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General Affairs Committee
September 16, 2011

[LR279 LR301 LR303]

The Committee on General Affairs met at 1:30 p.m. on Friday, September 16, 2011, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR279, LR301, and LR303. Senators present: Russ Karpisek, Chairperson; Dave Bloomfield; Lydia Brasch; Colby Coash; Tyson Larson; Amanda McGill; and Paul Schumacher. Senators absent: Bob Krist, Vice Chairperson.

SENATOR KARPISEK: Okay. Welcome to the General Affairs Committee interim study. For the record, my name is Senator Russ Karpisek and I live in Wilber. Today is our liquor day for our interim studies, and we will take up the resolutions in numerical order, starting with Senator Howard's LR279. Committee members joining me today: On my far right is Senator Brasch of Bancroft; Senator Bloomfield of Hoskins; Senator Krist had to leave and go back to Omaha; Senator Coash of Lincoln. We have committee counsel Josh Eickmeier of Seward. On my close left is Senator McGill of Lincoln; Senator Schumacher of Columbus will be joining us shortly--we saw him going to lunch; and then we have Senator Larson of O'Neill, and also have Christina Case as our committee clerk. If you are planning on testifying, please pick up a sign-in sheet that is on the table at the back of the room at both entrances. Please fill out the sign-in sheet before you testify. When it is your turn to testify, give your sign-in sheet to the page or to the committee clerk. This will help us make a more accurate public record. If you have handouts, please make sure you have ten copies for the page to hand out to committee members and staff. When you come up to testify, please speak clearly into the microphone. Please tell us your name and please spell your name, even if it seems an obvious spelling like Karpisek. (Laughter) Also please tell us whom you are representing, if anyone. Please turn off your cell phones, pagers, or anything else that makes noise. Please keep your conversations to a minimum or take them out in the hallway. I appreciate your cooperation on that. We will not be using the lights today, but I do ask that we keep it fairly short. Please don't repeat things that we've already heard, but we have some good studies here and I hope we have some good talk about it. We

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also will not be having any pro or con. We'll just have people come up in any order they wish. I understand Senator Howard is unable to attend today's hearing so her legislative aide Fran Cassell and administrative aide Dave Schinzel will be presenting in her place. Are you two going to present together or...? [LR279]

FRANCESKA CASSELL: Yes. I think Josh said that was easier, so. [LR279]

SENATOR KARPISEK: If that's okay with you, we'd appreciate that. Okay, when you're ready, you may begin. [LR279]

FRANCESKA CASSELL: (Exhibits 1 and 2) Chairman Karpisek and members of the General Affairs Committee, I am Franceska Cassell; that's F-r-a-n-c-e-s-k-a C-a-s-s-e-l-l, and I'm the legislative aide for Senator Gwen Howard who represents District 9. Senator Howard wanted to apologize to the committee for not being able to be here today. She asked that Dave and I provide the committee with the research that our office has found during the interim. I'll provide the research of what is being done in Nebraska, and Mr. Schinzel will provide information on what other states are doing. First, Senator Howard wanted me to thank you for holding this hearing to gather more information on the issue of salary and benefits for the three members of the Liquor Control Commission. As you know, Senator Howard introduced LB194 earlier this year, which this committee heard in February. The bill would eliminate the current \$12,500 annual salary paid to each member of the commission, and it would prohibit commission members from being eligible for health insurance and retirement benefits through the state. Senator Howard wanted to point out that these are benefits that you as members of the Legislature are not eligible to receive. This would save the state an annual \$81,161 per year. At the hearing for LB194, the committee was presented with the argument raised by State Auditor Foley in his attestation review of the Liquor Control Commission, dated June 23, 2009. The Auditor had concerns about the members of the Liquor Control Commission being permitted to receive health and other insurance benefits through the state insurance program. The committee was also given the

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Attorney General's Opinion, of December 9, 2010, that stated the commissioners must work at least one-half or more of the regularly scheduled hours to be eligible for benefits. We've provided both of those documents, again just to refresh your memories. The Attorney General's Opinion makes the determination that the issue of benefits for the commission should be determined on the number of hours worked. The Auditor's report provides the answer: The commissioners do not work regularly scheduled hours. Based upon information provided to us by management of the commission, the commissioners work approximately five days per month. In addition to the Auditor's report and the AG's Opinion, I'm also providing a list of the over 100 state boards and commissions with their compensation and benefits. You'll note that no one serving on these boards receives state health insurance benefits. The Liquor Control Commission is the only part-time board or commission that gets a salary, benefits, mileage, food, and hotel expenses paid. This is a difficult issue for this committee to consider, but Senator Howard believes that the taxpayers of this state are demanding that we spend their tax dollars efficiently, and she does not believe that the members of the Liquor Control Commission are doing the amount of work to justify the \$12,500 salary when compared to other boards and commissions that do similar work for no pay. A board that has a comparable work load is the State Board of Education. They receive no compensation and are only reimbursed for actual expenses. The argument is going to be made that if the salary is eliminated, the state will not be able to get qualified people to serve in these positions. Senator Howard, frankly, does not believe that this is the case and it is not the case in many states that do not pay their commissioners. We have no shortage of citizens willing to serve the state on other boards and commissions that pay no salary. There are many Nebraska citizens out there willing to serve without pay or benefits. Senator Howard also believes it would be prudent for this committee to look at the hotel and travel reimbursements for commissioners as a possible area for additional savings. Senator Howard previously brought to your attention the regular \$250 hotel bills for commission members and travel expenses in the thousands of dollars to attend conferences. Reasonable citizens would expect a commission to pay for the expense of a hotel room out of their own pocket, if they choose not to commute

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home, especially if he or she lives in Omaha or near Lincoln. Senator Howard feels it is impossible to justify this kind of spending to the taxpayer. The fiscal note for Senator Howard's LB194 is also being presented to you. By eliminating the salary and benefits for the Liquor Control Commission, the state would save a total of \$37,500 in salaries and \$43,661 in benefits each year. This amounts to a total of a savings of \$81,160 annually. I will now turn it over to Dave to present the research found on what other states are doing in the regulations on liquor licenses. Again, Senator Howard wants me to thank you for having today's hearing. [LR279]

DAVE SCHINZEL: My name is Dave Schinzel; that's D-a-v-e S-c-h-i-n-z-e-l, and I am on Senator Howard's staff. And Senator Howard asked me during the interim to look into what other states do as far as liquor commissions or boards and how they compensate them and what benefits they provide them. So during the interim I contacted the 49 other states and the District of Columbia to find out how each of them handles the licensing and oversight of liquor licenses in their states. I am providing...you'll have a handout, like a spreadsheet, providing the results of what each state told us they do. I'm also providing you some maps that show some of the results, too, which I'll get in better detail. Each state was asked the following questions: Did they have a board or commission to oversee the liquor licensing process? Did they pay that board or commission members a salary? Did they provide benefits to board or commission members? Were the board or commission members political appointments? And finally, were the board or commission members considered full-time employees? I'm also...you will notice the various responses from each state on the chart, and I'm also including a map that states the pay for commissioners over \$2,500 per year and a map of states bordering Nebraska and whether they have a board or commission. Of the 50 states and the District of Columbia, 28 have commissioners or boards at the state level to oversee liquor laws; 23 states, mostly in the western half of the United States, have no commission or board. In fact, the only two states west of the Mississippi River to have paid commissioners are Nebraska and Washington State. Six states, Wisconsin, Rhode Island, New Jersey, Maryland, Hawaii, and Arizona, leave the

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oversight of the liquor laws with the local governments and not the state government. There are currently 18 control states which are in bold caps on your handout. Maryland has two control counties but is not listed as a control state. Control states are divided into two categories. The first prohibits the sale of liquor in private stores, limiting sales to state-owned outlets only. These states are Alabama, Idaho, New Hampshire, North Carolina, Pennsylvania, Utah, Virginia, and Washington State. The second group of control states permit the sale of liquor in private stores, but the state acts as the wholesaler, setting prices and the product selection. These states are Iowa, Maine, Michigan, Mississippi, Montana, Ohio, Oregon, Vermont, Wyoming, and West Virginia. It is logical to expect that the boards and commissions in control states would have more responsibilities, given their involvement in wholesale and retail operations. For example, the members of the Pennsylvania Liquor Control Board are paid \$71,000 per year. However, this board is considered a full-time state position and is responsible for the operation of over 500 state liquor stores, over 1,000 employees, its own law enforcement agency, and \$2 billion in annual revenues. In Virginia, commissioners are paid a \$130,000 annual salary. Again, the board members are full-time state employees and are responsible for the operation of 330 state-owned liquor stores as well as their own police force and hundreds of employees. The only state west of the Mississippi River that pays its commissioners, other than Nebraska, is Washington State. The Washington State Liquor Control Board is also a full-time position and is responsible for the operating of 164 state liquor stores and thousands of employees. In reality, these commissions serve more as a board of directors than a political body. There are also several control states that either have no board or commission or, if they do, pay only a small stipend or per diem. Alabama, Utah, Idaho, Iowa, Mississippi, Montana, Oregon, Vermont, Wyoming, and West Virginia are all control states that have no commission or pay less than Nebraska. If you look at the handout I gave you that has the map of the United States, the states in white, including Nebraska, have a board or commission and pay their commissioners more than \$2,500 per year in salary. There are a total of 15 states in white. Three of those states, Tennessee, Maine, and Alabama, pay less than Nebraska. And you will notice that on the Alabama, the governor has the ability to

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eliminate the salary. And from the response I received from Alabama, because of their budget crunch, he did eliminate their salary. Of the 15 states, nine are control states. Three of the biggest states, California, Texas, and Florida, have no paid commissioners. If you look at the map of our neighboring states, you will notice that Nebraska is the only state that pays its liquor commission any salary or benefits. In fact, South Dakota, Wyoming, Colorado, Kansas, and Missouri have no commission at all. While Iowa does have the ABD commission which has five appointed members, they are only reimbursed for expenses. Even New York, which has a long tradition of well-paid boards and commissions, has taken steps to eliminate the salaries. In August, New York Governor Andrew Cuoma eliminated the \$90,800 salary for two of the commissioners of the liquor authority board and replaced it with a \$260-per-meeting stipend. A copy of an article from the Albany Times Union, detailing these cuts, gives a good summary of why Governor Cuoma cut these salaries. Senator Howard hears almost on a daily basis from her constituents how they want the Legislature to cut needless spending. Senator Howard believes eliminating the \$81,000 a year we are currently spending on salaries and benefits for Liquor Control Commission members is something that could be cut. Again, Senator Howard wanted me to thank you for having this hearing and considering this issue. [LR279]

SENATOR KARPISEK: Okay. Thank you, both. Lots of good information, Dave. Thank you. And that last sheet just, since it's interim study, I think I'm going to keep that for the gambling hearing next time, because that looks about the same for gambling all around Nebraska, but. So thanks. You did a little work for me. Do we have any questions? Senator Larson. [LR279]

SENATOR LARSON: How much was the benefits each year? I missed that. [LR279]

FRANCESKA CASSELL: For the Nebraska commissioners? [LR279]

SENATOR LARSON: Um-hum. [LR279]

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FRANCESKA CASSELL: Um... [LR279]

DAVE SCHINZEL: It's on the fiscal note that should have been included in the packet.
Was it 42, 43 something? [LR279]

SENATOR LARSON: Thank you. [LR279]

SENATOR KARPISEK: Is that all? [LR279]

SENATOR LARSON: Yeah, that's fine. Thanks. [LR279]

SENATOR KARPISEK: Okay. Any other questions? Seeing none, thank you. [LR279]

DAVE SCHINZEL: Thank you. [LR279]

SENATOR KARPISEK: Auditor, do you want to go next? Welcome. [LR279]

MIKE FOLEY: (Exhibit 3) Thank you, Senators. Good to be with you today. For the record, my name is Mike Foley. Mike is the usual way, M-i-k-e, Foley, F-o-l-e-y, Nebraska State Auditor. I want to begin today by expressing a word of appreciation to the many citizens of our state who step forward and express their willingness to serve on one of our many boards and commissions. Over the years that I've been in Nebraska state government, I've met quite a number of highly talented people who have stepped forward and said, "Yes, I'd like to serve. I can't give you full-time service but I could be on a board or commission and help out in some way." And they sure do. They do a great job for us and I'm very grateful for all they do for our state. I've circulated to you a copy of the, just one page out of the Nebraska Benefits Manual as published by our Nebraska Department of Administrative Services. One of the most costly fringe benefits paid to employees is, of course, the health insurance benefit. And that would be true, of

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course, for any other employer as well. The state's health insurance coverage for our employees is a self-funded plan, which means that when I go to the doctor and I receive a medical service, it's the people of Nebraska who pay the doctor's bill; not an insurance company. It's true that Blue Cross administers the paperwork but they don't pay the doctor bill. It's the people of Nebraska who pay the doctor bill. The annual premiums for the coverage in our state, for our state employees, is shared by the state. They pay 79 percent and the employees pay 21 percent. And the DAS manual sets forth a two-pronged test for the provision of who qualifies and who does not for the health insurance benefit. First, employees must be permanent and working at least half time. Secondly, employees who do work half time or more but less than full time can receive the benefit, but they must pay a pro rata portion of the state's share. It's only the full-time employees who receive the full benefit. So if you're a half-time employee, you can get the benefit but you have to pay a pro rata portion of the state's share. In the present case involving the Liquor Control Commission, as we did our audit, we found no audit evidence whatsoever that the commissioners were working half time. The commission holds hearings for two days a month. And even if you allow for additional time for some e-mailing and communications and so forth, we simply don't believe that the commissioners are working on state business half time. During our audit, the commissioners had no evidence to support that. I've been informed that as of January 1 of this year, the commissioners have been tracking their time, but those time records have not been submitted to the agency for review. And I should point out that of the three members of the board, two are taking the health insurance benefit and one member has declined the benefit. Our audit found that the commissioners were working...it was being provided the health insurance benefit just as though they were working a full 40-hour full-time schedule. They're not--not even close to it. We recommended at that time, that the agency discontinue the benefit or get a legal opinion from the Attorney General saying that they were indeed qualified, which we doubted. The AG has now rendered his opinion. It's been published and it completely concurs with our analysis and our understanding of the law; namely, that employees must work at least half time. If you work half time, you get it. If you don't work half time, you don't

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qualify. It's really that simple. So what if the commissioners could show that they are working half time? In that instance, the agency is still not handling this matter properly. Because they're providing a health insurance benefit just as though these people were full-time employees, they're not making the pro rata adjustment as is required by DAS regulations and is required by statute. Making that pro rata adjustment would significantly change the cost of providing this benefit. In summary, the State Auditor believes the agency is not handling this question properly; the Attorney General has issued a legal ruling that's consistent with our understanding of the law; and the Department of Administrative Services has published a benefits manual which backs up our understanding of the law. I stand firm in my original conclusion that the Liquor Control Commission should discontinue this benefit. Once again, I'm very grateful to the citizens of our state who step forward and offer to serve on these boards and commissions, including all the members of the current Liquor Control Commission. They are fine individuals that are rendering good service. I wish them well. I thank them for their service, but it's important that that service be rendered in accordance with law. Thank you, Senators. [LR279]

SENATOR KARPISEK: Thank you, Auditor Foley. Do we have any questions for the Auditor? Senator Schumacher. [LR279]

SENATOR SCHUMACHER: How long has this practice been going on of the commissioners getting...? [LR279]

MIKE FOLEY: Excellent, excellent question. We researched that, and to the best of our understanding, this has gone on since the 1970s perhaps. And maybe, maybe back in the 1970s the nature of being a Liquor Control commissioner was very different. Maybe it was more of a full-time job. I don't know. Nobody seems to know. But in today's world it's not. [LR279]

SENATOR SCHUMACHER: Thank you. [LR279]

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SENATOR KARPISEK: Any other questions? Have you spoken to any of the commissioners about this, or just the...? Who have you spoken to? [LR279]

MIKE FOLEY: Well, we conducted an audit that's actually a couple years old now, and the membership of the commission has changed somewhat over the two years, and, at that time, those commissioners were not working half time. Whether they are today or not, I don't know. We didn't have any documentation to look at that would show that. [LR279]

SENATOR KARPISEK: And so, I guess, why haven't we heard about the audit from two years ago? [LR279]

MIKE FOLEY: Well, the audit was...per law, when we issue an audit, we issue a copy to the Committee of Jurisdiction and it's out publicly on our Internet, so it's been out there for a couple years. And since the issuance of the audit, they went and proceeded to get the AG's Opinion, which was just issued this past December, and so that's where we are. [LR279]

SENATOR KARPISEK: Okay. And just so, the half-time thing, so we get it straight. If it's half time, then you should pay half of the premium? [LR279]

MIKE FOLEY: They would pay...yeah, there's a calculation for how you make it a pro rata portion of the state's share, whether it's half time or 60 percent or 70 percent, whatever it is, depending on how many hours you could document that you're working. But the first test is to prove that you're serving half the time. [LR279]

SENATOR KARPISEK: Very good. Thank you. Any other? Senator Schumacher.
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SENATOR SCHUMACHER: Half, meaning 20 hours, is that the (inaudible)? [LR279]

MIKE FOLEY: Yes. Yes. [LR279]

SENATOR SCHUMACHER: Okay. [LR279]

SENATOR KARPISEK: Any other questions? Seeing none, thank you, Auditor. [LR279]

MIKE FOLEY: Thank you, Senators. [LR279]

SENATOR KARPISEK: Okay. Anyone else who would like to testify? Welcome. [LR279]

HOBERT RUPE: (Exhibits 4 and 5) Welcome. Good afternoon, Chairman Karpisek and members of the General Affairs Committee. My name is Hobert B. Rupe. I'm the executive director of the Nebraska Liquor Control Commission. And I'll go through a couple of my prepared statements, and then I'll try to answer some of the questions that have come up with the previous testifiers, as well as answer any questions from the senators. First, is just to make sure (inaudible) because I do have my...I am present. Chairman Bob Batt, Commissioner Janice Wiebusch, and Commissioner William Austin are present. And just because I over...we tried to compensate, I did send out a proper Open Meetings law, because whenever two or more of them are anywhere talking about liquor, I want to make sure that I'm in compliance with the Open Meetings Act. The first thing I'm going to look at is people ask...and, please, if I start going too far into ancient history, please catch it. Remember, I was an undergrad history major and I have that problem at times. First, I'll ask Josh to send out copies which, hopefully, I hope the senators will find as illuminating as I did when I first read it, maybe about four or five years ago. The question is: Why and how much do the commissioners get paid? Okay, well, for the why, perhaps the best treat is for you to look at it to get an understanding is what Josh is handing out right now. It's a book called Toward Liquor Control. Toward Liquor Control was first published in 1933. John D. Rockefeller Jr. commissioned the

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publication of the book. Mr. Rockefeller was an ardent prohibitionist at the time, but he was of the opinion that although Prohibition had succeeded in certain goals, i.e., getting it out of the saloon era league, it had created a whole other host of problems, and we all know them as the Mafia and everything else going on, as well as the mere fact that you had a large percentage of the population who basically ignored a federal amendment in the statute putting it forth. I'm actually happy an organization called the Center for Alcohol Policy has recently got the rights to republish Toward Liquor Control, so it's much more available to policymakers and everybody who is involved in it. I will say, when I first had my newest commissioner, Mr. Austin, read it, his response was "I'm glad to see nothing has really changed," you know, on some of the same issues they were dealing with in 1933. Now the only bad side about it, now that it's more widely available, my title is one of the few holders of arcane knowledge from having read the original '33 manuscript, is now going to be suffering. However, the key thing which you had to look at, is...and what Toward Liquor Control did was to source out the framework, and almost every state has picked parts out of that book in setting up its liquor control act, and you heard some of that when Mr. Schinzel testified. Many states did it differently. Some did the control state model. Some, like Nebraska, did licensing with an independent board or commission. Some states, like Missouri, for example, have a direct gubernatorial appointed position in charge of an agency within the government. So states did it in many different ways. Nebraska went with the idea that the proper way to look at this would be to do a independent board and commission. If you'll read through Toward Liquor Control, they very much were in favor of that, because you always have to look back what they were coming out of. They were coming out of Prohibition, which was full of graft, influence. And so they were trying to get high-quality people independent of local political concerns to utilize their best judgment when dealing with these very, you know, hard issues. We have to remember, alcohol is the only specific product listed twice in the U.S. Constitution in the 18th and 21st Amendments. One of the things that they emphasized was that those independent positions, besides being very independent, by having long terms of service, can only be removed for malfeasance in office, also be paid a salary to attract the high caliber of

