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Government, Military and Veterans Affairs Committee  
February 08, 2007

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[LB133 LB135 LB464 LB471]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 8, 2007, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB464, LB471, LB133, and LB135. Senators present: Ray Aguilar, Chairperson; Mick Mines, Vice Chairperson; Greg Adams; Bill Avery; Mike Friend; Russ Karpisek; Rich Pahls; and Kent Rogert. Senators absent: None. [LB464]

SENATOR AGUILAR: Good afternoon and welcome to the Government, Military and Veterans Affairs Committee hearing. My name is Ray Aguilar, from District 35, Grand Island. Other members of the committee are, on my far right are Senator Russ Karpisek from Wilber, Nebraska; Senator Mick Mines, the Vice Chair, from Blair; seated next to me on my right is Christy Abraham, our legal counsel; on my left is Sherry Shaffer, the committee clerk; followed by Senator Mike Friend from Omaha; Senator Rich Pahls from Omaha; Senator Greg Adams from York, Nebraska. The bills before us today will be taken up in the following order: LB464, LB471, LB133, and LB135. Sign-in sheets are at both entrances. Sign in only if you are going to testify and put it in the box up here on the table in front of us. If you're not going to testify but would like to be on the record either as a proponent, opponent, or neutral on the bill, there is another sheet you can fill out. These are at the tables at the entrances also. Please print your name and indicate who you are representing. Before testifying, please spell your name for the record. Introducers will make initial statements, followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing senator only. If you have a prepared statement or exhibit, give it to the pages and they will distribute it or make copies. Everyone please turn off your cell phones and pagers. Our pages for today are Adam Morfeld of Sioux Falls, South Dakota; and Kristin Kallsen of Big Springs, Nebraska. We are now ready to open on LB464. Senator Chambers, the senior member of the Legislature, please.

SENATOR CHAMBERS: Thank you. Mr. Chairman, distinguished members of this honorable committee, and particularly, Senator Karpisek. (Laugh) [LB464]

SENATOR KARPISEK: Thank you, sir. [LB464]

SENATOR CHAMBERS: He dubbed you. [LB464]

SENATOR KARPISEK: He has a little hard time, but he's getting there. [LB464]

SENATOR CHAMBERS: Okay. This bill is not one that is complicated, but I want to give enough explanation so that I don't confuse anybody. When we were having the impeachment proceedings last year, it became clear to everybody that criminal enforcement of the Political Accountability and Disclosure Act was with the Attorney

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General and the commission. That criminal enforcement ability never should have been given to the commission which is an administrative agency. So what this bill will do is take that authority from the commission, where it never should have been in the first place, and places the primary responsibility of enforcement with the Attorney General. There is concurrent authority with the county attorney in the county where a violation may occur. Under the existing statutes, when it lays out the authority of the Attorney General and the county attorney, it points out that they have concurrent jurisdiction. Maybe originally...well, I'm not going to say originally how it got into this Accountability Commission to enforce the criminal parts of it. But that should be taken away, then there is no confusion. Prosecution should be in the hands of the prosecutorial arm of the government. There is another matter. I didn't bring my Statement of Intent, so I'm kind of flying blind here, because I was just going to read it, because I took a lot of time to fashion it and not say a lot of words. But there can be sometimes...thank you very much. Ask and it shall be given you, in this committee. I think if I read it, it will take me fewer words, and I think it will be clear, because I wanted to make it clear. Oh, and by the way, the commission would retain the civil enforcement authority--levying fines, or issuing cease and desist orders, and the kind of things that are designed to cause people to comply with the law as they should. But if they step outside the law, then it's in that criminal prosecution bailiwick. Whenever the commission believes criminal prosecution may be warranted, referral is to be made to the Attorney General, who shall advise the commission in writing whether or not prosecution is to be undertaken. Neither the commission's referral, nor the Attorney General's response is subject to the confidentiality provisions of Sections 49-14,124.01. There are certain proceedings which are not to be publicized. One of them I know, for example, would be if a complaint is filed, then unless the commission takes some kind of action, that is supposed to be confidential. And you have somebody here who can go into more detail on any of these matters as you see fit. Additionally, LB464 clarifies that the general law which is found in the Criminal Code regarding the making of false statements; it does not apply to false statements made in various documents required to be filed pursuant to the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act. Under the Criminal Code, as you'll see in the Statement of Intent, the highest level of offense for a false statement would be a Class I misdemeanor. Under the election laws, however, making false statements in specified circumstances is punished as a Class IV felony. This is so because the corruption or undermining of the election process is so grave and destructive of the democratic process itself. That's the rationale. But if you have over here in the general Criminal Code a certain offense, the highest level of offense for that act is a Class I misdemeanor, and over here the highest level of offense is a Class IV felony, you can see an inconsistency. Although, when the court is interpreting or construing laws that seem to go in different directions, the court will either take the one most recently enacted and follow that, or it will take the specific over the general. If there's a general provision, say in the Criminal Code, and then a specific provision on that same subject dealing with a specific area of the law, then the specific rules the general. But rather than have that argument even be made, this bill was

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drafted to make it clear with a statement in the Criminal Code that the provisions relative to making a false statement do not apply to violations committed pursuant to the statutory requirements related to the Accountability and Disclosure Commission. Now I'm going to try to erase and smooth away those frown lines from Senator Friend. I wanted to state it in a way that might seem technical. Under the election statutes, if you make these false statements you will be punished according to a higher offense level than if you just make a false statement ordinarily. The elections are so important to the proper functioning of democracy that when you knowingly make false statements on documents you are required to file, and there will be a notation on that document that if you knowingly make a false statement you will be guilty of a Class IV felony, people have notice of what the punishment is. They should be instructed as to how serious the election laws and the election process are. And since this activity is so important there's a harsher punishment. Some of the areas of the election law involve whether or not a person will receive state funds to help pay for a campaign. If I opt out from under the limitations for a given office, I have to file an affidavit and say I'm not going to be bound, and I have to make a good faith estimate of how much I'm going to spend. Then there are deadlines when I must make those filings, so that after a certain amount of money is raised by me, the one who will comply, then I can get an amount of money from the public funding that will equalize the playing field. And the gentleman from the Accountability and Disclosure Commission who knows everything will be able to tell you those specific dates, if you're interested, how many days prior to the primary you have to file, how many days prior to the general, and the percentages involved that will trigger the release of public funds. But I think I've covered everything that I need to. And I'd like to give the opportunity, when there are members of the public or agencies who are going to explain as much time as they might need to address the committee. And I'll hang around to close. And any questions you want to ask of me, I will answer them. But if you would like to ask me anything right now as to why I'm bringing it, if I haven't made it clear, then I will answer at this time. [LB464]

SENATOR AGUILAR: Questions for Senator Chambers? Senator Mines. [LB464]

SENATOR MINES: I do. Thank you, Mr. Chairman. Senator Chambers, in Section 4, the substantive part of your bill, my question is, why is it permissive? In other words, it says, at any time after the commencement of a preliminary investigation, the commission may refer the matter to a possible crime violation. If in fact your intent is that the Attorney General be authorized, why shouldn't we say "shall"? [LB464]

SENATOR CHAMBERS: Because the preliminary investigation may disclose that there is no need, that nothing of a criminal nature had occurred. But if they think...that's to make it clear that not every time... [LB464]

SENATOR MINES: Yeah. [LB464]

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SENATOR CHAMBERS: ...is this going to be referred to the Attorney General for...  
[LB464]

SENATOR MINES: Would this not also mean "may not"? They may choose not to forward an example, as you gave Mr. Hergert? They could also choose not to forward, in which case the Attorney General is not involved? Am I reading that right? [LB464]

SENATOR CHAMBERS: If you take it literally, the way it's written, when you say something "may", then included or implied is the idea they "may not". [LB464]

SENATOR MINES: Um-hum. [LB464]

SENATOR CHAMBERS: But when Mr. Daley comes, I think you can ask him the circumstances under which this language would become operational. [LB464]

SENATOR MINES: Okay. [LB464]

SENATOR CHAMBERS: But I don't want it to say that in all cases shall there be a referral. [LB464]

SENATOR MINES: I agree with that. [LB464]

SENATOR CHAMBERS: Um-hum, because sometimes it may not be warranted.  
[LB464]

SENATOR MINES: I agree with that. [LB464]

SENATOR CHAMBERS: And sometimes...what the commission is trying to do, and I don't want to speak for them absolutely, is get people to comply with the law. [LB464]

SENATOR MINES: Um-hum. [LB464]

SENATOR CHAMBERS: So if you can bring somebody into compliance, that's what you would like to do. So if there is a borderline case, then perhaps the commission would determine that criminal prosecution is not necessary in this instance, even though technically that perhaps could be done. [LB464]

SENATOR MINES: Um-hum. [LB464]

SENATOR CHAMBERS: But with the time, the resources that may be involved, on the other hand, you might have a person who had been cooperative and under some circumstances you might not want to refer it for criminal prosecution, I'm speculating.  
[LB464]

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SENATOR MINES: Okay, okay. [LB464]

SENATOR AGUILAR: Senator Avery. [LB464]

SENATOR AVERY: Yes, Senator Chambers, would this cover, and I don't think it does, but I need you to tell me, offenses in the seeking of the office that take place before you take the oath of office? [LB464]

SENATOR CHAMBERS: Yes, these are activities related to the filings you must make and all of the other information that you have to submit to the commission, whether you win or not. So this doesn't relate to impeachment. [LB464]

SENATOR AVERY: No. [LB464]

SENATOR CHAMBERS: This relates to the day-to-day operation of the commission. And from my part, the most important...let me not say that, the most significant thing from where I sit is taking that criminal prosecutorial authority from the commission. [LB464]

SENATOR AVERY: Um-hum. [LB464]

SENATOR CHAMBERS: And then that harmonizing between the two provisions that relate to giving of false statements is important, and that will be clarified and taken care of. [LB464]

SENATOR AVERY: But the impeachment issue is a separate one? [LB464]

SENATOR CHAMBERS: Yes, that is entirely separate. And there is a provision in the statutory scheme related to these election laws which say, that regardless, I'm paraphrasing, regardless of what action may be taken by the commission, it in no way impinges on the Legislature's authority and power to impeach. [LB464]

SENATOR AVERY: Thank you. [LB464]

SENATOR AGUILAR: Senator Friend. [LB464]

SENATOR FRIEND: Yes, thank you. Thank you, Chairman Aguilar. Senator Chambers, I read this a couple days ago. And the only thing that I was...I felt like I was back in Judiciary, because we're talking about the penalties and the things that are going to happen in Section 4 that Senator Mines pointed out. Explain to me why the Attorney General, though? I mean if I'm out in Sheridan County and I'm running for, you know, an NRD seat up there, and I violate, you know, I do some criminal things,... [LB464]

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SENATOR CHAMBERS: Um-hum. [LB464]

SENATOR FRIEND: ...why wouldn't the county attorney, I mean is there a person...is there a... [LB464]

SENATOR CHAMBERS: Yeah, the county attorney... [LB464]

SENATOR FRIEND: ...criminal procedure that would dictate, under these circumstances, that it should be the Attorney General, I guess, is what I'm asking? [LB464]

SENATOR CHAMBERS: The county attorney does have concurrent jurisdiction in the county where the offense occurs. So the... [LB464]

SENATOR FRIEND: Okay, so the AG could say, oh, go ahead and deal with that yourself. [LB464]

SENATOR CHAMBERS: Yeah, you handle it. Right. Or let's say we have a county attorney, for whatever reason, does not want to proceed. Then the Attorney General is there with the primary responsibility to go forward. [LB464]

SENATOR FRIEND: All right, I see. [LB464]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Senator Chambers. [LB464]

SENATOR CHAMBERS: Thank you. [LB464]

SENATOR AGUILAR: Before we go to the proponents, I would announce that Senator Avery has joined us...oh, were you here? (Laughter) No, you weren't. Senator Avery from Lincoln and Senator Rogert from Tekamah. First proponent, please. Welcome. [LB464]

