

November 8, 1989

LB 1-9
LR 1-3

escort the Honorable Kay A. Orr from the Chamber.

Ready for the introduction of bills.

CLERK: Mr. President, new bills: (Read LBs 1-7 by title for the first time. See pages 59-60 of the Legislative Journal.)

Mr. President, in addition to those new bills I have new resolutions. (Read brief explanation of LRs 1-3. See pages 60-62 of the Legislative Journal.) That, too, will be laid over, Mr. President. That is all that I have at this time, Mr. President.

PRESIDENT: If you will stand at ease for just a few moments, we have a couple more bills coming.

EASE

CLERK: Mr. President, further introductions: (Read LBs 8-9 by title for the first time. See page 63 of the Legislative Journal.) That is all that I have, Mr. President.

PRESIDENT: Senator Labedz, did you have any words of wisdom for the body, please?

SENATOR LABEDZ: Thank you, Mr. President. Yes, I would like to request that the...

PRESIDENT: (Gavel.) Please have your attention to listen to Senator Labedz a moment, please.

SENATOR LABEDZ: Since it is almost noon I would suggest that the Exec Board meet at one-thirty as part of the Referencing Committee to reference the bills that were introduced today, one-thirty in Room 1517.

PRESIDENT: Thank you, Senator Labedz. Senator Barrett, do you wish to adjourn us until tomorrow and tell us at what time, please?

SPEAKER BARRETT: Thank you. Mr. President and members, I move that the body adjourn until nine o'clock tomorrow morning. Thank you.

PRESIDENT: You have heard the motion to adjourn until tomorrow

November 9, 1989

LB 1-3
LR 1

resolve this problem with the present bills, LB 1 and LB 2. I have not studied LR 3...LB 3. We cannot resolve the problem in a regular 60-day session which will be forthcoming in 1990. There will be too many other problems at that time. We need to take the time now slowly, deliberatively, painfully, working with all the groups, principally the legislators. Of course, it's good to listen to those groups who spend the taxpayers' money, who have supported these bills. They have a responsibility to protect their entity but it is the Legislature's responsibility to draft the legislation and we should represent the taxpayers to the best of our ability. We should do that in slow, deliberate and a very painful process...

SPEAKER BARRETT: Time.

SENATOR SCHMIT: ...and, therefore, I support the McFarland resolution.

SPEAKER BARRETT: Thank you. Senator Nelson, followed by Senator Lamb.

SENATOR NELSON: Mr. Speaker, members of the body, I, too, will support Senator McFarland's resolution. I hope that, through our deliberation and our consideration, that we can lay all politics aside. I was elected by my constituents probably by a larger majority of the party that I am not represented to come down here and be as knowledgeable as I can be and to find out the facts and then try to make the best decision. I feel, by the very narrow call and these bills that were given us, I, too, have a lot of concern with a major change, particularly in LR 1. I would defy any senator on this floor right now to say that they fully understand the implications of that bill. Another thing that bothers me, I think Senator Schimek alluded to it very much. I don't blame the interested parties that had a lot of input in the drafting of these bills. They represent their own special interest. The one tax study group here, I called them last Friday. They named off the individuals that had met earlier that morning, primarily the railroads, the pipeline companies, the realtors, the Farm Bureau, and the school boards, and so on, and I said that is fine, but where was the Legislature? Who represented the Legislature? Who represented the taxpayers and my constituents? I think the answer was, well, that is coming. I am not comfortable. I am not saying that the draft is all right or they are wrong, excepting that for us to come down here and all along I have said, we don't

CLERK: Mr. President, I have received from the Reference Committee reference reports referring LBs 1-9 as introduced yesterday. I have also received a reference report regarding certain gubernatorial appointees to the appropriate standing committee for confirmation hearing. (See pages 66-68 of the Legislative Journal.) Mr. President, pursuant to receipt of the reference report, I have a motion on the desk. Senator Schmit would move to rerefer LB 1, LB 2, LB 4, LB 5, LB 6, LB 7, LB 8 and LB 9 to General File, pursuant to Rule 6, Section 2.

SPEAKER BARRETT: The Chair recognizes Senator Schmit.

SENATOR SCHMIT: Mr. President and members, I will not speak at great length at this time because there will no doubt be others who will wish to address the issue. I just would like to offer this motion because I want to point out that the reason for a public hearing, of course, is to provide the public an opportunity to come before the committee, present their point of view on a proposed piece of legislation. At this time, I doubt that hardly any members of the public do have before them any copies of the bill. Most certainly, they do not have before them the rewritten copies of LB 1, which I have seen, which I understand is still undergoing some change. Number two, I want to point out that I believe that, depending upon whether or not Senator McFarland receives sufficient signatures to extend the session or to expand the session, that the bills ought to be discussed and debated by the entire body. I have read many comments by the members who have indicated that the bills, LB 1, LB 2 and LB 3, at least, were going to be passed and, in fact, one of our colleagues said that he didn't know what was in them, didn't know if they were good or bad but that they would probably be passed. I don't think that reflects probably the total consensus but I think, it all honesty, it's an honest consensus and I certainly do not criticize the member for having been so frank. More than anything else, I believe that we ought to have all members involved in the process. I have introduced before the Revenue Committee many bills, in the past years that I have been there, very few, I might add, that have seen the legislative floor. I would like to suggest that it might have been a little less burdensome in this regard today had some of those bills made it to the floor. I would suggest that some of the bills that have been introduced, not...by the Governor, and not to pick on those bills or on Senator Warner's bills, some of the bills that I have introduced, some of the bills that Senator

Haberman has introduced, do merit debate on the floor. I believe that it ought to be up to the entire body to determine whether those bills have merit or whether they do not. I don't believe we should place the entire emphasis and give all of the responsibility to eight members of the Revenue Committee. I think it's important at this time that we recognize that there is no purpose to be served by going before a public hearing unless the public from Scottsbluff to Bellevue, from Falls City to Chadron, have a chance to come in and be heard. I have had numerous calls from individuals who have contacted me wanting to know how they can have input on these bills. My response has been very simple, call your senator. That individual is the best access you have to these bills. To attempt to come before the committee...and I respect Senator Hall and his committee very much, I have always said it's the hardest working committee on the floor and the most difficult committee to work as a member of, but I do not believe that we can get input from the entire cross section of the State of Nebraska. To the extent that we cannot, the thinking of the committee is not going to reflect a statewide opinion. It will, in fact, reflect the opinion of eastern Nebraska and I suggest that that is not fair and that is not equitable and that might be why the bills, as we see today, particularly LB 1 and LB 2, are in such a state of disarray. Certainly, had there been more input from outstate Nebraska, from rural, urban business groups, the bills would not be undergoing the rewriting that they are undergoing today. I suggest and I ask the question how can those individuals who will come before the committee tomorrow have any inkling of what is going to be in those bills when the amendments are being drafted as of now? They will be coming before the committee prepared to testify on the green copy if prepared to testify on anything, and I would suggest that the green copy that we have before us today will in no way reflect the content of LB 1 and LB 2 when they come before the committee. I would hope that the body will discuss the merits of having the bills on the floor where all 49 members can have input because we represent, as has been said today here several times, each a constituency. The only manner in which that constituency can be represented in the drafting of these bills at this time is if the bills come to the floor. If we get a microcosm of bills before this body, we are going to only address a very narrow part of the problem and I suggest that that will not be a solution. We should not be dodging the issue. We should not be dodging the tough questions. We should be addressing the tough questions, as difficult as they are, as unpopular as they are, as unpopular,

yes, as they might make us back in our home districts. But we do not have the luxury, we do not have the ability, I do not think, at this time to delay those decisions until another time. If you will go back and read the news accounts, and Senator Lynch had some here, I believe, yesterday, each time for the last 10 years that we have met in a session or a special session we talked about a temporary solution, a part-time application of a solution to a very difficult problem. We never did address the entire problem. Way back in 1979, I said you cannot patch a totally bad roof one shingle at a time, you must apply a new roof. Ladies and gentlemen, it's time for a new roof. It's time that all 49 of us were working on it and I think we ought to address it in that manner and, Senator Hall, again, I want to emphasize it is not in any way an indication of lack of competence in your committee, it is just an expression of mine that I think we ought to all be involved in the legislative and drafting process. Thank you very much.

SPEAKER BARRETT: Thank you. Discussion on the Schmit motion. Senator Chambers, Senator Hall on deck.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, as a member of the Executive Board, I opposed the Executive Board referring the bills directly to the floor and felt that the motion should be handled in the way Senator Schmit is handling it now by presenting it to the entire body and I'm going to support his motion. The better course would be to delay the public hearing so that there would be adequate time to publish this legislation and make it available for the public who will be affected very profoundly by it, but that is not to be done. And it's clear that it's not the administration's desire that the public know because the administration deliberately withheld even the green versions of the bill from the Legislature. That was done to manipulate the system and maneuver the Legislature into becoming a rubber stamp. But to show that certain news outlets understand the insignificance of what we're doing because it's a done deal, I can't help noticing things and I shouldn't read newspapers like I do, other than the funny papers but I do read something other than the funny paper and the sport section. But here are things that were more important to the Lincoln Star. Doctor. Kitty Dukakis drank rubbing alcohol. Here's another thing that's very important. Eating fish twice a week shown to prolong life. Then the new 84th and "O" project proposed. And here is an international issue that should merit front page coverage. German crisis

monitored by worried super powers. Another article. After mid-terms, 'tis the season to skip classes. Then winter is a murderous time as crows visit Nebraska towns. There is nothing about the Legislature in any of these articles and I think it just shows a decision made by those who publish the paper that this is nonsense that we're engaged in, this is a circus, this is a carnival. When has a carnival merited front page coverage? Now the World-Herald will give front page coverage because the World-Herald supports Governor Orr and the World-Herald has tried to make everything she do seem as though it makes sense when, in fact, it doesn't. When there is one large newspaper and it, instead of trying to inform the public, tends to becloud the issue and argue that there is no necessity that the public know what the Legislature is doing, it's clear that that paper has made itself an arm of the administration. It can do that. It can do that, because the Constitution grants them the freedom to do it, but it is not ethical and it is not professional. But when have the terms "ethical" and "professional" ever appropriately been attached to the World-Herald in anything that it does? I noticed the other day, after Nebraska had gotten its pants pressed in a football game with Colorado, that the World-Herald editors all got together in secret conclave and wrote one of the most vitriolic editorials against a university because the players took inspiration from the fact that one of their teammates had died from inoperable stomach cancer. Now if old Harold kicks the bucket and they write all these glowing terms about him and I stand up on the floor and talk about some of the terrible things I think he did, they would say I'm terrible. This young quarterback did not hurt the Omaha World-Herald. They did not...he did not do anything to try to improperly influence public opinion or defame anybody as the World-herald regularly does. But when you have a cheap, yellow journalistic sheet, like the World-Herald, supporting the Governor in what she does, it's difficult to make a jump but sometimes you say you judge persons by the company they keep. Now it's clear that there is no intent that the public be aware of what this legislation should consist of. It's clear that the legislators are not to be made aware of it. A public hearing would be a charade under these circumstances.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: The whole session, as I said, is simply pro forma just to go through the motions, but we don't have to participate in creating a sham that we foist on the public. As

Chairman of the committee, I can see where Senator Hall would want to discharge his duty and make a forum available to the public even though the time frame is so short that members of the public who may want to participate realistically will not have an opportunity to do so. I would rather that instead of getting into such a breakneck hurry to carry out the Governor's will...and I'm surprised some of my colleagues who pretend to love the legislative process so much and are praised by Dick Herman for loving that are not joining me in saying we should delay the public hearing until such time as the public can hear. But the purpose is not to give the public a hearing but to make the Governor's first step toward reelection a success. I'm going to support Senator Schmit's motion.

SPEAKER BARRETT: Thank you. Senator Hall, followed by Senator Warner.

SENATOR HALL: Thank you, Mr. President, and members, I rise in opposition to Senator Schmit's motion to reference the bills to General File and it's not because I am looking forward to the public hearings that we're going to hold tomorrow. The public hearings were scheduled, basically, for tomorrow because it did allow for additional time for the general public to get a look at the bills, at least, if nothing else, read the press reports, listen to the press reports on the bills that have been introduced. There had been some indication as to what was going to come in prior to yesterday. They, in their papers either last night or this morning, have I think gotten information that details what is in those eight bills. We were...I thought if we held the hearings this afternoon would be jumping the gun in terms of allowing folks from across the state the opportunity to testify on the various measures before us. Holding the hearings tomorrow, although it is Veterans' Day as recognized by the state, was I think the most opportune time to allow for complete discussion of the issues. Now that we have eight bills before us, we will spend the vast majority of the day from nine o'clock on dealing with all eight of those issues, in their entirety, in front of the committee. I understand Senator Schmit's concern. I would argue that the Revenue Committee would not look at these issues strictly from the viewpoint of eastern Nebraska but look at them from the viewpoint of the entire state. Our revenue system runs across the state. It is not limited to a certain geographic area of the state. I would also argue that I would appreciate Senator Schmit's testimony tomorrow before the Revenue Committee on these issues, and I would be very

interested in seeing a copy of the rewrite of LB 1. Senator Schmit, I have not been privileged to get that as of yet, and I will be very interested to hear the reasons for the amendments to the bills as they are presented tomorrow morning. It will make it easier for me to get up at six o'clock knowing that that is going to be presented the first thing in the morning. With that, I would argue that it is important, our whole system here, the Unicameral system is based on the public hearing. As you all know, we are the only state in the nation that allow for a public hearing on every bill. To deny that, I think, although many of the issues have been heard before, at least one of the bills is the bill that Senator Schmit...virtually the same bill that Senator Schmit introduced a year ago, was heard before the committee. They deserve the opportunity to be heard. They deserve to be debated. They deserve the opportunity to have amendments offered. I think there will be more amendments offered than the ones that Senator Schmit talks about. Those all need full public debate. We will allow for that tomorrow. After that, the committee will deliberate and make a determination as to how they will deal with the bills as they have been presented. We won't do anything any different than we have in the past, and I hope that the body will defeat Senator Schmit's motion to refer, although I completely understand his reason for offering it. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Senator Warner, please.

SENATOR WARNER: Mr. President, members of the Legislature, I would rise to support Senator Hall's position to go ahead and have the hearings. I don't know if this...actually when I pushed my button, I wrote an amendment out to exclude from Senator Schmit's motion LB 7 which I introduced because, in fact, I would appreciate a public hearing and the input that can be attained from that and have the Revenue Committee of the Legislature reviewing that proposal. As Senator Hall has pointed out, it has in part, at least, been considered before, and not knowing how things are going to go this morning, rather than offer an amendment, I'd assume that this is not going to pass, but if it does, then I will still come back and ask to have LB 7 excluded because I would very much appreciate a hearing on that bill by the Revenue Committee.

SPEAKER BARRETT: Thank you. Any other discussion on the motion? Senator Schmit, would you care to close?

SENATOR SCHMIT: Well, Mr. President and members, the idea of a public hearing is, of course, a very laudable one and a very desirable one. I always support that idea. My concern is, as I have expressed earlier, that this will not, in fact, be a true public hearing. We will hear again from, number one, the cities, number two, the counties, number three, the school boards; number four, we are going to hear from Mr. John Boehm. I, myself, will be most interested, Senator Warner, listening to Mr. Boehm come in and testify in support of LB 7 this time because he testified against LB 497 when I introduced the bill during the regular session. And I recognize that conditions change, and I recognize that situations change, and, therefore, of course, we have to sometimes change our position, but I would want to just remind you that Senator Hall doesn't even have the proposed rewrite of LB 1. I would suggest how can the public possibly be prepared to testify on such a bill when they do not have it in their possession even a few hours prior to their coming to the legislative arena. In addition to that, I want to suggest to you that the entire public hearing process ought to be once in awhile for the benefit of the public, so that the citizen, the taxpayer, the individual who has to pay the bill can come in and sit down and tell the Revenue Committee why they want a bill, do not want it. We have many reasons why, of course, the cities and the counties and the schools need to maintain their cash flow. I do not in any way condemn those entities for their interest. They have an obligation and a responsibility to the entities they represent to do so in a manner which maintains to the best of their ability the cash flow necessary to sustain those subdivisions of government. At this point in time, we ought to be listening to the taxpayer to determine if the taxpayer believes that all of the expenditures we have been making and intend to make and will commit to make are necessary and, in fact, ought to be a part of the obligation of the taxpayer. I think we would find it to be substantially different. I would like to ask just in conclusion, how do you propose, how do you propose that western Nebraska, even central Nebraska, can possibly get here to testify on these bills, present their point of view, when they will not have that information before them tomorrow morning. It is not going to work. We are going to listen, we are going to all get together, the same little groups, the same little group of lobbyists, the same narrow point of views will get together in the hearing room, exchange ideas and conversation and quips and jokes, and we will recess. I would just want to suggest, I don't want anyone to take any offense by it, but it will be very, very

strange, Senator Hall, if those bills introduced by Schmit and Haberman reach the floor tomorrow. If they don't reach the floor, it is very difficult for this body, as a group, to have any input on those. That is the only way that the additional 41 members, and therein the people they represent, can express their point of view on something other than the bills which have been proposed, which today almost everyone wants to distance themselves from. Governor Orr has worked very diligently, very sincerely, and very dedicatedly to try to resolve the problem from her point of view. We have an obligation to give to her our point of view, another point of view, another solution,...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...because as she has said, we should work together. The very groups whom she mentioned who have supported her, worked with her on the drafting of the two bills, have in two instances told me they did not even see the bills before they were presented to the body, and certainly were attempting to distance themselves from them. I would suggest, ladies and gentlemen, that the best possible hearing for these bills is a full and open debate before the legislative floor. However, I am a realist. I know it is not going to happen. Mr. Chairman, with your permission, I ask that the resolution be withdrawn.

SPEAKER BARRETT: Thank you. The motion is withdrawn. For the record, Mr. Clerk.

CLERK: Mr. President, I have a series of hearing notices from various Standing Committees regarding scheduling of confirmation hearings. Pursuant to the filing of those hearing notices, Mr. president, I have a motion to suspend Rule 9, Section 3 to permit the committees to conduct confirmation hearings on gubernatorial appointments more than five calendar days following the referral of such appointments by the Reference Committee.

SPEAKER BARRETT: The Chair recognizes Senator Labedz.

SENATOR LABEDZ: Thank you, Mr. President. I move to suspend the rules, Rule 9, Section 3, to permit committees to conduct confirmation hearings on gubernatorial appointments more than five calendar days following the referral of such appointments by the Reference Committee. Thank you.

November 13, 1989 LB 1, 2, 7

SENATOR LANDIS: My motion says that if we could have a temporary Kings-X on passing notes in from the lobby, and calling us out until the discussion on LB 7 is over tomorrow morning, I will be withdrawing this. I do want to make a pertinent remark. I think we may prepare for a deluge of lobbying. My guess is it will start at eight-eleven, I mean, sorry, five-eleven this evening, and will continue, unabated, tonight, tomorrow morning before the session, and during the session. My only admonition to my colleagues is I hope that we will have a chance to address this among ourselves, that we will bring an open mind to the discussion tomorrow, and that we will be able to decide this on the floor of the Legislature tomorrow morning. And, with that, I would withdraw the amendment, the motion.

PRESIDENT: Thank you. Senator Schmit, there is nothing before the house, did you still want to talk? All right. The Clerk is checking on something, and we will be at ease for a moment. Senator Hall, I understand you'd like to be recognized for a discussion about the bills tomorrow and so forth. Senator Hall.

SENATOR HALL: Thank you, Mr. President, members. The bills that the committee dealt with are....

PRESIDENT: Senator Hall, just a moment. (Gavel.) Could we please have it quiet so we can hear Senator Hall, please. Thank you.

SENATOR HALL: Thank you, Mr. President. The bills that will be before the body tomorrow, LB 1, LB 2, and LB 7 that the committee dealt with amendments on, are just about complete. We expect that those amendments, in their entirety, should be ready to be printed up before six o'clock this evening. I've talked to the Clerk, and Mr. Clerk feels that the amendments could be yet printed tonight so that they could be distributed to individual senator's offices. But they will probably not be here, they won't be here before 6:00 p.m., and it looks like it could be very likely much closer to 7:00 p.m. before they are ready. With that, that is the best I can do, folks. They will be ready at that time and we will distribute them to your offices at that time.

PRESIDENT: You're speaking about tonight, around seven?

SENATOR HALL: Tonight, yes.

November 13, 1989 LB 1

PRESIDENT: Okay.

SENATOR HALL: That's if they're all printed and they're all ready to go. If not, Mr. President, they'll be at your desk first thing in the morning.

PRESIDENT: Will there be some in the hallway, next to the Clerk's office, if they wish to stop by there and pick them up, tonight?

SENATOR HALL: I'm sure that's not a problem.

PRESIDENT: The Clerk says that, if they are returned from the Print Shop this evening, they will be on the desk in front of his office. However, if the Print Shop doesn't get through with them, he doesn't promise they'll be there.

SENATOR HALL: He's the boss, in this case, Mr. President. I have to yield to the Clerk.

PRESIDENT: Okay. Now, I think you have....

SENATOR HALL: As much as I hate to, I have to yield to the Clerk. (Laughter.)

PRESIDENT: Senator Schmit, your light is on.

SENATOR SCHMIT: Question from Senator Hall.

PRESIDENT: Senator Hall, please.

SENATOR SCHMIT: In other words, Senator Hall, we're supposed to begin debate on those bills, with rather extensive amendments, at nine o'clock tomorrow morning, without having seen them, right?

SENATOR HALL: Senator Schmit, very similar to the way we dealt with LB 1 in the committee hearing as the commissioner brought a complete rewrite before us. But that would be a good analogy, yes.

SENATOR SCHMIT: Then I can only say that I guess the committee is trying to exceed the commissioner's record for irresponsibility.

tomorrow, it's over, folks. There is no television station that goes statewide, other than ETV, and it isn't broadcast live, statewide, except under extraordinary circumstances, same way with radio coverage. So I think there is nothing we can do about this right now, except to say let's, in the future, both on the legislative side and the executive side, be more sensitive to the need for the public to know and be able to track what's going on out there, and for them to be able to make suggestions and contributions as we debate some very highly technical points. I know we all have networks of people that we go to and we run these things by. But I do think that in addition to the frustrations that we feel, that if I were a member of the public out there right now, trying to follow this, I would literally be my wits end. And I think this might be a thing for the Rules Committee to take up as we talk about how we inform the public and what kind of notice we put out to the public. This would be an appropriate issue to think about in the future. Thank you.

PRESIDENT: Thank you. Senator Hall, please, did you wish to comment on this?

SENATOR HALL: Thank you, Mr. President, members. I'd just rise to explain, I guess a little bit, not necessarily defend, because there is nothing to defend, and I don't feel any need to defend anything, the process that the Revenue Committee went through. We scheduled a hearing on eight bills that lasted eight and a half hours for the first full day that we had the opportunity to do that, that was Friday. We met in Executive Session today with only seven of the eight members, because that was the earliest point at which we could garner that many members together. Put together the materials, submitted them to the Bill Drafters who did yeoman's work in having them put together. Currently, LB 1, LB 2, and I'm signing LB 7 right now, are all down and will be on the Clerk's desk before five-thirty this afternoon. Explanations, bill summaries of the amendments are being copied. You've been handed, I think, LB 2, you'll get LB 1, hopefully, before five-thirty, and as soon as we have the explanation of amendments to LB 7, you'll get those shortly, they're being punched out of the machine as I speak. So we will have that information for you. Whether or not you'll get the draft copies of the amendments, I don't know, that's going to depend on the printers and how soon we get these over there. But we...just as difficult as it has been for members of the public, it hasn't been a piece of cake for members of the

November 13, 1989 LB 1, 2, 6, 7

Revenue Committee either. So I appreciate the Speaker's willingness to delay things until one o'clock, so I can explain these amendments to you, as well, tomorrow when we come onto the floor. So, with that, I appreciate his offer to extend the start back to one o'clock tomorrow afternoon.

PRESIDENT: Thank you. Mr. Clerk, do you have anything else for the record?

CLERK: Mr. President, your Committee on Revenue, whose Chair is Senator Hall, to whom was referred LB 1, instructs me to report the same back to the Legislature with the recommendation it be advanced to General File with committee amendments attached; LB 2 to General File with committee amendments attached; and LB 7 to General File with committee amendments attached. Those are signed by Senator Hall. (See pages 91-92 of the Journal.)

Mr. President, I further have a motion from Senator Warner to place LB 6 on General File. That will be laid over. That's all that I have, Mr. President.

PRESIDENT: Thank you. Senator Withem, please.

SENATOR WITHEM: Yes, I would move that we adjourn until 1:00 p.m., November 14th, Tuesday, November 14th.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. We are adjourned until one o'clock tomorrow afternoon. Thank you.

Proofed by: Arleen McCrory
Arleen McCrory

November 14, 1989 LB 1, 3
 LR 5

McFarland. (Read brief explanation.) That will be laid over. And LR 5 offered by Speaker Barrett. (Read brief explanation.) That, as well, will be laid over, Mr. President. (See pages 99-100 of the Legislative Journal.) And that is all that I have.

PRESIDENT: We will move on to General File, LB 3, please.

CLERK: Mr. President, LB 3 was a bill introduced by the Speaker at the request of the Governor. (Read title.) The bill was introduced on November 8, Mr. President. Subsequent to that action, the Reference Committee reported the bill directly to General File. I have no amendments pending.

PRESIDENT: Thank you. Senator Labedz, please.

SENATOR LABEDZ: Thank you, Mr. President. LB 3 appropriates the funds that cover the expenses of the Legislature and it is for the special session, of course, and Section 1 includes \$24,973, General Funds, for the senators' mileage and the per diem cost. There is also a \$5,000 for the...basically the printing costs. That is it. Thank you, Mr. President.

PRESIDENT: Thank you. You have heard the explanation of the bill, all those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 31 ayes, 0 nays, Mr. President, on the motion to advance LB 3.

PRESIDENT: LB 3 passes. LB 1.

CLERK: Mr. President, LB 1 was a bill introduced by the Speaker at the request of the Governor. (Read title.) The bill was introduced on November 8, referred to the Revenue Committee. The bill was advanced to General File, Mr. President. I do have Revenue Committee amendments pending. (See page 91 of the Legislative Journal.)

PRESIDENT: Senator Hall, please. Are you going to take the bill first, or the amendments, or how do you propose to handle it?

SENATOR HALL: Mr. President, I would like to take the amendments to the bill.

PRESIDENT: All right, thank you.

SENATOR HALL: I am not carrying the bill but I would, if someone would like to introduce the bill, I would be happy to hold off on the committee amendments until that was done.

PRESIDENT: Why don't you go ahead with the committee amendments. It won't be confusing, will it?

SENATOR HALL: I won't guarantee that, Mr. President, but then who knows what the explanation of the original bill would be. With that, Mr. President and members, LB 1 was brought, as the Clerk stated, to the Revenue Committee. It deals with the issue of changing definitions with regard to what constitutes real property as opposed to personal property. The committee amendments, as you have them before you in your bill book, walk through the bill and make some substantive changes, and I would just like to, if the Chair will allow, walk through those one at a time. The easiest way to do it is just ask you to open your green copy of the bill and also take the amendments which are two pages in length and follow along. On page 2 of the green copy, down on line 15, we strike that entire line. The line would have originally read, "include, but not be limited to, the following:" We struck that and we replaced that with "mean:", so that "and real estate shall mean:", and then down below is listed the definition that was not changed, that subsection (1), lines 16 through 18, where you get into all land, including land under water. Then we go down and we strike, in the committee amendments, lines 19 through 25 on page 2, and lines 1 through 17 on page 3. That section is then replaced with subsection (2) as it is found on page 1 of your amendments there. It starts out with improvements to real property definition then. "Improvements shall include, but not be limited to, the following items of property if there is actual annexation to the real property or real estate or something appurtenant thereto:", and it gets into buildings, mobile homes, cabin trailers, and those things that shall be deemed to be annexed to real property or real estate. The committee amendments then go on to on page 3 we already struck lines 1 through 17. We move over to page 4, and on page 4, we will strike lines 3 through 7, which deals with the issue of storage tanks, whether they are above or below ground, all of subsection (d), lines 3 through 7, you can strike a line through, and it would be replaced, on page 2 of the committee amendments, line 4, with the new subsection (d),

which reads, "Storage tanks, storage bins, and storage silos, whether above or below ground, and elevator legs;"; then move on to in line 13 after "other", you add the word "similar" so that line 13 would read, "satellite dishes, and other similar property,"; and then you strike lines 18 through 23 of the green copy on page 4, which entails subsection (g) of the original bill as introduced. This was the portion of the bill that was rather confusing with regard to whether or not the original bill was meant to include irrigation equipment. The new subsection (g) as it is in the committee amendments on page 2, listed as subsection (g), would, as it was introduced, take care of that change, and we do that through "except that the term real property" and this is lines 12 through 16 of subsection (g), "terms real property and real estate shall not be construed to include center pivot or other irrigation systems used for agricultural and horticultural purposes;" and this was the provision that was brought to the committee by Senator Johnson. We have incorporated it into the language of the original section there, so that there is no misunderstanding as to whether or not irrigation equipment or the pumps, casings, or anything involved with it, that as long as the primary purpose is agriculture or horticulture would not now become taxable where in the past there was no intention for that. With that, Mr. President, that is an explanation of...there are no additional changes then, excuse me, on page 5 of the bill, if you would, on line 3, if after "building", you were to put a period and strike "or structure; and" or put a comma, excuse me, or semicolon, and then on the same page, page 5, lines 5 and 6, strike the subsection (i) that is currently there, which reads, "Bank vaults, bank teller windows, and fixed bank teller machines;". It was determined that, through discussion with the department, that there was not a need for this to be spelled out, that these are currently covered under the language of the bill, as it has been amended, or current provisions in statute. That, as they have been stated, are the committee amendments to the bill. Basically, the idea behind the committee amendments was to clarify provisions that were in the original draft of the bill. They are really little, if any, substantive changes to the bill, I guess depending on your point of view. My understanding is, is that the department and the administration are in support of these amendments to the bill, and with that, Mr. President, I offer the committee amendments to LB 1.

PRESIDENT: Thank you. Senator Hefner, please, followed by Senator Rod Johnson.

SENATOR HEFNER: Mr. President, and members of the body, I rise to support the committee amendments. This, LB 1, the original bill was drafted in a hurry and we didn't think that it explained some things very well. And so along with the help of the Tax Commissioner and with the Revenue Committee and the Revenue Committee counsel, we drafted these amendments to the bill. There was one part of the bill that I was interested in, and that was on the center pivots system, and we also clarified in there that if that center pivot is used for agricultural purposes only, the reason we did this, we didn't think that it was the intent of the Tax Commissioner or of the Revenue Committee to exempt those underground watering systems like for that is on your lawn and to those property owners. And so I would ask you to support the committee amendments.

PRESIDENT: Thank you. Senator Rod Johnson, followed by Senator Chambers and Senator Schmit.