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people. That's specifically, I believe, on page 45 of the book. Nebraska, like everybody else, 1935, followed that. And if you look at the Liquor Control Act today and the Liquor Control Act from that day, they are very, very similar. There are very similar qualifications for the three commissioners. One of the biggest is that the prohibition against, you know, having any ownership interests or any financial interests of any sort in a licensee, or receiving any gift, emolument, or compensation from anybody with a liquor license. And so if you...sometimes, if you're really bored, look at 53-105 to 53-113. You'll see, you know, sort of the qualifications of the commission and the restrictions placed upon them. One of the reasons why they're trying to be very independent is the nature of the job. Yes, they do have a policy decision, but the vast majority of their job is actually quasi-judicial. Without putting too sharp a point on it, they tell people in different cases what they can do with their own private property. Do they qualify for a license and are they able to get a license under the statute? Have they violated the law after receiving that one, and are they going to be suspended, canceled, or revoked for that? So a lot of what their statement does, I believe, is very unique or very rare amongst other state boards or commissions. Now as to how: How are they compensated? 1935--I believe you should have, I'll have a copy of this one I believe I sent around--they received \$4,000. Now, of course, in...you know, if you've got two or three different economists and ask them the same question, they're going to come up with different numbers. They are the numbers that we got after speaking with the University of Nebraska economists. If the commissioners were still receiving the same pay as they did in 1935, that \$4,000 would actually be \$67,108. During that time, as you'll see by that handout I've given you, and the yellow indicates when the commission was raised, and in the right column is sort of gives you what it should have been if you were trying to keep it at that \$4,000. So, in other words, in 1953, when the commission salary was raised to \$5,000, if they still wanted to have the same at \$4,000 benefits that they had in 1935, it should have been \$8,215. In '56, it was raised to \$6,500--still a little bit behind. And in '61, it was raised to \$7,000. If they wanted to be concurrent, it should have been \$9,200. In 1969 they get really close. The salary as raised to \$10,500. At the same buying power of \$4,000, it would have been \$11,292. Then in 1973 it was raised

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to \$12,500, and that's where it sat ever since. It hasn't been raised. It hasn't gone up. At that time, the salary, if you want to be comparable, it should have been \$13,600. Now the commission...you know, remember that, you know, the Legislature has the authority to change, act, do what they want. I mean I'm not trying to say you can't look at this. This is purely under the 21st Amendment within the jurisdiction of the Legislature to see how to handle this. I was giving you an indication that was the past history and how it was done. Now to answer a couple questions which have come up earlier: First off, I guess I'm going to have to disagree with Mr. Schinzel. I believe the...you know, depending on what they're called, I know that, at least, the California Board of Appeals board which hears appeals from license denials, they receive an annual salary of \$25,500--and last time I checked they were west of the Mississippi as well as other states. But that doesn't change the fact that a lot of different states look at it differently and a lot of states have decided how much do we feel these positions should be worth and how should it be handled. As to the benefits, as far as we could tell, back in the 1970s they've always been entitled to benefits. That's come over in the gubernatorial appointment letter, they should be paid a salary of \$12,500 and receive all benefits as an employee. That's how the commission has treated them in accordance with that. Mr. Foley did do an audit in 2009, and for the first time, that issue was raised. The commission acted in accordance with that audit and requested an Attorney General's Opinion. The Attorney General's Opinion, which you have, came down in 2010, in December. In January, I instituted a policy with the three commissioners that they needed to keep track of their hours. If Mr. Foley believes that we should do something more than that, we are more than happy to work with Auditor Foley to make sure that is being clear and transparent. You know, it is not an attempt to hide or keep what's going on in that regard, and I'd be more than happy to deal with them. But at that point, based upon the Attorney General's Opinion, you know, I was going on the fact that the three commissioners...if two...now, if two of the three commissioners say, we believe we are working more than 20 hours, I have the documentation. You know, I'm of the opinion, you know, that they are gubernatorial appointees in that position. I'm going to rely upon that. If I am in error of that, as the administrative head, I would be happy to work with

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the Auditor to clarify that issue. So that's sort of the history of why they were paid as opposed to other boards and commissions, how much they were paid, and what the current status in regarding the employment issue is. One thing I will remember to point out--this is the lawyer in me--that any changes that the...although the Legislature can make any changes they want to the salary, it really won't apply to any of the current commissioners in their current terms, in accordance with the constitution. So it would be for future commissioners or for reappointments in that regard. So I'd be happy to answer any questions. [LR279]

SENATOR KARPISEK: Thank you, Mr. Rupe. Senator Larson. [LR279]

SENATOR LARSON: You touched on the Auditor, his advice, real quick, and how you followed up with the Attorney General, and I'm happy to hear that you're now documenting the hours. If they don't reach the 40 hours a week for full-time employment, do you plan on following through with the rest of his opinion and pro rating their health insurance? [LR279]

HOBERT RUPE: I plan to work on the Auditor's to see the proper way. I mean if he...I'll be honest that he probably has better terms of the proper procedures. We worked very well with the Auditor. As I said, it was somewhat surprised and this was the first time this was brought up. I know, generally, we are quite frequently audited as being the second largest contributor to the General Fund. You know, they like to see and make sure that the money, the \$29 million that were coming in, is going to the right locations. So we are more than happy to work with the Auditor. [LR279]

SENATOR LARSON: So the answer is yes. [LR279]

HOBERT RUPE: Yes. [LR279]

SENATOR LARSON: If they're not getting the 40 hours,... [LR279]

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HOBERT RUPE: Oh, yeah. [LR279]

SENATOR LARSON: ...you (inaudible). [LR279]

HOBERT RUPE: We are a commission of law and intend to continue to operate in that way. One thing I wanted to say is, going back to the audit, is none of the three commissioners were ever talked to by the auditors. I spoke with the Auditor. They asked me how many times I dealt with them and I gave them my rough estimate. But I specifically said, and I believe the Attorney General's Opinion notified that they needed to talk to the Auditor. Because every time they get a call from a constituent or a complaint or something else, it does not generally, automatically, you know, create a report to me. So I think the three commissioners themselves can answer any questions as to what they do. We kind of...you know, liquor issues are dealing with outside of the actual two days of hearings. [LR279]

SENATOR LARSON: So it's two days a month, right, in terms of hearings? [LR279]

HOBERT RUPE: Well, generally we can usually get two days of hearings done. It's usually two full days, and there will be probably prep time before that. You know, these are relatively large...I one time called us the county court of administrative law. We generally will hear upwards of 45 hearings over that two-day period, as well as handling the administrative functions. [LR279]

SENATOR LARSON: Anybody...I mean we can all make the numbers say whatever we want and support our cause, so you brought in this Consumer Price Index and what that \$4,000 would be now is \$67,108. Are they worth that for two days a month? I mean that's what you're trying to...I know that...that's what you try to imply that that's compared to what they were paid in 1935. To me, you're implying that they're worth that \$67,108 for the two days a month. [LR279]

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HOBERT RUPE: I don't believe, if I have made that implication, I'm not. I'm not saying it. You would have to...you make the decisions whether they're worth it. You also have to remember, based upon the act I just referenced, the executive Attorney General is appointed by the three commissioners with the consent of the Governor. (Laugh) So I'm not going to imply whether my bosses earn or to what they're entitled to in salary. I believe that's a legislative function. [LR279]

SENATOR LARSON: I understand. But I just felt like that I thought I'd raise that. It felt that's what you were implying because that's what they were paid. And I understand that you pegged at the Consumer Price Index, but by doing that, you know, there's implications. I guess my next question is, what is, in your mind, the difference between your commission and other appointed commissions such as the State Board of Education...or other commissions? I guess the State Board isn't appointed, neither are the Regents, but they run for those offices. But is it because they are elected officials and they choose to go...? I mean, what's the difference? Why should your commission get the salary and get the benefits compared to the Regents and compared to the State Board of Education? [LR279]

HOBERT RUPE: Okay. Well, I can't really, like I say, the State Board of Education or the Regents. You know, they are elected. I believe the Regents salary, you know, is set by, you know, statute as well. But I'll look more as some of the other boards you might hear of. The commission...you know, a lot of those other boards, you know, Corn Board, Ethanol Board, as part of their membership, you almost, you know, by a certain percentage, have to be involved in that industry. And the purpose of those is, as a deliberative body, to promote those industries. Well, that's actually the opposite of what the Liquor Control Commission is. The Liquor Control Commission is to regulate and promote the health, safety, and welfare, and temperance. And also most of those other things aren't going in and telling somebody, "We're sorry, you've had this bar in your family for 20 years but you've violated the act too many times. We're taking your license

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away." Which happens. I mean the commission has a very clear quasi-judicial rule. They make decisions which, under the APA, are appealable to the district courts. And so I think in a lot of ways that's somewhat unique compared to most other commissions, is that quasi-judicial function where they can actually say we have certain controls over how specifically you're going to utilize your personal, your private property. [LR279]

SENATOR LARSON: And I guess one of my last ones are...I mean Senator Howard's aide might have made a mistake with California, but we still do have the math, and there's quite a few that either don't have commissions or their commissions aren't paid. And I know that argument is we do want high-quality officials serving on these commissions. Are the people serving on the commissions in other states not as good a quality as yours? Or are we going to get the same type of people serving either way, or...? [LR279]

HOBERT RUPE: All right,... [LR279]

SENATOR LARSON: Because it seems like they're getting people to still serve with... [LR279]

HOBERT RUPE: Okay. You know, it sort of depends on how you work it, different states, and I'll use two border states as an example. South Dakota has two people involved in alcohol and their parts of their tax, their Department of Revenue, collecting the excise tax. Everything else in South Dakota is local. Missouri has a director of public safety of which their alcohol administration is there. I have been the executive director for the Liquor Control Commission for eight years. I am now on my fifth director from the state of Missouri on liquor issues. I think if you're trying to look at a specific area of law which is somewhat complex, you want some longevity and some time for people to become experts in it, rather than just having the rotation of, you know, who's in favor and who's not in favor. [LR279]

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SENATOR LARSON: Well, I have no problem. I mean, obviously I have no problem with the Liquor Commission. I meant in terms of paying the board. I mean there are some states with boards that...that was my question and not you. [LR279]

HOBERT RUPE: They're...yeah. [LR279]

SENATOR LARSON: I think you do a great job, Hobie. You come here and you tell us everything we need to know and you answer our questions. I'm not...obviously, we're going to pay the head of our Liquor Commission. [LR279]

HOBERT RUPE: Oh, yeah. And what I'll say is, once again, you know, clearly, you know, the great thing about the 21st Amendment is the Legislature can set up how we're going to do this and how we're going to do it, I mean, and then the Liquor Commission, you know, enacts the will of the Legislature. So if you believe that the need for a salary at this point in time is no longer necessary, that's a legislative decision. The key thing is, if you're looking for...and what I try to say from a historical perspective, you know, back in 1935, you know, they wanted to make sure that these people, you were well paid enough, you know, under the assumption--and without putting too fine a point on it--that they were corrupt. You know, they were coming out of an era where, during Prohibition, where, you know, corruption was rampant. In fact, it had created part of the problem for the repeal where people didn't trust government, because some places enforced it, some places didn't. And so, you know, if certain states had gotten to the point they don't think that's necessary or Nebraska is at that point, that's a legislative call. That's the beauty of the 21st Amendment. [LR279]

SENATOR LARSON: Excellent. I think you're right. It was a much different time, the end of Prohibition and what we're in now. Thank you. [LR279]

SENATOR KARPISEK: Thank you, Senator Larson. Senator Bloomfield. [LR279]

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SENATOR BLOOMFIELD: Thank you. You said the commissioners are now keeping track of time. Have you seen those numbers and do you know roughly what we're looking at? [LR279]

HOBERT RUPE: I haven't seen them. What happened was, in January, it was our first meeting after the release of the Attorney General's Opinion, and I said, well, you know, you guys need to keep track of your hours because when we'll be coming up for open enrollment, whether you're going to continue to receive those benefits; we need some justification. I asked the two commissioners at that time...it was also weird, at that point in time we, Chairman Logsdon had retired. We had, as you know, Commissioner Tuma for 48 hours (laugh) and then he resigned. And then, you know, Commissioner Austin. So both of those two senators (sic--commissioners) are here. I mean they have assured me they're keeping records. You know, like a lot of times, they will be getting calls...you know, the way our commission is set up into difference geographic areas, they might be getting calls from people they might not want me to know about, because they might be saying, hey, this is an issue but I want to keep it on the low, I don't want to...because once they a complaint comes to me, it's I'm sort of have to, you know, forward it on for official issues. So they might be receiving issues or people asking questions who wish to maintain their anonymity. So I have deferred to the two of them, you know, as to whether they believe they need to share those with me. If the Auditor believes that that's probably inappropriate, and I'm, you know, being somewhat too trustworthy, I would be more than happy to work with the Auditor to make sure that something will work that will also maintain their ability to do their jobs. [LR279]

SENATOR BLOOMFIELD: Okay. In their conversations with you, since they started keeping records, are they telling you they're putting in more than 20 hours? [LR279]

HOBERT RUPE: Yes. Yes. [LR279]

SENATOR BLOOMFIELD: Are they approaching 40 or have they said? [LR279]

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HOBERT RUPE: I...would you have to ask him. On some weeks, I'm pretty sure that not only is he approaching 40 hours but Chairman Batt is probably exceeding 40 hours.
[LR279]

SENATOR BLOOMFIELD: Okay. Thank you. [LR279]

SENATOR KARPISEK: Thank you, Senator Bloomfield. Senator Coash. [LR279]

SENATOR COASH: Thank you, Senator Karpisek. Hobie, something you said earlier, you know, the quasi-judicial nature of the commission does set it apart a little bit. Are there...you know, lots of boards have expertise requirements for their commission. You know, you can't sit on the Dentistry Board and not be a dentist, for example. Are there expertise requirements under, for the Liquor Control Commission. Do you have to some...I mean are there some guidelines that try to keep these commissioners, keep their skill up, or what's set in statute to say this is the kind of commissioner we want to have in our state? [LR279]

HOBERT RUPE: Well, actually, in fact, you know, it's actually the opposite. You know they want to make sure they don't have any experience, at least current, actively, within the industry. You know, and that goes back to, you know, what was happening with the possibility of corruption. If I remember correctly, the statute is, I think it's 115-you know, good moral character. You know, they have to go through...you know, they have to be...they're bonded. I'm not sure if a lot of other commissioners have to be bonded. Our three commissioners do. But at the same time, because of trying to maintain political independence, no more than two can be from the same political party. So you can't just, you know, put one party on in exclusion of the other. Actually, Fosdick and Scott, the two authors of Toward Liquor Control, wanted to take party completely out of it. Well, back in 1933, there was a fight within both parties whether to have wet planks in their programs. So, you know, it's actually the other way. You're not supposed to have

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specific expertise. [LR279]

SENATOR COASH: No educational requirements or... [LR279]

HOBERT RUPE: No educational experience. No. [LR279]

SENATOR COASH: Okay. So it's laymen of good moral character is really the criteria. [LR279]

HOBERT RUPE: That is exactly what it is supposed to...yeah. Laymen of good moral character who don't have a financial interest in any way, shape, or how, in the liquor industry. In fact, there's an exception that specifically says they can actually own their own...have liquor in their own house and be a member of a club which might have a liquor license. Because it could be, arguably, you couldn't even belong to a country club if they had a liquor license, at one point in time. [LR279]

SENATOR COASH: Thank you. [LR279]

SENATOR KARPISEK: Thank you, Senator Coash. Senator Schumacher. [LR279]

SENATOR SCHUMACHER: Just a couple questions. In this chart, which is kind of a nice-looking chart, did you make any effort to price, into a similar column on here, the cost of health insurance? [LR279]

HOBERT RUPE: No, we didn't, you know, and it probably was an oversight on my behalf. You know, it's that, you know, the...like I said, at this point our...I mean we only have two or the three, so the actual expenditure was going down. But we didn't do that on the healthcare, so. Because as far as we can tell, they only started getting it in the '70s, and that's probably when healthcare benefits started being offered to employees. [LR279]

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SENATOR SCHUMACHER: You mentioned the character of the commission is different from other commissions because it's got a quasi-judicial role. The Accountability Commission, aren't they kind of quasi-judicial? [LR279]

HOBERT RUPE: I would consider the Accountability and Disclosure quasi-judicial. Probably the PSC would be considered quasi-judicial, I mean... [LR279]

SENATOR SCHUMACHER: Those guys are paid a killing. [LR279]

HOBERT RUPE: Well, yeah. I'm just sort of thinking of other commissions I know which do receive. So there you've got both of these (inaudible). [LR279]

SENATOR SCHUMACHER: Well, Accountability, do you know what they're paid? [LR279]

HOBERT RUPE: I don't know what they are paid. I don't know if they are paid or not. I'm not sure they have a caseload that we do, either. [LR279]

SENATOR SCHUMACHER: Are there a shortage of...I mean, do you have to go shake the bushes in order to find somebody to apply for to be a Liquor Control commissioner, or are there plenty of people who would donate some time? [LR279]

HOBERT RUPE: I think, you know, there might be some other people coming up behind me who might be able to better answer that. You know, I'm sort of in the weird position. You can't really go out and try to get one of your, you know...Hey, do you want to come be my boss? So when they're having openings, I haven't gone out and actively, you know, sought people. I haven't answered any questions from people who might be applicants. It's a...oftentimes, I believe it's a somewhat thankless job duty, because, you know, you're never going to make everybody happy one way or the other. You're going

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to make decisions which are going to be upsetting because of the nature. So I believe that it is...you know, that is a thing which might keep some people from office...and it does have certain time constraints, as we saw. Former Colonel Tuma had to resign because his new job wouldn't allow him to take it because of the time constraints.

