

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

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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.



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PRESIDENT NICHOL PRESIDING

PRESIDENT: Ladies and gentlemen, would you please rise for the invocation by Reverend Harland Johnson.

REVEREND JOHNSON: (Prayer offered.)

PRESIDENT: Reverend Harland, thank you for your thoughts. Roll call, please.

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

PRESIDENT: Thank you. Do you have any corrections to the Journal, Mr. Clerk?

CLERK: I have no corrections, Mr. President.

PRESIDENT: Do you have any messages, reports or announcements?

CLERK: Mr. President, I have a series of Attorney General's Opinions addressed to...an Opinion addressed to Senator Baack; an Opinion to Senator McFarland; an Opinion to Senator Withem; a second Opinion to Senator McFarland. (Re: LB 2. See pages 82-84 of the Legislative Journal.)

Mr. President, I have hearing notices from the Natural Resources Committee; and from the Health and Human Services Committee regarding gubernatorial appointment confirmation hearings. That's all that I have, Mr. President.

PRESIDENT: The Chair recognizes Senator Landis, please.

SENATOR LANDIS: Mr. Speaker, I believe the Clerk has a motion on the desk, I'll ask him to read it, then I'd address myself to it.

PRESIDENT: Okay.

CLERK: Mr. President, Senator Landis would move to suspend the pertinent rules permitting notes to be sent to the floor from the Rotunda until after the General File debate on LB 7 is completed. That's signed by Senator Landis.

PRESIDENT: Senator Landis, please.

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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.

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

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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.

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Arleen McCrory

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

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

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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



PRESIDENT: Okay, we'll move on to LB 2.

CLERK: Mr. President, LB 2 was a bill that was introduced by the Speaker at the request of the governor. (Read title.) The bill was introduced on November 8 of this year, Mr. President, and referred to the Revenue Committee for public hearing. The bill was advanced to General File. I have Revenue Committee amendments pending. Senator, would you prefer to do those, discuss those before we offer...

SENATOR HALL: I would like to at least, briefly, run through the committee amendments if I could and then any amendments to the committee amendments.

SPEAKER BARRETT: Senator Hall, as Chair of the committee, yes, please explain the committee amendments.

SENATOR HALL: Thank you, Mr. President. The committee amendments, as have been presented to you, basically, are a complete rewrite of the bill. You have them before you in a white copy form and they...

SPEAKER BARRETT: Senator Hall, please. (Gavel.) Proceed.

SENATOR HALL: Thank you. The bill, as it was presented, would...by the governor, would have stripped from statute provisions that this body passed and the Revenue Committee heard last year in the form of LB 762. Last year, the Revenue Department brought to the Revenue Committee LB 762 that changed the provisions dealing with unconstitutional tax, illegal tax and mistaken taxes. The bill, in its green copy form, LB 2, rewrote much of all the refund provisions of that legislation that we passed in May last year. The Revenue Committee, after hearing testimony on the proposed changes, I think were not swayed that the changes were necessary in order to meet the call of the session in that there was testimony on the part of the tax commissioner that none of the changes in the green copy of the bill affected one of the 243 cases that are before the Nebraska Supreme Court. That is to say that there was nothing in the bill, nothing that deals with illegal taxes, unconstitutional taxes or mistaken taxes that had anything to do with the 243 cases currently being litigated. Those cases...those cases are equalization cases. Those cases are cases before the courts that say, we want to be treated the

same. We want to be equalized. They're not asking for exemptions. They're asking that their taxes be brought down in every case to those other individuals who have been given an equalization equal to zero. So it is not an issue, and we clearly need to not misinterpret the issue of equalization versus exemption, they are clearly different and we'll talk about that in LB 7 shortly. But LB 2 would have provided for a penalty provision in Section 1 that for failure to pay your taxes the green copy was a 50 percent penalty of the total tax amount. The committee amendment would change that penalty to 20 percent. Currently...the argument for that is currently that the 50 percent penalty, if you don't list the personal property that you own, and when you go through your list if you fail to list, for example, the hog shed that someone mentioned earlier today on the floor, that there is a 50 percent penalty for that. The bill, as presented, would now institute a 50 percent penalty for failure to pay your taxes, for fear that, I guess, that many individuals have threatened not to pay their taxes. The committee amendments reduce that to 20, and I am going to have an amendment to these committee amendments to wipe the penalty out altogether shortly. The second change was that no appeal of valuation or equalization case, in other words, any of the cases that are currently before the courts in any way, shape or form suspend duty by those individuals to pay their taxes. So, in other words, just because they happen to be in the court system, they're not free to do as they wish. They're not free to not pay their taxes. In other words, we just clarify that your tax is still due and owed. The third change that the issue of equalization or valuation, the cases that are before the courts does not constitute or is not considered an illegal tax. So that is spelled out in the bill. It was spelled out in the original bill and we leave that in as part of the committee amendments. Fourthly, clarify in the bill that those parties who are currently in a lawsuit declaring the tax illegal or unconstitutional, only those parties are entitled to a refund so that, in other words, if you have not filed suit against the tax commissioner, taxing authority, you aren't in the process of litigating that issue, that if you're not a party to those lawsuits that are currently in the system, then you are not eligible for a refund no matter what the courts would rule with regard to the tax being illegal, unconstitutional or whatever, mistaken. Fifthly, the bill as the committee amendments would have, it states that it is to be effective January 1 of 1989. It would make it retroactive to the beginning of the year. This is so that it does apply to the pending litigation, all except

for the new penalty provision which would become effective in the bill January 1 of 1990. I do have an amendment up, to the committee amendments, that we'll deal with first that will change that date to November 30 because there is a personal property tax bill payment that is due December 1 and would be delinquent at that time. We will deal with that amendment first so that we correct the committee amendments so that they are in line and then that will follow...be followed by my amendment to the committee amendments to strike the penalty provision altogether. The sixth section of the bill deals with the severability and the emergency clause in the committee amendments. And that, Mr. President, is an explanation of the committee amendments as they are before the body.

SPEAKER BARRETT: Thank you, Senator Hall. An amendment on the desk.

ASSISTANT CLERK: Mr. President, Senator Hall would move to amend the committee amendments to LB 2. (Read the Hall amendment as found on page 107 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. Senator Hall, please on your amendment to the committee amendments.

SENATOR HALL: Thank you, Mr. President, I'm carrying this amendment on behalf of the department. They have asked that the bill be changed to read November 30, 1989 with regard to the point in time when the penalty provision would become effective. The reason for that, as I stated earlier, is that there is a personal property tax payment that is due and owed on December 1 of 1989. With the passage of this legislation, with the emergency clause it becomes effective upon the signature of the Governor. At that point in time, it would take effect. They would like to have the penalty provision become effective December 1 of this year. As I stated earlier, I have an amendment to the committee amendments that follows immediately that will strike the penalty provision. Whether you agree or disagree with my amendment that follows, and I would guess that if you intend to have the penalty provision become effective as soon as possible, you should support this amendment that I'm currently presenting to you. It makes the date change. If you choose not to have the penalty take effect for the December 1 time frame, then you would oppose this amendment that I have before you. With that, I think that all it does is it makes the penalty provision become effective immediately upon the

signature of the Governor for the tax bill that is due and owed for personal property taxes on December 1 of 1989. I would be happy to answer any questions regarding the amendment to the committee amendments, Mr. President.

SPEAKER BARRETT: Thank you. Any discussion on the amendment to the committee amendments? I have four lights on. Would any of you care to discuss the date change? Senator Hefner, please, followed by Senators Schmit and Wesely.

SENATOR HEFNER: Mr. President and members of the body, I support the Hall amendment because we need the effective date for the penalty backed up to November 30th because part of the personal property taxes are paid on December 1st. And if we would wait till January 1st, well, then we would not...could not levy a penalty on those and that was not the intention of the Revenue Committee. And so I would say, let's support the Hall amendment. In fact, we really need it on the bill. And so I would urge you to support that.

SPEAKER BARRETT: Senator Schmit, did you care to discuss it?

SENATOR SCHMIT: I have a question for Senator Hall.

SPEAKER BARRETT: Senator Hall, would you respond?

SENATOR HALL: Yes.

SENATOR SCHMIT: Senator Hall, did I understand you to say that you were going to propose an amendment that will strike the 20 percent penalty for failure to pay the taxes when due?

SENATOR HALL: That's correct, Senator Schmit. It immediately follows this amendment.

SENATOR SCHMIT: Will there be any penalty provision in the bill then for failure to pay the taxes when due?

SENATOR HALL: No, as there isn't one currently in statute. The only penalty provision would be the 14 percent interest that accumulates when taxes are not paid promptly.

SENATOR SCHMIT: That's a part of the statute now, right?

SENATOR HALL: Correct.

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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

I thought it was preferable to the committee amendments. I didn't vote for the advancement of the bill because I think there are still deep problems with that proposal. My concern here is that we have a proposal where you propose to wipe out the penalty but the penalty for nonfiling is still a substantial penalty and that's in the existing statute. And my concern is that we are confused on this floor, I don't know what the taxpayer is going to be feeling like out there when he or she has to make an assessment of whether or not they own personal property. So I'm somewhat concerned about it. I'm not sure where we're coming from.

SPEAKER BARRETT: Senator Wesely, did you care to discuss it? Thank you. Senator Hall, no other lights, any closing?

SENATOR HALL: Mr. President, the time change that the department asked for, which is the amendment that we have before us, would change what was drafted in the committee amendments of January 1, 1990 to November 30 of 1989. The reason for that is there is a payment on personal property tax that is due and owed on December 1 of 1989. The department has requested the change so that when the bill becomes effective upon the signature of the governor that the penalty provision will become effective for that next payment. The fear is there that individuals will not pay their personal property taxes because they think that the personal property tax has become unconstitutional because of all the suits that have been before the courts and the recent decision that the court has returned in the Enron case. That is their argument on behalf of the penalty provision and on behalf of the change that I offer for them in this amendment. I would urge the adoption of the amendment.

SPEAKER BARRETT: Thank you. The question before the body is the adoption of the amendment to the committee amendments. Those in favor vote aye, opposed nay. Record, please.

CLERK: 28 ayes, 0 nays, Mr. President, on adoption of Senator Hall's amendment to the committee amendments.

SPEAKER BARRETT: The amendment to the amendment is adopted.

CLERK: Mr. President, Senator Hall would move to amend the committee amendments. This is the one, Senator, that would strike Section 1, I believe, of the committee amendments. (The Hall amendment appears on page 107 of the Legislative Journal.)

SENATOR HALL: That's correct.

SPEAKER BARRETT: Chairman Hall.

SENATOR HALL: Thank you, Mr. President, and members, the amendment that I offer is the one that I stated earlier would strike the penalty provision in LB 2. Prior to the introduction of LB 2, there was no penalty for filing your taxes late. The only thing you had to do was pay 15 per...or excuse me, 14 percent interest on what you owed and that, for a number of years, till the introduction of this bill, was felt to be an adequate control on late payments. With the introduction of LB 2, the change that would be made was a 50 percent penalty of the total tax owed. What the committee amendments would do would change that to 20 percent. My amendment would strike the provision altogether. It would just strike any penalty at all, outside of the 14 percent that you would have to pay in interest, and leave the situation as it currently exists. I do not think that it is fair that these individuals be required to pay anything more than the interest that is owed on the tax bill. What we're doing here is we will be doing exactly what Senator Schmit alluded to and that is we'll be putting a number of individuals who currently, for whatever reason, and most of them because they can't afford it, most of them because they can't afford it, pay their tax late. And it doesn't matter if your tax is late one day, one hour, one month or one year, the penalty is the same. I have not heard from any of the assessors that this is a problem. What this is, I think, is a boogey man that is out there that's been presented so that individuals will file their taxes, so that folks...you know, the argument has been made that many, many individuals are not going to file their taxes because of the Enron decision. Many, many folks are going to just forget that they have to pay, say we don't have to pay our personal property taxes. Ladies and gentlemen, that is not true. Those individuals who are familiar with the situation before us are individuals who have paid their personal property taxes. They have gone the route of the court system because they can afford to, they have attorneys either in house or on retainer and they have worked the system. The people that will be affected by this penalty provision are the folks who don't have a clue as to what we're doing down here this week, or don't care, or don't pay their property taxes on time because they forgot or the milk check didn't come in yet, or they didn't sell that herd of cattle yet and they don't have the money to do it.

It is not the individuals who are currently in litigation, who understand the system, who aren't going to pay their taxes. They're not going to be penalized. They're not going to be scared by a penalty provision. They're going to say they put a penalty provision into place, we don't want to spend any more money than we have to, we'll pay our taxes, we'll pay them under protest, that's what we'll do. The folks you're going to nail with this penalty provision are the little people. The little people are going to walk in the second week of December because the check came in the mail and they're going to walk up to their county assessor and they're going to say, George, how much do I owe you? And George is going to say, well, you owe me the \$500, you owe me the 14 percent interest and, oh, by the way, the Legislature now says you owe 20 percent of the total tax bill. You owe me six hundred and whatever the 14 percent would be on top of that because they passed that a month ago, and have a good Christmas. That's what the assessor is going to say, not my fault, I didn't mean to do it. I have one call from one county assessor who happens to be an individual who I think is a pretty bright fellow and told me that...didn't want his name used, for obvious reasons, but he said that he has over 1,500 taxpayers who pay late on a regular basis; 1,500 in his county and it's not a real populated county. But he said that amounts to 40 percent of all the personal property taxpayers in his county. They would have to then be subject to that tax. And the reason the committee voted...and I voted negative on this, to reduce it to 20 percent was because the fact was...is that there is a provision for appeal that will allow all these individuals to go before the county board and appeal the penalty provision. All right. And we said, well, if it's 50 percent, the argument in Executive Session was that that's too harsh and the committee is going to...the county board is going to throw all these out so let's lower it to 20 and that way the county board will probably just across the board penalize everybody who is late. Well, ladies and gentlemen, the county board will have to deal, in this case, and I'm sure it's pretty close to being uniform across the state, 40 percent of all the personal property taxpayers in their county. One way or another, even if it's to say, look, we'll forget about it, we're going to waive it, they're going to have to go through the entire process of the appeal arrangement that's provided for in statute with regard to failure to list because all this does is failure to pay, adopts the same provisions for appeal. You go before the county board, make your case, they either make you pay it or they don't. I think it's ridiculous. I think it's ridiculous



to put the penalty in there because of some boogeyman argument that says these people are not going to pay their taxes because of these court cases. You are not going to get the individuals who are out there currently litigating these cases. They're going to pay their taxes. They're going to pay them. They're going to pay them under protest and they're going to continue to file their suits. The people that you're going to hurt by putting this penalty provision in are the people who are totally unaware of the situation, who are good citizens, good taxpaying citizens but for one reason or another cannot pay them in a timely manner. In this case, in this county, 40 percent of the personal property taxpayers, I don't think that is fair by any means. I don't think it's a measure that belongs in the call of the special session and I think that the best measure for our body to leave it with is to pull the penalty provision out of the committee amendments. That's what the amendment would do. I would urge you to support it. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Discussion on the second Hall amendment. Senator Hefner, followed by Senators Withem and Crosby.

SENATOR HEFNER: Mr. President and members of the body, as I understand what Senator Hall is doing, he wants to delete the penalty section. It was a section that we just amended by his amendment to the committee amendment when we reduced the penalty from 50 percent to 20 percent and now he wants to eliminate that altogether. Folks, I don't think we should do that because I think we need a penalty in there. I realize that the county gets 14 percent interest but I don't believe that this is enough. I felt that the 50 percent penalty was too much. Remember, we do have a 50 percent penalty for failure to list property for taxation purposes and all these penalties can be waived by the county board if there is justification and I think we spelled some of those out in our statutes. So I really don't think it's that bad. If the property owner has a good reason for not paying them, well, I'm sure that the local county board would waive that penalty. So I'm against removing that 20 percent. I like to see some kind of penalty on there. The Revenue Committee met yesterday morning and we discussed this at length and it was felt by the majority of the committee that we should have a 20 percent penalty because we felt 50 percent was too much. So we lowered it to 20 percent. I think a 20 percent penalty is reasonable and I believe it's just. Thank you.

SPEAKER BARRETT: Thank you. Senator Withem.

SENATOR WITHEM: Yes, I have a question of Senator Hall concerning how this penalty will work, if he would respond.

SPEAKER BARRETT: Senator Hall, please.

SENATOR HALL: Yes.

SENATOR WITHEM: Senator Hall, if a county collects, let's assume \$2 million of penalties, where does that money go and how is that distributed?

SENATOR HALL: It would go into the county general fund, I would guess.

SENATOR WITHEM: Goes to the county. It does not then get distributed to the other subdivisions? It's just a windfall for the county that happens to...?

SENATOR HALL: I would guess that the penalty, since it is one that is levied by the county, would be either waived or enforced by the county board, would be the counties to do with as they wish.

SENATOR WITHEM: So there would be a built-in incentive for a county board that's attempting to balance its budget or start a new program someplace to be less than supportive of those people who...small people you described who come in to...genuinely forgot or the milk money didn't come in or the other examples you used, there would be a built-in incentive for that county board that's making the decision to turn down those requests for waiver?

SENATOR HALL: Well, the off-the-cuff response would be not one that was interested in being reelected. But I would think, Senator Withem, that that is a very good possibility. I mean, I don't know that county boards would look at it in that vein but they would have the ability to do that. And I think the argument that was made in Exec Session, and I don't mean to take too much of your time, that the county board just in order to not run into the problems of being lobbied one way or another or treating Joe different than they do Sam would just take a standard approach to it and say, we're either going to waive them all or we're going to make them all pay the penalty and no

questions asked. There is no exemptions. It doesn't matter if you're one day late or one year late, you either all get waived or you all get penalized and that is, I think, a real consideration with regard to how they would handle it.

