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Banking, Commerce and Insurance Committee
February 02, 2009

[LB177 LB297 LB327 LB377]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, February 2, 2009, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB177, LB297, LB327, and LB377. Senators present: Rich Pahls, Chairperson; Pete Pirsch, Vice Chairperson; Mark Christensen; Mike Gloor; Chris Langemeier; Beau McCoy; Dave Pankonin; and Dennis Utter. Senators absent: None. []

SENATOR PAHLS: I want to welcome you to the Banking, Commerce and Insurance Committee hearing. My name is Rich Pahls. I'm from Omaha, and I represent the 31st district that typically deals around the area of Millard. I have the pleasure of serving as the Chair of this committee. The committee will take up the bills in the order posted: (LB)327, (LB)177, (LB)297, (LB)377. As most of you know, this is your opportunity to have public input, and we're asking you to please do so. And to better facilitate today's meeting, I'm going to have you take a look at the little chart over on the side. Of course, you've heard this before. Please turn your cell phones off. We're going to ask you when you get ready to testify, we have three chairs up here called reserved. We'd like to have you sit in those. That gives us some feel of the number of people who are going to be testifying. The order of the testimony will be the introducer, proponents, opponents, neutral, and closing. We're asking the testifiers to sign in and place your sheet right in this little box up here. Spell your name for the record, and for those of you who aren't familiar with it, we do have somebody transcribing all our words and our laughter and everything, so it's nice for them to know who is speaking. Again, we're asking you to be concise, not to be too repetitive. It makes the life of all of us much easier. And we will distribute written material to all of...to the people on the committee. If you have ten copies, we'd like to have that; if not, hold your hand up, and we will have one of the pages run some copies off for you. The man sitting right here is Bill Marienau. He is, like I say, the glue of our committee. All the way on the other side is Jan Foster sitting over there, and she has the power to turn us on and off. Is that not correct, Jan? (laughter) And the committee members here, I'm going to start all the way over here with the senator at the very end. Would you introduce...? []

SENATOR UTTER: Oh, I'm sorry, I was taking a little nap there (laughter)... [LB327]

SENATOR PAHLS: Hey, there's no problem with that (laughter). []

SENATOR UTTER: And it's right after lunch, and I can do that (laughter). I'm Dennis Utter from District 33. []

SENATOR PANKONIN: Good afternoon. I'm Dave Pankonin, District 2, Louisville. []

SENATOR PIRSCH: Pete Pirsch, representing District 4, Omaha. []

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SENATOR McCOY: Beau McCoy, District 39, Omaha. []

SENATOR GLOOR: Mike Gloor, District 35, Grand Island. []

SENATOR CHRISTENSEN: Mark Christensen, District 44, Imperial. []

SENATOR PAHLS: And our pages today, we have Jared Weikum from Lincoln and Becky Armstrong from Omaha. And as I did say, the order of the bills. And what I'm going to do just so...because we have other senators coming from other committees, so I'm going to ask the...just could you give me an idea how many people will speak to the first bill today? Can I have a show of hands? I see one, two, three, four. There will be four speaking to the first bill. And I'll ask that for the rest and also a little later on. That allows us to give the other senators an advance notice. Okay? Well, the first bill that we will be dealing with today is LB327, is going to be introduced by me at the request of the Director of the Department of Banking and Finance. The bill makes changes regarding banks, trust companies, savings and loan associations, and credit unions. Director John Munn is here to give us a detailed and explanatory testimony on this bill. I'm going to have you come right to the front. Just a second. I did request those people who are going to be speaking to move to the front. It would make life easier for us. Thank you. []

JOHN MUNN: (Exhibit 1) Chairman Pahls, members of the Banking, Commerce and Insurance Committee, my name is John Munn, J-o-h-n M-u-n-n. I'm Director of the Nebraska Department of Banking and Finance. I'm appearing today on behalf of the department in support of LB327 which was introduced by Senator Pahls at the request of the department. The bill relates to financial institutions and financial entities under the jurisdiction of our department. The first two sections of the bill propose a new law requiring state-chartered banks with trust departments holding fiduciary accounts to pledge collateral to secure funds in those accounts which exceed the insurance or guarantee coverage provided by the Federal Deposit Insurance Corporation. Included within section 2 are provisions for acceptable types of collateral, and the authority of these banks to make deposits with affiliates of the bank, and to collateralize those deposits. Public funds deposits are exempted from the requirements of the section, as there are collateral requirements under other statutes. This section tracks federal law, 12 CFR 9.10(b), applicable to national banks with trust departments, and is intended to provide security for large fiduciary deposits handled by banks with trust departments. A state bank must have express statutory authority to pledge its assets. As a corollary to the pledging of assets restriction, I understand that during General File discussion on LB74 on Friday, there were questions about pledging deposit insurance and notices of additional coverage. The department has prepared some information to those questions, and after the conclusion of my testimony on LB327, I would be able to discuss that information if the committee wishes. Section 3 of LB327 proposes to amend section 8-112, the statute which governs the records of the department. Section

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8-112 of the Nebraska Public Records Act currently provide that examination reports are confidential in their entirety. This amendment is intended to clearly provide 1) that examination reports, investigation reports, and information relating to such reports remain confidential records of the department even when such reports and information are transmitted to the financial institution or entity that is the subject of the report or information; 2) that the confidentiality requirements extend to agents of the financial institutions and entities who have the report for appropriate business purposes, such as law firms; and 3) that subpoenas for such reports can only be directed to the department. This proposal addresses a recent situation in which a licensee representative provided examination reports to a third party in a lawsuit and then contended disclosure was not a violation of the law. Section 4 of LB327 would amend Section 8-163 of the Nebraska Banking Act relating to the payment of dividends by a state-chartered bank. The amendment would provide the director of the department with the authority to allow a state-chartered bank to pay dividends even though it previously had losses that equaled or exceeded its undivided profits on hand. Current law outlaws any future dividend payments. This amendment is intended for those institutions where the bank returns to a healthy condition with the safeguard that the prior approval of the director would be required before any dividends could be paid. The emergency clause is requested for this section. Sections 5, 8, and 13 of the bill contain the annual wild-card update for Nebraska's state-chartered depository financial institutions. This legislation provides the same rights, powers, and privileges to state financial institutions as those enjoyed by like federal-chartered institutions doing business in Nebraska. Essentially, these laws give equal rights to these state-chartered institutions without the need to enact state legislation for each specific power or privilege enjoyed by the federal charters; thus, the term "wild card." These three sections carry the emergency clause, those sections 5, 8, and 13. LB327 also contains an amendment to the Nebraska Trust Company Act. Section 6 proposes to amend section 8-209 to change the amount of pledged securities that trust companies and trust departments of banks must pledge to the department to maintain their status as trust companies or trust departments. Currently, the law provides that these institutions must maintain a pledge of \$100,000 in securities at par value. Section 6 creates a sliding scale in which the amount of securities to be pledged to the department would be based on the market value of trust assets held by the institution. The institutions would be further required to determine the market value of the trust assets at the end of each calendar year and increase the amount of the pledge within 60 days if the current pledge was insufficient. The intent of the amendment is to provide greater security in the event of liquidation of the institution. Section 9 would amend section 8-602(6) to eliminate the \$1.50 per page fee that the department is required to charge for copying documents. Under section 84-712(3)(b) of the Nebraska Public Records Act, charges for public records are the actual cost of making copies available unless there is another law which specifically sets an amount. With the repeal of this subsection, the department will charge actual costs. I expect that in most instances the overall cost to a requesting party would be reduced. Sections 10, 11, and 12 would amend the Nebraska Sale of Checks and Funds Transmission Act by

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adopting a change of control procedure for the licensees under the act. This act governs persons who sell money orders and travelers' checks, and those who transmit funds electronically. Section 10 sets forth a definition of "control," Another speaker will propose and discuss an amendment to this definition, which the department supports. Section 12 sets forth financial and fitness standards required for approval and the right to an appeal of a denial under the Nebraska Administrative Procedure Act. Section 14 relates to loan brokers, and would update the definition of loan broker in section 45-190(5). The amendment first provides that a person will be a loan broker only if an advance fee is expected or received from a borrower rather than from any source. This addresses situations where the broker is compensated by a lender such as some internet matching services where a consumer goes to a website to fill out an application, and the website forwards the application to a number of different lenders. This proposal comports with the intent of the Loan Broker Act, which is to prohibit the payment of advance fees to loan brokers by borrowers, because it will apply only in those situations where compensation is paid by a third party. The Nebraska Installment Sales Act would be amended under sections 15 and 16 of LB327. The first amendment is to section 45-346.01, and would change the date and installment sales licensee must submit its audited financial statements to the department from a maximum of 45 days after the audit is completed to, as required by section 45-348, or at the request of the director. Section 16 contains the coordinating amendment to section 45-348, and provides that the audit is to be submitted with a licensee's annual renewal application. These provisions are intended to improve the efficiency of the reporting process, both for the licensee and the department. The final amendment contained in LB327 is found in section 17, which would amend section 45-922 of the Delayed Deposit Services Licensing Act. Current law provides that the director of the department may suspend or revoke a license issued under the act if a licensee has abandoned its place of business for a period of 60 days or more. The amendment shortens that time frame to 30 days or more. This will allow the department to act expeditiously to ensure that the business has properly closed out customer accounts and safeguarded confidential customer information. I want to thank Senator Pahls for sponsoring this bill for the department. I will be happy to answer any questions. Thank you. [LB327]