[LR279]

SENATOR SCHUMACHER: And going to these interstate meetings and conferences I assume you go to, when you go to one that doesn't have pay for their commissioners, do they bellyache about not being able to get applicants? [LR279]

HOBERT RUPE: Not really. I mean, we never really dive into that. We're more looking at the nuts and bolts at those conferences. Later on, you'll actually...one of the things you'll hear will be about alcohol impact zones. That's something I got at one of those conferences for you to look at. So, you know, generally most of the people there, I mean, at the risk of sounding horribly bad, we generally turn into policy wonks and start looking at, you know, hey, this is my problem; do you have a problem with this issue as well? And you try to fix it and try to go from there. So on the...and that issue has never come up. [LR279]

SENATOR SCHUMACHER: Do you know what protocol they're using when they report so much time? I mean there's an old joke about lawyers: You spend two minutes and you record an hour because you bill in hour increments. [LR279]

HOBERT RUPE: No, I have not. I asked them, when they did it, I go, "You know, you need to keep time of your actual time. That would include phone calls or meetings." I know they (inaudible) or ride-alongs. Oftentimes, you just, to see, so they understand what's going on, they've done ride-alongs with the local law enforcement. So I've asked them to keep, you know, track of the actual hours, so. [LR279]

SENATOR SCHUMACHER: And finally, the back of this book says \$16.95. I trust

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nobody paid \$16.95 for this. [LR279]

HOBERT RUPE: No. [LR279]

SENATOR SCHUMACHER: Free? [LR279]

HOBERT RUPE: I was able to get that free, this time, for you, from the Center for Alcohol Policy. Perhaps because I've gone and spoke at their thing twice already for them, they decided to give me some copies of it. And just as funny one, I think one of the reasons they reprinted that was, I've been one of the people harping on people to reprint that because, you know, the old historian then becomes those who forget history are doomed to repeat it. And that tells us, if you look through there, you can almost see every single different state, where they picked and chose out of that book to put in their act. [LR279]

SENATOR SCHUMACHER: I don't have any further questions. [LR279]

SENATOR KARPISEK: Thank you, Senator Schumacher. Senator Brasch. [LR279]

SENATOR BRASCH: Thank you. How long have the other two...I know you're short one or... [LR279]

HOBERT RUPE: No, we have one now. We have...we're up (inaudible). [LR279]

SENATOR BRASCH: Oh, do you have one? Okay. How long have the two served, the...? [LR279]

HOBERT RUPE: Okay. The commissioners all serve staggered six-year terms. Senator (sic--Chairman) Batt is on his about...been there for about four and a half years. Usually May is the kickoff date. Commissioner Wiebusch has been on there for two years, and

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Commissioner Austin was just appointed this summer, so. So the next person who will cycle off, at least whose term would end, would be Chairman Batt in May of 2011...or May of 2013. [LR279]

SENATOR BRASCH: And do they have other occupations? [LR279]

HOBERT RUPE: They do. Currently, all three have other occupations. Chairman Batt is the executive vice president of Nebraska Furniture Mart. Commissioner Wiebusch owns her own successful real estate company in Kearney. And Commissioner Austin is an attorney with a law firm here in Lincoln, and he's a former city attorney for the city of Lincoln, so. [LR279]

SENATOR BRASCH: Do you believe that the salary is a factor in them accepting the appointment? [LR279]

HOBERT RUPE: You would have to ask them. You know, I mean, they've never, you know, shared that whether they would have taken the job at a lower or a different salary or not, so. [LR279]

SENATOR BRASCH: I have no other questions. Thank you. [LR279]

SENATOR KARPISEK: Thank you, Senator Brasch. Senator Bloomfield. [LR279]

SENATOR BLOOMFIELD: Is there any limit to the number of terms they can be appointed to? [LR279]

HOBERT RUPE: They can be reappointed. We...these...this is now...I've been the director for eight years, and at this point I now have three brand-new commissioners for me who weren't serving beforehand. Chairman Logsdon, whose term just ended in May, had served 12 years--two full terms. Traditionally, you know, the Governor, of late, has,

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you know, we will appoint you to one term and then maybe a second term. It's very rare...it's 12 years, so serving more than two terms is very rare. [LR279]

SENATOR BLOOMFIELD: But it can happen? [LR279]

HOBERT RUPE: It can happen. There's no term limit on it. [LR279]

SENATOR BLOOMFIELD: Okay. Thank you. [LR279]

SENATOR KARPISEK: Thank you, Senator Bloomfield. Any further questions? Okay, I have a couple. The statute. Is the statute...he needs a drink. [LR279]

HOBERT RUPE: Yeah. Sorry. [LR279]

SENATOR KARPISEK: Of water. (Laughter) [LR279]

HOBERT RUPE: Thank you for clarifying that. Got to love hay fever, right now. [LR279]

SENATOR KARPISEK: Is there a statute with the terms--and I should have asked this to the Auditor--but the salary and the benefits? [LR279]

HOBERT RUPE: There is a statute which specifically says what the salary is: \$12,500. And that's, you know, the same statute which is other than the number since 1935, is they have changed that on five earlier occasions. [LR279]

SENATOR KARPISEK: And then the statute is just for all employees. [LR279]

HOBERT RUPE: I believe the 20 hours per week is based upon the statute regarding your eligibility to be in the healthcare benefits. [LR279]

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SENATOR KARPISEK: All right. Thank you. What again did you say the Liquor Control Commission, how much liquor tax is there, roughly, in a...? [LR279]

HOBERT RUPE: Just under \$29 million. [LR279]

SENATOR KARPISEK: And your budget? [LR279]

HOBERT RUPE: About \$950,000. [LR279]

SENATOR KARPISEK: So not quite \$1 million. Okay. And I should have asked, too, but some states only have local control; they don't have a state? [LR279]

HOBERT RUPE: One of the classic examples of that is Nevada. Nevada does it by county. Hawaii does it by county. There's four different boards in Hawaii; each of the main islands has their own county board. And you've got Honolulu, which is very liberal, and then you've got Kauai, which is very conservative. So, you know, the states definitely took their opportunity on the 21st Amendment to say, what's going to work best in our state. And so most of the states are licensing states of some sort. Who licenses them? It could be an independent commission, could be a department agency or something like that, or a county. Most state people...most agencies...most of them have some state oversight. Like Colorado, has a...is what I would call a joint control...a joint...the city has to approve it and so does the state. If either one says no, neither one goes forward, as an example. [LR279]

SENATOR KARPISEK: And can you explain that, how we do that? [LR279]

HOBERT RUPE: Um-hum. What we do is, you know, the final decision is up to the commission; of course, subject to the review under the APA. When someone applies for a liquor license, once it's complete, there's four different state agencies that end up having their hands on it: the commission, of course; the Nebraska State Patrol for a

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background check; and the Department of Agriculture, Foods and Dairies; and the Fire Marshal. Also at that time, we send a copy out to the local governing body. If it's inside a city, it's the city council. If it's outside or an unincorporated village, it's the county. The county has 30 days to hold a hearing on that. They have to publicize it and have a hearing. And then they make a recommendation to the commission. Now if they make a recommendation to approve, unless there's something else that's flagged up either by one of the checks, generally that license can be issued as a matter of course. However, if the city or the county objects, files an objection, then automatically it's set for a hearing. It becomes a contested case in front of the commission, and so they'll look at whether the grounds for the denial are within the statutory scheme. They'll either approve or deny it. And then, of course, that's subject to appeal since it's a contested case. So, you know, there's three ways now--there used to be only two--but the three ways you can guarantee a hearing in front of the commission: if the city has recommended denial; if the commission receives a receipt of three or more written protests from citizens; and now, because of the change, if it's within 150 feet of a church. [LR279]

SENATOR KARPISEK: Senator Larson. [LR279]

SENATOR LARSON: I'm sorry, Hobie, but... [LR279]

HOBERT RUPE: I've got water. I'm all right. [LR279]

SENATOR LARSON: You mentioned the ride-alongs. I'm guessing that they are probably necessary to a certain extent to get a feel for what the Liquor Commission does. And I'm assuming you've been on one... [LR279]

HOBERT RUPE: Yes. [LR279]

SENATOR LARSON: ...and it was informative. How many...I mean are...can you get the

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feel with one or do you need to go once a week or...? [LR279]

HOBERT RUPE: You know, I think it sort of depends on what they're doing. I know that some of the commissioners have gone because, you know, they're looking...you know, although, you know, we're looking primarily at the license, you know, the general permit of the commission is to look at regulation within the alcohol industry. And so I know that they might do a ride-along for, you know...I remember two of them just within the last couple of months, each had separate ride-alongs, and they were doing stakeouts looking for underage buyers at certain locations, you know, where...and they were able to see that the car would pull up. You know, there was five spots right in front, wide open, and they're parking clear over here in the parking lot, and then one person out of the five is walking in. And, shockingly enough, when they made the stop, he was the only one who was 21. The other four were all underage and already drinking by then. And so they were trying to get an idea. So I think it depends. I mean, the law enforcement keeps changing depending on what issues is going on in that area.
[LR279]

SENATOR LARSON: So, but, I mean, not an exorbitant amount of ride-alongs are needed. [LR279]

HOBERT RUPE: I wouldn't say so. I'm not sure the police officers would want them around that long. (Laugh) [LR279]

SENATOR LARSON: Do you know, like, what the average is probably, or...? [LR279]

HOBERT RUPE: I think, you know, some of them have probably done three or four a year maybe, with different agencies, just to see what's going on. [LR279]

SENATOR LARSON: And an average one is eight hours? [LR279]

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HOBERT RUPE: Oh, I'd probably say four hours probably. Three or four hours, you know. Because, you know, and generally those... [LR279]

SENATOR LARSON: And that's, you would say, adequate to perform their job. [LR279]

HOBERT RUPE: Oh, to do a ride-along? I think it's part of their job. [LR279]

SENATOR LARSON: No, but to do three or four them, that's adequate. And I have no problem. [LR279]

HOBERT RUPE: I think a lot of it is going to depend on what's going on and whether they're being invited along, if they want to see what's on, you know, because, you know. So it's a...you know, to see what exactly, you know, the issues are. [LR279]

SENATOR LARSON: I just see as it a way to eat up hours, obviously, and an easy way to put...(laugh). [LR279]

HOBERT RUPE: Well, you know, I'm really not sure that if you want to eat up hours, you ride along with cops in the back of a cruiser on a Friday night, but. (Laugh) [LR279]

SENATOR KARPISEK: Senator Schumacher. [LR279]

SENATOR SCHUMACHER: The state, I think, has got lots and lots and lots of commissions, most of which are not paid, okay? Are there commissioners considered employees of the state? [LR279]

HOBERT RUPE: I'm not sure. I guess the best guidance you could get from that would be to look at the Attorney General's Opinion, I believe was supplied earlier. They go through the statutory thing about whether a person would be eligible for it as an employee based upon the nature of their job duties. And so you would probably have

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to...you sort of use that test against each different commission. [LR279]

SENATOR SCHUMACHER: Okay. So if you had a...I guess what I'm trying to get at in my mind, what's the difference between a commissioner who is a political employee...appointee, and has got some tasks to perform under the statute, and an employee who takes orders from on high? [LR279]

HOBERT RUPE: Well, I would...as I said--I actually think I might have a copy of it. You know, I think really it's going to have to look very closely, I mean, at the individual commission, I mean, what are their job duties. If your job is to, say, promote...you know, I'm not going to say anything...well, let's just pick on the Corn Board. I'm not sure what the Corn Board does. I'm not sure they have specific job duties, you know, enumerated within the statute that are there. I've never looked at it so I can't really opine as to whether they would be entitled to employees. I say the Attorney General's Opinion does give a good test analysis about whether you would be considered...whether your job duties would make you eligible. And clearly, the Attorney General said that, based upon the types of job duties they do, they would be eligible. But then do they work at least 20 hours? And then it's a two-part test. [LR279]

SENATOR SCHUMACHER: All right. They would be eligible if they were an employee. [LR279]

HOBERT RUPE: Yes. [LR279]

SENATOR SCHUMACHER: My question is, are these guys employees? Because if they aren't employees, then none of the Attorney General stuff... [LR279]

HOBERT RUPE: According to the Attorney General, the Attorney General said that based upon the definition of employee, the commissioners would be considered employees of the state. [LR279]

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SENATOR SCHUMACHER: I don't have anything (inaudible). [LR279]

SENATOR KARPISEK: Thank you, Senator Schumacher. Any other questions? Seeing none, we'll let you go. Thank you. [LR279]

HOBERT RUPE: Thank you. [LR279]

SENATOR KARPISEK: Anyone else to testify on LR279? [LR279]

ROBERT BATT: (Inaudible) work comp claim now. (Laugh) [LR279]

SENATOR KARPISEK: I guess you could since you're an employee. [LR279]

ROBERT BATT: Would you like to see my ID card? [LR279]

SENATOR KARPISEK: Welcome. [LR279]

ROBERT BATT: Thank you. I'll see if we can get some clarity on some of the things that we do. Hi. My name is Bob Batt, B-o-b B-a-t-t, and I'm the chairman of the Nebraska Liquor Control Commission, and I've been so since, for about three years and three months. I've lived in Omaha and grew up in Nebraska, born and raised, and I've been involved in various things for probably 30 years, both on a local level in Omaha, as well as state boards. This is probably my fourth different thing I've done for the state. Why am I here? About four years ago, I read in the paper and saw on television about an accident, I wouldn't call it an accident, but an occurrence that happened in Gretna of a 17-year-old boy, with two of his buddies in his car. They were going 110 miles an hour, drinking beer, and they ran into a ditch. He killed his two friends; he was injured. And he got a slap on the wrist. They sent him to juvenile court, regardless. If he had been, say, six months older, he would have been going down for motor vehicle homicide. I was

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outraged at the...not at what the judge did, but that's the judge's prerogative. So I found out that, at that time, that the Liquor Control Commission had an opening. And I thought about it for awhile and called a few people and consulted with them. And I'm not in the bar business, I'm not in the liquor industry business, etcetera. So I called the Governor and I applied for the position. I was the seventh person to apply for this position in the 2nd Congressional district. The first six were rejected by the Governor as not being suitable for the position. The Liquor Commission is not like the Corn Board or the Lottery Board. It's a very unique position. When I came into this position, they don't give you training. My training happened for the first 60 years of my life. It's a lot based on my time in business, as well as, you know, just understanding people and what's going on. So I applied. The Governor accepted me. I came before the General Affairs Committee. They approved it. The body of the Legislature approved it. Then you move into a different position than this job. We are, by its very nature, a very independent commission. We are...we don't work for the Governor; we work for the state of Nebraska. And it is our job to bring forth policy questions and ideas and initiatives to the General Affairs Committee and the Legislature as a whole. It's to hear on whether licenses should be approved or denied and whether or not they should be canceled, revoked, or suspended. So we get a lot of business. There's no shortage of business. But one of the things that we've done, I've done over the last three years, is we've tried to do some reforms, because there was some very antiquated parts, and we've had wonderful cooperation from General Affairs. They put forth our ideas and they're now enacted into law. My...the best one I'm most proud of is, we hadn't raised the fee for liquor license in probably 40 years. It was \$45. It costs the state \$325 to vet one license. So we said, I think we should raise our fees both for a shippers license as well as for a regular liquor license. And we did it. There's was no complaints to it. It's...you know, the state is recouping. It's more of an administrative deal. But what we've tried to do is to take a look at why things go right, why things go wrong, why when the DMV has such a beautiful system of vertical for minors and horizontal for adults, do people still get served in this state, and to propose new laws and legislation in order to get a more effective use. The first day I sat down on the job in a hearing, I got called a child killer, a

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felon, a whole bunch of names. And I said, "I just sat down here. I've never been involved in the business, so I think that this unwarranted attack is a little premature." And but it's been going on ever since. To tell you the truth, I don't care, because it is very unfounded in its whole basis. When we don't do something somebody likes, that they don't like, they'll will complain through various political officials, etcetera. But you have to be above that and say what does the law say. The first week we had a deal in Nebraska City where the winery had bacteria and salmonella. We shut them down on an emergency basis. They went to the Senator, and the Senator said, after looking it over, and said, "I agree with the Liquor Commission." You have to be able to make hard decisions. I don't get paid any more one way or the other. But what I do is what is right. That's the way I was raised by my family. That's the way I've operated in business, and that's the way I'm going to do it no matter what happens. We need to be very independent. I used to have people say, "Well, you did this because you're a Republican and you did this because you're a Democrat." Well, I'm now an Independent, because I don't even...I'm not politically aligned with anything. I am here to enforce the statutes. And, by the way, everything we do is statutory or it's Liquor Commission rule. We just don't think this stuff up. It's there. Plus, we have the Attorney General, and we have Hobie as our lawyer who gives us a legal opinion on what is the proper way to handle this administratively. When I applied, and I thought that I was going to retire from my other job--my day job, I call it--and the stock market convinced me that I ought to stay and be employed. That's the reason why I got into the benefits. I'm still working. Like I've said, I'm not in this for the money, and if I don't have the benefits that it will pay, I'm still going to do the job, because I'm very dedicated to what we do. I have taken a very active approach. And I want to tell you that we are not always on the side of, you know, of the majority. Sometimes you have a contrary opinion. But what I have found: Why did we have a state Liquor Commission and not let each city do what they want? Every time that we have found that cities get involved in the issues, the vote is by a political body that has to run for reelection. I neither have to raise money nor run for office, which makes me extremely independent and not subject to anybody's political whims. That's why we have a commission that oversees the whole

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state that is not involved in that. It works. I'm very proud of it and we've made wonderful changes in this thing. I do want to address to Senator Larson's question about what do we do out in the field. I found, a long time ago, in business, that you can't understand what's going on if you sit on your...in your chair in your office. I would go out and deliver furniture. I've sold customers on the floor. I have dealt with all kinds of problems. But I'm one who believes you have to go out on the front line not to participate, but to observe what your front line staff is doing. In this case, it's the State Patrol, the Lincoln Police Department, etcetera. We do this a few times a year, and we've had invaluable help on giving better decisions and understanding really what happens in a bar or a liquor store or a C-store or big events like the College World Series or the Nighthawks or the area surrounding the Nebraska football games. And because we stand and observe, we're better informed. It has nothing to do with hours. There's a lot of things that I myself, I mean I don't charge. It's...and it's not on the clock. But that gets back to the State Auditor. Two years ago, they did an audit and came up with these opinions. But to this day, and this is the first I've heard about what came out of that, no employee of the Auditor ever spoke to me, and there's no way that anyone could know what was going on or what my hours, my duties, or what I interact with, unless they talked to me. The Auditor's Office and I have had zero contact. So having an informed opinion on the number of hours that I spent in anything is absolutely impossible. And so I'm sitting here with amazement about knowing about what I do when they've never spoken to me. I just don't think that that's a way to run an audit. A lot of the things I do, do not involve my director. I had a call from a mother yesterday because her son drowned next to a bar, and she wanted me to investigate it. I am not the police. I am not the investigator. What I am is the person who will transfer that information to the proper law enforcement authorities. We have to stay alert, we have to stay educated, and we have to stay up-to-date, and it requires a lot of commitment. Now, what somebody else did in my position is one thing, but I know what I'm doing, and I'm going to do this job to the best of my abilities. My employer is nice enough that they give me a lot of time to do this. And what I do, and this may seem inconsequential, but when I get the money I get from this job, every year I have donated that back to the state, whether it goes to the

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Governor's Residence, to drunk driving education programs, to...I just gave to law enforcement awards. I do all kinds of things because I like to be charitable. I've earned it and I can give it away, and that's what I have done every single year. So this is not about money; this is about getting the job done. And I figured if I had some people who were irritated, that means I was doing my job right. But as of this date, with one exception, no senator, Governor, anybody in the industry, no lobbyists, ever tried to strong-arm me or say either you vote my way or there's going to be consequences, until now. And I have always done things with the utmost of integrity and I have had my reputation. They called for boycotts of us, or companies, just all kinds of bad things, because of the fact that I was trying to enforce a statutory provision on protestants when they lose. Under state law--not rules but state statute--we have to assess the amount of the penalty back to the protestant. It's all of \$48. But the law says you do, you do it. We cannot waive it nor would we. Some of the stuff that has been said today is not true, and I didn't even want to get into that, but the point is, I'm going to stand up for my reputation and that of my commission every day of the week. We have 11 people who work for us. We run a very lean, mean machine, and I'm proud of every one of them that works there. They don't have the ability to speak up for this stuff, but I do, and because I am independent and I am very forthcoming and frank on these issues, as you all are, I'm saying we have nothing to be ashamed of. Everything was done according to the rules, regulations, and statutes, as I was told at this time. I heard some different things today, but this is the first day I ever heard about it. You know, when you sign up and they say, sign here, sign here, sign here, and there's a new employee. If one of us was hurt on the job and, you know, somebody stood up and I took their license away and they stood up and wanted to punch me out, hopefully, the trooper in the back of the room could get to me before the licensee could. But it's happened. We've had some very ugly moments, but fortunately, we have good security when these things happen. I, as well as my other commissioners, we need some safeguards and that...of our employer. This is...it's a unique job, and I...and there's no way to compare it to any other board or commission that does it. You know, we deal with confidential material all the time, and we deal with federal/state law enforcement, county/city law enforcement. We

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know of investigations. We can't say a word nor do we. But that's why we're here to do the job, and I just want you to know that you've got three very dedicated people on the job, and I'll speak up for them any day of the week. I think I've said my piece on this. I don't want to belabor the point. But I want to do this. The end of the story is, I want to move on, no matter which way this goes, and I want to get to the reason to save, hopefully, by what we do, that we can save some other person's life. Whether we stop them from drinking and driving, whether we stop their access to alcohol or whatever it is, that's the job we're here for. And also we, our number two job is we are the custodians and the collector of \$29 million that goes into the state General Fund and the \$400,000 in fines that goes into the School Fund. You know, we're sort of like the protectors of the money, and we take it in and make sure that it goes in the right place. The state has got a good deal in this, and I want to keep it going. And anyway, thank you for your time. Questions? [LR279]

SENATOR KARPISEK: Thank you, Mr. Batt. Any questions? [LR279]

SENATOR LARSON: I'll go first. [LR279]

SENATOR KARPISEK: Senator Larson. [LR279]

ROBERT BATT: Oh, I've been waiting. I've been waiting. [LR279]

SENATOR LARSON: I don't think any of us were attacking the commission. I think we all respect the commission. [LR279]

ROBERT BATT: Oh, by the way... [LR279]

SENATOR LARSON: The interim study is relating to the compensation and benefits. And so I don't think any of us were attacking the commission. [LR279]

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ROBERT BATT: Senator Larson, I just want to say one thing: I never implied that it was somebody in this committee. I would never do that nor is that true. It has nothing...so I just want to make that clear. [LR279]

SENATOR LARSON: Okay. I think...but I just wanted to clarify. [LR279]

ROBERT BATT: Okay, we both clarified. [LR279]

SENATOR LARSON: I think we all have the utmost respect for the commission. What Senator...or Hobie said, that you worked for Mrs. B's or Nebraska Furniture Mart? [LR279]

ROBERT BATT: Forty-nine years. [LR279]

SENATOR LARSON: Forty-nine years. Full-time? [LR279]

ROBERT BATT: Not lately. [LR279]

SENATOR LARSON: Not lately. [LR279]

