

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office

COMMITTEE ON BANKING, COMMERCE AND INSURANCE  
February 7, 2005  
LB 640, 391, 686, 465

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, February 7, 2005, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 640, LB 391, LB 686, and LB 465. Senators present: Mick Mines, Chairperson; Pam Redfield, Vice Chairperson; Mike Flood; Jim Jensen; Joel Johnson; Chris Langemeier; LeRoy Louden; and Rich Pahls. Senators absent: None.

SENATOR MINES: Ladies and gentlemen, good afternoon. I'd like to welcome you to the February 7 committee meeting of the Banking, Commerce and Insurance Committee. My name is Mick Mines and I am fortunate enough to serve as Chair of this committee. And I would like you first...first announcement of the whole afternoon, please turn off your cell phones, beepers, shakers or Sally our red coat in the back will be over and break your wrist (laughter). Let me introduce the members of our committee to you. First, I'm going to start on your left with Senator Rich Pahls from Omaha; Senator Joel Johnson is next from Kearney; Jim Jensen, District 20 from Omaha; Senator Pam Redfield from District 12. On your right, Senator Chris Langemeier from Schuyler; Senator Mike Flood from Norfolk; and Senator LeRoy Louden, Ellsworth. To my right who is wandering, Bill Marienau, our committee counsel and Jan Foster, our committee clerk. The bills will be taken up in order of printing and this is your part of the legislative process so please feel free to come forward, testify, give us your thoughts and ideas. All we ask to help us facilitate this process is, first of all, sign in. There's a sign-in sheet at the door or in front of...the desk in front of me. Our process is the senator will introduce the bill. Then testifiers, those proponents, those opponents, and those neutral will testify in that order following the introduction and then the senator may or may not choose to close. If you have a prepared statement I ask that you please just give it to the page. And, by the way, our page, Jeff from Ogallala, Jeff Arbor, right?

JEFF ARMOUR: Armour.

SENATOR MINES: Armour, Ogallala, Nebraska. And, finally, when you testify, please spell your first name and last name

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 2

LB 640

so that not only can Jan get it on the record, but it's being recorded and we need to know where you live. So with that, we have Senator Connealy will introduce LB 640 and Senator, I need to introduce a bill across the hall so I will transfer the chair to Senator Redfield.

LB 640

SENATOR CONNEALY: Thank you, Senator Mines.

SENATOR MINES: Thank you.

SENATOR CONNEALY: Senator Redfield and committee members, I am Matt Connealy. I have the honor of representing the people of the 16th district. I'm here to open on LB 640. LB 640 was brought to me by the abstracters. Basically, it's a bill that coordinates the license renewal with the required continuing education that they have to do. It changes the license renewal time from every year to every two years. It allows the registration fee to be increased from \$100 because that's annually, to \$100 the maximum for the two-year period. So as you see with the fiscal note, it doesn't have any fiscal impact but actually it might save a little money if they put it in early. And we've done that with a few different fees and like the last few years. I urge your support of this bill.

SENATOR REDFIELD: Thank you. Are there questions? I don't see any. Are you going to stay to close?

SENATOR CONNEALY: I'll stay.

SENATOR REDFIELD: Thank you. We will take proponents. If you will please state your name and spell it for the record.

KATHIE NATHAN: (Exhibit 1) My name is Kathie Nathan, K-a-t-h-i-e N-a-t-h-a-n. I'm a member of the Abstracters Board of Examiners. I'm appearing on behalf of the board to have the record show that the board unanimously voted to have this legislation introduced and, hopefully, to become law after meeting on January 17th. This bill is simple and direct. Senator Connealy in his introduction explained the purpose of the legislation which simply is to allow abstracters' licenses to be renewed every two years rather

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 3

LB 640, 391

than the current annual renewal. The end result would make renewal and the continuing education two-year period the same and eliminate the confusion and questions concerning completion of the continuing education requirement at renewal time. I ask that you vote to advance LB 640 to General File, and if possible, as soon as you can. We need to have this bill passed into law this session in order to be in effect for the 2006-2008 continuing education period.

SENATOR REDFIELD: Thank you, Ms. Nathan. Are there questions? We appreciate your testimony. Thank you for coming today. Other proponents?

VICKIE WILLIAMSON: Hello, I am Vickie Williamson, V-i-c-k-i-e Williamson, W-i-l-l-i-a-m-s-o-n. And I'm here on behalf of the Nebraska Land Title Association in support of LB 640. And I really mirror what's already been said about the bill. It's just going to save a lot of confusion for those of us that are abstracters across the state trying to coordinate the education and the renewal process. So I don't have anything really new except that we would really appreciate it being advanced as quickly as possible.

SENATOR REDFIELD: We appreciate your brevity. Are there questions? Thank you again for coming.

VICKIE WILLIAMSON: Thank you.

SENATOR REDFIELD: Other proponents? Any opponents? Is there any neutral testimony? Senator Connealy. He waives closing. We will close the hearing on LB 640 and are we taking this one next? Because he's not back. Oh, all right, we're going to open the hearing on LB 391 and we have staff appearing to introduce a bill for Senator Mines. When you're ready.

LB 391

STEPHANIE CUDE: Thank you. Good afternoon, my name is Stephanie Cude. That's S-t-e-p-h-a-n-i-e. The last name is spelled C-u-d-e. And I am Senator Mick Mines' legislative aide. He represents District 18. Senator Mines asked me to present this bill on his behalf. He's currently across the hall as you all know (laugh) presenting a bill to General

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 4

LB 391

Affairs. And he'll return as soon as he's able. LB 391 is a bill that relates to the meetings of the Nebraska Educational Finance Authority. This bill would allow NEFA members to join a meeting and vote by teleconference or video conference as long as there was a physical site where the public could attend. NEFA issues bonds for the benefit of Nebraska private nonprofit colleges and universities. It is a quasi-governmental entity meaning that NEFA was created by statute and its members are appointed by the governor. However, the bonds it issues are not guaranteed by the state. Federal tax laws allowed the creation of entities like NEFA because private colleges are deemed to be providing a public service by educating students and thus bonds issued on their behalf should be taxed like bonds issued for public colleges. There have been times when NEFA members were forced to declare a conflict of interest and abstain from voting on a particular bond issuance. Because of that absenteeism, a quorum was not present at those meetings because certain members could not be present at the physical location of the meeting. If those members could have participated by telephone, the issuance could have been approved at that time and the delay in the issuance could have been avoided. Senator Mines is aware that the press association has some concerns with the bill and he's willing to work with them to come up with an appropriate solution. Thank you.

