a lot of work being done to try and find additives that you can put in the lagoons to mitigate the smell from those. I, I have some friends who have interest in hog operations, and they, they own the right to pump that effluent. But they can only pump it in the late spring-- late winter, early spring to lessen the smell.

WILLIAMS: Time, Senator.

HUGHES: Thank you, Mr. President.

WISHART: Thank you.

WILLIAMS: Thank you, Wishart and Senator Hughes. Senator Lathrop, you're recognized.

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LATHROP: Thank you, Mr. President and colleagues. Good morning once again. I just want to say this. Understand something. The current rule lets you, if you're moving into an area look around and go, yeah, everything's fine. Or I know that that guy's raising cattle over there, I can tolerate it. I know what I'm, what I'm in for. The thing that makes this bill so problematic is if you, Senator Friesen, and I are neighbors, we're third-generation farmers, we have both raised corns, our parents raised corn and our grandparents raised corn. We live next door or near one another and he drops in four barns with 5,000 hogs in them, and now he's he got a lagoon that takes the stuff out of confinements and it sits there. And it stinks. And now I can't enjoy my own house because under the current bill you couldn't do that. Under the current law. But under the current bill, you could. And I think it's important that you, that-- let me run through a couple of opinions from the appeals court that demonstrate what people are talking about. Because this-- these are rural people who say, what you're doing next door to me, I can't live in my house. So this is a case, comes out of Senator Briese's district. During the course of the trial all 18 plaintiffs, that's 18 rural people that got together to try to stop this, concerning how the defendant's hog confinement operation had impacted the plaintiffs' lives and their enjoyment of the property. Plaintiffs described the odors from these facilities as: unbearable, overwhelming, a suffocating stench, a musty hog s*** smell, as sewage odor, gas-like smell, the smell that chokes you. Plaintiffs further testified that smell from the facilities is significant enough that it is impacting their daily lives. Various plaintiffs testified to being forced to keep their houses closed up at all times. Not being able to spend time outside in the yards or their gardens, or to be able to hang laundry on the clothes line, not be able to spend time outside with their children and grandchildren. One of the plaintiffs testified that she's a prisoner in her own home. So when we talk about a nuisance and we talk about whether we're going to give somebody a pass, understand that's what we're talking about. These are people that you represent in rural Nebraska who have somebody come in and make their house uninhabitable. I could go on and read from this opinion. And maybe I will before this is over. It, to me, is a complete injustice to say no, you don't get to. And here's the problem. Here's the problem. If I, if I've lived there and I know you're raising corn and sometimes when you, when you harvest it there's dust in the air and those corn husks are flying around and you're driving big trucks by my driveway, I know that's part of the deal. But when you-- and you could under this bill-- change your farming operation, either in size, so you go from 5 cows to 5,000 cows, or you might be a corn-- somebody that raises corn, and now you're he going to put a bunch of hog sheds on there. This thing says you can do that.

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And understand one other thing. That when you say you have to use reasonable techniques, it didn't matter to these people because reasonable techniques were being employed in this case. It doesn't change the fact that you have taken something from me. Nuisance is taking something from somebody and not compensating them for it. So I'm going to make your home uninhabitable because I want to make some more money in this operation and ag is king. You can't live in your house, tough.

WILLIAMS: One minute.

LATHROP: I'm not going to pay you for it. And now I'm going to go down to the Legislature and make sure you can't stop me from making your house uninhabitable, and to the extent you have destroyed the ability for anybody to live in that farmstead. Anyone. I can't sell it to any-- I can't give it away. I've lost \$100,000 because my house has become uninhabitable because the neighbor now under this bill is raising hogs right next door to me. And now you're shutting the door to the courthouse. The reasonableness of your technique is not a defense. Most of these counties don't have zoning that protects it. And I can show you a case, and I'll get to it later, where the DEQ approved it and the zoning board grandfathered these people in and the court still found it's a nuisance. You make somebody's house uninhabitable, you owe them money or they need to be able to stop you from doing it.

WILLIAMS: Time, Senator.

LATHROP: Thank you.

WILLIAMS: Thank you, Senator Lathrop. Senator Crawford, you're recognized.

CRAWFORD: Good morning, Mr. President. Good morning, colleagues. Thank you, Mr. President. And good morning, colleagues. I rise with some questions and concerns about AM1209. I appreciate the importance of agriculture in our state and the importance of allowing larger agricultural industrial kinds of facilities to exist in the state. However, I'm very concerned about the language in the bill and concerned about its impact in terms of taking away the first in time principle. I think that's really critical that it's, its important to recognize that if someone else

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is already on the land that we're talking about a substantial change in that first in time principle. And so I have a question to ask to Senator Hughes, please.

WILLIAMS: Senator Hughes, would you yield?

HUGHES: Of course.

CRAWFORD: Thank you, senate Hughes. And I think I talked to you off the mike a bit about this question. When I look at what is excluded as a significant change, it excludes a change in-- a change in the type of operation, it excludes a change in ownership, a change in size, or a change in technology. So my question is, what's left? What would be a significant change that would be covered by our nuisance law now if we take out all these exceptions?

HUGHES: I'd have to give that some thought.

CRAWFORD: Thank you. That's my concern. I think this basically takes out all the examples that I can think of that would be significant changes. So we're basically taking out the significant change protection in the existing law, which I think is inappropriate. I think if somebody is-- purchases property, has a farm, maybe has a farm next to a farm that is now going to change and become a livestock operation, then it's important that, that if that's a substantial change, there's still a possibility for that farmer to go to court if those nuisance conditions are met. And as a couple of my colleagues have mentioned this morning, on both sides of the issue, those nuisance standards are very high. So we're talking about a substantial concern that someone would have with an operation next door to them. This is not just, oh, I don't like the smell. This is something that makes it uninhabitable or makes the land unable, unable to be used for agricultural purposes. So I think it's a very high standard for nuisance. And so I think it's very concerning that we would rule out the protection that is currently in the law in terms of if someone has a substantial change in operations. That seems to be an important condition that should open the door to someone being able to pursue a nuisance case if those conditions are met. And again, they're very high, a very high bar of what those conditions are. And if someone is experiencing those kind of nuisances because there's been a substantial change in the operations next door, I believe that we still need to protect that, we still need to protect that landowner from those substantial

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changes if they cause that high level of a nuisance that it makes it uninhabitable or unable to be used. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Crawford. Clerk for items?

CLERK: Mr. President, the Appropriations Committee will meet in Executive Session at noon in their hearing room. Appropriations at Room 1003 at noon. Senator Friesen would like to add his name to LB641 and Senator Hilkemann would like to recess the body until 1:30 p.m.

WILLIAMS: Members, we have a motion to recess until 1:30. We will maintain the certain level in the queue. Senator Chambers, you will lead off at 1:30, followed by Friesen, Hilgers, La Grone, and McCollister. The motion is to recess until 1:30. All those in favor say aye. Opposed say nay. We are in recess.

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

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

FOLEY: Thank you, Mr. Clerk. Do you have any items for the record?

CLERK: I have nothing at this time.

FOLEY: Thank you, Mr. Clerk. Members, when we recessed at lunchtime we were debating LB227. Senator Chambers, you were next in the queue. You may proceed.

CHAMBERS: Thank, Mr. President. Members of the Legislature, is Senator Briese somewhere on the floor? I think he's in the first aisle. If he would yield to a question or two, I would appreciate it.

FOLEY: Senator Briese, would you yield, please?

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BRIESE: Yes.

CHAMBERS: Senator Briese, you're working from the amendment that Senator Hughes offered, and that's what I'm going to work for. Do you have a copy with you?

BRIESE: Oh, if you give me-- yeah, I think I do right here.

CHAMBERS: Would you turn to page 2?

BRIESE: Yes.

CHAMBERS: Now what we're-- what I'm dealing with is the notion of a significant change and in line 3 it says a significance change does not include, and then it mentions these items. Do you see that?

BRIESE: Yes.

CHAMBERS: OK. So I had brought up initially the type of farm you could convert to another kind and that would be all right under this, wouldn't it?

BRIESE: Well, it wouldn't necessarily be all right. You still have to demonstrate that you're using reasonable measures to mitigate the impact on other folks, so not necessarily all right.

CHAMBERS: Let's not get ahead, but a different type. If you were raising row crops, you could switch to a hog operation, couldn't you?

BRIESE: It would appear that way from this language.

CHAMBERS: OK. We're taking it a step at a time and I'm not going to cut you off. Now if you go down to line 8, a change in the size of the farm, that wouldn't be enough, would it? That would not be a significant change by itself, would it?

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BRIESE: Correct.

CHAMBERS: It doesn't say anything about the directional growth of this operation, does it?

BRIESE: No.

CHAMBERS: If there were a recalcitrant landowner and the operation was big enough, say Costco, they could actually buy up the land and surround that person and leave a roadway in and out, couldn't they, under this?

BRIESE: No, not necessarily.

CHAMBERS: What would stop them, based on the language of the bill?

BRIESE: Because they would have to employ reasonable techniques to mitigate negative effects.

CHAMBERS: This is just talking about size.

BRIESE: Oh, yeah, I would agree with you there. It doesn't limit the size.

CHAMBERS: And they could buy property all around and literally surround a piece of land of a recalcitrant owner as long as they left a way for that person to get to and from his or her land, isn't that true?

BRIESE: If they met the other sections of this language.

CHAMBERS: Right, so they could put a hog operation or a pig farm-- I meant or a chicken farm and it surrounds this one recalcitrant owner and the person can stay there or leave. But here's what to ask you next. Would you go to page 1? And I have to kind of hurry before I run out of time. In line 17, "reasonable techniques to mitigate negative effects," do you see that?

BRIESE: Yes.

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CHAMBERS: What does the word "mitigate" mean in a legal sense?

BRIESE: Well, to reduce or offset.

CHAMBERS: To what extent? This doesn't give any indication of what that means, does it? It's just a word without a definition.

BRIESE: Talks about reasonable means to do it and I think reasonable is the key there.

CHAMBERS: But "mitigate" isn't-- you have to know what mitigate means to know whether what you're doing is reasonable. Yes or no, there is a definition for the word "mitigate" in this amendment, yes or no?

BRIESE: No, not a separate definition that I see.

CHAMBERS: Now when you lay out a list of items, whatever is not on that list is not included, would you agree?

BRIESE: Well, depending on language, what's-- what's your point?

CHAMBERS: Let's go to line 19. These techniques to keep dust, noise, insects, and odors, that's all under this that they're required by law to mitigate, isn't it?

BRIESE: No, they're to mitigate the negative effects, etcetera, including, but not limited to, reasonable techniques to keep out noise, insects, odors and-- at a minimum.

CHAMBERS: What about, since they're naming specifics, what about rats? Rats is not under dust, noise--

FOLEY: One minute.

CHAMBERS: --insect or odor.

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BRIESE: Well, with the language there, "included, but not limited to," yes, they probably should try to keep rats to a minimum.

CHAMBERS: No, it's-- that's talking about the techniques. Now another item: water-- wastewater runoff, lights on during the sleeping hours, drift of chemicals. See, you're a lawyer. You know exactly what I'm talking about, and you all have used mystifying language hoping you didn't have to deal with the language in this amendment. But the amendment is what we're tied to. That's all I'll ask you because my time is up right now. Mr. President, was that my second or third time?

FOLEY: Second.

CHAMBERS: Thank you.

FOLEY: Thank you, Senator Chambers and Senator Briese. Senator Friesen, you're recognized.

FRIESEN: Thank you, Mr. President. So where I currently live, there used to be a pretty sizable hog operation on there. Since I've moved on to there, I've taken down all the hog barns and they're gone. All that remains is a waste lagoon. I'm still permitted to have so-and-so many animal units on that location but someone driving by would probably have no idea that I could put livestock there without a public hearing or anything else. That permit is still valid. But again, that's not-- if I could go back to those exact same animal units, I couldn't expand it. When we look at a change of operation, so I was permitted for-- I think there were-- hogs were not currently permitted there, but right now we define everything in animal units. So if I didn't exceed the certain number of animal units, whether it was cows, hogs, chickens, whatever else it might be, I don't think I would necessarily need a new permit. I just need a building permit. But that's what zoning is for. And so if I want to do some of these things, that's what livestock-friendly status was all about. There's a criteria set up for how close you can be to neighbors, prevailing wind directions. They looked at odors. They look at all those things and they will not permit me to do things that are not spelled out under that livestock-friendly status. So you can go to your county zoning ordinances and you could find out what your neighbor can or cannot do. Now if I would let my permit go, if I would clean up that livestock waste facility there, then I no

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longer could just put livestock there. I would have to go in front of the zoning board. I would have to meet all the criteria of setbacks and everything else to my neighbors and I don't think I would get a permit to build there because I'm within less than a quarter mile of some neighbors. So those things are all taken account. They take account wind direction and prevailing winds and those types of things. And so it's not as though you can just build next to your neighbor. Now if your county doesn't want to enforce its zoning regulations, that's-- I can't stop that. But that, to me, not being a lawyer, I would assume that opens you up to a legal challenge of why they allowed them there if they're not following their criteria. You know, we're going to see consolidation in the ag industry. We've seen it for 150 or 200 years and we're going to continue to see it in the next 100 years. We will never have that tiny, small, little ideal family farm. We're a business and you could call us big business at times because you can't survive anymore on a few acres and a few pieces-- head of livestock. It just doesn't work. Our costs have exceeded that and your cost of living divided over those acres is-- doesn't work. You've going to have to have more acres. You've consolidated and those that are growing are the ones that are surviving and the rest are gone. So when you talk about livestock these days and value added for the row crop farmers like me, I've got neighbors who grew up raising pigs, milking cows, they had chickens, and they will say they do not want a livestock barn near them. I don't blame them. They grew up with it. They not used to it anymore. They don't want it. But that's where the county zoning regulations came into play. They had hearings. They spelled this all out. They had their input. Those rules and regulations are already in place. This does not change any of that. You know, we're--

FOLEY: One minute.

FRIESEN: --just the method of feeding livestock these days has changed considerably. It used to be, like the facility I'm on, they had open pits for their waste. The livestock barns or the hog barns that are put up today do not have those open pits. Everything is contained inside the building. Yes, it still smells, but it doesn't attract the flies and it doesn't have near the odor when a hog lagoon or a city's sewer waste lagoon turns every spring and every fall. The bottom comes to the top and the top goes down and it smells awful for a week or so. All lagoons do that. But those, those types of things have changed. The cattle industry still uses lagoons, but the hog industry does not. Chicken barns do not. So there's so many different things. The open-lot

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farming like we used to do, her day has gone by. We don't run hogs out in the open anymore. There's no runoff off those pens down the creek where your kids are swimming in the stream.

FOLEY: That's time, Senator. That's time.

FRIESEN: Thank you, Mr. President.

FOLEY: Thank you, Senator Friesen. (Visitors introduced.) Continuing debate on LB227, Senator Hilgers.

HILGERS: Thank you, Mr. President. Good afternoon, colleagues. I appreciate the conversation we've had this morning and again this afternoon and I think it's worth talking about the policy behind the initial law as well as what I believe is a new accommodation in what's being proposed in LB227 as amended by AM1209. And I appreciate Senator Friesen's comments because I think it kind of gets to the core of this. I think the original statute really did provide an accommodation, colleagues. I mean Senator Lathrop is absolutely correct that property does-- in the common law rule in most contexts is that you have a right to assert a nuisance claim, that you have the right to the air, certain standard of quality of the air that you have over your property, there's no doubt about it. It's also true that in many states around this country, in particular in Nebraska, that agriculture is both an incredibly important part of our economic engine, as well as it presents some unique challenges when it comes to nuisance just given the nature of the operation. And so the statute that is currently in existence, which, by the way, 49 other states, every single state in the union, has some sort of right-to-farming law, strikes an accommodation. It says, well, look, we're going to allow these operations to be able to operate, we're-- they're going to have their farming operations without the threat of a nuisance suit. Seems to me a reasonable accommodation. However, times change, as Senator Friesen just pointed out and described, and the current law, as it currently applies, freezes farming operations to a certain degree. Right now, if you have a certain operation, you can't-- if you grow in size, you run the risk of losing your nuisance protection. If you change ownership, you run the risk of losing your nuisance protection. If you want to change your operation in order to meet the needs of a changing economy, changing marketplace, you potentially lose your protection. And so what I believe LB227 and AM1209 would do is to help strike a new accommodation to reflect these--

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the changing dynamic in the marketplace and the nature of these operations. And it seems that on the one hand what this does it would provide some-- some reasonable protections because, remember, it also includes-- it doesn't just extend the rights or abilities or the protection that an operation might have, but it actually provides additional restrictions, the most important of which, I believe, is the one that Senator Briese discussed with Senator Chambers, which is you are not entitled to this protection, if it were to pass, if you are negligent, if you don't employ reasonable techniques. That restriction is nowhere in the current statute. So it represents an additional change to allow to reflect the changing nature of how these operations work while maintaining the initial balance. Now the question I think we should ask ourselves is whether or not the changes in which-- the changes that would come through AM1209 also retain sort of the same process, protections that the current law has. And there are some, I think, very legitimate, serious concerns that we've got to talk about, in general, and I think one of them is the idea of notice. I do think that it's a concept that goes throughout-- throughout our legal structure for the-- since before the United States was formed was this notion of due process, be able to have notice about what your rights are, what could happen to you. Certainly, the expansion, expanding your operation in a way that would potentially-- I think one question we have to ask ourselves is whether that expansion provides-- if there's ample notice for the-- the landowner who might adjoin the expansion. I think that's one question that we should ask ourselves. And so I think that on balance I think Senator Hughes has done something that helps accommodate what it is, the changing economic conditions for operations here in Nebraska. It is, by the way, a statute that, as I understand it, has-- is similar to one that's in Indiana, state of Indiana, which was upheld as constitutional. That's not to say that there aren't maybe some tweaks or things we could look at that might improve it. I took Senator-- I listened to Chambers, Senator Briese's dialogue on the-- on how far subsection (2)--

FOLEY: One minute.

