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Floor Debate
April 10, 2019

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HUGHES: [RECORDER MALFUNCTION] --call to order the fifty-seventh day of the One Hundred Sixth Legislature, First Session. Senators, please record your presence. Roll call.

HILGERS: Record, Mr. Clerk.

ASSISTANT CLERK: There's a quorum present, Mr. President.

HILGERS: Any corrections for the Journal?

ASSISTANT CLERK: No corrections this morning.

HILGERS: Any messages, reports, or announcements?

ASSISTANT CLERK: Not at this time, Mr. President.

HILGERS: Speaker Scheer, you're recognized.

SCHEER: Thank you, Mr. President. Colleagues, just wanted you to note on the agenda I did add a few bills. And those that are listening, I just want to note that the bills added are: LB323, Senator Crawford's bill; LB657, Senator Wayne's bill; LB693, Senator Halloran's bill; LB237, Senator Crawford's bill; LB496, Senator Wayne's bill; and LB375, Senator Brewer's bill. Again, for those listening: LB323, LB657, LB693, LB237, LB496, and LB375. And for those that are listening on TV, if you go to the Web site, just pull up today's agenda, they are on today's agenda. We were moving a little quicker and I just wanted to make sure that we had some items on the agenda as we move forward. Thank you, Mr. President.

HILGERS: Thank you, Speaker Scheer. Moving to General File, the first item on the agenda, Mr. Clerk.

ASSISTANT CLERK: Mr. President, the first item this morning, LB227, introduced by Senator Hughes. (Read title.) Bill was introduced on January 14 of this year, referred to the Agriculture Committee. That committee placed the bill on General File with committee amendments. Those amendments were previously offered, as well as an amendment from Senator Hughes to the committee amendments.

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SCHEER: Thank you, Mr. Clerk. Senator Hughes, you're welcome to open on LB227.

HUGHES: Thank you, Mr. President. Good morning, members of the Legislature. I want to thank everyone for the discussion we had so far on LB227, which would amend the Right to Farm Act. We have listened to those concerns that have been expressed on the floor and are developing an amendment that I think we can bring forth later today, later this morning, to address some of those concerns. It doesn't give us everything we wanted, but it goes a long ways towards balancing the interests of all landowners. I need to be very clear about that: all landowners, the ag producer and the rural residents. Some of the discussion on Monday focused on landowners who live by farm operations-- a farm operation that changes or expands. The discussion was that such landowner under the original bill had no notice or opportunity to say that a change in a neighbor's farm operation is significantly affecting my ability to enjoy my property. The amendment provides-- the amendment that we're looking at provides a rebuttable presumption for two years after the establishment date of the operation that the operation is not a public or private nuisance. After two years from the establishment date of the operation, the farm operation is no longer a public or private nuisance. However, the amendment defines the established date of operation as the date in which the farm undergoes one of the changes listed in the amendment, including conversion of a farm operation, change in ownership, enrollment in a government program, or adoption of new technology. So if a farm changes from crop operation to livestock, a landowner has two years-- a neighboring landowners has two years from the date of operation change to claim the operation is a nuisance. I'm hopeful that this amendment that we are working on as we speak balances the interest of landowners and farmers while providing the agricultural operation with some protection if they are doing what has been done-- what they have been doing in following the health, safety, and zoning laws. I would ask for your support. We have all gotten several e-mails. There are a lot of phone calls coming in. There are a group, it's unfortunate the timing that we have with the Costco expansion going on. I have been part of a event like this in my home county where there is-- a couple of times, where there is a lot, a lot of misinformation being fed to the public, and it is being exaggerated. One of the important things that we must do in our business here is we have to deal from facts. We cannot make our decisions based on emotion. We have to make our decisions based on fact. And it's imperative that we make sure that we get it right. And that's parts of what this debate is. That's what I appreciate, the debate we had the other day, the first three hours and however long it takes us today to finish up to make good policy, to provide protection for rural residents but also to provide protection for the agricultural operations that are in place and have been there and deserve the right to use their property to provide food for the people, to provide jobs, to provide income, to provide taxes so we can pay our bills at the state level. So I'm looking forward to the discussion today. It's going to be robust, I'm sure. And as soon as we get this amendment finalized, I will be dropping it so everybody can take a look at it on their computer and we'll go from there. Thank you, Mr. President.

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SCHEER: Thank you, Senator Hughes. Senator Lathrop, would you like to refresh our memories on some of the opposition?

LATHROP: Yes, I'd be happy to. Thank you, Mr. Speaker. Colleagues, good morning. Just a refresher and not really my advocacy yet this morning: my opposition, I think the opposition that comes from those who have concerns relates to the fact this bill, it has a nice caption-- the right to farm-- is, in fact, immunity for any operation done in an agriculture community. And it will result in taking of someone's property rights and the value of their neighboring property without any compensation whatsoever or any remedy for those people who are neighboring operations which, under current law, would create a nuisance. That would be my summary, Mr. Speaker.

SCHEER: Thank you, Senator Lathrop. Senator Halloran, would you like to refresh us on the committee amendment?

HALLORAN: Thank you, Mr. Speaker. The committee amendment is-- committee amendment is the white copy. As Senator Hughes said, the bill was very well debated the first three hours. I think everyone made some very poignant points. It's a concern that we have as much for our neighbors as for production agriculture. And production agriculture is-- is not unlike any other business. If production agriculture has not the opportunity to grow, it dies. And it's by no accident we've gotten to where we are today with production being very concentrated. I know it was suggested the other day that maybe we need to have a zoning law for the whole state and try to isolate some area where we could produce livestock and not have it infringe on anyone's-- anyone's property or be a nuisance or considered to be a nuisance. That would be a challenge. That would be something that would isolate that production from those producers that would have an opportunity otherwise to produce at their farms. And so I think the debate that will continue for three hours, and I'm looking forward to the amendment coming to the floor, I believe the two-year repose or two-year period of time speaks very directly to Senator Hilgers' concern or comments about having a notice when a new production facility is to be built. It gives a period of time for that, that producer or neighbors to declare and decide whether or not they consider it a nuisance. And it gives time, I believe, for the producer who might be building a facility to be able to mitigate any concerns that the neighbors might have. Thank you, Mr. Speaker.

SCHEER: Thank you, Senator Halloran. And, Senator Hughes, did you have anything to offer or to add in relationship to your amendment?

HUGHES: Yes. Yes, Mr. Speaker, I do. I need to remind everybody that AM1209 was our attempt at addressing the concerns that we heard after the hearing in the Agriculture Committee. AM746 was their opportunity to make the changes. We have been talking with a lot of people

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about this bill, and AM1209 is the result of that before we began the discussion. The amendment that is being currently worked on is a result of the discussions that we had the other day in the first three hours. Thank you, Mr. President.

SCHEER: Thank you, Senator Hughes. Going to floor discussion, Senator Lathrop, you're recognized.

LATHROP: Thank you once again, Mr. President. Colleagues, good morning. I have seen the amendment Senator Hughes has previewed for us this morning. I'll wait until that has been offered to tell you why I think it's not going to work without getting into the details. There's no point in doing it before you've had an opportunity to read it. I've seen a hard copy. And it will, at some point or another, end up on your gadget and you'll be able to follow along with me as I go through the problems. Many of you, many of you probably over the last couple of days, as spring has arrived, threw the doors or the windows open on your house and let the fresh air in. I know I did, and it's-- you know how the house smells when you open the-- open the windows up in the spring and you can smell fresh air coming into your house? Or maybe you went out and gardened. I did some yard work this weekend, spent about five hours working in the yard. Or maybe, maybe when this time of year comes around your thoughts turn to golf or riding your bike or doing other things outdoors. What we're talking about today is whether or not we will let one neighbor make those simple joys impossible. And it's more than just the simple joys. It's more than just being able to open the windows in your house. It's the ability to get to your car without being overtaken by flies. It's the ability to stand outside and have visitors over to your home, your family to come by. What happens, why we are here today, is we are talking about whether we will enshrine into law a policy that would let one neighbor ruin the property of another and not compensate them for it. Now, I've said all of this before. And you guys maybe that still support the bill and, believe me, if you think that's not what it does, I'll have that conversation again or with you. It takes somebody's property for the benefit of someone who has expanded their operation to make more money. And I don't have a problem with these big businesses. If you guys don't care about the small family farmer anymore and you want everybody to have sheds with 5,000 pigs in them, it's your business. I'd-- I-- go for it. But when you take away somebody's home or their property and then you immunize the person who's doing this, I have a problem. And what occurred to me this morning on the drive down is it's not just somebody's house. Maybe you're OK with taking the neighbor's house. But what-- what if they park one of these things next to a state park? Right? What if we park one of these things next to a state park? Or-- I've played some of your golf courses out in the west-- what if somebody parks this next to the Wild Horse Golf Course in Gothenburg or Bayside out in Ogallala or any of the country clubs that are out in the-- out in the country in small town Nebraska making them uninhabitable? See, these aren't the only people making an investment. A lot of people have made an investment in their property, not just their homes. It might be a golf course. It might be a state park. It might be any one of a number of activities that take place out

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in rural Nebraska and that investment's taken away, and they have no remedy. They can't ask a judge to stop it. And they--

SCHEER: One minute.

LATHROP: --can't file a claim for the loss of what they've had taken from them. This is really bad policy. This belongs in a committee that's going to develop zoning laws that will protect people. And on that topic, if zoning laws would do and if-- if compliance with zoning laws and federal laws and state laws would protect the neighboring landowner, no one would be able to make a nuisance claim. You couldn't prove one. A nuisance claim is made when those protections fail to protect a neighboring landowner and they now give up something: the quiet enjoyment of their own property. And by the way, that can be something that somebody spent a lot of money on, like a golf course, or it could be one of our state rec areas. It's OK; you can't sue them. They're using reasonable techniques--

SCHEER: Time, Senator.

LATHROP: --and they comply with the zoning laws. Thank you.

SCHEER: Thank you, Senator Lathrop. Those waiting to speak: Senator Hilgers, Chambers, La Grone, and others. Senator Hilgers, you're recognized.

HILGERS: Thank you, Mr. Speaker. Good morning, colleagues. I rise again in support of LB227. And I want to comment again and say I've appreciated the dialogue and the debate and the discussion the last time we were on the floor, and I certainly look forward to the next couple of hours discussing this particular issue again. And I want to start with taking a little bit of a step back and talking about some first principles. And the first principle that I want to talk about is the one that Senator Lathrop has described, I think very ably, this idea that you have-- you-- when you have a property right, when you-- inherent in our property rights is the right to quiet enjoyment of those rights, right? So if you think about your home or your business, it is absolutely true and it's fundamental in our-- our system of-- our system of government and our common law that you have a certain-- you-- you are able to quietly enjoy your property. One of the tools that you have to enforce the protection of that right is through a nuisance suit. That nuisance suit is very powerful, as it should be. One of the things that you can get from a nuisance suit is an injunction. You can go to a court and tell whoever is generating the nuisance, that person should stop. You can get a court order telling them to stop. So that is a fundamental first principle of our common law and it's absolutely a right that I support. However, the second point I think is a very important point, which is we have in our state, like all the other states around the country but in particular here in Nebraska, we have an important part of our economic engine,

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maybe the most-- the most important industry in our state is agriculture. And inherit in agriculture, unlike other businesses like a law firm or an insurance agency or something like that, agriculture generates some of the things that might-- you might consider to be a nuisance: odor, noise, insects, things like that. As by virtue of its-- of its inherent operation, these are things that can occur. And so you've got two competing-- you have two competing interests. On the one hand, you have a private property right and quiet enjoyment of your home. On the other hand, you have the right of farmers and operators to be able to pursue their economic interests without the fear of being shut down. Because if my law firm, if my law firm is-- if there's some nuisance that comes from my law firm: we're being too loud, there's some sort of smell-- you go to court, you tell me to stop that. Whatever that-- that noise is, or the smell or odor, does not go to the inherent economic functioning of my law firm. I can stop that and still operate my firm or insurance company or retail outlet or whatever it might be. If you're-- if you have an ag operation and they-- and you get an injunction shutting down whatever is causing the nuisance, more likely than not, almost more certainly than not, your-- your ag operation itself is at risk. So think of any other context, any other business where someone could go get an injunction and shut you down for that nuisance-- for-- for possibly violating a nuisance law that, that puts that-- that is a significant, significant restriction on the operation, the ability to farm and operate, which itself would then create a significant restriction on our economy. Now what's really important here is that this is a discussion that has been, in some ways, been settled in policy for nearly 40 years; nearly 40 years, colleagues. We have had a right-to-farm statute on the books. And that is-- that statute has intended to create an accommodation. Because what that statute says, if you-- it's in-- it's part of LB227 you can read it yourself. What it says is, if you're there first, and someone else comes in or someone-- they occupy it second or they change their-- they change their-- or their zoning second, they're out of luck. They can't do all the things that Senator Lathrop said that they should be able to do. They can't go to court. They can't get an injunction. Now that's a-- that's a pretty significant carve out to the nuisance law, but it's one that we've-- we have in the past accommodated. And the reason is, and we're going to-- next time on the mike I'm going to talk more in detail and I think this dovetails into AM1274, is because there is some inherent notice, right? The person who is moving in second, we say, look, you-- you could do due diligence. If you--

SCHEER: One minute.

HILGERS: --if you-- thank you, Mr. Speaker. If you see that there are-- there's a big operation that causes all these externalities, you-- you shouldn't move in. And if you do, we're going to-- we're going to say you don't have the right to then come in and shut down that farm operation. That's the way the law currently works, and I think that's fair. But some of the things that are in LB227, the requirement of reasonable efforts to mitigate the harm of the-- of these negative externalities, paying attention to zoning, things like that, that's not in the current law at all. So I think it's important to know where we're starting from. This isn't some new novel idea that we're

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instituting in statute. Forty-nine other states have a right-to-farm law. Now next time on the mike, I'm almost out of time, next time on the mike I'm going to talk about how this does expand the right to farm. There's no doubt this is an expansion. I think it's one that's justified. And I think the way that Senator Hughes has framed it, it's framed in a way to try to-- especially in light of the amendment that's coming, is meant to retain that accommodation and light a new [INAUDIBLE]--

SCHEER: Time, Senator.

HILGERS: --on farming standards. Thank you, Mr. Speaker.

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

CHAMBERS: Thank you. Mr. President, members of the Legislature, before I begin, I'd like to ask Senator Hughes a question for clarification.

SCHEER: Senator Hughes, would you please yield?

HUGHES: Of course.

CHAMBERS: Senator Hughes, I just got a hard copy of the amendment you discussed. Will your amendment replace the bill?

HUGHES: Yes.

CHAMBERS: OK. Thank you. Some of what I say may be taken care of by his current amendment, but I'm not sure. What I would look at, and I'll continue to look at, are words that are elastic and can mean anything anybody chooses. For example, "mitigate" simply means to lessen or reduce. Maybe you reduce the problem by 5 percent, which does-- is not substantial. It doesn't say substantially mitigate. When farther down in the current language, it says to keep these undesirables to a minimum, but minimum is not defined. Minimum according to what? So if you all insist on this, I'm going to see how honest you are. And I intend to offer language that says there will be a requirement that the best practices in the industry be followed and there must be the application of state-of-the-art equipment, machinery, technology to mitigate these kinds of bad actions. I still will not support the bill because I don't think we're being dealt with in a way that's completely objective. Senator Hughes mentioned the bad timing of the Costco controversy. Well, there was some bad timing the last time we discussed this, Senator Hughes, because Costco had a representative out in the Rotunda. Why does Costco send a representative if this is

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not designed to help the big corporations? The farmers who called me stated that for regular-sized farms, ordinary sized farms, this language is not necessary. What they're talking about goes to big operators because regular-sized operators are not going to engage in this level of activity anyway. It is tailored for the big corporations, for the big farms, whether they're incorporated or not, whether they're operated by an outside force or not. When we're not being dealt with honestly, the city people need to open their eyes and those who profess to be representing ordinary farm folk need to open their eyes and read the language that we're being given. This is tailored to the big farms, whether corporate, corporation, or not. Normal, ordinary, you might say, small to medium size, whatever terminology you need to define what most people think of when they consider farmers, it's not Costco. It's not Smithfield. It's not any of those big operators. This language is tailored for them. The current law cannot be shown to be defective in terms of restricting legitimate activities of regular-sized farms. I also got calls from some organic farmers who see great harm that can come to their interests from this--

SCHEER: One minute.

CHAMBERS: --type of legislation. They don't have a lobbyist out here; Costco did. Why would Costco have a representative if this does not affect the corporations? Costco should have already what they want. Are they looking to go farther? Are they looking to underwrite some individual farms now and get into an unholy alliance with them to produce huge numbers of chickens, which currently they may have a problem doing, and then nobody can go to court to do anything about it? The key, as Senator Lathrop pointed out, is you're shutting the door to the courthouse. Thank you, Mr. President.

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

WISHART: Thank you, Mr. President. I rise again with some anticipation to see the amendment that Senator Hughes has worked on. And I do commend him for really coming to the table and looking at finding a path forward. I do have a few questions for-- for Senator Hughes, if he would yield.

SCHEER: Senator Hughes, would you please yield?

HUGHES: Of course.

WISHART: So I'm going to-- and I'm fine with talking to the-- the amendment that-- that you have introduced because I think these questions will still be relevant. When I was thinking about this last night, one of the-- one of the concerns that came up in my mind, because I'm not as

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worried about the smell and I'm not as worried about flies. Maybe it's just 'cause I'm a girl that's grown up around horses. And I'm not as worried about the-- somebody's ability to grow their business. What I am concerned about is some of the things that potentially could be-- cause nuisances but actually that do affect another landowner's ability to do their business. So, for example, say I'm a farmer and I've grown-- I'm growing vegetables and I've moved into a community and I've decided to-- to add value to my crop by-- by going organic. And the farm next to me has practiced in a certain way that has allowed me to be able to go through the-- the hoops that it takes to-- to have that organic label on my products. And then all of a sudden they change ownership and they start to use a different form of crop and a pesticide that comes with it that, that with the wind blows over onto my farm and drastically affects my ability to-- to be an organic farmer. How does that-- how is that affected with this bill?

HUGHES: I-- I think there are other-- there's other redress that if you are a certified organic farmer, there are set backs that you have to-- borders, if you will, not-- that you have to maintain. It's up to you to maintain those borders, not your neighbors. If there is drift of chemical or something like that, the-- and I have actually had that occasion on my farm where a gentleman came in and sprayed chemical with an airplane and there was an inversion and it drifted and killed most of a 160 acres of my crop. I went to them, I talked to the Department of Agriculture. That was my redress. And if there is damage, you still get to, you know, discuss that with them and look for remediation. You know, if they're unwilling, then you still have a path through the court. This is-- this is not in the nuisance-- you know, it's not-- we're talking about nuisance. That's talking about a-- a damage, a very clearly defined damage.

WISHART: So a chemical-- so chemical drift onto another person's property that affects their property rights is not considered a nuisance?

HUGHES: I think it's addressed in other ways.

WISHART: But is that-- would that fall under our nuisance laws?

HUGHES: I'm-- I guess I'm-- that's-- I'm not a lawyer and I'm-- that's not my area of expertise. So I would have to ask an attorney that.

WISHART: OK, that's-- I mean that's really where my concern is. And-- and one more question: In terms of reasonable, because say chemicals do fall under nuisance and are affected by these changes,--

SCHEER: One minute.

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WISHART: --who determines-- who-- and I'll ask this question and then I'll-- I'll follow up with Senator Hughes when I talk next time. One of the questions I have is who is it that is determining what reasonable is? That's-- that's something that I-- I want to-- some more clarity on as well. Thank you.

SCHEER: Thank you, Senator Wishart and Senator Hughes. Senator Kolterman, you're recognized.

KOLTERMAN: Good morning, colleagues. Thank you, Mr. President. I rise for the first time to talk about this legislation. By now most of you have probably seen the e-mail exchange between myself and Ms. Richards [PHONETIC]. I will begin by apologizing for what I refer to as popping off at her. I probably shouldn't have done that. So, Ms. Richards, if you're watching, I apologize for that. But at the same time, I'm not going to apologize for stating the facts in my response. As I said earlier, I was not intending to speak on this legislation. But at this point, my integrity and my daughter's integrity have been brought into question. So I did want to rise to set the record straight. The e-mail that I sent-- that I was sent early this morning really hit home because it illustrates exactly what kind of challenges those who want to grow agriculture in this state are facing today. I want to be very clear. I'm not here to carry the water for my daughter or her company. She did not bring this bill, nor did her company. So with that, I would ask if Senator Hughes would yield to a couple questions.

SCHEER: Senator Hughes, would you please yield?

HUGHES: Of course.

KOLTERMAN: Senator Hughes, did my daughter or I or the company that she works for, Lincoln Premium Poultry, have any input on this bill?

HUGHES: No.

KOLTERMAN: Who brought the bill to you?

HUGHES: The Nebraska Cattlemen and Nebraska Farm Bureau.

KOLTERMAN: Thank you. Most of you know me and most of you know my daughter. And I hope nobody on this floor would question our integrity. The fact of the matter is that I generally try to stay out of her business. Sometimes our paths cross because we-- we both have one objective that we work on tirelessly, and that's to grow the state of Nebraska. In that regard, we're

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both engaged in efforts of focus on that and on LB227, and I believe that's one objective of this legislation. Because of my daughter's job, which for those of you who don't know, she was the first Nebraskan hired to work for Lincoln Premium Poultry on the Costco project. I've had a front-row seat in the project, and I'm really proud of her. She's worked really hard as an advocate for farmers in Nebraska. But my daughter has been followed in her car by activists. She's been shoved into bathrooms. She's been spit on. And she's pretty tough and she just shoulders it and moves on. As any Dad would be, I'm tired of it. I'm tired of seeing her beat up every day when she's trying to grow our state. But that's the reality of what these livestock producers face when they try to add value to their operations. The harassment she's seen has been mild compare what-- compared to what the producers themselves have seen. They've had nails poured in their driveway, throughout their driveways. They've had rebar placed in their fields prior to harvest and their children have been harassed and bullied in schools. Quite frankly, it's scary. But agriculture is important to these families and for many of them it's a family legacy. So they, too, shoulder it and quietly move on. This legislation is designed to protect farmers and ranchers from unnecessary lawsuits. I really appreciate the points that Senator Lathrop and others have made, but it's my understanding for their-- for situations where the farmers are truly not following rules, regulations, and the law,--

SCHEER: One minute.

KOLTERMAN: --a lawsuit would still be available to them. We aren't taking away any legislation. The fact of the matter is that in this day and age farmers are being sued before there's even a nuisance to be had, even before the barns are built. Neighbors are doing it in an effort to stop new agriculture growing from occurring. You know who pays for those lawsuits? It's not the large corporations, it's the farmers. And I'll finish my comments when I punch in again. Thank you.

SCHEER: Senator Kolterman. Thank you, Senator Kolterman and Senator Hughes. Senator Hughes, you're recognized. Excuse me one moment, Senator Hughes. Announcement, Mr. Clerk?

ASSISTANT CLERK: Thank you, Mr. President. The Appropriations Committee will hold an Executive Session at 9:45 in Room 1003.

SCHEER: Thank you, Mr. Clerk. Mr. Hughes, you're now recognized. Senator Hughes, you're recognized.

HUGHES: Thank you, Mr. President. I thought the amendment was going to-- my new amendment was going to be coming up now?

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SCHEER: Are you wishing to withdraw your other amendment?

HUGHES: Yes, I wish to withdraw AM1209.

SCHEER: So ordered. Mr. Clerk for amendment.

ASSISTANT CLERK: Senator Hughes, I understand you also want to withdraw AM1201?

HUGHES: Yes. Yes.

ASSISTANT CLERK: In that case, Mr. President, Senator Hughes would offer AM1274.

SCHEER: Senator Hughes, you're welcome to open on AM1274.

HUGHES: Thank you, Mr. President. Colleagues, this is the latest rewrite of this bill, taking into consideration the discussion we had for three hours the other day and trying to make sure that we're addressing the concerns that are being brought forth to us. The discussion that's going on and talking about the worst-case scenario, you know, those-- I guess I get frustrated with comments like those, the reasonable techniques. I guess I do, before I forget, I do want to address Senator Wishart's comments about the chemical drift and whether or not that's a nuisance. I think a nuisance is a recurring, ongoing problem, whereas the chemical drift across your property is probably a one-time thing. If it happens more than once, then there is redress to be handled for that. When she comes back, I will talk about my experiences and how we-- how we worked through those with my neighbor where I was the perpetrator and I was-- was also the victim. But getting-- getting back to the amendment, you all have the opportunity to look at this amendment now on your computers. We have made some changes. We put a two-year window in there when the ag operation is vulnerable to nuisance lawsuit. And I need to remind you that currently the law, you are protected today from nuisance lawsuits. That was the bill in 1982 that was the right to farm, that if you are a farm operation and you are, you know, you were established before, first in time, first in right, you were established and you are using reasonable techniques in order to mitigate the-- the smell, the dust, the insects, all of those things, you are protected. So we're not asking for anything new. The only thing we're asking is we choose to expand, to have a change in ownership. If I want to-- if I want to buy another piece of land, that's a change in ownership. I want to be able to use that land. You know, if I want to do whatever, if I want to change my crop. You know, we have the-- the discussion of possibly bringing hemp as a legal crop into the state of Nebraska, which I am totally in support of. But if you've ever been around it, it smells bad. And when the wind is blowing, you're going to smell it. It's not any different than cows or hogs or, you know, and I can't think of another crop, but, you know, you

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can smell alfalfa when you drive by. It's a matter of whether you find it offensive or not and how close it is to your house. I need to remind everybody that we have zoning laws that protect the homeowner and the farmer, the rancher. What the amendment does, AM1274, just specifies more clearly for the courts, if there is-- what the intent of the Legislature is if there is a suit brought, what our intent is. But it is opening up a-- a two-year window of vulnerability from when the operation commences. And that means if you're-- if you added a pen of livestock, an additional pen to your livestock operation, when you moved animals into that pen, that's the date of commencement, that's the two-year, that's when the clock starts. So if you're a neighboring homeowner, you have two years in order to file a nuisance lawsuit. That's a result of the discussions we heard the last three hours. I look forward to more questions. You know, agriculture is not asking for anything additional than what we currently have now. The only thing we're asking for is to have the same protection if we choose to make an investment in Nebraska. And I appreciate Senator Kolterman's comments. You know, the big ag, if you will, the corporate ag, is not what this bill is about. This is not about Costco, not about Smithfield, not about Tyson, you know, whoever the processors are. This is about the farmers on the land, the ranchers who want to make an investment in their operation, in their state, to bring their kids home, to keep young people in Nebraska. We need to have jobs for our young people. We produce some of the best in the nation, and we want to keep them here. And this bill provides some assurance that if we do make those investments, if we do provide the opportunities for our young people to come back, we're not risking the whole farm in order to do that. Thank you, Mr. President.

