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Transcriber's Office

Judiciary Committee
January 26, 2011

[LB167 LB197 LB251 LB293 LB310]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, January 26, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB197, LB167, LB293, LB310, and LB251. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson; Scott Lautenbaugh; and Amanda McGill. Senators absent: None.

SENATOR ASHFORD: All right. Let's get started. Good afternoon, everyone, and welcome to the Judiciary Committee. My name is Brad Ashford; I'm from Omaha. And my colleagues here today are Senator Larson--Tyson Larson from O'Neill; Senator Coash from Lincoln; Senator Burke Harr from Omaha; Senator Steve Lathrop, Vice Chair, from Omaha; Senator Amanda McGill from Lincoln; Senator Brenda Council from Omaha; and Stacey. Stacey is our legal counsel, and Oliver is our committee clerk. We have five bills today, and we're starting out with LB197. Many of you have been here before; I recognize several of you. Certainly Senator Dubas I recognize and Kent Rogert. And what we will do today is take LB197...let me ask, how many testifiers do we have on LB197? Okay, a few. Okay. Most of you who have been here are aware of the sign-in sheets that are behind the table, on the smaller table. We'd ask you to sign those. We have a light system, so other than the introducer, Senator Dubas, we're going to ask you to confine your comments to the lights--three minutes; the yellow light, we'll be asking you to summarize your comments. Obviously there may very well be questions from the committee, and that time will not be counted against you. So with that, why don't we get started with Senator Dubas and LB197. Welcome. [LB197]

SENATOR DUBAS: (Exhibits 1, 2, 3, 4, 5, and 6) Thank you. Good afternoon, Senator Ashford and members of the committee. My name is Annette Dubas, D-u-b-a-s, and I represent the 34th Legislative District. Several years ago I toured the Central Nebraska Public Health Department in Grand Island, and during that visit I had a chance to meet with Jane Miller, who I believe helps with the WIC program and also deals with a mentoring program for mothers who choose to nurse their babies. And I also had the opportunity to visit with a mom who was actually a part of that program, being mentored. And she told me how good she felt about--how much that program had helped her with her decision to nurse her baby and how good she felt about making that decision and what it was doing for her baby. But that's also when I learned that Nebraska currently had no law on the books to protect a mother's right to nurse her baby in public. I know in the grand scheme of things people will say: Don't you have more important issues to take care of at this point in time? And that is true. We have some very substantial budget and economic issues that are going to face us, a lot of challenging decisions ahead. But I also find it quite disturbing that in 2011 we are even needing to have this discussion; it should have been over and done with a long, long time ago. So for many reasons I find this to be a very relevant and timely topic. And how often do we have the

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opportunity to help improve the health of our children and potentially save the state and business community money that doesn't require us to spend any state tax dollars? Nebraska and Idaho are the only two states in the nation that do not have some type of protection in place for nursing mothers. So again, it's long past time for us to take action. LB197 will clarify a woman's right to breast-feed in public places. This bill will remove obstacles to breast-feeding, protect women who are fearful of violating existing indecency-in-public laws, and perhaps, and most importantly, show that Nebraska recognizes the public health and financial benefits of breast-feeding. As I worked on this bill, I heard from many mothers who had been--actually been asked to leave public places when they were feeding their babies or, worse yet, asked to go into the public rest room to feed their child. Is that where you'd like to eat your lunch? For whatever reason, there is still a stigma attached to nursing our children in public. There are so many benefits to nursing our babies, and there are people here today who will testify to those many advantages. I would like to touch on just a few. A study done by the Journal of the American Academy of Pediatrics estimates that if 90 percent of women breast-fed exclusively for the first six months, the United States could save \$13 billion per year. Breast-feeding is one of the most cost-effective measures to improve the health of children, and it also reduces the additional expense of buying formula. Women today are so actively involved in their communities, through their work and their family-related activities, so that means they are in public places where they will need to attend to the needs of their babies. Without a policy such as LB197, we are isolating women who want to nurse their child. And, in fact, we may even be discouraging them to consider this as an option. By advancing and ultimately passing LB197, we set a tone in Nebraska that recognizes the public and fiscal benefits of breast-feeding. It supports programs that assist women who want to nurse and protects those who do. Testifiers today will share with you stories of being asked to leave public places because they were nursing their child, statistics on the public health benefits, current programs and initiatives and its relationship with the WIC program, and the importance of this legislation and why it is needed. And I also had the page pass out a letter of support from Judy Amoo, who's part of a--from western Nebraska, the Scottsbluff area, with the Business and Professional Women group out there. So I would be happy to entertain any questions you may have at this time. [LB197]

SENATOR ASHFORD: Thank you, Senator Dubas. Senator Council. [LB197]

SENATOR COUNCIL: Yes, thank you, Senator Dubas. One of the questions I have is, because the bill just merely states that women have the right, if they are otherwise authorized to be where they are, to breast-feed. My question is--and it goes to many of the testifiers: What, if any, recourse would be available with the passage of this act to a mother who was breast-feeding in a public place where she was otherwise authorized to be? What, if any, recourse would she have if the owner or manager asked her to leave? [LB197]

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SENATOR DUBAS: You know, we looked at a lot of different model legislation things that are in place across the country--and there are other statutes in place that go into much more detail and probably address specifically what you're asking here--and for a variety of reasons just decided not to go into that in-depth with our particular statute and bill that we introduced. I guess her recourse would be that there is a law on the book that says you can't ask me to leave, you can't make me leave, you can't...I mean, I've had women who have been told: If you don't leave, we're going to call the police. But yet they were in a public place where everybody else was allowed. So I would agree with you that this bill probably doesn't have the teeth, like we like to say, in it that it probably could have. But I think due to the fact that we've had such a struggle even getting any type of recognition for any kind of protection in place for a mother, this is a good first step for us to take. [LB197]

SENATOR COUNCIL: Okay. Is there any intent if this legislation is enacted to initiate any kind of public education campaign to property owners? I mean, because that's what I...you know, if people don't know, then what we may end up creating is just more confrontations, because the property owner that doesn't know and says--they call the police. Yeah, the police should know but... [LB197]

SENATOR DUBAS: Right. [LB197]

SENATOR COUNCIL: ...may or may not know. Is there any...? [LB197]

SENATOR DUBAS: There's a lot of education that is going on currently with mothers, with hospitals, with people in the medical field about the benefits of nursing. And I think that's just an additional component that will have to come into that, helping our business community understand. You know, I think there's other laws that are probably in place at a higher level that are going to put some requirements on our business community; that's not what I was looking to do here. But education is definitely a component in that, and I think you'll hear from the people who are going to come up to testify how committed they are to this and their willingness to launch those types of educational campaigns. [LB197]

SENATOR COUNCIL: Thank you. [LB197]

SENATOR DUBAS: Thank you. [LB197]

SENATOR COUNCIL: Thank you, Senator Dubas. [LB197]

SENATOR ASHFORD: Any other questions? Thanks, Senator Dubas. Let's...do you wish to close? [LB197]

SENATOR DUBAS: I will close, yes. [LB197]

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SENATOR ASHFORD: Okay. Proponents--other proponents. Do you want to come forward? Thanks. Okay. [LB197]

AMY BUHLKE: Hi, my name is Amy Buhlke; I'm from Central City, Nebraska. My name is spelled B-u-h-l-k-e, and I am a mother of three children. I would like to tell you a personal story today, something that happened approximately five years in Grand Island, Nebraska, after I had my second child, who was three months old at the time. We had decided to go out for a family dinner, and we hadn't done this a lot, because my child was just recently born. And so we went in the middle of the afternoon to a public restaurant, Old Chicago Pizza. It had just opened in Grand Island, and we were very excited to have pizza with our family. So it was myself, my husband, our two-year-old daughter, and our three-month-old. We got to Old Chicago and were very excited. And we ordered our drinks; everything was going well. We got our drinks, and then we ordered our pizza. Well, my three-month-old child became hungry, and just like any other breast-feeding mom, I covered myself very modestly with a large blanket, and I started to breast-feed my child. She was underneath the blanket, and you probably couldn't even see her. But when the waitress came back to refill our drinks, she looked at me kind of funny, and she walked away. And she came back a few moments later and said: You're really freaking me out; you can't do that here. I didn't say anything, and I didn't stop what I was doing, but I knew exactly what she was talking about. She was telling me that she wasn't comfortable with me breast-feeding my child. So a few minutes later she brought the manager over, and he said: You're making the waitress really uncomfortable with what you're doing, and we don't want to make the other customers in the restaurant uncomfortable, and it's our policy that you're not allowed to breast-feed in our restaurants. Well, at that time I was just really surprised; I didn't have any idea what kinds of Nebraska laws protected nursing mothers, at the time. So that's why I'm here today. That happened five years ago, and I just feel really strongly that Nebraska needs to support breast-feeding moms by passing some kind of a bill. Does anyone have any questions? [LB197]