HILGERS: --the draft-- thank you, Mr. President-- the drafting of subsection (2) and whether or not, as I took the conversation, whether to include rodents, for instance, so I think there's maybe some language there we could look at. And so I'm certainly willing to continue to listen to that particular dialogue because I do think there are some good points raised that this-- but I will say at the end of the day this is a statute from 30 years ago. Times change. Operations change. We're

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trying to accommodate that change. I think we need to do it in a way that respects the other-- the rights of other landowners and I think we can get there if we're not there already. And so I appreciate Senator Hughes bringing the bill. I appreciate the conversation so far. I'll continue to listen, and at the moment I'm supporting AM1209. Thank you, Mr. President.

FOLEY: Thank you, Senator Hilgers. Mr. Clerk.

CLERK: Mr. President, I have a priority motion. Senator Chambers would move to recommit LB227 to the Agriculture Committee.

FOLEY: Senator Chambers, you're recognized to open on your motion.

CHAMBERS: Thank you. Mr. President, members of the Legislature, it's obvious that this piece of legislation is in need of work. But before I get to that, I'd like to ask Senator Hilgers if we will yield to a question or two.

FOLEY: Senator Hilgers, would you yield, please?

HILGERS: Absolutely, absolutely.

CHAMBERS: Senator Hilgers, you mentioned a word that is common and significant throughout the law, and that word is "notice." What does that mean in words-- or terms that a layperson can understand?

HILGERS: Well, it essentially means that you-- you have-- and I'm trying to define it in a way that doesn't use the word "notice," but that you have-- there's some acknowledgment or some understanding of what-- of what the implications of what someone's actions might be, what rights you have.

CHAMBERS: And it's a way of giving information to inform the person of what they-- of what a situation is.

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HILGERS: I agree.

CHAMBERS: Now here's why I'm asking you that. When I had my black-tailed prairie dog bill up, I showed you where the law as it's written said that this person who has the prairie dogs allegedly on his or her land can be in a situation where the county will send people on that land to poison the animals. They can damage crops, get-- they can damage property, and there is no liability. That person can then, if he or she does not pay money, have a lien put against his or her property. It can be subject to foreclosure. It can be subject to a sheriff's sale and even after that, that's not the end of it. There can be a filing by the county attorney in the nature of a criminal charge which would require the person to go to court and withstand that. And then it goes on further to say, and these do not represent the only avenues available for redress. And what I showed you, and you read it, that even if the person who has the property receives no notice, he or she is liable to everything under this law. Do you remember that?

HILGERS: I do remember that.

CHAMBERS: Thank you. And I'm not going to grill you on that. I just wanted to make that clear before I go on. They want to talk now about notice because it's something for the farmers to have and benefit them. Senator Hilgers knows as well as I do that no county can legally, no Legislature can legally authorize what amounts to the taking of a person's property without giving any notice. That black-tailed prairie dog bill law is unconstitutional. This Ag Committee, under Senator Halloran, got together so they would vote against my attempt to repeal that unconstitutional law, yet here we are and they want to give all kind of protection to these farmers, these farm interests who are going to expand and do things that encroach on the enjoyment by people of their property, but they don't care about notice now. So what I ought to do, just to make the discussion focused, is to offer an amendment to this bill to simply repeal the statutes that relate to the black-tailed prairie dog bill. Under that bill, I've told you some of the things that could happen. You like that, don't you? But it's unconstitutional. But it meant nothing to Senator Hilgers even after acknowledging what he did, acknowledged. He voted against my bill to repeal that unconstitutional law because they have a knee-jerk reaction to me. They will ignore the constitution, the law, and their legal training. But this bill is not going to escape that easily. I'm not going to waste my time asking questions to the people who support this bill

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because they're going to obfuscate, take as much time, beat around the bush. They won't read the language of their amendment, or Senator Hughes's amendment, because they think it will trap them. If the language is ambiguous, it is not going to stand. Notice applies to what the Legislature must do. The Legislature, in enacting a law that can cause a person to suffer damage of any kind, whether it's a fine, whether it's confiscation of property, or anything that would be harmful, there must be a clear recitation of what it is that person is prohibited from doing. If it's vague, meaning that it's unclear exactly what the wording means and reasonable people could disagree, that is vague. If it's ambiguous, it could as easily mean A as it could B, then you don't know because it's ambiguous. It goes two different ways like being ambidextrous. You can use both hands, right and left. If a law is ambiguous, that "ambi" means it can go either direction and that is unconstitutional. That's the way it was with that prairie dog bill. With this particular bill, Senator Briese wanted to pretend that he's not trained in the law or in the reading of ordinary English because on page 1, where it talks about reasonable techniques to mitigate, it is talking about techniques relative to mitigation or lessening, reducing, but that is not sufficient in the way of a definition because all they would have to do to mitigate, according to his definition, is put up a fence and say, well, not as much stink will go through because the stink that hits the slats in the fence won't go through, so that is a mitigation. And Senator Briese would say, well, no, it means more than that. Then the court will say, why didn't say it when you were putting the bill together? They want us to buy this claptrap. And when they had the opportunity to say clearly what they should say, they won't do it because they think, since it's a farm issue, that everybody will just swallow it. This goes to the basis of what the laws are in this state, how we legislate, and the due process provisions we put into the law. Citizens should not have to go to court to challenge the language that the Legislature uses because the legislators themselves, when discussing it, cannot say what it means. He didn't know what mitigate meant except giving a dictionary definition, and he gave two, to lessen or reduce, and those two are not necessarily the same in meaning. Then we go on, the negative effects, including, but not limited to, reasonable techniques to keep dust, noise, insects, and odor. What it's talking about is the techniques, not the itemization. The only things that that landowner who wants to encroach with the stink, the insects, and all the rest, is just say, well, I'm trying to stop them. It doesn't say there can be no dust. It doesn't say there can be no odors. It doesn't say there can be no insects. All of those can be there. All that person would have to do is say, well, I took these steps to try to reduce it, it didn't work, but I tried, and because of the kind of activity we have, there is no standard of

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reasonableness because obviously you cannot stop dust from flying around. But again, it doesn't mention rats, it doesn't mention the water runoff, it doesn't mention the light during sleeping hours, and some of these operations do have bright lights on at night. There was a chicken farm along the highway when I used to go back and forth. I still do, but that one is gone and it had a real stinky, pungent odor, and they'd have lights, very bright lights. I don't know why they kept them on at night but they did. But on some of these other operations, they do have bright lights. The water runoff, chemicals will be used. You can't stop the chemical drift. You don't have to do that. Atropine was being used at one time and affecting other people's property.

FOLEY: One minute.

CHAMBERS: And that went to court and the court did give some relief there. But there are any number of items that will exist because of these large operations. But you cleverly and "wily-ly," being wily, limiting the catalog to just four of those things, anything not on that list, that big operation can do and find a way to run somebody off that land. And remember, county boards are political processes and the county board will yield to the pressure from a big group and not worry about the damage to the individual. The individual is pushed aside but the big operation wins, just like happened in Costco. Thank you, Mr. President.

FOLEY: Thank you, Senator Chambers. Senator McCollister.

McCOLLISTER: Thank you, Mr. President. Good afternoon, colleagues. I wonder if Senator Hughes would yield to a few questions.

FOLEY: Senator Hughes, would you yield, please?

HUGHES: Of course. Of course.

McCOLLISTER: Senator Hughes, Section 3 of the amendment-- or (3) of Section 1 has to do with the farm or farm operation or public grain warehouse or public grain warehouse operation is in compliance with applicable laws and regulations, including zoning regulations of a local

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governing body. Senator Hughes, can you tell me what a local governing body, who that might be?

HUGHES: This would be the counties. They would have jurisdiction for zoning

McCOLLISTER: Do all counties in Nebraska have-- have regulations or zoning regulations?

HUGHES: Eighty-three of our 93 counties do have zoning.

McCOLLISTER: So a number don't, seven or so, correct?

HUGHES: Ten, ten do not, I believe.

McCOLLISTER: Ten, correct. When a wind farm makes an application, makes an application to go into a specific county, do they need to receive federal agency approvals of various kinds?

HUGHES: I'm not sure of that. I'd have to get back to you on that.

McCOLLISTER: Well, I can help you with that, actually. Federal agencies, in order to approve a wind farm installation, would include U.S. Fish and Wildlife, U.S. Corps of Engineers, Federal Aviation Administration, U.S. Environmental Protection Agency, U.S. Department of Commerce, U.S. Department of Defense, U.S. Department of Energy, U.S. Department of Agriculture, and, finally, the Federal Energy Regulatory Commission. So, yes, we have 15 federal agencies and then 9 state agencies, and that would also include as a separate entity the Southwest Power Pool. The Nebraska State agencies include the Nebraska Department of Revenue, Nebraska Department of Environmental Quality, Nebraska Department of Aeronautics, Nebraska State Patrol, Nebraska Game and Parks, Nebraska Department of Agriculture, Nebraska State Historical Society, Nebraska Department of Roads, Nebraska Power Review Board. And then, of course, as you indicated, Nebraska counties have to approve it, and that would include the land use and siting, road development, and utilities. That's quite a list of approvals to obtain, is it not, Senator Hughes?

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HUGHES: Yes, it is.

McCOLLISTER: Would a situation, if it arose, that a new operation was hoping to move into a particular farm area, maybe a county with regulations, would they have to go through all of those approvals?

HUGHES: They would have to meet the requirements of the county from which they wish to locate.

McCOLLISTER: But it could well be that that county would utilize some of the-- some of the departments in the Nebraska administrative offices, couldn't it?

HUGHES: Oh, absolutely, they-- yes, they should.

McCOLLISTER: That would be great. That's all I have, Senator Hughes. Thank you very much. Steve, want time?

LATHROP: No, I'm up.

McCOLLISTER: Thank you [RECORDER MALFUNCTION]

FOLEY: Thank you-- thank you, Senator McCollister and Senator Hughes. Senator Brandt.

BRANDT: Thank you, Mr. Lieutenant Governor. Thank you, Senator Hughes, for bringing this bill. I'm a fourth-generation family farmer, all of it spent in animal agriculture, cattle, hogs, and sheep, as well as row crop. In my area, you will find dairy, chicken barns, turkey barns, egg layers, feedlots, and swine facilities. You cannot build any livestock facilities of any size without DEQ and county zoning approval. Then the county commissioners must approve the final building permit, often inserting additional requirements. Opponents have successfully stopped projects from going forward in the past and will continue to do so in the future. This bill is about economic development in the rural areas of the state. If we cannot expand opportunities in agriculture in the rural areas for our kids to return to the farm, then what is left? Moving to

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Omaha or Lincoln. A lot of discussion has centered around odors, manure, and flies. I can tell you technology in these areas has continued to evolve. We have biocovers to deaden odors. We have exhaust filters on buildings. We have coverts over lagoons to capture biogas to be used in electrical generation. I am concerned that, without additional protections in place, these newer technologies will not be allowed to go forward on new construction. There is no better fertilizer than natural manure. It is better than expensive commercial fertilizer and helps farms control costs. My priority bill is industrial hemp. Under the current law, would a neighbor be allowed to stop hemp production because they are opposed? What if the neighbor has hay fever and the farmer plants alfalfa across the road? Can they stop his hay field? I think the "reasonable clause" in the bill provides protection for people wanting to file a lawsuit. I've had a lot of e-mails on this bill, about 50 percent for and 50 percent against, and feel the bill would adequately protect both sides, therefore, I stand in support of AM1209 and against the motion to recommit. I would cede the rest of my time to Senator Hughes if he wants to use it.

FOLEY: Thank you, Senator Brandt. Senator Hughes, 2:40 if you care to use it.

HUGHES: Yes, thank you, Senator Brandt. I appreciate it. I just want to bring us back around to what we're talking about. Senator Chambers' example of Costco buying all the property around a residence and then putting in a hog farm, they can't do that unless it's in a county without zoning and there's no Costco, I don't think, in a county without zoning. But there are still setbacks. Senator Brandt touched on that, you know, the challenges that we face with zoning regulation. You know, the distance from the operation to the nearest residence is called the setback. And depending on how big of an operation you want to build, how many livestock units, how many animal units that you are going to develop determines the setback. So if you're going to put in 10,000 head, yeah, the setback is a long ways. If you're going to put in 100 head, then the setback is not near as far because you're not generating near as much of odor, flies, dust, all of those types of things. The challenge we have is everybody is trying to become more efficient and economies of scale play into agriculture just like they do into manufacturing, just like they do into anything else. The more volume you have with the existing equipment you have, the greater the profit margin and the better off your bottom line is to pay off the debt that you've incurred for that expansion.

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FOLEY: One minute.

HUGHES: You know, that is-- that is the thing we need to keep in mind, that we're trying to make Nebraska business more efficient, more profitable so we can pay more taxes to support the things that we want in Nebraska. That's the issue here. Are we willing to grow our state with our number-one industry by paving the way to make sure that there are not undue barriers put in place that make it too difficult that people just say, I'm not going to take the chance? You know, that's the question. And if that livestock-- if that operation, whatever it is, we're-- we seem to be stuck on livestock and that's-- that's where the smell and the flies and the dust are generated, well, let's talk about that. You know, I enjoy a hamburger just as much as the next guy.

FOLEY: That's time, Senator.

HUGHES: Thank you, Mr. President.

FOLEY: Thank you, Senator Hughes. Senator Lathrop.

LATHROP: Thank you, Mr. President. Colleagues, good afternoon. So a lot of the discussion, we seem to be talking past ourselves and I kind of want to bring this back to maybe the main principle. I hear people, primarily folks from rural Nebraska, who look at this as economic development. The economies of scale, things have improved, things have advanced, and the old right-to-farm bill doesn't work because things have advanced. And the point is we don't have to raise cattle, pigs, what-- you name it, on small farms, load them in the back of a pickup truck, and drive them to Omaha like the old days. We can do this on larger-- larger scale, and we can put 5,000 hogs in one unit and right next to it another unit with another 5,000 hogs. And it's hard to deny that there are improvements in scale and the guy who does it is going to make more money because he's got more animals going through there, he makes a little bit of money on each one, the more he has, the more money he makes, and all of that is easy to understand but it misses the point. Here's the point. Nuisance jurisprudence is focused on the person across the road from this, OK? So when you say they can do zoning, you can get approval from the DEQ, you can do these things, that's little consolation if the person across the road can't live in their house anymore. This is about the person that didn't make this decision to go into greater

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economy of scale and change his operation and go from a corn farmer to a hog-raising operation with these big confinements. It's about the guy across the street. And if he can't live in his house, this is the one principle that hasn't changed with all this technology, right? The thing that hasn't changed is everybody has a right to do what they want on their own property and everybody has a right to peacefully enjoy their own property. And what you're missing in this conversation is nuisance law is there as a backstop. You can-- I can tell you there's a case of Knox versus-- I'll pull it up for you because it's a case where the guy actually went and got approval from the county board and he got approval from the DEQ, still had a nuisance. It didn't matter that-- to the person that lived across the road that couldn't use their house anymore, couldn't go out in the garden, couldn't go outdoors, was infested with flies. It doesn't matter. So this is about whether the person who is the victim of this operation has a right to go stop it or to claim recovery. And my answer is, use all this new technology, come up with all these big pens and these indoor containment centers where you can make more money faster. I don't have a problem with it until you-- until you take something away from the guy across the road, because you're taking something. If that house is worth \$100,000 before you put up the confinement facility, and maybe have zoning approval and maybe you have approval from the DEQ, what difference does it make if the person can't live there anymore, because what we're doing here is saying somebody can change their entire operation, they can grow it from 10 cows up to a pen of 1,000, and if I can't live in my house across the street from this expanded operation, I have to eat it, tough. You can't get insurance for this stuff. My house just went from \$100,000 down to \$5,000.

