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COMMITTEE ON GENERAL AFFAIRS  
January 24, 2005  
LB 287, 262, 355, 211

The Committee on General Affairs met at 1:30 p.m. on Monday, January 24, 2005, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 287, LB 262, LB 355 and LB 211. Senators present: Ray Janssen, Chairperson; Deb Fischer, Vice Chairperson; Matt Connealy; Abbie Cornett; Mike Friend; and Roger Wehrbein. Senators absent: Phil Erdman and David Landis.

SENATOR JANSSEN: Good afternoon, ladies and gentlemen. Welcome to the General Affairs Committee. I would like to introduce the members of the committee, but before we do that I want to make sure you remember the rules as far as testifying. Make sure that you sign in before you...if you are going to be testifying and I think there are the sign-in sheets back by the doors, so make sure they're there so you don't take up much time when you get up to the testifying table because this committee has in the past had some very long hearings and we want to keep them as short as we can. I don't think it's going to be that way this year, or today, anyway. I would like to introduce the members of the committee who are here with us today. To my far left is Senator Abbie Cornett, and she is from Bellevue, Nebraska. Next to her is the old veteran, Senator Roger Wehrbein, from the Plattsmouth area. And to Roger's right is Senator Matt Connealy, and he is from Decatur, Nebraska. To my far right is Senator Friend from Omaha. Senator Friend is Chairman of the Urban Affairs Committee. Senator Erdman will not be with us today. Senator Landis, I'm sure, will be coming in, sailing in here in a short period of time. And seated next to him is the Vice Chair of the General Affairs Committee, Deb Fischer, and she is from Valentine, Nebraska. With that, we are going to hear...we'll start the hearings today with some appointments to the...and for the record, my name is Ray Janssen, representing the 15th Legislative District. To my left is Brittany Sill, the clerk, and to my right is Laurie Lage, the new legal counsel for the General Affairs Committee. We're glad to have you with us, Laurie. Our page for the day is Brad. He's right over there, and he'll take care of any of your needs that you may have this afternoon. I have confidence in Brad. So we will start off today with appointments to the Nebraska Arts Council, and we want to make sure that you give your name and where you're

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from. And we're welcoming you all here and I think it's going to be a nice hearing. So we're going to hear...be hearing four other bills this afternoon. The first one will be LB 287. Senator McDonald is here. The second one is LB 262; that's Senator Stuhr's. And LB 335 is mine, and LB 211 is mine. So with that, we'll start with the appointments to the Arts Council, and Vicki P. Bromm, please, would you come up. You're first on the list, Vicki, and welcome to the General Affairs Committee.

CONFIRMATION HEARING ON  
VICKI P. BROMM TO THE  
NEBRASKA ARTS COUNCIL

SENATOR JANSSEN: You can commence, Mrs. Bromm.

VICKI BROMM: Thank you, Senator. My name is Vicki P. Bromm. I am from Wahoo, Nebraska. You have, I think, a bio in front of you of me, but I can give you a little bit of background. I graduated with a bachelor's degree at the University of Nebraska in design. I have a master's degree also from the University of Nebraska in art history. I've taught at UNO and UNL both. I have my own interior design business, and I worked in the public schools with the kids' summer institute programs, and I have been past president of the Hillestad Gallery which is at the University of Nebraska. What else would you like to know, Senator Janssen?

SENATOR JANSSEN: And how is your husband? (laughter)

VICKI BROMM: How is my husband? He's quite well, and he's sitting behind me making me very nervous. (laugh)

SENATOR JANSSEN: Oh, I see him back there. All right. I didn't see him earlier. Are there any questions of Mrs. Bromm? Seeing none, thank you for being with us today.

VICKI BROMM: Thank you very much. Thank you for making it easy on me.

SENATOR JANSSEN: Okay. Mr. David Catalan.

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CONFIRMATION HEARING ON  
DAVID CATALAN TO THE  
NEBRASKA ARTS COUNCIL

DAVID CATALAN: Good afternoon.

SENATOR JANSSEN: Good afternoon.

DAVID CATALAN: My name is David Catalan and I live in Omaha, Nebraska. Actually I'm a recycled councilmember. I served previously under Governor Kerrey in the late '80s. Currently, I'm the executive director of the Nonprofit Association of the Midlands, which is an association three years' old, of a statewide organization for nonprofit organizations. We have 157 members throughout the state in all areas, including the arts.

SENATOR JANSSEN: Okay. Any questions of Mr. Catalan? Seeing none, thank you for being with us today.

DAVID CATALAN: Thank you.

CONFIRMATION HEARING ON  
MURRAY NEWMAN TO THE  
NEBRASKA ARTS COUNCIL

SENATOR JANSSEN: Murray H. Newman.

MURRAY NEWMAN: I'm Murray H. Newman from Omaha, Nebraska, a lifelong resident of the state of Nebraska. Retired supermarket executive. I attended and graduated from the Wharton School of Finance, University of Pennsylvania; got a B.S. degree there. Later received an MBA at Creighton. I, in recent years, have been involved in a number of nonprofits, several arts organizations, foundations, and so forth, and am pleased to accept the appointment and be happy to answer any questions any of the senators might have of me.

SENATOR JANSSEN: Okay. Are there any questions? I want to know a little bit of the history, of course, when I hear someone that was in the retail grocery business. Now, which stores were you with, Mr. Newman?

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MURRAY NEWMAN: Hinky Dinky Supermarkets.

SENATOR JANSSEN: Okay. All right

MURRAY NEWMAN: It was a family business we sold a number of years ago.

SENATOR JANSSEN: All right. All right, thank you. Any other questions? Seeing none, thank you very much.

MURRAY NEWMAN: Thank you very much.

SENATOR JANSSEN: I forgot to ask, if there is someone who wants to testify in favor of any of the appointees, we'll do that after we've heard from everyone first, okay?

MURRAY NEWMAN: My wife was busy this afternoon, so.  
(Laughter)

SENATOR JANSSEN: Okay. All right.

MURRAY NEWMAN: Thank you.

SENATOR JANSSEN: Oh, thank you.

CONFIRMATION HEARING ON  
GERMELINA SALUMBIDES TO THE  
NEBRASKA ARTS COUNCIL

SENATOR JANSSEN: GERMELINA Salumbides.

GERMELINA SALUMBIDES: Close.

SENATOR JANSSEN: Am I close?

GERMELINA SALUMBIDES: Close.

SENATOR JANSSEN: Okay.

GERMELINA SALUMBIDES: Good afternoon.

SENATOR JANSSEN: Good afternoon.

GERMELINA SALUMBIDES: I'm GERMELINA Salumbides. I have

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resided in Kearney, Nebraska, for 18 years. I was born and raised in Manilla. I've been a 16-year naturalized citizen. I have served in the Nebraska Art Collection Foundation. I serve on the Children's Orchestra Society of New York Orchestra Foundation. I don't know why they keep me; it's maybe because they need minorities on the council. I have no idea. But we do have old friends there. My undergrad was in literature, Asian and English. My graduate degree was elementary and early childhood education. And I think you have my biodata so I don't think I need to say more.

SENATOR JANSSEN: Thank you. Are there any questions? Seeing none, thank you for being with us today.

GERMELINA SALUMBIDES: Thank you.

SENATOR JANSSEN: And I'm glad that I did pronounce that pretty close.

CONFIRMATION HEARING ON  
RICHARD VIERK TO THE  
NEBRASKA ARTS COUNCIL

SENATOR JANSSEN: Richard J. Vierk. Good afternoon.

RICHARD VIERK: Good afternoon, gentlemen. My name is Richard Vierk. I'm from Lincoln here. I'm also a lifelong Nebraska resident; started in Grand Island. Went through Omaha and ended up here in Lincoln. I'm a partner with Deloitte and Touche. I'm a tax partner, so I'd be happy to understand the tax law in Nebraska for you if you'd like. No, I've been "lifelongly" involved with lots of arts organizations, as you can see from my bio, all the way from I went to school at Dana up in Blair and was very involved up there, as small schools are in Nebraska which is wonderful. And was musically involved and from just an appreciation of it. In Omaha was involved with what used to be Ballet Omaha at one time when it was there. And with Joslyn and other organizations in Lincoln. I have been president of almost every arts organization in Lincoln I think, I guess just because I can't say no. But I'm very pleased to be on this council or appointed to it. And I look forward to it actually and all the organizations that it serves.