SENATOR R. JOHNSON: Mr. President, and members, my comments will be brief because Senator Hefner has covered an aspect of the bill that I was concerned with and brought up original points that I thought made the bill suspect, in my mind, as it related to agriculture and, in particular, the center pivot irrigation equipment that potentially could be taxed. We were called back in special session here to maintain a certain amount of status quo in our tax structure. That did not include adding additional items onto the tax rolls, such as irrigation equipment, and I want to thank Senator Hall and the Revenue Committee for their adoption of an amendment that we presented to the committee to clarify this point, and they have done so, and so I have no problem with the committee amendments as written.

PRESIDENT: Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, I'd like to begin what I have to say with a quote, and it is this. "What good fortune for those in power that people do not think." That quote is from Adolf Hitler, and he is one who certainly should know. I would paraphrase that to change the last word "think" to "know". "What good fortune for those in power that people do not know.", especially when they are members of the Legislature. I doubt that there is anybody on this floor who can explain what these amendments mean. Senator

Hefner said, "This bill was drafted in a hurry. We didn't think some things were explained too well." He should have stopped after he said, we didn't think. This whole thing is a hodgepodge and was thrown together. If you look at the first part of the amendment, some of it says that improvements shall not include unless specifically enumerated. Then further down it says improvements shall include, but not be limited to. I would like to ask Senator Hall a question. Senator Hall...

PRESIDENT: Senator Hall, would you respond. Let's find him first. Senator Hall, are you in the Chamber? Okay.

SENATOR CHAMBERS: Okay, if he weren't here, I would have asked somebody else who is carrying water for the Governor on these water amendments. Senator Hall, when we get down into line 8 near the bottom of the page, the substantial amount of new text beginning with the words "Mains"...

SENATOR HALL: Which page, Senator Chambers?

SENATOR CHAMBERS: The first page of the amendment, committee amendment.

SENATOR HALL: Okay, all right.

SENATOR CHAMBERS: Now when we say the word "except" in line 12, and this is the statement, "except that the terms real property and real estate shall not be construed to include center pivot or other irrigation systems used for agricultural and horticultural purposes," we were called here to define real property, is that true?

SENATOR HALL: That is...

SENATOR CHAMBERS: Is that the purpose of this bill?

SENATOR HALL: That was the purpose of LB 1, as it was introduced. That's my understanding.

SENATOR CHAMBERS: And in order to set up a classification so that it does not constitute special legislation, it must be a general act and not one aimed to include certain participants and members of a class while exempting other members of that same class. Is that correct?

SENATOR HALL: That is correct.

SENATOR CHAMBERS: Now, when you say except and you base the definition on the use of property rather than the nature of property, is that a valid basis for making a distinction as to what constitutes real property?

SENATOR HALL: Senator Chambers, it...the question that you ask is one that the very...I think strikes at the heart of the whole issue that we have before us, and that is what the intent, the question of intent with regard to personal property, is all about. The reason for spelling out the definition of what is real and what is personal property as we do in subsection (2), and now it is going to take me a minute to answer this question, if you don't mind.

SENATOR CHAMBERS: Go ahead because I can turn on my light again.

SENATOR HALL: But we talk about the fact that it has to be actually...if there is actual annexation to the real property, all right, which means affixed, attached, however you want to define annexation. That is the definition used so that you take the issue of intent on the part of the property owner out of statute. Your point that you make is that we do that in the first half, but then by saying, except that the terms real property and real estate shall not be construed to mean...all I see that as doing is spelling out that that is not the intent of the definitions of the terms real property to include center pivot irrigations if they are used for agricultural or horticultural purposes.

PRESIDENT: One minute.

SENATOR CHAMBERS: Would this, otherwise, this center pivot and other irrigation equipment, fall under the definition that has been given by being attached to the real estate or something appurtenant thereto?

SENATOR HALL: I think one could make a very strong argument to the fact that it was annexed to property because one of the specific definitions for being annexed to property is that it is attached, for example, the utilities.

SENATOR CHAMBERS: Okay, one other question and then I will have

to turn my light on again. If you are defining a structure such as a house to be real property, could you say a house is real property unless it is resided in by a farmer and, therefore, because a farmer lives in it, it is not real property and that is what distinguishes this class of houses from other classes, which would be real property?

SENATOR HALL: I'd guess the answer to that is...

SENATOR CHAMBERS: No.

SENATOR HALL: ...since you asked, could you, the answer I guess would be, no, I don't think you could.

SENATOR CHAMBERS: Thank you, and I will have to turn on my light again.

PRESIDENT: All right, fine. Senator Schmit, followed by Senator Nelson, please.

SENATOR SCHMIT: Well, Mr. President, and members, I agree again with Senator Hefner that the original bill was drafted hastily, and I guess I am concerned because of reports that I heard from a number of my colleagues prior to the time that any of us were called into session, and prior to the time that any of us had seen the bill, that the votes were here to pass the bills. Now it didn't say they were here to pass the bills without amendments, maybe one amendment or two here or there. Most people said the votes are there. The Governor is going to get her bills. I suggest perhaps the Governor did not see the bills either because I know the Governor would not have proposed the bills in the form in which they came to us. I do not believe you can classify an item as personal property or real property based upon who happens to be using it. That is part of the reason why we are here today because we have attempted to say that an item of property is personal if it is owned by a farmer, it is real if it is owned by someone else. I believe that the definition and the classification as outlined in the amendment originally includes center pivots, and then there is an attempt made to establish center pivots in a class by themselves. Now there are those here, attorneys, I am sure, and others more gifted than I am in this area who will argue to the contrary. But, remember, we are here, ladies and gentlemen, because we have attempted to tell the court from time to time, well, we have said it is this but we really meant something else, and the

court has lost patience with us and have said say what you mean, and do what you say, and don't come back and blame us if your explanation is not complete. I have a question for someone, on line 7 of the amendment, it says "annexation to the real property or real estate or something appurtenant thereto." Would someone want to answer for me what is meant by that "something appurtenant thereto."

PRESIDENT: Senator Hall, do you wish to handle that?

SENATOR HALL: Senator Schmit, according to Black's Law Dictionary, and I thought somebody might ask this question, so I did photocopy this out of the...or asked George to because I wasn't sure I could spell it right to look it up. This is the definition of it and it says, "Belonging to; accessory or incident to; adjunct, appending, or annexed to; answering to accessorium in civil law; employed in leases for the purpose of including any easements or servitudes used to enjoin with the demised premise. A thing is appurtenant to something else when it stands in relation of an incident to a principal, and is necessarily connected with the use and enjoyment of the latter. A thing is deemed to be incidental or appurtenant to land," and this is probably the most appropriate definition, "when it is used by right...it is by right used with the land for its benefit, as in the case of a way, or water-course, or a passage of light, air, or heat from or across from another land."

SENATOR SCHMIT: Fine. Is a pump which extracts oil from the ground, is that real property or is it personal property? Do you know, Senator?

SENATOR HALL: In terms of this legislation?

SENATOR SCHMIT: Yes.

SENATOR HALL: In terms of this legislation and in terms of my understanding with regard to the current law, that would be considered to be real property. There is no change there.

SENATOR SCHMIT: Yes, but a pump which extracts water from the ground would be considered personal property. Is that right?

SENATOR HALL: For purposes of irrigation, that would be correct.

November 14, 1989 LB 1

SENATOR SCHMIT: That would be correct. The same pump, I don't suppose, could be used to extract oil unless I let the drip system run too long, but if it were used to extract oil, would it then be real property or would it be personal property?

SENATOR HALL: I guess it would become, at that point in time, real property.

SENATOR SCHMIT: Um-huh.

SENATOR HALL: I doubt that you could pump them both at the same time but...

SENATOR SCHMIT: Well, there are some who have done it, I suppose, but we are not going to argue that point now. Senator Baack is an oil expert here, we'll have to ask him what happens...what can be done in that area. The point I want to make is this. A pump which is affixed to a casing which it becomes a part of the real property is, in fact, true with the material which pumps oil. The pump which is affixed to the casing and pumps water is personal property as defined here.

PRESIDENT: One minute.

SENATOR SCHMIT: I believe, ladies and gentlemen, that in the original language you have made irrigation systems real property, and then you have attempted to exonerate them or exclude them by virtue of a special classification. I don't believe that is a reasonable classification. I don't believe it will stand up in court, and I believe we will be back here with a whole series of lawsuits. There are a whole number of other questions I could answer or ask but I want to point out when you talk about something which is affixed to or something appurtenant to, the railroads, of course, the ties, the rails are affixed to the soil and, therefore, they are considered real property. We are attempting to identify how the pipeline becomes a part of real property, but I think if that same line were under the soil and were carrying water on my farm, would it be considered real property or would it be considered personal property? Does anyone know? If I had an underground pipeline on my farm which carries water several, I suppose five, six thousand feet, total.

PRESIDENT: Time.

SENATOR HALL: For purposes of irrigation or horticultural use, irrigation or horticultural use, agricultural or horticultural use, Senator Schmit, the answer is it would be tax exempt and it would be considered personal property.

SENATOR SCHMIT: Well, thank you, Senator Hall. I appreciate your trying to help me out. I don't think the court will agree with you. I will be back again.

SENATOR HALL: Senator Schmit, now wait a minute, I am just answering your question. I am not giving my interpretation.

PRESIDENT: Thank you. Senator Nelson, please, followed by Senator Chambers, and Senator Wesely.

SENATOR NELSON: Mr. Speaker, members of the body, I, too, had the same reservations as Senator Schmit. I don't know how you can construe pivot irrigation at one time for one way and one way the other. I do happen to know, even first hand, that if you desire a loan on irrigated land that happens to have a pivot irrigation system on it, you mortgage that pivot irrigation system and that goes with the land. Otherwise, you are selling dry land. Now that is a big difference between dry land and irrigated land. It could be handled in contract but I will tell you that I don't think that many farmers are going out and borrow any money on irrigated land that is to have a pivot on if that pivot is not included as real estate. I just want to throw that red flag up. I am almost as confused on this issue as I am sure the rest of you are, but that is how it is handled. And with that, I will give Senator Chambers the rest of my time.

PRESIDENT: Senator Chambers, you have four minutes on her time.

SENATOR CHAMBERS: Thank you, and thank you, Senator Nelson. Mr. Chairman, and members of the...

PRESIDENT: Senator Chambers, you are following her, so if you want to take your whole nine minutes.

SENATOR CHAMBERS: Thank you. I am speaking primarily for the record, so if people want to engage in their discussions, it doesn't matter because this whole issue has been cut and dried. Every amendment the Governor wants is going to be put into the bill. Every amendment offered by anybody else will be rejected. So we know what is going to happen but we are discussing this

for the purpose of the record, and some of us, such as myself, to distance myself from this nonsense. Now the courts have said that when you create a classification, that classification must include all members or individuals that would fit within it, and once that classification is created and you exempt out others, and the court has used language like this, it is clear you have not enacted a general statute but a special law. There are so many holes and gaps in it, so many singling outs of individual interests that are not to be included that a law such as that cannot stand. But, remember, and I said it the first day we came here, the purpose of these bills is not to solve the personal property tax question. The purpose of these bills is to get something on the law books that will go into court and it will take enough time to process these bills through court to allow the 1990 elections to have occurred. The Governor and her henchpersons, whoever decide that they will run, will then be home free because the problem that we have in personal property taxes will be postponed. And by postponing these problems, if they are bad now, they will be aggravated by that additional time. Remember, the cardinal principle of medicine is first do no harm. It would be better for us to do nothing than to engage in the charade that is involved in these bills. I will tell you something that occurs to me. I have thought about this a great deal and the way the system is being manipulated and disrespected by the Governor and by certain members of this body who have gone along with her and agreed to demean the Legislature in this fashion. We are not given the bills with enough lead time to digest them. Then when there are a multiplicity of amendments that will be offered by the Governor and her people, we are not given enough time to deal with those. So the only course open to this Legislature is to rubber-stamp what the Governor has sent down. Now, as a black person seeing a resurgence of racism of a kind that is far more open and virulent, attacks on students, the selling of racist T-shirts at the University of Nebraska and its justification by the students, creates or triggers that bitterness that lies not too far beneath the surface in any black person who thinks and lives in America. Had there been a tax system botched by black people in the way that Nebraska's tax system has been botched by the superior white people, I can imagine the stereotypical remarks that would be made about the ignorance of black people. This is why you cannot entrust them with a societal system, a taxation system, a monetary system, or a political system. Look how they have bungled it. Look at the preferences they have given, the favoritism. So then we get a black person as Governor who is

going to straighten it out, and this black person plays the game with the Legislature that was played by that woman over there in that part of the building, and you know what would be said? Again, this is why you can't trust black people to be in these positions. Look how they are twisting and distorting the system. Look how they are maneuvering and putting people in a position not to carry out their responsibilities, then dictating that the Legislature come into session, and they have no alternative under the Constitution except to comply. That is why black people should not be elected to office and probably why they should not even be allowed to vote. Then this genius black person presents a bunch of bills to us, and the bills are drafted by the most intelligent black people in the state, and they have been knowing about this problem, and you see the kind of claptrap and trash that we have on our desks, and I, as a black man, would be embarrassed. These bills are detrimental to the cause of white supremacy. A black person had nothing to do with this and it is regrettable that I have to stand here, as one who is a member of a despised race, a race that is put down, that is denied educational opportunity, employment opportunity, and all of those opportunities that are supposed to be available in a country like this, and that they extol so much when they talk about the breaching of the Berlin wall. What I wish is that some breaches would occur in walls in this society that impinge on black people more than the wall did, the Berlin wall did on East Germans. That is what I wish would happen in this country, and when they are talking about such a birth, a new birth of freedom, that it would reach within the confines of the United States of America where I live, supposed to be a citizen because I was born in this country, and then I look at this which was done by the master race, and I am a member of this legislative body. I want things in the record so that young black people will have something to look back at and judge by. The games and the tricks that are being worked by this legislation are reprehensible. Everybody who is a party to this is well aware that the purpose is to trigger litigation. The hope is that the litigation will be so time consuming that the elections can occur. The "Repelicans" in this body know it, and any weak-kneed Democrats that go along know it also. That is the reality that we are confronting that people don't want to talk about, and that is why this discussion of amendments means nothing other than to get some things into the record. But I would like to ask Senator Hall, not to interrupt your discussion but I have to, a question.

PRESIDENT: Senator Hall, please.

SENATOR CHAMBERS: You had indicated that the questions I was asking about these irrigation systems and the type of classification that is being done here goes to the heart of the bill.

SENATOR HALL: The...Senator Chambers, I don't...

SENATOR CHAMBERS: Let me...withdraw that question, let me ask you this one.

SENATOR HALL: Okay.

SENATOR CHAMBERS: Is that definitional portion that is being put into the bill, by way of the committee amendments, essential to this bill?

SENATOR HALL: No.

SENATOR CHAMBERS: Is it a reason for the bill's passage if it is added? Are there those who will support the bill with that amendment who would not support it without it, in your opinion?

SENATOR HALL: In my opinion, I would say, yes.

SENATOR CHAMBERS: Thank you. And what the Supreme Court has indicated is that if you create an entirely new piece of legislation that is an act within itself, then a clause can be inserted that will say if any portion is unconstitutional, any portion that remains on its own can be upheld. But if you are amending a statute,...

PRESIDENT: One minute.

SENATOR CHAMBERS: ...and an unconstitutional portion was a motivation for passing that amendatory statute, then if that portion is struck down, the whole bill falls. And what that means, and those who drafted this legislation or the evil ones behind it know and understand very well, that even if the bill is struck down after it becomes law, they don't care because their purpose is to navigate the election waters safely. I am going to vote no on everything that comes up this session while I am here to cast a vote.

PRESIDENT: Thank you. Senator Wesely, followed by Senator Moore and Senator Lynch.

SENATOR WESELY: Thank you. Mr. President, and members, I appreciate the opportunity to just make a couple of questions and points. Even though I haven't participated earlier in the special session, I have tried to follow the issues quite closely from quite a distance, but, nevertheless, I have a question of Senator Hall, and, Senator Chambers, I hope you can follow this as well. If you look, Senator Chambers and Senator Hall, on page 4, you will find in the original bill discussion about item, subitem (g), deal with the question of production. There is a term that is included as you list through the pipes, tanks, valves, gauges and other issues, and for purposes of, but not limited to, production, and then transportation, transmission, et cetera, and then steam, heat, water, oil, gas, or other products. It is a much broader interpretation. If you look at the committee amendments, you don't have production included, and you also change from other products to other similar substances. You change dramatically the scope of this definition of real property for taxation purposes, and I have some conceptions about why this change is being proposed by the administration but I would like, Senator Hall, if you could, to just address what you know to be the reason that they proposed these amendments, if you could. If you don't know, that is fine, too. And then I would just like to follow up on that, if you could, Senator Hall.

SENATOR HALL: Senator Wesely, my...I mean it is just basically the answer would be that the original green copy of the bill, subsection (g), that deals with...it just lists and it says, used for the purposes of, but not limited to, now which is a very...it means anything, production, transportation, transmission, or storage of steam, heat, water, gas, oil, or other products. Other products can be anything under the sun, and the reason for the change is that, as you stated, the committee amendments just deal with other similar substances. So the purpose for it is to very much narrow in scope the intent of the legislation.

SENATOR WESELY: Thank you. I appreciate that. I think the other intent is that there was perhaps...perhaps in the original draft of this bill, somebody wasn't being as careful as they should be. As I think we'll point out as we go through this legislation, point by point, you can find where perhaps we

haven't spent the time or the detail that we need to in this measure. What you are doing here is dramatic change, because as Senator Hall just said, it is a much broader interpretation of the original bill, which you could include under the original production and other products would include meat packing plants and any number of other types of items would be included as real property and, therefore, subject to taxation. And the question is, why shouldn't they be subject to taxation, those different mains, pipes, pipelines, et cetera? They are attached, they are a part of the facility, the purpose is clear. Why would they not want to continue to have that definition under the committee amendments? And I think the reason is that there is some people affected that they didn't realize that perhaps have exemptions under LB 775, perhaps for other reasons are now enjoying some tax advantages that they don't want to lose under this definition. I don't know enough at this point to be able to come back and tell you how much we are talking about or the specifics of the situation. All I am pointing out is that there is in small detail, small language, big impacts, that they can make a difference to this company or that company, or this activity or that activity, and in taking the time to understand what we are doing has a major impact, I think, beyond what we even contemplate at this time. We are moving fast. The bill was introduced a few days ago. We have caught some problems, and in some cases, maybe the problems aren't with the original bill, they are problems with the amendments, but we haven't really had the time to dissect in the detail we should. When you deal with tax law, you are dealing with an expertise that is incredibly important. You have tax attorneys making a great deal of money being able to find just where that dotted line is, or where that comma or that period is placed, or just how you put this word or not put that word here or there in a sense...

PRESIDENT: One minute.

SENATOR WESELY: ...can mean thousands and millions of dollars to certain companies, and can mean that in tax revenues to the state. And so, clearly, what we are doing is important here and I certainly hope, as we work our way through the bills, we catch different things like this and have in time the ability to understand what we are doing. I don't, at this time in this particular case, have the ability to tell you whether or not the committee amendments or the original bill is the better tax policy. All I know is something different is occurring here that may be very important and we ought to watch for the details

in this legislation.

PRESIDENT: Thank you. Senator Moore, followed by Senator Lynch, then Senator Hefner.

SENATOR MOORE: Pass.

PRESIDENT: Okay, Senator Lynch, please.

SENATOR LYNCH: Mr. President, and members, I rise to just make a point, quick point. Apparently the debate seems to be around "attached". The key word is whether something is mechanically, physically attached, and to be completely frank, some of us who are from the city assume that when a piece of land has a center pivot well on it, since it is attached, the value of that land pretty much indicates that it has a center pivot on it, whether you identify the pivot or not. Also, it is identified with its ability to grow, talk to agronomists, and other things. If you have an apartment house, for example, in the city, and you have got three-bedroom units rather than one-bedroom units, you don't distinguish the unit as three bedrooms or two bedrooms, necessarily, but its ability to rent and also the attachment, physical attachment, is obviously the two or three extra bedrooms. To be completely frank, and not being facetious or flippant, but if we are talking about the use of water and attachments, you have got to talk about how your facilities and your house are attached, all to underground water supply systems. When you flush one of them, when you open a sink faucet on another one, all of them are attached. So if you really wanted to be particular about how we identify these things, I can understand. Just for what it is worth, I thought I should share this with you, how there could be very much confusion as to, in fact, what attachment, mechanically or otherwise, means and how it really applies valuewise for tax purposes, whether it is personal property or not, another good reason why most of the bills that are introduced really mean very little in this session as far as I am concerned.

PRESIDENT: Thank you. Senator Hefner, followed by Senator Schmit.

SENATOR HEFNER: Mr. President, and members of the body, just a point of clarification, and, Senator Schmit, you may want to listen to this, but right now the irrigation pump and well are considered real property, and this bill doesn't change that, as

I understand it. So that would be treated just the same as oil pumps and wells. What we are asking here that center pivots be exempt, and I believe they would be exempt under this bill anyway because, you know, when we add irrigation equipment, that increases the value of that land for taxation purposes. So what we are asking here, that we do not want that center pivot taxed twice. Most of the items, most of the items that are taxed now under personal property would be taxed the same, and the value would be figured the same as it is done now. And I think what we are talking about here, folks, and why we need this bill is because we want to...there could be a potential loss of \$30 million to local government, and here we are talking about our schools, our counties, our cities and villages, and it is going to leave some of them in a very...in very bad shape. In fact, it may go as far as to bankrupt some of them. So this is why we need LB 1, and all we are doing here in the committee amendment is trying to clarify some of these things. We don't think that when the original bill was drafted that it clarified some of these things, and so this is what we are trying to do in the committee amendments, spell it out a little clearer. Thank you.

PRESIDENT: Thank you. Senator Hefner, please, followed by Senator Schmit. Senator Schmit followed by Senator Hall.

SENATOR SCHMIT: Senator Hefner, did you say that my irrigation pump on my irrigation well is now classified as real property?

SENATOR HEFNER: Yes, as I understand it.

SENATOR SCHMIT: Well, I don't believe it is, Senator.

SENATOR HEFNER: Okay.

SENATOR SCHMIT: The well is classified as real property but the pump is movable. The motor on top of the pump is movable. The engine is movable. The center pivot can be moved. The point I am trying to make here, all of those have been in the past classified, at least in my instance I am sure, as personal property. Now there is another problem, as I indicated earlier, I have underground pipe that goes from the pump to the center of the quarter section that is four feet deep. Obviously, it can't be picked up and moved. You are attempting here, when you say irrigation systems are personal property, you are trying to say that is personal property. It can't be moved. It is affixed to

the land, just like the Enron pipe. Secondly, I have several thousand, 2,500 feet of eight inch pipe that goes from one pump to another field. It pumps water out, not to a center pivot, but out on top of the soil. That, I believe, adds to the value of the real estate and is real property. Obviously, it can't be moved. The engine, the pump, the pivot, the gearhead, the electric motor, all of that is transportable. When they sold farms up in the sandhills and someone's vernacular used to say, should never have been developed. They took everything away except the hole in the ground and, in some cases, they filled that with concrete, but the point is that anything that could be moved was personal property. I believe, and maybe Senator Hall will have to enlighten us again. Did you, Senator Hall...I don't like having to ask you now because you will use all of my time.

SENATOR HALL: I will answer your question on my time.

SENATOR SCHMIT: Okay, good, the point I want to make is this, I think on this floor now we ought to have a vote, if nothing else, and decide how many people think the pump, the irrigation pump, and the motor on top of it, is or is not real property, and if you agree with me, then we have a problem here right now because Senator Hefner and I do not agree. If you do not agree with me, then there are a lot of people out in the country who have a problem. There is another problem, of course, that we all are aware of, and that is the fact that we have a classification called irrigated land, just the mere fact that you can irrigate certain types of soil with various types of equipment raises the value of that land. If, in fact, Senator, the pumps then become real property, do you add that value to the total amount of the value of the quarter section? I think there is a very real disagreement here, and if, in fact, if, in fact, the irrigation well on my property is real property, then you really have a problem because you speak here in terms of irrigation systems. The system, Senator, is not the pivot. The system is the pump. It is the motor. It is the engine. It is the gearhead. It is the pivot which walks around the field. It may be the gated pipe. It may be any other kind of a sprinkler system. It may be a portable sprinkler system which you pick up and move by human manpower. Those are systems, and I suggest that you are going to have to clarify your...you are going to have to clarify your explanation once more, Senator, if you are saying that the pump is, in fact, real property, because you are going to have to say the pump, the irrigation system excluding,

excluding the pump which sits on the casing because that is movable, much more movable, Senator, than the underground pipe.

PRESIDENT: One minute.

SENATOR SCHMIT: You also refer here, you struck the language when you referred to mains, pipes, et cetera, the transport, steam, oil, gas, or other similar substances. I don't know what other similar substances are, but I will tell you, the court doesn't know either. It leaves it wide open for you to get shot right between the eyes. Now we have been shooting ourselves in the foot here for five years. One of these days the court is going to get tired of fooling around with us. It is lucky we can't be dismissed for incompetence, Senators, or we would all be going home lots earlier than we expect to be. We have been chastised, we have been scolded. The time is going to come when someone is going to draw this for us if we don't do it ourselves. I suggest right now that on this floor there is a basic disagreement as to what is an irrigation system and what is not.

PRESIDENT: Thank you. Senator Hall, followed by Senator Ashford.

SENATOR HALL: Thank you, Mr. President, and members. The issue of whether or not a pump is part of the system, whether or not it is real or personal property, I think it is very easy to understand if you'd just read the amendment. And the amendment says, "the terms real property and real estate shall not be construed to include center pivot or other irrigation systems used for agricultural and horticultural purposes;". All that says is that, no, it is real property, it is not...excuse me, it is personal property, it is not real property. The only thing that is real property, I mean you can't run the system without the pump. I mean the system doesn't exist without the pump. There is no system. There is a pile of pipe out there on wheels. The only part of the, if you want to call the system the system, I guess, that would be classified as real property is the part that you can't, as Senator Schmit mentioned, pick up and move, the hole that is in the ground, the well, itself, and that remains real property. That has not changed. But when you talk about an irrigation system, you are talking about the system. You are not saying a pump is not part of that system, and I mean if that is what the intent was by the individuals who introduced the amendment, then I misunderstood and then it does

November 14, 1989

LB 1, 3, 6
LR 6

need to be clarified, and I guess they would be the ones that would have to clarify it, because, in my opinion, the way it is currently drafted, it goes to the intent of the amendment that was offered, and it exempts the irrigation systems from being called real property, which means they are classified as personal property. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Ashford, you are next but I understand we have an amendment to the committee amendments. Mr. Clerk.

CLERK: Mr. President, if I may read some items for the record.

PRESIDENT: Please.

CLERK: Mr. President, I have a confirmation hearing report offered by the General Affairs Committee, signed by Senator Smith as Chair. A new resolution offered by Senator Abboud, Mr. President. That will be laid over. (Re: LR 6. See pages 100-102 of the Legislative Journal.)

A motion by Senator Warner with respect to raising LB 6. Enrollment and Review reports LB 3 to Select File, Mr. President.

Mr. President, Senator Schmit would move to amend the committee amendments. Senator, I have AMO28S in front of me. (On file in Clerk's Office.)

PRESIDENT: Senator Schmit, please.

SENATOR SCHMIT: Mr. President, and members, I have just been handed letters from two county assessors in which they say that LB 1 clearly defines real and/or personal property and outlines why they support LB 1. That only leaves 91 more county assessors to get their letters into Mr. Larry D. Worth, Administrator of the Property Tax Division. I would suggest they also send copies of these letters to the Supreme Court because that is where we are going to be again, and I am sure they will be most impressed with these two letters. Anyway,...and I mean they mean well, they mean well. Senator Hefner said that the pump, the irrigation pump is real property. Senator Hall said the irrigation pump is personal property. Ladies and gentlemen, you don't need to point the finger at me for raising the issue. You have got two members of the Revenue

Committee who disagree. They have sat through the hearings. They have sat through the discussions. They have tussled and wrestled with it. They have worked diligently and honestly and sincerely. I don't blame them. I have said a thousand times on this floor, they have a tremendously tough job. I am sorry it appears that I am making it more difficult. I am just trying to, for once and for all, resolve the problem. You now have 80 percent of the personal property exempt from taxation. The amendment that I offer here will exempt all of the personal property in the State of Nebraska from taxation. It takes it all off. It takes it all off. Number two, it puts back on the tax rolls all real property except that which is exempted by the Constitution and by the homestead provision which we have provided for. The reason that I am offering this amendment, ladies and gentlemen, is that I think that once in awhile on this floor we have to be honest with ourselves. There is a school of thought that says we can't act hastily. I have here no lesser authority than the World-Herald, who have, according to last Saturday's editorial, said we shouldn't act hastily. I am the first guy that said you shouldn't act hastily. I have been calling for this session for three months. I said you ought to take your time and you ought to...we ought to agree upon what we are going to do. It wasn't me who acted hastily. LB 1 was offered to this body without the input of a great many of us. It was transformed dramatically from the time it was introduced until the hearing. It has had some more amendments now. I would suggest that we ought not to act hastily. We ought to act in slow, deliberate fashion and we ought to know what we are doing and where we are going, and when we get there, we ought to know we are there. Under this provision, ladies and gentlemen, there are those of us who say let's just patch the quilt one more time, and then there are those of us who say, well, maybe this is going to have some impact politically, and then there are those of the body who say let's really resolve the issue. We have put it off, ladies and gentlemen, for more than 10 years. We cannot put it off indefinitely. I can tell you, very frankly, the people of the State of Nebraska know what is going on. They do not like this. They do not like this. I can assure you that if you are concerned about 243 lawsuits, ladies and gentlemen, if you pass LB 1 and LB 2, and I am not taking a position at this time on LB 7 because there are a whole bunch of amendments on that, I will guarantee you that you will have considerably more lawsuits than you have at the present time. I know that there are those here who think this is going to solve the problem. It will not solve the problem. The court

has criticized us and have brought onto this floor the doctrine of equal protection of the taxpayer for the first time since I have been here. If we continue on this course of trying to develop legislation which will specifically outline, in this instance, items that belong to certain pipeline companies, specifically Enron, I would suggest that we are going to get criticized again by the court who says we are not providing equal protection to the taxpayer. Number two, if LB 2 passes, we are going to be accused of not providing or allowing for due process. We are going to repeal the taxpayer's right for redress in the courts. I would suggest that we cannot do that. I would suggest that we'd not only look foolish, we'd look as if we are becoming paranoid. And I would suggest that eventually, eventually, ladies and gentlemen, we ought to learn from past mistakes. We are going to have to take the tax off personal property. We just as well do it. If we don't do it this session, we probably can't get it done during the short session either. We will have a whole hodgepodge of lawsuits after which time we will come back and we will do it. Now I don't like to say I told you so, but during the 1989 session, I had a little bill, LB 497. It was promptly without fanfare killed by the Revenue Committee. At that time, I made the statement, this bill will resolve a portion of the problem. You will get rid of the problem of the railroads at this point. You are striking a deal, and we made a proposal. For whatever reason, I didn't hear the debate in the committee, the bill was killed. Now the bill has been brought back under the form of LB 7. It has some merit, although it is I think attaining less merit with some of the amendments I have seen, but the point is this. The bill, that was bad in 1989, January, February, of '89, has now suddenly become good. I do not suggest it has become good or was bad because I introduced it. This body would not face the music at that time. We would not face the issue. We just wanted to put it off. Now we don't want to face the issue again of exempting all the personal property, but if it is fair, if it is fair to tax 20 percent of the personal property in the State of Nebraska, is it not fair to tax the other 80 percent? Now we have said we have passed an amendment which says we can classify. Yes, we did, but then how do you classify? What rational means do you have to classify? I suggest that we are splitting hairs and we are going to be right back in the same dilemma we were before. If you pass my bill, you will remove from the tax rolls approximately \$118 million worth of property. If you pass the complete amendment, you will add to the tax rolls about the same amount of property. We didn't plan it that

way. The Department of Revenue gave us those figures. Kind of interesting, it would also then lower your real estate bill by approximately 9 percent because it would add to the tax rolls that much additional valuation. I would suggest that that is a first step. It is a pretty big step, I grant you that, but I will tell you one thing, it is a step in the right direction. Governor Charles Thone used to say it is better to be 10 miles from Hell headed away from it than 100 miles from Hell headed toward it, and I suggest, ladies and gentlemen, you had better turn around and head away from Hell, because you are going to pay for it. I will tell you one more thing. As I said earlier, the people understand. They don't like indecision. They do not like this body not facing the music. They do it every day. They make decisions, sometimes unpopular, sometimes costly, but they make those decisions and they understand them. As I watch some of the other amendments that have been proposed, ladies and gentlemen, we are singling out, we are singling out a number of other entities for punishment. Ladies and gentlemen, the reason the 4-R Act is in existence today is because in various states we zeroed in on the railroads and said, they are big and nobody likes the railroads; everybody likes trains but nobody likes the railroad, let's tax them. So finally the Congress said we are going to tell you guys you can't do it, and they did. Now we have a problem. They said the court overreacted. Maybe so, but why did they do it in the first place? Because Legislatures like ours attempted to do things which we should not have done. I read an amendment here which says we are going to put a sales tax back on the diesel tax (sic) used by railroads. Ladies and gentlemen, with my seven-year-old diesel, I could fill it from Council Bluffs and drive to Colorado and don't have to fill up in the State of Nebraska. Do you not think the railroads won't do the same thing? You know, I would never suggest, I would never suggest that we could put a tax on diesel fuel and put the money in the General Fund and get away with it. I don't think we can here. Maybe that is not where it is going to go. I don't know. Maybe it is earmarked for some other purpose.