FRANK DALEY: Thank you, Senator Aguilar, and members of the Government, Military and Veterans Affairs Committee. My name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Nebraska Accountability and Disclosure Commission. And I suddenly have this heavy mantle bestowed by Senator Chambers of omniscience, so I'll see what I can do about that. I'm appearing today to express the commission's support of LB464. The commission believes that the responsibility for criminal prosecution of violations of statutes really ought to lie with an agency which is structured for criminal prosecutions, and LB464 does that. The other thing that LB464 does is it harmonizes some criminal statutes which, quite frankly, have been difficult to reconcile and probably

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have...the current structure has probably formed an impediment to the criminal prosecution of statutes under the Accountability and Disclosure Act and the Campaign Finance Limitation Act. And maybe let me just flesh that out a little bit. When you are prosecuting a crime, it's kind of like building blocks, you are trying to figure out what the elements of a crime are. So the crime may be A, B, C, and D, those are the elements. But one thing that happens in a criminal prosecution is that the defense attorneys appropriately look to see that their client is properly charged. And if there's an offense over here that says, A, B, C, and D are the elements, and there's another offense over here that says, A, B, C, and D are the elements of the crime, but one is a felony and the other is a misdemeanor, that gives the criminal defense attorney the opportunity to have the court either force the prosecution under the criminal provisions with the lesser penalty, or at least be sentenced under the lesser penalty. And so that really makes it rather difficult, and that's the situation which exists now. We have in the Accountability and Disclosure Act and the CFLA provisions that say, if you make false filings with government, it's a felony. But there are provisions in the general Criminal Code that say, if you make false filings with government, it's a misdemeanor. And so part of the purpose of LB464 is to harmonize that by making clear that in the general Criminal Code, under Section 28-915.01, there is an exact reference, there is a reference that says, this statute is not intended to apply to documents filed under the Accountability Act or under the CFLA. And I think that gives the prosecution one more factor that will aid in the prosecution of that case under the Accountability and Disclosure Act. He would have one more presumption in his favor. So that's kind of the point of all of this. And the commission really believes that that's necessary in order to ensure criminal prosecution, when appropriate, under the Accountability Act. If I can respond to some of the questions I heard asked. First of all, Senator Friend, you mentioned the difference between the county attorney and the Attorney General. Years ago, the statute in the Accountability Act provided that the commission had criminal jurisdiction concurrent with the county attorney. And for whatever reason a number of years ago the Legislature specifically changed that to make it criminal jurisdiction concurrent with the Attorney General. And I think the idea was that if there were going to be criminal prosecution of a situation like this, there would be a more standard...there would be a more uniform standard applied across the state rather than one county attorney thinking, ah, this should be prosecuted, and the other county attorney in another county thinking it shouldn't. So I mean, I think that goes to part of what you were asking. The other question involved Section 4 that Senator Mines asked about, the concept of "may". And I think Senator Chambers touched upon it. Sometimes we'll get into an investigation and look at it and see it's really a very, very minor thing. By way of example, we may get a complaint that someone filed a false statement. And when we look at the campaign statement, and perhaps do an audit, and perhaps untangle things, we may see there is an error in there. For example, if the person got two contributions of \$1,000 from the ABC PAC, but they reported one, and you go in and you look, and the treasurer and the candidate all agree, oh yeah, we thought this was a double entry, so we listed one, and yeah, now that we look at our records, it should be two. Well, strictly speaking the

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statement is false, but they correct it and that doesn't seem to be the type of thing that you would want to refer to the Attorney General's Office. So I think that's part of the rationale for the "may" language. Some things just don't rise to that level. The other thing is there may be violations under the Accountability Act that do not carry criminal penalties and things of that nature, of course, would still be handled by the commission. Are there other questions from members of the committee? [LB464]

SENATOR AGUILAR: Further questions? Seeing none, you did a good job, thank you. [LB464]

FRANK DALEY: Thank you, Senator. [LB464]

SENATOR AGUILAR: Any other proponents? Welcome. [LB464]

ROGER HOLMES: Mr. Chairman, members of the committee, my name is Roger Holmes, H-o-l-m-e-s, and I'm speaking on behalf of the organization Common Cause Nebraska in support of LB464. I have nothing to add to the reasons given by Senator Chambers or the explication by Mr. Daley. We wanted to be on record as having been interested in and involved in campaign finance since its inception. We wanted the committee and the senators to know that we feel this is an excellent adjustment to the law that will benefit, not only the voters of the state, but we feel the people who are running as well, by clarifying for them the rules under which they run for office and making that process easier, therefore encouraging more people to become involved in the process and also to avoid, in cases of violation of the laws, confusion that can obscure the importance which we feel Senator Chambers has specified here very clearly, and that the electoral process is a most important part of our democracy. So thank you. [LB464]

SENATOR AGUILAR: Thank you. Questions for Mr. Holmes? Seeing none, thank you for coming today. Further proponents? Are there any opponents? Neutral testimony? Senator Chambers, to close. [LB464]

SENATOR CHAMBERS: I'll waive closing. [LB464]

SENATOR AGUILAR: Senator Chambers waives closing. We're now ready to open on LB471. Senator Chambers, please. [LB464 LB471]

SENATOR CHAMBERS: (Makes a martial arts gesture and noise.) (Laughter) You were looking a little bored there. You never know what to expect around here. Mr. Chairman, members of the committee, I'm Ernie Chambers. I represent the 11th Legislative District. And this bill is designed to regulate an activity which can be very dangerous. It can even border on brutal, and there needs to be some kind of regulation of it. I've been contacted by several people, as some of the rest of you may have been, and I was

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specifically requested to offer some legislation. And I am convinced that it is necessary that this regulation be done. So what this bill will do is to place under the commissioner of the Athletic Commission the authority to regulate this mixed martial arts activity in the same way that boxing, wrestling, and other types of contests or exhibitions are regulated. By statute there will be established the number of rounds that can occur in one of these activities and the length of the rest periods between. As with boxing, on the day that one of these people will participate in this activity, there would have to be an examination by a duly qualified and certified physician to make sure that this person is physically up to snuff to engage in this. But we make no specification that there be a psychiatrist, because people are entitled to choose their own poison, so to speak. In order to have a definition, there was some examination of other statutes. And I have worked with the director. I shouldn't call him the director, the commissioner. He is a former Omaha police officer. People never thought the day would come when I would be working in concert or colluding (laughter) with a former Omaha police officer. But look, when people wake up and change and are doing something worthwhile, it should be possible to work with that person on that issue. And I'm confident that he's going to do a very good job in regulating this activity as with others. The definition you can find on page 10. For purposes of this bill, mixed martial arts, commonly referred to as MMA, means an unarmed combat sport in which two competitors seek to achieve dominance over each other by utilizing a combination of permitted martial arts techniques from disciplines of martial arts, including but not limited to grappling, kicking, and striking. Martial arts means any one of the disciplines set forth in rules and regulations adopted and promulgated by the State Athletic Commissioner. The reason I drafted the definition in this fashion is so that when we list these items, we want to make sure that these are to give an example of what we're talking about, rather than an exhaustive list. Because if somebody wants to get around a statute which lists items, anything not listed is not covered. So let's say I'm an unscrupulous person, I don't want to be regulated, then if they say grappling, kicking, and striking; maybe we would say punching, wrestling, or find some other term. So it's drafted in this way to give flexibility to the commission which is going to do the regulating to meet any attempt to circumvent or to add refinements to the law as may be needed, as this activity progresses and goes forward. So if you have any questions of me, I will answer them. But that little noise that I made was not a challenge to anybody, it was just to kind of wake you up, because I'm not going to do any grappling, kicking, or striking here today. [LB471]

SENATOR AGUILAR: Senator Friend. [LB471]

SENATOR FRIEND: Thank you, Chairman Aguilar. Senator Chambers, how come... [LB471]

SENATOR CHAMBERS: Senator who? Agrith? [LB471]

SENATOR FRIEND: Sorry, Senator...(laughter) Chairman Aguilar,... [LB471]

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SENATOR CHAMBERS: I mean if there are some people I don't know...oh, okay. [LB471]

SENATOR FRIEND: I lost my train of thought. (Laughter) [LB471]

SENATOR CHAMBERS: I'm sorry. [LB471]

SENATOR FRIEND: No, you're not. [LB471]

SENATOR CHAMBERS: Okay, I'm not. [LB471]

SENATOR FRIEND: No, no, no. How come...why can the State Athletic Commissioner, why couldn't mixed martial arts, I guess, and maybe you explained it with your definition on page 10, a lot of them are making money. Why couldn't that fall under professional wrestling in current statutes? [LB471]

SENATOR CHAMBERS: Because it's not any of those things. It's the thing, as the law would say sui generis, it's a thing unique and distinct to itself. And there are things permitted here which would not be permitted in those other activities. And this is based on a type of combat or competition which is not the underpinnings for these other sporting events. [LB471]

SENATOR FRIEND: So it's fully unregulated now... [LB471]

SENATOR CHAMBERS: Um-hum. [LB471]

SENATOR FRIEND: ...in this state? [LB471]

SENATOR CHAMBERS: Um-hum. [LB471]

SENATOR FRIEND: Not every state, probably, correct? [LB471]

SENATOR CHAMBERS: There are other states where it is regulated, but not here. [LB471]

SENATOR FRIEND: Yeah, like Las Vegas, or Nevada and stuff like that, I think. Well, who would win, Lennox Lewis or Randy Katera (phonetic)? [LB471]

SENATOR CHAMBERS: Well, it depends on how old they are, what the frame of mind is, and what the purse is. [LB471]

SENATOR FRIEND: And what...that was a joke. I didn't...that was rhetorical. [LB471]

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SENATOR CHAMBERS: Yeah, but if you were serious, we might work something out here and both of us could get a little something. (Laugh) [LB471]

SENATOR FRIEND: It depends on how they were being...depends on what they were doing in the ring, what they were allowed to do. [LB471]

SENATOR AGUILAR: Senator Avery. [LB471]

SENATOR AVERY: Thank you, Mr. Chair. I have a question, Senator Chambers, about your definition. [LB471]

SENATOR CHAMBERS: Yes. [LB471]

SENATOR AVERY: You used the words "unarmed combat sport." [LB471]

SENATOR CHAMBERS: Yes. [LB471]

SENATOR AVERY: Isn't it true that in some of these martial arts they actually do use weapons? [LB471]

SENATOR CHAMBERS: Well, those might be exhibitions. But in these events that we're talking about, we don't want them using weapons or arms, other than the two attached to their shoulders. [LB471]

SENATOR AVERY: Um-hum. [LB471]

SENATOR CHAMBERS: Although, after it's over, you may be unarmed. [LB471]

SENATOR AVERY: My son was in tae kwon do for quite a long time, and they have the...I don't know what they call them, the things on... [LB471]

SENATOR CHAMBERS: Num chucks or... [LB471]

SENATOR AVERY: Yeah, something like that. [LB471]

SENATOR CHAMBERS: Okay, and... [LB471]

SENATOR AVERY: And then these stars, you know, with the sharp edges on them. (Laughter) [LB471]

SENATOR CHAMBERS: Um-hum. That's not what we're talking about. [LB471]

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SENATOR AVERY: Okay, so that would not be covered? [LB471]

SENATOR CHAMBERS: Not based on what this is attempting to do. We define... [LB471]

SENATOR AVERY: So you don't actually have competition then with those kinds of weapons? That's just for exhibition... [LB471]

SENATOR CHAMBERS: They can still do what they're doing. [LB471]

SENATOR AVERY: Um-hum. [LB471]

SENATOR CHAMBERS: Because if you have the stars, I don't think in any of those competitions you attempt to stick the stars in anybody. [LB471]

SENATOR AVERY: Only in the movies. [LB471]

SENATOR CHAMBERS: Right, and even then they fake it. But there's one other point. The makeup of the commission will be changed by requiring a new member who either participated in or currently is active in mixed martial arts. And the term "mixed" separates it from just martial arts exhibitions, where there may not be contact, or not the kind that is allowable here. [LB471]

SENATOR AVERY: Okay. [LB471]

SENATOR CHAMBERS: And again, by giving the commission the authority to promulgate rules and regulations, if any confusion develops, or any questions arise, those things can be worked out by rule and regulation. And I don't want to try to cover every possible eventuality in statute. [LB471]

SENATOR AVERY: Okay, thanks. [LB471]