SENATOR ASHFORD: Does anyone have any questions? Seeing none, thank you. [LB197]

AMY BUHLKE: Thank you. [LB197]

SENATOR ASHFORD: Thanks for sharing your story. I think we're okay. Go ahead. [LB197]

BOB RAUNER: All right, I'm... [LB197]

SENATOR ASHFORD: We may not be, but go ahead anyway. [LB197]

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BOB RAUNER: (Exhibit 7) All right. Okay. I'm Dr. Bob Rauner, and I'm representing the Nebraska Medical Association here today. I'm the chair of the public health committee there. Basically, I'm going to cover the public health and the health effects to the child and some of the demographic changes that have led to this being needed. Breast-feeding, we're taught...you hear a lot lately about healthcare costs and how they reduce those. One of the reasons this has come to our attention: this is probably one of the most cost-effective ways of lowering healthcare costs. The initial costs are extremely low; they're actually almost nonexistent other than the education that's being done. By breast-feeding as opposed to formula feeding, the cost savings start immediately: one, just with lower cost of formula since it's not necessary. Some of the health savings start immediately. We've got conclusive studies on lower rates of ear infections, cases of SIDS, intestinal infections, pneumonia; that's just within the first few weeks to few months. Now, we now have also long-term studies showing that if you breast-feed your child, the longer you breast-feed, the lower the rates of childhood leukemia, type I and Type II diabetes, atopic dermatitis, asthma, and even now, most importantly...well, more in the press, is childhood obesity. And so there's lots of health effects for the children. Senator Dubas mentioned the cost estimates for the entire country being a \$13 billion savings if we can get 90 percent of women breast-feeding six months. Sometimes a billion is hard to wrap your head around. The individual cost: there's about \$200 per child difference. So that's every child that is breast-fed as opposed to formula fed--it's about \$200 for the first year that that saves. Those costs do add up. There are some cost savings to employers as well. Because those kids aren't sick as often, that means Mom doesn't have to miss work as often. And there are some studies on that as well, where women who breast-feed--their absent days are about 50 percent lower than the women who choose to formula-feed. So cost savings are there; they're pretty well substantiated; the evidence is pretty conclusive. Part of the reason this is happening I think, that helps understand why this is an issue now where it wasn't before, is the generational change. A couple generations ago, all women breast-fed because there was no alternative. But at that time most women weren't in the work force; they weren't out in public a lot going to restaurants like they are now. At the time they entered the work force, that was demographically when women quit breast-feeding and switched to formula. And then after we realized that that was not such a good idea, we really did want people breast-feeding, we're at the point where women now are out breast-feeding and they're out in the work force, they're out at Old Chicago, the Joslyn Art Museum, places like that. People aren't used to that now, and so suddenly you're getting women kicked out of the Joslyn Art Museum and asked to leave public events and things like that. That's why it's happening now, where it wasn't an issue 15 years ago. Another thing is this isn't just one thing going on; there's a lot of things. And Jane Miller is going to talk a little about some of the public education, some of the other things happening. But it's also an issue of childhood obesity. NMA has really taken an issue on childhood obesity. There are a lot of things that have to be done. It's one of those issues where there's not just one thing to fix; there's a whole bunch of them. And this is one of a whole host of issues that we've got in front of the Legislature this year.

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And other things that are going on in the physicians' offices and publicly. So thank you. [LB197]

SENATOR ASHFORD: I would just make one comment, general comment. I appreciate the public health committee of the Nebraska Medical Association. I think that the renewed focus on public health and the focus on public health generally by your group and by UNMC and Creighton are incredibly important to our state. I think there was a period of time--after I left, really, in the '80s and early '90s--when for some reason public health became less of a focus. Certainly it was always out there, but it's renewed again, and you should--you and your organization should be applauded. I appreciate all the work that you did with "safe haven"--your organization--and your helping with the violence issues in Omaha and now this issue, which is very important. So I just commend the public health committee. Any questions for Dr. Rauner? [LB197]

BOB RAUNER: All right, thank you. Okay? [LB197]

SENATOR ASHFORD: Thank you. [LB197]

BOB RAUNER: Thank you very much. [LB197]

JANE MILLER: (Exhibit 8) Good afternoon. My name is Jane Miller, M-i-l-l-e-r. I'm a registered nurse with the Central District Health Department program WIC in Grand Island, Nebraska. I'm here to highlight some of the most recent breast-feeding success stories that have occurred in the last couple of years. I have worked with low-income families for 28 years here in Nebraska and am happy to announce to you some of our successes. The Nebraska Breastfeeding Coalition is brand-new. Two years ago it was a baby, and now it's a network of individual members, over 200 strong, and 6 organizational partners. This statewide resource has developed a Web site that offers information and resources for families, professionals, and work place. Last year we had 1,593 visitors to our Web site, up 213 percent over the previous year. The coalition also sponsors a Facebook page, with 450 members, as well as social networking via Twitter. MilkWorks, located right here in Lincoln, provides breast-feeding education and support for mothers regardless of the mother's ability to pay. This nonprofit organization was selected to receive one of eight national grants as part of the Surgeon General's "Call to Action" announced last week. MilkWorks will be nationally highlighted as an example of a successful breast-feeding community center, which is necessary to increase breast-feeding rates and extend duration. The Nebraska WIC program, my program: This statewide program provides nutrition, health information, and breast-feeding support to 45,000 low-income pregnant and breast-feeding women, infants, and children. According to KIDS COUNT, 57 percent of babies born in Nebraska were born on the WIC program. And in October of 2009, WIC revamped its nutrition program to reflect the latest science on healthy diets, address obesity, and provide breast-feeding incentives by providing the greatest amount of food for exclusive-breast-feeding

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mothers. The WIC program has 110 clinics statewide which are coordinated by 14 local agencies. And the handout that you have in front of you--the nursing mothers lounge at the State Fair this past year. When it became apparent that Nebraska State Fair was moving to Grand Island, the discussions for a permanent site to provide an area for mothers to comfortably breast-feed their babies began. The State Fair decided to provide such a center. We were overwhelmed by 1,197 fair-goers who took advantage of the lounge to prepare breast milk by pumping and to breast-feed their babies--45 Nebraska counties, 84 communities, and even 9 out-of-state mothers used the facility. It appears that if you provide it, they really will come. Remember that legislation reflects social acceptance. And I appreciate your action on this very important issue to Nebraska families. Do you have any questions? [LB197]

SENATOR ASHFORD: Yes. Senator McGill. [LB197]

SENATOR MCGILL: That's just awesome; I didn't know that they had that out there. Anyway--and, for me, I would be a proponent of even more expanded rights for women and breast-feeding in locations like this, because, I mean, it's family friendly: it allows moms to not have to stay home with their kid but to still be a part of that family unit as Dad goes and takes the other kids somewhere. And...yeah, this is just amazing. [LB197]

JANE MILLER: I agree. [LB197]

SENATOR MCGILL: So thank you. And almost all the young women my age that are having kids are breast-feeding now. It's become the trend again; it's become what's popular again. And so stuff like this needs to be taking place... [LB197]

JANE MILLER: I agree. [LB197]

SENATOR MCGILL: ...for this new generation of moms. [LB197]

JANE MILLER: The last time that we were here, one of the questions I was asked was: If we pass this bill, will there be a change in the culture? [LB197]

SENATOR MCGILL: There is that change. [LB197]

JANE MILLER: I can tell you... [LB197]

SENATOR MCGILL: Yeah. There is. [LB197]

JANE MILLER: ...after being involved in this for 28 years, it is changing, yes. Thank you. [LB197]

SENATOR MCGILL: Um-hum. [LB197]