SCHEER: Thank you, Senator Hughes. Those waiting to speak in the queue: Senator Briese, Halloran, Lathrop, and others. Senator Briese, you're recognized.

BRIESE: Thank you, Mr. President. Good morning, colleagues. I rise to comment on LB227 as amended by the latest amendment, AM1274. I appreciate the discussion. And as I read AM1274, the main thing it does, it sets, essentially, a statute of limitations for bringing a nuisance suit. And to me, that's good policy. It creates some certainty after a certain time. As Senator Hilgers pointed out, you know, perhaps a need for notice. It kind of addresses some of those concerns there. And this bill is about growing our state. We can talk about growing our state all we want or we can do things that will help us grow our state. This is a chance to implement something that can help us to grow our state. I want to address a few things I heard a couple days ago and perhaps a couple things I heard this morning. Someone suggested that what we're trying to do here is close the courthouse door, and that's absolutely not true. As per the new language, a suit can still be brought within that two-year period. And as for the language of AM1274, the ag producer must still show that he or she fits within the language we're proposing here, and that's a showing they employed reasonable techniques to mitigate. And somebody called this immunity for the expanding ag producer. Not so. Again, as per the latest amendment, a suit can still be brought. Again, the operation must still fit within the requirements of the Right to Farm Act. And someone suggested the other day a growing ag operation could encircle a residence, and

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really such a scenario overlooks the fact that that ag operation is going to have to demonstrate reasonable techniques to mitigate any damages. Someone complained the other day that, you know, we're not really defining mitigate here. And I submit the words must be taken in context, and that context is requiring a demonstration of reasonable techniques to mitigate. And really, it would be up to the finder of fact, whether it's a jury, whether it's a judge, to determine what constitutes a, quote, reasonable technique to mitigate. And somebody also talked about the failure to mention flies and rats and things of that sort. But I note the language of the bill requires reasonable techniques to mitigate to keep dust, noise, insects, and odors at a minimum, but it's-- it-- the language also indicates, including but not limited to. And that language modifies those categories of products. They're talking about those categories plus other categories. That's really the obvious way to read that language, I believe. And then somebody tried to bring up the often used argument or suggestion that this might be unconstitutional and I disagree with that. And we can talk about why. You know, we can talk about a physical taking under the Fifth Amendment or we can talk about a regulatory taking that really only must be supported by a legitimate government interest. We can talk about the legitimate interest of a state's police power. We can talk about our state's interest in growing, growing our economy and allowing our businesses to thrive and flourish. But instead of all that, you know, let's just remember that, you know, we're the legislative branch here. What we do is presumed constitutional until adjudicated otherwise. So we shouldn't be sidetracked by some claim that it could be unconstitutional. Heck, anything we pass in here could suffer that fate. So don't be sidetracked by some of the arguments we're hearing here. Instead, let's consider what we can do here to help grow our state. This is one of those bills that can help us do that. Thank you, Mr. President.

SCHEER: Thank you, Senator Briese. Mr. Clerk for announcement.

ASSISTANT CLERK: Mr. President, the Urban Affairs Committee will hold an Executive Session in Room 2022 at 10:00.

SCHEER: Thank you, Mr. Clerk. Senator Halloran, you're recognized.

HALLORAN: Thank you, Mr. Speaker, colleagues, Nebraskans. If anyone would have tuned into this conversation over the first three hours or the start of this three hours, they would-- they might draw the conclusion that those folks that live in rural Nebraska that farm for a living are just bad neighbors, that they would just purposely, in an effort to expand their operation, place a 5,000-unit hog operation right across from somebody's residence, disregarding local planning and zoning or regarding planning and zoning that they would do something like that. They would look out. They would not want to invite a nuisance lawsuit to begin with. And besides that, we respect our neighbors and we wouldn't do that. Now 80 years ago, the average farm was about 160 acres. Every farm had some dairy-- few dairy cows; some chickens, a few chickens, not

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5,000, a few chickens; a few head-- few hogs; and they had 160 acres of cropland. They grow-- they would grow the feed for the animals and everything was fine. Since then, due to technology, much to technology, a lot to foreign policy, 160 acres is not viable anymore. You cannot support more than one person today on a crop production of 1,000 acres. So you have a farmer that's got a son that wants to join in the operation. They've got 1,000 acres. It supported the family but now the son wants to get married and join in the operation. So what are they to do? You try to find ground to rent or to buy, it's not going to happen. It's not that readily available. Competition is stiff. So one of the options is to build some livestock facility so that that son and his family can join in the operation in partnership with the parents. I've lived on a farm the better part of my life. Better part of my life I have smelled things that emit from farming operations. Got a livestock feeding operation that's about six miles, seven miles south of us. Sometimes the prevailing wind oftentimes is from the south. Do we get the odor? Sure we do. But on my farm, we raise grain and we feed grain and those livestock feeding operations buy the grain. It's a symbiotic relationship. And so for me-- me to be upset with the odor of cattle on a southerly windy day, I'm not going to be upset with that, nor is anybody in my community. An exaggerated example of someone losing their right to private ownership of their property with flies and odor and their value's gone to nothing, may be some real cases out there, I haven't heard identification of those cases. I'm sure Senator Lathrop has those and I would like to share those with him off mike or he may want to talk about it on the mike. But the fact of the matter is, we can't keep the best commodity, if you will, that we have in this state, and that's our youth, to stay on the farm unless they have the opportunity to grow. And that's all this is. It's no longer Old MacDonald had a farm, E-I-E-I-O. And on this farm he had one of each type of livestock. We can't turn the clock back. And here's what the real nuisance is. The real nuisance potentially is if we want-- if we want to be extraordinarily concerned about the sensitivity of people's smelling something,--

SCHEER: One minute.

HALLORAN: --if we want to go overly sensitive about that, thank you, the real nuisance is that we could-- we could move away from this style of production. We could, we could move away from it. The real nuisance would be \$35 steaks in the grocery store, \$15 hamburger, because we couldn't produce enough livestock without this methodology that we use today. Thank you, Mr. Speaker.

SCHEER: Thank you, Senator Halloran. Senator Lathrop, you're recognized.

LATHROP: Thank you, Mr. President. I want to start my comments by talking about what Senator Kolterman just addressed on the mike. I don't think there is anyplace-- first of all, I've served with Senator Kolterman for a couple months now, I know his daughter as well: two honorable people. And I don't appreciate anybody questioning either Senator Kolterman's honor,

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his integrity, or his veracity, nor his daughter's. If they tell me something's true, you can take it to the bank, and I believe that to be true of both of them. I don't think there's any place for the shenanigans that are going on when we have issues that are of consequence that-- that raise the emotional level in a community where people are throwing nails on somebody's driveway, following them into the rest room, insulting them, sending crummy e-mails to them, there's just no place for that. And I-- and I'm going to say, I think that the debate in this case has been at the level that where a legislature, a deliberative body ought to be, and I appreciate that. The-- when Senator Hilgers spoke, when Senator Hilgers spoke, he said that he recognizes-- and the difficulty when Senator Hilgers speaks is I agree with an awful lot of what he's telling you. Like he's telling you the same thing I'm telling you, right? He's telling you the same thing I'm telling you, which is under the existing law, if I'm going to go out and buy a place out in the country, I can look around and see what's there. Right? And if somebody's got a hog operation or cattle and I move next door, I can't complain about it because I have notice, right? I know that that's happening. The difficulty, the difficulty with this bill is you don't have notice. It can change on you. And it's not-- it's not the guy in south Lancaster County or in Washington County or Cass County, those areas close to a metropolitan area where the urban guys want to go get their piece of land. We're not talking about that. Probably do have zoning laws that protect that. By the way, we have some counties with no zoning. And I can give you cases where the zoning laws didn't protect somebody from a nuisance. So if zoning laws and the laws are being complied with, or even reasonable techniques were being complied with, and that solved the problem and we're supposed to have some peace of mind because someone is going to comply with the zoning laws and federal laws that don't really regulate farmers very much or their operations, if those were to give us peace of mind then they wouldn't need the immunity. And, Senator Briese, it is immunity. If I can't bring a suit against somebody who is causing me harm, that's an immunity and it's contrary to common law. But here's the problem: If I go out, I can be a third-generation farmer farming next door to Senator Friesen, and if he changes his operation, I can't do anything about it. At the end of the day, we're allowing all of the things that Senator Halloran talked about: the need to grow agriculture, laudable. Who of the 49 of us isn't in favor of that, right? We know the importance of agriculture. But who's going to pay for that growth? The difficulty is when you let somebody do something to somebody else's property,--

SCHEER: One minute.

LATHROP: --and they don't get compensated, they're bearing the burden. OK? Chicken may go down from \$5 to \$4, but that guy can't live in his house and no one's compensated him for it. That's what this is about. That's what this is about. And it's a poor remedy, it's a poor solution for what is a zoning problem. This thing needs to go back. Somebody needs-- and I'm happy to work on this-- somebody needs to put in a zoning bill so that when somebody builds one of these things, they know that it complies with zoning that is intended to protect the neighbors. But just to say there's zoning and now the neighbor can't sue is to take away a remedy without replacing

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it with a methodology that otherwise protects them. And when we point to state regulations, federal regulations, and zoning requirements, I'm telling you they don't work. And eventually I'll read some cases and you'll see. Every case that I can read that's been reported from the Supreme Court is a--

SCHEER: Time, Senator.

LATHROP: --case where zoning law didn't work. Did you say time?

SCHEER: Yes, Senator.

LATHROP: OK. Thank you.

SCHEER: Thank you, Senator Lathrop. Senator Hilgers, you're recognized.

HILGERS: Thank you, Mr. Speaker. Good morning again, colleagues. Let me first strongly echo the comments made by Senator Lathrop, both about Senator Kolterman, who I've served with for the last three years, as well as the importance of a deliberative debate, which I think we've had on this particular bill. I could not agree more with what Senator Lathrop just said and I appreciate everyone's contribution to this particular debate, which I think has been very good. I think two questions here, and Senator Chambers raised one, Senator Lathrop has raised another, really help distill, I think, what two-- the questions, I think, underlie whether or not I-- I would support or anyone should support LB227. The first point is one that Senator Chambers made, which is there's no change needed. And if you agree that there's no change needed to the current law, then you should not vote for LB227. And the second point is, if you think that there is a change that is needed, does it accommodate sort of this-- our notions of fair play or notice or the-- the property rights that people have. And if you think the accommodation, the accommodation proposed by LB227 doesn't quite hit the mark, then don't vote for LB227. So let me take both of those pieces in order. Senator Hughes is telling us, and you hearing from a number of other colleagues who are in the rural areas, and, by the way, an argument that to me rings very true, both as a business owner as just-- and as someone who sort of understands how businesses work, they're saying we need a change. The reason we need a change is that the current law sort of freezes in current operation size and structures. OK. We want to talk about the large operations, the one that might be the most problematic. But the bill doesn't just focus on those. The bill identifies at least four areas where at least current operators are concerned that if they make these changes, that these changes will cause them to lose their protection against nuisance suits. A couple of these I mentioned the other day and I don't think are controversial. One is the conversion of the-- of the type of operation, Senator Chambers has talked about that. Number two is changing the size of-- of, in any way, by the way, one acre would be enough, of

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the operation, enrolling or ceasing to be enrolled in a government program or using technology. What we're hearing from our rural neighbors is that those changes they may not be able to do under the current law. And so what happens is, especially when you sort of-- you have this significant threat of an injunction in a nuisance suit, if you-- that, that protection is very important to the economic-- the ability of those farmers, those operators to be able to continue the economic-- be able to continue their operation. As I mentioned before, you know, you can get an injunction against my law practice for noise, I can still practice law. If you get an injunction against someone's operation, the thing that's causing the odor or the noise, you might not be able to actually operate, operate at all. So I think so what you're hearing, at least what I hear is, the reason why we need to change is the current law locks in current operators into the current size. Now maybe that's something we didn't have to worry about in 1982 when the current Right to Farm bill-- Act was-- was passed into law. Maybe we didn't have to. But certainly today, as farm-- as operations grow, as ownership changes, right. I mean if from Senator Hughes to a family member, if that-- is that something that might cause them to lose their liability protection currently? That puts it at risk. And I think that uncertainty is something that Senator Hughes is trying to resolve. And so I think-- I think that-- I think that there has been a strong argument made that-- that the conditions have changed in the last 40 years. Farms are not operated in the same way they were in the early '80s. There's more consolidation. There's more growth. There's changing of the type of operations that they have on their ground and we need to accommodate that, that change. Now the second question then is if you think a case has been made for change, and I think there has been, can we do it in a way that accommodates private property rights? And I think that really goes to the core of what Senator Lathrop has argued. And I think we have to get that right. There's no doubt about it, I think this conversation has helped getting us closer to getting that right. And--

SCHEER: One minute.

HILGERS: Thank you, Mr.— thank you, Mr. Speaker. Senator Hughes has made a couple of accommodations. One of which that gets lost a little bit is now-- there is now an additional condition on getting this liability protection that does not currently exist. Currently, if you have liability protection, you don't have to take any reasonable efforts whatsoever. If you are causing a nuisance to your neighbor next door and they moved in after you, tough luck. There's a zoning requirement, and you want-- you can-- you can ignore that and still keep your liability protection. So the first thing Senator Hughes has done in LB227 is actually put some more restrictions and say, no, you've got to be a good neighbor. Not currently in the law right now, doesn't-- you don't have to currently do it under the-- under the statute as it exists today. Under LB227 you would have to. Now when I come back-- I'm about to run out of time-- when I come back I'm going to talk about some of the other ways and then-- that Senator Hughes is-- or LB227 has tried to accommodate this private property, this notion of private property along with

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what we're trying to do to accommodate modern agriculture. And in particular, I think the-- the very sound and smart--

SCHEER: Time, Senator.

HUGHES: --protections of AM274 [SIC]. Thank you, Mr. Speaker.

SCHEER: Thank you, Senator Hilgers. Those waiting to speak in the queue: Senator La Grone, Chambers, Friesen, and others. Senator La Grone, you're recognized.

La GRONE: Thank you, Mr. President. I really do appreciate the discussion that's taking place on both sides of this. I think we're really getting into the meat of this bill, which is the way it should be done. I just wanted to touch a little bit on the implication that has been made at various points throughout the debate that there are constitutional problems with the bill. And the claim would be that the bill would affect a government taking of private property and there's really-- and there-- that would be based on an Iowa case that is actually very obscure. And there's-- it's, I think, it's pretty clear that this is not a taking and, thus, the bill is constitutional. So we're looking at whether something is a government taking or not, there's a-- a very big difference in this instance between granting immunity for private action and the government taking some action which effectuates a taking. Now in Iowa, they found that there was a taking, but they based that on the fact that there is an 1895 lawsuit that equated a nuisance immunity to an easement, and, thus, by-- in Iowa, by taking away that liability, the court found that-- that the legislature was granting easement over that land. However, in every other state that has considered this, they have rejected that Iowa analysis because they have no such decision equating nuisance immunity to an easement. And Nebraska doesn't either. So when we look at this, we know that it is not a taking because some of the key elements of a taking are missing; thus, that there be some government action effectuating a taking. This is granting immunity for a private action, which is drastically different. So I just wanted to get up and clarify that again. There's not a constitutional issue here because we do not have the same analogy in our law of nuisance immunity liability to an easement. And because that, I-- I-- I just want to point out again, there is not a constitutional problem with this bill. Thank you, Mr. President.

SCHEER: Thank you, Senator La Grone. Senator Chambers, you're recognized.

CHAMBERS: Thank you. Mr. President, members of the Legislature, I will not expose my hand at this point. I'll wait until Senator Hughes's current amendment is adopted. Then I'm going to offer some amendments, and I call them polygraph amendments. Senator Briese speaks in very general but dismissive terms rather than address the issue. The word "mitigate," according to him, is what people understand. What Senator Briese, as a lawyer, must understand but he may

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have forgotten is that in the law you take ordinary words and when you don't want them used in the ordinary sense then you give a definition showing that this particular word is what's called a word of art. It has a certain meaning and application in a legal context which it would not have in ordinary conversation. In the law the term "person" is a term of art. It applies to a corporation, partnerships, any number of entities which are different from a natural person. If you ask an ordinary, untrained in the law individual what does the word "person" means, he or she would give some kind of representation that includes and restricts it to the application of human beings. But in art-- in law it has different meanings so a definition is given. Then when that term of art is used in a succeeding or other statutes, the language will be, when they give that word, as defined or as found in whatever the section the definitions are given. Senator Briese is either deliberately or unknowingly clouding the issue. And that's because they cannot deal forthrightly with the language of the statute. We're dealing with very serious problems that involve ordinary persons who happen to be in the rural areas and farmers. I'm not going to say that all the people who called me are masquerading and pretending to be farmers or rural people or who will write letters and not only sign it but give their address and a phone number. Those are the kind of communications I get because the people feel they have nobody to turn to. This very bill shows the power of the large-scale farms and corporations. They get this kind of time from the Legislature. People distort and misstate what the law is and they're supposed to ride that magic carpet above every criticism and get the corporations to where they want to land. When you read the language, you are not talking about ordinary farms or farming operations. You're talking about very large, expansive farming operations. You're talking about a situation where an existing small farm can be a toehold to give a corporation a basis under this law to do other things. The ownership of that small farm can be changed. It now is owned by a large corporation.

SCHEER: One minute.

CHAMBERS: Whatever that small farm could have done, now the large corporation can do it by tailgating on what the farm it purchased could have done. You all want to pretend you don't understand, or maybe you really don't. So that's why I'm going begin to speak in very elemental terms for the record to at least show that I'm not trying to mislead anybody, that I've read the language, that I know what the language means and I can tell you what the purpose is in adopting the kind of language that they adopt. Change in size means nothing. Change in ownership means nothing. Participation in or withdrawal from participation in programs, the adoption of any new technology, these are things which you allow in the law. So let's say you get some farm operation where they use directional boring, like they're using out here to get--

SCHEER: Time, Senator.

CHAMBERS: --piping. You said time?

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SCHEER: Yes, Senator.

CHAMBERS: Thank you, Mr. President.

SCHEER: Thank you, Senator Chambers. Those waiting to speak: Senator Friesen, Pansing Brooks, Kolterman, Williams, and others. Senator Friesen, you're recognized.

FRIESEN: Thank you, Mr. President. I'm going to try and touch on a couple things that have been said on the floor, and one of them deals with the chemical drift. And so, you know, right now I think the EPA is-- deals very strictly with chemical drift. It has nothing to do with a farm nuisance or anything else. That is a serious issue that is not addressed here at all. I don't think there's any liability given away there whatsoever. I cannot allow chemicals to drift. I have to spray when the conditions are right. I have to follow all the chemical labels, and there is no exemption for that. And if I drift chemicals onto a neighbor, I will be liable. What this bill does now is it does give a two-year window, which I-- I don't think is unreasonable. The one thing I want to talk about more is that we keep being told that we need to grow our state, we need to grow jobs in this state, we need to add value to products that we have. And yet, at the same time now, we're expecting someone to invest a million dollars and not have some protection from a nuisance lawsuit that comes with growing livestock. Times have changed. We don't-- we don't grow them out on the open lots anymore. They are more confined. It is more industrialized, there's no denying that. And I don't think we could even pretend that we could feed the population if we tried to have everything free range and-- and open and I think the pollution issues would be worse than they are now by far. We don't-- right now we incentivize companies to create jobs, but any one of these people that's putting up one of these hog barns or chicken barns in this state doesn't receive any incentives to do that. That is an investment of their own money. They sign the mortgage to borrow the money. They put up the barns. They're hoping that these contracts are good. I'm not a big fan of contract feeding, never have been. But it's the only way that we're going to get any livestock production in the state because small farmers on their own cannot do this anymore. There's no market. You can have niche markets if you're close to Lincoln and Omaha. You can do some of these small-size farms. It works great, more power to them. But it just doesn't work on the scale anymore. You can't make a living doing it. Corporations have no need to own these barns. We're foolish enough to do it for them. We work for almost cost, sometimes even below cost, and we continue to provide the safest, cheapest food supply in the world. Why would a corporation come in and own this if we will do it for nothing? We have been doing this for a long time and I have not seen an attempt by corporations to come take over ownership of the land and run these farms. When a farmer owns it, they've found that their livestock are taken care of in a better manner than if they just hire somebody to come in and do it. Those operations who have tried to be run by hired help find that their livestock are not taken care of the way they should be. Farmers tend to do a better job and we do it cheaper than anybody. There isn't a corporation out there that operate on the margins we operate on, and yet

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we're supposed to now be asked to invest a million dollars and not given some protection against a lawsuit that could turn you to bankruptcy. This isn't right. With that, I'll yield the rest of my time to Senator Hughes.

SCHEER: Senator Hughes, 1:15.

HUGHES: Thank you, Senator Friesen, I appreciate that. We just need to get back to what this bill actually does, you know, and it is providing continued protection that we enjoy today if we make a minor change, you know? And those minor changes are the conversion from one type of a farm to another. That could be adding livestock. It could be changing your crop rotation. There are a lot of variables in agriculture. The enrollment in a government program, the adoption of new technology, and a change in ownership: those are the things that we're trying to protect. Those are the-- the-- to-- to continue the protection that we have today that we already have if we want to make additional investment in Nebraska. And that investment is coming from the people who own the land. It is coming from people like Senator Friesen and myself, who have created an opportunity to bring our-- our kids back to the farm for that next generation.

SCHEER: Time, Senator.

HUGHES: Thank you, Mr. President.

SCHEER: Thank you, Senator Friesen and Senator Hughes. Senator Pansing Brooks, you're recognized.

PANSING BROOKS: Thank you very much, Mr. President. I have a couple questions for Senator Hughes, if he'd be willing.

SCHEER: Senator Hughes, would you please yield?

HUGHES: Of course.

PANSING BROOKS: Thank you. Senator Hughes, a couple things that I'm interested in. You-- you mention that-- that you had a neighbor that at one point you were the perpetrator, another point that neighbor was the perpetrator and that you came to an agreement. Is that right?

HUGHES: That is correct.

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PANSING BROOKS: OK. So if you came to-- if you had not been able to get to an agreement, what would have happened?

HUGHES: I-- well, I investigated-- when I was the victim, it was-- it was a large field. I lost about 150 acres of a crop. And if the applicator was-- did not or was not willing to settle with me or their insurance company, I would have filed a-- a complaint with the Nebraska Department of Agriculture and there would have been an investigation and I would have gone redress, you know, through that.

PANSING BROOKS: And there-- there would have been a lawsuit. So I guess that's part--

HUGHES: Probably not a lawsuit. I think the Department of Agriculture would have handled it.

PANSING BROOKS: OK. Well, I would like to just say, in my opinion, that-- that part of the reason that there are-- there are neighbor issues and part of the reason that people do come together and make a decision is because of the fact that-- that if something doesn't work that's mutually accessible and agreeable, then-- then people have access to the courts to say I'm being wronged, I need to be able to have access to the courts because my right to property and my-- my ability to hold property is being detrimentally affected. So I-- I guess, you know, I guess I have another question, too, for Senator Hughes.

HUGHES: Oh, yes, please.

PANSING BROOKS: Oh, thank you. Senator Hughes, I'm wondering, so would that-- this include wind farms?

HUGHES: This? This bill?

PANSING BROOKS: Yeah, because it's the Right to Farm. So if you change to a-- a, you know, if you change your crops to all of a sudden putting up a wind farm, seems to me that you would have the same inability to sue for any kind of public nuisance. Correct?

HUGHES: That's why we have zoning regulations that address that also.

PANSING BROOKS: Well, but OK. But under this, it can't be a nuisance. Is that correct?

HUGHES: I--

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PANSING BROOKS: Yes, at-- at least as I read the law, that is correct. So, and that's, you know, this covers a broad range of issues, my friends, and so that's-- that's what I'm concerned about is-- is we've had law that's come through common law, which means really old law that's led up to this point of having nuisance law. So those are some of my concerns. I'm happy to talk off the mike on some of these issues. And I'll give the rest of my time to Senator Lathrop, who wanted a little bit more time.

SCHEER: Senator Lathrop, two minutes.

LATHROP: Perfect timing. So the question about drift, there's actually a Supreme Court case on this subject and it was written by Judge Shanahan. Maybe you never met the guy. He was a brilliant jurist. He went from our Supreme Court to the federal court, and a wonderful human being. In Morrill County, there was a-- somebody who put atrazine on his corn. It drifted over to some guy's soybeans. Right? I don't have to tell you guys what happened. The soybeans didn't work out for him. And he brought a nuisance claim and Judge Shanahan to collect damages for the loss of his crop. Now maybe you can most the time collect this from insurance. Sometimes you can't sue the insurance company of your neighbor directly, so you have to sue the neighbor. The cause of action is for private nuisance. It's a tort claim. And you're trying to recover damages for the drift. That is-- that is an available part of nuisance law that would be immunized. That's part of farming operations,--

SCHEER: One minute.

LATHROP: --right? So you drift the atrazine over to the neighbors. I know when I sat on the-- on the Ag Committee previously, we talked about the-- the weed killer that if you apply it above 90 degrees, it turns into a cloud and drifts off into somebody else's property. That can be a nuisance. Certainly is if you're a grape grower. Apparently a little bit of that will kill a grape crop. We got to be careful with what we're doing. Look at-- look at Hall v. Phillips. It is a private cause of action for nuisance to recover for damaging created as a result of chemical drift of atrazine over to a soybean field. So that is another thing. This isn't just about the hog confinement or a chicken confinement facility. It's about a lot of things that nuisance encompasses and would be immunized here. Thank you.

SCHEER: Thank you, Senator Pansing Brooks and Senator Lathrop. Senator Kolterman, you're recognized.

KOLTERMAN: Thank you again. And I'd like to thank my colleagues for speaking kindly of me. Senator Lathrop and I have enjoyed a good relationship sitting next to each other here. I appreciate his point of view. And I want the public to know that we can debate these issues fair.