SENATOR AGUILAR: Senator Rogert. [LB471]

SENATOR ROBERT: Senator Chambers, does this encompass then the UFC, the Ultimate Fighting Championships that they have been working on and... [LB471]

SENATOR CHAMBERS: The which now? [LB471]

SENATOR ROBERT: The Ultimate Fighting Championships? That's a big one, it's...is that kind of what this is? [LB471]

SENATOR CHAMBERS: If they do any of these kinds of things, because those

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activities might vary from place to place in terms of what's allowed, but if that kind of activity is a part of it, and it takes place in Nebraska, it would be under this bill, and it would have to meet the regulatory requirements contained therein. [LB471]

SENATOR ROBERT: In order for them to have those competitions? [LB471]

SENATOR CHAMBERS: Um-hum,... [LB471]

SENATOR ROBERT: Okay,... [LB471]

SENATOR CHAMBERS: ...legally. [LB471]

SENATOR ROBERT: ...thank you. [LB471]

SENATOR CHAMBERS: Right. [LB471]

SENATOR AGUILAR: Senator Mines. [LB471]

SENATOR MINES: Thank you, Chairman "Ya-Ya-Ya". Senator Chambers, this bill also increases the Athletic Advisory Committee from five to six members. [LB471]

SENATOR CHAMBERS: Um-hum. [LB471]

SENATOR MINES: Is that...is there a reason behind that, or is it just a nice number? [LB471]

SENATOR CHAMBERS: So that you can put another person on it who is familiar with this mixed martial arts activity. [LB471]

SENATOR MINES: And that's important? [LB471]

SENATOR CHAMBERS: Yes. [LB471]

SENATOR MINES: Yeah. Okay. [LB471]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Senator. [LB471]

SENATOR CHAMBERS: And I won't do again what I did when I came up here. I was more embarrassed than you all were surprised, let me tell you. (Laughter) [LB471]

SENATOR KARPISSEK: I don't know about that. [LB471]

SENATOR CHAMBERS: Oh, okay. (Laughter) [LB471]

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SENATOR AGUILAR: First proponent, please. [LB471]

WALLY JERNIGAN: Senator Aguilar, members of the committee, my name is Wally Jernigan. I'm the director of the Athletic Commission and I'm the policeman who woke up. (Laughter) First, I'd like to address Senator Avery's concern, if I could. And this was a note that I made just before I came here. This mixed martial arts, once placed in statute, has nothing to do with the judo, the tae kwon do, and the karate that the kids and those exhibitions have. This is strictly professional mixed martial arts. On behalf of the mixed martial arts community and the Athletic Commission, I'd like to thank Senator Chambers for introducing LB471. Secondly, I'd like to thank the committee for taking testimony and, hopefully, moving LB471 to the full body of the Legislature for consideration and passage. Currently, there are 34 states that regulate mixed martial arts. They vary in size from the small states, like Kansas, who do eight or ten shows a year, to Nevada and New Jersey who do the large Pay-Per-Views and generate millions of dollars in revenue and are considered the mecca of ultimate fighting and mixed martial arts. I'd like to point out a couple of things that really point to the importance of having this bill passed. And one is unscrupulous promoters. We have promoters that come in here from Wyoming, Colorado, Kansas, a few from the northeastern side of Iowa that will pull shows. They go to the various communities and they tell wherever they're going to hold the show at, that they are licensed with the state, and that they have all the necessary permits to put on the production. They charge X-amount of money from the business owner. They take the money and run. They leave unpaid bills. They don't pay the officials. They shortcut the contestants and run off and we never hear from them again. There is a string of promoters coming up that are working...currently working Oklahoma, Kansas, and they've tried to get up into Nebraska, that have left a string of bad checks and unhappy contestants. We went through a period of time when we had unskilled and untrained competitors. They would go into these bars and put these things on, and they'd get people out of the stands who had been drinking and the next thing you know you've got a guy that is about half in the bag competing against a guy who's been working out, who knows what he's doing, and you wind up with someone getting injured. We went through that at Bourbon Street in Omaha several years ago, and some of you may remember that. I went to one of their shows, it was unregulated, to see what they did. And as they're shaking hands, before the bout started, the competitor who knew what he was doing jerked the guy to him, head-butted him and split his forehead. And I thought, well, this is really nice, so I told my inspector that was with me, I said, let's go and we left. Unregulated events, there's no licensing, there's no oversight, no one collects the state tax, no one collects the city tax, no one collects the athletic tax. The promoters take the money and run. They provide no health insurance or a death benefit for the contestants. However, we do have some fellows, in the mixed martial arts community in Omaha and around this area, that want the activity regulated by the commission. And they have done their best to provide those things: insurance, physicals, physicians at ringside, and things that we

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require with amateur and professional boxing and wrestling. And they've done a good job. And I've talked with Mr. Andersen several times on things that he should probably do when they're talking about their shows and that, and he'll speak to that later. We have no pre-bout or post-bout physicals on these unregulated events, so we don't know if somebody is going to have a heart attack before they get in there, or if they're going to suffer some type of physical problem at the end and could pass away in the dressing room, as happened in Missouri. There's no ambulance with EMT's and resuscitation equipment at ringside at the majority...at all of these unregulated events. And I'd guess that over the past fiscal year we've had probably 12, or maybe more, unregulated, unsupervised events in Nebraska. And it's not unique to this side of the state, it's all over the state. You might have read the thing in the paper about the event they had in Gering, where after the show the chief of police got punched in the nose, and so he immediately went to the council and they were going to pass an ordinance that banned mixed martial arts from any city owned facility. And I don't know if that went through or not. There is currently an event scheduled for June in Grand Island and there's one being planned right now for North Platte that could be in the next month or two. So these things are happening on a regular basis unregulated. And I'm going to go against Senator Chambers a little bit right now. [LB471]

SENATOR CHAMBERS: That's okay. [LB471]

WALLY JERNIGAN: I know he doesn't like to hear what other states do, I know he doesn't like to be compared to other states. But there is a revenue stream that we're missing here also. In Iowa, last year they've had 23 events, this was just up through October, 23 events generating between \$25,000 and \$50,000 in athletic tax alone, not including state tax on the sale of tickets and other associated revenues that they would get from the production, like concessions and what have you. Kansas, a brand new commission, two to three years old, we helped them get started down there. They've had eight shows this last year and generated \$29,500 in athletic tax. And that doesn't include licensing and those other associated fees. And once the bill is passed, we would review and research the rules and regulations from the states that are the most active, and the ones that have been pretty successful, and go through their rules and regulations with a member of the mixed martial arts community from here in Nebraska, and pick out the best of the best rules and regulations, and that way we would have the best. And we wouldn't be floundering around, not knowing what's going on. And in addition, there is another member added to the advisory committee from the mixed martial arts field. And additionally, we would add another inspector to supervise and regulate the shows from the mixed martial arts community also, because it wouldn't do any good to send me, because I don't know a left hook from a fish hook when it comes to mixed martial arts. And so the commission would do what is necessary to keep us in line with what is taking place. And in closing, you mentioned the UFC. And on Tuesday night we had the WWE in Omaha. And one of the inspectors had an opportunity to talk with Mr. O'Gorman (phonetic) from Qwest Center, and he asked at that time, couldn't

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have been better timing, if the State Athletic Commission was going to start regulating mixed martial arts? And they told him that they were unsure, that there was a bill that had been introduced by Senator Chambers and were waiting for that to move one way or the other. And he said that he had made...Mr. O'Gorman (phonetic) stated that he had made contacts and was ready to promote the larger UFC and mixed martial arts shows at the Qwest Center, and he was talking about doing five or six shows a year, which would be a giant revenue boost for us. But he won't do it unless it's regulated, he won't come to Nebraska unless it's regulated. And with that, I'd like to thank each of you for any and all consideration given this matter. And again, I'd like to thank Senator Chambers for introducing the bill for us. And I'll answer any questions you might have. [LB471]

SENATOR AGUILAR: Questions from the committee? Seeing none, thank you for coming today. Next proponent. [LB471]

LYNN REX: Senator Aguilar, members of the committee, my name is Lynn Rex, R-e-x, representing the League of Nebraska Municipalities. First of all, we'd like to thank Senator Chambers for introducing this measure, not only because of the incident that occurred in Gering, but what's happening in other cities as well just in terms of inquiries from folks wanting to conduct these kinds of events. This bill is very appropriate and we think very necessary. So we hope you advance it to the floor. I'd be happy to answer any questions you may have. [LB471]

SENATOR AGUILAR: Questions for Ms. Rex? Thank you. [LB471]

LYNN REX: Thank you, Senator. [LB471]

SENATOR AGUILAR: Next proponent. Welcome. [LB471]

MARTIN ANDERSEN: My name is Martin Andersen, that's A-n-d-e-r-s-e-n. First, I'd like to thank Senator Chambers for sponsoring this bill on short notice also. Thank you guys for listening to us today. I'm here, basically, as a witness. I've witnessed a lot of what Wally was saying. I've been to the Bourbon Street, I've watched professionals fight drunks that were staggering so bad they couldn't hardly stand. I've also witnessed martial arts being a very skillful art, you know, where crowd control was great and everything, too. Biggest problems is nobody governs it right now, and we need somebody to govern it. Right now Nebraska is a state that doesn't have laws for or against it, and it's leaving us vulnerable in the small towns in Nebraska. These promoters are coming in. They cash in, they leave, they don't care who's hurt, or what happens. What's going to happen is it's going to take every town in Nebraska either shut them down, or (inaudible) before something happens, if we don't pass this bill. Basically, the way you can look at it is to say no to LB471 would be saying we don't want regulations and rules. It's also saying we don't want the revenue in Nebraska. I'll

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end there because I think they've covered about everything we really need to cover. If you have any questions, please ask them. [LB471]

SENATOR AGUILAR: Questions for Mr. Andersen? Senator Friend. [LB471]

SENATOR FRIEND: Thank you, Senator. Mr. Andersen, I would...this is a good bill, I think, by the way. But I'm a little worried. I mean sometimes they sound pretty underground anyway. These events sound fairly underground. I'm wondering if we don't drive them further...don't get me wrong, this is needed. How do we stop...how would you stop a drunk...if somebody fines it, strict penalties, I mean is that what you're getting at? The other thing is, why would a professional go into a bar and beat up a drunk? I mean I haven't witnessed that stuff. I mean, that happens a lot? [LB471]

MARTIN ANDERSEN: For some...for some...well, it's let up. The Bourbon Street days were real bad. I mean they went on a couple years doing that. And what a lot of them are doing is they're just training for their next show out of town or whatever, because their big money is out of town. We don't have anything sanctioned here to make it good money. So they're just using these guys as little practice dummies. That's why they can go in there every Friday, or every Tuesday, whatever it was when they were having the shows and do this stuff. It was just a workout to them. It was an easy win, makes them look good on their record, and they get to travel the glory, when really, I mean, some of the shows were disgraceful. And as far as the underground, if you give a competitor someplace to compete in the sport he wants to grow, he's not going to go underground, he's going to take the real ride and go up. So the sooner we get it sanctioned, give these people a place to compete in the real world, the underground will get choked out. [LB471]

SENATOR FRIEND: Okay, thanks. [LB471]

MARTIN ANDERSEN: No problem. [LB471]

SENATOR AGUILAR: Further questions? Seeing none, thank you for being here today, Mr. Andersen. [LB471]

MARTIN ANDERSEN: Thank you. [LB471]

SENATOR AGUILAR: Next proponent. [LB471]

TIM BAZER: Good afternoon. My name is Tim Bazer, B-a-z-e-r. I'm...thank you, Ernie Chambers. I am here as a fighter and a promoter. I've had 14 shows in Nebraska in this last year alone. We brought in close to \$80,000, so there is money in it. Me, as a promoter, would I like to give up another extra 5 percent? No, but at the same time, I don't want to be shut down in the near future because of guys who do come into this