SENATOR PAHLS: Director Munn, I'm to assume that will be somebody coming forth with an amendment? [LB327]

JOHN MUNN: Correct. [LB327]

SENATOR PAHLS: Okay. Senator Utter. [LB327]

SENATOR UTTER: I want to call you John, but I know I should refer to you as Director Munn. Under the sections 15 and 16 thing, what is that it...it says here, "at the request...or at the request of the director." What does section 43-348 require on the date to submit financial statements? [LB327]

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JOHN MUNN: What it...the coordinating amendment says the audited financial statement would be submitted at the same time the licensee applies for a renewal license. [LB327]

SENATOR UTTER: And that is... [LB327]

JOHN MUNN: Any year. [LB327]

SENATOR UTTER: ...throughout the year? [LB327]

JOHN MUNN: No, that's one date in time. [LB327]

SENATOR UTTER: Okay. Say that again? I'm sorry. [LB327]

JOHN MUNN: As far as the renewal process,... [LB327]

SENATOR UTTER: Yes. [LB327]

JOHN MUNN: ...we have one renewal date in a year's time... [LB327]

SENATOR UTTER: Okay. [LB327]

JOHN MUNN: ...so it would be fairly standard at that time. [LB327]

SENATOR UTTER: Okay, and... [LB327]

JOHN MUNN: Now it would also give me, if we had... [LB327]

SENATOR UTTER: ...and is it a common renewal date for everybody? [LB327]

JOHN MUNN: Yes. [LB327]

SENATOR UTTER: And what is that date? [LB327]

JOHN MUNN: Oh,...October 1st? [LB327]

SENATOR UTTER: So it's...and so it may not necessarily be a fiscal year statement that you're getting. Or... [LB327]

JOHN MUNN: No, it's probably most likely a calendar year statement, probably from the prior year-end. Now if we had concerns about the conduct of a licensee, I could request that at any time. [LB327]

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SENATOR UTTER: I see. Okay. [LB327]

SENATOR PAHLS: Seeing no more questions on this...do we want to [LB327]

JOHN MUNN: (Exhibit 2) I have something to hand out to the members of the committee. [LB327]

SENATOR PAHLS: I appreciate your responding in such fast action on this question that we have brought forth. [LB327]

JOHN MUNN: As I indicated in my LB327 testimony, I was informed that during the General File discussion on LB74, I think that took place last Friday, questions were raised about whether and how banks notify customers about the availability of large deposit guarantee bonds or if LB74 were to pass, how they would notify customers about the possibility of Federal Home Loan Bank letters of credit securing their excess deposit. First, I believe that the public today knows the limits of FDIC insurance, and if their accounts approach the maximum levels, they will either inform the bank that they are moving the excess dollars or ask how the bank might protect their excess deposits. Secondly, in today's banking climate, the need for liquidity can be as important for a bank as is capital. Liquidity means the ability to pay your creditors on a daily basis. If a bank loses deposits, it loses liquidity, so it's extremely important for banks to retain those deposits. The best way to retain a large core deposit is to offer up front before a depositor approaches the bank about the size of the deposit, a guarantee bond, or the CDARS program. And the CDARS program is explained in the handout I gave you, or the proposed letter of credit security if the bank participates in those types of activities. Some banks will offer this to the individual depositor; some will put a notice in all customer statements; some will post a notice in the lobby and on websites. Banks have to be and are proactive about retaining large deposits. As an example, you may recall the press reports in September of last year that Kansas Bankers Surety Company was giving notice that it was exiting the bank deposit guarantee bond business. At that time, more than 130 of Nebraska's state and nationally chartered banks were offering guarantee bonds through that company alone. As a result, it does not appear necessary to include a notice requirement about the availability of these programs in the law. [LB327]

SENATOR PAHLS: Just to make it clear. No notice should be...your recommendation that we should not go forth with a notice,... [LB327]

JOHN MUNN: That's correct. [LB327]

SENATOR PAHLS: Okay, okay. Senator Pankonin. [LB327]

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SENATOR PANKONIN: Thank you. Thank you, Chairman Pahls. Thank you, Director Munn, for being here today and bringing some of these materials. I just want to make a couple of comments about our discussion on Friday. The reason I stood up and spoke is I knew Senator Pirsch probably wouldn't have firsthand knowledge about some of the history with KBS--Kansas Bankers Surety, and that having exited the business and some of the background, it put banks in a peculiar position of wanting to have...offer these coverages, but maybe not having that source, obviously. I did make one misstatement that Senator Utter thankfully corrected me on after the session on Friday, and it kind of tells about some of the confusion that exists for everybody. I knew that there was an opt-out provision, but it pertains to, as I understand from Senator Utter, to banks opting out of the unlimited coverage on deposit accounts that don't draw interest. Is that...is that a fair statement? Right... [LB327]

JOHN MUNN: Under the FDIC's temporary liquidity guarantee program? [LB327]

SENATOR PANKONIN: Right. And so I appreciate him for correcting me or understanding that better than I did. But I think it does show that there's been enough changes in the industry that makes it a little bit interesting. I want to add a comment, though. This morning on driving down, I was listening to NBC's Today show, Matt Lauer's interview with President Obama from yesterday. And a question came up about the banking system, and he says, well, all depositors are covered, or some statement as of all...nobody should worry about their deposits, no matter what they have, and so I think that sometimes blanket statements can get us in trouble. But I guess the point being is that, as I think Senator Utter would agree, institutions need to make business decisions (inaudible) almost, in all cases, in their best interest to provide depositors with all the information they can about how to structure deposits and other available guarantee programs. But it's pretty hard to actually...as maybe was brought up on the floor to force banks to do that because there's, you know, there's just so many different business models out there and different ways you can do things. And those people's own situation, if they're not single, and they've got other ways to structure, they've got quite a bit of flexibility if they'll just work with it, especially with a \$250,000 limit now. [LB327]

JOHN MUNN: Sure. And I think banks have really worked in training their front-line people to be able to answer questions about, "Is my deposit insured or not?" [LB327]

SENATOR PAHLS: Senator Utter. [LB327]

SENATOR UTTER: Director Munn, just briefly, just for the sake of letting people know, a man and a wife could safely insure how much money under today's FDIC? [LB327]

JOHN MUNN: Well, since the FDIC temporarily, you know, raised the insurance limit from \$100,000 to \$250,000, each of them in their own name could have up to \$250,000,

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total of a half million. If they have an individual retirement account, coverage can extend beyond that to the extent of \$250,000 for each individual retirement account. [LB327]

SENATOR UTTER: Joint account? [LB327]

JOHN MUNN: Throw in another joint account? [LB327]

SENATOR UTTER: POD accounts. The point being is that a...that I think it's important to...for folks to know that there's an awful lot of ways for people to structure their accounts to have complete FDIC insurance coverage over a substantial amount of money. In our particular institution, and I'm just speaking for our bank, we found the need for the deposit guarantees that were formerly written by KBS, now underwritten by other insurance companies and the FHLB, we found them to be most valuable in the case of a single depositor who didn't have a spouse or didn't have children, and was trying to, under the old \$100,000 limit, was trying to guarantee more than the \$100,000 deposit insurance coverage. That became quite valuable to the bank to have these options, so that we could help particularly that individual depositor without relatives, insure their full deposit. [LB327]

JOHN MUNN: Um-hum, absolutely. [LB327]

SENATOR UTTER: And it's very important for the liquidity of the bank. [LB327]

JOHN MUNN: You bet. [LB327]

SENATOR PAHLS: Senator Pankonin. [LB327]

SENATOR PANKONIN: Thank you, Senator Pahls. Director Munn, just another question. Along these lines, would be that if this bill passes, Senator Pirsch's bill, and there is this insurance product...or this product available from the Federal Home Loan Bank, banks would not be prohibited from...they could post that in the lobby or in statement stuffers or websites to say, see us for additional insurance coverage if you're interested, or we have other programs in place. There's no... [LB327]

JOHN MUNN: It doesn't prohibit it. [LB327]

SENATOR PANKONIN: ...prohibit that. [LB327]

JOHN MUNN: It just doesn't require it. [LB327]

SENATOR PANKONIN: Right. [LB327]

JOHN MUNN: Yeah. [LB327]

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SENATOR PANKONIN: Thank you. [LB327]

SENATOR PAHLS: Senator Pirsch. [LB327]

SENATOR PIRSCH: Is there anything about offering these letters of credit that cost the banks money or view it as a negative such that they wouldn't want to make their customers, in some situations, aware? [LB327]

JOHN MUNN: I should let Mr. Woita answer that question directly. He's here from the Federal Home Loan Bank of Topeka, but generally, you don't get a letter of credit from the Federal Home Loan Bank just because you asked for it. They'll usually require some manner of collateral behind it, some section of combination of notes, something like that. [LB327]

SENATOR PIRSCH: So these would be then offered if you're...ostensibly, you have to take positive action to... [LB327]

JOHN MUNN: Yes, to get it in place. [LB327]

SENATOR PIRSCH: ...procure that type of letters of credit, and... [LB327]

JOHN MUNN: Um-hum. Unless the Federal Home Loan Bank has come up with some new mechanism that I'm not aware of, yes. [LB327]

