

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

Government, Military and Veterans Affairs Committee
February 03, 2010

[LB715 LB987 LB1035 CONFIRMATION]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, February 3, 2010, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB715, LB987, LB1035, and a gubernatorial appointment. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Robert Giese; Charlie Janssen; Russ Karpisek; Bob Krist; and Kate Sullivan. Senators absent: Rich Pahls. []

SENATOR AVERY: (Recorder malfunction)...settling down. I'm going to have to wait for just a few minutes until I get a quorum, and we're not there yet. Are you there, Mr. McMeen? Okay. It'll be about five minutes. A quorum appeared quickly. Welcome, folks, to the hearing of the Government, Military and Veterans Affairs Committee. My name is Bill Avery. I am joined today by other members of the committee. We will have Senator Charlie Janssen here later. Senator Pahls is excused because of illness. But we do have with us today Senator Bob Giese, who is from South Sioux City; and the Vice Chair, sitting next to him, is Senator Scott Price from Bellevue. Legal counsel to my immediate right is Christy Abraham. Senator Karpisek from Wilber will be joining us soon. Sitting next to him is Senator Kate Sullivan from Cedar Rapids, and she is next to Senator Bob Krist from Omaha. The committee clerk is Sherry Shaffer. We have two interns with us today, Mark Woodbury and Lisa Cook; I'm doing that by memory; yes, that is correct. When you...if you wish to testify, we're going to ask you to fill out one of these forms. Print the information very clearly, and give that to the clerk. If you have any material supplements--exhibits for our perusal--you would want to distribute those in photocopy form; please have 12 copies available. Give that to the clerk; she will have the pages distribute them to the committee. If you wish to be recorded for or against a bill but you do not wish to testify, there's another form for you to fill out. Both of these forms are available at the door here and, I believe, at the other door. We would ask you to turn off all electronic devices--telephones are sufficiently silenced--so as not to disturb the proceedings. We ask that you pay close attention to testimony so that you are not repetitive. And we will ask you also to try to keep your comments to not more than five minutes. We do not use the light system in here unless we're pressed to the point where we must. I don't think we'll have to do that today; at least I hope not. Before we start with the agenda...the agenda, by the way, is posted outside the committee room. There are three bills that we'll be hearing today, in the order as printed. And before that, however, we do have one item of business that we need to take care of, and that is the appointment of Reynold McMeen. []

REYNOLD McMEEN: (Exhibit 1) Reynold McMeen, yes. [CONFIRMATION]

SENATOR AVERY: You want to say that again? [CONFIRMATION]

REYNOLD McMEEN: Reynold McMeen. [CONFIRMATION]

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SENATOR AVERY: Reynold McMeen. [CONFIRMATION]

REYNOLD McMEEN: Yup. [CONFIRMATION]

SENATOR AVERY: And he is being nominated for a position on the State Emergency Response Commission. Mr. McMeen, if you would take a few minutes to tell us a little bit about yourself and why you wish to be on this commission, we would appreciate it. [CONFIRMATION]

REYNOLD McMEEN: Thank you. And thank you for the opportunity to talk to you all. My background is--I was a science teacher for 9 years, a physical therapist for 35; and I've been a mayor for 3 years. I've had some practical experience with disasters. My first year in office we had a south-side fire, which burned down the south side of our square; we had a coal train derailment downtown; and then we had a severe ice storm--all within a period of about four months. At that point, I decided I needed to get more involved in emergency response. I went to a hazmat course just outside of Washington, D.C., and it was a very good experience. And it pushed me along, I mean, thinking I want to become more involved with emergency response. I became a member of the Custer County Emergency Response Committee, and then we formed a LEPC, or Local Emergency Planning Committee. And from there, I was asked to come to a State Emergency Response Commission meeting, and I was very much interested, and I wanted to serve. And they asked me if I would, and I said yes. (inaudible) what want to do on the commission is see if we can't help the LEPCs in rural Nebraska get a little better developed and a little bit more involvement of the communities and the city government. How's that? [CONFIRMATION]

SENATOR AVERY: (Laughter) That's fine. Before we go to questions from the committee, I want to tell you that Senator Deb Fischer sends her regards; I understand that you and she are good friends. [CONFIRMATION]

REYNOLD McMEEN: Yeah. That's good. I need her help. [CONFIRMATION]

SENATOR AVERY: Well, she is not on this committee... [CONFIRMATION]

REYNOLD McMEEN: Oh. [CONFIRMATION]

SENATOR AVERY: ...or she would be here to express those good wishes herself. We'll now go to questions from the committee. Senator Price. [CONFIRMATION]

SENATOR PRICE: Thank you, sir. Mr. McMeen, thank you for your service; thank you for your willingness to serve. I have a philosophical question--if you could give a brief idea on your thought on the statewide communications architecture and infrastructure

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and the ability to integrate all these disparate systems into one system and moving forward with our information technology concerns and upgrading networks: Just philosophically, how would you approach that aspect of state emergency response? [CONFIRMATION]

REYNOLD McMEEN: Well...wow. You're going to have to...we have to come up with the funding to do this, and we need an overall plan. And we need to start, well, actually, start with, I think, (inaudible) or FEMA--I'm not sure where. We have to have an overall plan. It needs to come out of, I think, out of the Legislature: this is what we're going to do, and this is how we're going to do it. [CONFIRMATION]

SENATOR PRICE: Thank you. [CONFIRMATION]

REYNOLD McMEEN: And then structure it that way. [CONFIRMATION]

SENATOR PRICE: Thank you. [CONFIRMATION]

REYNOLD McMEEN: Okay? [CONFIRMATION]

SENATOR AVERY: Senator Sullivan has a question. [CONFIRMATION]

SENATOR SULLIVAN: Thank you very much, Senator Avery. And, Mac--if I may just be so bold as to call you that--you may not...I noticed that on your area of interest it didn't include golf. And that's how I remember you. You and my husband used to play golf when we lived in Mason City 25-plus years ago. [CONFIRMATION]

REYNOLD McMEEN: That's right. [CONFIRMATION]

SENATOR SULLIVAN: So first and foremost, though, I really appreciate your concern for rural Nebraska and improving emergency preparedness out there. And I wondered if you could maybe expound on that a little, in terms of how your role on the commission might serve that idea, that concept. [CONFIRMATION]

REYNOLD McMEEN: Well, the last meeting I went to, they had done a survey of the LEPCs, and we kind of talked about it and thought the survey was a little too vague; it really didn't tell us what the problems really are. We need to go back, find out what the problems are, why there's not involvement. But then we're going to have to actually make visits to these meetings and see if we can't give them some ideas to get more involved and get their city officials involved so that they can be functional when they need to be. [CONFIRMATION]

SENATOR SULLIVAN: Very good. [CONFIRMATION]

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REYNOLD McMEEN: Does that make sense? [CONFIRMATION]

SENATOR SULLIVAN: Yes, it surely does. Thanks very much. [CONFIRMATION]

REYNOLD McMEEN: Um-hum. [CONFIRMATION]

SENATOR SULLIVAN: And thank you for your willingness to serve. [CONFIRMATION]

SENATOR AVERY: Any other questions from the committee? Let me ask you, sir: If you could change the agency to which you are being nominated, what would you change? [CONFIRMATION]

REYNOLD McMEEN: Oh, dear, I've only been in two meetings. I think we've got a pretty good setup. It looks a little weak when (inaudible) asked for volunteers to do projects and nobody raises their hand. We need...I think the community members need to get more involved, and we need, actually, to be appointed to things. That's the way I do things. And so if you wait for people to volunteer, you're going to have a hard time getting some of these things done. [CONFIRMATION]

SENATOR AVERY: Let me ask you one more question: If a conflict of interest should arise in your work on the Response Commission, how would you handle it? [CONFIRMATION]

REYNOLD McMEEN: You mean as far as being mayor? [CONFIRMATION]

SENATOR AVERY: Any conflict of interest, anything that might involve a direct interest that you might have that would be in conflict with your work on the Response Commission. [CONFIRMATION]

REYNOLD McMEEN: Well, I'd have to abstain or--abstain from that issue, I guess. Like the city council, we simply don't vote or...I simply won't (inaudible) a part of anything that's a conflict of interest, so I...I wouldn't drop off the board, though, of the commission. [CONFIRMATION]

SENATOR AVERY: But you would abstain from--refrain from participating in that particular issue. [CONFIRMATION]

REYNOLD McMEEN: Yeah. I don't like to see that type of thing. [CONFIRMATION]

SENATOR AVERY: Thank you. Any other questions? Seeing none, thank you very much, sir, for calling in. [CONFIRMATION]

REYNOLD McMEEN: Thank you. [CONFIRMATION]

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SENATOR AVERY: That will end the confirmation hearing on the nomination to the State Emergency Response Commission. All right. Now we are going to move to our published agenda. And the first item up is LB715. I am the principal sponsor of that, so I'll turn the chair over to the Vice Chair, Senator Price. [CONFIRMATION]

SENATOR PRICE: Senator Avery, the floor is yours. [CONFIRMATION]

SENATOR AVERY: Thank you, Senator Price. For the record my name is Bill Avery, spelled B-i-l-l A-v-e-r-y. I represent District 28 here in Lincoln. LB715 grew out of an interim study that we here in the Government Committee conducted this past year. It was authorized by LR151, and the purpose of that was to examine alternative funding strategies for the improvement of Centennial Mall, an area of the Nebraska State Capitol Environs District. The bill before you specifically amends the Nebraska State Capitol Environs District Act. If you look at the green copy, you'll see that there is a law that defines that. What it does is it provides that the state of Nebraska is empowered to participate in beautification projects in the State Capitol Environs District, including Centennial Mall, as an individual entity--acting alone--or in conjunction with the city of Lincoln and the county of Lancaster. In 2008, some of you may remember that I introduced a bill that would have created a task force to study the issue of renovation of Centennial Mall. I was in my second year in the Legislature; I had been frequently walking through the mall on my way to lunch and various appointments, and each time I grew more weary of looking at the deteriorated condition of the mall. And often I would stand down and look back up at the Capitol, and I could remember many years ago it used to be a beautiful sight, with the fountains working and everything looking good. Then I would look around me, and I would see deteriorating concrete, fountains that no longer worked, trees that had split their planters long ago; sometimes electrical outlets that used to be used could no longer be used, being grown up by tree roots and things of that sort. And it was really an eyesore and not a beautiful sight at all. So my purpose at that time was to create a task force to study ways in which we could come up with a better design, repair options, and funding strategies. That bill did not pass on General File. It was doomed because of an argument made by the Speaker that the Legislature ought not to be forming joint commissions and task forces with the executive branch. I did not disagree with that argument; I thought that the Speaker was right, that we were ceding some of our legislative authority in doing that. So last year I came back with an interim study; it didn't create a task force, but we did put together a fine group of people to take a look at these issues. Centennial Mall is a part of the Nebraska State Capitol Environs District. It does serve as the scenic doorway to our State Capitol. It connects the Capitol with the University of Nebraska. It was intended by the architect of--or the person who designed this building to be a beautiful gateway to the Capitol. We have found that, over the years, budget challenges have contributed to the decline of the mall; and it is in serious need of repairs. The city of Lincoln just in the last few months has stepped forward and renewed its commitment to the area by announcing its plan to

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improve Centennial Mall by leveraging local tax increment financing revenues with private investment dollars. Because of the city's recent decision to spend some funds on Centennial Mall, there has been a renewed interest in identifying other funding strategies to help the city of Lincoln renovate the mall; and that includes some financial commitments from the state of Nebraska. To begin the process of securing additional revenue, a statewide committee of stakeholders has been formed; and over the interim this committee met several times to discuss the funding of Centennial Mall. Several senators were involved in this effort: Senator Campbell from Lincoln, Senator Conrad from Lincoln, and Senator Price from Bellevue. In addition to the statewide committee, smaller groups were formed at the local level; and they have been meeting frequently to monitor progress on the mall. We hope to bring the university in as a participant--they are a stakeholder at the north end of the mall--perhaps also the federal government, because they have a significant amount of property that abuts or fronts onto the mall in the middle, and, of course, the state here at the southern end. There are a number of testifiers that will follow me, including the mayor of this city, Senator Chris Beutler, who preceded me as the representative of District 28; and they will explain this project in substantive detail. They'll talk about the history of the mall, the connection of the mall to the Capitol, the design process, a brief overview of plans, and cost. I ask you to seriously consider advancing this that is not calling for money at this time. Should this committee decide they'd like to recommend money be appropriated--we all know how things are in the Legislature right now with new money--but it would not be a bad idea if we give some thought to where can we go from here and what role can this committee and the Legislature play in that. And I hope that we can shed some light on those issues here this afternoon. Thank you. [LB715]

SENATOR PRICE: Thank you, Senator Avery. Are there any questions? Senator Sullivan. [LB715]

SENATOR SULLIVAN: Thank you, Senator Price. Senator Avery, as I've read the...listened to you, read the bill summary, looked at the additional information--and correct me if I'm wrong--the state of Nebraska already has some responsibility for this environs district. So why do we need this legislation? [LB715]

SENATOR AVERY: This legislation serves two purposes. It firmly establishes the Centennial Mall within the Capitol Environs District and therefore would establish clearly a shared responsibility between the state and the city for the maintenance of this mall. And number two, it gives us an opportunity to look at some interesting plans and designs that you may not otherwise have seen and give more public scrutiny to this issue. [LB715]

SENATOR SULLIVAN: In addition to that, just as you said, with our current budget challenges, will this commit us in any way to having a financial obligation, going forward, on this project? [LB715]

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SENATOR AVERY: We cannot do that in this committee. We couldn't do that without a vote on the floor. And then we'd have to go toe to toe with Senator Lavon Heidemann, and you know what that's like. [LB715]

SENATOR SULLIVAN: Um-hum. Okay. [LB715]

SENATOR PRICE: Senator Janssen. [LB715]

SENATOR JANSSEN: Thank you, Senator Price, Senator Avery. This is...so...there's no A bill on this; you're not calling for any money at this time. Is it basically because of the environment we're in currently in budgeting that you don't think this bill would pass--pass out of committee, pass on the floor--if it was funded with anything or if you put something on it specific saying that we're going to fund fountains; I don't know. [LB715]

SENATOR AVERY: Well, I would like for this committee to go on record supporting the renovation of Centennial Mall. And I think this bill would do that. And I think that I would like to see this committee say that we believe that the maintenance and the renovation of the mall is a shared responsibility involving the university, involving the state, and involving the city. And the city is prepared to put up money already, but we don't feel that they have enough to do what we need to do to bring the mall to the level it ought to be without some participation by the other stakeholders. [LB715]

SENATOR JANSSEN: So agreed or disagreed--whether I agree or disagree with this bill--at present we have no...we've taken no stand to say: Yeah, we should be on the hook for a third or a quarter of... [LB715]

SENATOR AVERY: No. [LB715]

SENATOR JANSSEN: ...the renovations. And if we did this, we would essentially be saying: Yes, we should be on the hook for a quarter or a third of--or pro rata. [LB715]

SENATOR AVERY: I think what we'd be saying is that we recognize that the mall is an important part of the Capitol environs, that the state of Nebraska is an important stakeholder, and that we do have some responsibility to the renovation and maintenance of it. What that responsibility is or the extent of it would be up to this committee and to the larger body. [LB715]

SENATOR JANSSEN: Thank you, Senator Avery. [LB715]

SENATOR PRICE: Other questions? Senator Avery, I have a question for you. In your response to Senator Sullivan, you had said that the reason--one of the reasons--for this

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legislation would be to put the Centennial Mall completely within the Capitol environs or to solidify its existence in the Capitol environs, correct? [LB715]

SENATOR AVERY: I did. [LB715]

SENATOR PRICE: Okay. Is that to say that it's currently not in it? Or what part is, and which part isn't in the Capitol...? Or could you just say what is the Capitol environs. And then everything outside of that is not? Can you take a moment on that? [LB715]

SENATOR AVERY: This bill does not say that we have to take the entire Centennial Mall all the way to the State Historical Society and include that in the Capitol environs. At least that's not my reading of it. It reiterates the importance of the mall to the Capitol environs and establishes firmly that it is a part of the original plan for the Capitol and that the state is a bona fide stakeholder in the maintenance and the preservation and the renovation of it. Is this absolutely necessary? Maybe not. But it is something that I would like to see us do, to reaffirm the place that the Centennial Mall holds in the Capitol environs and to give us an opportunity to have a thorough discussion of it. [LB715]

SENATOR PRICE: So basically we just still would remain an adjacent neighbor to the city and that. It would still be the city's property and... [LB715]

SENATOR AVERY: I wouldn't put it...I wouldn't say adjacent. [LB715]

SENATOR PRICE: I want to make sure, though; if you had to draw a line and you had to say this is the property lines, you know, the Capitol environs would be--the Centennial Mall would be on one side of a line... [LB715]

SENATOR AVERY: Yeah, I know what you're getting at. [LB715]

SENATOR PRICE: Okay. [LB715]

SENATOR AVERY: But I am going to specifically object to and disagree with "adjacent neighbor." We are squarely in the middle of an important part of downtown Lincoln. And that's not an adjacent neighbor; it's an integral part of Lincoln. We will have testimony from Jeff Searcy, who is the president of the Capitol Environs Commission. And Jeff can, I think, answer the question of where you draw the property line better than I can. [LB715]

SENATOR PRICE: Great. And I appreciate that. Thank you, Senator Avery. Are there any further questions? Seeing none... [LB715]

SENATOR AVERY: Thank you. [LB715]