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And at the same time, at the end of the day, somebody is going to win and somebody is going to lose and we're going to home and we're still going to be friends. But with that said, I am going to finish my remarks and it's the last time I'll talk on this bill. When I left off I was telling you about who pays for lawsuits. It's not large corporations. It's the farmers. It's the kids like the ones in my district who are trying to expand their family operations so they can come back to the farm. I signed on to this legislation because I have a lot of livestock producers in my district, livestock producers who are good stewards of the land, who follow DEQ requirements, who are just trying to grow and diversify their operations. Let me share a few facts with you. University of Nebraska reports that roughly 56 percent of all agricultural commodity sales in Nebraska were-- were attributed to livestock. The analysts also estimates the direct economic impact of livestock production in Nebraska is \$8.5 billion. Colleagues, that's how we grow our state. The reality is that more and more people are removed from the farm. The reality is that there are people in our state who don't-- don't understand the way agriculture has grown and have tried to vilify anything that doesn't resemble the 1950 version of agriculture, that looks something like a Fisher-Price farmstead with a little red barn, one horse, one cow, a few chickens, and a pig. That's not how it exists anymore. And if it did, our country and the world would be starving today. Finally, in conclusion, I'd like to say-- set the record straight, all of you, except for Senator Chambers and I, have received e-mails from the people that are responding to their concerns. I understand that Senator Chambers doesn't have an e-mail address and I understand why they're not sending him the e-mails. But if somebody is going to use my name and my daughter's name in an e-mail, they ought to have the courtesy to send the same e-mail to me that they're sending to all of you. I find that offensive. And when they say that I'm in the hip pocket of the Governor, they are dead wrong. I do not take my orders from the Governor. I vote against him on a few bills. We disagree on things. By and large, I think he's doing a great job. People will dispute that. But I am not in the hip pocket of anybody. I make my own decisions. I listen to the testimony, both pro and con, and I move forward. As I said, this is the last time I'll talk on this bill. I was not going to talk on it originally, but when somebody starts to attack any integrity, I will fight tooth and nail, as well as for my daughters, both of my daughters. So I-- I thank you for listening to me this morning. And I would yield the rest of my time to Senator Hughes.

SCHEER: Senator Hughes, 1:30.

HUGHES: Thank you, Senator Kolterman. You know, I think I've made about all the points. You know, we need to really focus on what this bill does and what this amendment does. You know, we're trying to do the best that we can, listening to the arguments that are being made, to extend the protections that are currently in place. We're not asking for anything new. We're just asking for the protections that I, as a farmer, enjoy today if I want to make a-- an investment in my farm and not be put at risk. I want to make that investment in Nebraska. I want to make that investment in my family. I want to make that investment in my county. And I'm happy to do that, because I enjoy the heck out of what I do. And having the opportunity to enjoy that with your

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kids is incredible. It doesn't always work, but when it does, that opportunity is something I wish everybody could have. This bill is about farm operators like me, the small guys. I'm not affiliated with any corporate food giant. If I had to have the opportunity to bring my kids back, that's something that I would look at. I don't want to take that off the table for anybody.

SCHEER: Time, Senator.

HUGHES: Thank you, Mr. President.

SCHEER: Thank you, Senator Kolterman and Senator Hughes. Senator Williams, you're recognized.

WILLIAMS: Thank you, Mr. President. And good morning, colleagues. Appreciate the opportunity. This is, is clearly a difficult issue for many. It's also an issue that deserves good debate, questions that are being asked, and I appreciate everybody's willingness to engage in that. I wanted to talk a talk just a little bit, the three counties that I'm involved with: Dawson, Custer, and the north portion of Buffalo Counties, all have significant county zoning requirements. And the reason they do is because those counties are highly intensive with agriculture; in particular, livestock agriculture: cattle feeding and hog feeding. And these businesses do have some issues. And they do the best job they can to deal with odor, dust, and insects. But they're never going to be perfect. I had the opportunity to visit with one of my constituents this morning that is in the hog confinement business, and he deals with many small farmers around the Broken Bow area that have put up hog facilities. It is a big investment. Each one of the small farmers invests about \$2.5 million into that facility. The last thing they want to have happen is to have an issue with a neighbor. So they not only follow the restrictions that are placed on them by the county, they personally double those setback numbers so that they are further away. But that doesn't mean there still might be a neighbor that's going to have an issue. As I understand the amendment here, this would give that neighbor a two-year window of opportunity to look at that. One of the issues that I wanted to talk about is the certainty that is necessary in agriculture to make a \$2.5 million commitment. You don't make that investment without having pretty significant certainty that you're not going run into a major long-term issue. First of all, many of those facilities are financed. That financing is not going to be available unless those issues are covered. We've talked about a lot of large, small, and medium-type facilities, and I will tell you that is all in the eye of the beholder. There are people that would tell you that the constituent I talked to is very large. In the world of hog feeding, he is not all that large. And the people that put up those barns that are owned by the farmer on that land are certainly small farmers. I do have a quick question for Senator Hughes, if he would yield.

SCHEER: Senator Hughes, would you please yield?

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HUGHES: Of course.

WILLIAMS: Senator Hughes, I listened intently when Senator Lathrop was talking about golf courses and parks and different things. And one that was mentioned was Wild Horse Golf Course in Gothenburg. And you may not know this, but there is a large cattle feeding operation about 2.5 miles from that currently. But the golf course was built after that--

SCHEER: One minute.

WILLIAMS: --after that was there. Thank you, Mr. President. My question is, if a farmer, and if it met county zoning requirements, but if a landowner right around Wild Horse Golf Course wanted to build the hog confinement facility there, would they be taking the risk that under your amendment the golf course ownership would have a two-year window in which to file a nuisance lawsuit?

HUGHES: That is correct.

WILLIAMS: So from a banker's standpoint and from an investor's standpoint, would you think that would be a wise decision on the part of that farmer to take that risk of a \$2.5 million investment in a facility like that next to a golf course?

HUGHES: Absolutely not.

SCHEER: Time, Senators.

WILLIAMS: Thank you.

SCHEER: Thank you, Senator Williams and Senator Hughes. Those waiting to speak: Senators Hilgers, Albrecht, Ben Hansen, and others. Senator Hilgers, you're recognized.

HILGERS: Thank you, Mr. Speaker. Good morning, again, colleagues. The last few times on the mike I was talking a little bit about some of the principles that I think are at play, and then talking about what I think are the key issues, the key questions for me. One, as Senator Chambers noted, is there a change necessary? Some may think there is no change needed, and if you don't think a change is needed, then you should vote no on this bill. If you think a change is needed, then the second question, in my view, at least, is whether or not it accommodates some of these property rights that we've been talking about in a way that it is consistent with or

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otherwise acceptable under the Right to Farm laws that we currently have. So I think those are the two questions. Last time on the mike, I talked a little bit about why I think, I think Senator Hughes made a very strong case for why some change is needed to accommodate. And we're talking about basic things that any business would do, whether it's in ag or any other industry. You might want to be able to grow, you might be able to want to change ownership. You may be able to-- you may want to actually have a new business line. All things that currently in the ag sector may put you at risk under the current law, at risk of losing your liability protections. So in some ways, that uncertainty, especially when you're talking about significant economic investment, to grow in operation, that uncertainty can really freeze that investment. I think Senator Hughes is exactly right, and Senator Friesen and others to say, look, that uncertainty on what our protections might be if we, if we just add one acre to our operation is pretty significant. And so I think, I think that the case has been made that some change is needed. So the second question then is, how does this change accommodate property rights? I think it's a very important question. And I think it's important to sort of understand what LB-- or, I'm sorry, AM1274 would do. And there's a couple of different things that I think it does to try to strike that balance. First, and I mentioned it last time, but it is important to reiterate, it actually changes, it restricts the instances in which you actually get the protection in the first place. Currently, if you are first in time, you are first in right. So if I own property and someone else comes, no matter what I do, if it's a nuisance, they can't sue me. And that is true even if I am not reasonable in my effort, any efforts, let alone any to try to help mitigate whatever harms that I might be causing. That is the current statute. So what AM1274 would do in the first place is would say, no, we're not going to-- you are only going to get this liability protection only if you do a couple of things, two of which are new restrictions, new conditions on currently existing rights. One of which is you have to be reasonable in your efforts to mitigate. The second thing it does, and this is really what is added in AM1274, is it now says, OK, we're going to have a two-year window after, importantly-- because I think this is important-- after operation has commenced. So not when you maybe start your construction, which could take a couple of years. I mean, in other words, after the operation that is causing the purported nuisance has commenced, that neighbor, that other landowner, still has two years to file suit. I think that's very important. They have two years to file suit. So, and it's timed such that if they have two years after operation, that should be plenty of time in which that individual, that landowner would be able to understand, hey, there's a problem, there's a nuisance, I want to be able to file suit. Now, for some reason two years isn't quite enough or maybe it's too much, I'm certainly-- there is no magic number with two years. I think it's a reasonable amount of time. It's not so short to say three months or six months. It's not so long that you've got the protection. The other thing, and if you read this statute is, every time, every time there is a change, the two-year clock starts over. So if Senator Hughes-- if the ownership of Senator Hughes' ground goes to-- there's a change in ownership from him to his son, two-year clock starts over again. If his son then wants to add an acre, two-year clock starts over again. If he wants to add significant expansion of his facilities, starts all over again. So it's not just two years and then they can, after that they can do whatever they want, it's two years for

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that particular change, two years again if there's another change, and so on. So I think that, you know, when you look at this, I think one of the strongest arguments against, and I think it is a very strong argument, is to say it isn't fair, it isn't right to say to a landowner who was there first, right, if you expand into their operation, or it was there--

SCHEER: One minute.

HILGERS: --and you changed your operation significantly, it is not fair to that landowner to say, you just got to, you just have to sort of eat it. It's not fair to say that. And I think that's a very strong counterargument to this bill. But I do think AM1274 answers that argument. Not completely necessarily, right? I mean, if it was a complete answer to that argument, then why bring the bill in the first place? But again, when we're trying to seek accommodation, we're trying to say to farmers and producers, hey, you know what? We're going to treat you like other businesses and we're going to ensure that you can have the certainty to invest in your operation, to grow, to change ownership, to add new business lines, whatever it might be, while still making sure that others can't use the powerful sword of an injunction to shut down your operation.

SCHEER: Time, Senator.

HILGERS: Thank you, Mr. Speaker.

SCHEER: Thank you, Senator Hilgers. Senator Albrecht, you are recognized.

ALBRECHT: Thank you, Speaker Scheer. And good morning, colleagues. I do rise because I am now a farmer's wife of nine years. And I do have some questions. I would like to have Senator Hilgers listen to my story because I am going to ask you a question when I get done. I had eight e-mails and I had four phone calls on this particular bill. And the reason I rise is for the farmer today, I want to ask about how this is-- is this even needed for the everyday farmer today-- I'm not talking about a corporate farmer, but an everyday farmer today. If the city has purchased ground from a farmer that used to be a dairy farmer, he sold off a portion of his land, the big super Walmart comes in, the city starts building around the super Walmart and around his farm. Is he protected today from somebody saying that, hey, we don't like the smell, we don't like the flies, and the dust on the farm is causing us to have to wash our cars too often. I mean, is that farmer today protected? Senator Hilgers, would you yield to a question, please? Senator Hilgers.

SCHEER: Senator Hilgers, will you please yield?

HILGERS: Yes.

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ALBRECHT: So my question is, is this particular incident covered today? That they really wouldn't have grounds to sue?

HILGERS: My understanding is, in your hypothetical, you have a current landowner sells, there's some change in ownership of some of their land--

ALBRECHT: No change in ownership, just selling the land to a super Walmart.

HILGERS: Well, if you take some land and sell it to someone, that ownership changes to someone-- someone else now owns that land. I think under the current statute, as I understand them, someone could correct me if I'm wrong, the other landowner with that change of ownership without the statute would then have a cause of action to sue.

ALBRECHT: So then I rise in major support of all of this because in that instance that farmer was there. He sold his land to somebody else and the city builds up around it, and then all of a sudden he's responsible? I guess that is why I would, in fact, rise to protect the farm families of today that-- but I will tell you in all honesty, the reason besides property taxes that I'm here today standing is I was very much aggravated with packer ownership of livestock. But I have come to realize that we are growing Nebraska, and that is where the most number of people on this floor chose to have packer ownership of livestock in the state of Nebraska. So to be able to protect the farmer that chooses to build that hog confinement or bird-- bird confinement or whatever for large corporate farming, this obviously is why we're here. But I am also going to say that I cannot not stand and protect the everyday farmer like we are. What do you do, though, and Senator Hughes, can you yield to a question, please?

SCHEER: Senator Hughes, would you please yield?

HUGHES: Of course.

ALBRECHT: What if you are in a county that is livestock friendly but has no zoning or planning board? How is-- how is the neighbor that comes in, that is sitting on one of those acreages and has six kids and they like their horses, but, gosh, we didn't know that the farmer next door was going to put in three hog sheds. I mean, where-- is that one of the reasons that we would protect the farming community from something like that? Is that the reason that we would have this bill?

SCHEER: One minute.

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HUGHES: That's not the reason we have this bill. That is a local issue, that local zoning. And for whatever reason that county has chosen not to have local zoning issues. I spent enough time on the school board that I don't like the Legislature dictating to local individuals in their area of jurisdiction. And I know there are ten counties that do not have zoning, and I have heard various reasons why they don't want to have that zoning. I don't think that's wise on their part. I think they should have zoning for instances like this. But I can't address why that county should not be taking care of their own business.

ALBRECHT: Right. OK, and just one more quick question before I lose time. Is, I mean, how many actual--

SCHEER: Time, Senator. You have lost your time. Thank you, Senator Albrecht, Hilgers, and Hughes. Mr. Clerk for a motion.

ASSISTANT CLERK: Mr. President, a priority motion. Senator Chambers would move to recommit the bill to committee.

SCHEER: Thank you, Mr. Clerk. Senator Chambers, you are welcome to open.

CHAMBERS: Thank you. Mr. President, members of the Legislature, I've been here for all of the discussion. And there are people who will yield time to Senator Hughes, which is understandable, he is the introducer. So I have to create my opportunities to speak. And I've used this methodology on other bills. The conversation between Senator Albrecht and Senator Hughes was not only interesting, it bears out what I say. Ordinary people are in counties where they have no protection whatsoever. You keep hearing people talk about zoning laws, but there are counties where there are no zoning laws. So Costco, Smithfield, anybody can come in there and do anything they want to. And the Legislature has an obligation to not enact legislation which can be utilized to oppress people who do not have a county or any other agency to protect their rights. Senator Albrecht described a family. If that family happens to be in one-- in one of these counties, then a huge hog operation, a feedlot, anything can come in. And there is no way anybody in that county can go to court because this bill shuts the door to the courthouse. There is nothing that would prevent them, the statute allows them to do it. And this insertion of obeying zoning laws is thrown in as a sop for the suckers. You all are suckers on this floor. And the rural senators have not been honest. Senator Albrecht inadvertently made Senator Hughes point out something I have been talking about, where you cannot rely on county boards, and some people don't have even a pretense of zoning. So what you're doing with this law is taking away a present right that people would have to bring a nuisance lawsuit if somebody came in and did these things. Under this law, it takes that away, it shuts the doors to the courthouse. But you're not going to listen to what I'm saying. I'm hoping people who are not on the farms and in

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somebody's back pocket, some people who are not in that status will listen. The Farm Bureau is not a farm organization, it does not speak for the farmers. It speaks for the big corporate interests and entities, and I would like to hear Senator Kolterman or anybody else contradict that. I've said it on the floor. I've said it in the Ag Committee. There are people who are top officials in the Farm Bureau who will not come before the Ag Committee because I am there and I embarrass them by establishing on the record they are not a farm organization. Senator Halloran knows it. He's not going to say anything. None of you are going to say anything because you have interests that are contrary to the interests of the ordinary people. You all are interested in protecting the perpetrator. I'm interested in protecting the victim. Not what the perpetrator wants to spend to be in a position to oppress people, but I'm looking from the standpoint of the one who is going to be oppressed, the victim of these big farm operations. My three Ls come into play here: the least, the last, and the lost. The nature of production agriculture is intrusive and invasive. Senator Hilgers cannot draw a comparison to his law practice. That is restricted to the confines of a building and the territory within that building that his office occupies. He is not affecting anybody outside that office. Maybe they don't like what he does. Agriculture intrudes on and invades the property of other people, it hinders their ability to enjoy their property. Enjoyment of property does not just mean somebody can come in and take that land away from you. It means that you can enjoy being there and continue to have those things that led you to come there in the first place. You might like the view, you might like a sunrise, you might like a sunset, you might move next to a row crop farm because, as I've said, you like to hear the sound of the wind or the breezes and the warm summer evenings rustling that dry corn. You like that, it lulls you, it speaks to your spirit. It takes away and drains away all of those pressures of the day. You commune with nature, nature communes with you. It's not like a loud, stinking vermin-drawing and infested feedlot or hog operation. And I'm going to speak on this floor for the people in the rural communities who have nobody on this floor from that area to speak for them. You know what shows the kind of man I am? When there were farmers in the state afraid during the so-called farm strike to identify with those farmers who were willing to risk prison to try to get a fair shake for the farmers. But I was there. I came from the city. And the people who were against them said that these people would hang me up if I came out there. And they're the kind of people who would hang me. I said, well, let me assume the risk, because I see a greater injustice being visited upon them that their own people will not speak for. So when they had conferences, I was there, not any white farmers from Nebraska, not even in Nebraska. A group of them had gotten a reservation in a Holiday Inn. Then some of the people, like the Farm Bureau, talked to these people from the Holiday Inn and said, these riffraff, these violence-prone people are going to hurt your reputation. And you know what Holiday Inn did? They canceled, canceled all those reservations. I am telling you what I was a part of. I am not like you all who just fat mouth and have the Farm Bureau tell me what to do, or the Cattlemen who have made contracts with the big companies. So you know where we went? I went into a Quonset hut in midwinter with no heat, but I was there and I spoke. And I gave my honest views about the problems between black people and white people and how white people will go to the devil himself when they need help,

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which is what they were doing in this instance. But in this instance, the one you would call the devil and worthy of being lynched, is your salvation, and you know it, and that's why you invited me here and you're glad that I am speaking in the way that I speak because now I am speaking for you. When I was speaking the same way for me and mine, you hated me and everything I said. But now that I am using those same tactics to speak for you and yours, and here is what I did. I like dramatic effect, I said: I do not smoke, but watch this. And you saw that steam, you saw that vaporizing, you saw what looked like smoke. I said, that's as close as I'll come to smoking. But I am here with you all where it's cold. Where is the Farm Bureau? I'm looking around here. I don't see the suits that go into the Legislature to lobby, I see people like you. I am dressed more like you than them, and I'm not doing like governors and others who, when they're campaigning, they put on what they considered their "hickified" clothes to make it look like they're like you. This is the way I dress all the time. These are my work clothes because I am always working wherever I go. And besides that, if there were clothes that were good enough for the people who gave me my living when I was barbering, they're good enough for anybody.

SCHEER: One minute.

CHAMBERS: And I was out there, not just in Nebraska. I gave you all some examples, but you don't read anything. I traveled around this country, and I don't even live on a farm. And my reputation preceded me and I got invitations from all over this country, not just in flyover country where the backward people in Nebraska live, but places where they supposedly have some forward-thinking, progressive people. But none of them would speak in the way that I spoke. The FBI, I found out from the records I could get, through Freedom of Information, they monitored everywhere I went, everything I said. And you know what the statement always was that they would write? No violence, no untoward incidents. They had branded me as one who advocates violence.

SCHEER: Time, Senator.

CHAMBERS: Who spreads disorder. Thank you, Mr. President.

SCHEER: Thank you, Senator Chambers. Colleagues, a number of you have been asking about the final time on this bill. It is my intent to go to lunch at somewhere between 11:40 and 11:45. We will return after lunch and we will have a half-hour left of floor discussion and then a vote at that point in time. (Visitors introduced.) Returning to the queue, those waiting to speak: Senator Ben Hansen, Senator Lathrop, Chambers, and Hunt, and others. Senator Ben Hansen, you are recognized.

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B. HANSEN: Thank you, Mr. Speaker. I have gotten-- this isn't in reference to Senator Chambers' motion, so much as it is to the underlying bill and the amendment. I've gotten emails, texts, phone calls from people in my district, both in favor and opposed to this bill. And so I think it's behooven upon me to ask Senator Hughes a few questions that some of my constituents have asked of me. Just to make sure we're clear, because I know we hear from Senator Lathrop and Senator Hilgers a lot of the legality, a lot of the terminology about how this would flesh out maybe in the courts, but I kind of want to bring it down just a little bit more to some layman's terms. Not just for myself, but also my constituents and other peoples that might be watching and listening. So if Senator Hughes would yield to a couple of questions, please.

SCHEER: Senator Hughes, would you please yield?

HUGHES: Of course.

B. HANSEN: OK. These are just a few questions I got from my constituents. I was hoping you can kind of clarify. Even though some of these have already been clarified before from other senators, but maybe just if you could refresh us a little bit and kind of fill me in. The first question is, does this provide immunity to large corporations from a nuisance lawsuit from anyone? And Senator Chambers even mentioned this a little bit like, for instance like a small farmer and then a corporation comes in and buys the small farmer out and then expands. Would this provide immunity to that farm, to that corporation?

HUGHES: If it is a corporation, they have corporate immunity.

B. HANSEN: OK. How about like does that include like a large farm, such as a chicken barn?

HUGHES: Well, I guess I, I need to step back a little bit from that. I got a look from Senator Lathrop that I misspoke, and I appreciate the aid, the visual aid, Senator Lathrop. Yes, that immunity would pass, but there is a time frame that they have to meet. If there's a change in ownership, change in type of operation, that's what the two-year window is. And that two-year time frame begins when that change commences. So if it's ownership, that's one-- the clock ticks there. If they're expanding, adding pens or something like that, it's not when they start building the pens, it's when they enter the livestock into those pens. That's when the two-year clock starts ticking.

B. HANSEN: OK, thank you. And under what circumstances could someone sue a business that expands or establishes an operation near a house?

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HUGHES: That's, that's what we're talking about. This nuisance, if they are inundated by dust or flies, I mean, if their neighbor is not using reasonable techniques to control those things, or odor is probably the most commented on offense, then they can bring suit. This, this does not prohibit anybody from bringing suit. Then it goes to the court and the court has to determine whether there has been loss of privilege of your property.

B. HANSEN: OK, thank you. I know some of these are repetitive but I'm just kind of--

HUGHES: That's fine.

B. HANSEN: I just want to flush this out just a little bit. And in your opinion, does this strip away the rights of citizens?

HUGHES: No, absolutely not.

B. HANSEN: Thank you. And if a nuisance lawsuit is filed, does the operation have to halt expansion during that time? That might be, that's more of a legal question maybe. I don't know if you can answer that one or not.

HUGHES: I'm not familiar with-- I would not know.

B. HANSEN: OK. All right, thank you, Senator Hughes, appreciate it. So this is something I had to deal with being on the city council in Blair. This is something I'm sure anybody who's been on a county board or city council, any kind of that kind of position, like, this is the rub, right? This is a rub, the gray area between someone owning a house, enjoying the house and enjoying their land, enjoying their property, and someone looking to expand their business. I don't believe in hindering or putting undo burden upon someone trying to expand their business, but we also have to protect the rights of somebody who wants to open the windows in their house, who wants to enjoy their yard without being, you know, without their being an undue nuisance upon them.

SCHEER: One minute.

B. HANSEN: So I think this is a tough decision as us as senators try to decide this. And it's, I'm glad that we're having this discussion, I'm glad we're able to talk about it. And I think one of the best ways that we can help our property tax crisis in our state is expansion of business, both smaller farmers looking to diversify their operation or expand, or larger operations. That's one of the best ways that we can decrease property tax in our state: increase revenue, increase business. I also believe smaller government, and that's just a personal thing with me. Smaller government

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and controlling our costs as a government is also another big way that we can help reduce the property tax burden. But I appreciate Senator Hughes answering some of the questions from myself and my constituents. And I appreciate the discussion we're having on this bill. Thank you, Mr. President.

SCHEER: Thank you, Senator Hansen and Senator Hughes. Senator Lathrop, you are recognized.

LATHROP: Thank you, Mr. President and colleagues. I want to talk a little bit about the amendment that's before you and a problem that I have with it. And to illustrate the problem, I want to talk about a case that happened back in 1948. Senator Arch, you and I would be concerned about this, this involved a rendering plant that was going to be on the Sarpy County, Douglas County line. It was going to be on your side of the fence at the Papio-- they call it the Papio-something or another, I assume that's right where Southport is right now. And this outfit came in and they bought the property and they wanted to build a rendering plant. If you know anything about rendering plants, I don't, but I read this opinion: not a good thing. You don't want to live next to one. And a bunch of neighbors that lived in what is now really a developed, metropolitan area, but not back in 1948, they brought a lawsuit. And understand, these things are equity actions, that probably doesn't mean anything to you, it does to lawyers, to get an injunction is an equity action. So you ask the court, hey, I need to have you restrain somebody from doing something that is about to cause me harm. And the court in this case-- so these people hadn't built the plant. They bought the land and it was zoned rural. It was a rural area at the time. And they wanted to put a rendering plant up there and they got a lawsuit from people who lived in the area. Whatever that means, I assume they were other farmers back at that time. And the court went through this and they said, there hasn't been a nuisance yet. This is not an unlawful and a nuisance per se. That means that every time somebody does a rendering plant, it doesn't make it a nuisance. It's only a nuisance if it's bothering other neighbors. And because it hasn't been built yet, I can't give you an injunction to stop them from building it. Now, maybe after they started operating it, it would have been a nuisance. And it really illustrates this point, and a problem I have with the amendment. The amendment basically says, after two years there's no-- it can be the biggest nuisance on the face of the state map, but you can't do anything about it. OK. That would be what we'd call a statute of limitations. You can't sue except for within those two years. And this case is important for this reason. The clock starts here on things that don't have anything to do with the smell and the flies and the pool. The clock starts when one of these events happens: so if you change ownership, if you change the type of operation. Let's say that you put up a building, you start the hog confinement operation; and we keep picking on those guys because that seems to be the most common type. You do that, and there's some other issues about size, and what's a change in size and that sort of thing, but it hasn't started to stink yet. And if you don't have an opportunity, if you say you have two years to file suit, but I can't show that it's affecting me yet, and after I can show that it's affecting me, you're

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saying you can't sue anymore, there's a problem. And the problem comes in this way, or can be resolved in one of two ways. One is you can make it four years, which is a very common statute of limitations. You got four years to bring your suit. If you don't bring your suit, tough. OK? The other thing is, you can change the starting point. If you want to have it two years, then say two years from the date the conditions exist that you complain of. So if you think the nuisance is the smell is intolerable--

SCHEER: One minute.