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SENATOR JANSSEN: Thank you. Any questions? Seeing none, thank you.

RICHARD VIERK: Thank you guys.

SENATOR JANSSEN: Donna Woods. Is Donna Woods here? Oh, okay. I understand Senator Schimek should be here. She should be right across the hall. Okay. We'll just stand at ease a little bit. We want to be sure we get rid of...or take care of the appointments. How about... Well, we want to get rid of you people real fast. No, while we're waiting for Senator Schimek, is there anyone here who would like to testify for the people that we've already heard from? Senator, would you like to come up?

SENATOR JOHNSON: Senator Janssen and members of the committee, it's not very often that you take the occasion to show up. I guess I better tell who I am. I'm Senator Joel Johnson from Kearney representing the 37th District. At any rate, the reason that I've come forward today is because I thought that the rest of you would like to know a classic case of where we have an immigrant to this country come in and really make a difference. Ms. Salumbides said that she was from Manilla, came here with her husband as he took a neurosurgery residency in New York and followed him other places. We were fortunate that they moved to Kearney, Nebraska, and actually she and her family now happen to be my next door neighbors. But these people have come here from the Philippines and have just really made a mark in the most positive sense that you can aspire to, and I thought it was worth recognizing that and making sure that you are all aware of it too. It's really one of those kind of stories that we like to hear about, so thank you very much.

SENATOR JANSSEN: Good. Thank you, Senator. Any questions? All right. I believe I saw another hand back there?

JARON BROMM: Thank you, Senator Janssen. Members of the committee, my name is Jaron Bromm, and it's not very often that you get the opportunity to publicly recognize your mother. And so unbeknownst to her until right now, of course, I have come to do that. It is my honor and privilege to be here to encourage this committee to recommend my mother to serve this great state as a member of

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the Nebraska Arts Council. As many of you are aware, she has a deep passion for the arts rooted in the very essence of artistic experience and creativity. She is, no doubt, an ingenious creator of beauty. Now, those of you who know her husband may find that hard to believe, but I assure you of its truth. A famous philosopher, Plato, once wrote: The power of the good has taken refuge in the nature of the beautiful. In this world in which we live where the daily news of tragedies and hatred seem to never end, this world needs beauty more than ever to not sink into despair. Vicki is experienced and has led many to experience the joy that beauty brings to the human heart. She knows art as that precious fruit which resists the erosion of time, unites generations and cultures, and enables them to be one in admiration. She has a great gift in recognizing and inspiring others towards beauty and the arts. She sees the power of the arts to enrich the cultural heritage of Nebraska and of all humanity. She also recognizes the power of arts to probe the true nature of men and women, their problems and experiences as they strive to know and perfect themselves and the world, to discover their place in history and the universe, and to portray their miseries and joys and their needs and strengths, all with a view to a better world and a better future. We cannot underestimate the power overall that the arts have in inspiring people towards beauty. And as Vicki Bromm appreciates this role of the arts, we cannot underestimate the great service she will do for this state in recommending her confirmation to the Nebraska Arts Council. And on closing I would ask that if there are any questions that they may not be for me to do any singing or drawing or anything of the like for fear of ruining my mother's chances of confirmation. (Laughter) So if you have any questions, I'd be happy to answer them but I thank you for your time.

SENATOR JANSSEN: Any questions? No, but I do believe you succeeded, Mr. Bromm, in bringing a little tear to your mother's eye.

JARON BROMM: At least this time it's a good one.

SENATOR JANSSEN: Very nice of you. Thank you. And is there anyone else?

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CONFIRMATION HEARING ON  
DONNA WOODS TO THE  
NEBRASKA ARTS COUNCIL

SENATOR JANSSEN: All right, I see Senator Schimek is here. Senator, the chair is yours; we're ready for you. Yes, you are here representing Donna Woods, is that correct?

SENATOR SCHIMEK: That is correct, Mr. Chairman.

SENATOR JANSSEN: All right. Welcome to the committee that you've sat on for so many years.

SENATOR SCHIMEK: Thank you. It's very nice to be here again and I'm a little out of breath because I wasn't watching the time and it got away from me. Yes, I am here on behalf of Donna Woods. She had actually contacted me because we're acquainted with each other and she had to be out of town. But she has been very involved in the arts over the years and is wanting a second term on the Arts Council. She actually filled out the term of her husband during her first term. She has been on the Museum of Nebraska Arts board out in Kearney--MONA. She's been on the board that oversees the Sheldon Memorial Art Museum. And in the past she has been on the boards of the Nebraska Art Association; Medici, M-e-d-i-c-i, which is a support group for the art department at UNL; the Lincoln Symphony; and the Symphony Guild. At present, she's on the boards of the Lincoln Community Foundation and the Woods Charitable Fund. Again, thank you for allowing me to come and speak on her behalf today.

SENATOR JANSSEN: And you did a remarkable job, Senator Schimek.

SENATOR SCHIMEK: Oh, thank you.

SENATOR JANSSEN: Are there any questions of Senator Schimek? Seeing none, thank you, Senator, for being here.

SENATOR SCHIMEK: Thank you very much.

SENATOR JANSSEN: And you can go back to your Business and Labor now.

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SENATOR SCHIMEK: Okay, thank you.

SENATOR JANSSEN: Is there anyone wishing to express any desires of Donna Woods? Seeing none, that will take care of the appointments for the day. And we'll now get on with our agenda for the January 24 meeting. Senator McDonald, you are going to tell us all about LB 287.

LB 287

SENATOR McDONALD: It's good to be back here. I was on this committee for a short term.

SENATOR JANSSEN: I know you were; I know you were. Yes.

SENATOR McDONALD: Absolutely. Well, Senator Janssen and the members of the General Affairs Committee, I'm Senator Vickie McDonald, representing the 41st Legislative District. And I'm here today to introduce LB 287. LB 287 directs the General Affairs Committee to examine the laws governing the management and use of cemeteries. The committee would determine whether the cemetery and burial laws need to be rewritten so that the language reflects how we use it today. Many of these laws were passed at the beginning of the last century and haven't been updated over the intervening years. Terminology should reflect the current and common meaning and usage, but it doesn't. LB 287 also directs the committee to examine the effects of urban and rural growth on cemeteries. Nebraska didn't have zoning when the most cemeteries were established. Cemeteries on the edges of cities and towns that are growing have specific issues related to that growth. The notification process followed in most local zoning ordinances doesn't recognize cemetery plot owners as individual property owners. The proliferation of cell phone towers is causing problems in rural and urban cemeteries, alike. Pioneer cemeteries and abandoned cemeteries seem to have no state or local agency to protect them. We're losing track of these cemeteries due to vandalism, misuse, and adjoining landowners, or complete neglect. The religious, historical, and personal significance of these cemeteries will be lost forever to the effects of time and neglect. Cemeteries in urban areas are full or nearly full. Residential or business growth have surrounded these cemeteries and there is no place for these

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cemeteries to expand. These are just a few of the cemetery issues that prompted my introduction of this bill. Public input will be vital to the examination of these issues. That's why LB 287 requires the committee to hold at least two public hearings. One public hearing will be held in a city or village with a population of less than 5,000 located in a county with a population of less than 50,000, which will provide a rural forum. The other hearing will be held in Lincoln or Omaha, which provides an urban forum. LB 287 does not prevent the committee from holding other public hearings. At the end of this year, LB 287 requires the committee to submit a report to the Legislature, along with their recommendations for policy changes. I believe that it's time to bring Nebraska cemetery and burial law into the twenty-first century and encourage you to use LB 287 as that vehicle. Thank you for your time and I'll be happy to answer any questions you might have.

SENATOR JANSSEN: Any questions? Senator Wehrbein.

SENATOR WEHRBEIN: I never thought about this. I had some instances in the past on the county board, looking at abandoned cemeteries, so I know there are some but I know... Do you have any idea what other states... Is there... Have you looked in the other state laws? Other states, I mean, not...

SENATOR McDONALD: As far as how they handle abandoned cemeteries.

SENATOR WEHRBEIN: Yes. Is there...?

SENATOR McDONALD: You know, I haven't, and I thought maybe that would probably be part of your study.

