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Transcriber's Office

General Affairs Committee
March 09, 2009

[CONFIRMATION LB411 LB443 LB498 LB500]

The Committee on General Affairs met at 1:30 p.m. on Monday, March 9, 2009, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB411, LB498, LB500, and LB443 and gubernatorial appointments. Senators present: Russ Karpisek, Chairperson; Kent Rogert, Vice Chairperson; Colby Coash; Tanya Cook; Merton "Cap" Dierks; Annette Dubas; Mike Friend; and Scott Price. Senators absent: None. []

SENATOR KARPISEK: Senator Russ Karpisek from Wilber, and I am the Chair of the committee; to my far right will be Senator Coash from Lincoln; next to him is Senator Friend from Omaha; next to Senator Friend is Senator Dierks from the basketball hot spot of the state of Ewing; next to him, Senator Rogert from Tekamah; Josh Eickmeier, our legal counsel from Seward; Senator Dubas will be on my left from Fullerton; Senator Cook from Omaha; and next to her will be Senator Price from Bellevue; and Joan Snyder is our committee clerk from Lincoln. Helping us today in committee, the pages are Courtney Ruwe of Herman; and Blair Gay of Columbus. Today we have one confirmation hearing followed by four bills. The confirmation hearing is for Judy Pearl-Lee to the Nebraska Arts Council. We will then hear LB411, introduced by Senator Giese; LB498 introduced by Senator Fulton; LB500 introduced by myself; and LB443 introduced by Senator Christensen. After each bill is introduced, we would like to hear testimony in support of the bill, then in opposition, and finally, neutral testimony. If you're planning on testifying in any capacity, please pick up a sign-in sheet that is on the back table of the room at both entrances. Please fill out the sign-in sheet before you testify, then when it is your turn to testify, give your sign-in sheet to one of the pages so they can give it to the committee clerk and this will help us make accurate public record. If you have any handouts, please make sure that you have ten copies for the page to hand out to the committee. If you know ahead of time you don't have enough, raise your hand and the pages will help you. When you come up to testify, please speak clearly into the microphone, please tell us your name and spell your first and last name, even if it is a simple name. Also, please tell us who you are representing, if anyone. Please turn off your cell phones, pagers, or anything else that beeps, and please keep your conversations to a minimum or take them out in the hallway. I haven't got to throw anyone out this year and this is our last hearing, so. Mr. Miller, you're looking good. Now, there are also other committees going on as we are, so if senators leave it's because they probably have another bill to introduce in another committee. Now we'll begin with the confirmation of Judy Pearl-Lee, if you could please come forward. And as I said, she is going...a confirmation to the Nebraska Arts Council. Welcome.
[CONFIRMATION]

JUDY PEARL-LEE: Good afternoon, thank you. May I have a seat? [CONFIRMATION]

SENATOR KARPISEK: Please. Tell us a little bit about yourself and anything you want

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us to know, and why you want to be confirmed. [CONFIRMATION]

JUDY PEARL-LEE: Well, I'm originally...first of all, my name is J-u-d-y P-e-a-r-l-L-e-e. I'm originally from Omaha, Nebraska. I attended Omaha Central High School in Omaha, Nebraska. I also graduated from the University of Nebraska in Lincoln. I am an advocate of the arts, and more importantly the advocate of youth in arts. I'm really excited about it. If you know my personality, I'm enthusiastic, I have all the positive thought processes it is in getting young children involved in the arts. Originally I attended, once again, the University of Nebraska; I am a...okay, I'm getting nervous now. [CONFIRMATION]

SENATOR KARPISEK: That's okay. [CONFIRMATION]

JUDY PEARL-LEE: Thank you. [CONFIRMATION]

SENATOR KARPISEK: Don't be nervous. [CONFIRMATION]

JUDY PEARL-LEE: Don't be nervous, huh? [CONFIRMATION]

SENATOR KARPISEK: No. [CONFIRMATION]

JUDY PEARL-LEE: I've actually...studied under textile design--Dr. Hillestad in the textile division of the Home Economics Department. And what else do you need? [CONFIRMATION]

SENATOR KARPISEK: Is this your first time to be on the committee? [CONFIRMATION]

JUDY PEARL-LEE: Yes, yes. [CONFIRMATION]

SENATOR KARPISEK: It is. [CONFIRMATION]

JUDY PEARL-LEE: I'm very excited, yes. [CONFIRMATION]

SENATOR KARPISEK: Okay. [CONFIRMATION]

JUDY PEARL-LEE: Very honored to be a member of the organization. [CONFIRMATION]

SENATOR KARPISEK: Good. Do we have any questions? Senator Rogert. [CONFIRMATION]

SENATOR ROBERT: Ms. Lee, thanks for coming in today; I'll help you out.

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[CONFIRMATION]

JUDY PEARL-LEE: Okay. [CONFIRMATION]

SENATOR ROBERT: I'll give us lots of stuff you might need. [CONFIRMATION]

JUDY PEARL-LEE: Great. []

SENATOR ROBERT: Give me a couple of ideas that you would have for youths in the arts. [CONFIRMATION]

JUDY PEARL-LEE: I think, personally, it's very important to get children involved very early, and I would say Headstart in particular. The reason why, I think, as children get older they have other commitments, they have friends, other activities. But starting, introducing them to the visual arts and also the music and things of that are very important. [CONFIRMATION]

SENATOR ROBERT: I noticed you had some previous affiliation with Girls, Inc., one of my favorite groups. [CONFIRMATION]

JUDY PEARL-LEE: Yes, thank you. [CONFIRMATION]

SENATOR ROBERT: Have you done any art work or stuff with them? Did you work with those guys on any of that type of program? [CONFIRMATION]

JUDY PEARL-LEE: I was part of the Partners Board, for a time, which I found very overwhelming because they do so much so quickly, but I think there's a real influence on youth at that point and it's kind of exciting to see children evolve from a very...when they start the program until high school, and to watch them grow, and their interest. [CONFIRMATION]

SENATOR ROBERT: I agree, thank you. [CONFIRMATION]

JUDY PEARL-LEE: Thank you. [CONFIRMATION]

SENATOR KARPISSEK: Thank you, Senator Robert. Any other questions? Senator Dierks. [CONFIRMATION]

JUDY PEARL-LEE: Yes. [CONFIRMATION]

SENATOR DIERKS: Sure, thank you, Senator Karpisek. Tell us what your responsibilities are a little bit. How many times a month do you meet, or year or whatever, and what are some of the decisions you make as a board member?

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[CONFIRMATION]

JUDY PEARL-LEE: Actually, this will be my first or my second meeting at the Arts Council. Is that what you're referring to? And I'm really kind of excited about it and I really don't know what my responsibilities are, though I know that when I accept things I take them to the nth degree to become successful. It makes me...I have no children and often I will talk about my two kids--my four-legged children. And it's kind of exciting, in not having children, it's important for me to give back to the community and to youth. So because of that, I've made this one of my most important obligations to our youth.

[CONFIRMATION]

SENATOR DIERKS: What are your four-legged friends? [CONFIRMATION]

JUDY PEARL-LEE: I have...oh, I used to have a beagle named Chandler, and he passed away in December. But now I have a Basenji. [CONFIRMATION]

SENATOR DIERKS: A which? [CONFIRMATION]

JUDY PEARL-LEE: A Basenji, which is a barkless dog from the Congo, in Africa. And of course, the beagle, of course, was from Britain, so. [CONFIRMATION]

SENATOR DIERKS: Thank you. [CONFIRMATION]

JUDY PEARL-LEE: Thank you. [CONFIRMATION]

SENATOR KARPISEK: Thank you, Senator Dierks. Any other questions? Senator Cook. [CONFIRMATION]

SENATOR COOK: Thank you very much, Mr. Chairman. I don't have any questions, but I just wanted to brag a little bit... [CONFIRMATION]

JUDY PEARL-LEE: Thank you. [CONFIRMATION]

SENATOR COOK: ...about knowing Ms. Pearl-Lee for most of my time on this planet. And I would like to attest to the Chairman... [CONFIRMATION]

JUDY PEARL-LEE: You're aging me, Senator. [CONFIRMATION]

SENATOR COOK: Yeah, I know--but I didn't say how long I was on the planet... [CONFIRMATION]

JUDY PEARL-LEE: Thank you. [CONFIRMATION]

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SENATOR COOK: ...or how long you were on the planet, Ms. Pearl-Lee...
[CONFIRMATION]

JUDY PEARL-LEE: Outstanding, outstanding. [CONFIRMATION]

SENATOR COOK: ...so please remember that. But I wanted to also state, for the record, that she's an ideal nominee for this opportunity. Has been involved, as she said, her entire life in the creation of arts and a patron of the performing arts and an appreciator of the visual arts, and certainly among youth-serving agencies in Omaha and across the state, so. Thank you very much for your kind consideration.
[CONFIRMATION]

SENATOR KARPISEK: Do you have anything to say back to Senator Cook, or...?
[CONFIRMATION]

JUDY PEARL-LEE: Thank you, thank you very much. [CONFIRMATION]

SENATOR COOK: There's the opening that they've been waiting all session, Ms. Pearl-Lee. [CONFIRMATION]

SENATOR KARPISEK: Senator Price. [CONFIRMATION]

SENATOR PRICE: Thank you very much, Senator Karpisek. Ma'am, question: I was just at lunch with Senator Coash and a few other senators in the office at an arts and the visually impaired and that was one aspect. But also I'm thinking about, when we look at the Nebraska Arts Council, do you have any thoughts on sharing the arts with rural Nebraska, so we're not just thinking about the cities here? There's so many, as you said, children, throughout the state and the arts. [CONFIRMATION]

JUDY PEARL-LEE: No, ironically...I'm glad you brought that up. I don't know if you know, professionally, what I am. I'm a bag lady, in the nicest sense. We manufacture bags. My company name is Frontier Bag. It's a family-owned company, second generation. My father, very early in the...1946 dealt with a lot of rural Nebraska. He sold burlap bags which some of you may or may not know about, multi-wallpaper bags to a lot of the feeders throughout the state of Nebraska. So I am, in essence, very familiar in western Nebraska and, as a matter of fact, I do travel there. So I think it will be very interesting to bring another facet of not only am I a bag lady but I can also bring a bit of the art and understand a little bit about the communities themselves. I'm excited and that's all I can say. I can't elaborate on something that I've not done, I can only tell you that I'm excited in doing what I can do. [CONFIRMATION]

SENATOR PRICE: All right, thank you. [CONFIRMATION]

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JUDY PEARL-LEE: Thank you. [CONFIRMATION]

SENATOR KARPISEK: Thank you, Senator Price. Any further questions? I would just like to say I think it's great that you're concentrating on the kids because, try to teach me something about art now and I'm not very...well, probably not on anything, the committee will attest, but... [CONFIRMATION]

JUDY PEARL-LEE: I'm not going there. The other part, and I'd like to say if I may, that I'd like to bring my husband into light on this. My husband is visually impaired and I think, in essence, it's important for people who are visually impaired to be able to accept and understand and to appreciate the arts as well. So I cannot say it's all related to children, but I can also say those people that may not have the abilities to appreciate, or the faculties to appreciate those things that we find very common. So that's my story and I'm sticking to it. [CONFIRMATION]

SENATOR KARPISEK: Good. And your personality does shine through even when you're nervous. [CONFIRMATION]

JUDY PEARL-LEE: Oh, really? Thank you very much. [CONFIRMATION]

SENATOR KARPISEK: All right. Seeing no further questions, thank you for coming today. [CONFIRMATION]

JUDY PEARL-LEE: Thank you. [CONFIRMATION]

SENATOR KARPISEK: Okay, our first bill will be LB411 by Senator Giese. Welcome. [LB411]

SENATOR GIESE: Thank you. [LB411]

SENATOR KARPISEK: Go ahead, Senator Giese. [LB411]

SENATOR GIESE: Thank you, Senator Karpisek and members of the committee. My name is Robert Giese, G-i-e-s-e, and I represent the 17th Legislative District which includes Dakota, Dixon, and Wayne Counties in northeast Nebraska. LB411 would update the Nebraska Electrical Act to reflect changes in the National Electric Code and is brought on behalf of the State Electrical Board. This legislation would update the current minimum standards for electrical wiring in the state to the most recent national guidelines. Historically, when the National Electric Code is updated every three years, a bill is passed by the Legislature to update references to these standards in Nebraska statute. In 2008, Senator Engel introduced LB723 which would have updated the Nebraska Electrical Act from the 2005 to the 2008 edition of the code. This bill did not pass due to concerns of the Home Builders Association, but those concerns have since

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been addressed. The provision of the code that generated controversy last session dealt with the requirement that new construction use arc fault circuit breakers. In their testimony on LB723, the Home Builders Association asserted that this requirement could increase the cost of affordable housing by \$750 to \$1,000 but were unable to provide any documentation for this claim. The State Electrical Board has reviewed the cost of the arc fault breakers multiple times and have found that the cost estimates are significantly lower than the home builders claim. There have been several developments in the interim which strengthens the argument in favor of adopting the 2008 National Electric Code. In response to the failure of LB723, Senators Engel and McDonald introduced LR344 which asked the General Affairs Committee to study the process and standards used to revise the State Electrical Act. After careful study of the issue over the interim, the committee concluded that the State Electrical Act should be updated to reflect 2008 National Electric Code standards. Even without updating the State Electrical Act to reflect 2008 standards, many new construction projects would still be required to use arc fault circuit breakers. On October 31, 2008, Governor Heineman signed a change to Rule 18 of the Nebraska Electrical Code which would require the use of arc fault circuit breakers in bedrooms beginning on November 5, 2008. Some Nebraska municipalities have also chosen to adopt the 2008 code as well. The city of Hastings has adopted the 2008 code in its entirety, and the city of Omaha has adopted the 2008 code without the arc fault circuit breaker requirement. As I am sure the home builders will note in their opposition testimony, updating to the 2008 code would result in a modest increase in the cost of constructing a new home. But simply looking at the construction costs ignores the costs not updating the code. These changes are made every three years to save tax dollars spent fighting residential electric fires and more importantly, to save lives. In my opinion, the benefits of updating to the 2008 National Code vastly outweigh the cost. Thank you for your time, and I would be happy to answer any nonelectrical questions. (Laughter) [LB411]

SENATOR KARPISEK: Thank you, Senator Giese. Any nonelectrical questions for Senator Giese? Seeing none, thank you. [LB411]

SENATOR GIESE: Thank you. [LB411]

SENATOR KARPISEK: Will you stay to close? [LB411]

SENATOR GIESE: I'm going to waive closing, but I'll be here. [LB411]

SENATOR KARPISEK: All right, thank you. Do we have the first opponent, or sorry, proponent? [LB411]

SENATOR PRICE: You will have to... [LB411]

SENATOR KARPISEK: Yeah, I'm not with it today. It's Monday. [LB411]

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SENATOR PRICE: LB443 has you. [LB411]

SENATOR KARPISEK: (Laugh) Yeah, I know; should've done that first, but that would've... [LB411]

SENATOR PRICE: We will get there. [LB411]

SENATOR KARPISEK: Welcome. Let's see if I can get on track. [LB411]

RANDY ANDERSON: (Exhibits A-D) Mr. Chairman, members of the committee, I'm Randy Anderson, A-n-d-e-r-s-o-n. I'm the executive director of the Nebraska State Electrical Division and I'm here, obviously, in favor of LB411. We're charged with enforcement of, inspection and licensing laws in Nebraska and keeping up-to-date with the policy that's changed every three years; always in the past has been a simple deal that went through up until, as Senator Giese said, until 2008 when some questions arose. I was going to call a little attention to LR344 but I'll go on with others until it's all passed out here. The mission of the board is definitely safety of the citizens of Nebraska, and there's been a...from what we've found, most of the opposition against the 2008 code has been the increased cost in the entry-level homes--it would stop the building. We feel, you know, you always feel for anybody that if you think it's going to stop the livelihood, but I think there's a lot of factors that have to do with home building, and if homeowners are made aware of what is available safetywise it makes a big difference. Through our meetings with the home builders one question we've had is education. Are you educating people when we find out that something was misinterpreted? In one instance in LR344 was that they thought all breakers. In fact, the testimony was there's 42 breakers in your home, you do the math. Well, that is a true statement; many homes do have 42 breakers. But how many of them have to be arc fault is not every circuit in the house. I'm not going to get into the cost because I have another gentleman coming behind me that's going to break that down for us. The NFPA is a sort of committee made up of people of all over the industry, and they research things out and then put them into code. And they do this every three years. Basically, this session right here--what you people do--shouldn't be to decide what is right there or not, it'd be whether we'd move on with adopting the 2008 code. Now that I think you have those, I would call attention to that one marked LB344 that I passed out, and if you look at the last paragraph on the first page, that's where the estimates came from. And that is one where it was found to be...the electrician was not wrong about possibly what an arc fault breaker costs, but he was wrong about the number. There was another case where a thousand dollar bill was presented, but when requested to drop it down so that we could review it and give them an honest answer of where they came up with this we never did get anything besides just a piece of paper saying \$1,000, so it was pretty hard to answer it. But as you can see, I highlighted the last two paragraphs and board Rule 18 was passed, like Senator Giese said, which puts arc fault in bedrooms because