LATHROP: --and that starts on January 1, 2018, you'd have two years from that date, not two years from the date they built the pen and it didn't start to cause a problem. Does that make sense? So one of the concerns I have with the amendment is the starting point from when the two years begins and the fact that the two years is a very short period of time. It would be like in malpractice, if you want to sue your doctor, we have a two-year statute of limitations for that. This would be like saying, I went to a orthopedic surgeon for my wrist. I have carpal tunnel. We treat it for a year and a half, we treat it for two years. And for two years he had me in a splint and he had me on anti-inflammatories, whatever it is, and then he did surgery and cut on the wrong arm. And if we had a statute of limitations that started from the date that I treated with that guy, I would have no remedy. But in the law, you start from the date of the harm.

SCHEER: Time, Senator.

LATHROP: That's where this amendment misses the mark. Thank you.

SCHEER: Thank you, Senator Lathrop. Mr. Clerk for an announcement.

ASSISTANT CLERK: Mr. President, the Appropriations Committee and the Judiciary Committee will be holding an Executive Session at noon in Room 1510.

SCHEER: Thank you, Mr. Clerk. Those waiting to speak: Senator Chambers, Hunt, Moser, and others. Senator Chambers, you are recognized.

CHAMBERS: Thank you. Mr. President, members of the Legislature, Senator Lathrop was reading my mind. And it saves me having to deal with what he dealt with. Senator Hansen, some of these operations, they buy from the small farmer, that's the change in ownership. It might take them two years to get all the architectural drawings, all the financing, everything, but they're working and saying we got the location. But the start was when the sale took place. They may not even be ready to break ground for two years. So then when they start from that point, this law

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says you cannot law-- you cannot sue. If they spew stuff out of the smokestacks, you cannot sue. You cannot do anything, and that's why I say the big corporations are behind this because they're the ones who knew what they were doing when they put this in the amendment they gave to Senator Hughes. Senator Hughes didn't come up with this language. I told you the other day-- you all don't listen to me. This is one of those things that is so bad and hurtful, I don't want to be able to tell you later on I told you so. How does that help the ordinary people who were hurt? Because you were tricked. You were bamboozled. You were misled. Let them be as blunt and forthcoming as I am. Let me give you another example of where I was criticized by people in my community. John Deere was going to close all the dealerships they had in Nebraska, and I didn't think that was fair. There were a lot of people who had John Deere equipment. Farmers didn't do anything, but you know what I did without being asked? I wrote the corporate office of John Deere and told them how I may not be able to hurt them, but their reputation means something to them, and I'll talk about them on the floor of the Legislature. When you want them to buy your products, you go by the term John Deere. But then what happens? They get the "Dear John" letter. I'm not interested in you, I'm out of here. And you know what they did, they sent one of their top officials to have a meeting with me at the airport. A black legislator who hadn't even been in office that long. But see, reputation means something to those people. And we talked. But here's where I had the problem. I was not representing farmers, I was not representing any organization. And yet, what I was trying to do had been carried in the newspapers, so when that guy found out that it's just me, the voice crying in the wilderness, they went ahead, wrote the "Dear John" letter and sent it out and they left. Farmers, like other people, need somebody who is willing to go their bond. Somebody who can see beyond what the person in the middle of the battle cannot see because that person is interested in survival. Farmers don't have people like me interested in them. What am I going to get out of this? The ones I'm trying to help are the ones who got term limits to get me out of office. But I believe in what I believe. And my belief embraces even those hardhearted people who don't believe in respecting other people's rights. So while this bill is before us, I'm going to speak. Why would I spend all this time up here when it has nothing to do with me? I could have been down in my office like other people have been away from this floor. But it's a belief that I have, self-imposed, that makes me speak out for those people who would have contempt for me. But they like what I'm saying now. Because if you're drowning and I have a very sharp--

SCHEER: One minute.

CHAMBERS: --two-edged sword and I handed it to you, you would grab that. Because you would risk cutting off some fingers to save your life. I'm going to do what I can, and I hope there's some people on this floor who will watch the way those who want this bill have misled, have not been able to answer questions. And the answers and the discussions always had to come from those who disagree. Are there going to be enough people to give this to the big corporations? They're the ones who want it. Those of you who are farming know good and well

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you could not start one of these big operations now because you don't have the money to do it. So who is it for? It's not for the ordinary farmer, that's the one Senator Albrecht was worried about. But the ordinary farmer can get nothing from this.

SCHEER: Time, Senator.

CHAMBERS: Thank you, Mr. President.

SCHEER: Thank you, Senator Chambers. Senator Hunt, you are recognized.

HUNT: Thank you, Mr. Speaker. Like Senator Wishart said earlier today, I'm not in opposition to this bill because of the potential for the flies or the smell or any of these hypothetical irritants, that we need to define in the bill of course, but that we can't really quantify before it happens. I'm very concerned about these things, and I certainly wouldn't want to live next to these things myself. And I've been contacted by many people who oppose this bill for these reasons. At my last count-- and they're still coming in. I think all of our offices are probably getting calls on this right now. But all the calls I have received: 9 calls in opposition, 19 e-mails in opposition. I'm not hearing a lot of support for this bill from the everyday people who are taking time out of their days, out of their workdays, out of their lives to contact their legislators here in Lincoln about how this will affect them in real ways. The reason I oppose this bill is because of the precedent this sets to take away rights from property owners. This bill takes away the rights property owners by closing the courthouse doors to people who have legitimate concerns and taking away an opportunity for these family farmers to protect their land. With regard to AM1274, if we put these property owners on a two-year clock, that means that we're recognizing that there are operations going on that are worthy of litigating. And I want to call my colleagues' attention to a study from the current issue of the Journal of Rural Studies from April 2019; so that's right now. And this is academic peer review journal, this isn't, you know, an e-mail forward that I got from my grandfather or something. But they published a study titled: Property Rights in Rural Justice, a Study of U.S. Right to Farm Laws. And what this study found is that these nuisance suits that-- that individuals bring against factory farms, typically, are increasingly defining whose property rights matter and whose don't in the countryside, in rural America. And Right to Farm laws elevate the property rights of absentee agribusiness at the expense of those who live in the countryside. So what we're talking about with these factory farming operations are potentially things that are going to affect the values of a person's home as long as the operation goes on. And I'm not saying we shouldn't have huge farming operations; I'm not saying that we should hurt the economic potential of our state by closing these businesses down. I'm not making a judgment on those businesses. What I'm saying is, how dare we take the rights away of people to defend their property? This bill and the amendment to add the two-year window, it doesn't reassure me, because every time someone's home is harmed by the operations of their

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neighbor, the clock needs to reset. It shouldn't just be two years. But that's not really reasonable, and that's why I'm against limiting property owners to two years. We need to make sure they have the ability to go to the courthouse, to get justice, to defend their property all the time, not just within two years of somebody opening up. If a big factory farm next door to your house makes your house uninhabitable, this bill will protect that farm, that factory farm and the cooperation that owns that farm, typically not a Nebraska-based corporation-- not necessarily even based in the United States. It would give that company immunity from negligence and nuisance lawsuits. It gives people no legal recourse against the taking of their property. And this two-year window isn't-- it isn't big enough because a company could sit on that property for two years and wait until the window closes before developing it. I grew up in Blair, Nebraska, and I have received a lot of e-mails from people in opposition to this bill, and calls to my office from people I know in Blair. And there's a family in Washington County that has two children with debilitating illness. The doctors told them that--this is from their e-mail--that they will have to move or the kids could die from the exhaust from these barns. So for many families, this is a life or death issue. And when they invest in a home and they put down roots in a community and the schools and the businesses there, and we're trying to attract and retain people to rural Nebraska, and then we open the door for farms--

SCHEER: One minute.

HUNT: --big farms to come in and have these operations without giving any recourse to these property owners, they have to leave. They have to come to urban Nebraska, or they have to come to places where their children aren't going to be affected by these fumes and by these nuisances that really affect their quality of life. They go on to say: It's more than stink, it's more than beetles, it's ruining peoples' lives who have to live in the vicinity of these facilities. She also says: I was told that this facility would be a death sentence for my 91-year-old grandfather by a gerontologist at UNMC. So for that, for that reason, I'm against this bill. It's not about hurting businesses, it's not about closing opportunities for economic development, because I think that we need to do that. And I think that we can do that in Nebraska without passing this bill. We don't need this bill to pass for big factory farms to come in and bring income and jobs to our state. What this bill will do, though, is take away the property rights of people who also need the ability to defend their investment in Nebraska and their investment in their communities.

SCHEER: Time, Senator.

HUNT: Thank you.

SCHEER: Thank you, Senator Hunt. Senator Briese, you are recognized.

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BRIESE: Thank you, Mr. President. Morning again, colleagues. Listening to the discussion, appreciate the discussion. A lot of great points made on each side. But I did want to address something that Senator Lathrop and maybe a couple of the others have talked about, this concern about when this two-year limitation begins to run. In other words, when does the statute of limitation begin to run? Typically, it begins to run when the cause of action accrues. In this situation we're putting into statute here that the cause of the action accrues at the conversion of one type of farm operation or a change in size of a farm operation. And if I'm the judge or the court trying to interpret what that means, if I'm putting together jury instructions on something like that or trying to assess what that means, I don't think I would interpret that to mean when the basement is dug or the foundation is poured for that new facility. That is intended to mean when the damages are apparent. When the aggrieved party should be concerned, when the damages become more apparent than simply the commencement of construction, the commencement of that increase in size. And so I believe that language, the language we have in here right now, will be interpreted properly. It will be interpreted to protect the interests of the plaintiffs in these situations. And I don't share a whole lot of concern about the language we currently have now. With that, if Senator Hughes would be interested in any additional time, I would yield my time to him.

SCHEER: Senator Hughes, would you please yield?

HUGHES: Yes, thank you. Thank you, Senator Briese. I guess I would like to try to get to a vote yet today, we need to-- we need to dispense with Senator Chambers' recommit to committee. Then I have an amendment that Senator DeBoer and I have been working on that I think alleviates a lot of concerns. So if we can get to that, that's where I would like to go. Thank you, Mr. President.

SCHEER: Thank you, Senator Briese and Senator Hughes. Seeing no one in the queue, Senator Chambers, you are welcome to close on your recommit motion.

CHAMBERS: Mr. President, in the interest of being collegial, I'm going to withdraw-- after I say a few words-- that motion. I do not trust what's going on on this floor this morning. Now before it's over, you all are going to see that what I'm telling you is true. First of all, Senator Briese had not read the statutory language because he got up and started saying very confidently that the statute of limitation, the right to sue comes when the problem and the damage becomes apparent. Then he read the language. And the two years doesn't start when it becomes apparent, the two years starts with the change of ownership. That's when the two years start. He had it wrong. You all are considered so dumb, and you are so dumb. You are stupid. I'm trying to stir your mind and help your people. These are not my people, except in the sense that every human being is my brother or my sister. I gain nothing from this. I lost a morning that I could have spent doing

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something that pertains to my bills that I can't get out of committees right now. But I said that I would withdraw this motion. And I'm going to see the next stratagem that they bring to fool and trick and bamboozle you suckers. Mr. President, I withdraw that motion.

SCHEER: Thank you, Senator Chambers. Mr. Clerk. Senator Hughes, you are recognized. Are you wishing to withdraw your motion?

HUGHES: Yes, I do wish to withdraw AM1274, Mr. President.

SCHEER: So ordered. Mr. Clerk.

ASSISTANT CLERK: Mr. President, Senator Hughes would then offer AM1287.

SCHEER: Senator Hughes, you are welcome to open on AM1287.

HUGHES: Thank you, Mr. President. Colleagues, I do want to give credit to Senator DeBoer for helping me with this. I would refer to this amendment as the DeBoer-Hughes amendment. What we have done, we are seeming to get hung up on the time frame, the two years. And I want to make it very, very clear that it is not at the commencement of construction. It is for a livestock operation, the two-year time begins when the animals enter the building or the pen. That's when the two-year time clock starts, that is my intent. What the latest version of LB227, I think this is LB227.03, 04, I have lost count. We do make that, the time clock changes every time one of the changes occurs. So any time there's a change in ownership, the clock starts. Any time there's a change enrollment, reduction in the government programs, the clock starts. The adoption of new technology, the clock starts. So it is not all-encompassing, we're keeping that as more of a separate, treating each of them separately. And I think that goes a long ways towards the conversation about when does the time start, you know, what triggers the time start. And I'm hoping that I'm making that very clear as to when that happens and what this amendment does. And I do appreciate Senator DeBoer's help on this immensely, of trying to make this better legislation. That's what we need to be doing here. Thank you, Mr. President.

SCHEER: Thank you, Senator Hughes. Going to floor discussion, Senator Chambers, you are recognized.

CHAMBERS: Thank you. Mr. President, members of the Legislature, I have a copy of Senator Hughes' amendment that's before us. And I would like him to show me the language that he has discussed, which changes, what is before us now.

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SCHEER: Are you asking Senator Hughes to yield, Senator Chambers? Senator Chambers?

CHAMBERS: Say it again?

SCHEER: Are you asking Senator Hughes to yield?

CHAMBERS: Yes.

SCHEER: Senator Hughes, would you please yield?

HUGHES: Yes, of course.

CHAMBERS: Senator Hughes, I see the language about change of ownership on page 2 in line 17. Is that where your attention is focused? On change of ownership?

HUGHES: My apologies, Senator Chambers, I should have been more clear. The first change occurs on page 2, line 5, after the first word "operation," the comma we have inserted at that point, "including as modified by any subsequent change as provided in this section." That is additional language. The other change that we made is we struck Section 4 of AM1274.

CHAMBERS: Well, let's look at line 17, "A change in ownership." That's when the clock starts, isn't that true? If the small farmer sells it to a big corporation, when that sale is completed, that starts the two-hour clock-- I mean, two-year clock. Isn't that right?

HUGHES: On the ownership portion, yes.

CHAMBERS: And the one who buys it is a corporation, and when the corporation lets two years expire and then begins what it's going to do, show me where a new clock starts.

HUGHES: At the change in any one of those four: line 13, line 17, line 19 and line 4. Any time one of those changes is made, a new clock starts. So if a corporation would buy the land, keep it for two years, they're fine. But if they adapt new technology on that property, then another clock starts.

CHAMBERS: They're just going to build a hog operation; no new technology, not a wind farm. They're just going to build a traditional hog operation. There's no new technology involved there. They have changed also the type of farm operation, which is guaranteed to them in the law.

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They're guaranteed to be allowed to change the operation. So they make the purchase. They let two years elapse, then they start their hog confinement operation, and there's nothing that can be done. They cannot sue because the two years already elapsed. That's the way I read what you told us.

HUGHES: That-- I hesitate to correct you ever, Senator Chambers, but I disagree with your assessment. What I believe-- if you allow me a moment to explain--

CHAMBERS: No, because my time will run out, then you'll probably get a chance to speak.

HUGHES: OK.

CHAMBERS: But here's what I have to say. Members of the Legislature, discount what I say. Follow them and see where it gets you. If I thought that what I'm saying is incorrect, I wouldn't say it. They've got a lot of moving parts in this bill. As one of them I mentioned, change the nature of the farm operation. That's not changed. The two year time--

SCHEER: One minute.

CHAMBERS: --does not start when the cooperation begins to build its hog operation. The specific item that's provided for in this law is a change of ownership. When the ownership changes, the two-year clock begins. And I don't see and I haven't heard from Senator Hughes anything that changes that. He doesn't amend that portion. But I will not-- oh well, my time is up anyway. But I won't prolong it at this instant. Thank you, Mr. President.

SCHEER: Thank you, Senator Chambers. Senator Lathrop, you are recognized.

LATHROP: Thank you, Mr. President and colleagues. I've had a chance to look at the AM1287. It does not get to the concern that I expressed the last time I was on the mike. I also have a concern, and I think this may be the point Senator Chambers made. In the amendment, the two-year clock starts on the happening of any one of three or four different types of events. Right? One of them is a change in the size. What we don't know from this is what that means. Right? So if somebody-- if somebody is raising 25 cows or cattle and they go to 500, is that a change? What if they're raising 25 and go to 30? So listen, if I was a district court judge, and I'm not, but if I was a district court judge and I looked at the statute, I would say: We don't know what a change in size means. Right? What we're concerned with here, I think everybody understands on the floor, because we keep talking about these big confinement facilities and going from, you know, sort of the mom and pop small family farm, right, to a big confinement facility. But that's

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a spectrum in terms of numbers, and where does it become a change? When does it become a change? Does it become a change every time somebody puts in size-- every time somebody adds five cows or five cattle? So that's an issue. It is a significant issue that we start the statute of limitations on these types of causes of action before the problem is evident. So you heard Senator Hilgers earlier talk about this concept of notice in the law. Like if I have a cause of action, I can't do it anticipatory, like those people did with the rendering plant, I got to wait for something bad to happen. Well, my concern with the amendment is that those things can happen without a nuisance being created yet. And if the nuisance doesn't develop or the odors attendant with a hog confinement facility aren't evident for two years, you've never had a chance to, A, recognize the problem; and B, file any type of a claim. I think I'm going to go back to a theme that I have had at the mike. I think this is a-- this is a poor remedy for a problem that I appreciate. I get why you want to do this, I'd help you do it. I think zoning is the right way to do it. We go down in Ag Committee, in Government Committee, or in Urban Affairs, whichever would have jurisdiction, and develop zoning requirements for these type of facilities and impose them on the communities, the counties. And they should be developed in a way where the end result is you don't have a nuisance-- there's no basis for a nuisance claim because we have zoned, properly zoned, and developed zoning regulations that make it impossible or nearly impossible, and we have separated these operations and the problems that are attendant with them from the neighbors. And that's something that can be done with zoning. And then, if we can all agree on what it looks like, then you can't bring an-- then you can't bring one of these suits. But just to say we're not going to let somebody bring them before they even know they have a problem, and it's ruining people's property or their quiet enjoyment.

SCHEER: One minute.

LATHROP: I mean, we're all, we're all like individual liberty, right? This land is mine, I'm going to do what I want with it. That's true. And that's a firmly-held principle of the law. So too is the principle that you can't do something on your property that interferes with my use. And it's not just, even today, it's not just any smell or a couple of flies, it has to be a substantial interference. And the cases that you read that have been decided by the Supreme Court and the court of appeals all talk about basically making someone's residence uninhabitable. And it's not just homes. It can be somebody's investment in a golf course, the state's interest in a state park. These things are real and we need to work through them before this thing should become law. And I'm going to tell you, I think the answer is in a zoning regulation that's thought through, when we bring people in and we don't just try to do this with a sheer number of people who are concerned about what one organization is telling them to do in here, because it's bad policy.

SCHEER: Time, Senator.

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LATHROP: Thank you.

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

ASSISTANT CLERK: Mr. President, I do have a priority motion. First of all, a reminder that the Appropriations and Judiciary Committee will be holding an Executive Session at noon in Room 1510. And then Senator Bostelman would move to recess until 1:30 p.m.

SCHEER: Colleagues, you have heard the motion to recess. All those in favor please say aye. Any opposed say nay. That was too low. We are in recess.

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.

ASSISTANT CLERK: There is a quorum present, Mr. President.

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

ASSISTANT CLERK: Mr. President, one item. The Executive Board, whose Chairperson is Senator Hilgers, to whom was referred LB330, reports the bill back to General File with committee amendments attached. That's all I have.

FOLEY: Thank you, Mr. Clerk. I understand when we broke at the noon recess we were on LB227 with the Agriculture Committee amendment pending and the Hughes amendment, AM1287, pending. In the speaking queue-- in the speaking queue are Senators Crawford, DeBoer, and Arch. Senator Crawford.

CRAWFORD: Thank you, Mr. President. I have been trying to listen to this conversation about LB227 and particularly AM1287 to LB227. I really appreciate the efforts that Senator DeBoer has taken and the openness of Senator Hughes to try to find a good compromise in terms of addressing the concerns that many of us have with this bill, the concern that someone would have a nuisance harm and then not have any recourse, even if they were first in time and because there was some change in that agricultural enterprise that is next-door. So one of my concerns, and so I appreciate the effort to say it could be within two years after any of these changes. One

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of my concerns is that, as some others have noted, the-- you might not have the actual harm occur within two years after that change begins. And actually one farm family that I've heard from said that some of the livestock operations don't really begin to smell enough to be a nuisance until seven years out, so I'm just taking their word for that. I haven't lived next to one myself. But if it is the case that some of these harms may take time to accrue even after the specific change has happened, I think it's important that the statute of limitations would begin at the time that the harm occurred, not at the time that some change that might cause harm later on occurred, specifically if there are cases in agriculture, and according to what I heard from this farm family, this would be one of them, a nuisance concern where the harm doesn't occur until perhaps five or seven years after the specific change occurs. So that still is a concern that I have about the amendment. I appreciate the direction we're going, but I'm not there yet because of that concern I still have about the amendment. Thank you, Mr. President.

FOLEY: Thank you, Senator Crawford. Senator DeBoer.

DeBOER: Thank you, Mr. President. I just want to say first of all that I very much appreciate the work of Senator Hughes and others as we've been trying to find the right way forward with this legislation. I appreciate very much the concerns that have been brought up by Senator Chambers and Senator Lathrop and all the others. I think we're making this bill better. The amendment which Senator Hughes and I worked on, which is what we're talking about now, AM1287, I think is moving in the right direction. I didn't address all the concerns with that amendment, and I hear several additional concerns about the lack of clarity about the word "size" in terms of that change, and when the two-year period is triggered and whether two years is actually long enough to allow the potential nuisances to become apparent as you just heard Senator Crawford saying. The way a typical statute of limitations works is that it doesn't begin to run until the harm has occurred, not when someone begins the action which will later cause that harm. So it's particularly difficult to write in statute when the harm begins in this case, and I think that's some of what we're running up against. We're attempting, I think, in this case to apply a bright line rule to a nuanced problem, so that's very difficult. I don't know if we can address this issue fully. I don't know how we fully balance the two interests, but I have seen everyone in this body wants to work together to try because we value the big and small agriculture and we value landowners' rights and the quiet enjoyment of their property. So I would say at this point this bill isn't perfect, but let's move it forward. Let's see if we can address it, the issues that are still left, before Select. And if we can't fix it then, it might fail then-- it might fail then. But let's take the time between now and then to work on it and see if we can address those issues. This is a difficult piece of statute to write. So with that, I will support this bill at the moment and attempt to work with Senator Hughes and others between now and Select File. I would encourage your green vote on General File to pass this on to Select. Thank you.

FOLEY: Thank you, Senator DeBoer. Senator Arch.

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ARCH: Thank you, Mr. President. I-- I am struck-- I am struck by continually coming to this point, and Senator DeBoer actually mentioned it in her-- in her comments in passing, and that is this balancing that we are always called upon to do here in the Legislature where-- where there are times when we have decided that we will take something here and provide something here. And those are-- those are very difficult decisions that we make for the greater good of the state of Nebraska. And I think we, we face that with this bill obviously. I have-- I have some questions for Senator Hughes if he would be willing to respond.

FOLEY: Senator Hughes, would you yield, please?

HUGHES: Of course.

ARCH: Thank you. As I-- as I read now in AM1287, I just want to make sure that I'm understanding correctly. In Section 3, which would be line 5, that additional language where you said, where it says "including as modified by any subsequent change as provided in this section." My reading of that, and this is just to confirm my understanding correctly, my reading of that is that if any of these (1), (2), (3), (4) that follow here in this Section 3, if any of those event occur, whether it-- whether it's one of those events or four of those events at any period of time following the first event, the clock starts again, the two-year clock starts again. Do I understand that correctly?

HUGHES: That is correct.

ARCH: So you could have a-- you could have a conversion to one type of farm, but then-- but then subsequent to that there could be a change of ownership or size, the clock would start again.

HUGHES: Yes.

ARCH: So that is-- that is how I understood. I just wanted-- I wanted to confirm that.

HUGHES: Yes, that is correct.

ARCH: OK. And then-- and then, of course, this issue of when the clock starts is probably the key issue. Because as I-- as I read this, "the date of such change shall be deemed the established date," line 11 on page 2, "the date of such change shall be deemed the established date of operation for such change." And then, for instance, (1) it says "The conversion." So again, when exactly is that? Is that when the papers are signed? Is that when the sale closes? Is that when-- I mean, those are the types of things that I would hope that if this bill moves forward after -- at

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this point between here and Select, more of that detail could be filled in, clarified so that it's not up to-- it's not up to a judge to, to make that determination. And, and anybody that believes that they have been harmed would have very clear understanding as to what their rights are, as to when that clock starts and what exactly the conversion means, and all of those things. Because I heard, for instance, when we talked about the change, the change shall be deemed established and the conversion from one-- at one point it was-- it was, you know, when the cattle enter the pen. When, when-- you know, well, I say, you know, the bill can certainly be improved, and I'm sure-- I'm sure others would agree the bill can be improved by more clarification on that language. I think it's, again, we're back to the balancing, and I think that it's, it's a difficult call when we're trying-- when we're trying to balance rights of, of, of all the individuals in our state. At this point with the commitment to work on language between here and Select File, I-- I will be supporting moving the bill forward. Thank you.

FOLEY: Thank you, Senator Arch. Senator Hughes.

HUGHES: Thank you, Mr. President. Thank you, Senator Arch, I appreciate those comments. I would like to go back to the bill. I think it is-- to me it's clear of-- and if you look at line 8 when operation com-- "operation commences operation," I think that is very key phrasing in there about when the clock starts. Now-- and we're talking about two different things if you are adapting technology, if you are participating in government program, if you are change of ownership, those dates are pretty clear. But if you are going to do a conversion when you specifically change from row crop to livestock, that-- there's-- we have some confusion there about-- and to me when that commences operation is not when you begin building pens, it is when you, you stock that with the livestock. That is my interpretation. Now if we need to work on that between General and Select to make that more clear, I am-- I am fully committed to doing that. I do want to take just a moment to talk about statewide zoning came up earlier this morning. And I have concerns when we talk about that because I am very passionate about local control. I was reminded over the lunch hour that we tried to do statewide zoning at one point and boy oh boy did we -- I don't think I was here, but we ran into a buzz saw that, you know, the heavy-handed of government, the one-size-fits all top down, just absolutely does not work in Nebraska. So even any mention of that statewide zoning gets-- I know some of you have had some phone calls over the noon hour because that is a very, very touchy subject. And that is certainly not where I'm headed with this bill. You know, local control is very important. There was concerns raised about individuals that get appointed or elected who are making these county decisions. Not everybody I vote for gets elected, but I make sure that my voice is heard. And that's incumbent upon us as voters. And that-- that does not-- just because we're elected officials doesn't mean we have any more or less sway on who gets elected to any position, whether it's our school board or county supervisor or commissioner, you know, and who they would appoint to planning commissions. You know, that's the responsibility we have living in a representative, republic democracy. Senator Morfeld could get the-- get the acronyms in the right place for me.