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town, or into this state and, you know, run with their money. I'd rather pay that extra 5 percent, or 10 percent, whatever the money is. As a fighter, it's the same thing. I started at Bourbon Days, at the Bourbon Street Days. I was there when they brought Des Moines guys in every weekend, and they'd beat up our drunks. They train out there in Des Moines, because there wasn't nothing here. There was no training, basically, the promoters just came in, they got their money, they didn't care, obviously, if anybody got hurt or not. They were just there for the show. Two or three people packed into the bar, you know, and watched the show. Great. I mean that's where I got my career started, so I don't regret any of it. Luckily, I wasn't one of the drunks. However, I did throw in the towel probably 15 times out of a year. I mean, me just being in the crowd, not knowing either the fighters, but because it was so unfair that, you know, I wasn't...because I don't drink or anything, I could comprehend what was going on and I didn't approve of it at all. And that's why I became a promoter here in Nebraska to help regulate it myself. Now I know there's nothing in Nebraska saying, you know, these rules, you know, we abide by these rules. We don't have that. So I went to the...well, I didn't go to the UFC, I looked on their web site, I broke down all their rules that were legal for them, and that's what I did for my shows. Now nobody...if you...we'll stop the competition right away, if you break any of the rules, then the fight will be over. You won't get a second chance. There is nothing...we have EMT's at every show. We have doctors that look at the fighters, and I'm caught up on all my taxes, so I'm one of the only ones in Nebraska right now that is legal, as much as I can be, because I don't want to get it shut down. We became, you know, Marty and I became closer and closer in the last year, and we wanted to be here. You know, we started this whole thing to get here and we want to see it get regulated, one way or another. I mean I'd rather get shut down than somebody get killed. But, you know, it's better to have the regulations and the rules versus the other. If there are any other questions... [LB471]

SENATOR AGUILAR: Questions? Senator Rogert. [LB471]

SENATOR ROBERT: Thank you. Thanks for coming in. Where you been holding...have you been holding your shows? [LB471]

TIM BAZER: There all in...most all of them, but one, are in Omaha, and the other one was in Fremont. [LB471]

SENATOR ROBERT: You're at the Sokol? [LB471]

TIM BAZER: At the South Sokol, yes. [LB471]

SENATOR ROBERT: I've been to some of your shows. You do a good job. [LB471]

TIM BAZER: Thank you. [LB471]

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SENATOR ROBERT: Congratulations. [LB471]

TIM BAZER: Thank you, appreciate it. [LB471]

SENATOR AGUILAR: Further questions? Thank you for coming today. [LB471]

TIM BAZER: Thank you. [LB471]

SENATOR AGUILAR: Any more proponents? Welcome. [LB471]

JACK CHELOHA: (Exhibit 1) Good afternoon, Mr. Chairman and members of the committee. My name is Jack Cheloha. The last name is spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. I'd like to testify in favor of LB471. Likewise, want to thank Senator Chambers and the Athletic Commission for bringing this bill forward. What I'm having the page hand out right now is, in anticipation of this bill being introduced, my city council and the Mayor of Omaha passed a resolution of support. It was unanimous and the Mayor signed it. And we feel that this bill is very appropriate, maybe even past due a little bit. As you've heard, we've had activities and events in Omaha and we've struggled with that locally in terms of how to regulate it, what kind of ordinance can we pass? And at most, if you want to prohibit it, or have penalties, you know, we're limited by the power of the city in terms of penalties. And so as they thought about it, they didn't want to go so far as to actually prohibit these activities. We understand from listening to the two previous testifiers that there are merits to these fights, and there is good that come out of it. It's a spectator sport that people enjoy. And if they're done and regulated properly, and if you have, you know, health insurance and a doctor available, etcetera, that it can be another good opportunity for some entertainment. But at the same time, we do need to have this regulation. And we've got the appropriate board to review it. And so with that, it gives me great delight to have the city of Omaha working with Senator Chambers on the same side. (Laughter) [LB471]

SENATOR AGUILAR: Questions for Mr. Cheloha? Seeing none, thank you. [LB471]

JACK CHELOHA: Okay, thank you. [LB471]

SENATOR AGUILAR: Further proponents? Are there any opponents? Any neutral testimony? Seeing none, Senator Chambers, to close. [LB471]

SENATOR CHAMBERS: I will close briefly, but I want to tell you Senator Schimek was watching our proceedings, and there was so much love going on here, especially between me and a former police officer, and then she saw the representative for the city of Omaha, that she's going to lead us in a chorus or two of "Kumbaya." (Laughter) That's not true. But here's why I came back, after listening to Mr. Jernigan and the other witnesses, I would request that you put the emergency clause on this bill and send it

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out, so that they can begin taking steps immediately to put in place what has been discussed here. And the word can go out that Nebraska is going to do some regulating. And that's the only reason I really came back to offer a closing. [LB471]

SENATOR AGUILAR: Any questions for Senator Chambers? Seeing none, thank you for joining us today. [LB471]

SENATOR CHAMBERS: Thank you very much. [LB471]

SENATOR AGUILAR: That closes the hearing on LB471. We're now ready to open on LB133. Senator Schimek, please. Welcome. Welcome home. [LB471 LB133]

SENATOR SCHIMEK: Thank you. Thank you, once again. Mr. Chairman and members of the Government, Military and Veterans Affairs Committee, this is another one of those carryover issues. It has to do with the transfer of development rights. For the record, I'm sorry, my name is DiAnna Schimek. I represent the 27th Legislative District, the "Historic District." The transfer of development rights plays a permanent role in directing new residential, away from, scattered, rural area sites to areas desirable for relatively dense housing, such as being near incorporated communities, or next to rural subdivisions that already have the needed infrastructure, for instance roads, water, emergency services, schools, etcetera. It could also be used to allow a landowner to gain the financial benefit of developing his property and still being able to conserve his property for farming, hunting, or to protect an endangered species. During the 2006 Legislative Session, Senator Landis introduced LB979 on behalf of Lancaster County. LB979 granted all counties the authority to establish transfer and exercise development rights. The Government Committee heard the bill and the members were very interested in the zoning tool, but wanted an opportunity to study the issue more closely. Therefore, an interim study was introduced and completed during the 2006 interim. Questions and testimony during the interim study from the committee and a representative from the Nebraska State Home Builders Association relayed some reservations with how it would be applied, and what property it would be applied to. In response to the questions and testimony, LB133 was drafted. LB133 limits zoning authority to Lancaster County and clarifies that it is the voluntary transfer of noncontiguous, and I emphasize noncontiguous residential property. The purpose of LB133 is to permit Lancaster County to use the transfer of development rights, or TDR's it's sometimes called, as part of the county zoning authority. Under current law, Lancaster County has the authority to regulate in density population on contiguous property. LB133 specifically provides that only Lancaster County would have the authority to regulate density on noncontiguous property if the transfer is voluntary between landowners and applied to residential uses. The transfer development rights would be considered a zoning action required to have a public hearing and notification of the property owners within the area of, not only the area where the property rights are being transferred from...that ends with a preposition, sorry, but also that area where the property rights are being transferred to. And with

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that, I know there are people here from the county to talk about this more at length. But those of you who have been on the committee will recognize this issue for sure. With that, Mr. Chairman, I would conclude my remarks. [LB133]

SENATOR MINES: Thank you, Senator Schimek. Do we have questions from the committee? I see none. Oh, I'm sorry, Senator. [LB133]

SENATOR ADAMS: May I? And if you want to defer this question, Senator,... [LB133]

SENATOR SCHIMEK: I may. [LB133]

SENATOR ADAMS: ...you can. But can you give me an example? [LB133]

SENATOR SCHIMEK: Well, yes. You could have a farmer who's living in an area that allows him a certain density so that he would be able to have that land used for development, for building homes on. And he would really like to maintain his farmland, but yet there is a certain attraction about using some of this farmland for development because he would get additional dollars. There's somebody...maybe I shouldn't even be explaining this. I'm going to get stuck here in a minute. But there is somebody in another area of the county that would really like...there's a building, probably, that would really like to build some homes in an area that is near an area that's got some infrastructure development already. And so he persuades one property owner in that area to trade with the farmer who has a certain density, and they are both happy. And everything is supposed to work really well that way. So that's it, kind of in a nutshell. I don't know if that really answers your question? [LB133]

SENATOR ADAMS: Okay, no, that makes sense to me. May I ask another question? [LB133]

SENATOR MINES: Sure. [LB133]

SENATOR ADAMS: Why Lancaster County only? [LB133]

SENATOR SCHIMEK: Because Lancaster County is the county that requested this in the first place. And I am aware that there are other counties, at least some of whom might like to be included, but there is strong opposition against that as well. And so my intention would not be to bring anybody else into this, if this bill did move to the floor. [LB133]

SENATOR ADAMS: Okay, thank you. [LB133]

SENATOR SCHIMEK: It could be tried, maybe, on an experimental basis in Lancaster County. [LB133]

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SENATOR MINES: Further questions from the committee? I see none. Thank you, Senator Schimek. I'll return the chair. [LB133]

SENATOR SCHIMEK: Thank you. [LB133]

SENATOR AGUILAR: First proponent, please. Thank you, Senator Mines. How many wish to testify on this bill? I see four. Welcome. [LB133]

MIKE DeKALB: (Exhibits 1, 2, 3, 4) Good afternoon, Mr. Chair and members of the committee. My name is Mike DeKalb, D-e-K-a-l-b. I am a planner with the City/County Planning Department, here in Lincoln, Nebraska. I am the county planner for Lincoln and Lancaster County. I've asked...the pages are passing around, I have four handouts for you; I think will help clarify, illustrate, and answer some of your questions. If everybody has the one that has some subdivision drawings in it, I'm going to give you an example of what we do today. This is a little bit of cluster 101, if you will. But what our statutes allow Lincoln and Lancaster County to do is to cluster a subdivision. So our ag zoning is a 20-acre minimum lot size, 32 dwellings per square mile. What we do today if, for example, you look on the number page 28-1, they've taken the density off this entire parcel of land, pushed it up to the north, created small 3-acre lots, so it's an adjustment of lot, they got a 20 percent bonus for doing that, and the large area down at the souther end of this, or at the bottom of the page, has been reserved for farming. On the flip side is the one with the grey tones on it. This happens to be a case that is down by Roca. Again it's a real life circumstance where they again took the number of units off that 1 per 20, clustered them up in the corner in small acreage lots, reserved the balance of the land, in this case, for farm land, in the white area, and are preserving flood plain in a riparian area in a forested area in the crosshatch. And to answer your question that you asked earlier, I would suggest there are probably several ways of approaching that. If this farmer, on that first example, owned farmland a mile or two away, or even across the street, today under our current enabling statute the attorneys tell us we cannot include the land across the street. But if that farmer said, gee, you know, this is on a paved road, this is a great place for acreages, I want to preserve my farm that's a mile away, I want to transfer those units here, this law change would allow us to do that. So it can be multiple owners, it can be one owner. In this case it's one owner; in this case it was more than one, but they all came in as a package, we agreed to come in and run it through as a group. So that's what we're doing today. The question in front of you is to be able to expand that, to do it noncontiguous, across the street, a mile away, two miles away to accomplish the same benefits. The next illustration, I guess, is super simple, but obviously you've got Lancaster County and where it's at. Based on the testimony we've had before, we brought it down to limit it to counties with a city of the primary class, so it's Lancaster County only. On the flip side is a very simple illustration of how the transfer of the development would work. At the top, upper left-hand corner is your parcel of raw land. It has some density to it based on the current