SENATOR WEHRBEIN: I understand. Okay, thank you.

SENATOR McDONALD: But I think that's probably an issue everywhere and especially out here in rural Nebraska. I do have a letter that I'd like to submit. (Exhibit 1)

SENATOR JANSSEN: All right. Fine.

SENATOR McDONALD: And I do have copies and I do have someone here that would...that brought this attention to me

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that is the reason I'm nere with this bill, so. And I...

SENATOR JANSSEN: Good. Are there any other questions of Senator McDonald?

SENATOR McDONALD: And I won't close on this because I have some other important...

SENATOR JANSSEN: Oh, you waive closing?

SENATOR McDONALD: I waive closing.

SENATOR JANSSEN: All right; all right.

SENATOR McDONALD: All right. Thank you.

SENATOR JANSSEN: Thank you, Senator. All right, are there any proponents?

LARRY DIX: Senator Janssen and members of the committee, for the record my name is Larry Dix, spelled D-i-x. I'm executive director of the Nebraska Association of County Officials. The NACO board has taken a position to support this and look into this. And as you all know from the many times that we've been in front of you and talked about this, these types of abandoned cemeteries do become an issue for counties and for county board members. And so we certainly support the idea of looking into this. We just ask...and obviously we'll be there at the hearings...that we have a seat at the table just so that we can express our views and concerns that we have and that many, many of the county boards have. So really, with that, I'll be happy to answer any questions you may have.

SENATOR JANSSEN: Okay. Any questions? Senator Wehrbein.

SENATOR WEHRBEIN: Just to refresh my mind, I think it is in the law that county boards have to take over abandoned cemeteries if requested, don't they?

LARRY DIX: That is correct. That is correct.

SENATOR JANSSEN: Larry, how many counties have expressed information about where the...you know, their duties with abandoned cemeteries and so on? Are they a big problem to

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counties?

LARRY DIX: Well, you know, some of the things that we're running in to, quite honestly, with the abandoned cemeteries are we're having a little bit of an issue and county boards are having a little bit of an issue when these things have become abandoned and local property owners have started to do some things that probably we don't all want to hear about, but we've had some examples in some counties where some folks...and they may be very, very small pilgrim cemeteries...but people are running pivots through them, knocking down fences, and just some things that really probably don't want to have happen. And that's why we want to...why we're interested in taking a look in that and see if we can strengthen, especially some of that area. Certainly, I know that a number of counties would say, well, you know, they're abandoned; now we've got to maintain and things like that. But that probably is truly the logical place of government to step in and say, yeah, they are here; they are in our county, and, yes, we probably are the logical point to watch over these.

SENATOR JANSSEN: Of course, the number is not...I suppose it could rise, but some of those small cemeteries have been there for years and years, and the families that use those aren't there any more. I know in my district there are a couple of cemeteries. There used to be an old church there. Well, you know, they are running out of those descendents and some of them, I'm afraid, in a few years are going to be abandoned and the counties will have to take care of them.

LARRY DIX: Yeah, I...

SENATOR JANSSEN: But we need to know where they are at, you know, and so that that doesn't happen.

LARRY DIX: Yeah, I think you are exactly right and I think, you know, probably with the Oregon trails and the people that years and years ago went across our country, there probably is not...I don't know if there are any our counties that are immune to that, that would not have pilgrim cemeteries in it, but for the most part I think we'll find them in just about every county.

SENATOR JANSSEN: Okay. Any other questions? Seeing none,

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thank you, Larry, for being with us today. Are there any other proponents to LB 287?

MARY SOMMERMEYER: My name is Mary Sommermeyer, and that's S-o-m-m-e-r-m-e-y-e-r. I'm here on behalf of the League of Nebraska Municipalities. We don't have any particular issues like Larry had to bring to you. I would say we have a couple of bills you'll be hearing in a minute that are on cemetery issues and we hope you will advance those. But in working on those and in working from time to time with questions on cemeteries, it is clear that the statutes haven't had a good look for quite a few years, and so we would certainly support taking the time to look at those and hope we'll be involved.

SENATOR JANSSEN: Thank you, Mary. Any questions? Seeing none, thank you for being with today. Any other proponents?

GREG EASLEY: My name is Greg Easley, G-r-e-g E-a-s-l-e-y. And I am the general manager of West Lawn Hillcrest Cemetery. I've been the general manager there for 32 years in Omaha, Nebraska. And I'm a past president of the Nebraska Cemetery Association. And I'm also in favor of this and I hope that they would use our association or some of our members as resources so that we could also say why some of the rules might be there and why a lot of them are antiquated also. I get calls, mainly just because I've been around so long in Omaha, where every year there will be some wealthy person that says, I want to start my own cemetery. What is going to happen, is in a few years it is going to end up that one of these municipalities is going to end up taking care of it because this guy is going to be dead, his relatives are going to be gone, and, boom, this guy started a little place with five or six burials on his property and there are no restrictions on some of these things. Our perpetual care, where I think you only have to put \$3,000 on perpetual care, which back in 1910, would have been a substantial amount of money, but today, you know, if somebody doesn't have \$100,000 or a couple hundred thousand, well, some of us have over \$8 million in our perpetual care funds to take care of our cemeteries. So, right now, people...I had one gentleman that just called me up a couple months ago and wants to put up a private mausoleum...this is like about a \$500,000 granite building out in the country on his farm. Nothing is stopping him from really doing it.

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But then maybe some municipality nearby might have to end up taking care of this when it got rundown or it gets vandalized or that sort of thing. So I would hope that we would be used as a resource and we can let people know what are some of the good points and what are some of the bad points of the existing laws, and some that need to be reinforced so we don't have more of these little people coming on board, and there could be some starting out in your districts right now and you don't even know it, and in the municipalities. They're going to end up taking care of them later on. That's about all I have to say.

SENATOR JANSSEN: Any questions? Seeing none, thank you for being with us.

GREG EASLEY: Okay. Thank you.

SENATOR JANSSEN: Okay, sir.

NORMAN SMITH: I need a running start.

SENATOR JANSSEN: Well, we've got somebody to help you there if you need some help.

NORMAN SMITH: My name is Norman Lewis Smith. I am from Albion. I was on the Albion Rose Hill Cemetery Board from 1989 until 2004, and I at that point in time retired due to disability. So I would say I'm the president emeritus. I am an advocate of this cemetery study and I think I can provide you with some interesting things to study. Two sets of problems. I'll take the Albion Cemetery. When I went on the board in 1989, they were on the verge of bankruptcy. The board members were making up the deficit each month in order to just pay the operational costs. Their checking account was a negative balance and they had a \$3,000 road fund, and their recorded operational procedures were found in a small handbook that had last been revised in 1962. The cemetery itself was in a state of benign neglect. And when we met for the first time when I came on the board, they had invited an attorney. And the attorney brought along...he said, by the way, here are the cemetery association laws. Not a single board member, at that time, even had seen those laws; did not know they existed. So I would say to you, if you would like to study something interesting, study what we did from that point in time to the present. And we

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documented all of the problems we encountered trying to bring the cemetery in compliance with the existing laws. I would say, if you were to study the financial structure, we finally decided the sensible thing to do was where we could not meet the letter of the law, we'll go back and create a structure in relation to the existing conditions today that makes sense. So, in other words, we are going to comply with the intent of the law. These are problems areas: financial structure and the existing laws...are not...if you checked on us, you would find they're not following the law. But we can show you why we took that direction. All of that is documented in our handbook which was revised 2002. So if you are interested in the study or interested in studying that kind of thing, it's there. We found trouble with the area in which they require an audit. That's complete obsolete and I think you will find that. They're saying you must have a CPA audit on your books. Today, auditing by a CPA is an expensive thing and you...hardly worthwhile when you have a operational cost of about, oh, roughly \$20,000 to \$25,000 a year. There was an absence of grandfather clauses, and this...I'll show you how that affects us. We have a donor here that says, I want to contribute to your cemetery. We say, fine; give us your 501(c) status. We don't have it. We were in existence beginning in 1895. That's when we were incorporated; 58 years before that law even came along. No provision made whatsoever, so that's a problem area. That ties into what happened to us with regard to the Nebraska tax department. For over 50 years we had a tax exempt status. All of sudden, we get a new form. What's on there? 501(c). We don't have 501(c). No tax exempt from that point on. We now have to pay taxes. We looked into the cost of bringing the cemetery into compliance with a 501(c). A year's worth of paperwork, according to the attorney we consulted. He sent in a fee of around a thousand dollars. We tell a donor today, we don't...we're always honest...we don't have that, but we also say we have never, no record of where there has ever been a problem with regard to someone making a donation to the cemetery. Another place: eminent domain is in there. We know we need to expand. Well, what do you do with a cemetery that has no money to back the eminent domain? If the eminent domain had a grantor type of clause in there so...and let's just say, for example, the state said, yes...since they can't mortgage the cemetery to borrow money and they can't go to a local bank to borrow the kind of