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But my last point, I am very appreciative of Senator DeBoer and her help getting us this far. I think there are maybe a few things that we do need to tighten up. I appreciate Senator Crawford's comments that, you know, we can tighten it up a little bit and make it very clear what our intent is because we do want to protect all the citizens of the state of Nebraska. Everybody who's made an investment in the country, you know, if it's a homeowner who's got one acre, ten acres out there, you know, their three acres of heaven, you know, they need to be protected. But also we need to protect the farmers who have made significant investments as well who are out there as part of their living to generate income, you know, to pay the taxes to-- you know, so we can have, you know, good roads and good schools and all of those things. So this has been a very--

FOLEY: One minute.

HUGHES: --interesting process. And I appreciate everybody who's talked in favor and opposition to try and make this a better bill. You know, that's-- that's our goal here is to make the best possible legislation we can. That's why we have three rounds of debate. We've made a lot of progress here. Are we done? I don't know, but we will certainly take a look at it between General and Select and try and tighten up those things. And I'm certainly willing to work with anybody who's willing to work with me. Thank you, Mr. President.

FOLEY: Thank you, Senator Hughes. Senator Hilgers.

HILGERS: Thank you, Mr. President. Good afternoon, colleagues. I rise again in support of LB227. I don't intend to use all my time. I just want to make two points. The first is since we're nearing the end of this particular debate, I just wanted to restate my support and why I support this particular bill. And that is when we start we are-- the question before us is not whether we should ever have immunity from this type of nuisance suit. The question is whether or not we should expand the current protections that are already in law. And as I discussed before, I think Senator Hughes has detailed the need to have some expansion, some accommodation for modern techniques and advancement in agriculture. And secondly, I think Senator Hughes has done a very good job to try to accommodate the private property rights and to ensure that those other landowners have the ability to go to the courthouse and to be able to defend their rights or assert their rights. Point two, though, sort of dovetails off the first one which is if you think-- and I think it's been a great debate-- if you think that the law should not change at all, period, full stop, then vote-- don't vote for cloture. But if you think that this is a concept that you see the need, you see where, where we can help improve and provide some protections for agricultural enterprises in the state of Nebraska and maybe you've got some concern exactly where we draw the line on the-- on the immunity and the expansion of the immunity protections, then I'd ask you to vote for cloture and continue to work with Senator Hughes. Senator Hughes has worked with myself, he's worked with Senator DeBoer, with a number of others to try to draft amendments to try to

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accommodate these concerns as best as he can. And I'm certain that he'll continue to work past General to Select File to try to continue to refine it and try to reach as much consensus as we possibly can. So with that, I do rise in support of LB227 and all the amendments. I do intend to vote for cloture. I'd urge you to do the same. And I would yield the rest of my time to Senator Wayne.

FOLEY: Thank you, Senator Hilgers. Senator Wayne, three minutes.

WAYNE: Thank you, Mr. President, and thank you, Senator Hilgers. This is a bill that I've been listening to the debate on, going back and forth. I do think there's been some progress. I would like to see one more round; and if some things aren't worked out, I won't be supporting the second round or the second round of filibuster. But I do think there are some, some things that are-- need to be worked on, and I'll give you an example. I would like to see more of a statute of limitation where we see in the professional, negligent side of things where it's instead of the "commencement," I don't like that word, I'd rather like to see somewhere around "should have known or known or reasonably would have known." So the scenario that I heard on the floor a couple times regarding if someone started to build something and they put their slab down and decided to run a year, is that the commencement of starting a new operation, is it not? But I think if we use some terms that are already defined judicially, which is "should have known or reasonably should have known," especially around like medical malpractice, professional malpractice, different things around that category, it puts the onus on that individual. If they reasonably would have known that a new operation was starting and the potential effects of it, that's when the clock starts for like a two year. I just think that's reasonable. I think it gives some cloture [SIC] to people who are making an investment. But I'm still listening to this debate. I don't have the years of experience in farming and dealing with these issues as some of our colleagues, and even those who have been on the floor arguing these issues like Senator Chambers. So I'm still listening and trying to figure out maybe what the best plan is forward. But for round one on a filibuster, you-- you will have my support. And if we can't get anywhere farther where I feel comfortable, then I think I won't be there next time around. So with that, I'll yield the rest of my time back to the Chair.

FOLEY: Thank you, Senator Wayne. Senator Cavanaugh.

CAVANAUGH: Thank you, Mr. President. Thank you to Senator Hughes and Senator DeBoer for working so diligently on this bill. I still have concerns about-- kind of what Senator Crawford had previously stated. And I know I only have a few minutes to make a decision as to whether I'm going to vote for cloture or not. But I just wanted to say on the record that I very much appreciate the hard work that's gone into trying to make this bill better. And I hope we can get to a place where we all are in agreement as to what's best for the citizens of Nebraska and the

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farming community. It's very important that we are thoughtful in this. And I just am grateful to Senator Hughes' willingness to work on this. Thank you.

FOLEY: Thank you, Senator Cavanaugh. Senator Lathrop.

LATHROP: Thank you, Mr. President, and good afternoon, colleagues. I'm wondering if Senator Hughes would yield to some questions.

FOLEY: Senator Hughes, would you yield to some questions?

HUGHES: Of course.

LATHROP: Senator Hughes, I have Section 3, the amendment Section 3 in front of me. I'd like to go through the changes that-- that are enumerated beginning with the conversion from one type of farm operation to a different type of farm operation. Can you tell us what you contemplate with that?

HUGHES: What line are you on, Senator Lathrop?

LATHROP: This would be page 2, line 13. So one of the-- one of the things that would start the two-year clock is a change or a conversion from one type of farm operation to the next. So if I have primarily I'm growing corn, row crops, and I have cattle that feed in the corn in the winter and maybe I have some in a pen and I continue some row crops, but I grow the number of cattle on my property. Is that a conversion?

HUGHES: It, it depends on the local zoning laws. If you meet a certain threshold, then you do have to have permits. And this, I'm speaking specifically of livestock numbers. That if you-- if-- I mean, anybody can have livestock on their-- on their farm or their acreage unless it's not zoned for that. Once you begin-- reach a threshold that is set by the local governance, then that's when changes and that's what I would look to in this to--

LATHROP: What if I'm grow--

HUGHES: --constitute a conversion.

LATHROP: What if I'm raising cattle and I decide to stop doing that and now I'm going to raise elk?

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HUGHES: I think there are-- there are animal units is what the law has in place. So, you know, there are so many chickens that equal a animal unit. I think one cow is equal to an animal unit. I don't know if they have elk in there, but I would assume it's pretty similar to a cow.

LATHROP: Do elk have certain diseases that are communicable to cattle?

HUGHES: Yes, I believe they do.

LATHROP: And they can't vaccinate against those-- some of those diseases, can they?

HUGHES: You're getting out of my area of expertise, but I'm sure someone from the Department of Agriculture in the state of Nebraska could--

LATHROP: OK.

HUGHES: --give us that answer.

LATHROP: I want to go back to something maybe a little more-- if, if-- go back to my hypothetical-- somebody-- somebody has row crops and they have cattle. At what point does raising more cattle become a conversion?

HUGHES: I would--

LATHROP: When they stop raising corn or when they get more cattle?

HUGHES: And that's probably one of the things that we need to look at between General and Select--

LATHROP: OK.

HUGHES: --to kind of tighten that down looking at the changes and taking a look at the local zoning laws and see when they make the changes for the setbacks may be somewhat of a guideline for us.

LATHROP: OK. How about a change in ownership? How's the guy in-- how's somebody going to know when there's been a change in ownership of a parcel of property? Let's say right now it's

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owned by some rich doctor or lawyer from Omaha, and he's just sold it to a different rich doctor from Omaha and how is the guy in town or the neighbor going to know there's been a change in ownership?

HUGHES: I think there's a requirement--

FOLEY: One minute.

HUGHES: --those changes are printed in the local newspaper. And as a rural resident, we look at those to see whose-- what land is being changed.

LATHROP: How about the change in the size of the farm operation? This one, I will tell you, causes me the greatest heartburn because is it when you go from 25 cattle to 26? 25 to 30? 25 to 50? 25 to 100? When do we have, as you contemplate in-- on line 17, a change in the farm operation?

HUGHES: And, and I appreciate you bringing that up. That was one of the things I had forgot to mention. In some of the other states who have adopted legislation like this, it is a sliding scale. If my conversations over the lunch hour, if I remember them, that once there's a 25 percent change, one of the states that's what they had was that constituted a significant change at that point.

FOLEY: That's time, Senators.

HUGHES: And we can write it as we want.

FOLEY: That's time, Senator. Thank you, Senator Lathrop and Senator Hughes. Senator Chambers, you're recognized.

CHAMBERS: Thank you. Mr. President, members of the Legislature, I've been around this Legislature too long to be tricked and suckered in this fashion. Senator Hughes is not writing this bill. Senator DeBoer is not writing it. There are big interests who want this bill, and they will continue having a moving target. And every time issues are raised, well, this time we're giving you the solution. Then Senator Briese in good faith may get up and obfuscate and make it sound like he's saying something when he's not. I'm sticking to the language of the bill. Senator Hughes mentioned something about a percentage increase in whatever you're doing. If I've got four cattle and I get rid of one, that's a change even though it reduces. But if I get another one or two, then that takes me over the 25 percent and I've got a change. My neighbor may not notice that, two more cattle. But that change starts the two-year running. All I've changed is the size, but I've

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changed it. I haven't changed ownership. And after these two years, then I open the floodgates and you just were not attentive. They got so many ways they will trick people. These senators mean well, but in the rackets they call it being a shill, a shill. That's what we're dealing with. We're dealing with shills. That's what you see, but the real actors stay out of sight. Their real motivations are not made clear. And I don't believe that everybody on this floor, as old as some of you all are even though you're not as old as I am, are not as naive and dumb as you're pretending to be. I appreciate what Senator DeBoer tried to do, but that change did not change anything. Some of us are looking at the ones who will be harmed by what these big operations want to do. I can't tell you how many calls I've gotten, and I've even been stopped in the hallways here, about how the changes they're talking about are not going to apply to ordinary farmers. Ordinary farmers don't need all of this, but the big ones do. Somebody wrote me a letter about how Costco handled things and how the county board or the-- whatever they called it, did not do anything in the way of what they ought to do. And it's easy when you're in a political environment dealing with a political process to let the people who have been elected know where the power is. Anybody who is-- susceptible to that would rather have the Governor on their side than the Governor against them, because money talks. When these big corporations want something in a little state like this where the legislators are either not bright or they have no integrity, this is the way they do it. They give you something that has an appearance, but the reality is not there. It's like sets on a Hollywood sound stage. You open the front door and you step out into the backyard. All you see is the facade. I ought to just let you mess over your people like you're trying to do, and I ought to delight in it because these rural people often are very narrow-minded, very racist. And black people are calling me now from places like Grand Island and Kearney where they are few in number, but they're harassed by neighbors. They can't get the sheriff to do anything.

FOLEY: One minute.

CHAMBERS: Their children, if they have them, are hounded and harassed and bullied, and they've got no recourse, so they call me thinking that I can do something. So don't tell me if you were thinking about trying to tell me how welcoming and friendly these areas are to black people. It would be perhaps divine vengeance to let these big corporations come on in here and kick all these little farmers out. Then when people come here to the Legislature, they don't have to pretend and lie to their colleagues. Now I'm not saying everybody is lying, but there are people who are not telling the truth. And it is so obviously not true that in a court of law a judge would say based on your experience and your knowledge the court cannot accept that you believe what you're saying is actually true and that it accords with the facts. And that's what I'm listening to around here.

FOLEY: That's time, Senator.

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CHAMBERS: And some people will find an excuse to give a vote, but it's going to--

FOLEY: It's time.

CHAMBERS: --play them false before the session's over. Did you say one minute?

FOLEY: That's time, Senator.

CHAMBERS: I'm sorry. Thank you, Mr. President.

FOLEY: Thank you, Senator Chambers. Senator Hughes. Excuse me, Senator Lathrop.

LATHROP: You called on me?

FOLEY: Yes, Senator Lathrop.

LATHROP: OK. Pardon me. Thank you, Mr. President. Will Senator Hughes yield to a few more questions?

FOLEY: Senator Hughes, will you yield, please?

LATHROP: While he's going to the mike, I just want to comment on the debate. Like I have to tell you I've been a little disappointed since I returned to this place. And with the debate, much of it seems to be coming from places other than people's independent judgment. This feels a little bit different. I want to compliment the body on a debate that's not personal, and it's not off on obfuscation and some of the things that I've seen; and I just want to compliment the level of debate on this issue regardless of how the vote in a few minutes turns out. Senator Hughes, will you yield to a question?

FOLEY: Senator Hughes, will you yield, please?

HUGHES: Of course.

LATHROP: Senator Hughes, I want to go back to the amendment before us and that list of changes in operation that are enumerated on page 2. And before I ran out of time, we were talking about size of the farm, and I expressed that that may be my biggest concern. At what

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point is there a change in the size of the farm that is of significant consequence that it would trigger the starting of the new two years? Or what's your thought on that and what did you hope would be?

HUGHES: Well, you know, this is part of the things that I appreciate the back and forth of fleshing out your concerns. And if there's a way that we can bring this tighter, I'm all in favor of doing that between General and Select. As I mentioned, there are other states, I think there are other states that have passed legislation like this. And I do know in some of those they do have definitions that can be applied in this-- in this instance to that size category and, you know, would certainly be looking at those. I would be more than happy to work with you to lock it down or make it--

LATHROP: OK.

HUGHES: Get to a-- get to a place where you're comfortable with the change in size.

LATHROP: I'm just going to make this observation. If I had five barns, each one of them had 5,000 pigs in it, I own-- it's a big farm. It's a really big farm. [LAUGHTER] And now I'm going to put up another barn on the other side of my farm that's near Lathrop's house. It's not going to be a 25 percent increase. Is that a substantial change in size when I add one barn to my five barns and-- but this barn happens to be closer and now I got an issue because, you know, I'm downwind from it now? The other ones were far enough away it didn't really cause me concern. But is that a change sufficient to start another two years? Or because it's less than a 25 percent increase in my head count, is it not?

HUGHES: The 25 percent that I threw out was just an example that I think came from Minnesota. We can-- we can put in whatever-- if we're going to use percentage, we can put in whatever percentage that we want or make the definitions that we want. As far as putting another barn across the other side of, you know, a ways away from your original five, we still have the backstop of the zoning regulations that have to be met. You know, I think there-- and the-- my recollection of--

FOLEY: One minute.

HUGHES: --the number of livestock or number of animal units, that is a total for the farm. It's not I've got five barns here and I put one more over here that makes me a lesser-- makes it a lesser threshold that I have to meet. It is you count them all together if it's under the same ownership.

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LATHROP: OK. I want to move on to the last one: adoption of new technology. I'm curious about this because there's always changes in technology for people on-- in agriculture. What do you mean by this? Is this the difference between raising pigs in a pen and raising pigs in a barn? What are we-- what kind of technology changes are we talking about?

HUGHES: There's, there's any type of technology. You know, the use of drones is new technology that's coming into play now that I can fly over the top of my fields and take infrared--

LATHROP: OK. I don't have a whole lot of time.

HUGHES: Sure.

LATHROP: I'm just going to suggest that if you-- if you buy a drone and you start the two years all over again, you might be-- you might be doing--

FOLEY: That's time, Senator.

LATHROP: --something to yourself with this bill you didn't mean to.

FOLEY: That's time, Senators. Thank you, Senator Lathrop and Senator Hughes. (Visitors introduced.) Mr. Clerk, you have a motion at the desk.

ASSISTANT CLERK: Mr. President, priority motion: Senator Hughes would move to invoke cloture on LB227, pursuant to Rule 7, Section 10.

FOLEY: It's the ruling of the Chair that there has been a full and fair debate afforded to LB227. Senator Hughes, for what purpose do you rise?

HUGHES: Thank you, Mr. President. I'd like a call of the house and a roll call vote in regular order, please.

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

ASSISTANT CLERK: 28 ayes, 4 nays to go under call.

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FOLEY: The house is under call. All members please return to your desk and check in. The house is under call. Senator Vargas, check in, please. Senator Wayne, check in, please. All unexcused members are now present. The immediate question before the body is whether or not to invoke cloture. A roll call vote has been requested. Mr. Clerk, please call the roll.

ASSISTANT CLERK: (Roll call vote taken.) The vote is 34 ayes, 11 nays, Mr. President, on the motion to invoke cloture.

FOLEY: The cloture motion has been adopted which takes us now to consideration of AM1287. Those in favor of the amendment vote aye; those opposed vote nay. Record vote has been requested. Have you all voted who care to? Record, please.

ASSISTANT CLERK: (Record vote read.) Vote is 36 ayes, 2 nays, Mr. President.

FOLEY: AM1287 is adopted. Next vote is consideration of the Agriculture Committee amendment, AM746. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

ASSISTANT CLERK: 33 ayes, 4 nays, Mr. President, on the adoption of committee amendments.

FOLEY: The committee amendment is adopted. Next vote is the advance of the bill, LB227, to E&R Initial. Those in favor vote aye; those opposed vote nay. A roll call vote has been requested. Mr. Clerk, please call the roll.

ASSISTANT CLERK: (Roll call vote taken.) Vote is 31 ayes, 7 nays, Mr. President, on the motion to advance the bill.

FOLEY: LB227 advances. I raise the call. Items for the record, please.

ASSISTANT CLERK: Mr. President, your Committee on Enrollment and Review reports LB177, LB252 and LB304 all to Select File, some with E&R amendments. That's all I have at this time.

FOLEY: Thank you, Mr. Clerk. We'll move to General File 2019 senator priority bills, LB616. Mr. Clerk.

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ASSISTANT CLERK: Mr. President, LB616 introduced by Senator Hilgers. (Read title.) This bill was introduced on January 23, referred to the Transportation and Telecommunications Committee. That committee placed the bill on General File with committee amendments attached.

FOLEY: Thank you, Mr. Clerk. Senator Hilgers, you're recognized to open on LB616.

HILGERS: Thank you, Mr. President.

FOLEY: Excuse me, Senator. Members, please come to order. Senator Hilgers, please proceed.

HILGERS: Thank you, Mr. President. Good afternoon, colleagues. LB616 is an extension of some of the work that we've done in the Transportation community-- Committee to find win-win-wins when it comes to building out our infrastructure in the state of Nebraska. I was pleased last year to introduce LB271 that was prioritized by Senator Geist that would help speed up the construction of roads, major highway construction projects here in Nebraska through a process called NEPA Assignment would be a win-win-win in a sense that it would help speed up road construction and save up to \$20 million per year for taxpayers. LB616 is another bill that's intended to sort of move along this type of effort where we're getting good product for the citizens of the state of Nebraska for less cost. I really want to speak-- there's a committee amendment here which replaces the bill so I'll speak briefly to that-- I know-- although I know Senator Friesen here in a minute will be introducing on the committee amendment. Essentially this bill-- what this would do, the bottom line is will help save approximately \$7 million in interest costs to the state of Nebraska, in particular as it relates to the construction of the South Beltway. Those of you in Lincoln and probably most of you here have heard of the announcement earlier this year by the administration that the South Beltway, the long-awaited South Beltway here in Lincoln will finally be constructed starting in 2020. And that importantly what was going to be an eight-year project will now be roughly a three-year project. So this, this South Beltway has been talked about for decades here in the city. And because it's a new road, the value of the beltway only comes about when it's complete. So it would take eight to nine years after we first move dirt to have the highway complete or the road complete. At that point, we finally get the economic benefit, the benefit of that particular road. Through this-- through this building mechanism, the South Beltway will be built in three years versus eight, not only accelerating the economic impact for the city of Lincoln and the state of Nebraska but also saving tens of millions of dollars in construction inflation costs over the life of the project. That mechanism this-- it's going to be a three-year build-out, paid out over eight years. There's a statute, what LB616 would do is ensure that the current statute that we have in place that mandates certain interest costs is reformed slightly to accommodate this unique build-out structure. Currently the statute says that if the contractor isn't paid within a certain amount of

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time, that a certain percent interest rate percentage would accrue. This-- the South Beltway project would be over a year-to-year contract. The payments will be built in over a different period of time than we would normally expect under a typical project. But because the statute didn't anticipate this type of build-out, it doesn't really fit neatly. So if we didn't make the change, the state of Nebraska might have to pay up to \$7 million in interest costs. And so what AM422, which becomes the bill, would do is it would simply modify that statute to account for these types of projects, saving around \$7 million. So I-- it's a very simple bill. It's very straightforward. I want to thank Senator Friesen and all the members of the Transportation Committee for their work on this. It did come out 8-0. We had significant amount of support at the hearing from groups such as the Lincoln Chamber, 4 Lanes Nebraska, AGC, NDOT, and others, and there was no opposition. So it's a simple bill. I would appreciate your green light on LB616. Of course, I'm happy to take any questions. And I would encourage your advancement to Select File. Thank you, Mr. President.

FOLEY: Thank you, Senator Hilgers. (Visitors introduced.) As the Clerk indicated, there are amendments from the Transportation Committee. Senator Friesen, as Chair of the committee, you're recognized to open on the committee amendments.

FRIESEN: Thank you, Mr. President and members of the Legislature. The committee amendment strikes all provisions of the bill and substitutes a provision that amends current Section 39-1349. This new language would exempt highway construction projects with a payment schedule that exceeds the time beyond completion of the construction from being required to pay contractor interest. Senator Hilgers suggested this language, and I urge your adoption of this amendment. Thank you, Mr. President.

FOLEY: Thank you, Senator Friesen. Debate is now open on LB616 and the pending committee amendment. Senator Chambers.

CHAMBERS: Thank you. Mr. President, members of the Legislature, it goes without saying that I'm chafing from that last vote. There were easily enough votes for cloture, but they wouldn't have had the vote successful if those who didn't vote on advancing it had not voted on cloture. Some of these people have been played, and they're going to find out as time goes on. So I'm going to get back into my mode, which I was not in, because Senator Hughes was entitled to get something done on that bill. It was a serious bill. I disagreed with it, but I'm not going to go through all that. I will not be able to get everything done this time around, so I'm going to put my light on because I'm going to probably need the full five minutes. I intend to give you all a Bible lesson today. I talked about it yesterday. I told you about the real god having people at a contest, and the people who believed in the false god and were at the contest were mocked because the people who had the false god prayed, they jumped around, they cut themselves. Everything they

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did was as futile as the efforts I put forth on this floor to get things done for the people who have no voice, who are marginalized, who are considered the unpeople, the nonpeople. Those who have no power are held in contempt. They are derided and they are slammed and shown how much they do not count for when a bill comes up like the one you had the other day to provide assistance for those people who suffered a flood. Suffering is suffering is suffering. The closer people are to you, the more concern you have about them and the more willing you are to help them. The less people look like you or the farther away from what you think, the less regard you have for them. You do not even respect their fundamental human dignity. You have no concept of all people who are human, and every person should be human. Then why would I be redundant and say all people who are human? You know that all humans are people, but you don't believe that all people are human. If you believe that all people were human, we wouldn't have classifications. We wouldn't have categories. We would not have in the state law and the federal law what are called protected classes. We would just have laws that deal with people, laws that pertain to maybe those of a certain age, those of a certain practice or employment, but not people as people. When because of somebody's religious belief that eases them outside the pale. Somebody who has a sexual identity or different concepts about what proper or appropriate or acceptable sex may be, they're moved outside. If it's somebody black like me, definitely I'm outside, but I say like the kids and when I wore a younger man's clothes, I'm black and I'm proud. Were I blacker, I could be prouder. You cannot offend me by saying black as some of these racist Christians who have written to me and called my office because of what I said about the flag being a rag. And I give my rationale. I don't apologize. I'm not going to change. And all I have to do is give an example of things you all know. When those black children were demonstrating to try to get the right to go to school--

FOLEY: One minute.

CHAMBERS: --or to just sit down and eat a hamburger, they brought out police dogs and fire hoses and set those hoses and dogs on these children, and they wore United States flags on their uniforms. When Rosa Parks was taken off the bus because she wouldn't get out of the seat, the cops who took her had flag uniforms, and the ones who prosecuted her and stood in the courtroom wore flags, and there was a flag in that courtroom. And Ms. Parks had gone along with the program. The sign that said colored behind which she needed to go to sit, that's what she did. But then when these white people got on and their section was full, they moved that sign back farther. And she had to move back farther. And she didn't say this, but I imagine it went through her mind. I played by your rules. I demeaned myself once. You're not going to demean me again. I'm going to sit where you sit. I have to sit, and now that I'm playing by your rule, I'm not going to move. That's why she was taken off the bus.

FOLEY: Senator Chambers, that's time, but you're next in the queue. You may continue.

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CHAMBERS: Thank you. She did not sit down in the so-called white section. But if we contaminate a seat, why would some pure master race white person want to sit where she had been sitting? That's the insanity that we as black people have to look at and not just look at, but we have to live with it. Now I'm going to give you all that Bible lesson about the different gods. Remember how I mocked your God? Asked where's your God? Where's your Jesus? You want God to do these things, you have somebody praying up there to him every morning, and he doesn't hear you. And I told you I got that from the way the right God's prophet talked about the people calling on their false god. This is from First King--in case I need a little more time--First King, the 18th Chapter: And it came to pass, the Bible speaks in quaint language. And it came to pass when Ahab saw Elijah, that Ahab said unto him, art thou he that troubleth Israel? And he answered: I have not troubled Israel but thou and thy father's house, and that ye have forsaken the commandments of the Lord and thou has followed Baal. Now, therefore, send and gather to me all Israel unto Mount Carmel, and the prophets of Baal 450 and the prophets of the groves 400, which eat at Jezebel's table. And there were a lot of people who would be called Christians today who were at Jezebel's table, by the way. They wore disguises, but they were there. Just like the man who owns-- is it the New England Patriots? Was he the guy who was in one of those Jezebel locations, one of the fine people of this society who supported Donald Trump? So Ahab sent unto all the children of Israel and gathered the prophets together unto Mount Carmel. And Elijah claimed unto all the people and said, How long halt you between two opinions? If the Lord be God, follow him. But if Baal, then follow him. And the people answered him not a word. As you all answer me not a word. Then said Elijah unto the people, I, even I only, remain a prophet of the Lord; but Baal's prophets are 450 men. Let them therefore give us two bullocks and let them choose one bullock for themselves, and cut it in pieces, and lay it on the wood, and put no fire under: and I will dress the other bullock, and lay it on the wood, and put no fire under: And call ye on the name of your gods, and I will call on the name of the Lord: and the God that answereth by fire, let him be God. And all the people answered and said, It is well spoken. And Elijah said unto the prophets of Baal, Choose you one bullock for yourselves, and dress it first; for ye are many; and call on the name of your gods, but put no fire under. And they took the bullock which was given them, and they dressed it, and called on the name of Baal from morning even until noon, saying, O Baal, hear us. But there was no voice, nor any that answered. And they leaped upon the altar which was made. And it came to pass at noon, that Elijah mocked them, and said, Cry aloud: for he is a god; either he is talking, or he is pursuing, or he is in a journey, or peradventure he sleepeth, and must be awakened. Isn't that what I told you about you-all's God? Call him. Call him when I talk about him, when I chastise you so-called Christians. Is he asleep? Is he visiting? Is he on a vacation? I got that right here from the Bible when the good god's prophet was mocking another god.