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SENATOR ASHFORD: I did see the Surgeon General's speech, and it laid out the six-month continuum, which was very obvious. Yes, Senator Larson. [LB197]

SENATOR LARSON: You said you work with a lot of low-income families, correct? [LB197]

JANE MILLER: Yes. [LB197]

SENATOR LARSON: What percentage of low-income mothers are now breast-feeding? [LB197]

JANE MILLER: That's interesting. Historically, the percentage of low-income women that breast-feed is generally lower. But recent data tells us that this increased support that we're providing is really working. And the breast-feeding initiation rate for WIC moms is very close to 80 percent, which is above the Healthy People 2010 goal of 75 percent nationally. So we beat it here in Nebraska; we did. And Nebraska duration rates are also on the increase, Senator. Thank you for asking. [LB197]

SENATOR ASHFORD: Thanks, Jane. Thanks for all your work over the years... [LB197]

JANE MILLER: My pleasure. [LB197]

SENATOR ASHFORD: ...and all your trips here to inform us over the... [LB197]

JANE MILLER: I couldn't be happier to come back. (Laugh) Thank you. [LB197]

SENATOR ASHFORD: You've been here many times. Good morning--good afternoon. [LB197]

LAURA WILWERDING: I'm Dr. Laura Wilwerding; I'm a pediatrician and an internationally board certified lactation consultant. I am representing the Nebraska Chapter of the American Academy of Pediatrics as their state breast-feeding coordinator, a member of the Nebraska Medical Association involved with all their recent projects, and also a representative of the leadership team of the Nebraska Breastfeeding Coalition. I wanted to talk first about the "Call to Action" that the Surgeon General released last week. And for those of you who are aware of it, it was really a remarkable publication. If you'd like it, it's 107 pages. But I just wanted to share the idea behind it. The underlying message in the "Call to Action" is that women are being sent mixed messages. Women now know that breast-feeding is good; it's wonderful. It has great benefits, as we've heard. But women are deciding to breast-feed and then not given adequate support to be successful. And that's what we need to change. The Surgeon General herself says, quote: The hardest thing is to keep it up, because our

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society and culture aren't there to support them; they really shouldn't have to go it alone. And that's why we're here. In the "Call to Action," they call on state and other policymakers to effect environmental changes that will protect breast-feeding. Protective legislation is one of those environmental factors that will help to protect breast-feeding, and that's what we're calling you to do today. Recently the Nebraska Medical Association, as Senator Ashford noted, has been very active in the public health realm. We're really looking at ways to tackle this childhood obesity problem. Breast-feeding has been identified by the CDC as one of five specific priority areas for prevention of childhood obesity, and that's why the Nebraska Medical Association has taken this on. Not only have they taken it on, but we've had statewide organizational meetings of what we're calling the Child Health and Obesity Partnership, where over 30 organizations from across the state have gotten together to discuss policy issues that affect the health of children and particularly with regard to prevention of childhood obesity. Almost unanimously, breast-feeding promotion and this particular bill was supported within those meetings. So, basically, the passage of this legislation is meant to get rid of the obstacles. Over 75 percent of women in the state of Nebraska choose to breast-feed, but by six months only 47 percent are still breast-feeding. We want to know what can we do to help women. We know this type of legislation will empower women who are active in their community: they're in the children's schools; they're in museums; they're everywhere that you are. But they're with their children, because we're all busy people that are busy doing our lives, and we shouldn't have to feel constrained because we want to do what's best for our babies. This also would signal that the state of Nebraska sees the public health and fiscal benefits of breast-feeding. And, as everyone has already stated, this is one of the most cost-effective ways to decrease healthcare costs for children. Also, and finally, to support the already existing awesome programs that people like Jane Miller are working on. We are so lucky to have such wonderful people, wonderful families in the state. Thank you very much. And if I can answer any questions...I do have an answer for Senator Council's question if you're still interested. [LB197]

SENATOR ASHFORD: I'm sure she is. (Laughter) [LB197]

LAURA WILWERDING: This is actually a question that I've been asked before. And the first question--the question of whether or not there's any recourse for a mother: The first thing that I would tell you is through education, women...and if I had known when I was breast-feeding and had been asked to leave, I would try to clarify the situation. And, obviously, most breast-feeding women are not going to be belligerent and, you know, get into fisticuffs and make them call the police. But having that on their side sometimes I think would just settle someone down. But it's a basic civil rights issue, the same way that they can't send you out because you're an African-American or you're a woman in general; it's the same thing: You can't make me leave because I'm breast-feeding; I have the law behind me. It is, however, a huge issue of education. And that's something--for those of you who aren't aware, the Nebraska physical activity and

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obesity prevention part of HHS is currently writing a statewide obesity prevention plan. And one of the large areas in that is also breast-feeding promotion. And we have specific plans, if this legislation is passed, to help with an education campaign for businesses and the people of Nebraska to understand what this legislation is and what it means for Nebraska families. So those things have been considered, and I think it's a very, very good point to bring up. [LB197]

SENATOR COUNCIL: Thank you. [LB197]

LAURA WILWERDING: Um-hum. Any other questions? [LB197]

SENATOR ASHFORD: Thanks for your energy and commitment. [LB197]

LAURA WILWERDING: I tried to calm down a little today. (Laughter) [LB197]

SENATOR ASHFORD: But I mean, this is our second conversation on this issue, and I didn't forget anything about the first one. So I'm glad..., [LB197]

LAURA WILWERDING: Well, thank you very much for the time. [LB197]

SENATOR ASHFORD: Thanks, Dr. Wilwerding. All right, any other proponents? Opponents? Neutral? Senator Dubas. [LB197]

SENATOR DUBAS: Thank you so much, colleagues, for your attention to this. I'm committed to this issue and to the women behind me and families behind me, because it so important. And if now is not the time, I don't know when is; we've been waiting a long, long time. We deal with children and children's welfare issues on a regular basis here in the Legislature, and I think many times we feel like we're not able to effect much change. There are very serious issues that we're dealing with, with children. This is an issue with a very short, simple-to-understand piece of legislation that we can effect some great change--just by making a statement that if you as a woman make the decision to nurse your child, the state of Nebraska says, go for it. I just can't think of anything better that we could do for the children of our state--and, again, the financial benefits that we can reap because of it. The social benefits, I think, are there too, for us to reap. So I just want to say thanks to my testifiers; I think they just did an awesome job. Dr. Wilwerding did tone down her excitement, because she is passionate about this, and I appreciate her passion and the others who came forward. And I'm really proud of what the State Fair in Grand Island did for our nursing mothers. I heard just...I mean, I spent a lot of time at the State Fair, and that was one of the things I heard the most comments about. So thank you for your attention. [LB197]

SENATOR ASHFORD: Yes, Senator Council. [LB197]

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SENATOR COUNCIL: Yeah, just two quick comments. Number one, talk about when you...I have the public accommodations act behind me if I'm asked to leave because of my race, and that's what I was looking at. I mean, if there's somewhere we need to be looking to provide that same level of civil rights protection--that's why I asked the question. And secondly, I just want to comment for the record, while I know the Nebraska Medical Association was represented here in testimony today, I just want the record to reflect that I met with the Metro Omaha Medical Society during the interim, and public breast-feeding was presented to me as one of their priority legislative agenda items. So I just wanted the record to state that MOMS, Metro Omaha Medical Society, had expressed to me their desire to see this type of legislation enacted this session. [LB197]

SENATOR DUBAS: Great. [LB197]

SENATOR ASHFORD: Thanks, Senator Dubas. It's amazing what three lines can do, isn't it? [LB197]

SENATOR DUBAS: It is. [LB197]

SENATOR ASHFORD: Three lines in a law. [LB197]

SENATOR DUBAS: It is. [LB197]

SENATOR ASHFORD: Maybe we should all learn from brevity and... [LB197]

SENATOR DUBAS: Sometimes less is more. [LB197]

SENATOR ASHFORD: There's strength in brevity. Thank you very much. [LB197]

SENATOR DUBAS: Thank you very much. [LB197]

SENATOR ASHFORD: Okay. Senator Fischer has snuck in. We don't get to see her very often, and here she is. Sorry, Senator Fischer. LB167, is that right? Yeah, LB167. [LB167]