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SENATOR PRICE: Thank you, Senator. [LB715]

SENATOR AVERY: I think I'll stay around for closing if... [LB715]

SENATOR PRICE: I assumed as much. [LB715]

SENATOR AVERY: ...you don't mind. [LB715]

SENATOR PRICE: First proponent, please. [LB715]

CHRIS BEUTLER: (Exhibit 1) Senator Price, members of the committee, my name is Chris Beutler, and I'm currently the mayor of the city of Lincoln. I had the privilege, I think as most of you know, of serving here a great number of years prior to that. Senator Janssen, you can, please, give my regards to your uncle. [LB715]

SENATOR JANSSEN: Certainly. [LB715]

CHRIS BEUTLER: Appreciate that. Many would say that the representation from the 28th District has improved decidedly in recent years, but I'm not ready to admit that yet. (Laughter) We appreciate Senator Avery's leadership and commitment of energy to the important landmark which is Centennial Mall. Please consider my testimony and enthusiastic endorsement of his mall renovation efforts. The mall was originally built in 1967 to commemorate the centennial of the state itself, not of the city of Lincoln but of the state. Centennial Mall extends from the State Capitol Building itself seven blocks north on what would be 15th Street if it were not otherwise named. The renovation will create durable, accessible walkways along with an extended lawn and landscape area and a couple of fountains. Funding has not been available to make improvements in the past, and the mall has deteriorated. Current fund-raising plans, which you will hear more about shortly, will include a \$1.5 million endowment for future maintenance of the mall. A number of the years when I was in the Legislature I also helped the city of Lincoln raise money for a variety of projects, and one of the things that we started doing then and that we continue to do now is to be sure that with every major park improvement project, especially those that require extraordinary expenditures of one type or another--such as those that include fountains--we are always and consistently and every time requiring an endowment fund to go along with it. We don't know exactly what the size of the endowment fund needs to be with this, but we think it's right at about \$1.5 million, and we're prepared to set that aside. The city is also committed to bringing key partners together to restore the mall to its former beauty. This restoration has been on the back burner for too long now, and we have a group of leading citizens who are excited about helping to gather statewide, we think, groups and citizens who will work to preserve and improve this public treasure. For the first time ever, the city is making a huge commitment of funding to Centennial Mall. We've committed \$3 million to it

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already. This will cover only a portion of what will be approximately a \$9 million project, including the endowment fund. I've asked that the \$3 million not be released until we have commitments for the remaining \$6 million, but we hope that the city's commitment to the project will inspire other stakeholders to join us in this restoration. It needs to be a joint project between the city, the county, hopefully the state of Nebraska, perhaps the federal government; and we know that there are lots and lots of private donors out there who are prepared to be helpful. So we're here today, essentially, to update you on the project, to request that you assist us in helping to think of creative ways that the state itself can be of assistance in this project. The project has a great design team working on it--The Clark Enersen Partners, Bahr Vermeer Haecker, Olsson Associates, and a great architect by the name of Tom Laging. Their creative, yet, I think, fiscally responsible, vision includes a number of aesthetically delightful aspects that will constitute the new mall. The exquisitely designed Capitol Building is a source of pride in our state, as you well know. You've made a huge commitment already--a commitment that began in my years--to the total restoration of the building itself. It's been a popular tourist attraction; over 1 million people visit the State Capitol Building each year. Centennial Mall, then, enhances the beauty of the Bertram Goodhue building. Centennial Mall is aesthetically and historically linked, in visual effect, to the Capitol Building and is, for all practical purposes, an extension of its front steps. In fact, the new vision is particularly interesting in that it extends that stepped vision down to the north towards the university. The city has committed very substantial now financial and leadership resources to the project. We are into this as never before. But we cannot do it all. We need some help, and we're hopeful that you all will, perhaps, broaden your view, Senator Price, of what I know already is of interest to you and provide us some assistance in getting the mall renovated. Thank you. I'd be glad to chat with you or answer any questions that I can about what we have in mind. [LB715]

SENATOR PRICE: Thank you, sir. Are there any questions from...yes, Senator Sullivan. [LB715]

SENATOR SULLIVAN: Well, this is really going to date me, because I can remember when the fountains probably were showing off for the very first time, and I was coming in as a freshman at the University of Nebraska, and the... [LB715]

CHRIS BEUTLER: Um-hum. [LB715]

SENATOR SULLIVAN: ...the Lincoln Journal did a story on new students. And I remember standing in front of a barricade that was just about ready to be removed, and they ran the picture in the Lincoln Journal. So I hope I'm in better shape than those fountains are right now. (Laughter) I guess I'll let you all be the judge of that. But...and so I think this is a great project, and we're obviously in need of it. But I do...I'm concerned a little, in terms of looking at the economic challenges that we're all facing...and just what you just said, that there's going to be the expectation, perhaps, in

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working on the design and going forward on it that there's going to be some financial input from the state. I don't know that we can guarantee that at this point. [LB715]

CHRIS BEUTLER: Well, it's a matter of how the state perceives the matter, and obviously many, many things factor in to your ability to be a part of this. It's interesting to think back and recognize that the Capitol Building itself--a much huger enterprise than just the mall--was built in the very worst of economic times. How do you suppose the Legislature that day came to the conclusion that we should have a brand-spanking new Capitol Building built with these huge limestone pieces and carved out in detail, with a gold dome, in the midst of the Great Depression. Some things are of great symbolic value--tremendous symbolic value. This Capitol Building is one of them. It's an incredible symbol to all of the people of the state of Nebraska. And the mall is a part of that symbol. Everything the mall is about is about state power and the state entity. And the city of Lincoln benefits from it, obviously. But the city of Lincoln also has responsibilities, and what we're prepared to do this time is to take stronger hold of our responsibilities by creating this endowment fund, so that we think we're going to have a handle on the continuing care in perpetuity of this landmark. And, hopefully, we will not be back again for state assistance. So you'll have to make that judgment, Senator, but I would suggest that there are some things of enduring value that are worthwhile for their aesthetic and symbolic qualities. [LB715]

SENATOR PRICE: Thank you. Senator Krist. [LB715]

SENATOR KRIST: Just...thank you. I'm relatively one of those cut-to-the-chase kind of guys. [LB715]

CHRIS BEUTLER: Cut and chase? [LB715]

SENATOR KRIST: Cut to the chase. [LB715]

CHRIS BEUTLER: Cut to the chase. [LB715]

SENATOR KRIST: Cut to the end of the... [LB715]

CHRIS BEUTLER: Okay. [LB715]

SENATOR KRIST: What is your realistic assessment, in terms of...you've said the city has \$3 million; the project is \$9 million. The individual benefactors within the community--do you have some kind of target figure on what you think the government...if...let's just say we did not have an economic problem today and you were sitting in that chair with a surplus, what would your assessment be of the government--the state's responsibility on the mall? [LB715]

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CHRIS BEUTLER: I think if the state accepted a third of the responsibility, that that would be certainly agreeable to us. I mean, we're going to struggle to get this done, hopefully, working one source or another. But in all fairness, I think some sort of contribution like that would be appropriate. [LB715]

SENATOR KRIST: So the city is in for \$3 million. You believe you can raise the money for \$3 million; you're going to withhold your \$3 million until you see the total. So the state could--could--kick this can down the road until we see the tax receipts come in and commit once the other two-thirds is committed to. [LB715]

CHRIS BEUTLER: Sure. [LB715]

SENATOR KRIST: Thank you. [LB715]

CHRIS BEUTLER: You betcha. And let me say, you know, we are at a preliminary-enough stage that we're open to all sorts of creative ideas as to how this might be structured--or done. But what we need to basically do is get the total amount of funds together so that we know the money is there to begin at a certain point in time and to get the job done and, most of all, to have \$1.5 million left to take care of it in perpetuity. [LB715]

SENATOR KRIST: And that \$9 million includes \$1.5 million. [LB715]

CHRIS BEUTLER: Yes. [LB715]

SENATOR KRIST: Yes, sir. Thank you very much. [LB715]

CHRIS BEUTLER: Um-hum. [LB715]

SENATOR PRICE: Yes, Senator Giese. [LB715]

SENATOR GIESE: Thank you, Senator Price. Mr. Mayor, I appreciate you coming today. Usually the first step is the hardest one, and I appreciate the city of Lincoln coming forward with the offer of \$3 million. I understand that we always have the option to say no--no, thank you--for what you've done. But just to clarify, the county of Lancaster--are they involved? Are they part of the...is there any monetary commitment by the county at this point? [LB715]

CHRIS BEUTLER: You know, I--with your permission, I'm going to defer that question to a subsequent testifier and ask them to pick up on that. The county is most certainly on the list of those that are--that would be expected to help out. But to what extent they've been approached and to what extent, if any, they've made a commitment at this point in time I'm not aware. [LB715]

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SENATOR GIESE: Okay. And then just one other follow-up then. I'm sure there's been some costs along the line--planning. Has the city of Lincoln--have you incurred any cost along the line in this process? [LB715]

CHRIS BEUTLER: Yes. You're going to see a design that has been worked on, and certainly we are incurring some costs in order to get that done. And those costs are coming out of city funds. [LB715]

SENATOR GIESE: Well...and again I appreciate you coming forward. And, just, the option is always there for us to say: No thanks. But anyway, thanks for coming. [LB715]

CHRIS BEUTLER: Okay. Thank you. [LB715]

SENATOR PRICE: Any further questions? Seeing none, thank you, sir. [LB715]

CHRIS BEUTLER: Thank you. [LB715]

SENATOR PRICE: Next proponent, please. [LB715]

CHRIS BEUTLER: Counsel, good to see you. [LB715]

JIM CUDABACK: Good afternoon. For the record I am former state Senator Jim Cudaback. Senator Price and members of the committee, I used to serve on this committee, so I appreciate all the work that you're doing currently and will be doing more of. I currently serve on the Capitol Commission, you know, at the pleasure of the Governor; he appointed me, which I'm grateful of. And I'm here for myself, not for representing the commission or the Governor or whatever; I want to make that clear. I'm here for Jim Cudaback, you might say. Honorable speaker, you've heard the meat from our mayor and from Senator Avery and so on and so forth. So I won't give any of the facts and figures, but I'll just speak off the cuff. This is an important project to me, you know. I walked that mall, as many of you have, and will in the future, thousands of times--maybe not thousands, I'm stretching it probably--but hundreds and hundreds of times, back and forth, to here and here, and we looked, and we walked, and we'd do this, and we'd talk. And one day I was walking there, and I said: What happened here? What happened? You know. It's kind of like an age of a person. You know, you see somebody every day, you don't notice their...like me, for instance, you don't notice I'm getting older. But if you don't see somebody for 20 years, you know, bam, that person got older than I am, you know. And the same way with the mall: when you see it every day, you don't see the changes. And I think that's probably what happened here. I didn't notice that; and one day, I said: What happened? The cement was cracked here; the cement moves over here; the fountains weren't working; this was bad; the trees were...it's just become--I don't want to use the word "mess," because that's the wrong

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word to use, because it's still nice. You look at it from above and from afar--it's still a nice place. But it's just dilapidated or whatever words you want to use. And we have thousands of kids come here every year--fourth-graders. I've spoken to thousands of fourth-graders right in this room here, explained things to them. And we want to make it inviting for...a first impression means a lot. I have the ability to ramble, so I won't do that, because I know there's a few people following me. But, you know, we need to keep up what we have committed to. Our kids--we need to have them go home and say: Wow; this made an impression on me. And I use that word "wow." We want to change "What happened here?" to the word "Wow--Wow! This is great." You know. And the way we do that: we work together--whether it be the county, whether it be the city, or whether it be the state or whatever. I don't know whose responsibility it is, in answer to your question and your question; I don't know whose responsibility. But I do know one thing, that something needs to be done. I guess when you look at it through the eyes of the public, I think the public would like to have, you know, what complements the Capitol. You know, we have this big, tall building here. It reminds me of a story. I go to the Indianapolis 500 races all the time, and I happened to be in line with Ernest Borgnine. Remember him? That'll date some of us. But Ernest Borgnine--you know, the actor. You know, he asked me where...he's a nice guy, asked me where I was from. I said: I'm from Nebraska; I'm...and he said: Well, I go through Nebraska. And I said: Did you ever see that great, big, tall building? And he laughed, and he laughed. And he said: Well, who couldn't see that? That's a beautiful building. And I just remember that incident. He said: That's a beautiful building. And he just laughed, because he didn't think I would think that he noticed this big, nice, tall building. And I think that complements this nice, big, tall building. So, I mean, what do we have here? We have a situation where something needs to be done. And we do have a few shakers and movers here, you know, on this town as well. You know, we have a mayor here and a former mayor sitting here--you know, good people. County board--good people. We have a Governor that really has the ability to do but what you want him to. You know, he has this ability; he's a graduate from West Point. And you ask your Governor to do something; he'll get the job done--just as well as the mayor. So I think we have the, what, the tools, you might say, to do this. And then we have more tools here, looking at it from your perspective--the Government Committee. Yeah, I'm rambling here--so I said I wouldn't do that. But let's make this a not "What happened?" thing, but let's let the kids say: Wow; look what we have here; we have this nice, big, long, four-, five-, or six-block area with the fountains and the trees and so on. Make it something that we can all be proud of. Who pays for it? Unanswered question--\$64,000 question. But I'm sure it can be done with the shakers and the movers that we have available. Anyway, thank you for letting me appear. It's been a pleasure here; it's just been fun. So... [LB715]

SENATOR PRICE: Thank you, Senator Cudaback. [LB715]

JIM CUDABACK: ...you got your work cut out. [LB715]

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SENATOR PRICE: Are there any questions? Senator Sullivan. [LB715]

SENATOR SULLIVAN: In paying for this, Senator, should it be taxpayer dollars? Or should it be private dollars? Or should it be a combination? [LB715]

JIM CUDABACK: I think it should be a combination. I think there are many dollars that will come forward. We can have little tools inside of this, whether we have little sections here for different donations or whether they can maybe supply some of the fountains or supply some of this or supply some of the trees or this here. I think you're going to be surprised who might step up and say: Hey, I want to be a part of this; I want to get my...you know. Not that we want to turn it into a billboard; I don't like that. But we do have billboards that...universities and so on, big signs--Pepsi-Cola, Coca-Cola, and all of this stuff. We have people who want to share their, you know, ability to raise money through a project like this. Just to answer your question, I think it should be a combination. And you'll be surprised what you might get. The state may not have to throw in anything. Who knows? You know, there may be more dollars pour into this. The kids may bring their piggybanks if you show them the situation, you know--like we do, you know. No, I think the money will come if you, you know...like the...someone once said: Build it, and they will come--or something like that or whatever. Anyway, that's my idea. [LB715]

SENATOR SULLIVAN: Okay. Thank you. [LB715]

JIM CUDABACK: I hope... [LB715]

SENATOR PRICE: Thank you. Senator Janssen. [LB715]

SENATOR JANSSEN: Thank you, Senator Price. Senator Cudaback, thank you for appearing today. I'm most used to seeing you playing a squeezebox at a sausage feed on an annual basis. So before we stopped, I didn't know if there was going to be a continuance of former senators and mayors here, so I wanted to get this out and maybe get some of your advice on it. I think we'd be wasting a lot of experience; as I kind of look around this office, including Senator Pahls, I believe there's more years of experience either sitting in that chair or that chair--even if we throw former Senator Wesely in this--than there is on this whole committee. I think we got 21 years combined service if we get credit for this year. So I want to throw this question out at you and kind of get your thoughts on it and maybe some of the other senators'. I think there's more in here, too, I saw one walk--stragglng in. Swing a dead cat in this place without hitting one. When I looked at the Centennial Mall...I just walked down it today, had lunch at Lazzari's. And I love everything about the Centennial Mall. I mean, it is in disrepair; I agree with that. I don't like going by the certain buildings and it smells like smoke everywhere as I head down the Centennial Mall; that's somewhat disturbing. But on a nice spring day when we're down here--sometimes they're few and far between--it's an

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enjoyable walk all the way down. And I enjoy that. But as representing District 15, in Fremont, and saying to the constituents back there, you know, why should their state dollars go to help something that they consider Lincoln--I know it's the Capitol environs--but how do I make that argument? Because before I came down here--and I came down here a lot--I never really noticed it as much. But I certainly appreciate it now that I'm down here. And I think the citizens of Lincoln probably feel the same way. So where do I draw the line between this is something that is great for our state to where...you know, Fremont could use a little sprucing up, too, in the name of civic pride. [LB715]

JIM CUDABACK: I think you'll be surprised; I think the people are smarter than we give them credit for sometimes. The average Nebraskan thinks of Lincoln, you know...the building--it's the State Capitol; it represents them. That could have been in their town; that could have been in Kearney; that could have been in Scottsbluff, Fremont, Omaha, whatever. But it's in Lincoln. And I think most people realize that this is the Capitol. And I think most people want this Capitol to be here another 700 years. That's why we're spending, what, \$54 million on it. If we didn't have this forward look, we could not do anything. And I remember the day we appropriated--and Chris does too--the--and Senator Wesely also--the monies to do it. We started out, I think, \$18 million; and it just kept growing, because it was in such disrepair. This building was ready to...and there might be a generation come along after you--I mean there's going to be a generation of senators, I mean, every...as we know, every eight years there's going to be a new group. And one of them might say: Oh, this building is shabby; let's tear it down. And they could do it, you know. But we have spent money; we invested \$54 million point something and maybe more to come to do this. And I go to coffee shops by the hundreds--maybe not by the hundreds but a lot of them--and I haven't heard one person ever say we shouldn't spend money on this Capitol. No, everything else, we should...but not one...just ask your constituents; you'll be surprised. No, I bet you won't be surprised, because you already know that, that they're proud of this building and they want it to remain here for another 700 years. That's what they estimate. It could be here another 700 years; think of that. And you want the surroundings to be, you know...I'm getting a little carried away with my gesturing, but it just means that much to me that you got to have the complements of the outside. You don't want a bunch of, you know...and it's not that ratty right now. I mean, let's face it; it's not as bad, maybe, as I'm pointing out. It's still there, and it's still nice, and it's...but it just needs...you know, it's dated, you'll say. We say to our homes: Let's buy a new cupboard, because it's dated. You know. So that's probably, what, dated. It's that simple; it's dated. So let's make it a "wow" project to turn it into something that our kids will say: Wow! [LB715]