SENATOR REDFIELD: Thank you, Stephanie. Are there questions? I don't see any. Oh, yes, Senator Louden.

SENATOR LOUDEN: How many members are on this commission?

STEPHANIE CUDE: I'm not positive. Tip O'Neill is coming after me and he'll be able to answer that question for you. Sorry about that, Senator Louden.

SENATOR REDFIELD: All right. Thank you, Stephanie.

STEPHANIE CUDE: All right. Thank you.

SENATOR REDFIELD: Are there any proponents?

LINDA BEAVER: (Exhibit 1) Good afternoon. My name is Linda Beaver and that's L-i-n-d-a B-e-a-v-e-r and I am the executive director of the (NE) Educational Finance Authority.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 5

LB 391

And I am here to ask for your support of LB 391. The best thing that I can say about this is that this will in no way affect the notice that is given to the public of our meetings. We will still be required as always to have the full notice of meetings. The public will have complete access to the meetings. They can join us at our physical location site of that meeting so, hopefully, we will still be able to...not, hopefully, I'm sure we will be able to still maintain the spirit of the open meetings act. And, of course, that notice will specify the date, time, and location of our meeting. Now our board will typically meet twice a year. And I'm sure many of you may be aware of how sensitive a market can be and that can mean literally hundreds of thousands of dollars to a college who may be looking at doing a refinancing of their current debt. And given that, time truly is of the essence and if we have to put off a meeting for six months or whatever in order to accommodate that, you know, because of a conflict where a board member has not been able to attend it does make for a hardship more than just for our board, but also for the colleges that we are created to serve. To answer Senator Loudon's question, we have seven board members who are appointed by the governor. And in our statute, we do have a set number of different disciplines that we need to have in the composition of our board, some of which need to be members of the education arena from the colleges themselves. And so when we do have an issue for a college that they happen to represent, they are then required under conflict of interest to abstain from voting in that. So it is very important that we have as many people as possible to be able to participate in the meetings. Okay, next thing is I would like to offer for you what other benefit this can do not only for NEFA, but for the spirit of having representation across the state in that this would merely make our board more inclusive rather than exclusive. I think you can appreciate the fact that this is a volunteer board and given such, when you have a member who...right now the furthest west member we have is in Hastings. If we were to be able to court someone I guess I'll say (laugh) from the further western parts of the state, you're talking quite a hardship for them to drive many hours each way to attend a meeting that's probably going to be an hour and a half in length. In doing so, we are taking them away from their livelihood and as such, we just hope that you will help us and support this so that we can be more responsive to both our members

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 6

LB 391

and to the constituents, the private colleges, that we were created to serve. Any questions for me?

SENATOR REDFIELD: Thank you, Ms. Beaver. Questions?  
Senator Johnson.

SENATOR JOHNSON: Well, your predecessor indicated there may be some concerns by other people about... Do you anticipate any of those? Since you're here I'll give you a chance to rebut before they have a chance to butt (laughter).

LINDA BEAVER: I do understand that the Nebraska Press Association has some concerns about the Open Meetings Act and to that, my only statement that I can...until I know more specifically those concerns is the fact that we are still required to give a two-week published notice of our meeting, that that's required from the IRS regulations itself. So there is a two-week notice that is published, statewide paper for which we use the Lincoln Journal, and so the public is given a two-week notice of the meeting. And at that time, it will state where we're meeting, what time, and the agenda is always kept current at the office and the notice tells the public that they can always contact the office for a current agenda of what is to be presented. And at that time, then they still have the complete ability to join the meeting there in person. So they will still have full access to the meeting, that will not change. All it will do is give us the possibility to bring somebody in via telephone conference who, for whatever reason, be it weather that may prevent them from traveling, or if we should be so fortunate as to get somebody on our board from a further location to the west that that would give them the ability to also participate and not have to drive, you know, what, four or five hours each way for a short meeting. So I see this as a way of being more inclusive in what we do than being exclusive.

SENATOR REDFIELD: Do you think we could consider this for the Unicameral when the weather is bad and people have to drive in from the panhandle? (laughter) Are there other questions? Yes, Senator Louden.

SENATOR LOUDEN: How are these board members, are they appointed by the governor or how do they get there?

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 7

LB 391

LINDA BEAVER: We make recommendations to the board of people that we feel would make a good fit for the board and...but then it is still up to the governor's office as to who they appoint. They have taken our recommendation and appointed those people, and other times they've said no and appointed somebody that they wanted.

SENATOR LOUDEN: And then are they confirmed then by the Legislature? Is that how that works on that board?

LINDA BEAVER: No, they are not. They are simply appointed by the governor.

SENATOR LOUDEN: Okay. On this telephone conference call and that sort of thing, to meet your open meeting laws, and I presume then you're talking about having a conference call into some kind of an area such as an extension service or something or an office in another part of the state then in order to comply with that in order to be where the public could meet?

LINDA BEAVER: We could handle that a number of different ways. Either they can come to the actual site where the meeting is which may be in our conference room or it may be, you know, in a hotel meeting room, wherever we may be meeting. And at that time we could always provide a call-in number for them and they could call in to the teleconference. To this, I would state the fact that in the history of NEFA there has never been a member of the public attend one of our meetings.

SENATOR LOUDEN: Probably not but you can't exclude it...

LINDA BEAVER: No, I don't mean to exclude them. No, no means do I want to propose that. But I'm just saying that historically there has never been a member show...

SENATOR LOUDEN: Well, I guess my concern would be is if you were going to have telephone conference calls, is this going to somebody's house when they were, or office when they were having their calls and the public wouldn't be able to be there at that, at some of those places where those telephone conference calls on the other end are going out to. That's what I was wondering about.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 8

LB 391

LINDA BEAVER: The site of the member, where they may be calling in from?

SENATOR LOUDEN: Yeah.

LINDA BEAVER: That could be from anywhere. It may be that they are...they're required to travel for their job and maybe they're in Los Angeles and need to call in. I believe according to the Open Meetings Act is that we need to provide the facility where the chairperson or vice chair is conducting the meeting to be open to the public and then to even further that, we could provide a call-in to any of those who wanted to call in. I mean, if you as a private citizen wanted to call in, you could contact our office and we could give you a call-in number and you could call in from your home which I think, like I say, would be more inclusive than it is currently.