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zoning of it. You have an agreement with that parcel in the second square, they've shaded in that area where they said, okay, we want to take the units off of this and transfer it to somebody else we know and have an agreement with. And so down in the square or slide number three, if you will, you've got the beginnings of a little cluster subdivision down here, and they're transferring additional units. The first guy says, I'm going to keep it in farming, I want to keep it in farming, but I'd like to sell you that ability. The other guy says, I've already got something going, I'm going to add some lots to it, I'll pay you fair market value, whatever we agree it might be, and puts it down into the last box here which is then more lots in the same subdivision that had already been clustered. On...I might jump to...one of the pieces of information is a letter from the city of Lincoln, very short two-liner, that basically says the city of Lincoln is taking...it does not affect the city's jurisdiction, and the city is taking the neutral position on this particular bill. With that, I'll go to my testimony and quickly run you through that. I'd be glad to take any questions after that or interrupt me as I'm going, if you'd like. On the first check, again, it's Lancaster County. We want to expand an existing practice called clustering. I've walked you through that. We think that this minimizes the impact on acreage development. It reduces access conflicts; instead of multiple driveways on a road, we can get it down to a private road, with one road access. We've used it to preserve farmland, we've used it to preserve environmental resources, in fact we offer a 20 percent bonus for folks that do this. We would now like to do this in a noncontiguous fashion, again, across the street or a couple miles away. This amended legislation, after last session, as Senator Schimek pointed out to you, it's been narrowed down to apply only to residential uses, and only in the county with a city of the primary class. And we do not believe it impacts any authority of any town, or any town's jurisdiction. This would be specifically for Lancaster County alone. On the third check, granted, a change of zone would increase density. If somebody came in and said, I want to change the zone from ag to acreage zoning, bump up the number of units from 1 to 7, or from a 20-acre minimum lot size, to a 3, yes, you could certainly do that. And I think all counties and all cities have that ability today. The trouble is if we're trying to tailor something to fit a particular circumstance, and we've had some in Lancaster County, and you grant a straight...it's like using a ball pein hammer to swat fly, or a sledge hammer to swat a fly,... excuse me, it's too heavy-handed, and it raises other questions of equity, and spot zoning, and if they get it, why don't we get it, where we can apply this technique across the board and it's equal for everybody to go for this opportunity. Allows the shifting of residential density to areas out of areas of high impact or sensitivity and into areas that are better accommodated for it. It's got bad soil, got rural water districts, got paved roads, that might be a good place to put houses. There are other places that aren't as good. A good example that's coming up in Lancaster County, I think most of you have heard about it, we've got a federally listed little tiger beetle along old Salt Creek, north of town. We expect there will be some federal regulations coming down that will restrict the ability of people to do things, whether it's farming or acreages. We're looking at this as a technique, again, to allow that landowner to move units out of that impacted, sensitive area, and get some compensation, and it's a private, market-type of

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compensation that comes in. The next check, the zoning action then, it would follow our normal zoning action. Special permits for clustering today is a...it's a zoning process. We post it, we put legal ads, we do letters to all property owners within a mile. We have public hearings at the Planning Commission, and a recommendation that goes on to the county board for another public hearing and final action by the county board. As with any zoning action, on the next piece, property and conditions can be rezoned, it can be amended, it can be modified at a later date. It's not an automatic lock-in, it runs with the land. But as circumstances change, as cities grow out and annex the area, or other things come up, it can be amended, it can be rezoned. And I know that's been a question that's been asked. So bottom line, on the bottom paragraph, the bottom check, from Lancaster County's point of view and myself as a practicing planner here for over 30 years, I would tell you we think this adds flexibility to an existing method, gives us a better response to be able to respond to the issues of the community and, quite frankly, we consider it a win-win for both the government entity and the property owners involved. And with that, I'd be happy to answer any questions you have. [LB133]

SENATOR AGUILAR: Questions for Mr. DeKalb? Senator Mines. [LB133]

SENATOR MINES: Thank you, Chairman Aguilar. Mr. DeKalb, you've been before this committee last year, when it was introduced, and I think I remember you when we had the interim study this summer. [LB133]

MIKE DeKALB: Yes, you're correct. [LB133]

SENATOR MINES: In committee last year, we chose not to advance the bill because of a number of reasons. But one of those is the county or the planning authority has the authority to do what you're asking us to do already. In other words, as I recall, it's a zoning matter. You can do, you as an organization can make those changes with or without any change in statute, as I recall. It is, as I recall, a zoning matter, it's about zoning. And you have full authority to do your zoning however you'd like. How is this different than what we heard last year when it wasn't advanced, and this summer when we had the interim study? [LB133]

MIKE DeKALB: There was two key pieces of difference. One is last year it was generic legislation that affected all counties, it raised a lot of questions. This time around it's specific to Lancaster County only. And you are correct in your memory that it is a zoning action. I guess, I would question...we wouldn't be here if we could do it today. Yes, we can grant a change of zone. My ag zoning in Lancaster County is a 20-acre minimum lot size. I can get about 4 units out of an 80. The next step up is AGR, or ag residential, that's seven times as many units. And we do follow our comp plan. We have areas shown for agriculture and otherwise, approving the change of zone to a higher density, I think, would be a conflict of our comprehensive plan, number one; and number two, if we do grant that here and claim a special circumstance, why not everybody around it?

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And then that density keep bumping up. As soon as we get over 40 dwelling units an acre, we're paving roads instead of gravel roads. The infrastructure... [LB133]

SENATOR MINES: But that's a decision made by the local authority. And... [LB133]

MIKE DeKALB: True, and we have that...and we have that today. [LB133]

SENATOR MINES: And you have that ability today. [LB133]

MIKE DeKALB: If I might finish, if I might finish, and you are absolutely correct. And we have the authority to do what we call a community plan, or the cluster, as I showed you. But both the city of Lincoln and the Lancaster County Attorneys tell us that by state statute we cannot do noncontiguous special permits, or noncontiguous clusters, or transfer density across noncontiguous land. And that's why we're here, we want to clarify that we will have that ability. So, I can't speak for our attorneys, but I can tell you that's why we're here. They said, no, it's a great idea, you can't do it. You need to have statutory clarification. [LB133]

SENATOR MINES: I'll follow up. Thank you. [LB133]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Mr. DeKalb. [LB133]

MIKE DeKALB: Thank you. [LB133]

DICK ESSEKS: (Exhibit 5) Mr. Chairman, my name is Dick Esseks. I've got some written comments to circulate. And I'm speaking on behalf of LB133. Although I'm a member of the Lincoln, Lancaster County Planning Commission, I'm not speaking on behalf of the commission. I'm speaking... [LB133]

SENATOR AGUILAR: Would you spell your name, sir. [LB133]

DICK ESSEKS: Yes, E-s-s-e-k-s, sorry. I'm speaking on behalf of myself. I'm a college teacher. I've studied rural residential development issues since 1978, and I've conducted a number of studies dealing with land use regulation in rural areas. And currently, I'm at the University of Nebraska, it's Center for Great Plains Studies, and I'm conducting an externally funded research project, funded by USDA, on urbanization of agriculturally important counties. And one of the 15 counties, the one in New Jersey, has 2 programs like this, 2 programs which I've studied and seem to be working quite well. If you look at my handout, after the Section A, where I try to justify why I'm here, I may have something of use to offer you, there's a brief section on the nature of the transfers. We've already had some examples, let me give you another hypothetical example, under Section B here. Let's say a farmer is not convinced that he or she wants to develop his land. However, he doesn't want to give away the equity already in the

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land. The development rights to this land, let's say 1 new home for every 20 acres, may have considerable value. It may be that those acres have been appraised at as many as \$5,000 per acre. Yet he's not sure he wants to sell. Fortunately, a developer comes along having figured that his development project, let's say on 160 acres, perhaps many miles away, would benefit if he builds more homes, even if he purchased the development rights to some of this farmer's land. He's figured it out that he can still achieve a sufficient profit, because his parcel is in a better part of the county for development purposes, hence he can charge higher prices per building lot. But the county should agree, the county must agree that this is a good transfer. And that's the authority which Lancaster County is now seeking. Now why would the citizens of the county benefit? And hence, why should the county board members agree to this type of transfer? Because it's better for the county to have the extra new homes located on land like that of the developer in this hypothetical case. The developer's 180 acres adjoin a state highway, where as the land owned by the farmer willing to sell his development rights is on a gravel road. Residents of new homes along that road may pressure the county board to pave the road, and thereby incur a public cost that would be avoided if the same homes were built on the developer's land. The proposed development along the state highway is just four miles from a town, while the farmer's parcel let's say is 15 miles out. That is 11 miles farther from a hospital emergency room, as well as from a fire/rescue service that can provide advanced life support care. In the study my students and I did of rural housing developments in McHenry County, west of Chicago, the average response time for emergency medical care to new homes was 15 minutes, rather than the recommended maximum of 6 minutes. The public may benefit in other ways through the transfer of the new homes location. The farmer's parcel may have outstanding soils for farming, as well as adequate groundwater for irrigation when needed. Alternatively or in addition, it may have some special resource, like the remains of a pioneer's cabin or native prairie vegetation. The state Legislature has already authorized county government to protect good farm land, historical, environmental, and other resources through community unit plans that cluster housing units away from such valued resources. Clustering through community unit plans should also yield internal roads that are shorter and therefore more economical to serve. Hopefully, you senators will see fit to allow Lancaster County to transfer building sites to adjoining parcels or to distant parcels in order to achieve the same kinds of benefits to the community while not sacrificing landowners' equity values. One remaining question that I didn't cover, why Lancaster County? I've actually studied Lancaster County off and on since 1979, when I took part in a federal national study of farmland preservation. This county has used a lot of different tools effectively to achieve compact development. In one study, I think we were the sixth most compact metropolitan area in the country. This is another tool. I urge you to allow the county to give it a try, see whether it can't preserve farmland, compact development, and also help the county in terms of economizing our services, because compact development really is more economical to serve. [LB133]

SENATOR AGUILAR: Questions from the committee? Seeing none, thank you. I'm

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sorry, Mr. Karpisek. [LB133]

SENATOR KARPISEK: Thank you, Mr. Chair. Mr. Esseks, thank you. I should have asked this sooner, but are these land rights then in perpetuity? Does it go forever? What if 50 years down the road Lincoln has gotten to that point and all of a sudden they decide, hey, this would be a great place to start another subdivision? [LB133]

DICK ESSEKS: Hmm, excellent question. Typically, when the development rights are sold an easement is put upon the land. The easement may run 25 years. For example, in Maryland they have a 25-year limit if the land can be proven not to be economically usable as it is then, such as in farming. The community would always have the power of eminent domain to come in and run roads and other necessary public utilities through that property. But it's really a market transfer. The farmer wants to sell his lands, developmentwise, if the price is right. The developer says, I can offer him or her a price that is right. Then the rights have been transferred, and they no longer can be exercised here, because they are being exercised there. But Lincoln or some other community has the power, after a certain period, to buy those rights back, or at least to use eminent domain plus, you know, paying for the rights of eminent domain to be exercised to achieve its necessary goals, such as running a road or sewer and water lines through that area. [LB133]

SENATOR KARPISEK: I guess, my thought is an unscrupulous developer says, oh you don't have anything here, let me buy your rights for a song. And within five years the city has grown and it's right there. Oh boy, too bad, you could really sell your land for \$1 million dollars an acre, but you already have your rights sold for the next 20 years. [LB133]

DICK ESSEKS: In this county in New Jersey which I studied, the landowners proved to be quite savvy. More than that, there were government organizations, elected by the general population, that did protect the rights of both parties. [LB133]

SENATOR KARPISEK: Okay, thank you. [LB133]

DICK ESSEKS: Okay. [LB133]

SENATOR KARPISEK: Thank you, Mr. Chairman. [LB133]

SENATOR AGUILAR: Further questions? Seeing none, thank you for being here today. Next proponent. Welcome. [LB133]

JUSTIN BRADY: Chairman Aguilar, members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist of the Nebraska Realtors Association in support of LB133 because of the concept of

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promoting development and housing developments, that is why the realtors support it. And I'd try to answer any questions, hopefully, not too technical, but I will try. [LB133]

SENATOR AGUILAR: Questions for Mr. Brady? Seeing none, thank you. [LB133]

JUSTIN BRADY: Thank you. [LB133]

SENATOR AGUILAR: Next proponent. Are there any opponents? Welcome. [LB133]