SENATOR JANSSEN: Thank you, Senator Cudaback. [LB715]

JIM CUDABACK: What do I know? [LB715]

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SENATOR PRICE: Thank you, Senator Cudaback. Are there any other questions? Seeing none... [LB715]

JIM CUDABACK: Thanks for letting me appear before you. It's been a pleasure, again. [LB715]

SENATOR PRICE: Thank you, sir. The next proponent, please. [LB715]

DENNIS SCHEER: Senator Price, members of the committee, my name is Dennis Scheer, S-c-h-e-e-r. I'm a landscape architect with The Clark Enersen Partners and a member of the design team. I want to spend a few minutes going over the design--going through the design with you. I think a lot of the components of the design are in the booklets that were handed out. But Lynn Johnson, who is the director of Parks and Recreation here in Lincoln, is going to point to some of the features as I speak into the microphone. Mayor did a great job talking and summarizing the history of the mall. All four axes of the Capitol Building as they go north, south, east, west were a vision of Bertram Goodhue, the Capitol architect, to be developed. And Centennial Mall, obviously, is the axis to the north, which connects to the University of Nebraska. So I'm not going to spend any time on history. I'm going to pick up on history starting last fall, September, when our design team got involved. We have been spending a number of months talking to stakeholders, key users. I think we've spoken to all of the--or representatives of all of the buildings along the mall, including the university, state government, private business owners. And we had a number of meetings in September and October of 2009 and asked them what needs to happen on the mall. And they said essentially three things: Make it safe; make it functional so that if we can use the space for events or activities, that it's possible to do that, in terms of level topography and the kinds of spaces that people want to go to; and make it beautiful. So we've tried to do that. We're in the schematic design phase now; we have lots of room to make modifications, and we have a lot of work to do yet. On November 10, we had a public open house, and we held it at the Sesostris Temple, right down a little bit north of here on the mall, and had over 400 people attend, which is a huge amount of people to attend a public open house for a project like this. Typically, we get 50 or 60 people to show up at those things. And the interest was high and had a lot of really great comments from the public. We've presented updates to the Capitol Environs Commission every month since October--October, November, December; we skipped January. And we will be going back in February and asking--or this February or next month, March--asking for their formal approval of the master plan, which is what we're going to talk about here in a minute. In summary, in terms of the design, there are currently four closed blocks, as you know, to traffic--the two southernmost blocks, nearest the Capitol, and the two northernmost blocks, nearest the university. The three middle blocks are open to traffic and will remain so. The two southernmost blocks we see as an extension of the Capitol grounds, the grounds that we're sitting in right now as you proceed north. So that first north block--and Lynn will point to this stuff--we

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anticipate that we'll create a design that will be a series of plazas. The effect of steps that come down the north entrance of the Capitol, outside here, will be continued. And a lot of the features that you see on the building, including, for example, the concolor firs that are right at the entrance of the north entrance to the Capitol--we will continue with those kinds of details on that first block. The signature piece of that first block will be a fountain--a new fountain on a plaza. We have a total of three fountains on the blocks. This is the first one, on the southernmost block. We think that the story that that fountain will tell will be something associated with the history of our state. We're talking about representing Governors or counties or something in that fountain with numbers of jets and things like that that come out of the pavement. All of the fountains that we're talking about, by the way, will not have basins; they will be basinless. They'll be the new kind of fountain that you see around the world in public plazas. So that first block is really an extension of the Capitol grounds. The second block, which is the block that the State Office Building sits on, will have another fountain. And we want to tell the story in that fountain of our agricultural history, stewardship of the environment--those kinds of themes. And we--again, we haven't developed these fully yet, but the idea there is that that fountain would be the signature piece of that block. We want to open up the plaza space at the State Office Building entrance and remove the stairs that you now go up into the east entrance to the State Office Building and create a very, very nice plaza/festival kind of space outside the State Office Building there. So that's that block--the second southernmost block. The next three blocks--the block at Pershing Auditorium, the federal parking garage, and the federal building itself--will remain open to traffic, as I said. And the idea there is to really create a very significant aesthetic streetscape that includes new pavements, new landscape, new site furniture, and new lights. By the way, there's no lighting on Centennial Mall at all right now; it doesn't exist anywhere on all seven blocks. And we will be providing lights all up and down both sides of the mall in the new plan. But those three open blocks then would be redesigned so that...for example, even the curbs will be what we refer to as mountable curbs--they won't be a barrier curb--so that it'll hold traffic in place, but when those streets are closed--for example, with Rib Fest, as they are now--they'll be very easy to close and feel like a pedestrian plaza, including the street right of way itself. So that's what happens in those three open blocks. The two northernmost blocks have a huge influence--adjacent influence--of the University of Nebraska. Andersen Hall, a number of fraternities, sororities...the admissions office is just down the street a little bit. So we're really focused on trying to create a campuslike setting on those two blocks. The block at the Children's Museum and Andersen Hall will have the third significant signature fountain. And the story that we want to tell with that fountain is really the creative, educational process for children--all the way from young children, which is associated with the Children's Museum, all the way through college, university, which, again, is part of that environs. And we think that that fountain ought to be very interactive for kids and adults alike and create also a festival space. "Music and Mozzarella" is now staged there out of the Children's Museum, and we want to create a plaza that is good for that kind of an activity as well. The final block to the north--the one closest to the State

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Historical Society--now is the site of "Tem & Ptah," the sculpture--rocks. There's other names for that sculpture, but we'll use the correct one. Lump and Bump--people refer to them as "Lump and Bump." That sculpture will remain there, but we want to create a nice landscape around it and create a campus quad kind of feel in that block. You'll notice with the landscape--if you look at the top two perspectives--that one of the big features here is that we want to create lines of trees that always focus you. Whether you're walking south or north--you look back towards the Capitol or you're looking at the Capitol--those lines of trees will focus you to this focal point, which is, after all, the reason we would even want to think about doing something in this right of way. The final feature that I want to talk about is, really, one that is not so visible as a signature fountain, but it's something that permeates through all of the design. And that is, that within our design team we're referring to the middle part of the mall itself as "Capitol Green" on Centennial Mall. And the reason for that is because we want to create a design that is completely sustainable, environmentally sensitive. All of the fountains, pavements, trees, water use--all of those things--we want to be as sustainable as possible so that we're providing a good example for the future generations that will use the mall of how we can best use resources, be ecologically sensitive. And again, we have a great message in our state with our agricultural tradition of stewardship. My father-in-law is a farmer, and, you know, he prides himself on doing the right things and has all of his life. And that's part of the story of this mall as well. So that's a brief synopsis of what we're in the process of doing. We're--again, we're very early in schematics. We will be going through design/development over the next three or four months, developing additional design detail, renderings, things like that. And so those things will be coming forward in the next few months. Any questions? [LB715]

SENATOR PRICE: Thank you, Mr. Scheer. Are there any questions from the committee? Senator Krist. [LB715]

SENATOR KRIST: Not so much a question as a comment. You related to the sustainable architecture at the end of the mall. I think you should incorporate the LEED--whatever LEED certification, at the silver certification level--throughout... [LB715]

DENNIS SCHEER: All the way through, yeah... [LB715]

SENATOR KRIST: All the way through. [LB715]

DENNIS SCHEER: ...all seven blocks. Yeah, that's our intent. Absolutely. [LB715]

SENATOR KRIST: The sustainability of the mall should be zero-cost. [LB715]

DENNIS SCHEER: Yeah. [LB715]

SENATOR KRIST: The lights should be solar. [LB715]

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DENNIS SCHEER: Yup. LED lights and even the fountains--how we use water and--circulate water--all of that we're taking into account. [LB715]

SENATOR KRIST: Set the example for the LEED certification... [LB715]

DENNIS SCHEER: Exactly. [LB715]

SENATOR KRIST: ...because we're going to have that fight over and over... [LB715]

DENNIS SCHEER: Yup. [LB715]

SENATOR KRIST: ...in the next few years. [LB715]

DENNIS SCHEER: There's actually--just as an aside--there's a brand-new program that's coming out that is LEED affiliated which is for sustainable sites, not buildings; and I would love to see this be a pilot project in that. [LB715]

SENATOR KRIST: Perfect. [LB715]

DENNIS SCHEER: It would be a wonderful thing. [LB715]

SENATOR KRIST: Thank you, sir. [LB715]

DENNIS SCHEER: Yup. Thank you. [LB715]

SENATOR PRICE: Are there any... [LB715]

DENNIS SCHEER: Other questions? [LB715]

SENATOR PRICE: ...other questions? Senator Sullivan, please. [LB715]

SENATOR SULLIVAN: Thank you, Senator Price. Is anyone from the Capitol...like, I'm thinking--is it Bob Ripley? [LB715]

DENNIS SCHEER: Um-hum. [LB715]

SENATOR SULLIVAN: ...involved in your conversations and your meetings? [LB715]

DENNIS SCHEER: Bob has been involved in our conversations; and Bob has been to all of the Capitol Environs meetings as well, and he's a huge asset. One of the things that we want to do as we develop detail is bring some of the imagery that happens in the Capitol and some of the meaning that you see every inch of the building here--bring

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that down to the mall and do things with inscriptions and imagery on walls and in pavements and stuff. And Bob is a great help in interpreting that for us. [LB715]

SENATOR SULLIVAN: Thank you. [LB715]

DENNIS SCHEER: Yeah. [LB715]

SENATOR PRICE: Thank you. Any further questions? Seeing none... [LB715]

DENNIS SCHEER: Thank you. [LB715]

SENATOR PRICE: Thank you, Mr. Scheer. [LB715]

DENNIS SCHEER: Thanks. [LB715]

SENATOR PRICE: Our next proponent. [LB715]

JEFF SEARCY: (Exhibit 2) Good afternoon... [LB715]

SENATOR PRICE: Good afternoon. [LB715]

JEFF SEARCY: ...Senator Price, Senator Avery. Thank you, committee members. My name is Jeff Searcy; it's J-e-f-f S-e-a-r-c-y. And I have the privilege to serve as chair of the Nebraska Capitol Environs Commission and am honored to be here with you this afternoon. The Environs Commission was established by the Legislature as a joint city and state body charged with the duties to protect and enhance the Capitol Environs District and the meaningful vistas and view corridors beyond, and I serve at the pleasure of the Governor. And I'm glad to be here this afternoon. It was--in fact, it was about 12 years ago, I remember, at my very first Capitol Environs Commission meeting as a member. And I think it was, maybe, right here in this hearing room or at least one of the similar hearing rooms. And I was so excited, because at that time the Environs Commission, after months and probably years of previous effort, had come up with a great idea and a design for Centennial Mall. And we needed that 12 years ago. And at the time: this is fantastic; this is great. Now, 12 years later, the reality of, I guess, a decade of delay and decay has, honestly, happened, and that's part of the reason that we're here today. And so you've heard about some of that from previous testimonies, and I do think the...Mayor Beutler, thank you so much for your leadership in this; and Senator Cudaback, thank you for your emotional description of what I think we all feel. And then, I'll never forget, it was just at one of our regular Capitol Environs Commission meetings--monthly meeting--this last year, and a representative from the mayor's office came in to say a few words. And they gave us the great news that there was going to be significant funding available to at least begin to explore how we can finally, truly address what is so necessary with Centennial Mall revitalization. And after we got up off the floor

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and realized what had been said, the process began in earnest. And I'm very, very excited about it, and you heard some of it today in brief format. But it's really in the spirit of Goodhue--and I'm going to keep these remarks very short--but in the spirit of Goodhue and the grand promenade that we've been visiting about today--Centennial Mall to the Capitol--that, on behalf of the Capitol Environs Commission, we urge your not only consideration but enthusiastic support of LB715. Thank you very much. [LB715]

SENATOR PRICE: Thank you, Mr. Searcy. Are there any questions from the committee? Seeing none, thank you. [LB715]

JEFF SEARCY: Thank you. [LB715]

SENATOR PRICE: Are there any further proponents? All right, can I get a show of hands how many more proponents we might be having? Great. You saved the best for last. (Laughter) [LB715]

PATTY PANSING BROOKS: (Exhibit 3) Gosh. I hope you say that at the end. Okay. My name is Patty Pansing Brooks; it's P-a-t-t-y P-a-n-s-i-n-g and then Brooks, B-r-o-o-k-s. And I am an attorney with the Brooks, Pansing Brooks law firm here in town. And I'm here today as a community volunteer who is totally committed to the beautification of our State Capitol's front doorstep and to voice my support of LB715. I want to first thank Senator Avery and Senator Price for giving us this opportunity and also the rest of you to let us share our exciting plans regarding this great project. I am honored to be working on Centennial Mall with Susan Larson Rodenburg, our fabulous campaign coordinator, and also Roger Larson and Mary Arth, who are two outstanding and very passionate community leaders who also recognize the importance and value of this project to our state. They are both out of town today but have written you confirming their enthusiasm for this important project for all Nebraskans. We are all committed and confident that Centennial Mall will be restored and renovated; I am truly saying that to you. It will be restored and renovated within the next few years, not only because the need is so great but because the passion and love statewide for our Capitol and its environs is clearly evident to everyone to whom we speak. If you haven't done so in a while, again, as a couple others have mentioned, I encourage you to take a little stroll down the mall. I think you'll be as shocked and dismayed at its condition as I am. Broken paving stones, cracked sidewalks, and the lack of accessibility make walking the mall dangerous and difficult for all of our citizens, especially our handicapped citizens. The fact that the national Special Olympics games are being held here in Lincoln this summer highlights our concerns. The athletes are being housed at the University of Nebraska and will be headquartered at Pershing Auditorium, which means to all of us, of course, that the mall will act as the most direct path between the two sites. I am concerned not only for the athletes' safety but for their impression of our state, and also I am concerned about any liability that the state, city, and county share according to state law, pursuant to Nebraska Revised Statute 90-304. That law states that "the city of

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Lincoln and the county of Lancaster are hereby empowered to expend their respective funds to participate singly, with each other, and with the state of Nebraska in the planning, construction, and maintenance of all manner of special lighting, landscaping, decorative walkway, fountain, and any other beautification projects in the Nebraska State Capitol Environs District." Let me emphasize again that the law specifically states that the city and county can expend funds "singly, with each other, and with the state of Nebraska." That law does not say "or with the state of Nebraska." Therefore, the law sets forth that the state is not only a responsible party in the care and maintenance of the mall and its environs, but the statute arguably characterizes the state as the key participant in its preservation. To me, that statute does not offer a choice but a duty of the state to support and participate in this project to get the mall safe and up to speed. Fortunately, we are very fortunate, because the city is geared up, and Mayor Beutler has committed the first very significant funding ever to be directed towards mall renovation since discussions of revitalization have arisen. And that is significant. We are all aware that you are working hard to deal with complicated constraints of our state budget, but we want Centennial Mall on your radar screen. Since the state and university own 49 percent of the lineal feet fronting the mall--that's 2,190 feet of the 4,440 feet are state of Nebraska and University of Nebraska--it makes eminent sense that the state be a major funding partner in this project. Finally, once we have financial commitments from the primary stakeholders, the Lincoln Parks Foundation is ready and willing to commit the leadership resources to seek private donors who will join with your commitment to make this project a reality. Included with our fund-raising efforts will be at least a \$1.5 million endowment to ensure that Centennial Mall helps our Capitol remain the sparkling beacon and symbol of our state's democracy forever. I want you to know that we are totally convinced that this fund-raising effort for Centennial Mall is going to happen and that it will be successful. For the first time ever, thanks to Mayor Beutler, we have this very significant commitment of \$3 million on the table. This money from the city--leveraged with a dedicated, proven group of fund-raising volunteers who have recently raised nearly \$10 million for the community--makes it a perfect time to revitalize our state's mall. We are excited and very hopeful. Centennial Mall will soon be the vibrant entrance to our State Capitol and our state university that it once was. We need your help, though, to make it happen. Please join us. Please pass LB715 out of this committee so that we can bring this issue to the full legislative body. And maybe enough bright minds can come together and maybe enough people can help protect the state from future liability and at some point help us find dollars and help join us in revitalizing the front doorstep of our state treasure. Thank you for your time and for all of your work on behalf of Nebraska's citizens. Any questions or thoughts? [LB715]

SENATOR PRICE: Thank you, Ms. Brooks. Are there any questions from the...? Good, then I can ask one. [LB715]

PATTY PANSING BROOKS: Okay. [LB715]

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SENATOR PRICE: First of all, I do appreciate your coming forward, because I was unaware of the statute 90-304 and where that does seem to clearly define and call out the state's participation in this. And in all the commentary we've had--and we've heard about the current state there--it is an issue if concrete crumbles out from under your feet and you're walking and you're maybe enjoying the beautiful views and you're looking up or you're walking down a step and you're looking up. So there is a liability expressly involved there. And I do appreciate you bringing forward a tool--a hard tool--to use in the conversation other than we all like beautiful things and pretty things. There's actually something very concrete there; pardon the pun. So I appreciate your coming forward, ma'am. [LB715]