PRESIDENT: One minute.

SENATOR SCHMIT: But the longer we go, the more punitive we become, and the more ridiculous we look, and the less reason we have to earn the respect of the people who have sent us here. I would much rather, ladies and gentlemen, be sent home for having done the job as I saw it was necessary to do than to stay here forever by vacillation, equivocation, and trying to fool the

people. It will not work, ladies and gentlemen. I suggest you take a serious look at my amendment. Thank you very much.

PRESIDENT: Thank you. I have six lights on and I don't know which ones of you wish to speak to the Schmit amendment and which want to speak to the committee amendments, but please let me know if you do not wish to speak to the Schmit amendment. Senator Ashford. Senator Nelson, the Schmit amendment. Senator Moore, the Schmit amendment. Senator Hall, the Schmit amendment.

SENATOR HALL: Thank you, Mr. President, and members. I rise in support of Senator Schmit's amendment to the committee amendments, and that only comes after a very long look at the issue of personal property. We currently have a system, as the courts have said, that is 75 percent exemptions and 25 percent tax. With the passage of LB 7 to the end of this special session, we will probably have a system that is closer to 80 percent exemptions and 20 percent tax. The reason behind the session, the reason for the call has been that we want to protect local subdivisions, protect their revenue base. I don't know how you protect the revenue base by exempting more of their revenue base, but the way you do that I guess is pass this so that the fear of losing any more of that base the argument is will go away. That, basically, is a coin toss. There is a 50-50 chance it will go away, and there is a 50-50 chance that the base will be taken care of by the courts. What Senator Schmit does is, basically, offer an amendment that wipes out personal property tax which is, in effect, what the Legislature has done over the last 10 years. We are in special session to wipe out more of the personal property tax base, and we are here saying that that is going to fix the problem. That is not about to fix the problem. It is only a continuum of the very problem that we have in our personal property tax system. What we need to do is wipe out the system that we currently have and go about the process of either reinstituting a personal property tax system that is one that is viable, that does allow for specific classifications, in my estimation, they need to be in the Constitution in order to be protected, and then tax evenly, equitably within those classes of property. That is what we need to do. What we need to do is allow for those classes to then be dealt with in a very uniform way, not in the way that we do in LB 1, not in the way that we have done in our personal property tax system in the past, but on a very up front and informative way that we currently don't deal with personal

property tax. When we pass LB 7, all we are going to do is allow for a whole other round of lawsuits to be placed before the courts. We are not fixing the situation at all. We are only compounding it. We are only compounding the problem that we have. We are delaying it. We are putting it off, and we are saying that this, hopefully, will take care of it. Well, the courts I don't think can get much clearer. I think LB 7 can be viewed as the opportunity to step back, for the courts a doorway to be opened so they can step away from their Enron decision. I don't see that happening. I see them running full-bore through the door and saying, sorry, folks, it doesn't work, and you are going to have to go back to the drawing board one more time. And what then have you done to the subdivisions? What you have done to the subdivisions is really left them in flux. You have done a disservice to them far and above the saving of a 30 to 40 million dollar base that they might lose. We could very easily...and both Senator Johnson and Senator Warner have stated publicly that they intend to bring in legislation in January that will cover that loss of revenue to those subdivisions, and we need to do that. That is something that the Legislature needs to make sure that there is not a loss to those local subdivisions. They should not fear that schools are going to close or that towns are going to go bankrupt, as we have heard over the summer.

PRESIDENT: One minute.

SENATOR HALL: That will not happen. The Legislature will not let that happen. But what we ought to let happen is we ought to let the personal property tax system in this state go away because we have chiseled away at it little by little, and we have very little left to deal with. What we are going to do is end up in the courts once again, time and time again, with a system that neither serves the purpose of the people that it was intended to, nor is fair and equitable to those that remain within it. I would urge you to seriously consider Senator Schmit's amendment. I know it does not have a chance of passage at this point, but, at some point, we are going to wipe out our personal property tax system as we know it and as it exists currently. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Hefner, please, followed by Senator Schmit.

SENATOR HEFNER: Mr. President, and members of the body, I have

November 14, 1989 LB 1, 8

a question for Senator Schmit.

PRESIDENT: Senator Schmit, would you respond, please.

SENATOR SCHMIT: Yes, Senator, I will respond.

SENATOR HEFNER: Senator Schmit, I don't have a copy of that amendment on my desk. Is that the same as LB 8?

SENATOR SCHMIT: It is a combination, Senator, of LB 8 and LB 9.

SENATOR HEFNER: Okay, and I understand that LB 8 removes exemption provided to religious, educational, and charitable organizations, and cemetery real property holdings. Is that included in this amendment?

SENATOR SCHMIT: Except that property, Senator, which is exempted by the federal and state Constitution, which is the churches.

SENATOR HEFNER: Which is for churches?

SENATOR SCHMIT: Yes.

SENATOR HEFNER: Okay. What is your definition then for religious organizations?

SENATOR SCHMIT: Whatever has been considered religious in the past. I guess it is a much broader term, Senator, than it was 150 years ago.

SENATOR HEFNER: Okay, well, how come we say that it exempts some religious organizations? What part of the religious organizations does it exempt?

SENATOR SCHMIT: It exempts that which is exempted by the two Constitutions, Senator. That is the way I told the bill drafter to draft it.

SENATOR HEFNER: Okay, but there is still some exemptions that would go to religious organizations then?

SENATOR SCHMIT: Churches, per se, would be exempt, yes.

SENATOR HEFNER: Okay. How about the religious schools?

SENATOR SCHMIT: If I may elaborate, my intention was this, to strike all of the exemptions with the exception of those that apply to the churches and the homestead exemption which we have applied here as a result of another constitutional amendment. Then, as I said before the committee, let all of those entities that have in the past historically been exempt come before the Revenue Committee and make the case as to why their exemption should be continued. Many of those exemptions are here today, Senator, strictly because they have convinced the Department of Revenue that they qualified as a nontaxable entity. I believe that is wrong. I believe it has greatly broadened the original intent of the Constitution. I think it is time the Legislature takes a look at this and let the Legislature provide for the exemptions.

SENATOR HEFNER: Okay, thank you. I don't believe that I can support this amendment to the amendment at the present time. I feel we should defeat this amendment and then go on with the committee amendment. And the reason I say this is because I think we need to find a short-term solution so that these local governments will not come up 30 to 32 million dollars short in this coming fiscal year, and that is what LB 1 with the committee amendment would do. And, Senator Schmit, mentioned the letters that I passed out from several county assessors, and I did this because they felt that they certainly needed some clarification, and so what we are doing, we are saying that we are reclassifying some of that real property, some of the personal property that will be classified into real property, and we feel that this will take care of the problem and offer a short-term solution. I am not saying that the Revenue Committee shouldn't get busy at the start of the next session and try to find a long-term solution. We certainly need this but, up to this point, we just haven't had the time to get that done.

PRESIDENT: Thank you. Senator Schmit, there is one other light after you so this will not be your closing.

SENATOR SCHMIT: Thank you, Senator. Senator Hefner, you have been a member of the Revenue Committee for 13 years, I believe. I have been here longer than that. I believe it would be accurate to say that each year since you have been a member of that committee we have had a short-term solution to an immediate problem, a short-term solution to a crisis. Each time we have looked for a quick fix. We looked for a 90-day solution. Each

time we got ourselves dug in deeper. I would suggest that today, if we pass LB 1, even with the improved version, and I again commend the Revenue Committee for really making a serious attempt, that we are going to be back in here again with a really serious problem on our hands. I guess at this time I really appreciate the support of Senator Tim Hall. I know it is not an easy thing to support. I know you are going to get some criticism, but let me tell you, you are going to get less than you realize because I can increase my dues, and I can even increase my church support, I hope Father Secord is not listening, in the event that we put some of that property back on the tax rolls if it is necessary, for a 9 percent reduction in the overall real estate proposal. I would like to ask Senator Hall, since I was not able to attend the entire hearing, I would like to ask Senator Hall, who opposed my bills in the committee hearing, Senator Hall? Can you give me that information please?

PRESIDENT: Senator Hall, please.

SENATOR HALL: Senator Schmit, there was only one testifier with regard to the removal of the real estate exemptions and that was an individual who represented the not-for-profit nursing homes.

SENATOR SCHMIT: The not-for-profit nursing homes?

SENATOR HALL: Not-for-profit nursing homes, and I think which there were about 25-odd or so nursing homes in the state that fell under that provision. No one else testified in opposition of the bill.

SENATOR SCHMIT: Thank you, Senator Hall. Fellow members, I think that tells you something, and I want to say this. I will be the first to concede that this amendment should not be adopted without extensive debate, and if there is something that ought to be further clarified in it, Senator Hefner, I would be most willing to try to do that, but I want to make this point. It has been over three or four months since I proposed this type of a solution in public. You will be amazed, ladies and gentlemen, I received some criticism but, after I sat down and discussed it with a whole host of people, the vast majority of them said, well, maybe you have got a point. At least the Legislature ought to take a look at it. I really have no problem if the not-for-profit nursing homes can come in and convince the Revenue Committee that their exemptions ought to

continue. That would be a decision that I would think that ought to be a logical conclusion of the committee, and if the Legislature approved of it, fine. What I am saying is that over the years, over the years, we have added billions of dollars to the tax exempt real property, and the definition of what is tax exempt continues to be more broad. I would expect, and this is not aimed at this entity, but I would expect that the property owned by the Whooping Crane Trust Fund is exempt...

PRESIDENT: One minute.

SENATOR SCHMIT: ...from taxation. Ladies and gentlemen, I think they have got 10 or 15 million dollars in the fund and we have only got a 150 whoopers. If they can't afford to pay tax on their real property, who in the State of Nebraska can? I would suggest there are other entities out there that are similar. It is also true that we have greatly expanded what is religious activity today. I am not critical of it, but when we originally studied those intentions of the constitutional exemptions, it was pretty obvious that we were exempting the church, maybe the parsonage, and that was about it, but today we have broadened our activities considerably. And the church I belong to owns a lot of property, and some of it is product producing and probably they pay tax on it, some of it is not. Let all of those exemptions, Senators, come before the committee, come before this body, and be debated at length, and once you have done that, I think you will agree that perhaps this is a better solution than what you would think. Someone sent me a message that the State of Texas thinks they have \$45 billion of this type of property. One of my principal concerns here, ladies and gentlemen, is the fact that you can propose something of this nature and get very little debate on the floor. You get very little debate or argument from the committee. You get very little debate from your fellow senators. It is almost as if you have a closed mind. You say we are not going to look at this, Schmit has got another crazy idea again. It is not going to work. We have committed ourselves to LB 1, LB 2, LB 7, we are going to go. Ladies and gentlemen, bear in mind again the admonition of former Governor Thone. I think it might be worth remembering. One more thing, as long as we are talking about personal property, Senator Jim Exon, and I often quote Senator Jim Exon, but Senator Jim Exon raised a point, which I think is a valid one. He said in reference to LB 775, which many people supported, how do you exempt from taxation a jet airplane that is owned by one

business which happened to expand its operation, and you tax a jet airplane that is owned by another business which did not expand its operation? How do you exempt a computer which is owned by a business which expanded its operation, and don't exempt the little computer which is necessary to my business?

PRESIDENT: Time.

SENATOR SCHMIT: Ladies and gentlemen, we haven't even scratched the surface of the troubles we are going to have. Someone said, there was a song once, no one knows the troubles that I have seen. Wish I could sing, I would sing it for you.

PRESIDENT: Thank you. Senator Haberman, followed by Senator Owen Elmer.

SENATOR HABERMAN: Mr. President, I wonder if Senator Schmit would answer a couple of questions.

PRESIDENT: Senator Schmit, please.

SENATOR SCHMIT: Yes, Senator.

SENATOR HABERMAN: Senator Schmit, have you passed out to the body copies of your amendment?

SENATOR SCHMIT: No, I have not, Senator.

SENATOR HABERMAN: Well, Senator Schmit, is it, what, 50, 75, 100 pages?

SENATOR SCHMIT: About 70 pages, I think.

SENATOR HABERMAN: Thank you, Senator Schmit, but if I remember correctly, Senator Schmit was up here yesterday morning carping about we cannot meet without seeing the bills, without seeing the amendments. We have to have time to study this issue. We can't do this, and he went on and on and on about we can't do something with a little, what, 10 or 12-page bill, and now we have got about four amendments that is before the body, and now he is standing up and he is saying, members of this body, here is my amendment. My amendment is the correct amendment. I want this body to accept my amendment, regardless nobody has even seen it except those members of the Revenue Committee and, quite frankly, I did not vote to advance his amendment. I don't even

know whether there was a motion made. Because, one of the reasons, I didn't have enough time to take his amendment and go page by page and line by line and section by section and have a legal beagle look at it, argue, and change it around. So I guess my point is this, for you folks to stand up here one day and to carp on something, and then to turn right around the next day and do the same thing, I guess it all boils down to the eyes of the beholder. Now the committee, the Revenue Committee, spent approximately seven and a half hours Friday on these bills. We listened to the testimony. Now that is a long time. Now maybe I didn't agree with everything that the Revenue Committee did. However, we discussed it. We discussed it Monday afternoon, and here it is. If you don't like it, take it out and vote it down. That is what we are recommending, but I sure wouldn't stand in this body and say take a 90 or 70-page amendment you have never seen and vote yes. I would ask you to vote no on the Schmit amendment. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Owen Elmer, please.

SENATOR ELMER: Thank you, Mr. President, and members. What Senator Schmit is proposing here is something that we need to really look at a little bit. People we talked to out there say, I don't care if I have to pay a tax as long as it is affordable and everyone else is paying on the same kind of property. They say, don't come in and patch the wreck we have. Fix it. Something like this, whether it is Senator Schmit's amendment, or the amendment that I will offer to you later on in the afternoon, but it needs to be fixed. If Senator Schmit's amendment looks better to you than the solution I am going to offer, I would suggest to you that you would vote for this. It solves some problems. It does away with these exemptions that are the heart of our problem. If one of us pays the tax, we should all pay the tax. I am going to support Senator Schmit's amendment.

PRESIDENT: Thank you. Senator Langford, followed by Senator Chambers. Senator Langford. Excuse me, Senator Langford.

SENATOR LANGFORD: Mr. President, I respectfully call the question.

PRESIDENT: The question has been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye, opposed nay. We are voting on ceasing debate on the

November 14, 1989 LB 1, 2, 7, 8, 9

Schmit amendment. Record, Mr. Clerk, please.

CLERK: 25 ayes, 1 nay to cease debate, Mr. President.

PRESIDENT: Debate has ceased. Senator Schmit, would you like to close, please, but before you do, (gavel), let's hold the conversation down so we can hear Senator Schmit, please. Thank you.

SENATOR SCHMIT: Mr. President, and members, LB 8 and LB 9 have been printed just as long as has been LB 1, LB 2, and LB 7. Senator Haberman, you are a member the Revenue Committee, how did you vote on the motion to kill LB 8 and LB 9?

PRESIDENT: Senator, are you asking Senator Haberman?

SENATOR SCHMIT: Haberman, yes. I won't waste any time. I will ask him when he gets back on the floor.

PRESIDENT: All right.

SENATOR SCHMIT: Do you know, Senator Haberman, I have had to hop off this floor several times with my foot in my mouth. It is not too bad if you can negotiate the steps. After that it is pretty easy. The point is this, Senator Haberman, if you voted to kill those bills without reading them, then you were voting irresponsibility. If you read them and voted to kill them, then you know what is in them, because this amendment is identical to LB 8 and LB 9. So don't tell me, you don't need to read the book to me, Senator, I have been here awhile. The amendments that have been offered for LB 1 and LB 2 have been much more extensive than what I am proposing. There is no new material in my amendment. It is LB 8 and LB 9 compiled. Now I can tell you one more thing, Senator, I will answer any question you want me to answer on LB 8, on this amendment. That is more than I can say for those of you who have proposed the amendments, many of them at least, to LB 1. We have a disagreement between members of the committee as to whether or not an irrigation pump is real or personal property. I think before you do anything else, we ought to call a recess and decide that little issue right there. There are some other issues we can decide as we go along but, first of all, the committee, themselves, ought to know. There may well be and there probably is a difference in the way the equipment is being handled between the counties. What I am suggesting to you is this, ladies and gentlemen, I am suggesting

a major step and I agree it is a major step, but I am suggesting to you that it is a step in the right direction. It removes the personal property problem once and for all. Number two, it places back on the tax rolls property which, some of the favorite words we use around here, it was never intended to be exempt. Number three, it then clears the way for us to do those things which need to be done relative to individual situations, relative to the raising of money, relative to the financing of the schools, relative to the financing of the local subdivisions. But unless the people know where they are at, under LB 1, you are going to have a complete new line of work out there, ladies and gentlemen, for the assessors in those counties, and I suggest it is going to be almost impossible for them to do it. They are going to be faced, shortly after the first of next month, you are going to get the new appraisals on farmland. If you like the appraisal you get on farmland, ladies and gentlemen, you are going to love LB 1. I would suggest you take a good look at it. I suggest that you not summarily dismiss this amendment. You are making a serious mistake. You can be critical of me, personally, if you wish. You can criticize me, personally, for introducing the bill in this manner. It was not my desire to do so. I do so only because I think I know that you are going to have serious problems if you proceed in the direction you have laid out. I would hope that you would not kill this amendment. I would hope that you would adopt the amendment and proceed then to resolve the problems that we have created otherwise under LB 1. Ladies and gentlemen, again, I have not handed the amendment out. If you want to read the amendment, read LB 8 and LB 9. Those are the bills. The bill drafter has hundreds of them, and if you haven't checked them out and read them, it is not my fault. Specifically, Senator Haberman, a member of the Revenue Committee should have read those bills. There isn't anyway you could vote responsibly without having read the bills unless you have been committed to a preordained course of action, which happens, perhaps, once in awhile around this place but which is not good for the people of the State of Nebraska. Mr. President, and members, I ask you to vote affirmatively on my amendment to LB 1.

PRESIDENT: Thank you. The question is the adoption of the Schmit amendment to the committee amendments. All those in favor vote aye, opposed nay. A simple majority prevails. Have you all voted that care to?

SENATOR SCHMIT: Mr. President, a record vote, please.

PRESIDENT: All right. Mr. Clerk, a record vote, please.

CLERK: (Read record vote. See pages 102-103 of the Legislative Journal.) 15 ayes, 25 nays, Mr. President, on adoption of the amendment.

PRESIDENT: The Schmit amendment does not pass. Now back to the bill, Mr. Clerk, I understand we have another motion.

CLERK: Mr. President, Senator Chambers would move to amend the committee amendments. (The Chambers amendment appears on page 103 of the Legislative Journal.)

PRESIDENT: Thank you. Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, if you will turn to the committee amendments, I can tell you very easily and simply what it is that I am doing. Toward the bottom of the page in line 12, starting with the word "except" where we deal with the center pivot or other irrigation systems used for agricultural and horticultural purposes, I'm striking all of that. Starting in line 12 with the word "except", I'm striking all of the language through "agricultural and horticultural purposes", on line 16, and I'll tell you why I'm doing that. There are a lot of people who are distressed about the groups and special interests that don't pay taxes. Everybody who is an adult realizes that it takes money to run and operate a government. People become offended deeply when they see those most able to pay taxes are not required to pay them or those similarly situated because they have a spokesperson or lobbyist not having to pay. The Governor put together what was called, I was told it was called, a crisis team to deal with this situation. When you look at the make-up of that team, that is the crisis. The make-up of the team, therein lies the crisis. You have people who are paid to represent certain interest groups, not the public, not the taxpayer, who, in order to protect their jobs, come up with this nonsense and the Governor doesn't care, remember, what nature the bill takes. The Governor doesn't care how silly it is, how stupid it is, because it is the ignorant Legislature that is going to enact it and she will say as she is running for reelection, we presented it to the Legislature and they were free to reject it, but as usual, the dumbbells went for it. All

the Governor can do is give them a basis for discussion and the bills were presented, as Governor. And she will look at the transcripts and get this assistance that I am offering since her geniuses are so silly and empty-headed, as Governor when I issue a proclamation to call an extraordinary session, I state the perimeters of the session. I tell what issues are to be dealt with, but I don't tell in detail how they must be dealt with. I don't attempt to limit the plenary power of the Legislature to legislate on the issues that I put before them. Now, if they are so gullible, if they are so silly and they are the ones whose job it is to legislate, to accept that claptrap that I sent over there, they are the dummies that are responsible, and isn't that what you hear all the time? Why do people say that there is a tax problem now? Because of the Legislature. And yet there have been governors and others who have coaxed and bullied the Legislature into doing what has been done. So there is blame to spread around, but the Legislature is the one that accepts it. The Legislature is the butt of everybody's joke. The Legislature is considered collectively to have the lowest IQ of any similar group anywhere in the world. You could go to a regional center and those people may be crazy but they are not stupid. The same cannot be said of the Legislature. How many jokes have you heard about the density of this body? If you could convert the IQ of the Legislature into fog, London at its worst would look like a crystal clear day. That is what they think of the Legislature and being a member of it and observing close up, I can't say that I disagree with them or blame them. Here is a letter that I got from a lawyer, and I'm going to read part of it, and he is talking about the exemptions given to special interest groups. Now the railroads had ample legal justification to seek relief from the federal court, the exemptions now existing in the property tax field are one-sided, favoring only one segment of our citizenry. For instance, Senator Hefner, I know of a farmer who leases over 1,600 acres and farms the same with machinery worth over \$400,000. He pays no property taxes on the land because he does not own it. His machinery is further exempt because of the Legislature's piecemeal work. All the nitrates he also buys to produce the crop are further exempt from sales tax, yet the Lockwood Manufacturing Company of Scottsbluff, which manufactures farm equipment, pays over \$55,000 in property taxes annually on its machinery and equipment which produce the farm equipment. The landowner that leased the land after payment of taxes receives only 3 to 4 percent return on his investment. Is this fair or just, Senator Elroy Hefner? I added that Senator Elroy Hefner,

that wasn't in the letter. Why are chemicals and fertilizer used for agricultural purposes exempt from Nebraska sales tax? I must pay sales tax on all supplies I use in my business. There is a precinct in Senator Baack's district where there is, and he gives a figure which is very high, a percentage, cancer rate, which is believed to be caused by the high nitrates in the drinking water. Yet the use of said nitrate is encouraged by its tax exemption. You might ask me if sales tax on services would be feasible. My answer is in the affirmative as long as there are no favorites played. For instance, if you tax a lawyer's services, you also must levy a sales tax on crops and livestock raised and sold. It is simply a matter of supply and demand. My request is simple and obvious. A complete overhaul of our tax system is needed. For this state to move in a positive direction in the future, you must solve the tax, then in parenthesis, (exemption mess) for the good of all Nebraskans, not just for a few. And what my amendment attempts to do is to stop some of the nonsense that the Governor's dumbbells over there are perpetrating on this Legislature. When they had that language that Senator Wesely mentioned the term "production" and the term "products", those terms were broad enough to include this farm equipment that the farm group said, if it is included, I will oppose the bill. So she said, fine, we'll give you what you want; we don't care if the bill is no good, we just want to get through the election. So how do you propose we do this? We'll just write that you're not going to tax as real property, the pivot...center pivots and irrigation systems, and we're happy. We're as happy as hogs in heaven, or happy as those in hog heaven, however it goes. Anyway, we're happy. And then the Governor links arms with them and all these crisis team members, and they just skip down the lane happily. And in here is the dumb, ignorant Legislature that does not even understand the significance of creating a classification by statutes, going along, led by somebody who has put a ring in the nose. My amendment would do this. First of all, let me tell you the way I see the law as it stands, the proposed amendment. If the court rules that you have created an improper classification, then this that you're doing will be struck down as unconstitutional and if it is struck down as unconstitutional, you're right where we start now, but you are back here after a long time and the elections are over. Let's say that you have it upheld, that these pivot irrigation systems and the other irrigation systems are allowed. Then you have created a further division between urban and rural people which will have repercussions when we come back to the session because you

already know, some of you in the rural areas, the anger that a lot of city people feel at not only exemptions, but the subsidies that farmers get. Two years ago over 60 percent of the income of farmers of the net income was from direct government subsidies. You know this independent work ethic people who never stick their hand out, well, if 60 percent of my income was dropped in my pocket from the government, then I could say I'm independent, biggest beggars, moochers or sponges in the society. Then these farmers don't even understand math, Senator Schmit. A farmer would come to me if I make shoes and I say, I got to put \$50 worth of leather into a shoe that I can sell for \$10. They will say, dummy, if you put more into it then you can realize when you sell it, you're bound to go broke, do something else. Then the farmer comes here with a pitiful mouth and says, government, taxpayers, give me something because it costs me five cents to produce three cents worth of corn. I say, say that again. Well, I spend five cents on the corn and I get three cents for it.

PRESIDENT: One minute.

SENATOR CHAMBERS: I say, then why do you keep doing that? Well, I like to do it. It is my culture, it's my way of life. Well, how do you propose to live? I'm going to ask the taxpayers to give me some money because I never learned math very well, or I'm a shrewd, cunning con person and I'll get other people to pay money for my stupidity. These are the kind of issues that are developing not only around the county, but in Nebraska too. There is no rational basis under the kind of bill that has been presented to us for this amendment that I'm trying to strike. So I am asking that if you intend to pass this bill and adopt the committee amendments, you should strike all of this language relative to the center pivots and irrigation systems.

PRESIDENT: Thank you. Senator Hefner, followed by Senator Hall and Senator Schmit.

SENATOR HEFNER: Mr. President and members of the body, I rise to oppose this amendment to the committee amendment because I feel that we need this...these four lines or five lines in here to clarify what we're trying to do. And the reason that we put that in, because we wanted to make sure that center pivot systems would not become a part of real property. Because when land is irrigated it goes into a higher value, and so the owner

of that land is paying higher taxes because the land is valued higher and so I think that we certainly need this in to be sure that we exempt center pivots. And we did put in there that it would have to be used for agricultural purposes. I think this is fair, I think it is just and I feel that we need to keep this in, and so I would urge you to oppose the Chambers amendment.

PRESIDENT: Thank you. Senator Hall, followed by Senator Schmit.

SENATOR HALL: Thank you, Mr. President and members. The portion of the committee amendments that Senator Chambers' amendment would strike was brought to the committee, as I stated before, by both members of the agricultural interest groups as well as Senator Rod Johnson, and it was brought as an amendment so that there would be no change basically in what was done in practice currently as opposed to what would happen if there was not a specific exemption allowed for the changes that would be made in LB 1 as it was introduced. That is the reason behind the amendment, part of the committee amendments as they are drafted, so that the current practice would be incorporated along with the changes that would be applied through the committee amendments in LB 1. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Schmit, followed by Senator Chambers and Senator Lynch. Senator Chambers, do you wish to continue on?

SENATOR CHAMBERS: Yes, I do, Mr. Chairman. I want to earn that money that the Legislature pays me. This, that I'm going to talk about now comes from a case handed down by the Nebraska Supreme Court, and it has some very worthwhile language that I want in the record, and this is State Securities Company v. Ley. It's from 177 Nebraska, starting at page 251. It is discussing Article I, Section 16, and Article III, Section 8, of the Constitution, both of which deal with special legislation. And the case says, Article III, Section 18, of the Constitution of this state provides in part, "the Legislature shall not pass local or special laws". The provision prohibits the Legislature from passing any act which does not operate equally and uniformly upon all persons in a class. Article I, Section 16, Constitution of Nebraska, prohibits the granting to any person, any special or exclusive privileges or immunity. Then I go on to page 259. The rule established by the authorities is that while it is competent for the Legislature to classify, the

classification, to be valid, must rest on some reason of public policy, some substantial difference of situation or circumstances that would naturally suggest the justice or expediency of diverse legislation with respect to the objects classified. In the case that we have before us here today with the exemption being offered, the only policy involved is a personal policy on the part of those senators who want to be reelected and the Governor. I'm going back to the case. There is no substantial difference of situation or circumstance that would naturally suggest the justice or expediency of diverse legislation with respect to the objects classified. Reasoning or refinement which would harmonize such classifications with the Constitution would make of the supreme law of the act of the Legislature and of the judgment of the court, a farce or a delusion. The bill that the court was discussing at that time, "is an attempt to legalize," well, it's talking about a special interest rate, and my time is running, and it has said that there is no basis for giving a special interest rate to one category of lenders and not another. They should all be subject to the same provision. But then the other language that applies to our situation here, and this is on page 260. The classification must rest upon real differences in situations and circumstances surrounding the members of the class relative to the subject of the legislation which render appropriate its enactment and, to be valid, the law must operate uniformly and alike upon every member of the class so designated. Classifications of persons for the purpose of legislation must be real and not elusive. They cannot be based on distinctions without a substantial difference. And when you try to distinguish this kind of equipment that would be granted the exemption from other similar equipment that is included in the definition of...or classification, there is no rational basis. Page 261, the very purpose of Article III, Section 18, of the Constitution is to prevent legislative action which grants benefits or immunities to persons or property within the general class that is made the subject of legislation. The accepted classes are so numerous and varied and cover such a broad field that the act, in fact, does not have the semblance of a general law but of a special one aimed at a special and limited class. It clearly denies to that class the equal protection of the laws. It grants to the excepted classes special privileges and immunities in violation of the State Constitution. On page 263, the Legislature may not create lesser classes of persons or property not permitted by the Constitution as...