SENATOR WITHEM: Thank you, Senator Hall. I'm learning a lot here today on these bills and I'm making up my mind on a lot of these measures as they are presented and I think that's what a delivery body should be doing. I think Senator Hall makes some good strong arguments. My concern, as I read through LB 2, what it really is is a bill that is going to discourage and penalize the small taxpayer, in this case the person who makes a mistake or genuinely has a cash flow problem, without touching at all these people who have caused the problem for us, the larger corporations. Senator Hall is right. They have large attorneys, they have adequate cash flows, they're going to cover all their bases legally. The people that are going to have the problems with this are going to be those smaller ones. I have a similar concern about Sections 3, 5, and 6, and I will just alert the body. I do have an amendment up that would strike Sections 3, 5, and 6. That's the provision that declares that only those individuals who are parties to a lawsuit declaring a tax illegal or unconstitutional are entitled to a refund. I think there are very strong reasons why that is an unfair, unworkable procedure that maybe the attorneys in here will like because that will guarantee that more and more lawsuits will be filed but it is one, again, that will cause absolutely no damage to the large corporation that has an attorney staff on staff all the time but it will cause problems to the small taxpayer. So I'm going to support Senator Hall's amendment. I'm going to ask you to give favorable consideration to my amendment to strike Sections 3, 5, and 6 as they come up. Thank you.

SPEAKER BARRETT: Thank you. Senator Crosby, followed by Senators Wesely and Schmit.

SENATOR CROSBY: Thank you, Mr. Speaker. Senator Hefner's questions answered a couple of my questions but I do have a little confusion. I have listened to all of the debate this afternoon and I have gotten down to the point now where I am wondering, what personal property taxes do I pay? Well, automobiles come to my mind, the first thing, and so I would like to ask Senator Hall, are we talking about automobiles, personal property?

SENATOR HALL: No.

SENATOR CROSBY: No.

SENATOR HALL: No, we're not.

SENATOR CROSBY: Okay, I didn't think so but I wanted to be sure because...

SENATOR HALL: No, but we are talking about, for example, Senator...

SENATOR CROSBY: Crosby.

SENATOR HALL: ...Crosby, boats.

SENATOR CROSBY: Boats? Oh, all right. All right, that brings it down...

SENATOR HALL: Boats, you pay personal property tax on boats.

SENATOR CROSBY: Yeah. So it's individuals and not just companies and small business.

SENATOR HALL: Very much so. Very much so.

SENATOR CROSBY: All right. My other...all right, then so on the interest that is paid, that's set by the Legislature as it states in those first...the opening part of LB 2, correct?

SENATOR HALL: That's correct.

SENATOR CROSBY: Well, is that the 14 percent interest that has been tossed around this afternoon?

SENATOR HALL: That's...yes.

SENATOR CROSBY: Fourteen...is that the current rate?

SENATOR HALL: Yes.

SENATOR CROSBY: Why does anyone feel that that's not enough?

SENATOR HALL: I do.

SENATOR CROSBY: I mean, what...have you...I haven't had any calls from individuals. I have had calls from and discussions with small businesses and that kind of thing about these bills but I haven't had anyone call and say, I'm not going to pay my taxes. Along with that, like on a boat, do you pay that at the same time as your license just as you do on an automobile? Don't you?

SENATOR HALL: I don't own a boat, I don't know.

SENATOR CROSBY: Oh, you don't. Okay. No, Lorraine says you don't.

SENATOR HALL: All right.

SENATOR CROSBY: So it's all right, that clarifies that for me. I just...I just think we're getting really...

SENATOR HALL: Lorraine must own a boat.

SENATOR CROSBY: I just think we're getting really confused here with who is paying what on what and I do think that the...the penalty sounds unfair to me. Twenty percent even is a lot. So I may vote for your amendment at this time and take a look at it again on Select File. Thank you, Tim.

SENATOR HALL: Thank you.

SPEAKER BARRETT: Thank you. Senator Schmit, please, followed by Senator Hannibal.

SENATOR SCHMIT: Mr. President and members, first of all, I'm going to support the Hall amendment and, secondly, I'm going to support the proposed amendment, I believe by Senator Withem. But I am becoming concerned because once you declaw the tiger and you dehorn the bull and you defang something else, all of a sudden you've got something going across here that we can all vote for and then we've still got a piece of crap and that's what it is, and I think you just as well know it. And I think it's amazing to me, it's absolutely amazing to me that anyone would propose on this floor a bill which denies the citizen the right to use the court system and tries to intimidate them from doing so. Senator Hall is trying to minimize that to a certain extent but to include in a bill Sections 3, 4 and 5 which says, unless you instigate the process, you cannot share even though

the tax is declared unconstitutional is to me the height of something or other and I would have to say arrogance. I'm going to say one more thing and that is this, if you think you've got trouble with 243 lawsuits, so help me, God, you're going to have 2,400 or 24,000 or 240,000 because every single individual that's got the 28 bucks is going to have to go down and file to protect himself or herself. Now, as someone said, Senator Withem, I believe, these lawyers don't need that kind of help, they're pretty good at getting involved themselves because they're trained that way, they're bred that way. It must be a generic quality of a person who becomes a lawyer that he can always figure out a lawsuit and this Legislature then turns right around and guarantees, guarantees the filing of hundreds, if not thousands, or tens of thousands of lawsuits. Someone ought to be...if the people who thought up this bill aren't getting paid off, they ought to be. They ought to be. They ought to be working for the Bar Association because that's where you're going. I can't believe that we have this sort of activity that we try to intimidate and bar the people from using the normal processes to protect themselves. I know it sounds like a campaign speech. I'm not campaigning. I don't have to campaign. I think this thing is so bad that no matter what you do to it, Senator Hall, it's still bad. But I think that you ought to take a look at it. You ought to take a look at the original bill and ask yourself how the bill could have been introduced in that fashion. And when you have done that, ask how you would like to stand up here on the floor and defend the bill. No one recognizes LB 1 anymore. I voted for the Conway amendment because it was the lesser of two evils. I guarantee you I won't vote for the bill as it proceeds across the board. I didn't vote to advance it. It doesn't do what it was purported to do. May buy a little time. Going to add confusion upon confusion. I have to kind of chuckle a little bit when you turn down my amendments which specifically do certain things and then you buy something which no one understands what they do. And so, at this point in time, I think that Senator Hall made an excellent point. The county boards, in the instance of an individual who fails to file, can make a rational decision, was it done intentionally? Was it done accidentally or for some other means or reason? And they can make a decision, shall we waive or not waive the penalty? Shall we assess 10 percent or 20, or 40, or 50? But, in this instance, you're placing the county boards in a very undesirable position. And, as has Senator Hall has said, it is going to allow all of the people a waiver or it's going to charge them all. And I certainly don't

think it's very good business to charge an individual who simply didn't have the money at the time the payment...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...came due to pay the tax. And so to keep it in the bill is ridiculous. But I would suggest to you that you read the bill and read it and read it and ask yourself, do you want to have your name on a bill that tells your taxpayer, your constituent, no, you can't benefit from an unconstitutional tax unless you happen to have a battery of lawyers on hand to advise you on every step of the way to keep you apprised of your rights and to instigate due process. Ladies and gentlemen, as I said before, the courts have chastised us because we have not brought into play the equal protection clause. If you pass this bill and leave in it Sections 3, 4, and 5, they will throw the whole thing out because we have tried to do away with due process. I don't think we want to do that.

SPEAKER BARRETT: Senator Hannibal, on the amendment to the amendment.

SENATOR HANNIBAL: Thank you, Mr. Speaker. I have a question of Senator Hall if he would respond.

SPEAKER BARRETT: Senator Hall.

SENATOR HALL: Yes.

SENATOR HANNIBAL: Senator Hall, I, too, listened to your arguments and agree that you have made some very strong arguments. I'm likely to support your amendment. I would like to ask you if you understand that part of the law about what happens when you do pay your tax and you do apply for a refund and the courts or some deliberative body eventually says to you, yes, you did not need to pay that tax, it was an illegal tax or that was an unauthorized tax. And then we allow the subdivisions, I believe in your bill, in LB 2, a period of as long as two years if it be under duress, if they had to refund immediately. Is that correct?

SENATOR HALL: Right. The original green copy would have allowed four years.

SENATOR HANNIBAL: Four, and we're back to two now?

SENATOR HALL: Well, after the amendments were adopted, yes.

SENATOR HANNIBAL: When the amendments were adopted. Do you know whether after I have paid my tax and I have applied for the refund and I have been given a decree that, yes, I was entitled to refund and I go to my subdivision and the subdivision says, I can't pay you my refund right now...pay you your refund because we don't have the money yet, we have got two years. Do you know whether that refund would collect interest?

SENATOR HALL: It would not.

SENATOR HANNIBAL: It would not. That's correct and I was asking about that and I found that kind of interesting that we can collect interest on the one side and yet we don't pay it.

SENATOR HALL: We don't pay it.

SENATOR HANNIBAL: We don't pay it back. That, together with the idea that the 14 percent, while it was originally passed, was considered at the higher limits, it is somewhat of a confiscatory type of a tax that actually is a penalty right now because it's well above market rates, although maybe not for long, I'm afraid. I have not yet seen any reason why we should have this penalty. It is not in current statute. It is not intended, in my estimation, to answer an emergency for which we have been called, will not do anything about that emergency but rather we are making just a change in tax structure. Is that not correct?

SENATOR HALL: It would just be another, I guess, piece of armor to use against those individuals who fail to pay their taxes, Senator Hannibal. It's just...it's nothing more than a penalty that if you adopted the committee amendments, as we have amended them, it would take effect on the day the bill passed and was signed by the governor.

SENATOR HANNIBAL: Would it do anything to have this penalty down to zero or at 50 percent, does either one of those things do anything about the emergency nature or the \$30 million loss of revenue?

SENATOR HALL: Nothing whatsoever.



SENATOR HANNIBAL: I have a tendency to agree with you. I will support your amendment.

SENATOR HALL: Thank you.

SPEAKER BARRETT: Any other discussion? Seeing none, Senator Hall, would you like to close.

SENATOR HALL: Just very simply, Mr. President, the amendment would strike the penalty provision which I feel is totally unfair, unwarranted and is not something that really was or can be justified by any of the lawsuits that are currently before the courts. I would urge the adoption of the amendment.

SPEAKER BARRETT: Thank you. The question before the body is the adoption of the amendment to the amendment to LB 2. All in favor vote aye, opposed nay. Record, please.

CLERK: 33 ayes, 7 nays, Mr. President, on adoption of Senator Hall's amendment to the committee amendments.

SPEAKER BARRETT: The motion is adopted. The next item.

CLERK: Mr. President, Senator Withem would move to amend the committee amendments by striking Sections 3, 5, and 6. (The Withem amendment appears on page 108 of the Legislative Journal.)

SPEAKER BARRETT: Senator Withem.

SENATOR WITHEM: Mr. Speaker and members of the body, this is a simple amendment. It has not been distributed but all you have to do is take the sheet that is given to you by Senator Tim Hall. We have just taken Section 1 and X'd that out. If you adopt this amendment, Sections 3, 5 and 6 will be X'd out. What they say is that only those people who actually go through the process, in most cases retaining an attorney, not necessarily, they could do it on their own, but only those individuals who actually physically file an appeal will be able to take advantage of a refund, if the tax is illegal or unconstitutional. Let me explain to you a worse case scenario. But this is one...my understanding of what this amendment does is very physically possible to happen. Let's assume this Legislature, in not one of our brighter moments, passes a bill next year that puts a state property tax specifically on

homeowners. Everybody knows that that's unconstitutional. You can't do that, according to the Constitution. The Constitution was amended back in the sixties, you can't do that. But let's just assume that in a somewhat of a drunken stupor here some night for fun we pass a state property tax. Next year some homeowners look at that and they say, well, this is nuts, we don't have to do that. So under the provision of the bill the way it was drafted, prior to the Hall amendment, they would still have to pay the 20 percent penalty. Under this provision of the bill, if each specific homeowner in the State of Nebraska does not retain an attorney or take action on their own to file an appeal, they would get none of the money back. Even though it's a blatantly unconstitutional tax, they would not be able to get any of the money back at all because they did not initiate an action. I agree with Senator Schmit as he characterized this bill, this is the height of arrogance. We are all assuming, and I can understand the feeling of the people that drafted this bill, we feel besieged. We feel like the large corporations in the state are out after us, that they're taking any chance they can get to get any advantage that they want out of our tax system, and they're probably right. They have been doing that. But to correct the statute, to take an action that will lead us to what I see is in a totally opposite direction and that is making our system to right the wrongs that this Legislature does from time to time create so difficult that the only people that can take advantage of it are those, again, that have attorneys on their staff, that have the legal expertise to perfect their claim. It is unfair. The other thing that this bill will do, it will guarantee that your courts will be clogged with lawsuits. I work for a trade association of business people. I have been involved in discussions of people in my particular trade group and those people are talking about, yeah, it may not be a good tax, may not be a bad tax, but if we are going to have an opportunity to get a refund, we want to make sure we do everything we have to. If we pass a law that says any and everybody that wants to take advantage of a lawsuit that some individual may file, has to be party to that lawsuit, must file an identical lawsuit before they take advantage of it, we're guaranteeing that our courts are going to be clogged up. Originally, I was going to file this motion just to bring the matter to your attention and let you know what my interpretation of the statute is. I think the more I think about it, the more I heard Senator Schmit's remarks, the more I heard Senator Hall's remarks, I think that this really is blatantly unfair and I am going to leave it up for a vote and I would ask you to

support it.

SPEAKER BARRETT: Senator Abboud. Thank you. Senator Scofield, discussion?

SENATOR SCOFIELD: Thank you, Mr. President and members, I didn't know Senator Withem was going to bring this amendment but he addresses a concern that I have had about this bill and it seems to me that the fairness issue is the central one here. And, as I am reading this, I think Senator Withem has hit this but particularly in Section 5...and I'm going to give Senator Withem the rest of my time if he would like to comment on just the question I'm raising and why I think this probably makes some sense. It seems to me what we're saying here is that if the bill is found unconstitutional, that you have to have been...you have to have been the person that brought the suit which, obviously, leads then to the clog-up in the courts that Senator Withem is talking about and it raises a policy issue about fairness which it seems to me maybe if you're a similarly situated person, you ought to be able to get the same privileges as the person who actually brought the suit. It looks to me like right now, the way this is drafted, that that doesn't happen. So I think that's a valid question to raise about the fairness issue and I think, at this point, unless somebody can give me a very good reason why I shouldn't support this, I'm going to support Senator Withem. I will give the rest of my time to Senator Withem if he wants to make sure I'm right the way I'm reading this.

SENATOR WITHEM: Senator Scofield, I would agree with your interpretation. I would agree with your interpretation. That is my interpretation also. I really don't have a lot more to add to it at this point, other than to say I think that's your interpretation and I think that's an unfair situation and that's why I'm filing the amendment.

SPEAKER BARRETT: Senator Landis, discussion on the amendment to the amendment.

SENATOR LANDIS: I'm looking for a copy on my desk. Has it been sent around, Ron?

SENATOR WITHEM: Senator Landis knows I explained in my introduction what the amendment does is very simple and I did not think it needed distribution. It merely, on the explanation

sheet...

SENATOR LANDIS: It changes "appellant" back to "taxpayer".

SENATOR WITHEM: Takes out Sections 3, 5, and 6 out of the bill.

SENATOR LANDIS: And that means that you return instead of the words "appellant" to the original word "taxpayer" people who might be entitled to a refund.

SENATOR WITHEM: That's correct.

SENATOR LANDIS: Okay. Mr. Speaker and members of the Legislature, one of those three, and I believe it's Section 6, raises the question of what happens when an appellant goes before the Board of Equalization and makes a case that their equalization, their valuation is a mistake and the Board of Equalization finds that there has been an equalization mistake for them, but leaves, if I understand the Withem amendment correctly, would return to the word "taxpayer" the matter of remedy. Equalization cases have always been handled in a way that it required you to go ask for, make an appeal, be granted remedy upon a specific showing for your piece of property. As you are the one who made the appeal and were the appellant, you are the one who is entitled to relief. Now if by making this change, Senator Withem means that there is somehow an affirmative obligation to treat any other taxpayer arguably in the same situation, that will reverse current practice even if it doesn't reverse current law. Secondly, with respect to whether or not on an unconstitutional tax, should you grant an automatic refund to somebody who didn't go to court? Tough choice. On the other hand, we have had that happen one time and, in fact, we did a refund to all the people who had gotten community technical college taxes paid, lot of them being taxes between one, two and three dollars on their checks that were returned so that the next year in a new form they could be taxed for exactly that, plus the cost of sending them their one, two and three dollar costs of sending them their checks. Why? Because the expense of government goes on each and every year. You know, there is...in one form or another, the obligation to pay for those services goes on. Now it seems to me reasonable to say, listen, we learned from our court decisions. We learned from the conclusions and, in fact, the appellant who has the guts is rewarded for going to court. On the other hand, everyone of us doesn't get the virtue of sitting and standing

still and not challenging the lawsuit and getting our money back, in fact, we pay to government what it is that we're told that we owe and from then forward, if there is an unconstitutional tax, it will not be collected. It rewards in a lawsuit those who go forward and press the claim. It does not reward anyone else and, basically, it says, hey, all right, fair enough, there are some tough things that happen every now and then and maybe there is a mistake in the tax but that we don't go back to square one and start writing checks back and undo the cost of government which in contemplation means you simply then reformulate the tax in a new way to pay for all the old taxes you collected. In other words, you learn from your mistakes but you go forward. We don't go backwards with our tax policy. We don't go backwards with our public policy. If, for example, today we were to undo the death penalty, would we go back to people who had been executed under an un...let's say that our death penalty had been...

SPEAKER BARRETT: One minute.

SENATOR LANDIS: ...found to be unconstitutional, would we go back and give wrongful death payments to people who had been executed under it? No, we would not. We would go forward. Public policy is a river that goes forward and that's true in this situation. I oppose the Withem amendment. Hope you do too. Hope we advance LB 2.

SPEAKER BARRETT: Thank you. Senator Schmit, followed by Senators Hall and Moore.