PATTY PANSING BROOKS: Thank you. [LB715]

SENATOR PRICE: Thank you. [LB715]

PATTY PANSING BROOKS: Thank you very much. [LB715]

SENATOR PRICE: Okay, now, are there any further proponents? No. Any opponents? No opponents? Anybody who would like to testify in the neutral? Seeing none, Senator Avery. [LB715]

SENATOR AVERY: Thank you, Senator Price. I want to thank all the people who came to testify on behalf of this bill. I invite all of you over the next several weeks before we adjourn to take the time to stroll through the mall. Don't take my word for it; go and look for yourself. Look at the crumbling sidewalks. Look at the fountains that have been disabled or filled in with dirt. And look at the trees that have broken the planters; they've grown out of them. Look at the shrubs that need to be replaced. Look at the lighting that hardly exists. And then come back and talk to me and try to convince me that it doesn't need to be replaced. I really think that an objective look at that mall will lead us all to agree that it diminishes the grandeur of this magnificent building. We have much to be proud of here. Let's not let that mall detract from the beauty of the building that we are now in the midst of restoring to its original condition. I would like for the mall to take its rightful place in this restoration, so that by the time we finish the building, the mall, too, will be back where it was once, as a beautiful complement to this building and a wonderful entrance to the front door of what we are so proud of here. Thank you. [LB715]

SENATOR PRICE: (Exhibits 4 and 5) Thank you, Senator Avery. Are there any questions from the committee? If not, I'd like to take a moment to read into the record--we have a letter here of support from former Senator DiAnna R. Schimek. Could we have that read into the record? And then one from Mr. Roger T. Larson also in support of LB715. So thank you very much. And that will conclude our hearing on LB715. (See also Exhibit 6.) Thank you. [LB715]

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SENATOR AVERY: All right. Please, those who are not staying for the other bills, please clear the room so we can get started. Senator Krist, I know, has people who have traveled in from out of town for this hearing. And I apologize for making you wait, but sometimes these hearings go longer than we expect. And I do appreciate Senator Krist's patience and understanding. We will now move to LB987. Senator Krist, welcome. [LB987]

SENATOR KRIST: (Exhibits 1, 2, and 3) Thank you. Good afternoon, Chairman Avery and fellow members of Government, Military and Veterans Affairs Committee. For the record, my name is Bob Krist; I spell it K-r-i-s-t. I represent the 10th Legislative District in northwest Omaha. I appear before you today in introduction and support of LB987. Lung cancer and its devastating effects have personally impacted my family. It is through that life experience that I am compelled to do my part so that others can avoid potential pain and suffering. LB987 requires the Department of Veterans' Affairs to contract with the University of Nebraska Medical Center Eppley Institute for Research in Cancer and Allied Diseases for a clinical study for the early detection of lung cancer. This study will include up to 500 Nebraska veterans, with a one-time funding transfer from the health care cash fund. LB987 employs cutting-edge technology currently under clinical trial for the detection of lung cancer using an inexpensive noninvasive test. Technology is the key to saving lives. Until now, widespread lung cancer screenings were cost-prohibitive due to the nature of testing required. Now that inexpensive technology is available to identify those with lung cancer, treatment can be initiated sooner. As with any type of cancer, early detection is imperative. Unfortunately, lung cancer in most victims isn't caught until it is in the later stages--stage III or stage IV--meaning the cancer has progressed beyond the point of having treatments be successful. Survivability rates for other types of cancer, notably prostate cancer and breast cancer, are high because of public awareness campaigns emphasizing the need for early screenings and public participation. I invite you to look at the bar graph to look at the survivability rate on lung cancer in particular compared to the others. Five-year survival rates for prostate and breast cancer are 99 percent and 87 percent, respectively. The five-year survival rate for colon cancer is 64 percent. By comparison, the five-year survivability rate for lung cancer is only 15 percent. New technology will help us improve the rate significantly. It may be interesting for you to note that veterans are 25 percent more susceptible to developing lung cancer. We can readily identify those who should be tested. Simply put, this bill is good for the veterans; it's good for the citizens of Nebraska and an appropriate use of the dollars in our health care cash fund. Dr. Rudy Lackner of the University of Nebraska Eppley Institute for Research in Cancer and Allied Diseases will be testifying after me, and I would defer questions about the scientific and technology components of LB987 to him, because I am a pilot not a doctor. I am aware that Creighton University medical school has a friendly amendment offering their assistance and desire to participate in the clinical study, and I support their efforts. I will leave the decision for incorporating the amendment up to the

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committee and to the veterans. I would respectfully request the committee move this bill to General File as soon as possible, as it is my intention to designate LB987 as my priority bill for the session. I would be happy to answer any questions, and I want to thank the committee. And I will be here for closing. [LB987]

SENATOR AVERY: Thank you, Senator Krist. May I ask you one quick question? [LB987]

SENATOR KRIST: Yes, sir. [LB987]

SENATOR AVERY: You--I believe you said that veterans are 25 percent more likely to get lung cancer? [LB987]

SENATOR KRIST: Yes, sir. [LB987]

SENATOR AVERY: Do you have any suggestions as to why? [LB987]

SENATOR KRIST: Well, from my own experience--and I was going to talk to this in closing--but in my service in Desert Shield/Desert Storm, as soon as the Iraqis set every oil fire--every oil well on fire--and all the smoke drifted south, I'm sure that the year I spent over a two-year period deployed to the theater has increased my risk of lung cancer. My exposure to asbestos and most veterans' exposure to asbestos is much higher than the general population. But those are my personal views. I think the folks behind me can speak more to the scientific. [LB987]

SENATOR AVERY: Thank you. Any questions from the committee? Senator Sullivan. [LB987]

SENATOR SULLIVAN: Thank you, Senator Avery. Senator Krist, how will the 500 veterans be selected? [LB987]

SENATOR KRIST: That would be...I would...John Hilgert is here to answer and I think can answer--and if not, we can get that answer to you. And I thank the Governor to allow John, as part of his cabinet, to participate. That shows you the level of support that we have. [LB987]

SENATOR AVERY: Any other questions? Thank you, Senator. [LB987]

SENATOR KRIST: Thank you, Chairman. [LB987]

SENATOR AVERY: Proponent testimony. [LB987]

RUDY LACKNER: (Exhibit 4) Mr. Chairman and members of the Government, Military

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and Veterans Affairs Committee, my name is Dr. Rudy Lackner; that's R-u-d-y L-a-c-k-n-e-r. I'm associate professor of surgery at the University of Nebraska Medical Center and a member of the Eppley Cancer Center, and I am here to testify in support of LB987. I would like to thank Senator Krist for including us in this project. Lung cancer continues to be a major cause of cancer deaths. In the last year alone, it is estimated to have caused over 1 million deaths worldwide. In the United States, there'll be over 219,000 new cases of lung cancer diagnosed and almost 159,000 deaths. This makes lung cancer the leading cause of cancer death in both men and women. For women, lung cancer is responsible for more cancer deaths than breast, ovarian, and uterine cancers combined. Lung cancer in men results in more cancer deaths than colon and prostate cancers combined. As of 2006, there were only 364,996 men and women alive with a history of lung cancer. This compares with more than 2 million survivors of breast cancer alone. Lung cancer, like most solid tumors, is curable; and when detected at an early stage, this usually means a small tumor confined to the lung. Unfortunately, only about 15 percent of lung cancer patients are detected at this stage; and then even then, many have much larger tumors. In reality, most patients who present with symptoms of lung cancer are already at an advanced stage--if you remember Peter Jennings, who appeared on television with a hoarse voice, indicating regionally advanced disease. Despite all the improvements in diagnosis, staging, and treatment options, we are only able to cure about 20 percent of patients diagnosed with lung cancer. Screening has been utilized effectively in patients with breast, colon, and prostate cancers. Early reports on lung cancer screening have been encouraging, with most studies demonstrating the ability to detect lung cancer at an early stage. As you may know, the Eppley Cancer Center is one of only 64 National Cancer Institute-designated cancer centers. It is also one of the 21 National Comprehensive Cancer Network's--or NCCN--members. The Eppley Cancer medical center is currently conducting a lung cancer screening project, the "NEED-IT" study, which is Nebraska Early Detection study. I myself have recently been appointed to the NCCN Lung Cancer Screening Guidelines Committee, which is evaluating ways to refine the screening process. Unless new and more effective treatments are identified, early detection and surgical therapy remain the best way to improve survival in this devastating disease. UNMC is poised to partner with the Nebraska Department of Veterans' Affairs to conduct this clinical trial. The Eppley Cancer Center has the expertise, statewide network, and infrastructure to ensure that the protocols will be met. Finally, UNMC has a longstanding record of caring for veterans through our affiliation with the federal VA Nebraska and Western Iowa veterans Health Care System. We already conduct research studies, train students, and care for VA patients under this arrangement. Thank you for your time. I'll be happy to answer any questions. [LB987]

SENATOR AVERY: Thank you, Dr. Lackner. I will ask you the question that I asked Senator Krist. Do we have any evidence that might indicate why veterans are 25 percent more likely to have lung cancer? [LB987]

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DR. RUDY LACKNER: I think Senator Krist's answer was right on target. I think that it's probably concomitant exposures. There's fairly good data that would suggest the combination of asbestos exposure and tobacco use increases one's risk for developing lung cancer. And certainly all the other things that they may wind up being exposed to while on duty may also wind up increasing their risk. [LB987]

SENATOR AVERY: So I'm a veteran, so I was likely also exposed to asbestos, and I'm a former smoker. Should I be worried? (Laugh) [LB987]

DR. RUDY LACKNER: I would personally recommend having a CT scan done. So I think that that would be probably a good idea. [LB987]

SENATOR AVERY: Should I turn this over to the Vice Chair and take off now? (Laughter) Any questions? Senator Sullivan. [LB987]

SENATOR SULLIVAN: Thank you, Senator Avery. So the purpose of this study would be to look at a test for early screening. Is that correct? [LB987]

DR. RUDY LACKNER: Correct. [LB987]

SENATOR SULLIVAN: Is this--this early screening test--something new, or is it being used now? [LB987]

DR. RUDY LACKNER: This is something that's newer in development. The problem with CAT scan screening is that some of the studies have suggested that if you screened every person that lived in Nebraska, about 50 percent of them would have nodules. So then if you start from there, it only turns out that maybe 1 percent to 1.5 percent of those will actually turn out to be cancerous. Many of them are just from, you know, working in the fields, being exposed to different types of fungal infections. So the problem is once you do the CAT scan, then you already have 50 percent of the patients who have a nodule, and then now we're concerned that they have cancers. So the technique that's used here--rather than looking at just scans and looking at nodules, which is relatively nonspecific--is actually to collect sputum and then look for cancer cells in there using a new modality that's become available that so far seems to be highly sensitive and highly specific for detecting cancers. [LB987]

SENATOR SULLIVAN: And so you're looking at--you're highlighting veterans because of their high incidence. You know, I've--almost on a regular basis I see a lot of attention being given to radon in homes as a possibility for increasing the occurrence of lung cancer. So I'm just wondering about that too. [LB987]

RUDY LACKNER: If you look at the data that's available for women, about 15 percent to 20 percent of cancers that develop in women are in nonsmokers or no real secondhand

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smoke exposure. So there clearly is an environmental, you know, component to lung cancer. If you look in men, though, the risk for developing lung cancer is probably less than 5 percent if you haven't smoked or been exposed to secondhand tobacco products. So there are clearly some environmental ones, but they make up a very, very small component in comparison to those that have used tobacco products. So it's a group that, you know, has a exposure to tobacco and also potentially other risk factors that would make it, you know, a higher risk. And that at least...part of the problem with a lot of screening is trying to narrow down, you know, who you're actually going to screen. And this would potentially give us the ones that would be at greatest risk. [LB987]

SENATOR SULLIVAN: Thank you. [LB987]

SENATOR AVERY: Senator Price has a question. [LB987]

SENATOR PRICE: Yes, Dr. Lackner, thank you for being here today. And I do believe at one point I had a consult for you to do surgery on me, but one of your friends did it, and they did a good job; thank you. My question is, in looking at this, how are we going to establish service connection? If I have a break in service of 30 years, for a veteran, if we go through the protocol, how is it that you're going to be able to establish a service connection? [LB987]

RUDY LACKNER: I'm not sure that it's so much to establish a service connection as opposed to potentially--you know, patients that are cared for in the VA system. Normally most of the screening types of programs usually have some cutoff of age. So since we know that lung cancer is relatively uncommon in those under 50--not necessarily screening the youngest members who are veterans. So if you use 50 years of age, then most of them will also wind up using a cutoff for number of years smoked--so pack-years. So typically many of the screening studies would select those who are, you know, over the age of 50, more than 20 pack-year history of tobacco abuse, regardless of how long prior to that they've stopped, and then use that as your, you know, target population. So I'm not sure that necessarily has to be somebody who currently is in the service but at least at some point along the way is, you know, being cared for as a veteran. [LB987]

SENATOR PRICE: Okay, so then just to make sure I understand, then, you're saying we just want to find a screening--if this is basically a screening for early detection. [LB987]

RUDY LACKNER: Correct. [LB987]

SENATOR PRICE: So okay. Great. Thank you very much. [LB987]

SENATOR AVERY: Senator Janssen. [LB987]

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SENATOR JANSSEN: Thank you, Chairman Avery. Dr. Lackner, safe to say that, based on your consultation with Senator Price, you were not in plastic surgery at all; (laughter) we've cleared that up. That said, I might be asking the wrong person this question, but I want to get it out there for one of the witnesses that comes up. Like Senator Krist, I also did two tours during the exact same time, it sounds like; a nonsmoker, but I was confined on a ship. And I'm just curious, when I got out, there was...we all go through somewhat of a medical exam to get out. I don't recall that being done at the time on me. I also recall a year or so later getting something back--Persian Gulf syndrome questionnaire--that I had to fill out and wasn't certain if it was covered on that as well or if they're currently doing this type of screening when they're discharged from the military. So I don't know if you know that or if somebody else might know that. [LB987]

DR. RUDY LACKNER: That I do not have the answer to. [LB987]

SENATOR JANSSEN: Okay, thank you. [LB987]

SENATOR AVERY: I noticed that the bill calls for a longitudinal study of up to 500 veterans. [LB987]

RUDY LACKNER: That is correct. [LB987]

SENATOR AVERY: But it also specifies that a report should be--will be submitted to the Legislature no later than July 1, 2011. Longitudinal study is an over-time study. [LB987]

RUDY LACKNER: That's correct. [LB987]

SENATOR AVERY: How long do you plan for the study--how long will these 500 people be studied? [LB987]

RUDY LACKNER: The study framework for this is five years. If you look at the real benefits from screening...when you start, you may find a cancer or two in that initial group of patients, who already actually have lung cancer. Those aren't necessarily the ones that you're really screening for. What you're looking for are the ones that don't have anything at the beginning of the study, and then each year some percentage of them will then go on to develop a cancer. So the real benefit long term for screening for lung cancer kind of comes, you know, down the road. So each year as you wind up getting the follow-up CT scans, some percentage of that initial group of 500 will develop a new lung cancer. Conceivably, we'll find that at an early stage. And then once that's, you know, diagnosed and as we go forward, we'll actually start to see an improvement in the long-term survival from lung cancer. [LB987]

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SENATOR AVERY: So you're really interested in which diagnostic tools work best?
[LB987]

RUDY LACKNER: Correct. The CT scan is kind of more of a shotgun approach. So you're going to scan the chest, and if you find, you know, that they have nodules, once you've found the nodules, now you have the dilemma of: Do you just watch them? Do you biopsy every nodule that's there? So the CT scan by itself generates a lot of anxiety with the patients: Do I have a cancer, or do I just have a benign process? Then you either have to get subsequent scans--so then, depending on the protocol, you may be scanning every six months for the first two years. And then once you're at least reasonably convinced that it's benign, then scan yearly after that. And so all that cost winds up being expensive for all the CT scans. If you then decide something is more suspicious by the criteria that we use, then you talk about doing a biopsy, which might entail a bronchoscopy, which is a scope down through the windpipe; a needle biopsy under CT guidance; or a surgical biopsy. And then again, some percentage of those will turn out to be benign; some will turn out to be malignant. So the cost associated with that winds up being fairly high. This is much simpler, because all the patient has to do is produce a sputum sample; and then they're subjected to the material and then looked at under a microscope. And then if it lights up, then there's tumor cells there. Then you know you've made the diagnosis. So it's something that's easy to reproduce--reproduce on a relatively, you know, regular basis but doesn't subject the patients to the cost and the anxiety of doing scans or other things. [LB987]

SENATOR AVERY: Have you looked at additional sources of funding, like the NIH, for example? [LB987]

RUDY LACKNER: At least for this, I'm not aware of, you know, what's been looked at as far as funding. [LB987]

SENATOR AVERY: Okay. Any other questions? Senator Price. [LB987]

SENATOR PRICE: Thank you, Mr. Chairman. Sir, just one quick question again: In reading through your testimony that you provided here written, I see that, "one of the 64 NCI" and "21 NCCN members." Do you know of any other studies that are also being run in this same format? [LB987]