LYNN REX: Thank you. Senator Aguilar, members of the committee, my name is Lynn Rex, R-e-x, representing the League of Nebraska Municipalities. I'd first like to start by saying that as this bill applies only to Lancaster County and to Lincoln, our board is neutral on it. However, I was going to direct them to testify in opposition to it, because of the other 92 counties. Lincoln, Lancaster County is, I think, has one of the most collaborative relationships in terms of how they do their joint city-county planning. Let me share with you some of the same testimony that I talked about with our interim study, some of the issues, some that you've raised just now. First of all, let me just clarify that I do think that Lancaster County can do this in a methodical way, and they have been very supportive and helpful in terms of basically how growth is done. They've had, I think, just a great history of how planned growth should happen, and planned growth outside of cities, and helping cities grow. That is diametrically opposed to what has happened in some other areas in the state. So one of the concerns we have is that we do not want to create a situation where we end up with unincorporated cities. In other words, they're not cities, but they are...we already have in I believe it's Washington County, certainly in Sarpy County, there are areas there where there is a population base and residences that exceed the amount of hundreds of villages and incorporated cities in this state. And the problem is many people, when they move into those, believe that they are actually moving into a city, because it looks like a city; it quacks like a duck, they think that they ought to have all the benefits of that and when in fact they do not. One of the other concerns that we raised during the interim study hearing is that this would basically allow that type of thing to happen in other counties whereby in fact they would not even be under sanitary improvement district laws. Many of you that were either mayors within the last 20 years, or served on this committee in some way, shape, or form, would know that changing the SID laws from 1980 on was a very concerted effort of the Legislature because sanitary improvement district laws were so open that there has been just a lot of chaos created, especially in the metropolitan counties of Douglas and Sarpy in this context. What's occurred is that there are SID's right now with debt that is so high, there is no way that those cities can annex them, even in the near future. Now the SID laws have been changed significantly so that new SID's don't have those problems. Because what was happening is developers came in, made their money, they left, and those folks were there with roads that didn't meet standards or didn't do anything else. So we are very, very concerned about the application of this bill to any other counties. So I just believe that this is one of those

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issues that you have a unique situation with Lincoln and Lancaster. The city of Lincoln has indicated they are neutral on it. And as it applies to Lincoln-Lancaster, we'll be neutral, but we would strongly oppose this in an application for any other county in the state of Nebraska. Be happy to respond to any questions that you might have. [LB133]

SENATOR AGUILAR: Questions for Ms. Rex? Seeing none,... [LB133]

LYNN REX: And my board president, Senator, also wanted me to emphasize it was a unanimous decision of the board, and it's not always a unanimous decision of our board. So I appreciate your time this afternoon. And appreciate Senator Schimek's willingness to say that she would not encourage others to try to amend into the bill either. Thank you for your time. [LB133]

SENATOR AGUILAR: Any other opponents? How about neutral testimony? Senator Schimek, to close. [LB133]

SENATOR SCHIMEK: Thank you, Mr. Chairman. I'll be brief. But what I would really like to do is to ask Mike DeKalb to come up and answer Senator Karpisek's question as well. I can answer it, but I'm not sure I could do it as well as he can. So, would that be okay? [LB133]

SENATOR AGUILAR: Let's allow that. Please come up. [LB133]

MIKE DeKALB: Thank you for this special opportunity. And I'm sorry. I didn't think I had enough to respond ahead of time before your question. But you asked several very good questions of what happens? How does it roll over? How does it change? What happens when the city gets there? I think that's the basic package. [LB133]

SENATOR KARPISEK: Yes. [LB133]

MIKE DeKALB: And let me tell you that, as I've said, we've been doing this particular technique for about 50 years. It's not locked in perpetuity. As I tried to say in the testimony, a change of zone and an amendment to the community plan is what typically takes place. It's very common that the city of Lincoln has grown into these areas where we've had a cluster subdivision, as I've shown you before, and it ends up being a double positive, because the developer has kind of taken his first bite, has clustered the houses and sold them and got the benefit out of that, and has reserved a chunk of land that is farmland. Well, that chunk of farmland then becomes a clean slate when the city gets there and does a change of zone to regular residential zoning, and amends that community plan, that cluster subdivision to change the package of growth that's going with it. And that chunk of clean slate then becomes shopping center, churches, schools, and regular residential lots. So it actually ends up, many times, acting as a holding zone where you can take your density today for what the zoning allows you, and at a later

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date when things set up right, then you get the appropriate change of zone, you've got the services, and you get your urban density. So it is flexible and it does work that way and it has. So I thank you for that opportunity. [LB133]

SENATOR KARPISEK: Thank you. [LB133]

SENATOR AGUILAR: You have any follow up, Senator Karpisek? [LB133]

SENATOR KARPISEK: No, thank you, Mr. Chair. [LB133]

SENATOR AGUILAR: Thank you. Senator Schimek waives closing. That closes the hearing on LB133. Senator Fulton, to open on LB135. Welcome. [LB133]

SENATOR FULTON: (Exhibit 1) Thank you, Chairman Aguilar. Members of the Government, Military and Veterans Affairs Committee, for the record, my name is Tony Fulton, F-u-l-t-o-n, and I represent the 29th Legislative District. I appear before you today to introduce LB135. I'll begin by explaining the origin of this bill. This bill came to me at the request of the city of Lincoln. The city of Lincoln acted in response to a request by the federal Department of Homeland Security. The Department of Homeland Security had...made a general request to municipalities asking that they take steps to secure sensitive information from the public record, information which could be used for a terrorist act. LB135 exempts certain public entity records, such as those pertaining to infrastructures of public utilities from disclosure when such disclosure would jeopardize public security, health, safety, or property. I do have an amendment that I would like you to consider, it's AM34, which I will distribute. As the amendment is making its way into your hands, after initially introducing LB135, I was contacted by the executive director of the Nebraska Power Review Board who suggested to me that the language could be strengthened. And that is reflected in what you see here in AM34. Following consultation with the Power Review Board, I concluded that LB135 should be amended to include the term "electric supplier", as defined in Section 70-1001.01. This amendment strikes the phrase "served by such entities," found on line 7 of the green copy of your bill. And these minor changes ensure that the provision applies to Nebraska suppliers, the public suppliers of electricity. I therefore submit AM34 for the committee's adoption. LB135 is a proactive measure to make certain public infrastructure less accessible and therefore less vulnerable to terrorist attack. We may have forgotten, but it is worth repeating and worth remembering that we live in a very different world than what we did just a few short years ago. We live in a time when men, half a world away, are plotting the best ways to kill us, to kill our children, to kill our countrymen. They have destroyed our embassies, they have bombed our naval carriers, they have toppled our buildings onto thousands of innocent people whose only crime was to show up for work. They have stated publicly and fearlessly that they will do so again. And they've stated flat out that they want to reign mass destruction on America and her cities. We, as senators, raised our right hands, we swore oaths, and this

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measure before you is a small step that we, as state officials, can take in order to do our small part on the war on terror. The reason I agreed to sponsor this bill may be informative to you. My background, as some of you know, is engineering. And when this was presented to me by the city of Lincoln, immediately my mind grasped what was being said about the vulnerabilities. One of the projects, I'll give by way of example, that I worked on when I was doing engineering was a redesign of...a renovation of Memorial Stadium, it was the sanitary sewer system at Memorial Stadium. Some of the plans that we obtained in order to help us with our work were infrastructure drawings for the city of Lincoln, for the municipality, showing piping diagrams for forced water delivery, as well as sanitary sewer lines. As an engineer, I can look at a piping diagram and find the points of pressurization within that piping diagram and tell you very quickly where vulnerabilities exist. Another example, as I was sitting here listening to the testimony before us, this very room, there are recessed slots in the ceiling that some of them suck and some of them blow, some of them are forced air, some of them are return air. If I knew which ones were which, and I saw the ducting diagrams for a building, I could show you where the point of highest pressurization in this building or any other building would be. And it becomes very simple to introduce a foreign substance such that it can do the most amount of harm with the least amount of effort. Another example I give that we saw in a poignant way in central Nebraska is our electrical distribution system. We had many people in central Nebraska without power as a result of an ice storm. Imagine, if you will, someone having the plans for the electrical distribution system. How much havoc could be wrought upon a greater swath of Nebraska than what the ice storms did. These are some examples that I give to you. Those that seek to do us harm are seeking ways to inflict the most carnage, in the easiest way, in the shortest time possible. Having access to certain of these drawings that I elucidated earlier makes it easier for them to do that. And so I submit to you that we can make that more difficult by adopting this measure. Now in thinking through this bill, the only groups that I could fathom who may have reservations with the bill, besides engineers and contractors, engineers and contractors are the ones who typically want this type of information, the only other groups that I could conceive that might have reservations with the bill would be media professionals, or reporters, or those who are providing information to the public interest. And so they can raise a legitimate argument. I recognize that there is a trade-off of freedom of speech and public information versus the public safety. And so I want you to know that I have considered that and I recognize that, and I therefore bringing it to your attention for you to consider also. There's a legitimate argument that information in the public interest should be made totally and absolutely available to the public. It's a legitimate argument, and I would respond by pointing out that which we already exempt. In the green copy of LB135, I'm going to point to a few subsections which are illustrative of my point. Subsection 12, on page 4, this is an example of something which we already exempt from the Freedom of Information Act: correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature in whatever form. Again, this already exists in statute. This is an example of something we already exempt from the public record. This

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is acceptable to the state, this is in statute, this is acceptable at present to those who may have reservations with LB135. Subsection 13, on page 5: records or portions of records kept by public bodies which would reveal the location, character or ownership of any known archeological, historical, or paleontological site in Nebraska, when necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. At present this exists in statute and this is exempt from the public record...from the Freedom of Information Act. Subsection 15 is the final example I'd point to, they're here before you, so you can see all of the examples: job application materials submitted by applicants other than finalists who have applied for employment by any public body, as defined in Section 84-1409. It's an example again of some public record that is exempt under existing statute, and it's acceptable to Nebraskans, it's acceptable to those who may have reservations with LB135. So what I seek to add to this list of exemptions pales, in my opinion, pales in comparison to the lives we may jeopardize by failing to act. In my opinion, if we can exempt archeological information, certainly we should be able to exempt items indicating say structural load drawings, structural load-bearing drawings of buildings, such as the Capitol. If we can exempt appraisal information and negotiations records concerning property, which is one of the exemptions, surely we can exempt security plans to a public airport. I submit to you this bill, LB135 as amended, is worthy of inclusion in statute. And I would ask the committee to find it worthy of advancing to the floor for greater debate. [LB135]

SENATOR AGUILAR: Questions for Senator Fulton? Senator Adams. [LB135]

SENATOR ADAMS: Senator, on the surface, this seems a logical thing to do. But I was wondering to myself, and I'm going to ask you this question, and maybe I'm jousting at windmills here. So let's say, for instance, that we're a city and we have drawings and plans all done of a new project that we want, a new sanitary sewer system, a new water system that we want to build. And if this passes, I say to myself, well Senator Pahls here, rather than a senator he's a contractor, and he's my buddy, and I really want him to get this bid on this project. So, rather than let the plans out to 40 different contractors to bid, I use your legislation and say, no, this is sensitive material, so I'm going to give it to this contractor who I really trust to bid it. Now am I creating a problem that you don't think exists? How would you respond to that? [LB135]

SENATOR FULTON: I don't deny that that problem exists, but I would submit that the problem exists anyway, regardless of whether LB135 is moved forward. There will be those who seek to build the system, can't be denied, there always will be those. This...it's possible that one could point to, say, subsection 8 of the bill in order to accomplish what you're suggesting. If there are unscrupulous people who will use the law to affect their own means, I am saying that I do not believe that the existence of unscrupulous people who would use the law to affect their own means does not prohibit us, or should not prohibit us from moving forward with that prudentially, I think, what I'm submitting is a good idea. So that scenario could play out using subsection 8 already.