SENATOR FISCHER: Correct. Thank you, Senator Ashford. Good afternoon. And good afternoon, members of the Judiciary Committee. For the record, my name is Deb Fischer, F-i-s-c-h-e-r, and I am the senator representing the 43rd District here in the Nebraska Unicameral. LB167 amends the Nebraska Department of Roads' state Relocation Act to reflect updated provisions of federal law located in Title 49 C.F.R. Part 24. Specifically, the bill allows the department to establish reasonable maximum payments by rule and regulation and expands the list of circumstances under which a person or business will not qualify for relocation assistance. This bill will ensure that

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Nebraska and local agencies are in compliance with the federal government. If this bill is not passed, state and local agencies do face the possibility of losing federal aid and incurring sanctions. I know that Director Fredrickson is here from the department to answer questions. I would be happy to do so also. Thank you, Mr. Chairman. [LB167]

SENATOR ASHFORD: Thank you, Senator Fischer. Yeah, Senator Council. [LB167]

SENATOR COUNCIL: Thank you, Mr. Chairman. Thank you, Senator Fischer. Since the bill does provide for a series of new definitions and applications--and tell me, Senator Fischer, if it's better...if my questions are better directed to the department officials--but as I understand it, LB167 is being offered so that our laws conform with the federal relocation laws. Since we presumably operate pursuant to them now, I mean our Nebraska law wouldn't supersede federal, particularly if we're talking about federally assisted or federally funded highway projects, correct? [LB167]

SENATOR FISCHER: Correct. This law is just putting Nebraska in compliance with those federal laws. [LB167]

SENATOR COUNCIL: Okay. So if I look at pages 3 through the top of 6, all of that new language would be language that we would find in the United States code for the most part. [LB167]

SENATOR FISCHER: I would assume so but I would think you'd have to ask the director if that is word for word what the federal law is. [LB167]

SENATOR COUNCIL: Okay. Because I will ask him at the end, in one of the questions, so that you'll know, Senator Fischer, on page 3, beginning in line 5 there is the insertion of a qualifying phrase, "determined by the displacing agency to be in unlawful occupancy," and I would need to know whether that is coming from the federal government as well, and if not, what problems were being experienced. I think that kind of creates problems if you don't have standards as to guide the displacing agency on what is and what is not unlawful occupancy. [LB167]

SENATOR FISCHER: I'm sorry, Senator, I can't tell you if that is directly from federal law or not. [LB167]

SENATOR COUNCIL: Okay. All right. Thank you. [LB167]

SENATOR ASHFORD: Thanks, Senator Fischer. And I know you have to get back to Revenue so... [LB167]

SENATOR FISCHER: I would waive... [LB167]

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SENATOR ASHFORD: But you can't... [LB167]

SENATOR FISCHER: Oh. [LB167]

SENATOR ASHFORD: ...because Senator Harr... (Laughter) [LB167]

SENATOR HARR: It's just a quick... [LB167]

SENATOR FISCHER: I better not close my book yet then, right? [LB167]

SENATOR HARR: Yeah. It's a quick question. Why isn't there a revenue fiscal note attached? I mean there is, that says zero. How come? Won't this save the state money though if we pass this? [LB167]

SENATOR FISCHER: How would it save the state money, Senator? Oh, you're thinking so we don't lose the federal money for highways,... [LB167]

SENATOR HARR: Well,... [LB167]

SENATOR FISCHER: ...that that would be a savings? [LB167]

SENATOR HARR: Well,... [LB167]

SENATOR FISCHER: Usually I... [LB167]

SENATOR HARR: ...definitely that, yes, I appreciate that, but also doesn't it...and it's...I guess definitely that but also because there will be less paid out. Is this all federal money that's paid out currently to the owner occupants? Is that correct or am I just completely out in space? [LB167]

SENATOR FISCHER: I don't believe it's federal money that's paid out. I think it's state money. But I apologize for not knowing that but I would assume the director would. [LB167]

SENATOR HARR: Okay. And maybe I'm just out there, Senator "Moonbeam." Okay, thanks. [LB167]

SENATOR FISCHER: I'm probably opening up a can of worms here, but this law or a similar bill has come up in the past. I can't find the reference that I wanted to refer you to. [LB167]

SENATOR ASHFORD: We will follow up. [LB167]

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SENATOR FISCHER: So I'll just pause on that one. [LB167]

SENATOR HARR: I know. Okay. Thank you very much. [LB167]

SENATOR ASHFORD: (Laugh) We'll follow up. Thanks, Senator. [LB167]

SENATOR FISCHER: Sorry. [LB167]

SENATOR HARR: No. Thank you. [LB167]

SENATOR ASHFORD: Thank you, Senator Fischer. And if we need you, we'll come get you I guess. (Laugh) [LB167]

SENATOR FISCHER: We have the Governor in Revenue, so I better get back. [LB167]

SENATOR ASHFORD: All right. Oh boy. [LB167]

SENATOR FISCHER: Thank you. [LB167]

SENATOR ASHFORD: Okay. Thanks, Senator Fischer. How many proponents do we have? Yes, Mr. Fredrickson. I think I heard you on the radio this morning, didn't I? Weren't you on? [LB167]

MONTY FREDRICKSON: On a different issue. [LB167]

SENATOR ASHFORD: It was. [LB167]

MONTY FREDRICKSON: (Exhibit 9) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Monty Fredrickson. [LB167]

SENATOR ASHFORD: You did a good job. [LB167]

MONTY FREDRICKSON: Thank you. [LB167]

SENATOR ASHFORD: That's what I was going to tell you. You were on the radio, I'm telling you right now you were, and you gave the five points on highway safety and you did a good job. [LB167]

MONTY FREDRICKSON: Oh, our safety goal, yes. [LB167]

SENATOR ASHFORD: Yeah. [LB167]

MONTY FREDRICKSON: Very great accomplishment. My last name is spelled

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F-r-e-d-r-i-c-k-s-o-n. I am the Director/State Engineer for the Department of Roads. I am here today to provide testimony in support of LB167 that adds categories of persons excluded from the definition of displaced persons, harmonizes provisions, and repeals the original Section 76-1221 and 1228. I would like to thank Senator Fischer for introducing this legislation on behalf of the department. The state Relocation Assistance Act defines the lead agency for this act as the Department of Roads, which makes the department responsible for any changes in this act. The state Relocation Assistance Act and ultimately the department's relocation assistance regulations contained in Section 410, Nebraska Administrative Code, Chapter 5, should be amended to reflect the provisions of the federal final rule and to remove any conflicting provisions in that rule. And that federal rule was effective February 3, 2005. These proposed changes are technical changes so the state Relocation Assistance Act reflects the provisions of the federal final rule. Specific changes include allowing the department to establish reasonable maximum payments by rule and regulation, expanding the list of circumstances under which a person will not qualify for relocation assistance, and updating federal references and make minor clarifications. These changes will cause no new costs or fees, no unfunded mandates, and do not require additional staffing, office space, equipment, automobiles, or technology. I'd be happy to answer any questions. [LB167]

SENATOR ASHFORD: Yeah, Senator Council. [LB167]

SENATOR COUNCIL: Yes, thank you. And thank you, Director Fredrickson. And those are the questions, the points I want to get to. The federal rule change was 2005. Have we been operating in accordance with the final rule, notwithstanding what our statutes say? [LB167]

MONTY FREDRICKSON: Yes. [LB167]

SENATOR COUNCIL: Okay. And that's what...it makes it a lot easier because I'm sitting here going, well, if the final rule changed in '05, why haven't we gotten here before now and if there haven't been any problems because you've been operating pursuant to the final federal rule. And you indicated that under the final federal rule, it provided the states with the opportunity to set out additional incidents where someone would not be eligible for relocation assistance. And I notice pages 3 through 5, all of these new additional categories of either qualification or disqualification. Do those come directly out of the final rule or were those developed by the department? [LB167]

MONTY FREDRICKSON: Those came directly from the final rule. Matter of fact, we are directed to follow those. So our law now, as amended by this bill, would mirror... [LB167]

SENATOR COUNCIL: Mirror. [LB167]

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MONTY FREDRICKSON: ...exactly word for word the federal statute. [LB167]