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money we would need, we would have a grantor--some place to turn. Those...that cemetery that started out bankrupt, we did one significant...we did many things but the significant thing we did, we sat down and we said, okay, who has the interest in this cemetery? It's the private property owner. Old-fashioned discussions have got the elders, any we could find, and say, look, who is buried there, who is related to whom, and so forth? We started that way, creating a list of private property owners. And they are the ones that we always make the covenant with to guarantee them perpetual care. From 1989, when we started that process, we built that list until today we have a contact with between 600 and 700 private property owners scattered over 26 states, coast to coast, north and south, and we have about 550 of those that live within the state of Nebraska. Those people collectively, by simply saying, here's the truth, here's the state, we're willing to do whatever we can to preserve this cemetery but we cannot do it without financial help. To this date, they have contributed over \$120,000. That has given us something to do. It's also given us the opportunity to create a perpetual fund which did not exist at the time we started. So there would make an interesting state. All of that is documented. I've sent documentation to Senator McDonald's office so it's there. You can see what we did. Our problem though is, we never had any place to turn and to ask, are we in compliance? I've made all kinds of calls over the years, the Attorney General's Office, for example, calls that went directly to the Legislature, and never got definite answers. I'm a retired educator. I'm familiar with school law. I was involved with the implementation of LB 403, 49 and 92470...gosh, I can't even remember the name--the federal law anyway. But the point we always had with school law is, here's the law, here are the rules and regulations, here are the compliance. And we always had a place to turn, and we'd say. We've always wondered as we made the changes in operating this cemetery, will there be a day when someone walks in and says, I'm here to take a look at the structure of your cemetery? I think it should happen. It's something you might want to look into. All right, the second major issue: fighting this. And I'll make it very brief. After 133 years of existence, and this is a pioneer cemetery, bang, along comes the city of Albion with their set of zoning code based on state law, and they include the cemetery. All right, we took a look at the situation. We

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attended all the meetings...and, again, all of this documented and in the senator's hands...and what happened is, we found they didn't know that they...when they looked at a cemetery, that's the greatest concentration of private property owners in any community. In our case, we've got 6,000 graves up there so we...this is our financial support...so, they notified one person and that was...happened to be the guy that runs the cemetery. He's on our board but he's the guy that digs the graves. All right. We appeared at all the meetings; we presented information. All the information we could possibly provide it--a copy of the cemetery laws, copy of our handbook, and we said consistently, you notified only the people who own the unused property. We owned the streets, the fences, and so forth. But you have not contacted private property owners and they are the ones that have the greatest stake in this. We offered to assist them in contacting these people. They, being the planning board and the city council, resisted this right up to the end until their attorney told them, you had better notify these private property owners. In the meantime, when it arrived, and we notified our owners, this is what's happening to your cemetery; please, communicate with the city; tell them how you feel, pro or con (inaudible). They refused any public comment; they refused any written input to it; they went bing, bing. They passed it and today we have a cellular tower on top of Rose Hill, and that's placed there. It's the prime focal point of that historic cemetery. All the graves start at the top at that hill and they come down. So we walked out, quote, defeated. We had legal counsel. And legal counsel, after spending \$2,000 donated by a private donor, not taken from the funds of the cemetery, you have two choices: We'll ask for a stay in the local court to get the tower erection stopped and then we'll file suit against the cemetery association code. There's a slight problem. Cost, estimated \$15,000 to \$20,000. We don't have that kind of money. As president, I said, no, we don't have the right to dip into the funds because...so, today, we have a tower. And we have a mailing list, and I would say to the committee, if you open this study and you have any aspect that involves this kind of attitude toward a historic site, frame the letter you would like to frame and I'll see to it that it's mailed. We offered that same thing to the city and when we refused to turn over the mailing list to them, because we have a board policy that says we will not let

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that list go out of our hands, they said...oh, they accused us of secrecy. So I'm here today as an advocate to say to you, I think it's...my personal opinion...I think it's criminal that people who make a covenant with us asking for perpetual care, thinking that when they leave, they still have protection. The comment made to city hall when I asked repeatedly, what about the 700, I used at that time, what about these people, have you contacted them? The response was, most of them were out of town so they don't count. So the clash is between two sets of law: 19.924 to 29, that's the zoning ordinance...that's the statutes used there, and then 12.501. We are now a sitting duck. We've got one side of our cemetery blocked. We can't expand there. We have a visual pollution, and that's what I would call a tower when it's up there. And we have people in protest and our hands are tied. There's nothing right now to prevent them, the next entrepreneur coming over the hill with a fistful of money, taking a look and saying, gee, that's beautiful land next to the cemetery, why don't we build a development there. And we could not lift a finger to stop it. Now, I've written to Senator McDonald; I have a proposal I think that might work. This is not the time to talk about that. But there is the need, and my plea is there is a need for this study; a need to take a look at that. Our counsel advised us, he said, this is a common problem; it's nationwide, he said. So that's what \$2,000 worth of legal counsel brought us. I'd entertain any questions.

SENATOR JANSSEN: Any questions? Seeing none, thank you for being with us today, Norman.

NORMAN SMITH: Very good. Thank you. Thank you for hearing me.

SENATOR JANSSEN: Any other proponents? Any other proponents? Any opponents? Anyone in a neutral capacity?

J. ROCK JOHNSON: Senator Janssen, members of the committee, my name, for the record, is J. Rock Johnson; initial J; Rock, R-o-c-k; Johnson, J-o-h-n-s-o-n. And I'm testifying in a neutral capacity because I'm not familiar with the intricacies of the legislation. What I am here to say is I would like special consideration be given to the cemeteries at the Norfolk Regional Center, the Lincoln Regional Center, and the Hastings Regional Center, as this study is done.

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And also I might suggest that a historian be involved in the work of this committee, in addition to the committee members. And that's the end of my testimony on this bill.

SENATOR JANSSEN: All right. Thank you. Any questions? Seeing none, thank you for being with us. Is there anyone else in a neutral capacity? Seeing none, Senator McDonald did waive closing, so that will end the hearing on LB 287. Next is LB 262, Senator Stuhr.

LB 262

SENATOR STUHR: Good afternoon, Senator Janssen and members of the General Affairs Committee. For the record, my name is Elaine Stuhr, S-t-u-h-r, and I represent the 24th Legislative District. I'm here this afternoon to introduce LB 262, and this changes provisions relating to cemeteries in cities of the first and second classes and villages. It would allow a limited portion of the principal in certain perpetual funds to be used for the purchase and development of additional land for cemetery purposes. No more than 25 percent of the principal could be used in any fiscal year, and no more than 35 percent could be used in any ten consecutive fiscal years. The current statutes, Section 12-402, 16-242, and 17-946 vary in their provisions regarding perpetual funds. For example, under Section 16-242, for cities of the first class, the income from the sale of lots must be used for the care, ornamentation, or maintenance of the lots or the cemetery in general. LB 262 would allow a limited portion of this perpetual fund principal to be used for enlargement of the cemetery. In addition, any money that comes to the fund by donation, bequest, or otherwise, that does not prohibit such use, could also be used for the additional cemetery land. The same 25 percent and 35 percent restrictions would apply. The bill amends statutes on various forms of cemetery governance. That applies to the three classes of municipalities. And to refresh your memory and for those who are new on the committee, this bill was passed out onto General File last session. Because of the short session and the time factor, there wasn't time to debate it on the floor. So we're bringing it back again to you, and it was brought on the behalf of the League of Municipalities who represent many cities throughout the state. And I believe

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someone is here from the league to testify and give you any more information, so.