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And so if I were to utilize the logic that we shouldn't move forward with the proposed subsection 17, then we should use the same logic to come back and repeal subsection 8. I guess that...I supposed it could be used in the way that you construe, but I think that that already exists. [LB135]

SENATOR AGUILAR: Further questions? Senator Mines. [LB135]

SENATOR MINES: Just one. Thank you, Chairman. Senator Fulton, under Section 17, lines 5 and 6, it starts, by records of a public entity when disclosure of such records could reasonably be expected to jeopardize the security, and so on. Could..."reasonably be expected to" is subjective. Could "reasonably be expected" is also not determined. I mean, whose reasonable objectivity are we talking about here? [LB135]

SENATOR FULTON: The...let's see, I believe it's listed earlier. The municipality, it's, let's see. Okay. Page 2 of your green copy, I'll start with line 3, but I believe your question is answered in line 6, "The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting, or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records." So that's whose volition... [LB135]

SENATOR MINES: Coming from that background, I can see how the term of art could reasonably be expected could be used from an administrative perspective to not be forthcoming. And I wonder if you would be open to an amendment that would change that to simply say "will"? Records of the public entity, when disclosure of such records will jeopardize the security, health, safety, is that something you'd consider? [LB135]

SENATOR FULTON: Certainly I'd consider it. I'd want to... [LB135]

SENATOR MINES: Okay. Will or would? [LB135]

SENATOR FULTON: Yeah, I want to discuss that with my aid, who's an attorney. [LB135]

SENATOR MINES: Okay. All right, thank you. [LB135]

SENATOR FULTON: But, yeah, I certainly would...I tell you what I want to accomplish here is an intention. [LB135]

SENATOR MINES: Absolutely. [LB135]

SENATOR FULTON: So, yeah, in any way the committee could help accomplish that, I would very much appreciate it. [LB135]

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SENATOR MINES: Okay. [LB135]

SENATOR AGUILAR: Further questions? Senator Karpisek. [LB135]

SENATOR KARPISEK: Thank you, Mr. Chair. Senator Fulton, I'm just thinking of fire departments, or police, maybe police isn't as good, but fire department, if they need the schemes, the drawings, in case there would be a fire say in a school, and, I mean, would this...because maybe they have that in a file somewhere, then in case that does happen they can pull the file and say, okay, here's what we have to do. Would this exclude that, or... [LB135]

SENATOR FULTON: I'm not...there may be others that will testify in favor of this who may be better able to explain that. But I would think in that case the lawful custodian, the fire department would probably fall under that category already. So there may be other examples that I'd be missing, but I believe the lawful...they would fall under the category of lawful custodian already. [LB135]

SENATOR KARPISEK: Again, I understand and agree with where you're going. I'm just wondering if someone doesn't want to hand it over, or if it is in a fire department and there is, you know, volunteer fire department has 50 people, and who all is privy to that, that's a little concern. [LB135]

SENATOR FULTON: Yeah, that's...I will defer that question. I think there will be people who can answer it more succinctly or better than I can answer. But as I read it, I believe that would already fall under the category of the one who holds volition by law anyway. [LB135]

SENATOR KARPISEK: And it probably gets into their oath also. I mean it's even farther than what your bill is doing, what I'm bringing up. So that's not really fair. But that is a concern that I had as being mayor, who all really can look at this stuff and what can they do with it. So thank you. Thank you, Mr. Chair. [LB135]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Tony. [LB135]

SENATOR FULTON: Thank you. [LB135]

SENATOR AGUILAR: We'll have the first proponent of LB135. Welcome. [LB135]

TIM TEXEL: Thank you. Senator Aguilar, members of the committee, my name is Tim Texel, T-i-m, last name is T-e-x-e-l and I'm the executive director and general counsel of the Nebraska Power Review Board. And the Power Review Board is a state...is the state agency with the primary authority over Nebraska's electric power suppliers. I'm testifying today in support of LB135. At its January meeting, the Power Review Board

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unanimously voted to support LB135 and the amendment offered by Senator Fulton. We didn't have the draft of it at that time, but we knew what the text would be. And the board unanimously wanted me to testify and authorized me to be here today in support of both. And as you heard Senator Fulton, I asked for the inclusion of the two provisions in the amendment because of our purview, the electric utilities in Nebraska. And I specifically wanted to make sure that the public power entities in Nebraska, not just the municipalities, would be covered by this. The board supports the bill both on the public policy grounds and based on the need to protect certain records held by the Power Review Board specifically. And I'm here due to the electric power industry. And the Power Review Board records that we hold, though, we normally do not testify on policy matters. We're an administrative agency, and my board believes that's your role. We take our marching orders from that. We normally are more informative. So we're here because of the records we hold and the protection we'd like to have for some of those records. First of all, I'd like to say that I think part of LB135 are already covered in current public records law. In Section 84-712.05 some examples of that are in subsection (a) of the bill, it talks about vulnerability assessments. And those are already explicitly protected under subsection 8 of the current law. That's one example. So I think, in my opinion, that would probably be redundant. I think these are easily taken care of, but I wanted to point some of them out. Much of what is in subsection (c) of the bill, such as response plans, passwords, security procedures, lock combinations are already specifically protected under the current subsection 8. Likewise, the emergency response protocol set out in subsection (d) of LB135 is probably covered by subsection 8 in the current law. So I did want to point those out because our support isn't necessarily a blanket support for everything being necessary in the bill. What is not covered, in the board's opinion and in my personal opinion, is the information under subsections (b) and (e) of LB135, that is the architectural, engineering, or construction diagrams set out in subsection (b), and the public infrastructure information that's described in subsection (e). I don't believe those are covered under subsection 8, at least in my professional opinion, and the board wanted me to testify to that. The board believes the protection of the records, such as listed in subsections (b) and (e), is warranted. The board knows that Nebraska's policy as a state is to allow access to all government records, unless there is a specific protection provided for a particular type of records. And the PRV certainly agrees with that. That is how I run our office, that we are open and provide records to all...any member of the public that we can. But there are certain records that probably would warrant being protected for the protection of the public, or not disclosed for protection of the public. The board is somewhat concerned because it has records, such as engineering and construction diagrams, that were provided to the board during an application process, or approval process, some such information is provided to us after the application process subsequent to that. And we would have those information, which may not be proprietary, and so would not be protected under the current Nebraska public records law. Senator Fulton mentioned the ice storm in central Nebraska. And I wanted to point out certainly the generation and transmission assets, if sabotaged intentionally, would obviously be much worse than

Mother Nature taking out a large swath, but without any particular targeting. And so I just wanted to mention that to the committee. The board does have some records about configuration of Nebraska's transmission assets, normally that we acquire after its built, and we have maps of the transmission assets in the state. Some of the security personnel at the utilities have indicated they probably prefer that not be out in the public domain because it would essentially tell somebody where the vulnerabilities might be if you knew, as an engineer, something like with specialized knowledge you could look at that. I'm an attorney, I wouldn't necessarily know what on there would show me what, but others might, and I would, under current law, I think have to give that information out. I wanted to mention too that subsection 8, if the committee would want to move the current parts of the bill into Section 8, I think at least the current language in subsection 8 would need to be modified. As I read it, in subsection 8, it deals very specifically and narrowly with security measures. I think my preference would be not to have that additional language in LB135 in that subsection if it were anywhere, because I don't think the two are necessarily compatible, unless the current language in subsection 8 is modified a little bit. I think this is much broader in the bill than subsection 8, which deals with specific, unique vulnerabilities and security measures. Dealing with AM34, just to briefly mention why I asked for these two provisions. The first one, striking the "served by such entities" language, my concern with that was that we have utilities that have generation assets where they don't serve the public around that asset. Gerald Gentleman Station, near Sutherland, that area, the immediate area is not served by NPPD, but they have that generation asset; LES has either contractual or ownership interest in Laramie River Station, in Wyoming. And if they have any information, as a public official, I'd want to see them able to protect that, even though the public isn't served, obviously, in Wyoming by any Nebraska entity. So I think with the way the public power system in Nebraska is set up, I think it would behoove us to protect those assets, wherever they are, regardless of who serves it. I think under the language in the bill, it makes sense why it's set out this way, because it deals with municipal systems. When it's expanded to all public power systems, I don't think it works well not for that reason. Regarding the second part of the amendment, electric supplier, as defined in the section listed, my concern was this dealt specifically with municipal systems. And Department of Homeland Security maybe isn't familiar with Nebraska's all public power system. But we don't have investor owned utilities that can protect their own records; we have all public power entities. The cooperatives might not need that protection, but certainly our public power districts would. And the public power and irrigation districts, because they're public entities, are under the public records law. So their assets are what I was concerned about. And this provision dealt with, in the original bill, just with municipal systems. And that was my concern and why I requested that additional language. Therefore the Power Review Board would urge the committee to act favorably on LB135 and Senator Fulton's amendment, AM34. And that is the conclusion of my testimony. I'd be glad to try and answer any questions. [LB135]

SENATOR AGUILAR: Questions from the committee? Senator Adams. [LB135]

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SENATOR ADAMS: As I'm looking at page 6 of the green copy and Section (b), architectural, engineering, or construction diagrams, and again let me preface my question with I understand what you're trying to do here, and I think it's important. But let me be the devil's advocate, if I'm again jousting at windmills, stop me. But let's assume that you're going to build a transmission line, a power plant, and you're going to exercise eminent domain and take my property, or at minimum you're going to have change in zonings and maybe my property is adjacent to the property that's going to be occupied by the electrical supplier, and there's a public hearing. And I go to that public hearing, and I say, what you're going to do could affect the value and the use of my property. What are you going to do? And you say, well, we're going to build an electric line. Well, where and how big? Now, if this passes, does that mean as an affected property owner I'm having information taken away from me? [LB135]

TIM TEXEL: That's a good question. I think that what I'm dealing with is after it's built. The infrastructure, I think, the person that you're talking about would be able to find out where the eminent domain would be exercised on their property, so the utility would have to tell them, for value purposes and others, where it was going to be located. The specific line, I don't know that any specific line would create the vulnerability. My concern is more of the entire network and where...when you look at the entire outlay of the transmission system, you see where a substation is. [LB135]

SENATOR ADAMS: Right. [LB135]

TIM TEXEL: And a lot of those lines you're talking about connect centrally to one substation. If you take out that substation, you know, three counties go dark. One line I don't think would normally do that, unless it's a 345 kilovolt line, something like that. But I would think normally somebody who was having eminent domain proceedings against them would have that information. And also one thing under the public records law, it doesn't create a prohibition to release some of these records. It creates the ability to withhold the records. The distinction...and when I was at the Attorney General's Office, that was a very important distinction for us because that means the public records custodian could release it, such as NPPD exercising eminent domain proceeding could release it, they have the right to. But if they need to withhold it for some reason, there's a security concern there, they have the ability under law to withhold it, but not necessarily the requirement to withhold it. And that, for something like this, I think would be an important distinction. [LB135]

SENATOR ADAMS: And that distinction is what bothers me a little bit. But thank you for your answer. [LB135]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB135]

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TIM TEXEL: Thank you. [LB135]

SENATOR AGUILAR: Next proponent. [LB135]

SHELLEY SAHLING-ZART: Good afternoon, Senator Aguilar and members of the Government, Military and Veterans Affairs Committee. My name is Shelley, S-h-e-l-l-e-y Sahling-Zart, S-a-h-l-i-n-g hyphen Z-a-r-t. I'm vice president assistant counsel for Lincoln Electric System, the municipal utility here in Lincoln, and I'm testifying today on behalf of the Nebraska Power Association, which is the trade association representing all of Nebraska's nearly 170 publicly-owned electric utility systems across the state, that includes municipalities, public power districts, rural public power districts, and cooperatives, and joint-action agencies. And we're here today to support and thank Senator Fulton for introducing LB135. I think this bill will go a long way to protecting our infrastructure. And I am going to try to address your questions before I'm done. I think first of all, as Mr. Texel pointed out, this is a tool, this isn't a prohibition, this is a tool for us to use to keep certain kinds of sensitive information out of the public domain. It doesn't mean you have to not disclose it to everyone. This is really about what we have to put in the public domain and make sort of readily available to everyone that asks for it. I'm going to get to your point in a minute. Obviously, some of the things you talked about, a great deal of our infrastructure is exposed. It's not too hard to find a power plant, it's not too hard to find a transmission line and a substation. A lot of those things are out there, you know where they're at, they're not big secrets. I think what we're really getting at is some of the more intimate details about some of those facilities that somebody intent on doing you harm could gain great value from. We're not talking about the average person, necessarily, out there. We're talking about people that might have reason to do you harm or mess with your business somehow. And I think that's a distinction. For example, I think under this bill we view our administrative building at 11th and O far differently than we would our facility at 27th and O, where our major nerve center, our major control center is, and even far differently from that would be our power plant northeast of town or southwest of town and the two nuclear power plants that we have in the state. Those are different kinds of animals. I think you have a higher level of security, the higher you go in those facilities. Our power plant northeast of town, let's take that one, it's a combined cycle power plant, fired by natural gas. We have ammonia on sight for some cooling operations and some things. And we did do, as we were sighting that plant and building that plant, we did coordinate with the neighbors in the area; we let them know what was there, how close it was to their property. We did do some of that communication because we felt they had a responsibility to know what they were neighbors next to. Do we want a diagram out in the public domain telling the general public out there exactly where those ammonia tanks are, or exactly where that natural gas line runs underground into the plant? I don't think so. Those are strategic locations where somebody could disable your system. So that's where I would kind of differentiate. On sighting a transmission line, yeah, there is certain information that you have to share with the landowners because you're condemning that property. And once