FOLEY: One minute.

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CHAMBERS: And that god did just like you-all's god that you pray to every morning who never answers you. Because you draw near to him with your lips, but your heart is far from him. That's a quote from your "Bible," too, and your Jesus said it. And they cried aloud, and cut themselves after their manner with knives and lancets, till the blood gushed out upon them. And it came to pass, when midday was past, and they prophesied until the time of the offering of the evening sacrifice, that there was neither voice, nor any answer, nor any that regarded. Just as happens when you all give your prayers here-- no voice, no answer, none regard, because I watch you on television, and I know what the outcome is going to be. Somebody said, if you keep doing the same thing over and over and expect to get a different result, that's the definition of-- definition of insanity. You all pray every morning.

FOLEY: That's time, Senator.

CHAMBERS: The same prayer. Thank you, Mr. President.

FOLEY: Thank you, Senator Chambers. Senator Cavanaugh.

CAVANAUGH: Thank you, Mr. President. It's time for our PSA. This month is Sexual Assault Awareness Month, and I mentioned previously that I will be standing up to shine light on this very important issue. This is according to RAINN, which is an organization that advocates for victims of sexual assault. Male college students are at risk. Males ages 18-24 who are college students are approximately five times more likely than nonstudents of the same age to be victims of rape or sexual assault. College-age women are at risk-- at a high risk of sexual violence. They are-- college-age women are four times more likely than noncollege women to experience sexual violence. I do think that it's great that we have the students here today working in social work. I think this actually probably pertains to a lot of the work they'll be doing in their professional lives and victims that they'll be working with. And they also are getting an education in the history of the Legislature from watching Senator Chambers at work. Thank you, Mr. President.

FOLEY: Thank you, Senator Cavanaugh. Senator Chambers, you're recognized, your third opportunity.

CHAMBERS: Thank you, Mr. President. Continuing: And Elijah said unto all the people, Now, brothers and sisters, friends, enemies, and neutrals, this is where you all come in. This is what you all ought to get by way of a result because Elijah believes in the same god you all profess to believe in. He prayed to the one you all pray to every morning. But he got results and you all don't. That ought to tell you something, but let me not get ahead of the story. And Elijah repaired the altar of the Lord that was broken down. And Elijah took 12 stones, according to the number of the tribes of the sons of Jacob, unto whom the Lord-- the word of the Lord came, saying,

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Israel shall be thy name. And with the stones he built an altar in the name of the Lord: and he made a trench about the altar, as great as would contain two measures of seed. And he put the wood in order, and he cut the bullock in pieces, and laid him on the wood, and said, Fill four barrels with water, and pour it on the burnt sacrifice, and on the wood. And he said, Do it the second time. And they did it the second time. And he said, Do it the third time. And they did it the third time. And the water ran round about the altar; and he filled the trench also with water. And it came to pass at the time of the offering of the evening sacrifice, that Elijah the prophet came near, and said, Lord God of Abraham, Isaac, and of Israel, let it be known this day that thou art God in Israel, and I am thy servant, and that I have done all these things at thy word. Hear me, O Lord, hear me, that this people may know that thou art the Lord God, and that thou art hast turned their heart back again. Then the fire of the Lord fell, and consumed the burnt sacrifice, and the wood, and the stones, and the dust, and licked up the water that was in the trench. And when all the people saw it, they fell on their faces: and they said, the Lord, he is the God; the Lord, he is the God. And Elijah said unto them, Take the prophets of Baal; let not one of them escape. And they took them: and Elijah brought them down to the brook of Kishon, and slew them there. After all this praying, he took them all and killed every one of them. That's how your religion works and your flag. You talk about liberty and justice for all, not for all black people, not for members of the LGBTQ community, not for those workers who cannot get a decent minimum wage, not to those former convicts who cannot make use of food stamps even though they're hungry and you ought to feed all the hungry, none of those. But you pray every morning, but the fire does not come. You all should pray to God to burn me. [CHOKING NOISES] Fooled you, didn't I? You thought your prayers were answered, didn't you? You thought that your God was going to do like Elijah's God, didn't you? Well, this is a story, brothers and sisters. This is a fable. This is a children's tale. It's not believed by anybody. It's not believed by those who wrote it. It's not believed by those who translated it. It's not believed by you who mouth those words and you say your prayers, and they go no higher than the ceiling of this room. Oh, "holy Foley" knows what I'm talking about. He goes to church every day and then does things on this floor that ought not be done. Stop praying and I'll stop talking like this. You invite this by the way you conduct yourself.

FOLEY: One minute.

CHAMBERS: I always tell people that if there's to be an interaction between me and somebody else, they determine the nature of it. Nobody can treat me better than I'll treat them. Nobody can be more fair to me than I'll be to them. But if they walk on me or try to walk on me, then they'll get something that maybe they didn't bargain for. So I'm your even change. You can win a vote here. You can win a vote there. But the ones I'm really concerned about I'll be hounding you about them all session: the least, the last, and the lost. And some of you are going to be punished by each other. You give them a vote, and then they're not going give you a vote when you need it. That's the game you play. Not only do you lose the issue, you lose a part of yourself. It's going to

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be stripped away little by little, and your self-respect is going to be squeezed away drop by drop, and you'll die the death of a thousand cuts. Thank you, Mr. President.

FOLEY: Thank you, Senator Chambers. Senator Friesen, you're recognized to close on AM442 committee amendment. Is Senator Friesen on the floor? Senator Hilgers, are you authorized to speak to the committee amendment?

HILGERS: Yes, I am.

FOLEY: Would you like to close on the committee amendment, please?

HILGERS: I waive closing.

FOLEY: Waives close. The question before the body is the adoption of AM442 Transportation Committee amendment. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

ASSISTANT CLERK: 35 ayes, 0 nays on the adoption of committee amendments.

FOLEY: AM442 committee amendment has been adopted. Mr. Clerk.

ASSISTANT CLERK: Senator Hilgers, you had filed AM203, but I have a note to withdraw.

HILGERS: That's right.

FOLEY: The amendment is withdrawn. Is there any further discussion on LB616 as amended? Senator Chambers.

CHAMBERS: Thank you, Mr. President. Members of the Legislature, you see this book? It says on the cover, Holy Bible. You're supposed to conclude therefore what is in it is holy. You all think of me, and I think Senator Groene labeled me the son of perdition. Well, the son of perdition can hold it and I'm not struck my lightning. And as Popeye said, I am what I am and that's all that I am. But you all defame it. You profane it. You blaspheme. You claim to believe it. Why do you care what I say about it? If I were to tear it up, which I won't do because it's not mine, why would you be offended at that? If I rip up that fabric, why should it make any difference to you? Who in here who has two brain cells working and is aware of what Trump is doing and his "henchpersons" and this latest person that he put in who is known to be a white

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nationalist and they hate black people. That is their hallmark. You want me, who am black and have been black all my life, to worship that thing that you call a flag. Is everybody participating in liberty and justice? Isn't that what one of your magical incantations says-- with liberty and justice for all? The slaveholder might be included in that all who enjoys liberty and justice, but what about the person who is held in slavery, reduced to the Kingdom of Thingdom? Is that person going to sing those words the way you sing them-- with liberty and justice for all? If he or she did, wouldn't it be a lie? You want them to sing a lie. When children are compelled or pressured to say those words in school, you pressure them to say a lie. They know their parents are not free. They have been in the car when a white cop will stop and embarrass and humiliate their father. He cannot even speak in defense of his children because he runs a good chance of being shot. It happens so much that's what you all have a way of calling the new normal. For a cop to shoot an unarmed black person is the new normal. I saw going across the screen this morning on ABC national news a statement that a cop was going to have to face trial because he shot to death an unarmed black woman who was approaching his cruiser. What do they tell you? If you see something wrong, tell it. Who are you going to tell it to? I'm going to go tell it to the cop. I'm a woman, I'm unarmed, I'm approaching and he shoots me dead. And white people say, ho-hum; and because Chambers talks about it, he's the one who creates racism. You are out of your mind if you think I'm going to bite my tongue, I'm going to hold my tongue, I'm going to deny the reality that we as black people and poor people and LGBTQ people to a lesser extent, and for a different reason. I'm going to be aware of those things and not say something about it in this place where we took an oath. You all did. I gave an affirmation. I don't believe in oaths. You know what this "Bible" says that you all put you-all's hands on when you go to court and put your hand on it and say you swear to tell the truth, the whole truth, and everything but the truth, I mean, the whole truth and nothing but the truth, but you're going to tell everything. You lie when you say that. But this is-- in this "Bible," the Jesus you say you worship says, swear not at all. Let your words be yea or nay.

FOLEY: One minute.

CHAMBERS: Anything more than that comes up evil. Don't swear by heaven. It's God's throne. Don't swear by earth. It's his footstool. Don't swear by Jerusalem. It's the city of the King. In other words, he's telling you don't swear, oh, and don't swear by your head because you can't make one hair white or black. Now what do you think of that? Thank you, Mr. President.

FOLEY: Thank you, Senator Chambers. You're recognized for your second opportunity.

CHAMBERS: Thank you. I'm going to paraphrase, not paraphrase, Senator Lowe. I'm addressing this to Senator Lowe because he's making eye contact. I'm going to paraphrase, Senator Lowe, something in the "Bible." Were I not to speak like them, these books would

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stand up and speak. But the one who said that was talking about stones and said the stones will speak. There is much in the "Bible" that is interesting. Mark Twain called it a very interesting book, full of fables, some history, a lot of sex, two or three hundred lies. That's what it is-- just words put on paper by men. You all don't know that this book was not written in English. The people who came up with these original words, they didn't speak English. And as quiet as it's kept, when they have cartoons about little critters, little ants, and roaches and whatnot, they don't really speak English, but in the movies they do. The monsters understand English. Everybody understands English. Such self-centeredness and boasting about freedom, justice, and equality and is one of the most racist places you'll find on the face of this earth. You all know it, and I know it. You all want to talk about freedom of speech until somebody exercises that freedom of speech. I'm told that all these white people who fought in the wars fought so that I'm free. No, there were black people like me. I wasn't old enough to fight in the war, the Second World War and First World War. That's something about white people. They didn't get it right the first time, so they had a second one. Still didn't get it right. So now they have a multiplicity of little wars all over the country and all over the world. And then when you put them together you're in the midst of the Third World War right now, which might be the final war. It's being fought everywhere, even former General Eisenhower who became a president, who was president of Columbia University and was a general had said you must beware-- be aware and beware of the military industrial complex. He talked about the power that that complex would seize and how they would misuse it. He was not heeded and his words have come true. But you all would reject that. And if I hadn't told you that Eisenhower said it, you'd probably say some dirty "commie" said it, some no good socialist said it. And I tell you again, the Bellamy who wrote that flag salute was a socialist. I say it again-- Bellamy was a socialist and he wrote your flag salute. The melody for your National Anthem is from an old British drinking song. That is your National Anthem. How little you know. It was called "To Anacreon in Heaven"; a drinking song! Some guy, I guess some American, ignorant like Americans are, loud, disrespectful toward everybody, but they go where the liquor runs free and maybe what they call prostitutes are plentiful and easy. So some guys were lying in the gutter and singing, humming. He said, good God almighty, that's a wonderful melody, and he jotted it down and it became your National Anthem. A drinking song for the National Anthem, a Pledge of Allegiance written by socialist, and you all hate socialism. You don't even know what socialism is. Is that where the government controls the means of production and distribution? What is the Tennessee Valley Authority? Oh, they don't have publicly owned power in Nebraska, do they? It's all privately owned, isn't it? Oh, it's not privately owned? Then why do you have socialism in Nebraska and yet you condemn socialism? That's how ignorant Americans are. And it's why I was opposed to that bill Senator Slama brought about Americanism. It did nothing, nothing to advance the cause of true education. It was a bit--

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CHAMBERS: --of propaganda. It said things that are not true, and it glossed over various things. One thing that was true that I've told you all over and over, George Washington was a slaveholder. He raped black women and raped little black girls, and then the little children that were produced were slaves and they were sold. And Thomas Jefferson followed his example, a rapist of women and children and a seller of black people. They were the first sex traffickers in America. Why are you going to turn your back on what the fathers of your country did? They were sex traffickers. They raped black women. They raped little girls. Thomas Jefferson even took little Hemings to him when he went to France. And by today's laws that would have been statutory rape.

FOLEY: That's time, Senator.

CHAMBERS: Thank you, Mr. President.

FOLEY: Thank you, Senator Chambers. Senator Chambers, you're recognized for your third opportunity.

CHAMBERS: On this particular matter. Mr. President, members of the Legislature, since these Christians and flag wavers continue to call my office, they didn't get to cuss Cindy out. I took the call. And let me tell you what I did to this witch who called. And you know how I know when one of them calls? Because that little phone you've got with the little screen on it will say anonymous, which means they blocked out their phone number, so I know who's calling and I know what they're going to say. So when they start, are you Senator Ernie Chambers; I say, uh-huh. They can't contain it anymore. The one who said the flag is a rag; I said, yes, and I don't apologize for it. Then the stream of profanity, the racial slurs, and when they take a breath I say, bless you, my child. I'm going to pray for you for obviously you stand in the need of prayer. You pray lest a worse thing come upon you, and they get more and more furious and get louder and louder. Then I descend to the way of the street and I'll say, your mama, your mama, your grandma, and that makes them almost so hot that I can feel the heat coming out of the telephone. Then I tell them, god bless you, my child. Have a blessed day. Then I start laughing. I say, oh, this is so funny. I'm having a good time. Keep talking to me. I like what you're saying. It shows me just what you are. And then I laugh, then click. You think I'm going to argue with a fool like that. Answer a fool? Don't. Let's not be like unto him. But I know how to deal with these fools. They are free because they're white. What are they free to do? Racial slurs, cowardly threats, insults. That's what these white people and Christians are free to do. What about the land of the free? That's their freedom. What about brave? Are they brave? They block out their telephone number. Here's how ignorant they are. They're going to send me an insulting letter designed to be insulting, and I'm going to make that one of my "Erniegrams." I'm going to send you all, hand around some samples of what your Christian, patriotic brothers and sisters send to me. They're

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not going to put the real return address; and even if they did, am I going to go down south to find them? But they even lie about that. One of them gave a South Carolina address and the canceling machine wrote Des Moines, Iowa. Another one wrote a Washington, D.C., return address and the canceling machine said Seattle, Washington. What-- how dumb are these white people? This is the master race, though. Do you see why I'm not walking around here shaking in my boots because the master race is making threats to me every day? I'm not like you all. You all get upset about something that they put on this, what do they call it, social media. If you got what I got, you'd either run under the bed and hide, you'd go get some hypnotherapy, you'd take some sedatives, and you wouldn't venture outside of your house because you're cowards. You're cowards. And when they write your name on the social media, they have singled you out and label you, and you cannot hide with the crowd, so you come on this floor and whine about it. Whine about it. What do you care? They don't know you. They're not going to do anything to you. And the first hen that cackled laid the egg. If there were--

FOLEY: One minute.

CHAMBERS: --if there were 50 jackasses in a pen and I was a Christian-- because Christians love to hurt those who cannot help themselves-- and I picked up a brick and I threw it among those jackasses, the first one says hee-haw is the one that was hit. So when you all shriek and holler, then you must have been hit. Where is all of your education? Where is all of your religion? Where's that calmness that you ought to have? You know when you will know that you have grown? When there can be for you the complacent acceptance of the inevitable. It's inevitable, what can you do about it? It's raining. Don't say you're going to let it rain. You can't stop it. That's going to happen. Learn how to recognize the things you cannot change, adjust your conduct accordingly, and be happy.

FOLEY: That's time.

CHAMBERS: But you all can't do that.

FOLEY: That's time, Senator. Senator Hilgers, you're recognized to close on the advance of the bill. He waives close. The question for the body is the advance of LB616 to E&R Initial. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

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

FOLEY: LB616 advances. Mr. Clerk for an announcement.

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ASSISTANT CLERK: Mr. President, the Transportation and Telecommunications Committee will hold an Executive Session at 3:00 under the south balcony.

FOLEY: Thank you, Mr. Clerk. Members, pursuant to the agenda, at 3:00 p.m. we now switch over to the legislative confirmation reports. Mr. Clerk.

ASSISTANT CLERK: Mr. President, the first report this afternoon is an appointee to the Stem Cell Research Advisory Committee.

FOLEY: Senator Howard, you're recognized to open on the confirmation report.

HOWARD: Thank you, Mr. President; good afternoon, members. This afternoon I bring you the reappointment of Dr. Alysson Muotri to the Nebraska Stem Cell Research Advisory Committee. Dr. Muotri, I'm not sure if I'm pronouncing that correctly, is one of the two scientists appointed to the committee by the Chief Medical Officer of the Department of Health and Human Service. This committee is part of the Stem Cell Research Act that was created in 2008. The appointment was advanced from the HHS Committee with a majority vote. Doctor Muotri currently serves as a professor at the University of California, San Diego School of Medicine, Department of Pediatrics and Cellular and Molecular Medicine, and also teaches in the stem cell program. He holds a PhD in genetics from the University of Sao Paulo in Brazil, along with an undergraduate degree in biological sciences from the University of Campinas in Brazil. His post-doctorate research on neuroscience and stem cells was conducted at the Salk Institute of La Jolla, California. Some of his current research projects include autism or spectrum disorders and studying the effects of the Zika virus and how it affects the body. Dr. Muotri says that his experience serving on the Stem Cell Research Advisory Committee has been very positive and looks forward to continuing his service. I would urge you to vote to affirm Dr. Muotri and I would be happy to answer any questions that you might have. Thank you, Mr. President.

FOLEY: Thank you, Senator Howard. Debate on the report. Senator Murman.

MURMAN: Thank you, Mr. President. I just wanted to speak in favor of Dr. Muotri. He has done tremendous amount of research on the autism spectrum disorder, as Senator Howard mentioned. Rett Syndrome is what our daughter, Whitney, the disorder that she has. And he has done a tremendous amount of work with Rett Syndrome. So I strongly support his nomination. Thank you.

FOLEY: Thank you, Senator Murman. I see no further discussion. Senator Howard. She waives close. The question for the body is the adoption of the confirmation report from the Health and

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Human Services Committee. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

ASSISTANT CLERK: 37 ayes, 0 nays on the adoption of the report.

FOLEY: Confirmation report is adopted. Next report, Mr. Clerk.

ASSISTANT CLERK: Next report, Mr. President, is by the Natural Resources Committee to the Nebraska Power Review Board.

FOLEY: Senator Hughes, you're recognized to open on your confirmation report.

HUGHES: Thank you, Mr. President. Members of the Legislature, I present for your approval the appointment of Frank Reida to the Nebraska Power Review Board. Mr. Reida came before the Natural Resources Committee on March 14. The Power Review Board is a state agency created in 1963 to regulate Nebraska's electrical utility industry. Nebraska is unique in that it is the only state in the country served at retail entirely by consumer-owned electric utilities. These utilities include public power districts, cooperatives, and municipalities. The agency consists of five members appointed by the Governor to a four-year term. The board must include an engineer, an attorney, an accountant, and two laypersons with no geographical boundary restrictions. Frank Reida lives in Omaha, Nebraska. He is a reappointment to the board serving as the attorney member and currently serving as chairman of the board. Mr. Reida is an MEP, which means-- stands for mechanical, electrical, and plumbing plains examiner, or engineer for permits and inspection division for the city of Omaha. He is also currently an adjunct professor of energy policy at Creighton University. Mr. Reida has been appointed to several advisory committees and judging panels, et cetera, over the last several years. The committee advanced Mr. Reida's appointment by an 8-0 vote. I ask for your confirmation of Frank Reida to the Nebraska Power Review Board. Thank you, Mr. President.

FOLEY: Thank you, Senator Hughes. Discussion of the confirmation report? I see none. Senator Hughes, you're recognized to close. He waives close. The question for the body is the adoption of first confirmation report from the Natural Resources Committee. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

ASSISTANT CLERK: 40 ayes, 0 nays on the adoption of the report.

FOLEY: Confirmation report is adopted. Mr. Clerk.

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ASSISTANT CLERK: Mr. President, the next report from the Natural Resources Committee is Robert Allen to the Game and Parks Commission.

FOLEY: Senator Hughes, you're recognized to open on the second confirmation report.

HUGHES: Thank you, Mr. President. Members of Legislature, I present for your approval the appointment of Robert Allen to the Nebraska Game and Parks Commission. Mr. Allen came before the Natural Resources Committee on March 13. The Game and Parks Commission is charged with the stewardship of the state's fish, wildlife, state parks, and outdoor recreation resources. The commission is also charged with issuing state hunting licenses, fishing licenses, and boat registration. It conducts public education programs for hunting and boater safety, and also provides other resources for those who wish to learn to enjoy the outdoors. The agency is governed by nine commissioners, each member of which is appointed by the Governor to a six-year term. Each eight commissioners serve each of eight districts across the state; the ninth serves in an at-large role. Commissioners serve in a volunteer capacity and meet at various locations across the state approximately every two months. Mr. Allen lives in Eustis and he is a reappointment to the commission as a district five representative. Mr. Allen is on the board of directors of a Plains Equipment Group, a John Deere dealership. He was previously the west region manager for the company and has since retired and works on special projects as needed. Mr. Allen is a life-long hunter, specifically pheasant hunting; a lifelong fisherman, and he is also a habitat and conservation enthusiast. Mr. Allen has an impressive resume of community involvement and leadership positions in and around the Custer County area and beyond. Mr. Allen is currently the vice chairman of the Game and Parks Commission. And if he is reappointed, will serve as the chairman. The committee advanced Mr. Allen's appointment by an 8-0 vote. I ask for your confirmation of Robert Allen to the Nebraska Game and Parks Commission. Thank you, Mr. President.

FOLEY: Thank you, Senator Hughes. Debate on the report. Senator Erdman.

ERDMAN: Thank you, Lieutenant Governor; good afternoon. Thank you, Senator Hughes, for bringing the name of Mr. Allen. He and I have something in common; we both like to fish. But I was wondering if you would yield to a question.

FOLEY: Senator Hughes, will you yield, please?

HUGHES: Of course.

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ERDMAN: Senator Hughes, I didn't go look it up, but can you tell me have the Game and Parks commissioners always been appointed? Have they ever been elected?

HUGHES: My understanding it has always been a gubernatorial appointment.

ERDMAN: And so how many terms can they serve before they are not eligible to be reappointed?

HUGHES: I think two.

ERDMAN: Two terms, so it would be 12 years?

HUGHES: Yes.

ERDMAN: OK. So, I have no problem with Mr. Allen. But I think in the future, it may be something that I would like to consider maybe to make these appointments-- or these positions an elected position. That may be something I may want to consider in the future. I just wanted to give you that heads-up. Thank you.

FOLEY: Thank you, Senators Erdman and Hughes. I see no further discussion. Senator Hughes, you're recognized to close. He waives close. The question for the body is adoption of the confirmation report from Natural Resources Committee. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

ASSISTANT CLERK: 36 ayes, 0 nays on the adoption of the report.

FOLEY: The confirmation report from the Natural Resources Committee is adopted. Final confirmation report, Mr. Clerk.

ASSISTANT CLERK: Mr. President, the final report from the Natural Resources Committee is John Hoggatt to the Nebraska Game and Parks Commission.

FOLEY: Senator Hughes, you're recognized to open the confirmation report.

HUGHES: Thank you, Mr. President. Members of the Legislature, I present for your approval the appointment of John Hoggatt to the Nebraska Game and Parks Commission. Mr. Hoggatt also came before the Natural Resources Committee on March 13. John Hoggatt lives in Kearney

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and he is a new appointment to the commission as the District 4 representative. Mr. Hoggatt is a Kearney/Grand Island market president of First National Bank. His interests in agriculture spans over 30 years in agribusiness banking throughout Nebraska, as well as his ownership of Hydro Irrigation Incorporated. He has many and varied professional affiliations. Mr. Hoggatt is an avid outdoorsman, a member of Ducks Unlimited, Pheasants Forever, and is also president of the Central Nebraska Retriever Club. The committee advanced Mr. Hoggatt's appointment by an 8-0 vote. I ask for your confirmation of John Hoggatt to the Nebraska Game and Parks Commission. Thank you, Mr. President.

FOLEY: Thank you, Senator Hughes. Discussion of the report. Senator Howard.

HOWARD: Thank you, Mr. President. I rise in support of Mr. John Hoggatt's confirmation today. I actually had the opportunity to participate in the State Chamber's Leadership Nebraska Program this summer and John Hoggatt was one of my class members and he is very much a class act and a wonderful human being. And I feel honored that I had the opportunity to spend that kind of time with somebody who is so committed to their community. With that, I would urge the adoption of his confirmation today. Thank you, Mr. President.

FOLEY: Thank you, Senator Howard. Senator Lowe.

LOWE: Thank you, Mr. President. It's a pleasure to say John Hoggatt's name now. I have known John for a very long time. As a matter of fact, my brother hired John at First National Bank when he was still, I believe, in college. And he's a very good man. He's an avid hunter. He believes in doing things right. So it's a pleasure to have him confirmed today. Thank you, Mr. President.

FOLEY: Thank you, Senator Lowe. Seeing no further discussion, Senator Hughes. He waives close. The question for the body is the adoption of the third confirmation report from the Natural Resources Committee. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: 38 ayes, 0 nays on the adoption of the confirmation report.

FOLEY: The confirmation report is adopted. Members, we're now going to move to Select File, 2019 committee priority bills. We'll need a number of voice votes; we ask you to please be attentive. Mr. Clerk, the first bill is LB320.

CLERK: LB320, Senator Slama, I have Enrollment and Review amendments.