RUDY LACKNER: Not using this particular, you know, mode of screening. There are many CT scan protocols that are being done in various places, as is the one that we're doing, which is really just a CT-based study. So ours--we accrued 100 patients; we've got the initial scans; and now we've closed that one to new patients; and now we're following that 100. Our plan was to, through Dr. Cowan and the Eppley Cancer Center, was that if this winds up being a reasonable way of doing it, to try and extend it to all of the other, you know, hospitals in Nebraska and really make it into what might have been

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the first, you know, truly statewide screening program. But right now we're just accumulating the data on the first ones. So there are a lot of CT screening studies throughout the country, but this is really, kind of, you know, looking at something very unique and, hopefully, you know, less costly than doing scans. [LB987]

SENATOR PRICE: All right. Thank you very much, sir. [LB987]

SENATOR AVERY: I see no more questions. Thank you, Doctor. Next testifier in support. [LB987]

JOHN HILGERT: Good afternoon, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. I am John Hilgert, director of the Nebraska Department of Veterans' Affairs--spelled J-o-h-n H-i-l-g-e-r-t. I want to thank Senator Krist for introducing LB987, and I am testifying as a proponent. The subject of participants in the longitudinal study that is called for in LB987 are veterans. And, sir, let me answer your question why veterans. John J. Pershing--his bust is up in our Capitol--was asked: You ask me what we need to win the war. He said: I answer, tobacco as much as bullets. It has a long association with our armed forces. Some of the early interesting historical references during the War between the States of our Union forces exchanging coffee with their Southern opponents, getting tobacco in return. In World War II, tobacco was included in their ration kits, hooked an entire generation. Lucky Strikes were free; it was their patriotic duty to give tobacco products free to our servicemen and -women. In fact, the cigarettes were included in the rations until the 1970s. The Department of Defense has tried to take steps to limit this. Obviously, we no longer get cigarettes in our MREs--at least not that I know of. In fact, in one of my calls today...we used to get cigarettes quite at a discount at our PXs and BXs, through AAFES. The Department of Defense in 2005 directed that the cost of cigarettes--of tobacco, I should say--in our bases and posts and forts be within 5 percent of the market price of tobacco in the area; so it can't be less than 5 percent of what it is. So a pack of Marlboros at Offutt today is--Marlboro Reds--is \$4.32, which is very close to what it is you could get it at the Kwik Shop. The carton is around \$42. So it's interesting that they've made those reforms. That being said, though, 30 percent of the members of our armed forces still smoke. In fact, studies have shown that smoking has increased since 1998; that was a Defense Department study. And those veterans who are returning from Iraq and Afghanistan may be even 50 percent higher than the rates of our soldiers who are non-deployed. And as was mentioned, tobacco is not only the reason that it is appropriate that we use veterans for this study; our men and women in uniform are exposed to many different types of chemicals and pollutants, be it burning oil wells in Kuwait...I remember when I got that same letter from the VA after I came home--I was with the 1st Infantry Division--they said: Were you ever enveloped in smoke? And my first question was, I mean, how many days in a row? We were there; I mean, it was all the time. We had to dry our clothes inside the tent. You had to operate the wipers on your Humvees during the middle of the day. It wasn't raining; it was the

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smoke and the oil that would cake on it. So whether we're talking about burning oil wells in Kuwait or burn pits for our veterans in Iraqi Freedom and Enduring Freedom, whether we're talking about the Navy and those--the environmental, the asbestos that was mentioned, that's all of record. This is why veterans should be part of this study. I want to thank Senator Krist's insight for choosing veterans. It certainly is the right thing to do. This bill has the support of our department, and we would be very eager and welcome the opportunity to fulfill the obligations set forth in LB987. [LB987]

SENATOR AVERY: Thank you for your testimony. Your opening comments reminded me that James B. Duke, founder of Duke University and Duke Power, actually was also the founder of American Tobacco Company. He started his empire by selling little packages of tobacco to Confederate soldiers. It was called Duke's Mixture, which in North Carolina today is another word for potpourri. Anything that's a mix of things, that's Duke's mixture. [LB987]

JOHN HILGERT: (Laughter) Smoke them if you've got them, Senator. [LB987]

SENATOR AVERY: And field strip them when you're finished. Questions? Senator Price. [LB987]

SENATOR PRICE: Thank you Senator--Chairman Avery. And thank you to Mr. Hilgert. I agree. I remember my fondest days of opening up C-rations and the Lucky Strikes and then--not as an active-duty member, mind you, but my father is prior Army, so we got to use them. And then going to basic training, and the first thing you learned--I mean, you learn, you adapt quickly--everybody, smoke them if you've got them. You've got a break outside, and if you didn't go and smoke them, you would do more duties inside. So it didn't take too long for a lot of people turning green out there... [LB987]

JOHN HILGERT: Um-hum. [LB987]

SENATOR PRICE: ...crowding around the butt can. But I'd also like to add to it, too, that there are other areas that people serve--I'm sure we mentioned just being aboard a ship pretty much guarantees you an asbestos exposure... [LB987]

JOHN HILGERT: Right. [LB987]

SENATOR PRICE: ...but also the burn pits in Soto Cano; you know, we have burn pits in a lot of places. And that if you were in operations in Hungary, taking over the old Soviet air bases, those are purely asbestos traps. And I remember distinctly having one of our finer members of our Guard unit, who was an asbestos abatement specialist, talking about how the buildings and floors and walls were emitting asbestos and that if anybody ever came over and did an environmental study, they'd close it down--the country--because of the amount of asbestos that was over there. And so--just so that

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stuck to the tape--that they realized that the servicemen and -women and even our defense contractors who go out there with us--they're all subject to the very same perils, wherever we go, because of the nature of the business. But thank you very much for coming forward. [LB987]

SENATOR AVERY: Any more questions? Senator Sullivan. [LB987]

SENATOR SULLIVAN: Thank you, Senator Avery. So Mr. Hilgert, how will the 500 veterans be selected? [LB987]

JOHN HILGERT: Well, certainly that's a detail that we would certainly consult and have to work through. My initial answer to you, to be direct, would be it would be somewhat of a self-selection based on a pre-established criteria. I would think you would want at least two groups, perhaps more. I'm getting in over my head here--but the nonsmokers and the smokers. You would have a, probably, a heavy smoker of 20 years, one to two packs a day--would probably be in the smoking group. Nonsmoking would be, of course, the nonsmoking group. We're only talking about 500; we have around 167,000 veterans that might be eligible for one part of the study or another within Nebraska. So I don't think it would take very much advertising--an invitation--to get those veterans to come forward. I think they would probably apply, and then our medical folks would approve or disapprove their eligibility. But I think you would have a lot of eagerness. To have a test where you just use sputum and you have that chemical that attaches itself to that cancer that produces a, basically, a red flag if you--almost literally--that's noninvasive that has a high degree of confidence, it would be a wonderful, wonderful advancement. And to dovetail on Senator Jannsen's question, those screenings didn't exist in our day. We want to make that available for Nebraska veterans and then hopefully for all of us into the future. [LB987]

SENATOR SULLIVAN: Thank you. [LB987]

SENATOR AVERY: Any more questions from the committee? Seeing none, thank you for your testimony. [LB987]

JOHN HILGERT: Thank you very much. [LB987]

SENATOR AVERY: Other proponent testimony? Welcome, Mr. Cavanaugh. [LB987]

JAMES CAVANAUGH: (Exhibit 5) Senator Avery, members of the Government, Military and Veterans Affairs Committee, my name is James Cavanaugh, J-a-m-e-s C-a-v-a-n-a-u-g-h. I'm a registered lobbyist; I represent Creighton University. I appear here today in favor of LB987, and we commend Senator Krist for bringing this important matter to your attention. I have, for your consideration, amendment language that Senator Krist referenced in his introductory remarks that simply does what Nebraska

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has done in a lot of other instances relative to cancer and biomedical research. And it directs that we use all of our cancer research facilities to implement the program outlined here. Essentially what you see is an amendment that goes to the bill on page 2 and adds language that is used elsewhere in statute relative to cancer research funded by the state of Nebraska, to include other postsecondary institutions having colleges of medicine in the state of Nebraska and the cancer research program funded by cigarette tax in Nebraska. This language goes on to say: which have cancer research programs. Creighton University has participated in this joint cancer research effort with the University of Nebraska Medical Center's Eppley Institute for 20-some years now. And the language here simply incorporates the distribution formula used in our cancer research program that is funded by cigarette tax. This is funded by the Health Care Cash Fund, which is established out of the tobacco settlement that Nebraska entered into with the tobacco industry some years ago. And Nebraska is unique, of all the states in the union who received tobacco settlement funds, in dedicating portions of those funds to research the diseases actually caused by tobacco. In Nebraska, a good portion of those funds were set up for biomedical research. Again, the distribution formula encompasses University of Nebraska Medical Center, University of Nebraska-Lincoln, Creighton University, and the Boys Town Institute as research entities funded by the Health Care Cash Fund. This particular program, with its time line, probably can use as many hands on deck as possible to get it done. Five hundred of these procedures that you heard outlined here over five years is going to take some effort to set up and execute and track, and we'd be happy to work with the Eppley Center on implementing that. Senator Krist has indicated that he looks favorably upon this amendment. We would be happy to help the veterans of Nebraska with this problem of diagnosing whether or not they may have cancer, and it might be something that turns up information that would have further implications both in Nebraska and nationally. So I would look at this as kind of an exciting, new pilot project to track a target population that has been exposed to a lot of carcinogens just in the course of serving their country and trying to identify whether or not there's anything that we can do for them at an early stage, where a lot can be done under current science. I'd be happy to answer any questions you might have. [LB987]

SENATOR AVERY: Thank you, Mr. Cavanaugh. I appreciate you pointing out how unique Nebraska is and how we've used our settlement money. I do know of one state that is a major tobacco producer that used its tobacco settlement money to aid distressed tobacco farmers (laughter)--the ultimate irony. Any questions from the committee? Seeing none, thank you. [LB987]

JAMES CAVANAUGH: Thank you. [LB987]

DAVID HOLMQUIST: (Exhibit 6) Good afternoon. Chairman Avery and members of the Government, Military and Veterans Affairs Committee, my name is David Holmquist; that's spelled D-a-v-i-d H-o-l-m-q-u-i-s-t. I am a registered lobbyist representing the

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American Cancer Society--High Plains Division, Incorporated, for the Nebraska region. Today I am pleased to offer testimony in support of LB987. The American Cancer Society applauds Senator Krist for introducing LB987. Senator Krist is all too familiar with the burden of cancer, and particularly lung cancer, on patients and their families through personal experience. The American Cancer Society estimated that in 2009, 1,230 new cases of lung cancer would be diagnosed in Nebraska. This figure represents an astonishing 15 percent of all new cancers diagnosed. The 1,200 new cases of breast cancer, while also staggering, is slightly less than new lung cancers. Of the estimated 3,360 cancer deaths in Nebraska during 2009, 890 men and women will have lost their lives to lung cancer. That figure is more than 2.5 times the number of deaths from colon cancer and more than 4 times the number of deaths from breast cancer. It also means that more than 26 percent of all cancer deaths in Nebraska are attributable to lung cancer. Two hundred ten Nebraska women will have lost their battles with breast cancer, and 350 men and women will have lost their battles with colon cancer. The good news is that those numbers are decreasing, but the bad news is that deaths from lung cancer are not decreasing as rapidly. Those figures point out the disparity in screening, diagnosis, and treatment between breast cancer, colon cancer, and lung cancer. Because we have proven screening tests available for breast cancer and colon cancer, physicians can find cancer at earlier stages that are more likely to respond well to treatment protocols. These screenings are a primary reason that mortality figures for cancer have seen steady declines over the past decade. Unfortunately, screening tests for lung cancer have heretofore been costly and cumbersome and have, if you will, given us too many potentials for false positives. Lung cancer is the leading cause of cancer death in men and women. Remarkably it is also one of the most preventable cancers. Simple changes in lifestyle are the key to prevention. While not universally popular, I applaud the Unicameral for its vote to make Nebraska smoke free. That will go a long way in preventing future lung cancers. In recent polling, more than 80 percent of Nebraskans said they like the new smoke-free environment. We hope the pilot study contained in LB987 will be an important step in the search for an inexpensive and noninvasive screening test for lung cancer. I would leave it to trained medical professionals and researchers to explain the science of lung cancer and how this study might advance--and we've already heard that from the doctor--how it might advance our quest to find cancers of the lung at earlier stages, when response to treatment will have much more positive outcomes. I urge your positive consideration of LB987. Thank you, and I'd be happy to answer questions that I can. [LB987]

SENATOR AVERY: Thank you, sir. Questions from the committee? Seeing none, thank you for your testimony. [LB987]

DAVID HOLMQUIST: Thank you, Senator. [LB987]

SENATOR AVERY: Additional proponent testimony? [LB987]

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BURDETTE BURKHART: Chairman and members of the committee, my name is Burdette Burkhart; that's spelled B-u-r-d-e-t-t-e Burkhart, B-u-r-k-h-a-r-t. I'm the adjutant of the Nebraska American Legion, and I also serve as secretary for the Nebraska Veterans Council. And the Nebraska Veterans Council is made up of members from AMVETS, Veterans of Foreign Wars, the American Legion, Disabled American Veterans, Military Order of the Purple Heart, Paralyzed Veterans of America, and Vietnam Veterans of America. During our--January the 19th of 2010, our Veterans Council met and unanimously agreed to support LB987 sponsored by Senator Krist. We'd just like to go on record as all the veterans organizations going in support for this legislative bill. [LB987]

SENATOR AVERY: Thank you for your testimony, sir. Questions from the committee? Don't see any. Thank you. [LB987]

BURDETTE BURKHART: Thank you. [LB987]

SENATOR AVERY: Next proponent. [LB987]

JOHN COUSINS: Hi, Mr. Chairman and senators of the committee. My name is John Cousins; I'm the president and CEO of Biomoda, and we're a company from New Mexico, in Albuquerque, that have developed a early lung cancer diagnostic test based on sputum. [LB987]

SENATOR AVERY: Excuse me. Would you please spell your name for the record. [LB987]

JOHN COUSINS: (Exhibit 7) My name...just like your relatives, C-o-u-s-i-n-s, my first name J-o-h-n. Thank you, Mr. Chairman. And I must say I'm impressed with your Capitol Building and coming here and with your unique political process and with the level of support and eloquence of the testimony that's just come before me. We have developed, as I said, a test for the early diagnosis of lung cancer based on sputum, the deep-lung fluid that people cough up, and we have ran a--developed and implemented and ran a screening program like this in New Mexico. And we've screened veterans for lung cancer. The state of New Mexico funded \$1.65 million over the last two years to do this screening program. It's been very successful. And we're very excited about the opportunity of potentially working with Nebraska on this program. I'd like to open it up to questions and things because I think my experience with developing and running it in New Mexico would be very informative to some of the questions that we were talking about. This book here represents about \$1 million worth of work that was done to do the protocol and submit that to the FDA, get the FDA's input into this screening program. This work can be transferred basically directly into a program here in Nebraska to...that front-end work will not have to be repeated and that the moneys that are allocated for

this screening program will go directly to screening veterans instead of the front-end paperwork to design the study and things. Also, all this money would stay in Nebraska and things. We would contribute our services on our end and things with our own funds and expertise and to help the program get off the ground and run. I'd like to address a couple of the questions you...Mr. Chairman, you had asked about the reason for 25 percent higher incidence of lung cancer in military; that's a DoD statistic. There's a number of other statistics that actually show higher numbers, too, but that's the conservative number. And there are a number of different causes, concomitant effects. There's also expellants from missiles and depleted uranium bombs, a lot of things--fine particulate in sand and things like that in dust; there's a lot of things that come together--and the effects of tobacco that were very eloquently discussed earlier. And then how the veterans would be picked. What we did in New Mexico was we went to the various veterans agencies and things and with a clipboard talked to them about it, and they actually signed up. We had certain exclusion/inclusion criteria. What we wanted to do, like--as Dr. Lackner said, is to identify a high-risk group that we were going to screen. You don't want to screen just the general population; you want to identify a risk-profile group at the front end. So veterans off the bat have a higher incidence, and we chose veterans that were 20 pack-year smokers, that they had smoked the equivalent of a pack a day for 20 years. So that was a relatively high-risk group. Those are the ones that we identified and that we screened in New Mexico. And they signed up; it was a volunteer thing. And the other part was that they had to know who their primary-care physician was in the VA system or otherwise and also have their insurance or medical benefits, so that they--if we found an issue, that they would have the wherewithal to get treated. So a lot of the front end of the study, too, was...as we talked to a number of veterans, they really didn't know who their primary-care physician was and things. So we also liaisoned with the VA and things to identify their insurance benefits and who their primary-care physicians were and then give them traction into the system. So it was very beneficial on the front end that way as well. [LB987]

SENATOR AVERY: So you have gone through a lot of testing with your technology, so you know how much efficacy it has in actual detection of cancer. Right? [LB987]

JOHN COUSINS: Yes, Mr. Chairman, we have. We've done--we're in--completing our phase II clinical trial. There's three phases to clinical trials; we're completing our phase II trial right now. We've been doing that in New Mexico and then also in Delaware with our principal investigator there at the teaching hospital--Christiana--at the University of Delaware. We've done a lot. We have...it has...indicates that it has very good accuracy. In our study we also...every participant got a CT scan that was read by a radiologist under the ELCAP--the Early Lung Cancer Action Program protocol--looking for lung nodules, identifying those, and then identifying for the longitudinal segment who should be followed based on if they had lung nodules. We also...there was a sputum collection that each participant gave. It was a triple-pooled one, where they would collect sputum three days in a row, bring it back to our...it would be sent back to our laboratory, and we