PRESIDENT: One minute.

SENATOR CHAMBERS: ...the basis for legislation. If such a method were permitted, the restriction upon the Legislature contained in the Constitution would be reduced to a shambles with a meaningless effect. Now what the court has said repeatedly, in similar cases, is that the Legislature cannot do what the Legislature is attempting to do now. And when the Legislature runs headlong to do this for a political purpose and the court properly strikes down such legislation, there should be no criticism of the court. What should be said is that you're dealing with an idiot legislature. You repeatedly tell them what they are allowed to do under the Constitution. They repeatedly ignore it for political purposes and whereas the court understands why they do that because they feel their purpose in life is to continue to stay in office, the court should not be blamed for doing its job under the Constitution. I think this is a sham and, therefore, my amendment is valid and may rescue the rest of the bill.

PRESIDENT: Thank you. Senator Schmit, we missed you a little bit ago. Did you wish to speak?

SENATOR SCHMIT: Senator Chambers has once more put a rope around the neck of every agricultural senator in here because he knows better than any of us that any rural senator who votes for his amendment is going to get a full-page headline, Schmit votes to take, or to put the pivots on the personal tax roll and, of course, most of us are cowards. We don't like to see those kind of headlines. The reason the language is there, Senator, I can't disagree with you, is this. It is there for the same reason that 361 and LR 2 marched side by side. Because a promise was made, you pass 361 and raise your taxes 50 million bucks this year and in a year we're going to go out and we'll pass LR 2 and then, lo and behold, we'll roll your taxes back by 50 million. Now, if, may God forbid, LR 2 doesn't pass, it's not our fault. If, on the other hand, it doesn't pass, it does pass, and the Legislature in its wisdom chooses not to roll the real estate valuations back by that amount, still no one's fault. We can always blame someone else, but the point is this. The language is put in there, as Senator Chambers well knows, to bring along those of us rural senators who say, well, just leave us alone, write us out of it, and we'll be home free. Then if...the court says, wait a minute, pivots are not a rational classification of real property. All of a sudden, well, it

wasn't my fault, just throw that out, get ready to add the value of your pivot to your real estate. I asked a question of several people who were involved. I said, if you've got \$160,000 quarter section and you've got a \$60,000 irrigation system, you are already valuing the quarter section as irrigated land, maybe 50, \$60,000 more than if it were nonirrigated. If you add the value of the equipment to the value of the land, are you going to reduce the irrigated land to dry, et cetera? Oh, no, they said, we're going to throw it right on top. Ladies and gentlemen, step by step you are getting into the quicksand. When you get up to your nose and you can't breathe anymore, it is going to be too late then to say, well, the court did it to us. The court is not going to do it to you, ladies and gentlemen. We are doing it to ourselves. I can't vote for Senator Chambers' amendment because I can't explain it back home. I'll tell you one thing, I'm not going to vote for LB 1 either.

PRESIDENT: Senator Langford, please.

SENATOR LANGFORD: Mr. President, I'd like to call the question, please.

PRESIDENT: The question has been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye, opposed nay. No, this is on voting to cease debate. Record, Mr. Clerk, please.

CLERK: 24 ayes, 8 nays, Mr. President, to cease debate.

PRESIDENT: Senator Chambers, you are next, followed by Senator Rod Johnson.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, although some people may not like the one bringing the amendments and doing the discussing, there are things that need to be gotten into the record because for some of us it is serious. Senator Langford, I notice you call the question a lot. That makes me think of one of these biblical characters, I forget which one it was or what he was talking about but he said, for this purpose came I into the world. Now I know why Senator Langford came to the Legislature. Calling the question, for this purpose came she into the Legislature. But we need a division of labor and people do what they have a talent for doing. I have a talent for analyzing legislation, reading cases

and applying it to what is before us and trying to goad and provoke the Legislature into behaving like a body that people will say is intelligent even if we're not. This amendment though is one of substance. It is densely textured with validity. It ought to be adopted by this Legislature. The fact that it was not included in the Governor's original proposal shows that she had no respect for those agricultural groups who talked to her. Who respects farmers? Who respects their representatives? So just put some stuff together in front of them in general terms and say, this is what I want to do, then call a press conference and you have the farm groups, the chambers of commerce and all these others running around at a press conference without having seen legislation saying, yeah, we support the general idea, then the Governor says they supported the legislation. And those people go along because they have been embarrassed and have to then support the legislation and they have been snookered, they have been snookered. And they don't have the courage to stand up and say we were "taken". You don't have to know how to speak English correctly to have courage, Senator Lynch, over there, chuckling. The reason I want this amendment is so that we can bring the true issue on the table. The intent of all this legislation is to merely postpone the inevitable, but it should not be done in the way that this committee amendment attempts to do it. Senator Hall, did you say that the Governor approves of this amendment, with this language that I'm trying to strike?

SENATOR HALL: It was my understanding that the administration and the department were in support of the amendment.

SENATOR CHAMBERS: Would that include the crisis team?

SENATOR HALL: I was only for a very short time a portion of that crisis, Senator Chambers, so I cannot speak for them.

SENATOR CHAMBERS: Okay, thank you. All right, I know that my amendment to the committee amendment is doomed to failure because the "Iron Lady", the "Tin Lizzie" has control of this Legislature, has control of this Legislature and you all know it and the public knows it. I'm probably the only one in the universe who can do like I do on the floor of this Legislature because there is nothing anybody can give to me and nothing anybody can take from me that makes any difference. My existence, my reason for being, my self-confidence, my self-esteem are not based on what other people think because you

consider the source and judge the capability of those who are trying to make judgments and what do you care about them because you look at them in operation when they are undertaking the work that they swore an oath to do to the best of their ability and you see that everything is thrown out the window and the Legislature becomes oatmeal persons. I don't really blame the Governor for what she is doing. Power corrupts and absolute power corrupts absolutely, is what some guy said.

PRESIDENT: One minute.

SENATOR CHAMBERS: You exercise power over people by compelling them through the force of your will or threats to do what you demand them to do when they don't want to do it. It doesn't take power to get people to do that which they have an inclination to do already. It might take persuasion but power is a coercive force that you bring to bear on others and compel them against their will to do that which their better judgment tells them they ought not do. And naked power is being exerted on this Legislature, the knees are buckling and trembling. Backbones could be stronger than what they are now if you pour Jell-O down them and then people are going to run out of here talking to school kids and others about what a good job the Legislature does and how laws are made. A person once told to me that...told me when they were in high school taking Civics classes, they believed all that stuff they read and then they came and worked in the Legislature and saw what the real story is and all respect went out the window.

PRESIDENT: Time.

SENATOR CHAMBERS: We're lucky people don't come here and listen to what we say.

PRESIDENT: Thank you. Senator Rod Johnson, please.

SENATOR R. JOHNSON: Mr. President, members, the argument that we're having on this floor I guess is in part of an amendment that Senator Hall referred to earlier of an amendment that I brought to the Revenue Committee that dealt with center pivot irrigation systems. I had no involvement in the drafting of LB 1. However, when it was pointed out to me by certain farmers and in certain center pivot irrigation manufacturing companies that these pivots might be taxed under the redefinition, I became concerned and again, working with my staff and some

others to correct that problem because I saw this as being somewhat of a movement that was beyond what I thought the purpose of the call was called for which was to, not to change the status quo, not to repeal certain exemptions that had been in law before this special session had been called. So I drafted the amendment, I took it to committee and Senator Hall and his committee considered it, along with other options that were presented to him and the committee, at the public hearing and it was put in the bill. At this point, Senator Chambers is asking this body to consider taking that amendment out. I would ask you to retain that section because Senator Schmit has already covered some of the points I was going to make, but I think that what am attempting to do is preserve our status quo as best I can to save the state, as the Governor has indicated to us, \$30 million. If we want to make substantial tax policy changes in this state, that is fine with me, then let's do it up front and openly and not in amendment form or not at this...in this special session. I guess I was one who did sign Senator McFarland's call for an additional special session to deal with the broader picture because I thought that that was the right path to take and if we want to argue doing away with farm exemptions for personal property, then let's do it at that time, but...and, at this time, I think LB 1 was designed not to tax agricultural property that it had received exemptions previously and I guess I wanted to retain that in place and I would be reluctant to vote for Senator Chambers' amendment. Senator Chambers, I would agree with you, I don't think your amendment has much of a chance, but I respect your ability to bring this issue before us. I'm hoping this is not the weak link in the chain that would take us down because I would then have to seriously consider not supporting LB 1 if this amendment is successful.

PRESIDENT: Thank you. Senator Dierks, please.

SENATOR DIERKS: Mr. President and members of the body, I would have to stand and rise in opposition to this amendment. I don't think there is probably a senator in here who has...whose district would be more affected than mine. I don't know how many irrigation, center pivot irrigation systems I have, but I'm sure it is in excess of 3,000. I, too, appreciate the dilemma that Senator Chambers has come to us with, but I really don't believe this is the place for us to take out our frustrations and so I would urge that you defeat this amendment. Thank you.

PRESIDENT: Thank you. Senator Chambers, please, followed by Senator Schellpeper.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I'm going to try this time to make it clear what it is that I am saying. The committee amendment will be attached to a bill whose stated purpose is to redefine real property. They say clarify. That is an easy word, but that is not really what it does. It doesn't clarify anything, it changes, it changes it. Now, a general definition is contrived. Under that general definition, there would be included center pivots and irrigation systems as described by Senator Schmit earlier. In order to stop the definition from including that which it would include, this language was offered and the Legislature probably will adopt it. I'm telling you, before I proceed, that I can understand the political motivation behind it. I understand the political motivation of the Governor for calling us into special session. But if we're going to undertake to enact a law that changes the definition of real property, because there exists a problem pointed out by the courts, then why in fashioning that definition do you build in a problem that makes the definition invalid? You are creating a classification by a definition, then you're saying and pointing attention to it for the courts to look at and that's what I'm trying to do. We know that center pivots would fit within the definition. We know that irrigation systems would fit within the definition. We know that there is no rational basis to distinguish these items from the others that are taxed but, nevertheless, we are going to do it. And when those seven justices get together, they are going to scratch their head in amazement and they are going to say, this was talked about on the floor of the Legislature. Look, look at the debate. They knew that they were creating a classification then, while creating it, offering additional language that would cause it to apply unequally to members that fit within the class. They knew that and they did it anyway. They are throwing it in our face. They see us like that 90-pound weakling on the beach. We're just some old graybeard, well, grayheaded judges, those that have some hair, and those that don't can do that Megadox (phonetic) or whatever that commercial that is...is that what grows hair, Megadox, or whatever? One of those, Minoxidol, (phonetic) thank you. They could do that commercial, so they have some value, but they rouse themselves from their sleep and they say the Legislature has kicked sand in our face again and they are bringing this to us and telling us that because they were willing to abdicate

their responsibility under the Constitution, we should abdicate ours. No, we are not coequal branches of government. We, as the court, have to be the instructors. We're the pedagogues. We have to teach them. They are children that never learn or they are ever learning and never come to a knowledge of the truth. Case after case we have told them this and they disregard it. That shows that the Legislature is and always will be a political animal, which everybody understands, and because of that, principles go out the window and the interests of those with a lot of money or power will be served. I believe that this amendment may save the rest of the bill for you if you're serious about trying to save it, but what the Governor sees here is that a land mine has been placed in the bill so that none of the rest of it will stand. Senator Johnson and others have said that the reason they will support the bill is because of the language I'm trying to strike and that makes that language essential to the passage of the bill. It was an inducement to pass it and the court said when that happens, then even though you put in one of these clauses it won't make any difference, the whole thing is struck down and that's what...

PRESIDENT: ...the Governor would like. Somebody over there has sense enough to see what harm is being caused by this. But that is the time bomb that they will place in there and it will tick, tick, tick, and when it gets to the court and explodes, then the Governor will say, well, they did it, they did it, and then when a law is struck down whose purpose it is to amend the existing law, the existing law prior to that attempted amendment is still in effect. Nothing will have changed. We will have been herded in here, ordered what to do and then told, get out of town by sundown on that seventh legislative day, and the Legislature, boogity, boogity, boogity does it.

PRESIDENT: Time. Senator Schellpeper, please.

SENATOR SCHELLPEPER: Call the question.

PRESIDENT: Thank you, you are the last speaker. Senator Chambers, would you like to close, please?

SENATOR CHAMBERS: I certainly would. Do you know, I'm thinking about not going back...not going to Oklahoma. I'm enjoying myself immensely, and one thing I have already done, I'm taking a late flight out of here so I'll be with you all tomorrow and I'm not going to stay until Friday. I'm going to come back late

Thursday night so I'll be back down here Friday with my colleagues. I'm going to read something from the Lincoln Star, the editorial page. "No Political Posturing?" is the heavy wording above the editorial. It is from this morning, 11-14-89. "Governor Kay Orr began this 1989 special session with a plea for no political posturing. No political posturing? Come on. Without political posturing, there will be little of interest to talk about during this brief gathering of the 49 state senators. Without political posturing, there is nothing left but tedious technical talk about classification systems and tax refunds and definitions of what is this kind of property and what is that kind of property. The bills the senators eventually will approve are not intrinsically fascinating. They will provide income for a small army of attorneys in the next year or two as they head through the court system, but they don't make for lively dinnertime conversation. The bills will, in the short run, create enough diversion that the state will not have personal property tax apoplexy within the next few months." Do you hear that word, apoplexy? That's from an editor in the newspaper. "The bills may completely solve the personal property tax problem--though the odds are slim. If this technical tinkering doesn't do the trick, Nebraska will have to devise some new tax schemes. The governor and senators have been soliciting advice on that broader issue for a long summer and fall. They've been asking business leaders publicly and privately. The governor even sent her Revenue Department staff on the road to talk to citizens at meetings across the state." And they probably did it to...who is that guy, Willie Nelson? He sang the national anthem at the Republican National Convention and they said he missed a few bars in the song because he didn't miss any bars on the way to the national convention. But anyway, they would go on the road to his song, "On the Road Again". "Everyone agreed that it was a hard question, for sure. And no one seemed to have any sure-fire solutions. But the business and agriculture communities have stepped forward during this special session with some comments, exhibiting classic symptoms of taxpayer sentiment. 'Make sure you don't tax us,' said the agriculture community, fearful that one bill inadvertently would put ag equipment--like center pivot systems--on the tax rolls. Agriculture interests want to make sure they keep their exemptions. And three big business organizations--the state, Omaha and Lincoln Chambers of Commerce--that Chambers has no reference to the one speaking, have decided the present tax system is just fine, thank you. Never mind that more than 240 Nebraska businesses rushed in to

claim tax exemptions through the potential loophole created by the recent Supreme Court decision. Never mind that this mad scramble for tax exemptions was the reason for all the worry about the loss of \$220 million in local tax revenue and thus the reason for this special session. The chamber can see the dangerous dollar signs lurking on the other side of change. If they win additional property tax exemptions, they might lose financially. The business community would rather face the known (the taxes they now pay on business equipment) than the unknown of the alternatives (potentially more costly increases in corporate income tax or the much-despised sales tax on services.)" You all know, even Senator Johnson, Senator Schmit and the other farm senators, that this is a valid amendment...

PRESIDENT: One minute.

SENATOR CHAMBERS: ...if we were here to do what the Governor said by her proclamation we were sent to do, if the purported reason behind LB 1 is the actual reason. But we all know that none of those things are true. This is a Barnum and Bailey world, just as phony as it can be. We all know it and I just want to say it. I feel that I have said it and somebody had passed me a note which I'm not going to read, but they might utilize it when they speak and I think you'll get a chuckle from it. But I am asking that you seriously consider this amendment, and, Mr. Chairman, before I sit down, I'd like a call of the house.

PRESIDENT: Okay, the question is, shall the house go under call? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 17 ayes, 1 nay to go under call, Mr. President.

PRESIDENT: The house is under call. Will you please record your presence. Those not in the Chamber, please return to the Chamber promptly and record your presence. Senator Smith, would you like to record your presence, please. Thank you. Senator Labeledz, would you like to record your presence, please. Thank you. Senator Dierks, would you like to record your presence, please. Thanks. Looking for Senator Landis, Senator Schmit, Senator Scofield. Now we are looking for Senator Schmit. Did you ask for a roll call vote, Senator Chambers?

SENATOR CHAMBERS: No, but now that you mention it, I would like

that.

PRESIDENT: Okay. Roll call vote, and the question is the adoption of the Chambers amendment to the committee amendments. Mr. Clerk.

CLERK: (Roll call vote read.) 12 ayes, 34 nays, Mr. President.

PRESIDENT: The amendment to the amendment fails. Senator Coordsen, for what purpose do you rise?

SENATOR COORDSEN: Point of personal privilege, Mr. President.

PRESIDENT: State your point.

SENATOR COORDSEN: Well, in a nation of many commemorative events there are some that, while worthy of national attention, certainly have escaped being red-lettered on our calendars. Today, my friends, is one of those days. A fellow member of the body, Senator Sharon Beck, is celebrating her just past twenty-first birthday today and I think it is worthy of commemoration, at least among the members of the body. Thank you, Mr. President.

PRESIDENT: Did you say you are going to sing her "Happy Birthday"?:

SENATOR COORDSEN: I did not say that I was going to sing her "Happy Birthday".

PRESIDENT: Okay. (Applause.) Senator Beck, you just lucked out. Congratulations. The call is raised. We're back to the committee amendment. Any more amendments to the amendment, Mr. Clerk? Okay, we're back to the committee amendment and, Senator Ashford, you are first, followed by Senator Nelson and Senator...okay, Senator Nelson, you are second, and, Senator Moore.

SENATOR NELSON: Mr. Speaker, members of the body, I wasn't even going to speak now, but I think in all of our deliberation we should maybe somewhat give consideration to the federal tax guidelines. It pretty well spells out what is depreciable property and what isn't depreciable property and what is real estate and what is real estate improvements and it may give us some guidance. I know that that is based on for tax purposes,

income tax purposes, but irrigation motors, equipment and so on is a tenure basis now. Various guidelines, and then improvements to real estate and those improvements can be depreciated which is the irrigation well down in the ground, but I'm just giving that to you for consideration. I'm not saying that...I know this issue is so muddled now, that I don't believe any senator is exactly sure what we're going to be voting on or exactly what will be the consequences of it. But the federal guidelines on depreciation do give us some guidelines.

PRESIDENT: Thank you. Senator Moore, please.

SENATOR MOORE: Mr. President, I would call the question.

PRESIDENT: Thank you, it won't be necessary but you're the last one. Senator Hall, did you wish to close on the adoption of the committee amendments?

SENATOR HALL: Now if we just turn on the micro...there we go. The committee amendments, as I think have been adequately debated, do improve the bill. I would urge every member of the body to support the committee amendments whether you intend to support the bill or not. I do not intend to support the bill, but I do intend to support the committee amendments because they clearly do make a bad bill better. The issue of whether or not the pipeline, center pivot irrigation system issue is one that would lead to further court decisions is up in the air. Whether it is in this bill or in any other bill that we pass in this Legislature, a law is clearly just a law and until it is tested in court at which point in time then we don't know until the court decides whether it is...runs afoul of our Constitution or not, and if it is never tested, there is not a problem. It could be tested as could any other law that we pass in this body. I would urge you to pass the...adopt the committee amendments and then debate the bill on its face and vote that up or down as you see fit. It is prudent at this point in time, I think, to adopt the committee amendments. Thank you. The question is the adoption of the committee amendments. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 30 ayes, 1 nay, Mr. President, on adoption of committee amendments.

PRESIDENT: The committee amendments are adopted.

CLERK: Mr. President, Senator Elmer would move to amend the bill.

PRESIDENT: Thank you. Senator Owen Elmer, please.

SENATOR ELMER: Thank you, Mr. President and members. As all of you are aware, I've been working on this personal property tax problem for several months and you have all received correspondence from me relative to what this proposal would do.

PRESIDENT: Senator Owen Elmer, may I interrupt you a second. Could you talk more directly into your...it's difficult to hear you. Thank you.

SENATOR ELMER: Thank you, Mr. President. We're all here because we recognize that the local subdivisions are suffering and bleeding through the exemptions and the attack we have received because of those exemptions. And through actions by our past legislatures, but granted exemptions from property tax liabilities to various interests, we face the probable loss of most, if not all, of the personal property tax base relied on to support local government and schools as well as the possible assault on real property tax on the same basis of discrimination and nonuniformity due to exemptions granted to nonprofit and other organizations and individuals. We have, through our past actions, made our 60-day, 1990 session the one which must address the problem of school finance. We are looking to LB 611 as a very possible and viable method to secure property tax relief for our citizens through support from income tax. The School Finance Commission has presented a very workable plan. I would suggest to you that any progress toward these goals of property tax relief is in a state of disarray due to the railroad and pipeline decisions. And further, that any progress in school tax reform is dependent on how we resolve this issue at this time in this special session. If all these issues would be resolved with any solid, logical policy, we need to show the leadership our constituents expect. The only avenue to establish state tax policy is through this Legislature and its leadership. I feel that reinstatement of personal property tax is not viable which leaves the alternative of removing personal property tax from the tax rolls in its entirety, as Senator Schmit described in his earlier amendment to the committee amendments. I would suggest to you for this consideration my amendment which would eliminate personal property as a taxable base and redefine real property on the basis of what I am

assured is one of the very first tenets that are learned by real estate agents, appraisers and attorneys, that real property is land and anything affixed to the land. There are strong arguments for this proposal. It would greatly reduce the litigations since personal property tax would no longer exist; the elimination of criticism that this is just another patch job; the satisfaction of the public that the liar's tax has finally been laid to rest; the probable no loss of tax base to the local subdivisions; the retention of local assessment within guidelines set up by the Department of Revenue; the obvious ability to very uniformly assess the two classes of property. People will say, is this within the Governor's call? I say very definitely. The first article of her proclamation states, to amend Chapter 77 of the Nebraska Revised Statutes to redefine terms, real property, personal property and tangible property. My amendment does nothing more than redefine personal and real property. We redefine taxable property into two classes. Personal property would be no longer taxed. Real property, taxable real property would be the land itself, which is nondepreciable, and the other taxable would be the depreciable property that is attached or annexed to the land for 12 months or more. There is no laundry list. It assesses everybody equally, and if you'll look at my handouts, you will see what the fiscal office has said about the retention of the tax base. It would eliminate discrimination and just, as has been said on the floor here before, if some of the property that under this definition becomes taxed, should not be, these interest groups can come to the Revenue Committee and make their case. It is well within the Constitution and does retain motor vehicles as they are presently. I would ask your consideration and the adoption of this amendment. It would do what we are here to do. The people in this state say, don't just patch it, fix it. I propose this would fix it. They say, I'm willing to pay any kind of a tax that you put on as long as it is affordable and everyone else pays that tax. This would do that. Yes, it would include many of the things we have been debating here whether should or should not be assessed and taxed. We would all be nicked a little with this, my type of business, agriculture and many other businesses. I'd suggest that we seriously debate this. I'll try to answer any questions that you might have and I would ask that you adopt the amendment to LB 1.

SENATOR BARRETT PRESIDING

SENATOR BARRETT: Thank you. Discussion on the amendment

offered by Senator Elmer, Senator Withem, please.

SENATOR WITHEM: Yes, Mr. Speaker, I just have a question for Senator Elmer, and I have to apologize to him because I'm sure in some of his mailings and such he has covered this, but I need a little better explanation particularly when you made reference to the fact that we are going to define real property in two categories, nondepreciable and depreciable, and we're going to eliminate the tax on personal property and it is going to be revenue neutral. What happens under your scheme to...in the small business I work for we pay a personal property tax on our personal computer, our furniture, our typewriter, those types of things. That's currently classified as personal property. We pay business equipment personal property, we pay property tax on that each year, what is going to happen to that?

SENATOR ELMER: Senator Withem, those particular items that you mention are clearly very portable, can be moved from business to business, just like your household goods. If you were going to move...

SENATOR WITHEM: Okay, what happens to them then?

SENATOR ELMER: They are nontaxable.

SENATOR WITHEM: Okay, then how is your proposal fiscally neutral then if we're removing those items from the other tax rolls?

SENATOR ELMER: The way that it works out, according to the fiscal office and talking to many of my assessors, and they agree, the way the personal property tax is now reported and assessed, in my particular business I go into the county assessor. I tell them what personal property I have that I think I can get away with. I tell them how much I think it is worth at the lowest figure I can give. They put it in the file and I pay tax on that. Under this scheme, it is real property. The assessor goes out, he looks at the building and he writes down the size of the building and how many rooms are in it and at the same time he writes down, in the case of an automobile dealer, for example, the front-end machines, the hoists, the compressors and all of those various things and puts it on the list and then...(interruption)

SENATOR WITHEM: And then, because they are attached then they

are depreciable real property.

SENATOR ELMER: That's affirmative.

SENATOR WITHEM: But, again, my furniture is off the tax rolls and how is that going to be fiscally neutral if you're taking things that are currently being taxed? I may be the only person in the state accurately declaring these things, how is it fiscally neutral if I'm no longer paying that tax that I paid last year?

SENATOR ELMER: If you looked at the handout that I gave you that came from the fiscal office, that the personal property that would be exempted they estimate at \$3 billion of base. They estimate conservatively the additions to the depreciable property at a minimum of two to three billion...(interruption)

SENATOR WITHEM: Okay, where are the conditions going to be coming from, the fact that...(interruption)

SENATOR ELMER: From items that are currently not assessed, are underestimated in value...

SENATOR WITHEM: Because you and I just aren't...because you and I aren't reporting those, the assessor will come out and he will actually see those and he will put those on. Their estimation is that will be a wash between what is taken off versus what comes on?

SENATOR ELMER: That is affirmative.

SENATOR WITHEM: Okay, I just...

SENATOR ELMER: Or also currently exempted items.

SENATOR WITHEM: Okay, thank you. I wanted to make...I understand that point. Senator Elmer, if you have anything else to add, you can have the balance of my time. I just genuinely did want to get that clarified to understand what the proposal was. Thank you.

SENATOR ELMER: Okay. Because it would include, obviously, things like grain bins and their attachments, the wells and the power units, and the center pivots, many of the tanks that are setting around at various petroleum dealers and fertilizer

dealers and...

SPEAKER BARRETT: One minute.

SENATOR ELMER: ...the list goes on and on.

SPEAKER BARRETT: Thank you. Senator Schmit, further discussion on the Elmer amendment followed by Senators Chambers, Hefner and Nelson. Senator Schmit.

SENATOR SCHMIT: Mr. President and members, I understand it's easy to shrug off Senator Owen Elmer's proposal because like so many others on this floor we don't really understand them and that which we don't understand we're afraid of and so the easier thing to do is to vote against it. I would suggest that Senator Elmer has a proposal here which deserves serious consideration. I recognize that there is going to be some changing perhaps of definitions, but certainly his system would clarify much of the debate that is revolving around here today. Might not be quite as desirable in some ways for rural people as...who would like it to be, but certainly in other areas it would remove doubt as to whether or not certain classes of property was real or personal. One of the questions that is always raised is, of course, the question of the mobile homes and the cabins built upon leased property and other types of property. I think that Senator Owen Elmer's amendment clarifies that. Certainly that is not clarified in the present version of LB 1. The issue of center pivots, I believe, is clarified with Senator Owen Elmer's situation and it is not clarified...well, at least the pump system is not clarified by virtue of LB 1. I would suggest that Senator Elmer's amendment is a lot like mine. It is one which needs to be discussed and debated; it needs to be explained; needs to be kicked around; certainly does not deserve to be summarily dismissed. He has put a lot of work on it and he certainly deserves some debate on the bill, on the amendment. I think that eventually we're going to have to move in the direction either of my amendment or his amendment and away from the type of language we have in LB 1. So, at this time, I would support the amendment. I think it deserves debate and we deserve to keep the issue alive.

SPEAKER BARRETT: Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, in Senator Elmer's amendment, on the first page down in line 18

it says, depreciable real property shall mean any improvement upon or beneath nondepreciable real property which remains in the normal course of events affixed upon or beneath such property for longer than 12 months. Senator Elmer, what is an improvement, for your purposes? What would constitute an improvement?

SENATOR ELMER: Senator Chambers, it would be anything that is a permanent appurtenance, a building, a grain bin, a set of tank battery and the pipes that connect it, a printing press in a newspaper, the assembly lines in a manufacturing concern...

SENATOR CHAMBERS: Or anything beneath the ground?

SENATOR ELMER: Anything beneath the ground which would include the minerals, the pipelines, the cables, anything that has real value that can be determined by the assessor with the aid of the Department of Revenue.

SENATOR CHAMBERS: What about a vault and a casket?

SENATOR ELMER: I'm not sure...

SENATOR CHAMBERS: You pay sales tax on those things now. I tried to exempt them saying the tax man should not follow a person beyond the grave but this Legislature insisted on continuing to tax. So when it is affixed beneath the ground, it now changes from personal property to real property and will that be in the category of pipelines and these other things?

SENATOR ELMER: I would assume that the Department of Revenue could determine a market value for that, that somebody would be willing to buy that...

SENATOR CHAMBERS: Senator Elmer...

SENATOR ELMER: ...conceivably it could.

SENATOR CHAMBERS: But does market value depend on somebody's willingness to buy or do you create a hypothetical situation where if there were a buyer and a willing seller, this is probably what it might fetch? Because if you have to have a buyer before you have a market value, then each item that does not have an existent buyer would not have any market value.

SENATOR ELMER: I would say to you they would have to make a very strange case to show that someone would be willing to abridge all of the human decencies that we have to exhume one of those and sell it for some predetermined unrealistic value.

SENATOR CHAMBERS: Have you ever heard of Burke and Hare?

SENATOR ELMER: I've heard of the hare and the tortoise.

SENATOR CHAMBERS: (laugh)...touchy, or touche Burke and Hare were two notorious grave robbers and they did exhume and they were paid for what they did and they were paid for what they retrieved. Here is the point that I'm getting to. The definition fits those things and probably would fit the corpse also because there are people who would purchase corpses. There are people who actually dig up corpses now and use them in ceremonies, so even though it might elicit a chuckle, one of the things that I think needs to be looked at when we're defining, and this doesn't go to the essence or intrinsic value of Senator Elmer's amendment because I know what he is trying to do. I'm simply trying to call attention to the fact that we need to read definitions very carefully and understand that what we contemplate when we fashion a definition may not encompass everything that would be included in that definition, but when we legislatively define everything that that definition fits is included in the definition. So the way I read the definition, a vault...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...a casket and a carcass would fit...would be included in the definition of nondepreciable...let me see...what is it called?