SENATOR COUNCIL: Okay. And I just have one question and maybe you can tell me what this means. At the bottom of page 3, subsection (e), now up above that, you know, it gives all these examples of when someone is not deemed to be a displaced person and it depends on when they occupied the property, but this last one says "a person who has occupied the property for the purpose of obtaining assistance." Can you give me an example of what that would be? [LB167]

MONTY FREDRICKSON: An example could be that we go in and need to relocate ten families and we get eight of them relocated but the houses are still there and we don't want them to deteriorate because we want to sell them, so we'll actually rent them to others. And so someone might come in and rent that property with the desire to try to gain a relocation payment and mislead us and others. And so this is one of the reasons that they are not considered a displaced person. They're trying to beat the system. [LB167]

SENATOR COUNCIL: Okay. Thank you. [LB167]

SENATOR ASHFORD: Thanks, Mr. Fredrickson. I believe that's it. Thank you. [LB167]

MONTY FREDRICKSON: Did we get your questions answered? [LB167]

SENATOR HARR: Yeah, I did. I figured it out. Yeah, thank you. [LB167]

SENATOR ASHFORD: Any other? Thank you. [LB167]

MONTY FREDRICKSON: Thank you. [LB167]

SENATOR ASHFORD: Thanks for all your hard work and your staff. Anyone else want to talk about LB167? Seeing none, thank you. I believe Senator Fischer waived. So, all right, LB293 is our next bill. Senator Avery is our introducer of that bill, and this bill relates to pawnbrokers and so forth. How many testifiers do we have on LB293 today? A couple? Okay. Let's see, what's the next bill? LB310. Oh, Senator McGill has LB310. We'll wait a few minutes here. Did we call Senator Avery, Tom? Yeah. Tom, is Senator Avery coming now? Yeah. How many do we have on LB310, which is the bill after Senator Avery's bill? All right. And then LB251? [LB167]

SENATOR AVERY: Am I up? [LB293]

SENATOR ASHFORD: You're up, Senator Avery. [LB293]

SENATOR AVERY: You must be having a slow day. [LB293]

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SENATOR ASHFORD: We stood down for a while but we're ready to go. [LB293]

SENATOR MCGILL: Stood at ease. [LB293]

SENATOR ASHFORD: We stood at ease. All right, LB293. [LB293]

SENATOR AVERY: LB293. Thank you, Mr. Chair. My name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28. I'm bringing to you today LB293 which will change pawnshop statutes with respect to recovery of property. This will be the first time since 1981 that the Legislature has looked at law in this area. The current law allows owners to recover their property through replevin action, which is a legal procedure--most of you know that since you are lawyers--a legal procedure for property owners whose property... [LB293]

SENATOR MCGILL: Yeah, some of us are. (Laugh) [LB293]

SENATOR AVERY: ...(laugh) has been unlawfully taken to recover that property through the courts. The replevin is used when the owner having the right of property cannot simply repossess or take the property back. It's a relatively, I think, simple process and speedy process for obtaining a court's judgment to recover stolen property by means of requiring the pawnbroker to return the goods to the property owner. What LB293 does is expand the recovery of property section of law by allowing rightful owners who have proof of ownership--that is a manufacturer's mark, serial numbers, model numbers, unique markings, or a police report detailing theft--will permit them the opportunity to buy back their own stolen property at a cost that does not exceed the financial interest of the pawnbroker. Basically, property owners should be entitled to reasonable and expedient recovery of their stolen personal items and should not be burdened with court costs or price markups for their own property. Here's how the pawn system works, at least in Lincoln. A thief robs you of your iPod, your bike, guitar, or if you own one, whatever it is, and takes it to a pawnshop for quick cash. The pawnshop must fingerprint the seller and make a detailed written record of sale. These records are forwarded to the chief of police every day. The pawnbroker may not sell the item for four months, that is in Lincoln. I think it's six months in Omaha. But after such time, they can put it up for sale. Pawnbrokers don't pay high dollar for anything. They're going to pay the absolute minimum. They're in business to make a profit. So typically here's how it goes: They tell the seller, we have 50 iPods. You know, say, your iPod was stolen; you have reason to believe it's at this pawnshop. They'll say: Oh, I've got 50, I can't move this thing; you know, I'll give you 10 bucks for it. Then when someone comes in to buy an iPod they'll say, man, these are so popular, we just can't keep them in stock, so it's going to cost you \$100. This is common and it's lawful. There is absolutely no reason that the pawnbroker ought to be able to make money on stolen property. If you can prove it's yours, you ought to be able to get that back at the same amount of money that

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the pawnbroker paid for it. That is in the record that the pawnbroker has to provide for the chief of police and it's easy to determine that. In fact, I had Chief Casady in my office when we were talking about this bill, and I told him about a former student of mine who had his guitar stolen, and he had the serial number on it. I think he may have been off one digit or something. But he went to a pawnshop, located it almost immediately, and the chief was able to get on his iPod, not iPod, iPad, he got on his iPad and was able to access that file right then. It was three years old and within a minute he had the information on his iPad and we could see what the person had to pay for it. And the problem here is that you don't want people who have already been victimized by having their property stolen to then be further victimized by the pawnbroker. I'm not trying to take anything away from the pawnbroker in terms of lost income. If the pawnbroker paid \$50 for something, then the person that wants to reclaim it without going to replevin action in the courts then ought to pay that \$50. It's a pretty simple bill. It tries to strike a balance between rightful owners and pawnbrokers and the rights of each. I would hope that one of the by-products of this might be that pawnshops would be deterred from buying what sometimes is almost apparently stolen property. So I urge you to advance this to General File. I'd be happy to try to answer any questions. We do have someone here from the Lincoln Police Department. [LB293]

SENATOR ASHFORD: Okay. Senator Coash, then Senator McGill. [LB293]

SENATOR COASH: No, I'll reserve my question for the police department. [LB293]

SENATOR ASHFORD: Okay. Senator McGill. [LB293]

SENATOR MCGILL: And I just wanted to thank you for bringing this because this is something that I have family in law enforcement who have said that this is a huge problem, and it just sickens them that, you know, someone can have a fine piece of jewelry stolen that her late husband bought her and then she has to go in and pay extra, you know, for it. [LB293]

SENATOR AVERY: Yeah. [LB293]

SENATOR MCGILL: So this is something I've always meant to look into and hadn't yet, so thank you, Bill. [LB293]

SENATOR AVERY: I think I just got a vote from the committee. (Laughter) [LB293]

SENATOR ASHFORD: I wouldn't be so sure of that, but... (Laughter) All right. [LB293]

SENATOR AVERY: I will not be able to stay for closing. I have to get back to my own committee. [LB293]

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SENATOR ASHFORD: Okay. Thanks, Senator Avery. [LB293]

SENATOR AVERY: Thank you. [LB293]

SENATOR ASHFORD: All right. Proponents of LB293. Okay. [LB293]

JOY CITTA: Good afternoon. My name is Joy Citta. I'm a police captain for the Lincoln Police Department and we're here to...oh, you want my spelling of my last name, which is kind of unusual, C-i-t-t-a. [LB293]

SENATOR ASHFORD: Okay. Great. [LB293]

JOY CITTA: We're here in support of Senator Avery's bill. Certainly he's already outlined all the fine details on it. But when people are victims of crime, it's hard enough to be a victim of a theft, a burglary, having things that belong to you taken away, and then it's difficult enough to recover. So we certainly support the bill in the means that folks who are already victims are able to get in and at least pay what was originally paid for the item and get their property back. [LB293]

SENATOR ASHFORD: Thanks, Captain. Yes, Senator Coash. [LB293]

SENATOR COASH: Thank you, Chair. Thanks for your testimony, Captain. I just want to make sure that this bill doesn't inhibit law enforcement's ability to investigate the crime or anything of that nature. You know, you've got records of a piece of property that has...you know, it's at the pawnshop and then the owner comes to get it. I don't know, does the police department need access to that item before? You know, I don't...I mean that piece of property actually turns into evidence at that point, right, evidence of theft? So is there any...do you see any problems with being able to, you know, use that piece of property, access it if you need to in order to make your case and prosecute a criminal? [LB293]

JOY CITTA: I don't see any problem with that. We'd certainly look at that as it goes along. Normally when we take a call for service or go take that theft report for somebody, we're telling them, if you locate this, if you come across it, you know, call us right away; let us come back out, let us continue with the investigation; notify us if you find it because there is the recordkeeping piece that goes with this and we're able to get in there and see who brought it in, what their identification was. We've got their fingerprints so we are able to continue investigation through that. [LB293]