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of the number of fires--I'm not going to go into the number of fires because somebody testifying behind me is going to go into that also. I am going to go in, though, to the...some of the testimony you've heard in the past is there is a lack of evidence by any kind of a standard showing the fires that did not happen because of an arc fault. And I'd kind of relate that to if you hit your brakes and you have good brakes and you miss a car, do you tell anybody about it? If a breaker trips in your house and I, as an electrician, come out and fix it do you call anybody and tell them that it worked? If the GFI breaker in your bathroom trips for some reason and then you know the appliance is bad...there are no reports like that and so that would be a kind of an answer to what I think is coming behind me, saying there's just no proof that they work. Well, absolutely there's years of testing. This idea isn't something that's new. This wasn't introduced by the manufacturers, as the home builders have testified in the past. It was introduced by fire chiefs, and people in the industry wanted something that would look for an arcing fire and try to stop it. Now there's nothing that will stop all fires and I'm not here to tell you that, but they sure don't hurt. Through their requests, then manufacturers made the product. Then it went through the code-making process of getting adopted. And they go through a lot of years of testing. There's questions why were they put they put just in the bedrooms? Why weren't they put in all the rooms? Well, that was because that's where the most deaths were, and then they worked from there saying they had not tested them enough to see how they were going to react in the rest of the home. And that has moved forward from the 2005 code to the 2008. And that is why they moved into another section. It takes years of testing for this stuff to move forward; they don't just put it in there. Also Consumer Product Safety Council is in favor of the use of the arc fault. I also have a copy from the Ohio Chapter--it'd be the single page that's highlighted partway down. This is done by the Ohio Chapter of the International Association of Electrical Inspectors. This is a little bit on cost. I'm going to cover the last line before it's the highlighted area, it says: the study researched the cost of the combination arc fault circuit interrupter device and multiple receptacle types from a local distributor, then applied those costs to three home types: 900 square foot, which is your entry level, and they show a cost of 18 cents a square foot or \$160; 1,700 square foot home, \$205 or 12 cents a square foot; and a 2,100 square foot home, \$241 or 11 cents a square foot. So you can kind of see as the price of the home goes up the changes on the cost. But that's just a...the next thing I'd like to call your attention to is I provided you with a map. This was taken off the Internet. I did upgrade Idaho, Wisconsin, and Washington on this map because on this Web site they still had those states blue, and we're in a multi-state licensing agreement with 14 states here in the Midwest and New Hampshire, and I know those directors quite well so I know what they cover. And the green states are now states that are on the 2008 code; the blue states are on the 2005 code which required arc faults in the bedrooms; the yellow states have no program, but we do have cities in there. And I was trying to search their Web sites--it's a little more difficult when you get into municipalities to search through their Web site to find out exactly...I know that Kansas City, St. Louis, Wichita, and Salina were on the 2005 code enforcing arc faults. Whether they went to the 2008, I can't find it on their Web sites if they have so I

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just left them as states with no program. And then you'll see New York up there is red--I have nothing on that, but New York's on the 2002 code and New York's kind of unique because they write their own code. They take the NFPA and then they write it to work in New York, and they stay quite a ways behind everybody else because they have to...it takes them a long time to research, so. I also just received an e-mail which I wanted to share with you. There was talk about do we really want an arc fault circuit interrupter on the smoke alarms in our bedrooms? Because if the arc fault circuit interrupter trips, well, would we be out of a smoke detector in the rooms then? The answer to that is no. Number one, because all smoke detectors are now required to be dual rated; they'd have to be battery and 110. But it doesn't...Jeff sent me this and I'm sorry, because after I got the thing out I don't know where Amherst is so I don't know what state this is, but it was a fire just caused by a faulty smoke detector that caused \$175,000 to a home. Now, I can't stand up here and say that having that on an arc fault would have done it; I'd never say that because we never know. We know it would be better with them but we can't say it would have done it. But saying that you don't want them on there because you're afraid they'll go off would be a bad reason. Because here is just one case of the fire was caused in the smoke alarm. Had that arc been sensed, possibly by an arc fault circuit interrupter, possibly it could have stopped the fire. We don't know that though, so I just brought that up because I think testimony's going to come in to say that they shouldn't be on a bedroom circuit that protects you firewise. The last thing I want to talk about is nuisance tripping. We've...have not had, I can't say, reports of nuisance tripping. I do know that the ones that have been looked into where they tripped what you might call a nuisance was actually either the device doing its job, because maybe you don't see the arc, you don't know it's there. Maybe you've got a lamp cord that's pinched, or a staple that's too tight and it's tripping. You see nothing, but that doesn't necessarily mean the device is nuisance tripping. Also, I know that Dan Froberg is going to testify, the ones he's investigated the device was working. It was improper installation that caused the device to not work properly. And I think a big thing is education. And like I said before, the home builders have talked about this but I know of nothing that they have done to educate their people to say, hey, you can spend \$300, \$500, \$600 on safety. More so what I see is hey, we got some flashy cabinets and we've got some nice countertops, but that...and I understand that--that's what sells homes. If you're out buying a house you don't care about that arc fault breaker, you care about what it looks like when you're done. But I do think that when they talk about it stopping construction, I think there are other areas that we could probably shave some money and if we explained it to a homeowner...and my nephew would be one. When I told him about it, before this was ever required, he built a new home and said well, why wouldn't I want to put them in, for the cost of them? And like I say, he had no idea they were out there. And if your builder or your electrician didn't tell you about them, why would you be expected to know that? You know, that's why you hire people to build your house. But I think through education we can get it to where we find out that people would be less against these. And that is all I have, Mr. Chairman. [LB411]

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SENATOR KARPISEK: Okay. Thank you, Mr. Anderson. Senator Price. [LB411]

SENATOR PRICE: Senator Karpisek, thank you very much. Mr. Anderson, couple quick questions. [LB411]

RANDY ANDERSON: Sure. [LB411]

SENATOR PRICE: If this is adopted there would be no impacted current building going on right now; would they have to go back and retrofit homes and facilities that aren't completed at this point in time? Would they have to go back and retrofit them with GFIs? [LB411]

RANDY ANDERSON: No. The way we do it, just like we did when the Governor signed AFCI into bedrooms, we set a date that every permit taken out after that date falls under this. So we could have a job that's been going two years and the NEC is not retroactive--it's for new wiring. And then our act says if we see existing wiring that presents an immediate hazard the board has instructed all the inspectors that...let's say that you're going to just replace a fuse now where the fuses are always too big and we're getting into an old home. You're not putting any new bedrooms in, so you would be able to put a new panel in and hook it all back up for the way it was--it wouldn't be retroactive unless you added outlets to your bedroom or one of the rooms that this would change. [LB411]

SENATOR PRICE: Great, and that leads into my second question, then. I heard statements made...who actually has authority here between the board and the fire departments--fire marshals and officials? Particularly with regards to assisted living facilities. There have been many times, and I don't have them with me at the moment, but situations where a fire marshal, someone, comes into a facility and says because they don't have the GFI met or some condition met they penalize...they tell people they have a finding. And then they go and they talk to the board; the board says but that's within code. And then the fire marshal says...who actually has the authority here? [LB411]

RANDY ANDERSON: By law, the Electrical Board has authority over NFPA 70, which is this document we're talking about, and I know exactly what you're referring to. It's going into the nursing homes and every time NFPA 99 comes out they have to rewire hospitals and nursing homes. The board doesn't feel that's what it says, however, the Fire Marshal is in charge of NFPA 99. So they come in behind us after we've approved it and say well, it meets your NFPA 70 but it doesn't meet our NFPA 99. And I do know that one of our board members has just said he wants to, because of this issue, wants to get some clearer ground here about who is going to determine what the electrical should be. And I realize NFPA 99 is the only document that doesn't say it pertains to new wiring, so the Fire Marshal is reading that to say...because that was my argument

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to the Fire Marshal's office was every time a document comes out we're supposed to travel across Nebraska and make everybody rewire everything? And we've worked off of you build new, you meet today's code. If it's old and doesn't present a hazard, it stays existing. [LB411]

SENATOR PRICE: So is there any way we can amend this...take NFPA 99 to end this olympiad of problems we have? [LB411]

RANDY ANDERSON: I don't know. That would be a legal question. Right now, we do not enforce NFPA 99; we're in charge of NFPA 70. [LB411]

SENATOR PRICE: Thank you. [LB411]

SENATOR KARPISEK: Thank you, Senator Price. Any other questions? Senator Rogert. [LB411]

SENATOR ROBERT: A few. Can you help me understand here? I know how circuit breakers work and how GFI receptacles work. Explain to me how an AFCI works. [LB411]

RANDY ANDERSON: An AFCI senses a fault and reacts in so many seconds, kind of like a GFI did, and shuts off before the fault becomes an arc--let's put it that way. [LB411]

SENATOR ROBERT: And these are, these are actual breakers in the panel; these aren't on the receptacles. [LB411]

RANDY ANDERSON: Yes. [LB411]

SENATOR ROBERT: Okay. What causes it to sense that? [LB411]

RANDY ANDERSON: There would have to be an arc--similar to what we had several years ago, the GFIs you see in your bathroom with the resets on them. Those are 5 millions of an amp in one-sixtieth of a second, and I've got to apologize: on the arc fault, what's inside of it, I can't...I don't think there's any way that I can describe how it senses it. [LB411]

SENATOR ROBERT: Okay. [LB411]

RANDY ANDERSON: But Dan Froberg, coming up later, might have a better handle on that exact...the relays and systems inside of it. [LB411]

SENATOR ROBERT: Okay. [LB411]

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RANDY ANDERSON: But it does sense a...it tries to stop an arc before it's hot enough to start a fire. [LB411]

SENATOR ROBERT: Okay. This place is really dry. I shock myself, almost everything I touch when you just walk around. Is that going to be enough to set one of these off? [LB411]

RANDY ANDERSON: It should not. [LB411]

SENATOR ROBERT: Okay. Do these require any different mode of installation? Are they just the same type of a breaker, they just look a little different? [LB411]

RANDY ANDERSON: They look exactly the same as that you walk up to your panel and snap it in. They have one thing extra which is a little white wire that hooks to the neutral bar, which I believe a guy coming behind me is just going to give you one to let you see it so you can that they're exactly...so the installation, you know, I'm sorry, but the installation, we were told there's a lot of extra money to install it. It basically snaps in once the cover's off and there's one extra lead... [LB411]

SENATOR ROBERT: Okay. [LB411]

RANDY ANDERSON: ...to hook up because it runs through the neutral. [LB411]

SENATOR ROBERT: I don't have a copy of the code. Is the code that we're going to adapt, is that required on every single... [LB411]

RANDY ANDERSON: No. Any place that there's not a GFCI right now. [LB411]

SENATOR ROBERT: Okay. [LB411]

RANDY ANDERSON: So it wouldn't be in your bathrooms, laundry rooms, garages... [LB411]

SENATOR ROBERT: Outdoors. [LB411]

RANDY ANDERSON: ...kitchen, yeah. [LB411]

SENATOR ROBERT: Okay, so that helps. Back to the situation described with the panel. Say I want to...my panel's full and I want to add a run and so I need to...I'm going to have to get a new panel. So going from 100 amp service to a 200 amp service because I want to add one or two more runs because I... [LB411]

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RANDY ANDERSON: Sure. [LB411]

SENATOR ROBERT: ...for whatever reason. So you're saying if I do that, I can use all the current breakers I have except for the two that I had that are new as long as...if they're not in the bathroom and those would need to be AFCIs. [LB411]

RANDY ANDERSON: Or bedroom. [LB411]

SENATOR ROBERT: Right. [LB411]

RANDY ANDERSON: Yes, as long as you have the same brand. If you were changing out one brand for another brand, and the breakers were not so old that they weren't listed, you know, and that'd have to be quite a ways back; you could move those breakers over and then only have to meet the 2008 code on the circuits that you put in new. [LB411]

SENATOR ROBERT: And if I went to a different brand and I went and bought from Square D to GE...would I, at that point, have to change...move up to the AFCIs? [LB411]

RANDY ANDERSON: No. [LB411]

SENATOR ROBERT: Okay. So only the two additional circuits I would have to... [LB411]

RANDY ANDERSON: You'd have to add that receptacle in the rooms that we're talking about. If you're refeeding what's already there, it wouldn't apply. [LB411]

SENATOR ROBERT: Okay. That answers my questions, thank you. [LB411]

RANDY ANDERSON: And that...could I make one comment... [LB411]

SENATOR ROBERT: Certainly. [LB411]

RANDY ANDERSON: ...to kind of follow up? The reason...I think you're probably going to hear if the board thinks these are so safe why wouldn't we do them in all old homes? And I'll tell you their main reason. Ma and Pa on a fixed income have an old fuse box. They can't hardly afford to fix it the way it is. If we go all the way, in those certain, few instances...it's not that we don't think it's a good safety idea, but what if we stop everybody from replacing their panels because they're terrified? They don't know exactly what it's actually going to cost, but somebody has pumped their head full that it is; they won't replace that bad fuse box. And that was... [LB411]

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SENATOR ROBERT: Well, and I understand that replacing the service panel might be a couple-three hundred dollars and this could turn it into a \$700 or \$800 thing if you have to replace them all. And I would be concerned about that too. [LB411]

RANDY ANDERSON: Right. The idea was that we could still now get rid of a bad fuse panel and a new breaker panel, and then when they add to the room then we'll have them change to the arc fault. [LB411]

SENATOR KARPISEK: Thank you, Senator Rogert. Any other questions? Seeing none, thank you. [LB411]

RANDY ANDERSON: Thank you. [LB411]

SENATOR KARPISEK: Next proponent. Welcome. [LB411]

RUTH CHERMOK: Thank you. Chairman Karpisek and members of the General Affairs Committee, I am Ruth Chermok, C-h-e-r-m-o-k, and I am the executive director of the National Electrical Contractors Nebraska Chapter. I appear before you today to strongly support the adoption of LB411 which incorporates the most recent National Electrical Code into our state code standards. Fortunately for all of you I'm also not here to explain anything electrical (laugh). In fact I'm quite impressed with a number of the senator's questions; they obviously have an understanding of this issue. But candidly, there has been significant debate surrounding this adoption and it is something that, in the past many, many years, has just been part of a very standard process. The National Fire Protection Association includes many groups from the industry. NECA participates, numerous city and state inspection officials, contractors, suppliers--and all code revisions are handled through a national committee process, and all stakeholders are welcome to either support or oppose any changes through that process. I'm here today more to talk to you about a larger philosophical debate about all of us continuing this tried and true process. Once the committees meet and review all proposals, the changes are put forth into adoption into the National Electrical Code. This process has served the industry very well and has ensured safe and effective installations. Typically, every city and state municipality then adopts that code. And in the past, the practice has always been that they may offer more restrictive elements to the code but typically there is nothing they can do to make it less restrictive. The National Electrical Code, or the NEC as you'll hear it referred to, is the minimum standards for safe installations. And our industry and our organization is very concerned about allowing this tried and true process to be circumvented at every city and state level, and we feel that it would truly undermine the code and the highly technical decisions that are made behind it and the safety aspects that are applied to the thought process. Our association has never been completely in favor of every change or standard. There's times we've questioned things, but we routinely work through the system and the process that is well established to affect code revisions. If we have an issue with the code adoption we, as an

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organization, through that committee process at the national level, weigh in. At the end of the day, NECA feels that it is critical to support the State Electrical Board. These are the experts that have been appointed by you and the Governor to ensure safe installations for our citizens, and the national code adoption process has served us very, very well for many, many years. We do not support individual interest groups, ours included, carving out and changing the national code. Those decisions then become part of a political process that is framed by economic decisions and excludes the technical expertise of the industry and does not take into proper consideration the reasons that the National Fire Protection Association and others are charged with public safety. So I urge you to advance LB411 and to adopt the most recent version of the code, and I'll entertain any questions you might have. [LB411]

SENATOR KARPISEK: Thank you, Ms. Chermok. Senator Price. [LB411]

SENATOR PRICE: Senator Karpisek, thank you. Ms. Chermok, a question for you. How will this adoption impact students enrolled, right now, ready to take tests? Will they...will this be a new burden on testing or is that something a state level official can answer? [LB411]

RUTH CHERMOK: No, I can answer that. We're blessed in this state to have a State Electrical Division and a State Electrical Board and a process. A number of states run without our licensing and testing. This will affect, as it does every cycle, all electricians, all apprentices, all master contractors, and everyone who is responsible for learning all individual and new code updates. And they routinely do this; they go through and they...we put on classes to help them get ready for the new code. And there'll be just one of any number of things in the code that changes every year that they're responsible for learning and then implementing in the field. [LB411]

SENATOR PRICE: I was just concerned if we have a class that graduates next week and they get a test, you know...I mean a proximity...would there be an opportunity to say within one year of adoption you have to have this down? I mean, think about the folks out there. [LB411]

RUTH CHERMOK: Yeah, well, again, it is just a standard part of our industry that the year before that the code is going to go into effect we all--not me--but all the experts in the industry know what those revisions are coming and the State Electrical Board works with apprenticeship committees. Any number of people...this would just be one of many, many things that gets changed in the code. So it's not like it will happen tomorrow and a bunch of folks trying to get their licenses would be bumped out. [LB411]

SENATOR PRICE: And in your answer you mention one year; thank you... [LB411]

RUTH CHERMOK: Okay. [LB411]

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SENATOR PRICE: ...that's good. [LB411]

SENATOR KARPISEK: Thank you, Senator Price. Any other questions? Seeing none, thank you. [LB411]

RUTH CHERMOK: Thank you. [LB411]

SENATOR KARPISEK: Next proponent. That was one. [LB411]

DAN FROHBERG: (Exhibit E) My name is Dan Frohberg. I'm here kind of representing Northeast Community College, Norfolk, Nebraska. [LB411]

SENATOR KARPISEK: Can you spell your name, Dan? [LB411]

DAN FROHBERG: F-r-o-h-b-e-r-g. [LB411]

SENATOR KARPISEK: Thank you. [LB411]

DAN FROHBERG: We do...the costs I'm going to address today are on our project houses that we do every year. So we do two project homes. They are 1,500 square foot residences. I have a little Power Point handout you can kind of see when everybody gets the handout. They are built on the Northeast College campus and total costs associated will be in the range of \$55,000 to \$58,000. The print is on the bottom of the first page. I kind of put together some code requirements; I'm going to kind of skip through those, you can kind of take a look at those. As far as calculating those lighting circuits, the cost comparisons I have highlighted--these will reflect wholesale costs only--and contractor pricing to the college is not available. We are not eligible because of the amount of materials we buy. Article 210.12(B) talks about those arc fault circuits, at the bottom of page 2. Basically, they're going in a family room, dining room, living room, parlor, den, bedrooms, sunroom, recreation room...so you have a pretty good list there of areas that they will like to have the arc fault circuit interrupter protect. The next page, on page 3, just shows a couple of arc faults--and I am handing a couple around so the committee can take a look. At the bottom of page 3, it kind of takes a look at a normal wave form so when we look at sine waves, as far as the current, arcing type faults tend to spike those sine waves, and that's what this breaker is going to take a look at under the conditions. Top of page 4, again, is the same residence with the areas colored in that are not required to have arc fault circuit interrupter protection, which is basically bathrooms, the kitchen area, the garage area, any outside area. If we look at the arc fault circuit breaker costs, on the middle of page 4, we have used arc fault circuit breakers in our panels since 2002. It was a requirement in 1999 to use them by January 1, 2002. Since our use of those circuits we've had two problems--basically self-inflicted, if you would. Home runs stapled too tight--it would still operate under a normal circuit