SENATOR ELMER: It would depreciable real property.

SENATOR CHAMBERS: Oh, depreciable real property, right. It would be under depreciable real property and I think we would all agree that all three of the items that I have mentioned do depreciate over time.

SPEAKER BARRETT: The Chair recognizes Senator Hefner.

SENATOR HEFNER: Mr. President and members of the body, I commend you, Senator Elmer, for bringing this amendment to us

again. You presented it to the Revenue Committee and the Revenue Committee did not take any action on it, and the reason we didn't, as I understand, was because we felt that we needed more time to research it out, to study it and to see just exactly what was in this amendment. I think that right now that I'm going to vote against it because, like I said, I really don't know enough about it. And maybe this is part of our long-term solution and I just wanted to explain to the body the Revenue Committee's position on it and leave it go at that.

SPEAKER BARRETT: Senator Hall, please. Excuse me, Senator Nelson, followed by Senator Hall.

SENATOR NELSON: Mr. Speaker, members of the body, I first want to comment. I did sit through the hearings last Friday and I did receive a lot of information. I can appreciate Senator Elmer's position, but it seemed to me like he left the impression at the hearing that I guess everybody is liars out there and I would hope not, for the benefit of maybe the urban people or the people that have not maybe gone through some of the rules and regulations for assessing real estate. Rural homes are taxed exactly the same way as in town, so many bathrooms, shake shingles, finished basement, so on and so forth, square footage. Grain bins, for example, are taxed not only what the farmer gives is not taken necessarily in consideration. I'll just use a quick thing, \$10,000 the farmer gives \$9,000. It is not taxed at \$9,000 if the average of five grain bin manufacturers within that location or the county may charge \$11,000 for that grain bin. That grain bin then is on the tax rolls at \$11,000. In our area, there is a little airplane that goes over fairly regular. There is a maintainer that goes up and down the road. Mind you, if there is any improvements there, I think they are added to it. It also works the other way. You have a hog house. Okay, you were in the hog business 10 years ago, became very unprofitable. You got out of the hog business. You tore the hog house down. That slab of cement is still there, you are taxed for that slab of cement. Unless that farmer goes in and happens to pay attention and goes down the list, he is still taxed for that hog house until he lets the assessor know that that hog house is not there. It happens just as much one way as the other. I'm not saying that there is not gasoline tanks, service stations property that is not probably on the tax roll, but it also works both ways and I do...I did want to clarify that. And then I have a question for Senator Elmer, please.

SPEAKER BARRETT: Senator Elmer, would you respond.

SENATOR ELMER: Yes, sir.

SENATOR NELSON: I notice, and I think I know why, you are exempting the ones that have the benefits of LB 775. I think it is page 3 of your amendment. Why, might I ask you, should we give those participants, the ones in the future, the ones that we've already given, I don't think there is much that we can do about it, but why, again, should we set them aside as privileged taxpayers over and above the mobile homes, the service stations, the farmers, and I'll go right down the laundry list, just why are they any more privileged from paying tax than the rest of us or the other taxpayers?

SENATOR ELMER: Senator Nelson, I included this in the bill strictly because of the contractual arrangement that was had. The special session that we are having will not allow us to depart from anything but redefinitions. So the only thing I could do in that portion of the bill is redefine. Those corporations that enjoy that contract under 775, that we decided was good state policy the first session I was here, would continue to do so but they would pay the local subdivisions the tax on their nondepreciable real property as defined in this bill and then reapply that to their sales or income tax liability that they would have from the state. If it was good policy to invite those businesses in three years ago, I didn't feel like that the debate should include whether or not that was a good policy now.

SENATOR NELSON: I appreciate your answer and I probably would have answered in exactly maybe the same way you do, but, again, I see this special legislation for special interests and sometime and another I guess that we have to say whoa and I include this underneath that...within that definition. Thank you.

SPEAKER BARRETT: Thank you. Senator Hall, Senator Withem on deck.

SENATOR HALL: Thank you, Mr. President and members. The amendment that Senator Elmer brings before the body is one that he did present to the committee in hearings last Friday. It was discussed by the committee. There were questions asked of

Senator Elmer at that time and there were, I think, points similar to the ones that were brought out here on the floor today that we talked about as well. It is an alternative approach to the personal property tax situation that we find ourselves dealing with. It is a broader view of the overall problem, dividing basically the property into two classes, that of depreciable and nondepreciable. The use of those terms, I think, has a bit of a problem for me in that they are traditionally used in other ways and they have other definitions and uses, commonly, and that that in itself is one of the first problems that I see with the legislation. But I think what it does do is it does move us in the direction and does force us to look at the classification of property as a way to deal with this problem, and I think the ultimate solution that we will find ourselves in when we correct this situation, should we choose to do that, will be through a classification process and toward that end the amendment that Senator Elmer offers is one that moves in that direction. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Senator Withem, followed by Senators Elmer and Weihing.

SENATOR WITHEM: Yes, Mr. Speaker, I put my light on because I had two questions. Senator Hefner's remarks brought a third one to mind. First two are primarily factual sort of understanding questions, third one I'll get into in a second. I think the first one might have been covered in your dialogue with Senator Nelson, just to make sure I understand. I was concerned when I read the 775 exemptions in your bill. Basically, those are placed there for clarification purposes to continue existing 775 sorts of exemptions. This does not add any new exemptions beyond what are currently there in statute.

SENATOR ELMER: That is exactly right. It's just a hold harmless type of a thing.

SENATOR WITHEM: Okay, got that. I want to get to the other two points and then make a statement. Working from your based on currently available assessments data sheet from the fiscal analyst's office, I now understand the contention that you're making that passage of this bill will provide more accurate assessments and we will, hopefully, be recovering through that process what will be lost through the, as you call it, the liar tax, personal property tax exemptions that will be added by passage of this. Where in your bill do we provide for this

improved assessment process or is it a...I hate to use this terminology, a trust me sort of thing that we will have more accurate assessment of the nondepreciable or the depreciable real property that will be attached to the facilities, the hoist, et cetera, that are going to be in the...your place of business?

SENATOR ELMER: When I was addressing this I visited with the Department of Revenue and some assessors and they said it would follow very closely the type of the manuals that they use for...

SENATOR WITHEM: Okay, this would follow then through a rule and reg process that the department would come up with, okay. Third point I guess I'd like to make, I was interested in Senator Hefner's remarks that we really haven't had time to assess Senator Elmer's proposal. Senator Elmer, I know you've been mailing this to us. When did you first start making this available to us?

SENATOR ELMER: The date of the first letter that I mailed was October 6.

SENATOR WITHEM: October 6, so well over a month we've had this information. Senator Hall, I have a question. When did we, as a legislature, have LB 1 available to us for consideration?

SENATOR HALL: Senator Withem, it is my understanding we had it Tuesday of the week past.

SENATOR WITHEM: Okay, so we've had Senator Elmer's proposal before us as senators for well over a month. We've had LB 1 before us less than a week, a week?

SENATOR HALL: Some folks had it Monday. I wasn't one of them, but...

SENATOR WITHEM: Okay, a little over a week.

SENATOR HALL: Right.

SENATOR WITHEM: Yeah, I think the contention that we ought to stick with what is tried and true and what we know and understand in LB 1 because it has been available to us for a whole week now and we ought not be flying off on something that we've only had a month to consider and we need more time for

this is pretty silly logic at this point. I think...I think what Senator Elmer is offering to us, I may, ultimately may not care for it, but I think what it is is a good-hearted serious attempt to move us in the direction of a final sort of solution to this problem and it's one that needs more serious consideration than what I see in LB 1 which is merely an attempt to put the proposal behind us in a very tentative fashion knowing full well we're going to be back into court in the near future. I'm going to give Senator Elmer a vote on his amendment.

SPEAKER BARRETT: Senator Elmer, please.

SENATOR ELMER: Thank you, Mr. Speaker. One of the things I should answer is the question raised by Senator Chambers relative to vaults, caskets and bodies. The second page of the bill, of the amendment, retains the exemptions on properties and included in that are cemetery properties. So if a cemetery property is exempt, I would assume anything beneath the cemetery property also would be. As far as the difficulty with the definitions, it doesn't matter what we call it. We can call it type 1, type 2, type A, type B and if it would be helpful any of these kinds of corrections that people would feel more comfortable with as far as definitions clarifying a little language here and there, I realize can be done very easily before Select File. One of the things that I think is very necessary in order to make this tax proposal work and give our public out there a feeling of confidence that we are addressing a solution and not just another...put another patch on the roof and see if it rains through again tomorrow, is to do something of this nature that looks like it can be a viable solution. I realize definitive figures that as far as tax base are not available, nor will they be until they are actually assessed, so it is like the chicken and the eggs. We pass it and try it, see if it is going to be adequate or we reject it and we'll never know. So the next point to make is we rely much too heavily on property tax anyway and that this particular proposal would more evenly spread the taxation of that property across the state. It would be very uniform. I don't think the litigation that is currently going on would have a leg to stand on. We wouldn't be trying to call apples oranges. We call them all oranges and there are no apples left. Those arguments would go away. The people of the state want an even playing field. I think this amendment could give that even playing field to us and we can refine it as we go along. I'd ask adoption of the amendment.

SPEAKER BARRETT: Thank you. Senator Weihing, please.

SENATOR WEIHING: Mr. President, members of the Legislature, my constituents commonly would talk to me about the property tax situation and many, many of them would say get everybody onto the property tax or get everybody that is...or the personal property tax, off of that. In other words, they were saying get at a level playing field. The property tax has become very complex with all of its exemptions and all of its classifications and subclassifications. This is an intriguing amendment that Senator Elmer has brought to us. I commend Senator Elmer for this. It is simple. That is the first real simple amendment that we've had, two basic classifications. Senator Hefner said more time to research it out. That perhaps is true, but looking at this amendment, it does take it to a fundamental base. The land and the improvements upon the land are all of those that are there. It makes it simple, discreet and doesn't have all of the many different subclassifications and exemptions with which we're trying to deal and with which we're trying to equalize out among ourselves. We know where it stands. I feel it is worthy that we give it consideration, if not as acting upon it positively at this moment, but as a thought way, a process way in developing a sound base for our property tax dilemma. Thank you.

SPEAKER BARRETT: Thank you. Senator Chambers, please, additional discussion.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I listened to what Senator Withem said and even though I said I'm going to vote no on everything in here, my mind can be changed by persuasive argument and even though Senator Elmer's amendment may not get adopted, listening to the discussion that has occurred thus far, I'm going to give a vote to it. However, Senator Elmer raised an issue that he should have left alone. Corpses don't become the property of the cemetery, they don't. The one who owns the top of the land does not necessarily own what is underneath the land. Ownership means that you have certain prerogatives and rights and privileges that can be infringed only by the government if they can show a justifiable basis under the Constitution to infringe those personal privacy rights. So I just wanted to correct you, in my opinion, because I read what you talked about in the bill, that the corpse does not become cemetery property for the use of the cemetery. But

the only reason I raised that issue again, because I don't think they are going to adopt Senator Elmer's motion. It is too sensible compared to all this other claptrap, so that is going to doom yours, and based on Senator Elmer, I'm shocked that he brings such a reasonable amendment now that I think about it. I felt something had to be wrong with this, Senator Elmer, because it made sense. Maybe I've been here too long today but, at any rate, what we need to look at after Senator Elmer's offering is disposed of is what LB 1 is asking the Legislature to do. Could you feel more comfortable if something left this body, if it were Senator Elmer's offering or if it was what is contained in LB 1? And you might have a general idea of LB 1 from the discussions even if you haven't read every word of it. Senator Elmer, this may be the last time you'll get a vote from me at a time when I had made up my mind in advance that I was going to vote no, but if it happens once, it can happen again. And, Senator Withem, as late as it is in the day, believe it or not, there are people who listen to these discussions and I think it is very wholesome to get these types of issues into the record because, as the day wears on, I understand that people get tired, their energy levels are low. But in preparation for Senator Labedz, Senator Lindsay and others on 769 in the regular session, I've been exercising more, I've been sleeping better, I've been eating my spinach. I don't say prayers, Senator Smith, because I don't want to make anybody angry should there be somebody there, but everything else that would put me in shape, I've been doing those things. So even though at this part of the day most people have blanked it out, sometimes some of the most worthwhile discussion occurs now. So, Senator Withem, Senator Elmer and those others who have amendments to offer, I hope you will not simply read the amendment, look around and get the general impression that nobody is listening, lose heart, and not present it. None of us, I don't think, have had the opportunity to completely digest what was slipped under our door last night or this morning. So we need the benefit of the discussion provided by those who understand their offerings and who believe in them. So I applaud you for what you have brought and I hope that you continue to reach the same high standard in the future although if you get one of those nags that licks up a muddy track and beats everybody going off at 50-1 odds, that is not an indication that they will always do that because all those circumstances may not coalesce in the same way. But this one time, Senator Elmer, you're a semi-winner because you've got me and you've got Senator Withem, and when you get two such quality individuals on your side,

(laughter) what difference does the rest of it make?

SPEAKER BARRETT: One minute. Thank you. Senator Elmer, would you like to close on the adoption of your amendment to LB 1, please.

SENATOR ELMER: Certainly, Mr. Speaker. Senator Chambers, thank you very much for the kind appellations. I don't think I should pursue the cemetery any further, but all of you have had an opportunity to think about this over a considerable period of time. I think it is time to set politics and partisanship aside. We all are here to do our duty for the best interests of all those people out there in the State of Nebraska who pay these taxes. I would ask that by your vote, one way or the other, you do what you feel is the best for this state and its citizens. I would urge the adoption of this amendment.

SPEAKER BARRETT: Thank you. The question is the adoption of the Elmer amendment to LB 1. Those in favor vote aye, opposed nay. Senator Elmer, please.

SENATOR ELMER: Mr. Speaker, I think that there are a lot of people out of the hall and to expedite it, I'd request a call of the house and a roll call vote, please.

SPEAKER BARRETT: Thank you. The question is, shall the house go under call? All in favor vote aye, opposed nay. Record.

CLERK: 22 ayes, 0 nays to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, please return to your seats and record your presence. Those members outside the Chamber, please return. Senators Landis, Schellpeper, Rod Johnson, please record your presence. Senator Johnson, the house is under call. All present and accounted for. We have had a request for a roll call vote in reverse order. The question before the body is the adoption of the Owen Elmer amendment to LB 1. Mr. Clerk, proceed with the roll call in reverse order.

CLERK: (Roll call vote read. See pages 104-05 of the Legislative Journal.) 22 ayes, 20 nays, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: The motion fails. The call is raised.

Anything for the record, Mr. Clerk?

CLERK: Yes, Mr. President, I do. Mr. President, your Committee on Agriculture gives notice of confirmation hearing. That's signed by Senator Rod Johnson as Chair. Health and Human Services, Chaired by Senator Wesely, reports on a gubernatorial appointment confirmation hearing. That will be laid over, Mr. President. (See page 105 of the Legislative Journal.)

Mr. President, the next amendment I have to LB 1 is by Senator Conway. (The Conway amendment appears on pages 105-06 of the Legislative Journal.)

SPEAKER BARRETT: Senator Gerald Conway, please.

SENATOR CONWAY: Thank you, Mr. Speaker, members, on your desk before you, you have an amendment that I would like to offer to LB 1. For the most part, this amendment, if you will find the GAC sheet on your desk, is basically a one-page. It stretched itself out into two by virtue of necessity to strike some of the other language that's in the existing LB 1 as amended. Short of that, the LB 1 amendment, as I offer it, would be an amendment and a bill that would only consist of one page. I would like to take you back to about nine months ago when the Enron case and some of the other concerns with real estate and personal property was being discussed in the courts and concern was being raised and, at that time, I sat back one evening and thought to myself, with a background in real estate and working in the theory of real property, personal property, for transaction purposes for the conveyance of title and the other kinds of particulars that we do deal with real estate besides taxing purposes that, as you look at the Enron case or you look at some of these other techniques by which we have defined property, that they weren't in line, that if you look at Enron, for instance, we would find that the gas pipelines are such that if they belonged to your eye, if they were well casing rather than a conveyance for gas or natural gas or whatever, it would be called real estate. And so, at that point, I felt that the definition was wrong. I didn't do anything about it at the time and when the governor's office and the Department of Revenue came forward late summer and suggested that some of these definitions were not proper, I was somewhat excited about it. I thought that's good, now we've got people working on these definitions in such a way that not by virtue of the owner for taxing purposes but by virtue of the nature of the property that

these definitions would be aligned. Then LB 1 came out and LB 1, I think, was an overkill. I think LB 1, in its original draft, as most of you read it, saw a lot of problems in it. We saw new taxes in it. We, all of a sudden, saw five, six, seven pages of new language that still did not follow the conventional technique by which we define property. It still really didn't define real property. It simply started these laundry lists, these enumerations, as many of you have alluded to all day long today and are still concerned with even as amended. What I firmly believe is what we need to do is once and for all define real estate, real estate, and make that conventional definition as close to the same definitions we use for other purposes. If I were to convey title to you, what do you get when you buy my property by that definition? And so what you will find in this amendment simply is an attempt to go back, look at that original definition and say, okay, real estate is what common law or what case law or what everything else in other areas besides taxation call it and it is the land and literally everything that is permanently affixed to it and it's very clear in this amendment it describes that. It also doesn't give you options and means and loopholes and everything else you may find by virtue of the way you own it. You can't finagle by virtue of ownership and split ownerships and leasehold estates, and so forth, the land is the land, the improvement is the improvement, it is real estate and it's going to be taxed as real estate. If it doesn't qualify for real estate and it does not get its exemptions by virtue of what exemptions we have given to business equipment and the like and the personal property tax, then it's going to be personal property tax. But real estate is real estate. What it does is it has a very clear, one-page, easy to understand definition and I also looked and spent some time looking at what the courts had to say and if you look at the pipelines, they start addressing the pipelines with respect to intent, if they intend to ever pull them out, if they have them on leasehold property. Those were the escapes by virtue of that kind of property. What I say in here is that if...I don't care what your intent is but if you...if it meets all the definitions and it does not move for a six-month period of time regardless of what your intent is, yet it seems to be by any rational person's view permanently affixed to the ground, and, therefore, it is real estate and will be taxed as real estate. If it's not, if it's mobile, it fits in that category and, therefore, is personal. So it's simply a delineation by nature, not who owns it, not what it's used for, not what your intention is, but simply if it looks like a duck and walks like a duck, we're

going to call that a duck. And over here, if it doesn't meet those, we're going to call it personal property and then we will deal with those techniques by which we tax personal property. So, with that, like I say, it's very simple, it's what I thought LB 1 was originally going to do, what I would have drafted nine months ago and it's really my response now to what I think has been a confusing process by...even with the amendments, we're up to about a five-page laundry list that many of you are still arguing with in terms of what is this new definition. The terms that are here you are going to find in Black's Dictionary, you're going to find in case law, you're going to find in common law, and so I firmly believe that the courts can be directed very specifically with what constitutes real estate and what constitutes personal property by following these standard definitions.

SPEAKER BARRETT: Thank you. Discussion on the Conway amendment. Senator Hall, Senator Hefner on deck.

SENATOR HALL: Thank you, Mr. President, and members, would Senator Conway yield to a question?

SPEAKER BARRETT: Senator Conway.

SENATOR CONWAY: Certainly.

SENATOR HALL: Senator Conway, on your amendment, lines 9 and 10, on page 1, "whatever title or estate the property is held as defined", is that what I think it is? Is that basically the argument that you're making in your opening with regard to the lease arrangement, the different types of loopholes that you alluded to in your opening? Can you explain for me what specifically that entails?

SENATOR CONWAY: Certainly, under current law, if, in fact, an improvement is made to leased land and the improvement is made by the person who is leasing the land, that property, no matter what the physical structure is, is deemed as personal property because it's not permanently affixed to your land. Through ownership or interrelationships, you can convert a palace that's on a 99-year lease to personal property even though under any definition a house is a house and would be real estate. So what it basically says is regardless of how the title is held, we, as a state, are going to view it as real estate, tax it accordingly and since you've got a contractual relationship with a lease for

rents and other kinds of things within your contract, you define who is going to be responsible for the tax but the property will be taxed and be levied against and then contractually, as you would your rents, you would decide who ought to be able to...who will be the bona fide person that is expected to pay that tax.

SENATOR HALL: Thank you very much. Mr. President and members, the amendment that Senator Conway offers is somewhat similar although a little more lengthy than one that we talked about in the committee to deal with the issue in LB 1, the issue being how do you define property. And it was an amendment that basically all we said in ours, the one that the committee discussed, was that real estate was land improvements and minerals and that was about it. Just basically had the same intent that Senator Conway has here only he does it in a little different way. It does do exactly what I think he says it will do and it takes that laundry list of items, as we have come to call it, exemptions, out of the statutes and I think that is a proposal, in my opinion, that makes the definition one that's very clear, a lot cleaner and does leave the issue up to the courts to determine whether something falls in or out of that provision, based on the language that we use to define it and I don't know that this is probably not the correct way for us to go. It is clearly a change from what LB 1 is as it's been amended. The committee did deal with this as an option and chose not to address it. I said at the time that I probably would offer it as an amendment to the bill. Senator Conway's amendment is here in a different form but with the same intent. I would urge the body to consider it and debate it based on its merits because I think probably that the procedures, the way that this is laid out makes much better sense than to get into the situation where you exclude specific things, label specific things, and very likely we will get into a situation where we have left something out, whereas, with a general definition such as this would allow, that does not happen. And, with that, I intend to vote for Senator Conway's amendment.

SPEAKER BARRETT: Thank you. Senator Hefner, would you care to discuss the Conway amendment.

SENATOR HEFNER: Mr. President and members of the body, yes, this is another definition. It's another way to define property. I don't know if I am completely comfortable with it. I don't believe that it will satisfy the courts on the way that he defines property. I don't think he has a clear definition on

annexation and this is...this was one of the things that the courts relied very heavily on. Then he goes down in line 16 and he says, "Permanently affixed property shall not include machinery and equipment used for business purposes...". Well, I believe that pipelines could fall under that definition. But in LB 1 we separate real property into three categories, land improvements and other interests, therefore, I would like to hear a little more explanation of it too, but right at this time I just don't believe that I can support it. I would rather go with what LB 1 says and the amendments that we adopted to it.

SPEAKER BARRETT: Thank you. Any other discussion on the amendment? Any other discussion? Seeing none, Senator Conway, would you care to close on your amendment?

SENATOR CONWAY: Thank you, Mr. Speaker, and members, the amendment, like I say, is I think a major attempt to solve a lot of the dilemma that's here. What we intended to do from day one, what I believe the Governor intended to do, was to come up with a definition that was designed in such a way that it truly describes what is real estate and what is not real estate. This definition does that and I'm fearful, we talk about whether this will do this or will not do that, it simply says here is real estate, this is not real estate, and let the chips fall where they may. There has been several questions raised with respect to trailer houses, well, what's their status? In doing some calling around to some county assessors, the trailer house question really is not as big a question as we think because county assessors attempt to equalize the personal property tax they charge on the trailer to be literally the same amount as they would charge if it was real estate. That's how they come up with equalization formula of what is a trailer house worth. Well, if one person calls it real estate and the other person calls it personal property, it doesn't make much difference, they're going to charge that same rate under the personal property tax schedule. So, in terms of the dollars, the trailer house owner should not be overly concerned about his status because it's the same tax dollars. What does he care whether it's called real estate or personal property? If we start these laundry lists of exemptions of saying, gee, a trailer house is not, or this is and this is not, we have a problem. What we have got is a firm, solid definition that then everything falls under and I don't think that it's going to create a situation but what it's clear. The terms that are used, like I say, are in law, they're in case law, they're in common law and it's

fairly easy to attribute. There has also been questions raised in terms of number (4) where it talks about all property that's constructed above the earth's surface. Here we're talking about condominiums, those things that you have a fee simple in a property but you also have a common property that you have a partial fee and by virtue of the common ownership. And so that's all (4) talks about is things above the ground because we have found an influx of that particular title ownership. The key is, as I say again, it is as the structure is. It's the land and the improvements. If we're going to tax it, we're then going to have to sort out who is going to be the responsible payer, that ultimately is going to have to come and we may contract that relationship with one another if we have a leaseholder and a person who is...or a person who owns the land and someone else who is leasing it and improving it because, at some point in time, that value is there, it belonged to somebody, and it should not be a means by which we escape taxation, by being able to finagle a lease arrangement, make the improvements and the state is left behind even though that improvement, that change, that alteration has been brought about. So I think if we look at this definition, as I say, it's clear, it's concise. The interpretations of the courts, when we sat down and drafted this we took into consideration the things they were saying in the Enron case, the intent. We no longer think the intent is there and I believe that's what also the Governor's proposal intended to do was strip intent as being a major court consideration. We did that as well, it just didn't take us as many pages to do it. So, with that, I would hope that the body, who has read this, looked at it, views this as an attempt to accomplish the same thing but in a way that will eliminate a whole lot of other confusion, arguments and maybe court interpretations over the way we have restructured some language later on trying to create lists where we enumerate who is in and who is out.

SPEAKER BARRETT: Thank you. You have heard the closing and the question before the body is the adoption of the Conway amendment to LB 1. All in favor vote aye, opposed nay. Have you all voted? Senator Conway.

SENATOR CONWAY: We seem to be a little bit short of the numbers on the floor so I guess I would call a call of the house, please.

SPEAKER BARRETT: A request for a call of the house. Shall the

house go under call? All in favor vote aye, opposed nay.
Record.

CLERK: 20 ayes, 1 nay to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, please check in. Those members off the floor, please return and record your presence. Senator Dierks, please. Senator Landis. While waiting for members to check in and return to their seats because the house is under call, an announcement of general interest because some of you have already begun to ask, it's my plan to work through the dinner hour this evening. Work through the dinner hour and process as much as we can possibly process today. The dinner hour will begin at five forty-five. Senator Landis, please.

SENATOR LANDIS: (Microphone not on) ...just that I would inform the body that I have ordered eight large pizzas and they're going to be done at five-twenty and they should be back at about five forty-five and I would invite the body to break bread a little later.

SPEAKER BARRETT: Thank you, Senator Landis. Members, please return to your seats. The house is under call. Senator Haberman, please report to the Chamber. Senator Conway.

SENATOR CONWAY: Mr. Speaker, to expedite things, upon the completion of check-in, why don't we just do a regular order roll call, please.

SPEAKER BARRETT: Thank you. Regular order roll call has been requested. Senator Landis, the house is under call. Senator Haberman, please report to the Chamber. Members, return to your seats. Senator Haberman is on his way. Senator Conway, may we proceed. Thank you. The question then is the adoption of the Conway amendment. Roll call vote in regular order, Mr. Clerk.

CLERK: (Roll call vote read. See pages 106-07 of the Legislative Journal.) 25 ayes, 16 nays, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: Motion adopted. Anything else on the bill, Mr. Clerk? The call is raised.

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

SPEAKER BARRETT: To the bill as amended. Senator Hefner, are you handling it, please.

SENATOR HEFNER: Mr. President and members of the body, I rise to support LB 1 as amended. What we do here is redefine real property. By passing this bill, we say that we can reduce the potential loss at least \$30 million to those local government entities, like school districts, counties, villages and cities, and the like. So I really think that we need this. I think that this bill now reads the objective test of the Attorney General's Opinions. I also feel that we need to do this this session. If we would have waited until the regular session, that \$30 million would have been gone for good. And so what this does is addresses that problem.

PRESIDENT NICHOL PRESIDING

PRESIDENT: Thank you. Senator Withem, please, followed by Senator Landis.

SENATOR WITHEM: Yes, Mr. President and members of the body, I have a question I would like to direct toward one of the attorneys in here, maybe Senator Kristensen or Senator Ashford or maybe both of them, getting some free legal advice here and I know how much free advice is worth probably. But, Senator Kristensen, I notice in here on page 6, LB 1, Section 4, we're saying the changes made in this bill are expressly intended to apply to all litigation pending as of the date such bill is passed and approved according to law. I see that language also is included in the others. Is this a fairly common legal sort of action to pass legislation and then specifically apply it to litigation that is currently pending? Suit has been filed and action has been taken under a current statute and then the Legislature comes into place and changes that statute midway through. And I am genuinely asking this for information purposes. Is it fair, proper game? Does this go on, from your experience?

SENATOR KRISTENSEN: Well, I think what you're asking me is a practical question. Does it happen very often? From my experience, no, it doesn't happen very often.

SENATOR WITHEM: Then...but, okay, is it...

SENATOR KRISTENSEN: Can you do it? I think that is a different answer.

SENATOR WITHEM: Okay, can we do that?

SENATOR KRISTENSEN: Yes, I think that you can do that.

SENATOR WITHEM: Okay.

SENATOR KRISTENSEN: Now then back to the political question, is that a fair thing to do, politically and practically...

SENATOR WITHEM: Yeah.

SENATOR KRISTENSEN: ...but legally is it okay? In my opinion, yes.

SENATOR WITHEM: Okay. Thank you very much. I appreciate that.

PRESIDENT: Thank you. Senator Landis, please, followed by Senator Chambers.

SENATOR LANDIS: Mr. Speaker and members of the Legislature, the amendment that's just been adopted constitutes the bill. We have another level of debate to consider it. One of the things that I think we ought to analyze is the impact of the Conway amendment on the Enron decision. Does the Conway amendment give us a good handle on solving the kinds of problems that arose in the Enron case? I think there is a matter of opinion here. We ought to do a little home work, do a little study, keep our minds open. By the time we come back on Select File, we may want to...we may find that this formula approach is an excellent way to accomplish the same end. We, arguably, may find the contrary, that by allowing the analysis of attachment that we have given courts the right to review the subjective intent of somebody who attaches property, which was the very issue that dealt us the conclusion in the Enron case. It seems to me that we should analyze that language carefully and see whether or not we get to the same place. If we do, there's probably a value to the formula approach. If we wind up, however, with not creating a good, strong wall around the personal property or real property, if you will, that's on the borderline, then I think we need to reconsider. But we have plenty of time to do that. Let's advance the bill and let's send our legal beagles to work and come back with an answer on Select File.

PRESIDENT: Thank you. Senator Chambers, please, followed by Senator Hall.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I think that the bill, in its present form, in giving a general definition that does not laundry list exemptions, puts it in better condition than it was in the green form of the bill even with the committee amendments. So, based on that, I think we're less bad off than we would have been without the amendment. And after hearing Senator Hefner's eloquent appeal that we accept the bill and advance it in its present form, he has equaled Senator Elmer. I had said I was not going to vote yes on this bill, under any circumstances, but having considered Senator Hefner's arguments, I am going to be as reasonable as I can be at this juncture and I'm going to vote for the bill. And I agree with Senator Landis, there may be some things that have to be looked at, but since we are moving in a direction that is at least broadly based in terms of an all-inclusive definition, I feel less uncomfortable with it. So I'm going to vote to advance it.