ROBERT BATT: I've worked there for 49 years and since I've been 14. I'm 63 years old. I get paid if I'm there one hour or 100 hours. I am on the road. I do all kinds of different things, so...but I also work at this job. [LR279]

SENATOR LARSON: And do you find you're...you said the Auditor didn't ask you, and I don't know. What is your hours, roughly, as a liquor commissioner, would you...? [LR279]

ROBERT BATT: They vary from week to week. [LR279]

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SENATOR LARSON: Average. [LR279]

ROBERT BATT: That's a tough thing, and I didn't...nobody said that we were going to get into that today, so I did not bring my records. [LR279]

SENATOR LARSON: If you had to throw a number against the wall? [LR279]

ROBERT BATT: And see what sticks? Since this is on the record, I cannot give you an accurate portrayal. Sometimes I've worked as many as 50 hours in a week. Sometimes I've worked 20 hours in a week. I count phone calls, e-mails, conferring, and now being chairman and dealing with...we have HR functions. You know, it's not just hearings. We also have the employees who we deal with, our legislative letters, etcetera. [LR279]

SENATOR LARSON: I understand. [LR279]

ROBERT BATT: I want to be accurate when I give it to you, and I don't have it. I can't give you an accurate... [LR279]

SENATOR LARSON: Fair enough. And I'm really happy to hear you say you would serve, no matter what, because it's all about getting the job done. I think that's important as we move forward. Do you personally think that we, if there wasn't a pay--and I knew that you donated your salary, and I think that's very commendable and whatnot. But do you think if we did take away the salary and benefits, would we have a problem getting qualified people to serve in your position and truly care, as you do, for the Liquor Commission? [LR279]

ROBERT BATT: It's possible that you would lose out. We would call it, what is the ROI? What's the return on the investment by the state? Warren Buffett should do this good on return on investment. You have a small amount out. You're getting a tremendous amount back from all three of us. You know, I... [LR279]

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SENATOR LARSON: Is that because of the salary? [LR279]

ROBERT BATT: No, no. We're talking about for the number... [LR279]

SENATOR LARSON: Obviously, you said it's not because of it, because you would do it without the salary and you've been a great investment for us, so. [LR279]

ROBERT BATT: Right. We're talking about the number of hours that are worked versus what you're getting. I don't work for minimum wage in this job. I mean, you know, talk about labor violations. (Laugh) [LR279]

SENATOR LARSON: I feel the same way. (Laugh)) [LR279]

ROBERT BATT: Well, hey, yeah. I mean, it's the same thing as being a senator. [LR279]

SENATOR LARSON: I think all of us do up here, but. (Laugh [LR279])

ROBERT BATT: I would do this in...you know, I mean, it's there and it's nice, but I would do this for nothing, because I love Nebraska. When we came to Nebraska, in 1917, we came here with nothing and we were penniless. My grandmother came off the boat, all my grandparents. We were very poor. And America, and especially Nebraska, has been very good to my family. That's why I'm involved in all kinds of charities. My wife and I do all kinds of things: juvenile diabetes, cancer, etcetera. But my mother always taught me to give back, and my grandmother did the same thing in her way. It's just not about it. It's about what was available at the time, in the time frame. So, you know, if you take it away, I'm not going to change my attitude with the job, whether I'm paid or not. Now this is me speaking. I don't want to speak for my fellow commissioners. But I'm telling you, it's what's there. You know, here, fill here; take your picture. I've got an employee ID

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card, and they say this is it, and so that was that. [LR279]

SENATOR LARSON: And I think you're exactly right. People want to give back and can give back to the community, and I commend you for doing that in this job, and I think a lot of people would, regardless of the pay, would say the same thing as you have. So thank you very much. [LR279]

ROBERT BATT: Right. Thank you. You're also aware that of the number of restrictions as a compensation. I have friends in the bar business. We all do. And I can't go in, he can't give me a free drink, he can't buy my lunch. I can't...you know, I had a guy from Budweiser trying to buy me a beer. I said, I can't do it. We don't live without restrictions in this board. The Corn Board, they could put 50 bushels of corn on there and the guy goes, hey, this is terrific. It's not so in our job. We are restricted by statute on what we can and cannot do. And I still have friends in the bar business and...but I also have friends at MADD. I have friends on both sides. I know a lot of people; I'm in business. Okay, I'm sorry. [LR279]

SENATOR KARPISEK: Any other questions? Seeing none, thank you, Mr. Batt. [LR279]

ROBERT BATT: All right. Thank you. [LR279]

SENATOR KARPISEK: Any other testifiers on--I can't even remember the LR--LR279? [LR279]

MIKE DYER: My name is Mike Dyer, M-i-k-e D-y-e-r. I'm here independently. I don't represent anybody. I'm an attorney in Omaha. Part of my background is I was a police officer in New York. I'm retired on disability, and I'm an attorney and I represent people who are hurt in injuries, like drunk drivers and. As Mr. Batt was talking about the ramifications of the importance of this job, this is life and death, the kinds of decisions that are made. And I think that when you see a salary being reduced by inflation and

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then taken away, there may be a vacuum that's created that would then be filled by somebody who has political aspirations or, you know, maybe you agree with them, maybe you don't. You know, as you reduce the compensation and you may be in a position to then have people who have different alternatives or different incentives for doing a job. The salaries that were paid, I guess the last time it was raised was in '73, and there were the hours, I guess that were talked about, that were being worked at that time compared to what are being worked here, and now whatever they are, when you look at the reduction in the actual buying power of what they had, you're looking at...well, you're looking at a reduction of, what is it, about \$12,500 since 1973. And I think the buying power was somewhere equivalent to it at that point. I would just hate to see this being taken from a point where you have somebody who is dedicated to doing a job for, you know, and not being beholden to anybody, to lose that. Once that you start the downward spiral of reducing the salary, everybody I think has said that it's an important position, and I just think it would help to keep it independent. And that's all I have. [LR279]

SENATOR KARPISEK: Thank you very much. Any questions? Seeing none, thank you for your testimony. Welcome. [LR279]

LEE POLIKOV: Thank you, Mr. Chairman, members of the committee. I'm Lee Polikov, L-e-e P-o-l-i-k-o-v, and I'm the Sarpy County Attorney. I don't think I could probably add too much more to this. I'd like to certainly create a dialogue if we can. I'm here to express my opinion but if I can help enlighten the committee at all I'd be glad to do that. There are a couple of key things that were said throughout today's testimony that raised some thoughts in my mind both as a politician but mostly a person who's elected. And, by the way, I spent 26 years with the sheriff as chief deputy and counsel in Sarpy County and then the last 12 years as county attorney. So I'm sure there's no one here that would doubt as to how much alcohol consumption, alcohol abuse affects the daily work that my job and my office do. Alcohol is such an important factor in that and in all our lives, in your lives as well certainly. But...so I think I can speak to some of the things

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that were brought up. I think that what other states do is really irrelevant. I think we spend a lot of time on that. And what I think Mr. Rupe told us was it really depends. Each state we know is different, how they deliver alcohol and the services. So why would we look to build a model around someone who does a job differently? We have to make sure that we're comparing apples to apples and oranges to oranges, that's pretty obvious. And if we are really looking at this position, maybe we should be looking in changing the way we deliver services like they do in another state, not honing in on what the cost is as far as the salaries if they're paid at all. Others boards...this is big...in my mind, other boards and commissions aren't necessarily the targets of lobbyists, manufacturers, providers, and because of not only a quasi-judicial role, but the Liquor Commission serves as in a law enforcement. So then we get over to the part-time, full-time discussion. And trust me--I think I'm probably preaching to the choir here--I see no difference from what we've talked about the Liquor Commission than a state senator who's working for a stipend quite frankly. Do state senators work full time? Do they work part time? How many hours does it take on a daily basis? I don't even think those are fair questions. I think that the salary was really probably meant to be a stipend and even at the value today it really is a stipend, but it does set that person off, that responsibility off as making it more independent. This whole thing about benefits is really a new animal because of the change in healthcare and the discussions of healthcare and having the longevity I have in the county and now being an elected official. And if you read the paper about Sarpy County, one of our commissioners brought that up recently about: should elected officials get full benefits. Is that fair? Full pay for healthcare? That's a new discussion and if we're going to look at it and look at it on a state level and a county level, I think we should, but we need to look at the big picture. I think it's patronizing and rather phony to use that as well. My constituency wants me to cut costs. The constituency, usually that information and that input is not very well-informed. You get it every day. I get it every day. And we have to make decisions, both you and I, based on facts and information and we have to learn. And the time you've invested today I think I couldn't put it any better than Mr. Batt as to what the Liquor Commission does, and I hope you picked up from that some of the implications of it all. So those

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were the things that attracted me in the discussion. Certainly if we're going to look at why pick out one agency or one section of government and save money on it, we have to look at the big picture I think. We need to make sure our motivations are true on what we're doing and why we're doing it and if you can do that, certainly study is worthwhile. I'd be glad to answer any questions. [LR279]

SENATOR KARPISEK: Thank you. Any questions? [LR279]

LEE POLIKOV: Thank you for your attention. [LR279]

SENATOR KARPISEK: Seeing none, thank you. Hello. [LR279]

MICHAEL KELLEY: Good afternoon, Mr. Chairman, Senators. My name is Mike Kelley. I am an attorney. I've practiced in front of the commission for some 30 years. [LR279]

SENATOR KARPISEK: Could you spell that, Mr. Kelley? [LR279]

MICHAEL KELLEY: K-e-l-l-e-y, Mike is M-i-k-e... [LR279]

SENATOR KARPISEK: Thank you. [LR279]

MICHAEL KELLEY: ...for the record. And the...I guess I've been practicing in front of the commission for over 30 years and I just wanted to throw a little bit of input, my perspective. Clearly I've thought for a long time the commissioners are underpaid. They should be paid more. I think that of state senators as well. I know the kind of time and efforts you have to put in, the same point Lee was making. And the...it isn't a question, can you get good people? We have good people. Look at this committee. Look at the commissioners we have. Under the current system, we're getting good people, no question about that and we have a great state. But, number one, that doesn't necessarily make it fair or right if we're not paying them enough. Secondly, you want

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to...especially the amount of money you pay does effect the amount of applicants you get. Look at our legislative races with where there's almost maybe one person filing. Our wonderful Speaker never has had an opponent yet, (laugh) you know, which is great. But I mean that...the pool of applicants is important, and to get...it's much easier to get quality people to serve on a board if there's a salary connected to it. So I would urge you not only to keep the salary but look at going up. I think one of the reasons it hasn't been increased for many years is a variety of factors, one of them the fact that suddenly the health insurance benefit did become a much bigger thing. Back in the old days when I served on the county board, you got a low salary but you got health insurance with it, but that wasn't that big of a benefit then, back eons ago when I served. But now it is, now it's becoming a huge benefit. And maybe that...and that's one of the reasons I think it's been increased. In the seventies it wasn't increased because there was a very unpopular commissioner who the (laugh) the Legislature didn't like. But that's what happened in the seventies. And the eighties, nineties I think it was more just the benefits were there so there was no really need to raise it. But certainly I would certainly hope that you wouldn't consider...you really wouldn't consider eliminating it. If anything, it ought to go up just like yours ought to go up. That's my piece. [LR279]

SENATOR KARPISEK: Thank you, Mr. Kelley. Any questions? Seeing none, thank you. [LR279]

MICHAEL KELLEY: Thank you. [LR279]

SENATOR KARPISEK: Any other testifiers on LR279? Welcome. [LR279]

MARGIE MAGNUSON: Hi. My name is Margie Magnuson, M-a-g-n-u-s-o-n. Mr. Chairman and members of the General Affairs Committee, I was here before you when...testifying on behalf of Senator Gwen's...a proposition of her bill last year. As you know, I am the spokesperson for the Alcohol Impact Coalition, which is a grass-roots coalition in Omaha concerned with the saturation of alcohol outlets in our

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neighborhoods and how those outlets negatively impact our community. In the past four years, our coalition has opposed several liquor outlets in our community at the Liquor Control Commission. And in those years I've had personal experience appearing before the hearings before the Liquor Control Commission and have participated in several pretrial conferences associated with those hearings. At the pretrial conferences, I've been involved and none of the commissioners were ever present and Mr. Rupe had acted as a judge in deciding what evidence would be admitted and how the hearing would proceed. At each of the commission hearings I attended, I have noted that it is the hearing officer, Mr. Rupe, who is presiding over the hearing, ruling on legal questions with the commissioners rarely commenting or asking questions during the process. And, in fact, in some of the past hearings I've had I've seen some commissioners not even paying attention during the hearings and ignoring some of the witnesses by doing crossword puzzles. At a hearing last year when the commission was deciding on the 24 Walgreens applications in the Omaha area, none of the commissioners were present and Mr. Rupe wrote the summary opinion on the hearing for the commissioners to rule on. Today I've heard them refer to as a quasi-judicial. I know Mr. Rupe is their attorney and I see him doing a lot of rulings and I always thought the commissioners were more acting as a jury not necessarily weighing the heavy legal issues. Given that the only qualifications for commissioner's jobs refer to a person's party and the lack of any legal or professional background required, I do not think that the salary plus the benefits justifies the job. I believe our state has serious financial worries to contend with and that you need to take a hard look at how we can trim some of that fat off of our budget. Thank you. [LR279]

SENATOR KARPISEK: Any questions for Ms. Magnuson? Seeing none, thank you.
[LR279]

MARGIE MAGNUSON: Thank you. [LR279]

SENATOR KARPISEK: Any other testifiers? Welcome. [LR279]

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RICHARD HALVORSEN: Thank you. My name is Richard Halvorsen, H-a-l-v-o-r-s-e-n. I start off I think, like Senator Larson, I don't think...not this board or I've never...anybody ever questioned the integrity, past or present, of any board members past or present. Again, like I say, this is not, you know, a hearing on that. However, I think it is a hearing on fairness. They talked about return on investment. Well, the Board of Regents last I knew got zip. They've managed a lot more millions of dollars than the Liquor Control Commission. Like they say, quasi-judicial. Well, yeah, but again they have attorneys advising them I'm pretty sure that they pretty much follow the advice of the attorney. Like the Chairman said, his training was life. I think it's just common sense, you know, for qualifications. Again, there's no written qualifications but appears, as I say, if you've got common sense, you know, you might do it. And some of the things they mention like the ride along. Well, the example somebody gave about watching a 20-year-old (sic) buy booze for five other underage people, well, that has noting to do with the Liquor Commission because of the 21-year-old, you know...you know, it's a law enforcement but it's not Liquor Commission because a 21 could buy in the bar. You can't sanction the bar for what the guy does later. The hours. Now you can quantify...well, various professions have quantified hours. They can tell you what you should...you know, you might say, well, it took me X to do this. It took me...you might say, well, it took me an hour to answer that phone call. But there again why I say, well, mechanics, even some of the accountants, there's a scale that says, well, this is what you should do, this is what it should take an average person to do and if you take more, tough luck, you know. Like a mechanic can't charge more than the...you know, whatever the book says. So, I mean, that's...I think Mr. Foley could quantify their hours. And plus like they mention, well, some hours, some weeks I work X hours and some weeks I work 50 hours. Well, I think the brand inspectors got in trouble like that because they were, you know...they weren't working the full amount of hours every week. Again, some weeks they would, you know, go over and other weeks they would fall short. And the state came down and said, sorry, you know, that doesn't cut it. I know I think you brought up a bad example to say like they pay attention when they go along at a football stadium. Well, there you're

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not doing a good job there, I mean, whoever monitoring that situation. And, again, applicants. Like you said, there were seven applicants for the job he got and I'm sure many of those who were weeded out were just maybe just a shade less qualified or maybe at the time they were the wrong political party for somebody else they had in mind. And I suppose the last thing, the insurance. In this day and age when a lot of people are losing their insurance or having trouble getting insurance, I think it just leaves a bad perception to the public that appointed officials are getting, as Mr. Foley pointed out, benefits they probably aren't technically, you know, legally...well, I meant their position as they are. You know, I think it's with the...again, according to the common-sense, you know, reading of the deal, the average citizen you say, well, no, they really aren't qualified for that. And again I think some people if they don't have insurance would be...again, a lot of people don't know that I think but would be upset. So I guess that's... [LR279]

SENATOR KARPISEK: Okay. Thank you, Mr. Halvorsen. Any questions? Seeing none, thank you. [LR279]

RICHARD HALVORSEN: Um-hum. [LR279]

SENATOR KARPISEK: Any other testifiers? Seeing none, that will end the hearing on LR279. Senator Coash, can you take over? [LR279]

SENATOR COASH: Okay. We're going to move on to LR301 which Chairman Karpisek is going to introduce on the interim study to examine issues relating to alcohol impact zones. Can I see how many people are here to testify on that particular study? Okay. Thank you. All right. We'll let Senator Karpisek go ahead and tell us what this one is about. [LR301]

SENATOR KARPISEK: Thank you, Senator Coash, members of the General Affairs Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. I

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introduced interim study LR301 to examine whether it would be prudent for Nebraska to follow the lead of other states in establishing alcohol impact zones. These zones are typically identified as areas within a state where there are serious primary and secondary effects of alcohol consumption. This issue first came to my attention as an item in the Liquor Control Commission's legislative letter. I will let Mr. Rupe, Executive Director of the Liquor Control Commission, elaborate on the commission's purpose for proposing alcohol impact zones, but I believe there are concerns regarding certain areas of Omaha as well as Whiteclay. I also understand that Senator Louden plans to testify on his concerns regarding Whiteclay. This has come up numerous times in my five years in the Legislature and I think this is a perfect example of why we have interim studies and why we would want to talk about this rather than waiting and introducing a bill. That's why I brought it. I wanted to hear more about it and learn more about it and I think, again, that's what an interim study is for. It's not a bill; it's just to look at it, try to get some information. And we got good information on the last one; I'm sure we'll get more on this one. So with that, I will turn it over to Mr. Rupe and then we'll have Senator Louden after him. [LR301]

HOBERT RUPE: (Exhibit 6) Unfortunately I killed more trees. Good afternoon, Senators. Once again, my name is Hobert Rupe. I'm the Executive Director of the Nebraska Liquor Control Commission. I'm having...what's being handed out right now is a copy of the rules and regulations the state of Washington has utilized in dealing with this issue. First off, I'd like to let...for the record, know that the three commissioners are present. This was part of our legislative letter of last year, and according to the open meetings law I made sure that everybody knew that they would be here at least discussing this with you from the possibilities. Alcohol impact zone, alcohol impact area, sort of different...they're the same thing, different words, whether you like zone better than area or whatever it is. In a nutshell what it is, is you have areas usually in a defined geographical area where you're having a problem with chronic inebriation and the attendant social ills that come along with that. For example, Washington is one of the leaders, that's why I've sort of went with them. They've got the most history of dealing

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with it. They currently have three alcohol impact areas: one is in downtown Seattle; one is in downtown Tacoma; and one is in parts of Spokane, Washington. The one in Seattle also includes parts of the University of Washington campus. If anyone of you ever has been up to Seattle, part of the problem they had is they have a large homeless, indigent problem and they were having a large problem with public intoxication and the attendant social ills, including graffiti, violence, other issues. So they based upon...and Washington is a control state, so they from a statutorily perspective they got a little bit different animal. You know, their main issue, what they were dealing with, you know, they weren't dealing with spirits because most of the spirits all go through the state store, but they were dealing with what would be called high-gravity beers--I think you've all heard that term before utilized on other places--as well as fortified wines, you know, Mad Dog 20/20, Wild Rose, some of the higher alcohol contents. And what they did was if you look through this, you know, is they looked at, okay, we've got a problem with certain areas and with overintoxication and it's a putting a strain not only on law enforcement but on other services within that area. And so what they looked at is very much a joint state and city effort on that one. In a nutshell, what happens is if a city thinks we've got this kind of problem, they send out notice or publication to the licensees in their area and say, hey, we're going to consider asking the state-in this case the Washington Alcohol Board--to designate this as an alcohol impact area. It basically give them six months to clean up the area because the theory is, is that the type of sales going on is contributing to the public intoxication and the public inebriation. If they don't, then they go to the board and there's an in-depth study looking at, what are the causes, what's going on, were there certain problems, and...which happen like, for instance, in downtown Seattle is once they identified where the district goes, where is was, is then they put restrictions on existing licensees as to the type of alcohol being sold, the size of the alcohol being sold, the fact whether you can have single-can sales in that area. Now of course they were looking in Washington primarily with the beer and wine because they could just tell their employees (laugh) at the, let's say, liquor stores we're not going to sell this type of issues. I've been in consultation with a good friend of mine named Rick Garza. He's the deputy director of