SENATOR JANSSEN: Okay. Any questions of Senator Stuhr? Seeing none, thank you, Senator. Are you going to stick around and close?

SENATOR STUHR: Yes. I think I will waive closing...

SENATOR JANSSEN: Okay.

SENATOR STUHR: ...this afternoon, so thank you.

SENATOR JANSSEN: All right. Proponents?

MARY SOMMERMEYER: My name is Mary Sommermeyer, S-o-m-m-e-r-m-e-y-e-r. I'm here on behalf of the League of Nebraska Municipalities. First, we would like to thank Senator Stuhr for, again, introducing this bill. It was LB 1109 last year, and we appreciate her bringing it again. She did an excellent job of explaining the provisions in the bill. The request was originally brought to us by the city of Seward, and I do have the city attorney here today, too, who will get up and testify. I just might mention, as an example of some of the difficulties with the cemetery statutes, there's three sections to this bill. The second one, as Senator Stuhr said, applies to cities of the first class. There were two statutes, then that we looked at for cities of the second class and villages. Section 1 amends one that talks about when the city has a cemetery board. And Section 3 is where there is a cemetery association in the city. There are different ways that cemeteries can be governed. And each of those statutes was a little different, and we went through and tried to put the same provisions in each one of them and tried to make them consistent, and that's actually last year when the committee advanced the bill. The committee amendments helped to do that, to get the same provisions everywhere. And we had originally last year proposed the no more than 25 percent of the principal to be used in one year, and the committee saw fit to put in an additional restriction that no more 35 percent in any ten consecutive years could be used. That was, in part, to make sure that that fund does remain there to be for the perpetual care of the cemetery and not have all the funds go for additional land or the development of

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that. And I might mention that as the...if additional land is acquired, you know, there might be a concern about the funds that would be used for that taken away from the fund, but as new lots are then sold in that additional land, that money would go to replenish the perpetual funds and there would be some additional monies going back in. And we hope that you will advance this bill again this year.

SENATOR JANSSEN: All right. Are there any questions?  
Senator Wehrbein.

SENATOR WEHRBEIN: This is a new issue to me so I have to ask one dumb question. Is perpetual care required by state law of all cemeteries?

MARY SOMMERMEYER: No. In fact, some of the statutes don't mention it at all. That's one of the things in the bill that when we were looking at the different classes, some of them don't even mention a perpetual fund. So we actually wrote the first section of the bill that if a city establishes such a fund, then these things would apply. But, yeah, there is quite a variation.

SENATOR WEHRBEIN: Well, obviously it isn't required for private funds or private cemeteries or we wouldn't have the problems with abandonment. But how about, let's call them public cemeteries, then? That's not necessarily true with public?

MARY SOMMERMEYER: Not in all cases, no. Some of the statutes mention that fund and require it, and then some don't.

SENATOR WEHRBEIN: But it's by different side classes?

MARY SOMMERMEYER: Um-hum, or the form of governance, depending on (inaudible).

SENATOR JANSSEN: I believe most of them are...the private cemeteries are usually church-related, aren't they, Mary?

MARY SOMMERMEYER: Um, I'm not sure if I could speak to that.

SENATOR JANSSEN: Excuse me. There are some...I know the

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city of Fremont has one. It's a cemetery association and it's run by a board of directors, and they are getting landlocked at this time, and if it's a city cemetery, they do have the right of eminent domain, but a private cemetery doesn't. If it's a group of investors that have this, you know. And we tried to get that law passed several years ago, but they wanted to acquire, through eminent domain, some property within the city and they were unable to do so. But then I do believe since then they have reached another agreement with some property owners, so they have been able to expand. But I know we had a heck of a time getting that out of the committee at that time, so. Anyway, any other questions? Seeing none, thank you very much.

MARY SOMMERMEYER: Thank you.

SENATOR JANSSEN: Any other proponents?

LARRY BRAUER: Senator Janssen, fellow committee members, my name is Larry Brauer, B-r-a-u-e-r. I'm the city attorney for the city of Seward. And I would like to thank Senator Stuhr for introducing this bill. My city clerk called me on Friday and asked me if I could come down here and testify. On Friday, I had total laryngitis, so I told her if I have a voice today I'll be down here. I feel a little bit like Marlon Brando in the Godfather. But it seems to be working out okay. This is an issue that has come up periodically during my tenure as city attorney. I think about every other year my city clerk calls me and asks me a question about the perpetual care fund, and I usually tell her, no, you cannot do that. And so we have, from time to time, when the league give us the form for legislative recommendations, we have filled it out and requested a change such as this. I've told her repeatedly that if you spend the principal, it's not considered a perpetual fund anymore, and so I think the compromise that this bill has is really great, that it allows 25 percent of the principal to be spent in any one-year period, and 35 percent over a ten-year period. That makes it still a perpetual care fund, but it gives the cities a lot of latitude in using that. The city of Seward recently needed to expand its cemetery for future use, and we've acquired 40 acres recently. We had to do it with borrowed funds. We've got close to \$100,000 in a perpetual care fund, and if we were able to tap into some of that principal we would not have had to borrow as much money to

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acquire that. Now, we do need to develop that land for cemetery use, and this bill would be very beneficial in helping us use some of the perpetual care funds to help develop that. So on behalf of the city of Seward, we do believe that this is an excellent bill and I would urge the passing of it.

SENATOR JANSSEN: Thank you, Larry. Are there any questions of Mr. Brauer? Roger?

SENATOR WEHRBEIN: Can you afford to set the rates high enough then that, on into the future, that you can take care of that? I mean, obviously you're going to have raise your plot rates.

LARRY BRAUER: What we currently do is, I believe \$75 of each sale of a lot goes into the perpetual care fund, and certainly we could make an adjustment to that if we need. I'm not sure exactly what we charge per burial lot, but I do know the figure \$75 goes back into the perpetual care fund. So obviously, if we saw the need to keep that perpetual fund going, that it's diminishing, we would probably increase the amount that goes from the sale of lots into that perpetual care fund.

SENATOR JANSSEN: Larry, did you say \$75 or 75 percent goes to that?

LARRY BRAUER: Seventy-five dollars, I believe, of each of our lot sales goes into the perpetual care fund.

SENATOR JANSSEN: Okay. Just a set amount, then.

LARRY BRAUER: Right. And I'm not sure what it is. I think we charge \$300 per lot. I mean, I'm not sure but it's around that.

SENATOR JANSSEN: Right. Any other questions? Seeing none, thank you for being with us today, Larry.

LARRY BRAUER: Thank you.

SENATOR JANSSEN: Any other proponents? Other proponents? Any opponents? Any neutral?

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J. ROCK JOHNSON: I'm sorry. I intended to testify as a proponent. I wasn't quick enough.

SENATOR JANSSEN: As a proponent?

J. ROCK JOHNSON: Yes.

SENATOR JANSSEN: Oh, okay. Fine. That's fine.

J. ROCK JOHNSON: Senator Janssen and members of the committee, for the record my name is J. Rock Johnson; that's initial J, Rock, R-o-c-k J-o-h-n-s-o-n. I am very much in support of this committee advancing this bill forward. I'm sure that anyone who does genealogy in the state of Nebraska would be very deeply grateful for having this information. I noticed that part of it is focused on a central databank of cemeteries. And also regarding the history of the operation of cemeteries, I should like to see language that would go a bit further with reference to the cemeteries that are attached to the regional centers, the regional centers in Lincoln and Norfolk and Hastings. Because what you find, while there are some monuments in the Lincoln cemetery, what you find is a concrete brick with a number on it.

SENATOR JANSSEN: Excuse me. Are you on LB 262?

J. ROCK JOHNSON: You know, if I were I probably wouldn't haven't been saying any of the things I was just saying. Not only did I jump up and not be as a proponent, I'm now on the wrong bill.

SENATOR JANSSEN: Well, is it...

J. ROCK JOHNSON: I am speaking to LB 211.

SENATOR JANSSEN: LB 211? Okay. Well, we're on LB 262. I'm sorry.

J. ROCK JOHNSON: Can we just...yes, can we just strike this from the record?

SENATOR JANSSEN: I think we can. All right. We'll be to LB 211 here in a little while. Anyone else in a neutral capacity? All right. Seeing none, Senator Stuhr? Senator Stuhr waives closing. Okay, that ends the hearing on

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LB 262, 355

LB 262. We'll go to LB 355 and I will turn the chair over to the Vice Chair.