PRESIDENT: Thank you. Senator Hall, you're the last light, are you closing or is Senator Hefner closing?

SENATOR HALL: No, I'm not carrying the bill.

PRESIDENT: All right. Okay.

SENATOR HALL: Thank you, Mr. President. The...I'm not going to...even though I supported Senator Conway's amendment to the bill, I'm not going to rise and agree with what Senator Hefner said with regard to the changes that LB 1 would make as it has been amended, because I do not believe that LB 1, as we have it before us, is in any way, shape or form a resolution to the issue of \$30 million or \$40 million, whatever that price tag is out there, on lost base. I don't think it changes the situation as we have it before the courts. I don't know that there is anything in LB 1, and we have changed the definition, but I don't think that that impacts the cases that are before the courts. I don't know that there may not be other suits that follow that basically protect the base into the future and I don't want to leave the impression with the body that all of us agree that LB 1 is a solution to that 30 million or 40 million dollar shortfall or potential shortfall that the subdivisions of

local government could face into the future. I think that that needs to be very clear that this is...it is very questionable as to whether or not it does just that. Now does it give a good or at least a better definition of what real property is? Yes, it does. And I think Senator Conway's amendment does move in that direction and that's the reason for supporting it. But don't think for one minute that it is an automatic fix with regard to potential revenue loss at the local level. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Hefner, would you like to close, please.

SENATOR HEFNER: Mr. President and members of the body, just a few brief comments. I think we must remember why we're here in this special session. We're trying to address some of these problems that we have. We're trying to help local government and when I say local government, we're trying to protect the families that live in these communities because they depend on local government so much. And if we don't take any action this special session, well, then, like I said before, the schools, the cities, the counties we represent will face some serious problems in their ability to deliver essential services. Right now, right now there is over 200 cases before the Nebraska Supreme Court and each one of these cases are asking for tax exemptions. Each one of these exemptions would take money away from school programs, from city programs and from county services. I don't know for sure what the Conway amendment does but I believe we're going to be in jeopardy there. But let's go ahead and advance the bill, talk to some of the people with legal minds and try to determine if the Conway amendment is better than the amendment that the Revenue Committee had. And so, at this time, I would urge for the advancement of this bill.

PRESIDENT: Thank you. The question is the advancement of LB 1 to E & R Initial. All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: 29 ayes, 5 nays, Mr. President, on the advancement of LB 1.

PRESIDENT: LB 1 is advanced. Do you have anything for the record, Mr. Clerk?

CLERK: Not at this time, Mr. President.

November 14, 1989 LB 1, 2

SENATOR SCHMIT: There is a penalty for failure to file, is there not?

SENATOR HALL: That's correct. That penalty is 50 percent of the taxes due and owed and that was the reason for the 50 percent as it is my understanding in the green copy of the bill.

SENATOR SCHMIT: What if there is a lack of knowledge as to whether or not, based upon the changes we are proposing, you actually own personal property and thereby you fail to file?

SENATOR HALL: That individual would be then liable for a penalty in the green copy of the bill, 50 percent of the tax due and owed; under the committee amendments as are currently before us, 20 percent of the taxes due and owed, and under my amendment they wouldn't have a problem.

SENATOR SCHMIT: Under LB 1 though, is the taxpayer going to have difficulty knowing whether or not he or she should file?

SENATOR HALL: It's my understanding, Senator Schmit, and I could very well be wrong the way things are moving here, but we have LB 1 that is a bill that changes the definition of real property and personal property. It has the emergency clause on it. You have a bill in LB 2 that has a penalty provision in it that has the emergency clause on it and there is a personal property payment that is due and owed on December 1 of 1989, roughly less than three weeks, about two weeks away. I don't know, Loran, I can't answer that question. I would guess that if those all become operative immediately with the emergency clause, those individuals could find themselves, even though they didn't know now it was personal property, and I don't know that there is a good argument for that because, really, what we're doing in LB 1 is putting...making things real property as opposed to personal property, it may not be an argument at all. But the penalty provision is something very new and if an individual did not know that there was a penalty and just forgot to pay their taxes timely, would then have to pay whatever that penalty would be because they might have just thought that it was...things hadn't changed and they only had to pay the 14 percent interest as opposed to the 20 percent penalty.

SENATOR SCHMIT: Well, I voted for the Conway amendment because

having refused to accept that expense money. So we have to, if we can, put ourselves in the position of those ordinary people, mere mortals, made of lesser stuff than we are, therefore, intrinsically of less value as human beings, but they have feelings or something that we can equate to feelings, and they would like to feel that they are being treated justly by their government. And I think Senator Withem's amendment would accomplish that purpose. There is only one other point that I'd like to make at this time. There are situations that could arise, Senator Moore, where it would be so difficult to rectify something that the government did that the practicalities of the situation might militate against doing something about that.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: But where a taxing system is ongoing, and so much harm can be done to people, an ongoing type of harm, a traumatic type of harm, the least that we can do is accept what Senator Withem is offering where we make whole, as much as we can, those people who are harmed. So I do support his amendment.

SPEAKER BARRETT: Thank you. Senator Hefner.

SENATOR HEFNER: Mr. President and members of the body, I think Senator Withem could have just as well offered a kill motion, because this guts the bill. We took Section 1 out of it. We deleted the penalty section. But I think we need to realize what we're doing here. I feel that we needed LB 1 and LB 2 to help local government, because they are faced with a potential loss of about \$30 million. This is going to have drastic results. I feel that we need all of LB 2. By striking these sections that he's proposing really guts the bill. We need to give our Tax Commissioner the tools to work with, and I think the way LB 2 is written that it's fair. I feel it's fair to everybody. So I would urge you, at this time, to vote against the Withem amendment.

SPEAKER BARRETT: Thank you. The member from North Platte, please, Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Thank you, Mr. President. It's always enjoyable to speak for the first time in a session to a body that is busy eating pizza somewhere else. But, nonetheless, it's an interesting dilemma that we find ourselves in, and I

to him anyway.

SENATOR LABEDZ: Thank you, Senator Schmit. Senator Byars.

SENATOR BYARS: I think what Senator Schmit has said has a lot of merit. But I stand in opposition still to this amendment, having sat in the position in a local subdivision, both on local school board and on a county board of supervisors of what impact it has, no matter how honorable it is, to take care of all of the people, which I think we're all here to do. They're still going to get it in the neck. I have communities within my district who were bumped right smack dab up against the top of their levy. We're down here talking about 30, 40, 100 million dollars, to these people a couple thousand bucks is vital in running the business and providing their city and providing the services to the people. We don't have any way of replacing these dollars. We talk about a long-term solution, but I don't see any in sight, I honestly don't. We open ourselves up to a liability of an additional 80 to 90 million dollars, and where is it going to come from? I know what Senator Schmit is saying, I know what Senator Withem is saying, I have empathy, I understand that completely. It's going to be very hard to go home and explain that. But I do think in the end the little people are going to get it in the neck again. I'd like to yield the balance of my time to Senator Lamb.

SENATOR LABEDZ: Senator Lamb.

SENATOR LAMB: Madam President and members, you know, during this summer, when we were home doing our thing, whatever that was, we heard all about the problems of local subdivisions as a result of the recent court decisions. And I think every one of us, when we read the newspaper every day, we turned to that section to see what was the latest development. And there was no good news, it was all bad news. We heard it time after time. Then I guess I'm finding it hard to believe that it seems as if, perhaps, this body is not as concerned about the problem as I thought it was. We're here in Special Session to do what we can to alleviate the problem. But what I've heard here this afternoon and evening has mostly been on the other side. This body is, in effect, saying, no, there is no problem, let's let those things go as they are going to go, without any corrective measures from this body. What have we done so far? Well, we adopted the amendment, the Conway amendment to LB 1. That, I guess, and I think Senator Conway, in its present form, maybe it

November 14, 1989 LB 1, 2
 LR 7, 8

CLERK: Mr. President, your Committee on Enrollment and Review reports LB 1 to Select File with E & R amendments attached. (See page 108 of the Journal.) Two new resolutions, Mr. President. One by Senators Schmit and Labedz, and a resolution by Senator Wesely. Those will be laid over, Mr. President. That's all that I have. (See pages 109-10 of the Journal, re: LR 7, and LR 8.)

SPEAKER BARRETT: Thank you, sir. Additional discussion on the amendment to the amendment. Senator Lamb.

SENATOR LAMB: Mr. President, I'd call for the previous question.

SPEAKER BARRETT: The question has been called. Do I see five hands? I do. The question before the body is, shall debate cease? All in favor vote aye, opposed nay. Please record.

CLERK: 25 ayes, 1 nay to cease debate, Mr. President.

SPEAKER BARRETT: Debate ceases. Senator Withem, the floor is yours for closing.

SENATOR WITHEM: Yes, Mr. Speaker, members of the body. I offered this amendment at the beginning as process to what I thought was to clarify a bill, to remove a portion of the bill that just stood out, to me, like such a sore thumb, such an unfair provision that I thought what I was doing was improving a bill by removing a piece...a portion of that bill that I thought was so bad. In a sense, the debate, not at my design, I've only spoken twice, once to introduce the amendment, and once during the debate, but the bill...the amendment has kind of grown into, I think, an opportunity for people to express their frustrations and their concerns about the entire process we're involved in. It may be a healthy thing, because we have not really been able to do that yet. The amendment is a simple amendment. The amendment preserves the current system, it does not change the system, it preserves the current system for dealing with appeals; it will, I think, somewhat stop the flood gates that...opening the flood gates of individuals coming in and filing suit, because anybody out there that has an attorney on staff is going to perfect their claim by filing an action. It will also treat people fairly, people that do, in fact, under the class action concept that Senator Chambers defined, who will

Attorney General's Opinion here, we're talking the courts have determined already that that provision is provided for, that which LB 2 was introduced and stated to prevent currently is there. The remedy is there. We don't need the bill. The arguments for the bill are the very same arguments against it, that it is not necessary. Why was the bill introduced? The bill was introduced because it's the foundation for this house of cards that we're calling a Special Session. And without the reason for this Special Session, without the reason to say that there is a crisis out there, without the reason that we need to prevent this flow of refunds that will wipe out subdivisions of government, you really don't have an emergency. You really don't have the need for a Special Session. All the Attorney General is saying is that, sure the bill is constitutional, as a matter of fact, you can do it right now, there is not a problem. And he quotes cases, and he quotes the court's decision, and that is the reason I offered the kill motion, because we don't need it. And I think it reflects on the Special Session as a whole. I would urge the adoption of the motion to indefinitely postpone the bill.

SPEAKER BARRETT: Thank you. Senator Hefner, would you care to respond?

SENATOR HEFNER: Mr. President and members of the body, I oppose killing this bill. I think that we need LB 1 and LB 2 as a package. And this, I realize, will only address the short-term problems that we have. And we definitely need to work towards a long-term solution. Senator Schmit says I served on the Revenue Committee for 13 years, that's right. And we've been struggling with this problem. We've known for a number of years that we had problems, but we just could not find the solution. So we're here today, when the crisis has hit. Yes, I was on the response team, and we wrestled with it. But now I think the crisis that we face is that local government could come up short with approximately \$30 million. So what we're trying to do is stop that. If we don't do it before the end of the year, that \$30 million could be gone down the drain. So I think it's important that we pass LB 1, that we keep this bill alive and advance it, discuss it some more tomorrow, because I feel that we need to address this for a short-term solution, and I believe that these two bills, along with LB 7, would do that. So I would urge you to vote against LB 2.

SPEAKER BARRETT: Thank you. Senator Wesely, would you care to

only costs \$20,000, but we're talking about something different and justice becomes too expensive if it goes into the millions. That is untenable and if people were acting from principle, we would not be here in this special session. He said I only have a minute, so it can't be on...

SPEAKER BARRETT: Time. Thank you. Senator Lamb.

SENATOR LAMB: Question.

SPEAKER BARRETT: The question has been called. Do I see five hands? I do. Shall debate now close? Those in favor vote aye, opposed nay. Voting on ceasing debate. Record, please.

CLERK: 25 ayes, 5 nays to cease debate, Mr. President.

SPEAKER BARRETT: Debate ceases. Senator Hall, please, to close.

SENATOR HALL: Thank you, Mr. President and members. I would close by asking...answering Senator Landis's question because Senator Landis makes the argument that there should not be a kill motion on this bill basically because the nub of value, as he called it, nub of value is in that the bill would prevent, basically, a class action suit in the case of those cases before the courts, basically exempting those who have not gone through the process of being eligible, to be eligible for tax refund whereas they have not done anything to deserve it. It's a good argument but it isn't applicable because in this case, as I have showed you in the Attorney General's Opinion which reflects what the court has said, not what the Attorney General has said, but what the court has said, the issue is an issue of, in the case of LB 2, refund of taxes that are illegal, unconstitutional and mistaken taxes. And on Friday when we had our hearing in the committee room, I asked Commissioner Boehm directly and a very pointed question that said, does the issue of the refunds in LB 2 that deals with illegal, unconstitutional and mistaken taxes affect, in any way shape or form, the 243 cases that are currently before the court? And the answer was no, it does not, no, it does not, so that there is no nub of value in LB 2. There is no basis for the argument with regard to a class action suit as Senator Landis would have us believe in LB 2. Now I understand that LB 2 is necessary for all the other arguments with regard to LB 1 and LB 7 that have been brought before this body and to kill LB 2 would be extremely embarrassing because it

wonder if there might not be a problem with the subject which was just mentioned, the matter we were just talking about. Attaching this amendment to the Landis amendment to the bill could very well jeopardize the...LB 7 itself. We do have an opinion rendered by the Attorney General that this matter is outside the call, so the bill, even though it might be very carefully conceived and well drafted and well meaning and a legitimate attempt to deal with our property tax problems, it could very well be in jeopardy by attaching an amendment or an amendment to a committee amendment which, at least in the opinion of the Attorney General, is outside the call. So I guess that would be my concern at this point, despite the fact that I think Senator Dierks and Senator Landis both make a very good point and that is the point at which I find myself in a bit of a dilemma, a dilemma because as has been pointed out, corporate income taxes have been increased but one time in the last 10 years and we are here to talk about, among other things, fairness and equity in our tax situation, our overall tax situation in this state which makes one wonder if there might be considerable merit in the attempts by Senators Dierks and Landis to address the matter of corporate property taxes. Having said that, I think I will be hard-pressed, however, to vote for either amendment because of my concerns about jeopardizing the entire bill itself. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Ashford, please.

SENATOR ASHFORD: Thank you, Mr. President, members, I would stand also somewhat in the same tone as Senator Barrett, but I'd like to raise a couple additional points. I think my feeling is that we can affect changes in our personal property tax system through the devise of rational classifications different from what we're doing in LB 7, LB 1 and LB 2. I think there are ways, legitimately, that as a state that we can divide and tax different classes of personal property and I believe that if we take the time to do it, that we can do it effectively. That is one issue. To what extent can we create classifications and within those classifications, one, how do we determine value and then, two, how do we tax once we determine the value? That is one issue. The second issue is, in making those classifications and changes, if there is a funding short-fall how do we affect that short-fall or fill that short-fall up? It seems to me, and why I supported the sunset that Senator Hall brought to us is that I think those changes can be affected in the short term in less than one year or two years. But I do think that the only

true, so I'm going to vote against the amendment. Thank you.

PRESIDENT: Thank you. Senator Landis, followed by Senator Morrissey and Senator Lamb.

SENATOR LANDIS: Thank you, Mr. Speaker. I want to make a couple of remarks about the debate itself, then I want to respond to Senator Warner's admonitions. There are a couple of arguments that Senator Crosby just made that I want to respond to. She said that it's not appropriate for us to be in special session setting tax rates. But it's critical to understand that we are setting tax rates. If we do nothing, if we pass LB 1, LB 2 and LB 7 and do nothing else, we're setting tax rates. Our inaction is setting tax rates out in local political subdivisions. It is an illusion to think that we are not setting tax rates by making sure that political subdivisions are going to have that \$12 million problem to deal with next year without the adequate remedies we gave them in previous years, for which we have no plans before us. So, we are setting tax rates, Senator Crosby, that vote really means that the property taxpayer should pay the 12 million bucks. Second, her statement was when we get together and say let's get them, speaking of the corporations, we're affecting a group of people, number one, to whom we should feel some loyalty, since they make the whole thing work, and, secondly, people who have other obligations in their private lives. Well, we haven't ever said, let's get them. This state has never said, let's get the corporations. This state has said, how much do you want, to the corporations. Our historical pattern is to ask less of them than we ask anybody else. And we have trickled down with a vengeance in our tax codes at this point. On the other hand, I try to pride myself in trying to read the street and see what's what. And the last vote on the Dierks amendment was not really a vote about the three tiers, the two tiers, it was about the underlying issue. And I think it was the body responding to Senator Warner's argument more than any other. Now, Senator Warner is pretty crafty in that take a look at the special...at the reso...at the agenda for the session. What we've got there is a motion to raise this from committee. It's not on General File, it's not on Select File, it's a day behind, it's easy "pickins'", it will give the corporate community one more day to kill it. On the other hand the motion to raise it, attached with the motion to place it on the agenda for today puts me in a relatively even capacity. Pretty fair up. I'm going to assume that Senator Warner was making a good faith effort, and I'm

which gets us the most political hay, then count me out, and that's exactly what we are doing. Senator Landis says the corporations lack a low stable tax. Sure they do. As I said earlier you can increase the tax 100 percent, if you provide the loophole for me to crawl through, or to walk through with my head high,...

PRESIDENT: Time.

SENATOR SCHMIT: ...saying I'm going to hire some new people, create new jobs, and therefore I don't owe any taxes. Ladies and gentlemen, we ought to be consistent, we ought to be honest with each other and we ought to address the issue in total, or we ought to confine it. I make one prediction, ladies and gentlemen, with the amendments on LB 1 and LB 2 and the way LB 7 is moving, the Governor will veto LB 1 and LB 2, sign LB 7 and we're going to go home....I think the Governor is going to learn from Governor Exon and we're going to be made the goats of the whole thing.

PRESIDENT: Thank you. Senator Hefner, please.

SENATOR HEFNER: Mr. President, members of the body, I voted to kill LB 6 and I'm not going to support bringing it to the floor now, because as Senator Haberman and, Senator Haberman, are you listening? I think I heard Senator Haberman say that if we advance the bill he's going to gut the bill and put the corporate tax in there. I'm opposed to that because I think, like Senator Labeledz said, we should have a hearing. Whenever we increase the tax rate I think we should let those people that are affected come before us and say why they don't want us to increase it. Besides, we're looking for a long-term solution here. And when we're looking for a long-term solution I know that it's going to take some adjustments in tax rates, because if we're going to relieve property taxes it's going to take an increase and a combination of sales and income tax. Are we going to bash the corporations now, increase their tax rates now, and then when we do the long-term deal we'll increase them again? I don't hardly think that is fair. Senator Haberman, is that right? Are you going to gut this bill when we raise it out of committee? I thought I heard you say that a little earlier.

SENATOR HABERMAN: Senator Hefner, I will support a motion to gut the bill and replace it with some other issue, yes.

November 15, 1989 LB 1, 3

that I have at this time, Mr. President.

SPEAKER BARRETT: Thank you. Proceeding then directly to item 6 on the agenda, Select File, LB 3.

CLERK: Mr. President, on LB 3 I have no amendments to the bill.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: (Mike off.) ...advance to E & R final, excuse me...

CLERK: Senator, it's LB 3, I'm sorry.

SENATOR LINDSAY: ...LB 3 to E & R final.

SPEAKER BARRETT: Any discussion? All in favor of the advancement of LB 3 please say aye. Opposed no. Ayes have it, motion carries. The bill is advanced. Next bill.

CLERK: Mr. President, the next bill is LB 1. The first item I have, Senator, are Enrollment and Review amendments on LB 1.

SPEAKER BARRETT: Chairman Lindsay.

SENATOR LINDSAY: Mr. President, I move the adoption of the E & R amendments to LB 1.

SPEAKER BARRETT: You've heard the motion to adopt the E & R amendments. All in favor say aye, opposed no, carried they are adopted.

CLERK: Mr. President, Senator Elmer would move to amend the bill.

SPEAKER BARRETT: Senator Owen Elmer, please.

SENATOR ELMER: Thank you very much, Mr. Speaker. This amendment is basically what I had proposed yesterday and got 22 votes to consider. You know, we've all been trying to reach some sort of a permanent solution. The public would like to have us do that and all the testifiers at the hearing Friday before the Revenue Committee asked us to try to accomplish that, but neither the Legislature nor the Governor's Office are really ready to do this. These changes would be far-reaching, we don't

have enough data. I've been quite encouraged by many knowledgeable individuals and by your vote yesterday that this proposal is possibly a part of a permanent solution. After all the rhetoric and observations that have been made here, I feel we are probably...we probably should go ahead and patch this wreck that now looks like we might be able to get by for a short time further and work toward those permanent solutions in the regular sessions that follow. I'll certainly try to work with everybody that is interested and see if we can't reach some of those solutions. We can gather the data, conduct the hearings and give deliberate considerations to the changes that I and Senator Schmit, Senator Hartnett and others have really thought about and tried to propose. And with that, I'd respectfully ask permission to withdraw this amendment.

SPEAKER BARRETT: Thank you, it is withdrawn. Anything further?

CLERK: Mr. President, Senators Conway and Lamb would move to amend the bill. Senators, I have AM054S in front of me. (Amendment appears on pages 130-31 of the Legislative Journal.)

SPEAKER BARRETT: Senator Conway, please.

SENATOR CONWAY: Thank you, Mr. Speaker and members. On your desks in front of you you have AM054S signed by both myself and Senator Lamb who has been working on this issue throughout much of today. What you've got in front of you is an alternative to what we adopted yesterday as an amendment that I offered. That amendment was offered in part in the spirit of trying to reduce the amount of changes in activity and confusion and difficulty in incorporating a lot of the other information that was in the original bill and as it was amended, and most of you, I think, agreed with the concept of some degree of limiting the amount of language and amount of changes and amount of harmonization that may be necessary in the future along with this. As I introduced that legislation, I suggested at the time that there were a few points that needed to be addressed because they were stickling points, particularly in the business equipment area. What we have been able to do since that time is try to address those and worked very diligently with our staffs with support out of some people from the Department of Revenue in terms of what expertise they would lend with respect to some language attempts that we made. What we have finally come up with I believe is a concise, an amendment offered to LB 1 which, in essence, does a couple of things. One, in a very brief method brings us back to the

original intent that most everyone thought LB 1 was really trying to do and that was to try to come up with a definition that put some of the things that many of us felt were real estate rather than personal property and define them in such a way that they would be in that category rather than on the personal property tax side which was the Governor's intent and which I think most of us agreed to in theory. Our entanglement for the most part was in process. So what you've got in front of you, if you would check through it, you'll see that starting on basically on line 7, under the original bill that information...that language was stricken. An attempt was made to rewrite it and we ended up with five or six pages to do that. What we've done is reinstated the original language that is in the legislation and in the statute books now and then try to refine it specifically, keeping that old language. So any enumerations you see in the old language, they were already there when we talked about the buildings, fixtures, mobile homes and the like. I've had several questions this afternoon in terms of what this does and basically for almost everyone, almost every taxpayer, the tangibility or intangible are real versus personal status that they have been experiencing in recent years will not change. We've kept all of that the same. Your trailer house situation will not change. Any of these other kinds of definitional attempts do not change. What we simply have done is through that enumeration included pipelines, railroads track structures, electrical telecommunication poles and so forth. Now yesterday, like I say, we got into a laundry list and we got to arguing over the laundry list and what was in there. We worked as hard as we could to come up with a single definition so that it was very specific and rather than having a list, you would run the test of the definition. And in the short order we have, and with the disparity in how we tax by virtue of who owns between agriculture and various types of businesses, at this point in the short order that was impossible. But we do feel, and I believe we'll be supported with speakers after this, we feel that this does accomplish it, does isolate the specific problem that we are here in special session to address and I believe as I can speak on behalf of the Governor's Office that this basically endorses the concept that they wanted and with that I offer this amendment to the body.

SPEAKER BARRETT: Thank you, sir. Discussion on the amendment, co-introducer Lamb, followed by Senators Hefner and Elmer.

SENATOR LAMB: Well, Mr. President and members, Senator Conway

has explained the situation very well. I am much more comfortable with this than I have been with any of the previous versions of LB 1. I think as a result of the action taken yesterday, it got the attention of certain people and made it much easier to draft a simplified version which does what the Legislature and the Governor wants to do, yet retains much of the original language in regard to real estate so that we don't inadvertently do some things we do not want to do. I think it's a good piece of legislation. I would ask that you support it.

SPEAKER BARRETT: Thank you. Senator Hefner.

SENATOR HEFNER: Mr. President and members of the body, I rise to support this amendment and I want to commend Senators Lamb and Conway for bringing this to us. As you know, yesterday I was a little uncomfortable with the Conway amendment. I really didn't have enough time to really go through it and understand it fully, but there were several words and sentences that concerned me, and so that is why I opposed it. However, he did get 25 votes and after it was on the bill, well I was a little more disturbed because I felt that it didn't do what I wanted anyway as a description to real property. I think that as this amendment is written does that. I think that it's very good and so I would urge you to support the Conway-Lamb amendment.

SPEAKER BARRETT: Senator Elmer, Senator Kristensen on deck.

SENATOR ELMER: Thank you, Mr. Speaker. I think that what we're going to pass here is not going to make any lawsuits go away. In fact, I think we'll have some more as part of this action. It merely is a stopgap and I really believe that when we start our session the first of January 1990 that we need to seriously, all of us, give consideration toward a general reform in the way we are addressing and describing our real property and taxing it, but we have no choice. We have to protect this tax base for 1989. That is why we are here in 1989, because we cannot protect 1989 tax base in 1990. Therefore, I would reluctantly support this amendment.

SPEAKER BARRETT: Thank you. Senator Kristensen.

SENATOR KRISTENSEN: Thank you, Mr. President and members, I, too, tried to help Senator Conway to draft a definition that would include everything that we wanted to include without having a laundry list. Quite frankly, as a lawyer I would love

to see a laundry list in a law because I'll guarantee you, I can find something that doesn't fit in that list and I can guarantee you that I'll take that list and find something that is in there that isn't quite the way it ought to be and I'm going to run with it, and I'm going to win. I know I'm going to win and I love to see laundry lists. What I don't like to see are definitions that are tight, that are concise and those are the exact definitions that Senator Conway, Senator Lamb and I and others were trying to draft, but given the amount of time it is very, very difficult. We don't have an all inclusive laundry list, but what we do have is a good enough attempt here to give our court something to go with and to try to help us out in the Supreme Court. For us to go through and try to get an all-encompassing definition of personal property might well be an impossible task. I doubt if we can do it. This underscores the need for us, and at least in my belief, to do away with the personal property tax system. But given the situation we're in today that is not going to happen, that is not going to happen this week and that is something we're going to have to do another time, and I would strongly support the definition that we have here. To give you a little reminder, one other thing that this amendment does and the original bill did was in the Enron case we had a three-prong test to look to see what personal property or what a fixture was to whether it should be included to be taxed or not and that three-prong test looked at whether it was actually put on the property or what we call annexed. Now that can either be nailed down, bonded with cement or whatever. The other thing we looked at is what was the use, was that part of the real estate? In other words, one of the ways that a pipeline doesn't fit that is the pipeline doesn't have anything to do with real estate that is being farmed. That pipeline doesn't do anything with the corn crop and that is what helped define it as being personal property and not part of the real estate and thus being real property. The other test was the final one, the court said the most important one, and that was the intention of the party making the annexation part of the real property. What we're doing with this amendment and this bill is we're going to look at only one of those tests and that is the first test. Is it actually annexed to the property, and so what we're doing is going away from common law, and part of this is for the record, we're going to, for tax purposes, and remember this bill doesn't change the old laws in a contract dispute or if you're having a dispute with your landlord over what a fixture of real property is, this is for tax law only. We're going to go solely with the test of whether there is an

actual annexation to the real property and that is a major change but that is one that I believe will aid LB 7 and the other bills that we've passed so far or will pass very soon to give us some assistance with those 240 other cases. So I would add my support to it. It's not perfect and there is certainly ways to go after it, but it does the job that we need to do and I would support it 100 percent at this time.

SPEAKER BARRETT: Thank you. The member from the 26th District, Senator Wesely.

SENATOR WESELY: Thank you, Mr. Speaker, members, I'm pleased to hear the confidence expressed by Senator Conway and Senator Lamb and Senator Kristensen and whoever else has expressed their confidence in this legislation. I, however, have a lack of confidence in this legislation and I think it's based on the track record that we make it clear why we should all have at least some skepticism about anything that might be before us considering that we've only had it handed to us in the last hour or so. This would strike all of the bill as it is presently constituted by the Conway amendment and other amendments. Let's go back a little bit. We had LB 1 introduced which was the "dog is cat, roses-tulip" bill, changing what once had been real...personal property, turning it into real property, and then we had amendments brought in to that bill and committee amendments were attached and then that bill came before this body just yesterday, 24 hours ago, whenever, and that was thrown out essentially. And Senator Conway had his definition in, now that is thrown out and we've got this definition in and in the matter of days, is there any wonder why I'm wondering if we really have got the right proposal before us. I know that there is probably similarities between what we've had looked at before, but we just haven't quite gotten it right yet at this point, and perhaps another 24 hours will pass and we'll think of something different again. So I'm just kind of curious about exactly where we're at and whether or not we truly have found out what we need to. I looked back at the Enron case and I'm not at all a legal expert as Senator Kristensen is, but they went through the process to try to determine what was real and what was personal property and they spent quite a bit of time going through that and came to the conclusion that pipelines were personal property. Now we have, I suppose, the power to come in and say what the court just did was wrong. We can do it if it's based on a rational...for rational reasons. I don't know if we've particularly reached that rational basis yet. I'd

like Senator Conway to lay that out because, frankly, for the record, Senator Conway, you've got to lay out the rationale behind this classification in a way that will convince the courts that this is a proper thing to do because they could decide that they were right in the first place, that their definition through common law and common sense makes more sense than what we're doing today and not go along with us. And so I would encourage you, Senator Conway, to clarify further than we've seen so far exactly where we're at. All I'm saying is my confidence level and the writing of tax policy and tax law at this point is shot, and I have next to no confidence that what we're doing here is going to end up taking care of whatever problems we have.

SPEAKER BARRETT: Thank you. Any other discussion on the amendment? Senator Conway, would you like to close?