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breaker, but over a period of time that's going to start to wear through. You need to take a look at the arc fault circuit protection as protection 20 years down the road. Yes, we're using it for current standards, but we're looking at that wiring system aging over the next 20 years and we want that protection in there. So if we look at an arc fault circuit breaker, wholesale cost, as far as my cost, with \$31.14, you still had to have a standard breaker at \$5.62; the cost difference between them is \$25.52. The cost of ten breakers that we associated with this residence was \$255.00 more. In actuality, we used six in one and seven in the other, so my totals are a little high. Besides the arc fault, we are also bringing in tamper resistant receptacles out of Article 406. That code article is at the bottom of page 4. Tamper resistant receptacles--and you have an example of the tamper resistant receptacle--it needs equal pressure on both prongs in order to plug something in, so inadvertent--a paper clip, a pin--can't be stuck in on the hot side and cause a shock, a burn hazard, those types of things. The tamper resistant receptacles were 88 cents--these; the standard receptacle, residential grade, was 43 cents, so I've added a cost difference of 45 cents. So the cost of approximately 60 receptacles within our residence is \$27.00. The other tamper resistant receptacle at the bottom of the page was an example if they used a commercial grade receptacle, which is higher. The cost difference--it would actually be cheaper to use a tamper resistant than a commercial grade type of receptacle. The next page, out of Article 406, talks about those receptacles that are in damp or wet locations. They must be a rated, weather resistant type, and I kind of went through those requirements if you take a look at the next page. It will have a WR rating on the receptacle to show that it's weather resistant. The internal application of the weather resistant receptacles are stainless steel instead of brass so they'll hold up to that damp environment. So tamper resistant/weather resistant receptacle that we would use outdoors, bathroom areas, possibly, with \$1.48--middle of page 7--again, the standard receptacle was 43 cents; the cost difference of \$1.05; for a cost of ten, approximately \$11.05 additional. The tamper resistant/weather resistant GFCI receptacle that I would need to do in those outdoor locations, the receptacle was \$13.20; the standard GFCI receptacle was \$8.41--that I would need in those locations--a cost difference of \$4.79. The cost of six additional would be \$28.74. Top of page 8...so if we look at project totals to the 2008 National Electrical Code, the cost of the AFCI breakers, \$255; the cost of the tamper resistant receptacles, additional \$27.00; the cost of the tamper resistant/weather resistant receptacles, \$11.05; the cost of the tamper resistant/weather resistant GFCI receptacles of \$28.74: my project totals look like \$321.79. The actual purchase of the receptacles, the switches, the breakers...not the breakers, the plates--the foam plates in our structures were \$425.00, so it's going to be real close. So the approximate increase for our house project totals, if I'm looking at approximate average of \$55,000 we're looking at a change of a little over half a percent: .05, .0058 percent. I have...on the last three pages there are some statistics. I guess I get a little hesitant in using statistics once in a while because of how they are recorded. These come from the Fire Administration's National Fire Incident Reporting System. A lot of times we have a report of the structure fire; we have no report on the age of the structure, exactly, as far as those applications. But if you look at

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that first handout under the electrical distribution and lighting equipment, the leading cause--as far as 6 percent of the home structure fires--still causing 13 percent civilian deaths and 6 percent of the injuries. Again, these are data from 2007 as far as the year. The next page talks about the leading areas of origin in home structure fires 2003 to 2006, bedroom being 8 percent; living room, family room, den: 4 percent. We're looking at 12 percent of the locations in the structure causing 47 percent of the deaths, 31 percent of the injuries. I think this is a lot of the background in why arc fault breakers were designed or put into those areas. On the last page, from the U.S. Consumer Report Product Safety Commission report under total electrical distribution, again, we're looking at installed wiring, cord and plug, receptacle switch, lighting, or other electrical pieces of equipment. From 2003 to 2005, 2006 to 2008 data was not available yet, I think they're in the process of putting it together. We show a steady decline from 2003 to 2005 in those areas that we would have...again, we don't know exactly if it's the arc fault, if it's education, what other means, but it's a good idea or indicator that arc faults are doing their job and we're knocking out some of those fires caused by those. [LB411]

SENATOR KARPISEK: Okay. [LB411]

DAN FROHBERG: Questions? [LB411]

SENATOR KARPISEK: Thank you, Mr. Frohberg. Any questions? Senator Rogert. [LB411]

SENATOR ROBERT: Mr. Frohberg, thanks for coming down. Just wanted to comment, first of all, you guys have a great program up there. I've know some friends that have gone through it, so, we're proud of you guys. [LB411]

DAN FROHBERG: Thank you. [LB411]

SENATOR ROBERT: You've been around a while. When GFIs were mandated... [LB411]

DAN FROHBERG: 1978. [LB411]

SENATOR ROBERT: ...was the cost of the GFI over a regular receptacle a wider spread than it is today? [LB411]

DAN FROHBERG: No. The breakers came out first. Some of the breakers were coming out at the first time the GFCIs came out about \$75.00--that was the approximate cost of the first GFCI or AFCI breaker that I purchased. Then the receptacles came out. I don't think you will probably see AFCI receptacles, just because of some of the internal process, but those costs quickly came down as manufacturing costs were paid for and they sold the quantity. [LB411]

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SENATOR ROBERT: Do you think there's a chance that the gap between standard breakers and an AFCI could close further? [LB411]

DAN FROHBERG: Probably slightly. [LB411]

SENATOR ROBERT: Okay. [LB411]

DAN FROHBERG: I'm guessing at high 20's. [LB411]

SENATOR ROBERT: Okay. Those things are big. Do they fit in every panel? [LB411]

DAN FROHBERG: They are designed to fit the same spot. This is a Homeline Square D product. It fits the same location as a breaker. [LB411]

SENATOR ROBERT: Okay. [LB411]

DAN FROHBERG: So the space is no different. [LB411]

SENATOR ROBERT: Well, I mean...they're quite a bit wider. [LB411]

DAN FROHBERG: Yes, but the... [LB411]

SENATOR ROBERT: Are all panels wide enough to fit in there? [LB411]

DAN FROHBERG: The panels are wide enough to accept the breaker. [LB411]

SENATOR ROBERT: Even an older panel. [LB411]

DAN FROHBERG: Even an older panel will accept these. [LB411]

SENATOR ROBERT: Okay. I just...I know what the inside of mine look like, and wow, it could be tight. [LB411]

DAN FROHBERG: It looks crowded when we start bringing in our circuits to the breakers, but yes, there is room. [LB411]

SENATOR ROBERT: Okay, thanks. [LB411]

SENATOR KARPISSEK: Thank you. Senator Price. [LB411]

SENATOR PRICE: Senator Karpisek, thank you. Sir, a couple quick questions. You mention that arcs tend to spike despite the sine wave there? [LB411]

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DAN FROHBERG: Yes. [LB411]

SENATOR PRICE: What else, then, if you said those tend to be the reason, what else causes a spike? [LB411]

DAN FROHBERG: Transient voltage applications, lightning, any electronic equipment could cause it internal, within in the building. [LB411]

SENATOR PRICE: So if you have a surge, like your motor going off or something like that. [LB411]

DAN FROHBERG: But it will not be enough to trip the breaker. [LB411]

SENATOR PRICE: Great. And then also you talked about when a staple's too tight to the wiring setups. I'm envisioning a house that, maybe this condition exists, we put it and we start tripping. Is there any...I mean, I suppose an electrician would know, but for a house or if it doesn't set up quickly, you know, if they're getting kind of aggravated, I mean, is there a way that you have...I don't know whether you're using a wheatstone bridge or something to find out where that...to isolate that, or they're going to tear them out a lot of walls? [LB411]

DAN FROHBERG: They would have to start pulling pieces, devices out and isolating the portion of the circuit that's causing this trip. We had one just in our last house that we're doing now, and it was the switch leg from the box up to a recessed light. [LB411]

SENATOR PRICE: That was convenient, to be a little quicker. [LB411]

DAN FROHBERG: So it helps, but it also is a good learning experience for the students. [LB411]

SENATOR PRICE: All right, thank you. [LB411]

SENATOR KARPISEK: Thank you, Senator Price. Any other questions? Seeing none, thank you. Further proponents? Welcome. [LB411]

DAN CHRISP: Okay. Senator, Chairman, good to be here. My name is Dan Chrisp, D-a-n C-h-r-i-s-p. I'm an electrical engineer and also an electrical contractor, a license on it. I'm here to talk more on the commercial side, not the arc fault or the home side. In my trade, the permits, when they're pulled out will actually verify what code we fall under. Last year we started redesigning to 2008. That never was adopted, so we had to go back, change our documents, directed by the older code. And if the project's already under construction so we had to go through and start writing up change orders for the

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people to go back to the older code. Now we're back to the same point is we're redesigning to the 2008 code again. If it doesn't get adopted, we're going to be going back and redesigning all over again. And when you go through a redesign, or if it's after bid, it's going to cost money. It's either going to cost the engineering firm money, it's going to cost the owner money, or it's going to cost the contractor money. It's usually going to cost somebody. And with the 2008, they also address newer technology that we've got out--newer material that we have out--from the 2005. And so it's...for now, that material cannot be used because it does not meet code. But yet 2008 adopts it and it's acceptable in it. So then the code also changes for several places like healthcare facilities. Now that's one of them where you kind of want...they keep track over what the big problem is and they change as they go. Costs to the homeowner: a little bit of money, because they're going to cost arc fault or cost somebody a lot because the change did not go through to the 2008 code. Because when they make a change that usually means a number of people have died to warrant a change on it. That's usually the big push on getting a code article changed in the electrical code. As of now, I cannot use fiberglass conduit anywhere in the facility because it is not adopted by the 2005 electrical code. Even though it would be the best material for the project, I cannot use it; I still have to go to either a metal or a PVC on it which, if they have certain chemicals in there that melts PVC and is caustic to metal, it's going to cost somebody in the long run to replace it, or if I went with fiberglass it would be fine on it. I really don't have too much to say on it but that. But I do have one little thing to say on the arc fault. I've got a six-year-old daughter. I've gone through my house and put on arc fault breakers and I had a whole \$250 wrapped up in it. And that's about all I have. [LB411]

SENATOR KARPISEK: Thank you, Mr. Chrisp. Senator Price. [LB411]

SENATOR PRICE: Senator Karpisek. Sir, so isn't this part of the normal business rhythm of every three years we have code changes that you would build into your bid process? And we heard previous testimony that if you're already doing something, I mean, are you saying if you're beyond the 35 percent build or design? [LB411]

DAN CHRISP: No, yeah, right now I have a project that I'm at 80 percent on. It will be bid in 2 months, and it's designed to 2008 because after it's bid it usually takes another two months before they actually have a permit pulled on it. So it's still going to be past...you know, if the bill gets passed it will be in the 2008. So we're designing it as of today for the 2008 code, not the 2005. [LB411]

SENATOR PRICE: Right. I was just thinking of risk. You take a risk when you sit there and say... [LB411]

DAN CHRISP: Yeah. Oh yeah. [LB411]

SENATOR PRICE: I just want to make sure that this wasn't... [LB411]

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DAN CHRISP: Yeah. [LB411]

SENATOR PRICE: ...something new that, for the board, you know, you're talking normal... [LB411]

DAN CHRISP: Yeah, yeah, every three years we can usually figure between May and July of the code getting passed, and so we pretty well plan accordingly as to when that permit will be pulled as to what code we fall under. [LB411]

SENATOR PRICE: Okay, any estimation on the cost change if you go from 2005 to 2008 after you maybe starting build? [LB411]

DAN CHRISP: This project will...if we go from...that I'm on right now--it's a hospital medical office building and it's 50,000 square feet, and if we go...do not adopt the 2008 and we catch it before the bid time, that will probably cost my employer around \$10,000 to go back, to rego through and make sure everything is still done to the 2005. [LB411]

SENATOR PRICE: Okay, thank you. [LB411]

SENATOR KARPISEK: (Exhibit F) Thank you, Senator Price. Any other questions? Seeing none, thank you. Any further proponents? We have one letter in support from the Professional Engineers Coalition. Opponents? Do we have any opponents? Welcome. [LB411]

GREGG BRUCE KEVIL: (Exhibit G) Thank you. I'm Gregg Bruce Kevil, B-r-u-c-e K-e-v-i-l, representing the Nebraska State Home Builders Association. I'd like to start my testimony taking where we left off this summer with the memo from Laurie Lage, the former legal counsel from the General Affairs Committee. Costs have been talked about, bantered around. We're not electricians. Our home builders say to the electrician, give us a cost for these code changes. What has transpired has been very painfully obvious. Number one, electricians don't know the kinds of code changes there are. They see big dollar costs and they add and pad for their share. Plus there's...and an interesting thing that I came across: an electrician can put various numbers of receptacles, fans, on a circuit. So depending upon his judgment to prevent nuisance tripping from a sloppy vacuum cleaner or refrigerator or something it can be anywhere from 12 to 17 items on a circuit. So there's a lot of play that goes on. The best way for me to describe about how we came up with costs is we relied upon Hearthstone Homes and then we actually took Bar-None Housing, which is an affordable housing product, and asked the electrician to provide costs. And steadily, through about the two-year period, that's kind of come down as the Electrical Board does their responsibility with educating the electricians it gets better and more information is provided, they get competitive, and stuff like that. But with that being said, I revised the cost estimates and

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we found that still we're getting costs on average for a home of around \$560. But material increase, which is basically the only thing that's been quoted to you is material increase, and the cost for labor and stuff like that, and installation. But I respectfully submit to you that there's more than just the material cost. Every home is financed, and if you took as a rule of thumb this \$560, 80 percent of it would be financed for 5 percent say, for 15 years. That adds on another \$637. So from a cost standpoint, these are real figures. And it's unfortunate that the education in the industry has not gotten out into the field very thorough. I must tell you that I was disappointed when the summer when I submitted the Bar-None computation I hadn't...the Bar-None electrician was not educated, was not contacted by the Electrical Board--neither was I--and so if they have an educational responsibility, I would appreciate it if they would work harder at it. I'd like to take some liberty to examine this issue of fire protection justification. This is an 81-page report put out by NFPA. I didn't print the whole thing off, but some interesting things are reported. The number of home structure fires has fallen by 46 percent since 1980, and the home fire death total has fallen by 45 percent. And of that, the death toll's 65 percent of the fire deaths occurred in homes with no working smoking alarms. That's the critical ingredient: homes that have working smoking alarms, not arc fault circuits. Now you can go to page 45 and it says: one in two family dwelling structure fires by heat source, and it identifies the heat source. One hundred percent of the fires are accounted for. Those that they don't know about, they just follow the random pattern distribution. But we can look at wiring switch or outlets: 9,000 fires, or 3 percent; cord or plug: 2,400, 1 percent. Civilian deaths: wiring switch or outlet is 5 percent; cord or plug is 5 percent. Again, that's an issue that's tempered greatly by the smoke alarm. You take that roughly \$11,000, you multiply it times over 1.5 million building units which occurred in one year and they felt like that there were basically, what, 11,400 fires occurring due to wiring switch, cords, and plugs and you do a cost comparison. And what we find out is that we're spending \$1.8 billion as compared to approximately \$393 million, \$100 million in property damage. So I would respectfully submit to you it's the smoke alarms that saves lives. That to spend actually an additional 4.75 times additional costs above and beyond property damage fires doesn't make good economic sense. This is all in an effort to eliminate actual fire costs and fire damage, and an effort to address those 4 percent of home fires. Now the Nebraska State Home Builders Association has never been against the NEC. We've only been against this particular clause, 210.12(B). And I would hope that the committee would see to amending that arc faults in residential only and let the code through and pass and we get on with what all we've got to do. So with that I'll shut up and any questions? [LB411]

SENATOR KARPISEK: Thank you, Mr. Kevil. Any questions? Seeing none, thank you. [LB411]

GREGG BRUCE KEVIL: Um-hum. [LB411]

SENATOR KARPISEK: Further opponents? No other opponents. Any neutral

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testimony? Welcome. [LB411]

EDWIN BERGSTRAESSER: Thank you. My name is Ed Bergstraesser, B-e-r-g-s-t-r-a-e-s-s-e-r. I'm currently the certified electrical inspector representative member of the state of Nebraska's Electrical Board. And in sitting here and listening to the testimony before you, I wanted to remind the committee that what you have in front of you today in this bill is something that is based in safety. This is based in safety; it's not a cost argument, in my opinion. And so I wanted to remind everybody here that there's not just an arc fault issue. Mr. Frohberg here did talk about tamper resistant receptacles. I'd like to remind this committee that back in, I believe it was 2005, there was an infant right here in Lincoln, Nebraska, that was killed because of that particular reason. Right now, as I understand it, the 210.12(B) that Mr. Kevil was referring to is already in effect under our 2005 ordinance. And I'd also like to remind the committee that as a representative of the State Electrical Board I can tell you that there are 131 active members out there involved in our continuing education of electrical contractors and electricians. And so there is an awful lot of education going on out there. Right now we mandate 12 hours of continuing education for our licensed electricians every licensing cycle. And so with that, thank you. [LB411]

SENATOR KARPISEK: Okay, thank you. Any questions? Senator Friend. [LB411]

SENATOR FRIEND: Thank you, Mr. Chairman. Mr. Bergstringer, is that... [LB411]

EDWIN BERGSTRAESSER: Bergstraesser. [LB411]

SENATOR FRIEND: Bergstraesser, thank you. Sir, in 14 states west of the Mississippi River, according to the map, have adopted the requirements which include the AFCI, or the standards which include the AFCI requirements. I mean, if the opposition testimony and the discussion we had here today, do we see ourselves going backwards? I mean, is this ever going to be...is this a situation where you adopt the standards now or you're going to adopt them eventually anyway? Do you see what I'm saying? If everybody's moving in this direction, why would we follow the opposition testimony and say well, let's put this off for one more year, or two more years, or three more years? Is the trend taking us to adopting these as soon as feasibly possible, I guess? [LB411]

EDWIN BERGSTRAESSER: Honestly, in the state of Nebraska here, from my own perspective, we're kind of the ones that since we do have a state enforcing agency, it seems...what's the word I'm looking for...it doesn't seem prudent for us to not adopt these safety rules and regulations just like the rest of the country already has. Because if you look on that map, all the other states on that map that have an overall state division with enforcement and regulation like we have right here in Nebraska, they've already been doing this. And so we're kind of the ones bringing up the tail end of the cart. [LB411]

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SENATOR FRIEND: Okay. Thank you. [LB411]

EDWIN BERGSTRAESSER: If that answers your question. [LB411]