SENATOR SCHMIT: Mr. President and members, I can't argue with the eloquence of Senator Landis but I can assure you, Senator Landis, although we would not make wrongful death payments to those who had been executed we certainly would not execute those on death row who have not yet been executed. There is a substantial difference. You know, you raised another point. You said the expense of government goes on and, therefore, someone has to pay and so the one who pays is the one who does not have the attorneys retained by the year or the month. The one who pays is the one who does not normally find him or herself in court, that goes on and does his job and performs his daily duties and expects government to be fair and equitable with him or her. We have had a number of occasions when it has been stated that the school boards and the cities and the counties and, yes, the Farm Bureau supported these proposals in

their pristine form whence they first came before this body. I don't blame them for doing that. With the exception of the Farm Bureau, all those entities had a vested interest and had to do what they could do to maintain their income flow. One of the questions that was never raised was, what happens if an individual happens to suffer a reverse? Senator Warner had some hail damage on his corn crops, others had drouth damage, others had other kinds of income. People in salaried positions take reductions. The Goodyear employees took a 30 percent reduction, from \$12 an hour to \$8.50 an hour. What did they do? They readjusted their lives, that's what they did, they took a second look. They said, what are we doing now that we're going to have to quit doing? Has anyone suggested that maybe somewhere along the line the continual escalation of expenditures at every single level of government ought not be stabilized and even reversed. We've done it a few times. We called ourselves back into Special Session, Governor Kerrey did, and said, whoa, the money is not here, we're going to cut it off. All of a sudden wailing and gnashing of teeth was rampant. But, you know what? No one jumped off the 14th floor. No one said, I'm going to quit this government job. No one said, I'm going to march to another state and find a state that doesn't treat me so inequitably. I had people coming to me saying, Schmit, you know, ration up the hours on our jobs, but don't lay anybody off; we'll hang tight. They understood it. We react, in every instance on this floor, as if we had to keep the cash flow going in perpetuity, when, in fact, it's not going to be there always. We raised and spent an additional \$300 million last year, something like that, even though we insisted the tax was not a permanent thing, tax increase. We may have a little problem with that come the next session and the session thereafter. I really think that Senator Withem is on the right course here. We have not a normal situation. We have a situation which is chaos, created in part, at least, by ourselves and our absolute unwillingness to face reality and address the issue, and a responsible manner contributes to that chaos. So we're telling the taxpayers, listen, there may be unconstitutional tax out there, but unless you hire an attorney and file a lawsuit, you're not going to be reimbursed. It may be a small amount of money. You can't talk to an attorney, Senator Landis, for less than a hundred bucks, sometimes not a very good one for that. You've got to file a lawsuit, going to cost you some money to do that. You've got to file the action. So the average taxpayer, who has less than several hundred dollars of money coming back, says, well, nuts.

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: But once again, once again, and I hate to use a term which has been used with some degree of accuracy and some degree of derision, but the fat cat's going to walk away and the skinny cats are going to get skinned. It happens all too often. Senator Warner made a comment here once during the regular session. He said...we were talking about, I believe, the underground tank bill, and he said, we do sometimes perform inequities on this floor, but we don't do it intentionally. I agree with what Senator Landis says to a point, that we just really can't reverse all of these things, we can't do anything, but we ought to not come from the position of saying the responsibility is all the taxpayer's. Part of that responsibility is ours, and I think this is an unusual situation, it is not a normal situation, therefore, I support the Withem amendment.

SPEAKER BARRETT: Senator Hall, please, further discussion.

SENATOR HALL: Thank you, Mr. President, members. I rise in support of Senator Withem's amendment. I think the issue of fairness, who is ultimately going to be caught in this web, has been very clearly spelled out. I would agree, to a certain extent, with my good friend, Senator Landis, but I would also disagree. I don't know that the arguments he makes with regard to the river of state government running forward all the time would hold true. I would say that should we then take that same argument and apply it, for example, to Commonwealth? Should the river of government continue to run by those individuals? I don't think they should. I don't think it should. I have not supported that river to run by, to drown, in this case, those individuals. This is one case, like Commonwealth, where we should make sure that the river does not run on past these individuals. They should have every opportunity, whether they got into the system on time or not, to, if they choose, get a refund for taxes that they did not owe. I mean, clearly we don't want to have state government, local governments continuing to have to open up the checkbook and write out checks to everybody under the sun. We want to minimize that. What you need to realize is that there are many taxpayers who have not filed lawsuits against the state, lawsuits against subdivisions for taxes they have paid. Many, many corporate entities, many, many individuals, many, many partnerships, and sole

proprietorships, the vast majority, 99.99 percent, have not filed lawsuits. Those individuals recognize the fact that there is an obligation to function and run state government with taxes. They don't mind paying their taxes. They'll pay them. They want to be treated equitably and fairly, just like that other .001 percent who have filed the lawsuits, only they do it in a different way. They belly up to the bar, they write the checks, and they say, Legislature, don't let us down. What will happen is exactly what Senator Withem said, is that if you pass the bill, as it's currently drafted, if you leave the sections in that he is trying to strip, you will basically take that 99.99 percent of the taxpayers who haven't filed lawsuits and you will awake a sleeping giant that says, now, wait a minute, Legislature, we didn't mind paying them, we didn't mind having the local subdivisions pay for those goods and services, we deemed that we need those. But now you're saying that the only people that are going to be eligible to receive those back are the folks that basically tried to screw the rest of us. They tried to stick it to the rest of us, they tried to make us foot the bill for them, and they are the only ones you are going to treat decently. You're going to basically slap the rest of us upside the head that have been the good citizens, that have paid the taxes. You're going to see the 25,000, the 250,000 individuals pay their taxes in 1990, they're going to pay them, but they're going to pay them under protest. We don't change that,...

SPEAKER BARRETT: One minute.

SENATOR HALL: ...we don't change that in this bill. We can't stop those individuals from filing under protest and then waiting to see. And I guarantee you, I've talked to the tax attorneys in Omaha that work for these big companies, the ones that are litigating these cases right now, and they have said that you will see, across the state, when it comes time to file taxes in 1990, individual after individual file their taxes under protest. And, if you pass LB 2, that is going to be the main reason for that protest. They are going to say, look at this bill, folks. You're going to have every accountant, every attorney advise every 1040 individual who files taxes, and every pulp mill attorney who puts out forms for 75 bucks, that makes wills up and does corporations, they're going to be advertising that for \$75 they'll fill out this form for you to let you protest your taxes. And there are going to be individuals who think, well, heck, for 75 bucks, or whatever the figure will



be,...

SPEAKER BARRETT: Time has expired.

SENATOR HALL: ...I need to do that.

SPEAKER BARRETT: Senator Moore, please, followed by Senators Chambers, Hefner, and Bernard-Stevens.

SENATOR MOORE: Mr. Speaker and members, as often, Senator Withem has brought us a proposal which at first glance is very appealing, very good, seems he says it very fair, and he says, and Senator Scofield and others said, how possibly can you argue fairness in the other way. And we all know that fairness is in the mind of the beholder in this body, and you can't argue it the other way, you can't argue it since Senator Chambers said we're a bunch of dumbbells, is that the right word?

SENATOR CHAMBERS: That's one of them.

SENATOR MOORE: One of the right words, us dumbbells resort back to very elementary nursery rhymes. The Little Red Hen asked people to help her out, mix the flour, beat the chaff, got the bread made, everyone wanted to come join in. The Little Red Hen said, up yours, basically, you're not going to do it. And that was, to me, as a little kid, a basic, was a very basic issue of fairness, don't expect to reap the profits if you're not willing to do the work. Now, granted, that may be stretching that nursery rhyme a little bit, but yet it's still there. It's a good stab at trying to argue the fairness and I will stand by it. But as Senator Landis has said, much more eloquently than I can hope to, the fact of the matter is, what is the prudent thing to do in the state? What is the prudent management of state dollars, local dollars? I mean, it sounds very fair, but you're putting a risk, you're increasing what is at risk by about four-fold, from 30 to 120 million dollars, and what are you going to do about it? I can...you know, it's very tempting to grab onto Senator Withem's amendment. But I firmly believe the prudent and wiser management will be to oppose it, because once we, hopefully, whether at some point in time we adopt Senator Owen Elmer's amendment, or Senator Schmit's amendment, we're going to fix the problem. But is it fair to go back, because...go back and refund everybody's money all the way back? That's a tremendous burden on localities and governments all across the state. So I urge that...to ignore that first glance

at Senator Withem's amendment, think about the consequences and oppose it.

SPEAKER BARRETT: Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, at first glance Senator Withem's proposal is excellent, and at second glance it is "excellenter". I like what he has proposed, and it is fair. Senator Moore asked, what is the prudent thing to do? I think it is always prudent for the government to be fair, especially when the problem was created through the government's unfairness. If a tax is unconstitutional, it means that the Legislature undertook to do that which the Constitution said it cannot do. Since the Legislature has coercive power and can compel people to do things, to extract an unconstitutional tax is no different from the old days in England when you drive down the road and a highwayman, or in these days a highway person, highway creature would put a pistol on you and say, your money or your life. People must do what the government orders them to do under pain of a sanction. In view of the fact that the government can coerce, when a determination is made, in court, that such a coercive act was illegally placed by the Legislature, anybody who suffered should be made whole. The term justice, simply defined, means giving a person his or her due. Your due is to be restored to the position you held prior to being unfairly treated. And, in this instance, I have to think about what Senator Landis said on the death penalty and get an analogy that might be more appropriate in terms of what we're talking about. If a person is illegally imprisoned, most states, I haven't read of any that wouldn't do it, will compensate that person for the time that they spent in jail that they should not have spent there. The time cannot be restored. In this society money in the means by which you try to make a person whole when that person has been wronged. I was in a position, a few years ago, and it might have been before Senator Moore came down here, trying to get us expenses during session. The only one who really pushed that through court, and I had to bring pressure on the Attorney General, was myself. But when the case was won it was an instant of, well, it wouldn't be the Little Red Hen, the black panther receiving the benefits, all the white mice and rabbits got theirs, too. And some of those were even out of office. Some of them had left office, as legislators, and they still received back money for the expenses they were entitled to while they were in the Legislature. So when it came to our situation, I'm not aware of any senator

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

hope to speak to a couple of questions. The first...or a couple of points. The first one, I've heard a lot from Senator Hall and others about the little person. But, you know, I think what the body needs to keep in mind is that the middle person is going to be hurt no matter what we do. Our tax policy in this state has been so screwed up for so many years that we are in such a corner that, if we pass the Withem amendment, we open the door for large corporations to take the walk, and we know who will pick up the tab for that, we know who will pick that up, and we'll have to do something, obviously. If we pass the Withem amendment, the little people are still, at some point, not going to get the things that they should have because...that's another issue that I'll get to in a minute. I know that doesn't make much sense. I think what I'm trying to get to is something that has been swelling in me for a long time listening to this debate. One of the things that I naively, I guess, thought when I came to this Chamber, and I hope when I leave I'll still believe it, still naively, I suspect, is that we are elected as government officials to care for the people, to take good care of the money of our people, and to spend it wisely. I find it intolerable, I find it intolerable that we, as a body, regardless of the reason, say that, yes, we have collected the money unconstitutionally. The courts have said that to us. We're collecting it unconstitutionally, but if we give it back, because it's the right thing to do, if we allow you to give it back, government will be hurt. We may not be able to function as government like we have in the past. So what we find this body turning itself into, if they would just look at it, they are trying to preserve government above the people, and that is not what we are based upon, that is not what any political party says that they believe in, though I doubt it from what I've heard here today. We are basically saying that we want to punish people, and if you have enough money, and if you have enough advice, I know people that are so ignorant of tax laws and what to do, they would have no clue of what they had to do, whether it was protest or not, they would dutifully pay because they believe in us, sadly enough I think sometimes. What we are saying here today is that to all of those people, and there are thousands of them out there, if you don't know enough to protest, if you don't know enough to file a fee, if you can't afford an attorney or don't hire an attorney, we will not pay the money that we know we've collected unconstitutionally. We know it's wrong, but gosh we might get...hurt government. And then we turn it around and twist it around to say, if we as government are hurt, that means the

money going to the people will be less and will hurt the people. We can't hurt the people, therefore, we must protect our money that we're getting illegally. It's a warped, circular logic. This Legislature is in such a corner that there is no way out, without hurting the people, period. That's how bad the tax policy is. When you're in a corner, and I wish Senator Moore was here, I'd tell him what my father told me a long time ago. There are two things you can do, number one, if you've taken something from someone else illegally, and you've found that it is improper for you to have it, you give it back, and you try to show a little extra kindness for that, but you give it back no matter how hard it hurts,...

SPEAKER BARRETT: One minute.

SENATOR BERNARD-STEVENS: ...because it's not yours. That's the way it is with tax money right now. The second thing is when you're in a corner and there is no way to go but to hurt, you have to do what is right. In a democratic system where apparently we are supposed to trust, take care and trust, and trust the money that has been given to us. We have no right to keep that money on the pretense of protecting government, because if we profess that the government is the people, then by giving the money back to the people we are not, in fact, decreasing government, we are establishing exactly what we are, a democratic country that does things properly with our people's money. And, if we've messed up, we will then have to come back and correct the system, which is what we have to do. I urge the body to support the Withem amendment because of what we are, not because of what we are afraid of. Thank you.

SPEAKER BARRETT: Thank you. Senator Smith, please, followed by Senators Kristensen and Hannibal.

SENATOR SMITH: Thank you, Mr. Speaker. I'm standing here as a person who knows not very much about taxes and tax law, and I'd be the very first person to admit that. But I'll tell you right now, and on the surface, Senator Withem, what you're proposing sounded good to me and sounded fair. But in talking, and again I have to admit that I've gone out and talked with lobbyists who represent the cities and the counties, who are the reasons that I thought we were down here, to try to prevent further erosion. I am one of the people, also, who very loudly and specifically have said over, and over, and over again throughout this whole interim no way, I'm not...I don't want to be a part of a Special

Session. I don't think that we're ready, we don't have a consensus, and I think that's been evidenced...I mean, I think I'm right on that. We don't know what we're doing. I think things are moving really, really fast right now. I'm really getting frightened about what we're doing here in the heat of the moment. You know, I voted for some things that maybe are not right at this point in time, but I finally decided I'm going to make a point, and that is let's make it fair for everyone. And I think that's what you're trying to do with your amendment. But on the other hand, the point has been made to me, by these very people, this is the essence of the whole thing. We're down here to try to save the local subdivisions from further erosion. On the other hand, if we do this, if we accept your amendment, then what are we going to be doing to ourselves and to these people who these very services that we're talking about, out in those counties, towns, whatever you...wherever you are at in the State of Nebraska, in the subdivisions, we're trying to protect because won't this open the door to the possibility of losing everything? If we do that, what about those services that we were talking about trying to save? Who is going to pay for the total loss that could result? I'm not laying a finger on you, Ron. I'm just asking someone, who...is there anyone that will respond to me about this concern? Yes, Ron, if you think that...I mean, if you can clarify that for me, because that's a real concern that I'm now feeling.

SPEAKER BARRETT: Senator Withem.

SENATOR WITHEM: Senator Smith, I don't want to use much of your time. I would just say that I think there are probably other things we can do to stop the bleeding, that's the cliché that's going around. I think this particular thing is wrong and is bad. I would be more than happy to sit down and work with the subdivision folks to work out an alternate way to stop the bleeding. But to say that an individual has to have been smart enough, rich enough, capable enough to have been a party to an action before they get back their funds, I don't think that's the right way to do it. And I don't want to take any more of your time. I'll finish with my closing.

SENATOR SMITH: Okay. And I will respond a little bit to that, too, Ron, because that appealed to me, when you said that, immediately. I agree with you with that whole philosophy on the surface, because I think it's totally unfair that only those who can afford could get off the hook, is what it really amounts to.

Except that, if that is the only way we can prevent further erosion at this point in time, then maybe that's what we're going to have to accept for right now, and then come back and do something to totally revamp the system and change it, which I am very supportive of doing. So I want you to know that probably, unless someone can alleviate my fears here in another way and make me see that this is not what is going to happen, I can't vote for this amendment, even though I totally understand what you're trying to do, and I agree with it. But I don't want to create more problems that we already have at the local level, and so that we totally lose our base for all the services that all of those people out there that we're talking about are bleeding, are enjoying, because we're talking here about our schools and everything else, I think. So I'm just hoping that someone else can expound on this, and, if they can't, I may be voting wrong, but I'll have to vote against the amendment. Thank you.

SPEAKER BARRETT: Thank you. Member from the 37th District, Senator Kristensen.

SENATOR KRISTENSEN: Mr. Speaker, I'd like to pass for the moment.

SPEAKER BARRETT: Thank you. Senator Hannibal, followed by Senator Scofield.

SENATOR HANNIBAL: Mr. Speaker, I, too, am looking around the room and realizing there is not very many people here to listen to. But I would like to ask Senator Hall a few questions, if he would respond, and I want to make a couple of comments.

SPEAKER BARRETT: Senator Hall.

SENATOR HANNIBAL: Senator Hall, we have right now before us appellants that would fall on about 243 in number right now that this legislation is designed to frame the issue around. Is that correct?

SENATOR HALL: Correct.

SENATOR HANNIBAL: And, if this amendment is passed, then we no longer have just 243, we have all those who pay personal property tax.

SENATOR HALL: Senator Hannibal, that...

SENATOR HANNIBAL: Possibly?

SENATOR HALL: Possibly, yes.

SENATOR HANNIBAL: All right, if...let me further my question then and say, if some of these cases, which it is my understanding some of these cases are dealing with...going to the total issue of classification of all people who pay boat tax, all people paying motor tax, all people who pay airplane tax, all people who pay business equipment personal property tax. If those classes...some of the appellants are in those classes, and they're saying they want their properties, their tax reduced equal to zero, and if this amendment passes then all people in that category would have their property reduced to zero, their tax reduced to zero.

SENATOR HALL: Okay, not with the...not with the simple passage of this amendment. They would...the court would still have to determine, I mean, we cannot,...

SENATOR HANNIBAL: Assuming the amendment is passed, assuming the bill is passed, assuming the cases are upheld in court.

SENATOR HALL: Assuming the amendment is part of the...as it is...excuse me, now let me make sure...I want to make sure that the question...

SENATOR HANNIBAL: Assuming the amendment is...

SENATOR HALL: Okay, Senator Withem's amendment would be passed.

SENATOR HANNIBAL: Right.

SENATOR HALL: We strip the three sections out of the bill.

SENATOR HANNIBAL: Correct.

SENATOR HALL: Okay. The answer would then be, in my opinion, no. And the reason I say that is because I still think that those individuals would have to make an appeal for...I don't think that any process goes out the window in terms of whether or not they get their taxes back. I don't see anywhere in the current statutes where if the court upholds those 243 cases



before the...I think that those 243 individual entities would, yes, get their taxes refunded. I still think anybody else who wanted to go that route would still have to file.