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FOLEY: Senator Slama for a motion.

SLAMA: Mr. President, I move that the E&R amendments to LB320 be adopted.

FOLEY: Members, you heard the motion to adopt the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk.

CLERK: Nothing further, Senator.

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that LB320 be advanced to E&R for engrossing.

FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB320 advances. Next bill is LB603, Mr. Clerk.

CLERK: LB603, Senator, I have no amendments to the bill.

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that LB603 be advanced to E&R for engrossing.

FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB603 advances. LB713, Mr. Clerk.

CLERK: LB713, Senator, I have no amendments.

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that LB713 be advanced to E&R for engrossing.

FOLEY: Members, you heard the motion to advance LB713 to E&R for engrossing. Those in favor say aye. Those opposed say nay. LB713 advances. LB316.

CLERK: LB316, Senator; I have E&R amendments first of all.

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FOLEY: Senator Slama.

SLAMA: Mr. President, I move that the E&R amendments to LB316 be adopted.

FOLEY: Members, you heard the motion to adopt the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk.

CLERK: Senator Kolterman would move to amend with AM1187.

FOLEY: Senator Kolterman, you're recognized to open on AM1187.

KOLTERMAN: Good afternoon, colleagues. AM1187 simply adds the emergency clause to LB316 so there is not a delay in the enactment of this bill. This would ensure all contracts agreed upon between pharmacy benefit managers and pharmacies will not contain gag clauses and clawback provisions once this bill becomes law. With that, thank you. And I ask for your support on AM1187 and LB316.

FOLEY: Thank you, Senator Kolterman. Is there any discussion of AM1187? I see none. Senator Kolterman, you're recognized to close on the amendment. He waives close. The question for the body is the adoption of AM1187. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: 35 ayes, 0 nays on adoption of Senator Kolterman's amendment.

FOLEY: AM1187 is adopted. Mr. Clerk.

CLERK: Nothing further.

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that LB316 be advanced to E&R for engrossing.

FOLEY: Members, you heard the motion to advance LB316 to E&R for engrossing. Those in favor say aye. Those opposed say nay. LB316 advances. LR14CA, Mr. Clerk.

CLERK: Mr. President, no E&Rs. Senator Groene would move to amend with AM1255.

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FOLEY: Senator Groene, you're recognized to open on AM1255.

GROENE: Thank you, Mr. President. Senator Wayne and I had discussions and I said I was going to bring an amendment because I want him to be successful on what he is attempting to do because I followed TIF for too many years and seen how it's been misused. So we came up with an amendment, showed it to Senator Wayne and he's full on board. It's a description that fits in the constitution without taking away the ability of the Legislature to define. So-- if I can bring up the bill. We are going to add a description for highly extreme blighted that matches kind of what's in the law now and just say due a high, extremely blighted, due to a high rate of unemployment combined with a high poverty rate as determined by law. That is exactly what Senator Wayne wants to do. He wants to define extreme blighted by poverty and unemployment, which I agree with him. I do not want in the future to see a TIF project on 185th and Dodge, or further out, where the blighted is a corn bores in a cornfield and where there isn't any relationship to unemployment or poverty. And we added the word "combined" because they seem to ignore the word "and" in TIF now where it's-- they seem either go blighted or they seem to go substandard and forget there's an "and" between there. But this makes it clear. It's exactly what we debated the first three or four hours on this issue. And I hope Senator Wayne stands up, which he will, and say he agrees with the amendment. So thank you, Mr. President.

FOLEY: Thank you, Senator Groene. Debate on AM1255. Senator Wayne.

WAYNE: Thank you, Mr. President. And as my colleagues sometimes say, a broken clock is right two times a day, a blind squirrel can eventually find a nut. Groene and I eventually found a compromise. So I am in favor of the amendment. It does add some language that I think will help the voter, because we have to remember this is going to a vote. This is not going to be set in stone. It will help a voter understand what we are trying to do. And with that, I do support it. So I would ask you to vote green on AM1255 and green on the underlying bill. Thank you.

FOLEY: Thank you, Senator Wayne. Senator Groene, I see no further discussion. He's recognized to close. He waives close. The question for the body is adoption of AM1255. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: 43 ayes, 0 nays on adoption of Senator Groene's amendment.

FOLEY: AM1255 is adopted. Mr. Clerk.

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

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FOLEY: Senator Slama.

SLAMA: Mr. President, I move that LR14CA be advanced to E&R for engrossing.

FOLEY: Members, you heard the motion to advance LR14CA to E&R for engrossing. Those in favor say aye. Those opposed say nay. LR14CA advances. Proceeding to Select File 2019 senator priority bills. First of those is LB390. Mr. Clerk.

CLERK: LB390, Senator, I have E&R amendments.

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that the E&R amendments to LB390 be adopted.

FOLEY: Members, you heard the motion to adopt the E&R amendments. Those in favor-- excuse me, Senator Chambers, you're recognized.

CHAMBERS: Mr. President, members of the Legislature, since I'm now running this show, I don't have a problem with any of these bills. So on one motion, I would like to adopt all of the amendments and move all of the bills. Can that be done, Mr. Chairman?

FOLEY: I'd love to, but no.

CHAMBERS: I didn't understand you.

FOLEY: I said I would love to, but no.

CHAMBERS: I'll accept the ruling of the Chair. Thank you.

FOLEY: Thank you, Senator Chambers. Members, you heard the motion to adopt the E&R amendments. Those in favor say aye. Those opposed say nay. E&R amendments are adopted. Mr. Clerk.

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

FOLEY: Senator Slama.

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SLAMA: Mr. President, I move that LB390 be advanced to E&R for engrossing.

FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB390 advances. LB472, Mr. Clerk.

CLERK: LB472, Senator; I have E&R amendments, first of all.

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that the E&R amendments to LB472 be adopted.

FOLEY: Members, you heard the motion to adopt the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk.

CLERK: Senator Lowe would move to amend with AM1223.

FOLEY: Senator Lowe, you're recognized to open on AM1223.

LOWE: Thank you, Mr. President. AM1223 would change the necessary vote to enact the sales tax from a two-thirds vote of the county board to the vote of the people. I know that Senator Dorn is opposed to this amendment, but I could not let this bill advance without attempting to make this change. My amendment would make this unique sales tax process similar to how we enact the other sales taxes. Senator Dorn argued on General File that this was not necessary because those taxes were for wants or needs and this is for requirements or a mandate. I would urge that while Gage County is required to pay this judgment, state and local governments are required to pay for lots of other things as well. Local governments are required to pay for K-12 education. City and county governments are required to provide roads. Any of these required projects needed funding beyond currently available funds, the counties or cities would be required to get a vote of the people to provide these funds for all except Gage County. We should require a vote of the people in all of these circumstances. We heard concerns on previous bills on about how easy it could be at times to change a statute. I have those same fears when it comes to this bill. Future legislatures could easily change the threshold that was put in place where they could add other needs in which a county board could put a sales tax in place with a two-thirds vote of the county board. They could also add the ability for other boards to attempt this path toward new sales tax. If you think TIF has been abused, then I would suggest that you should consider how this new process could also be abused in the future. Let me clarify that this is not a filibuster attempt. I, however, vote no. If you believe that a new sales tax does not deserve a vote of the people, please vote no on this amendment. If you believe that certain needs are so great an

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elected board should be granted the powers that everywhere else belongs to the people, please vote no on this amendment. If you believe that bad precedent should take away the power of the citizens to decide the issue of a new sales tax, please vote yes on this amendment. If you believe that we should maintain the process that we now have that empowers the voters of Nebraska to make these decisions, then I ask you to vote green on AM1223. This is a slippery-slope bill. Once we start this, there can be no turning back and we take the people out of the equation. Let's not make it so that five members of a board can raise our taxes. Let's let the people decide on if they want their taxes raised or not. Thank you, Mr. President.

FOLEY: Thank you, Senator Lowe. Debate is now open on AM1223. Senator Dorn.

DORN: Thank you, Mr. President. Colleagues, just wanted to visit a little bit about this amendment. I am opposed to this amendment. Senator Lowe, I thanked him for coming forward several days ago already and telling me that he was going to come forward with this amendment. That I appreciated very, very much. Since then we visited a couple other times about this amendment. I am not in support of this amendment. Couple of things Senator Lowe made and some points he made about five members of the board now deciding to raise a sales tax. Gage County has this judgment. This judgment has been decided by the courts. It is, with the lawyer fees, it is \$30 million. By state statute, the only way that this can be paid today is by property taxes. I repeat, by state statutes, the only way it can be paid for is by property taxes. Senator Lowe commented that five members of that board would now vote on raising a sales tax. Five members of that board had no decision in the property taxes. They have to vote to raise the property taxes. I call that also a tax increase. We're going to have a lot of discussion later on on some of the bills that maybe are going to come out about property tax and property tax increases. If you think that five members of the board should not be the ones that get the vote for this half-cent sales tax, then I argue with you the fact that why, by state statutes, did five members of the board now get to decide to raise \$30 million in property taxes. A couple other quick points I want to make. The city of Beatrice in Gage County has 50 percent of the population. Half of the people in the county, a little more than half, live in the city of Beatrice. The city of Beatrice has 20 percent of the valuation. Twenty percent of the valuation correlates into, when you look at the \$30 million, the city of Beatrice will be paying \$6 million in this judgment over the seven to eight years. The other 50 percent of the population of Gage County will be paying \$24 million. If you take this to a vote of the people and you live in the city of Beatrice and you know that those numbers are out there, I ask you-- you decide in your mind if you would now vote for a sales tax increase. In my opinion, I have talked to a lot of people in the county, I have talked to all the county board members, a vote of the people will not pass for this half-cent sales tax increase. The purpose of bringing LB472 was strictly for some relief of property taxes. That's the reason for bringing that forward. Today, because of state statutes, 100 percent of this judgment will be paid for by property taxes. I don't look at it as a sales tax increase, I look at it as it is helping pay the judgment off. The sales tax will amount to approximately \$1.25 million. Part of the

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amendment that we added when the bill came forward, after visiting with the League of Municipalities was so that the county--

FOLEY: One minute.

DORN: --could not lower their property tax rate of \$3.8 million, they have to continue that to be able to do this sales tax. That will bring the payment up to about \$5 million a year. So instead of eight years, we are now going to pay it off in six years. We are going to pay this off quicker doing this route. We need to have this bill passed and available to the citizens of Gage County to help pay this judgment. I encourage a red vote on the amendment and a green vote on the bill. Thank you.

FOLEY: Thank you, Senator Dorn. Senator McCollister.

McCOLLISTER: Thank you, Mr. President; good afternoon, colleagues. I rise against AM1223 and in support of LB472. We talk often in this body about process-- process. And I think this bill is a good example of process that has been well-served. Let's go back and review the various steps that this bill has gone through. This bill came to the Revenue Committee. I was-- I am a member of the Revenue Committee and it came out of that committee 7-0. There's one member not voting. So I think that's testament to the support this bill had just in committee. And then it came to the floor, and an amendment was proposed, AM1193. And that amendment had 45 positive votes, zero no votes, and four members not voting. Also, good testament to the worth of this bill. Finally, on April 4, it came to General File. It had 40 positive votes, one no vote, and eight members not voting. So, this bill has gone along the route. The process has been well-documented and has received wide support from the members in the body. I believe this represents a rather unusual circumstance that we need to take care of. So that's why I'm supporting this bill. I understand that we shouldn't allow counties the right to tax willy-nilly. I don't think this bill does that. So, I support this bill and oppose the amendment. Thank you, Mr. President.

FOLEY: Thank you, Senator McCollister. Senator Chambers.

CHAMBERS: Thank you, Mr. President. Members of the Legislature, this bill would give me the opportunity to be vindictive, to punish those people in that county for voting to reinstate the death penalty and all the things they did that go collectively when they acted against what I believe in. But as a Legislature, there comes a point when we have to rise above that pettiness. We have to rise above threats made by the Governor. If it's going to be a session of threats, if this bill doesn't go, then maybe no bill should go. Or if they do, they should go through very lengthy, painful, painstaking process. I have not undertaken to do that, except with three specific bills: the

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LGBTQ bill, the minimum wage for the tip workers, and the SNAP stamps for people who have been in prison. This is one that I think you all, you all have an obligation as members of this Legislature to do what you have done already. If you can give the votes that you did, then let the Governor express dissatisfaction, he's out of here. He's not coming back again. But he might have his eyes on the U.S. Senate. So he's concerned about his political future. You all, if you're going to put it in a political context, would do the right thing and that will be something good on your record. You can easily explain why you voted to let the county take this approach that you had a senator who was willing to take this bull by the horns and bring it to earth. You should not take this away from your colleague. He's one of you. You can do it to me. I'm accustomed to it. That's why I'm here. I'm the one that you should take your ire out on because it doesn't make me any difference. But this is one of your own. It's going to undo something you all already took a position on. Then the Governor in those few days can turn you all around. Look, again, I'm speaking for you. Senator Bostelman, I'm speaking for people of your complexion. Senator Brewer, my half-brother, literally-- I don't mean of the same mother and father, but because the blood that flows in our veins. And I can prove mine. The point I'm getting to is this, there's no need in us pretending that there's respect in this body, that there's a belief in fairness. So I'm throwing all that out the window. I'm bringing it right down to brass tacks right now. If you had 40 votes, if two black men voted for it, you had 38 white people who publicly said this is the thing this Legislature ought to do because it is just, it is fair, it is proper. One of your number had the grit and the backbone to bring something like this to tax the people in the county where he will run for office again. Isn't that what people are always saying they want in a public official? And now you've got it. You've seen a man manifest, a shining star of manhood. That's what Senator Dorn did. You all know I don't be running around here praising white people.

FOLEY: One minute.

CHAMBERS: But I will find it utterly inexplicable for you all to turn away. Are you all aware that when somebody gets a judgment, they can put a lien against the property of the one against whom they have the judgment? I'd like to ask Senator Briese a question right quick.

FOLEY: Senator Briese, will you yield, please?

BRIESE: Yes.

CHAMBERS: Senator Briese, if I have a judgment against you and you don't pay it, I can put a lien against your property and get it sold to take it, can't it?

BRIESE: Yes.

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CHAMBERS: Thank you. And I'll put my light on again.

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

La GRONE: Thank you, Mr. President. I rise in support of AM1223. I just think this really goes back to ensuring that if we are going to-- that people have a say in how their county's money is spent effectively. It gets back to the same discussion about respecting what tax dollars are. They are time that people spend away from their families. They're not the money of government officials. They are money of people who earned that money who then simply comes into the government. So, I thank Senator Lowe for bringing AM1223. If he would like the remainder of my time, he can have it. Thank you, Mr. President.

FOLEY: I'm sorry, Senator, who did you say you're yielding to?

La GRONE: Senator Lowe.

FOLEY: Very good. Senator Lowe, you're recognized for four minutes.

LOWE: Thank you, Lieutenant Governor. I have a letter here from one of my mayors in my district. It says: Senator, it is my understanding that Senator Dorn intends to introduce a bill which would authorize a countywide one-half-cent sales tax with just a two-third vote of the county board and without countywide vote. This authority would apply to any county that has a federal judgment rendered against it by a federal court for violation of a federal law. This would even apply to transactions in municipalities that already have a local opinion sales tax. If introduced in this current form, I would ask that you strongly oppose this bill. This was dated January 15. So this amendment was not brought to me by the Governor. It was brought to me by one of our mayors who fears that this is a slippery slope. This is not the way we impose sales tax. I appreciate what Senator Dorn is trying to do for his county and for the problem that they have. And like I said before, I'm not going to filibuster this. I'd like to see it go to a vote. But I would like to say that several other people have raised city sales tax effective January 1, 2019, Dakota City will impose a sales tax and use tax at a rate of half a percent and it was done with an affirmative vote of the people. Effective January 1, 2019, cities of Randolph and Wahoo will increase their sales tax and use tax to 2 percent by a vote of the people. As a result of successful votes, on November 6, 2018, the following cities will impose or change a city's sales tax rate effective April 1: Ansley, DeWitt, Laurel, Pleasanton will each start a local sales tax by the vote of the people. Hubbard will start a local sales tax effective April 1. Clay Center, Harrison, Oakland, Osmond, Pender will all increase their city sales tax effective April 1. Beatrice, Fullerton, Grand Island, Loup City, Ord, Paxton, Sargent will increase their sales tax to 2 percent effective April 1. When cities see they need to solve a problem, they come together.

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FOLEY: One minute.

LOWE: Thank you, Mr. President. They come together the right way it's supposed to be done. I have simply to Senator Dorn and to Gage County. I want Senator Dorn's bill to make it through. But in order to do that, it must have this amendment tied to it. So please vote green on AM223 [SIC] and let's give Senator Dorn and Gage County their relief. Thank you, Mr. President.

FOLEY: Thank you, Senator Lowe. You're actually next in the queue if you want five more minutes. He waives that opportunity.

LOWE: I waive because I'm done talking on this issue. I'd like to see this come to a vote. I'm not here to filibuster. Senator Dorn, I want to provide you some relief. Thank you, Mr. President.

FOLEY: Thank you, Senator Lowe. Senator Friesen.

FRIESEN: Thank you, Mr. President. I stand in opposition to AM1223. Obviously, this is our property tax issue to me. This is the point always where we reach the same conclusion when we have bond issues that do school funding. You have the minority out in the country and you have the majority in the city and they outvote you and the minority pay the largest amount of the tax and you've now shifted that burden onto the agricultural property owner. You know, maybe this burden should be carried by the city where this event happened. It happened in a town. Maybe they should pick up the whole tab. They are residents of a city, let's let them pick up the whole tab instead of the county. This is one of those unfortunate incidents where I think we have to look at our whole judicial process and how we try capital murder cases. We have counties out there that don't have the expertise to try these cases and they screw up. And now the county is left with the obligation of trying to amend its mistake, which is difficult to do with just money. But now you want to put that burden on a minority number of ag landowners out there that are going to have to pay the majority of that bill. All this bill does is-- it's a special event, it's a one-time thing where we'll never see this again, hopefully. And I do not think that this is one of those issues where you have a vote of the people to do it. This is where the state steps up and takes care of it. I think that's what we have done by putting this issue up here. We have given them the authority to do it. We'll let the elected leaders do it; we'll let their commissioners decide the way it should be done. So I oppose this amendment and I support the bill. Thank you, Mr. President.

FOLEY: Thank you, Senator Friesen. Senator Brandt.

BRANDT: Thank you, Mr. Lieutenant Governor. Would Senator Lowe yield for a question?

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FOLEY: Senator Lowe, would you yield, please?

LOWE: Yes, I will.

BRANDT: Senator Lowe, can the state of Nebraska raise sales tax without a vote of the people?

LOWE: Yes, they can.

BRANDT: Shouldn't the state be subject to the same standard?

LOWE: The state gives the counties the right to do things.

BRANDT: OK. Next question. Are you all right with only 25 percent of the people in Gage County paying the whole judgment, because that's what happens if the sales tax doesn't pass?

LOWE: I believe it ought to be up to the vote of the people.

BRANDT: And then I guess my last question, would you be willing to amend this so that if this fails by a vote of the people, that the state of Nebraska kicks in the \$1.2 million a year that they would have raised with sales tax?

LOWE: I would rather see other means come to play.

BRANDT: OK. Thank you. Thank you, Senator Dorn, for bringing this bill. Colleagues, please vote against AM1223 and for LB472.

FOLEY: Thank you, Senator Brandt. Senator Briese.

BRIESE: Thank you, Mr. President; good afternoon, colleagues. I rise in support of LB472. And I want to commend Senator Dorn for his commitment to this issue. I know he's brought numerous bills to address this. And this bill makes a lot of sense and it helps address one of the recurring issues that we discuss in this body and that is our over-reliance on property taxes to fund local government and the unfairness of a system that places a disproportionate share of that property tax burden on one subset of taxpayers. What do I mean? On a hand-out I passed out a few weeks ago, I had an example where a typical ag producer can oftentimes pay in the area of 27 times the amount in property taxes than his friends and neighbors in town might pay. And that discrepancy exists whether that ag producer is making any money or not. And since the property

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tax burden is typically passed on to renters in the form of higher rents, that property tax burden can be borne by an ag producer that doesn't own an acre of ground. At the hearing on LB427, we heard from a farmer who said his taxes are going to go up \$7,300 per year to help pay off this judgment, while it would cost his non-ag friends a couple hundred bucks a year. He didn't think that was fair, and I don't blame him. And furthermore, testimony at the hearing indicated that only about 13 percent of Gage County residents are farmers, but 72 percent of the tax base is ag. And to me all this suggests that a formula that utilizes property taxes to pay off this debt has a hugely unfair burden to a small segment of the population in Gage County. Without this bill, without LB472, ag producers already struggling from negative margins, burdensome property taxes, and the curve balls that Mother Nature has been throwing at us, will be called upon to carry the ball and bailing out Gage County. And that's not right. It's not responsible tax policy. It doesn't sound fair to me and it's certainly not perceived as fair by that farmer who testified, who is probably not making any money, but who is still going to pay 36 times more in property taxes to pay off this debt than his non-ag friends. When one considers the negative impact on the ag economy that this can have, you know, I question the sustainability of it. I would submit that the fairest, most responsible, most sustainable method of paying off this debt is that suggested, that provided in LB472. It spreads the burden, it will be perceived as more fair, more balanced. It's a good proposal. I do want to address Senator Lowe's AM1223. And I want to thank Senator Lowe for his intentions in bringing this. I want to thank him for his efforts to always protect the taxpayer. And I normally would agree with him. Normally, taxing decisions, bonding decisions in particular, should be subject to a public vote. But here I'm concerned that such a vote really subverts the intent of this proposal. And that intent is to provide a fairer, more balanced way of paying off this debt. I'm afraid that requiring a public vote here would leave those folks who are underrepresented at the voting booth, but who are overrepresented at the treasurer's office, high and dry once again. I'm afraid this amendment would force a disproportionate share of this debt onto a few. And we can't let that happen. And we have to remember, this bill is only for a very limited set of circumstances. A federal judgment imposed by a federal court for violation of federal law. Not going to happen very often, not going to come into play very often. So I'm going to vote red on AM1223. I certainly respect Senator Lowe's efforts in this regard, but I still need to vote red on it and I'm going to support LB472. Thank you, Mr. President.

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

CHAMBERS: Mr. President, members of the Legislature, I'd like to ask Senator Dorn a question or two, if he would respond.

FOLEY: Senator Dorn, would you yield for a question, please?

DORN: Yes, I'll be glad to.

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CHAMBERS: Senator Dorn, did you include a specific dollar amount that the judgment would have to be for at least before this would even be available?

DORN: Yes. The amendment that was added to this states that this has to be at least \$25 million federal judgment.

CHAMBERS: Thank you. Members of the Legislature, members of the Legislature, if I knew how to be as dramatic as the little-- as Geico's gecko, I would get on this table, I'd fall down on my knees, throw my hands up in the air and say, somebody help me, I have a flat tire. That would get your attention. Senator Lowe is making himself look very unwise. When is it likely that there's going to be another \$25 million judgment against any county for anything? Will you all listen? It's got to be at least a \$25 million judgment, not the stuff that this piddling stuff that Senator Lowe is talking about. This is the Governor's hand. I wrote a rhyme and it talked about putting a joker in the deck. The Governor is the joker and he called you out there and made you all undercut Senator Hunt on a bill. And he's done it on at least three bills. He's running this Legislature and now he's hurting your people. Which one is stupid enough to stand upon this floor and try to explain to me how some county is going to get a \$25 million judgment in federal court. That's not going to happen. This kind of case will not happen here again. If I were the lawyer for those people, I would put liens on all the property that the county owns. I'd make them sell the courthouse. I'd put a lien on all the sheriffs' cars. Every bit of property that the county has, I would do it. I didn't want to be rude. Now I'm going to ask Senator Lowe a question, if he'll answer.

FOLEY: Senator Lowe, will you yield to a question, please? Senator Lowe.

LOWE: Yes, I will.

CHAMBERS: Senator Lowe, were you aware of the fact that this can only be triggered by a federal court judgment of at least \$25 million?

LOWE: Yes, I am.

CHAMBERS: And you're afraid this is going to happen in counties all over this state?

LOWE: Five years ago, \$25 million was a lot of money. In the future, \$25 million may not be that much money.

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CHAMBERS: That's not what I'm asking. Do you believe that this is going to happen in counties throughout this state?

LOWE: I don't know if it will or not.

CHAMBERS: Thank you. He knows that it's not going to happen. He can't even tell the truth that I know he knows. How many of you are going to let the Governor make a fool and a liar out of you? Who in here thinks that there's going to be another \$25 million federal judgment? Why am I standing up here just like this morning trying to help white farmers? This is a county that voted to reinstate the death penalty. I have every reason to join what Senator Lowe is doing. But that would make me, if you drop the "e" off his last name, that would make me mighty low. And I think it is something that you all ought to watch and see who is the next water carrier for the Governor. This is the Governor's action. If I didn't have a modicum of modesty, I'd take my boot off, and it's a ten and a half, I'd hold it up and I'd say, everybody come kiss my boot. That's what the Governor is telling you all to do.

FOLEY: One minute.

CHAMBERS: You all will be boot-licking sycophants if you vote for this amendment. Senator Lowe had no choice but to bring it. His hope inside is that there will be enough of us, enough of us with the decency, with the common sense, with the practicality who are realistic enough to know that there's not going to be another \$25 million federal judgment against any county. And if there is, I will pay it off with the money that I've got in my left-hand pocket, which shows you that it ain't going to happen. I'm strongly against this motion to amend the bill and I'm strongly in favor of the bill. Thank you, Mr. President.

FOLEY: Thank you, Senator Chambers. Senator Dorn. Senator Dorn, you're recognized.

DORN: Thank you. Thank you, Mr. President. Thank you, colleagues. I appreciate all the conversation. When Senator Lowe and I visited, we both had the same thought that this would not get extended debate, that we welcome the conversation. We welcome very much the conversation. This bill is very, very important to me. But at the same time, I don't want to sit here and now take this thing to three hours, or however long it goes. I have a couple quick comments to make though, and then I'm not going to use my five minutes' time this time. Senator La Grone, and if he's here, I'd even ask him a question, otherwise I have a comment on what he said there a little bit ago. I want to make this comment today by state statutes, this is 100 percent on property taxes. I have visited with the lawyers that helped us through this, the bankruptcy attorneys, our lawyers that helped determine that the only way by state statute was to pay this off is only property taxes in the state of Nebraska today. We had an attorney that handles all of the bonding,

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all of the bonding votes that go in front of people in counties, cities, anything, they look at that to make sure they meet state statutes. He also came back and assured the board that the only way you can pay for it is with property taxes. Back to the comment Senator La Grone made. He said something about along the line that he is for this sales tax going to a vote of the people. What are taxes? He made that comment, what is a sales tax? That should go to a vote of the people. I will also make the same argument that what are taxes-- property taxes are also taxes. Gage County did not have a choice of that going to a vote of the people. That was decided by the board. I will yield the rest of my time back to the Chair and I thank everybody for taking the interest and listening to all the comments on this bill. I again will urge you to vote red on the amendment and green on the bill. Thank you.