SENATOR CONWAY: Thank you, Mr. Speaker, members. Senator Wesely raises some appropriate points that do need to be asked. I think as we look at what we ultimately came down with, I, like I say, would have loved to have had in my original intent yesterday, and I was so close, I was so close to have a single definition that would be the test in terms of what is real estate and if it's not real estate, then naturally it's personal property. Where I ran into the snag in terms of trying to hold onto that theory that I convinced you yesterday was a proper theory and I still believe it's a proper approach, eventually as we slowly work our way into it. Where we ran into the snag is that we have in the infinite wisdom in this legislative body, differentiated certain kinds of business. We have said we are going to exempt agriculture equipment, for instance, whereas by the same token our wishes might be that that same type of equipment, if it was used for other purposes other than agriculture, might not, and that's where you start having trouble of folding that in. Senator Lamb, rightfully so, was adamant to make sure that the center pivot and the irrigation systems were enumerated like they have been in each of the other bills before, so it was clear that no, no matter how that definition was structured, one could not construe a pivot unit that was fastened to a well head to be a permanent as we think of permanent, and so that was enumerated. What we've done in this, if you go back to the original theory of the definition basically, if you'll look in the old language which has held up for the most part over the years where we identify land naturally and then we start talking about fixtures and

improvements, we talk about trailer houses and we talk about mobile homes, cabin trailers and the various terms that are used, we added to that enumeration. And Senator Kristensen mentioned the court basically, by lack of not defining or enumerating these other items, pipelines, railroad track and structures and the like, the only thing they had to lean to by virtue of our lack of enumeration was to go to the common law test. What was their intent? Was it to be mobile, and the other provisions of the test? We threw this enumeration and through counsel and some other people in some cases who suffered working with this Enron issue for a long, long time, and in their counsel have assured me, and I am finally convinced that this will work as well, or as long as we also specifically say to the courts that this enumeration will be used rather than a common law test of that kind of measurement in terms of how it is used and the like. I'm convinced at this time, but I am going to continue, and I think this is a temporary approach, but I am going to continue to work on finding a specific definition. Eventually to accomplish that goal though, I believe we're going to have to start treating property by virtue of its nature and its structure as a taxable item one way or the other regardless of who owns it or how it is used, whether it is agriculture or some other form of business? With those kinds of separations that we created over the years, that is what is creating that problem. I've used this analogy over and over that if Senator Haberman, for instance, has a car and I have a car, the car ought to be able to be defined as a car and then tax policy starts addressing by virtue of our use whether or not it gets different tax treatment. I think we can eventually get to that point, but right now we, over the years, kind of hodge-podged our taxing technique in such a way that it's making it very difficult to come up with a single definition for the test. I believe this does it and it follows almost all of the standards that I tried to present yesterday. It needs to be very brief so that in this short order we have about 20 lines worth of reading of new language different than the old that one fixes, directs the court and also makes reference to the current litigation that is there. So those kinds of things are in this language and in the long haul, hopefully, we can have a definition of real estate that fits for taxing purposes, will fit for transfer of property ownership or whatever in that Senator Haberman's car is still a car, mine is still a car, we may be taxed differently or have different exemptions for different reasons, but the definition of what it is is solid. So I'm convinced this will accomplish what the Governor desired, eliminate us arguing over

what is on the list and not on the list. We've limited it down to those things that are only in question at this point in time and leaves the rest of our personal property...personal and real property tax structure as we knew it alone for now until we have time to look at the larger picture. So with that, I offer it and I hope the body will adopt this amendment.

SPEAKER BARRETT: Thank you. The question before the body is the adoption of the Conway amendment to LB 1. Those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk.

CLERK: 25 ayes, 0 nays, Mr. President, on adoption of Senator Conway and Lamb's amendment to the bill.

SPEAKER BARRETT: The motion is adopted.

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

SPEAKER BARRETT: Thank you. Senator Lindsay, please, on the advancement.

SENATOR LINDSAY: Mr. President, I move that LB 1 as amended be advanced to E & R for engrossing.

SPEAKER BARRETT: Any discussion? If not, those in favor of the motion to advance the bill say aye. Opposed no. Ayes have it, motion carried, the bill is advanced. Anything for the record, Mr. Clerk?

CLERK: Mr. President, I have a...your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 7 and recommend that same be placed on Select File with Enrollment and Review amendments attached. That is signed by Senator Lindsay as Chair of the Enrollment and Review Committee, Mr. President. That is all that I have.

SPEAKER BARRETT: Thank you. Before proceeding to LB 2 on the agenda, an announcement perhaps of general interest to the body. (Gavel.) LB 7 is down from E & R Review. Copies of the amended version will be available momentarily. Copies are being printed at the present time, should be on your desks in just a few minutes. It would be my hope, as suggested earlier, that we could proceed with the discussion of LB 7 on Select File yet this evening. I'd like to proceed now to LB 2, followed by LB 7 on Select File, even if we have to stand at ease for a few

those who support the bills that are before us, more clarification on what the court meant. We're clearly doing that and the sunset would make that very, very clear that that is what this body was asking of the court. Now I come from the point of view that we shouldn't do that and I don't intend to support LB 7 even with the sunset provision on it, but I do think that that then is a very honest approach to what we are here about. And we are here about, in my opinion, to give us an idea as to where we currently stand. Unless I misread the newspaper articles and unless I misheard the arguments on behalf of this legislation. That is why I thought we were here. The arguments with regard to protecting the tax base really are, I don't think, arguments that, first of all, anybody agrees on what the tax base is and we've all clearly said that that is not going to happen because we're going to cover that short-fall should there be one. The amendment I think is an amendment and a vote on whether you ever intend to change the system, whether you ever intend to have a long-term solution to the problem. I would argue that LB 1, LB 2 and LB 7 are, in effect, without the sunset in this provision, an offering that says here's what we're going to do, but no more. And unless you sunset this exemption, you are not telling the court that you do intend to fix the system, you do intend to have a long-term solution, you do, as a body, intend to come in in 1990 and work toward that end. The sunset allows those cases that are currently being litigated to flush through the system. It allows for that process to take place. It clearly allows for not only the centrally assessed issue, but the locally assessed issue to be addressed. It clearly allows for us to know where we stand and to deal with that. If you don't put the sunset on it, what have you done? I think you've sent the message to the courts that will work very much toward the end of those who are litigating these cases. It would say, your system is unfair, your system is unjust. What you're telling them is that no, the message we want to send you is that we don't want 75 percent of our base exempted, we want 80. And you can wax eloquently about the 4-R Act I guess as long as we want to listen to it, but that is not really the issue. And that may have been the issue in a couple cases and it may be the issue in particular to the railroad rolling stock, and Senator Warner is I think very correct when he says that when you put this classification together that it will be one that would be upheld by the courts as a rational classification, but that does not address our entire system. And our entire system is what is being attacked. It is not just the railroad rolling stock, it is not just the 4-R Act that we

be considered for final enactment.

SPEAKER BARRETT: Thank you. There are no other lights on, and the question before the body is the advancement of LB 7 to E & R engrossing. All in favor of that motion please vote aye, opposed nay. A machine vote has been requested. Have you all voted? Have you all voted? Record, Mr. Clerk.

CLERK: 27 ayes, 7 nays, Mr. President, on the advancement of LB 7.

SPEAKER BARRETT: Motion prevails, the bill is advanced. I'd like to suggest that we stand at ease now for a few minutes for the bills to be correctly engrossed. I would say probably a ball park, 10 minutes, 15 at the latest. So if we would stand at ease, please.

EASE

SPEAKER BARRETT: Mr. Clerk, have you something to read in?

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 1 and find the same correctly engrossed, LB 2 correctly engrossed, LB 3 correctly engrossed and LB 7 correctly engrossed, all signed by Senator Lindsay. That is all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Anything else for the record?

CLERK: Nothing further, Mr. President.

SPEAKER BARRETT: No messages on the President's desk?

CLERK: No, sir.

SPEAKER BARRETT: Senator Lindsay, would you care to adjourn us until nine o'clock in the morning?

SENATOR LINDSAY: I would yield to Senator Kristensen.

SPEAKER BARRETT: Senator Kristensen, would you do the honors, please?

SENATOR KRISTENSEN: As Vice-Chairman of E & R, I would. I

SENATOR ASHFORD: (Response inaudible.)

PRESIDENT: The question is the adoption of the motion as suggested by Senator Schmit. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 29 ayes, 1 nay, Mr. President, on the motions offered by Senator Schmit.

PRESIDENT: The Schmit motion is accepted. Any further?

CLERK: I have no further reports, Mr. President.

PRESIDENT: Do you have anything further for the record?

CLERK: Not at this time, Mr. President.

PRESIDENT: Are you ready to start on Final Reading?

CLERK: I'm ready, Mr. President.

PRESIDENT: Will you folks....Members of the Legislature, please return to your desks. (Gavel.) Ladies and gentlemen, will you return to your desks, please. We're ready to start on Final Reading. Those listening on the intercom, perhaps they may wish to return to the Chamber. Mr. Clerk.

CLERK: Mr. President, with respect to LB 1, Senator Haberman would move to suspend the rules, Rule 6, Section 7 and 8, Rule 7, Section 3 and vote on the final passage of LB 1 without further amendment or motion. That is offered by Senator Haberman.

PRESIDENT: Senator Haberman, please.

SENATOR HABERMAN: Mr. President, members of the body, early this morning I submitted a motion just exactly like that on these bills for this reason, in my opinion we have sat here, debated the bills, debated the amendments and every word that has conceivably been thought of has been said about the bills and the amendments. We've bashed the bills, we've praised the bills. We've bashed the Governor, we've praised the Governor. We gave them an extra shot at raising the corporation tax, everybody had their shot to do that. I believe we have done

everything humanly possible to express everyone's opinion on this Special Session. We have spent an hour and a half on one issue. Now, if we allow amendments and debate, two things could possibly happen. An amendment, for example, could be brought back, good, bad or indifferent, and adopted. Then that throws the Special Session into next week. We could stand here and debate amendments and motions until ten o'clock tonight. And, quite frankly, I feel that people are going to peel out of here if you have them sit here from nine o'clock this morning until six, seven, eight, nine o'clock tonight. Now, I personally....I realize the reason some of these folks wish to debate...have amendments. They want to work off their frustrations, they want to make a point. But I believe that has all been made. So, at this time, I would like to ask you to support suspending the rules and voting on the bills without further amendment and debate, and that takes 30 votes. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Chambers, please, followed by Senator Withem and Senator Schmit.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I wish Senator Haberman wouldn't try to impose his limitations on me. Perhaps there are words he cannot conceive of, but that doesn't mean the same holds true for me. Now, this has been a session where a lot of different positions have been taken, pro and con, on a lot of different issues, and it has been acrimonious to some extent. And I think all of that is good and wholesome because we're dealing with one of the most crucial types of issues confronting the people of this state and certainly this Legislature. Now, Senator Haberman conceded that an amendment may be offered which would be accepted. But, because it might require some additional time to process it, we shouldn't even consider it. He's acknowledging that there could be something defective in one of these bills, and 25 members could see that, if given the opportunity through discussion or the offering of such a corrective amendment, but rather than have to give the time necessary, don't even consider it. Now, I think that is giving a message to the public in line with the things I've said earlier, and in a way I'm pleased he's saying it. These bills probably or perhaps or maybe might pass. But I want the record to be crystal clear on my position on all of this. Senator Haberman mentioned the correct number of votes it takes to suspend the rules. I presume that if the 30 votes are there, then the bills are going to get 30 votes, and the Governor will have had her way and I'll applaud her for that,

but not too vigorously, because when you push over a patsy and a pushover, you haven't done anything. She has contempt for this Legislature, and that contempt is showing itself to be warranted by these types of amend...this type of motion to suspend the rules. And my comments condemning that would not just go toward Senator Haberman, but anybody who'd vote for the motion. We may as well be frank and blunt. We're all grown people here, and we perceive our responsibilities in different ways, some see theirs as to continue to get elected, some see theirs to get out of here by sundown at the time that the Governor set it. Shoot out at the K-O corral, and the Legislature is that, and she comes with guns and gives you all water pistols, and all she has to do is make a threat and everybody cuts and runs. But not everybody. And there are serious matters that should be addressed with reference to these bills. Now, I have some amendments up there, some motions. So it's obvious why I want this motion defeated. I probably have that curiosity, like a lot of people, as to how many votes these bills will garner once they're voted upon. But, remember, I'm not the one who called the Special Session or advocated it. I'm not the one who laid out a straitjacket that complied with what the Governor dictated and insisted on. I didn't do that. I perceive my responsibilities as more serious than that. And when we decide to take these political decisions, then we ought to know that there are going to be some people who disagree with them and will express that disagreement. I think there has been a total abdication of legislative responsibility by the way this session has been scheduled. The Governor can call it, but she shouldn't be allowed to schedule it. And, if everybody is so busy picking corn, or whatever else they have to do, then they should have killed these bills when they were first brought and we adjourn sine die. That's what we should have done. But to go through the charade and pretend that we have adequately dealt with these bills is insane, in my opinion. But to say now that we have been here and run through the course that the Governor laid out, jumped through the hoops she established, on cue as she directed, we now have...

PRESIDENT: One minute.

SENATOR CHAMBERS: ...an obligation to go along and further abdicate our responsibility is not something with which I can agree. And I do disagree with it. So I'm opposed to Senator Haberman's motion.

November 17, 1989 LB 1

PRESIDENT: Thank you. Senator Withem, followed by Senator Korshoj and Senator Moore.

SENATOR WITHEM: Yes, Mr. President, members of the body. Frankly, the Haberman motion has a lot of personal appeal to me. I have nothing more to say about the legislation, maybe a speech somewhere along the line, just kind of reiterating some of the things I said earlier on, just so one more time I can hear them say them. I don't know if you want to hear them again or not. I think I know the answer to whether you want to hear them again or not. I have no amendments to offer. I have little else to do on this legislation. Frankly, I'd like to go home, I'd like to go home by noon. But that is not what being a legislator is all about. Being a legislator involves participating in the legislative process. Our Constitution indicates that there are three separate stages of consideration on legislation. What Senator Haberman is asking that we do is that we ignore the third stage of consideration for debate. I think that is improper. These are very complex matters. We have had two years of dealing with this problem, as you've heard me say before, and we have now had specific proposals advanced to us as short as two weeks ago. For us to pretend that we as legislators fully understand all of the ramifications in this legislation, and that we have solved the problem and it is now time to go home, even without the third stage of consideration on these bills, I think is grossly irresponsible. I, from time to time, favor...vote in favor of motions such as this one. There are times I think when, at a particular stage of debate, we have exhausted all serious consideration of a proposal and it is time then to take the extraordinary step of suspending rules and to move on. We have not begun the third stage of consideration of this legislation. It does not appeal to me in the slightest, frankly. Senator Chambers, you're an incredibly eloquent individual and I enjoy listening to you. I really don't want to spend the day listening to you. Sit down. (Laughter.) Don't take it too heavy. I really don't want to spend the day here listening to you. I don't want to spend the day here listening to lots of other people talk about this legislation, but that is what this legislative process is all about. To vote for this motion at this time, I think, is the height of irresponsibility and I would urge you, regardless of your position on the issues, regardless of your desire to go home, regardless of what other considerations you may have, for the sake of the legislative process, which is supposed to be a deliberative process, I don't think you can vote in favor of

this motion.

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Thank you. Senator Korshoj, please.

SENATOR KORSHOJ: Mr. Speaker, and members, I don't feel guilty of taking a few minutes to speak at this time. I have not been on the floor one time since we came down here, but I have got to admit I was one of the people that sent the Governor a letter requesting this Special Session. And I said in there I felt that I would rank 49th of all senators who would want to come down here at this time, but I said we should attempt, yes, attempt to solve this problem. I further said the courts weren't going to solve it for us nor were the newspaper comments or their suggestions, that only we with her could solve it. And then I said that the Revenue Committee has had hearings all over and I wanted to hear what they found out in these hearings. So I sat here for five to six days as an observer. I have been here every minute of the debate, I've listened to everything that was said. So I observed. I knew what was going on in here because when I left the floor every night I would ask three or four senators, what have I observed today? I have no idea what is going on, but nobody could tell me. Nobody could tell me what I had observed. And I think that the unwillingness of the Governor to expand this call is really where the trouble is. I think we are in the right direction, but also think that if she would have cooperated and expanded this call, we could have found a way to pay for this \$12 million shortfall or whatever. On the motion of Landis yesterday on LB 6, I didn't vote. I'd voted on it a couple of times. I was in favor, very much in favor of it, but it was outside of the call, totally outside. I feel if we'd have passed that and taken it over to the Governor, there is no way she was going to expand that call, no way at all. You could have drafted those 20 deer hunters of Spence's to get up there and pound on that desk, Spence, put them in a circle, and put the Governor in the middle of it, and said you either expand it or else. There would have been singing at the mansion but Kay wouldn't have heard it. We'd be going to a state funeral today. This call is not going to get expanded. It was very apparent from day one, and I am very much in favor of raising the corporate tax and getting this money back. In all the observing I done and understood very little of it, I never got to set in when the lobby and the Department of Revenue decided what we were going to do on this floor. Here it come.

Next day they changed it. Next day they changed it. I have been called down only a couple of times because the lobby has pretty well decided that why talk to a hardheaded Dane. He is not going to listen to you anyway, and the only thing I hear out there is if we don't pass this there is a \$30 million shortfall. What do I care if there is a \$30 million shortfall? This body right here passed an income tax bill that, in my opinion, is immoral, to tax the people to have one of the nation's biggest surpluses. In my opinion, it is immoral to tax the people to have a surplus and, furthermore, in my opinion, it is immoral to tax the people for a surplus. So I am willing to take 30 million of that surplus, if that shortfall happens, and go ahead and let the citizens of this state continue to get the services that they so rightly deserve. I want to solve this problem. I really think we can solve it next year. We got on the right track a couple of times but our track inspector of the train got off the track.

SPEAKER BARRETT: One minute.

SENATOR KORSHOJ: I personally don't think that what we have got here today is going to solve our problem. The Band-Aid is too small that Senator Hall sent us. The bleeding is going to continue. I honestly believe that most senators do not comprehend exactly what these bills are going to do. The lobbyists, Department of Revenue think they probably know what they are going to do, but they don't know. They are giving these lawyers jobs that we have been talking about. I think probably the motion...I have got a motion that would shove those motions of Haberman's so far to the rear we would never see daylight. I have got a sine die motion I am thinking about testing the water and saying let's go home, let's come back in six weeks. What is our hurry? Come back in six weeks and solve the problem from one end of it to the other end, and I think we should really consider what we do today because there is going to be some ramifications that pop up. And what they are, I don't know, because as an observer, I really don't know what they are going to do, and, Ernie, I was going to give you the rest of my time, but I am sorry, ten seconds, we can't even crank you up.

SPEAKER BARRETT: Time has expired.

SENATOR KORSHOJ: Thank you, Mr. Speaker.

SPEAKER BARRETT: Thank you, Senator Korshoj. It has just occurred to the Chair a very honest oversight perhaps should be rectified at this particular point. There was not a motion on the agenda today to suspend our two-day rule and I would like to defer to the Clerk at this point to have him explain and perhaps handle it at this moment. Then we will proceed to the voting order. Mr. Clerk.

CLERK: Mr. President, Senator Labedz, as Chair of the Executive Board, would move to suspend Rule 6, Section 7(b), which is the two-day layover provision, to allow consideration of bills on Final Reading today.

SPEAKER BARRETT: Senator Labedz.

SENATOR LABEDZ: Mr. President, I have nothing further to add to the motion other than I will read the motion, I move to suspend the rules, Rule 6, Section 7(b) to permit consideration of LBs 1, 2, 3, and 7 on Final Reading today, and the rule is on page 45 of the Rule Book, Final Reading, "No bills shall be voted on for final passage until two legislative days after it is referenced to Final Reading." I move for the adoption of the motion.

SPEAKER BARRETT: Senator Landis, state your point.

SENATOR LANDIS: Mr. Speaker, I understand why we have to make that motion and we should, but my question is this, there is a motion before the body in the form of Senator Haberman's motion. We are not entitled to proceed to another matter of business without disposing of that item, it seems as I understand it. We have a little difficulty here of getting the chicken and the egg, but our rules do not permit once a matter is joined to elevate a motion which is not a priority motion before it. Unfortunately, Senator Haberman is going to have to withdraw his motion for Senator Labedz's motion to be heard. In which case, it loses its priority and Senator Chambers gets his motions. That I think is according, but I am asking the Chair whether or not that is correct, but I don't believe once we have made a motion that we can intervene with another motion unless this one is either disposed of or withdrawn.

SPEAKER BARRETT: Senator Haberman, did you have a comment.

SENATOR HABERMAN: A point of order, Mr. President.

SPEAKER BARRETT: State your point.

SENATOR HABERMAN: Could we go ahead and read the bills, then ask for Senator Labedz's motion?

SPEAKER BARRETT: No, I am afraid not, Senator Haberman.

SENATOR HABERMAN: Well, after we read the bills, don't we vote on them? Don't we have to vote on them after we read the bills?

SPEAKER BARRETT: No, I think we must dispose of this situation first.

SENATOR HABERMAN: Well, it's...

SPEAKER BARRETT: Senator Landis makes a good point. Senator Landis, the Chair has determined that your point is well-taken and is grateful to you. The Chair also at this point would recognize Senator Haberman.

SENATOR HABERMAN: Mr. President, and members of the body, would you please rule on my interpretation on actions that I intend to take or am considering taking. If I remove my motion, it goes down to the bottom of the pile of the motions on that particular bill, is that correct?

SPEAKER BARRETT: If you withdraw your motion, it would occur to me that it would go...

SENATOR HABERMAN: And then resubmit it.

SPEAKER BARRETT: ...to the bottom of the pile on that particular bill. That would be my understanding.

SENATOR HABERMAN: Well, then to solve this dilemma, it sounds like LB 6, again, doesn't it, folks? To solve this dilemma, I will withdraw my motion and resubmit my motion and let Senator Labedz's motion go ahead of mine.

SPEAKER BARRETT: Thank you. We, then, return to Senator Labedz.

SENATOR LABEDZ: Thank you, Mr. President. I move for the adoption of my motion. Thank you.

SPEAKER BARRETT: Is there any discussion on that particular motion offered by Senator Labeledz? Anyone want to speak? One, Senator Haberman, or, Senator, excuse me, Chambers.

SENATOR CHAMBERS: Thank you. He has Haberman on the brain, Senator Haberman, so don't take offense as I don't. Mr. Chairman, members of the Legislature, this that we have just gone through demonstrates what happens when things are done in haste. I am the one who kept saying we need to deliberate and others said, no, everything is under control. We are under the control of the lobbyists, but we don't have control of our own system. And now because of the haste with which we are attempting to act, we have got to suspend our rules so that we can read these bills today. Our rules, everything about our process is being waived to accommodate the Governor. I want those things into the record because I am going to hammer on them and use them to ridicule and hold this body up to scorn which it so richly deserves. The Legislature has behaved contemptibly throughout and it is contemptible, not because there are differences of opinion. Those things fade into insignificance now. What is contemptible is the fact that we are willing to give up those prerogatives that we have as a Legislature. We are giving up and abandoning our responsibility. I cut short a trip to come back here so that I could be with you today, and it is good that I came back because we once again had the opportunity to demonstrate graphically how careless the Legislature operates, how it will cut corners, and I have the opportunity to say these things because of the way the Legislature collectively behaves. There is no need in throwing a rock, causing damage, and then expecting me not to comment on it, then getting angry when I do comment on it. You all know me, and if you don't, I will show you my Visa card so you can see who I am, but I am not going to be coerced or criticized into being quiet and failing to discharge my responsibility because the Legislature collectively has behaved itself in a simpleminded manner. How am I going to so characterize the Legislature, then do the very thing myself? Where much is known, much is required. I know much so much is required of me. If the Legislature doesn't know much, then it can't do much. If it has got a thimbleful of understanding, you can't expect a cupful of knowledge, and I delight in these opportunities. I delight in these opportunities because knowing full-well what the consequences of various actions will be, those actions are placed. I love to go out across this state

and talk about how this Legislature does and how the representatives they send down here behave, and I like to take portions of transcriptions to leave with people so they can see what their senators did, and let them know if they want the entire debate, they can get a copy from the Clerk. Those are very telling speeches that you can give, and they are very attention grabbing because they will say, you know, I thought old Senator So-and-So was down there doing this and that, but this is not what his words or her words indicate is going on. Haste makes waste. I am going to tell you what I think the scheme was, to put some motions on the desk, and then say if somebody offers an amendment, then read that motion, because that is the way things are done around here, and that would have really been inappropriate, but it would have been done. So I am very pleased that things have taken the turn that they have taken this morning because we like to be confirmed in our being right.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: And it angers people in a body such as this so much for somebody such as me to stand up and say, I am right, and there is nothing you can do about it because you insist on being wrong. You put your head up there, and then if it gets swatted, then you get angry. I am going to vote against Senator Labeledz's motion because I don't think the Legislature should have to disregard its own rules in order to carry out the Governor's intentions and wishes. She is over there rolling around on the floor laughing right now. That is what she does. She comes over here in jumpsuits so she won't get her dresses dirty when she laughs at what the Legislature is doing. Have I talked ten minutes, Mr. Chairman?

SPEAKER BARRETT: Eight seconds remaining.

SENATOR CHAMBERS: Have I talked ten minutes?

SPEAKER BARRETT: Oh, no.

SENATOR CHAMBERS: Okay, how much time do I have left?

SPEAKER BARRETT: Your time has just expired.

SENATOR CHAMBERS: Thank you.

SPEAKER BARRETT: Thank you. Anyone else care to speak to the motion? If you do, raise your hand. I don't want to jeopardize the board up here with the number of names I have got on the other motion. Anyone else? If not, Senator Labedz, any closing? Senator Labedz waives closing and the question before the body is the suspension of the rule, the two-day rule, in order to read the bills today. Those in favor vote aye, opposed nay. A record vote has been requested. Have you all voted? Record, please.

ASSISTANT CLERK: (Read record vote as found on page 155 of the Legislative Journal.) The vote is 37 ayes, 1 nay, 11 not voting to suspend the rules, Mr. President.

SPEAKER BARRETT: Motion is adopted. The next item, Mr. Clerk.

ASSISTANT CLERK: Mr. President, Senator Chambers would move to return LB 1 to Select File for a specific amendment.

SPEAKER BARRETT: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Clerk, I would like you to read that amendment because I want it in the transcription of this debate.

ASSISTANT CLERK: On page 2, in line 25, put a period after "purposes" and strike the remaining language through lines 1 and 2 on page 3.

SENATOR CHAMBERS: Thank you. Members of the Legislature, the effect of this amendment would be to strike the exemption relative to center pivots and other irrigation systems. I think this is a subclassification that is not warranted or merited by what the bill is supposed to be doing, and I would like to ask a question, first of all, Senator Hall, would you yield to a question or two.

SENATOR HALL: Yes.

SENATOR CHAMBERS: Senator Hall, how did this get back into the bill as an exemption specified?

SENATOR HALL: It was on an amendment offered jointly by Senator Conway and Senator Lamb, I think, on Wednesday of this past week, Select File amendment.

SENATOR CHAMBERS: All right. Do you support the bill as it stands?

SENATOR HALL: No.

SENATOR CHAMBERS: Okay, then I will ask somebody a question who supports the bill. Senator Hefner, you jointly sponsored this amendment, do you support the bill as it stands?

SPEAKER BARRETT: Senator Hefner.

SENATOR HEFNER: Senator Chambers, I did not co-sponsor the amendment. That was Senator Conway and Senator Lamb.

SENATOR CHAMBERS: Oh, sorry. Senator...

SENATOR HEFNER: But, yes, I support the bill and I support the amendment.

SENATOR CHAMBERS: Okay, well, maybe I should ask Senator Lamb that particular question, then. Senator Lamb, do you support the bill with the amendment as...the bill in the amended form?

SENATOR LAMB: Yes.

SENATOR CHAMBERS: All right, now, when this proposal was put in to exempt this center pivot and other irrigation systems, would you have supported the bill were that not included in the bill?

SENATOR LAMB: Well, the purpose of the bill is to really have status quo, you know, tax those things that are now being taxed.

SENATOR CHAMBERS: But here is what I want to ask you because my time will run out, and I am not doing this to argue with you, but would you support the bill if that provision were stricken?

SENATOR LAMB: Well, if that means that the irrigation systems are taxed, which are not now taxed, I would not.

SENATOR CHAMBERS: All right, thank you. Senator Hefner, would you answer that question that I asked, if this exemption were taken out, would you still support the bill?

SPEAKER BARRETT: Senator Hefner.

SENATOR HEFNER: Am I on? I would have to carefully consider that. I probably wouldn't because I don't think that we should tax center pivot systems now, because when we irrigate this land, it goes into a different classification, and the value of that land goes on. So if you are a farmer that irrigates with a center pivot, you could be taxed twice.

SENATOR CHAMBERS: Okay, not to be rude but you answered the question. Thank you.

SENATOR HEFNER: Okay.

SENATOR CHAMBERS: Senator Dierks, may I ask you a question. Would you support this bill if that provision were stricken?

SPEAKER BARRETT: Senator Dierks.

SENATOR CHAMBERS: Yes.

SENATOR DIERKS: No, I would not.

SENATOR CHAMBERS: Thank you. Members of the Legislature, the reason I wanted that into the record is because there is what is called the savings clause where you say that if any section of this act should be declared invalid or unconstitutional, the rest will remain. What the court has said, and I wanted it in the record from some of the supporters of this bill, and some of those who've defended it, that the motivation they have for supporting this bill is the very provision that I am trying to have stricken. So if that provision should be found to be an unconstitutional classification, and that was the motivation for passing the bill, then all the rest of the bill is unconstitutional. This is not a total distinct act on its own. It is an amendment to existing statute. So if the portion that is struck down was the motivation for enacting the bill, then that clause is not going to mean anything, and the court has said that repeatedly, so I want that into the record, and that is all I am going to say on that motion, but I would like a vote on it anyway.

SPEAKER BARRETT: Thank you. Discussion on the motion by Senator Chambers to return the bill to Select File. Senator Abboud, followed by...thank you. Senator Hefner, followed by Senators Dierks and Lamb. Senator Hefner waives. Senator Dierks, please.

SENATOR DIERKS: Yes, Mr. Speaker, I just want to offer the suggestion that I think that Senator Chambers was trying to put, in a sense was trying to put words in my mouth, and I am not sure this is exactly the way the intent that I had. I did not...I would not approve taking that irrigation systems measure off of LB 1, and LB 1 I intend to support with that irrigation systems measure removed, but I am voting on the entire issue, not just on the irrigation issue, and I think that that should be made clear. I am not...I think that there is a whole lot of other issues that go into the makeup of LB 1 that I can support and it isn't just on the basis of the irrigation systems alone, although that is what it sounded like. Thank you.

SPEAKER BARRETT: Thank you. Senator Lamb, followed by...

SENATOR LAMB: Question.

SPEAKER BARRETT: The question has been called. Do I see five hands? I do. Those in favor of ceasing debate please vote aye, opposed nay. Record, Mr. Clerk.

CLERK: 25 ayes, 0 nays, Mr. President, to cease debate.

SPEAKER BARRETT: Debate ceases. Senator Chambers, would you care to close?

SENATOR CHAMBERS: Yes, because I want to try to get a clarification from Senator Dierks. Senator Dierks, I don't want to put words in your mouth, so let me ask the question again. If this provision is stricken from the bill, if this provision is stricken from the bill, would you still vote for it? If we get rid of this exemption...what my amendment does is strike the language relating to the irrigation and pivot systems, would you still support the bill if that language were taken out of this bill?