SENATOR HANNIBAL: They have to make an application.

SENATOR HALL: Exactly.

SENATOR HANNIBAL: Okay. They would have to go through the application.

SENATOR HALL: They would have to do that in order to generate that.

SENATOR HANNIBAL: Okay, I appreciate that. Thank you. I'm going to oppose the amendment in spite of the fact that that we've had many people make some pretty good arguments about the home, mom and apple pie issue of this. I'd like to remind you of two things, and I'm going to run out of time, probably, and I may put my light back on. Two things. One, we're talking about something that has been proven unconstitutional, and yes, it's true, it was, because of the federal 4-R Act. And then because of the domino effect, the federal 4-R Act forced us to put a tax to zero that we didn't really think was unfair. Most of us in this room didn't think it was unfair. I think most of the people didn't think it was unfair, but the Constitution said, because of the 4-R Act it was unfair, then, therefore, the domino effect, remember how...why we're here, it says because that was unfair, now pipelines and transmission cables and all these things are unfair, which we really don't think are unfair, I didn't think was unfair, and by the way I do pay personal property tax because I pay business personal property tax. Remember, most individuals do not pay personal property tax. They don't pay tax on anything except boats, motors and airplanes, and business equipment and, of course, we do pay on our vehicles. But, as I understand this,...

SPEAKER BARRETT: One minute.

SENATOR HANNIBAL: ...motor vehicles have nothing to do with this bill, would not be affected. One of the Revenue Committee counsels is saying that is correct. So we're talking about boats, motors and trailers in one case, both motors and airplanes, and we're talking about my business property tax I pay on my desk, my calculators, computers, those kind of things.

So what you are going to do is say, I'm going to get my tax back. I've already paid it, by the way, I'm one of those people who have already paid it before December 1st. I'm going to get it back, if I refund after these cases are tried, I'm going to get it back, and all my business counterparts are going to get it back also. Me, the little guy, the businessman, we're going to get all this back. Who is going to pay for it if governments have to go on? You people who don't pay it right now. Now, if you think you're trying to help the little guy by putting this amendment on, I would suggest to you, you're helping the entrepreneur, the proprietor, the business corporations, the partnerships, the people who own motorboats, which I own one, by the way, people who own airplanes, I do not own one of those, and the motors that go along with them.

SPEAKER BARRETT: Time has expired.

SENATOR HANNIBAL: You're not helping the little guy by putting this amendment on. I think you're going to have the little guy pay the bigger people back.

SPEAKER BARRETT: Thank you. Senator Scofield, Senator Chambers on deck.

SENATOR SCOFIELD: Mr. President and members, I'm glad Senator Withem brought this amendment because I think it gives us a chance to vent our frustrations with the box we're in here. And we're essentially...as the argument here...Senator Landis makes the point, and Senator Bernard-Stevens and others, we're caught between what is fair and what is practical here. And we're largely here, first, because of tax decisions made back in the sixties, when we took personal property off, and then, of course, the 4-R Act. So here we are saying I'd like to do something for the little guy. Senator Hannibal has said what the consequences of this are. And I guess I'll have to confess when I said to Senator Withem a little bit, if somebody can't give me a good reason for voting against this, I'm going to vote for it, because I wanted to hear this kind of debate, because I'm not sure people have really thought this through yet and really thought about how insidious that 4-R Act is, and yet I'm afraid we're stuck with it. I tried desperately, over the last year and a half, to get the thing changed; I don't think we're going to get it changed. So here we are faced with a bill that still kind of sticks it to the little guy, and there isn't any relief unless you sue, unless we do the Withem amendment. Yet

under the Withem amendment, I'm afraid if we do that, we'd start the avalanche. And guess who is going to pay that? The little guy is in terms of loss of services out there, whether it's in the school district, or the cities or the counties. It's not a very nice spot to be in. We're really in a crummy spot because we have a fundamentally unfair tax system in the State of Nebraska and we can't fix it under the current call. So, what do you do? Well, I guess you don't just stomp out in anger, as much as I'd like to. And I'd really like to vote for the Withem amendment because I am so angered by this session, and I am so irked at just circumstances beyond all of our control. But because we're in that box, with the 4-R Act, and we're going to get to that when we get to LB 7 and probably see even more galling things that we're going to have to do just to prevent our cities, our counties, our schools, our fire districts and everybody else going down the tube. And I guess I'd like to say I told you so, and the people that called for a broader call were right, because we can't get there from here under the current call. We're stuck. We've got to vote for stuff like LB 2, that is galling, that is unfair to the little guy, but I guess if you want to look at what is the greatest good or the least evil kind of standard, the least evil is probably voting for LB 2 and not supporting Senator Withem's amendment. But I guess that is why we're having this debate, is it's so frustrating because we can't get where we'd like to go. And our only choice would be to either call ourselves back in and go where we want to go, and clearly the consensus isn't there. I think some of the answers there, after our weekend up in Platte River Park, some of the answers are to be found in the recommendations of the School Finance Commission. But to put all those pieces together requires many more debates like this and many more discussions like this so we clearly understand what our limits are. So we aren't going to make our tax system fair by passing the Withem amendment, much as I'd like to. So I guess I'm going to vote against it and bite my tongue and gag and hope we finally get to a fair tax system. Thank you.

SENATOR LABEDZ PRESIDING

SENATOR LABEDZ: Senator Chambers, on the amendment to the committee amendment.

SENATOR CHAMBERS: Yes. Thank you, Senator Labeledz. Members of the Legislature, the last few speakers, especially Senator Scofield, had indicated the difficulties in trying to grapple

with the issues raised by Senator Withem's amendment. The problem is similar to what Senator Bernard-Stevens indicated. A lot of people in here feel more affinity with governmental subdivisions as entities than they do the people who are to be served by those subdivisions, the people for whose benefit and welfare those subdivisions exist. Government exists to do for the people what they can't do for themselves, and that doesn't mean to rob them. Saying it a little differently than Senator Bernard-Stevens said it, when a thief is caught with the goods, he has to give them back and we understand that if we're talking about ordinary, natural persons. What this body ought to consider doing with all of these bills is putting in a provision that within 30-days after passage the Attorney General will be required to take an original action to the Supreme Court to challenge or have determined the constitutionality of these bills and require the Supreme Court to deal with them on an expedited basis. If we mean what we say, and we don't want unconstitutional taxes extracted from the people, knowing that if the legislation is enacted without Senator Withem's amendment, the people will be out of that money, they can't get it back, and an unconstitutional, in effect, illegal act had given these political subdivisions a windfall. If you are under the care of a trustee and the trustee robs your till, how can that trustee be said to be discharging his or her fiduciary duty? If the government is to be put in a position to steal from the public, how can it be said that the government is stealing from the public for the public's own good? That's what we're saying here. We spend a lot of time together on a day like this and pretty soon we think we're the whole world and don't realize that there are people out there hurting who look for some relief from this Legislature. Then they hear the legislators stand up here and say, it's too inconvenient on these political subdivisions if we require that justice be done to the people. Senator Hannibal, when you talk about some of these bigwigs gaining from the system created, should Senator Withem's amendment be adopted, that is no basis for voting against the establishment of a proper principle of government operation. But it also shows the problem with this system. Any time the ordinary person gains something in court, by way of a legal decision, the big people will gain from that small person's effort, it will always read down to their benefit. And the same way if the Legislature enacts a law that benefits the ordinary people, since the corporations are defined as persons they benefit automatically. But how many ordinary people, or even small businesses benefitted under LB 775? We can always

pass laws and the court can give decisions that will benefit only the top crust of this society, and it doesn't filter down. But if any benefit is derived by the small person, then the big people will trample them into the dust as they run to take advantage of it, and we stand and sit here, as a Legislature, afraid to put into law a system that will make possible the opportunity to obtain justice. And because some of the people out there who make their money...

SENATOR LABEDZ: One minute, Senator Chambers.

SENATOR CHAMBERS: ...trying to persuade us to work against the interests of the people can change our minds. And, Senator Smith, I understand what you're saying about a lot of things happening and you're unsure what is happening. I said, in the beginning, I feel naked on this session. These bills were not given to us with any lead time, amendments were not presented in time enough for us to digest them, so we have to go by what our sense of justice is and where it leads us. If I make a mistake during this session, I want it to be on the side of benefiting the people. But I still think we ought to hold to that primary principle of medicine, first do no harm. We ought to adjourn sine die and don't do anything, then people at least know where we are and we haven't created a worse situation. But you watch, in the next few days, they're going to be twisting people's arms, they're going to have people doing flip-flops, and much of what was...

SENATOR LABEDZ: Time is up, Senator Chambers.

SENATOR CHAMBERS: ...done today will be undone.

SENATOR LABEDZ: Senator Warner, on the amendment to the committee...to the Withem amendment.

SENATOR WARNER: Mr. President, members of the Legislature, as I understand the impact of the amendment, if it is adopted, because of the nature of some of the lawsuits at least, as Senator Hannibal was indicating, which result in class action, if this amendment is adopted, the potential is that something in the vicinity of maybe 120 million would have to be refunded because of all the business equipment and any other lesser items that were referred to. And the refund doesn't come anywhere but out of the people who are left to pay. And either you're going to increase the sales and income tax, or you're going to

increase the property tax to refund the 120 million, or the 30, or 40, whatever it ends up. And those who are on the side of the little people better vote no on the amendment, because that is the only way you're going to help those who can't help themselves. I would urge that the amendment be rejected and the bill remain as it is.

SENATOR LABEDZ: Senator Schmit.

SENATOR SCHMIT: Mr. President and members, 55 years ago a new President, who later became revered, didn't like the decisions of the Supreme Court, so he said I'll fix those guys, I'll appoint some new members, and I will pack the court and I will get the decisions I want. This Legislature, not liking the decisions of the court, has said, well, we can't tell the court what to do, we don't like what they're doing to us so we'll take another step; we will deny the citizen access to the court. Pretty effective system. I heard Senator Warner, Senator Hannibal, Senator Scofield, Senator Moore, all my esteemed colleagues, all with a lot of experience, all members of the Committee on Appropriations, which, very frankly, hand out the money, I'm not saying that because they are members, have a kinship in a way with the subdivisions who stand to lose the money, but they recognize that certain functions have to be provided for, probably more so than I do. They recognize that there is usually a way to provide those functions. But what I'm telling you is this, Senator Warner says the little people are going to pay. Ladies and gentlemen, as has been explained before, the little people always pay. The little people always pay, and make no mistake about it, more so today than a year, five, ten years ago. The argument that if we vote for the Withem amendment that somehow or other the big guy is going to get out, the big guy is going to get out. We passed LB 775, and then we had a loophole in it so that people who laid off people could actually still qualify for the benefits, so we said we've got to plug that loophole, and so we did. Then a company, a local company, didn't lay anybody off, but they rolled back the salaries of some people from \$12 an hour to \$8.50, taking about \$21 million annually out of the pockets of certain employees. I want to emphasize I am not critical of that company. That management has to know what they have to do to survive in a competitive industry, and they did what they thought they had to do. But I would suggest they probably still qualify, Senator Wesely, you might check it out, for the benefits of 775. Didn't lay anybody off, but it is directly contrary to the arguments I

heard on this floor time, after time, after time about what's going to happen; going to create new jobs, bring in new money, hire new people, turn this over seven times. Ladies and gentlemen, what happens when you take 20 million bucks out of the economy? What happens when you do that? Somebody hurts. But this combined legislative intellect isn't smart enough to outsmart the least experienced businessman when it comes to making his or her business survive, that's why they're good at it. They do the things they have to do to survive. I've heard it said here this afternoon we're down here to preserve the tax base of the local governments. Nuts! That's not why I'm here. I hope that 47 or 48 others are not here for that purpose. We are here, ladies and gentlemen, to devise and craft, and pass into law a fair and equitable tax system. And, if that means that the local government is going to lose 40 million, or 120 million, so be it. If that means it's preserved, so be it. If that means it enhances their coffers, so be it. I don't think that's what we want to do. But the point is this, we are here to devise a fair system. We're collecting the tax...

SENATOR LABEDZ: One minute, Senator Schmit.

SENATOR SCHMIT: ...illegally. And we're saying to those of you who are not in a position of influence, who do not normally hire lawyers, you're going to be barred, you're going to be barred. And I cannot believe some of my colleagues who are saying at all costs we've got to deny these people access to the courts, because the reverse of that is tens of thousands of lawsuits, tens of thousands of filings. If you think you've got problems with the court system today, ladies and gentlemen, what will you have then? Again, I want to tell you, we're not here to preserve the tax base for the counties, or the cities, or the schools, we're here to draft and devise a fair and equitable tax system and if that is outside the call, then we ought to go home, we ought to go home. We ought not to have been here. There were those who insisted we didn't need to come, and all of a sudden it was an emergency that we get here, and we didn't see the bills until the last minute, and we testified before the committee without having the benefit of the amendments.

SENATOR LABEDZ: Senator Schmit, your time is up.

SENATOR SCHMIT: And now we're being told by all means preserve the local tax base, even if it whipsaws the little guy around some more. Regardless of how you do it, you're going to do it

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



will be changed, maybe he'll change it tomorrow, but that let's Enron off. The current thinking is that that amendment lets Enron off. So we're not doing all that much there. Then we've taken off the penalty for late payment. I didn't like that penalty, certainly not when it was at 50 percent. I was pleased that the Revenue Committee saw fit to reduce that to 20 percent, which I think was reasonable. But we've taken that off. So, there again we're not doing anything to alleviate the problem. So, now we are here with another amendment which will cost somewhere in the vicinity of possibly \$120 million. Are we going to now pass a third amendment which, in effect, says to all those people out there, there is no problem, folks, the Legislature is saying to you and to everybody else there is no problem, we're not going to do what we can do to correct what most people out there and most subdivisions do think is a problem. I urge you to defeat the Withem amendment.

SENATOR LABEDZ: Thank you, Senator Lamb. Senator Kristensen, on the Withem amendment to the committee amendments.

SENATOR KRISTENSEN: Thank you, Madam Chair, members. Senator Byars, I want to respond just real quickly to you. I do think that we're trying to work towards a long-term solution, that truly is what we're going to have to get accomplished in this session and, if not now, as soon as we can when we meet in January. Throughout the day I've been very supportive of most of the amendments that have been offered. I think that they do look down the line, and let's don't patch it, let's try to solve it. Unfortunately, this is one of those amendments that I have to stand up and say something about because I think it perverts the process a little bit. And I don't know about the amount of dollars that are going to be lost. I don't have those figures, I don't know if they are accurate, I don't know where they've come from. But what concerns me is the system here of how we're going to do these refunds. What we're here to do is things to the future. What the amendment looks to is for refunds on past taxes. The analogy I want to use is if we have a school with asbestos and some student is injured, now he's going to go to court and he's going to sue and he's going to prove those people are negligent, they are so negligent they've got asbestos and it is causing injuries and death, in fact, their child was severely injured. So they're going to go to court. They're going to probably win, let's say, and they're going to get a judgment, and they're going to get paid for their injuries, right? Now does that mean that every other kid in the school ought to get

paid? No, our system of justice says, they go and prove their claim, they go and prove their damage, they go and show us what we've done wrong. That is the reason that you've got the appellant in here right now, that's the reason you have to have filed your claim. You've got to go off and affirmatively do something. Again, I don't know about the dollars. The dollars shouldn't make any difference in your decision, it's whether the process is fair and right at this point, and I think that is the exact reason that we ought to leave that in. And, Senator Withem, I've been supportive of almost all the amendments that have been here today, and sometimes that scared me when I've agreed with you. But, no, just in passing, this is one of the amendments that I think we have to stand up and say the process isn't right here. And it's real easy to go and say, this isn't fair, this isn't fair, look at all these people who have been hurt. That is the reason that we're here, right here and now, to fix it for the future so that we don't have those problems, and that is where we ought to turn our attention to. The refunds, I think we're going to have to leave the process with the appellant and not just to everybody who happens to be in the same situation. Thank you.

SENATOR LABEDZ: Senator Withem.

SENATOR WITHEM: Yes, Madam President, members of the body. Lots of things I wanted to say, lots of things I want to say and I don't really know where to begin, because I offered this amendment, not to kill the bill, I know that is the quick, easy way when you don't like something, just say that it kills the bill; not to pretend that there is no problem, because we all know there is a problem, there is a very serious problem, but to deal with what I see is an inequitable way of dealing with the problem. I'm getting a little frustrated when I hear people standing up here and saying, we've got to deal with the problem; this doesn't deal with the problem; the problem is an unfair tax system; when all this amendment does, excuse me, all the bill does, the amendment changes the bill, all the bill does is to protect us from what we've all said is a totally unfair system. This bill, the other bills, this Special Session does not begin to touch the problems that are out there, and that is what our frustration is. Does this amendment make the system more unfair? No, it doesn't. This amendment simply preserves the status quo, to listen to all the messages that you've been getting out in the Rotunda you would think that this amendment is devising some brand new, crazy scheme that we've never had

before. But what does the amendment do? The bill now calls for some changes, calls for some changes that say that some individuals who may think that the tax is unfair will not get access to refunds from an unfair tax, that's what the bill says. What does the amendment do? The amendment returns us to the status quo. Everything else about this session is designed to preserve the status quo, everything that is put before us, preserve the status quo, don't deal with the problems. We've had problems for two years now. We've been promised that we're going to deal with this problem in its entirety. We've been promised since March of 1988 that we have to get people together, we have to get a broad-based group together to attack this problem. Has that group even been created yet? Have any of you been involved in that? No. There's been a little group, called the Crisis Response Team, that includes three or four lobbyists for some trade associations, and two or three senators. And we're promised that, if we do this stuff, maybe we'll get this other group, this other group created. But have we seen it? No. We have a problem, we've had it for two years. When you have a problem you deal with it, you don't bring this kind of garbage in front of us. What my amendment does is very simply says, if we've got an unfair tax system out there, which we all know that we do, we're not going to bar individuals from recovering under that unfair system. This amendment preserves the status quo, it does not change it. If you want to deal with the unfair tax system, if you want to deal with what is out there, with the \$120 million that Howard Lamb is talking about, and a fairer system of taxation, then let's get at it. If this amendment doesn't go, the next best thing to do, I think, is to adjourn sine die, go home, send the message to the Governor that we want to deal with the problems in its entirety. Senator Chambers' rhetoric is excellent, we want to act like a Legislature. We don't want to act like a bunch of lap dogs who run in here, respond to three pieces of garbage that are put in front of us, and then go home and pretend like we've done something, because we haven't. The proposal we've been talking about at our seminar, I'm not enough of an egotist to tell you that that is the answer. That is only one, small portion of the answer dealing with school finance. There are lots of other things that we have to do. But you don't do those by...