SENATOR COASH: Good. Thank you. [LB293]

SENATOR ASHFORD: That's a great question. What happens, and there may be others to talk about this, but certainly with firearms where you have a stolen firearm, and

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oftentimes they can be pawned or are pawned, it would be very important for you to have the ability to get information about that weapon, correct? [LB293]

JOY CITTA: Yes. [LB293]

SENATOR ASHFORD: And so you would encourage the owner obviously to contact you. But what role would you have in that transaction? How does this work exactly? There would be a...the owner would contact the pawnshop? How would this change what happens now, I guess is what I'm...I mean I see the difference in payment, but how would this procedurally work? [LB293]

JOY CITTA: Well, right now the pawn dealers are required, they have a permit, and... [LB293]

SENATOR ASHFORD: And they contact you. [LB293]

JOY CITTA: And we get a daily report... [LB293]

SENATOR ASHFORD: Right. [LB293]

JOY CITTA: ...of everything that they've taken in and that is all entered into our internal record system. And so we have it. We run it against...we run...we'll run those serial numbers against what we've already entered. So if your computer is stolen, your laptop, and you've got the serial number, make, and model, and you've reported it to us, we've taken that report, we have entered all that information into our internal record system. [LB293]

SENATOR ASHFORD: Okay. [LB293]

JOY CITTA: When we get the report in from the pawn dealers daily, those are again entered and we're checking them against what we already have. Now you may not know the make, model, and serial number of your particular computer but you've now found it somewhere by looking around or we're posting on-line. You can get out there and read, our officers can, information about what's available. [LB293]

SENATOR ASHFORD: Well, if you're an owner and you take and you report the stolen item... [LB293]

JOY CITTA: To us. [LB293]

SENATOR ASHFORD: ...to you, then you've got a match through the pawnshop records. [LB293]

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JOY CITTA: We would have a match if everything matches up, so. [LB293]

SENATOR ASHFORD: So that's a valuable service that the pawnbroker is providing. [LB293]

JOY CITTA: Very valuable. We have great cooperation here in Lincoln. We, you know, have a good relationship with our pawn dealers. They report that information. It's timely. It comes to us. And it is very valuable for us to be able to get out there and find their property or find the people who turned it in, not necessarily the same people who took it from them but... [LB293]

SENATOR ASHFORD: Right. And is that data from the pawnbroker, from the pawnshop, is that entered by you daily when it comes in or the next day or as soon as possible I suppose. [LB293]

JOY CITTA: Yes. [LB293]

SENATOR ASHFORD: Okay. [LB293]

JOY CITTA: The staff works Monday through Friday,... [LB293]

SENATOR ASHFORD: Okay. [LB293]

JOY CITTA: ...so it is entered daily on those days. [LB293]

SENATOR ASHFORD: Okay. Yeah, Senator Harr. [LB293]

SENATOR HARR: Thank you. I've worked a little bit in this area. I guess my question is, in Douglas County at least, when there's a match, the officer goes down--and actually Senator Cornett used to do this before she retired. [LB293]

JOY CITTA: Put a hold on it. [LB293]

SENATOR HARR: Or disable it. Yeah, sorry. And they take...then the police would take the property, correct? And now the property is in the custody of the...in this, my case, would be the Omaha Police Department. Is that correct? [LB293]

JOY CITTA: We can file an action to take the property. Our procedure is we put a hold on it. [LB293]

SENATOR HARR: Excuse me? [LB293]

JOY CITTA: We would put a hold on it. [LB293]

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SENATOR HARR: Put a hold. Okay. So there's a pawn hold. If it is, and this is what...right now you have to have a replevin motion to return the property. Is the pawnbroker reimbursed if there is a replevin motion, or not? [LB293]

JOY CITTA: I'm sorry, I don't know that. [LB293]

SENATOR HARR: Okay. And maybe when someone else comes up and speaks we can find that out. [LB293]

JOY CITTA: One of the attorneys, yeah. [LB293]

SENATOR HARR: Okay. [LB293]

SENATOR COUNCIL: I don't think they...no, if you have to go through a replevin action, I don't think they get reimbursed. [LB293]

SENATOR HARR: Okay. [LB293]

SENATOR LAUTENBAUGH: They don't balance it out. They just...they get the stuff back and that's the end of it I think. [LB293]

SENATOR HARR: Okay. Thank you. [LB293]

SENATOR ASHFORD: Interesting. It's an interesting...thanks, Captain. I think... [LB293]

JOY CITTA: Thank you. [LB293]

SENATOR HARR: Thank you. [LB293]

SENATOR ASHFORD: There don't seem to be any other questions. Other...do we have other that are proponents? And do we have opponents? Neutral testifiers? [LB293]

SENATOR COUNCIL: We have an opponent that needs to come up. [LB293]

SENATOR ASHFORD: Oh, I'm sorry, we have an opponent? Come on up. [LB293]

PETE LANGER: Afternoon. [LB293]

SENATOR ASHFORD: Afternoon. [LB293]

PETE LANGER: My name is Pete Langer, L-a-n-g-e-r. I'm a facility manager for Alter Trading Corporation in Norfolk, Nebraska. For the most part, we agree with everything

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that the bill is trying to say. The one issue that we have is that at this point it lumps anybody in the scrap industry also with pawnbrokers. We see a pretty major separation there. We're talking about commodities on one side and we're talking about basically, again the laptops, the guitars, the computers, things of that nature. We really kind of disagree with that lump there. The biggest issue that we have, so much of this stuff we're forced to do already through existing legislation. Any high-risk items that we deal with, high-value scrap metals, we already have most of this in place. A lot of the other lower value items that we deal with, those items it would be incredibly prohibitive for us to be able to try to track all of this information. The volume of material we deal with day in and day out, it just wouldn't...we couldn't pull this off. We don't really have any issues with Section 2. In Section 3, we start to...you run more into this whole bill would circumvent the subpoena and the warrant process, so suddenly law enforcement has the ability to come into our facilities and assume that this stuff is stolen rather than have to go through the process in order to prove that, no longer requiring a judge's order, just by stopping by during regular business hours. And I have to add that we do this. This is a process. We have a fantastic relationship with law enforcement almost across the board. Almost throughout our industry we provide this information. I just don't want to end up in a place where we're now required to by law without having to go through process. I don't think...the other issue I have, I don't want to end up in a position where someone can come into one of our facilities. We don't have many of these marks, many of these identification numbers. We're talking about a commodity no different than corn or beans. It's difficult to tell one type from the next. So I don't want to be in a situation where somebody in one of our facilities is forced to make a determination about whether or not the claim of the person who arrives, saying that that material was stolen from them, is or isn't legitimate. We're not in a place to make that determination. Our people aren't trained to handle those kind of situations. That's what law enforcement is for and that's why we have this subpoena and warrant process. The number one issue, for what I've heard so far from Senator Avery, is this is geared more towards goods, pawnbrokers, and we agree with that. What we don't agree with is that we're not pawnbrokers. We are commodity dealers. We move scrap metals. We're not in the business of profiting from theft at any level. So while we agree with what's going on, we just want to make sure. This may not be the right language to accomplish what you're trying to accomplish. Any questions? [LB293]

SENATOR ASHFORD: Yes. Senator Lautenbaugh. [LB293]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. So briefly put, what you're saying is that the things that come to you don't necessarily have serial numbers and aren't as readily identifiable as the stuff that would come to a pawnshop. [LB293]

PETE LANGER: Exactly. [LB293]

SENATOR LAUTENBAUGH: So this would cause a substantial hardship for you as

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compared to the pawnshops. [LB293]

PETE LANGER: It would. And a lot of the information that's being asked for here we track already. Now when you start getting into fingerprints, driver's licenses, we track that information. We're required by law to track that information on high-value items that have proven problematic in the past. When you start getting into the lower-value, higher-volume items that we deal with, we're talking tens and thousands of tons of this material a month, we may deal with 500 to 1,000 different transactions in a day. It becomes...I can't see how law enforcement could possibly comb through all of that looking for this information. I just see that being useless and incredibly prohibitive to us. [LB293]