FOLEY: One minute.

LATHROP: So when we talk about the advances in agriculture, I'm all for them. I'm all for them. I vote like that on the committee. I'm for advances in agriculture. I'm for advances in techniques. I like reasonable measures to keep these things down. All of that is good but it doesn't solve the question. What happens if the guy across the street, after all that's done, can't live there and you've taken something from him in the name of growing your operation into something more profitable? In Iowa, they had a case, and I'll have an opportunity to talk about where they address the constitutionality. And what the court did in that case is talk about it in-- in this context, which you might understand easily. It's like imposing an easement on the neighbor's property. We're going to take something from you and just have to--

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FOLEY: That's time, Senator.

LATHROP: --lump it.

FOLEY: That's time.

LATHROP: Thank you.

FOLEY: Thank you, Senator Lathrop. Senator Chambers.

CHAMBERS: Thank you. Mr. President, members of the Legislature, Senator Lathrop is making a good record. He's giving you the legal underpinnings and the theory behind everything that we're talking about here today. But now I can bring it back to what I often talk about when I say that flag doesn't mean anything, and this proves it. If I'm a little white guy out in the country, the flag doesn't protect him from being eaten alive by a big plant, by a big hog operation, by a big feedlot. Doesn't the American flag and the constitution protect him? Or in the interest of large corporations or a rich person, maybe a Ted Turner, except that he buys land in Nebraska to create preserves, to prevent Nebraskans from indulging certain bloodthirsty practices they love. He's trying to civilize Nebraskans, so I applaud what Ted Turner is doing. Some people in the rural areas don't like it because they say as he and other people buy land in Nebraska, it raises the market value of that land and the value of surrounding land rises accordingly, so they hate Ted Turner. Well, I say good for Ted Turner. The reason you have laws, and I say you because everything I say is based on your constitution, the white people's constitution that white people wrote of, by, and for white people, not the communist manifesto, not anything about socialism, even though the person who wrote the Pledge of Allegiance was a socialist. Did you all know that a socialist wrote your pledge? Oh, you didn't know that? There are a lot of things you don't know and you talk because politicians and hucksters tell you what to say. You run up that notion of patriotism which, as Dr. Johnson said, is the last refuge, or first, of a scoundrel. Just holler, "Patriotism, patriotic!" That's what Trump does. You all don't have to worry anymore about wind energy because your President has announced that the-- no, he calls them windmills. The noise from the turbines create cancer-- the noise creates cancer, and that's what President Trump said. Once he says it, you "Trumpites" follow it. He uses the word "SOB" and says the words and they

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go up in a shout. He uses the first and last name to fill in the terms for that expression "BS," he said both of the words. He used the word for manure that starts with "s" and put a "hole" on the end of it, "hole," the word "hole," and that's the way he described black countries. And you all think the flag means something to me? What does it mean to you all? Shouldn't these little persons who live in the rural areas have their rights protected? Or when an American patriot gets big enough, then that erases the rights of this little person who may have been a veteran, who may have fought, like the stuff you all tell me but it means nothing to you when we talk about money and who's going to prevail. And every one of you is a fool or a liar if you'd stand here and tell me that county boards are not subject to political pressure. If the battle is between a big corporation like Costco--

FOLEY: One minute.

CHAMBERS: --and two or three neighbors who are not going to be able to live where they live if you have this chicken farm, who do you think the county board is going to bow to? Senator Brandt knows that. He plays like he doesn't. That's why I call you all by name, because none of you are as dumb as what you sound like. You know these county boards yield to that kind of pressure. You know it and I've seen it happen. I've read about it happening and I've read situations where it was happening. One person is going to go to the county board, Costco is going to come, now which one will they listen to? Oh, you didn't-- oh, you think they'll listen to the individual over Costco? You all need more instruction than I thought. I need to go back to the basics. The first three letters of the alphabet are ABC, ABC. "A," if it's a capital, that means a big "A," it looks like a triangle with no bottom--

FOLEY: That's time, Senator.

CHAMBERS: --and then you draw--

FOLEY: That's time.

CHAMBERS: --a stick across the tube and then--

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FOLEY: Senator Chambers, that's time.

CHAMBERS: Oh, thank you, Mr. President.

FOLEY: Thank you, Senator Chambers. Senator Hunt.

HUNT: Thank you, Mr. Lieutenant Governor. Good afternoon, colleagues. I've been listening with interest in this debate today and I've-- I've learned a lot from the conversation between Senator Hughes and Senator Lathrop and Senator Brandt. I grew up in Blair, Nebraska. I'm sixth generation from Blair, and I'm the one who moved out of Blair and the area there to be an urban person, an urban senator now. And I still have many friendships and connections with people in that community in the areas of Washington and Burt Counties. And in speaking with family farmers from that area, the overwhelming feedback that I've gotten from these folks is that the law works as it is today. And I feel like when we have so many family farmers who are dealing with devastation from the flooding in Nebraska right now, I really have to respect the concerns that I've heard from these family farmers who have called my office, who have e-mailed me, who have written letters to tell me that this bill will not help them. The groups that have asked me to support these bills represent big, industrialized farms, many of them not based here in Nebraska. And the groups that have asked me to oppose this bill are small family farmers, individuals who are dealing personally with devastation from the flooding, who still took the time to contact me personally. You know, we all get the-- the e-mails where we get the same form letter from everybody. But the personalized letters that people take the time to write to say this is something that I'm struggling with now and it's not going to help me, so those are the voices that tend to weigh most in my mind when I'm thinking about what to do about an issue that I don't directly face in my district. And with that, I'll yield the rest of my time to Senator Chambers. Thank you.

FOELY: Thank you, Senator Hunt. Senator Chambers, 3:20.

CHAMBERS: Thank you, Senator Hunt. Thank you, Mr. President. I had mentioned earlier where I get letters from people in you all's districts, some of you they mention by name, and if I describe some of the situations, you'll know exactly who you are, or they may have written to more than one person. People in my district don't write to people in the farm community and say,

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do something for north Omaha. But they know that you all are not receptive to them. You all can get big donations. I don't know who supports Senator Hughes, but maybe some big corporation like Smithfield, that's one of the farm outfits that I'm familiar with, maybe they donate to him. And if we check you all's filings, then we could find out who supports you. But it's clear you're not supported by ordinary people, not just on this but on most of the things that come through this body. Many of you, directly or indirectly, will benefit from the legislation that is enacted. I know it. You all know it. These are the things that show me how you all don't care and why I say your flag means nothing, your constitution means nothing. The only time they mean something is when you can use it to try to attack me because I'm giving examples of how you show it doesn't mean anything. And if it's your flag and it doesn't mean anything to you, it sure can't mean anything to me. These are the times when the rights of the ordinary people, the ordinary citizens, should be vindicated. You were not sent here to represent big corporations, not at all. But that's whom you all are speaking for today. You don't care about the ordinary people. Somebody mentioned that there were people in the balcony supporting a particular bill, but there are probably more people not here who didn't support it. You can-- you can only speculate about that. You can see who's here. Anybody can say who's not here. But when ordinary people contact various-- various senators, then that means something. But any-- any letters that I get, they probably know better than to write to me. But every now and then--

FOLEY: One minute.

CHAMBERS: --a mailing to everybody, and it'll be from big-- some big corporation, big outfit. And this I want somebody to stand up and show me that I'm wrong, that a county board will yield to the wishes of a big operation, even if it means going against what will benefit individual citizens. They look at-- they're looking at their next election, who will support them. So the citizen is left in the dust. Some of us have to try to pick those people up. Thank you, Mr. President.

FOLEY: Thank you, Senator Chambers. Senator Hughes.

HUGHES: Thank you, Mr. President. We need to make a very clear distinction here. I appreciate Senator Lathrop's arguments about building a hog farm across the street. This is not Omaha. This

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is not Lincoln. This is rural Nebraska and the setbacks that I'm talking about, the county zoning regulations, are miles. That's how far you have to go. That's how close you can build to someone's house. They are miles away. We recently had an organic dairy want to come into my home county. In fact, I had an information meeting on that last January, I believe, a year ago, January of 2018. And we packed the room because there was a lot of misinformation out there about what this expansion of livestock would be in our county. We have zoning regulations. They are in place before this company ever came to Chase County. But there was still a lot of unanswered questions, and that's what I did. I brought everybody together. I brought the people who want to develop the operation and provided an opportunity for all those who were in opposition to come and get their questions answered. And it worked out well. The process worked. The county zoning provided sufficient setbacks that this company could build economic sizes of pens for their dairy. They weren't as big as they had hoped for, because of our setback regulations, but they were sufficient that they could make it work. We're talking apples and oranges when we're talking about building a hog farm across the street. That's not what this is. This is not about corporate agriculture or about Smithfield. This is about people like me who made an opportunity to bring my kids back to the farm, to bring the next generation back to the farm, and sustaining family farmers on the land. We don't want corporate agriculture any more than you do. Corporate agriculture is not bad, but we like being our own boss. We like having the tools that we need in order to survive against big agriculture, against the-- the people who are generating a lot of commodities at a cheaper price. And that's a price we're willing to pay. So let's-- let's keep in mind the area that we're really dealing with. This is rural Nebraska and the setbacks are miles. And it's about existing operations. If you're a farm operation and you want to make a change, this gives you a little bit of peace of mind so you have the opportunity to protect your investment, because without that investment the revenue to the state does not come in and we don't have the opportunity to spend our tax dollars on all of the other things that we do. The techniques that we use to mitigate the smell, the dust-- oh, one other thing, talking about dust and smell, the wind doesn't blow out of the same direction all the time. One of the--

FOLEY: One minute.

HUGHES: One of the points that I did want to make in doing research for the livestock facility that wanted to come into Chase County, it was located north-northwest of town. What are the

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predominant-- what are the prevailing winds in Nebraska? North-northwest. That was a concern. There were some people that just knew they were going to smell that dairy 365 days a year. But if you look at the data, you'll find out spring and fall is when the wind blows the most and that's when your smell is the least. During the summer is when the smell is the worst and the wind out of the south was the second-most days of the year. There are a lot of different factors that go into this equation, but we are not building across the road. We are having-- asking for the opportunity to expand miles--

FOLEY: Time, Senator.

HUGHES: --from your house. Thank you, Mr. President.

FOLEY: Thank you, Senator Hughes. Senator Friesen.

FRIESEN: Thank you, Mr. President. So when I was talking earlier, if I wanted to put up a livestock operation now at my place, with a neighbor as close as I am, and if wanted to increase that size, first of all, I'd have to get a permit from the DEQ, they'd have to approve my waste management plans, and again, I'm too close to the neighbor. My local county zoning would not let me do that. So, you know, people have started to compare this to wind generation and I-- I didn't really want to go there, but right now, I mean, you can come in and my neighbor could put up a windmill and I would not be able to enjoy my time on my farm, I'd have to look at those windmills when the sun is setting, and I would have no say in it and I would have no way of suing or getting damages because he's taken away my ability to enjoy the sunset and my peace and serenity on the farm. But again, this-- this goes back to-- I'm curious. I like the discussion and I-- I wish everybody would participate and learn because I think this is how we kind of exchange ideas. And so I'd like to ask Senator Lathrop some questions.

FOLEY: Senator Lathrop, will you yield, please?

LATHROP: I'd be happy to.

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FRIESEN: So, I mean, I'm-- I'm curious like if-- under what conditions are you saying that someone can be-- deprived of their property any more than a windmill will deprive me of my property? I mean, let's-- you know, your sense of smell and sight and what's offensive to one person might not be to another. So give me a condition, I guess, where something could happen that--

LATHROP: So we have a number of nuisance-type claims. The most common is smell coming from some type of a livestock operation. There are also nuisances in town. If you can imagine somebody running an asphalt plant, they go into an industrial tract and the smell of the asphalt plant, that's also been the subject of a-- of nuisance cases. The-- the law requires that you be able to show a substantial interference. It's not just any interference. And the law-- and the report of cases also says that if you're out in the country, you've got to expect some of the things attendant with that. It's only when it gets bad enough for an individual that--

FRIESEN: So going back to the residential case and you're next to that industrial park and the industrial plant comes in and he's in the industrial zoned area and the-- York had a situation like this. The sewer gases and everything started to affect neighbors and-- and, you know, they were operating correctly but those odors were offensive, they couldn't sit out on their deck. Is there any recourse for that person to sue someone in that industrial park if they followed all the permitting?

LATHROP: Yes. And so one of the cases-- and I'll just tell you, I read a whole bunch of nuisance cases over the weekend. One that I read but did not make a copy of, so I don't have it with me, involved a-- an asphalt plant going into an industrial tract in Lincoln and the soot and the smell from that was, as I recall, sufficient to have the-- have it enjoined or stopped.

FRIESEN: Was it the soot or the smell? Both?

LATHROP: Both. There were people that were like, I, you know, I go out and my car is covered in soot every day because they were downwind from the plant.

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FRIESEN: Because I'm-- I look at if-- if you're already out in the country and I'm living within an eighth mile or a quarter mile of you, I would not be able to put up one of these hog barns. Now let's say that I already had one and it was a small operation and I wanted to double the size. And if you go into our statutes, you concentrated on the feeding operation--

FOLEY: One minute.

FRIESEN: --you would have to get a permit again. And if it doesn't meet the requirements of the-- those zoning statutes, I wouldn't be able to put it there. I'd have to find a new location, whether I had livestock there or not. So I-- and I've run into more cases where county boards were pressured by the residents not to approve a permit, even though it met all the qualifications. So in those cases, I mean, if-- if they have not followed the zoning rules that they've set out, wouldn't that person still have right to sue under those statutes?

LATHROP: Yes, and there's a case that-- that addresses that. The fact that the zoning board said okay and the fact that the DEQ, by the way, that's just mostly worried about contaminating streams, the fact that the DEQ said okay doesn't change the fact that the condition, you have to establish the condition is intolerable on your property, not just the--

FRIESEN: But that-- that's where the zoning statutes come in though. I mean, our statutes clearly define where and where you can't put those. But if they would not follow those--

LATHROP: They-- they--

FOLEY: That's time.

FRIESEN: Thank you, Mr. President.

FOLEY: Thank you, Senator Friesen and Senator Lathrop. Senator Moser.

MOSER: Thank you, Mr. President, and good afternoon, colleagues. As a point that Senator Hughes made I thought resonated with me is that this bill helps the small- to middle-sized

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producers more so than the most huge food-producing corporations. Those huge corporations have rooms full of lawyers. They can afford to do whatever legal actions they want. But a small-to medium-sized producer is intimidated by being sued by his neighbor, so he's going to be careful what he does. Defending himself in a lawsuit, I mean, a \$10,000 would probably be the minimum and it could easily go to \$100,000 by the time you get it heard in court and then go through any appeals. I think this bill helps the state. It's an economic development improvement. It makes this business successful possibly in Nebraska. We'd rather have it here than other states. You know, who better has a good water supply than Nebraska? Who's got more grain available than Nebraska? Well, maybe Iowa, to be truthful, but, nonetheless, we're in the top two or three. And we have producers that want to grow food. The economies of scale have changed in agriculture over the years and open hog yards don't pencil out and chasing free-range chickens around the barnyard and catching them with a piece of Number 9 wire is a lot of work. I've done it and-- and you won't be able to buy a chicken at, you know, the grocery store for \$1 a pound if that's how we produce them. You know, I think it's a benefit to the people in our state. They'll have more reasonable food costs and we have all of the inputs to make it successful. They still have to satisfy the DEQ and the county. And in the one example that was cited, they had DEQ and the county approval, but they still were a nuisance and they still got sued. So I think that kind of proves the point that if you are a nuisance, in reality, there's still a place for you to get relief. You-- you can still sue your neighbor. So again, I think that LB227 and Senator Hughes's AM1209 are worthy of support. I think it helps our state. I've had people contact me from both sides. And I know Senator Chambers said that some people went to him because their senator wouldn't see their side of an issue, but when we have people on both sides of the issue, you're going to make one half of them mad no matter what, so you have to reason through what they're saying and why they're complaining and, you know, try to get some idea of who's right or wrong. There's no way to satisfy everybody. And I-- I've had probably more people contact me that are interested in the bill passing than not. And so-- and besides that, I still think it's a good bill. Thank you very much.