SENATOR LOUDEN: Well, the reason I was going down that road was is this person is out there in the world someplace and he's calling in and he's supposed to be a board member on there. Are you going to give him a code that he has to follow through in order to know that you're talking to that person that's on that board or are they talking to their perhaps an assistant or somebody like that? That's what I was wondering about. See, when you have a public meeting you get to see who's there...

LINDA BEAVER: Oh, how to identify who is on the phone? Well, what we would do is like in any meeting, take a roll call and at that point we would have to believe that the person who is saying that's who they are, they are. I can say I do get to know my board members very closely and I do recognize their voices and so I would know that. And on any telephone conference, you always hear a beep when somebody comes on and likewise when they leave. And for those being put in by telephone, we would make it a policy that, you know, they introduced themselves as being by phone and likewise, if for some reason, they needed to leave, you know, disconnect from the conference call that they tell us that, you know, I am...I'm Roger Doerr from Hastings and I need to leave the conference call now. And, of course, that would then so be reflected in our minutes that Roger had left the phone.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 9

LB 391

SENATOR LOUDEN: Okay. Thank you.

SENATOR REDFIELD: Thank you, Ms. Beaver. I don't see any other questions. Are there proponents?

JOEL VANDERVEEN: Good afternoon, Senators. My name is Joel VanderVeen, J-o-e-l V-a-n-d-e-r-V-e-e-n. I'm with the Kutak Rock law firm and we're bond counsel to the authority. I just wanted to make the point that this is really a matter of efficiency for the authority and convenience for the board members who, as Linda noted, are volunteers. It's not a unique proposal in terms of we work with issuers in other states who regularly meet by telephonic means for their board members. And to address the questions regarding how such a meeting might be conducted, I could give you just a real quick example. Typically, the meeting would be held in the authority's office. Board members would be given a dial-in number to a conference call in advance so that there... only those who actually have the conference call code would be able to dial in so that there's some controlled access for the board members. The physical meeting in the office is as open as any other meeting of the authority when there's not telephonic participation by the board members. It's one meeting location in the authority's offices and in terms of participation and the ability to hear the participation of each of the board members, you know, there would be a speaker phone on the conference table so that everyone can be involved in a way that certainly happens regularly in business and in governmental affairs, as well. And so, to the extent that's helpful in answering the questions about logistics.

SENATOR REDFIELD: Thank you. Have you observed that there's been a problem with a voting quorum at some of these meetings?

JOEL VANDERVEEN: No, it actually the, you know, the whole purpose for allowing telephonic participation is to make it easier to obtain that quorum and, you know, for volunteer board members who have business elsewhere, vacation, whatever, you know, typically it's some effort to get everyone together to match the timing for the sale of bonds and it really does become a problem and it's not just in Nebraska that, you know, people have to deal with those issues.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 10

LB 391

SENATOR REDFIELD: So a scheduling problem more than anything else perhaps.

JOEL VANDERVEEN: Clearly a scheduling problem, but one that's not an occasional problem. It's a chronic problem and just as, you know, as a member of the public, you know, I'd like to make the point that it's sometimes a challenge to find the qualified board members that you want to participate in organizations like NEFA and telephonic meetings help in that regard a great deal.

SENATOR REDFIELD: Thank you. Are there questions? Thank you, Mr. VanderVeen. Other proponents?

TIP O'NEILL: Senator Redfield, members of the Banking Committee, I'm Tip O'Neill. That's O'-N-e-i-l-l. I'm the president of the Association of Independent Colleges and Universities of Nebraska which is a consortium of 14 privately-controlled nonprofit institutions which are located in Nebraska. We support LB 391 and I guess if there's a person to blame as far as the drafting is concerned, that would be me because I did draft this bill. And I know the press association has some concerns about it as it relates to the Open Meeting Act. And it would be an exception to the Open Meeting Act and it just says that, you know, if you have a difficulty getting a quorum you can have a person participate by teleconference. I am working with the press association to get a mutually agreeable solution to this issue. I certainly don't want the whole notion of the open meeting laws to go away and, in fact, the way that this bill is drafted there would still be a physical location as far as the meeting is concerned where the press and the general public would be able to participate. But at this point, I think probably it's a bill we would want to hold for a while until perhaps the press association and our group can find a mutually agreeable solution. I'd be happy to answer any of your questions.

SENATOR REDFIELD: Senator Johnson.

SENATOR JOHNSON: Would it be possible just for the press to be able to call in and be as part of the conference call? That might make it easier for them.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 11

LB 391

TIP O'NEILL: Well, I think they're already allowed to do that under the open meeting section but yeah, I mean, I think the whole issue is how we define emergency and, hopefully, we can find a solution that way. I mean, if you can define emergency that says because someone doesn't show up in a meeting you can't do the issuance which will cause harm to all the parties who are involved, if that can be defined as an emergency then we don't need this bill. Then we can use section 84-111 and go under that way. I think we have to be able to convince bond counsel though that that is appropriate so.

SENATOR REDFIELD: Other questions? Thank you, Mr. O'Neill.

TIP O'NEILL: Thank you.

SENATOR REDFIELD: Other proponents. Opponents?

ALAN PETERSON: (Exhibit 2) Senator Redfield, members of the committee, I am Alan Peterson. I represent not the Nebraska Press Association but Media of Nebraska. This group is a coalition of the broadcasters, the press association, the two dailies in Lincoln and Omaha, and then a group called the Daily Press Association which essentially is the dailies from all across the state. So it's a coalition and it's not just the papers. We're not just the little papers, not just the big ones. The purpose of Media of Nebraska is to protect access to news, Public Records Act, public meetings act (Open Meetings Act) especially. And we do oppose this bill as written. Number one, it would create for this one group an allowance of call-in votes and participation that neither the Legislature nor any other public body in Nebraska is permitted to do. Sole other exception, the Nebraska Judicial Qualifications Committee is allowed on very, very exceptional circumstances to have a phone call meeting. Now why is this? The Open Meetings Act is not just a matter of everybody having notice when the government is going to act on something important. It's a chance for the public including the media, if they want to, to come and monitor and to look each of the commissioners or board members or senators right square in the eye. And after the meeting if they want to, to buttonhole and ask well, why did you vote for? Why did you vote against that? And, then try to inform the public. The phone in vote is something that has been tried in some other states. In this state, we made