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: One minute.

SENATOR WITHEM: ...going around, throwing up your hands saying we can't find a consensus out there, you do that by building a consensus, and we need to do that. Passing this amendment is the fair, proper, just thing to do. The rhetoric about it killing the bill, endangering local subdivisions, this amendment doesn't do that, our current system does that. What this amendment does is it says an individual that is treated unfairly under the current system has an access to be treated fairly. Senator Bernard-Stevens was 100 percent right. When we're dealing with the rights of government, rights of subdivisions, keep in mind those subdivisions are those schools out there that I stand on this floor and bleed for, that I've spent my entire summer working around this state trying to find a better way to formulate those, the schools that I care for deeply are part of that system. But when you have a balance of the rights of government to take money, and the rights of individuals to be treated fairly, there is only one side you can come down on, and that is the side of those individuals who are treated unfairly. That's what this amendment does...

SPEAKER BARRETT: Time has expired. Senator Smith, please.

SENATOR SMITH: Thank you, Mr. Speaker. I'd like to let you continue, Ron, if you would, because I'm standing here...I'm sitting here listening, maybe I shouldn't even be listening to you, because I guess, (laughter)...the thing is, the point that I'm trying to make, and I know that Ernie has said so many good things and so many right things, and I understand your concern about people. But I also am saying, on the other side, Ernie, that if we strip away, and you're saying you feel like you're standing there naked with what we're dealing with here, if you strip away, so that we leave no resource for the continuation of the services that these people use at the local level, and this is the mechanism that we're using for that, we have to make a provision for that first, before we can do this, don't we? Ron, would you continue on, please.

SENATOR WITHEM: Senator Smith, thank you for your offer for the time. I guess I would just reiterate what we said last time you and I had this exchange here. I appreciate your question and your thoughts. Yes, we have to keep the services going. I think there are probably some other things we can do other than slamming the door in the faces of people as they come to the system and ask for money back that they think was taken from them unfairly. I don't know what those answers are. Part of

the process of finding answers hasn't gone on here, because we have not done the exercise that...Senator Dave Landis is one of my heroes in that regard, because Senator Dave Landis is the type of person who can take people with radically different ideas, bring them together, throw ideas up in the air, work with those ideas and find a solution that maybe nobody knew existed prior to the beginning of the process. That's what I try to do in the area of education. That's what I've tried to do with the area of school finance plan. That process has not taken place. I think there are probably some other things we could do. One thought I would throw out was that maybe rather than dealing with...saying nobody gets access to their money, maybe we ought to be looking at the idea of statutes of limitations. When I heard what the problem was we have some people out there that may be asking for refunds, three, four, five years back, that troubled me. We ought not allow that to happen. I could certainly see a compromise with this maybe extreme position I've been using here, saying that people should always have the right to get their money back, some sort of statute of limitations so we don't go back more than a year in those sort of things. That's something to throw out. Probably everybody in here, if we sat down and we said, how do you deal with the problem, what do you think, could put some good ideas up on the board. And, if we work through a problem-solving process, that has not taken place yet, we could find those solutions. It's just I am...what I have in front of me is the solution that is mentioned in LB 2, and I don't find that to be a good solution.

SPEAKER BARRETT: Go ahead, Senator Smith.

SENATOR SMITH: Ron, would you then, continuing on with this discussion you and I are having here, based on what you've just said, would you be willing to withdraw your amendment for right now and maybe look at something else that could replace it, before we decide whether we could support that amendment? Maybe....

SENATOR WITHEM: I would rather see the amendment be adopted, take this language out of here that I find offensive, and then work to find something to replace it with. I think we have General File, Select File, and Final Reading to do that.

SENATOR SMITH: Well, I admit we'd be in a position of having to do that. Maybe that's what we need to do is get pushed into something. Thank you.

SPEAKER BARRETT: Thank you. Senator Chambers, followed by Senators Lamb, Lynch, Schmit, Abboud, Hall and Scofield.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I think this is one of the better discussions that we've had because it underscores a point. We don't have enough time, during this session, to give serious consideration to the profound problems that are confronting us as a Legislature trying to represent the interests of the people. We were given a political package. The only reason we're here is because the Governor was getting the lowest ratings in the polls of any Governor in history. She was opposed to a Special Session. And I'm not going to go through the little thing I did the other day, about her and Exon arguing as to the need of a Special Session, but she was on the side saying no. Her political operatives indicated that she's got to do something to...she's not worried about the hemorrhaging of money out of the coffers of any political subdivision, she's worried about the hemorrhaging of support that she is experiencing as Governor who has been told to seek re-election. That's why we're here here, that's why we were called on the spur of the moment. We were not given the legislation, or even the proclamation, which states in general terms the subject matter for us to consider that would put us in a position to have the Speaker set up a seven-day legislative schedule, and we would be forced to rubber stamp what the Governor gives to us. This is a thorny problem, and perhaps time is needed to sleep on it, to think about it and discuss it with others than lobbyists. But we don't have the time because we've allowed ourselves to be shackled and straitjacketed into seven legislative days, because that is what Lola wants and that's what Lola gets. And it's shameful for us to let ourselves be stampeded into trying to handle these very serious issues in that fashion. There will be a price to pay in days to come, and I believe we ought to consider that. Senator Lamb said, if we adopt Senator Withem's amendment, it will be telling the people there is no problem out there. Can he say, if we don't adopt Senator Withem's amendment and pass LB 2, that the problem has been solved? No. Nobody who supports the Governor's bills can be made to be so dishonest as to say these bills solve the problem. Nobody has said that. Senator Kristensen gave the example of a child who might be injured as a result of asbestos in a school and other children would not automatically recover. Senator Kristensen knows there is such a thing as a class action suit which will apply to everybody

situated in that class, even if they are not named as a plaintiff. And there have been class action suits run against railroads and other large corporations, and they are compelled to put advertisements out all over the country, if they are national, to inform people that if you're a member of this class, you're entitled to this. That's what is required right now under the law. And Senator Kristensen knows that, but he may not have thought of it. There is an earned...what is that, earned credit that people who make a certain amount of money, the government will give them earned income credit on your income tax when you file it. Okay, earned income credit. Even if a person doesn't file for it, but the figures and facts contained in their return indicate that they are entitled to it, the government automatically provides it. This is the IRS, one of the most evil things this side of Satan, people tell me. But without the person who is entitled to even claiming it, or even knowing about it, it is upped by the IRS, and they're not elected individuals. What I think...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...we're confronted with is really whether or not we're going to be a Legislature or we're going to be rubber stamps. There are certain members in the body, whose names I will not call, who I know how they're going to vote on everything the Governor brings, and I know what they're going to say. They're going to oppose anything the Governor has not asked for and support everything that the Governor wants. So those people I'm not trying to reach. But there are other people who are grappling with these matters that are before us, and they understand the complexity and the seriousness. What we ought to do, if we're not going to adjourn sine die, is to recess for a week, because now we've got amendments before us and we know what we're confronted with, and maybe we'll decide, after that recess, that we should not do anything. But, if we continue to be stampeded headlong, Senator Schmit, I believe some things will be enacted that probably cool judgment would have indicated...

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: ...ought not to have been.

SPEAKER BARRETT: Thank you. Mr. Clerk, have you some matters for the record?

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



be able to take advantage of what is due them. I think it's fair and I think it's just, and I'd urge you to support it. Senator Lynch had his light on for some time, didn't get an opportunity to speak, I'd like to give the remainder of my closing time to him.

SPEAKER BARRETT: About three minutes, Senator Lynch.

SENATOR LYNCH: Thank you, Ron. Mr. Chairman and members, I might not need that much time. It's amazing to some of us, at least, that we're debating, for the last few hours on the floor now, and it's been very good and helpful to me, I hope for you as well, about how we can continue the inequity, because we're worried about how it would affect local governments. Think about this, county government in particular, and in most cases school districts and cities, are our creatures, we're their mothers and fathers, so to speak. They can do no more, nor less than what we allow them to do. And we say we can't...to help them we have to continue to...and support inequities at the local level, and it doesn't make sense. Like Senator Dennis Byars, I, too, happened to be a county board member for over 20 years, and was Chairman of the Board of Equalization for a long time, and it was repugnant then, and it's repugnant to me now that justice only prevails for those who can afford it, and we sit here justifying that. If we caused the system to exist on this floor that creates that kind of inequity and injustice, take credit for it, but don't throw up your hands like Pontius Pilate and say we can't do anything about it because it might hurt jurisdictions of government. I was one of them, a lot of us were local jurisdiction officials. That's a weak excuse and, in a sense, to be completely frank, I think a dishonorable one as well. I think, if we can do no better than the way we've talked here just in the last few minutes, in the last hour or two about the Ron Withem amendment, we probably should go home, pack up and go home, because apparently we've endorsed inequity. Depending on whose going to be hurt, who can afford an attorney, that's the criteria that will probably be used to justify whatever passes, if anything passes at all here today, or this week, or during the session. I'd encourage you to not worry about the results of this amendment but about the justice that is inherent in it and vote that kind of conscience, and I think you'll be doing the right thing.

SPEAKER BARRETT: Thank you. You've heard the closing, and the question is the adoption of the amendment to the committee

amendments. Those in favor vote aye, opposed nay. Have you all voted? Please record. Record vote has been requested.

CLERK: (Record vote read as found on pages 110-11 of the Legislative Journal.) 14 ayes, 26 nays, Mr. President.

SPEAKER BARRETT: Motion fails. To the committee amendments. Senator Hall, would you care to address the committee amendments?

SENATOR HALL: Mr. President, I would just move that the committee amendments be adopted as they have been amended.

SPEAKER BARRETT: Thank you. For discussion purposes, Senator Scofield.

SENATOR SCOFIELD: Mr. President and members, I really don't want to discuss the committee amendments particularly. I want to talk about the debate we just had, because I think as some of the rest of you, including Senator Withem, said this really illustrates the frustration we feel in here, and it also illustrates the kind of talent that is in this body. And I guess, you know, I couldn't help but thinking when I was in grade school I used to play a little bit of basketball and once in a while there would be a kid on the team that wouldn't pass the ball. And that has kind of been the situation that we face here. I'm confident, given the quality of the debate we had in here just now on the Withem amendment, that we can solve this problem. The talent to solve this problem lies in this Legislature, right here, if we were just given a chance. But the kid who has the ball hasn't passed it to us. So, I guess I'd just like to say I'm really proud of you as legislators because of the quality of the debate, the kinds of creativity that is there. And as I listen to the debate on the Withem amendment I know that we can solve this, if somebody will just pass the ball to us. In the meantime, I guess we've got to do this. I'm going to go ahead and vote for the amendments and we're going to move ahead. But it would sure be nice to get a chance to really play the game. Thank you.

SPEAKER BARRETT: Thank you. Any other discussion? Anything further, Senator Hall?

SENATOR HALL: Mr. President, committee amendments become the bill, I would urge their adoption.

SPEAKER BARRETT: Thank you. You've heard the closing. The question is the adoption of the committee amendments to LB 2. All in favor vote aye, opposed nay. Record, please.

CLERK: 34 ayes, 2 nays, Mr. President, on adoption of the committee amendments.

SPEAKER BARRETT: The committee amendments are adopted. Mr. Clerk.

CLERK: Mr. President, I now have a motion to indefinitely postpone LB 2. That is offered by Senator Hall.

SPEAKER BARRETT: Senator Hall.

SENATOR HALL: I think it would be appropriate to ask someone other than myself if they want to take it up.

SENATOR LANDIS: (Mike not activated immediately.) ...as the introducer of the bill, isn't that right? The kill motion goes to you to decide whether it's taken up or not. What is your decision?

SPEAKER BARRETT: As the person who introduced the bill on behalf of the Governor, I would presume that to be absolutely correct, Senator Landis. My decision would be to take it up tonight. Senator Hall.

SENATOR HALL: Thank you, Mr. President, members. Senator Scofield, suit up. (Laughter.) Ladies and gentlemen, this is a bill that I would argue, through this motion to kill it, that we don't need, and I do that based on an authority that sometimes I agree with and sometimes I don't. And I'm sure later this evening I'm going to disagree with that authority. But tonight, at this point in time, I agree with that. I do that based on the Attorney General's Opinion to Senator McFarland, that you'll find on pages, I think, 82, 83 and 84 of the Journal. I would urge you to open the Journal to those pages and specifically page 84, because every once in a while the Attorney General is right, and this is one of them, I think. Senator McFarland asked the question with regard to whether LB 2, placing limitations on property tax refunds, is constitutional. And I would just ask you to follow along with me, if you will, and I'm going to read from the top of page 84. Talking about the

previous section of the opinion, on the earlier page 83, we go into the top of the page where it says, "The Nebraska Supreme Court noted that the tax on an overvaluation was not a void tax for which refunds would be the apt remedy. The court quite clearly stated that the tax was a voidable tax which required action on behalf of the taxpayer to first apply for equalization relief before the county board. This subtle distinction between void and voidable taxes places the burden upon the taxpayer with a voidable tax complain to first go forward and seek relief within the established channels for equalization. The Nebraska Supreme Court held that the district court was without jurisdiction to grant equalization relief. The court reasoned that to permit such jurisdiction would constitute a collateral attack upon a voidable tax. Collateral tax is an attempt to avoid defeat or evade a judicial proceeding and incident proceeding with the intent to defeat it." The court further stated the, "Appellants, taxpayers argued to us that the Legislature would not have amended Nebraska Revised Section 77-1735 unless it believed that such amendment was necessary to preclude claims for refunds being made. Such arguments must be rejected. As we have already said, even before Nebraska Revised Statute 77-1735 was amended to specifically preclude an action such as the one brought here, such an action could not be maintained. The amendment merely made clear by statute what was already the law. The fact that the Legislature may have believed that such amendment is necessary does not change the law nor permit such action to be brought directly in the district court. Likewise, it would appear that the proposed bill is again codifying the current law of collateral attack. Those taxpayers that have failed to file appeals from locally assessed taxes within the forty-five days after adjournment of the county board of equalization are barred from bringing refund claims for prior years. Centrally assessed taxpayers are afforded ten days under the Nebraska statutes "to perfect a valuation appeal to the Supreme Court. For 1989, the State Board of Equalization met on August 11. Therefore, any appeal after August 21, 1989, is barred both by the proposed bill and the doctrine of collateral attack. The short response then to your question regarding the constitutionality of such a limitation in light of the foregoing is that we cannot foresee any constitutional problem with the limitation for the reason is 'that it mirrors current case law'." Ladies and gentlemen, we don't need the bill. If we're going to argue, in an hour or so, that the AG's Opinion is one that we should uphold, and there is a difference here because we are talking case law, not just the

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

speak to the kill motion, followed by Senator Withem.

SENATOR WESELY: Thank you. Mr. Speaker, members, the confusion reigns, I guess, at this point. I remember the debate we just had, and I thought I heard Senator Landis make the argument that Senator Hall was just making, that the current case law, or whatever, didn't provide for class action refunds. Then I heard Senator Warner and Senator Hannibal and others talk about the fact that, if we didn't keep the language in this bill that Senator Withem's amendment was trying to amend, that we would have class action refunds that would cost us \$120 million, or whatever it would cost us. And so we rejected, or some people rejected the Withem amendment, now we're back to the original point that I thought we had that Senator Hall was making, that class action refunds are not evidently possibly under case law. What it just tells me is I don't think we know what is going on. We don't know the current situation, we don't know what we're trying to change to, that we are in a state of confusion here, that certainly for a lot of us that are not at all involved in this sort of tax measure we have to rely on experts, we have to rely on the Department of Revenue, we have to rely on tax expertise that we simply don't have on this floor. Now I admit, with Senator Scofield's comments, that given the information we can make good decisions. I think we have the ability, within this body, to make some good tax decisions, but we can't do it when we have to ferret out the facts for ourselves as we work our way through floor debate. It is simply not the way to do our jobs. At this point, it's quite confusing to me. In addition, I'd like to ask Senator Hall, I know he's busy over on the side there, but, Senator Hall, is it not also the case that we just went through this whole exercise, not more than six months ago, when on May 26th we passed LB 762, a Revenue Committee priority bill, introduced on behalf of the Revenue Department in an attempt to anticipate the refund problems we're now attempting to address, knowing that there was litigation, knowing that we were going to face this issue? As I understand it, the Revenue Department made this issue a priority with the Revenue Committee, and LB 762 was passed changing the exact statutes, essentially, that we're now amending again, six months later. Why are we back at this? I don't understand why, when the Revenue Department came in, we couldn't get it straight the first time. What is...did we not address this issue before with that committee priority bill from the Revenue Department? And why is it that we weren't able to resolve it, now we're back again in the state of confusion? Senator Hall, I'm just curious

about why we're doing this circle.

SENATOR HALL: Well, Senator Wesely, I think we have. I don't think we need to be here, and that is the reason for my indefinitely postponing the bill. Maybe your question is better directed towards Senator Hefner.

SENATOR WESELY: Senator Hefner, if you'd like to...I tend to agree with Senator Hall. It seems to me that we visited the issue of the refunds, and we tried to make some corrections last session. Why are we back at it, and why are we not able to understand what the situation is any better than we are? Senator Hefner, I'd be curious to know what your feelings are.

SENATOR HEFNER: Senator Wesely, as I understand, we need this bill to stop the process so that we will not be paying back any more money to local government.

SENATOR WESELY: So we won't have...but Senator Hall just said the Attorney General says that we don't have a problem with class action, and we just had this other bill last session. The question isn't paying back money to local subdivisions anyway I didn't think, I thought it was....

SENATOR HEFNER: Okay. According to the Tax Commissioner, he feels that we need this.

SENATOR WESELY: Hmm. Thank you, Senator Hefner.

SPEAKER BARRETT: One minute.