SENATOR LAUTENBAUGH: So in other words, simply put, if we removed scrap dealers from this, your opposition would go away. [LB293]

PETE LANGER: Absolutely. [LB293]

SENATOR LAUTENBAUGH: That's probably obvious I guess. [LB293]

PETE LANGER: Yeah. (Laughter) Yes. [LB293]

SENATOR ASHFORD: And we have passed quite a bit of legislation in this area in the last... [LB293]

PETE LANGER: And successfully. I think that legislation has been successful. [LB293]

SENATOR ASHFORD: Yeah, with the cooperation of your group... [LB293]

PETE LANGER: Yeah. [LB293]

SENATOR ASHFORD: ...and, you now, agreement. It's been a very good process so... [LB293]

PETE LANGER: Again, yeah. [LB293]

SENATOR ASHFORD: Yeah. Senator Harr, then Senator Coash, and then Senator Council. [LB293]

SENATOR HARR: Thank you. Could you tell, just for the record, what are the lower-value, high-volume items that would be harder to track? [LB293]

PETE LANGER: The lower-value items would be more along the lines of old white goods, appliances, car bodies, farm scrap, things that wouldn't necessarily have

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numbers on them to begin with or that have been destroyed to the point that that stuff is either illegible or not on that item anymore. We may get...I mean, to give you an idea, we may get a load of appliances in that may have 500 appliances in one trailer. It's not possible to go through that, from our perspective, to be able to go through that and try to find all of this information for every piece that comes through there. [LB293]

SENATOR HARR: Okay. Thank you. [LB293]

SENATOR ASHFORD: Yes, Senator Coash, and then Senator Council. [LB293]

SENATOR COASH: Thank you, Chair. As I read the statute, this applies to certain types of businesses, and I just want to understand which category you think you fall into. [LB293]

PETE LANGER: We would...my concern is that, according to this law, we would be assumed to be junk dealers. [LB293]

SENATOR COASH: Assumed? Okay. [LB293]

PETE LANGER: Yeah. There's no language in there saying that we are... [LB293]

SENATOR COASH: Okay. [LB293]

PETE LANGER: ...but I don't want to be lumped into that position where suddenly we're forced to deal with this by assumption. [LB293]

SENATOR COASH: Okay. Because as pawnbrokers you're obviously not... [LB293]

PETE LANGER: We're not. [LB293]

SENATOR COASH: ...you're not taking...you're not loaning money on any of the goods that you get. [LB293]

PETE LANGER: Absolutely not. [LB293]

SENATOR COASH: Secondhand goods? Probably not, or junk dealers. [LB293]

PETE LANGER: No. We're basically end of life recyclers for scrap metal. [LB293]

SENATOR COASH: Okay. So it's the junk dealer piece that you're worried about being... [LB293]

PETE LANGER: That's what we're concerned about. [LB293]

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SENATOR COASH: Okay. I got you. Thanks. [LB293]

PETE LANGER: Uh-huh. [LB293]

SENATOR ASHFORD: Senator Council. [LB293]

SENATOR COUNCIL: And I'm going to waive then. I was going to ask something that was not totally relevant. But do you see an increase in copper? [LB293]

PETE LANGER: We...recently, yes. Now this legislation has been in place for roughly two years, the existing legislation. It's been pretty effective. In our facility, most of our Nebraska facilities, 75 percent of our Nebraska facilities are represented here today. We actually go above and beyond what the statute requires. These higher value items, they're really only limited to a couple of things--catalytic converters and copper--and we expand that to any of our nonferrous metals just to make sure that in the case that there are thefts outside of these items, which now they know we're required to take information on, we're covered; that we can provide information for prosecution. We don't like this theft and return program any more than anybody else. We would like to stop it. I have seen significantly less at our plant since this was enacted and since we started providing this information and taking this from customers coming in. [LB293]

SENATOR COUNCIL: I just...just an FYI. There's been a rash, an increase of break-ins in vacant homes and the copper thefts. And, you know, it's not so much the...well, taking the copper is bad enough, but the damage that's done to the property... [LB293]

PETE LANGER: The damage. Absolutely. [LB293]

SENATOR COUNCIL: ...to get the copper is... [LB293]

PETE LANGER: And we have established a...the Omaha Police Department and other police departments, we've established a network of e-mail addresses where anytime in the city of Omaha, if there is a theft, we receive an e-mail throughout our entire organization so that everybody is aware. It gives a description what we should be looking for. And we actually...and we're able to help prosecution. [LB293]

SENATOR COUNCIL: Thank you. Great. [LB293]

SENATOR ASHFORD: And that's good to know and I think we spent quite a bit of time in this committee working on that issue. [LB293]

PETE LANGER: Yeah. [LB293]

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SENATOR ASHFORD: And it's always good to know that it's actually (laugh)...it's actually working, so we... [LB293]

PETE LANGER: It works. And we are not...again, we are not in the business of profiting from theft of any kind. [LB293]

SENATOR ASHFORD: Right. [LB293]

PETE LANGER: We want it discouraged as much as any... [LB293]

SENATOR ASHFORD: No, no, and I think that your group played a major role in developing that legislation and it was much appreciated. So all right. [LB293]

PETE LANGER: Absolutely. [LB293]

SENATOR ASHFORD: Thank you for coming back. [LB293]

PETE LANGER: Thanks. [LB293]

SENATOR ASHFORD: We may need you to sign the sheet. Okay. [LB293]

MARK ANDERSEN: I didn't get the signature done either. I'll do that afterwards. [LB293]

SENATOR ASHFORD: All right, we'll do it. Welcome back. I think I remember you coming before to us. [LB293]

MARK ANDERSEN: I feel like I'm kind of following up here, but my name is Mark Andersen, A-n-d-e-r-s-e-n, and I represent Andersen Wrecking Company out of Kearney. We are also a scrap metal recycler. And I kind of drug Pete in on this so we're kind of...we're definitely on the same keel here that we don't like the terminology of the bill. Basically the way Senator hit upon it was junk dealers. That's our real question there. A few issues, I guess would be, first of all, everything covered in this thing we've already covered through LB766 two years ago, as we mentioned. So we're already taking fingerprints, we're already doing photo ID. We're doing more than what this bill in front of us today is actually specifying. So we're already doing a lot more of that and it is working. We've had good success. I know our local police department and the state police... [LB293]

SENATOR ASHFORD: And there are prosecutions occurring. [LB293]

MARK ANDERSEN: They have, yeah. Now those are ongoing, I mean those take forever (laugh), but they do happen. [LB293]

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SENATOR ASHFORD: Yeah. [LB293]

MARK ANDERSEN: So that's not nearly as fast as we like to see it, but... [LB293]

SENATOR ASHFORD: Yeah. [LB293]

MARK ANDERSEN: And so, you know, a lot of this stuff seems to be repetitive why we would have to do this. Another thing is that having to do it manually, that's kind of going backwards. I mean we've invested thousands to make sure that it's electronic so that we could...you know, it's digital so we can store it on computers and hard drives and all this, and now they want it back on paper again, so...in ink. And that's...for us that would be a real problem. We can write tickets every 30 seconds, so doing it by hand is not going to happen. I don't know how we're going to be able to keep up with something like that. We do over 50,000 tickets a year so... [LB293]

SENATOR ASHFORD: Senator Lautenbaugh. [LB293]

SENATOR LAUTENBAUGH: Thank you. [LB293]

MARK ANDERSEN: ...that would be a real problem. [LB293]

SENATOR ASHFORD: Oh, sorry. I'm sorry. Go ahead. [LB293]

MARK ANDERSEN: Yeah, I was going to say, yeah, (laugh) if you want to jump in, go ahead any time. [LB293]

SENATOR LAUTENBAUGH: No. No, please finish. [LB293]

MARK ANDERSEN: As far as...I guess what I compare it to would be like, say, you go into a grocery store, and if the clerk wasn't running it over the little UPC scanner. She had to actually take the name off the can, write it on a piece of paper, just time and time and time...I mean you wouldn't stand there for half an hour while she tried to ring your groceries in. So this is the kind of thing that we would be facing, you know, if this was in effect for our type of business. I don't know if that's what was intended when the bill was written, when they called it junk dealers. I'm not sure what the intention was there, but I definitely don't think it should apply to scrap recyclers. That's kind of our feelings. Basically, the other final note I guess I would say is that I don't want to be redundant, like I say, so I guess the final thing would be that it should be up to the police departments and the law enforcement really to take care of a lot of this stuff. I agree that I wouldn't want a person to come in and say, hey, I know that's mine so the law says I can have it back. I would rather go through the proper channels, have them contact the police, which they do now, and the police come down and they investigate. They either take the property or they, you know, they tell us to hold it, put a hold on it until it's