SENATOR FISCHER: Thank you, Mr. Chairman. Senator Janssen, would you like to introduce LB 355, please?

LB 355

SENATOR JANSSEN: Thank you, Senator Fischer and members of the committee. For the record, my name is Ray Janssen, representing the 15th Legislative District, here to introduce today LB 355. Are we on the right one, counsel? Okay. I'm introducing this bill on behalf of the Nebraska League of Municipalities. This is to address a problem the league has encountered in dealing with some of their cities. Currently, Nebraska statutes provide for the transfer of cemeteries from cities and villages to cemetery associations. However, the type of transaction that seems to be more common is the transfer of cemeteries from associations to the cities and villages, especially in smaller communities. Apparently, it has become more and more difficult to find people willing to serve on cemetery associations, which eventually ends up asking the city or the village to take care of the cemetery. The problem is that there are no statutory guidance for this type of a transfer. This bill is meant to provide the guidelines for cemetery transfers from associations to cities and use the same basic language from the statutes that allows the opposite type of transfer. That's more or less the bill, and the League of Municipalities and others, I'm sure, are here to tell you more about the problems and the bill. So with that, I'll close and ask for any questions if there are that I can answer them.

SENATOR FISCHER: Do any committee members have questions? Senator Wehrbein.

SENATOR WEHRBEIN: Can the city refuse?

SENATOR JANSSEN: I would imagine they can. I'm not sure but I'm sure someone will be here to answer that. I would think they probably could and I don't know what happens to it then. I would probably be abandoned.

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SENATOR WEHRBEIN: Well, I just...you know, as we head into more problems, it would look like some people...

SENATOR JANSSEN: Well, you can go the other way but you can't go back, you know, so.

SENATOR FISCHER: Any other questions for Senator Janssen? Thank you, Senator. We have proponents for the bill to speak, please?

MARY SOMMERMEYER: (Exhibit 2) I'm Mary Sommermeyer; that's S-o-m-m-e-r-m-e-y-e-r, and I'm here on behalf of the League of Nebraska Municipalities in favor of LB 355. We'd like to thank Senator Janssen for introducing this on our behalf. He did an excellent job of explaining what the bill does and, Senator Wehrbein, the bill does start out that the city or village may accept ownership, so it is permissive in that sense. What I'd like to do is I have a letter from the city attorney for Loup City and Ravenna, Mark Eurek, and that's E-u-r-e-k for the transcribers. And if it's okay, I'll just read through his letter. He was not able to be here today and so he asked me to present this. "I am the city attorney for the cities of Loup City and Ravenna in central Nebraska and am writing this letter in support of LB 355. Both of the cities that I represent also have authorized me to indicate their support on behalf of this legislation. They have both encountered a problem which appears to be somewhat common in that each city, in both instances, has taken over a private cemetery or an existing cemetery association. While the present Nebraska statutes address the situation where an existing cemetery association wishes to exercise control and management of a cemetery which belongs to the city or village at Nebraska Revised Statutes 17-934 et. seq, the present laws do not provide for the reverse situation, that of the city taking over the local cemetery association or a private cemetery. When this situation has occurred, the city has found itself with no guidance regarding the Nebraska statutes to address issues such as how the transfer takes place and what happens to the perpetual care funds that have been established by the cemetery association? Is the municipality then to have a perpetual care fund? What use could be made of that fund when it came over from the cemetery association? What ways would the city access those funds? What about transfer of lots? LB 355 addresses the specific situations of cities taking over cemetery

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associations, how the mayor and council accept ownership from a cemetery association, and provides that the property and accounts of the association vest with the city, both lots and assets. And it also addresses the issue of the cemetery association perpetual care fund and what uses can be made of that fund. Finally, it provides for a dissolution or disbanding of the cemetery association. This legislation would give clear guidance with regard to any transfer by a cemetery association to the city and would provide guidance for the transfer of the assets and the ultimate dissolution of the association. We strongly urge that LB 355 be passed and implemented into law. We thank the committee very much for hearing us out with regard to reviewing this letter in support of the bill. Sincerely, Mark Eurek." And with that, I don't have anything further. If there any questions?

SENATOR FISCHER: Any members of the committee have any questions for Mary? Seeing...oh, Roger; Senator Wehrbein.

SENATOR WEHRBEIN: Sorry. I assume that this should be part of a study on whether...I mean, if we really want to look at taking care of cemeteries across this whole state, this ought to be looked at as to whether a city or a village could be forced to take a cemetery or not. I mean, is...as you...I see the cost of cemetery maintenance probably increasing to the point where many are going to increasingly struggle and it's going to be a temptation to have a government entity take it over, a taxpaying base. And I would think that you would want the right to refuse that as a league. And I see Larry Sommer here. We just as well be out in front. I mean, we've had the same issue with the state taking over historical things. And I don't know that a cemetery can be compared, but as I see the increasing costs I would wonder if some cities and villages would not want to take over cemeteries and would want the right of refusal in a law as we study. Now, that's not for this today, but into the future when we study it.

MARY SOMMERMEYER: Yeah. Well, that's certainly why we wrote the bill permissive because there are situations where the city or village may feel that this isn't something they want to take over due to whatever factors. And so...

SENATOR WEHRBEIN: On the other hand, if we have an

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obligation as a state that it has to be done, we may well want to force somebody and we've already forced counties to do that in the case of abandoned cemeteries. That's already in the law. And so I...it looks like that will be part of a study, but I would that if we really have to take care of cemeteries, somebody is going to have to do it and it may have to have a tax base to...

MARY SOMMERMEYER: Yeah, I see what...

SENATOR WEHRBEIN: It's just something to think about. I don't...

MARY SOMMERMEYER: Right. I see your point. Um-hum.

SENATOR FISCHER: Any other questions? Thank you, Mary.

MARY SOMMERMEYER: Thank you.

SENATOR FISCHER: Other proponents?

LARRY BRAUER: Once again, my name is Larry Brauer, B-r-a-u-e-r. I am the city attorney for the city of Seward. Since I'm down here on LB 262, I thought I might speak on LB 355. We currently don't have any particular issues regarding this topic right now with the city of Seward. However, in the past in my private practice I have had occasion to be contacted by cemetery association members and it is difficult sometimes to be able to provide guidance to them as to how they're going to handle some of these issues. I think this is a good bill and I support this bill. This is a situation, Senator Wehrbein, where we've got people who are wanting to do something and this gives them an avenue to be able to do it. As a city attorney, I would take the position that, yes, we can always refuse it, a donation of land, and we could do that in this situation. But what this does is this gives a tool for the situation where we've got an association that for, because the members are aged or dying off, they need to do something with these cemeteries, and if a city is willing to take it over, this gives the procedure to be able to do that. So from that standpoint I think it's a good bill. There's no question about it. Some of these that you have talked about probably need to be addressed in the study. But I would certainly, as city attorney and as a private attorney in private practice, I

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would certainly support this bill.

SENATOR FISCHER: Any questions? Thank you, Larry.

LARRY BRAUER: Thank you.

SENATOR FISCHER: Other proponents? Do we have any opponents to the bill? Anyone wishing to testify in a neutral capacity?

CYNTHIA MONROE: I mostly just am coming forward on this to address something that Senator Wehrbein said, that the counties are obligated to take care of cemeteries.

SENATOR FISCHER: Could you state and spell your name, please?

CYNTHIA MONROE: I'm sorry, Senator. Cynthia Monroe, C-y-n-t-h-i-a M-o-n-r-o-e.

SENATOR FISCHER: Thank you.

CYNTHIA MONROE: From Lincoln. But counties will...I have had some trouble with some counties not taking care of cemeteries after a request, even though I have seen in the statute they are obligated to at least fence them. But there is a cemetery, for instance, just as an example, in Otoe County, that the people who take care of the cemetery picked up all the tombstones and put them under the tree so it would be easier to mow. And so this is the kind of activity that goes on all over Nebraska. I spend quite a bit of time in cemeteries, so. A little strange.

SENATOR FISCHER: Any questions?