SENATOR WESELY: I don't even know what to say to that. (Laughter.) The concept that the Tax Commissioner says we need this, the Tax Commissioner said that last session we needed the other bill, and I thought that the Tax Commissioner was saying we took care of this refund problem then, and now the Tax Commissioner says we need this bill. When will we be back, when the Tax Commissioner says we need another bill. When are we going to take care of the problem? Have we not already taken care of the problem? I don't know. All I know is that we certainly are not making a very strong case at this point for this legislation. With Senator Hefner's answer and Senator Hall's, I would stand in support of the kill motion.

SPEAKER BARRETT: Thank you. Senator Withem, followed by

Senator Abboud.

SENATOR WITHEM: Very simply, Mr. Speaker, I am going to vote in favor of the kill motion. I think I'm going to use this opportunity to speak to carry on with the suggestion made by Senator Scofield that I think we, as a Legislature, really do need to...may take the ball away, using the analogy, as opposed to having the ball passed on. And we need to, each one of us, seriously look at this major problem that we have in front of us and begin to formulate solutions, because what we have in front of us are not solutions. I think Senator Hall is probably right about the bill not even being needed. It doesn't need to pass. We're going to have an opportunity, a little later on here, to again act as an independent Legislature, including our own ideas. My guess is we'll probably fail at that attempt also when we consider the committee amendments to LB 7. But I think maybe, more importantly, is each one of us begin to think about what we can do to bring a solution to this problem as opposed to waiting to have the solutions brought to us, because they haven't been brought to us in the year and a half, two years that we've had to deal with this. And, if we hold our breath waiting for those solutions to be brought forward, we're going to die of asphyxiation, I'm sure. So I think the proper thing to do is to kill this bill, I don't think it's needed. But, more importantly, I think it's time that we, as a Legislature, begin to formulate some solutions.

SPEAKER BARRETT: Thank you. Senator Abboud.

SENATOR ABOUD: Mr. President, I'd like to give my time to Senator Landis.

SPEAKER BARRETT: Senator Landis, please.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I think Senator Hall raises some very interesting questions. And you've got to take a look in your green book to understand the point that he's making, because I think there is some soundness to part of his argument, and yet I think there is a major value left in the bill unaddressed by his argument, and I'd be interested in hearing his perspective on that as we go on. You'll see that by citing the Attorney General's Opinion, Senator Hall argues, and I think persuasively, that Section 77-1735 and the adjustments made to it in the green copy of the bill are unnecessary, that the evil that they hope to



undo could be undone under existing equitable rules that prohibit collateral attacks. As a matter of fact, what was in the green copy of the bill was a change from the automatic refund mechanism that we passed in LB 762, Senator Wesely, to a system of filing for a claim, a paper exchange and the like, fair enough. Not very significant, but the bill goes on from there and one of the questions that is at issue to me, and I'd be interested in Senator Hall's opinion on it, is to go beyond that section of law because more than one section is amended in this bill. And the section that worries me is one that is now in the committee amendments and it is Section 1775, not 1735. The Attorney General's Opinion is about Section 77-1735, fair enough, good argument. Now let's go on to 1775 because what is 1775? Section 1775 is where, and this isn't about unconstitutional taxes or illegal taxes, this is a straight equalization appeal. You have scores of them in your counties. The State Board of Equalization has scores of them. As a matter of fact, the State Board of Equalization has had an arm lengthful, we all remember the story of when the corporations came in asking for valuation changes, for equalization changes, okay. Now the portion of the committee amendments that is still valuable, it seems to me, is this. If you appeal from a valuation and you take that appeal up to the State Board of Equalization and you make your case and justify that your valuation is too high, are you as well entitled to force the valuation down for every other like situated taxpayer in the state? Now, in the Board of Equalization there has only been one class action before the Board of Equalization under the existing law which, by the way, says that the taxpayer, not the appellant, but the taxpayer is entitled to the refund and, in other words, though we have a very limited history and in that case the class action was denied. On the other hand, before us in this slew of cases are a handful of appeals that are class actions. They are not asking for just their own valuations, but for everybody an evaluation to drop. It has never happened that this remedy has been given before that we know of, that I know of, or that within living memory have been able to recreate. In fact, the existing language says that a taxpayer is entitled to refund, but the practice has always been only the person before the board has been able to get remedy.

SPEAKER BARRETT: One minute.

SENATOR LANDIS: Only the person before the board has ever gotten remedy. The value of the amendment, to my mind, that

still exists in the bill is not all the rest of the bill, but it is one little portion and here it is. If you are up before the Board of Equalization and you bring a heretofore rarely and always unsuccessfully used technique of a class action and are successful, have you not, with using existing law, forced the revaluation of everybody in the...and is not then the remedy that everybody gets revalued? It has never happened in the past. Equalization issues have always been based on the person who brought the appeal and specific to their piece of property. That has always been the form of relief. Frankly, we've used the word taxpayer that is broad enough and ambiguous to permit perhaps the conception of a class action, and while we've never had it in the past, we've got a slew of them now.

SPEAKER BARRETT: Time has expired.

SENATOR LANDIS: The question I have is this, to sum up. Is there not a value in limiting to the way that we've always done it to receive remedy for the appellant, but not for the taxpayer, to pass this language creating past practice to avoid that ambiguity and to meet the very real threat of the class action suits which are now before the Board of Equalization and the courts? That is my question.

SPEAKER BARRETT: Thank you. Senator Chambers, followed by Senators Lamb, Schmit and Landis.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, Senator Landis argued learnedly and well and it sounded like somebody whose name I believe I could call and it's not Landis, and he can correct me if I'm mistaken. But what we are confronted with again is an argument presented on behalf of local subdivisions. That's what we're all the way back to again. The committee amendment that has become the bill would be those white sheets in front of the green copy. Kill it, and we're right where we were when we came down here. And, Senator Hefner, I'd like to ask you a question, if you will answer because you've been kind of discussing these things.

SPEAKER BARRETT: Senator Hefner.

SENATOR CHAMBERS: Senator Hefner, what would be bad about not having LB 2? Now before you answer, there was a movie called "Star Wars" and these people were in serious trouble in the galaxy and they said, help us, Obi Wan Kenobie, you're our only

hope. I can see you saying, help us, LB 1 Kenobie, you're our only hope, even though I disagree with you, but why is LB 2 necessary, other than that the tax commissioner said it was?

SENATOR HEFNER: Senator Chambers, I was on the response team. We discussed this...

SENATOR CHAMBERS: Is that the same as the crisis team, so that I keep that straight?

SENATOR HEFNER: Yes, we could call it the crisis team, too.

SENATOR CHAMBERS: Okay.

SENATOR HEFNER: But we decided that something had to be done.

SENATOR CHAMBERS: Okay, I understand that.

SENATOR HEFNER: And so a group of the committee worked and they came up with LB 1 and LB 2.

SENATOR CHAMBERS: Okay, now why did they decide...what was it they decided that had to be done? Other than something? A little more definite than that.

SENATOR HEFNER: Okay. LB 2 addresses the constitutional problems that we have on these refunds.

SENATOR CHAMBERS: And what is the constitutional problem that LB 2 addresses?

SENATOR HEFNER: Well I think Dave...Senator Landis explained some of those.

SENATOR CHAMBERS: But he was too esoteric for me. I want to talk to a down here on the ground person such as myself so that I can understand it because Senator Landis, I don't think, was a crisis member.

SENATOR HEFNER: Yes, he was.

SENATOR CHAMBERS: He was there?

SENATOR HEFNER: And he was a dedicated and faithful member of this committee.

SENATOR CHAMBERS: So then he was at all these meetings you had, but I still would like you to tell me, because you were talking to Senator Wesely, why is LB 2 needed?

SENATOR HEFNER: We decided that LB 1 and LB 2 would address the problems that we now have and would preserve, or we felt it would preserve a \$30 million potential loss that the local governments have.

SENATOR CHAMBERS: Okay, thank you. Before Senator Landis leaves, Senator Landis, I'll ask you...I was trying to let you finish up there before I...because I didn't want to call you away from that. Why is LB 2 needed? Why did the crisis team say LB 2 is needed, first of all?

SENATOR LANDIS: I'll get to the answer, and let me make these two things, number one, I wasn't at all meetings, and, number two, I was not asked nor did I say yes to LB 2 in this form. I didn't see it. In answer to the question, the value that I see in this bill would be contained in what is in your white copy in Sections 6 and 7. That is the nub of value I see and it says this, that if you are up before the Board of Equalization now, or into the court system seeking remedy for a valuation problem based on this railroad lawsuit, you are entitled to remedy yourself but for no one else and that, to me, is of value and that I would contend remains of value as we go forward.

SENATOR CHAMBERS: So then your feeling is that there could be people similarly situated who are entitled to relief, but you would want each one to individually go and seek that relief.

SENATOR LANDIS: I would, yes.

SENATOR CHAMBERS: And is there any statute of limitations currently existing...don't call it a statute of limitations, a time frame within which a person must seek that relief?

SENATOR LANDIS: There is, and it has run with, for the purposes of this last year's taxes.

SENATOR CHAMBERS: All right, so it is a matter of days really, we're not talking about two years or six months even.

SENATOR LANDIS: That's right.

SENATOR CHAMBERS: So your feeling is that even if a person improperly pay taxes because of the valuation aspect of it, they should not be able to recoup that which they should not have had to pay, that's your feeling?

SENATOR LANDIS: That is correct, and to quantify it, I believe there are claims against \$42 million of taxes by taxpayers. If, in fact, all class actions apply to all the property we're talking about, we'd be talking about \$120 million worth of tax revenues.

SENATOR CHAMBERS: Suppose the amount for all of them were \$20,000, how would you feel then?

SENATOR LANDIS: It seems to me that our system of justice is one in which those who seek remedy are entitled to it, and in that sense, I would be prepared not to use, in this limited window of opportunity, the class action mechanism. I think we're entitled to stand on forcing appellants with actual cases in controversies to be before the court.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: That is not a direct answer, but here is what I am trying to get at. The reason we're here is because the amount of money that might be lost by these political subdivisions, if it were \$20,000, would we be here?

SENATOR LANDIS: In special session?

SENATOR CHAMBERS: Yes.

SENATOR LANDIS: It is problematical, my guess is no.

SENATOR CHAMBERS: So then it's the amount that is involved. Justice could be granted to these people if it were \$20,000, but if it begins to reach the level of millions then we change the concept of justice and they are not entitled to it. It wouldn't be essential that we come up here and change the system if the amount of money involved were low enough and that's what some of you all who voted against these amendments need to understand. We are basing the rights that the people would have on the amount of money involved and not the equities of the situation. Justice could be afforded and allowed by the Legislature if it

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

says you don't have a problem in terms of the refund issue. The courts have said you don't have a problem in regards to the refund issue. In other words, you don't have a need for a special session because you don't have an emergency and there is the crux of the problem, ladies and gentlemen, because you have taken away all of the arguments for being down here in Lincoln this week. You've just wiped them out because there is no emergency, there is no need to protect a base of taxes that will be refunded because of some court action. It isn't going to happen and, even if it did, the process by which you could protect yourself is currently in statute, and the courts have said that and there is no basis for LB 2. There is no reason to have this bill before us. We've dealt with the issue as recently as six months ago. The committee amendments that we have adopted to the bill, basically all they did was take LB 762 and say that we endorse it. We do not change it, rip it out of statute as the green copy of LB 2 would have us do, but we endorse it. We've done very, very little except leave that nub in that Senator Landis talked about. And I would say that that is not necessary and argue that there is no reason to have this bill before us, that we can...

SPEAKER BARRETT: One minute.

SENATOR HALL: ...currently, in statute, do what LB 2, as the courts have said we are allowed to do. But when you wipe this out you wipe out the premise for being here and then somebody has egg on their face. That is an unfortunate thing, but it also is very correct and I would urge you to vote to indefinitely postpone LB 2. There will be good arguments for LB 7 and I think you ought to listen to those, but LB 2 is not needed. We currently have all the tools we need before us and in statute to handle the situation. I would urge the body to kill this bill.

SPEAKER BARRETT: Thank you. You've heard the closing and the question is the indefinite postponement of LB 2. Those in favor of that motion vote aye, opposed nay. Record please. A record vote has been requested.

CLERK: (Read record vote. See page 111 of the Legislative Journal.) 12 ayes, 25 nays, Mr. President.

SPEAKER BARRETT: Motion fails. Next order of business, Mr. Clerk.

CLERK: Mr. President, Senator Landis would move to amend the bill. (Landis amendment appears on page 112 of the Legislative Journal.)

SPEAKER BARRETT: Senator Landis.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, it seems to me that we are getting a little testy on this point and probably with some good reason. It's not easy. My motion says this. Strike all of LB 2 except two sections, Section 6 and Section 7. If you'd open your green copy and take a look at it I will tell you what it says. Now, frankly, this is not what the administration wants I suppose and it's not what Senator Hall wants and it is not what Senator Withem wants, but Senator Scofield said there is a lot of talent in this body that can solve these issues and if we're not faced with one, can't we find ourselves in a more flexible situation and make some reasonable rules over time? What I've tried to do is to get all of the things that, in fact, we could do another day off the table, to get down to the nub of value that I see in this bill and I think is the one that is used to justify the bill and that is this. We have before our Supreme Court claims in class action in which people are trying to get back not just their taxes, but to create that standing, they have sued for everyone else in the class as well. And we're in a muddle now about the way the court is handling the reevaluation of what should be exempt property, railroad property. That is not going to happen again. We're going to solve that problem, but take a look at what 6 and 7 says and it is critical to take a look at them. By the way, for Senator Hall's purposes, this is not the section that Bob Spire opined about, this is a different section. Take a look...just read the language here on 7...at the bottom of page 11 of these committee amendments. When property is valued or equalized by the tax commissioner and an appeal is taken from such valuation, that could be a class action or equalization, and the final result of such appeal, that could be the one person who is appealing but who is claiming for everyone else, establishes a lower value than that upon which taxes have been paid, that could be everybody in the class; the amount of taxes paid on the value in excess of that finally determined value shall be refunded to the...and here is the existing word, taxpayers, who have paid such tax. In other words, although it has never happened, although it has never been claimed, although it has never been the way we have handled equalization appeals



before, this language is arguably broad enough to allow an entire class action which would require the court to lower all values. Now, in fact, we can have a lowering of a whole value. Danny Lynch will tell you this story. He was just reminding me, Douglas County had 15,000 appeals one year, rolled back their valuation, had the power to do so, could and did so, exercised equitable jurisdiction, has the power by law, solved the problem at the local level. Board of Equalization has the same right. They can lower an entire class if they want to. Let's say they don't want to. Let's say it's on appeal. Now it's to the court and the question is, how much power does the court have? Well, certainly the court has all of its power under our judicial articles for equitable relief, but what does this statute say? It says the court shall give the remedy to all taxpayers, to taxpayers, ambiguously, potentially, everybody in a class action suit, and we've got them, we've got them. What's the new word? Appellant. What does that mean? The appellant gets their taxes lowered, but nobody else does. Take a look at Section 7. The changes made in Sections 2 to 6, and here I'm not worried about 2, 3, 4, or 5, I'm just saying 6, of this legislative bill, are expressively intended to apply to all litigation pending as of the date this act is passed and approved according to law. In other words, this ambiguity out here in our existing law which has never been used to give class action award, but which arguably may, is not supposed to apply to the appeals before the court. That is to say that the Legislature is not ordering the court under the word "shall" in Section 6 to grant class action approval. Now, if the court has equitable power, inherent judicial authority to grant such remedy, they can, and we couldn't take it away even if we wanted to. But Section 6 is our order to a court as to what remedy they will grant and by using the word taxpayer we've made it ambiguous enough to seemingly order them to grant class action remedy. I don't think we meant to do it. It has never been done in history. I don't think that was our intent and in this case it's the difference between a potential loss of \$42 million and \$120 million. That is big bucks. If we want to buy time for a creative solution, which I agree with Senator Scofield, perhaps we deserve, fair enough, but let's go back to the understanding of the past practice we've always had which has included this ambiguity which has never been used before but now that these very intelligent attorneys, who are out there filing these claims, have fastened upon. Let's take the rug out from under them for their legal chicanery in this case and put this back to the practice we have always had. You appeal your taxes, you get

them back if you win, that's it. And if we need new solutions, let's take all the rest of the bill out, save it for another day. It's not everything Ron Withem wants, it's not everything Tim Hall wants, but if I understand it correctly it gets us down to the issue at hand, saves for another day a whole bunch of other fights and leaves us with a demonstrable improvement in the statement of public policy, consistent with what we've always meant but have only ambiguously captured in language. I urge the adoption of the amendment.

PRESIDENT NICHOL PRESIDING

PRESIDENT: Thank you. Mr. Clerk, I understand we have an amendment to the amendment.

CLERK: Mr. President, Senator Hall would move to amend Senator Landis's amendment by adding the emergency clause.

PRESIDENT: Senator Hall, please.

SENATOR HALL: Thank you, Mr. President and members, and I've got another amendment here that would clarify Senator Landis's amendment just so that, because the reference in...if you're going to adopt his amendment which would strike everything except for Sections 6 and 7, I don't know that you need a severability clause that the committee amendments, the bill, as it currently sits, that it was in there. I don't think you need that, but you do need the emergency clause. And then I've got another amendment here that would change the language in Section 7 so that there would be no reference to Sections 2 to 6 and would just read, the changes made by this legislative bill. So they are nothing more than cleanup to allow for the amendments if they are adopted, and I have to offer them one at a time because I didn't have them put together. The E clause would be first and then the change in Section 7 to strike reference to "Sections 2 to 6 of" would be taken out of that so that it would read properly, I guess, just because there would no longer be Sections 2 to 6. If you...anyway...sure.

SENATOR LANDIS: I think that's...I'm glad he's here because I didn't think of it and I'm so glad...that's an excellent amendment and I urge the body to adopt this one and the next one as well.

PRESIDENT: Thank you. I had five lights on before we switched

from the Landis amendment to the Hall amendment to the amendment, so please tell me if you wish to speak to the Hall amendment. Senator Schmit, to the Hall amendment. Senator Chambers, to the Hall amendment. Senator Wesely, to the Hall amendment. Senator Hannibal, to the Hall amendment. Okay.