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 12

LB 391

a compromise on this issue, something like eight or nine years ago. And a number of the statewide agencies, and there's more than 200 of them by the way, not just NEFA and a handful, but more than 200 of these statewide, usually volunteer boards and commissions who do the business of this state, and those folks do make a sacrifice as do the NEFA folks, to attend and do their job. But the compromise that was made was to permit video conference meetings up to one-half of the time of all the meetings per year and that covers state agencies, statewide boards. There are a number of entities specifically mentioned. NEFA is not mentioned and if, in fact, it doesn't feel that the statute is broad enough to cover it for video conferences, this bill could be used to make that clear. That would be a good use for it. But to permit phone-in votes by essentially everybody except some chairperson sitting in the Lincoln office really means you don't have a meeting. Under the law, you would have a nice phone call, a nice conference call. And it doesn't work in the sense of true public access, at least that's the position of my clients who would like to be able to see what's going on. And I do mean see what's going on. So, let's take just a moment and see where we are. We've got a public meetings law that provides for video conference meetings, which is a statewide network we can use and it is used by some already for half the meetings. I guess that means one out of the two for this entity. That leaves an obligation for those who agree to sit on this board to show up once in Lincoln or halfway across the state, if they wish to have a compromise sometime and honor the outstate members one time. That's not much compared to many of the statewide boards that meet several times a year. It's not much compared to those who meet 60 days or 90 days in Lincoln for every year, and namely yourselves, who come from all over the state. And even though we're concerned here about the ability to issue bonds on time because interest rates might change, we've already got another remedy in the existing law for this problem. If, in fact, there's an emergency...let's say they have their meeting and for whatever reason people don't show and they don't have a quorum. Only three instead of four show up who can vote, all they have to do is declare and have an emergency meeting on the ground that it's going to cost a fortune if we don't get this business done. They do have to give a new notice but it can be as much as one day, as little as one day, as an emergency meeting and let that be the solution because under emergency meetings where

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 13

LB 391

it's truly an emergency you can do it by phone under existing law. I haven't heard NEFA say that they have tried either of those solutions to their problem and with all respect, I simply think that allowing this one entity to have call-in votes whenever it wants to and all the rest of the entities in the state not, including your own entity except those special motion and vote, I believe, occasionally you have call-ins from your offices. It simply is not right. And while it's true that NEFA is not attended much by the public I'm sure and only occasionally by the members of my clients, the news media. Nevertheless, this is the camel's nose under the tent, this is the foot in the door. I cannot distinguish this entity from the other 200 plus statewide agencies of volunteer members who give their time and give their effort and give their thinking. So we oppose it as not necessary, as an important undermining of the open meetings law concepts and we ask that you not advance this bill.

SENATOR REDFIELD: Thank you, Mr. Peterson. Now I'm hearing your testimony about buttonholing. With video conferencing a reporter wouldn't have the opportunity to buttonhole the person at the other site. Is that true?

ALAN PETERSON: That's true. While you can try to call them right after the meeting if you can get through, but video conferencing sacrifices that to some degree also.

SENATOR REDFIELD: So that isn't really a remedy for that concern for you and yet we allow video conferencing.

ALAN PETERSON: Up to half of the meetings. At least you get to look them in the electronic eye, sort of.

SENATOR REDFIELD: So you can look at them; they can't look at you maybe and the audience. But you could report that they were sweating as they were voting.

ALAN PETERSON: Good (laughter), but no, as a matter of fact, that system is set up so well that it is two-way.

SENATOR REDFIELD: Well, it's two-way generally from where the camera is, but it's not usually on the back row of the press.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 14

LB 391, 686

ALAN PETERSON: There you go.

SENATOR REDFIELD: All right. Thank you. Are there other questions?

ALAN PETERSON: Um-hum. Thank you, Senator.

SENATOR REDFIELD: Thank you very much.

ALAN PETERSON: Thank you.

SENATOR REDFIELD: Are there opponents?

ALAN PETERSON: Oh, I did prepare a letter of my testimony as a summary if I could leave that, I'd appreciate it.

SENATOR REDFIELD: If you would leave that, that would be helpful to the transcribers.

ALAN PETERSON: Thank you.

SENATOR REDFIELD: Seeing no other opponents, is there neutral testimony? Would you like to close, Stephanie? All right, that will end the hearing on LB 391. And we will open on LB 686 and there is the senator. Good timing (laugh).

LB 686

SENATOR MINES: Thank you. Chairman Redfield, members of the Banking, Commerce and Insurance Committee, my name is Mick Mines, M-i-n-e-s, representing Legislative District 18 and I'm the principal introducer for LB 686. LB 686 clarifies the Intergovernmental Risk Management Act regarding the treatment of certain funds when a risk management pool is a member of a reinsurance mutual company or pool for the purpose of securing reinsurance. In this case, any paid-in capital, surplus, equity, or ownership interest is recognized as an admitted asset. This clarification is needed because the differences between an intergovernmental risk management pool and an insurance company. The Intergovernmental Risk Management Act is the law that allows local governments in Nebraska to join together to create insurance pools. The Department of

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 15

LB 686

Insurance regulates these pools. The act was designed to allow local governments to work together to save costs on insurance and improve risk management services. By law, these pools are not insurance companies. Some of the practices of the pool do not match traditional insurance companies and the question becomes how to handle these situations. In this situation, several state pools obtain reinsurance from national pools. LB 686 provides guidance to the department on how to treat this practice. I have testifiers behind me and I would entertain questions or refer them to those following me. Thank you.

SENATOR REDFIELD: Thank you, Senator Mines. Are there questions? He's trying to cut back the taxes again, I see. All right.

SENATOR MINES: (laugh) Yes.

SENATOR REDFIELD: All right. Proponents. If you would state your name and spell it for the record.