SENATOR FRIEND: I think it does. And just...I'm trying to figure out whether...a lot of times it doesn't necessarily always matter to us as policymakers whether we're following particular trends--certainly, when you have states like California and others making horrible decisions. But at the same time, it doesn't look like we're moving backwards away from this direction of electrical technology, I mean, the technological changes that we're making in our commercial area and in our residential areas, so. It seems like it's just one of those things that's bound to happen; it's a matter of when we decide that we... [LB411]

EDWIN BERGSTRAESSER: It is a matter of when we decide to go ahead and do it. [LB411]

SENATOR FRIEND: I guess that's my point. [LB411]

EDWIN BERGSTRAESSER: You've got a pretty accurate assessment there. As I understand it, we've already been in the hold and wait mode and, in my opinion, it's time to move forward with this. We've had two full years of discussion on this just in our electrical division alone. We've had the legislative resolution, interim study; there's been all sorts of discussion on this bill already. And like I say, in my opinion, this bill was based in safety. Now is the time to move forward on it. I'd like to see a unanimous approval vote and consent. Thank you. Any more questions? [LB411]

SENATOR KARPISEK: Any more questions? Seeing none, thank you. [LB411]

EDWIN BERGSTRAESSER: Thank you. [LB411]

SENATOR KARPISEK: Any further neutral testimony? Seeing none; Senator Giese waives closing. That will end the hearing on LB411. Next we have LB498. Senator Fulton. Whenever you're ready, Senator. [LB411 LB498]

SENATOR FULTON: Good afternoon, Mr. Chairman, members of the committee. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n and I represent District 29. And I bring to you today LB498. In October of 1869, Wyuka Cemetery became the state's cemetery as a burial place of state inmates. In 1927, the Legislature codified the statutes relating to the cemetery and provided that there be three trustees of the cemetery. These members were elected during the Lincoln city elections until 1959, when Lincoln Senator Stanley Portsche addressed the unjust expense to the people of Lincoln caused by these elections, at which time the Legislature saw fit to make these

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appointed positions. To this day, three trustees remain as the number of members overseeing Wyuka Cemetery on behalf of the public. LB498 is an attempt, endorsed by the members of the Lancaster delegation, to ensure that the public trust in the Wyuka board can be restored. The bill adds two appointed trustees to the board. Having five trustees will ensure that three trustees are necessary to constitute a quorum and that all such meetings will be in compliance with the Open Meetings Act. Concluding, my intent here for this measure is twofold. Number one, to allow the Wyuka board a more pragmatic existence while keeping the public interest with respect to the state's Open Meetings Act; and number two, to provide broader judgment and public oversight for this important tradition of the city of Lincoln and, ultimately, the state of Nebraska. If there are any questions I'd be glad to try to answer them. [LB498]

SENATOR KARPISEK: Thank you, Senator Fulton. Any questions? Do you have proponents behind you to... [LB498]

SENATOR FULTON: There will be some, yes. [LB498]

SENATOR KARPISEK: All right, thank you. Do we have any proponents? Welcome. [LB498]

ROBERT KUZELKA: (Exhibit A) Welcome, Senator Karpisek. My name is Robert Kuzelka, R-o-b-e-r-t K-u-z-e-l-k-a, although you might prefer me to say Kuzelka. Chairman Karpisek, thank you for giving me the opportunity to testify before your committee today on LB498. I would also like to thank Senator Fulton and the other Lincoln and Lancaster County for introducing this important bill. I am presenting this testimony as a property owner in Wyuka Cemetery, and former Wyuka Cemetery trustee for 16 years, and its only trustee emeritus--an honor that was conferred on me by the trustees when I retired in March 2001. I am also empowered to make this testimony on behalf of Vera Mae Lutz, who was a trustee from 1993 through 2004. We strongly support LB498. It proposes a change in the composition of the governance board at Wyuka Cemetery that I have long felt needed and essential for improved policymaking on the financial and operational management of the cemetery and its assets. However, with this change we would encourage you to make three more changes in the statutes that prescribe the management of Wyuka Cemetery, Revised Statutes 12-101 through 12-105. Without these changes, I do not think that LB498 will achieve the objectives to which it seems to aspire and which you just heard from Senator Fulton. First, from the date when LB498 would become effective, all appointed trustees must be existing property holders in Wyuka Cemetery. Currently, you cannot be a state senator without living in the district you represent. Similarly, Wyuka trustees will take an increased dedication to the cemetery and its management if they will also someday be residents of this historic necropolis. Second, from the date when LB498 would become effective, no more than three appointed trustees could be registered in the same political party. This would return a bipartisan nature to the management of the

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cemetery as it was, as you heard from Senator Fulton, prior to 1959 when the trustees were elected on a nonpartisan ticket by the citizens of Lincoln. After 1959 they became subject to the appointment of the Governor. Third, from the date when LB498 would become effective, a supermajority of four out of the five trustees would be required as the majority at board meetings to conduct business. A simple majority of three could pass motions except those related to the investment of permanent maintenance funds which would require a supermajority of four. These investments are funds assigned legally by the trustees to provide for permanent maintenance of Wyuka in Revised Statute 12-103. Currently, the majority to conduct business and to pass motions is two out of three--at least during my term as a trustee that was the bylaws that we went under. If you pass LB498 without this, Section 103 requires a unanimous vote for investment of funds, so you would be requiring a vote of five because it doesn't say how many are unanimous, it just says the number of trustees. So if you don't make some adjustment in Section 103, which has not been made in the bill that's now written, you would be requiring a vote of five related to the investment of the permanent maintenance funds. I would be happy to answer any questions from the committee, and I would also be very happy to work with the committee on inserting my three suggested changes in LB498 before it is reported out of committee to the Legislature. [LB498]

SENATOR KARPISEK: Thank you, Mr. Kuzelka. Do we have any questions? I guess I'll ask, is this the whole board's feeling? Are you speaking for the board or are you just... [LB498]

ROBERT KUZELKA: I'm not on the board. [LB498]

SENATOR KARPISEK: Oh, okay, I'm sorry. You're just... [LB498]

ROBERT KUZELKA: (Laugh) I don't know; maybe there's someone from the board going to present. [LB498]

SENATOR KARPISEK: Okay. [LB498]

ROBERT KUZELKA: No, I'm a former trustee. [LB498]

SENATOR KARPISEK: Okay, I'm sorry. [LB498]

ROBERT KUZELKA: I'm off the trustees now. [LB498]

SENATOR KARPISEK: Okay, but then in hindsight you would... [LB498]

ROBERT KUZELKA: But I am speaking on behalf of two trustees, both of who...one who served 17, 16 years and I, who served 16 years. So people who had a rather significant investment in the cemetery and its future. [LB498]

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SENATOR KARPISEK: Are you compensated at all for... [LB498]

ROBERT KUZELKA: No. [LB498]

SENATOR KARPISEK: Nothing. [LB498]

ROBERT KUZELKA: Trustees are not, no. [LB498]

SENATOR KARPISEK: Okay. So it wouldn't cost any more money, huh? [LB498]

ROBERT KUZELKA: No, there's no cost in the bill, I think. And I didn't look at the legislative fiscal note but I don't think there is any. And certainly, my three changes are policy and not financial. [LB498]

SENATOR KARPISEK: Senator Dierks. [LB498]

SENATOR DIERKS: Robert, I've been told that you have an excellent meeting facility out there, is that right? [LB498]

ROBERT KUZELKA: Say it again, sir? [LB498]

SENATOR DIERKS: Meeting facility in Wyuka Cemetery. [LB498]

ROBERT KUZELKA: I don't know what you term a meeting. We have meetings there in the building which was constructed while I was a trustee. There is what is called a garden room which is used sometimes for various group meetings as well as auxiliary other things. And then a historic stables building was saved that had been used as the maintenance building and, again, while I was a trustee we built a new maintenance building on another part of the cemetery, retained that, and since that time it's been used, quite successfully, for plays, particularly Shakespearean plays, in the open courtyard. And that may be what you're referring to. [LB498]

SENATOR DIERKS: That's interesting. I just wondered how you go about reserving that facility. Is that difficult? [LB498]

ROBERT KUZELKA: I can't answer that. I'm not, in any way, shape, or form involved in the management or operation of the cemetery now. [LB498]

SENATOR DIERKS: Okay, thank you. [LB498]

SENATOR KARPISEK: Thank you, Senator Dierks. Senator Price. [LB498]

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SENATOR PRICE: Mr. Chairman, thank you. Sir, the question I have is on your second point where you talk about limiting to a political party. [LB498]

ROBERT KUZELKA: Yes. [LB498]

SENATOR PRICE: I'm...my curiosity's peaked by that. I mean, if the voters decided they wanted it one way or the other, isn't that the way it would be? Should we be meddling and telling them what they should and shouldn't do based on party affiliation? [LB498]

ROBERT KUZELKA: Well, the voters don't decide now. [LB498]

SENATOR PRICE: But when they did... [LB498]

ROBERT KUZELKA: Currently, it's decided by a political governor. [LB498]

SENATOR PRICE: Right. But when they did, it could have all been one or the other at that point. [LB498]

ROBERT KUZELKA: Well, then it was like you were elected--on a nonpartisan thing. The reason I feel strongly about it, if I can continue? [LB498]

SENATOR PRICE: Please. [LB498]

ROBERT KUZELKA: Sure. While I was a trustee, at no time did we have more than two from a political party. Now, we had some very lively meetings because we needed three to do our important business of investment. So we watched each other pretty closely, and I think that's important. And I think it's important that that be ensured. And I think, looking at it over the time I have, I think that's one way of ensuring that it takes place is by making sure that you don't have a majority of a single political party. [LB498]

SENATOR PRICE: Okay, thank you. [LB498]

SENATOR KARPISEK: Thank you, Senator Price. Any further questions? Seeing none, thank you. [LB498]

ROBERT KUZELKA: Thank you. [LB498]

SENATOR KARPISEK: Further proponents. Welcome. [LB498]

FAYE OSBORN: Thank you. Thank you, Chairman and senators of the committee. Appreciate your time today. I am Faye Osborn, F-a-y-e O-s-b-o-r-n. I am representing Wyuka as a trustee. First of all, I'd like to thank Senator Fulton for helping us with this bill, and the other people sponsoring the bill today. As a trustee, and representing the

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trustees today, we feel strongly that having two trustees as appointed by the Governor is very important at this time, and this will help strengthen and improve the operations and governance of Wyuka, the state-owned cemetery and funeral home. It is very important that we do continue to supervise and having more trustees than us three would be very important at this time. And having these five trustees would give us a wider range of talents and experience to get information from and help handle the affairs of Wyuka. And one of the important things is having people as trustees that have an interest in Wyuka. This would be a tremendous benefit at this time to help the historical foundation and everything that Wyuka represents for the state. I've been a trustee for about three years--just appointed--didn't have any information about cemeteries before and have learned a lot during the past three years and the experience that's been going on there. And having additional trustees to help in this area would be very helpful. I thank you for your time and your consideration of this bill, and I am open for questions. [LB498]

SENATOR KARPISEK: Thank you, Ms. Osborn. Questions? Senator Cook. [LB498]

SENATOR COOK: Thank you, Mr. Chairman, and thank you for your testimony. I don't have any direct experience with Wyuka Cemetery but I'm getting the impression that around Lincoln it is an important institution. And can you help me understand how we got from a place where we inter our inmates to what appears to be an important political and community institution? [LB498]

FAYE OSBORN: Basically, it was written in the bill that indigents get buried free and you know, whether...and military people and babies. And yes, Wyuka does do that. It's got very low cost--they have a little burial thing but it's basically free. [LB498]

SENATOR KARPISEK: Thank you, Senator Cook. Any other questions? Senator Coash. [LB498]

SENATOR COASH: Thank you, Chair. Thanks, Faye, for coming down. Just so the other members of the committee get an idea here, if you--as it stands now--if you and one of the other board members want to get together, just one other person, are you allowed to do that? [LB498]

FAYE OSBORN: No, because that constitutes legally informing the whole world that we're having a meeting. [LB498]

SENATOR COASH: So you can't go to lunch with another board member and... [LB498]

FAYE OSBORN: Right, right. [LB498]

SENATOR COASH: ...try to work out some of the problems that we know exist. [LB498]

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FAYE OSBORN: Yes, and so it's been pretty difficult in handling those things. [LB498]

SENATOR COASH: Okay, thank you. [LB498]

SENATOR KARPISEK: Thank you, Senator Coash. Senator Dierks. [LB498]

SENATOR DIERKS: I just wondered, did we hear whether Senator Fulton's going to close or not? [LB498]

SENATOR KARPISEK: He thinks he will. [LB498]

SENATOR DIERKS: Okay. I'll save the question for him. [LB498]

SENATOR KARPISEK: Okay, thank you. Seeing none, thank you. [LB498]

FAYE OSBORN: If I may... [LB498]

SENATOR KARPISEK: Sure, please. [LB498]

FAYE OSBORN: ...answer his questions about, yes, there is a nice room that you can have meetings in and it's during when we aren't having the funerals and the receptions that are held in it. And there are a lot of entities that are holding meetings there, which is really nice. [LB498]

SENATOR DIERKS: Thank you. [LB498]

SENATOR KARPISEK: Okay, thank you. [LB498]

FAYE OSBORN: Thank you. [LB498]

SENATOR KARPISEK: Further proponents. Do we have any opponents? Seeing none, do we have any neutral testimony? Seeing none, Senator Fulton, to close. [LB498]

SENATOR PRICE: Senator, we have one more. [LB498]

SENATOR KARPISEK: Oh, I'm sorry, I'm sorry. Moving right along. Are you proponent, opponent... [LB498]

KEN GRAY: Neutral. [LB498]

SENATOR KARPISEK: Neutral, okay. Welcome. [LB498]

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KEN GRAY: Thank you, Senator. My name is Ken Gray, K-e-n G-r-a-y. I first would like to thank the committee for hearing this matter and for Senator Fulton, Senator Coash, and all the other Lincoln senators for introducing this bill. I am strongly in support of raising from three to five the number of trustees. However, in looking through the bill I would like to just raise a couple concerns and questions as a property...I have my rights of internment there and I have my funeral plan there and I have somewhat of a history with Wyuka. And having been employed there back in 2004 and finding some financial irregularities and concerns and bringing them to the State Auditor and the Governor and various other state institutions, you know, we're moving towards getting resolution and getting things straightened out. I would point out one thing. Whether you have three trustees or five trustees that really shouldn't have any bearing on what their political party is. If it's...you're either honest and ethical and do the right thing or you don't. And political affiliation, I don't think, is going to make a big difference. I do think, from Senator Fulton's comments and from Faye's comments, that the practicality of a number of years the open meeting laws were not strictly adhered to and it does create a difficult situation, especially with the scrutiny that's been going on the last several years, rightfully so. It does provide an impediment for trustees being able to set down and have lunch and discuss anything that comes up, especially if it's Wyuka affairs. Because if two or more of them are gathered they're all going to assume they're talking about Wyuka. And so I think that's a good move, to go to five. I would also like to encourage, though, that the committee and the Unicameral give some consideration to some of the proposals that some of us have made. And one of them is, of course, going from three to five trustees. We also have proposed that there be an ethics class that's taught by the Department of Insurance given to every member that's going to become a trustee. Every person that becomes a trustee should understand that there's a three-day course on ethics from the Department of Insurance. The Accountability and Disclosure Commission has a great course on accountability, open meeting laws. And I think trustees, not only at Wyuka, but every political subdivision...that might be some consideration to have there so people know what they're getting into, what their responsibilities are. Mr. Kuzelka raised the questions about everybody needs to be a property owner there. You don't own property; you own right to an interment there, or inurnment, or entombment, depending on which way you're going. It's encouraged that they have that vested interest. The problem has been that for many years, a number of the trustees have not been...had their funeral arrangements made their, or their burial arrangements made there. And that provides some concern because you have a bunch of outsiders, if you will, coming into a state property that have no vested interest and making decisions on it. All that aside, I think the fundamental issue that you have to look at, and where Wyuka got from solvency to insolvency, and the problems that they still face and are challenged. And it still exists, as far as I can see, having attended a public meeting in the garden room last Tuesday. As you walk into the main hallway there, they're still promoting their gardens and their stable and the Shakespeare theatre out at the stables. And that's all pushed by the historical foundation. You have, in essence, since 1998, two 501C(3) not-for-profit corporations. The first one is Wyuka as mandated

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in statute; the second one was the historical foundation created in 1998. The problem is, they duplicate; you don't need two 501C(3) not-for-profits. And if you take a look at the letterheads and the members of the historical foundation versus the members of the trustees, it's a revolving door over 10 years. And since the creation of the historical foundation back in '98, '99, what you've had is you've gone from solvency to insolvency. And you've had the focus of Wyuka trustees being diverted from burying people and honoring the dead that are buried there and keeping the faith to the families that have plans to be buried there has been diverted to some community center, to some Shakespeare theater--they've wasted tens of thousands of dollars, and that's being conservative. They've gone into perpetual care funds to subsidize this, and if you look at the auditor's report from last year and the subsequent report this last November, you'll see things have not changed. I would strongly urge that you deal with the source of some of the problems and get rid of the historical foundation, freeze those assets, get the \$251,000 that was originally given to the historical foundation from Wyuka back to the trustees, to Wyuka, to help get the perpetual care funds and the pre-need trust fund straightened around. And get focused back what Wyuka is; it's the peoples' cemetery. It's one of six state chartered cemeteries in the United States. It's a precious treasure; we need to keep that treasure there. And this is a good step: to start with expanding from three to five. But I want to beg you, encourage you, implore you--get some oversight in there. I think the Unicameral needs to have some oversight. The Auditor's Office, the Secretary of State's Office; you have a situation that the investigation from the Department of Insurance and the Auditor's Office, and charges were made about forgeries on 52 pre-need funeral contracts and when the State Patrol confronted the individual, he readily admitted 52 to 53 counts of forgery of pre-need insurance policies totalling over \$400,000 in cash converted to pre-need policies and commissions that got laundered through. And the Attorney General failed to do anything about it. So you've got a lot of problems there; your intervention in the Unicameral is welcomed. It does need to go to five trustees, but not just adding more people. There needs to more oversight there so that we can continue to get Wyuka repaired and back on its feet and restore the trust. And if you get rid of the historical foundation and expand to five trustees, I think you'll go a long ways to getting the thing solvent and back to where it should be. Thank you. [LB498]

SENATOR KARPISEK: Okay, thank you. Any questions? Seeing none, thank you. Any further neutral testimony? Seeing none, Senator Fulton. [LB498]