SENATOR PAHLS: Senator Utter. [LB327]

SENATOR UTTER: Well, Senator Pahls, just to clarify. There's also a fee in addition to the collateral that you pledge to the Federal Home Loan Bank. They will have a nominal fee that they charge for the issuance of that letter of credit. [LB327]

SENATOR PAHLS: Seeing no more questions, thank you, Director Munn. [LB327]

JOHN MUNN: Okay, thank you. [LB327]

SENATOR PAHLS: Appreciate it. Proponents? [LB327]

BILL MUELLER: (Exhibit 3) Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Money Services Roundtable. Director Munn referenced an amendment, and the page is handing that out to you. I do thank Patty Herstein, general counsel of the department, Director Munn, and William Marienau, your committee legal counsel in working with me on this. I represent a group of Money transmitters, and those would be individual companies that sell payment

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instruments like money orders, travelers' checks, and money transmissions. Members of the association that I represent include American Express, Western Union, MoneyGram. These entities are regulated by the department currently under the Nebraska Sale of Checks and Funds Transmission Act. That act is being amended in (LB)327 that you have before you. We've worked with the department, and the department has agreed to making three changes to the Nebraska Sale of Checks and Funds Transmission Act. This is what this amendment does. Number one, it takes a uniform amendment of control from the Uniform Money Services Act and puts it into Nebraska law. And that is actually on page 2, lines 4 through 9 of the amendment that you have before you. And this just says that in order for the department to have to approve in advance a change of control of a company, that change in control has to be brought about by a power to elect a majority of the executive officers, managers, directors, or trustees. The bill as introduced, would have said that if you change an officer or you change a director, you would have to file an application with the department for prior approval. The department took a look at that and said that that was not what they were intending. What they are intending is that if there is a change in control of the licensed entity, then that entity would have to come before the department to get approval for that change, so we are tightening up, if you will, the definition of control. Then the department said, well, we would like to see you include in our statute Section 603 of the Uniform Money Services Act which, again, is the Uniform Law Commissioners act in this area that we are drawing this language from. That language is on page 1 of your amendment, section 13. And what this provides is that any material changes that occur to one of these companies during the year that they're licensed, they would have to notify the department within 30 calendar days of that change, and that's acceptable to my clients. Secondly, it would require that you would have five business days to inform the department if serious matters such as a bankruptcy filing were made, a petition for receivership, or the commencement of other proceedings that would seek to dissolve or reorganize the licensee. If there was a proceeding in another state that was commenced against the licensee, if the licensee's bond were cancelled, if an officer or a director were charged or convicted of a felony, again, we would have to inform the department within five business days. We would ask the committee to adopt this amendment and advance the bill to the floor. We do support the changes made by the department, and what we are attempting to do is take some of the Uniform Law Commission definitions that are in effect and put them into Nebraska Statute. I'd be happy to answer any questions that the committee may have. [LB327]

SENATOR PAHLS: I'll give you five days to respond (laughter). [LB327]

BILL MUELLER: (Laugh) I'll probably need five days to respond. This has been an interesting discussion among the banker members of your committee. [LB327]

SENATOR PAHLS: Yeah, okay. Seeing no questions? Thank you. [LB327]

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BILL MUELLER: Thank you very much. [LB327]

SENATOR PAHLS: Next proponent? [LB327]

BRANDON LUETKENHAUS: Thank you, Mr. Chairman, members of the Banking, Commerce and Insurance Committee. My name is Brandon Luetkenhaus, B-r-a-n-d-o-n Luetkenhaus, L-u-e-t-k-e-n-h-a-u-s, and I'm here on behalf of the Nebraska Credit Union League. Our association represents 96 percent of our 73 credit unions in Nebraska. I appear before you today, offer association support of LB327 as it pertains to credit unions. LB327 includes annual credit union wild-card provision that is extremely important to our Nebraska state-chartered credit unions. Our association strongly supports the dual chartering system whereby a credit union can choose either a state or federal charter and can move from one charter to another. Choice of credit union charter and regulation in our opinion is crucial in creating an innovative operating environment in and for which all credit unions and consumers can benefit. The wild-card provision is essential to state-chartered institutions because it provides clarity to those areas not specifically addressed by state statutes and extends parity in the services which can be offered by state-chartered credit unions. I would answer any questions this committee may have. [LB327]

SENATOR PAHLS: Any questions? Seeing none, thank you. [LB327]

BRANDON LUETKENHAUS: Thank you. [LB327]

SENATOR PAHLS: Next proponent. [LB327]

ROBERT HALLSTROM: Senator Pahls, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB327. I want to first extend my appreciation to the banking department for working not only with the Bankers Association, but individual bankers across the state in circulating this legislation or component parts of this legislation for input and comment. We were able to work with the department in making some significant changes, particularly as they relate to the amount of securities, the determination of market value as of the year-end, providing 60 days to increase the amount of securities if there's a determination that there's a shortfall, all those things where positive changes recommended by individual bankers. We do support the bank and savings and loan wild-card provisions of the legislation, the trust account pledging requirements which will conform state law with the requirements of federal law, the provisions regarding the payment of dividends in cases where a bank may have previously incurred losses exceeding undivided profits. Additional flexibility is granted to the director to allow dividends to be made. So with that, I would close my remarks with regard to our support on LB327. I would want to take just a second since the director commented on LB74 which Senator Pirsch introduced on behalf of the

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Bankers Association, that I certainly agree with his comments both with regard to the coverage of FDIC insurance and with regard to some of the issues regarding whether or not a specific notice should be mandated by state law. I have visited with Senator White subsequent to the comments on the floor and told him that we would certainly entertain, upon learning more about what might be expected or anticipated through their comments, looking at changes. But for the most part, I think that requiring or mandating a specific type of disclosure and notice, particularly in light of Senator Pankonin's comments about the different business models are out there, we certainly have issues where banks are interested in liquidity, more so than ever. Capital has traditionally been king, but liquidity is right up there on the market right now, and I think banks are doing everything voluntarily with regard to promoting whether it's the CDARS program or the Federal Home Loan Bank's letters of credit. If this were to become law, deposit guarantee bonds in like to their customers without any mandate of specific state law. Be happy to address any questions. [LB327]

SENATOR PAHLS: I have one question. You did have an opportunity to talk to Senator White since he did... [LB327]

ROBERT HALLSTROM: Yes. [LB327]

SENATOR PAHLS: ...bring it up? Okay, that's great. Thank you. Senator Pankonin. [LB327]

SENATOR PANKONIN: Thank you, Chairman Pahls. Mr. Hallstrom, along the deposit side, you might also explain to me--we have...we're talking state-chartered banks here, and maybe some of these programs--CDARS would be for all banks, but would all the Federal Home--I mean, obviously, to take advantage of Federal Home Loan guarantee bonds, you got to be a member of that Federal Home Loan... [LB327]

ROBERT HALLSTROM: Yes. [LB327]

SENATOR PANKONIN: ...and not all banks are, correct? [LB327]

ROBERT HALLSTROM: That would be correct. You have the Federal Home Loan Bank of Topeka is what banks in Nebraska are eligible to become members of which is why the bill, LB74, was limited to the Federal Home Loan Bank of Topeka. Not all banks will join or are members of the Federal Home Loan Bank of Topeka, but they are certainly eligible to do so. [LB327]

SENATOR PANKONIN: But that makes it a little more troublesome for saying a certain notice has to be, because not all banks are in that system. [LB327]

ROBERT HALLSTROM: Yeah, not all banks will be in the system; potentially, not all

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banks would choose even if they were a member of the Federal Home Loan Bank to offer that particular product. There are costs associated with it as Senator Utter alluded to in his comments, and so all of those decisions would be factored into whether or not there's a one-size-fits-all type of notice requirement that might work. [LB327]

SENATOR PANKONIN: Thank you. [LB327]

SENATOR PAHLS: Seeing...no more questions? Thank you... [LB327]

ROBERT HALLSTROM: Okay, thank you, Senator. [LB327]

SENATOR PAHLS: ...Mr.... [LB327]

KURT YOST: Chairman Pahls, members of the Banking, Commerce and Insurance Committee, my name is Kurt Yost. I am a registered lobbyist for the Nebraska Independent Community Bankers, and we, too, appear here today in support of LB327 and appreciate the efforts of the Department of Banking as Bob Hallstrom pointed out, and working with all of us in the industry to make sure we've had an ample opportunity to research it and go over it. As most of you know, the department comes before this committee every year with an ominous bill and continues to work with the various statutes to make them better. With that, I would conclude. [LB327]

SENATOR PAHLS: Okay. Any questions for Mr. Yost? Seeing none, thank you. [LB327]

KURT YOST: Thank you. [LB327]

SENATOR PAHLS: Any opponents? Anybody in the neutral? That concludes the hearing on (LB)327. I think we are now ready for hearing on (LB)177 by Senator Lathrop. [LB327]

SENATOR LATHROP: Do you have a page? [LB177]

SENATOR PAHLS: Yes. [LB177]

BILL MARIENAU: I'll do it. [LB177]

SENATOR LATHROP: No, I'll just hand it to the clerk... [LB177]

SENATOR PAHLS: No, no. [LB177]

SENATOR LATHROP: ...when the page gets here,... [LB177]

SENATOR PAHLS: Where are we? No, no. Both of our pages are gone? Senator

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Lathrop, the floor is yours. [LB177]

