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FLOOR DEBATE

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LB 754

SPEAKER BROMM: The bill started out, Senator Thompson, to actually deal with the burden of proof issue, and we, after the public hearing and discussion, decided that we really didn't want to deal with that. There is case law that says very much, as you have said, that the burden of proof is on the person that appeals the decision to show that the decision was wrong, and this doesn't change that. Strangely enough, of the provisions of the bill that I have had the most positive comment on from counties, it's that section. The good zoning officials that have contacted me from outstate and those areas where they have had considerable livestock activity feel that that's exactly what they should do, is issue a state of factual findings, because I believe both sides feel it's more likely that the decision would be based on the rules that are in place and the information that's presented and not on who it is that they are dealing with, but rather the factual situation. Now the attorneys that say that this would give rise to more litigation, I guess I would disagree with that because you wouldn't have to guess at what the findings were or what the decision was based on. You have it and you...

SENATOR CUDABACK: One minute.

SPEAKER BROMM: ...can decide whether it's, in fact, supported by the facts or not. And usually that leads to less litigation than more, but these are very difficult cases to appeal and litigate. I know that. There is not a lot of appeals and they are very difficult when they are appealed. So I'm sorry to take that much of your time.

SENATOR THOMPSON: And...that's okay, and just who issues the statement of findings?

SPEAKER BROMM: It would be the...in the case if it's a county that has a planning commission that makes an initial recommendation, which most counties do, the planning commission would attach that findings to their recommendation sent to the county board. The county board could either agree with those findings or they could disagree, and if they are the final decision maker, then they would issue a set of findings with their decision.