SENATOR FULTON: ...for Senator Dierks. This Wyuka is, in a way, kind of like dealing with the Almighty in that, with respect to the board of trustees, where two or more are gathered there shall the public be in their midst. And that's ultimately what caused me to go ahead and agree to bring this bill. Senator Coash touches on it: if, right now as it stands, if two members of the board get together for lunch to discuss Wyuka, they are constrained by the Open Meetings Act in Nebraska. So I, just as a matter of pragmatism, if we're going to take three, four, five, six steps in order to rectify the

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situation at Wyuka, we first have to take one step, and I propose to you that that first step ought to be to change from three members to five. So I respectfully ask that you move this forward to General File. And if anyone, like Senator Dierks, might have any questions, I'll try to answer them. [LB498]

SENATOR KARPISEK: Thank you, Senator Fulton. Any questions? Senator Dierks. [LB498]

SENATOR DIERKS: Thank you, Senator Karpisek. I'm just curious, Senator Fulton, how does Wyuka come to be under legislative jurisdiction? As a...no other cemeteries in the state made the same way? [LB498]

SENATOR FULTON: No, in fact, I believe that number that we heard earlier is correct: I think there are just a half dozen in the country. The reason why a senator is bringing this before the Legislature is because of what exists by way of governance of that board exists in statute. You have it spelled out there in that section of law. How that came to be, on this I gave a little bit of history. I think that there are probably those more qualified to speak to the specificity of history, but it occurred. It occurred some time ago and presently, in order for Wyuka to operate with any more than three trustees on their board, it will take a change in statute. Therefore it's before us today. [LB498]

SENATOR DIERKS: Thank you. [LB498]

SENATOR KARPISEK: Thank you, Senator Dierks. Any other questions? Seeing none. [LB498]

SENATOR FULTON: Thank you. [LB498]

SENATOR KARPISEK: Thank you. That will end LB498. Senator Rogert. [LB498]

SENATOR ROGERT: We'll move to LB500. Senator Karpisek. [LB500]

SENATOR KARPISEK: Thank you, Senator Rogert, members of the committee. My name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. I represent the 32nd Legislative District. LB500 makes changes regarding perpetual funds in municipal cemeteries. The bill makes it clear that the mayor and council, or the board of trustees may set aside the proceeds of the sale of lots, donations, and bequests as a perpetual fund. It provides that income from the fund may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery or as the donor designates. It also provides that the principal of the perpetual fund may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery as long as no more than 20 percent of the principal is so used in any fiscal year and no more than 40 percent of the principal is so used in any period of ten

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consecutive fiscal years. The purpose of this bill is to allow cemeteries to use some of the perpetual care money for upkeep. Right now, the perpetual care can be used for buying more land, the bigger parts that you would do, not the everyday maintenance. As we all know, interest rates are not very good right now and cemeteries are having a hard time getting enough interest out of the perpetual care to keep up with just the general maintenance--mowing, those sort of things. So this bill would let the city use 20 percent of that perpetual care in the year or 40 percent over ten years to help out with the mowing and just the general maintenance of that. Many of the cemeteries have a huge perpetual care balance, but of course at 2 percent, maybe, it doesn't get much money and to mow these cemeteries takes a lot of time to weed eat around the headstones and all those things takes a lots of time--it's not cheap. And I'm on a cemetery board back home and if you don't mow them as often as people think hey should be mowed, they definitely let you know that it should be mowed more often. With that I would take any questions. [LB500]

SENATOR ROBERT: Thank you, Senator Karpisek. Senator Coash. [LB500]

SENATOR COASH: Thank you, Senator Rogert. Since you sit on a board, are cemeteries running out of funds they need for maintenance? I mean, are they saying, look, we'd like to mow more but we can't? [LB500]

SENATOR KARPISEK: Some are, and the one that I'm on is not a city cemetery, but a lot of them are. Especially the smaller towns where they just don't have the population that they used to have. They're not selling as many lots as they used to sell. So they don't have that much money coming in; they have a lot of money sitting in this perpetual care fund but really can only use the interest. So that creates a problem. [LB500]

SENATOR COASH: Where are the funds used for maintenance now coming from, typically? [LB500]

SENATOR KARPISEK: Usually in the selling of the lots what we do is if you open the lots for a burial then that's another part that we charge for, or just, you know, people donate money so that helps run, but it does seem a little odd that you may have a quarter of a million dollars sitting in perpetual care but you can only use that 2 percent off of it. I do have a concern that we don't want to deplete those numbers too far because it'll just be worse. But I think now--especially when it's owned by the city, then the city has to use the money to go out and mow it and maintain it and so that's also causing a problem. [LB500]

SENATOR COASH: All right. One last question: how did you come up with the 20 percent? Just thought that would... [LB500]

SENATOR KARPISEK: Right. [LB500]

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SENATOR COASH: Not too high, not too low. [LB500]

SENATOR KARPISEK: Right. [LB500]

SENATOR COASH: Okay. [LB500]

SENATOR KARPISEK: Somewhere...yeah. And the League may have a better answer for you on that. [LB500]

SENATOR COASH: Okay, thanks. [LB500]

SENATOR ROBERT: Thank you, Senator Coash. Senator Price. [LB500]

SENATOR PRICE: Senator Robert, thank you very much. Senator Karpisek, just as Senator Coash noted, the 20 percent caught my eye. How shall we say, 20 percent in one year but not more than 40 percent in ten years does lead to a possible big gap for eight years, the way people like to spend money. That's one thing I've noticed is if people have new money, they'll spend it. And also, I notice here that we changed, on page 5, line 2, which is in Section 2, the money used to be available to do this type of care if the lot was fully sold out. Seems that that's really the part of the kingpin here. You already have a mechanism available, but if the lots not fully sold out. [LB500]

SENATOR KARPISEK: Well, I think it was "shall be used"... [LB500]

SENATOR PRICE: Right, and now it's "may be used." [LB500]

SENATOR KARPISEK: I think it's "may be used in the general care and management." Before, it was "shall be used for care, ornamentation, and maintenance of such lots or the cemetery in general." [LB500]

SENATOR PRICE: So in other words, it seemed to me once you sold out full, you had the latitude to use this perpetual fund without the limitations you had before. [LB500]

SENATOR KARPISEK: I guess...you are right, Senator. And I guess I don't know anyone that would be fully sold out or maybe that doesn't owe money and... [LB500]

SENATOR PRICE: Why would you have to buy more land if you weren't fully sold out? That's my question, so... [LB500]

SENATOR KARPISEK: Well... [LB500]

SENATOR PRICE: ...again, I wonder, would this have impact on the previous bill we

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heard, LB498? [LB500]

SENATOR KARPISEK: It shouldn't, but...not that I know of, because that's a state-owned cemetery. [LB500]

SENATOR PRICE: Well, we'll see then. We'll make sure that... [LB500]

SENATOR KARPISEK: Yeah. [LB500]

SENATOR PRICE: ...there's nothing there that would affect it. [LB500]

SENATOR KARPISEK: Yeah. [LB500]

SENATOR PRICE: Thank you. [LB500]

SENATOR KARPISEK: Yep. [LB500]

SENATOR ROBERT: Any other questions? Seeing none. First proponent, please, on LB500. Welcome. [LB500]

GARY KRUMLAND: Senator Rogert, members of the committee, my name is Gary Krumland--it's spelled G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities appearing in support of LB500. And first of all I want to thank Senator Karpisek for introducing this bill on our behalf. This bill does apply to municipal cemeteries. Those are cemeteries that are owned by cities and villages, and it applies to...it amends the statutes for the cities and villages other than Lincoln and Omaha, so it's publicly owned cemeteries in cities other than Lincoln and Omaha. And it...many of these cemeteries, if not all of them, do get tax support for the normal maintenance. A lot of times they do have a perpetual fund because many of these cemeteries were created many years ago as a private cemetery and the cemetery association developed a perpetual care fund, and the cemetery then was transferred over to the city. The city has maintained the perpetual fund, and as has been noted, the interest can be used for the upkeep. Senator Price, your specific question, I think, is more of the statute you're looking at deals with cities of the first class, and I think when the bill was drafted it was more of a trying to make the same language apply to all of the sections other than a specific target to change that. What...the purpose of the bill, as Senator Karpisek mentioned, is to allow a city to take a certain amount of the principal to be used for the care of the cemetery. And it is limited to 20 percent a year and 40 percent over 10 years with the idea that there may be special projects, you know, it would be the normal maintenance but maybe the paving erode or doing something that's going to generate additional cost--more than the normal cost. And this would allow some of the money to come from the perpetual fund to do that. A city, unless they're doing bonds or something under the lids and levy limits, has some restrictions on just coming up with money all at

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once, and so this might be a way for them to do that. They are, generally, tax supported. A city cemetery, if you started a cemetery today, there is no requirement that you create a perpetual fund. You could just create a cemetery fund, put the money into it, and have complete flexibility. But because a lot of these perpetual funds are carryover from prior years--and I'm talking the 1920s, '30s, and '40s, when some of these were transferred over--that there are money in these funds that the city is very limited on how they spend it. And so what we're asking is just to give the cities a little more flexibility. These are public cemeteries; they are supported by tax funds. It's not a situation where the city's going to close up and run away--they will be there to support the cemeteries in future years. But this will give them a little more flexibility in spending these specific funds. I'd be happy to answer any questions. [LB500]

SENATOR ROBERT: Thanks, Mr. Krumland. Any questions from the committee? Seeing none, thank you. Next proponent. Good afternoon. [LB500]

JIM LITCHFIELD: Good afternoon, senators. My name is Jim Litchfield, J-i-m L-i-t-c-h-f-i-e-l-d, city administrator in Wakefield. And we're here to support LB500 and we appreciate Senator Karpisek and the League on helping us with putting this together. And without going into a long amount of details, basically want to echo Mr. Krumland's thoughts and comments, basically asking for your consideration to amend this, giving the cemetery boards flexibility to allow the boards to make these improvements. Senator, you commented on budgets and restrictions and a lot of communities our size do have restrictions. We do have problems with managing budgets and making sure things are getting done. But to answer your question, most of those improvements would be on a plan--they would be on a five or six year plan to make a building improvement, lot improvement, overlay of the streets, lighting, fences, that type of stuff. So typically, the funds would be expended for those particular projects, not necessarily on a yearly basis, so. But our budgets are limited and we do run into some problems, restrictions with that and we appreciate the opportunity for some flexibility to allow these cemetery boards to do some of these much needed improvements and projects. Thank you. [LB500]

SENATOR ROBERT: Thank you, any questions from the committee? Senator Price. [LB500]

SENATOR PRICE: Senator, thank you. Sir, Mr. Litchfield, so let me understand: are you currently at your lid levy? Have you maxed that out totally for running the operations of the cemetery? [LB500]

JIM LITCHFIELD: For the cemetery itself, or the overall city budget? [LB500]

SENATOR PRICE: The cemetery itself. Does it have its own lid? [LB500]

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JIM LITCHFIELD: No, this falls under the general budget, so it's basically a piece of the general budget. [LB500]

SENATOR PRICE: Okay, so I just want to make sure that if we have people start spending these monies and all of a sudden something comes up, they're not going back to people with a tax rate increase to... [LB500]

JIM LITCHFIELD: Yes, sir, I understand what you...no, what we're attempting to do is, like the other gentleman commented, is utilize some of that perpetual care fund that's setting in the bank drawing a little bit of interest to make these improvements and to utilize these funds for projects. Not necessarily...we're not talking about spending money for salaries and wages, but literally for buildings and projects and overlays and those type of improvements. [LB500]

SENATOR PRICE: All right, thank you. [LB500]

SENATOR ROBERT: Any further questions? Seeing none, thank you, sir. [LB500]

JIM LITCHFIELD: Thank you. [LB500]

SENATOR ROBERT: Any further proponents? Are there any opponents? Anyone here to testify in a neutral capacity? Senator Karpisek waives closing; that closes the hearing on LB500 and we'll go right to LB443. Senator Christensen on his way? Okay. Senator Christensen, welcome. We've been waiting all day for this, you know? [LB500 LB443]

SENATOR CHRISTENSEN: (Exhibit A) Thank you, Mr. Chairman, members General Affairs Committee. I'm Senator Mark Christensen, M-a-r-k C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District, I'm here to introduce LB443. LB443 would promote the health, safety, and general welfare of the people of the state by establishing reasonable regulations to prevent the negative secondary effects of adult businesses and sexually-oriented businesses. LB443 would regulate the time of operation of adult businesses and sexually-oriented business, regulate the minimum distance allowed between the employee in a state of sexually explicit nudity or seminudity and a patron, and prohibit the touching of an employee in the state of sexually explicit nudity or seminudity by a patron or the touching of a patron by an employee. In addition, the bill would put in place a quarter mile distance regulation from a child-care facility, a private or public school, public playground, a public recreational facility, a residence or a place of worship for all new adult businesses, sexually-oriented businesses, after effective date of this act. There have been many land use studies establishing the existence of negative secondary effects from adult sexually-oriented businesses. The U.S. Supreme Court has ruled clearly that the government can regulate the time, place, and manner of this category of business and that it is not necessary for a community or state to have first proven negative secondary effects with

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their own study. The next testifier will have more information regarding the land use studies and the legal case history surrounding the regulations of sexually-oriented businesses. Several states have put similar statutes on their books, Tennessee, Ohio, Arizona, New Jersey, among others. In fact, the state of Ohio put their regulation in the state constitution. Since the introduction of LB443, we've had several people review the bill, make suggestions to improve and tighten up language. We have prepared an amendment to LB443 that I believe will improve and make the bill more effective. I've handed this out for your consideration. Some of the changes are: One, add citations of land use studies into the intent language; two, adjust some of the definitions to make them clearer; three, change the closing time from 11 p.m. to one hour later at 12 a.m.; change 10 percent of the display space in the definition of sexually-oriented business to 35 percent of display merchandise, revenue, or floor space; five, change the quarter back setback to 1,000 feet; six, prohibit employees to appear in the state of nudity; seven, prohibit no one under age 18 on the premises of sexually-oriented business; and eight, add configuration requirements for certain sexually-oriented business premises. As I testified in another hearing, LB444, escort licensing, I know that there has been a stigma placed on this bill. I've heard the joking directed towards the bill and at me for bringing what seems to be a frivolous moral crusade. However, I would ask you to think about these questions. What is so funny about the negative secondary effects of increased sexual crimes, theft, and devaluation of property causing blight which sexually-oriented business have been proven to bring in study after study? What is so funny about an industry that exploits women as a sexual object creating the potential environment that attracts criminal activity? These things aren't very humorous. Minimum standards across the state will protect women and children especially in smaller communities that may not have the resources to effectively protect their communities from negative secondary effects of an unexpected through sexually-oriented business entering their community through good regulation. I know that this is an uncomfortable topic that some of you would just like not to have to deal with but hope we can have a serious and constructive discussion today about the reducing the negative secondary effects surrounding sexually-oriented businesses. Again, I would like to emphasize that this bill is not an attempt to shut these businesses down but to protect the public from the negative secondary effects and the exploitation of women who find themselves employed at a sexually-oriented business. I encourage you to advance LB443 to General File and thank you for your consideration. With that, I'd be willing to try to answer any questions you may have. [LB443]

SENATOR KARPSEK: Thank you, Senator Christensen. Any questions? Senator Cook. [LB443]

SENATOR COOK: You can't see out of your peripheral vision, so I'd like to... [LB443]

SENATOR KARPSEK: Senator Dierks looked like he was really thinking. [LB443]

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SENATOR COOK: Thank you, Mr. Chairman. And thank you for introducing the bill, Senator. I agree that it's a conversation that we need to have. I probably would approach it from a different perspective like education, childcare, work opportunities for women who in my knowledge of the issue are supporting children on their own. So, but since you've chosen to introduce this bill and address some of the issues related to worker protection in this manner, I have some questions about a couple of provisions in the bill. [LB443]

SENATOR CHRISTENSEN Okay. [LB443]

SENATOR COOK: I haven't had a chance to really review the amendment. [LB443]

SENATOR CHRISTENSEN: Okay. [LB443]

SENATOR COOK: The six foot rule has come up and you talk over and over again about the secondary effects, that the primary purpose of the bill is to address the secondary effects related to the industry. [LB443]

SENATOR CHRISTENSEN: Right. [LB443]

SENATOR COOK: So how does the six foot provision..which from what my understanding how gratuities are received by the dancers mostly female dancers...how does that, first of all, prevent the adverse secondary effects? And secondly, does the bill prohibit directly or indirectly that patron from offering a gratuity to the worker? [LB443]

SENATOR CHRISTENSEN: Only it prohibits offering gratuity during the...being in the state of nudity or seminudity. That's when you must be the six foot back. [LB443]

SENATOR COOK: So does the bill contemplate how she or he would receive the gratuity? [LB443]

SENATOR CHRISTENSEN: It doesn't address that but as long as they are clothed, they can approach them after they dance, they can approach them before they get in a state of nudity. [LB443]

SENATOR COOK: Okay. I have another question, but let Senator Dierks. [LB443]

SENATOR KARPISEK: Senator Dierks. [LB443]

SENATOR DIERKS: Well, I almost hate to bring it up too, Senator Christensen, but recently I'd heard a report about the number of women in slavery in this country. Have you heard anything about that? [LB443]

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SENATOR CHRISTENSEN: I have, and that's what LB444 addresses very well with the licensing for human trafficking or license of escort service because a lot of runaways are actually picked up, befriended, and then they learn to trust that person and then forced into prostitution and they use the escort services. And in our research on that across the state, there's multiple places the same company will have multiple outlets across the state following Interstate 80 where they'll leave them for a short time to be an escort then move to another one and to another one keeping them moving so that they're not caught. And that's the...was the intent of LB444 was to go after the human trafficking and the trapping of women in that way. But this one here is just trying to address more...there's a lot of secondary effects with sexually-oriented businesses from decreased valuation of buildings in surrounding area, it causes a lot of family breakups, it causes pain within that. I've never had a woman tell me they encouraged their man to go to a strip joint before coming home. You know. There's the effects of what happens to the relationship and now it's just like you're decreasing the value of the beauty of that woman. It's all on the physical attraction instead of being an actual person inside. And that's the intent of this bill is to bring it up into a...just put some minimum standards across of where they can be located away from schools and things that effect kids. And I've had many responses even about different outlets here in town where people say well, gosh, my kids we come out of this dance studio and across the street is a business promoting sexual orient type materials and it's so explicit they're going mom, what's that? Or dad, what's that over there? And so they're having to educate their kids that or talk about it in some manner to 3-, 4-, 5-, 6-, 10-year-olds that don't have to understand everything that's going on over there. And it's just a way of...it's not prohibiting them but getting them to locate away from schools, away from day cares, away from residencies where children and women can be. And if you go look at the studies that will be presented to you following me if you go look at an area around a business like this, crime rate increases two ways. One, on the person that goes to these joints, criminals know they can go attack them when they leave the facility because it might be a husband that's not going to report this even if they get robbed because they don't want to admit it to their wife and family and have it in the press and in a report, so you've got those facts. And then you also have the potential of the person getting excited that leaves that business and then goes and rapes somebody. And you know, I look out, think about my kids. I wouldn't want one of my girls working in a place like that or having one of my girls' boyfriends go there get excited and come back and rape them or pressure them which might be called date rape into doing something they wouldn't have done if it hadn't have been for the arousal of being in a place like that. That's the type of secondary effects that spread out from these type of businesses. [LB443]