FOLEY: Thank you, Senator Moser. Senator Matt Hansen.

M. HANSEN: Thank you, Mr. President, and good afternoon, colleagues. I just kind of wanted to rise and when we were talking about this, kind of, as I hear this debate and I view this debate,

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when we're talking about nuisance law, we've been talking about it a lot of in the very specific context of some of these specific farm operations. But the concept of nuisance law is bigger than that and larger than that and expands beyond that to-- to all sorts of industries. It's kind of this fundamental I have a quiet right enjoyment to my property and if another property owner infringes upon that right, it gives me a cause of action. And that's just something I kind of wanted to step back and make sure people kind of reflected upon and stop-- thought of and-- and thought about when they-- when they debated this bill, because that's how I'm kind of framing it and trying to put all the puzzle pieces together here as I listen to debate on this bill. You know, I appreciate concerns that as, you know, certain types of farm operations, livestock operations increase, it has impacts upon their neighbors. But the-- kind of the concept of nuisance law would stay the same regardless of how that property developed or changed. You know, that would be the same as if, you know, you were going-- and I'm not as familiar in this issue or area, but, you know, we're talking about going from, you know, I think row crops to-- to hog land or, you know, hog containment, something like that. It would-- nuisance law would also apply if you went from row crops to a factory or row crops to an outdoor amphitheater or row crops to, you know, a power plant. And so but under this law, if we pass these strict provisions, we would increase the provisions that treat just some of those uses at a very, very high threshold. And that's something I think we've got to take a step back of, you know, if we as Nebraska are really coming down hard on nuisance law, we want to have property rights of the individual property be very strengthened, why are we limiting it to-- to just-- just one industry and why are we focusing on just this one industry? And I think that's-- obviously it came through Agriculture Committee and obviously it's in part of the Right to Farm Act. But I'm kind of-- I'm kind of stay-- approaching it from that angle of, you know, if I own a piece of property and my-- you know, my next-door neighbor is building a new, you know, commercial facility that's going to infringe on the quiet enjoyment of my property, you know, I have that right, right now, to at least file a lawsuit and state my case in court under nuisance law. Under this bill, if we pass it, if that individual built a new agriculture facility as opposed to a commercial facility, as opposed to a manufacturing facility, we'd be held to two different standards, even if the resulting, you know, problem is-- you know, whatever it is, noise, smell, what have you, is virtually the same. You know, as I understand it, a commercial manufacturing property would be treated to a much lower standard or-- than an agriculture facility. And that's kind of why I'm taking a step back is I appreciate that discussion and I appreciate that you know a lot of these issues. I don't necessarily

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have the rural ag expertise on some of these issues and necessarily what these facilities look like or can be or change or what have you, but I just know the concept of nuisance law applies regardless of what the facility is. So that's something I kind of want to step up and change because, you know, a lot of people have been getting up and pitching this bill as either kind of, you know, an embodiment of you supporting a type of farm or type of industry or type of ag. And while I understand it's like the intentions and maybe the inspiration for the bill and the desires for the bill and some of the supporters of the bill, but fundamentally nuisance law is non-industry specific. It is-- it is broad and overall and, you know, and kind of goes to that fundamental quiet right of enjoyment to your property. And I just kind of wanted to step up and make sure we kind of injected that in the debate as we're talking about these things. You know, you might-- you might-- you know, I understand kind of the worst-case scenario of somebody builds a house surrounded by farms and gets annoyed that there's still farms there.

FOLEY: One minute.

M. HANSEN: And I understand why we have-- thank you, Mr. President. I understand why we have some of those protections. But kind of fundamentally the issue-- the issue here, you know, is the same regardless of how the property is developing in a way that infringes on your quiet development. And here, with AM1209 as I understand it, we're kind of developing newer and bigger and stronger standards and protections for agriculture in a way that we aren't just for every other commercial or other venture that you'd use with such property. And so I just wanted to make sure people kind of thought about that and that in the back of their minds, as I've had it in the back of my mind listening to debate on this bill. With that, thank you, Mr. President.

FOLEY: Thank you, Senator Hansen. (Visitors introduced.) Continuing discussion, Senator Dorn.

DORN: Thank you, Mr. Speaker. Thank you, colleagues, for the discussion we're having on this bill. And thank you, Senator Hughes, for bringing this. I very much enjoyed listening to a lot of the discussion, the different thoughts, the different viewpoints. I also, though, am a former-- we raised livestock. I wanted to talk about a few things that I see as we've gone through this discussion. First off, I want to make a comment on some comments Senator Lathrop made that,

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generally speaking, when we have a nuisance or something like that or some other kind of zoning, we lower or people tend to think that we lower the value of that property. In Gage County we had-- while I was on the county board there the last two or three years, we had two big zoning issues that took us over a year to have our public hearings, our zoning board and everything that we went through. Someone wanted to bring their nephew back and have a couple-- some chicken barns. And part of that discussion, there was somebody that all the zoning requirements were met for zoning for Gage County and yet they lived on the outside of that and they were so concerned with those barns coming in, they testified several times that it would lower the value of their property. We ended up passing that. They built the barns. They put their acreage up for sale. That acreage that they knew would lower the value of the property then sold for a third more than what it was on the valuation of the property. That might be one example. I could find you examples the other way, also, though, where it does lower the property value. So that is part of the discussion. Yes, it can lower the value, but it don't mean it will lower the value of that property. And Senator Chambers has commented several times today about someone from a county board and some of the decisions we've made, or they make, and that they are generally for, I think if I heard you right, maybe, the bigger corporations. And maybe if you'd yield to a question to make sure I heard you right?

FOLEY: Senator Chambers, would you yield, please?

CHAMBERS: Yeah, oh, yes, I'll yield.

DORN: Yeah. Explain that again a little bit, I guess.

CHAMBERS: I said when it generally involves an issue that comes before the county board and there is a large corporation on one side and citizen on the other side who would be harmed, generally they'll go for the big one and the citizen loses out.

DORN: I can't argue you with that that thought doesn't happen or that process doesn't happen. I can also tell you, sitting on the other side, on the county board, though, that that doesn't always happen. Like I said with those chicken barns, that took us over a year to have multiple public hearings, multiple discussions with our zoning board, with the individuals involved with that.

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And the ultimate end up-- decision ended up that that individual got to build those county barns. But we've also had other times where our board did not vote that way. They voted with the people. So I look at the decisions we made down there. They're just like up here. You have a lot of really good conversations. You have a lot of really good discussions. Everybody, because we had zoning in the county, everybody got to bring forward their thoughts and their ideas and discussion about the zoning laws--

FOLEY: One minute.

DORN: --were they proper to protect the people. What we did find out about that was, though, that in the ultimate end we reviewed our zoning to decide if as a county-- and that took another year to make sure those zoning met not only the people there but everybody involved, the person living in the house, living on the farm, all of that. So like I said, I enjoy-- a new-- a first-time senator, I enjoy very, very much the conversation that these type of issues bring out. I've learned a lot. I know some of the other bills that we've had here, and we've had a lot of really good conversations, it's not just all one-sided always. We get to hear both sides. We get to hear Senator Chambers do his teaching moments and we get to hear other people on both sides of the aisle discuss what's going on or why they think something is right or wrong. Thank you very much.

FOLEY: Thank you, Senator Dorn. Senator La Grone.

La GRONE: Thank you, Mr. President. I just wanted to address something Senator Lathrop was talking about in relation to the Bormann case in Iowa. Senator Lathrop brought up how in Iowa this-- this nuisance was seen as an unconstitutional taking, thus rendering a somewhat similar law in Iowa unconstitutional. However, what we didn't hear about in the Iowa case is that that case is incredibly unique to Iowa. Essentially, the logic goes that a nuisance effectively is-- getting rid of the liability for a nuisance is effectively granting the offending individual an easement over the other individual's property, thus, effectuating taking. However, Iowa has very specific law going back to the 1800s that analogizes nuisances to easements. But it is a very unique case. Three other states, subsequent to that Iowa decision, Indiana, Idaho, and Texas, and that's just what I could find in a cursory search, have considered that exact question of whether a bill like this was a taking due to a nuisance being an easement. They have all rejected that claim,

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and I'll just read a quote from the Indiana case citing to the Idaho case. The Idaho Supreme Court refused to apply the Iowa Supreme Court's holding in Bormann because the court found that there was no direct authority in Idaho holding that the right to maintain a nuisance is an easement. And so the question as that relates to Nebraska then becomes, is Nebraska more like Iowa or is it more like Idaho, Indiana, and Texas? And I think the answer is that it's clearly more like Idaho, Indiana, and Texas, because unless I missed something, I could not find an instance in Nebraska law that relates nuisances to easements. So while, yes, the Iowa case is out there, it's incredibly unique to Iowa and Nebraska's law, at least what I have been able to find this morning, is more similar to the three cases that have upheld these kind of laws as not being takings. So I just want to point out that while I-- I appreciate Senator Lathrop bringing that up, because I do think that needs to be part of the discussion, I think that it doesn't raise any issues with this bill because there is no analogous provision, that I could find, at least, in Nebraska law relating nuisances to easements. Thank you, Mr. President.

FOLEY: Thank you, Senator La Grone. Senator Chambers, this is your third opportunity.

CHAMBERS: Thank you. Mr. President, members of the Legislature, when you talk about an easement, that means somebody is allowed to use a portion of your property. I'd like to ask Senator La Grone a question since he spent a little time on that. Senator La Grone--

FOLEY: Senator La Grone, would you yield, please?

La GRONE: Yes.

CHAMBERS: Does the property owner have to voluntarily grant the easement or are there circumstances where the court will require the easement to be allowed even though it's against what the landowner wants?

La GRONE: Are we talking about in easements generally or are we talking this specific--

CHAMBERS: Say it again?

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La GRONE: Are we talking about easements generally or this specific story?

CHAMBERS: Easements generally--

La GRONE: Just generally--

CHAMBERS: --any kind of easement.

La GRONE: Yes, there can be a situation where there is an easement granted that the property owner does not want.

CHAMBERS: Even if the property owner doesn't want-- right. And by the way, another term for easement is "servitude." If you look up "servitude" in Black's Dictionary, you'll see the concept of an easement, a right granted in somebody's land. So that's all I was going to ask you. If the court will impose an easement allowing somebody who doesn't own property to have access to certain of a property owner's property which the property owner does not want, then that should give you pause. What you all are doing with this, when somebody said, and I won't call his name and I'll bear no blame, that this helps smaller to midsized farmers more than the big ones, that doesn't make sense. If a big operation wants to come in on their own, then they have to go through certain steps to be allowed to do that. But before I go into that, I'd like to ask Senator Hughes a question.

FOLEY: Senator Hughes, would you yield, please?

HUGHES: Of course.

CHAMBERS: Senator Hughes, you mentioned setback. Is setback a constitutional requirement?

HUGHES: I--

CHAMBERS: Does the constitution set what--

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HUHGES: I-- I am not aware of that. I'll have to find the answer.

CHAMBERS: No, it's not. Is it a statutory requirement in terms of how many feet or miles?

HUGHES: That would be my guess, but you're the expert. I'll defer to what your explanation is.

CHAMBERS: I'm not going to let you get out that easy. Thank you. But I'll ask you this. Who asked you to bring this bill? What I'm-- who drafted this language for the original bill?

HUGHES: The idea for this bill came to me from the Cattlemen and the Farm Bureau. It was drafted by the people upstairs.

CHAMBERS: OK. Well, right. I know that. But I meant the idea. Thanks. That's what I was getting at. The Farm Bureau is not something for ordinary people, not for ordinary farmers. I sit on the Ag Committee. I've seen farmers come in and oppose what the Farm Bureau supported. I've seen where the Farm Bureau will have different organizational meetings and a certain number of people are to be there and they were not there but the Farm Bureau nevertheless took a position. So I don't have to live in the farm area or be a farmer to know how those operations are politically motivated and engage in political activity. If a county board establishes a setback, the county board can alter it. And if an operation is big enough, you all can be naive if you want to, but that big operation is going to get its way, especially in a state like Nebraska. There is such a thing as depriving a person of the peaceful enjoyment of his or her property and that amounts in legal parlance to a taking. You have taken something from that person which he or she has a legal right to because it goes along with the land. When you purchase that land, it's not just the dirt.

FOLEY: One minute.

CHAMBERS: It's the use that it's to be put to, the enjoyment that you expect to have. That's why if a building shuts off your right or ability to see something that was a part of your vision, you can sue about that. The thing to ask yourself if somebody brings a nuisance lawsuit, will that just result in a money judgment or will it result in a mandate from the court to dismantle the

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operation? And you all don't know the answer because it varies form issue to issue. I don't want to get into the legalese, but I could. I know more about property law than you all may think. But I don't bring that up because you all haven't taken law. Why should I discuss it in terms that laypeople are not going to comprehend? It's not to bedazzle you. It's to try to bring it down to where you can apply it to yourself, your neighbors, to those people who are going to be involved in these issues. What is fee simple? What is fee tail?

FOLEY: That's time, Senator.

CHAMBERS: What is a life estate?

FOLEY: That's time, Senator.

CHAMBERS: Thank you, Mr. President.

FOLEY: Thank you, Senator Chambers. Senator Hilgers.

HILGERS: Thank you, Mr. President. Good afternoon, colleagues. Reiterating my appreciation of the discussion on this particular issue today, I've enjoyed the conversation, the debate, and-- and the deep dive into different and various legal issues such as notice and the like. Just to reset this again if-- especially for people who haven't had the opportunity to watch this debate all day who are sitting there thinking to themselves and are scratching their head and say, wait a second, I don't want to be living in my house and having some sort of obnoxious odor and-- or some other nuisance on my home and not have the right to go-- be able to go to the courthouse. And what I think is important to start this debate from is the idea that almost 40 years ago this Legislature, similar to 49 other state bodies around the country, have said that we will make an exception, we will make an exception for nuisance for agriculture operations. So Senator Hansen had a good conversation about nuisance law and why we're making an exception. The reality is we, like every other state, have made an exception for this particular type of industry in certain circumstances. And really I think the-- the give-and-take between, on the one hand, a protection, a realization of how agriculture operations work, and other hand really a notice, this idea of notice. Those are the two-- I think policy rationales that are tugging at each other. And so the

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current law says it doesn't matter how you operate, how you go about your operation, you could do it negligently, you don't have to do anything to stop any of the odor or any of the insects or anything else that might come from your operation so long as you were there first. Now the idea in that instance is that, well, someone who moved in later had notice, but that individual who is in their home and is having-- and has all the things that might cause and otherwise give rise to a nuisance claim, has no right to be able to go to the courthouse. And that's been in our statutes for nearly 40 years. Now what has changed now is that the agriculture operations themselves have changed. And so I do think that Senator Hughes has articulated a very strong case, very logical case for the idea that we-- as our agricultural operations themselves have evolved, the protection against nuisance suits also should evolve. Now the question then, of course, is, are we doing enough to provide notice? And I think ultimately what goes to the heart of the opponents' argument, and one that I have significant sympathy for, is the idea of having enough notice. And I think there is where the question will turn on this particular bill. And I think there is-- there are-- there are-- I think there are aspects of this bill that do strongly support the idea that someone would have notice. But are there ways that potentially we could tweak it to improve that? Absolutely. I think there probably are and I'm willing to-- I certainly, speaking only for myself and not for Senator Hughes, I would look at those types of changes to see if we can make that notice provision a little bit stronger. But in this day and age of modern agriculture, with operations expanding in way that maybe they didn't in the early '80s, with changing an operation in rural-- these rural environments that aren't, you know, nestled up against a small town through zoning requirements and the like, prohibitions and the like, I think-- I think there is ample practical notice for the LB209 as it's currently constructed. But I certainly would be willing to look at ways to make that a little bit stronger. And I will say, with whatever time I have left, just to briefly acknowledge a point that has nothing to do with the issue at hand except for as it relates to notice, I would briefly clarify the record from Senator Chambers' discussion of the prairie dog debate from last year. Senator Chambers is absolutely right that that-- there should be a notice provision in that particular statute and I'd support that change. The change at issue would have repealed the entire bill and I thought the remedy proposed in his bill was broader than-- than-- than the-- the error that he wished to rectify or that he-- he articulated, at least, for the constitutional defect, so, anyway, just to make sure the record is clear on that notice point, I think notice is an idea that is one we have long cherished in this country and in this state, it's one that we ought to take very-- we ought to and I think we do take very, very seriously. But at the

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same-- but it is one that I think also we should accommodate with the most important industry in our state.