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the state of Washington. He and I served together on the executive committee on the National Conference of State Liquor Administrators and he's been helping me on this. And if we decide to go for a bill, I have...you know, he has assured me that he will come and testify in front of you (laugh) so he can answer your questions as to what they've done with it. Some other cities which have done it, for instances, Tennessee has one in parts of Memphis is an example. And there are some other ones scattered around the issues. And the key thing of what it does is, you know, we've always been concerned about how careful do we get when we're looking at what's going on in these areas. If we start picking and choosing--we want this licensee, this is okay, this is not--then you're being arbitrary and capricious. You're picking winners and choosers. If you're doing something which we're going to create a law which is only going to apply to Whiteclay, well, then you're probably looking at a possible special legislation problem issue. And it's not a problem, although that may be the most glaring example, that's limited solely to there. And so what this does and, you know, we would...if the committee decides to go forward, we would be happy to work with how we would want the basic statute and then, you know, really some of our model rules we would look at to make sure that we were doing in conjunction with it, is a more neutral thing. It says: there's a specific area that we're going to look at, here's the criteria that are going to be ticked off if there's an issue there, and here's how the process is going to work. And the key thing I cannot enforce enough, this is definitely a cooperation between the city and...the local governing bodies and the commission. The local governing bodies didn't say we're the ones in the front lines; we're the ones dealing with this problem; here's how we think it needs to be fixed; here's what we think...how we need to do it. And then we're using the state's ability to place reasonable restrictions on those licenses to try to affect that problem. So in a nutshell, that is what a alcohol impact area or alcohol impact zone is. They're both...I think Tennessee calls them zones, Washington calls them areas. You know, it's not picking and choosing which licensees we're going to keep, one or not. For instance in Washington, if you want to go up to a beer place and still buy a six-pack of Bud Light, you can do that. If you want to go up to one of those alcohol impact areas and buy a 9.8 percent alcohol single can of Hurricane, you can't because they're prohibited from

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selling it to you. So you...it's a way to bring in responsible access and still maintain those methods. And I think it's very good. And as Senator Karpisek, I appreciate him bringing this forward because this is exactly the type of issue I think that an interim study is designed for because if we're going to be looking at this, we want to make sure that we're doing it when we can...I mean, you guys are so darn busy during the regular session reading every law and bill that at least this way you've had a chance to look at the idea and understand the philosophy behind it before it becomes...might become going forward. And I would be more than happy to answer any questions at all. [LR301]

SENATOR KARPISEK: Thank you, Mr. Rupe. Any questions? Senator Bloomfield.
[LR301]

SENATOR BLOOMFIELD: Thank you, Senator Karpisek. First question has to do with high-gravity beer. That's not a term that I am familiar with. [LR301]

HOBERT RUPE: A high-gravity beer is a cheap, very cheap way of making a beer which is generally of a higher alcohol content than what most people would consider a normal beer. Beer for the most part, I mean, right now in the marketplace you've got anywhere from 2.8 percent alcohol which is like MGD64 which actually has a lower specific gravity--that's where the term is from--from water, it'll actually float on top of water when you mix with it, all the way up to beers, some of them up into 12, 13 percent alcohol. Now the two differences is some of those higher alcohol beers you have two types. You have the craft beers which are being utilized which are generally causing \$10, \$12 a bottle at that point. The other way to make it that's utilized what is called the high-gravity method which you're getting a 20-ounce can of 8.5 percent beer for a dollar and a half. And so...and I can tell you, and this is from personal knowledge, I am a beer fan. I enjoy good beer. I believe I tried one of those just so I knew of what I was speaking going back to the, you know, fieldwork. I think I made it through two swallows before I just poured (laugh) the rest of it down. That's how horrid it is. But that's because it's made cheaply and it's designed to appeal to a certain demographic who wanted to

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drink as much out of that alcohol as cheaply as they can. [LR301]

SENATOR BLOOMFIELD: I also have a question that goes back to the lawyer part in you. [LR301]

HOBERT RUPE: Okay. [LR301]

SENATOR BLOOMFIELD: If we go up to Whiteclay, and I'm pretty familiar with Whiteclay--I used to deliver groceries to the grocery stores up there--would we not be looking at some discrimination suits if we refused to sell to the Native Americans? [LR301]

HOBERT RUPE: If you refused to sell to Native Americans, yes, you would be. But the idea behind an alcohol impact area is you're still going to be able to operate your business, but we're going to put restrictions as to the type of alcohol and the size of alcohol and the single-can sales that you're not going to be able to do. If using...just use Washington as an example. If somebody goes up, a Native American goes up to one of the places and says I want a six-pack of Coors Light or a six-pack of Budweiser, they can probably purchase it. But the problem is, is what they're being utilized up there is, is the high-gravity single-cans which then they're going out and creating the public inebriation because they're just drinking it on the street. You know, and so I believe that this is the methodology to make sure that it's not a discriminatory method. This is a tool that can be used for by local governing bodies to try to deal with these issues. And I just point out Whiteclay as one of the most...you know, as the most notorious version of where we have that problem. [LR301]

SENATOR BLOOMFIELD: Yeah, but Whiteclay's residency, it would appear to me that we're getting into what the meaning of "is" is and that, you know, if we're solving the problem in Whiteclay, the problem is really not in Whiteclay. You know, whether then the folks that don't stumble back across the line, which is 100 feet north of the outlet,

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before they get inebriated. [LR301]

HOBERT RUPE: Well, I think, you know, as I said is, you know, is this a silver bullet which is going to stop alcohol abuse from the Pine Ridge Indian Reservation? No. If I had that somewhere, I would bring it forth to utilize it. But this is I think is a tool to try to stop some of the public intoxication problems and some of the attendant social ills that not only would be applicable at Whiteclay but there's parts of Omaha, there might be parts of Lincoln which may be qualified for the same areas. And so... [LR301]

SENATOR BLOOMFIELD: From what I observed in Whiteclay, if we did something to solve the problem there, it would probably move to Gordon. It would be further for them to go and I think we would see more accidents on the road. [LR301]

HOBERT RUPE: Well, I mean, Whiteclay, there might be some other problems. Like I said, I don't believe this is only one issue, but this is an area where other states have utilized to try to deal with similar problems and I'm just bring it up for the senators' examination of the possible issues. [LR301]

SENATOR BLOOMFIELD: Thank you. [LR301]

SENATOR KARPISEK: Thank you, Senator Bloomfield. Senator Schumacher. [LR301]

SENATOR SCHUMACHER: Just so that I get kind of an idea what we're talking about here. You're talking about designating an area as...for a special set of rules, in other words. Is that... [LR301]

HOBERT RUPE: Exactly. [LR301]

SENATOR SCHUMACHER: Okay. And who...is there criteria for this designation who makes the decision kind of...? [LR301]

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HOBERT RUPE: If you look...I mean, of course that would be how we would set it up. I gave you the Washington as an example. It said in Washington's example, the request has to come from the local governing bodies. You know, here's this party, this is the problem we're dealing with. And, you know, I mean, for the first question you said, and how is an alcohol impact area formed in their rules? A local authority that is a city, town, or county must first designate an alcohol impact area by ordinance and make good-faith efforts for at least six months to mitigate the effects of chronic public inebriation with such ordinance before petitioning the board--which in this case would be the commission--to recognize an alcohol impact area. The board must recognize an alcohol impact area before any unique review process, condition, or restriction described in this rule may be applied. A local authority must meet certain conditions to achieve recognitions. It's got to be clearly discernible as a geographic area. Local authority must explain the rationale behind why this is the border, what the issues we're seeing within this...to this area, what types of issues. You know, I mean because this isn't going to be a one-size-fits-all. I mean, you're definitely...what this is designed to do is here's a area and I think Washington...you know, we of course would have to make it work better for us. I mean this is an idea and I put this out there to see what one other state have done. You know, why reinvent the wheel completely, but I think we ought to change some spokes, make it work for Nebraska. I think the final decision would be the Liquor Commission would be making...because what we would be doing is placing restrictions upon licensees in that area as to what type of product they can sell within that area.

[LR301]

SENATOR SCHUMACHER: And how would a place get off of the list once it started behaving itself? [LR301]

HOBERT RUPE: Well, actually the area would have to be...I believe Washington's rules has a recognition to, you know, do away with and alcohol impact area once those areas are taken place. So I think you're absolutely right that the actual nuts and bolts in a

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repeal of that area classification would have to be there if you fixed those issues that you have, so. [LR301]

SENATOR KARPISEK: Thank you, Senator Schumacher. Senator Larson. [LR301]

SENATOR SCHUMACHER: Thank you. [LR301]

SENATOR LARSON: In this...so what you're saying, and I may have been short on it, that they'd still be able to buy beer at Whiteclay or just not the high...the idea is that they wouldn't be able to buy the high-alcohol content beer. [LR301]

HOBERT RUPE: Yeah. I threw that out as an example of what other states have done to try to stop that. Because they....the big part about once it's a designated as an area, there's an in-depth review done by the locals and by the board as to what are the products we're seeing, what are we seeing? I mean, for instance, in one of the areas in Omaha when the issues were we would...we would have to deal with which Washington doesn't because of the way...because they're a control state are the flight bottles. You know, I mean homeless people, young kids who are public intoxicating love the little, teeny, tiny flight bottles. They're cheap. They're concealable. And what you're seeing then is they're hitting those, then you're seeing those spread all over the street, around the parks or whatever going on as well. And so I think what you're going to have to look at, what specific things are happening in that area and what are the...and what's the most efficient way to address those problems. [LR301]

SENATOR LARSON: I guess my concern is... [LR301]

HOBERT RUPE: Some of them might be time constraints. [LR301]

SENATOR LARSON: ...what about just straight up free market, the ability to access any...I mean, you're essentially, the idea this limits your ability to produce product and

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sell it if there's a consumer that wishes to buy it. Is that the state's role? [LR301]

HOBERT RUPE: Well, I think with alcohol it is. Alcohol is unlike any other product we regulate. It has a societal impact. [LR301]

SENATOR LARSON: So are we picking winners and losers? [LR301]

HOBERT RUPE: I'm trying not to be. I'm trying to pick...I'm trying to save areas within certain areas. I'm trying not to say this licensee... [LR301]

SENATOR LARSON: But I mean you're saving areas but are you picking winners and losers among the free market in terms of businesses? [LR301]

HOBERT RUPE: Well, you know, I don't think we are. I think what we're trying to do is trying to utilize the authority granted the commission to promote temperance in a well-regulated and orderly market, and the big thing you're going to be looking at in these alcohol impact areas are, there is less regulation as regulates. [LR301]

SENATOR LARSON: Would there be the ability to pick winners and losers in...?
[LR301]

HOBERT RUPE: I'm not sure what you're talking about. I mean, you know, picking like, you know, Store A is going to stay open the Store, B is going to, no. [LR301]

SENATOR LARSON: Not Store A, Store B, but I mean essentially you're going to pick what type of liquor gets to be sold in these or what type of beer and what type of liquor gets to be sold in these. [LR301]

HOBERT RUPE: You're absolutely right. [LR301]

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SENATOR LARSON: So I mean essentially the state gets to pick the winners and losers of the alcohol industry to a certain extent in these alcohol impact zones. [LR301]

HOBERT RUPE: You know, I'm not...if a manufacturer is basing their entire market share on the type of areas that we're dealing with and the type of products, I'm not going to feel very much sympathy for them. You know, as I said earlier in response to Senator Bloomfield, I mean, the high-alcohol content are two different things. You're dealing...you know, and...but at the same time if you're going and buying a \$10 craft beer, you're generally not going down drinking on the park bench and then just smashing into the concrete as you get done drinking it in public. You know, is it a perfect system? No, but I think it's at least something to discuss to try to deal with those issues to try to be proactive on those areas to try to reduce the amount of alcohol issues, attendant issues, but still maintain that these people can sell alcohol in a responsible and respectful manner. [LR301]

SENATOR KARPISEK: Thank you, Senator Larson. Senator Bloomfield. [LR301]

SENATOR BLOOMFIELD: Thank you again. Hobie, could the restrictions be interpreted to the point where you could prevent all sales of alcohol or beer or...? [LR301]

HOBERT RUPE: Well, I'm not sure on that because at that point in time you would be trying to use the alcohol impact area to cancel a liquor license which is, you know, cancel for cause is a power of the commission. So I don't think you could draw them so broadly that you can't, you know...I think you would have to have an identifiable target, what you're trying to...problem you're trying to fix and you would have do reasonable and fact-based criteria to try to fix that problem. You know, if a place is so bad in violation, we have a method for that. We sanction them in front of the commission and cancel or revoke the liquor license. So I'm not trying to do that. I'm...you know, so. [LR301]

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SENATOR BLOOMFIELD: But if there is no...again, that's my understanding of Whiteclay, there is no violation of the liquor law with what they are selling. [LR301]

HOBERT RUPE: Well, I'll be the first to say whether there's not a violation or whether we have problems because of the nature of Whiteclay proving the violations taking place might be two entirely different things. I am of the opinion that there is probably sales to visibly intoxicated individuals taking place up there, but there's been a proof problem with it because the minute a law enforcement officer shows up, there's no violations. It closes down. I mean, I think other senators have been up there and seen the same thing. And so what this is trying to do is, this is trying to say, hey, this is a problem in that area. Here's where we're trying to fix it and try to make these people be responsible in the sale of alcohol. We're not trying to...you know, this isn't a prohibitionist-type proposal. This is a regulate...a responsible regulation-type proposal. [LR301]

SENATOR BLOOMFIELD: Where you are wanting to...as I understand it, you're wanting to limit the high-gravity beer up there. From what I know of Whiteclay, they'll simply drink two Budweisers if that's what you're selling... [LR301]

HOBERT RUPE: Well, you know, they might have... [LR301]

SENATOR BLOOMFIELD: ...instead of one high gravity. [LR301]

HOBERT RUPE: But, you know, the last time I checked, one Budweiser cost more than one high gravity. And... [LR301]

SENATOR BLOOMFIELD: But, again, I'm not familiar with the cost. [LR301]

HOBERT RUPE: Well, like I said, these high-gravity beers, not only are they very potent, they are cheap, incredibly cheap. [LR301]

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SENATOR KARPISEK: Thank you, Senator Bloomfield. [LR301]

SENATOR BLOOMFIELD: Thank you. [LR301]

SENATOR KARPISEK: Senator Coash. [LR301]

SENATOR COASH: I think we need to get back on track here. With what you've presented us with what Washington is doing. [LR301]

HOBERT RUPE: Yes, Washington. [LR301]

SENATOR COASH: As I look at it, it looks like the state kind of says we're going to give some authority to local control to put these impact zones in place. And then in a community where the locals believe that they've got an interest in drawing some geographic boundaries and making some changes based on what they see in their own communities, those changes happen at the local level. Is that correct? [LR301]

HOBERT RUPE: The designation would happen at the local level and the issues they have to. But when they actually have...it's very much a partnership between the locals and the state because if you read what Washington does, just for an example, is they give them six months to try to...and they have to show what they've tried to do to stop it themselves and to the point going, we've had a good-faith effort and we're still having these problems. The only way we needed...the next step is to maybe start, you know, shutting off the spigot a little bit and try to control types of alcohol or hours of sale being sold in this areas. [LR301]

SENATOR COASH: So the process is a collaboration between the local and the state entity and if you have state that has identified four of these zones, you know, four different communities across the state where the idea is put forth we need to draw some

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boundaries in these four different communities, they're not...they're different communities. The enhanced rules for each one of those zones could look very different from the other one. [LR301]

HOBERT RUPE: Exactly. [LR301]

SENATOR COASH: So we're not trying to paint a broad brush here. We're trying...this is a concept where local entities work with their state entity to put some boundaries around what they feel is best for their community. So we're not up here going to set a rule for what happens in each community. This is more about setting up a process, is that...? [LR301]

HOBERT RUPE: Exactly right. [LR301]

SENATOR COASH: Okay. Thank you. [LR301]

SENATOR KARPISEK: Thank you, Senator Coash. Senator Schumacher. [LR301]

SENATOR SCHUMACHER: Just a little follow up as I sit here thinking about this. You know, we're 90 years past prohibition now, but a lot of the things that caused prohibition to happen are still held dear by a small percentage of the population. And so far right now in liquor control things are pretty much working. Now to the extent there's this ability for a local government to request a special set of rules, doesn't that open the whole can of worms again of having a local group of a small minority putting a lot of heat on the...or blowing out of proportion certain interests or certain incidents so that their local government has got this mess that they've got to try to deal with where things are pretty much working now? [LR301]

HOBERT RUPE: Well, I think...but that's one of the reasons why, you know, the process has both the state oversight as well. As we heard before, the state is independent. You

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know, and then the main goal from the commission would be, you know, are we...is for public health, safety, and welfare, and is the response...request from the city conducive to creating that? And that would be the way the commission would look at it. I mean, just because the city says we want it doesn't mean the commissioner (sic) is going to get it. In fact, in speaking with Mr. Garza in Washington, after they put the first three in, a lot of cities have had results by starting the process of getting their licensees into compliance and so they stop the process. In other words say, hey, we're going to start looking at this issue, this is what we want to talk about. And so, you know, and so because of the concern is that, hey, wait a minute, we're rather, you know, police ourselves rather than having, you know, these restrictions coming down. This is not a...I don't believe that this process is going to be a knee-jerk process. I mean, and it's probably going to take a year between when it's being requested for the first time until it's being implemented at the minimum. You know, and so what we're trying to do is give a tool to the cities who are our partners. Yes, do we disagree with the cities and the counties on a lot of times? Yes. But it's like family, well, family argues back and forth. You didn't listen to us on this one, oh, but you listened to us on the other one so you're okay. Most cities I think given this power I believe would...and I'm going to...maybe I'm up high in the sky an optimist, I think most cities with this are going to try to use this...the city or the city or county is going to try to use this in a responsible manner to try to deal with an identifiable small problem that they can put their hands around.

[LR301]

SENATOR SCHUMACHER: But if you...and I guess I hung around local government maybe a little bit too long, but you get a group who's an activist group, and here sets the city council or town board or whatever. And the activist group comes in and pounds on them. And they really don't want to take this action, but the easy way out is to take the action, bump it up, and let the liquor commission earn their \$12,500 a year by saying no somehow. So, I mean, are we opening that door? [LR301]

HOBERT RUPE: You know, I think we might not be. I mean, yes, if we draw it too

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broadly, you're 100 percent right. I just...when you were saying that I went back and I looked at some of the requirements that the city has to show they attempted before they even come to the state in Washington. One is, submit finds or facts that demonstrate pervasive pattern of public intoxication or public consumption of liquor as it's documented in crime statistics, police reports, emergency medical response data, detoxification reports, sanitation reports, public health records, other similar records, community group additions--there's one of them--public testimony or testimony by current or former chronic public inebriants. I mean, there's a list of information they're going to have to bring. I don't believe that just saying, hey, we got a...somebody comes in, we got a problem here unless it's also shown by calls to service by both the EMTs. I don't know how you can blow that up. I mean, you're either going to have the emergency service responders going in there, the police are going to have the calls for service, you know, just one of the issues. I 100 percent agree that if it's not drawn very tightly and constrained it could be open to abuse by people who might be activists on one side or the other. So that's one of the reasons why I thought the appropriate way was to bring it up through an interim study was so, you know, we can look at other states. I mean, we don't want to copy other states but, you know, by gosh, if somebody has already tried it, let's see did it work or did it not work. Let's see what the results thereof. Like I say, there's some other states other than Washington but I just thought Washington was on the clearest definition to give you an example of what they're doing.