SENATOR DIERKS: Thank you. [LB443]

SENATOR KARPISEK: Senator Price. [LB443]

SENATOR PRICE: Senator Karpisek, thank you. Senator Christensen, would a dinner

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theater possibly fall under this if they have something like some art show, or not art show but play like where they're...I can't even say it, but they have a show at a dinner theater which is not your typical establishment. Would they be in jeopardy? Would they be able to understand all these rules? Hot Tin Roof is what I'm thinking of, but something like that. Cat on a Hot Tin Roof, Streetcar Named Desire, I don't know. Some of the more avant-garde things that are available out there. So I was just bringing that up for you to review, I guess, what I'm saying. Also, more importantly, how are you going to measure six feet? A lot of those think of very discreet measurements that you provide and outline but if we have an enforcement or a police officer out there or someone doing the enforcement, do they have a calibrated eye that says this is six feet, that was five feet nine inches, you know. I'm worried about that because I've heard discussion before off mike where there's a bar put up around a stage, but there's so many other opportunities where there's close contact. I think we were alluding to that before, so how do we measure six feet and make sure that this is enforceable? [LB443]

SENATOR CHRISTENSEN: Well, I guess I would envision that since the stage is raised two feet and you're being six foot away and so the chairs and the tables and things are probably going to be six foot away from the stage. That's going to be up for the business to decide but it doesn't stop, as I addressed earlier, that a woman can come down and pick up her tips and other things this way by walking through the crowd as long as she's clothed. You know, and that's why the definitions are very discreet here. It doesn't per, it does ask for not touching but it doesn't say that they can't come closer when they're in a clothed state. [LB443]

SENATOR PRICE: All right, and then finally you mentioned in your previous answer about a dance academy, would a dance academy fall within a place that couldn't be within 1,000 feet. That's like a private institution of learning. [LB443]

SENATOR CHRISTENSEN: Not under the language as I see it written here. [LB443]

SENATOR PRICE: Okay. So I'm thinking about any private thing where the children are going to, no matter what it is, that wouldn't be included in this. [LB443]

SENATOR CHRISTENSEN: No, it's listed as residencies, churches... [LB443]

SENATOR PRICE: Okay. [LB443]

SENATOR CHRISTENSEN: ...day cares, schools. [LB443]

SENATOR PRICE: I just wanted to be sure. All right, thank you. [LB443]

SENATOR KARPSEK: Senator Cook. [LB443]

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SENATOR COOK: Thank you. I have another question because you mentioned the dancer going through the audience to pick up her tips and I'm thinking statistically who is likely to have this kind of employment. There's another definition in the bill, the second type of employee who, let's say she regularly appears nude or in a state of sexually explicit nudity or seminude on the premises so when she walks through to get the gratuities is she also in violation of the statute? [LB443]

SENATOR CHRISTENSEN: She can't. [LB443]

SENATOR COOK: Because you just said that she can't get the tips directly from the patron during the performance, and then you described a time after when she might be able to go through and collect a gratuity and then I'm confused because there seems to be a different...maybe that's another question for whoever drafted the bill, but there seems to be a second kind of employee defined. [LB443]

SENATOR CHRISTENSEN: Where's the section that you're looking at? Maybe I'm. [LB443]

SENATOR COOK: I'm looking at my notes. [LB443]

SENATOR CHRISTENSEN: Okay. [LB443]

SENATOR COOK: And it seems to define a different...maybe I'm reading it wrong, defining another employee let's say she's not working that day and she comes back by the establishment to collect belongings or collect payment...the statute, based on the way I read it could also prohibit her from being on the premises to, for any reason. [LB443]

SENATOR CHRISTENSEN: See, I guess every section here I'm reading here it says an employee while in the state of sexually explicit nudity or while seminude shall not knowingly do the following: appear in the view of the patron in less than six feet; touch the patron or the clothing of the patron; or touch another person who is in the state of nudity, seminudity; the...no patron shall knowingly touch an employee while in the state of sexually explicit nudity or seminude or in that costume. It's always referred to the touching or the distance offset in the state of nude or seminudity. [LB443]

SENATOR COOK: While...okay. While they're performing. [LB443]

SENATOR CHRISTENSEN: Yes. [LB443]

SENATOR COOK: Okay. Thank you. [LB443]

SENATOR KARPSEK: Thank you, Senator Cook. Any further questions? Seeing none.

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May I have the first proponent, please? [LB443]

DAVE BYDALEK: Sorry folks, I know this looks like a lot of reading. (Laughter) [LB443]

SENATOR KARPISEK: Welcome. [LB443]

DAVE BYDALEK: (Exhibit B, C, D, and E) Senator Karpisek, members of the committee, my name is Dave Bydalek, and for the record that's B-y-d-a-l-e-k. I'm executive director of Family First. By way of background, for the first nine years of my career I worked as a state Assistant Attorney General in Nebraska Attorney General's Office where I got to argue about 70 or 80 cases before Nebraska Supreme Court, Court of Appeals, and the Eighth Circuit Court of Appeals. I then spent two sessions as a policy advisor to then Governor, Mike Johanns. And for the committee I'd wanted to note, I've provided information on a CD, these are summaries of land use studies across the country that document the negative secondary effects of sexually-oriented businesses. That CD also contains relevant case law in the area, so anything you really need to know about why we brought the bill, material supporting that is either in the handout or on that CD, so I'd like to have that entered into the record as well. Family First strongly supports Senator Christensen's efforts to place statewide standards on sexually-oriented businesses. The bill is not being offered to shut down these establishments. The Supreme Court has held that we can't do that. It's purpose instead, is to create statewide time, place, and manner restrictions on sexually-oriented businesses. The bill pursuant to the proposed committee amendments would primarily do the following: one, was require a sexually-oriented business to close between the hours of 12 a.m. and 8 a.m.; prohibit full nudity; create a buffer zone of at least six feet between patrons and employees of the sexually-oriented business; prohibit employees of sexually-oriented businesses from knowingly and intentionally touching patrons or the clothing of the patrons in a sexually-oriented business; prohibit persons under the age of 18 from visiting a sexually-oriented business; and as of the effective date of the bill, prohibits sexually-oriented businesses from locating within 1,000 feet of a child-care facility, a private or public school, a public playground, a public recreational facility, or residence, or a place of worship. And in virtually every study on sexually-oriented businesses whether they be land use studies, crime reports, or even judicial opinions concludes that sexually-oriented businesses present what are termed harmful secondary effects. These harmful secondary effects include: adverse impacts on surrounding properties; crime, and it's attendant public safety risks; illicit sexual conduct and potential disease; illicit drug use and trafficking; litter; aesthetic impacts; noise; and blight. And as I stated, the CD contains summaries of many of these studies but the findings of the harmful secondary effects really are universal. In two Supreme Court cases, Renton v. Playtime Theatres and Young v. American Mini Theatres the court concluded that governmental entities have a substantial interest in protecting and preserving the quality of life for its community against the adverse secondary effects of sexually-oriented businesses, regardless of the size of the community. The regulations

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in the bill via the committee amendments have repeatedly been upheld by appellate courts. I've listed three cases examples in the Eighth Circuit Court of Appeals that would be: SOB v. County of Benton , which is a 2003 case; Jake's Ltd. v. City of Coates, Eighth Circuit case from 2002; and Stoke Pictures v. City of Kansas City, which is a 1998 case. And in fact, every federal appellate case to consider dancer patron buffers, no touch rules, hours of operation, and open booth regulations has upheld them as constitutional. In the process of upholding these kinds of regulations, the courts have examined the evidence of negative secondary effects including crime and adverse impacts on surrounding properties and have concluded that the regulations are nearly tailored to serve the substantial government interest in preventing such effects. We also believe that a statewide rule in this area is needed. First, there are no provisions in Nebraska state law which regulate sexually-oriented businesses. While some cities have ordinances which deal with the issue, many sexually-oriented businesses locate just outside the zoning authority of the municipality to avoid municipal regulation. Statewide minimum standards have been successfully implemented in many states of note, Tennessee, Arizona, Ohio, New Jersey, and recently South Dakota. And this creates protections for communities that would otherwise be caught off guard without regulations or even if they had them would not have sufficient resources to defend against them...defend them against expensive industry lawsuits and attacks. Further, the secondary effects of these businesses are universal, doesn't matter whether it's rural or urban. And given this, each community in the state of Nebraska should be afforded at least the minimum amount of protection afforded in LB443. And finally, the law in this area is very technical, what LB443 provides is a solid framework for protection which has withstood constitutional scrutiny numerous times. I won't go into the anecdotal stories that we get in my office. I've had calls from Scottsbluff to Omaha regarding these types of businesses. I was talking also to an individual here in the Capitol building, I don't think I'm at liberty to disclose his name yet, but he said he has a relative that works on a zoning board in one of the counties here in the state of Nebraska. And they are now dealing with this issue, and what he told me was that his relative said that it would have just been easier if the state would have had a statewide rule to deal with this and would have saved us a lot of time and effort. So in closing, I would point your attention to...particularly if you haven't read much about sexually-oriented businesses, the head person in the country in doing a criminology studies on this...I provided you with a report he did for the Jackson County Legislature, Jackson County Missouri, and if you've ever read anything about sexually-oriented businesses secondary effects studies, this is what to read. And I realize you guys after working in the AG's office and working for the Governor, you guys have a lot to read, I know that. But in any event I would strongly advise you to take a look at that because it will answer a lot of questions you may have about negative secondary effects. With that, I would just ask that you advance LB443 to General File for debate by the entire Legislature, thank you. [LB443]

SENATOR KARPISEK: Thank you, Mr. Bydalek. Any questions? Senator Price. [LB443]

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SENATOR PRICE: Two things. First Mr. Bydalek, I'd like to thank you for giving me something I can't look on my computer because we don't have the ability to read CDs. (Laughter) But my staff can. [LB443]

DAVE BYDALEK: I wish I would have known that. [LB443]

SENATOR PRICE: Secondly, just off the top. When we talk about explicit nudity or seminudity, and then we went through all the definitions of it, that doesn't preclude somebody who is in a bikini. It covers all the pieces and parts. [LB443]

DAVE BYDALEK: That's right. [LB443]

SENATOR PRICE: Of being in direct contact? [LB443]

DAVE BYDALEK: Well, it says a state of...if you look at the, yeah, you're right. If they are in a bikini that would not be the intent of this act to prohibit that. [LB443]

SENATOR PRICE: Okay, thank you. [LB443]

SENATOR KARPISEK: Thank you, Senator Price. Any other questions? Senator Cook. [LB443]

SENATOR COOK: Thanks. I'm still. Thank you very much, Mr. Chairman. Maybe since you've done so much national research or Family First has or whoever, wherever the bill is coming from has done a lot of research on the six foot provision. Can you offer how tactically that the gratuity is received by the dancer if it's not received. [LB443]

DAVE BYDALEK: Right. Thank you Senator Cook, and I did want to address something you'd asked Senator Christensen. What businesses have done apparently, and this is from what I've been told by the people that have dealt in this area of the law, have put up a bar at six foot that would preclude patrons from going past that particular line. It really is up to the business. With regard to gratuities, actually, if you look at the committee amendment, employees who actually...the buffer zone really relates to people while they're in the state of seminudity. That's the six foot buffer zone. Afterwards they can actually come out into the crowd, however, Section C, (c) of Section 2 basically says even if they come out, there still can't be any physical contact between the dancer and the patron but that wouldn't preclude somebody handing them some money or the other way to get a gratuity is to set up, you know, with inside just outside that six foot barrier a jar or some sort of device which would enable the dancer to pick up their gratuity. So I mean, do I have specific ideas other than that, I'm just relating what I've heard. And they can come out into the general crowd as long as they don't touch a patron. And if somebody wanted to hand them a tip or hand them money

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as long as there was no physical contact. [LB443]

SENATOR COOK: But that is within six feet. [LB443]

DAVE BYDALEK: But the buffer zone doesn't apply to that. [LB443]

SENATOR COOK: Oh. Thank you. [LB443]

DAVE BYDALEK: The buffer zone does not apply to that. The buffer zone only applies to them in a state of seminudity. It doesn't apply after they're done performing. If they regularly perform there, they can't touch the patrons and the patrons can't touch them. But they can go out if somebody wants to hand them some money as long as there's not physical contact, there's no prohibition under this bill. [LB443]

SENATOR COOK: Thank you. [LB443]

SENATOR KARPISEK: Thank you, Senator Cook. Senator Price. [LB443]

SENATOR PRICE: Senator Karpisek, thank you. So this will kill the proverbial table dance. [LB443]

DAVE BYDALEK: Yes, it will. [LB443]

SENATOR PRICE: Thank you. [LB443]

SENATOR KARPISEK: Thank you, Senator Price. Any other questions? Senator Cook. [LB443]

SENATOR COOK: A statement and I appreciate bills being brought. Senator Christensen made a reference to increasing respect for women in this state and I guess as a woman serving in the Nebraska Legislature and a Nebraska citizen, my hope and expectation is that many, many more bills get introduced that would mandate or even encourage respect for women in all of the roles that they play in this state, personal, professional, in the home, so. [LB443]

DAVE BYDALEK: I definitely appreciate that, Senator Cook. [LB443]

SENATOR COOK: I will look forward to working with you on some things that I think show respect for women. [LB443]

DAVE BYDALEK: Well thank you, and having three daughters myself, now that they're high school age you start thinking about these things and it really is kind of scary sometimes to think about what life is like for teenage girls in our society today. So

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hopefully bills like this might be able to at least start a discussion and provide at least a minimum amount of protection for communities around the state. And the two gentlemen that I've been working with on this bill are the national experts on this. They would be more than happy if any senators want to get ahold of me, they would be more than happy to speak on the phone with you if you so desire. [LB443]

SENATOR KARPISEK: Thank you. [LB443]

DAVE BYDALEK: Thank you. [LB443]

SENATOR KARPISEK: Next proponent. Welcome. [LB443]

DON KUHL: (Exhibit F) Thank you, members of the committee. My name is Don Kuhls, K-u-h-l-s. I'm chairman of Omaha for Decency and I'm speaking on its behalf. For almost 19 years I've been afforded the opportunity of learning the dire consequences that result when human beings are exploited for sexual purposes. Due to this experience there is no question in mind that women in particular are mere pawns in the hands of those who use them for their own personal gain or purpose. A recent conversation I had with a woman who once performed as a dancer is an ever present reality. She shared with me how more was expected from her than when she first began as a performer. I believe in her case this was a motivating factor in her leaving the business. Unfortunately, many can't seem to escape it. I talked with her about the fact that most women who get into this type of behavior have histories of sexual abuse in their lives. Although she did not go into detail, all she could say was, if you only knew. I also received complaints from mothers complaining about sexually-oriented business storefronts with scantily clad women in their display windows. They are angry and upset because their children are being exposed to such blatant exploitation of women. Reliable and unbiased studies from law enforcement prove that rising criminal activity is directly associated when sexually-oriented businesses are unregulated. Statistics gathered by the National Coalition for the Protection of Children and Families reveals some of these law enforcement studies. For example, Oklahoma City, Oklahoma, saw a 26 percent decrease in rape in one year after 150 adult-oriented businesses were shut down. During that same period rape rates rose 20 percent in the rest of the state. In Cincinnati, Ohio, police found an 83 percent decrease in major crime such as rape and robbery in an area where an adult-oriented businesses were closed. Phoenix, Arizona, police found that one neighborhood with adult-oriented businesses experienced 47 percent more property crime, 44 percent more violent crime, and 135 percent more sex crimes than in areas of the city without adult-oriented businesses. The reason for this is because these establishments lack human dignity, honor, respect, and women are treated as mere sex toys thus creating grounds for criminal activity. Red-light districts are a reality when there is no regulation or oversight and that's why I support LB443. Sexually-oriented businesses are progressive. In other words to become progressively worse when there are no...when laws are lacking. And that's why I'm asking this

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committee to support this bill as well. Thank you. [LB443]

SENATOR KARPISEK: Thank you, Mr. Kuhls. Any questions? Seeing none, thank you. [LB443]

DAN KUHLIS: Thank you. [LB443]

SENATOR KARPISEK: Next proponent? Good afternoon. [LB443]

AL RISKOWSKI: (Exhibit G) Good afternoon, yes, good afternoon it's good to be here. My name is Al Riskowski, it's R-i-s-k-o-w-s-k-i. Executive Director of Nebraska Family Council. I'm here to support this bill. I pastored for a number of years prior to taking the executive directorship of Nebraska Family Council, so I thought I'd bring a little bit of a different perspective, two perspectives. Number one, just before coming to the meeting, I drove by The Luv Shop on South Street at about 14th and if you want to make a casual drive by there you'll notice a number of things. Within a block there is a grade school, there's a Children's Imagination Station across the street, there's a preschool across the street, there's a CEDARS Home Office for Children across the street, and I remember when they first came in we received a number of phone calls because you had all this foot traffic of children going right in front of that facility on South Street that they could at least cover their windows so kids wouldn't be looking in as to what was some of the pictures inside of there. But you can still...you drive by there, it still says triple x on the outside. It is not appropriate for that to be located in that spot. And this type of bill would address this type of a situation, I think that's very positive for us in the state of Nebraska. As I was trying to remember back to my years of ministry, I could remember three cases where an establishment of this type created major problems for people who came in for counseling. This was really an entry point where they began to act out some of the things they were reading or looking at in their home and as I was trying to remember some of the counseling as they related what their experience was like going to one of these places where the women perform. One of the things that really stood out was the sexually inflamed atmosphere that is created especially not only by the visual but by the physical touching at certain instances. And in these three cases, two of them lost their jobs eventually and one lost his family. They were really inflamed by this. I believe that this is a reasonable restriction here to calm down some of the inflammatory things that happen within these organizations. I believe it's very reasonable to say where we locate some businesses like The Luv Shop, it shouldn't be where it's located right now. I don't believe this bill would make them move currently, however in the future it would stop some of that from happening. And the other thing that as I pondered some of this is I know living in rural Nebraska for a period of time, it can be difficult for counties that are sparsely populated or small cities to fight these kind of businesses that want to come in. And I believe this type of legislation would help us then across the state of Nebraska especially in those sparse areas where some of these people locate that they have to not only take on that sparsely populated area but