FOLEY: One minute.

HILGERS: Thank you, Mr. President. And-- and that is our agriculture industry. So with that, I continue to support AM1209 but certainly would look for ways to improve it if we can. And with that, I appreciate it. Thank you, Mr. President.

FOLEY: Thank you, Senator Hilgers. Senator Lowe.

LOWE: Thank you, Lieutenant Governor. You know, if you don't grow, you're not going to be there. That's been the common word in business for years. And it is the common practice in agriculture too. You need to grow to survive. One cow, one pig, dozen chickens and 80 acres, you're not going to survive anymore. You need to grow in size. That's the agriculture point of view. That's the commodities point of view. I grew up in the town of Kearney and growing up we knew every Wednesday was sale barn day because you'd wake up and you'd have that smell. It was quite pungent but you got used to it. And you know science and technology, that smell is hardly there anymore. They're able to contain it. They do proper things. And that's what we're doing now in agriculture. We're doing proper things so that we do not affect other people, as farmers and ranchers, as businessmen, because that's what the farmers and ranchers really are. They do proper things for their animals because they do love their animals. They do proper things for their neighbors. Just take a look at what's happening across this state today and for the last two-and-a-half weeks. We're doing things for our neighbors because we care. This bill is about caring. This is a good bill. And with that, I'd like to yield the rest of my time to Senator La Grone.

FOLEY: Thank you, Senator Lowe. Senator La Grone, 2:40.

La GRONE: Thank you Mr. President, and thank you, Senator Lowe. The only thing I can think to say is that I couldn't have said it any better myself. Thank you, Mr. President.

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FOLEY: Thank you, Senator La Grone. Senator Lathrop.

LATHROP: Thank you, Mr. President and colleagues. I have a couple of thoughts. One thing, when people stand up and they say zoning is going to take care of it, we have setbacks, we're good to our neighbors, all of-- there's new technologies, we capture this stuff, it doesn't smell as bad, the things that make these things difficult to live next-door to are being remediated, here is my answer. You don't need the immunity bill. No one is going to be able to put a case together to make a nuisance case if all these things are true. But we are here today because in spite of those advances, there's still the risk of a nuisance claim. I also want to make a point that the setbacks, the zoning setbacks aren't miles. OK? They're not miles. I'm reading the cases that have been reported from the Supreme Court, and people are living a quarter mile away from something that's causing a nuisance. These are reported cases with facts that have been developed during the course of a trial that made their way up to the Court of Appeals or the Supreme Court. But let me make this point and it's this: If zoning is the answer, if having a zoning law is the answer, then-- then instead of trying to get rid of somebody's remedy for a bad actor, we ought to have a bill in Government or in Urban Affairs that develops a zoning plan or a zoning process that will ensure that no one is subject to a nuisance. Why does that make sense? I was talking to Senator Friesen a little bit ago. People that are putting these confinements up are spending a lot of money. Right? Who wants to make an investment? And I don't know what they cost to put up, but they look expensive. They have a lot of technology. Things are automated. They are confined. You want to know if you are going to spend that money that some judge isn't going to issue an injunction making you stop your operation. To me, the solution isn't to get rid of or to immunize nuisances in the farming world but to go in front of-- and I don't know if it's the Government Committee or which committee would be responsible, maybe it's the Ag Committee-- for bringing in the experts from the university and saying, how far away from people do they have to have these operations where they can be done and we can be sure that the guy that lives down the street or across the road is going to be able to live near it. Then, then we-- then we would have a zoning road map that counties could enforce and employ to ensure that people are not doing this to their neighbors. It's almost ironic, Senator Lowe, that you would talk about how everybody is being a good neighbor, especially in this time. Yeah, they are. But when they build these things and somebody can't live in their house, that's not being a good neighbor. I would like you to think about it this way, if you would. If the county came in and said

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we are widening the road in front of your house, we need to make it three times wider than it is right now. Maybe it's a gravel road, maybe it's a highway, wherever you live, and they said thanks, we are going to take half of your front yard and turn it into a street, and we are not going to pay you for it either. You'd say, wait a minute. Somebody is benefiting from this. I should be compensated because you are taking something from me. The idea here is that when you have a nuisance you have taken something away from a neighbor. You have taken something of value.

FOLEY: One minute.

LATHROP: And what we are saying with this bill is go ahead. In the interest of allowing somebody to grow their operation, the cost is going to be borne by the person whose house loses value. They got to deal with the flies, they got to deal with the stink, and they got to deal with the rats and everything else that goes along with this, not compensated at all for what they've lost. We are going to immunize the guy that's doing this and saying the doors to the courthouse are closed for someone who has suffered this loss so that someone else can expand their operation. I will tell you it is fundamentally unfair, probably unconstitutional, and I will tell you it's not the Nebraska way. You don't know as you sit here whether you are going to be the guy that's growing the operation--

FOLEY: That's time.

LATHROP: --or the guy that's going to have to live with somebody else's.

FOLEY: That's time, Senator.

LATHROP: Thank you.

FOLEY: Thank you, Senator Lathrop. (Visitors introduced.) Continuing discussion, Senator Bostelman.

BOSTELMAN: Thank you, Mr. President. I wasn't going to say anything on this bill. But I've been sitting and listening quite awhile. I want to thank Senator Lathrop, Senator Crawford,

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Senator Chambers, Senator Hunt, Senator Matt Hansen for a lot of the comments they made on this bill. It's interesting to hear these comments on this bill when there's been a similar bill in a different area, and they have been on the opposite side of it. So I would like to thank Senator Lathrop for talking about zoning setbacks and nuisances and help me understand better what-- how that applies in the state of Nebraska. Zoning needs to have setbacks. Zoning is the local control that we talk about when we try to talk about local control for things or at the state level because we have no local control, no zoning or it crosses multiple county lines, oh, no, that doesn't apply. That's not appropriate. A nuisance: bright lights, shadow flicker, a large item, a large wind turbine, shall we say, that can throw a 300-pound chunk of ice a half a mile right across the road from you, that's not a problem. That's not a nuisance. Yes, it is a nuisance. There's areas in the state where people cannot live now, do not live now for one reason. Things don't affect everyone the same and I agree they don't. Some person may be affected by odor, next person won't. And that's true and I agree with that. Same thing with how they may be affected by large industrial wind turbines, not opposed to having them in, but there needs to be proper setbacks. There needs to be proper governing on these things. Senator Matt Hansen talked about changing a cornfield into a commercial power generation facility. There's a difference there. I agree. I agree 100 percent, but yet we ignore that when we start talking about wind turbines. Here again, what's a proper location, how do we do that so it does not impact that person who lives right across the road from them? That's an important thing that we're talking about. We have talked about things can't get out of committee or if it gets to the floor, the same arguments we are making now are the arguments we don't listen to when they-- when they get to the floor. Why is that? Well, a couple of things. I think Senator Chambers has hit the nail on the head on this one-- big companies. Multimillion-dollar companies are in here to buy out county supervisors, county commissioners, people who make up the zoning. They sign contracts with them. When you get pulled out, who is it? It's the-- it's the multimillion-dollar companies that are pulling you out and talking to you. It's the people who benefit from it financially is the ones who talk to you about it. Again, not that you can't put them in the state, not that you can't put them in places, but you need to do it within reasonable setbacks, within reasonable areas so people are not bothered by them so it isn't a nuisance, the legal taking of their right to live on their property where they're at. That should be a basic-- I won't say fundamental right, but it should be a basic thing that all people should have. I should not have to be annoyed by something, if you will, right across the road from me, if that is the case, whether it be the lights at night. I know a lot of

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people in this state now who have those type of situations right across the road from them, surrounded by them. But it's okay for that to happen. But now on this bill, this isn't okay to have a facility that's in existence and you've been there first, but they're not going to build across the road from you but they may expand across the section from you. Same thing should apply. We need to-- when we talk about this and when we talk about this in the future again, I want to bring this back up, because I think this is a good conversation to have. But we all need to be talking about it--

FOLEY: One minute.

BOSTELMAN: --apply the same principles to different situations as these bills come up. Local people, local dollars. If someone is expanding their facility, it's a local farmer expanding, putting money into their local facilities. When we do large scale wind turbines, what we have is international and out-of-state companies putting millions and billions of dollars from out of state into our state. It's not local people building and local people benefiting. It's out of state. So when we have this discussion again, I appreciate all of your comments because I think they are relevant; and I think we are talking about those, and that's a good thing to talk about. But when we bring up other areas that this applies to, let's remember the things we're talking about today, apply the same principles to that, and I appreciate that, and I hope we do, because we need to consider these things--

FOLEY: That's time, Senator.

BOSTELMAN: --as we move forward. Thank you very much.

FOLEY: Thank you, Senator Bostelman. Senator Cavanaugh.

CAVANAUGH: Thank you, Mr. President. I have inherited Senator Clements' cold from last week and the baritone voice as well. I rise today to, first of all, to thank my colleagues for this conversation that we're having on this piece of legislation. I feel like I'm learning a lot and I'm trying to coalesce all of the different points everyone is making across this room. So thank for-- for your respectful and diligent conversation. I promised Senator Hughes I wouldn't ask him to

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yield to questions. I have stated previously that this is Sexual Assault Awareness Month, and when I can I'm going to take a few moments to highlight issues relating to sexual assault awareness. And because of my voice, I will spare you all reading a full article and just direct you to the World-Herald had an article in the paper yesterday. The subject line was Washington Digest: House okays Violence Against Women Act without Nebraska's backing. The short recap of this is that the Nebraska delegation did not support the reauthorization of the Violence Against Women Act, which is disappointing. And I encourage everyone to reach out to our delegation and encourage them to do so in the future. And there are many of us today that are wearing pinwheel pins. In addition to being Sexual Assault Awareness Month, it's also Child Abuse Awareness Month. And so I just want to make sure that we are bringing light to that very important issue as well. With that, I yield the remainder of my time to the President. Thank you.

FOLEY: Thank you, Senator Cavanaugh. Senator Hughes.

HUGHES: Thank you, Mr. President. Colleagues, we are about 15 minutes from our three hours so I poked my light. I believe this is my third time. But I just wanted to bring us back around to what this bill actually does. But before I do that, I would like to address some of the comments that Senator Hansen made about the challenges of commercial versus ag. Commercial is different. We don't-- they don't have the issues of the weather as much to the extent that agriculture does. Most of agriculture is outside. It's large enough you can't put a roof on it. We do have feeding facilities that do have our confinement but a lot of them are not. And just because of the sheer volume of the space needed comparing ag to commercial probably is not or I guess I would argue that point that they should be treated the same. This bill does not block the courthouse in any way, shape, or form. It is not a way-- it's not going to prevent anybody from suing anybody. That's not going to happen. As I originally stated, this bill is clarifying the intent of the Legislature to provide safeguards for Nebraska's number one industry, Nebraska's largest industry, the industry that generates the most amount of money for this state to tax-- income, sales, and property-- some assurance that the continued investment that they are going to make in technology is not going to be lost through a frivolous lawsuit. You do have to be there first, and this provides you some protection if someone moves in close to you. The same thing that happens in town, you know. If you want to build a house in the bad part of the neighborhood and then say, oh, I don't like this, you know, that buyer beware comes into play. But I appreciate the

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discussion. I appreciate everybody who's weighed in on this on both sides. You know, it's gone about as I expected. And I appreciate those who still have an open mind and am certainly willing to sit down and have conversations with you about how we can make this bill better going forward. Because that's what this what we do here is, is we all have different backgrounds. And we need to get together and make it work for everybody because we want to pass a good law. Thank you, Mr. President.

FOLEY: Thank you, Senator Hughes. Senator Wishart.

WISHART: Thank you, Mr. President. So I rise. I just still have significant concerns with LB227 with AM1209, but I have talked with Senator Hughes and think that there needs to be a discussion at the mike. There are portions of this bill that make sense to me, the technological advancement makes sense; the change of ownership makes sense as well. But I, I am struggling with some of the other portions. What I've heard today, the-- one of the concerns that I have is-- I'll say-- I'll give the other side perspective first. There is something to be said for when somebody moves into a-- and buys a piece of property that's zoned for agriculture. There is something to be said for buyer beware, that you can anticipate that there will be a level of agricultural development on a variety of measures, and you can expect that. So I do understand some of the position on this bill that, you know, if it's zoned ag, you should expect that there will be significant industry in the agricultural sector next-door to you. So I get that. I still do have concerns, though, that-- that in a way this bill, in my mind, and I have talked with a friend of mine over, over text messages over part of the lunch hour that in a way this bill is not as free market as I would hope for it to be in the sense that when you go into a business and you take that level of risk in determining whether you are going to continue to grow corn or change the crop that you are growing, when you go into a business, you have to anticipate that there is a potential that somebody else is going to file a lawsuit. And that's the risk you take as an entrepreneur and as a businessperson. And so one of the concerns that I have is are we creating more laws that align ourselves with sort of establishment policies where we actually prevent the kind of competition that needs to happen that makes this country so great? So that's, that's what I'm weighing right now. I do have concerns. I mean, this country, we settle a lot of our disagreements within the court system. That's what-- that's what makes us very unique in a lot of ways. And so one of my concerns is that we would be actually stifling the ability of people to do

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that. So those are the two issues that I'm weighing. I do think there is a potential for this bill to move forward. But I've already talked to Senator Hughes, and I would like to sit down and see if there's a way we can work on it to address some of the concerns I have. Thank you.

FOLEY: Thank you, Senator Wishart. Senator Gragert.

GRAGERT: Thank you, Mr. Lieutenant Governor. I've been sitting here for the last two, two and-- two hours, two hours forty-five minutes listening to some good debate. Just thought I'd get up and with my career with 30 years with the Natural Resource Conservation Service, the way I look at this bill, it's a bill for opportunity for diversity. We're always looking-- the producers are always looking for a chance to diversify which makes a lot of sense. The livestock friendly, if you will, farm friendly, everything we've been hearing about today goes on. And I will be the first to admit nobody wants to ever be regulated, and I'm not one here to regulate. But producers do have to get permits. So it's not strictly up to-- they got to get the state and local permits. It's not strictly up to the zoning committee or-- or it is up to-- more up to the state DEQ. We talk about setbacks being miles or not miles. I do know there are minimum setbacks, and that's the-- that depends on the type of animals and number of animals you are going to have in a certain location. So that's all dependent on how far that setback will be. So just because a producer owns a piece of property next to you on a row crop or maybe already raising some hogs, chickens, or cattle, whichever it may be, even if that individual wants to extend that, he has to get or he or she has to get permits to even extend their livestock production. So in those permits, and it's a very comprehensive process that you have got to go through as far as first and probably the most important one with the local county committees, zoning committees, is-- is the setback. However, there's a lot of other things addressed in those permits as far as comprehen-- comprehensive nutrient management plan, if you will-- how that producer is going to handle the manure that those animals are producing in an agronomical and environmental friendly way. So, you know, not only how much he has, but he has to-- he or she has to have the amount of cropland to be able to spread that manure produced. So a lot more goes into permitting setbacks and everything else with, yes, neighbors and everyone else taken into consideration. So as far as lawsuits, a lawsuit still remains. And as far as I see, a lawsuit even coming about would be if there's a health or safety issue. So I just wanted to get up and say that I support LB227. Thank you.

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FOLEY: Thank you, Senator Gragert. Senator Friesen.