[LR301]

SENATOR SCHUMACHER: I have nothing further. Thank you. [LR301]

SENATOR KARPISEK: Thank you, Senator Schumacher. Senator Larson. [LR301]

SENATOR LARSON: Just a technical question. For a city like Omaha, it obviously has...you could say so many that this would be beneficial in some areas. But would the entire city have to go into the zone? [LR301]

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HOBERT RUPE: No. In fact, you know, one area where we might have to look at is, Washington statutes specifically says you can't just call a whole city. You've got to have an easily definable geographic region that the general public would recognize, you know, and I probably would go like by neighborhoods or by certain areas. I'm not saying it's a problem but let's just say everybody here probably knows if...where the Old Market would be, is if they put that boundary in there or something like that. And so you've got to have easily identifiable zones. I don't think...you know, a whole city problem would work that way. [LR301]

SENATOR LARSON: So to Senator Bloomfield's point, I mean, Whiteclay, just driving to Gordon. I mean, and Omaha could be even more prevalent. They just, I mean, would drive from whatever area that is the impact zone to the liquor store across the impact zone. I mean, where does it stop in terms of...and then that area becomes then the impact zone, and all of a sudden you have become more prohibitionist, you have...I mean, you give... [LR301]

HOBERT RUPE: Yeah. Well, I understand and Washington had that problem, too, in certain parts. You know, the first one they put in up in...I think it was Tacoma. They were very conservative, and they actually realized they made it too small and expanded it out because of those issues. But it was still a very small part of Tacoma where it was dealing with just the issues. And generally public inebriation, I mean, everybody says they're going to get in their cars and go, most people who are having problems with chronic inebriation don't own cars. You know, they're the people who are hanging out in the parks, hanging out, you know, getting the cheap alcohol, causing the societal problems. They're generally not the people who are picking it up from one point and taking it back to their home. [LR301]

SENATOR LARSON: What about Whiteclay? Use Whiteclay as an example then.
[LR301]

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HOBERT RUPE: Well, why is Whiteclay a problem? Because it's within walking distance of Pine Ridge. Gordon is not within walking distance of the village of Pine Ridge. I mean, at its...it's the easiest thing. That's one of the reasons why Whiteclay has a problem. And I'm not talking about the sale of the alcohol. I'm talking about what's going on in the streets there. Why are these people sitting there on the street corners of a vacant house drinking in the middle of the day and getting drunk and passing out? That's what Washington...I mean, Washington had the same problem, although where theirs was...where ours might be Whiteclay and couple places in Omaha, theirs was downtown Seattle, right there near the docks going all the way up to...almost to the University of Washington. [LR301]

SENATOR KARPISEK: Thank you, Senator Larson. Any further questions? Seeing none, thank you, Mr. Rupe. [LR301]

HOBERT RUPE: Thank you. [LR301]

SENATOR KARPISEK: Senator Louden, welcome to the General Affairs Committee. [LR301]

SENATOR LOUDEN: Well, thank you, Senator Karpisek. Senator Karpisek and members of the General Affairs Committee, I was here to give some testimony on LR301. As I've visited with Senator Karpisek through the...as the session was ending last year on some of these impact zones, and of course I have an area there that I've been working on for quite a while. We've done some research. There was one done by some folks from California, Professor Parker (phonetic) I think was his name, and their research said that violent crime would drop if local ordinances banned single-serve containers of alcohol. Sociology professors from California conducted studies of the correlation of alcohol availability and youth homicide in 91 of the largest U.S. cities that was examined from 1984 to 2006. The study examined crime rates and cooler space allocated to containers sold individually in San Bernardino, California. They found higher

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rates of violent crime in neighborhoods around alcohol outlets that allocate more than 10 percent of cooler space for single-serve containers. Researchers stated that many who purchased the drinks tend to be underage and loiter outside liquor stores causing problems. They also found that most people who consume these drinks buy them because they're cold, they're cheap, and an immediate way to get a buzz. And I think the Director just now talked about what in Whiteclay and this would probably sum it up quite well for that area. One researcher said that these results suggest that alcohol control can be an important tool in violence prevention. Policies designed to reduce outlet density can provide relief from violence in and around these neighborhood outlets and banning or reducing the sales of single-serve, ready-to-consume containers of alcohol can have an additional impact on preventing violence. And these findings were published in the journal of the Drug and Alcohol Review. So I guess what happens in California have to do with Nebraska? And of course as you've just heard the discussion, a case in point is Whiteclay, one that I'm familiar with. I've testified many years since I've been down here and Whiteclay has been criticized for the alcoholism on the reservation and surrounding area. Whiteclay, with its distribution of beer near a populated area, no doubt contributes to the problem, but it is not the sole cause of alcoholism on Pine Ridge Reservation. I would want to point that out. Other liquor and spirits are brought onto the reservation from somewhere else because in Whiteclay they only sell beer. And also in Whiteclay they have...the law enforcement has gotten them so that they will only sell beer in cans. They won't sell it in bottles because bottles can made into a weapon. So they've done that over the years. Also they've set it up so that the owners there have agreed to not sell beer after 11:00 at night. I think they probably figure time to go home. And they...but they do start at 8:00 in the morning. And so as I've talked to Sheriff Robbins and others in the area about perhaps not allowing the sale of alcohol before perhaps noon because the ones that come in at 8:00 in the morning, those that are arrested, he said, usually come in from, oh, up around Oglala and Kyle and other places in the reservation. They're not exactly all from Pine Ridge. And they come, catch a ride into Pine Ridge, walk over to Whiteclay to get their beer, their buzz, at 8:00 in the morning. And as Hobie has mentioned here a while ago that the type of

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alcohol sold, it's these great big containers with...it's cheap and it's probably rotten but this is what they do. They come in there, they panhandle long enough until they get to 75 cents or a dollar and a half to buy a single serve of beer and then they go and get blasted on it. And as the Director pointed out, most of them will pass out. And the mission up there feeds them at noon. So a lot of those people are drunk by noon, then they go eat and, yeah, then they're laying on the street someplace. So that was one of the things I brought up. Should they...should we try and see if there's a way of banning the sale before noon, perhaps that would make a difference. Also, the single-serve idea. If all of this beer is sold off-sale, so is there a way that we could perhaps draft legislation that single-serve alcohol couldn't be served in some of these areas? Also in Whiteclay or something like that. If there was other areas that wanted to sell single serve, could that be given a permit such as your beer gardens now have to get a permit to sell beer when they ordinarily don't have. So there are ways that I thought these problems could be addressed, but this has probably been the easiest way or smartest way to try and address this problem in Whiteclay with their Pine Ridge situation. And as Senator Bloomfield mentioned that they were about 100 yards from the first outlet across there. Now the problem is when they come over there, they buy these single-serve beers off-sale, well, there's no place to go to drink it but step out the door and drink it on the street. Now if they...the reservation, as they call it, is a double dry, so you can't even have alcohol on the reservation. It isn't that you drink it or anything or if you drink it and come on the reservation and drunk, you get picked up for alcohol violation. So they can't go back across the line and drink their beer. It isn't that it can't be sold on the reservation. You can't even drink it or even have it on your breath or you go to jail. So consequently then people drink it in Whiteclay and wait around until somebody loads them up and hauls them back to Pine Ridge, for the most part. And so there is as, you know, a problem with the reservation and the Pine Ridge and the Sioux Nation up there, but there isn't much we can do about that. But perhaps we can do something about what we can sell them, when it can be sold, and how it would go from there. So this is what I've brought forward. And when Senator Karpisek had this interim study on it, I thought it would be a good time to bring this forward to see if we can draft legislation

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that would...perhaps whether we do an impact zone and could expand it to the time of day that certain liquor could be sold, whether we have it that none of the beer or liquor could be sold before noon in these impact zones, or whether you couldn't sell single containers. That would probably do as much as anything because most of the problem comes from the panhandling when people come...are there if somebody wants to do business in Whiteclay. You're never going to get any kind of tourism business or anything. There's women up there that are opening up quilting and handiwork and stuff like that that they would sell, but nobody is going to stop there and do it if as soon as you pull up and stop somebody is pounding on your car for quarter, a dime, or a dollar and a half, or whatever it is. So this what we're trying to work for, so do something to do away with the panhandling. We've come quite a ways. Right now we have a camera up there in Whiteclay that feeds into the Sheriff's office in Rushville. That saved him a lot of trips up there. Mostly it's when they report a fight. He says now I can take a look and see whether I have to drive up there at 100 miles an hour or whether the fight is over with. And since he does have the camera, he doesn't have as many fights. And also with the grant money that we got in the last Legislature, another I think \$10,000 or whatever it was, he wants to put in another camera that would pretty near show all of Whiteclay and also some recording on there so that if there is something happens he has a record of it. So we are, you know, coming around to that situation. Now also they're building a nursing home up there. That's supposed to be breaking ground here some time this summer or fall. I haven't checked lately to see how far along that's coming along. But it's a 60-bed nursing home in Whiteclay on the Nebraska side of the border. So we need to try and do what we can to clean up the place. And over the years it's always been people have come in here by the trainloads and said, oh, let's shut them down, let's shut them down, let's shut them down. And to me that isn't the answer because there's the people on the reservation and what this single-serve liquor actually sells to are the alcoholics, chronic alcoholics, because that's the ones that come over there. And as the Director point out that that type of beer is terrible to drink. I don't know how many of you are old enough to remember when Native Americans couldn't buy alcohol. But when I was clear up until in my teens it was against the law for Native

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Americans to even buy it. But in Gordon, Rushville, those towns like that and if Senator Bloomfield used to haul groceries, I don't know if he's old enough to remember, but I tell you what, the vanilla went out of there by the cases and because of the alcohol content of the vanilla. When the vanilla was gone, the bay rum went out. And I tell you what. If you want to get knocked on your fanny and think you're going to die, why try a shot of bay rum some time. (Laughter) That was...I seen it all. See, I've been around and seen it all, so I know what happens with these people when they're alcoholics. And so now as they come up with this type of beer, why it can be sold legally and it probably...the quality isn't a concern. The alcohol content is what the concern is. So as you work on this interim study, I would hope that you could work with us or I could work with you and draft some type of legislation that we could address our problems up there. With that, I'd be willing to try and answer any questions. [LR301]

SENATOR KARPISEK: Thank you, Senator Louden. Any questions? Senator Bloomfield. [LR301]

SENATOR BLOOMFIELD: I would just like to get a couple of things on the record here that I think Senator Louden will verify. The two-mile stretch between...roughly two-mile stretch between the city of Pine Ridge and Whiteclay has been lighted at night because it's lit up like a city street, that rural two miles of road in hopes of preventing accidents on there. Unfortunately the folks still tend to stumble down the middle of the highway instead of off to the side of it. But with all the restrictions that Senator Louden mentioned on the reservation and the city of Pine Ridge, we still had to as drivers watch very carefully when you backed into the docks at Pine Ridge as well as at Whiteclay because people were passed out back there. It was mentioned earlier that the problem does not stem entirely from Whiteclay. It's a convenient place for them. We can make it harder for them. I don't think we're going to cure the problem with any legislation we do down here. [LR301]

SENATOR KARPISEK: Thank you... [LR301]

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SENATOR BLOOMFIELD: Do you have any response at all to that? [LR301]

SENATOR LOUDEN: Well, yes, I agree with you fully. And I would add that when you say the two miles, that's from downtown Pine Ridge to I guess downtown Whiteclay because there's...altogether. And as I've worked with those people up there with this nursing home and everything, I keep asking them, you know, what is the population of Pine Ridge. And nobody can really tell you. If you've ever been to Pine Ridge, you have this town about a certain size here. And then as you move out maybe another 100 yards, maybe the houses are on a little bit bigger area. Then may out a quarter of a mile the houses are a little larger area. And so when you start counting in there, there's somewhere within this probably three-mile radius of downtown Pine Ridge 15,000 people. And that actually, when you count that, that's the biggest town in that part of the country. I mean, that's bigger than Chadron or twice as big as Gordon and Rushville put together. So that is a population area. Now are four liquor stores too many for a population of 15,000 people? I don't know. There's a lot of towns of 15,000 that have a lot more liquor stores than four. So it's isn't the number of liquor stores, but I think it's the way that the reservation is set up with their liquor violations. I mean, you're...you go to jail if you step on there, you're drunk or anything. You smell it on your breath, you go to jail. There's no...nothing else. [LR301]

SENATOR BLOOMFIELD: According to theory. [LR301]

SENATOR LOUDEN: Yeah. And so that's part of the problem. But I think if we can probably control the way some of this is sold, I don't know whether time of day would be the best or single serve. I think that's a good idea. Single serve because that's what causes the trouble. I think when you say the researchers found out people who consume these drinks buy them because they're cold or cheap and they're an immediate way to get a buzz, that sums it up exactly on what those people do. And also, you know, they said something about they tend to be underage, which not

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necessarily this but they loiter outside liquor stores causing problems. And that's...I mean, when I say this research, why it summed up what we have going here, so.
[LR301]

SENATOR BLOOMFIELD: Do you not think that if we limited or eliminated single serve that they would simply chip together and buy the six pack? [LR301]

SENATOR LOUDEN: I think you got to have a time-of-day sales as a primary deal to start with. I mean, first of all, how many people want to...are out there buying these 20-ounce cans of beer at 8:00? It isn't the average person that's been stacking hay (laugh) all morning and wants to cool down. So I think time of day would...and as I've talked to Sheriff Robbins and them, they thought that would help some, you know. I think the counties can do that, regulate that. But on the other hand, can the counties if they regulate that, then does everybody in the county have to do that? Now can you regulate it at just you can't have off-sale liquor before a time of day in an unincorporated (laugh) village? I mean, but I think we have to have some state statutes to kind of give direction on what can be done it looks like to me. Because the counties do have some authority on that, but I know I said something about it and they said, well, they have the golf course there that's outside of the city limits. If you put it, you know, outside of the city limits, well, they got the golf course and about every so often they have some kind of a tournament that they want to have their beer bust or whatever it is. So that...if you did something like that, the counties would be somewhat reluctant to do something like that. So I think we need something. And whether you have an impact zone and declare it as a time of day of sales, as they've mentioned, or something like that, I think...you know, as you say, we have to be careful it isn't special legislation, but I think we can do something at least to limit it a little bit. [LR301]

SENATOR BLOOMFIELD: Okay. Thank you, Senator. [LR301]

SENATOR KARPISEK: Thank you, Senator Bloomfield. Senator Brasch. [LR301]

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SENATOR BRASCH: Thank you, Senator Karpisek. I'm hearing a whole array of words and vocabulary here and it started out we were talking about a buzz and quick fix and this and that and a jolt or...and then you used the words "chronic alcoholics". And I believe that these high impact zones, you know, more than liquor control maybe should be Health and Human Services. I believe these are sadly tragic situations of hard-core alcoholism. And I think you both alluded to by, you know, just shutting down the store, we're not going to make the problem go away or making the bottle little or big. It's a Band-Aid fix. I don't know. I mean, if the communities need this, which it sounds like they do, for...and it's saying here for the welfare, health, peace, or safety of surrounding communities, when it gets to that extreme something is wrong somewhere. It's bigger than just time of day, it's that we have a population or a growing population of people who have a disease, alcoholism sickness that...this is a good step, but I think we need to think larger than this. You know, we can start here, but perhaps it needs to go somewhere else to truly be a solution. [LR301]

SENATOR LOUDEN: Do you want me to comment on that? [LR301]

SENATOR BRASCH: Go for it. [LR301]

SENATOR LOUDEN: Okay. It'll take a little bit. [LR301]

SENATOR BRASCH: Uh-oh. Nevermind. (Laughter) A quick solution. Okay. All right. [LR301]

SENATOR LOUDEN: You're right 100 percent. Now here's where we've come on this. First of all, the Indian Health Service doesn't recognize alcoholism as a disease or a sickness. [LR301]

SENATOR BRASCH: And I'm not talking about just Whiteclay. I mean, he said the

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problem can be all over. [LR301]

SENATOR LOUDEN: Yeah, yeah. [LR301]

SENATOR BRASCH: I'm, you know... [LR301]

SENATOR LOUDEN: And I'm telling what draws it from the... [LR301]

SENATOR BRASCH: Okay. [LR301]

SENATOR LOUDEN: ...because it's from the reservation is where our problem comes from. [LR301]

SENATOR BRASCH: Um-hum. Um-hum. [LR301]

SENATOR LOUDEN: The people, the Native Americans that have more wherewithal drive to Chadron or some place else. They buy it, loaded it up in their car, drive home and drink it at home, and nobody seems to bother them because they're not...these are the people that have nothing left. They're living wherever they lay down at and they'll catch a ride into Pine Ridge. Because I've asked, well, why don't they go to Swett? Well, first of all, you can't hardly catch a ride on the reservation to go to Swett because, see, they sell beer there, too, just like they do in Whiteclay. But you can always catch a ride into Pine Ridge because that's the center of the tribe, that's where the tribal offices are. And then they walk over there and satisfy their alcohol needs. And as I said, the Indian Health Service won't recognize that alcoholism is a disease or a health problem, so nothing is done on that. These people don't have any money, so if it isn't...if the health service don't take care of them, then nobody takes care of them. The next thing is, is to get that, they don't have any money so they have to panhandle for it in order to get enough money to buy the cheapest thing that they can buy that takes care of that alcoholism. I don't know if you've ever been around chronic alcoholics and people like

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that, but as my years as running a ranch I've hired a few of these guys that you darn well wanted to have some cheap whiskey around because if they started...as my dad always said, started seeing snakes in their boots, you better have something to give them out there, you know, which nowadays we call it d.t.'s or delirious tremors. And this is what the people are. And you're right. It's a disease and doing this won't do much for it. [LR301]

SENATOR BRASCH: That's my whole point. You know, we are battling a disease not just a zone, an area. This is where... [LR301]

SENATOR LOUDEN: Right. It isn't something that people will...are doing this because they want to. [LR301]

SENATOR BRASCH: And I believe Whiteclay was brought up here as one situation, but we were...you know, the earlier conversation was we need to look at several areas statewide that this could take place... [LR301]

SENATOR LOUDEN: Well, I'm sure there are in these towns. [LR301]

SENATOR BRASCH: And we're just...one situation that's singled out, but I think it's more than...I think it's, you know, a Health and Human Services area, some counselling, some help, you know, that type of thing rather than just open the store at noon and let them get drunk from noon on. [LR301]

SENATOR LOUDEN: We do have...and seeing this is what's...in Nebraska, if the law goes up there and arrests somebody that's drunk, they have to take them down to the hospital and have them checked out and then they take them, there's a detox center the state of Nebraska maintains in Gordon for these people. Well, they call it a bed and breakfast for drunks actually because, see, once they sober up, they can walk off from there and leave it. And I think the state of Nebraska puts a half million dollars a year to

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furnish that thing. On the reservation as I've talked to the sheriff, they've found times when they'd pick somebody up, especially if it was cold or in the wintertime or in the air and the guy was pretty cold, and then he said I thought he probably going to die on me. He picks him up and takes him up to the hospital in Pine Ridge, government-owned hospital. Well, when you take them to the hospital in Pine Ridge, they slap him on the face a few times to wake him up a little bit and they send him over to jail. They don't send them to a detox center (laugh) or anything like that. So those people are never treated if they're taken back on the reservation. If they're taken into Nebraska, the treatment isn't mandatory. I mean, it's just a matter to get them up on their feet and get them going again. So if there was...and I've worked, tried to work with these people on the reservation to try and set up some kind of a detox. Well, of course they need government funding. On the other hand, should...you know, can they make it...could the tribe make it mandatory? Yes, they can. On the reservation the tribe can...they make the rules, they make the laws, and they enforce them. So we have a larger problem. All we're trying to do here is see if we can, oh, what would you say, contain it or find...slow it down a little bit in Whiteclay so that probably perhaps we can live with it a few years more. [LR301]

SENATOR BRASCH: Thank you. No other questions. [LR301]

SENATOR KARPISEK: Thank you, Senator Brasch. Any further questions? Seeing none, thank you, Senator Louden. [LR301]

SENATOR LOUDEN: Okay. Thank you, folks, for hearing me today. [LR301]

ROBERT BATT: I'm going to be real brief. (Laughter) [LR301]

_____ : They've heard you testify before. (Laughter) [LR301]

SENATOR COASH: Can we put that on record? [LR301]

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ROBERT BATT: Okay. We're having a sale today if anybody is interested. (Laughter)
[LR301]

SENATOR KARPISEK: What are we selling? Welcome back, Mr. Batt. [LR301]

ROBERT BATT: Thank you, Chairman. I want to make a couple of quick points in this deal. Number one, I've been to Whiteclay with a couple of senators and other people. Tough place. The more...rather than do nothing I think that the alcohol impact zones, especially on the town of Whiteclay if the local authorities will even implement it, if not then we need to have something reserved that we can implement it on a state level to put in some guards rather than have it wide open as it is like the rest of the state would be an accurate and meaningful way to try to stop it. I don't think that the whole alcoholism problem is a problem of the state of Nebraska. The reservation and Pine Ridge operates on its own level. I went through every store there, by the way, myself. Fortunately I had a state patrolman behind me. But we inspected every one looking for the tiniest violation where we could cite them on it and we didn't find any and it was unfortunate. But there is a lot of alcoholism. The guy says, I was born an alcoholic, I am an alcoholic, and I'm going to die. And the guy looked about 79 years old, he was 46. I knew he would be dead before he was 50. But we have to do something and I think this is good way to do it. But let's take the other side of the state because alcohol problems are not just the purview of Whiteclay and northwest Nebraska. We had an intersection in Omaha, 33rd and California, had a problem. There was a neighborhood objection on a new C-store that was just going to sell off-sale beer, six-packs or larger. Under the law we could...you know, there was no reason to deny the license. But after that was over, I wanted to see what the neighbors were talking about, so I walked anonymously around the neighborhood and checked it out. I found two things. One, that there is a problem but the problem was, was from a bar that sold the one-ounce, we call them airline bottles, and then they take them out. You could find them all over the street like garbage. And there was also a grocery store on the corner of 33rd and California that