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the state of Nebraska and the simple regulations that are here. So I believe this is very reasonable standards for the sexually-oriented businesses and I hope that this committee will move LB443 out into the full Legislature. [LB443]

SENATOR KARPISEK: Thank you, Mr. Riskowski. Any questions? Seeing none, thank you. [LB443]

AL RISKOWSKI: Thank you. [LB443]

SENATOR KARPISEK: Further proponents? Welcome. [LB443]

JIM CUNNINGHAM: (Exhibit H) Thank you, Senator. Senator Karpisek and members of the committee, good afternoon. My name is Jim Cunningham, and that's spelled J-i-m, C-u-n-n-i-n-g-h-a-m. I'm the executive director of the Nebraska Catholic Bishops Conference and I testify on behalf of the conference in support of LB443. The conclusion of the Catholic Conference's governing board is that the purpose and intent of this legislation are to uphold and enhance to the extent constitutionally permissible common decency, a basic sense of morality, social order, respect for human dignity, concern against exploitation, and quality of community life for families and children. All of these aspects ultimately promote the common good which is the fundamental standard for meritorious legislation. From a personal perspective, I've not had any opportunity to look at the DVD or the CD that you were provided but I did have the opportunity to review the fact sheet that Family First created. It is thorough and I think offers a strong rationale in support of this bill. I urge you to give attention to that. Based upon the important goals of this bill, the Nebraska Catholic Conference supports LB443 and urges the committee to advance the bill to General File for consideration by the full Legislature. Thank you for your time and attention. [LB443]

SENATOR KARPISEK: Thank you, Mr. Cunningham. Any questions? Seeing none, thank you. [LB443]

JIM CUNNINGHAM: Thank you. [LB443]

SENATOR KARPISEK: Further proponents? Good afternoon. [LB443]

TERRY ROSSETER: Good afternoon, my name is Terry Rosseter. I'm from Omaha, I represent Virtuous Men, I also am on the board of directors for Omaha for Decency. [LB443]

SENATOR KARPISEK: Can you spell your name? [LB443]

TERRY ROSSETER: Last name is spelled R-o-s-s-e-t-e-r. I'm a cofounder of Teen Challenge of the Midlands back in 1973, '74. That's an organization that works with

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young people, or actually it's probably a misnomer. We work with men and women of all ages with life controlling problems. We're best known for working with drug addicts and alcoholics. When we first started, we saw some phenomenal success with people who were strung out on drugs and alcohol and only to see them fall back into the same lifestyle. So we found out that the problems that they were having were just secondary addictions. Their main problem and their main addiction was pornography. And they were using drugs and alcohol to drown their shame and to numb the pain of their addiction to pornography and sex. The shame is a huge issue. You're looking at somebody who is a former drug addict, excuse me, I take that back, a former porn addict. I was strung out on porn. You talk about secondary effects, I experienced a secondary effect. It ruined my life, it cost me my first marriage. It devastates a man's life. It's not all about men, it's also about their spouses, their children, their community, our society. The collateral effect is tremendous. Just, not to do anything, it is an uncomfortable subject, I understand. But if we don't address it, nothing happens. It just continues as usual. I, now, as the leader of Virtuous Men I do a lot of counseling. I have people that I have worked with in the past and continue to work with who are in state and federal prisons for becoming predators. They did not start out with that goal in mind. In fact, pornography addicts--or any addict--nobody wakes up one day and says you know what my goal today is? I think I'll become a crack head. Nobody starts out that way. Nobody starts out in pornography realizing that they're going to become addicted to the point where it's more life controlling than heroin. Okay. And I can say that from my own personal experience and dealing, and also in my counseling. I've asked men, what would you...how would it have affected your life if pornography and sexual things like we're talking about here--establishments--would not have been available at all. I mean, if we'd really upheld several years ago, obscenity laws, how would that have affected your life? And they all--to the man--say, if only. If we could go back. We're not going back, we're not asking to go back. We're just asking to do something to hold this back. We're looking for restraints. That's why I'm for passing LB443. I love this bill because it's doing something. To do nothing is not only unproductive, it is counterproductive. Something must be done and I thank Senator Christensen for doing something. And I just hope that you will pass this bill on. Thank you. Any questions? [LB443]

SENATOR KARPISEK: Thank you, Mr. Rosseter. Any questions? Senator Coash. [LB443]

SENATOR COASH: Thank you, Chairman. Thank you for coming to share your story. That's a personal story and you should be commended to come and share that. I have a question related to your experience, you know, if a person has...is an alcoholic, he goes to AA, those services are out there. A person has an addiction to gambling, Gamblers Anonymous. Are there...and I'm asking this as a person who works in the field now, are there similar resources out there for addiction to pornography? [LB443]

TERRY ROSSETER: Me. [LB443]

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SENATOR COASH: Okay. [LB443]

TERRY ROSSETER: That's what I do but there are several ministries across the state. There are most...I know people that are not church related. I'm church related, I'm a Christ-centered ministry. But there are counseling organizations that are not in any way associated with churches that deal with this. And all of them say it's very difficult. I get the addicts, the guys that have the problem. That's what I deal with. I also deal with their families, their spouses, but most secular counselors don't want to deal with the addict because it's such a difficult problem. It is huge. But they will deal with the collateral damage, the wives, the children. They try to help them. And so there's counseling needed in every area, not just the guys with the problems that's my job. But the families, even the neighbors, the children of friends that have been approached inappropriately. We counsel with them, we deal with them. The issue is huge, it's uncomfortable but I say okay, let's get uncomfortable. And let's stop ignoring it and do something about it. Do something positive. [LB443]

SENATOR KARPSEK: Senator Cook. [LB443]

SENATOR COOK: Thank you, Mr. Chairman. And thank you for your testimony and your personal testimony. You are indeed, brave. I have a question related to addiction to pornography. Given that its use is pervasive across the state, we've heard testimony on this committee that 10 percent of people who gamble become addicted. Do you have any idea what percentage of people--men--who use pornography would become that hard-core addict that you are describing in your ministry? [LB443]

TERRY ROSSETER: I would say very confidently pornography addiction is the number one addiction among men today by far. It's so far-reaching I can comfortably say that in this room there are people who are controlled to a certain degree by sexual addictions. And I won't look anybody in the eye because it makes everybody uncomfortable because I'm thinking of anybody in particular. But I know that it's approaching anymore with the advent of the Internet, it's closer to 100 percent than it is to 70 percent of addictions. But most of that happens with young people. [LB443]

SENATOR COOK: So when any user of pornography would 100 percent of them would be addicted to the use of it. [LB443]

ROSSETER: There is another...I've written a book, but there's another book out I wish I'd had the title. It's called Every Man's Battle, well-named, every man battles this in varying degrees. Every man battles it unfortunately today with it being so out in front, most men are losing the battle because their minds, their eyes are bombarded constantly with this stuff. And pornography isn't just, you know, Doctor Love or whatever that place is called here in Lincoln. It can be Victoria's Secrets catalog. Anything that

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stimulates you that way can... [LB443]

SENATOR COOK: Are you advocating that there not be Victoria's Secrets catalogs not be distributed? [LB443]

TERRY ROSSETER: No, I'm just saying that pornography is deep and wide. I mean, you can open up anything that is designed to stimulate...the word pornography comes from the greek word porne, it stands for prostitute. And graphic has to do with graphic representations of thoughts by way of print, by photography/videography, graphics. Pornography is simply a different kind of whore. I'm sorry, it's the prostitute of the mind. It attacks the mind and once it gets ahold of the mind, it can get ahold of the person and then the person acts out and I end up dealing with them after their family looks like a train wreck or their lives look like a train wreck and they're on their way to prison or wherever else. More answer than you needed, maybe, but. [LB443]

SENATOR COOK: Thank you. [LB443]

SENATOR KARPISEK: Thank you, Senator Cook. Any further questions? Seeing none, thank you. [LB443]

TERRY ROSSETER: Thank you. [LB443]

SENATOR KARPISEK: Further proponents? Welcome. [LB443]

MARY QUINTERO: Good afternoon. My name's Mary Quintero, and that last name is spelled Q-u-i-n-t-e-r-o. I'm a family law attorney working in California for 24 years now. In late 2000, we moved to Nebraska. I continue to work for the same law firm in California, I do what I call "e-commuting" so it's novel but it works. My experience in the area of pornography and its effects on men, women, and children compels me to be here today in support of LB443. First let me address what I call the so what factor or what's the big deal factor. Strangely, I have never met anyone that has ever encountered pornography's effects make those kind of comments or joke about it. Because when you deal with the effects of pornography, whether it's a loved one, a coworker, a neighbor, the joking stops because the reality is there. It sets in and there's no denying it. So you won't ever see me quietly sit by while anybody makes jokes about it. I ran across a column from a Denver publication that's stated so well what I watched play out in my law practice that I'm going to paraphrase it shortly for you. Pornography is never innocent entertainment no matter how private it may seem. It turns human beings, the vast majority of which are women, into no more than objects. We can say that over and over again but it's true. Women are made to...they are stripped of all other value except for their body. It creates impossible expectations about sexual intimacy, that's what pornography does. It kills enduring relationships between the sexes, especially between husbands and wives. And ultimately it is a lie and a cheat.

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Pornography is a cheap, quick, empty imitation of the real thing which is the real joy of sexual intimacy. So let's take a look at what I've observed. First, by the time a man gets into my office, the damage is already done. He has no excuses, he's become a victim right along with the rest of his family. On those occasions when addiction is involved, it is nearly impossible to break. I have seen one husband and father become entirely free, and I use the word free very carefully because you will hear the opponents of this bill talk about freedom and when you do I want the word slavery in your mind. Because this is its own form of slavery and the men seeking to end their use of pornography describe it in terms of wanting to be free. Okay. He is the one man that I mentioned that did become free still lost his wife and family. He has a fractured relationship with his adult married daughter and is rebuilding a relationship with his college-aged daughter. In that situation, I had contact with the wife for several years. I watched her regain some of her self-esteem, some of her self-worth, some amount of recovery in her life. She's not completely there yet, but she is doing better. The women I have worked with in my practice who have experienced a marriage or a relationship with a man that uses pornography has overwhelmingly expressed dismay to me. The feeling is one of why am I not enough? It strikes right to the heart and it's very hard to heal. Often anger and resentment toward the male take over her feelings completely. This affects so many things. It affects how she interacts with her children regarding their father, it affects how she interacts with him of course. The children raised in a family where a parent uses porn and a parent who sees women as sex objects, the children miss out and get a double-dose. First in their own childhoods and then in their adult relationships. First they are denied a normal home life. They do not witness a normal loving relationship between their parents because it's not there. Kids sense things no matter how clever or careful a parent thinks they are. Girls growing up in a home of a parent who uses pornography will have difficulty with her self-esteem, her self-worth, her self-image. She will likely not be good at choosing male companions and ultimately her choice of a husband will be skewed. Boys growing up in such a home have difficulty cultivating healthy relationships with females. That shouldn't be shocking, but many people don't realize it. Some boys will become addicted to porn thus continuing the cycle and ensuring a steady stream of money for pornographers, some of who will be opposing this bill. Don't fall for it. The women who actually work in the sexually-oriented businesses are often, although not always, often they're there because they were abused in their younger years and they have a sense that their value lies only in their bodies. They experience a dysfunctional feeling of acceptance in this industry that steals them from any hope of every becoming whole. So the limits LB443 seek on pornography in the state of Nebraska, I believe, can only assist in minimizing the damage. Pornography is poison and it should be treated like toxic waste and controlled accordingly. It is a worthy and wise goal that you're considering today. The less available, the better it is for all of our communities in the state of Nebraska. And I thank you so much for your time. [LB443]

SENATOR KARPISEK: Thank you, Ms. Quintero. Do you have any questions? Seeing

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none, thank you. Next proponent? Welcome. [LB443]

DEB BADEER: (Exhibit I) Thank you, my name is Deb Badeer, and I just have very short testimony coming not as a representative of any particular organization but as a citizen and a mom. [LB443]

SENATOR KARPISEK: Can you spell your name, please. [LB443]

DEB BADEER: Yes. Thank you for the reminder, it's Badeer, B-a-d-e-e-r. And I do have letters for each one of you, thank you. I have a very short note of my support of LB443 and the desire to standardize the restrictions of sexually-oriented businesses. I see this as a delightful balance between constitutional freedoms which I'm very concerned about as a citizen in this country, and the freedom--that we might say--to choose the activities that you participate in as an individual and as a family. LB443 would not remove, then the basic rights of these businesses to operate or for people to participate if they so choose. But yet would give that opportunity for--let's say--families to be less exposed when they didn't want to be. It would be a little bit easier to avoid if you're choosing to avoid and have the freedom from these kinds of sexual activities. Specifically I really appreciate the balance that LB443 brings to protect the innocence of children and families that do not wish to view or participate in such activities while it also offers protection for women who do opt to dance in the clubs, and again I say this is a good constitutional balance between the two. I am not a constitutional lawyer, although I like to dabble in that and teach home educated students and I do feel very strongly about individual rights as a result of those studies that I dabble in. Again, I'd ask you to consider the good balance between the freedoms of the citizens and the protections that we deserve to give to them at the same time allowing a place for the operation of such businesses for those who choose to do so. And I want to give a special thank you to Senator Christian (sic) for entering into such a controversial issue. And also for everyone in the room for the very professional and appropriate wording being used in delicate area because I felt free to bring some of my students to learn further about this, trusting in the fact that it would be done very appropriately. [LB443]

SENATOR KARPISEK: Thank you, Ms. Badeer. Any questions? Seeing none, thank you. [LB443]

DEB BADEER: Thank you. [LB443]

SENATOR KARPISEK: Do we have further proponents? Seeing none. Do we have any opponents? Welcome. [LB443]

AMY MILLER: Good afternoon. My name is Amy Miller, that's M-i-l-l-e-r. I'm legal director for ACLU Nebraska, the nonpartisan organization in charge of protecting the constitution. The First Amendment in the Bill of Rights covers free expression rights and

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the rights of people to experience and have access to materials. That includes books, films, live performances, and that covers sexually explicit books, films and live performances. It is true that the case law around sexually-oriented materials has made this type of material the poor stepsister in the First Amendment. And as mentioned by David Bydalek of Family First, it's true that many court cases have upheld zoning restrictions of the sort you're looking at here today. ACLU is only addressing the zoning issues, the length of time which such businesses can stay open, and the distance between such a business and other items in the community. You've heard about the so-called secondary effects. There are many studies that could be introduced on the other side. I'm not a psychologist or sociologist and I don't bring those to you. I assume someone behind me may. But when you have those so-called secondary effects, that is then when a municipality or state can take action to restrict what's happening with the sexually-oriented business. It is not adequate to merely recite that there are secondary effects and it's not adequate simply to look at the experience of other municipalities. There needs to be a direct connection between the problem you're attempting to solve in Nebraska and the information that you are seeking then to remedy. If you look at the most relevant Supreme Court decision that's City of Los Angeles v. Alameda Books, a 2002 case, and the court was evaluating whether or not there was ample evidence of the secondary effects. Here you had a plurality of the so-called conservative justices on the court, Justice O'Connor, Chief Justice Rehnquist, Justice Scalia, and Justice Thomas, and they granted some deference to the city of Los Angeles' recitation of the so-called secondary effects. You'll see the quotation from that case at the bottom of the first page of my testimony. A municipality cannot get away with shoddy data or reasoning. The municipality's evidence must fairly support the municipality's rationale for its ordinance. There has to be a direct linkage and this is because of the First Amendment protected nature of the businesses and the activities that are at issue. If you want to look at a good example of how one municipality has handled this, you can look to the Eighth Circuit decision, which is the federal circuit covering Nebraska, in Excalibur Group v. Minneapolis, that's cited on the second page of my testimony. In that case, Minneapolis, just a city, wanted to restrict with the zoning rules where there was going to be sexually-oriented businesses. They had a study, such as those I presume that have been provided to you by Family First, where they looked at other communities. They had the planning department review those and conduct an empirical study to compare those studies to what was happening in Minneapolis. Then they passed...they held public hearings before the city planning commission, they took public testimony on both sides, they held further hearings, and then they passed the law. They did not simply recite there are secondary effects and move forward. And indeed, I suggest to you that is the main flaw in LB443. You have before you studies and you have before you recitations in the statute, in the proposed bill and in the amendments, but there's no linkage to what's going on in Nebraska. The U.S. Supreme Court has said this needs to be narrowly tailored if you're limiting the free speech rights of one type of entity, here sexually explicit material, there must be a narrow tailoring. How can you possibly pass a statewide law without any facts or figures before you that would

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compare the small village of Royal, Nebraska, in Antelope County, to Lincoln, in Lancaster County? The types of secondary effects and the types of businesses that are available in those two cities are going to be so different that it is simply not possible to narrowly tailor this unless you first take the time, money, and effort on the part of the state to commission a study. We also oppose the distance that is being suggested. I understand that has been brought down to 1,000 feet in the amendment. You'll see that in another Eighth Circuit case in ILQ Investments v. Rochester, an Eighth Circuit case from 1994, the Eighth Circuit has upheld a 750 foot limitation. We would suggest that a 1,000 foot limitation, certainly the earlier proposal of a quarter of a mile almost doubling that which has been upheld by the Eighth Circuit, seemed extreme. We would suggest that 1,000 feet still needs that showing of how exactly that's going to protect Nebraska citizens. I'll add as a final item in the footnote, the bill only refers to childcare facility. This is something that comes up in other bills that the state has considered, especially regarding residency restrictions for sex offenders. The language generally is a licensed daycare facility to provide adequate notice to the businesses or the individuals who are affected. A childcare facility could be my home where I watch my brother's kids once every Thursday. It needs to be a licensed daycare facility to provide adequate notice to people. For these reasons, we oppose LB443. We suggest that the state, if it wants to pass such a law, it needs to first commit the money to do in Nebraska a specific study and then at that point narrowly tailor a bill that would specifically address whatever secondary harms you find in Nebraska. [LB443]