SENATOR WEHRBEIN: If I can make a comment. That's my concern. If we really are concerned to the first bill, which I see as a problem, because I've seen that same thing. Some...I've known a lot of private cemeteries around. Some are well taken care of because somebody had some money and did it, and then there's others down the road that have no care at all and never will. And if we're really going to look at cemeteries, I just really wanted to raise the issue because I think it's...

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CYNTHIA MONROE: Um-hum. Well, there's an abandoned cemetery up in Cass County that I have returned a couple tombstones to, and there are a couple private individuals who just, on their own...just on their own, take care of this cemetery and try to keep it fenced and...

SENATOR WEHRBEIN: Yeah, and you know, the generations move away, there will be nobody local at all left in the...so...

CYNTHIA MONROE: But it would be nice to see them protected, at least. You know, maybe not cared for in detail, but protected; fenced and mowed.

SENATOR WEHRBEIN: Yeah, I've been through that a few times with the county. Thank you.

CYNTHIA MONROE: Thank you.

SENATOR FISCHER: Thank you, Cynthia. Anyone else wishing to testify in a neutral capacity? Senator Janssen, would you like to close?

SENATOR JANSSEN: If it's all right, I'll just close and open on the next bill; how's that?

SENATOR FISCHER: Are you ready for the opening then?

SENATOR JANSSEN: Sure.

SENATOR FISCHER: Okay. We'll close the hearing on LB 355. We'll open the hearing on LB 211. Senator Janssen.

LB 211

SENATOR JANSSEN: Good afternoon. For the record, my name is Ray Janssen, representing the 15th Legislative District, here to introduce LB 211. This bill, which was before the committee the last couple years would accomplish something that I've been trying to get done for quite a few years now. It would create a statewide cemetery registry that would be established and maintained within the Nebraska State Historical Society. This issue came to my attention after I introduced a bill regarding cemetery associations within the

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city limits and their ability to acquire new land, which I mentioned in a little testimony before. And, of course, in working on that bill I came to find that not all counties have records on their cemeteries and cemetery associations even though they are required by statute to have them. Many times I've heard of people telling me about their inability to locate cemeteries of their ancestors or tell me about disputes that have arose over location and size of cemeteries, or are concerned about cemeteries that have been abandoned. And we have discussed that earlier. All the bill asks is for those who own, operate, or maintain a cemetery to report the information that is reasonably available that they have about the cemeteries that they are interested in. And the basic information asked for is the location of the cemetery, a plat of the cemetery, names and addresses of those who own, operate, or maintain that cemetery, the inception date, and whether the cemetery is abandoned, and if so, the abandonment date. As I said before, this information is to be reported only if it is reasonably available. And we ask that each registry be updated with any new information once every ten years, which I don't think is very unreasonable. There were several concerns last session with a similar bill I had introduced, and I believe that I modified the bill to address these concerns. I'm not asking for details on who is buried there and I'm not asking for any information that you don't have. In other words, you won't be penalized for failing to meet all the registry requirements. What I'm asking is for someone's best effort to help us put together a central databank of cemeteries, which I think is very important. One location which go, you know...one location which we can go to just to find out where our cemeteries are at. I don't think that's unreasonable. I believe we have modified the bill now. I can't imagine anyone being upset with this. But I'd be happy to answer any questions you might have.

SENATOR FISCHER: Any questions? Thank you, Senator. Are there proponents wishing to address this?

LARRY DIX: Senator Fischer and members of the committee, for the record my name is Larry Dix. I'm the executive director of the Nebraska Association of County Officials. I appear in front of you today generally in support of LB 211. Last year, when the bill that Senator Janssen referred to, was introduced, I believe it was LB 1209 or something to

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that nature, NACO had taken a position to oppose. And at that point in time the opposition was the fact that there was so many things that we just were out of our control that were being asked for. And working with Senator Janssen over last year and providing some input with that, you will notice that there are many things that the counties can provide if available. The only thing that we did have a concern about, on page 2, is it talks about the plat of the cemetery. That is one thing that we're not sure if all counties do have and certainly I know Senator Janssen's intention is not to penalize anybody if we do not have that information, but we would like to see if at that line also if we could put, if available, which is the same language that you will see below on page 2 on line, probably 25 and 27. So those are some of the comments. Some of the counties that I've talked to currently are working with their local historical societies. Some of the counties already have the information that is now required in LB 211. Some of the counties certainly feel that we need to preserve this piece of our history in the state of Nebraska, and so we'll look forward to seeing where this bill goes. I'd be happy to answer any questions you may have.

SENATOR FISCHER: Any questions for Mr. Dix? Senator Wehrbein.

SENATOR WEHRBEIN: The way this is written, I assume the counties won't see this as an unfunded mandate?

LARRY DIX: No. It's...you know, I think...when you get into unfunded mandates, you are going to look at all those, you know, and many, many of those that we see, it's one of those that I think the way it's written, with "if available," that certainly we don't deem it that it's going to be too much of an expense to counties to meet the requirements of LB 211 the way it's written now.

SENATOR WEHRBEIN: I remember 25 years down in our county, somebody volunteered to do it and went around and spend a lot of time. I assume it's in the clerk's office; I don't know where it's at but...

LARRY DIX: And I think it's normally where it is. Some counties... And I think it's like anything else. If you get a county and somebody on the county board or within the

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courthouse that actively takes an interest, it's going to be there and available.

SENATOR FISCHER: Other questions from senators? Thank you, Mr. Dix.

LARRY DIX: Thank you.

SENATOR FISCHER: Proponents?

LAWRENCE SOMMER: Senator Fischer and members of the committee, for the record my name is Lawrence Sommer, S-o-m-m-e-r. I'm the director of the Nebraska State Historical Society. And since we're named in this bill, I'm here to testify in support of it. Last year, when the similar...Senator Janssen's bill was introduced, we also had some of the concerns that were expressed last year about the availability of some of the information that was being requested. We think those issues have been addressed and we're quite comfortable that we would be able to implement this bill without too much trouble. In fact, during the surveys, archeological and historic site surveys that we have been conducting around the state for many decades, we've already gathered a lot of information about a lot of these cemeteries that, you know, would be included in this registry, so we think this is a very implementable bill and we're in strong support of it. Thank you.

SENATOR FISCHER: Thank you. Questions? Thank you, Mr. Sommer.

J. ROCK JOHNSON: For the record, my name is J. Rock Johnson; initial J, Rock, R-o-c-k J-o-h-n-s-o-n. And Senator Fischer, members of the committee, I'm glad to be here testifying on LB 211 in support. As I have heard, I want to also thank Senator Janssen and Senator McDonald and Senator Stuhr because this is obviously more complex issue than at least I would have ever thought of, and I really appreciate that this committee is apparently willing to take this on, and I think it's very timely, again, and for people who are doing genealogy work. My particular concern is the individuals who were buried at the regional centers, who were buried without a name, who were buried with a number, without the dignity of having a name or knowing who those people are. And I should like to see the Historical Society

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perhaps obtaining some other funding so that we might know and give the dignity and respect to the people who were warehoused, who died nameless without a marker and are buried here in Nebraska. That ends my testimony.

SENATOR FISCHER: Thank you. Questions from senators? Thank you.

CYNTHIA MONROE: Senator Fischer, my name is Cynthia Monroe, M-o-n-r-o-e. I am very much in favor of this bill. In fact, I helped prepare the booklet that is available. It's about 90 pages with about, oh, what would say Laurie? About 20 people on a page? Of 20 cemeteries on a page. So there is quite a database already established at the State Historical Society. And I don't think that it would be very costly to keep this updated. It's going to take a few years to get this updated, but you can contact mortuaries across the state, other places. There's lots of resources that are available. The USGenWeb, which has a lot of cemeteries listed, as well. And they include, in many cases such as Lancaster County, we have the people who are buried in the regional cemetery and we have the people who are buried in the state penitentiary cemetery identified. So some ones that might be a problem, like the Lancaster County poor farm, those records disappeared. But a person could go through the county commissioners minutes and secure that information. But besides people who do research and are genealogist, such as I, there are people who have been away for many years. I had a couple from California come back to Lancaster County looking for her parents' burial, and so it's things like that are also helpful. But I don't think it's going to be an impossible or a costly task, either one. And people like me who volunteer at the Historical Society help keep that updated.

SENATOR FISCHER: Thank you.