SENATOR LATHROP: (Exhibits 1 and 2) Great. Good afternoon, members of the Banking (, Commerce) and Insurance Committee. My name is Steve Lathrop. I am state senator from District 12. I'm here today to introduce LB177. This bill makes changes to the security freeze provisions of the state law that was passed in 2007. A security freeze stops any of the three major credit reporting companies from providing your credit report to anyone unless the freeze is suspended or lifted by the individual who placed the freeze. This freeze is the strongest tool available to a consumer to estop identity theft. LB177 makes three changes to the current law. First, the bill defines a minor for purposes of the security freeze provision as someone who is 19 and under...make that who is under 19. While the bill passed in 2007 provided for security freezes for minors, this change actually defines who a minor is under this law. That's also consistent with the statutory definition of a minor for other purposes as well. Second, the bill removes the seven-year sunset provision for the security freeze. Nearly every state does not have an expiration date for these freezes, and by making the changes Nebraska would be consistent with what is taking place across the country. This is especially appropriate since it can sometimes take longer than seven years to rectify a case of identity theft. Third, the bill lowers the fee to initially place the freeze from \$15 to \$5. At its current rate, it would cost a married couple \$90 to place a freeze with each of the three credit-reporting companies. Since a freeze is placed with the three agencies or none at all, the actual cost to a consumer is \$45. Security freezes can assist with deterring identity theft, and by lowering this cost, we can help encourage the use of these freezes by consumers. LB177 seeks to make improvements to our current law so that consumers are given additional tools that assist with making it more uniform with other states while providing much-needed assistance to Nebraska consumers. I believe there are proponents of the bill who can testify with respect to the specific details on these changes, and I ask for your support. I will mention to the committee, this was a bill that was something that I worked on with Senator Mines two years ago, and we passed it at the time. The security freeze was...put us really at the forefront of this process, and these changes, I think, will be consistent with what you're seeing. The handout shows what's going on in other states, and you'll see a couple of things. One is that the...ours expires or sunsets in seven years, and typically, states are enacting these with no sunset provisions. So if I want to protect myself from identity theft, I put a freeze on, and it will last indefinitely until I take it off, and which is what's happening in most states. So it's an important tool. If somebody gets your Social Security number and your name, they can get into that database and establish credit. With the freeze, if people take advantage of it with the freeze, they can't get any credit information, can't establish credit, and so that's why it's important in combating identity theft. I will also tell you that I've spoken to Experian. They came in to testify against my bill today, and I had a conversation with them this morning. They are agreeable, as I am, that if we move it to \$3 for each of the transactions which is \$3 to put the freeze on, \$3 to lift it, or \$3 to temporarily lift it, they would testify in a neutral capacity, and I think that's a reasonable

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compromise. And I brought with me an amendment that would do that, if you care to take that up. So with that, I would encourage you to move LB177 to the floor, and I believe I can waive my close unless you want me to stick around. [LB177]

SENATOR PAHLS: No, no, but could we ask you a question or two? [LB177]

SENATOR LATHROP: You certainly may. [LB177]

SENATOR PAHLS: Senator Lathrop, here's when this was on the floor, were the fees raised on the floor? Or had we already...? [LB177]

SENATOR LATHROP: I think it came out...this is the history, as I remember it because that's a great question, Senator Pahls. I believe we had it at \$5, \$5, and \$5, and it turned into \$15 at the front and zero to lift or zero to take it off temporarily. And I think that was done as a compromise with some folks who were merchants that wanted to...and specifically, I think it was Cabela's and Nebraska Furniture Mart that said, if somebody comes into my store, I want to be able to lift it right there on the spot, and not have them pay anything. And as a consequence, we ended up having it heavy on the front end, and this really is an attempt to rectify that. And I don't remember which piece...Senator Mines had a piece of that, and I had a piece of it, and we put our bills together, and I don't know if that was Mines's piece or mine, if I can use that confusing sentence. [LB177]

SENATOR PAHLS: Yeah, right. And the reason why, because I think we shot the bill as a priority, and the price...to be honest with you, when we send a bill out as a priority, and then I call a major change is made in the bill, and we're not informed, that was an irritant, because the fees went from here to here... [LB177]

SENATOR LATHROP: And, honestly,... [LB177]

SENATOR PAHLS: ...that wasn't you. I understand. [LB177]

SENATOR LATHROP: Yeah, honestly, I don't know if it was something that I did or Mines did, but I know it was in response to concerns expressed by Cabela's and Nebraska Furniture Mart. [LB177]

SENATOR PAHLS: Right. No, I was told afterwards, to be honest with you, because you can still see it burns a little bit. Both parties weren't at the table, just one party. So that's the reason why the fees are raised, and I just...when we send a bill out as a priority out of this committee, when major changes are made, I think the committee should be informed. And I know you weren't a part of that; I understand that. [LB177]

SENATOR LATHROP: Right, thanks. [LB177]

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SENATOR PAHLS: Okay, thank you. Senator Pankonin. [LB177]

SENATOR PANKONIN: Thank you, Senator Pahls. Senator Lathrop, thanks for bringing this. I remember it from two years ago, and I think it was some important legislation. Do you have any, just even anecdotal ideas? Has this helped? Has this been used or...frequently? Or, I guess, that's a question... [LB177]

SENATOR LATHROP: To be honest with you, I don't have...I don't even have a good story for you. But among the proponents there will be somebody who is an advocate for folks with...who have had their identities stolen, and I think she'd be better able to address whether or not it's been effective. If you think about it...I don't know how many people have taken advantage of it, but if you take advantage of it, and I probably should, if you take advantage of it, they can get your Social Security number and your name and not be able to do anything with it. It's the ability to get to the credit agency and then open a credit card account in your name that causes all the headaches, so... [LB177]

SENATOR PANKONIN: Well, we'll ask that question maybe of some other future testifiers here. [LB177]

SENATOR LATHROP: Okay. [LB177]

SENATOR PANKONIN: Thank you. [LB177]

SENATOR PAHLS: Thank you. [LB177]

SENATOR LATHROP: Thank you, and I appreciate... [LB177]

SENATOR PAHLS: And I assume you'll... [LB177]

SENATOR LATHROP: ...your cooperation. Thanks. [LB177]

SENATOR PAHLS: Okay. Thank you, Senator. Proponents? Good afternoon. [LB177]

JAIMEE NAPP: Good afternoon. Chairman Pahls, members of the committee, thank you for this opportunity to speak today in support of LB177. I'd like to thank Senator Lathrop for introducing this legislation. For the record, my name is Jaimee Napp. It's J-a-i-m-e-e N-a-p-p, and I'm the executive director and founder of the Identity Theft Action Council of Nebraska. We are the only nonprofit in the state solely dedicated to identity theft and its issues affecting consumers. I can say that I was here when we did testimony in 2007 to pass this legislation, so I can speak a little bit about its history. But, again, to provide a little bit of background for those new to the committee, security

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freeze: it really is the only tool available to consumers, giving them control over who views or accesses a report. And it does only stop that new account identity theft, only one type, but that is the type that is most costly and time consuming for victims to fix. And I am also a victim of new account fraud. A manager from my former employer stole my information from employer records and used that to open four new credit card accounts. And that has been about four years ago, and my family and I still really do feel its effects, so security freeze is really the only way for me to stop my impostor in her tracks. And I have had the security freeze since it was available in 2007, so I'll briefly just kind of describe how that process would work for a consumer. The consumer must request the freeze from the three main credit bureaus, Experian, Equifax, and TransUnion in writing. The bureaus then send a pin number to the consumer which is used to temporarily lift the freeze when the consumer wishes to access credit. About a month ago, I purchased a car, and so I lifted the freeze in order for that dealership to pull my credit report, and I did this by calling the three credit bureaus, and through their automated phone system, input my pin number, and selected how long I wanted that lift to last. It was very easy to do, and it was very fast. I know that Senator Lathrop did give you the list of the current state security freeze laws. There are currently 47 as of January 29 of this year, and plus the District of Columbia. And, again, it is true the committee did pass to the floor a consumer-friendly bill in 2007 with a \$5 per transaction fee, and, again, it was made a priority bill. But it was right before the Final Reading amendment was added that reduced the bill's effectiveness without any of the parties including the committee in that discussion. LB177 really does correct and highlight...correct to improve it and restore it to its original intention. And we do agree with Senator Lathrop's change with the \$3 per transaction as proposed. I guess the bottom line with the freeze is that more consumers are able to use the freeze when it is easy to use and at a price point that is usable to the consumer. In the economic climate, when a pricing is too high, it becomes a barrier for consumer use. In reference to Senator Pankonin's question to Senator Lathrop, I have rough numbers of how many people have taken advantage of the law. About four months after the law became effective, there were about 125. As the law stated, identity theft victims don't pay a fee. I'm guessing a large amount of those would be identity theft victims and not just regular consumers. But it is a barrier; the pricing is a barrier, and when I go and speak to community groups about it, they do mention that. So, again, I would ask the committee to swiftly move this bill forward to the floor, and I'd be happy to answer any more questions. [LB177]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. [LB177]

JAIMEE NAPP: Okay. Thank you. [LB177]

SENATOR PAHLS: And just for a show of hands, how many more proponents or opponents or neutral? I see two. Okay, thank you. Proponents? [LB177]