FRIESEN: Thank you, Mr. President. So as you-- as you watch what the industry has done over the last 100 years, we have continually been more concentrated. We start to get mono agriculture I guess. We either do row crop or we do livestock, and it's hard to do a good job of both. But the opportunity here is to expand our livestock operations which add value to our grain production and it adds value to the state of Nebraska and it creates jobs. So when you look at what has happened in the industry, the same thing has happened to small business in the state. You've got the Walmarts that have put out of business the small hardware store. You know, it used to be you could make a living on 500 acres of ground and you'd have a few hogs and you had some chickens. That's the way I grew up. You raised lots of livestock. You were diversified in your operation. It doesn't work anymore these days. Whether you like it that way or not, it wasn't by choice. This is just the way the industry has developed. And it's not to be big ag or small ag. You just can't make a living. The margins are too tight. Nowadays if you are not farming a thousand acres, I don't see how you make a living. Your spouse works off farm, and that's how you do it. But in order to put up these facilities, you're investing. If you want to talk about the Costco facility, that's a million-dollar-plus investment. How are you protected? When you put that up, if you followed all the zoning that's been put in place and all the metrics that they've adopted since then, the university and they look at prevalent winds and distances and odors, you've followed all of these metrics, you've put up this million-dollar-facility; and the way I understand it, anyone can sue anyone. I could sue Senator Chambers for looking at me funny. I could do that. Probably lose, but a lawsuit is a lawsuit. Are we putting a few more protections in place for that producer who invested that money? I hope so because I don't-- I don't think this is in reaction to something has happened in Nebraska. It's being proactive before it happens here and puts some producer out of business because he followed the rules. And as you look at the zoning of the different counties, I mean, maybe some counties need to do a better job. I don't know that. I'm familiar with my county zoning, and I'm comfortable with it. I don't necessarily want a livestock barn across the road from me. I grew up with livestock. But I'm comfortable in their zoning decisions that that's not going to impact me to where I won't be able to enjoy the outdoors. In rural Nebraska, you live in small towns, and there will be a feedlot that could be three to four miles south of you and there are some nights that you smell livestock. There's people that complain, and I have been on a city council that's complained about a feeding operation on the edges. And

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you do what you can to support those small businesses, but at the same time you do the best you can to protect those near them. I think this is a balance of the two. There's always an opportunity for a lawsuit. I don't think this eliminates that. I hope it makes it a little harder. But again, when you have two established homes there and you want to change your farming practice, if you are now raising 500 head of hogs and you want to go up to 1,500 or 2,500 head, you have to apply to the county zoning and you have to meet those zoning requirements. And if you do, hopefully they have taken into account all these different legislation we have passed.

FOLEY: One minute.

FRIESEN: And they either give you that permit or they don't. I would never build something across the road from one of my neighbors without talking to them. But the way we have set up our zoning in Hamilton County now, you can look at their zoning. You can go find a location that meets all those metrics that they have put in place, and then you can apply for a permit to mitigate some of those issues that you had to deal with earlier. So I do think this is a good bill. Does it need some work? I don't know. I think Senator Hughes is willing to look at anything that would make it a better bill. Do I think we need it? Yes. I would rather be proactive than do something in reaction to someone losing their livelihood because they followed the rules. Thank you, Mr. President.

FOLEY: Thank you, Senator Friesen. Senator McCollister.

McCOLLISTER: Thank you, Mr. President. Good afternoon again, colleagues. I intend to vote to recommit to committee which is, I would guess, is likely to lose. But after the bill moves on, I think we can, in fact, make the bill better. How can we make this bill better? I think we should follow up on Senator Hilgers' idea of notice. I think he brought up a good point and that's something we ought to incorporate into the bill. Secondly, perhaps we could add a phrase to put wind energy in the section of terms defined. We could make that Section 2, include wind generation, solar, geothermal, biomass, gas, some other-- some ideas with regard to renewable energy. I think that would improve the bill. So, you know, I'm anxious to, to work on that. Second, responding to the idea that county boards aren't representative, I don't think that's the case. I have seen plenty of instances in Omaha where a county board will take up the opinions of

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their constituents against a large corporation or a large building or something of that nature. So, no, I don't think you can automatically assume that a county board won't represent the citizens. I don't think that happens that much. Finally, wind energy benefits landowners and counties. And I think we need to consider that as we move this bill forward. Thank you, Mr. President.

FOLEY: Thank you, Senator McCollister. Senator Bostelman. He waives the opportunity. Senator Chambers, you're recognized to close on your motion.

CHAMBERS: Thank you. Mr. President, members of the Legislature and to my fellow Omahan, Senator McCollister, the Douglas County Board's operations are different from those in small towns because often there will be people with considerable political clout who will go there and the county board members don't want to offend them. They still are responding to the pressure. I was told that a representative from Costco was out there today, so why would Costco be here if that's not who this bill is about? Those are the people who brought this bill. Senator Hughes didn't bring this for ordinary farmers. If you read the language, you see right next to each other as two items that are not the changes that would stop anything from happening, a change in size and a change in ownership, right together. This little farmer sells out to an outfit like Costco. Then they can build that as big as they want to. And I don't believe what Senator McCollister says will obtain in these small towns because I have seen what happens with some of these boards when the bring corporations bring the pressure to bear. If Costco didn't have the clout they had, you wouldn't have the chicken farms going up. Read what was going on with that nuclear storage area in Boyd County. I had gone out there to speak on behalf of the people. I was invited by Cap Dierks and some of the others because they know that I believe that my representation goes beyond my district. You all have no idea how much easier my job would be if I dealt like some of you all with only what affected my 11th Legislative District. Most of this trash that I read and try to write correctly, I wouldn't even have to read it. It doesn't refer to my district, but my view is broader than you-all's, and I would be fortunate if I could get it into my head that I'll deal only with issues that relate to the 11th Legislative District. Bills would probably go flying through here. You would have been through with those 700 bills by now if I were not here. But I perceive my job to be more and different from what the rest of you all do. Senator Hughes mentioned the Farm Bureau. I'd like to ask Senator Hughes a question. I would like to ask Senator Hughes a question.

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FOLEY: Senator Hughes, would you yield, please?

HUGHES: Of course.

CHAMBERS: Senator Hughes, this is a leading question. Isn't it true that the Farm Bureau has far more city members than farmers?

HUGHES: I would not know that.

CHAMBERS: Isn't it primarily an insurance operation?

HUGHES: I do know they sell a lot of insurance, yes.

CHAMBERS: OK. Well, I can tell you what happens when they come before the Ag Committee and they don't send some of their big shots anymore because that's the first question I ask them. Why do they even have Farm Bureau when it does not represent farmers and the vast majority of people who are connected with it are those who buy the insurance? When you buy the insurance, you become a member of the Farm Bureau. He's a farmer, and he didn't know that. Why should I even care about it? Because there are people who send individuals here to represent them and those people who represent supposedly are not representing ordinary people. I'm not here to represent corporations. I'm not here to represent the big farmers. The big farmers get their handouts from the federal government. From the federal government they get free money, and they don't want to give a minuscule increase in the minimum wage for tip workers. They don't want to make food available through the SNAP program, though most of that program is paid for by the federal government. Not going to hurt this state at all, but their meanspiritedness comes through. And I'm supposed to rise beyond that and help people when their bills need to be rewritten--

FOLEY: One minute.

CHAMBERS: --or redrafted. And I do it. But that's something I don't have to do except that I do because some of the legislation is so trashy that I would be embarrassed to have been a member

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of the Legislature when that got into the statute books without my strenuous opposition. It started with that so-called Americanism bill. You know why that thing went through? Who would be against Americanism? That was noth-- that was not an achievement. It played to the jingoism, to the racism, to the "Repelicanism" that runs this body. That's what that was about. Let the ones who got that bill get any other bill of any consequence. They don't even stay on the floor. That's what I see happening here. But anyway, this bill will go off the agenda for today, I imagine. I would like us to stay on it until we shut down for the day. The discussion has been on point--

FOLEY: That's time, Senator.

CHAMBERS: --much of the time. Is that it, Mr. President, you said time?

FOLEY: It's time.

CHAMBERS: I would ask for a call of the house and a roll call vote.

FOLEY: There's been a request to place the house under call. The question is, shall the house go under call? Those in favor say aye; those opposed vote nay. Record, please.

CLERK: 18 ayes, 5 nays, Mr. President-- 6 nays to place the house under call.

FOLEY: The house is under call. All senators please return to your desk and check in. The house is under call. All senators please return to the Chamber. The house is under call. Senator Wayne, Senator Slama, Senator Bolz, please return to the Chamber and check in. The house is under call. Senators Wayne, Slama, and Bolz, the house is under call. Senator Slama, the house is under call. All unexcused members are now present. The question before the body is the option of Senator Chambers' motion to recommit the bill to committee. There's been a request for a roll call vote.

CHAMBERS: In reverse order.

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FOLEY: In reverse order. Mr. Clerk, please call the roll.

CLERK: (Roll call vote taken.) 8 ayes, 28 nays, Mr. President, on the motion.

FOLEY: Motion is not successful. I raise the call. Speaker Scheer, you're recognized.

SCHEER: Thank you, Mr. President. We've reached the allotted time on LB227. So we will move forward. Senator Stinner is not here today so we will pass over LB334 and move directly to LB177. Thank you.

FOLEY: Thank you, Mr. Speaker. LB177, Mr. Clerk.

CLERK: Mr. President, LB177 is a bill introduced by Senator Lindstrom. (Read title.) Introduced on January 11 of this year, referred to the Natural Resources Committee, the bill was advanced to General File. There are committee amendments, Mr. President.

FOLEY: Thank you, Mr. Clerk. Senator Lindstrom, you're recognized to open on LB177.

LINDSTROM: Thank you, Mr. President. Good afternoon, colleagues. I bring before you today LB177, a bill to change the termination date for bonding authority of natural resource districts. I believe this is a truly significant bill given the devastation caused by the recent flooding. The Papio-Missouri Natural Resource District experienced the worst flooding they have seen in many decades, washed-out roads, bridges, homes lost, entire towns submerged beneath the rushing water. Home to nearly 1 million people, Omaha and the surrounding communities were protected by the flood control projects completed in the area by the Papio NRD, without which the situation could have been much more dire and is a perpetual reminder that life can be-- can change in an instant. LB177 would allow the Papio-Missouri NRD to continue to utilize the bonding authority given to-- given by this body in 2009 for another ten years. While the Papio-Missouri NRD has completed many necessary projects in-- in their district, there remains several projects that still need to be funded. Six proposed priority reservoir projects in Douglas and Sarpy County are projected to cost \$80 million. LB177 does not grant any additional taxing authority as the bond debt service must fit within the NRD's statutory authorization-- authorized

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property tax levy of 4.5 cents per \$100 of valuation. The district, with or without bonding authority, can never exceed a 4.5 cent levy. The district may not utilize more than 1 cent of its existing levy for bonding purposes. The district may utilize an additional 1 cent after approval of the district's electorate. LB177 simply extends the bonding authority date to December 31, 2029. As many of you are aware, Offutt Air Force Base is currently undergoing significant levy improvements and construction. The base was hit hard by the recent flooding, leaving a third of the base under water. That project has only just be-- had only just approved. The base does not have the proper protection that it deserves. Extending the bonding authority would include this area and allow for the levy repairs to be completed to the project-- excuse me, to protect the SAC headquarters and the 55th Wing, which is critical to our national security. LB177 overall is critical to our flood prevention plan to protect homes, businesses, and life in this state. I would like to thank Chairman Hughes for designating this bill as one of the Natural Resource Committee's priority bills. There is an amendment-- committee amendment that Senator Hughes will explain, but I would appreciate a green vote on the underlying bill and the committee amendment. Thank you, Mr. President.

FOLEY: Thank you, Senator Lindstrom. As the Clerk indicated, there are amendments from Natural Resources Committee. Senator Hughes, you're recognized to open the committee amendments.

HUGHES: Thank you, Mr. President. Members of the body, the committee amendment, AM713, reduces the extension of the termination date by five years. The NRD's authority to issue flood protection and water quality enhancement bonds would expire on December 2000-- December 31, 2024, rather than 2029. The committee questioned whether that time period was necessary and we worked with the NRD and we believe five-- five more years of bonding authority will allow the NRD to accomplish its flood control mandate. What this bill really does is-- it's not about giving them additional spending authority. It allows them to basically borrow against future spending so they can commit to projects and save money for the district in the long run. Any bonding authority that they have under this legislation has to fall underneath their spending limit, and that's one of the reasons that I supported this. In visiting with the manager of the NRD and some of the men-- members who came and testified, they assured me that they could have

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what they needed to be done within five years. So with that, I ask for your support for AM713 and ultimately LB177. Thank you, Mr. President.

FOLEY: Thank you, Senator Hughes. Debate is now open on LB177 and the pending committee amendment. Senator Albrecht.

ALBRECHT: Thank you, President Foley. And, members of the Legislature, I'd like to-- to just stand in opposition to AM713 and LB177. The Papio NRD is part of my district, and so is the Lower Elkhorn. And when this bill came before us, I had reservations, number one, and the biggest reason was because this was taken to the vote of the people and it failed. And for the NRD to turn around and want to come to us and ask permission to extend it ten years but then agreed to five years was concerning to me. I look at the NRDs and their responsibility back in 1972. I'd like to bring some of the newer senators, as well as even those in my class, up to date a little bit on the NRDs. But in 1972, the Legislature combined 154 special-purpose resource management entities, including county soil and water conservation districts, drainage districts, watershed boards, into 24 NRDs. And in 1989, this number was reduced to 23 NRDs through a merger of the Papio NRD and the Middle Missouri Tributaries to the NRD. Their authority back in-- at that time, and still is today, is erosion prevention and control, prevention of damages from flood water and sediment, floods prevention and control, soil conservation, water supply for any beneficial uses, development, management, utilization, and conservation of groundwater and surface water, pollution control, solid waste disposal and sanitary drainage, drainage improvement and channel rectification, development and management of fish and wildlife habitat, development and management of recreational parks, facilities, forestry, and range management. Again, this bill came to us well before the floods came to Nebraska on March 13. And I handed out a couple handouts. I want you to be able to see what great work they have done and I know that they want to continue to do. But I look at it like if we allow one NRD to come to us and ask us for an extension, we have LB98 that asks them not to. And I do believe that especially LB177 today, knowing what our state has gone through, and when FEMA decides that they're finished and they've done their work in Nebraska and they leave and the Governor has already used up all of his emergency money, we're left with this-- the counties trying to match their 12.5. And when they can't do that, that's when this body has got to turn to the NRDs and other resources to figure out how are we going to get these roads and bridges back in order so

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that we can allow commerce to move, people to get to their jobs and children to school, and everything else that needs to be done. So if we're-- if we're simply allowing them to do this for what-- whatever purpose they had at the time that they came to us, whether it's a few more of these beautiful neighborhoods that have water around them, if that's-- if that's the goal, I think they're going to have to regroup and figure out what they're going to do because, again, I came from Sarpy County ten years ago and they had the dike problem back then and they still have it today, and they still have money put away for that. So everybody has to take a-- a strong look at what we really want to do with this bill and if it's really warranted to go forward. I do believe we're going to-- we're going to see that--

SCHEER: One minute.

ALBRECHT: --that there's an awful lot of interest in-- in economic development. I do know that in the city of Papillion, I mean, they-- they stay dry, but Missouri and Offutt Air Force Base, they lost a lot of homes in that area. You know, we've got problems all over our state, Senator Gragert's area, Senator Walz's, Senator Moser's. We were spared. We have a few houses that were flooded in Pender and we lost a bridge. The construction of it has to be put back together. But-- but it wasn't as bad as some of these other areas. So I don't know that this is the time for LB177. I think we're going to be looking at some-- some much stronger bills next year to figure out what we can do with the funds that people get from the NRD. Thank you.

SCHEER: Thank you, Senator Albrecht. Senator Blood, you're recognized.

BLOOD: Thank you, Mr. President. Fellow senators, friends all, I actually stand in support of both the amendment and the bill. And what I'm-- I always fear is that there's misinformation coming out onto the floor when people oppose a particular bill. First of all, I'd like to point out that all the communities, especially the ones that are downstream in Sarpy County, supported this bill and wrote letters of support to the committee in reference to Senator Lindstrom's bill. I strongly encourage you that are on-- those that on the fence, to read the March 28 editorial in the Omaha World-Herald. That editorial was very telling. We talked. Senator Albrecht, who I respect very much but today I respectfully disagree, when she talked about how Papillion didn't flood, those of us that are in Sarpy County are very familiar with the Papillion Creek Watershed. If we

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were to get a flood like the one they had in Ames, Iowa, a few years ago, if you look at the map of what happens when we get a flood such as the one that happened in Ames, Iowa, Papillion disappears. And that's not make-believe. That's something that can happen. So NRD does preventative actions that regard things like the Papillion Creek and that helped it keep it from flooding this month. So you were right, Senator Albrecht. It didn't flood. But it didn't flood because NRD knew that it could and took action to prevent that from happening. So this bonding allows them to speed up projects and to secure land so they can move forward before properties are developed and that ultimately holds down the cost. So in some ways, they do have a crystal ball. Sarpy County, last I checked, was the fastest growing county in Nebraska. And this isn't an urban-rural thing. This is about saving tax dollars ultimately, preventing things that are going to destroy eastern Nebraska especially. We got a really good view of what happens when people sit on their laurels and don't get things done when Offutt Air Force Base flooded. And that didn't happen at the state level. That happened at the federal level. But we have to constantly be diligent. And they have been very responsible and prudent with their dollars. There is nothing that tells me that they would do anything otherwise. We can't sit here and cast stones. We have to trust that they know what they are doing. And if we trust that we know that they know what they're doing, if we trust that, then we have to give them the tools to continue doing such an excellent job. All you have to do is look around Nebraska right now and look at this flooding and I don't understand how we could ever oppose this bill. They're not asking us for more money. They're asking us for the ability to keep doing what they're already doing and to allow the people to help them move forward. And that's a responsible way to do it. But for Sarpy County, and I can't speak for all the senators in Sarpy County, and I certainly do not, but I know that in my area and downstream, we need the NRD to have as many tools as possible to move forward and to protect our communities, because we are talking about people and homes and farms and businesses. And after what happened this month, in the last 30 days, why we would not move this bill forward is beyond me. Thank you, Mr. Speaker. And if we have any time left, I'd like to yield my time to Senator Lindstrom.