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would prepare slides. One microscope slide would go up to the VA Medical Center in Denver, where they would do a Pap staining, which is the same type of staining that they use for the cervical test. And they do that staining and review...a cytopathologist would review those slides at the VA Medical Center in Denver and then report the results. So we had the radiology standard of care in place with this study, and then we had the cytology standard of care, which is the Pap review. And then we had our test, which is for investigational use. And we've compared those three results and basically used the two standards to make diagnoses to report to the primary-care physician and the person. [LB987]

SENATOR AVERY: Okay. Let me see if I understand this right. You already have gone through at least one phase of testing. So you have some idea of how good your product is. Will you be, in this current study proposed here, would you be involved in comparing your testing technology against others to see which ones are more efficacious? [LB987]

JOHN COUSINS: Yes, that's the proposed...yeah, so... [LB987]

SENATOR AVERY: That's the plan of the study. [LB987]

JOHN COUSINS: Right, so that we could in essence triangulate a diagnosis off these three different diagnostic modalities--the Pap staining, the cypath test is our test, and the CT scan read under the ELCAP protocol, along with a risk profile of the patient/participant. In this case it was veterans who were 20 pack-year smokers. So there's that high-risk profile and then the diagnosis--the three diagnostic tests done together. And that would be brought together to screen these patients/participants. [LB987]

SENATOR AVERY: Is your company being asked to contribute to this study in any way other than to participate? Are you being asked to help pay for the study? [LB987]

JOHN COUSINS: Well, we're paying for it in-kind by providing the study protocol and things that we've already done and the ability to manage and run that test--this kind of study--and our experience. And then also to perform our test on all the patients. So we're contributing funds in that...it's probably about a 1-to-1 type of funding--in-kind type of contribution we'd be giving. [LB987]

SENATOR AVERY: And will the results of this study be part of your phase II testing? [LB987]

JOHN COUSINS: It would actually be part of our phase III; we're essentially done with our phase II testing. And we would like these results...that's what we would provide, and what we would like in return is to have the data as part of a--one of the sites for our multi-site pivotal trial, our phase III clinical trial. The end point of that would be submittal

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to the FDA for regulatory approval and then to make this a widely available test throughout the United States that wouldn't even require other modalities. And then it could move into an inexpensive diagnostic screening tool for the general high-risk population. [LB987]

SENATOR AVERY: Well, is it a fair conclusion that the data gathered in this study would be of significant value to your company in establishing--or getting approval from the FDA, I think it is you said? [LB987]

JOHN COUSINS: Yes. Yes, Mr. Chairman. We'll be gathering data similar to this in approximately six to eight sites around the country. []

SENATOR AVERY: Senator Price has a question. []

SENATOR PRICE: Thank you, Mr. Chairman. Sir, thank you for coming out. I know it's hard to leave New Mexico. My question to you is kind of a piggyback on what I asked before. And that is: How many veterans have been screened in New Mexico? [LB987]

JOHN COUSINS: In New Mexico we screened 135 veterans. [LB987]

SENATOR PRICE: 135. [LB987]

JOHN COUSINS: And we've been following a subset of those on a longitudinal basis, bringing them back in every three months for follow-on. [LB987]

SENATOR PRICE: For how long? [LB987]

JOHN COUSINS: We're into our second longitudinal follow-on of those. [LB987]

SENATOR PRICE: So, I mean, how long have you been doing it--for two years, three years? [LB987]

JOHN COUSINS: Oh, I'm sorry. We...it's been for approximately a year and a half. It took us about almost a year to do--about nine months to do the protocol, get it through the FDA, get their feedback, design the study, get what's called an IRB approval to--safety approval--to do the study. We started recruiting and receiving our first samples and doing patients in April. So we've been doing it since April of 2009. [LB987]

SENATOR PRICE: Great. Thank you [LB987]

SENATOR AVERY: Any more questions? Seeing none, thank you very much, Mr. Cousins. [LB987]

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JOHN COUSINS: Thank you, Mr. Chairman, members of the committee. Appreciate it. [LB987]

SENATOR AVERY: More proponent testimony? Seeing none, I will now call for opponent testimony. No opponent testimony. Anybody wish to testify in a neutral position? Seeing none, Senator Krist, you're recognized to close. [LB987]

SENATOR KRIST: Thank you, Mr. Chairman and fellow committee members. Because we don't deal with this area a lot, I'll just take very quickly to say that this is a one-time transfer--\$650,000 out of the Health Care Cash Fund. The Health Care Cash Fund is sourced by two individual cash funds: the Medicaid Intergovernmental Transfer Trust Fund and the Tobacco Settlement Trust Fund. So from those two, this Health Care Cash Fund is fed. It's important for us to note in deliberation that the two funds collectively have \$310,364,990. They are, by current projection, due to be expended somewhere between 2036 and 2042. That is based upon today's revenue and the interest earned on those funds to date. So a lot of things could change. It could extend. Obviously, a lot of things could change that would lessen that time. And I want to personally thank Liz Hruska, a program analyst, for helping us out with the details and for all the folks who testified today. And I stand for any questions. [LB987]

SENATOR AVERY: When we look at this Nebraska Health Care Cash Fund--it's a combination, as you said, of funds. [LB987]

SENATOR KRIST: Yes, sir. [LB987]

SENATOR AVERY: Help me with this. And I should disclose here that I am a cosponsor on this bill, so if this appears to be a hostile question, it is not intended to be. But are there other purposes to which that money is now being put that might be harmed? We might divert money that goes to good purposes now to this good purpose. [LB987]

SENATOR KRIST: Well, most of the cash funds that lead to the exhaustion of those funds--and again sometime between 2036 and 2042... [LB987]

SENATOR AVERY: Yeah. [LB987]

SENATOR KRIST: ...depending upon whose numbers you look at--are recurring transfers and good programs, I'm sure, all. There's a book about this thick including gambling and anti-gambling efforts. I don't believe that there's any better, personally, there's any better reason to spend tobacco money or the Medicaid Intergovernmental Transfer Trust than to find a cure for cancer. My father died of mesothelioma, which is a cancer that, if it is detected early enough, can be treated. If it's not detected early enough, as in his case, the cancer, an asbestos granule, if you will, in the lung, will combine itself or attach itself to the inside of the lung, to the diaphragm, to the rib cage,

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and to the outside. It's devastating. Finding a cure or finding a screening process that is as simple as you coughing up the phlegm that they need to test I think is one of the most valuable ways to expend that fund. And I would make that case on the floor, and I hope to have the opportunity to do that. [LB987]

SENATOR AVERY: That's a good close. (Laugh) Any more questions? Senator Price. [LB987]

SENATOR PRICE: Thank you, Mr. Chairman. Senator Krist, thank you again for bringing this forward. And I was wondering, I know, and you are very well aware of pools of money and colors of money, as we like to talk about it. But is there an ability to rationalize that a lot of money could be paid for by the tobacco settlement portion going into this group pot? I mean is the tobacco settlement money a large enough portion of the pot of \$300 million plus to satisfy this? [LB987]

SENATOR KRIST: Is there enough money there to do that? [LB987]

SENATOR PRICE: No. Did the tobacco portion that went into that community pot, is that a big enough portion to pay for this? [LB987]

SENATOR KRIST: Should we allocate more? Is that the question? [LB987]

SENATOR PRICE: No. The question is just simply if someone had to say: Hey, we're paying for a tobacco problem, perhaps, with tobacco money; we mished and mused it all together, and it's one central pot that you're asking us to take it from, but to know that the input to that pot... []

SENATOR KRIST: I see. I see. [LB987]

SENATOR PRICE: ...was large enough to justify and... [LB987]

SENATOR KRIST: Just the tobacco? [LB987]

SENATOR PRICE: Yeah. [LB987]

SENATOR KRIST: Yeah. I would have to defer that question to John Hilgert and to the management of that cash fund. I don't know it well enough. It would be wonderful if we could say: Let's pull it out of tobacco, because it's a tobacco problem. I don't know that that cash fund is managed that way. Actually that might be a better question for Senator Heidemann. And we can ask that. [LB987]

SENATOR PRICE: And I understand. I'd just bring that up to him when you do have the opportunity to, hopefully, on the floor. [LB987]

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SENATOR KRIST: Good point. Sorry I didn't follow your question. [LB987]

SENATOR PRICE: It was convoluted. Thank you. [LB987]

SENATOR AVERY: Any more questions from the committee? Thank you, Senator, for your testimony. [LB987]

SENATOR KRIST: Thank you. [LB987]

SENATOR AVERY: That will end the hearing on LB987. [LB987]

BREAK []

SENATOR AVERY: All right, we will now move to consideration of LB1035 and welcome Senator Tanya Cook, I think the first time before this committee? [LB1035]

SENATOR COOK: Yes, absolutely. My maiden voyage. [LB1035]

SENATOR AVERY: All right. Proceed. [LB1035]

SENATOR COOK: Thank you, Senator Avery and members of the Government, Military and Veterans Affairs Committee. My name is Tanya Cook; that's spelled T-a-n-y-a C-o-o-k. I am the Nebraska state senator representing Legislative District 13. Today I appear before the committee, for the first time, as the introducer of LB1035. LB1035 proposes a tool for county and city attorneys to address basic nuisances that pose threats to public health. This bill grants powers to any county, city, or village to declare public health nuisances that may result in the spread of infectious disease. The legislation outlines but does not limit specific public health nuisances. Those specific conditions are itemized in section (2) of the proposed act. In addition to providing this direction and authority, LB1035 gives the power to any Nebraska county, city, or village to direct the owner or user of the property where the nuisance exists to abate the public health threat. Finally, if the owner or user of the property refuses, fails, or neglects to abate the public health threat, the county, city, or village is given the authority to abate the nuisance and acquire a lien for the cost of abating the nuisance. Nebraska Bankers Association has raised concerns that liens created under the act will not be recorded for the purpose of subsequent loans. Their representative can address this in more detail later, during their testimony. Through conversations with the bankers' representative, I would welcome amendments from that group that would make timely recordation necessary under the act. This would ensure that transferability of property is transparent and accountable. While providing clear authority and consistency for the communities across the state, LB1035 does not diminish any political subdivision policy through ordinance or resolution. Section (3) of the bill addresses that. Section (3) reads: Nothing

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in the act "shall limit the authority of a county, city, village, or other political subdivision to regulate nuisances." I introduced LB1035 on behalf of Friends of Public Health. Friends of Public Health will testify about ambiguities in the existing law that led their membership--public health directors across the state--to ask for this legislation. Jeff Kuhr, director of the Three Rivers Health Department and the newest member of the Fremont City Council, will testify here today, in his capacity as public health director, in favor of the bill. He will describe an instance that gave rise to the need for LB1035's introduction. In 2004, Mr. Kuhr along with the Ashland city attorney, Saunders County attorney, the Nebraska Department of Environmental Quality, and the Nebraska Attorney General's Office struggled to find statutory authority to take care of a public health threat outside of Ashland. The situation was a salvage yard that was noncompliant with certain requirements placed upon the operation of salvage yards. Mr. Kuhr can give more of the details of this situation when he testifies. Each of the agencies struggled to find statutory means to ensure public health. They ended up enforcing noncompliance by the salvage yard by using a 1961 law allowing for mosquito abatement by localities. LB1035 will create a stand-alone statute with clear tools to abate the most common public health risks. The Nebraska Farm Bureau has raised issues about this bill's potential effect on agribusiness. I will let them testify about their specific concerns. However, the committee should be aware that this legislation is not intended to have any detrimental effect on agribusiness. Additionally, I would be in support of an amendment that specifically exempts from enforcement under the act agricultural practices that are in complete compliance with existing industry standards. Potentially, if the bill could be amended to apply only to areas within county jurisdiction that do not meet some sort of habitation threshold, I would not object to that. The intent of the bill is to protect public health. If the public is not at risk, as a result of an absence of population, the legislation is not intended to apply. In summary, LB1035 will benefit public health efforts across the state. The bill addresses issues faced by every local political subdivision and will provide for consistent public health protection against communicable disease. LB1035 clarifies existing state law and provides local control to deal with public health threats that confront our communities every day. LB1035 recognizes the pivotal role that all Nebraska governments have in keeping their communities free of infectious disease. These are difficult challenges, challenges specifically addressed by this proposal. The proposal acknowledges this crucial governmental role by clearly defining their responsibilities in abating infectious-disease public health threats in their communities. The authority to deal with basic and common threats needs to be clear in statute. LB1035 does just that. Thank you for your consideration of the bill. I welcome your questions, and I do plan to stay to close.
[LB1035]

SENATOR AVERY: Thank you, Senator. Let me start by an observation and a question. Under current law, we have given cities the right to issue ordinances that deal with these kinds of issues--public safety, public health nuisances. Just last year we extended partial ordinance authority to counties. Counties already have zoning authority to deal

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with these kinds of issues. So I'm a little bit puzzled as to what it is we're trying to fix. [LB1035]

SENATOR COOK: Well, I think you can look forward to asking the people who asked me to bring the bill. From my understanding, they had a very specific and entangled experience related to a salvage yard in Ashland. Of course, the situation they were referring to happened in 2004 and... [LB1035]

SENATOR AVERY: I remember it well. [LB1035]

SENATOR COOK: Okay. And not being that familiar with the specific case or what the law said then or how this LB532--as I'm recalling--would apply to that situation, I can't really say. [LB1035]

SENATOR AVERY: Okay. [LB1035]

SENATOR COOK: So... [LB1035]

SENATOR AVERY: I'll wait. [LB1035]

SENATOR COOK: ...perhaps it is something that's covered. But I was asked to bring it because there are specific nuisances related to public health that are identified, and section (2) gives you an exhaustive list of those that the LB1035 would address. [LB1035]

SENATOR AVERY: Thank you. Senator Price. [LB1035]

SENATOR PRICE: Thank you, Chairman Avery. Thank you, Senator Cook. I believe I understand some of the gates you're beginning to engage and go through with this legislation, but I do have a general question I think you can address. And that is when we outline "nuisance" in the list in section (2), I don't see a beginning and an end. So when does a nuisance begin that can be a criterion that is applicable across a broad spectrum throughout the state? And I'll go specifically, just to make the chase a little shorter. And I appreciate also your willingness to, say, exclude agricultural lands, and it...because...paragraph (c) here on page 3 that talks about the "accumulation of manure." The issue is a nuisance: how much manure is a nuisance? If you were on a feedlot, it might be a little different than somebody running a garden, so...and I know odors travel--so that's one question. The other part is...further down is paragraph (h); again it goes to "strong odors." The question is that where do we begin? Is it a three people thought it was odiferous? Or a county person thought it was odiferous? Just so you see where you're surmounting--or you're facing. And then when we get into (k), "maintaining weeds"--I think we have weed boards in counties. And we give them money and statutory authority--so we have weed boards. So I just wanted to be--give

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you an opportunity to respond to how...what's the degree of nuisance? How do you measure? What's the threshold of nuisance? [LB1035]

SENATOR COOK: I don't have a definition... [LB1035]

SENATOR PRICE: Okay. [LB1035]

SENATOR COOK: ...for "nuisance" as outlined in this proposal. What I'm imagining is that there is some common definition among public health directors as they're identifying nuisances that are directly linked to public health threats of an individual or groups of individuals. [LB1035]

SENATOR PRICE: Okay, great, because what...then like with that mosquito one, I can see it's stagnant water--mosquito eggs, larvae--you know, we're done. [LB1035]

SENATOR COOK: I can give you some sample threats if you would like those. [LB1035]

SENATOR PRICE: I'm okay. I've smelled bad things before. [LB1035]

SENATOR COOK: Okay. [LB1035]

SENATOR PRICE: But I appreciate that very much, Senator Cook. [LB1035]

SENATOR AVERY: Any other questions from the committee? Seeing none, thank you, Senator Cook. You did say you were going to stay for closing. [LB1035]

SENATOR COOK: Yes, I am. [LB1035]

SENATOR AVERY: Thank you. Proponent testimony. Welcome, sir. [LB1035]

JEFF KUHR: (Exhibit 1) Thank you, Senator Avery, members of the committee. My name is Jeff Kuhr, J-e-f-f K-u-h-r--not "cure," "coor" like the beer. You know, well, actually, I'm here representing the advocacy group for Nebraska's 20 local public health departments, which serve all of our state's 93 counties. And I'd like to just jump in and address your two questions if I could, because that really does cover what I'm prepared to talk about. Senator Avery, counties and municipalities do have the power to install nuisance ordinances or...well, I guess it's ordinances both ways now, since the passage last year. But what we find often is that when there's an issue, then the ordinance is not in place. So--so often that those ordinances may be introduced as kind of a reaction to something, because, you know, I think that my fellow health department directors would say that we get people approaching us all the time for issues that we just don't have an answer to. But...and then to go along with what Senator Price is saying, it really puts this bill into perspective, because we're not really looking for anything to which we would