SENATOR DIERKS: I answered earlier, Senator Chambers, that I would not. I would like to clarify that a little bit. I think that bill involves so many things, I would have difficulty supporting it with that out. I would have to do a little reassessment, but that is a very important part of the bill as it exists, and so I have to be favoring the bill as it exists.

SENATOR CHAMBERS: But would you still support it, because I

think there is such a short span of time between now and the vote that we would take, would you still support it if that were taken out because your answer might help my cause. See, if you would still support the bill and the possibility of that language in the bill could make everything else unconstitutional, then it might be advantageous to take it out and save the rest of the bill. So would you still support it if we took it out?

SENATOR DIERKS: I would have to do an awful lot of soul-searching, Senator Chambers.

SENATOR CHAMBERS: How much time would you have for soul-searching between when this vote is taken and when a vote is taken on the bill?

SENATOR DIERKS: About that much time, I think.

SENATOR CHAMBERS: That was a very good answer. Thank you, Senator Dierks. Members of the Legislature, I am not going to prolong discussion on this particular aspect because I have in the record what I wanted, and you will understand very clearly from this discussion why the next amendment is being offered, and I think it will not seem unreasonable to you.

SPEAKER BARRETT: Thank you. You have heard the closing and the question is the return of LB 1 to Select File. All in favor vote aye, opposed nay. Record, please. A record vote has been requested.

CLERK: (Read record vote as found on page 156 of the Legislative Journal.) 8 ayes, 29 nays, Mr. President, on the motion to return the bill.

SPEAKER BARRETT: Next item. Motion fails.

CLERK: Mr. President, Senator Chambers would move to return. Would you like me to read, Senator? Return to LB...return LB 1 to Select File for specific amendment. On page 3, line 1, put the period after the word "systems" and strike the remaining language through lines 1 and 2.

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. Clerk. Members of the

Legislature, I hope you will reject this amendment now, especially in view of the discussion we just had on the other one. This is creating...it is attempting to create an exempt class of property. It says that if you have a center pivot or other irrigation system used for agricultural or horticultural purposes it is exempt. Now you may disagree with the argument that I am giving, but I want it in the record. You are talking about a type of property that does a particular type of thing. You are saying, in effect, if it is located in the country, it is exempt; if it is located in the city, it is not. It would be like saying that buried pipelines are real property for the purposes of taxation unless they carry 30-weight oil as opposed to 40-weight oil. It is exempt on the basis of that which is flowing through it or its use rather than the nature of the property itself. If the center pivot and the irrigation systems are what are to be exempted, then all such property should be exempt. You are not saying an irrigation system that is center pivot as opposed to one which is composed of canals. You could show a difference in the type of item that you are dealing with and maybe get away with it, and I am not sure. If you were going to say a jet plane is exempt but a propeller plane is not, maybe you could get away with it, but do you think you could get away with it if you said a jet plane that flies from Omaha to Scottsbluff is exempt, but one that flies from Omaha to Lincoln is not. Both are planes, both are doing the same thing, but one is exempt and the other is not, depending upon who is using it. Aren't you basing the classification on the individuals making use of the property rather than the nature of the property and what it does? That is what I think, and I think it is an invalid subclassification within a class, and that is why I hope you vote against this motion, because it is going to be clear from the record that this was brought before the Legislature, that it was formally discussed and considered, and in disregard of that discussion, the Legislature voted to keep this improper classification or subdivision of this property in the bill, and that is one of the motivations for enacting the bill. Do you think that if I am correct and the court says that you have improperly tried to subdivide these irrigation and pivot systems that they will say, well, we will just strike that part that Chambers wanted to strike and leave...we will expand it then to include all. No, the court is going to read what you said, and this is not hypertechnical language. Anybody reading it can understand what it says, that only those who use it in certain activities can get the exemption. That doesn't make sense, and I don't believe that is valid, and I want to bring it before you

today. There was one law that was struck down because it had to do with granting interest rates on certain types of loans, and the court said that if you make a general law related to all loans, then that can withstand a challenge, but if you are going to allow certain classes of lenders to charge a higher rate of interest and others not, and those that you exempt out can charge that higher rate without being in violation of the law, then you've improperly given a benefit to certain individuals that the Constitution prohibits, because if that particular law, and it is a constitutional principle against this special legislation when it comes to the lending of money, if that kind of principle is violated, everybody who violates it should be subject to the same sanction, not just those certain ones that have not been exempted out. So, if this is a classification of property, if there is such a thing as center pivot which can be used for other than agricultural or horticultural purposes, if there are other irrigation systems, just a general classification without specifying anything else that can be used for other than agricultural or horticultural purposes and they are not exempt also, then I think the Legislature has created an improper classification, and that is why I made the motion, and I definitely want to get a record vote on it, when that time comes.

SPEAKER BARRETT: Discussion. Senator Hefner. Thank you. Any discussion? Seeing none, Senator Chambers, for closing.

SENATOR CHAMBERS: I just want it clear from the record that the matter was before us at a time when a majority of the senators were seated at their desks with their eyes open, their ears open, their thinking caps on, and their best mental faculties operating 100 miles an hour, and they chose to go forward with the bill in its present form with this classification that I have described as improper, and with that, Mr. Chairman, I will relinquish my time, and while I am standing, I will withdraw that other motion that I have on this bill.

SPEAKER BARRETT: Thank you. It is withdrawn. You have heard the closing. We will be voting on Senator Chambers second motion to return LB 1 to Select File. Those in favor of that motion please vote aye, opposed nay. A record vote has been requested. Record, Mr. Clerk.

CLERK: (Read record vote. See pages 156-7 of the Legislative Journal.) 11 ayes, 27 nays, Mr. President, on the motion to

return the bill.

SPEAKER BARRETT: Motion fails. Next item, Mr. Clerk.

CLERK: Senator, you did withdraw. Mr. President, the only other one I have remaining is Senator Haberman's motion, which would be to suspend Rule 6, Section 7 and 8, and Rule 7, Section 3 and vote on the passage of LB 1 without further amendment or motion.

SPEAKER BARRETT: Senator Haberman, please.

SENATOR HABERMAN: Mr. President, and members of the body, Mr. Clerk, are there any more motions on LB 1?

CLERK: Not at this time, Senator.

SENATOR HABERMAN: Ernie, stay in your chair. Then I withdraw my motion.

SPEAKER BARRETT: Motion is withdrawn. Proceed to the reading of LB 1, Mr. Clerk. Members, please return to your seats. Proceed.

CLERK: (Read LB 1 on Final Reading.)

SENATOR HEFNER: Mr. Speaker.

SPEAKER BARRETT: Senator Hefner, for what purpose do you rise?

SENATOR HEFNER: Could we all check in before the vote is taken.

SPEAKER BARRETT: We are technically under call, Senator Haberman, because we are on Final Reading.

SENATOR HEFNER: I noticed there were several senators missing.

SPEAKER BARRETT: The Chair has no problem with that, Senator Hefner.

SENATOR HEFNER: Okay.

SPEAKER BARRETT: Would you check in before the vote is called for? Senators Goodrich, Peterson. Senator Lynch. Senator Landis, state your point.

SENATOR LANDIS: Since we are not under call, the purpose of waiting, which is normal, it seems to me in this case that we need to proceed to the vote. The chance to check in has come and gone. There is not a call of the house and I would suggest that we proceed with the reading of the bill. There is no obligation to wait because we are not under a call of the house.

SPEAKER BARRETT: We are waiting for the one member to return, because when we are on Final Reading, we are under call. Unless they are excused, they are to be here.

SENATOR CHAMBERS: A question.

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, so that I understand this for future reference, even though the member is here, does the rules say that we are under call when we are on Final Reading.

SPEAKER BARRETT: I don't believe technically our rules state that specifically, but that has been custom.

SENATOR CHAMBERS: But we are not under call unless the body votes to place us under call and there is a distinction, and I think the only way there can be an authorization to send out and bring in members is if the house places itself under call. And I think Senator Landis made a valid point. I understand the ramifications of this bill but I want that point clear for future reference.

SPEAKER BARRETT: Thank you. Clear the board, Mr. Clerk. Roll call vote has been requested. All provisions of law...

SENATOR CHAMBERS: Mr. Chairman, so that that point I was trying to make is clear, because I didn't get your opinion, what you are, by your ruling, saying is that when we are on Final Reading, then, and members are not here, then a member can object and we will have to stay our activities until every member is brought here unless we vote to go off Final Reading. Is that what your ruling is, because under call that is the case. We stay under call until everybody is here or we vote to raise the call. Then we don't have to wait anymore, we can proceed with the business.

SPEAKER BARRETT: It has been the custom of this presiding officer to consider that when we are on Final Reading all members are to be in their seats. That is in our rule book, Senator Chambers.

SENATOR CHAMBERS: Here is what I want clear. If a vote is being taken and there are members absent, I can insist that we not take the vote until every member is in his or her chair, is that what your ruling is saying? Either it is or it isn't.

SPEAKER BARRETT: If they are not excused according to our rules, that probably would be the case.

SENATOR CHAMBERS: I think it should be either it is or it isn't because I would hate to feel that this ruling is made because it is the Governor's bill. I think when the Chair makes a ruling, it shouldn't be probable, it should be, yes, I rule that it is this way or I rule it is not that way. That is what I am trying to get from the Chair so I know in the future what I am contending with.

SPEAKER BARRETT: Senator Withem, please.

SENATOR WITHEM: Yeah, just to add to this discussion and, again, to make it clear that this is not dealing with my position on this piece of legislation one way or the other, I do not support it. I'd prefer that it didn't pass. Supporting what Senator Hefner did and the way the Chair acted I know makes it more likely that this bill will pass, but I think the Chair acted properly. The rule on page 10, Rule 2, Section 3, section (h) says members shall remain in their seats during the final reading of a bill, and until the vote thereon has been announced, except if they are excused by the President or during discussion of amendments or motions offered pursuant to Rule 6, Section 8. Perhaps what the request was was not formally stated but the request, in effect, I think that Senator Hefner made was that this particular rule be enforced, asked the Chair to enforce that rule, to have members in their seats, so indicating by pushing their green button, and he was within his rights to see that that rule was, in fact, enforced and to wait until it was enforced.

SPEAKER BARRETT: Thank you. Senator Landis, please.

SENATOR LANDIS: Mr. Speaker, by the way, had the request been

phrased in that way, I would not have objected. We do as a courtesy for ourselves to know how many votes are here or not a checking in. It is just a courtesy we do for each other, but it has no specific special rule carrying significance. I felt as if the Chair was interpreting it as if it was the same as a call of the house, which is an act well within our rules, and it would be, I think, a mistake to treat this courtesy with the same matter of right that a call of the house would. In which case, on the other hand, if I thought the rule was a request for the rule to be carried out, I would not have stood on my feet. I felt what was happening was let's have a check in, everybody who was here had checked in, but we were still waiting. That is different. Checking in is a courtesy to people to count votes and that is it. It is not the same thing as a call of the house, and when the Chair begins to treat it as such, that is when I felt the time had run on what the courtesy of checking in is all about.

SPEAKER BARRETT: Thank you. Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, I hope you will bear with me, but what I am asking for from the Chair, because we are expressing our opinions and they are not binding on the body, is the Chair viewing this request as something that will entitle a member to hold the body up until everybody not excused checked in which would equate it to a call of the house, or just what...that is what I am asking.

SPEAKER BARRETT: No.

SENATOR CHAMBERS: Okay, so then if somebody makes that request, the only way they could insist on every member not excused being here is to ask for a call of the house even though we are on Final Reading, because I think you can ask for a call any time.

SPEAKER BARRETT: That's true.

SENATOR CHAMBERS: If people are absent and not just showing up.

SPEAKER BARRETT: That is true.

SENATOR CHAMBERS: Okay, now I am clear on what you have done. Thank you.

SPEAKER BARRETT: Thank you. Anything else? If not, all

November 17, 1989 LB 1, 2

provisions of law relative to procedure having been complied with, the question is, shall LB 1 with the emergency clause attached become law? Mr. Clerk, a roll call vote has been requested. Proceed.

CLERK: (Roll call vote take. See page 158 of the Legislative Journal.) 35 ayes, 10 nays, 4 excused and not voting, Mr. President.

SPEAKER BARRETT: The bill passes. LB 2E, Mr. Clerk

CLERK: Mr. President, the first motion I have on LB 2E is by Senator Haberman. Senator Haberman would move to suspend Rule 6, Section 7 and 8, and Rule 7, Section 3, and vote on the final passage of LB 3 (sic) without further amendment or motion.

SPEAKER BARRETT: Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the body, a question of the Clerk, are there amendments on the bill?

CLERK: I have one motion pending, Senator, in addition to yours.

SENATOR HABERMAN: I will withdraw that motion and put it after that motion, Mr. Clerk

SPEAKER BARRETT: It is withdrawn.

CLERK: Mr. President, Senator Chambers would move to return the bill for purposes of striking the enacting clause.

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, I want to look Rex dead in his eyes as I say this. I want to withdraw my motion.

SPEAKER BARRETT: It is withdrawn.

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

SPEAKER BARRETT: Members, return to your seats for Final Reading. Proceed.

CLERK: (Read LB 2 on Final Reading.)

gentlemen, but we are here today passing LB 7, even though we say that we have not had any direction from the courts. That argument might hold true with regard to the difference between centrally assessed or locally assessed and some other issues that are, I think, subservient to the issue of our personal property tax as we have talked about it during this entire Special Session, but the courts have very clearly given us I think the mandate, but yet we have refused to accept it. They have said you cannot do this, but it makes no difference, and yet we are here today and we are going to pass LB 7. I think that we not only ignore the direction that the court gives us but we ignore the recent history of the courts from 1982 to present that have brought us to this decision that have, basically, systematically laid the groundwork for the decision that came about in Enron. Through the passage of LB 7, you correct nothing. Through the passage of LBs 1 and 2, you correct nothing. What you do is you delay the inevitable, which means either a total rewrite of our personal property tax system, and that includes a rewrite if not a total outright repeal of our uniformity clause, or you just do away with personal property tax, as Senator Schmit talked about earlier this session. You really don't have any choice, and know full well that when you vote for the passage of LB 7, you really are voting for the, I guess, legislative version for railroad property of Amendment 4. The courts will throw it out and it is just a matter of time before they do that, and where we will be is back here probably not even in 1990 because the courts will not have had time to deal with that, and the argument will be that you have to wait for that to happen. Well, then it will be 1991, and the Legislature at that time will have to deal with the personal property tax issue, and deal with it I hope at that time on a very up front basis, because when the courts decide on the cases that are presented based on LB 7, I would hope that that would be enough of a determining factor, maybe they will do it sooner in the cases that are perfected and before them this summer, that we, as a legislative body, will take the stand that now we clearly understand that the courts have spoken because the courts have spoken a number of times. This legislative body has failed to listen, and by the passage of LB 7, we've failed to listen again. With that, Mr. President, I would urge you to vote against LB 7 because it does nothing but delay the inevitable, and I will withdraw the bracket motion.

SPEAKER BARRETT: Thank you. The motion to bracket is withdrawn. Mr. Clerk.

involved with it in the Special Session by virtue of the Attorney General's opinion. I would have introduced the bill in any event in a regular session, that was my intent, but when the Attorney General said that it probably needed to be enacted in calendar year, 1989, I am sure you have all read the opinion, it became clear that it would be desirable and a better opportunity to get clarification, and I would hope that that position which, as I recall, represented 37 members of the body...

SPEAKER BARRETT: One minute.

SENATOR WARNER: ...signing that brief was for further clarification, that is exactly what this does, LB 7 does. I believe it will be expedited in the sense there may be a few days difference, I don't know that. In any event, the court would determine it, not this legislation. So I would urge that the amendment be rejected and allow a process that has been underway for some months to proceed and one which others, who have some reluctance on the bill, nevertheless acknowledge other tax experts seem to believe it has merit.

SPEAKER BARRETT: Thank you. Senator Schmit.

SENATOR SCHMIT: Mr. President, and members, I would rise in opposition to the motion. Senator Withem said he didn't know how he was going to vote this morning coming down on this bill, and he doesn't need to feel bad, the Revenue Committee voted against it in February. They all voted for it two days ago, and so I would suggest that we have an option of changing our mind. I think the bill was necessary back in February. I think it was probably a better bill in February, a more timely bill, than it is today, but for purposes of classification of property, I believe we still need the bill. I have no doubt that there is going to be a court decision, a court determination on some other aspects of the bill at this time, and that is what we expect and anticipate. My principal concern is not with LB 7. My principal concern is with LB 1 and to a lesser extent with LB 2. You know, the Legislature, we were told many times, came down here to deal with a \$30 million problem, a \$30 million fly which I shall call personal property tax. That fly has been buzzing around our nose for sometime, and out in the pasture we have a billion dollar milk cow, which I am going to call real estate. Now unfortunately, the \$30 million fly landed between the eyes of the billion dollar milk cow, and the Legislature with the passage of LB 1 swatted the fly and killed the milk

cow, because we had a real estate system which had some inequities, but which has made some progress toward equity in recent years. Unfortunately, with the classification process we have place in LB 1, I am not going to go into that now, Senator Chambers touched upon one which I think is absolutely an improper class, that of center pivots, we have started a process which where we sow the wind and reap the whirlwind and it is too bad. I think we had better pass LB 7 now and at least be able to go back home and tell the folks that we did something which is not going to come back and haunt us forever and ever. I am afraid that LB 1 and 2 will, and so there ought to be something redeeming about this session other than LB 3, and that will be LB 7. So I would suggest we go ahead and vote on it. Thank you.

SPEAKER BARRETT: Thank you. Senator Hefner, followed by Senator Lamb.

SENATOR HEFNER: Mr. President, and members of the body, Senator Lindsay, I think you should have had this amendment on each bill, LB 1, LB 2, and LB 7, if you are really serious about asking the Supreme Court to do this. But I believe the Supreme Court is going to have this before them in record time anyway, and so I would just say that I really don't think it is necessary on LB 7. There is one other thing that I want to get in the record, and that is Senator Chambers has been saying that the Governor wants her way, the Governor wants her way, and the Governor called this session. I would just say to you, Senator Chambers and the body, that the Governor was requested by the local government entities to call this session, and the reason we are here, I thought I emphasized that enough before, the reason we are here is try to preserve \$30 million for local government because I felt that if we didn't pass these bills, LB 1, LB 2, and LB 7, that they would come up short, and I realize we can appropriate \$30 million, but I don't know how soon that will come. And if we don't get these bills passed with the emergency clause, come December 31st, it is all gone. The \$30 million is gone. So, ladies and gentlemen, I just wanted to get this into the record. We want to help local government with this \$30 million.

SPEAKER BARRETT: Thank you. Senator Lamb.

SENATOR LAMB: Question.

SPEAKER BARRETT: Thank you. The question is the return...

SENATOR CHAMBERS: He gave me just whatever he has.

SPEAKER BARRETT: Sorry, Senator Chambers.

SENATOR CHAMBERS: That's all right. Mr. Chairman, I would say just very briefly that Senator Warner did point out that in his opinion this bill will be utilized in a certain way by the court to have impact on the other pending cases, that we don't know where they are located on the docket so we don't know how long it would be before the court would even bring those cases up for the purposes of decision which could carry it a long way beyond the election, as I say, again. But forget about the elections and everything I have said about that and consider this one aspect. The amendment will not hurt LB 7 at all. It will affect LB 1 which could have an improper classification that would strike down that entire bill and we and the public are entitled to know that. This amendment would allow for an expedited hearing on LB 1 where we did all that defining of real property and so forth. So I think there is an adequate basis for adopting this amendment and it's not going to hurt LB 7, then we don't have to speculate about where the other two hundred some odd cases are, whether they will be expedited, what the court will do with this bill in relationship to the others because there could be discussions of a very legalistic nature. The important thing, I think, is to have a legislative directive and creating the machinery and authorization for the expedited consideration of these bills by the Supreme Court.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: I think that is a responsible action that might salvage some degree of respectability for the Legislature in view of the haste with which we have acted and we all know that ultimately the Supreme Court will make a determination as to what these bills are relative to their constitutionality. I really think that that part about the center pivot and the irrigation systems have destroyed LB 1 and I think the people who are going to be affected by all of the provisions of that bill are entitled to have a resolution of that issue as soon as possible. Senator Lindsay's amendment will make that possible.

SPEAKER BARRETT: Thank you. You have heard the closing and the

responsibility to come down and address the entire tax system. We don't have that opportunity here today but, for heaven's sakes, let's not miss the opportunity to at least do something right. Please vote to reconsider and pass LB 7. Thank you.

SPEAKER BARRETT: Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I oppose the reconsideration motion. And I'm not going to go into a discussion of the bill itself, partly because it is complex; secondly, because no minds are going to be changed as far as the merits of the bill because the bill has not been voted on for its merits. It's a part of the Governor's plan and some of us who are politically astute know that. I was downstairs looking through my vast file and collection of books that I have on the works of Abraham Lincoln and although I disagree with his position on some things, because he was a real "wascal", but sometimes those "wascally wabbits" are the shrewdest and most cunning rabbits and they have a good way of expressing ideas. In talking about the handling of the Dred Scott Decision, he had mentioned by first names, Stephen Douglas, Roger Taney, I think Buchanan, some of these other main players, and, supposedly, this decision was decided on the merits. It was the one that stated that black people have no rights that any white person is bound to respect. And he mentioned how James did his part over here, John did his part over there, Roger did his part over here, and each one was contriving portions of a house and they say they did not construct their parts according to a common predetermined design, yet when all the parts were brought together every piece exactly fitted. Where there was a notch left for a board, that board had been perfectly constructed to fit snugly into that notch, and when all of the pieces were put together, the house was constructed and yet they wanted to say there was no predetermined design. I believe that LB 1, LB 7, the original form of LB 2 was similar to what that "wascally wabbit", Abraham Lincoln, was talking about. And to quote Barbara Walters, "This whole thing would be tewwible, tewwible, tewwible." But the fact is that it does relate to the Governor's reelection. And Senator Abboud saying that it takes courage for her to call a special session, under these circumstances, makes me have to say that Senator Abboud does not understand the meaning of courage. There was political heat on her to try to do this to raise her sagging ratings in the polls. It doesn't take courage to do something that is going to delay a resolution or a consideration

of this matter by the courts until after the election. That is political cunning, not courage. And if there are people on this floor laboring under the same misconceptions as Senator Abboud, then it's clear that very little of what we are doing has been understood at all. I believe we're dealing with politics, politics, politics, nothing else. And if this were truly a nonpartisan body, if there were not concern for the Governor's reelection, these bills would not be before us because we would not have been called into special session. But had we been called into special session to really deal with the property tax issue, the proclamation, which is the call, would not have been so narrow. Senator Warner mentioned how long he had been working on this issue, but you will notice how the proclamation was deliberately withheld and there was a notch specifically tailored to accommodate his bill, but nobody else's. James, Roger and Stephen were at work, and when the pieces were all brought to the same place, at the same time, they fit like fingers in a glove that had been tailored for those fingers. So others can say what they want to,...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...I'm saying what it appears to me to be. And at other times I have seen certain legislators on this floor far more circumspect in their concern for the welfare of the public and the legislative process itself than they have shown themselves to be at this particular juncture. I think it would be a mistake to reconsider this question. We should leave it where it is and remember the first principle of medicine is first do no harm. That LB 1 has done harm and it's going to do a great deal harm because it's going to mislead some people into thinking that they've got something that they don't have. I may be the one to challenge that because my lawn sprinkler is a type of irrigation system but I don't get the exemption and the amount is not important, it is the issue. And I think it would be a mistake to do with this bill...

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: ...what has been done with the others.

SPEAKER BARRETT: Senator Hefner, followed by Senators Schmit and Morrissey.

SENATOR HEFNER: Mr. President and members of the body, I rise

to support the reconsideration motion. I just feel that we need this bill with the emergency clause. Without the emergency clause on, it won't do us much good. We need it yet this year because of those 243 or 244 cases before the Supreme Court. Some of those decisions are going to come down fairly quickly and this is why we need it. A red vote on this bill means a vote against local government, because if we don't get this bill, I think that we could lose a lot of the \$30 million. I realize that we did pass LB 1 and LB 2 and I thank you for it, but I think that we need all three of these bills together. Like I said before, some of these cases will be decided fairly quickly. If we don't have the emergency clause on, the bill wouldn't take effect until February 15th and I think we have let the cat out of the bag by then. So I would urge you to please vote for the reconsideration motion and then vote for the bill with the emergency clause. Thank you.

SPEAKER BARRETT: Thank you. Senator Schmit, please. Senator Schmit, on the motion to reconsider. Senator Morrissey.

SENATOR MORRISSEY: Mr. Speaker and members, I have consistently voted against all the bills today, mainly for one reason. I think they were poorly drafted, poorly thought-out, knee-jerk reactions and I don't think we should be a reactionary Legislature. We should be dealing with these problems before they come up. Unfortunately, that isn't the case. But the only bill that I would consider voting for was LB 7, and now I would urge you to support reconsideration because I will change my vote although I am not convinced by anyone that this is the right thing to do. I would like to ask Senator Ashford a question.

SPEAKER BARRETT: Senator Ashford, would you respond?

SENATOR ASHFORD: Yes.

SENATOR MORRISSEY: Would you...Senator Ashford, is it correct, will these cases be moved to the top of the agenda?

SENATOR ASHFORD: No, not as opposed to criminal cases. Is that what you're...they will not go above criminal cases, they go above civil cases.

SENATOR MORRISSEY: So there is no guarantee in anyone's mind that they will be heard before the first of the year?

SENATOR ASHFORD: No, absolutely not, but they would be expedited over other civil cases but not...that's my understanding of the way it works.

SENATOR MORRISSEY: And that is my problem still, but I will vote for reconsideration and then I will probably vote to support LB 7. And I would give any more of my time to Senator Ashford if you would like it, Senator.

SPEAKER BARRETT: Senator Ashford, you have approximately three minutes.

SENATOR ASHFORD: Well, I'm not sure, Senator Morrissey, why your reasoning behind changing your vote so it's hard for me to address it. I guess the...you know, we just can't get around what the Supreme...as I said before, we cannot, no matter how we stretch the language, no matter what we do, we cannot get around the clear intent...and no one has addressed...my problem is the record in this thing and no one has addressed my concern and Senator Hall's concern and that is the Supreme Court says unequivocally that there is one class of personal property, and that if we exempt one class, everybody else is entitled to an exemption. Now if somebody could answer that, I would change my vote too and, seriously, if someone could convince me that I'm...that that's not what the Supreme Court said then, fine, let's vote...if LB 7 will do the trick then let's vote for LB 7. But I'm afraid we're giving a very substantial exemption to a large industry in Nebraska without any...and it's not going to solve the other 243 cases. The other problem we've got is that we've got 75 percent of our personal property exempt, and because 75 percent of our personal property is exempt, no matter what we do with the railroads, any taxpayer is going to have the argument of the Enron case that this is one class of property and 75 percent of it is exempt. So I would love nothing more than to solve this problem today and I think Senator Warner has made a very honest and good attempt to do that, but we still have...are hit right in the face with the language of the Supreme Court. I think LB 1 would have been a...would have worked too if we hadn't put the irrigation equipment in, but we have, obviously, created a myriad of lawsuits with that now too because we're exempting out...we're exempting out irrigation equipment, we're calling it real property and then exempting it out. Even though it's exempt now, we're creating causes of action all over the place. The 243 claims are going to be a

November 17, 1989 LB 1-3, 7

SPEAKER BARRETT: Thank you. While the Legislature is in session and capable of transacting business, I propose to sign and I do sign LB 1, LB 2, LB 3 and LB 7. Mr. Clerk, item 8 on the agenda.

CLERK: Mr. President, one item. Senator Hannibal would like to remind those members of the LR 222 Committee regarding prison overcrowding that they will meet in Room 1004 at approximately 2:00 p.m. today; Room 1004 at approximately two o'clock.

SPEAKER BARRETT: Thank you. Item 8, please.

CLERK: Mr. President, one other announcement. Senator Schmit would like to announce that the Franklin Committee will meet at approximately two o'clock, 1520, Room 1520.

SPEAKER BARRETT: The Chair recognizes Senator Haberman.

SENATOR HABERMAN: Well, Mr. President, I move that a committee of five be appointed to advise the Governor that the Ninety-First Legislature, First Special Session, of the Nebraska State Legislature is about to complete its work and to return with any message the Governor may have for the Legislature. Yes, but there is a motion up there to allow no debate, Senator Chambers.

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: Is this on the motion that he read or his motion not to allow any debate?

SPEAKER BARRETT: The motion, as offered by Senator Haberman, is debatable.

SENATOR CHAMBERS: Mr. Chairman, where is the chair located on which they will place the Governor and then lift to their shoulders as they carry her to the Chamber in the appropriate posture?

SPEAKER BARRETT: Thank you. The Chair appoints the following members to return to the Chamber with the Governor with any message that she might have. Senators Hefner, Lamb, Schellpeper, Pirsch and Robak, will you members please advise the Governor and return to the Chamber with the Governor.

November 17, 1989 LB 1, 2, 7

SERGEANT AT ARMS: Mr. President, presenting the Governor of Nebraska.

SPEAKER BARRETT: (Gavel.) Members of the Legislature, it's my pleasure to present the Governor of the State of Nebraska, the Honorable Kay Orr.

GOVERNOR KAY ORR: Senators, thank you. Thank you very much. Thank you. As we conclude this special session, let me say on behalf of Nebraskans, thank you. Thank you for your time. Thank you for your diligence and thank you for your determination to take this important step in protecting the families of our state. The legislation that you have passed provides needed protection for essential programs and services Nebraskans expect from our schools, our cities and our counties. The definitions now in LB 1 will give our Supreme Court an opportunity to pursue a different direction and prevent the loss of more than \$30 million in local government revenue this year. It maintains the exemptions already established for Nebraska agriculture and prevents Nebraska homeowners and small businesses from having to shoulder a larger share of local government operations. The provisions in LB 2 will eliminate the possibility of many businesses receiving millions of dollars in refunds that would have devastated school programs and drastically impacted local services. LB 7, according to an opinion from the Attorney General, may remove the basis for equalization relief with respect to this tax year and in the future. Combined, the legislation of the special session will prevent the disruption of family life in every community in Nebraska. I know and share your frustration in dealing with this issue. Together, our work must continue. Through the expanded response team and by listening to Nebraskans throughout Nebraska, we can develop an understanding that will determine the future of state tax policy. I remain optimistic about the future and, as Henry Ford once said, coming together is a beginning, keeping together is progress and working together is success. I wish you a joyous holiday season and I look forward to seeing you again in January. (Applause.)

SPEAKER BARRETT: Thank you, Governor Orr. Will the Committee please escort the Governor from the Chamber. Thank you for being with us, Governor Orr. Mr. Clerk. The Chair recognizes Senator Dierks, please.

SENATOR DIERKS: Mr. Speaker and members of the body, I would