SENATOR KARPISEK: Thank you, Ms. Miller. Any questions? Seeing none, thank you. [LB443]

AMY MILLER: Thank you. [LB443]

SENATOR KARPISEK: Do we have any further opponents? Welcome. [LB443]

JESSE WYRRICK: Howdy, folks. I'm Jesse Wyrick, a microcomputer technology major at SCC. [LB443]

SENATOR KARPISEK: Can you spell that for us please? [LB443]

JESSE WYRRICK: Last name? [LB443]

SENATOR KARPISEK: Yeah. [LB443]

JESSE WYRRICK: It's W-y-r-r-i-c-k, and I had written an e-mail to Senator Christensen's office prior to this whole thing and he got back to me. Anyway, that's why I'm here. It's to me, it's all a numbers game. I saw, I don't know, maybe a handful of people in support of this bill. And I see according to your Web site, 48, 48 members of the state Legislature. But the commentary on the Lincoln Journal Star to the article

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written March 8, 2009, with regards to this bill, LB443, there's 97 opposed, myself makes 98. Two in favor of the sampling and that was just since the article was posted on March 8. And, you know, all readers of the Lincoln Journal Star and I would suspect all Nebraska residents but there's no way to verify that because it's anonymous postings, but I just...I wanted to share one comment that I hope would appeal to Senator Christensen. Right-wing Christian writes on March 8, 2009, at 9:14 P.M. I'm a right-wing Christian who thinks that this bill is a total waste of time. You cannot legislate morality. It is a waste to attempt to do so. In my younger days I visited strip clubs. There's nothing wrong with it in the least if these women are not hookers and all the patrons are adults. I don't see any children from any daycare centers attending. Please leave the public alone. The nanny government is going to destroy this country. And it goes on and on like this but, you know, I would stress that if you're going to seriously consider this bill, you'd stay on topic. What I've heard for the past few minutes has been kind of straying more into pornography and addiction, but LB443 is more of a zoning law than anything else. And it doesn't address the practice of private dancing where as a patron will go into a private cubicle away from the rest of the activity and have a one-on-one encounter with one of the dancers. So, you know, with that, I'll go ahead and, you know, be finished. [LB443]

SENATOR KARPISEK: All right. Thank you, sir. Any questions? Seeing none. Thank you for coming in. [LB443]

JESSE WYRRICK: All right. [LB443]

SENATOR KARPISEK: Further opponents? Welcome. [LB443]

CASEY ROWE: Thank you. My name is Casey Rowe, R-o-w-e. I'm an owner of a club in Omaha, Nebraska. Several things as I was...first of all, thank you for your time and listening to all of us. It's greatly appreciated in a high controversy, you know, we're talking about. One of the things that I heard about, secondary effects. I think it's pretty much true that if you go home tonight you can buy a pay preview channel or you can turn on MTV's Spike, watch Man Answers, you can watch a variety of different performances on TV that some may say that gives you secondary effects. As a club owner for the last almost seven years, I've had the joy of working with a lot of females. To me these young ladies don't have anywhere to go. You know, we pay our unemployment tax. We pay everything that we're supposed to do, our sales tax or our federal or our state. But if you call the Nebraska Workforce and you say, I would like to hire five young ladies to dance, they'll tell you straight up, no, we cannot, we cannot take that ad and place it in our bulletin and let people know, but even though that we're required to pay taxes. Many times I've tried that and, you know, we get laughed at. A lot of these ladies don't have opportunities. I have been a life coach and a mentor for so many years that I get a chance to work with them directly and we talked about what is happening here with this LB443, and they would love to have you come there and talk

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to them. These ladies have children. They have obligations. Unemployment is the highest it's ever been. They have very little skills of some. Some have tried to get into trade schools that didn't quite fit the qualifications, either they made just a little too much or not enough. There is a way to run a respectable, honorable club. I have for many years. And I've enjoyed the fact that many vice or political...how do I want to say this...politicians have come into my establishment and thanked me for how we run our club. Other states have thanked us. We've raised charitable events. We've given away many things for the children. Our highest one was over \$40,000 that was raised for the children of 9/11 and then we got an award from Mayor Giuliani himself from 9/11. But the biggest thing that we're trying to talk about is that we have a constitutional right. The city, the state gave us a license to dance and operate a business. On our Nebraska flag it says on the top, equality before the law. Sometimes we don't get our equality. You know, we get knocked down because of who we are or what we do. People choose to come into our club as adults. They make that constitutional choice to come in. The ladies that work there make a choice. We follow all rules and regulations that is imposed by the...that's put down by the state and city local governments. I don't see what we're doing wrong. One of the other biggest things is that, how do you possibly say that how we dance or how our ladies dance anywhere would harm somebody and maybe make that some person a sex addict? If that's the case, I'm a workaholic. I work a lot. So making me a workaholic, does that mean I have to close my office at 11 p.m. at night because maybe, because I work too much makes me a workaholic? There's a lot of reasons and we can put blame in so many different ways that this person watches this, he becomes or she becomes this. I'm sure many of us have worked long nights and could probably say we are workaholics. There is a label for just about everything if you spend the time and research it. One of my last closing statements would be that I appreciate that if Nebraska is going to take the time to pass a law like this, that the research as Ms. Miller was talking about, goes in place. Because I think you will find that our places of business really have been running low key. Just the other day I was at the bank across the street from my location, the lady there didn't even know what it was. And the funniest thing about is, outside her front window see's a popcorn shop, she looks right across the street and sees me every day. So there's a lot of people that are more aware of what's going on because of the publicity, what's happening with this particular bill. But I thank you for your time and if you have any questions, I'd love to answer them. [LB443]

SENATOR KARPISEK: Thank you, Mr. Rowe. Any questions? Seeing none. Thank you. Further opponents? Welcome. [LB443]

KEN SEMLER: Hi. My name is Ken Semler, S-e-m-l-e-r, and I own the Night Before Lounge here in Lincoln. It's a gentleman's club, it's just a nightclub only. And my comments will be, you know, more for my business only and for my small part of the world, but the six foot rule and odd things that this is getting clumped into are...basically would put me out of business. I have a small place. It's, you know, 2,000 square foot

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and you can't walk through my place with a six foot buffer from the stage to get to the bathroom or pass the bar anyplace like that. It would just, it would basically, I would have to, you know, change what I do for a living and this may be the purpose of the bill, I don't know that. Then the after 11 o'clock or 12 o'clock, I'm not sure what happens at 10:55 that doesn't happen at 11:05, but once again it would just almost, you know, put me out of business, it would really would. It wouldn't be worth that hassle, that, you know, they're just going to go to Iowa. Omaha people are going to drive across the river or to Kansas or whatever. Instead of having an hour, they've got three hours to do it, my customers specifically. I mean I...the trouble, you know, the blighting and the crime and this and that, my taxes have increased every year for 27 years. That's how long I've owned the bar. They've never gone down yet. The neighborhood hasn't gone done yet. My sidewalk is the cleanest in town. And there again, I can only say what my area is, but I hate getting lumped together with other things that are going on. And with 35 employees and we pay \$40,000 plus a year just in sales tax, not including any other tax. And it just, once again, it seems like we're getting picked on. But I'll keep it short because I can rant and rave I guess forever, but I don't want it going down to the point where, okay, you know, if it has to be this high that to be seminude, it's...you can't go to a swimming pool. You know, if it has to be covered this or down below, most every cocktail waitress in town is going to have to redress and it says bar, restaurant. You know, it doesn't say, just my types activity or regular and it just says bars, restaurants, or similar businesses. It's...you're going to have to redress every cocktail waitress and bartender in town. Then after that what are you going to do, make them quit wearing lipstick and hairdo and I don't know where it's going to end there, but that's all I have to say really. I appreciate it. [LB443]

SENATOR KARPISEK: All right. Thank you, Mr. Semler. Any questions? Seeing none. Thank you. Any further opponents? Seeing none. Anyone neutral? Welcome. [LB443]

GARY KRUMLAND: Senator Karpisek, members of the committee, my name is Gary Krumland. It's G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities, appearing neutral just to make a couple comments. There are several cities across the state that have adopted regulations regulating all businesses, and when a couple of the city attorneys read the green copy they were concerned that this may preempt the local regulations. And I know in talking to Senator Christensen, that wasn't the intent. And if you look at the amendment that he offered, Section 5 on page 10 clearly states that this does not preempt the local regulations and we appreciate that being included. And we'd support that amendment to make it clear that a city can still do their own regulation even if something passes in the Legislature. [LB443]

SENATOR KARPISEK: Thank you, Mr. Krumland. Any questions? Seeing none. Thank you. Further neutral testimony. Welcome. [LB443]

HOBERT RUPE: Thank you, Senator Karpisek, members of the General Affairs

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Committee, my name is Hobert Rupe, H-o-b-e-r-t, last name is R-u-p-e. I'm the executive director of the Nebraska Liquor Control Commission. The commission is seeking a neutral position. We're not, you know, underlying the purpose of the bill. However, there are a couple technical aspects which we at least thought there may be some concerns with. And I heard Senator Christensen say he'd reached out to a lot of people that try to fix them. Well, he never got ahold of us and so hopefully after this that might be rectified. A couple of concerns we have, first of all, I'll sort of...Dave Bydalek spoke earlier. Dave and I worked together, he for nine years, me for ten years as Assistant Attorney Generals. And I also testified in front of both the Nebraska Supreme Court and the Eighth Circuit Court of Appeals. And although he was correct in saying that there is no regulation in statutory scheme, there is a rule of the Liquor Control Commission which does prohibit physical contact from the licensee's agents or employees and its customers involving any kissing or any touching of the breast, buttocks, or genital areas. I was the Assistant Attorney General assigned to the commission when that was tested by the Nebraska Supreme Court and that was upheld. So just to make sure there is at least some regulation regarding, you know, the type of contact which can take place, but it's through a rule not through a statute. Where the commission might have some concerns is on the distance requirement. As you're aware, the Liquor Control Commission, and I'm speaking primarily here just about the alcohol license holding bars. You know, we have no...we don't care about the book stores or any of the other novelty stores or anything like that. We're just wondering, you know, that there might be potential conflict within certain aspects of the law. As you're aware, we look for certain...to get a liquor license, you can't be within 150 foot of a church. All righty. The Supreme Court in a 1956 case said that's from external wall to external wall. And so when a licensee comes to us, they don't tell us what kind of business they're going to run. Some of them we can tell from the name perhaps or if there's a filing of a protest, but if there's not a protest or something comes before us, we'll be looking at that standard and we'll probably issue a license for that. Well, there might be something within the...I believe the quarter of a mile was the first or 1,000 feet, we're not looking at that. I'm not sure who is supposed to be looking at that aspect. I mean if they're looking to get a liquor license, is this going to be changing some of the existing liquor license statutes or is it going to be adding to it? And if it's going to be adding to it, I'm thinking there might be more of a fiscal impact than the Nebraska State Patrol originally contemplated because, you know, going into certain areas trying to determine whether a place is a church, there's been litigation on that. A lot of the storefront churches within 150 feet. I mean, I'm not sure how if it's broadened out than that, if it's going to be part of the liquor act it's going to be problematic and so I was willing to...that was a concern because you're going to generally have to read statutes in harmony and provisions within harmony with each other. The other issue we have is on the enforcement side. I'm not sure if the proposed law anticipates in calling the local county sheriff, but I know if there's an alleged violation at a bar, whose phone's probably is going to be ringing is going to be either mine or Sgt. Costello's back there. And so I'm just wondering if we're going to be sending our already stretched Nebraska State Patrol

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Liquor inspectors out to measure whether something is five and a half feet or six foot on doing the rule or regulation going into it, and I'm just not seeing there any provision for covering that added expense to the state dealing with complaints. The other issue which doesn't seem to be addressed...to tell you the truth, we have more problems from an enforcement standard involving either sales of, to physically intoxicated or the touching rule that I said earlier, not to permanent establishments like Mr. Semler or Mr. Rowe's, because I'll tell you, I think Mr. Semler has had two violations in 26 years in front of the commission, but it's the traveling shows. There's a lot of traveling shows which do a circuit. They'll go around in small towns. They'll be there one Friday a month. They'll be going around. Those are both male and female dancers, a lot of times. And a lot of times because there's a lack of knowledge and professionalism, those generate a lot more complaints than the permanently licensed establishments. I'm not sure if that's contemplated in this act. I know the amendment said...defined regularly. Well, you know, is once a month regular or is it once every six months depending on what's going on. So I just think there's some significant enforcement concerns. And for the commission, at least, as to liquor license laws, as I said, we don't inquire into the license currently what type of business they're going to have. Usually we can get a rough idea based on the type of license they ask for, whether they're going to be an on sale, off sale, full service bar, or beer only. But so that we had some concerns regarding some possible conflicts within the law and I'd be happy to answer any questions regarding my testimony or anything else you would have. [LB443]

SENATOR KARPISEK: Thank you, Mr. Rupe. Any questions? Senator Friend. [LB443]

SENATOR FRIEND: Thank you, Mr. Chair. Hobie, I passed a note to Josh earlier and we kind of looked at each other funny. You might have an answer for this. This first section... [LB443]

HOBERT RUPE: That's always dangerous, Senator Friend. [LB443]

SENATOR FRIEND: Yeah. The first section of the amendment to the green copy, there's language in here that is strange to me but find...what it's more or less saying is that look at all these interpretations, findings, and narrowing constructions incorporated in cases and it gives, there's 30, 50, 80, 100 cases in here. What happened...is it a good idea to have this stuff in our revised statutes? What happens if the Fantasyland Video, Inc. v. County of San Diego in the Ninth Circuit is actually thrown out? Do we have to go into our statutes, and when these type of things are...this might seem trite, but I don't think it is. [LB443]

HOBERT RUPE: Yeah. [LB443]

SENATOR FRIEND: I've been doing this for seven years and I don't remember us citing a bunch of legal findings in our revised statutes. [LB443]

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HOBERT RUPE: Well, I guess I would answer this more...I'm not, you know, 100 percent sure about some these cited cases. I know that at least in more, in cases which are going under Liquor Control Act are begging for trouble because of the Liquor Control Act it's one of 50, actually 54 special unities. Every state is different. They might be basing it upon a factor of law which is not found within Nebraska law. And so I would be very hesitant to do a laundry list. I mean, I would probably echo Ms. Miller's earlier comments. I mean, if you wish to have, to make that determination that there are secondary offense, effects, you need to do what a lot of these, not so much the court cases but some of the other...some the findings of local governing bodies did and they looked at and do they exist. I mean, there's...I think you can't avoid the heavy intellectual lifting by merely citing cases in other jurisdictions because you have no idea what the standard was, what the applicable statute was. I think it's very dangerous to go down that route. [LB443]

SENATOR FRIEND: Okay. Thanks. [LB443]

SENATOR KARPISEK: Any further questions? Seeing none. Thank you. Any further neutral testimony? If not, Senator Christensen, to close. [LB443]

SENATOR CHRISTENSEN: Thank you. Appreciate everyone's time. Just address a few of the questions that's come up. The reason this has all been listed in here, these different cases and things, because it helps the prosecutors prosecute. It's been...if you look at some of the cases, a lot of them, the state can't do any thing right now without, unless they have a liquor license and yet we have some bars that don't have the liquor license that have the sexually-oriented businesses and it just brings all the different scopes in together. You know, and to the question on if it's going to affect alcohol sales, things that way, this bill does not stop liquor from being sold until 1:00 even if the dancing has to stop at 11 by the green copy or 12 by the handed out white copy. So that is the intent on that part there. To clarify, Senator Cook, you were right in your reading of the green copy but the white one does correct it in Section 3(d), page 8, of the amendment on clothed and the six foot. And then I guess I didn't write down the area but for Senator Price on talking about performing arts being excluded and stuff in theaters and things this way, you know, basically they're going to be exempt unless that is their total practice because you've got to be greater than 10 percent in the green copy or 35 percent in the white copy of businesses dealing with sexually-oriented business side of things to be classified into that type of business. There is a standard set up for what qualifies in there. And, you know, we had testimony here saying the affects of sexually-oriented businesses are different in every location and area and I guess I'd differ with that. The affects that it has on women is the same if it's in a small town regulated one way or in a larger town. The affects it has on men is very documented and can be an extreme battle. And so I think there is affects to all of it. And you know, there was mention to we're going to have to change the dress of cocktail waitresses. If

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you read the language as it's defined, cleavage is not part of it. It is very clearly defined in the definitions of what is seminude or full nudity and his comment about changing every cocktail waitress in the state I think is very well addressed in there. So if...I guess with that, I guess I would be glad to entertain any additional questions that you have. [LB443]

SENATOR KARPISEK: Thank you, Senator Christensen. Any questions? Senator Coash. [LB443]

SENATOR COASH: Thank you. Senator Christensen, crime was cited several times as a secondary affect of the businesses affected by this bill. Where are the police today? I was kind of looking for a police chief or somebody. I mean, every time we hear something about liquor or something like that we have the police come in and say, you know, this is a problem, the crime, because of this. Did you talk to any police officers, law enforcement folks, saying, yeah, this is a problem around these businesses, we have worse crime, we pick more people up. Things like that. Did you have any conversations with law enforcement about this bill? [LB443]

SENATOR CHRISTENSEN: I didn't personally. What I can say is, there's several studies in that one handout that addresses increased crime around there. And that's what I alluded to earlier that even if a man is mugged or had money stolen from him, he'll never admit it, turn it in because of the consequences of it being public that he was in a strip joint and it's going to hurt him and his relationship with his family, so that's just something they'll let slide. And criminals have come to realize that that's a safer place to go attack people and that's why some of the studies were handed out. [LB443]

SENATOR COASH: Gotcha. All right. Thank you. [LB443]

SENATOR KARPISEK: Thank you, Senator Coash. Any other questions? [LB443]

SENATOR CHRISTENSEN: I might add one more thing if I can. And if...for the question regarding the six foot buffer zone, what the studies have shown is that the more activities which are permitted on the premises, the higher the rate of secondary effects. The six foot buffer zone relates to the findings as well as any harm which may result to the dancer. It's just based off of them studies again that were held, handed out. [LB443]

SENATOR KARPISEK: Any other questions? Seeing none. That will end the hearing on LB443 and end our hearings for today. [LB443]

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Disposition of Bills:

LB411 - Placed on General File.
LB498 - Placed on General File.
LB500 - Placed on General File.
LB443 - Held in committee.

Chairperson

Committee Clerk