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was selling the high-gravity beers--Hurricane, Camo, Joose, etcetera. This stuff is horrible. I took one swallow and spit out the rest of it. It's just garbage. But if we restrict the single-can sales and get rid of high-gravity beer in one-ounce bottles, we would cure a lot of the problem in that neighborhood. And furthermore, one other statement that was made, do we have right to regulate. I'm sorry that Senator Larson is not here to hear this. (Laughter) [LR301]

SENATOR KARPISEK: I'm sure he hears you somewhere. [LR301]

ROBERT BATT: Oh, I know he does. (Laughter) But we had the effect of SPARKS and there was a couple other under several brand names where they were mixing beer and caffeine together. We got a judge that it was a danger. I mean, it kills kids and it's called being a wide-awake drunk. You drink and you're just so pumped up from the caffeine it causes a lot of problems and in some cases it causes bad injuries and death. As soon as it was determined that we had...were able to do that, the Liquor Commission banned the sale or consumption in the state of Nebraska with an immediate effect of...it was just a few days. So when we can determine and have the credible evidence to back it up, we just go forth and it comes to the commission, we said, this product is banned in the state. That means nobody can import it, nobody can sell it. And it's absolute and if you do it, your license is going to get fined, cancelled, or revoked. We do take action but we have to understand what we're dealing with. It's not just like a can a Budweiser. So if we have bad products--and I happen to consider Hurricane-type high-gravity beers a bad product--and we get the proper legislation on this, we can just go ahead and get rid of the stuff. But if you do it even on an intersection where the drinker is not mobile other than on foot, and we do it whether it's in north Omaha, south Omaha, midtown, etcetera, Lincoln, Wilber, Grand Island, wherever, Milligan, I can name...you name them all, and if we can...and O'Neill, (laughter) we could really take positive action. We are not afraid...we have to do it under the law, within the law, but we are sure not afraid to pull the trigger on this stuff. You enable us in the legislation and we'll take the action. And I guarantee you we could turn it around. I mean, Senators, when we were up in

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Whiteclay, it's one of the...I've been in India, I've been all over the world, and that is one of the saddest places I have ever been. But it takes teamwork to straighten it out, and I have no problem restricting single-can sales or high-gravity beers out of that place. I think it's a smart thing to do. So I congratulate Senator Louden on his research that he did to bring forth to the rest of you and let's move on and, you know, once and for all make progress up there. I do want to say one thing. If there is a problem with the local authorities which happens because maybe his brother owns the other bar in town and he wants to get the other guy banned, you have to have check and balances or you have to have the authority in the state who have no vested interest in the deal. And that's just, you know, the right way to handle the government. Thank you. Any questions? [LR301]

SENATOR KARPISEK: Thank you, Mr. Batt. [LR301]

ROBERT BATT: Okay. [LR301]

SENATOR KARPISEK: Seeing none. [LR301]

ROBERT BATT: All right. That's about as brief as I get. (Laughter) [LR301]

SENATOR KARPISEK: That's pretty good for you. [LR301]

SENATOR McGILL: Yeah, I'm impressed. [LR301]

SENATOR KARPISEK: Welcome. [LR301]

MARK VASINA: Welcome. And I will be brief. I'm saying it and I mean it, unless of course you ask me a bunch of questions which I don't think will happen. My name is Mark Vasina, M-a-r-k V-a-s-i-n-a. I'm the president of Nebraskans for Peace and many of you or maybe all of you know that we've for many years been associated with the

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effort to clean things up in Whiteclay. I thank you, Senator Karpisek, and the committee and the Liquor Commission, Hobie Rupe, and Commissioner Batt for bringing this unique type of legislation in a hearing like this for discussion. It definitely has the ability to make an impact in Whiteclay. I'm not going to say in a place like Whiteclay because there really isn't any other place like Whiteclay in this state. I want to only add emphasis to the last comment that Commissioner Batt made. And that is that the way the model legislation, the Washington State legislation, is written and the way I believe it has been contemplated up until now, initiation of the designation of an alcohol impact area or impact zone would come from the local authority, get raised to the state level, there would be a trial period, a voluntary period, and then it would go into place. I encourage...I'm very encouraged by Senator Louden's efforts up there with the county sheriff and other local authorities. But I firmly believe that the Sheridan County Board, which would be the local authority that would designate Whiteclay as an alcohol impact zone, would not do such a thing. And Commissioner Batt was correct in bringing up the need for some kind of situation such as Whiteclay where the state has the authority to move in over and above the local authority. And along with that, I think it's important that local ordinances and local authority should really in no way be trumped by the alcohol impact zone, but where an alcohol impact zone is needed as recognized by the state, in the case of Whiteclay, you know, the local authorities shouldn't have the ability to veto that or stop that. Limiting hours of sales, limiting single cans, limiting the high-gravity beer, which I think we all know as malt liquor which was the more established name for it for years, this would do an incredible thing to help in Whiteclay. And I'm not going to bend your ear on the complexities of the problem there. That's my testimony and thank you very much for hearing us. [LR301]

SENATOR KARPISEK: Thank you. Any questions? [LR301]

MARK VASINA: Thanks. [LR301]

SENATOR KARPISEK: Thank you. Welcome. [LR301]

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DIANE RIIBE: (Exhibit 7) Hi. Good afternoon, Senator Karpisek and members of the committee. My name is Diane Riibe and I'm the director of Project Extra Mile. We work on underage drinking prevention and youth access to alcohol. We'd like to thank the committee for looking at this important issue. It is important and you've had some good conversation. Thank you, also, to the Liquor Control Commission for bringing it forward because it has some really strong merits and we would assert that as well. Whether we're looking at the challenges of Whiteclay or Omaha, Nebraska, certainly is experiencing a transition of our communities that demands attention, and I'd like to share with you just a little bit of what we've been involved with. And unfortunately some of the neighbors from the Omaha area were unable to stay to provide some comment of their own. So hopefully we'll do justice to the work they've done there. We know that Nebraska, we've seen an increase in the number of liquor licenses granted at a rate that's double what the state's growth in our population has been over the last 20 years--a 31 percent increase in liquor license outlets compared to a 14 increase in the state's population during that same time period. What we know is that this change is not only harming our neighborhoods but it's also encouraging poor and sometimes dangerous business practices, even if not intentionally. Nebraska families are increasingly, in communities across the state, working within their own local communities to address these issues. They're working with their neighbors and they're working with their own local public officials. In Omaha, as I mentioned just briefly, a large number of local residents are working to address some of the problems they experience by proposing a local zoning ordinance. You've heard sufficient information about what an alcohol impact zone is. Those of us who work in this issue on public health matters have been aware of them for a number of years. We know that they show promise and results. We know in Tacoma, Washington, for instance, that the use of those zones has resulted in a significant reduction in EMS calls for service for those who have issues with chronic inebriation. Clearly when we see how alcohol impact zones are used in other states, we know that they hold promise for Nebraska. The problems of Whiteclay, as you've heard over and over again, really scream for some

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way to be addressed, and this strategy has particular relevance to that community. And I would reiterate Mr. Vasina's comments about the need to perhaps have some differentiation with an area that lacks that kind of local municipality input or oversight. Those who have worked with this issue for over a number of years would welcome the chance for their local city and their local municipality to really partner on this issue and to look at the causes that particular problems in the surrounding...for those surrounding residents and businesses. Both residents and businesses are frankly looking for solutions to make sure that those businesses and business practices bring a healthy and safe community. Because frankly when they don't, you get the kind of opposition and difficulty that sometimes you see which frankly none of us really want. It's adversarial and it's not a lot of fun. We like to work together on them. We do know that a local ordinance is still needed in local communities to address the larger landscape of those communities. A land use ordinance is allowed through state statute, Nebraska state statute currently, and is one of the considerations currently used to either grant or deny a liquor license in areas. Beyond the obvious differences between Whiteclay and Omaha, there is an important difference, as I mentioned just a bit ago and as Mr. Vasina did: Whiteclay does not have the same municipality oversight through a city council. They come to the jurisdiction of the county board, so there may be some need for the commission to have some more direct opportunity to identify a zone if, in fact, there's not a local city council there. We know that throughout the years Omaha residents and elsewhere have used the process of lodging a formal complaint when concerned about a problem liquor outlet, questionable business owners, and business practices of some. For instance to give you just an example, one applicant that was dealt with in the Omaha area came forward and had two Social Security numbers that he was operating under. That was uncovered by the local residents because of some larger concerns they had. And this man had his driver's license revoked in another state because of fraudulent use of those two Social Security numbers. That's relevant information and important. We know that since January of 2008 according to Omaha city records, there have been more than 400 new liquor license applications and about a dozen...a couple of dozen, excuse me, applications for upgrades of an existing license.

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In that same time period, Omaha residents have protested 53 license applications or upgrades while Project Extra Mile has protested 48 of those. So we can see from those numbers that we at Project Extra Mile, for instance, have protested and brought concerns forward in approximately 10 percent of those cases, and the residents have protested in just over 13 percent of the time. And those are often the same businesses, so it's rarely are we looking at different businesses. Those protests are not, we would suggest, an abuse of a system but rather an opportunity for us to provide relevant information on the issue that we know and the neighbors are experiencing firsthand to our local public officials. The protest can also be an indication, an evidence of some problems in those areas. Certainly as Mr. Batt described, when you go to particular parts of our community, they have some significant issues. These, in terms of those protests, are really critical functions of both citizenship and those of us who work on public health issues in the nonprofit world. We would, again, thank you and the Liquor Control Commission for the issue in bringing it forward. We think it has some opportunity for some real benefit, particularly if it's not used in any fashion to preempt what is the local authority to use a land use ordinance. I would also just kind of give you a copy of the issue brief that's been used in the Omaha area as we've been working on this issue so you at least have some sense of the work that's being done. So thank you, Nickie, and thank you very much, Senator. [LR301]

SENATOR KARPISEK: Thank you, Ms. Riibe. Any questions? I'll just ask real quick about the part of say Whiteclay where they don't have a city council and...I mean, I'll say that's one of my concerns is where do we draw that line where we do lose local control. And I'm not...I'm just...where do we draw it? Is it city council? County? [LR301]

DIANE RIIBE: Well, I think particularly when you look at that part of the Liquor Control Act, Senator Karpisek, counties are not able to adopt local ordinances, zoning ordinances. So that particular part of the Liquor Control Act identifies those zoning ordinances that would be a specific, relative, strategy, or tool that would be used by a local municipality. So, right there you're separating them in a pretty obvious way.

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[LR301]

SENATOR KARPISEK: Okay. And then the other one that just dawned on me is the Whiteclay issue of if it is part of Pine Ridge, if it is a sovereign nation, and all those things that we've run into along the way with Whiteclay, probably something to talk about off mike, but. [LR301]

DIANE RIIBE: Yeah. Well, I guess all I would say, and again I would commend Mark Vasina and the folks he's worked with on the work they've done there. But you're looking at, certainly from the commission's perspective, and not speaking on their behalf, but they have the regulatory authority to actually regulate and license those businesses and that's really the issue that we have opportunities as a state to deal with. The other issue is, I agree with Senator Brasch, have some much broader implications and certainly roots and I think require some additional attention. But for the purview of this discussion, it really is about how do we license, how do we regulate? And that does come under the jurisdiction of the commission. [LR301]

SENATOR KARPISEK: Very true. Thank you. [LR301]

DIANE RIIBE: Yep. [LR301]

SENATOR KARPISEK: Any other questions? Senator Bloomfield. [LR301]

SENATOR BLOOMFIELD: Thank you. Why would we think that increased restrictions in the village of Whiteclay would solve a problem that an out-and-out ban on the reservation has not? [LR301]

DIANE RIIBE: Well, first of all, it's a gigantic question, recognize that up front, but I can tell you what we know from the research apart from Whiteclay; and again, a unique population and a unique place. But we know from the research that when you limit, and

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this is from the Centers for Disease Control, not an opinion, but when you limit hours and days of sale, and you limit certain types and particular types in terms of larger, not just individual brands, but your larger types of alcohol, you reduce consumption and you reduce access both to the youthful population and those who have problems with alcohol. Will you solve it? No. But will you make a nice dent? Yes. So if you're looking for a silver bullet, we won't find one. If you're looking at any opportunity to make a difference, you have a good opportunity. [LR301]

SENATOR BLOOMFIELD: Thank you. [LR301]

DIANE RIIBE: Um-hum. [LR301]

SENATOR KARPISEK: Thank you, Senator Bloomfield. Any other questions? Seeing none, thank you, Ms. Riibe. [LR301]

DIANE RIIBE: Thanks, Senator. [LR301]

SENATOR KARPISEK: Welcome, thank you for waiting. [LR301]

TOM MUMGAARD: It's been a pleasure. (Laughter) Chairman, members of the committee, my name is Tom Mumgaard, T-o-m M-u-m-g-a-a-r-d. I'm a deputy city attorney for the city of Omaha and I appear today on behalf of the city of Omaha. The city of Omaha supports alcohol impact zone legislation. The problems that we've heard discussed in Whiteclay also exist in areas of Omaha. Unfortunately, those problems can be found at both ends of our state. The City Council of Omaha has long struggled to address those kinds of negative impacts of alcohol sales through the licensing process, but because of the way that the law is structured, they have limited impact on that. City councils only make recommendations on licensing. We have found the licensing process to be a limited success in addressing these problems for different areas of our town. We think that the alcohol impact zone concept can be a valuable tool to address

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these concerns. We look at it very simply that if you have areas that have identifiable special needs that it makes sense to use special rules for those areas. And that's all we're asking for and I think that's what we get with alcohol impact zone legislation. We would only ask that this tool that can come from alcohol impact legislation include local elected officials as a very important part. Those are the people who have to answer directly to the people who live in an area that is directly impacted by the negative impact. That negative effects of alcohol sales, local elected officials are elected, in part, because they make promises to do things about those negative impacts. They should be included. We're not standing on any particular form of alcohol impact zone legislation. The Washington form is a good start. We would just simply say that any legislation that comes forward should include local elected officials as a very large part of the solution. I'd be glad to answer any questions. [LR301]

SENATOR COASH: Thank you, Mr. Mumgaard. Any questions from the committee? Seeing none, thanks for being here today. [LR301]

TOM MUMGAARD: Thank you. [LR301]

SENATOR COASH: Thanks for Omaha coming out and going on record on this. Who else would like to testify on this particular legislative study? Okay, seeing none, we're going to close that one. And we're going to move to the last legislative resolution which is LR303. We're going to have our legal counsel go ahead and introduce that. This is LR303 which is the interim study to examine issues relating to whether the Nebraska State Patrol inspectors of violations under the Liquor Control Act should be under the Liquor Control Commission's jurisdiction. That's a mouthful. All right, "Ike", tell us what we got. [LR301]

JOSH EICKMEIER: Good afternoon, it's almost good evening. My name is Josh Eickmeier, J-o-s-h E-i-c-k-m-e-i-e-r. I'm legal counsel for General Affairs Committee. LR303 was introduced to examine whether liquor inspectors should be placed under the

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jurisdiction of the Liquor Control Commission or should remain under the State Patrol's jurisdiction. This issue first came to the committee's attention as an item in the Liquor Control Commission's legislative letter. Hobie Rupe, executive director of the Liquor Control Commission, is here to discuss this issue and provide some insight as to why the commission may believe it would be best to have the liquor inspectors under its jurisdiction. And so now I will turn it over to Hobie. [LR303]

SENATOR COASH: Hobie took off. [LR303]

JOSH EICKMEIER: Did he? (Laughter) [LR303]

SENATOR COASH: There he is. [LR303]

JOSH EICKMEIER: There he is. (Inaudible) just leave me high and dry today. [LR303]

HOBERT RUPE: Oh, I wouldn't leave you high and dry. [LR303]

JOSH EICKMEIER: Good grief. Good luck. [LR303]

SENATOR COASH: Oh, Hobie you just got... [LR303]

HOBERT RUPE: I'm going to give you the history, I guess. [LR303]

JIM MOYLAN: Huh? I can give the history. I've been around longer than you have.
(laughter) [LR303]

HOBERT RUPE: Last time I checked, I'm the director though. [LR303]

JIM MOYLAN: No, I'm going to... [LR303]

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SENATOR COASH: Mr. Moylan, we're going to let Hobie go. [LR303]

JIM MOYLAN: Huh? Next, okay. [LR303]

SENATOR COASH: We'll let you go next, but we...I promise you can go next, but we got to let Hobie up here. [LR303]

JIM MOYLAN: That's okay. [LR303]

HOBERT RUPE: I didn't realize we were playing... [LR303]

SENATOR COASH: Here's what I want, Mr. Moylan...all the stuff he says, you can come up next and correct it. All right. [LR303]

HOBERT RUPE: My name is Hobert Rupe. I'm the executive director of the Nebraska Liquor Control Commission and I'm sure Mr. Moylan will correct anything historically. Because when most of the issues went down, it was 1986, I was a freshman in college and my interest in alcohol might have been slightly different than it is today. This bill is to look at...and often came up to the question because people still think we might have liquor inspectors. We don't. Also just make sure that for the purpose that a notice went out for accordance to the Open Meetings Act that all three commissioners are here to listen and perhaps opine. Before I start about on this, I want to make sure I'm not...this issue is not designed to impinge the work the Nebraska State Patrol investigators do. They do a fantastic job. And of course, as you'll probably see later on, one of the options we're looking at is more of them. Okay, a little history: prior to 1986 there were liquor inspectors who were employees of the Nebraska Liquor Control Commission, they were state deputy sheriffs, they were empowered to enforce the act. There are still some other people who are similar in that; game wardens, I believe, are state deputy sheriffs and empowered to employ the game act. At that point in time there were 12 full-time FTEs in the commission. And, of course, they have the limited jurisdiction

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which we discussed. In 1986, LB1251, which is an Appropriations bill, transferred the 12 FTEs and the money for those positions from the NLCC to the NSP. Of those, seven of the existing inspectors transferred, became employees of the Patrol, the other five or the other...yes, five, the other five...my math (inaudible), the other five took...retired, resigned. Since 1985, the situation that we looked at now, and I've got copies here and just so you can see, people always ask, how many liquor licenses are there in the state? Well, this will give you an idea. This is taken off from today, shows 5,444 total licenses. Now I will let you know that that includes license applications, because once a license is applied for, it is coded in as a license number and we keep track. So some of those are in process. Also, we're coming up on the largest renewal period, which would be the Class C, CCB, and CK licenses. Generally any time you do renewals, you lose 50 to 100 of those licenses because they just won't renew because they'll be closed and we just wouldn't know about it yet. So that gives you an idea of how many licenses there are today. Now Ms. Riibe earlier said that there are more licenses now than there used to be--a couple of reasons why. If you remember back in the late 1980s there were a lot of lawsuits involving the city of Lincoln. I won't say anything like whether one of my current commissioners might have been involved as a city attorney on some of those, but the issue is, you'll remember, that one of the big ones was, up until that point, supermarkets couldn't get liquor licenses. There was a ban between...they had to have two separate walls. Supreme Court struck that down. We've also had the increase in the S1 liquor licenses have occurred. There's 290-some of those; those are the direct licenses that show up. You've also seen an increase in people getting licenses. Now actually, the biggest increase you've seen, actually not so much permanent licenses, but the absolute explosion of special designated licenses. There were over 3,700 SDLs issued by the commission last...in 2010 for special designated licenses. That's why we've had some issues trying to cut back on the number of those in recent years. And hopefully we're going to have an impact on that. That gives you an idea of...what we're looking at now is, we've got more licenses now in 2011 than we had in 1985-86. Okay, as I said, back then there were 12 full-time inspectors. One of the issues...and of how we deal with the issue that's come up with the Patrol is, Patrol has a whole host of

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duties and every year the Legislature sees fit to bestow more duties upon the Patrol. And also, generally, they're expected to do more with less, like every other state agency. And so as a result of budget cuts and utilization of other things is, I can tell you right now, and maybe the Colonel can tell you exactly how many they think, we don't have 12 FTEs enforcing liquor law from a state level right now. Best estimates I would probably give is we probably have 5 full-time investigators; we probably have 4 part- or half-time investigators. You have one sergeant who is in charge of the alcohol-tobacco division and he also supervises other NSP areas other than just alcohol and tobacco. There's also one sergeant in Troop A who supervises...who has...one of his many other duties, supervision of those investigators. The problem that has is, unfortunately, Nebraska State Patrol, because of the numbers of licenses increasing, without the same increase in enforcement capacity, has been pushed into what I would term as a reactionary mode of liquor enforcement. The fires come up, they go and they try and put them down. The complaints come in, they go in and they try and deal with them. They're also trying to deal with the license, the actual applications where they have to go look and do the background checks. So because of that, because they're being asked to do more with less, there are, of course, some things which are probably slipping through the cracks. One of the ones, which is my personal opinion and I believe the position of the commission, is that inspections of licensed locations is falling back behind.