FOLEY: Thank you, Senator Dorn. Senator Erdman.

ERDMAN: Thank you, Lieutenant Governor; good afternoon. Listening to the debate, I understand what Senator Lowe is trying to do. And, Senator Lowe, I appreciate the fact that you are concerned about taxpayers, I am as well. One of the things that happened, and Senator Dorn explained that the last time this bill was up, is the county board made a decision to raise their mill levy 12 mills. They did not need a vote of the people. They just voted as the board to raise the mill levy 12 mills. So we elect county officials, state officials, and those people to make decisions about how they spend our money and what they do. And there was no vote of the people to raise the mill levy 12 mills. And I was wondering if Senator Dorn would yield to a question.

FOLEY: Senator Dorn, would you yield, please?

DORN: Yes.

ERDMAN: Senator Dorn, thank you. So when you raised the mill levy to 12 mills, you did not have to get a vote of the people, right?

DORN: We did not have to get a vote of the people.

ERDMAN: How many dollars does that raise annually?

DORN: That was about 12 cents of levy we had, and that raises approximately \$3.8 million a year.

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ERDMAN: OK. So the mill levy raised was 3.8. So how much is the projected increase with the sales tax put in place?

DORN: The Fiscal Office estimated the first full year to be around \$1.25 million.

ERDMAN: OK. So the point I'm trying to make is, you, the county board, were able to vote to raise \$3.8 million and what you are asking now is approval or permission, authority to raise another 1.25? So, in your county, how much of your property tax is paid by agriculture?

DORN: Fifty-two percent of the valuation in Gage County is strictly ag land; no acreages, no cities, no industry, just strictly ag land.

ERDMAN: OK. All right. So for easy simple figuring even for me in math, I'm not a statistician like Senator Clements, but \$30 million is the judgment?

DORN: With the attorney fees, \$30 million is the judgment.

ERDMAN: So, 50-50 would be \$15 million each, right?

DORN: Correct.

ERDMAN: So, simple math, if you did the sales tax, in six years you raise a little over \$6 million. So if you do split the 30 in half, that's 15 for residential property owners and 15 for agricultural property owners. Would that be correct?

DORN: Correct.

ERDMAN: So take off three, because you raised six from sales tax. So what you have done, you have lowered their property tax by \$3 million for each one of those groups who owns real estate. Would that be fair?

DORN: I would agree with that.

ERDMAN: So I think one of a unique situation; and, Senator Lowe, I appreciate what you're trying to do there, but I think that a \$25 million federal judgment is probably a pretty stiff hurdle to overcome. And maybe you could help me, Senator Dorn, to understand, when that trial

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happened, the county decided to do that trial on their own and not take help from the Attorney General. Is that correct?

DORN: I do not have a real solid answer on that. I do know our county attorney did visit with their office several times over that. I'm not sure the discussion other than what I remember from that discussion was it was supposed to be handled by the county.

ERDMAN: OK. All right. I know we had a murder trial in my county two years ago, or three, when I was still there. And the Attorney General helped us and when they called--

FOLEY: One minute.

ERDMAN: --and said they would help us, I asked them if they wanted to make them-- wanted me to make them a room reservation. So I was willing and able to help them get that done. So I appreciated that. So, but, this situation that you were dealing with and we are dealing with today was a hand that you've been dealt a long time ago from somebody else who made that decision. Would that be fair to say?

DORN: That would be correct.

ERDMAN: Thank you for your time.

FOLEY: Thank you, Senators Erdman and Dorn. Senator Murman.

MURMAN: Thank you, Mr. President. I also want to speak in favor of the LB472 and against the amendments. And I, too, want to thank Senator Dorn and Senator Lowe for bringing this forward. It gives us the opportunity to point out the unfairness of property taxes on agriculture in this state. And I don't have a lot to add, but I do want to thank Senator Briese, Senator Friesen, Senator Brandt, Senator Erdman for also pointing out how unfair property taxes are on agriculture, so I won't add a lot. But it's just an example of-- almost like taxation without representation, but definitely taxation against a small group that doesn't have a lot of say on that taxation. Thank you, Mr. President.

FOLEY: Thank you, Senator Murman. Senator Lowe, you're recognized to close on your amendment.

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LOWE: Thank you, Mr. President. I don't agree with the property taxes now either. Senator Dorn, this is a bad way to pay for this. Our agriculture gets hit hard enough anyway, our farmers. But it is what we have and the vote of the people is one of the strongest things that we have in our country. And we should not undermine that. Our country was founded on these principles that our people have a voice. And I want to keep that. We have done many things in this state that I don't agree with, with the vote of the people. But the people have spoken; so we will deal with it. Senator Dorn, I'm not sure if this would pass in your county, but at least it would be done right. I would like to add this amendment onto your bill so that we can continue to do things right in the state of Nebraska and not let things go to stray. I have sympathy for the people in Gage County and for you, and I know that's why you're here. I thank you for bringing this bill to help solve some of the problems. But I believe we need AM223 [SIC] attached onto this bill so that we can continue to do things as Nebraskans do, the right way. Thank you, Mr. President.

FOLEY: Thank you, Senator Lowe. Question for the body is adoption of AM1223. Those-- call of the house has been requested. The question is, shall the house go under call? Those in favor vote aye; those opposed vote nay. Record, please.

CLERK: 27 ayes, 6 nays to place the house under call.

FOLEY: The house is under call. All members please return to the Chamber and check in. The house is under call. Senator Groene, check in, please. Senator Erdman, check in, please. Senator Groene, check in, please. Senator Groene. Senator Hilkemann, please return to the Chamber, the house is under call. All unexcused members are now present. Question for the body is the adoption of AM1223. A roll call vote has been requested. Mr. Clerk, please call the roll.

CLERK: (Roll call vote taken.) 9 ayes, 22 nays, Mr. President, on the amendment.

FOLEY: The amendment is not adopted. I raise the call.

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

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that LB472 be advanced to E&R for engrossing.

FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB472 advances. Next bill is LB268. Mr. Clerk.

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CLERK: Senator Slama, I have no amendments to LB268.

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that LB268 be advanced to E&R for engrossing.

FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB268 advances. LB352.

CLERK: LB352, I have E&R amendments, Senator.

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that the E&R amendments to LB352 be adopted.

FOLEY: The motion before you is to adopt the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk.

CLERK: Nothing further on the bill, Senator.

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that LB352 be advanced to E&R for engrossing.

FOLEY: The motion before you is to advance the bill. Those in favor say aye. Those opposed say nay. LB352 advances. Select File 2019 Speaker priority bill is LB218. Mr. Clerk.

CLERK: LB218, Senator, I have E&R amendments first of all.

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that the E&R amendments to LB218 be adopted.

FOLEY: The motion before you is to adopt the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk.

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CLERK: Senator Lindstrom would move to amendment AM1137.

FOLEY: Senator Lindstrom, you're recognized to open on AM1137.

LINDSTROM: Thank you, Mr. President. The intent of this amendment to AM536 to LB218 is to eliminate what we've already determined as an unnecessary reference to a public power industry definition. The intent of the bill is to allow the definition of real property to electric infrastructure owned by a political subdivision. The term "political subdivision" captures the necessary public power entities and further definition is not necessary. I would appreciate your green vote on AM1137. Thank you, Mr. President.

FOLEY: Is there any discussion on AM1137? I see none. Senator Lindstrom-- he waives close. The question for the body is the adoption of AM1137. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: 46 ayes, 0 nays on adoption of Senator Lindstrom's amendment.

FOLEY: AM1137 is adopted. Mr. Clerk.

CLERK: Nothing further on the bill, Senator.

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that LB218 be advanced to E&R for engrossing.

FOLEY: Members, the motion is to advance the bill. Those in favor say aye. Those opposed say nay. LB218 advances. LB59.

CLERK: LB59, Senator, I have no amendments to the bill.

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that LB59 be advanced to E&R for engrossing.

FOLEY: Members, the motion is to advance the bill. Those in favor say aye. Those opposed say nay. LB59 advances. LB514.

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CLERK: LB514, Senator, I have no amendments to the bill.

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that LB514 be moved to E&R for engrossing.

FOLEY: You heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB514 advances. LB87.

CLERK: LB87 does have Enrollment and Review amendments.

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that the E&R amendments to LB87 be adopted.

FOLEY: Members, you heard the motion to adopt the E&R amendments. Those in favor say aye. Those opposed say nay. E&R amendments are adopted. Mr. Clerk.

CLERK: Nothing further, Senator.

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that LB87 be advanced to E&R for engrossing.

FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB87 advances. LB212.

CLERK: LB212, Senator, does have E&R amendments.

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that the E&R amendments to LB212 be adopted.

FOLEY: Members, you heard the motion to adopt the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk.

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CLERK: Nothing further on the bill.

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that LB212 be advanced to E&R for engrossing.

FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB212 advances. LB15.

CLERK: LB15, I have no amendments to the bill.

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that LB15 be advanced to E&R for engrossing.

FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB15 advances. And finally, LB637.

CLERK: LB637 does have Enrollment and Review amendments, Senator.

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that the E&R amendments to LB637 be adopted.

FOLEY: Members, you heard the motion to adopt the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk.

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

FOLEY: Senator Slama.

SLAMA: Mr. President, I move that LB637 be advanced to E&R for engrossing.

FOLEY: Members, you heard the motion to advance LB637 to E&R for engrossing. Those in favor say aye. Those opposed say nay. LB637 advances. Members, pursuant to the agenda, we'll

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move back to where we left off prior to the switch in agenda, which takes us to General File, 2019, senator priority bills, LB585. Mr. Clerk.

CLERK: LB585 is a bill by Senator Friesen. (Read title.) Introduced on January 22; referred to the Revenue Committee. The bill was advanced to General File. There are committee amendments, Mr. President.

FOLEY: Thank you, Mr. Clerk. Senator Friesen, you're recognized to open on LB585.

FRIESEN: Thank you, Mr. President. LB585 creates a Renewable Fuel Infrastructure Program. The purpose of the bill is to increase the number of locations across Nebraska where consumers are able to fill their tanks with higher blends of ethanol, from E-15 all the way up to E-85. For those of you not familiar, E-15 is a 15 percent ethanol, 85 percent gasoline. It is like E-10, but it contains more Nebraska produced ethanol and that's good for Nebraska farmers. It's good for Nebraska's ethanol plants, and it's good for the economy. You don't need a flex-fuel vehicle to use E-15. It can be used in most any car on the road today. The EPA has officially approved E-15 for use in cars 2001 or newer. The fuel consumed by these vehicles account for more than 85 percent of the unleaded fuel sold. The problem is, even though Nebraska is number two ethanol producing state in the nation, drivers don't have many options where they can fill their tanks with the higher blends of ethanol. The blender pumps that would be funded by this grant program would also dispense E-30 and E-85. These blends of ethanol have been approved for use in flex-fuel vehicles. Again, the challenge for drivers of flex-fuel vehicles is these higher blends are not widely available across our state. Increasing access to E-15, E-30, and E-85 in Nebraska is hugely important because renewable fuels have been a great thing for Nebraska, especially rural Nebraska, and higher blends of ethanol is one key to continuing the growth of that industry. In a state like ours that a leader in ethanol production, we should be leading the way in promoting the use of ethanol-blended fuels and that's what this bill does. This bill will help Nebraska deploy increasing levels of renewable fuel. This target and support for ethanol industry will grow more renewable fuel energies, and in turn, invigorate our state. The Revenue Committee advanced this bill unanimously with an amendment. I'm also offering an amendment to AM1257 which strikes the million dollar transfer from the General Fund to this program. I would encourage you to support LB585. Thank you, Mr. President.

FOLEY: Thank you, Senator Friesen. As the Clerk indicated, there are amendments from the Revenue Committee. Senator Linehan, you're recognized to open on the committee amendment.

LINEHAN: Thank you, Mr. President. AM953 clarifies that the grants are for blends higher than E-15 and that the Energy Office will award grants maximum number of qualified applicants. The amendment also removes the elimination of the sales tax exemption for currency in bullion

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which was intended to cover the cost of the program. So, with that I would ask for your green vote on AM958 [SIC] and on LB-- I can't read that, LB585. Thank you.

FOLEY: Thank you, Senator Linehan. (Visitors introduced.) Mr. Clerk.

CLERK: Excuse me, Mr. President. Senator Friesen would move to amend the committee amendments with AM1257.

FOLEY: Senator Friesen, you're recognized to open on AM1257.

FRIESEN: Thank you, Mr. President. So what AM1257 does is on page 4, line 19 it strikes (1), which in the end it creates a program for this-- to carry out the purpose of the program. It eliminates-- so it actually on page 4, line 19 it strikes (1) and it strikes line 28-30 on page 4. Thank you, Mr. President.

FOLEY: Thank you, Senator Friesen. Debate is now open on LB585 and the pending Revenue Committee amendment and the amendment to the amendment. Senator Murman.

MURMAN: Thank you, Mr. President. I rise in support of LB585 and AM953 and AM1257. I have designated this as my priority bill because I see the possible economic development that it brings. LB585 creates the Renewable Fuel Infrastructure Program. The purpose of the bill is to increase the number of locations across Nebraska so that consumers are able to fill their tanks with higher blends of ethanol from E-15 all the way up to E-85. E-15 and E-85 are less expensive fuels than E-0 or E-10 so this gives consumers yet another choice when they are filling up their vehicles. The blender pumps that could be funded by this grant would also dispense E-30 and E-85. These blends of ethanol have been approved for use in flex-fuel vehicles. Currently, there are 200,000 flex-fuel vehicles in Nebraska. One thing that I want to address on the floor is the irrational thinking that not all cars can use ethanol in their vehicles. You don't need a flex-fuel vehicle to use E-15. It can be used in most any car on the road today. The EPA has officially approved E-15 for use in cars 2001 or newer. EPA is working to approve E-15 for year-round use. What this bill would do is make blender pumps more available for those consumers who choose to purchase blends of ethanol to fuel their vehicles. Drivers don't have many options where they can fill their tanks with higher blends of Nebraska ethanol because blender pumps aren't readily available across our state. Blender pumps will also give consumers an option of a cleaner-burning fuel alternative than fuel that is not imported. I want to draw attention to the jobs created by this homegrown energy industry that are generating tax dollars and economic activity throughout the state. The ethanol industry remains an important employer for our rural communities. We have 25 ethanol plants spread across Nebraska. Our ethanol industry is providing significantly higher wage-paying jobs that are mostly located in our rural

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communities. Today Nebraska is the number two ethanol producing state in the nation. The only state producing more than us is our neighbor Iowa. Nebraska's large ethanol production results in 94 percent of the product being shipped out of state, making us 10th in ethanol use. For example, when we look at the ranking between Iowa and Nebraska, Nebraska presently has only 62 retail locations out of 1,500 total retail locations that E-15 and higher blends, which are very small percentage of Nebraska gas stations nationwide, especially considering Nebraska's the number two ethanol-producing state. Iowa, which is number one for ethanol, has an ethanol infrastructure program which they are currently funding at 3 million a year. And they have more than 700 fuel retail locations offering higher blends. Nebraska should be leading the way in promoting the use of ethanol and blended fuels. Increasing E-15, E-30, and E-85 use in Nebraska is very important because renewable fuels have been a great thing for Nebraska, and higher blends of ethanol is one key to continuing the growth of the industry. Colleagues, I think you all know that we continually talk about how to grow our state on this floor. We are always looking for opportunities to grow our work force--

FOLEY: One minute.

MURMAN: Thank you-- and bolster our state's economy. Continuing investment in our state and the people that live here should be more of our priority. Nebraska should be leading the way in promoting the use of ethanol-blended fuels. This bill will help Nebraska deploy increasing levels of renewable fuels. This targeted support for our ethanol industry will grow our renewable fuel energies and in turn invigorate our state. This not only helps our agriculture producers and those that are employed in the ethanol industry, but it also gives those drivers who are looking for options to fuel their tanks with higher blends of ethanol-- of Nebraska ethanol. Colleagues, I urge your support for LB585 and the amendments. Thank you, Mr. President.

FOLEY: Thank you, Senator Murman. Senator Bolz.

BOLZ: Thank you, Mr. President. Would Senator Friesen yield for a question?

FOLEY: Senator Friesen, would you yield, please?

FRIESEN: Yes, I would.

BOLZ: Thank you, Senator Friesen. So, I just want to make sure I understand the way this bill would move forward under the amendments is that you would create a best practice policy, the opportunity for grant funds, and moving this forward would give you an opportunity in the future to identify a funding stream. Is that a fair analysis?

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FRIESEN: Yes. We have tried a different number of things that didn't work out. There are some funds dealing with clean air. There's some settlement funds we've looked at. We're still trying to find funding, but it would be, I guess, in my best interest now if we could get a program started and continue it when we do find the funding.

BOLZ: Right. OK. Thank you, Senator Friesen. I think that it is appropriate and perfectly fair to establish best practice policy on the floor. And I do think that it's fair to move forward legislation establishing the policy and finding a funding stream later. Senator Friesen, would you yield to another question, please?

FOLEY: Senator Friesen, would you yield, please?

FRIESEN: Yes, I would.

BOLZ: Senator, what might some of the opportunities for a funding stream be? What are some of the ideas out there?

FRIESEN: For looking for money?

BOLZ: Right.

FRIESEN: So there's numerous things out there that we can look at. I mean, there's been some settlements like the VW settlement; but I guess our Department of Energy has-- when they wrote something in there it's difficult to get to, but we're looking into that. There's some clean air funds that are out there that would kind of fit with what we're doing. Ethanol is a very clean-burning fuel. We've got-- I think there's another bill that I-- if I remember Senator Nordquist, back in the day, or maybe Senator Mello, there was a clean energy fund where we did some compressed natural gas, that ethanol was included in that. There's places I'm looking. And I think down the road if we have, again, some day have some revenue growth or something, this is something we could do.

BOLZ: I appreciate that. And I think that that's one way to move legislation forward. One of the things that has been a challenge for me on this floor is that sometimes when we've had bills like this move forward, bills that establish best practice policy and say we'll find funds in a future year when revenues are better or I'll look for a funding stream, or we'll find a way to fund it in the future, sometimes, and this has happened to me, there's an accusation that somehow the funding stream will be a funding stream by raising taxes, or that it's not fair to establish policy without any funding behind it. And Senator Friesen, two years ago I had a bill that would work

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on work force education, and you had some concerns that maybe there would be an increase in taxes-- in property taxes through the community colleges, even though I was using the same strategy that you're using today. Even though I was using the same strategy of establishing best practice policy and coming in in future years or future amendments or future bills or future policy to find a funding stream. So the point of bringing this up on the floor is that I don't oppose your bill. I don't even oppose your strategy. But I do think it's unfair to be inconsistent and to accuse or insinuate that certain senators might lead to a funding stream that increases property taxes or to say that you don't support a policy without a funding stream one year but that you do the next. And so I'm going to vote for this bill because I think that best practice policy is a good thing to move forward when you have the political will and the energy to do it. But, Senator Friesen, I would hope that you would have an open mind in the future when similar bills come from your colleagues. Thank you, Mr. President.

FOLEY: Thank you, Senator Bolz. Senator Wishart.

WISHART: Thank you, Mr. President. I rise in strong support of LB585 and the following amendment. I have taken some time over the last year to really invest myself in learning about ethanol. And the more I learn about this industry, the more excited I get about the potential Nebraska has to be a leader in this space. Not just for fuels, but also for other kind of products that corn can be used for. I think it would be great if every little kid in the state realized that some of the solutions to dealing with some of the biodiversity problems in our oceans are being developed using innovative techniques around ethanol in Nebraska. So hundreds of miles away from the ocean, we in this state are solving some of our ocean problems in terms of finding replacements for plastic with ethanol, and also finding food for fish farms instead of overfishing our oceans. We are using ethanol to feed fish. So that's really exciting. In terms of this bill, I commend the senators for bringing it. In Lincoln, I know there are two places that consumers can get E-15; and for those of you who are interested, in Lincoln they're at the Pump and Pantry on West O Street and U-Stop on 84th. And so this bill would give us an opportunity to potentially expand those locations in Lincoln and across the state. So again, I rise in strong support. Thank you.

FOLEY: Thank you, Senator Wishart. Senator Hughes.

HUGHES: Thank you, Mr. President. Would Senator Friesen yield to some questions, please?

FOLEY: Senator Friesen, would you yield, please?

FRIESEN: Yes, I would.

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HUGHES: Thank you, Senator Friesen. Would you give us just a little background of how the ethanol industry exploded here probably 20 years ago and how the funding for that took place, where that funding came from.

FRIESEN: Well, again, the ethanol industry in Nebraska is one of the most rapid-growing industries that ever happened probably in this state. Once the ethanol idea was born here, the corn growers actually had a checkoff, and we called it the Epic Fund. And we put money towards infrastructure and building these ethanol plants, along with the state; the state partnered with us, but I think the total cost that we put into it was about \$105 million just from the corn growers.

HUGHES: So it was a cost share to develop an industry between state general funds and farmer checkoff dollars, that's correct?

FRIESEN: Yes, the state put in approximately \$64 million. We put in 105.

HUGHES: Wow. Sounds familiar. What are-- I think Senator Murman touched on it, but the things that Iowa, our surrounding states, are doing to promote these blender pumps, to promote the use of our homegrown product.

FRIESEN: Yes, Iowa has put in-- they put in, I think, roughly \$3 million a year into this program in order to get more blender pumps out there. And so they've got like 700-some blender pumps currently in the state.

HUGHES: Just as a little background, I did spend, I don't know, five or six years on the Nebraska Ethanol Board. And, you know, that is the board that works at promoting ethanol in the state of Nebraska and was part of that growth spurt that went on. It's very interesting, and the parts you need to realize is that the oil industry has fought ethanol tooth and nail every step of the way. And that's part of the reason why these blender pumps are so important that we provide a little bit of money to help jump start that; because if you are a national chain, you have only a certain amount of space under your canopy. And those national oil companies don't want to share that space with ethanol, because we're taking part of their sales. It's not oil. It's ethanol. But the thing I really want to remind people is of how green ethanol is and why we use ethanol. What it does is it makes the gasoline, the oil product, burn cleaner. It makes it-- the gas, the oil burn more completely, so it reduces the pollution. That's why we have ethanol. That's why it came popular. It's to clean up our air. When I was a kid, I live in southwest Nebraska, and I can remember days when I would ride the bus to school, and you could see the smog from Denver 200 miles away coming up the South Platte Valley. And there's a lot more cars out there now, and you don't see that because we have blended our gas with ethanol and it provides an opportunity to burn more cleanly, more completely, and emit fewer emissions into the air.

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FOLEY: One minute.

HUGHES: So it is always been beyond me why everybody in Nebraska doesn't burn ethanol because it is good for our environment, and it supports our number one industry. Thank you, Mr. President.

FOLEY: Thank you, Senator Hughes. Senator Ben Hansen.

B. HANSEN: Thank you, Mr. President. I'm just standing in support of LB585 and the following amendments, especially AM1257 that Senator Friesen put forth. This bill kind of actually gave me a little bit of heartburn because in my district, with Cargill, one of the largest ethanol-producing plants in the state of Nebraska, I am-- I have an affinity towards ethanol; not just personally, but all through my district and my constituents. I like to see the growth of ethanol. I think its been brought up by other senators so far on the floor about the importance of ethanol, what it has been for our state, the investment that the state and other people have put towards this industry. However, I'm also a strong proponent of not taxing currency and bullion. I think that as a fair way to trade and use as currency, I don't want to see the state get involved in taxing that. So I do appreciate Senator Friesen for bringing forth AM1257 by removing that aspect of the bill. And so with that, I urge everyone-- their green vote on LB585 and the following amendments. Thank you.

FOLEY: Thank you, Senator Hansen. Senator Friesen, you're recognized to close on AM1257.

FRIESEN: Thank you, Mr. President. So what this bill does is create a program similar to what the Nebraska Corn Board has established. Currently, the Nebraska Corn Board established program, this year, I think they're funding it at \$775,000; and previously we funded at those levels. So, we've literally spent millions of dollars also promoting E-15 and blender pumps. And so when you look at these service stations out there, the Kwik Shops, the cost to put in a blender pump, and with this technology, is expensive. And their margins on fuel, it's very competitive market, and some of them just can't afford to make that change. And so that's the reason we developed the program at the Corn Board. It has worked very well. It has gotten some ethanol plants that actually partner with some of the convenience stores, and they also sell ethanol direct. So you can say that we're actually burning our own created fuel here, our only-- our renewable fuel that was created in Nebraska and you can burn it in your vehicles right here, and all that money stays in the state. So, I urge you to support all the amendments and we vote green on LB585. Thank you, Mr. President.

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FOLEY: Thank you, Senator Friesen. Members, you heard the debate on AM1257. The question for the body is the adoption of the amendment. Those in favor vote aye; those opposed vote nay. Have you all voted? Record, please.

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

FOLEY: AM1257 has been adopted. Senator Linehan you're recognized to close on AM953. She waives close. The question for the body is adoption of the Revenue Committee amendment. Those in favor vote aye; those opposed vote nay. Have you all voted? Record, please.

CLERK: 35 ayes, 0 nays, Mr. President, on the adoption of committee amendments.

FOLEY: AM953 is adopted. Senator Friesen, you're recognized to close on the advancement of the bill. He waives close. The question for the body is advancement of LB585 to E&R Initial. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: 39 ayes, 0 nays on the advancement of LB585.

FOLEY: LB585 advances. Items for the record, please.

CLERK: Mr. President, Committee on Transportation reports LB184 to General File with committee amendments attached. Senator Lathrop has an amendment to LB538 to be printed. New resolution: Senator Ben Hansen, LR83. Reminders: the Appropriations Committee will meet upon adjournment in Room 1003, that's Appropriations upon adjournment. And Revenue will meet at 5:30 tonight in Room 1510; the Revenue Committee at 5:30 this evening.

Mr. President, Senator Groene would move to adjourn the body until Thursday morning, April 11, at 9:00 a.m.

FOLEY: Members, you've heard the motion to adjourn. Those in favor say aye. Those opposed say nay. We are adjourned.