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have authority to go in and do. It really is kind of a tool for when someone's hands are tied, as was this 1961 bill that we found in regard to mosquitoes. You know, out of respect for whatever ordinances that local municipalities and counties may have--if people come to us as local health departments and say: We've got an issue; how can you help us? Well, in the past, we've not been able to say anything, aside from whatever you've got in place. But, obviously, by the time they come to us, they don't have the right thing in place. You know, we've seen various things: we've seen wolf-dogs in Malmo, Nebraska. I mean, I'm sure we could all go through in our own jurisdictions and find issues for which we had no answer. And so, really, I think, legitimately, we didn't put any end point or beginning point to what is a nuisance, because that leaves us the ability to define the nuisance as health department--as the experts in the field. And, plus, it forces kind of a triangulation of this issue to take effect. We don't want to...as my county attorney would say: Jeff, you're not going to go after everybody that doesn't cut their lawn. And that's not our intent. If the issue becomes large enough that there are people that have raised the hairs on the back of the neck of a city or a county, then, you know what? There's probably pretty broad support for that action. And so all we're asking is for this to be that tool if that broad support does come available. You know, in a perfect scenario, I wouldn't care if this thing got put on the back shelf and never got sought out. But the fact that we did use a 1961 law maybe the first time ever made me think that we need to have something broader out there, because we do get approached every day with various nuisance-type issues. We get approached by our cities; we get approached by our counties. You know, it's not us. We by no means ever want to be the people that go out and try to police things, because in public health, usually we only respond to complaints; we don't go out and try to seek them out. So that's--basically that's what...it answered what I was going to read, so I'm going to jump right in to my example of the salvage yard near Ashland if you don't mind. In 2004 I received a call from the mayor of Ashland regarding the salvage yard that's located on Highway 6 just outside of Ashland. And they were allegedly disposing of solid waste illegally and then had accumulated mounds of tires, open 55-gallon drums, and old appliances, all of which created various opportunities for water to pool. The Nebraska Department of Environmental Quality and the Nebraska Attorney General's Office had been working with the city to address the issue but was not able at that time to reach any resolution. So my office was...we were able to locate this 1961 law related to mosquitoes and associated diseases. And this law gives a county and any city of the primary class the power to take all necessary and proper steps for the extermination of mosquitoes, flies, and other insects of public health importance, among which is to abate as nuisances all stagnant pools of water and other breeding places for mosquitoes. So based on this law, the Saunders County attorney sent notice to the salvage yard owner to remove all sources of pooling water. The owner's noncompliance then in the matter played a role in the eventual closing of the salvage yard in 2006. So through all of the work done by the Nebraska Department of Environmental Quality, really it came down to this mosquito law that we just kind of searched for and were very lucky to find. So really, in summary, I just want to say that LB1035 will consistently

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provide statewide public health assurance across counties and municipalities and will not supersede or limit any current authority. And I also want to mention that when we use the term "public health threat," it's not the role of the local health department to address neighbor disputes such as the smell of manure or the storage of equipment in an agricultural area. The intent of this bill is to serve the public. And I just want to thank Senator Cook for introducing this bill. [LB1035]

SENATOR AVERY: Thank you, Mr. Kuhr. [LB1035]

JEFF KUHR: You bet. [LB1035]

SENATOR AVERY: Let me ask you if it might be better, in writing statutes, not to list all of the things that we, quote, in this case, consider a nuisance, because often what happens--and we encounter that here frequently--is that someone comes in, and they say: But my activity is not listed in law as a nuisance, and therefore it is not a nuisance. Might not it be better to not try to list all the possible nuisances but define what a nuisance is and let the jurisdictions then interpret the law and apply the law and not have to have this conflict all the time: Well, it's not listed; therefore it's not covered. [LB1035]

JEFF KUHR: You bet. I think that's a very good idea. And I'm not sure of the process, but... [LB1035]

SENATOR AVERY: It's right here. [LB1035]

JEFF KUHR: ...you know, you're right, because sometimes if you put too much, then you have to account for it. And if you don't put enough...you know, it's a tough situation to be faced with. [LB1035]

SENATOR AVERY: You know, my preference would be to have a good, solid, crisp, comprehensive definition of "nuisance"... [LB1035]

JEFF KUHR: Um-hum. [LB1035]

SENATOR AVERY: ...and then not have to list every possible nuisance like "dense smoke" and "strong odors" and... [LB1035]

JEFF KUHR: Yup. Well, and, hopefully, you've gathered, it really isn't about the language per se; it's just about the ability to do something for a county or a city that is on their last leg with--or not able to find other resources. So, you know, that--I think that would work very well. [LB1035]

SENATOR AVERY: You couldn't find anything in current law? [LB1035]

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JEFF KUHR: No. Most everything says: gives power to... [LB1035]

SENATOR AVERY: Well, you did find something in '61. [LB1035]

JEFF KUHR: ...gives power to develop nuisance law. You know. That's really...aside from this mosquito ordinance or state law that we found, everything else just gives power to the county or city to create...you know, it gives them that power to do so. But with the local health departments, you know, we all were developed by state--we're described, we're defined by state law; we are pretty standard in most of what we do. And so to have different laws in every single municipality and every single county throughout the state then, you know, kind of almost goes against what we are as public health statewide with these local health departments. But yeah, we've not been able to find in the past anything other than what says it gives the city or--well, not county; it wouldn't be the county--but the city the ability to create such nuisance laws. [LB1035]

SENATOR AVERY: Senator Sullivan has a question. [LB1035]

SENATOR SULLIVAN: Thank you, Senator Avery. Could you give me a little more information about how that situation in Ashland ended up? You indicated that the salvage yard actually closed, but were there fines levied? Or what happened in the interim? [LB1035]

JEFF KUHR: Well, you know, I'm not sure. I mean, I was asked to testify in the court in Saunders County with the Attorney General's Office present. And, you know, I mean, if you drive by there now, it's completely vacated the land. But I'm not sure exactly what they did beyond that--if there were fines or what have you. But that seemed to be the issue that got the landowner to do whatever he needed to do. [LB1035]

SENATOR SULLIVAN: Would you think that possibly then, in the broader context, that even though there are things listed in this proposed legislation--what is, in fact, a nuisance--that there is still the potential for wide interpretation among counties and cities? [LB1035]

JEFF KUHR: I think there is. But that's kind of...I mean, I tend to think that a county or city--at least from what I'm familiar with--will have a tendency not to approach something...you know, it seems more like a point of desperation when they do. And at that point, there are plenty of people that do rally around it, and so that flushes out a fairly legitimate description of what the nuisance would be. But otherwise, no. It would be broad...I mean, that broad, you know, interpretation by one person to make that...I actually don't think that would even move forward in order to make an action anyway. [LB1035]

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SENATOR SULLIVAN: And while I respect what Senator Avery said--that maybe it's best to have specific definitions--perhaps that's why there hasn't been something on this since 1961, because it is very difficult to identify and specify specifically what a nuisance is. And that legislation in 1961 did just that with respect to pooling of water and mosquitoes. [LB1035]

JEFF KUHR: Sure. And the nice thing now is--you know, since 2002--we have our local health departments, and so we do have the ability--and we've been written into a lot of legislation over the past few years. So we are--we do stand as expert...you know, we can gather the data, and we can testify as experts, which that...you know, prior to that, only 22 of our counties had such a thing. So it's a little bit different now than it was a few years ago. So at least the health departments can stand in to make sure that we're not kind of getting off track with what these are and what they could be. You know, we're very effective right now in the statewide smoking ban; you know, all the health departments have contracts with the state to monitor that activity, to enforce. So I think we're doing some pretty good things. [LB1035]

SENATOR SULLIVAN: Thank you. [LB1035]

SENATOR AVERY: So you had the authority to write an ordinance... [LB1035]

JEFF KUHR: Um-hum. [LB1035]

SENATOR AVERY: ...to control the problem. But that business would have been grandfathered in, because it would have existed prior to the ordinance. So you needed to find an existing law. [LB1035]

JEFF KUHR: Um-hum. [LB1035]

SENATOR AVERY: So if we had already established in law a pretty tight definition of "nuisance"... [LB1035]

JEFF KUHR: Um-hum. [LB1035]

SENATOR AVERY: ...then you could have included that problem as a nuisance problem, and you could have dealt with it. [LB1035]

JEFF KUHR: Correct. [LB1035]

SENATOR AVERY: Okay. [LB1035]

JEFF KUHR: And being statewide is kind of a key, because if you depend...you know, every municipality is going to create their ordinance to address their situation at hand.

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And so we're trying to be a little--have a little bit of forethought here and...because collectively, as health directors, we know what we've been approached with. [LB1035]

SENATOR AVERY: Okay. Senator Price. [LB1035]

SENATOR PRICE: Thank you, Mr. Chairman. Thank you, Mr. Kuhr. I'm going to ask a two-part question here that's going to tie into a broader subject matter. So I'd ask you to bear with me. In looking at section (1), paragraph (a), you said: "To declare as a public health nuisance any condition." "Any" is a big word; that's a real broad thing. And so I want you to think about "any" for a minute while I continue to talk. And then when we go down to paragraph (c) in the same section, we talk about "proper notice and lapse of a reasonable time for complying." I want to tell you, we have spent much time in this committee trying to understand what is "proper notice." [LB1035]

JEFF KUHR: Um-hum. [LB1035]

SENATOR PRICE: So "proper notice"--I don't know if that's defined somewhere else in statute, and I don't know if a "lapse of reasonable time" for compliance is articulated in statute. So I'd offer for you to realize that that's pretty open ended... [LB1035]

JEFF KUHR: It is. [LB1035]

SENATOR PRICE: ...there and not defined. But back to the "any," we had a bill earlier this year about tuberculosis. [LB1035]

JEFF KUHR: Um-hum. [LB1035]

SENATOR PRICE: And I go down to line 7. It says: "generating or spreading infectious disease." So any condition that would be spreading infectious disease would then give the county health department the authority to take actions. [LB1035]

JEFF KUHR: No, we have no authority. [LB1035]

SENATOR PRICE: Well, I mean, to...but you'd...well, say, down here...I just want to make sure. It said down here that: "acquire a lien...against the property." So I want to make sure that my...get to the point is--are we only talking about property--tangible assets--here, versus...because we said disease and tuberculosis, so I want to make sure I understand that "any condition" and "liens" and...can you illuminate a little for me there? [LB1035]

JEFF KUHR: Well, only from the point of...nuisance, I think, usually does refer to some sort of an origin, which would be a property owner of some sort, and so that would be owned property. In the case of tuberculosis, you know, we already do, you know, we

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survey--we do statewide surveillance; we all are connected to the National Electronic Disease Surveillance System. So we monitor that activity, and we take action to prevent any outbreaks, as necessary, but tuberculosis is a disease--because there are specific diseases also associated with nuisances. You know, I mean, you could have a vector transmission: you could have some diseases that are transferred to humans from mosquitoes, varmints, what have you. So I guess I'm not seeing the comparison with tuberculosis and nuisance. [LB1035]

SENATOR PRICE: Mine was more the focus on the word "any" used in there... [LB1035]

JEFF KUHR: Okay. [LB1035]

SENATOR PRICE: ..."any condition." [LB1035]

JEFF KUHR: Yeah. And once again, I think "any" is getting back to having confidence that the municipality or the county would use its best judgment in moving forward and then utilizing their local health department to be able to determine whether, you know, here is some data that would support your cause. But, once again, I think only...yeah, I think we really have to realize that this should never be used on a day-to-day basis just driving around the neighborhood looking for somebody to, you know, settle a civil dispute between neighbors with. And as Senator Avery suggested, maybe that language needs to be cleaned up anyway, you know, as well. I don't think the language is so much a huge part of it. [LB1035]

SENATOR PRICE: Thank you. [LB1035]

SENATOR AVERY: Thank you, Senator Price. Senator Krist. [LB1035]

SENATOR KRIST: Thank you, Mr. Chair. One of our responsibilities, I think, is to translate--or help you do your job... [LB1035]

JEFF KUHR: Um-hum. [LB1035]

SENATOR KRIST: ...and make sure that the law does that: empower you to do what you need to do. Honestly, Senator Avery is right on the money; and Senator Price--I hate to admit it--again, right on the money. The point is that there aren't enough terms in here defined clearly enough that was going to get it up through any process, I don't think. [LB1035]

JEFF KUHR: Um-hum. [LB1035]

SENATOR KRIST: My recommendation is simple: Define "nuisance"; define the action

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that you need to take if you incur the nuisance--and you want to solve the issue at hand. And you know, the definition of terms...I've seen some very, very well written bills on the floor that define and then project where they're going. I see your...I empathize. I've been there. I've tried...in my own neighborhood a few years ago, the issue was...and there wasn't anything we could do. They were being butts, and we couldn't do anything about it. That's the issue. And I understand that. I would like to help you, but I don't...the clear definition of what this would enable as a piece of legislation, as law--I don't see it.
[LB1035]

JEFF KUHR: Sure. [LB1035]

SENATOR AVERY: Thank you, Senator. [LB1035]

JEFF KUHR: And, you know, this is our first go with it, so I appreciate all the feedback as well. [LB1035]

SENATOR AVERY: Well, I see you have a Ph.D.; I'm sure you can work on this and...
[LB1035]

JEFF KUHR: I'm sure I'll give it a shot. (Laugh) [LB1035]

SENATOR AVERY: I don't see any more questions. Thank you for your testimony.
[LB1035]

JEFF KUHR: Thank you. [LB1035]

SENATOR AVERY: Any other proponent testimony? [LB1035]

KAY OESTMANN: (Exhibit 2) My name is Kay Oestmann, K-a-y O-e-s-t-m-a-n-n, and I have some testimony here, but I'd kind of like to address you, too, like Jeff did. I am the president of the Public Health Association of Nebraska, but I'm also a director of a local health department. And my local health department is the Southeast District Health Department, which is everything south and east of Lincoln. We--on a good day, we have 40,000 people in my five counties. So when I hear that the rural people are...the Farm Bureau is addressing this, I would like to address that a little bit, too, because I think I know farmers--have been one, currently am not. But I think that when you talk about manure, when you talk about, you know, people from the city driving by and seeing a cow or a hog laying at the end of a driveway waiting for the rendering plant to come and pick them up, that isn't a public health nuisance. That's a farmer doing his job. When you have huge feedlots that don't get rid of the manure, when you have huge feedlots that aren't disposing of the cattle--they're letting them lie there--those become public health nuisances. Sometimes it's the amount and it's the place that you are. We have worked with local county commissioners. And in rural areas, sometimes the county

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commissioners meet once a month. And, yeah, we have the ordinance ability, to develop ordinances, but if you have the problem arise the day after the county commissioners have met and you have to have a public hearing, sometimes that'll be two months, you know. So we need the ability to react to some of these things. Public health is defined in the Nebraska statute as having three core functions; and they are assessment, policy development, and assurance. In my area, I don't have the ability to do like Lincoln and Omaha and Grand Island and some of the larger health departments. I don't have people that are environmental specialists. I don't have people that can do these kinds of things for me, because it's something that comes up maybe twice a year. And I have to pull in my resources. Assurance in public health means that if something is being done and it's being done adequately, we don't do it ourselves and repeat it, you know; it's not a good use of resources. We call on the weed boards; we call on the EPA; we call on the NDEQ. You know. When there's--when I get a complaint about some farmer draining his hog lots into the river, I call the NDEQ. I go out and take pictures, and then I call them and tell them what I've seen; you know, I assess it first. But they have the laws; they have the statutes to pull from--the weed boards have the authority to do the things that are a public health nuisance. So, you know, our assurance factor is what we're looking for here. It's not something that we want to come in with guns blazing and say: You have to clean this out. It's something that we want to work with the people that are in our districts so that our public's health can be ensured. And nuisances vary from county and district to district, you know. The things that I have in my district that are normal, everyday things--the hogs at the end of a driveway--people in Omaha and Lincoln would probably be appalled when they drove down a county road and saw that, you know. A daily thing for me--and they disappear. You know, this time of the year it's not as important that they disappear right away as it is in July, you know. Yeah, you go past; you keep the windows up, and you drive past, you know. But if, you know, if we see them out in lots and there's a significant number that aren't being removed, you know, that's a public health nuisance. That can damage the public's health; the runoff of the water from that can make us have E. coli, salmonella, those kinds of things that are public health diseases. I have deviated from my testimony; you all have the testimony in front of you. You know, it's not our--the last paragraph of my testimony--it's not our intent to supersede or limit any local authority; that's not what we're after. We're after working with them and providing the best health for our public in our districts. And that's all we're after, you know. We don't want to enforce, you know. We want to see that it's done, but we don't, you know, we don't want to be the cops; we've got cops in our area to do that kind of things. So I would address any questions that you have. [LB1035]

SENATOR AVERY: Thank you. Questions from the committee? I do not see any. Thank you for your testimony. [LB1035]

KAY OESTMANN: Thank you. [LB1035]

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SENATOR AVERY: Additional proponent testimony. [LB1035]

SENATOR PRICE: Please. [LB1035]

CHUCK CONE: (Exhibit 3) Senator Price, are you taking over? Thank you. [LB1035]

SENATOR PRICE: Yes, sir. [LB1035]