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PATRICK HENRY: I'm a proponent. [LB177]

SENATOR PAHLS: Okay. [LB177]

PATRICK HENRY: (Exhibit 3) Good afternoon. I am Patrick J. Henry of 1460 Buckingham Drive here in Lincoln. I am a volunteer registered lobbyist with AARP. I'm also a property tax payer in District 23. I have a package of material here to pass out. Most of this is material that the people on the committee from last year or the year before had already seen, but I wanted to pass it out again for the benefit of the new people. I testified last year in support of (LB)831 and the prior year also, and presented backup material at that time--you're receiving it now. The material reviews a paper that was prepared by Eric... [LB177]

SENATOR PAHLS: Mr. Henry, may I just stop just...spell your name for us. [LB177]

PATRICK HENRY: Oh, I'm sorry. It's Patrick Henry, H-e-n-r-y. [LB177]

SENATOR PAHLS: Okay, thank you. [LB177]

PATRICK HENRY: The material reviews a paper that was prepared by Eric Eisentein, who at the time was a professor at S.C. Johnson Graduate School of Management at Cornell University on the subject of identity theft. I have attached a copy of my testimony from last year and a copy of that study. And I want to point out that the study has printed across it, "Do not distribute it without permission." I had permission to distribute to each of you last year, but subsequently to that time, it's been made available within the last couple of months on the Internet on Professor Eisentein's website, and it has been published in a business journal. AARP strongly supports LB177. The removal of the seven-year statutory lift on the freeze is important, as most people would not remember if the lift was five, seven, or ten years. Also, I remind you that AARP is representing a lot of older people who...mind on these things is like mine, is probably not always up to remembering when the freeze needed to be reinstated. The current statute provides a fee of \$15 as has been mentioned. This fee can be charged by each of the three credit bureaus, and it is much higher than the average. The average in the United States at the time of the study was \$8.10 for the total of the three, so our price is a little bit higher. I think we would be very happy with the \$3 that was mentioned earlier. We urge the committee to approve and advance LB177. Identity theft continues to be...cause a serious problem which will grow as the economy declines, and often impact those who are least able to protect themselves. Among the things in Professor Eisenstein's study is reference to the price barrier, and if you read the study, you will see that the price is...in the states where the price is higher, the use of the security freeze is lower. He also comments about the two different kinds of protection, the security freeze or the review post factor after the fact, and it points out how much more effective the security freeze is than the monitoring. If you have any questions, I'd

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be happy to answer them, or at least try. [LB177]

SENATOR PAHLS: Okay. Any questions for Mr. Henry? Thank you for the information. It was very thorough. [LB177]

PATRICK HENRY: Oh, okay. Thank you for your time. [LB177]

SENATOR PAHLS: Any more proponents? Opponents? Neutral? [LB177]

MURRAY JOHNSTON: Good morning, Chairman Pahls and members of the Banking Committee. I'm Murray Johnston, M-u-r-r-a-y J-o-h-n-s-t-o-n. I'm with Experian, and I am testifying neutral on this bill as amended. I'll be concise. What Experian typically wants in a file freeze legislation is legislation that's consistent from state-to-state. And we also...because we...with that consistency, then we can make innovations and we have worked to make our free system easy for consumers to use. We don't...our company does not have an issue with the amendments to either section 1 or section 2. I'll talk briefly about section 3 of the bill which changes the fees. As has been discussed, it was, at one time, 5, 5, and 5 two years ago, and then it went...all the fees went up to the front on the placement. We are...I guess our counter is a matter of principle. We would like to be able to charge the consumer at least a fee if they're using the service we are providing them. And so, the ability to charge for temporary lifts and permanent removals, we appreciate that from Senator Lathrop's amendment. In all candor, I didn't see what's so wrong with 5, 5, and 5 from the bill two years ago, so...but that's for the committee to decide. And I just also would remind the members of the committee that we're talking about fees that are charged to consumers who elected to place a freeze that are not victims of identity theft and that are not minors. So these are the people who choose to go do it, so I'd be glad to answer... Oh, and I guess Senator Pankonin, I did look up our numbers, and as of December of 2008, 483 Nebraskans had placed freezes on the Experian File; I can't speak for the others, so, so. [LB177]

SENATOR PAHLS: And so it appears there is a common agreement with the \$3? Is that what I'm to understand? [LB177]

MURRAY JOHNSTON: I'll take whatever the committee will give me. (Laughter)
Obviously, ... [LB177]

SENATOR PAHLS: Okay. We're in a bidding war, no. Okay, thank you. Okay. [LB177]

MURRAY JOHNSTON: Right. I mean, I mean, you know, it's a service we provide. We like to recover some of the cost from it. It limits the shifting the more we can...if there were...if the statute did not set fees, we typically charge \$10 to place, to lift, and to remove. The committee had kind of come to the conclusion of 5 and 5 and 5 two years ago, so if...if...and that, you know, as I said, we signed off on that bill as well, so.

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[LB177]

SENATOR PAHLS: Any questions? If not, thank you. [LB177]

MURRAY JOHNSTON: Oh. [LB177]

SENATOR PAHLS: Oh, I'm sorry, Senator Utter. [LB177]

SENATOR UTTER: Concerning the fees, just looking at the sheet, it just seems like they're all over the place. So it seems logical to me to just ask the question. What's the least you'll take? (Laughter) [LB177]

MURRAY JOHNSTON: Well, I mean, some...I mean, there are states where we...we...you know, opposed it all the way down because they would not allow us to charge a fee. And that's kind of a matter of principle that...that the state is requiring us to do something, and then we cannot recover from the consumer those fees, and so, we have to shift those to our other customers. But, you know, if we have our druthers, 10, 10, and 10, but you know, as...that's what we would charge, I guess, if...if there...if it weren't stated in the statute, and that's what we ask for. [LB177]

SENATOR UTTER: It...it seems to me that if there's a...if there was going to be a variation from the fee for each one of the steps, that not having a charge to put the freeze on, would make sense, and to have a charge to lift it or remove it might make sense. [LB177]

MURRAY JOHNSTON: It...I guess you, you know, as...by looking, by looking at those fees, you can see states have come to very different conclusions. Some don't want fees to remove; others don't want fees to initially place, but fees to temporarily lift. The theories, you know, are wide-ranging on that one, and I...I'm going to be, I'm going to say simple on this one, and just say, you know, we just want to be able to charge the people who are using the system who are not victims. [LB177]

SENATOR PAHLS: Senator Pankonin. [LB177]

SENATOR PANKONIN: Thank you, Senator Pahls. Since it's Senator Lathrop's bill, and he indicated that he had discussed this with you on the 3, 3, and 3? [LB177]

MURRAY JOHNSTON: Yes. [LB177]

SENATOR PANKONIN: And there was indication that there was some sort of agreement. [LB177]

MURRAY JOHNSTON: Yes, yes. I agreed to go neutral on the bill if...with that

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amendment. [LB177]

SENATOR PANKONIN: Okay. I think that's important for the committee to know. It's Senator Lathrop's bill, and if you did...you know... [LB177]

MURRAY JOHNSTON: I'm neutral on it as currently amended. [LB177]

SENATOR PANKONIN: Okay, that's important. How are these fees collected and, I mean, when someone calls on the phone, as was indicated, and uses their pin, are they...how do you get your fee then? [LB177]

MURRAY JOHNSTON: Usually with a credit card. [LB177]

SENATOR PANKONIN: It's a credit card... [LB177]

MURRAY JOHNSTON: Um-hum. [LB177]

SENATOR PANKONIN: ...transaction? [LB177]

MURRAY JOHNSTON: Or if they mail it in, they can include a check. [LB177]

SENATOR PANKONIN: They can do it by mail as well? [LB177]

MURRAY JOHNSTON: Yes, sir. Yes, Senator. [LB177]

SENATOR PANKONIN: Okay. Thank you. [LB177]

SENATOR PAHLS: Any...seeing no more questions, thank you for your testimony. [LB177]

MURRAY JOHNSTON: Thank you. [LB177]

SENATOR PAHLS: Any neutral? That concludes LB177. Thank you. The hearing on (LB)177. We are now ready for...to open the hearing on (LB)297. Senator Dubas, come forth. When you're ready, Senator. [LB177]

SENATOR DUBAS: All right, thank you. Good afternoon, Chairman Pahls, members of the Banking Committee. My name is Senator Annette Dubas. That's D-u-b-a-s, and I represent the 34th Legislative District. LB297 creates the Nebraska Beginning Farmer and Small Business Linked Deposit Loan Act. It provides a method to assist beginning farmers and small businesses in need of financing in rural communities. Under the program, the State Treasurer would deposit state capital investment funds into local participating banks. This legislation earmarks \$20 million of capital investment funding