JOHNNIE MILLER: (Exhibit 1) Senator Redfield, members of the committee, my name is Johnnie it's J-o-h-n-n-i-e Miller, M-i-l-l-e-r. I'm with the League of Nebraska Municipalities and am the director of the League Association of Risk Management, the Intergovernmental Risk Management Association of the Municipalities Association for 56 municipalities here in the state of Nebraska which is governed by its own membership, by the city administrators, and council people of the cities of Kearney, and Norfolk, and Fremont, and others that choose to use the Intergovernmental Risk Management Act to cooperatively do what they could not otherwise do on their own which is self-insure some of their risks. Because the Intergovernmental Risk Management Act allows for municipalities of all types, all public agencies in the state to join together through the Interlocal Cooperation Act to form an agency which its sole purpose is to deal with issues of risk management. We see our organization, first and foremost, as an interlocal agency. The problem is then, of course, is that as Senator Mines indicated this Intergovernmental Risk Management Act specifically states that the Intergovernmental Risk Management Associations are not insurance companies. However, it then leaves to the Department of Insurance the job of regulating those

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 16

LB 686

noninsurance companies wherein comes the rub that their regs and rules do not, or have not been written or developed in order to regulate noninsurance companies. They've been dealing with insurance companies from the beginning of time. And we've run into several situations, LB 686 being one of them, where the department is left without any direction, without any rules to apply to a certain situation. This particular situation is where the state-run pool that's sponsored by the state association of either counties or cities or schools, whatever it may be, many of those state organizations are provided excess and catastrophic insurance from their national counterparts. The League Association of Risk Management belongs to an organization called the National League of Cities Mutual Insurance Company, which was developed by the National League of Cities for the sole purpose of providing coverage to association sponsored pools, and that's all that they do. There's a couple of different similar organizations for the county organizations which I understand the county pool, here in Nebraska, also belongs to such an organization. Again, this legislative bill was brought the day before the last day that the bill could be introduced. I had a meeting with representatives from the Department of Insurance on this very issue of how to treat the fact that we are part of a larger pool, and that the monies that we pay into that pool because it's a nonprofit organization, when they have surplus that's equity that belongs to us and it will be paid back to us if we ever leave that pool, or we can use those monies that are there as our surplus to make future payments of premiums to them, and things of that sort. At the time of that meeting, the department wasn't sure how they could handle that because they have no similar situation with insurance companies to deal with it and they were left with not being able to allow us to recognize those assets that we have in that organization. LB 686 then was put together very quickly. We're not certain that the language is exactly correct. I've been in conversation with the department several times since it was originally drafted to try and work with them to make sure that the language is correct but, again, give them a vehicle to work with to be able to recognize that the state-run pools will belong to larger national pools in order to cut costs.

SENATOR REDFIELD: All right. Are there any questions for Mr. Miller? I don't see any. Thank you for your testimony.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 17

LB 686

Proponents. Ms. Rex.

LYNN REX: Senator Redfield, members of the committee, my name is Lynn Rex representing the League of Nebraska Municipalities. We're here today in strong support of LB 686. I think that you've had the bill outlined to you in detail in terms of what it does, why it's needed. This is being done in concert with the Department of Insurance. This is something we want to sit down and work out with the Department of Insurance, or committee counsel, NACO, and others because, again, their concern is they just want to make sure that they're doing what the law provides and this is one of those areas of the law that simply does not address the unique situation in which pools find themselves. Our pool has saved municipalities across the state of Nebraska millions and millions of dollars. It's an excellent organization and what we do, first and foremost, is deal with the issue of risk management and prior to the League Association of Risk Management being created, thanks to the passage of LB 398, introduced basically by Senator Landis as chair of this committee and it was a priority bill that was advanced several years ago. Not only NACO, but the league and others have worked hard to put these together, the community colleges and others as well are involved. So we would like a chance to work very quickly (laugh) with your committee counsel, with the Department of Insurance. I will just tell you, the Department of Insurance has been extremely cooperative. They have been wonderful to work with over the years, in this regard, and this is just one of those things that did occur that really needs to be addressed because the laws are silent. I'd be happy to respond to any questions that you might have.

SENATOR REDFIELD: Questions for Ms. Rex? I don't see any. Thank you.

LYNN REX: Thank you very much and thanks, Senator Mines, for introducing the bill.

SENATOR REDFIELD: Other proponents? Opponents? Is there any neutral testimony? Senator Mines, do you want to close?

SENATOR MINES: Thank you, Senator Redfield. Just maybe a snapshot here. As you heard, this is not a League of Municipalities bill. It also affects the Nebraska

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 18

LB 686, 465

Association of County Government and it's a little broader than one might think on the surface. And you also heard that the language isn't quite right yet so we needed to hear it today and we need to do some work on it, both committee counsel and this committee, as well as Department of Insurance, League, NACO, but we just need to hear it today to move to the next step. Thank you so much.

SENATOR REDFIELD: Any questions? Thank you. That closes the hearing on LB 686.

SENATOR MINES: Senator Redfield, before you start, I need to recognize, I know all my colleagues are looking back seeing all these handsome folks sitting in the back of the room. This is the group from this year's leadership group, the Nebraska Bankers Association leadership group from all over the state and we're just really happy to have you here. Thank you for taking the time. With that, I will open the hearing on LB 465. Senator Redfield.

LB 465

SENATOR REDFIELD: (Exhibit 1) Thank you, Chairman Mines, members of the committee. We're swapping chairs back and forth here. For the record, my name is Pam Redfield, R-e-d-f-i-e-l-d. I am the state senator from District 12 and I'm here to introduce to you LB 465. LB 465 looks familiar to those of you who have served on the committee before. It actually was sent to the General File last year by the Banking, Commerce and Insurance Committee and we ran out of time. Actually, the vehicle that was there became another bill that we needed within the time crunch. But what it actually deals with is cash value life insurance and annuities and how we deal with those under the bankruptcy laws of Nebraska. I have asked the page to distribute to you an article that was just recently in the Omaha World-Herald over the weekend and it's actually lifted from the Los Angeles Times. But about half of all bankruptcy filings in the United States occur because of health-related expenses. Many middle-class people who have purchased health insurance or have health care through their employers find themselves many, many times through just one diagnosis in need of very, very costly services and between the deductibles, and the inability perhaps to continue to work,