CHUCK CONE: All right. And the rest of the committee members--Kate--thank you very much for listening to us. My name is Chuck Cone, C-h-u-c-k C-o-n-e, and I'm the director of a local health department in Nebraska. An essential part...most of my health department or a good part of my health department covers Senator Sullivan's district. It's the Loup Basin Public Health Department, and I have nine contiguous counties, and the office is located in Burwell. And the counties cover over 7,000 square miles, and there are nearly 40 small towns and villages in the district. As health department director...and I was just going to go on this, but I guess I would say that whenever I do get a nuisance call, the huge, vast majority of the time it's from one of the small towns or the communities. It's not from a rural area; it's...you know, maybe once or twice in my seven years of being there I've had a call from something out in the country, and I would say that was legitimate. But basically, it's always from these small towns. And so my response is always: Well, what's your city ordinance? And: Well, we don't have one. Well, you can have one. But: Yeah, we can; but we don't. And so therein lies the problem. And so I think with this bill, as much as probably we've not put it together right, there's still time to go back and change things and make it so that it's much more palatable. But I think this would at least give us a baseline for all the small towns in Nebraska, because it's really tough for me: I can go to the county commissioners, and I can--the nine different counties that I have--and talk to them and try to get something...and a lot of them have something in place, but it's small villages and towns that just don't...and so this would really help my department. And I feel that it would help a lot of the other health departments in the state of Nebraska in the rural communities if we could get this bill through. It would...the other thing I would say is you would still maintain local control. You know, it doesn't supersede any...or it doesn't go over anything that you might already have. It'll just...it's just kind of a baseline bill, and I think that's good. I would say also that I'm a mayor of Burwell, and I feel this would really benefit the small towns, from that perspective, being the mayor. It's like, I know as mayor the health department can't help me when we have a couple of these issues in my town. And some of the other mayors...and I don't speak for all the mayors in the state of Nebraska, but I know they face the same challenges. And it's, you know, not that huge of an issue that we shouldn't be able to take care of it somehow. I think this is the first time I've ever come down here to testify on a bill. And so I'm old, but I'm still tender; you guys make sure you take--be nice to me when I get done here. (Laughter) Next time you can beat me up if you want to, but today be nice. I did...I think one of the reasons I'm on this committee is because I'm the mayor of a small town, and I belong to

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the League of Nebraska Municipalities. And we said: Well, we need to really, probably, work with them to make sure they understand what we're wanting also. And we don't want the league to say: Wait a minute now, this looks like the cities aren't going to like this. And so we worked closely with the league. They helped us and worked with us closely so that we're kind of all on the same page here. And that's kind of, I think, one of the number-one reasons that I did get on this committee. One of the biggest challenges I have been facing in the last few months as a health department director is H1N1 flu virus issues; I've been busy with it. I did drive down here today from Burwell to testify on this because I do think this bill is important. And with that, that's all I have. [LB1035]

SENATOR PRICE: Well, thank you very much, Mayor Cone. I appreciate you coming down--and particularly on such a long drive--but it does show your passion for the subject. Are there any questions from the committee? Yes, Senator Sullivan. [LB1035]

SENATOR SULLIVAN: Thank you, Senator Price. I'll make sure that we're nice to you. [LB1035]

CHUCK CONE: Okay. Thanks, Kate. [LB1035]

SENATOR SULLIVAN: But I do want to know, in your capacity not only as director of the health department but also as mayor, what kinds of nuisances have you encountered, and how have you either handled them or not been able to handle them? [LB1035]

CHUCK CONE: Well...and I guess I'll give you a prime example: tires in the yard in summertime, and they fill it full of water. And there they are, and there are mosquitoes and--well, mostly mosquitoes and West Nile virus--and it's a public health issue. And get them cleaned up. And well, there's...it's really difficult to say that you need to clean up the tires. And so, you know, you send the cop--the town police officer--down and talk to them. And they may or may not--depending on the type of individual they are--work with you. But, really, there's not a whole lot that you can do. And so eventually, when winter rolls around, or late fall, and things dry up, the problem goes away. And then, hopefully, it won't be as bad next year; maybe things will get picked up. But you just try to work with them, but I've never seen any enforcement on a problem like that. [LB1035]

SENATOR SULLIVAN: Do you think that there would be if we had this law in place? [LB1035]

CHUCK CONE: I guess I would hope so, but still it's going to stay down to the local control, I think--that you still have to have the county attorney or the city attorney back up the police officer if he writes a ticket. And somebody's got to send the police officer down there to write a ticket and make sure that he understands that he's going to be supported, or else he's not going to go down there and do that. So I think that this would

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help. [LB1035]

SENATOR SULLIVAN: Has the county attorney association been involved in this at all? [LB1035]

CHUCK CONE: No, I don't believe so. [LB1035]

SENATOR SULLIVAN: Okay. All right. Thanks. [LB1035]

CHUCK CONE: Maybe we should've had them. [LB1035]

SENATOR AVERY: Any more questions? Seeing none, thank you for your testimony, sir. [LB1035]

CHUCK CONE: All right. Thank you very much. [LB1035]

SENATOR AVERY: We're still on proponent testimony. Welcome. [LB1035]

GARY KRUMLAND: Senator Avery, members of the committee, my name is Gary Krumland--last name is spelled K-r-u-m-l-a-n-d--representing the League of Nebraska Municipalities and appearing in support of LB1035. As has been mentioned, and as several members of this committee who have been former city officials know, that cities and villages do have authority in the statutes to enforce nuisances as part of their core functions--that is, the protection of the public health and welfare. And part of that is the abatement of nuisances. Some of the early statutes in Nebraska, over 130 years old...I was looking at some of the legislative history, and they go back to 1879, giving cities authority. And the authority for cities is both very general--just to abate nuisances to protect the public health--and it gets very specific; like the weed ordinance for second-class cities and villages specifically says--it declares it to be a nuisance if it's over 12 inches on the first cutting if they...the second time they--in the same season--if it's over 8 inches, then it becomes a nuisance. So it varies. But generally, the city or the village would have to adopt an ordinance. And then they go through the process to abate, and usually it's giving notice and then giving the opportunity for the property owner to clean up the property to abate the nuisance--gives it an opportunity for a hearing. And then if at a certain point that doesn't happen, then the city or village has authority to go in and take care of the nuisance and, generally, charge the property owner--which is where the lien comes in: if that's not paid, they can file a lien against the property. I did run off all of the nuisance statutes, and I guess I didn't bring copies. I can; what I can do is put this in a good form if the committee is interested and get copies to the committee if that would be helpful. [LB1035]

SENATOR AVERY: It would be. [LB1035]

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GARY KRUMLAND: And I'll...so I'll do that. And it's all the different, various classes of municipality; there's five of them. I think LB1035 comes in play because it does create a list of nuisances, which would be in addition to the authority cities and counties already have, but it makes it uniform and allows the cities and counties, with the help of the public health departments and health regional areas to work with the cities and counties. And especially the smaller communities would be helped by this--that if they had people to work with them, they could do this over there; they generally don't necessarily have the staff or the resources to do it themselves. This would be helpful. It would also be helpful in a situation--like you talked about Ashland, where it was a problem large enough that not only was the city involved, but the county was involved, the Department of Environmental Quality was involved. By having a standard set of rules to follow, it would be easier to work together and to force those...for those reasons, we support LB1035. [LB1035]

SENATOR AVERY: Thank you, Mr. Krumland. Questions? Senator Price. [LB1035]

SENATOR PRICE: Thank you, Chairman. Mr. Krumland, just a quick question. And maybe it's just a nuance in the words--a previous testifier said about going out and writing a ticket, you know, if someone didn't do something. Is that part of proper notification and notice? That's okay? Or...I just was wondering. [LB1035]

GARY KRUMLAND: Well, there's several ways, depending on how you tend to enforce it. Let me give you an example. Say you have a noise ordinance--and very often a noise ordinance would be based on the decibel levels, so that...and you try to do it specifically, because that way it's easier to enforce. If somebody goes over that...and in that situation: you have somebody with a loud car who's making noise and you check the noise and find out it is above the level, you can give them a ticket. A law enforcement officer would do that, a certified law enforcement officer. In a situation where, say, you...the weeds are growing long or there's litter or stagnant water, you wouldn't necessarily just give a ticket; you would go through the process to try to abate them, where you'd send them notice that we have reason to believe that you have a nuisance--your weeds are too long, specifically. We would like you to take care of this within the next 30 days. If you don't take care of it, we will come in and do it. If you want to have a hearing on this, please let us know, and we'll have a hearing. And then, very often, the property owner will take care of it, and that's the end of it. If the property owner doesn't, the city then would have the ability to go in and hire somebody or have the city mow the property--to do that. And then they send a bill to the property owner for the cost of that. [LB1035]

SENATOR PRICE: Thank you. [LB1035]

SENATOR AVERY: Any more questions? Seeing none, thank you, Mr. Krumland. [LB1035]

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GARY KRUMLAND: Um-hum. [LB1035]

SENATOR AVERY: Any more proponent testimony? Seeing none, we'll turn now to opponent testimony. [LB1035]

ROBERT J. HALLSTROM: (Exhibit 4) Chairman Avery, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association to testify in opposition to LB1035. The spelling of my name is H-a-l-l-s-t-r-o-m. Our opposition is not related to the abatement of public health nuisances but rather to the provisions regarding liens that appear on page 2. It's late in the afternoon; I think there's only two opponents. I told Mr. Head: We're not going to request equal time to those who are proponents of the bill. And I'm a rather friendly objector, I guess, in this case. I've worked with Senator Cook and her staff in piecing together an amendment that I think addresses our concerns, and, if adopted by the committee, I would want the record to reflect--at least for floor debate if the bill were advanced--that with this amendment our objections would be removed. Specifically, when you look at page 2 of the bill, there's a generalized reference to the lien being enforceable in the same manner as liens are enforced against buildings and lots for labor and material furnished by contract with the owner. The bankers' general concern with liens are about threefold: Number one, we need to know how the lien is attached; we want to know how it's perfected and, generally, that that's done--particularly when real estate is involved--by being recorded so that there's notice to third parties who may have competing or conflicting liens; and then thirdly, how that all fleshes in with regard to the priority of the various liens that may be filed, in this case against real property. The lien that's created there is something that I'm quite frankly not familiar with as existing under Nebraska law, other than it sounds a lot like a construction lien. Our concerns with this being treated as a construction lien--if, in fact, that is the intent--is that when you look at the construction lien statutes, they're basically set up on the premise that I can go out to a site, I can perform services; my lien will arise based on when I started the services, and when I finish I have 120 days to file a lien. Once I file that lien, my lien relates back, all the way back, to when I commenced service on the project. So an intervening lien holder who checks the record will not see that there is a potential hidden lien out there in the form of a construction lien. So therefore the basis of our concern that if this is a construction lien and they were required to follow that format, that there could be the creation of hidden liens. What the proposed amendments do, very simply, one, is to provide clarification that this does apply to a lien against real property. The bill currently only references "property"; so we have inserted that on page 2, line 10. And then we have created a system, with the balance of the proposed amendment, that would grant the creation or attachment of the lien, would provide notice by requiring a statement that would contain both the existence of the lien and the amount of the expenses that were incurred in abating the nuisance--to provide notice of record--and then, for purposes of priority, would indicate that that lien would be subject

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to any lien, mortgage, or trust deed that was filed prior in time of record to the creation and perfection of that lien. So that's what we would like to see the committee do in adopting the amendment. If they see fit to advance the bill to General File with that amendment, we would remove our objections. Be happy to address any questions. [LB1035]

SENATOR AVERY: Thank you. Any questions from the committee? We're tired too. [LB1035]

ROBERT J. HALLSTROM: Thank you. [LB1035]

SENATOR AVERY: Thank you. Additional opponents. [LB1035]

CRAIG HEAD: Good afternoon, Senator Avery, members of the committee, my name is Craig Head; that's C-r-a-i-g H-e-a-d. And I am the state director of government relations for the Nebraska Farm Bureau Federation. And given the hour, I will deviate from the testimony a little bit to move things along--simply to say that obviously we've been in front of this committee over the last several years working on issues, and our concern is related to giving more authority to local political subdivisions and what, in turn, are the unintended consequences of doing so in a production ag setting, because we have seen over the last ten years, since I've been in this position, numerous challenges at the local level to agricultural producers, because we're obviously seeing more people move into the country. And it's not always new people in the countryside; it's people that have been in the countryside many years but no longer engaged in production agriculture. And that raises issues. And that's why we are always very nervous when we see bills introduced that would broaden that scope. And I won't get into it, but I think earlier Senator Price gave several examples within the bill--I won't go through the litany of them--of where agriculture could potentially be impacted. But our thought would be: This bill right now is very broad in nature; the scope is very wide. Where does the nuisance issue begin? Where does it end? And what could it mean for us? We've seen situations where producers have tried to develop livestock facilities in a county, and there's opposition to that, and they'll do about anything they can, looking at existing laws, to try and prevent that operation from going in, over fears of odor, manure, those types of things. And our concern would be that if we continue to broaden these authorities, it just puts more tool on the table for those folks to use to try and hinder livestock development. Many of the things that are listed in the bill or outlined in the bill are already addressed through regulations of other agencies. Again, I won't go through the list. Department of Ag, DEQ--there are many authorities that already exist there. As always with our organization, we're willing to sit down and visit. But I would tell you that we do have very broad concerns about the bill as drafted, in terms of broadening that scope. And if there's a way...I guess I was telling somebody this morning when they asked me about it, I said: The bill, as I see it, is a lot like my son walking out the door with a shotgun, and I ask him: What are you going to hunt? And he says: Whatever I

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can find. And I think, from our perspective, I think we'd like to see it--the scope narrowed so we would better understand what the issue we're trying address, because I think we'd be a lot more interested in working to try and figure out a solution if we knew specifically what areas are trying to be addressed, because that was the process last year on Senator Price's bill that did grant the counties limited zoning powers. So with that, I would conclude my testimony. Appreciate the opportunity to visit with you this afternoon. [LB1035]

SENATOR AVERY: Thank you, Mr. Head. Questions from the committee? I see none. Thank you. [LB1035]

CRAIG HEAD: You bet. Thank you. [LB1035]

SENATOR AVERY: Additional opposition testimony? Anyone wish to testify in a neutral position? Please come forward, sir. [LB1035]

JON EDWARDS: Good afternoon, Senator Avery, members of the committee. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s, and I'm here representing the Nebraska Association of County Officials. We are here today in a neutral capacity on LB1035--concerned neutral capacity, I guess I would say. We've hit on a lot of the issues already. When our board looked at this bill and started discussing it, they had a couple of concerns that did crop up, a lot of which has been pointed out today. Certainly they were concerned about whether this being some sort of a new mandate, you know, pushed onto county boards and city officials, in terms of regulating these health nuisances--or is it better something that we tighten up and work with through existing ordinance ability for the cities and zoning ability for counties? And there was also some thought that, really, don't we address most of these issues currently through county zoning authority and city nuisance ordinance authority and those types of things? So those are broad concerns that were brought up. Generally speaking, certainly, we don't want to get in the way of necessary adjustment to public policy and how we deal with health nuisances and so forth. So I think you've heard a lot of testimony about the concern with the breadth of the language, the need to probably tighten up the language. Certainly I would point to the last subpart (3) there, on the last page of the bill, that talks about basically leaving current authority in place and not stepping on that authority. And certainly I know, from NACO's perspective, we value that language and might even like to see that maybe fortified a little bit as we go through the process. Obviously it sounds like we're going to need to clarify a lot of things in this bill, tighten up the language. And, like all the other interested parties that have testified today, we're willing to participate in that process and do what we can to add to that conversation. And certainly we want to thank the proponents of this bill. They brought us into the conversation earlier this year, let us know they wanted to try to do something that they had some concerns about--how their organizations interact with the local political subdivisions and how best to do that. So we appreciate them bringing us into that; so we want to try to help this be as it

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should be, I guess, is where we're at. So with that, we're neutral on the bill as it currently is, with some concerns that we have. And with that, I'll end my testimony. [LB1035]

SENATOR AVERY: Thank you for your offer of cooperation. Any questions from the committee? See none. Thank you. [LB1035]

JON EDWARDS: Thanks. [LB1035]

SENATOR AVERY: Any other neutral testimony? Mr. Schaefer, welcome. [LB1035]

MATT SCHAEFER: Good afternoon, Chairman Avery, members of the committee. My name is Matt Schaefer, M-a-t-t S-c-h-a-e-f-e-r. I'm a registered lobbyist appearing today on behalf of the Nebraska Veterinary Medicine Association. The NVMA has taken a neutral stance on this bill but did want to share one concern with the list of public nuisances contained in section (2) of the bill. On line 25, page 2, the language provides that a public nuisance includes "a carcass of an animal that is not buried or...disposed of...within 24 hours after death." Current Nebraska law at Section 54-744 requires that a dead animal be disposed of within 36 hours of knowledge of the animal's death. The NVMA would ask that if LB1035 goes forward that it be congruent with the current law for disposal of dead animals. That's all I have. If any questions, I'd be happy to take them. [LB1035]

SENATOR AVERY: How long does it take for a dead animal to become a nuisance? [LB1035]

MATT SCHAEFER: I have no idea. [LB1035]

SENATOR AVERY: 24? 36? I mean, 24 is... [LB1035]

SENATOR PRICE: Depends on whose lawn it's on. [LB1035]

SENATOR AVERY: Yeah, I suppose so. I don't have the answer to that. Any questions from the committee? Thank you, Mr. Schaefer. [LB1035]

MATT SCHAEFER: Thank you. [LB1035]

SENATOR AVERY: Good to see you again. Senator, I...are there any more testifiers? We're in neutral. We're in neutral, Senator, so... [LB1035]

SENATOR PRICE: That means we're coasting. (Laughter) [LB1035]

SENATOR COOK: I would just like to close by thanking the committee for listening to the testimony and considering the bill along with proposed amendments and ideas.

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During the dialogue, we've had mention of a clarified definition of what precisely is a nuisance and that when does a nuisance begin, when does a nuisance end? I'm certainly open to continuing the dialogue among all of the interested parties to put something in place so that the public health community can have those assurances in place as issues arise. And thank you again for your time. [LB1035]

SENATOR AVERY: Thank you, Senator. Any additional questions for Senator Cook? Seeing none, thank you. That ends the hearing on LB1035 and the hearing for today. While the room is clearing, I would ask the committee to hang around for just a few minutes. [LB1035]