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you've reached that decision, then I think there are some things that you ought to be able to not disclose on a going forward basis. Spent fuel at a nuclear power plant, do we really want people knowing specifically...these are large sights, basically, large footprints where these power plants are. Do we want people knowing precisely where those spent fuel tanks are or our pools, or where your fuel facilities are? I don't think so. I think there's very good reason for not disclosing that level of information. So it's really about what you're trying to keep out of the general public domain. And I don't know if that went to answer your question or not, but that's about all I have. I would like to see you put this bill out with the amendment, and we'd like to see this bill passed. [LB135]

SENATOR AGUILAR: Questions? Seeing none, thank you for coming today. Next proponent. [LB135]

DAN MECHTENBERG: Mr. Chairman and members of the committee, my name is Dan Mechtenberg, M-e-c-h-t-e-n-b-e-r-g, and I'm the director of business operations for Aquila, here in Nebraska. Aquila provides natural gas service to about 200,000 customers in over 100 communities here in the state. Aquila requests the committee to advance LB135. As a public utility, we recognize the potential of some type of terrorist act against utility systems. And while Aquila would not be directly impacted by this bill, we agree that critical infrastructure information should be protected to assure the safety and security of customers and communities. So with that, I would urge the committee to advance the bill. And would be happy to answer any questions, if you have any. [LB135]

SENATOR AGUILAR: Questions for Mr. Mechtenberg? Senator Adams. [LB135]

SENATOR ADAMS: So if a city determined that it may want to purchase its gas system from you and a value has to be determined, how is that value going to be determined if the city can't see the infrastructure? [LB135]

DAN MECHTENBERG: I don't know that I can answer that. I think if it was a legal proceeding, we would probably be required to provide those records. [LB135]

SENATOR ADAMS: Okay, thank you. [LB135]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB135]

DAN MECHTENBERG: Thank you. [LB135]

SENATOR AGUILAR: Next proponent. How many more do we have to testify? I see two, three. Welcome. [LB135]

DAVID THURBER: (Exhibit 2) Thank you, Senator. My name is David Thurber, T-h-u-r-b-e-r. I'm the utility security manager for the city of Lincoln, Public Works

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Utilities. I'm here on behalf of the city of Lincoln. Before you is a prepared statement that I'd like to present to you this afternoon. The city of Lincoln supports LB135 as amended, which will add specific types of sensitive utility records to the current language in Section 84-712.05, Revised Statute Supplement 2006. Protection of a community's critical infrastructure involves more than physical security measures. We believe that disclosure of specific documents could be used in a plausible scenario to endanger the health and safety of the public. Lincoln officials clearly understand there are limitations in which federal legislation or programs can provide protection from unrestricted access to our sensitive records. Neighboring states, such as Kansas, have included specific language in their own laws to exclude utility facility and systems records from public disclosure. We find that the precise language of LB135 that will include security and response plans, engineering diagrams, and configuration of critical systems to be a responsible approach in identifying the sensitive components of a utility infrastructure. While a vulnerability assessment identifies threats in existing counter measures at a utility, equally important are the blue prints and drawings of key resources. These schematics are part of a mosaic of a utility system that could be just as damaging if released without considering the value of their content. The city of Lincoln does not desire to stop the information exchange with our utility partners. We believe, however, that LB135 can accomplish the balance required between public access and the need for sensitive information security. By advancing LB135 not only does the city of Lincoln, but all communities across Nebraska, benefit from clear definitions of specific exemptions to the public record disclosure. If you have any questions I could answer at this time? [LB135]

SENATOR AGUILAR: Questions for Mr. Thurber? Seeing none, thank you. [LB135]

DAVID THURBER: Thank you, gentlemen. [LB135]

SENATOR AGUILAR: Next proponent. Do we have opponents? [LB135]

VIRGIL HORNE: I'm a pro. [LB135]

SENATOR AGUILAR: Pro? Okay. [LB135]

VIRGIL HORNE: Senator Aguilar, members of the committee, my name is Virgil Horne, representing the Lincoln Public Schools. I will be very brief. As we read this, we're included. If we're not included in this process, we would like to be as a public school entity, because many of the things mentioned in the bill apply to public schools. Thank you. [LB135]

SENATOR AGUILAR: Thank you. Questions for Mr. Horne? Seeing none, thank you for being here today. [LB135]

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VIRGIL HORNE: Thank you. [LB135]

SENATOR AGUILAR: Any more proponents? Opponents? Oh or pro? [LB135]

BETH BAZYN FERRELL: Pro. Senator Aguilar, members of the committee, for the record, my name is Beth Bazyn, B-a-z-y-n Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. Mr. Horne said it better than I could. I just repeat what he said, if this applies to us...if it doesn't apply to us, we would like it to apply to us. [LB135]

SENATOR AGUILAR: Thank you. Any questions? Thank you. Any more proponents? Opponents? [LB135]

ALAN PETERSON: Mr. Chairman, senators of the Government Committee, I'm Alan Peterson. I represent, as attorney and lobbyist, the organization which is a coalition of the news media, called Media of Nebraska. And I've testified here many times on public records issues. Because this committee is the first defense, I think, against defraying the public records law to the point where the exceptions threaten to swallow important parts of it. The bill presented to you today as LB135 is well-intended, I have no doubt. And parts of it probably need to be passed in some form. However, I'm here to oppose this bill because, number one, it is drafted without regard to existing law, without regard to avoiding subjective determinations of what's public and what's not, and offers some very loose language as the test in place of the existing law test in subsection 8 that's been mentioned to you a couple of times earlier which requires the proof of a substantial likelihood of this danger. I also object because this bill, I think, is in a way wrong-headed and maybe a little bit not smart. Suppose somebody really wanted to get the records for a plan to damage our water, our gas, our electric, other utilities, or a municipal building, or the airport. And under existing public records law they come in and say, okay, I want the diagrams of each of the floors and subfloors of the Lincoln Municipal Airport; public record, let me have them. Under existing law, that person can be required to stand at the counter a little bit while you say, well, we'll pull those out, but for that kind of information we're going to need a little time, and we suggest you make a written request. And in the time it takes you to find records of that degree of sensitivity, of course, you can find out what's going on with this person. They don't have to answer exactly why, but when they pay for the records, and when they make the written request, you're at least going to get a name. And a request of that kind is a wonderful trap to catch people who have no visible means of having a good reason to have that kind of information. Keep that in mind a little bit. Existing Section 8 of the current law, which is found on page 3, lines 18 to 25, covers, as a previous testifier for the power industry said, already covers the new requested exception, parts (a), (c), and (d). All these specific protocols, vulnerability assessment plans, and means of combating security risks, those are already covered in subsection 8. And with all due respect, I assume Lincoln city attorney's office, or somebody representing them drafted this. I

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don't think Senator Fulton did, because you can read the new bill, you can read this LB135 and see that it absolutely repeats the same language, which they surely would not have done if they had looked up our public records law in the supplements instead of in the old, nice big red book, which is pretty, but out of date. In 2002 this Legislature, this committee and then the Legislature passed LB276 in response to exactly these same concerns. And that's that subsection 8 exception. Now, two parts of this bill are not, I think, encompassed in existing law. And that is this sub (b) on the new language page in the bill, which deals with the drawings and plans, presumably, of public buildings, and (e) which deals a little bit more broadly with structural diagrams, and equipment...and items of that kind. I think you could generically say this is talking about the drawings and information that might show the strategic points or the especially vulnerable points that are not covered. And I mean there's lots of good people that work on language. I volunteer, and have already offered to assist, if they would like to try to draft that language, so it adds what's needed to protect those exceptionally vulnerable items, including in the amendment that's been offered, that's fine. But this bill offers a standard of the reasonably expected danger apparently according to any custodian of public records. And that is a standard which I think is subjective, even though the word "reasonable" sometimes means a judge would look at it and say, no, it's objective, it's close enough. Because our public records law has thousands of people in charge of either giving out or not giving out public records, inherently it's subjective. And any fear whatever that, well, I better not give this out, it looks like it might be a plan or a diagram, that's going to result in closing off to the public, including the media, all the charts, all the diagrams, think of construction, and is going to allow the kind of subjectivity that lets people who don't really want to give something out, refuse to do so, and have at least the outer appearance of an excuse. Now I have to take a moment and mention an illustration of that kind of behavior that results in gutting the public records law, and it comes from an incident last year that some of you may have read about involving the construction of Lincoln's new fire trucks. Okay? When that broke, and the mayor broke the story herself, but after it broke they set up a couple of investigating entities and took piles, hundreds of pages of public records, including the diagrams and the specs that were supposed to be used, and they threw them over to the investigator. And when a request was made by the news media, well, can we see the financial stuff, and can we see these drawings you're all talking about? Oh no, those were public record, but not now; they were given to the investigator. And so for weeks the media tried to get those so they could tell the public what the heck's going on and were denied them. They were dribbled out to us gradually. And finally we did get them. As the investigation closed we got that stuff. But they tacked on, in the price of it, a bunch of money to represent the review by the Lincoln city attorneys of whether or not they could find some way to hold them back. So they added a per capita, per page price for the attorneys review. Now the public records law does permit, if you have to go out and hire somebody and it costs you more to produce public records, it's okay, you can add that to the cost. But that's not what this was. This is the kind of abuse by frankly an administration that wanted to hold this stuff back and let you know what they wanted you to know, that subjective

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exceptions allow. So let me just calm down because that one really made us made, and that probably was as close to causing a lawsuit, and I'm not sure there still won't be over that attitude of using a subjective exception to gut the law. The language here "reasonable expectation" should not be used. Use the existing language, I suggest, an offer that's in subsection 8, which is if there is a reasonable...if there is a substantial likelihood, that's free society language as a test. It's not perfect, but it's not this stuff that well, I kind of think we better not give it to you. So that's my suggestion. Secondly, I think that this bill should be limited to the drawings. And here's the principle that we can try to draft, where the disclosure would in substantial likelihood increase the danger to the safety of persons and property. That part of the documents may be excised or withheld. In other words, let's use a scalpel, not an axe on the public records law. And that is the kind of scalpel drafting that can be done, should have been done, and with some sensitivity to what the public records law is about. I'm sensitive to homeland security. Everybody has heard by now Benjamin Franklin's reference to not sacrificing freedom in the name of national security, because if you do, you don't deserve either one. And I think the public records law, this nice little statute in Nebraska, is a fine example of something that needs to be protected from overreaction. Reasonable change can be made. I, and I'm sure many others, would be glad to help draft it. But this is the kind of bill we keep a look out for, because it comes into this committee, into this Legislature with not much sensitivity towards what the Public Records Act really is supposed to mean for Nebraskans. And I've always been proud of it, and so is this committee. And if you continue to be so, and I know you will as will the Legislature, then don't pass this bill in this current form from this committee. It needs a lot of work. And if the work is not done, it should die. Thank you. [LB135]

SENATOR AGUILAR: Questions for Mr. Peterson? Senator Avery. [LB135]

SENATOR AVERY: Just one. I really do admire your commitment to accessible, open, accountable government. I think you're a treasure to this state. [LB135]

ALAN PETERSON: Thank you, Senator Avery. [LB135]

SENATOR AVERY: Did I hear you say that you'd be willing to work with our legal counsel to get this right? [LB135]

ALAN PETERSON: Of course. I know that good lady. [LB135]

SENATOR AVERY: That's great, thank you. [LB135]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Mr. Peterson. [LB135]

ALAN PETERSON: Thank you, sir. [LB135]

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SENATOR AGUILAR: Next opponents? Any neutral testimony? Seeing none, that closes the hearing for today and the hearings for the day. [LB135]

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Disposition of Bills:

LB133 - Held in committee.

LB135 - Indefinitely postponed.

LB464 - Advanced to General File.

LB471 - Advanced to General File, as amended.

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Chairperson

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Committee Clerk