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for that purpose. The participating banks would provide low-interest loans to the eligible borrowers participating in the program. There are a variety of requirements in the legislation that beginning farmers and businesses must meet. Eligible beginning farmers and small businesses may use the loan exclusively for inventory, rent, utilities, insurance, taxes, equipment purchases, rental or lease, renovations, repairs, and maintenance of equipment and facilities, or to purchase land and buildings. Beginning farmers must have a net worth of less than \$500,000, provide the majority of the day-to-day physical labor and management of his or her farming or livestock production operation, and have adequate farming or livestock production experience, or demonstrate a knowledge of that type of farming or livestock production, and demonstrate a profit potential and need for assistance. A small business would qualify if they were headquartered in Nebraska, employ fewer than ten employees, and do business in rural areas. With the recent economic downturn, it is evident that increased capital to small businesses and beginning farmers is needed now more than ever. States such as Kansas, Missouri, Indiana, and Oklahoma have successful programs in place. I approached the Farm Bureau about this issue after we had worked through an interim hearing on the issue of Initiative 300. And one of the points that was brought out of that hearing was the lack of access to capital for beginning farmers which, if anything, has increased to date. I think this is a working solution to addressing that part of the issue, and it's feasible to all parties. I've worked with a variety of stakeholders on honing it into the shape that it is in today. I would like to state for the record, I do have a few concerns about the fiscal projection for this legislation. In talking with other states and what it costs for them to implement this program, while not a large number of loans come through, they are very needed loans, so the amount of time that goes into it is not necessarily cumbersome as well as the monies used to advertise the program. I think just through the local banks, knowing that they have access to this program, they would be the greatest campaigners for use, so I wouldn't see the necessity of having a statewide media campaign to announce the launching of such a program. In addition, we found that states that have administered this program have administered around ten loans a year, you know, and these programs still are, you know, in relatively infancy stages, and have the potential to grow. But, again, we're not going to see hundreds of loans coming in, but the ones that are going to take advantage of it really are the ones who are going to need it. So I would appreciate your consideration for this legislation, and would be happy to answer any questions. [LB297]

SENATOR PAHLS: Any questions for Senator Dubas? Seeing none,...oh, do you plan to stick around... [LB297]

SENATOR DUBAS: Yes, I will. [LB297]

SENATOR PAHLS: ...for closing? Okay. Thank you. And I did see about four of you move up, so it looks like we have at least four people going to testify? Thank you. Proponents? You may begin. [LB297]

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JASON KVOLS: Good afternoon, Senator Pahls and members of the Banking Committee. My name is Jason KvolS, J-a-s-o-n K-v-o-l-s. My wife and I farm near Laurel in Cedar County. I am currently...serve on the board of directors of the Nebraska Farm Bureau Federation, and am here today on behalf of the Nebraska Farm Bureau in support of LB297. I want to thank Senator Dubas for introducing LB297. We believe the bill represents an opportunity to help beginning farmers. USDA research shows farmers with less than four years' experience are more likely to fail compared to other farming operations. Programs like the linked deposit program in LB297 can help beginning farmers when assistance is needed most and help them become established operations. Nebraska Farm Bureau has been and will continue to be supportive of measures that help and encourage individuals to pursue careers in farming and agriculture. The difficulties beginning farmers face are problematic at best. Entry into farming and ranching requires tremendous start-up costs and relies heavily on capital expenditures for land, livestock, and machinery. These costs are on top of the burdens of supplying health insurance and other expenses that are oftentimes covered in group plans for other professionals. We continually hear from younger farmers and ranchers that access to capital is the greatest obstacle to overcome when entering farming and ranching. LB297 would help address this obstacle by providing beginning farmers and ranchers another alternative to capital. The bill would allow the state to place funds available for investment in local banks. The banks could then use the funds to capitalize low interest loans to beginning farmers and ranchers. The bill also would provide assistance to start-up businesses in rural communities. Because the program utilizes state farms for investment, the only cost for the program to the state would be some administrative costs to the Treasurer's Office. Similar linked deposit programs exist in Missouri, Kansas, Illinois, and Oklahoma, to name a few, so the concept has been implemented in other states. The programs have been successful, to my understanding, with little cost to the state itself. Thank you for the opportunity to provide comments. I would be happy to answer any of the questions that you would have. [LB297]

SENATOR PAHLS: I see no questions. Thank you for your testimony. [LB297]

JASON KVOLS: Thank you. [LB297]

SENATOR PAHLS: Proponents? [LB297]

PETE McClymont: Chairman Pahls, members of the committee, I'm Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I'm here on behalf of Nebraska Cattlemen. I'm vice president of Legislative Affairs, and we are here in strong support of Senator Dubas and LB297, just to reaffirm her beginning statements. Obviously, in these economic times, it's essential that we, as a state, can provide opportunities for beginning ranchers, farmers, and small business owners. These people are long on sweat equity, desire, and dreams, and this is a good program that would give the qualified recipients, based on

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the relevant lender and also the state, to start out in a program like this. So agriculture, obviously, can be a capital intensive business, and so these people need to come to the lender with the proper opportunity and things in order, and so if this can benefit them, that would be terrific. Obviously, in talking with this bill and the senator and her staff, the fiscal note was a little bit of a concern, but nonetheless, I'm sure there's plenty of people that have voiced their concerns of fiscal notes on other bills. But at any rate, we would support Senator Dubas and the committee to hopefully advance this, and I'd be happy to answer any questions. [LB297]

SENATOR PAHLS: Seeing no questions, thank you. [LB297]

PETE McCLYMONT: Thank you. [LB297]

SENATOR PAHLS: Proponents? [LB297]

ROBERT HALLSTROM: Senator Pahls, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist, both the Nebraska Bankers Association and the National Federation of Independent Business in support of LB297. Senator Dubas did a nice job of outlining the specific components of the legislation. I just want to relate to the committee, I have talked to my counterparts in the states of Kansas, Oklahoma, and Missouri. All of the programs in those states for either small business and/or beginning farmers seem to be well utilized. Those programs have been in place for an extended period of time. They have grown to be much larger than the \$20 million maximum that we have in Nebraska, but I certainly believe that's an appropriate starting point. We can then determine where the program goes from there. I do want to extend my appreciation to both Senator Dubas and her staff for a great deal of work that went into the bill from its original draft form until the introduction of LB297. We looked at what other states were doing to modify and fine-tune the program. One thing in particular was looking at the maximum five-year loan period we had requested and is inserted in LB297, an amortization period of 15 years. There was some concern by the bankers that we talked about that a five-year \$250,000 loan may be a little bit difficult or steep for repayment purposes, but if you can allow for a longer amortization period with a balloon payment, for example, at the end, you may be able to use this program as a steppingstone into more traditional means of financing. With that, I would be happy to address any questions of the committee. [LB297]

SENATOR PAHLS: Senator Pankonin. [LB297]

SENATOR PANKONIN: Thank you, Chairman Pahls. Mr. Hallstrom, just unclear on this bill and why financial institutions might be interested. It has nothing to do with credit quality or credit backing or whatever. It's just to provide a link to potential low-cost deposits to match up. Would that be a fair...? [LB297]

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ROBERT HALLSTROM: It's additional funding source. All of the underwriting, all of the risk continues to be assumed by the financial institution. There is not an element of risk that is placed on the state other than indirectly, the state is agreeing up to the maximum of \$20 million allocated for this program that they will agree to take a slightly lower interest rate in exchange for the ability to make these types of low interest rate loans to small businesses and beginning farmers. [LB297]

SENATOR PANKONIN: So the implicit, and not a credit decision, but the implicit public policy decision here is have lower cost deposits that provide for lower cost loans. [LB297]

ROBERT HALLSTROM: Yes, because the risk is all on the bank. We make the decisions to make or not make a loan based on the bank's own independent credit... [LB297]

SENATOR PANKONIN: Evaluations. [LB297]

ROBERT HALLSTROM: ...worthiness and evaluations. [LB297]

SENATOR PANKONIN: Thank you. [LB297]

ROBERT HALLSTROM: Thank you. Seeing none (laughter). [LB297]

SENATOR PAHLS: Senator Utter. [LB297]

SENATOR UTTER: Well, I probably should have addressed these questions to Senator Dubas, and I apologize for not doing that, but I figured somebody would answer them, and nobody has to date. So Mr. Hallstrom, you are my...you're the one I chose to... [LB297]

ROBERT HALLSTROM: Guinea pig. [LB297]

SENATOR UTTER: ...be the guinea pig. [LB297]

ROBERT HALLSTROM: Thank you. [LB297]

SENATOR UTTER: How do you in the beginning environment, we have the old, and for the life of me now, I can't remember the new acronyms for the old FMHA loans that have a beginning farmer program. And the SBA that has a kind of beginning business program, how do you see that this is going to enhance or add to the existing programs that we already have for beginning farmers? [LB297]

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ROBERT HALLSTROM: Well, we visited... [LB297]

SENATOR UTTER: Or beginning small businesses? [LB297]

ROBERT HALLSTROM: Yeah, we visited with our bankers with regard to that in trying to make sure that this is a program that they would be interested in, and I think with the manner in which the program is designated with the formula for determining the rate of interest that the deposit will be placed with the bank, and, correspondingly, the rate of interest then or the margin that can be made on the bank in charging back that our banker said that there would be...although they're aware of those programs that are out there, Senator, that this would be something that they'd certainly take a serious look at and participate in. [LB297]

SENATOR UTTER: Can you help me through the math of the interest rate determination just a little bit? [LB297]

ROBERT HALLSTROM: Well, the basic rate is, it's tied to the judgment interest rate which is fluctuating, I think, on a quarterly basis. But I think the bill, if I remember correctly, allows for adjustment of that on a twice-a-year type of basis, so that at the time when the loan is made, whatever that prevailing judgment interest rate is, will be 2 percent below that, would be the rate that the State Treasurer would place the deposit with the financial institution, and the financial institution could lend that...those funds back at 2 percent above that judgment interest rate. [LB297]