SCHEER: 1:15.

LINDSTROM: Thank you, Senator Blood. Just a couple points of clarification here. There's 23 NRDs in the state of Nebraska. This is the only one that has bonding authority. And this flooding

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could have been a whole lot worse. Because of the action that the Papio-Missouri NRD has done over the last couple years, Omaha and the surrounding areas had a lot less flooding than-- than other parts of the state. And it's because of the action that-- that they've taken. So I really do appreciate Senator Blood's comments on that. I think we'll probably go for a little while on this, so I'll wrap it up there and wait for some more questions coming my way. Thank you, Mr. President.

SCHEER: Thank you, Senator Blood and Senator Lindstrom. Senator Erdman, you're recognized.

ERDMAN: Thank you, Mr. Speaker. Good afternoon. Listened to the comments this afternoon from Senator Albrecht and Senator Blood. It appears from the information that I've gotten about Papio is they have plenty of money to do whatever they want to do. The information that I looked at, it shows that they had a cash balance of \$24,860,000. And the unassigned cash was \$20,900,000. So what they do down there is they do recreational projects and they try to do things that-- for economic development. And it's a tax increase. This is a property tax increase. Don't-- don't let anybody try to kid you this is not. And this is not a tax savings. All right? So I've said this example before. If you were going to buy something that cost \$80 and you go back two weeks later and buy it for \$60, how much did you save? And most people will say \$20. The real answer is you spent \$60. So don't come here and try to tell us it's a property tax savings by increasing this bond issue. It's not. In my opinion, there is absolutely no reason, none that I can think of, that Papio needs an increase in bonding authority for another five years. This was intended to sunset and generally what happens here, like the Nebraska Advantage Act and many other things that happen here that should sunset, they don't. They figure out a way to extend it for another five to ten years because they're used to spending all the tax dollars they want to spend. So when they have that kind of reserve, there's no need for a continuation of it. The other issue is, the Papio valuation increase on an annual basis is between 4 and 7 percent. And so then one day they bragged about they lowered their mill levy by .002 and they said they lowered their mill levy, but what they didn't tell you was that their valuation went up 4 percent. And so they don't really not lie to you, but they just don't tell you the whole truth. They just give you what you need to know. So when Senator Linehan's bill, LB103, gets implemented, we'll be able to tell how much more tax dollars they're collecting. So they had no flooding in the Papio NRD because

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they built dams. They've already done that. But they're here to tell you that they want to protect Offutt, or whatever they want to do. But what they want to do is they want to build more dams to sell-- sell high property-- high-valued property near the dam so people can live by the water and have recreation. This is crazy, what we do here. We give them authority to go ahead and continue to bond when they have all kinds of cash and all kinds of authority left in their budget to go to 4.5 cents and take care of it. And they can go to the 1 cent. They're at 67.67 cents now and they can move up to 1 cent. So they don't need this. This is a tax increase. So anybody listening out there today, if you are for property tax relief, this is one way you can get it. This is straight-up property tax increase. Thank you.

SCHEER: Thank you, Senator Erdman. Senator Kolowski, you're recognized.

KOLOWSKI: Thank you, Mr. Chairman. I stand in support of this amendment, as well as the original bill. Want to fill in some gaps that were totally missing. As far as the large map that you have, the Papillion Creek Watershed, if you take a look at that, it's sitting at your-- at your desk and if you'll look at the areas that are circled with a red number-- a red line around them, as far as the continued growth of the Papio NRD and what they're-- what they're doing as far as additional lakes they'd like to get taken care of here, when you look at this map, think of one thing. It's dry. It's dry. I was on the Papio NRD Board from 2004 to 2012. Three of those years I was chair of that board as well. The things that we were able to do, and up to 2008, the things that we were able to get done were we're starting to climb into a-- a clash with the continued expansion of Omaha. This map is different than any other place you're going to see in the state because of the continued growth that is happening across the entire area, Douglas County and Sarpy County. The things that we did up to 2008 and what happened in 2008 with the Recession that we were going into at that time, that slowed down expansion. That was the best thing that could happen at the time because the Papio NRD was moving and-- and spending and putting in the additional lakes and retention ponds that were holding-- that was holding back and did hold back the additional water that we received in the recent events. Those things are reality. We didn't-- we didn't get-- we didn't move from 2008 a lot of-- a lot of housing did not get built, a lot of things were slowed down, and it's just starting to-- to gain momentum again in the last couple of years. But we were able to get those additional ponds, additional lakes, additional recreation areas taken care of with this bonding authority. I support the full ten-year extension of the-- of

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the-- of the plan, and I hope you'll look at that also because of what they were able to do in the most populous area in the entire state of Nebraska and the savings that we were able to-- to-- to bring to those locations because of the work that was done and the foresight that went into that work. We still have work to do. The expansion continues to take place in Douglas and Sarpy Counties. That will continue as we see the next decade come upon us and the ten-year limit would be excellent because that would match that decade's work. I hope we can keep in mind the-- the benefits of what took place--

SCHEER: One minute.

KOLOWSKI: --when that deluge happened in the-- in the-- the rain and the meltdown and everything that's taken place in our-- in our local area. We-- and I would also mention the-- the work at Offutt is exactly as described. It needs to be completed. That work is part of the future planning that we can take care of and be part of this-- this whole process. Take a look at this map, understand it from the population and what we have going on in the city of Omaha. Thank you.

SCHEER: Thank you, Senator Kolowski. Senator Albrecht, you're recognized.

ALBRECHT: Again, I am not saying that the Papio NRD is not and has not done their job. I think they've done a-- done an outstanding job. But knowing what we have done in this body over the last two years, letting the NRDs know that-- that it's time to take a step back, while they have the strongest population, if you will, and they have the most money in the state, our-- all NRDs-- and I just want this on the record. When I went out campaigning, not only was property taxes a problem, but the NRDs happen to be. I go to the coffee shop. On one side I have the NR-- the Lower Elkhorn-- or the Lower-- the Lower Elkhorn NRD charging farmers to-- you know, they have to put a meter on their-- their-- their irrigation. And Papio doesn't make them do it. One side says there's too much nitrate. The other one doesn't talk about that. So I'm just here to say that we do need to be considerate of what we're doing here because they are going to be raising taxes to-- to do what they need to do. But more importantly, if you have enough people that are talking about it's time to-- to step back and not-- take a look at all the-- the-- the taxes that the people have to pay, if you're a farmer up in northeast Nebraska, they will tell you that

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they put in Kramper Lake for us, but we still have flooding in the areas. The flooding that we have happens to be from the flood we just had, and certainly it didn't-- it may very well have done its job in certain parts, but we do still have roads and farm ground that are under water. So everything doesn't always appear to be what it is on the surface. It's evident to me that-- now Senator Lindstrom is running around with lights off so that we can get this over with today. But I just want to caution all of us in what we're doing here. You know, the voters, again, they-- they asked-- they defeated a double-- doubling the-- the Papillion Natural Resource bonding authority on May 16 of 2016. They attempted to double their bonding authority from 1 cent to 2 cents per \$100 in valuation. And the second 1 cent levy authority currently in statute would add another \$80 million in bonds to the district's property tax burden. Committee to Get the Job Done, the PAC, raised \$110,500 to try to pass this tax increase, but the people said no. That's where I have heartburn, with them coming to us when the people said, no, they were done. The average American household spends \$2,279 on a home of \$194,000. Nebraska is the seventh highest in the country and \$3,485, more than \$1,200 higher than the average. Nebraska's property taxes are among the highest in the nation. Only five states feature higher effective property tax rates, New Jersey, Illinois, New Hampshire, Wisconsin, and Texas. The difference between Nebraska's average effective rate of 1.88 percent and the effective rates in other states is often significant. The total states, plus the District of Columbia, have an average effective property tax rate of below 1 percent. Only three states have an average rate of 2 percent. The effective property rate in the three Papio Watershed counties are 2.12 percent in Sarpy County, the highest in the state, 2.7 in Douglas County, the second highest, 2.10 in Omaha--

SCHEER: One minute.

ALBRECHT: --the tenth highest in the country, and 1.83 in Washington County, which is at the state's average. And again, I guess I-- I would-- would like to know from Senator Lindstrom, if he'd yield to a question. We have just a couple minutes-- a minute.

SCHEER: Senator Lindstrom, would you please yield?

LINDSTROM: Yes, I will.

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ALBRECHT: OK. So you had said that-- what is it that they are asking for this bonding? Do they actually have-- is it-- is it-- is it development or is it to help with roads and bridges? Is it to help with Offutt? What, exactly, do you know?

LINDSTROM: Well, if you look at the map that was handed out, you can see there was eight, I believe, projects in the queue, and they do describe what they're looking at doing. Most of the projects are out west. I'll grab the map.

ALBRECHT: So do any of them-- are they to do with development or just flood control? Do you have any idea for sure what those--

LINDSTROM: Flood control.

ALBRECHT: They're all--

SCHEER: Time, Senators.

ALBRECHT: Thank you.

SCHEER: Thank you, Senator Albrecht and Senator Lindstrom. Senator Erdman, you're recognized.

ERDMAN: Thank you again, Mr. Speaker. I was listening to the conversation there, Senator Albrecht. So I was wondering if Senator Lindstrom would yield to a question.

LINDSTROM: Yes, I will.

SCHEER: Senator Lindstrom, would you please yield?

LINDSTROM: Yes.

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ERDMAN: Senator Lindstrom, this map that you gave us, the dotted line around the outside is the total NRD, is that correct?

LINDSTROM: Those are the-- that-- that's the boundary, yes.

ERDMAN: So then the majority of the city of Omaha would be in the NRD?

LINDSTROM: Yes.

ERDMAN: So then everybody who has-- who pays property taxes in Omaha pays property tax to the NRD, is that right?

LINDSTROM: They do.

ERDMAN: OK.

LINDSTROM: And currently, it's about 3.5 cents--

ERDMAN: It's--

LINDSTROM: --is where it's at, just a little north of that.

ERDMAN: Yeah, it's 3.75 last time.

LINDSTROM: Right.

ERDMAN: So in '13, the mill levy was .032753 and in '18-19 it was .037594, but the valuation went from \$52 billion to \$66 billion, so it was an annual increase of to 7 percent more spending year over year, 7 percent. That's a significant increase in property tax to those people that live in Senator Wayne's district and Senator Vargas' and Senator Chambers' district that contribute to the NRD.

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LINDSTROM: Can I respond?

ERDMAN: You can respond.

LINDSTROM: A lot of those developments and areas are in a low-- in the floodplains. And based on the work that the NRD has done, those areas did not flood. And so the-- the-- the issues that could have arose, had they not done those projects that they have done, could have been far worse than what it-- what it is or what it was.

ERDMAN: Right. And-- and I'm not arguing that the NRD didn't do a good job. That's why there was no flooding. The point I need to make is they've accomplished what they need to accomplish. And so going forward, I contend, they don't need another funding source. They have plenty of room left in their mill levy. They-- they can go from .037594 to 4.5 and they-- they're at .67 cents on their bonding and they can go to 1 cent. So there's no reason that I can understand that they need to have the bonding authority. And if you can explain to me how they can have a \$20,900,000 unassigned cash account, I'd be willing to listen to that.

LINDSTROM: A lot of that money that they're sitting on is already committed for projects.

ERDMAN: That's not what this says.

LINDSTROM: I don't know what you're looking at.

ERDMAN: It says unassigned cash, \$20,900,000. The total cash balance is \$24,860,000. So there's a \$5 million difference. And that \$5 million may be-- may be earmarked for some budget project, but the unassigned is \$20,900,000. These people have been collecting way more taxes than they need and it's time for them to spend their money wisely. They don't spend that money like it's our money, they spend it like it's their money. They just keep spending it. It doesn't make any difference what they do. And in '16, from what I understand, in '16, they put it to a vote of the people. Is that correct?

LINDSTROM: That is correct.

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ERDMAN: And--

LINDSTROM: And that's part of the process.

ERDMAN: --do you know how much, how much that failed by?

LINDSTROM: A couple percent--

ERDMAN: OK, so--

LINDSTROM: --2 percent.

ERDMAN: --so then the people in that NRD did not want bonding authority to go on. Is that correct?

LINDSTROM: Yes, and that's part of the process.

ERDMAN: OK. So if the people voted not to have the bonding authority continue, who are we to stand here and tell them that they should? That's my-- that's my comment. It's not required that you answer that. But this NRD is out of control, and many of them are, and they have lost their way and they don't understand what their charge was.

SCHEER: One minute.

ERDMAN: And we are going to give them an opportunity to collect more money and raise property tax. I am not, and maybe this will be a shock for somebody, but I'm not for raising property tax. Thank you.

SCHEER: Thank you, Senator Erdman and Senator Linehan [SIC]. Senator Bostelman-- excuse me, Senator Lindstrom, excuse me. Got my "Ls" screwed up. Senator Bostelman, you're recognized.

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BOSTELMAN: Thank, Mr. Speaker. Felt I should say a few words on this bill as it comes up. I heard this bill in committee. I voted against it coming out of committee. One thing that wasn't talked about here is Washington County Board of Supervisors did have a resolution in opposition to this bill. So the Board of County Supervisors from Washington County had a-- a resolution they submitted to the committee in opposition to LB177, and I still stand in opposition to LB177. Perhaps AM1-- or AM713 is better. However, I still have issues with how this is going about. One is, as Senator Albrecht already mentioned, is that there was a vote of the people and the vote of people said no and now we have it here on the floor to talk about it and as-- in a bill. My understanding also is that the levy along Offutt is already funded. This does not affect it. This, whether you vote for this bill or against this bill, it does not affect the levy that's being built. That money is committee and is there already for Offutt. What we heard was from developers that wanted these dams built in because they bought the land around there and they're going to put high-value, high-dollar houses around them. That's why they want the dams put in. That's what was stated in the committee hearing. I was at the hearing. Look at the transcript. The other thing I-- that-- with this that-- that kind of bothers me just a little bit, I just want to put perspective into, we're talking about flooding. I represent Saunders County. Saunders County, we're trying to put eight dams in right now that would affect flooding not on the Platte or any other river. We're talking about flooding that's going down across through creeks, through the basins, not on the Missouri River type of a flooding event that's happened this last time or along the-- the Platte River, which we had. If you go between Ashland and Memphis in Saunders County and we get rain, heavy rains, that all floods. We're trying to put dams in above that. So do we want to go and give them bonding authority? I-- I think not. What they're doing is they're levying and putting money away as time goes on so they don't have that increase, so they can pay for those as-- in a timely fashion. That's happening and that works. If you don't know, everything from-- from Lincoln and Salt Creek here goes through Ashland. Why did they have such a flooding problem there is that's where all the-- the water goes. And you get all the drainages from Saunders County goes through Ashland. They all converge in one spot. It's called the-- the guard camp and it all floods regularly. We need dams in as well. So for me to support a bill that the people said no and that it's going to go in an area that arguably is for future build-out of homes and that and we're not being able to-- to have the same type of authority or we're still struggling in-- in Saunders County in putting in dams to stop the flooding that occurs away from the rivers, that's why I voted no on this and I-- I'll be no on LB177. One-- AM713 is better. My comment back was, you

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give me specific sites and that may be a different story. I also heard from farmers in Washington County, multiple-generation farmers who now, their land is going to be taken up by force to be taken over by the NRDs to put these dams in. They're not wanting that to happen. They're fighting for their livelihood.

SCHEER: One minute.