SENATOR HANNIBAL: Yes, Mr. President, I would, and Senator Landis has already acknowledged that because the committee amendments do replace the entire bill, do they not, Senator Hall? So if you just leave Section 6 and 7, you're missing a lot of other technical things. I'm not a bill writer or a drafter or an attorney, but what Senator Landis is trying to get at is that the heart of the bill of Sections 6 and 7 are the things he wants to leave in. He also, I believe, says that he wants to leave in the emergency clause, an operative date and all the technical language that goes along with that. Senator Hall, if I could ask you...

SENATOR HALL: Yes.

SENATOR HANNIBAL: Does your amendment put the bill back into a legitimate form?

SENATOR HALL: Senator Hannibal! I'm aghast. Sure, Gary, all it does is...I offer the emergency clause so that it...I mean, we are in an emergency situation here.

SENATOR HANNIBAL: Operative date?

SENATOR HALL: If there is an emergency clause on it, it would become operative upon the Governor's signature, I would guess, so I wouldn't think that there is any need for that. The second amendment that I offer, if you would just grab the committee amendments which are now the bill, and we'll deal with this in a second, but just so you can...I'll read, I'll walk you through it. Section 7, at the bottom of page 12, all I do is strike...it reads, the changes made by Sections 2 to 6 of this legislative bill becomes the changes made by this legislative bill.

SENATOR HANNIBAL: So Section 7...the repealer area will have to stay back in...the appropriate repealers would have to be in there.

SENATOR HALL: I would just take out reference to Sections 2

to 6 because there would no longer be 2, 3, 4, and 5.

SENATOR HANNIBAL: All right.

SENATOR HALL: All I'm doing is just...and it just says the changes made by this legislative bill.

SENATOR HANNIBAL: Thank you. I would support the amendment to the amendment and, as a matter of fact, I would support Senator Landis's amendment in total.

PRESIDENT: Thank you. Senator Hefner, did you wish to speak about the Hall amendment? Senator Landis, did you wish to speak on the Hall amendment?

SENATOR LANDIS: I totally concur.

PRESIDENT: Okay, Senator Lynch...not there. Senator Hall, you may close on your amendment to the amendment.

SENATOR HALL: Move the adoption.

PRESIDENT: The question is the adoption of the Hall amendment to the amendment, to the Landis amendment. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 25 ayes, 0 nays, Mr. President, on the first Hall amendment to the Landis amendment.

PRESIDENT: The first Hall amendment is adopted. Senator Hall, did you wish to take your other amendment at this time?

SENATOR HALL: I would, Mr. President, I would just move the adoption. It just makes the language in Section 7 what will become, after the bill drafters renumber Section 2 of the bill, it just clarifies it so that there are no references to Sections 2 through 5 which no longer exist.

PRESIDENT: Thank you. The lights that I still have on, please indicate if you wish to speak about the second Hall amendment. Senator Schmit, Senator Chambers, Senator Wesely, Senator Hefner.

SENATOR HEFNER: Mr. President and members of the body, I have a question for Senator Hall.

PRESIDENT: Senator Hall, please.

SENATOR HEFNER: Did you include in your amendment an operative date?

SENATOR HALL: I did not. With the emergency clause...

SENATOR HEFNER: Then it will take effect as soon as the Governor signs it.

SENATOR HALL: That is my understanding.

SENATOR HEFNER: Okay, so that should take care of that. Thank you.

SENATOR HALL: I...that's what I thought.

PRESIDENT: Senator Lynch, did you wish to speak about this amendment? Okay. Do you wish to close, Senator Hall, on your amendment to the amendment?

SENATOR HALL: Move the adoption.

PRESIDENT: The question is the adoption of the second Hall amendment to the Landis amendment. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 23 ayes, 0 nays, Mr. President, on adoption of Senator Hall's amendment to Senator Landis's amendment.

PRESIDENT: The second Hall amendment to the Landis amendment is adopted. Now we're back to the Landis amendment. Senator Schmit, did you wish to talk about the Landis amendment? Senator Chambers. Okay, followed by Senator Wesely.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I have to ask Senator Landis a question or two. Senator Landis, we would go to page 11 to start with what you want to do and in line 21, on page 11, is where your amendment would start?

SENATOR LANDIS: Pardon me, it will just take me a moment to turn to the right page, I'm sorry.

SENATOR CHAMBERS: That's all right. On the white copy.

SENATOR LANDIS: Line 21?

SENATOR CHAMBERS: On page 11.

SENATOR LANDIS: That would be line 18, but, yes, correct.

SENATOR CHAMBERS: Right, right, but to get into the text, so then when we turn the page what we're dealing with is the word "taxpayers" which will be changed to the word "appellant".

SENATOR LANDIS: Yes.

SENATOR CHAMBERS: And we'll change "have" to "has". Now, you say that this has never been used for the purpose of obtaining a win for everybody similarly situated to the individual who filed the appeal.

SENATOR LANDIS: To my knowledge, in tax valuation cases the answer is yes, to my knowledge.

SENATOR CHAMBERS: Okay, then as the man who was addressing a group of people in one of those asylums asked, then why are we here? And one of them said, because we're not all there, but that won't suffice here.

SENATOR LANDIS: (Laugh.) Right, I'll tell you why.

SENATOR CHAMBERS: Okay.

SENATOR LANDIS: Because the text arguably could support a class action and because of the word "shall" which is our legislative mandate here to grant remedy...

SENATOR CHAMBERS: Ummm, hmmm.

SENATOR LANDIS: ...we may be ordering the court under this to grant class action remedy, something that we did not intend to do nor which has been a past practice, but which in this round some of our very quick-witted and probably highest paid lawyers have couched their appeals to the court in the form of. Heretofore, they have not but now they have.

SENATOR CHAMBERS: So you're saying right now there are pending before the court appeals which would entitle everybody similarly

situated to receive the same relief as the particular person appealing would receive should he or she prevail.

SENATOR LANDIS: I'd just add potentially, but, yes, that characterization is fair.

SENATOR CHAMBERS: Why then would there be two hundred and however many, 220 or whatever, the number of appeals that are pending? If they've kind of gotten their heads together, why won't one suffice for all?

SENATOR LANDIS: They haven't gotten their heads together but there are some among the litter who, to create standing to press their claim, have couched them in terms of class actions. The vast majority, the overwhelming majority have not. They've just asked for relief for themselves.

SENATOR CHAMBERS: So it still primarily is an individual appeal in each case where relief is being sought.

SENATOR LANDIS: The overwhelming majority of appeals are so formed, I understand.

SENATOR CHAMBERS: So if the overwhelming majority consists of individual appeals, where is the emergency that has called us into session?

SENATOR LANDIS: In...now, you did this to me the last time and, by the way, I almost tried to get my point here, you confused my justification for the language of the bill with then trying to make me justify the existence of the special session.

SENATOR CHAMBERS: No, not you. I was referring to...

SENATOR LANDIS: And you were unfair to do so the last time and I'm not going to let you do it this time. Now, on the bill itself the justification is this...

SENATOR CHAMBERS: Wait a minute...(interruption)

SENATOR LANDIS: ...the justification is this.

SENATOR CHAMBERS: Wait a minute...

SENATOR LANDIS: And that is that any one of those hundreds of

appeals which claims a class action suit opens up the potential to relief of not \$42 million, but \$120 million. One from two hundred wouldn't do that.

SENATOR CHAMBERS: But that, in fact, hasn't happened yet. That hasn't happened.

SENATOR LANDIS: No remedy has been granted, right.

SENATOR CHAMBERS: Now will those decisions come down before January 1st, in your opinion?

SENATOR LANDIS: No.

SENATOR CHAMBERS: So why are we here, in your opinion?

SENATOR LANDIS: Ahh...

SENATOR CHAMBERS: If the danger perceived is not going to take effect before we're back in regular session, why in the world are we here? Political reasons...I'm on my time now.

SENATOR LANDIS: That's right, and you are on your time.

SENATOR CHAMBERS: Okay now...

SENATOR LANDIS: Make your own characterizations...(interruption).

SENATOR CHAMBERS: Right, Senator Landis has given answers to these issues that most of you all can accept because he is the negotiator, but when we come down to the final conclusion that has to be drawn the danger or evil that would justify a special session does not exist and will not come into existence before we are in regular session.

PRESIDENT: One minute.

SENATOR CHAMBERS: So there sits Senator Lamb, and there sits Senator Hefner saying that we've got to get LB 2. Maybe Senator Lamb didn't say that here, but he is going to say that if I'd ask him. And then there is old Boehm saying you've got to have LB 2 and there is no reason for it. Even with what Senator Landis is talking about, should any one of those cases be handled as a class action suit, if no decision will come down



before next session, then why can't we use some time to fashion a remedy that addresses an evil that exists rather than something that is speculative, because that will not serve the Governor's political purposes. She wants those polls to go up. She wants to run for reelection. She wants to give the appearance that something is being done and that a problem is being addressed when, in fact, there is no problem in existence at this time. This bill does not address the real problem, it's a sham and it's a hoax, and what we ought to do is just go home. I want to go home, Senator Lynch, but I'll stay.

PRESIDENT: Time is up. Senator Wesely, please.

SENATOR WESELY: Mr. President, members, I think I have a partial answer to Senator Chambers' and my eternal question of why are we here, the one we are always looking and searching for the answers even. Senator Hefner said the answer was, we're here because John Boehm wants us here and this bill is here because he wants to see it passed, and I didn't think that was a particularly good question, but I think I know what is going on here because Senator Landis has gotten to the so-called nub of the issue. The nub of the issue is on page 12 and it is Section 6. So I looked back to LB 762 which was passed six months ago in May which I had before referenced with Senator Hefner where I said, didn't we just address the refund issue? Didn't we just clean up the refund issue? Why are we back to do it again? Well, the reason we're back to clean up the refund statutes is because we screwed them up six months ago. The very language that we're complaining and concerned about is the language put in in LB 762 six months ago. If you look at that you'll find that section did not exist before. The reason there have been no successful appeals in this in the past is there was no statute on this in the past. This is the first it has been in effect was after the session ended, the 90 days have passed, it is now there. We did the appeal, we messed up, we screwed up and we're trying to clean it up today evidently, but it's ironic that the very people that wanted that legislation are back wanting this legislation and I think it is important for us to understand why we're back here today is because of the very statute that was asked for by the Revenue Department last session is the very problem we're trying to solve in this session.

PRESIDENT: Mr. Clerk, I understand we have an amendment to the amendment.

CLERK: Mr. President, Senator Hall would move to amend Senator Landis's amendment. (Hall amendment appears on page 112 of the Legislative Journal.)

PRESIDENT: Senator Hall, please.

SENATOR HALL: Mr. President, members, again, it's another clarifying amendment that was brought to me. I wish I was smart enough to think of it myself, and it basically just changes the word on...the word "appellant" on page 12, line 4, which is Section 6 of the Landis amendment, to "prevailing party". And the reason for that is that you win, you become the appellee and you're no longer the appellant. Would you then not be entitled to a refund? So you change it to prevailing party and you cover the base. It's...the department is in concurrence with the amendment. Beats me, I just started law school, I don't know. (Laughter.)

PRESIDENT: All right, the lights that I have on are, Senator Lynch, did you wish to speak to the Hall amendment to the amendment?

SENATOR LYNCH: Mr. Chairman and members, I'm not sure because I'm not a lawyer either. But I probably think it's a good time to clarify something Senator Landis said. Back in 1968 during the Board of Equalization when in Douglas County we had to reevaluate, for the first time in a long time, we did have those 15,000 or so complaints and we did, based on the same laws that Tim quoted before, have the tools we needed since we are creatures of the Legislature to not only grant relief to those people in neighborhoods where the valuations were, obviously, unfair and inequitable, but to all their neighbors as well. It was like throwing a stone in a pond of water. You see how the circles seem to expand. That's what we did and we had the tools in the Board of Equalization to do that. In fact, if memory serves me, there were even, in some cases, refunds involved and they were also granted without people having to individually appeal. Now if that's true, if that law still applies, if that law is still on the books, then what Tim said earlier is absolutely true, if we changed it six months ago and screwed it up, I probably voted for it like all the rest of us, but let's admit to that unfortunate circumstance, make the changes apparently as we may have to do if we're going to vote for anything with LB 2, and have something that makes some sense.

But as far as I'm concerned, all we're doing is rewriting sections of the law to say again what we've already said. It is already complicated enough for most people and probably what we're not talking about are things in the bill I'm not sure where amendments would apply that would thwart jurisdictions of government that have the responsibility of collecting taxes by counties to notify everybody about their appeal process, when and how to do it; even maybe offer names and suggest dates of when they can do that. Unfortunately, if people don't pay their taxes directly, they are paid through savings and loans, sometimes, obviously, that notification of how to appeal never gets into the hands of the right people and people will continue to be treated unfairly and inequitably as it applies to the taxes they pay. I'm not much of a student of the stage but there is something, I remember once somebody sang, "much to do about nothing"; that's what it appears LB 2 is. We deserve it.

PRESIDENT: Thank you. Senator Owen Elmer, did you wish to speak about the Hall amendment?

SENATOR ELMER: Indirectly, sir, Mr. President. Several people have gotten up and say, why are we here? We are here because we have a problem with the 1989 tax and if we wait until 1990, we cannot address the 1989 tax base. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Chambers, on the Hall amendment.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I'd like to ask Senator Hall a question.

PRESIDENT: Senator Hall.

SENATOR CHAMBERS: Senator Hall, this word change from "taxpayers" to "appellant" was in the original green copy of the bill?

SENATOR HALL: Yes.

SENATOR CHAMBERS: Who brought that original green copy?

SENATOR HALL: It was introduced on behalf of the Governor by Senator Barrett. It was introduced in the Revenue Committee by the tax commissioner.

SENATOR CHAMBERS: So...and when you said the department gave

you the word just a few minutes ago...

SENATOR HALL: I was mistaken, I misspoke, Senator Chambers, and I was going to mention that the first opportunity I had and since this is it, I apologize for taking your time but I said it was others smarter than I.

SENATOR CHAMBERS: Okay. That was a mistake. So now, who were the ones who brought this information to you?

SENATOR HALL: One of the attorneys on behalf of the pipelines, as a matter of fact, to be quite honest with you.

SENATOR CHAMBERS: Okay, so then the department did not perceive this problem.

SENATOR HALL: No.

SENATOR CHAMBERS: Thank you. And, you know, at least they are consistent. You know, they didn't understand it when they first put it in, they don't understand it now and they probably think something very sinister is going on and that's what happens when you begin to use specific words when you are dealing with a concept or an idea or a status. We're talking about a status and that's why what Senator Hall said should be done, if you want the bill to be in some kind of rational order if you are going to pass it. I was hoping nobody would touch that. I wanted it to stay just like it is and I wanted to give the department what it and Senator Hefner and the crisis committee told us is necessary to get us out of this crisis. And when I first said it I felt like saying, Jesus crisis, Senator Hefner, if you'll pardon me. Abraham Lincoln, one time, was facing some kind of problem and he said something about knowing where you are in order to determine where you're attending so that you can get where you want to go. We don't know where we are, Senator Hefner. I know where we are. This is a state of confusion and the ones who said that the best minds put this stuff together are now being shown to have been as dumb as the way I characterized them the first day. I used that word. I said Boehm is one of the dumbest people in public life that I've seen; maybe I said office. This proves it. Didn't he used to work in the Attorney General's Office? What kind of recommendation is that for a higher position or more responsibility? And he is the one who has got the Legislature down here chasing its tail and in this particular provision that

is the only change in this section that is being amended, and he got that wrong. He is the genius. The Governor probably jumped up and clicked her heels when she said, good God almighty, I got John Boehm for a tax commissioner. And the Attorney General jumped up and clicked his heels at the same time and said, good God, I got rid of John Boehm as a deputy attorney general. And I want him to hear me say this. He is being paid by taxes that the public is paying, giving him a salary for that. He has plunged us into this nonsense and some people are too sensitive. If his hide is too thin to take what I'm saying, he ought to get out of that position. He merits worse than what I'm putting on him. And there are others in the Governor's office who are co-conspirators and just as responsible and guilty as he is of this stupidity. If he were a student in law school and did something like this, he would not pass, but now he's a lawyer, he is practicing, and he will never reach the level of competency. And, Senator Elmer, that is why we're here. We have people at the local level who are as inept as Lee Atwater is at the national level.

PRESIDENT: One minute, please.

SENATOR CHAMBERS: Senator Hefner, I read in an article that was published in a Boulder newspaper a few days ago that the Pope has acknowledged, Pope John Paul II, that Galileo was correct and that the church was wrong. Took them 450 years. How long will it take for you all who are hitched to the Governor's wagon to admit that they were wrong? Are you going to support this amendment that Senator Hall is offering, that is what I'd like to ask you? Are you going to support it? And it goes against what the Governor put here. Turn him on, would you please, because I want to hear this.

PRESIDENT: Just a moment.

SENATOR HEFNER: Senator Chambers.

SENATOR CHAMBERS: Yes.

SENATOR HEFNER: We're not all perfect.

SENATOR CHAMBERS: I didn't ask you that. I know the answer to that without asking the question.

SENATOR HEFNER: Yes, I'm going to...could you tell me the

dif...what's the meaning of the word "appellant" and...

SENATOR CHAMBERS: That is the one who files the appeal.

SENATOR HEFNER: Okay, and how about prevailing party?

SENATOR CHAMBERS: That's the one who wins.

SENATOR HEFNER: Wins, okay.

SENATOR CHAMBERS: Uh, huh. Well, why will you support this change in the Governor's bill when it's not what the Governor asked for?

SENATOR HEFNER: I haven't supported too many amendments today, but I will this one.

SENATOR CHAMBERS: You're about as slippery as an eel with goose grease.

SENATOR HEFNER: Well, no, no, you told me...you said that you was going to support an amendment so I thought, well, if Chambers can do it, well, I certainly can too.

PRESIDENT: Time has expired. Senator Landis, did you wish to speak about the Hall amendment to the Landis amendment? You didn't. Okay, Senator Hall, would you like to close on your amendment to the amendment, please?

SENATOR HALL: Mr. President and members, I only offer the amendment to clarify the legislation so that when we pass it, it works, and for no other reason. Thank you.

PRESIDENT: The question is the adoption of the Hall amendment to the Landis amendment. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 16 ayes, 1 nay, Mr. President, on adoption of Senator Hall's amendment to Senator Landis's amendment.