SENATOR UTTER: And the...and the linked deposit thing is set up to correspond with the term of the loan? [LB297]

ROBERT HALLSTROM: My understanding is it'll be rolled over as payments are made, the amount of the deposit would be reduced correspondingly, and then would just be kind of a self-advertising type of thing, if that's an appropriate description. [LB297]

SENATOR UTTER: One more question, if I may. Give me the definition of, in your mind, at least, as...there's not much said in here about a beginning farmer. Now, admittedly, in my banking career, a beginning farmer with a \$500,000 net worth is something to behold. I'd love a whole basketful of them, but... [LB297]

ROBERT HALLSTROM: Well, Senator, I think it says, "not more than" so you can start as low as you want to and work your way up. But there is a definition for the beginning farmer, Senator Utter, starting on page 3, and those are issues that, as I understand it, would... [LB297]

SENATOR UTTER: ...but there's no age type thing, so conceivably, if I decided at 60 years of age I was ready to start farming, why I could become a beginning farmer at that

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age, and be eligible for one of these loans. [LB297]

ROBERT HALLSTROM: Yeah, I believe so, and, you know, subject to other things, not to suggest that a beginning farmer at age 60 would not be able to do so, but there are day-to-day physical labor and management requirements, demonstrating profit potential, demonstrating the need for the assistance and, obviously, if you're age 60, you've made your living in other pursuits. That net worth of \$500,000 could possibly be a stumbling block to participate, but. [LB297]

SENATOR UTTER: Fair enough. Thank you, Mr. Hallstrom. Thank you, Senator Pahls. [LB297]

SENATOR PAHLS: Thank you. [LB297]

ROBERT HALLSTROM: Thank you. [LB297]

KURT YOST: Chairman Pahls, members of the Banking, Commerce and Insurance Committee, again, my name is Kurt Yost, K-u-r-t Y-o-s-t, and I'm here as a registered lobbyist of the Nebraska Independent Community Bankers, and we, too, support LB297. I would like to make one comment along the lines. Senator Dubas mentioned or someone prior to me mentioned liquidity, and again, I think it's important to emphasize that LB297 is nothing more than another tool. I had occasion to research the liquidity of Nebraska's banks for a speech I gave in Columbus recently, so I gathered some information from the FDIC, and just as a point of information for this committee, at the end of the third quarter of 2008, Nebraska's banks, as a total, had a 75 percentile in liquidity. Liquidity for those of you that don't know, is core deposits to assets. That's been the big buzz word around the United States in the commercial banking industry. The national average is 47 percent. That gives you an idea of the strength of Nebraska's banks. LB297 doesn't supersede any of that; it just simply is another tool. [LB297]

SENATOR PAHLS: Seeing no questions? Thank you, Mr. Yost. [LB297]

KURT YOST: Thanks. [LB297]

SENATOR PAHLS: Opponents? Neutral? [LB297]

JASON HAYES: (Exhibit 1) Hello, Chairman Pahls and members of the Banking Committee. My name is Jason Hayes spelled J-a-s-o-n H-a-y-e-s, and I serve as the Deputy State Treasurer. I'm speaking today in a neutral capacity for LB297 to explain the fiscal note associated with the bill. The State Treasurer's office estimates the need for a half-time FTE associated with the review process in section 9 of this bill. This part-time staff person would be engaged in reviewing the loan application to determine

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whether the applicant is eligible for the program. We made this estimate based on a fully utilized \$20 million program, and our costs could fluctuate based upon a change in either the total program amount, a change in the cap of each loan granted, or a decrease of program utilization. So I want to make sure that everybody is aware of that, that this was based upon our estimates of what a fully-utilized program would be. Also, we included \$30,000 in the fiscal note spread over two years to cover marketing and promotional costs associated with the program. This amount will help us to create pamphlets and run ads, letting prospective participants know of both the program and the eligibility requirements. This cost could be minimized though, to the extent that banks promote the program on an individual basis. We are aware that the state of Indiana started a similar program, but it was not fully utilized, and so we do feel that an adequate marketing budget should be included. And thank you for your attention to this matter. Any questions? [LB297]

SENATOR PAHLS: Any questions for? Thank you. [LB297]

JASON HAYES: Okay. Thank you. [LB297]

SENATOR PAHLS: I think we are ready for a closing. [LB297]

SENATOR DUBAS: Thank you again, Chairman Pahls, and members of the committee for your kind attention. I'd like to address some of the questions that were raised, and I think a question was asked about how many times the rates were adjusted, and it's quarterly. It's set up...rate adjustments would be looked at quarterly. And the definition for a beginning farmer is the same one that we already have in place for the beginning farmer, personal property tax credit, so that's how we define beginning farmer. I think this program is a great way for the state of Nebraska to invest in beginning farmers and business people in rural Nebraska. We need them. We need our young people to not only stay in the state, but even feel like they have an opportunity to come back to this state and make a living, bring their families, support our local communities. I think with relatively nominal costs, we can make that investment. We can tell our farmers and businessmen that we believe in you, men and women, that we believe in you, and what you have to offer to the state. We have a young son that we're bringing into our farming operation, and it's probably next to impossible to get into farming unless you have a family connection. But even with our son's connection through his parents and his grandparents, it hasn't been an easy row to hoe. We've faced our own financial challenges, bringing him into the operation right in the middle of one of the worst droughts that we've had in recent history. So, you know, even though Clint had access to family resources and help, it still was a challenge. And, you know, I think this program could have helped him and helped our local bank also, give him that foot in the door, get his feet on the ground, and get things going on, so that he could eventually, you know, have rolled into a different type of a loan program. He is still farming with us, and we're still thrilled to death about that, because we need him, probably more than he needs us

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right at the moment. So, again, I think this is a great opportunity for us to take state dollars that are available and invest them in the future of the number one industry in our state, and that's agriculture. So I'd be happy to answer any more questions you may have. [LB297]

SENATOR PAHLS: Seeing none, thank you, Senator, for... [LB297]

SENATOR DUBAS: Thank you. [LB297]

SENATOR PAHLS: That closes the hearing on LB297. Since you're the last of the 7s, this is LB377. Mr. Pankonin. [LB297]

SENATOR PANKONIN: Yes, it is. Go ahead? Good afternoon, Chairman Pahls and members of the Banking, Commerce and Insurance Committee. I am Dave, D-a-v-e Pankonin, P-a-n-k-o-n-i-n, and I represent the 2nd Legislative District. I'm here this afternoon to introduce LB377. LB377 would adopt the Nebraska Governmental Unit Credit Facility Act. The act would give political subdivisions authority to back their bonds with letters of credit from a United States governmental enterprise such as the Federal Home Loan Bank of Topeka or from a bank that is backed by United States governmental enterprise. LB377 is being introduced in reaction to federal law changes approved by Congress on July 30, 2008, under the Housing and Economic Recovery Act. The federal law changes permit Federal Home Loan Banks to ensure letters of credit to guarantee tax exempt municipal bonds for a wide range of projects through December 31, 2010. The potential advantage to political subdivisions would be that municipal bonds backed by these letters of credit, could possibly be issued at lower interest rates. LB377 would give political subdivisions in Nebraska the authority needed to take advantage of these new federal changes. The bill would give political subdivisions general authority to use letters of credit or similar devices from federal agencies to support their bonds. The procedure to issue bonds would not be changed by the act. The act would give political subdivisions an additional option when issuing bonds. A bond attorney from Baird Holm law firm in Omaha will testify, regarding this bill. A representative from the Federal Home Loan Home Bank of Topeka will also testify. Hopefully, they can answer any technical questions you may have about LB377. Thank you. [LB377]

SENATOR PAHLS: Seeing no questions, thank you, Senator. It appears we have four people going to speak to this bill, at least four of you? We will start with the proponents. The floor is yours. [LB377]

PARKER SCHENKEN: Good afternoon, Mr. Chairman, members of the committee. My name is Parker Schenken, P-a-r-k-e-r S-c-h-e-n-k-e-n. I'm a partner in the public finance group at Baird Holm in Omaha, and I'm pleased to have this opportunity to speak on behalf of the Nebraska League of Municipalities as a proponent of LB377, the Nebraska

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Governmental Unit Credit Facility Act. In my practice, I serve as bond counsel to a variety of political subdivisions in connection with tax-exempt financing transactions. And for those of you that have been through this process, you know that Congress and the Treasury Department have imposed numerous rules and restrictions and regulations that govern these things which keep me busy on a daily basis. And one of those restrictions is a prohibition against so-called federal guarantees of municipal debt. In other words, if a tax exempt...if a bond is federally guaranteed, it can't be tax exempt. And recent circumstances, as the senator indicated, this goes back to last summer, have negatively impacted the ability of municipal bond issuers to access the municipal bond markets. And so, in response to this, Congress amended the prohibition to provide an exception, an express exception, for guarantees by the Federal Home Loan Bank. And this is a temporary lifting of that prohibition for that purpose through December 31, 2010. The Federal Home Loan Bank has, in turn, developed a program to make their credit available to local municipal issuers, and we are fortunate to have with us, Mark Woita, representing the Federal Home Loan Bank, who will speak in a few minutes. The change at the federal level has the potential to benefit Nebraska political subdivisions, but as a general matter, Nebraska political subdivisions don't have the express statutory authority to enter into the kinds of documents that are going to be necessary to allow them to take advantage of this federal change, and that's the purpose of LB377 is to provide this kind of authority. LB377 has been drafted in a manner that not only takes into account the specific change permitting Federal Home Loan Bank guarantees, but also in anticipation of other federal programs that may come along or changes to that limitation that may allow guarantees by other agencies or other governmental units. And, thus, it's drafted with some flexibility so that we're not back speaking to you in the event of another change in a federal program. And, in short, this bill is intended to allow our local political subdivisions to take advantage of a change that exists and, hopefully, other changes like it that may come down the road. I thank Senator Pankonin for introducing this bill, and I'd welcome any questions. [LB377]