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 19

LB 465

and their insurance being covered by the employer, runs out and these people find themselves overwhelmed with bills and for the first times in their life they find themselves in bankruptcy. These are not people that are irresponsible. These are not people who have not prepared or tried to take into consideration these kinds of eventualities. That's why they have been purchasers of health insurance. This is why they have been purchasers of life insurance and annuities. We also live in a day and age where many people have a pension through their employer, but there are other people in the workplace who do not have an opportunity for a pension and so they are self-pensioned, so to speak. They may put their money into a life insurance product or some other vehicle so that they can take care of their family in their retirement years. These are the funds that are at risk when a person declares bankruptcy. If they were covered by a pension plan by their employer, that money would still be there month after month as they retire. But because they are, in a sense, self-funding that pension plan through a life insurance product or an annuity, that vehicle is very, very vulnerable in a bankruptcy. And the bill that is here before you would ask you to amend current statutes. Right now we allow an exemption of \$10,000. I don't know how many of you have tried to fund an entire retirement on \$10,000. And especially if, in fact, you are the widow left behind after you have just lost your husband in a hospital with very, very costly bills. And so what we are asking you to do is to raise that exemption to \$100,000 and there will be those here who can testify about the details of the bill, but that's the general gist of it. We're trying to protect a certain amount of money, not a lot of money. There are many states that have a total exemption. There is no limitation whatsoever. There are some states that have a limitation of \$200,000 so we're not being overly generous here. The concern that we've had in the committee before and we did address when we sent it out to the floor last year was one that the banks brought to us, a concern that people might be hiding their assets. We certainly don't want that to occur. So we have a three-year look-back which says they're going to look back and they're going to examine to see if, in fact, they're gaming the system and just trying to hide money in anticipation of a bankruptcy filing. So I don't think anybody is going to anticipate that three years out. These are going to be special events that no one ever planned for, certainly never anyone hoped would occur.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 20

LB 465

There will be an amendment that is offered and I would support that amendment and ask you to listen to the testimony that follows me very carefully. Are there any questions?

SENATOR MINES: Thank you, Senator Redfield. Senator Pahls.

SENATOR PAHLS: Do you think the three-year agreement is what we needed to make it work?

SENATOR REDFIELD: Well, certainly, there are vested interests in all of the creditors out there and I think that this gives them some assurance that there's no gaming involved. And I think that that's a fair task.

SENATOR MINES: If I might just on top of that, three years is pretty much a standard, is it not?

SENATOR REDFIELD: Yes, it is.

SENATOR MINES: Yeah, you go any longer and it gets tough to manage. Any other questions for...? Senator Flood.

SENATOR FLOOD: Senator Redfield, I like the look-back. I think that's a nice option. But the statute of limitations oftentimes extends four years if a bank was to go back, if a creditor was to go back. Would you consider four years to conform it to our statute of limitations?

SENATOR REDFIELD: Well, Senator Flood, we didn't even talk about the statute of limitations. The look-back provision, because it was standard and we were seeing that occurring nationally but also because as we had discussions amongst the different entities that were interested in the bill and they have agreed on three years, I'd be a little bit reluctant to tell the committee that I would suggest another figure. I mean, we talked about two years. We had talked about three years and three years was what they actually agreed on.

SENATOR FLOOD: All right, thank you.

SENATOR MINES: Thank you. Any other questions for the senator? Seeing none, thank you, Senator Redfield. Could I see a show of hands, those wishing to testify in support of

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 21

LB 465

the bill? I see two. Those wishing to testify against the bill? I see no hands. And anyone in a neutral capacity wishing to testify, please raise your hand. I see one. Would the proponents please come forward? Welcome.

DAN DUREN: Hi, how you doing?

SENATOR MINES: Good.

DAN DUREN: (Exhibit 2) Chairman Mines and members of the Banking, Commerce and Insurance Committee, my name is Dan Duren, D-u-r-e-n, and I'm here to testify in support of LB 465 on behalf of the National Association of Insurance and Financial Advisors named NAIFA, our Nebraska chapter. We're an organization comprised of 1,200 insurance and financial advisers throughout the state of Nebraska who assist our clients with insurance, investment, and financial planning solutions. NAIFA Nebraska has been on record in the past supporting similar proposed legislation. We believe that it is time, or the time has come to update Nebraska Statutes which was enacted about 23 years ago. We believe it is appropriate and desirable to increase the current \$10,000 cash value exemption limit to \$100,000 for life insurance and annuity contracts for many and all claims of creditors, of the insured, and/or the annuitant and their beneficiaries. This bill recognizes the need for a surviving beneficiary, typically a spouse or a child, to be able to meet the household expenditures, potential post secondary education expenses, major unexpected health care expenditures and minimum retirement securities after a personal bankruptcy. The exemption limit rightfully should be adjusted to a more significant threshold in order to preserve the long-term integrity of the life insurance death benefit and annuity contract. Allowing creditors to claim significant amount of the cash value of a life insurance policy can reduce the available death benefit or in some cases, can jeopardize whether the policy even remains in force. The premise that life insurance policies and annuity contracts that materialize in death benefits should be exempt from creditors is well established in both federal and state bankruptcy codes. Since death benefits are already exempt, the bill is designed to protect the value of those death benefits to a higher degree than the state law currently allows. All 50 states make a certain provision in order to protect some level of cash and/or loan value of

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 22

LB 465

life insurance and annuity contracts from the creditors. Currently, there are 32 states that provide unlimited cash exemptions from the claims of creditors. Four states possess a limit exemption ranging from as low as \$20,000 and an upper amount of \$200,000. Three states have the identical \$10,000 limit Nebraska has. The remaining states feature a lower exemption amount. The proposed \$100,000 exemption for Nebraska consumers would push Nebraska from the lower end in terms of the \$10,000 exemption limit and give Nebraska a more moderate exemption limit when compared to other states. Our members do recognize that there is concern that some individuals could intentionally put additional assets into purchase of life insurance or annuity contracts before they are confronted with bankruptcy proceedings. We have worked cooperatively with Nebraska Bankers Association and others to address these concerns and believe that LB 465 would prevent any intentional abuse of the exemption. This bill creates a three-year look-back period to prevent individuals from planning a bankruptcy in order to have the cash value exemption protection. During the three-year look-back period, as it impacts existing life insurance policies and annuity contracts, only additional, unscheduled premium payments into a life insurance policy and additional, unscheduled purchase payments into an annuity contract above and in excess of the regularly scheduled/planned premiums or purchase payments would be subject to the claims of the creditors. And I know there was an amendment mentioned by Senator Redfield and I think that's what it was addressing there. We recognize the need for creditors for fair treatment in a bankruptcy proceeding, and believe this bill prevents abuse while not penalizing Nebraskans who are continuing to make payments to keep these contracts in force and keep death benefits intact. NAIFA-Nebraska is in full support of LB 465 because increasing the \$10,000 exemption to \$100,000 for cash and/or loan values of life insurance policies and the accumulation values of annuity contracts from the claims of the creditors, thus placing them on the same level playing field as life insurance death proceeds will assure that these financial vehicles will continue to provide the foundation for a solid financial plan for Nebraska consumers. Life insurance policies are unlike any other products or services purchased by consumers. They are intended to mature and pay a death benefit for family surviving income, funeral expenses, estate transfer, settlement costs, mortgage debt

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 23

LB 465

reductions, business continuation and lastly, other needs. If creditors claim virtually all of the cash value of a policy, the benefits available to family members upon death could be severely reduced or in some cases, wiped out. So I thank you for this opportunity to present testimony in support of LB 465 to the committee and at this time I would open to any questions you may have. Yes.