PRESIDENT: The Hall amendment is adopted. May I introduce some guests, please. Under the south balcony, we have Shirley Lymn of Minden, Nebraska and Steve Thomlyson of Kearney, Nebraska. They are guests of Senator Barrett. Would you folks please stand and be recognized. Thank you. Back to the Landis

amendment. Senator Landis, do you want to move the adoption of your amendment?

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I move the adoption of the amendment.

PRESIDENT: Any discussion? If not, the question is the adoption...Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman, I haven't offered many amendments today and my conscience is whipping me to death because I ought to have about 30 of them up there, but maybe I'll wait and put them on LB 7. And it would be only justice because I'm not the one who said run in here and do everything in this short time, then run out. What Senator Landis is doing is perhaps desirable, but I want to ask him a question and this is in seriousness.

PRESIDENT: Senator Landis, please.

SENATOR CHAMBERS: Senator Landis, if you look on page 12, in line 14, we're past the point when we get down here of the appeal and the person has won and there is to be a refund. Now in line 15, line 14, it says, the refund shall be made in the manner prescribed in subsection 2 of Section 77-1736.04. Is that refund automatically given to everybody situated as the winning party is situated?

SENATOR LANDIS: I'll give you my answer, but let me qualify it by saying...

SENATOR CHAMBERS: Sure.

SENATOR LANDIS: ...I haven't read the section.

SENATOR CHAMBERS: Oh.

SENATOR LANDIS: I will tell you what I think is the way the system operates, but I haven't read every section of it.

SENATOR CHAMBERS: Okay.

SENATOR LANDIS: And I believe the answer is they get an automatic refund as a party, but not for everyone else who is like situated, no.

SENATOR CHAMBERS: So then...

SENATOR LANDIS: In other words, the prevailing party or the winner gets their automatic refund.

SENATOR CHAMBERS: So then even without this bill, as you want to amend it, even if there were a status that would be equivalent to a class action plaintiff, should that person win, the others, in order to get their refund, would still have to file individually.

SENATOR LANDIS: No, I think, Senator Chambers, you could argue that the court is being ordered in subsection 1 to grant class action relief and, if they so did, I think the automatic refund would then apply. But subsection 1, I think, is addressed to the court saying, here's...of course, you have your judicial power to decide, but here is the legislative order as well, and the legislative order is to grant a refund to taxpayers who are successful.

SENATOR CHAMBERS: Now does that granting of a refund in the upper portion of the bill that changes taxpayers to appellant direct that the refund shall be granted without the person who is seeking it doing anything to obtain it? I don't see where anything is imposed on the collecting agency of the tax to pay it out. It says it shall be refunded and then the statute goes on to tell how the refunding process is to operate. So the person who is situated similarly to the winning party does not have to go to court to justify his or her receiving the refund, but has to go through the steps that are laid out in order to receive it.

SENATOR LANDIS: I think I understand the distinction. I think arguably there is an ambiguity in subsection 1 worth cleaning up and that is that you are authorizing the court, as a matter of legislative dictate, to order refunds and if the court so ordered, I think that then 77-1736.104 would create an automatic refund, right. That is my answer to the question. In fact, I'm not exactly sure I can tell you, there's a lot of code here and I haven't been through all of it.

SENATOR CHAMBERS: Okay. I would tend to disagree with Senator Landis's final conclusion that if a person would win an action and thereby entitle everybody similarly situated to the refund,



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that the agency or the subdivision that collected the tax would automatically have to notify everybody so situated and give them the refund...

PRESIDENT: One minute.

SENATOR CHAMBERS: ...without them applying for it. So if the purpose is to put an obstacle in the way of some people or hope that some will be unaware of a right that they have, that would still be in the existing law. I still don't see a need to enact LB 2, so I'm going to vote against the adoption of Senator Landis's amendment because, by adopting that amendment, it's like saying what he is offering is necessary and I don't think that it is. I think it's a part on, not on Senator Landis's part, I think it's a part of the smoke screen, and I'm not saying that because he's got a smoke screen that he just created, he is doing these things on purpose. It's a part of a smoke screen behind which is hidden the true motive for this special session. But I believe that the public sees through it. It's like a group of magicians, and we're all facing the audience in front of us and we're doing tricks behind our back and unbeknownst to us there is a mirror behind our backs and those we're trying to fool can see exactly what it is we're doing while trying to trick them. Then we wonder why they don't accept what we tell them as being true.

PRESIDENT: Time.

SENATOR CHAMBERS: They...

PRESIDENT: Senator Landis, would you like to close on your motion, please?

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I do think that in the intervening time, should this bill pass, we need to examine the language very carefully and see if there are additional improvements. One of the things you have to remember is this. We all do our best in writing these laws and we have a bill drafting staff to help us with it, but when you put a bill, drafted in the haste of a session or even with a couple of months lead time, under the scrutiny of the legal talents of all the general counsels of all the major corporations in this state, you probably haven't foreseen every potential loophole they might be able to identify and argue. And, frankly, we're trying to catch up with a whole lot of very high-priced legal

talent and, if, in fact, we weren't very good six months ago or a year ago, it's because language doesn't capture these ideas all that easily. And, in fact, it's like Mark Twain said, you can't make anything that is foolproof because fools are real ingenious and we have some very ingenious lawyers out there inventing arguments and interpretations and we're trying to run around behind them and nail them down. Fair enough. There is a six-month lag time here or more. You've got to imagine how much legal talent there is on the other side of these fighting like the devil to get \$42 million of taxes back. Best we can do, and I'm not saying it's perfect, need a little more time on it, keep working on the thing, keep refining it, but where we can let's nail down whatever hatches, look a little bit shaky, and this one does. That's why I'd urge the adoption of this amendment and the advancement of the bill. Thank you.

PRESIDENT: The question is the adoption of the Landis amendment. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 28 ayes, 1 nay, Mr. President, on adoption of Senator Landis's amendment to the bill.

PRESIDENT: The Landis amendment is adopted. Do you have anything further on it, Mr. Clerk?

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

PRESIDENT: We're back on the advancement of the bill. Senator Hefner, are you going to move for the advancement of the bill?

SENATOR HEFNER: I move for the advancement of LB 2.

PRESIDENT: Senator Hall, your light is on, did you wish to speak about that?

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

PRESIDENT: Senator Landis, please.

SENATOR LANDIS: Yeah.

SENATOR HALL: Senator Landis, the...I'm reading 77-1736.04 and

it reads, if by judgment or final order of any court of competent jurisdiction in this state, in any action not pending on appeal or error, it has been or shall be adjudged and determined that any real or personal property tax assessed or penalty or any part thereof was unconstitutional for any reason other than the valuation of the property, if such judgment or order has not been made in time to prevent the collection of payment of such tax assessment or penalty, then such tax assessment or penalty whether expended or not which has been collected pursuant to such unconstitutional tax assessment or penalty for the year, such tax assessment or penalty is determined to be unconstitutional, shall, without the necessity of filing a claim, therefore, be repaid and refunded in the county where originally paid to the person paying such tax assessment or penalty. And, granted, I'm reading from 77-1736.04, Section 1, subsection (1), and the language in the bill as it sits, LB 2, references subsection (2) of that same section, what, if any, effect does subsection (1) have on the bill as it is before us?

SENATOR LANDIS: I'll tell you the answer and I believe...I hope I heard this correctly because it went by pretty quickly. Senator Hall read a provision authorized, thank you, thank you, I'm very grateful...and here is the critical part. It says this, if an assessment is ruled unconstitutional for any reason other than the valuation of the property. Take a look at LB 2, line 24 of page 11, if an appeal is taken from such valuation. In other words, there is one exception to the section that Senator Hall read and that appeals about valuation. What is 77-1775.01 dealing with? Appeals of, exactly what is excluded from the provision he read, which is appeals in valuation, and I think that is how they harmonize it, Tim.

SENATOR HALL: So in other words, you don't feel that there is any discrepancy there between the two sections?

SENATOR LANDIS: I don't, I read that provision...(interruption)

SENATOR HALL: I mean, maybe, I mean, I clearly raise it as a legitimate issue...

SENATOR LANDIS: You bet.

SENATOR HALL: ...that we probably should take a look at between now and Select File...

SENATOR LANDIS: More than fair.

SENATOR HALL: ...because I think the argument that relates it to subsection (2) in terms of how it is paid out is not a problem. That's not an issue, but do those two sections mesh and harmonize, and if they don't, then I think they need to be corrected.

SENATOR LANDIS: Could I have just a second to respond to that, because I think it's a fair point. One more reading of the statutes to harmonize is definitely in order. Their use of the correct language is in order. If the bill drafting that has been done on the floor is the end of the process, we're all in trouble because I don't intend to rely on my own work or what we do quickly here. I see us as having sketched a concept and I know that perhaps both you and Senator Chambers may have some reluctance, perhaps we need an outside source of review, but harmonization is well justified in this case and we ought to do it. And to this section my guess is if Senator Chambers can find half a dozen more that we ought to take a look at, very fair to be done.

PRESIDENT: Okay, Senator Chambers, were you through?

SENATOR CHAMBERS: I haven't even started.

PRESIDENT: Would you like to start, Senator Chambers?

SENATOR CHAMBERS: Yes. Members of the Legislature, we can all agree that we're dealing with a complex issue but it has been made complex because of the poor drafting quality of the legislation that was presented to us. Had there been time and circumspection expended on the drafting of this legislation, we would at least have before us a proper statement or delineation of the issues that we're trying to grapple with. But when the language utilized is not correct, when the concepts proposed will not achieve the end desired such as using the word appellant when you should have said prevailing party, and I wish whoever told...brought that up would have just minded their own business and left it alone. And as little as there might appear to be in the bill as it stands now, there are other things that somebody who really wants a coherent effective piece of legislation should review and consider. We can say anything we want to in a piece of legislation, but courts are not bound to

accept what we say and they have rejected things the Legislature has said. It is not always clear when you first read something, the impact that it is going to have on all legislation pending at this time. On page 12, this is the language and the section numbered 7 in the original committee amendment. The changes made by Sections 2 to 6, and those two references are out, the changes made by this legislative bill are expressly intended to apply to all litigation pending as of this date, as of the date this act is passed and approved according to law. Does it say it is expressly intended to apply to all litigation arising out of the issues that this legislation addresses or to all litigation pending at this time? I'd like to ask Senator Hefner that question, if I may.

PRESIDENT: Senator Hefner, would you like to respond to that, or not?

SENATOR CHAMBERS: Senator Hefner, am I reading it correctly when I read the language to say that the changes made by this legislative bill are expressly intended to apply to all litigation pending as of the date this act is passed and approved according to law? Is that what it says in that language?

SENATOR HEFNER: (Mike off.) ...no comment.

SENATOR CHAMBERS: Oh, okay. Who...Senator Hall, would you comment? Senator Hefner has jumped off the...jumped from out in front of the Governor's jinrikisha and want somebody else to pull that burden for a while. Senator Hall, would you look at that language? Does it say all legislation pending?

SENATOR HALL: Yes.

SENATOR CHAMBERS: Does all allow for any exception?

SENATOR HALL: No.

SENATOR CHAMBERS: Thank you. Senator Landis, would you deal with me on this? By saying that the language of this bill shall apply to all pending legislation, what is there that restricts that to the cases that maybe have arisen out of the issues that this bill deals with?

SENATOR LANDIS: The change would, I think on its face, be

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interpreted against generally litigation arising after this time or the like. When there are cases in the pipeline the languages intend to say, and by the way, court, we mean this to apply to the cases that are already on your desk.

SENATOR CHAMBERS: Okay, but that says...okay, all cases. It doesn't say only cases growing out of the tax issues that resulted from an opinion by the Supreme Court, all cases, all cases pending.

PRESIDENT: One minute.

SENATOR CHAMBERS: If I've got a traffic ticket, they've got to find out whether this applies. This is an entirely new piece of language. This is an entirely distinct section that applies not to just what is in this bill, but to every case pending. Is that good drafting? Could it be done better?

SENATOR LANDIS: Perhaps it could be done better. I think it is sufficient. My guess is that there isn't practically a line in the Nebraska statutes that couldn't be improved.

SENATOR CHAMBERS: Thank you, Senator Landis. I wouldn't offer an amendment to any of these bills for any purpose. Give the department what they asked for and then give it to the court and say, we weren't sure what we were doing, but we're going to ask you to construe it and then if they say we construe it and it's unconstitutional, then they are going to be running around here like they are now saying the court kicked us in the teeth. They should kick us somewhere, but on the other side and a little lower.

PRESIDENT: Thank you. Senator Landis, are you going to close on this?

SENATOR LANDIS: (Response inaudible.)

PRESIDENT: Senator Hall, are you going to close? It's to advance it to E & R Initial.

SENATOR HALL: I don't think that would be fair and...

PRESIDENT: Okay, the question is, shall LB 2 be advanced to E & R Initial? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

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CLERK:      29 ayes, 4 nays, Mr. President, on the advancement of LB 2.

PRESIDENT: LB 2 is advanced. Do you have anything for the record, Mr. Clerk?

CLERK: I have nothing for the record, Mr. President.

PRESIDENT: Okay, we'll move on to LB 7, please. Oh, Speaker Barrett, the Chair recognizes you.

SPEAKER BARRETT: Mr. President, I move we adjourn until nine o'clock tomorrow morning.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. Machine vote has been requested. All those in favor vote aye, opposed nay. Record, Mr. Clerk.

CLERK: 20 ayes, 11 nays, Mr. President, to adjourn.

PRESIDENT: You said nine o'clock tomorrow morning, Mr. Speaker? Okay. You are adjourned until nine o'clock tomorrow morning. Thank you.

Proofed by: Arleen McCreary

November 15, 1989

LB 2  
LR 4

PRESIDENT NICHOL PRESIDING

PRESIDENT: Welcome to the George W. Norris Legislative Chambers. We have with us this morning for our morning prayer Senator McFarland. Would you please rise.

SENATOR MCFARLAND: (Prayer offered.)

PRESIDENT: Thank you, Senator McFarland. Roll call, please.

CLERK: A quorum present, Mr. President.

PRESIDENT: We will move on to legislative resolutions. You have one thing, Mr. Clerk. Please.

CLERK: Mr. President, I do. Your Committee on Enrollment and Review reports LB 2 to Select File with Enrollment and Review amendments attached; signed by Senator Lindsay as Chair of E & R. (See pages 114-15 of the Legislative Chamber.) That's all that I have, Mr. President.

PRESIDENT: Now we will move on to legislative resolution, LR 4.

CLERK: Mr. President, LR 4 was introduced by Senator McFarland. It is found on page 99 of the Journal. (Read brief explanation of LR 4.)

PRESIDENT: Senator McFarland, welcome back.

SENATOR MCFARLAND: Thank you, Mr. Lieutenant Governor. This is a resolution in honor of Anastacio Munoz, better known to all of us as Ernie. You may remember Ernie. He was the one-armed...man with one arm who was a security guard at the Capitol and was always ready to give information and direction to those of us who were wondering where certain rooms or buildings or wherever we needed...whenever we needed direction. He died just a few months ago and he was such a fixture and such an honored person in our Capitol, I thought it appropriate that we should honor him with a resolution. I would just like to read it briefly. It just says, "Whereas, Ernie Munoz died on October 10, 1989; and Whereas, Mr. Munoz, better known as Ernie, worked for 15 years as a security officer at the Capitol and was selected State Employee of the Year in 1984 for his service; and Whereas, Ernie was a good, kind man who made many friends for



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.

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

minutes to wait for the amendment or perhaps to look at the amendment. Any questions? Senator Hall.

SENATOR HALL: Does that take a vote of the body to change the Speaker's agenda?

SPEAKER BARRETT: No, it would take a vote of the body to change that decision.

SENATOR HALL: My point is, is that I do have I think the only amendment to LB 7 and there are currently nine members of the body who aren't present. Yet it is your intention to go ahead on Select File with the bill, without prior to five-thirteen in the afternoon knowing that that was going to be the case.

SPEAKER BARRETT: That would be my hope, Senator Hall. I believe I alluded to this yesterday and this would then put us on track for a Friday adjournment. Now recognizing that the body might want to change that agenda. Any other other questions? If not, let's proceed to LB 2, Mr. Clerk.

CLERK: Mr. President, the first order of business on LB 2 are Enrollment and Review amendments.

SPEAKER BARRETT: Senator Lindsay.

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

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: I have nothing further on that bill, Senator.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 2 as amended be advanced to E & R for engrossment.

SPEAKER BARRETT: Any discussion? If not, shall LB 2 be advanced to E & R engrossing? All in favor say aye. Opposed no. Ayes have it, carried, the bill is advanced. I'd like to recommend the body stand at ease until the bill is back, please.

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

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.



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.)

November 17, 1989      LB 2, 3, 7

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 2 with the emergency clause attached become law? All in favor vote aye, opposed nay. Record, please.

CLERK: (Read record vote. See pages 158-59 of the Legislative Journal.) 36 ayes, 9 nays, 4 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 2E passes. LB 3 with the emergency clause attached.

CLERK: Mr. President, Senator, I have a priority motion with respect to LB 3. Senator Hall would move to bracket LB 3 until 12:00 p.m., November 17, 1989.

SPEAKER BARRETT: Senator Hall.

SENATOR HALLS: Thank you, Mr. President, and members. The motion is there strictly to jump in front of Senator Haberman's motion which was in line first so that I would have the opportunity to, although I didn't think he would be as charitable on LB 3 as he has been on the other two bills because there are more than just one motion that follow. I rise to just briefly get into the record some things in relation to LB 3 and much of the debate that has surrounded it over the last week. The personal property tax issue as we have debated it over this Special Session as well as a number of years has yet to be resolved and will yet to be resolved with the passage of LB 3E or the passage of the two previous bills as we have had them. But I would just like to get into the record some things of the court that we have talked about much, I think, over this same time and we have said that the court has given us little direction, and I have been one of those who stated that in some ways I agree with it, and in others, I disagree, and I earlier in debate on this bill read some things into the record.

SPEAKER BARRETT: Excuse me, Senator Hall, excuse me. Are you discussing LB 3?

SENATOR HALL: Yes.

SPEAKER BARRETT: As opposed to LB 7?

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.

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

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?

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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.



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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