SENATOR PAHLS: Seeing no questions, thank you. Good afternoon. [LB377]

MARK WOITA: (Exhibits 1 and 2) Good afternoon. My name is Mark Woita. That's M-a-r-k W-o-i-t-a. And I'm an assistant vice president and account manager for eastern Nebraska for the Federal Home Loan Bank of Topeka, and I thank the committee for giving my bank the opportunity to testify in support of this important legislation. I've handed out to you a copy of my testimony and then also a product brochure of the confirming letter of credit that we're talking about. The FHL Bank Topeka promotes housing and economic development by providing wholesale funding in related products and services that help our member financial institutions provide affordable credit and to foster strong and vibrant communities. FHL Bank Topeka was created in 1932 as a federally chartered government-sponsored enterprise or more commonly known as a GSE. FHL Bank Topeka is wholly owned by its member financial institutions which are comprised of commercial banks, thrifts, credit unions, and insurance companies that are

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chartered in the states of Nebraska, Colorado, Kansas, and Oklahoma. We currently have approximately 800 such members. FHL Bank Topeka has maintained the highest credit rating, AAA, from both Moody's and Standard and Poor's. And we have approximately \$58 billion in assets and over \$2.3 billion in capital. FHL banks are regulated by the Federal Housing Finance Agency in Washington, D.C., and as a side note, that's that new world-class super regulator that was recently created by Congress. The finance agency regulations authorize the Home Loan Banks to issue or confirm letters of credit which assist our member financial institutions in facilitating residential housing, finance, and community lending including economic development projects such as commercial, industrial, manufacturing, social service, and public facility projects and activities, and public or private infrastructure projects such as roads, utilities, and sewers, and for certain other purposes. A letter of credit is an irrevocable undertaking by the Federal Home Loan Bank of Topeka to pay the beneficiary up to the maximum amount of the letter of credit when the beneficiary makes a draw by presenting the required drawing certificate to the FHL Bank at any time before the expiration date. When a letter of credit is issued to credit enhance a bond, the beneficiary is generally either the bondholder or a trustee acting on behalf of the bondholders. The FHL banks may also issue letters of credit that confirm or back a letter of credit issued by a FHL Bank member financial institution. A beneficiary would draw on the letter of credit if there is a default in payment or principal on interest on the bond. An FHL Bank letter of credit must be fully collateralized by one of our member financial institutions which, in turn, agrees to reimburse the FHL Bank for any draws paid. Our member financial institutions pay the FHL Bank a fee to compensate for the risk assumed by the Federal Home Loan Bank. The FHL Bank Topeka strongly supports LB377, the Nebraska Governmental Unit Credit Facility Act. This act will allow Nebraska governmental units to credit enhance their bonds with letters of credit issued by or confirmed by FHL Bank Topeka or other United States government enterprises. FHL Bank Topeka could issue its letter of credit directly backing a bond, or we could issue a confirming letter of credit backing a letter of credit issued by a member financial institution in support of a bond. In either case, the rating of the bond should improve to AAA, greatly enhancing that bond's marketability and resulting in lower interest costs for the governmental unit. LB377 will allow governmental units to take advantage of a provision in the Housing and Economic Recovery Act approved by the U.S. Congress effective July 30, 2008. This act permits FHL Banks to issue letters of credit through December 31, 2010, to support tax-exempt bonds without jeopardizing the tax-exempt status of those bonds. The law states that the letter of credit must be made in connection with the original issuance of the bond, but Internal Revenue Service Notice 2008-79 states that a bond that is part of a refunding issue may also qualify. In these difficult times, laws such as LB377 are needed now more than ever. This act will help Nebraska cities, counties, villages, school districts, and other governmental units to obtain the financing they need for important community and economic development projects to improve and revitalize their communities. We at the Federal Home Loan Bank of Topeka enthusiastically support and request approval of SB377 (sic: LB377). We thank you for your kind attention. Any

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questions? Thank you very much. [LB377]

SENATOR PAHLS: Senator,... [LB377]

SENATOR UTTER: Chairman Pahls, Mr...., would I assume that this is primarily going to be used to guarantee revenue type obligations? [LB377]

MARK WOITA: That would be my... [LB377]

SENATOR UTTER: Or general obligation...or is there any restriction? [LB377]

MARK WOITA: I don't know the answer to that, Mr. Utter. Perhaps one of the other... [LB377]

SENATOR PAHLS: We can find that answer. [LB377]

MARK WOITA: Okay. Any other questions, sir? Sorry. [LB377]

SENATOR UTTER: Well, I did have one more. [LB377]

MARK WOITA: Oh, oh. [LB377]

SENATOR UTTER: Assuming that a bank sponsors some of this obligation,... [LB377]

MARK WOITA: Um-hum. [LB377]

SENATOR UTTER: ...issues the...has you issue the letter of credit,... [LB377]

MARK WOITA: Uh-huh, confirming letter of credit,... [LB377]

SENATOR UTTER: ...confirming letter of credit, and then that bank itself actually ends up investing in those...some of those bonds to put back in their investment portfolio. Are those bonds eligible as collateral (laughter) against the confirming letter of credit? [LB377]

MARK WOITA: I don't know the answer to that either, sir (laughter). [LB377]

SENATOR UTTER: It was fun (laughter). [LB377]

MARK WOITA: Okay. Thank you. [LB377]

SENATOR PAHLS: Just... [LB377]

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MARK WOITA: Yes. [LB377]

SENATOR PAHLS: ...are you from Topeka? [LB377]

MARK WOITA: I'm a lifelong Nebraskan, sir. Native of Beatrice; I graduated at UNL, and been in Senator Pirsch's district for 20 years. [LB377]

SENATOR PAHLS: Okay, okay, thank you. That's... [LB377]

MARK WOITA: You bet. [LB377]

SENATOR PAHLS: Another proponent. [LB377]

GARY KRUMLAND: Senator Pahls, members of the committee, my name is Gary Krumland. It's G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities in support of LB377. I want to thank Senator Pankonin for introducing the bill for us to take advantage of this opportunity. I just want to explain a little bit about municipal law and why we think this is a necessary bill. Nebraska is a...what's called a grant of powers state. It's sometimes referred to as Dillon's Rule. Dillon's Rule is named after a judge in Iowa in the 1800s because he came up with the rule. But basically,...and there's few exceptions in Nebraska. Basically means that a political subdivision can only do those things that the Legislature gives them authority to do or the things implied from those statutes. And so, because of this, the authority to use the Federal Home Loan Bank letters of credit is not real clear, so we think LB377 is very important to make it clear, that local governments can take advantage of this. It is a short time opportunity right now. We're hopeful that maybe it will be extended, and with everything going on in Washington that there may be other opportunities, so the bill is drafted broadly to take advantage of anything that could come up. But with that, we would ask the committee's support for the bill. [LB377]

SENATOR PAHLS: Seeing no questions, thank you. [LB377]

GARY KRUMLAND: Um-hum. [LB377]

ROBERT HALLSTROM: Chairman Pahls, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB377. Hopefully, you have had all the technical nuances of the bill explained, so there won't be many questions. But seriously, the banks across the state of Nebraska are actively engaged in promoting economic development and infrastructure projects in their communities to retain the viability, integrity of those communities. The federal law was passed to allow those types of projects to benefit from the issuance of the tax-exempt bonds and to authorize what has previously been prohibited which is the wraparound or confirming letters of

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credit to be issued by the Federal Home Loan Bank of Topeka, and we support the legislation. [LB377]

SENATOR PAHLS: Seeing no questions, thank you,... [LB377]

ROBERT HALLSTROM: Thank you. [LB377]

SENATOR PAHLS: ...Mr. Hallstrom. Any opponents? People in neutral? Closing? [LB377]

SENATOR PANKONIN: Just a....first of all, I appreciate the committee's attention to a rather technical bill, and this is one that we need as potential in case there is projects or banks that want to work with a local project, to have this on the books as you've heard so that we can get the potential federal guarantee from the Federal Home Loan Bank. Don't know if it will be used or how much the laws, as Gary Krumland mentioned, is written broadly enough. If there is subsequent federal backing in municipal bond issues, I think it would work under this framework, but we are in different and difficult economic times. The long-term markets have frozen up and still are thawing, but the municipal bond issuance right now is at a low point, and I think this is just another tool that may help get those markets going again. Thank you. [LB377]

SENATOR PAHLS: Thank you. No questions? That closes the hearing on (LB)377. [LB377]

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Disposition of Bills:

LB177 - Placed on General File with amendments.
LB297 - Placed on General File with amendments.
LB327 - Placed on General File with amendments.
LB377 - Placed on General File.

Chairperson

Committee Clerk