SENATOR MINES: Dan, thanks, great testimony. Thank you. Questions? Senator Jensen.

SENATOR JENSEN: Yes, right now what escapes bankruptcy?

DAN DUREN: \$10,000.

SENATOR JENSEN: \$10,000.

DAN DUREN: Correct.

SENATOR JENSEN: Plus a home, is that correct? Are you aware of that?

DAN DUREN: I'm not sure on that.

SENATOR JENSEN: Okay. There are other items that are included in that. I'm just not aware of what they are.

SENATOR FLOOD: I believe a home you have a \$12,500 homestead exemption so if you...

DAN DUREN: I believe that's correct.

SENATOR FLOOD: ...if your home is mortgaged.

SENATOR JENSEN: And certain business equipment too, I think somewhere in there. I don't know what those are but...

SENATOR FLOOD: Yeah.

SENATOR JENSEN: ...we can pick that up later on. Thank you.

DAN DUREN: Sure. Okay.

SENATOR MINES: Any other questions for Dan?

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 24

LB 465

DAN DUREN: I do have a handout, by the way.

SENATOR MINES: Great. Just hand that to the page.

DAN DUREN: Okay. Thank you.

SENATOR MINES: Dan, why do you suppose there's no opposition here today? And without being kind to you, there certainly has to be some opposition...

DAN DUREN: Well, I think there are some means already that bankers do have to collaterally assign a life insurance policy or even an annuity contract so, you know, there are means that these things are being handled, I think. It's really probably the...I think as Senator Redfield mentioned, you've got somebody who's been ill, out for awhile and all of a sudden the only course of action they have is a bankruptcy and, you know, then on top of it they're probably uninsured...

SENATOR MINES: Yeah.

DAN DUREN: ...so that even becomes more of an issue for them because they can't get new insurance to take care of what has been lost so.

SENATOR MINES: All right, makes sense. Any other questions? Dan, thanks.

DAN DUREN: Thank you very much.

SENATOR MINES: Next testifier in support of the bill. Good afternoon.

ROBERT FITZSIMMONS: (Exhibit 3) Mr. Chairman, members of the Banking, Commerce and Insurance Committee, my name is Robert H. FitzSimmons, F-i-t-z-S-i-m-m-o-n-s. I'm a CFP Professional and president of Bob FitzSimmons, Inc. Our firm is a financial planning firm that specializes in personal investments and insurance planning located right here in Lincoln, Nebraska. I'm here to testify this afternoon on behalf of the Nebraska Chapter of the Financial Planning Association. That's called FPA-Nebraska in support of LB 465. The FPA-Nebraska Chapter is comprised of about

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 25

LB 465

160 personal financial planners throughout the state of Nebraska. Our chapter is one of 100 nationally with a total membership of approximately 29,000 across the U.S. Most of our chapter members are heavily involved in personal financial planning services to thousands of clients here in the state of Nebraska. FPA-Nebraska Chapter supports this bill to amend sections 44-371 and 44-1089 of the Nebraska code. This bill as you've heard on several occasions already today basically changes provisions relating to the claims of creditors for the cash values inside a life insurance policy and/or a personal annuity contract. FPA-Nebraska's members understand that in the mid eighties when the current statute was enacted to curtail abuses, some individuals would buy a permanent life insurance policy with significant cash values added initially to that policy and/or annuity contracts only days before they were being confronted with a bankruptcy proceeding. We certainly don't condone this practice. A key provision of the proposed bill would protect creditors from this practice. It should, however, be noted that lenders are not prevented today from accepting collateral assignment of life insurance policies and thereby protecting the lender from a potential loss. We recognize the needs of creditors for fair treatment in a bankruptcy proceeding. But we also believe strongly the current statute goes simply too far in hurting those families who purchased life insurance contracts and annuity contracts many years ago who would lose all but \$10,000 of that aggregate cash value in these contracts. The new three-year look-back provision that was mentioned already in LB 465 will provide protection to creditors in a bankruptcy proceeding in our judgment. We assume each of you appreciates the importance of a surviving beneficiary, typically, as you know, that's generally a spouse and children, to be able to meet their household expenditures, potential post secondary educational expenses, major unexpected health care expenditures that we just heard about, and minimal retirement income security after bankruptcy claims have been processed. If this cash value is depleted by creditors, as is currently the case, there may be insufficient cash then to keep that policy intact for very long and the family will be hurt again by losing this asset. The vast majority of states have no limit on the amount of life and annuity insurance values exempt from creditors in a bankruptcy proceeding. Increasing this current aggregate exemption from \$10,000 to \$100,000 in a

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 26

LB 465

bankruptcy proceeding appears to us to be simply fair and appropriate for Nebraskans. We believe there is no revenue lost to the state of Nebraska from LB 465 but it could, looking down the future, reduce potential welfare and Medicaid expenditures in families after a bankruptcy proceeding. The FPA-Nebraska Chapter members encourage the committee's favorable consideration of this bill. I thank you for the opportunity to provide the testimony on behalf of the clients of our members who have owned permanent life and annuity contracts for many years. I would be pleased, Senator, to answer any questions you might have at this moment.

SENATOR MINES: Thank you, Bob.

ROBERT FITZSIMMONS: And that's it.

SENATOR MINES: Committee, do you have any questions for Mr. FitzSimmons? Seeing none, were you ever in radio? (laughter) You have a great voice.

ROBERT FITZSIMMONS: (laugh) I doubt if you were listening to KFOR today, but today I did talk on KFOR for six different times so just depends if you listen to KFOR...