Nebraska Revised Statutes, 53-116.01, requires frequent, and that's the term of art used in the statute, frequent inspections of all licensed premises to make sure they're in compliance, with not only the act, but with food, health, and other safety issues. When you don't have enough people to utilize that, then it's putting more and more strain. You're just putting out fires instead of being proactive on the enforcement side. The other issue which happens is because they're being forced to do more with less, the Patrol often will have people doing multiple jobs besides liquor enforcement. I will be the first to say, and I don't think anybody will be able to dispute it, being a Nebraska State Patrol liquor investigator is different than doing almost any other investigative process that the Nebraska State Patrol deals with. For the first thing, when you're doing a background check, you're dealing with a potential businessperson who wants to open a

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business and you're going to make sure they're in compliance with the act. You're not talking to a witness or a suspect. There's also financial records which are unique. If you have a concern regarding hidden ownership, doing that kind of examination. And I can't say the commission is clean and this is well. We used to have another auditor position we had to cut because of budget cuts, whose primary job duties was to work with Patrol doing those type of audits, retail audits, make sure that they aren't using it for other purposes like laundering money, that the actual people who say they are the owner are the actual owners in that respect. So what we've got here is, you know, you've got...I would probably have to say inconsistent enforcement based upon geography, workload, and manpower issues. Once again, this is an interim study and I'm...and so I think it's a good idea to sort of start to look at possible solutions as to how you want to fix it. And once again I'm going to reiterate, this is nothing...the Patrol investigators do a fantastic job. I just wish I had more of them. So there's a couple of ways. The first is to answer my prayer in that respect. You could, of course, increase the number of NSP with primary alcohol duties by linking the funding source to those positions. Nebraska State Patrol...the commission brings in \$29 million that goes to the General Fund. Last time I checked, Nebraska State Patrol is funded by the General Fund. If you sort of earmark some of those dollars, that might be one way to make sure that that's their primary job duties. Now we're not going to sit here and say and all hands on deck, they shouldn't be able to help out in other areas. But we've got, you know, oftentimes the helping out in other things is getting in the way of the liquor issues done. Of course we could put our head in the sand and keep the same. I have not had an opportunity to speak with the current colonel about this. I have spoken to his two predecessors about trying to get more resources allocated to the commission's job duties and really I have been, you know, I mean, they say they wish they could, but reality is, there's nothing they can do. That's why I'm here. The other issue is if you say, hey, this was an experiment we don't want to do, we can transfer the lot back to the...you could transfer, you know, positions over to the commission and reinstate the idea of a liquor inspector. Now, I'm not sure that's the best way. I think law enforcement officers are highly trained and I generally like to keep badges and guns in one highly trained professional organization as much

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as possible. But that is an option. It worked in the past. That's something else on the table. So at this point we're...unlike the earlier one where I had at least an idea of a framework, I'm saying here's the problem, we're asking for your help. We feel that we need more resources and, you know, it's so hard to ask for more help in a budgetary time like this. But, you know, at least we can begin the discussion now and I would be happy to answer any questions. [LR303]

SENATOR KARPISEK: Thank you, Mr. Rupe. Any questions? Sorry that I missed my introduction. I thought I saw enough green sheets that I could make it back. What I did miss was, why was it transferred from Liquor Control to State Patrol? [LR303]

HOBERT RUPE: Okay. You know, this is trying...and actually Mr. Moylan might be able to shed more recent...inference on this. From our records that we can look at, and we had certain staff who were around at that time, there was a push regarding, I believe, within the Patrol trying to get, as I said, guns and badges all underneath one bigger agency. It's my indication, I have no facts for this that the...at the same time they were discussing this with my predecessor, Mr. Chapman; they were also reaching out trying to bring in the Game and Parks, you know, the game wardens and that kind of stuff in that regard. From the commission's standpoint, you know, it reduced their administrative costs. It clearly made a demarcation between the enforcement of those laws and the final finder of fact as to whether there was, in fact, a violation. So in certain ways it makes sense in that regard. And the...from my indication looking at records, the commission thought they would be getting more resources because instead of having 12 full-time investigators, they would be having 12 full-time investigators who then also had road troops to aid them, other investigative services, because other help they could get from the Patrol. And so, if I were to criticize, the only thing which would have happened back in 1986, and I can't really criticize it too loudly because back then I don't think these things were done as much, was there was no memorandum of understanding between the two agencies as to what would be happening as a part of that bill. There was no staffing requirements, duty requirements. It was, we're going to

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shift all our enforcement duties, which were being done by the inspectors, over to the investigators of the Patrol. [LR303]

SENATOR KARPISEK: Senator Schumacher. [LR303]

SENATOR SCHUMACHER: If the enforcement were moved back under the Liquor Commission, what impact would that have on enforcement of, say, the illegal slot machine laws? We've seen throughout time that the illegal slots dropped to maybe a few hundred in the state, and at times to over a thousand, two thousand in the state. Would their authority to look into those things, when they make those inspections, change any? [LR303]

HOBERT RUPE: Well no, because, technically, the Patrol can enforce those right now. In fact, any local law enforcement officer has the rights under the act to enter into a licensed establishment to make sure that everything is in compliance with the act. So their ability to cite those would not be there...which would still be there. There is a specific statute within the Liquor Control Commission which has certain penalties against the licensee for allowing those on their job duties after a conviction. If there is a conviction in district court, or probably county court more than likely, then we receive notice of that conviction. Then the statute says for the first violation they "shall," not "may," this is one where it's not discretionary on the commission, "shall" be suspended for 20 days. And if a second or subsequent conviction within four years, the license "shall" be cancelled. So there already is part of that within the act and that wouldn't stop the ability. My thought would...actually we would have more enforcement because one of the areas where I wish we could get more help from the Patrol would be doing more inspections. You know, get out there, walk into a small town bar which hadn't had an inspection and do a Patrol inspection. And oftentimes that's when we find the slot machines--not because of a complaint, but somebody is in there doing a normal inspection from the Patrol and they find those issues. [LR303]

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SENATOR KARPISEK: Thank you, Senator Schumacher. Thank you, Mr. Rupe.
[LR303]

HOBERT RUPE: Thank you. [LR303]

SENATOR COASH: Senator Karpisek, in your absence, I promised Mr. Moylan he could go next, but after that we can hear from the Patrol. [LR303]

SENATOR KARPISEK: That's wonderful. That's great. Thank you. And again, I apologize for being gone. [LR303]

JIM MOYLAN: We had a little (inaudible) here. I hope we were going to...I was going to be first because I wanted to get back to Omaha. Mr. Chairman, members of the committee, I'm Jim Moylan, M-o-y-l-a-n, first name, J-i-m; 8424 West Center Road, here representing the Nebraska Licensed Beverage Association. And you all know that includes the retailers in the state of Nebraska. I guess I probably had as much to do with the transfer of those gentlemen from the Liquor Control Commission to the State Patrol as anybody. As you know, Governor Kerrey appointed Bob Tagg, a retired FBI agent, as head of the State Patrol back when he was Governor. Not everybody liked that. But he never lived the uniform. He says: I didn't come up in the uniform, so he wore a suit every day. Well the session started, it was either '85 or '86, and the rumor was around that Governor Kerrey wanted all this transferred to the State Patrol, including, I think, Game and Parks and everything. So, there was a...the inspectors over there were really raising hell over there at the commission and going around and organizing, you know, because they didn't want to lose their jobs. Well, number one, those inspectors were not quite picket fences like the State Patrol. And anybody in the service knows what a picket fence is, you know, you're a perfect specimen to carry a rifle and get off to the front line. So anyhow, Bob Tagg run into me in the Rotunda up here one day and he said, you know, Kerrey wants this done in the worst way. And it only has to be done through the Appropriations down there. And I'm having trouble with

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those people over there. How am I going to handle it? And I said, well, you're head of the Patrol; you just take every one of them off there with you to the Patrol and your problem will be solved. He went over and told them, we'll take you all over there and the problem was solved. Now, we're to today. I'm going to make this short. Our organization, and half of them are for it, and half are against, and I always stick with my retailers, but anyhow, there's three ways: you can leave it with the State Patrol, the enforcement; move it back to the commission which you only have to do through the Appropriations Committee, there doesn't have to be any legislation in order to get that done; or third, the proper way would probably leave it to the local law enforcement. They are the most logical people to be enforcing, you know, the liquor issues within their own communities. They know the operators; they know the people; they know the troublemakers. There's no use having two or three difference segments of law enforcement involved in this. It would be a money saver for the State Patrol, for the government of the state of Nebraska; it would be a money saver for the Liquor Commission. And it probably wouldn't add too much to the local government. So our organization would say, you know, just do away with the...on the state level, commission or Patrol and let local government have it. They handle everything else; they can handle this too. Any questions I'd be happy to try and answer. [LR303]

SENATOR KARPISEK: Any questions? Seeing none, thank you, Mr. Moylan. [LR303]

JIM MOYLAN: Thank you. [LR303]

SENATOR KARPISEK: Anyone else care to testify? [LR303]

SENATOR COASH: Can we get the State Patrol? [LR303]

DIANE RIIBE: (Exhibit 9) I'll be extra really quick. I hadn't planned on testifying, but I just want to make a couple points quickly. Again, Diane Riibe with Project Extra Mile. Good issue, certainly the commission has had concerns about this for a while. I can just tell

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you that we have worked with law enforcement both local, county, and the State Patrol across the state for...since our inception back in 1995. I can tell you that, certainly, some of the proposals that Mr. Rupe has brought forward, the one that would identify earmarking funds to make sure that those officers were paid for and remained at the State Patrol would be the most ideal because it would allow for that distinction between those agencies and the oversight would be appropriate. What I can tell you is that we know that the enforcement works, so it's more than an inspection and we would appreciate that. And, certainly, from a local law enforcement agency perspective, those of us who work with all of those agencies know that most people within this work look to the State Patrol for their expertise and they would be seen as the experts on liquor enforcement. So that kind of unique qualification that they have in their training which is a little different than law enforcement or local and county level have is a real asset to the community and an asset to the state. And we wouldn't want to see that kind of move and be a way. I just gave you the piece I did so that you see that enforcement, and this is the enforcement at the retail end, out of the Omaha Metro area, it absolutely works. And if you look at the bottom section, we know that, ultimately, which we don't want to ever lose sight of, is it means that we have lives saved. The numbers that we see in Nebraska are a positive. And so, we all take some level of ownership of that and we just thank our enforcement partners, but also the commission and the work that they do, so. Thank you. [LR303]

SENATOR KARPISEK: Thank you, Ms. Riibe. Any questions? Seeing none. [LR303]

DAVID SANKEY: Good afternoon. [LR303]

SENATOR KARPISEK: Welcome. [LR303]

DAVID SANKEY: (Exhibit 10) Well, Senator Karpisek and members of the General Affairs Committee, good afternoon. I am Colonel David Sankey, D-a-v-i-d S-a-n-k-e-y, and I'm the superintendent of the Nebraska State Patrol. I appreciate the opportunity to

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be here today to provide information regarding the Nebraska State Patrol's role in the enforcement of the Nebraska Liquor Control Act. I would like to start with a brief historical overview of the Alcohol/Tobacco Enforcement Division and its relationship with the Nebraska Liquor Control Commission. Within the structure of the Nebraska State Patrol, Alcohol/Tobacco Enforcement is a division of Investigative Services. The State Patrol has served as the primary enforcement arm for the Nebraska Liquor Control Act since July 1, 1986. Obviously, time has passed and people have come and gone, however, my understanding is the initiative to transfer responsibilities to the Patrol was spawned by concerns the commission had at the time regarding the liability of having armed personnel enforcing laws with minimal law enforcement training; the absence of policies and procedures for high-risk activities such as use of force, pursuits, etcetera; and the lack of persons with full police powers. A public hearing was held to discuss the issue and the commission members voted to transfer the enforcement authority to the State Patrol. An attempt to obtain a record of the hearing revealed the reporting service retains records for eight years, and thus no record exists. As part of the Appropriations Bill, LB1251, during the 1986 legislative session, a budget shift occurred causing the transfer of funds and FTEs supporting the former liquor inspectors from the commission to the Patrol. The transfer of personnel was voluntary on the part of the inspectors and 7 of the 12 eligible employees chose to become members of the State Patrol effective July 1, 1986. As these inspectors retired, the last one in May 2009, their vacant positions were filled with troopers. In the early 1990s the division began working cooperatively with the Department of Health and Human Services to enforce provisions of the Synar Act, named for Mike Synar of Oklahoma, relating to the sale of tobacco to underage persons. The act requires tobacco enforcement with documentation reflecting a noncompliance rate of less than 20 percent statewide. Failure to do so results in decreased federal funding to Department of Health and Human Services. Currently, we have eight criminal investigators and one investigative sergeant assigned to Alcohol/Tobacco Enforcement; two more officers than in 1986. Responsibilities for alcohol enforcement include background investigations of liquor license applicants to ensure all statutory requirements for holding a license are met; as

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well as the physical inspection of any premise where alcoholic liquor is or will be manufactured, distributed, or sold. This involves permanent liquor licenses of wholesalers, shippers, retailers, and farm wineries which last month totaled 5,375, a 19 percent increase from 1995. Special Designated Licenses: special events, fairs, street dances, tailgates, etcetera, which are also inspected, totaled 3,716 in 2010, a 1,574 percent increase from 1987; increasing the SDL ratio from 37 to 412 per officer. Our officers spent more than half of their time performing the administrative functions of application background checks and premise inspections. Retail inspections include, but are not limited to, checking for required signage and license posting in plain view; basic sanitation such as general cleanliness; ensuring there are no foreign objects in bottles and beverage delivery systems; checking for illegal refilling of liquor bottles; checking to ensure the business does not allow sales on credit; inspecting cigarette packages for tax stamps; and ensuring proper use of the "Documentary Proof of Age" book. Likewise, they spend about a third of their time performing enforcement duties involving violations of the state liquor, tobacco, and gambling statutes. This includes compliance checks as previously mentioned. I am pleased to say that due to these efforts and due to the efforts of our law enforcement partners, the noncompliance rates have dropped from 42.95 percent in 1995 to 10.7 percent in 2010, with our goal in 2011 being 10 percent. We work cooperatively with other state agencies while conducting tobacco enforcement such as the Department of Health and Human Services on the Nebraska Clean Indoor Act, and the Department of Revenue regarding tobacco tax violation and complaints relating to gambling devices. Historically, the Patrol becomes the lead investigative agency in gambling cases which may involve video slots and other questionable gambling devices. This involves the examination and evaluation of suspected devices to determine if they are games of chance or skill; the evaluation of carnival amusement games; and follow-up on complaints from casino/poker activities. Additionally, we provide no-cost training to employees and owners of licensed retailers on requirements of state statutes, commission rules and regulations, and provide guidance for the legal and responsible sales of alcohol. We offer the same free training and leadership to local law enforcement on the statutes, commission rules and regulations, and proper

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reporting procedures for criminal and administrative violations. I appreciate the opportunity to be here today to provide information regarding our duties enforcing the Nebraska Liquor Control Act. We are proud of the consistency we provide in the professional statewide enforcement of alcohol, tobacco, and gambling statutes. We look forward to continuing our relationship with the Liquor Control Commission as we strive to provide leadership in the enforcement of state statutes as outlined by the legislative body. I would be happy to answer any questions you might have. [LR303]

SENATOR KARPISEK: Thank you, Colonel. Any questions? Senator Coash. [LR303]

SENATOR COASH: Thank you. Colonel, you said you have eight criminal investigators and one investigative sergeant assigned to enforcement. [LR303]

DAVID SANKEY: Yes. [LR303]

SENATOR COASH: Is that their only duty? Or is that in context of other Patrol duties other than enforcement for alcohol and tobacco? [LR303]

DAVID SANKEY: That's their primary duty. [LR303]

SENATOR COASH: That's their primary. [LR303]

DAVID SANKEY: That's what we expect them to do on a daily basis. However, if some other event comes up, we may have to ask for their assistance with another investigation. On the flip side, if our liquor investigator with primary liquor investigative function needs some assistance, we will draw upon our criminal and drug investigators to help him with whatever case he's working on. So it goes both ways. [LR303]

SENATOR COASH: Okay. [LR303]

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SENATOR KARPISEK: Thank you, Senator Coash. Any other questions? Colonel, how is your force...how many people do you have compared to 1985? [LR303]

DAVID SANKEY: Well, we have about...I'd have to look at the numbers from 1985, but currently we have an authorized strength of 488 sworn officers. That includes all of our folks that work Carrier Enforcement, work mainly field services, to all of our investigators. [LR303]

SENATOR KARPISEK: And I don't know the numbers either and that wasn't a fair question to throw at you, but I would say, I mean I know that we didn't have new classes for a while come in, so I would feel that you're running less than optimum. I shouldn't say optimum, than you'd like to have. [LR303]

DAVID SANKEY: We're down from where we were several years ago, yes. [LR303]

SENATOR KARPISEK: Um-hum. And the reason I brought the study was to look at how to free up people for you and to have people full time over there that's all they do, they don't have to be pulled off. Part of this may sound like my intention would be to pull those people back, that would not be my intention. The way I would like to go about this is to leave what you have and maybe start over, over here and still work together. I don't want to put you on the spot now, but that's my intention. So I don't want anyone to think that I'm wanting to come over and steal your officers, because I do feel that you are under where you would like to be, or where I'd like you to be. So I just wanted to get that out since I missed my opening again. [LR303]

DAVID SANKEY: Thank you. [LR303]

SENATOR KARPISEK: I guess...I don't want to put you on the spot, so I better just be quiet. But... [LR303]

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SENATOR COASH: Do you want me to do it? (Laughter) [LR303]

SENATOR KARPISEK: Sure. [LR303]

SENATOR COASH: I am, frankly, interested in your take on this, Superintendent. I mean, what are your thoughts? Do you think that these duties are best fit in your department? I mean, let me put it this way, I know you'll do whatever the Legislature says you need to do, but I am interested in what you...what you think about how best to go about enforcement of these things. [LR303]

DAVID SANKEY: Yes. I do believe that the current setup is the best. I do think that our folks are leaders in enforcing the liquor statutes across our state. Many times local law enforcement comes to our officers because we are the ones that deal with it on a day in and day out basis. And so we can provide them with our expertise and our leadership as to how we should address a problem. We work very well with local law enforcement on these issues. I think it's also beneficial that there's a separate arm of government that actually does the enforcement and takes it to the Crime Commission so that they can independently decide on what's the proper action to take. And then I do think there are some advantage to, you know, having the ability for law enforcement officers to have full police powers to be able to go in and take whatever action they need to in an establishment, whereas the liquor inspectors in the past were only authorized to enforce the liquor statutes. [LR303]

SENATOR COASH: Thank you. [LR303]

SENATOR KARPISEK: Thank you, Senator Coash. And I agree, Colonel, that they should have complete police powers. We don't...no one needs to be out there without that, I feel. I guess some of the things though that I look at, you know, they're looking for gnats in bottles, and that sort of stuff. I just wonder if there...the Bureau of Foods and Dairy and some of those places should be doing those sort of things too. And I realize

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when they're in there, they're doing all those things. But I guess I'm just trying to figure out how we can get more inspection without taking any troops away from you or any, really, control away from you either, but how we can work that together so. [LR303]

DAVID SANKEY: Sure. [LR303]

SENATOR KARPISEK: I appreciate you coming in though. [LR303]

DAVID SANKEY: Thank you, Senator. [LR303]

SENATOR KARPISEK: Any other questions? Seeing none, thank you. [LR303]

DAVID SANKEY: Thank you. [LR303]

SENATOR KARPISEK: Any other testifiers? Everyone knows the 5:00 rule, don't they?
(Laughter) All right, that will end LR303 and our hearings for today. Thank you,
everyone, for coming. [LR303]