CYNTHIA MONROE: Thank you.

SENATOR FISCHER: Questions? Thank you, Ms. Monroe.

CYNTHIA MONROE: Thank you.

SENATOR FISCHER: Other proponents? Is there anyone here wishing to speak in opposition to LB 211?

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JIM CUNNINGHAM: Senator Fischer and members of the committee, good afternoon. My name is Jim Cunningham, spelled C-u-n-n-i-n-g-h-a-m. That's the same as the senator from the 40th District; we are not related; he always expects me to say that. I'm the executive director of the Nebraska Catholic Conference, which is the public policy office operated jointly and cooperatively by the Archdiocese of Omaha and the dioceses of Lincoln and Grand Island, which in aggregate, own or sponsor approximately 200 cemeteries, constituting more than 200,000 burials across the state. Honestly, after last year, I thought this idea was dead and buried. I have a pause here for the reaction, Senator Friend, but I thought you would pick that up.

SENATOR FRIEND: I was laughing internally.

JIM CUNNINGHAM: Obviously, Senator Janssen has resurrection power. I added that, as well. I am testifying in opposition to LB 201 (sic--211) because our position on the general idea of mandating that churches register with the state has not changed. However, let me add that this opposition is significantly qualified for two reasons. First, a practical reason, and that is that it won't be until later this week that our governing board will have its first opportunity to consider the modified proposal that is now LB 211. And secondly, it must be acknowledged that LB 211 represents a narrowing of the scope of such legislation in relation to last year's bill. I commend Senator Janssen for that. This is a much more reasonable proposal. The most onerous aspect of last year's bill, from our perspective, have been omitted from this bill, particularly or specifically requiring information pertaining to individual burial records. Now, as I understand the bill, this is actually limited to just cemetery information. Based on those two reasons, I cannot say with any great assurance that we will sustain our opposition to this bill. To your delight, I'm sure, it might be that you will see me ride off into the sunset with regard to LB 211. That was a theatrical reference I put in for Senator Landis' benefit, but obviously that didn't go over either. However, there still would be room for concern about the idea for new public policy such as this. First and foremost, our concern would be about where this idea of mandating registration and reporting is headed and will,

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over the course of time, end up. This could be the basis for future, more expansive mandates, regarding the subject of burials. This is a very interesting topic. There is an understandable desire to satisfy curiosity, as well the desire for cooperation from a variety of parties of interest, including churches. No doubt, reasonable cooperation in responding to sincere and legitimate inquiries and curiosity is the typical response currently. And as I told the committee last year, our diocesan offices do receive numerous inquiries over a period of time of people interested in burial information. Oftentimes, that information is in Czech or German, Polish, and a lot of it or a great portion of it, at least in our certain circumstances, are not in any easily retrievable or electronically transmissible fashion. So it can be a difficult situation, but there is a lot of cooperation that goes on. This legislation, however, has a broader context relating to public policy and the imposition of a governmental mandated upon churches and all other cemetery owners. The proposed mandate under LB 211 presupposes a commitment of time, energy, and resources in order to comply. Frankly, the requirement would be an imposition to some degree or other. Is there a need compelling enough, as a matter of public policy? Is the objective clear enough as a matter of public policy to justify this imposition in the form of a governmental mandate? That's a question worth your consideration as legislators. Finally, on one specific point, the requirement to be imposed by Section 2(b)(ii)--Mr. Dix referred to this already--that's a requirement for the reporting of a plat of the cemetery, et cetera. At least a fully accurate plat could prove to be problematic in some instances. And if the plat is not reasonably available prior to January 1, 2006, which is the date placed in the bill, it's unlikely to be reasonably available after that date unless that requirement is meant to apply only to new lots, graves, niches, and crypts, which is the language in the bill. Thank you for your attention.

SENATOR FISCHER: Thank you. Any questions? Senator Wehrbein.

SENATOR WEHRBEIN: Is there a record of all Catholic cemeteries? Do you have that in your jurisdiction?

JIM CUNNINGHAM: We do not have that on a statewide basis.

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I assume it's something that we could gather by working with each of the three dioceses individually. Certainly, the dioceses have a record of the cemeteries under Catholic ownership or sponsorship within their jurisdiction. I'm not aware of any statewide collection though.

SENATOR FISCHER: Senator Friend.

SENATOR FRIEND: Thanks, Senator. Jim, I guess I share some...you know, they are interesting questions that you brought up and I guess I wanted to pose one to you and not to play devil's advocate, but the Archdiocese of Omaha, for example, is there...can you give an example...and I don't know the answer to this so it's a legitimate question...can you give me an example of something else that the Archdiocese is either forced or prodded to provide, you know, the federal government on a consistent basis? I mean, for example, obviously there's...even though there are tax implications to every situation that the Archdiocese is dealing with, but the state knows about these. The state understands that. I mean...do you see where I'm going with that question?

JIM CUNNINGHAM: Sure.

SENATOR FRIEND: I mean, there are other things that the Archdiocese of Omaha, for example, is forced into. Maybe a couple examples of that so I can get my hands around it.

JIM CUNNINGHAM: Well, I can assure you that in the area of education, which is, of course, is another broad area of endeavor, there are all kinds of mandated reports and requirements. In the area of Catholic charities, Catholic social services, I assume that there are numerous programs where there are mandated registrations and reports.

SENATOR FRIEND: And I guess with that in mind and this would just conclude it for me, this...and I've seen some of that mandated language. I've read through some it; not all of it obviously. But this doesn't...in fairness, this doesn't look the same as language like that. I mean, and I think you alluded to that in your testimony. But I mean, it's...and it's dubious language to me too, almost. The shall be required only if such information is reasonably available. I mean, I'm sitting in Omaha, thinking it's not

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reasonably available; what are you going to do to me? I...

JIM CUNNINGHAM: I can assure you, Senator, that it...

SENATOR FRIEND: That doesn't look like mandated language to me, Jim; I guess that's what I'm saying.

JIM CUNNINGHAM: Well, I can assure you in the area of education you are seldom if ever going to find the words "reasonably available,"...

SENATOR FRIEND: Right. Exactly.

JIM CUNNINGHAM: ...having been involved with that for many, many years. So, yes, you are correct. I mean, this...as I said, my opposition is well-qualified by the nature of this bill. And, you know, last year our main difficulty with it, other than the broader issue of governmental mandates, our much more serious issue for us was the apparent requirement of the sharing of burial records, individual burial records, which is not in this bill and I acknowledge that.

SENATOR FRIEND: Thanks.

SENATOR FISCHER: Other questions? Thank you, Mr. Cunningham.

JIM CUNNINGHAM: Thank you very much.

SENATOR FISCHER: Other opponents to testify? Anyone wishing to testify in the neutral capacity on this bill?

MARY SOMMERMEYER: I'm Mary Sommermeyer; that's S-o-m-m-e-r-m-e-y-e-r. I'm here on behalf of the League of Nebraska Municipalities. We don't really have a position one way or the other in establishing this registry but I thought, when the bill came up last year, I testified in a neutral capacity and expressed concern about the requirements in that bill because they didn't have as much of the reasonably available language as this bill does. And so, if I'm interpreting this correctly, that it would apply even to the, like the cemetery that's already in existence, that after that date the reasonably available would apply to things before that date. I think that allays many of the concerns that we had when I testified last year. So I just

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wanted to have that on the record.

SENATOR FISCHER: Any questions? Thank you very much.

MARY SOMMERMEYER: Thank you.

SENATOR FISCHER: Anyone else wishing to testify in a neutral position? Senator Janssen, would you like to close?

SENATOR JANSSEN: Well, yeah, and I can understand, Madam Chairman, that there are always going to be opponents to every bill, but this is not a dead subject. (Laugh) It will probably come back again. I think we made a lot of concessions. It's not...we probably won't get as thorough of reports as we would have with the bill the way it was last year, but I wanted to be fair and answer the concerns that people had with it last year. So whether this will...if we take action on it, fine. I'm willing to argue it on the floor. So, with that, I ask for your consideration when we go into Exec Session. Thank you.

SENATOR FISCHER: Thank you. Any questions for the senator? With that, I will close the hearing on LB 211 and we are finished for the day, I believe.

SENATOR JANSSEN: That will end the hearings for the day.