BOSTELMAN: They're fighting for their lives, livelihoods that they had generationally for dairy farms and others. They're being forced out of their homes to put dams in for future potential flooding and for homes to be built out and developed around that as parks and as recreation areas. And that causes some pause for me. So those are the reasons why I voted no. Whether they're right or wrong, you agree or not, that is the reasons. I thought I would get it on the record, that I would talk about it just a little bit to understand why I stand in opposition. I think they can build these dams and they can do it the right way, like all other NRDs, and that way is through the levy authority, putting the money back as they go, and build those in the time/fashion they need to. Or if all those developers want these houses to go in there, maybe they can help fund it a little bit more. What I want in my county is to stop the damage that's going down through the fields that people-- and the homes of--

SCHEER: Time, Senator.

BOSTELMAN: Thank you.

SCHEER: Thank you, Senator Bostelman. Senator Albrecht, you're recognized, and this is your third time.

ALBRECHT: Thank you, Speaker Scheer. Would Senator Lindstrom-- Lindstrom take a question? Thanks. You--

LINDSTROM: Yes, I will.

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ALBRECHT: OK, Senator Lindstrom, since you have everybody's lights off and you have everybody that's already conferred with everyone behind the glass, as Senator Chambers has always taught me, you have to keep-- pay attention to the floor. I'll tell you, I want to know from you, will the Papillion NRD still take it to the vote of the people if they are wanting to bond?

LINDSTROM: They have to, based on the statute, if they want to go 2 cents. One cent, they do not; 2 cents, they do.

ALBRECHT: So they could do the smaller projects and-- and do it without the people's vote. But if they go to 2 cents, they have to go to the vote of the people.

LINDSTROM: Two cents under-- all of this is being done under the levy lid and it's not even-- it's not at there. So the 4.5 cents, it's not at that level, but everything that is done, as far as the bonding, has to be done under that 4.5 cents, 1 cent, 2 cent, anything.

ALBRECHT: Um-hum. Again, I still rise against AM713, which I'm sure it'll pass with no problem, for five years instead of ten, and opposed to LB177. Thank you.

SCHEER: Thank you, Senator Albrecht and Senator Lindstrom. Senator Ben Hansen, you're recognized.

B. HANSEN: Thank you, Mr. Speaker. I do rise in opposition to this bill, not just for myself but also for the-- my constituents of Washington County who have great pause with this bill and their concern with it-- flooding parts of Washington County, the effect that it's going to have on water rights in Washington County. There's three things-- there's three things I learned when I went door to door knocking on doors in Washington County. There's three things you don't mention to voters, chicken farms, hail, and dams. And so that's one of the things I learned when I was going door to door is that there are more people than I thought that have great concerns with the NRD, the authority that the NRD has, and some of the plans that they've had in the past with building dams in Washington County and the flooding that can affect and the parts of Washington County. So I think one of the things that might alleviate a lot of the concerns and one of the things-- the steps that we can actually take is that I know there is, if I am correct, a

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three-year proposed study between the Corps of Engineers and the NRD that's in place. And the purpose of the three-year study is to address the flood risk issues in order to reduce flood and life-safety risks in the Papillion Creek Basin that have increased due to rapid land development. And the purpose of this study is to provide local and federal officials the opportunity to provide a comprehensive reexamination of all potential solutions to flood risk in the greater Omaha area. The Corps anticipates a draft study to be completed this fall with approval of the final recommendation plan slated for April 2021. So if they already got a three-year plan in place, I think it would probably be in our best interest to almost wait until that is done so we can reevaluate the-- the watershed and get some more recommendations on maybe what our next steps should be. So I just wanted to get up here and at least kind of voice my opinion about the bill and kind of where I stand. So with that, I'll yield the rest of my time to the-- to the Chair. Thank you.

SCHEER: Thank you, Senator Hansen. Senator Bostelman, you're recognized.

BOSTELMAN: Thank you, Mr. Speaker. I guess there's one other thing as I go back through the testimony of individuals there, and I-- in fact, I've heard this at some of the NRD board meetings that I have attended, is that dams aren't always the answer. It's how you contour your ground, tillage on the ground. Those type of things also slow down water. If you put terracing in and other grasses, those type of things will actually slow down the water more, and what-- that's the whole point is to slow that water down as it comes across the land so that you don't have that rush all of a sudden to fill up an area or go through an area. I guess that is just one area that the people should consider with this, and this has been discussed, debated, I guess you would say, within the NRD in my district. There's other things they're doing within the district as well. But we also have old conservation tillage areas or dams, dry dams are in there. And to me, I've always asked, why don't we in and-- and reclaim those? And they says, oh, it just isn't going to do any good. That may be so. I-- I'm not convinced of that yet. The cost to go in and clean those out is far less than building a dam. And if that's slowing down the water and keeping the-- the water out of the areas where it's going to flood homes, that's the purpose for this. I guess the other question I have, too, with this is, are we building homes in a floodplain? And if we are, why are we doing that? Now, I think there's some discussion now, if you've got some land-- if you have homes that are along the Platte and the Missouri and you've been flooded a couple

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times, guess what? You can't go back and build there anymore. You've got to move. You're not allowed to. So are we putting in place areas that should not be built in, should not have homes put in or not-- or-- or should we? Are these going to be green spaces that come up or are these just for development? The people in Washington County, if you look at the-- if you look at the map, the population base and the board of directors for that NRD is pretty much so all in the southern part of that district, so there's little voice for those in the northern part of the district to be involved. I don't believe there's-- there may be-- there may be, out of 11 board members, one farmer, maybe. All the rest are not, live in town. So I'm not so sure that they're-- that the agriculture views of those who live in the northern part of the county are being addressed as well. With that, I yield the rest of my time back to the Chair. Thank you.

SCHEER: Thank you, Senator Bostelman. Seeing no others in the queue, Senator Hughes, you're welcome to close on AM713. He waives closing. The question before us is advancement of AM713 to LB177. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? There's been a request for a call of the house. There's been a request not to call the house. Have all voted that wish to? Please record.

CLERK: 26 ayes, 9 nays to adopt committee amendments.

SCHEER: Committee amendments are adopted. Returning to the queue, seeing no one wishing to speak, Senator Lindstrom, you're welcome to close on LB177.

LINDSTROM: Thank you, Mr. President. And if you came back to the Chamber, I would just ask that you please stay here. Just one of the quick things before I wrap up here, I was looking at some of the-- the issue came up with the \$26 million. All of that, with the exception of \$700,000, which is one month's operating expenses, all that excess money is dedicated already to projects. So again, I just want to thank the-- the-- the debate today. This is an important issue. And again, we're just extending the authority so that we don't have issues in the future like we've had the past couple weeks. So with that, I urge the body to vote green on LB177. Thank you, Mr. President.

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SCHEER: Thank you, Senator Lindstrom. The question before us, advancement of LB177 to E&R Initial. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record.

CLERK: 28 ayes, 9 nays on the advancement of LB177.

SCHEER: LB177 is advanced to E&R Initial. Next item, Mr. Clerk.

CLERK: Mr. President, LB252 is a bill introduced by Senator Geist. (Read title.) Introduced on January 14, referred to General Affairs, the bill was advanced to General File. I have no amendments to the bill at this time, Mr. President.

SCHEER: Thank you, Mr. Clerk. Senator Geist, you're welcome to open on LB252.

GEIST: Thank you, Mr. President and members of the Legislature. LB252 requires the Nebraska Lottery to disclose the odds of winning the prize with the largest value. The requirement will include all print advertisements such as billboards and in store wobblers to have the disclosure to be no less than 35 percent of the largest font. On-line advertisements will be disclosed in a ten-point font when the ad is created and before the advertisement is scaled down to size for on-line format. This bill will not be retroactive and would only apply to advertisements going forward. Currently, the Nebraska Lottery does not have to disclose the odds of winning the prize with the largest value on advertisements. Government transparency is important, and we as Nebraskans deserve truth in advertising through a clear and conspicuous display because the Nebraska Lottery is a state program. So I ask for your green vote of support on LB252. Thank you, Mr. President.

SCHEER: Thank you, Senator Geist. Seeing no one in the queue, Senator Geist, you're welcome to close on LB252. She waives the closing. The question before us is adoption and advancement of LB252 to E&R Initial. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record.

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB252.

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SCHEER: LB252 is advanced. Next item, Mr. Clerk. LB304 is a bill introduced by Senator Crawford. (Read title.) Introduced on January 15, referred to the Agriculture Committee, advanced to General File. There are Agriculture Committee amendments pending.

CLERK: Thank you, Mr. Clerk. Senator Crawford, you're welcome to open on LB304.

CRAWFORD: Thank you, Mr. President. And I would like to thank Senator Hansen, Ben Hansen, for selecting this bill as a priority bill. And I'd also like to thank the Agriculture Committee for their hard work on this bill with me. And so I appreciate their work, working with me and working with Senator Hansen and the advocate-- the folks who had some concerns about the bill to address those concerns. And so I-- I rise to introduce LB304. This is a bill about cottage foods, or low-risk foods made in the home by small-time producers, such as fresh fruits and vegetables, honeys, jams, jellies, and home-baked goods. The intent of LB304 is to allow Nebraska cottage food producers to sell the same shelf-stable foods that they are already statutorily allowed to sell at farmer's markets directly from their home or at other events, allowing them to supplement their incomes. In recent years, Legislature has been working hard to remove barriers to inner-- earning an income through occupational licensing reform and other regulatory reforms. It's critical that the state continue to pursue innovative approaches that allow all Nebraskans to earn an income. LB304 is a-- is a cottage foods bill that will allow Nebraskans to sell foods already authorized for sale at farmer's markets to customers from their homes, at certain events, or for order and delivery on-line or over the phone. Currently the Nebraska Pure Foods allows individuals to sell foods that are not time-temperature controlled for safe-- safety at farmer's market's without a permit. This includes foods such as based goods, uncut fruits and vegetables, jams, jellies, fresh or dried herbs. LB304 would allow individuals to sell these same food items that can already be-- they can already sell at farmer's markets from their home as long as they are properly labeled and the producer follows the food safety and handling guidelines for sales at farmer's markets as required by the city or county where the food is being sold. Labels must state the name and address of the producer and a warning that the food was produced in a kitchen that is not subject to regulation and inspection by the regulatory authority and may contain allergens. Colleagues, currently 49 states, including Nebraska, allow for the sale of cottage foods in some capacity. Twenty-eight of these states allow for the sales of cottage foods without any regulate-- registration, permit, licensure, or food safety course requirements, and 33

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don't have sales caps. Nebraska is the only state that only allows these shelf-stable foods to be sold at farmer's market. LB304 follows best practices, recommendations from a 2018 Harvard Food Law and Policy Clinic study by expanding the law to make sure that all citizens can participate in the home food-- home-caught food-- cottage industry without imposing a sales limit or overly burdensome regulations. Colleagues, we-- we did have-- we will be talking about an amendment coming up and this amendment is one that adds some additional regulations, but I think it's still-- they are not burdensome. And so I appreciate your attention to this issue and would appreciate your support for LB304 and our food producers across the state, including many who are from rural communities. If you see from the handout that's being passed out, you'll see that predominantly a lot of the revenue made from this cottage food industry work has been in rural communities. And so I would appreciate your support and attention to this bill. Thank you, Mr. President.

SCHEER: Thank you, Senator Crawford. Since-- Senator Halloran, as Chair of the Agriculture Committee, you're welcome to open on AM990.

HALLORAN: Thank you, Mr. Speaker. The Agriculture Committee amendments are a white-copy amendment and become the bill. As Senator Crawford pointed out, LB304 amends State Statute 81-2,245.01 of the Nebraska Pure Food Act by expanding commercial venues of small food businesses operating out of a private home could engage in-- could engage in, without being defined as a food establishment for purposes of the Pure Food Act. This section currently excludes private homes where nonhazardous foods is prepared for sale directly to the consumer at a farmer's market provided the consumer is informed at the sale location that the food was prepared in an unlicensed kitchen. LB304 would expand this exemption by extending the exclusion to businesses preparing nonhazardous foods in private homes sold at additional public events and when picked up or delivered from a private home provided the following: notification that the food is not prepared in a regulated facility is included on the producer's Web site or any advertising and include a warning of potential allergens; number two, the product label includes the name and the address of the producer; number three, the product delivery is directly to the producer in personal transactions or by mail or commercial delivery service; number four, the producer follows food safety handling guidelines for public event food vendors required by the county. The committee amendments retains these requirements with a minor clarification and

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inserts additional requirements. First, the amendment clarifies that a home-based food business comply with any applicable food-handling guidelines of any municipal or county for public event sales. Secondly, when engaging in sales beyond direct sales at a farmer's market, the amendment requires that producers has completed an accredited food-safety education course addressing various food-safety handling topics, or completed food-safety courses as part of a culinary school training or as required to obtain a food handler permit. Third, if the home business is using private well water, the producer will have water tested for contamination by nitrates or bacteria prior to engaging in food sales. And finally, for producers engaging in sales beyond the current farmer's market exemption, the amendment requires the home-based food business complies with the registration provisions of Section 3. Section 3 inserts a new provision into the Pure Food Act that directs the department to offer a registration and prescribes information to be submitted with the registration form. I would move the adoption of the committee amendment.

SCHEER: Thank you, Senator Halloran. Moving to floor discussion, Senator Ben Hansen, you're recognized.

B. HANSEN: Thank you, Mr. Speaker. And thank you, Senator Crawford, for introducing this bill, and thank you for allowing me to put my name on it as my priority bill. LB304 is simply a bill that promotes good business practices and personal freedoms. The Association of Food and Drug Officials defines cottage foods-- because I always get this question asked me the most, what is a cottage food and what does it even mean? It's defined as a non-potentially hazardous baked good, jams, jellies, and other non-potentially hazardous foods produced at a cottage food operation. And a cottage food operation, as a person who produces cottage food products only in the home kitchen of that person's primary domestic residence and only for sale directly to consumer. So we've taken steps to ensure any concerns are addressed by requiring producers to register with the Department of Agriculture, to clearly label foods, and to have well water tested if using a private well. These are the main concerns of the Restaurant Association, of the Grocers Association, Lincoln Department of Health, Department of Agriculture. And because of the amendments that we put in there, they have all pulled their opposition, they're coming in more of a neutral capacity. So I appreciate their willingness to work with us, Senator Crawford, and coming out with a good bill that's unopposed. There are no concerns with the bill. These are the

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same foods producers sell at farmer's markets throughout the state, and I'm sure everyone in this body, or most, have been to and purchased food from a farmer's market at some point in their lives. What better way to promote small business and individual enterprise than promoting cottage foods? Who knows what types of business will be created and thrive from the passage of this bill? Let's all keep in mind, for instance, Dorothy Lynch. You know, Dorothy was a gal who created this dressing out of her home and out of a restaurant. And so that's some good entrepreneurial spirit that I feel like the government should not be trying to limit. And that is the spirit of Nebraska, that farm-to-table mentality. And so this bill is a good example of that. A small-town family who enjoys baking could build up the clientele, experiencing cash flow to open up on their own. Another family could subsidize an income by selling products out of their home. The possibilities are pretty much endless for those who want to promote economic opportunity by those who don't have the resources to open up their own business. So as I stated, all the concerns of this bill have been addressed, and I see no reason why we would not have overwhelming support for this bill. With that, I ask for your green vote on LB304. Thank you, Mr. President.

SCHEER: Thank you, Senator Hansen. Seeing no one in the queue, Senator Halloran, you're welcome to close on AM990. He waives closing. The question before us is adoption of AM990 to LB304. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record.

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of committee amendments.

SCHEER: AM990 is adopted. Returning to floor discussion, seeing none, Senator Crawford, you're welcome to close on LB304.

CRAWFORD: Thank you, Mr. President. And thank you, colleagues, for that vote of support for the amendments. I would appreciate your support for LB304. This is a bill that will allow cottage food producers across the state to sell the same foods that they now can sell at the farmer's markets from their homes or at other events. And so I-- I encourage your support for our entrepreneurs across the state. Thank you, Mr. President.

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SCHEER: Thank you, Senator Crawford. The question before us is advancement of LB304 to E&R Initial. All those in favor please vote aye; all opposed vote nay. Have all voted that wish to? Please record.

CLERK: 41 ayes, 0 nays on the advancement of LB304.

SCHEER: LB304 is advanced to E&R Initial. Mr. Clerk, any items?

CLERK: I do, Mr. President. The Health and Human Services Committee reports LB244, LB460, LB540, all reported to General File with committee amendments attached. Amendments to be printed, Senator Linehan to LB334, Senator Friesen, LB356, Senator Kolterman, LB31. One name add, Senator Wayne would like to add his name to LB605.

Mr. President, Senator Howard would move to adjourn the body until Tuesday morning, April 9, at 9:00 a.m.

SCHEER: Excellent motion. All those in favor please say aye. All those opposed? We are adjourned.