SENATOR MINES: There you go.

ROBERT FITZSIMMONS: ...so, yeah, I've been on KFOR for ten years.

SENATOR MINES: Oh, you have.

ROBERT FITZSIMMONS: Yes.

SENATOR MINES: Well, welcome and come back anytime. Thanks, Bob.

ROBERT FITZSIMMONS: Thank you. I'll be happy to do that sometime. Thank you all for listening.

SENATOR MINES: Thank you. Do I see anyone else in favor wishing to testify in support? I see none. Are there any in a (laughter)...is there anyone able to chew gum and walk at the same time? (laughter) I believe there is no neutral and Mr. Hallstrom, you are the neutral capacity. Welcome.

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 27

LB 465

ROBERT HALLSTROM: Chairman Mines, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in a neutral capacity on LB 465. I fully intended to come in and oppose the bill today, but some conversations with the supporters of the bill and Senator Redfield have taken us back to where I believe we were at the end of last session when we had come to a compromise or a consensus agreement on what was then an amendment to LB 1047, late last session, that didn't get adopted because of lack of time and so forth. Essentially where we are, Senator Redfield had introduced similar legislation in 2003 that would have increased from \$10,000 to \$100,000 the items that are exempt from creditors' claims. The bankers were not willing to accept that significant of an increase without other exceptions, and so what we ultimately worked with the financial planners or the financial advisers group was similar to other provisions of existing law regarding retirement plans and pension plans where there is a similar look-back type of concept that says, in order to avoid people planning for bankruptcy in advance that you have a significant look-back period during which no established contracts or additions to those contracts will be rendered exempt from creditors' claims. The agreement that we had reached last year was to look at the three-year look-back period. Senator Flood, I would note that in the course of the conversations, why we arrived at three was that we made an initial offer of the four-year statute of limitations that applies to fraudulent conveyances. They countered at two and when the courtship was over, we settled on three. And so we now have a three-year look-back period. Some of the concerns that we have with LB 465, as introduced, is that that three-year trigger, if you will, for the look-back period was initially by the amendment last year, triggered by both the filing of a bankruptcy and the entry of a final money judgment, or the money judgment that thereafter becomes final. Somehow in the translation to the introduction of (LB) 465 this year, the entry of a final money judgment got lost. I have confirmed that both Senator Redfield and the supporters of the bill are willing to put that language back in so that is satisfactory with this. We are, however, had concerns and expressed concerns with regard to the ability to allow scheduled premiums even within the three-year look-back period to escape claims of

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 28

LB 465

creditors. Senator Redfield's amendment, which I think she is going to provide to the committee at closing, is one that would take us back to where any contributions, whether it's the establishment of an annuity or a life insurance cash value or additions to one through any type of payment, premiums, contributions, or otherwise, would still remain subject to creditors' claims within the three-year period. Obviously, all of this is further buffered by the fact that if, as one of the testifiers indicated, if a creditor takes a security interest by way of assignment then none of these limitations do apply. I would like to note for the record that while I think we have soup in concept I have just looked at the amendment within probably the last ten minutes and I would like an opportunity to review it for technical issues. This is kind of a confusing statute in that it starts out by saying, everything is generally exempt from claims of creditors unless you have a written assignment and then it further says, except you exempt these so we've got double negatives in all those kind of things that make for difficult drafting purposes. But I'm confident that between the supporters and Senator Redfield and her staff that we'll sit down and hammer that out and have something fairly quickly to come back to the committee that's acceptable for all parties.

SENATOR MINES: Great, Bob. Thank you. Are there questions for Mr. Hallstrom? I have one. Just from a practical perspective, when we see triggers kick in how is the tracking? In other words, how does this process all come together?

ROBERT HALLSTROM: Well, basically, what you'd have, Senator, is you look back three years from the filing of a bankruptcy...

SENATOR MINES: Yeah.

ROBERT HALLSTROM: ...and that any existing cash value or annuity contract balance that was created or expanded, if you will, during that three-year period would be available for creditors independently to go back after. They would not be exempted through the bankruptcy proceeding or...

SENATOR MINES: And that information is readily available or, I mean, that process...I'm not in that business but I...

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 29

LB 465

ROBERT HALLSTROM: ...what I assume you will have is, at a minimum, the recordkeeping documentation would be in the account statements that the individual had that would show...

SENATOR MINES: Right.

ROBERT HALLSTROM: ...what the balance was at point A, what type of additions had been made, whether a contract or a policy had even come into existence during that three-year period, whether there were interest or dividend accumulations during that period of time which would also be subject to...

SENATOR MINES: Sure.

ROBERT HALLSTROM: ...creditors' claims if added to the policy within the three-year look-back.

SENATOR MINES: So the look-back is a reasonably secure method of ensuring that creditors aren't going to take the bank, huh?

ROBERT HALLSTROM: We believe...obviously, people can transfer things out of those that were transferred in...

SENATOR MINES: Yeah.

ROBERT HALLSTROM: ...but there are issues involving fraudulent transfers and things of that nature that could come into play at that point.

SENATOR MINES: Okay, thank you. Any questions? Seeing none, thank you for your testimony, Bob.

ROBERT HALLSTROM: Thank you, Senator.

SENATOR MINES: Anyone else wishing to testify in a neutral capacity? I see none. Senator Redfield to close.

SENATOR REDFIELD: (Exhibit 4) Thank you, Senator Mines. I come back up just to pass out the amendment. It just came down from drafters. It returns the language to what the agreement was last year. If you recall, the discussion on

Transcript Prepared by the Clerk of the Legislature  
Transcriber's Office

Committee on Banking  
February 7, 2005  
Page 30

LB 465

the floor, Senator Bromm was the one who asked on the floor, in the record, if, in fact, any contributions during that three-year window of look-back would actually be counted and it was my understanding and I answered, no, I did not believe it was. Senator Bromm actually thought that under federal law it would have to be, if you were making regular payments along the way. So that's why we drafted it the way we did this year, but we are in agreement with the amendment that we're providing to you today and I would like to thank you very much for your attention.

SENATOR MINES: Thank you, Senator Redfield. Committee, any questions for the senator? Seeing none, thank you for your close. That does close the public hearing for LB 465 and we are done for the day and adjourned. Thank you all for coming.

ALL DONE FOR THE DAY AND ADJOURNED. THANK YOU ALL FOR