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determined, and we go through the proper steps and procedures. So I guess that I'd feel much more comfortable doing it that way than...I'm a little vague on exactly how this process would work the way this bill is written, if it applies to us. I'm not sure if it does. That's where the question lies so...but I'll keep it brief. [LB293]

SENATOR ASHFORD: Senator Lautenbaugh. [LB293]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. And I don't speak for Senator Avery and that's actually at Senator Avery's request. (Laughter) But with that said, I got from his testimony that he wasn't looking, thinking of you when this bill was drafted. So again, assuming we can clarify it to make sure that it's limited to pawnbrokers, you're fine with that. [LB293]

MARK ANDERSEN: Yes, absolutely. [LB293]

SENATOR LAUTENBAUGH: The clarification would take care of it. [LB293]

MARK ANDERSEN: Absolutely. We would feel very comfortable with that, yeah. I'm not an expert on pawnbrokers and I don't want to say good or bad about either. [LB293]

SENATOR LAUTENBAUGH: Sure. [LB293]

SENATOR ASHFORD: And just for my edification, do you get a transmission to your office in Kearney every day or when these stolen goods are out there? [LB293]

MARK ANDERSEN: We do. [LB293]

SENATOR ASHFORD: How do you...how does that notification come in? I don't... [LB293]

MARK ANDERSEN: You know, we get them through our trade association. It's called ISRI and they actually notify if there's thefts. [LB293]

SENATOR ASHFORD: So you log into that or how does that work? [LB293]

MARK ANDERSEN: Yeah, they send out e-mails if there's something missing. And, of course, we get phone calls, too, lots of times directly from police departments, detectives, things like that. They will call us and they will say: Hey, be on the lookout, you know; we noticed this was missing or that. [LB293]

SENATOR ASHFORD: And I assume that could be a...that's a national database, isn't it probably, or a regional database or... [LB293]

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MARK ANDERSEN: It is, but it's not nearly as...you know, it would be nice if it was a little broader, I guess, you know, a little more specific, spread out. The problem is the country is so large it's hard to cover every region. So they try to limit. Like say if something is stolen in Kansas City, we would probably be notified; something stolen in New York, you know, maybe not. I mean it's more of a regional type of thing as far as for notification. So that's what we personally receive. [LB293]

SENATOR ASHFORD: And then when you get that information then you... [LB293]

MARK ANDERSEN: We actually print the sheet off. We keep track of that. And, of course, we're watching our inventories as they come in or our purchases each day as they come in and compare them to our inventories and see if there's anything that fits that description or even similar to it. [LB293]

SENATOR ASHFORD: Okay. So your staff would be informed. [LB293]

MARK ANDERSEN: Um-hum. Oh yeah, the staff are trained to watch for those types of things, yeah, just as was mentioned, yeah, because, like you say, copper and catalytic converters are the two number one things. That's what the original bill was written for a couple years ago and...but it applies to other things too. It's not just that that's being stolen either. So I mean we cover the spectrum, try and watch for all types of metals. [LB293]

SENATOR ASHFORD: Thanks for that. I don't think I have any other questions. Thank you. [LB293]

MARK ANDERSEN: Okay. [LB293]

SENATOR ASHFORD: Get your point. We got it. Thanks. Any other opponents? Neutral testifiers? Senator Avery waives closing and we'll work with him on the language. Okay, Senator McGill is up, LB310. [LB293]

SENATOR MCGILL: This will be just a second. (Laugh) [LB310]

SENATOR ASHFORD: Okay. Are you ready? [LB310]

SENATOR MCGILL: I'm just going to ad-lib. [LB310]

SENATOR ASHFORD: Oh, ad-lib, okay. [LB310]

SENATOR MCGILL: I don't have what I had written but that's okay. [LB310]

SENATOR ASHFORD: Okay. Senator McGill. [LB310]

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SENATOR MCGILL: I think I'm competent enough to ad-lib. (Laugh) Hi. I'm State Senator Amanda McGill, M-c-G-i-l-l. I represent District 26 in northeast Lincoln. I bring to you today LB310. It's a bill that we started working on last year with various domestic violence groups who were concerned about protection orders and a court case that altered the interpretation of what was necessary in order to get a protection order. This is specifically dealing with the term "imminent" and some court cases revolving around that, and I've got plenty of folks behind me to reiterate all the details of those cases. And we want to make sure that women who are feeling that serious threat are still able to use a protection order in the way that it was initially designed to be used. So we think there are some changes that could be made to bring it back in line with the original intents. The Bar Association does have one part of the bill dealing with the attorneys and indigents that they're going to be here testifying against the bill because of...but we have drafted an amendment to take that part out. It's not the substantial part that we're most concerned about. So we're willing to work with them on that. I'd like to thank Molly in Senator Lathrop's office, and Senator Council, for helping work on this legislation in the interim and the beginning of this session so that hopefully we have it worked out in a way that the committee can move it forward. And with that, I'll take any questions.
[LB310]

SENATOR ASHFORD: Thank you, Senator McGill. Seeing none, we'll go to the first testifier. [LB310]

ROBERT SANFORD: (Exhibit 10) Senator Ashford and committee members, good afternoon. My name is Robert Sanford, S-a-n-f-o-r-d, and I'm the legal director and lobbyist for the Nebraska Domestic Violence Sexual Assault Coalition. The coalition consists of 21 programs, serving victims of domestic violence, sexual assault, and stalking, across the state. I am here to express support for LB310. As Senator McGill noted, senators stated in 1978 that "there is a present and growing need to develop services which will lessen and reduce the trauma of domestic abuse." We have seen at least two murders in Nebraska since the start of 2011 that are directly related to domestic violence. The Rita Eckhout murder in Omaha quite possibly could have been prevented had language that is proposed in LB310 already been law--language which would have corrected a problem brought to light by the Cloeter decision. The Cloeter decision was released on June 30, 2009, the last day of the court's fiscal year. In the year following that decision, the number of domestic abuse protection orders granted across the state fell by 10.54 percent, while the number of applications filed only fell by 3.87 percent. The court, in Cloeter, clarified the definition of domestic abuse under 42-903 in such a way that an individual applying for the legal relief offered by the Protection from Domestic Abuse Act would practically need to be assaulted before qualifying for the relief that is supposed to be provided through this act. This bill seeks to restore the definition to one that supports the original legislative intent and meet the federal definition of a protection order found in 18 U.S.C. 922(d)(8) and (g)(8). While the

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language clarifying the definition of domestic abuse would have prohibited Mitchel Hadan from possessing a firearm, additional obstacles may have deterred Ms. Eckhout from seeking relief from the courts or law enforcement that may have saved her life. Court filings show that when an ex parte domestic abuse protection order against Mr. Hadan was dismissed, the court sent a letter, dated August 30, four months prior to her death, informing Ms. Eckhout that she owed the Douglas County District Court \$82 in filing costs and the Douglas County Sheriff's Office an unspecified amount for serving the protection order. Federal law requires states such as Nebraska to certify that the state does not require victims of domestic abuse to bear the costs associated with the filing, issuance, registration, or service of a protection order. Some judges dismiss protection orders if a victim does not appear for the hearing and some routinely charge costs to the victim. Victims may not appear for a hearing or ask that an order be dismissed due to threats of retaliation and/or future abuse by the batterer. The fact an order is not granted or that a victim asks to have an order dismissed should not suggest that the protection order was sought in bad faith or that the statements in the order were false. It is possible, directing Ms. Eckhout to pay these costs, contradicting federal grant certification requirements, could have discouraged her from additional help from law enforcement and the courts. Thank you. [LB310]

SENATOR ASHFORD: Okay. I'll get...yes, Senator Harr and then Senator Council. [LB310]

SENATOR HARR: I guess I'm a little confused. You would agree with me that there are frivolous protection orders filed. [LB310]

ROBERT SANFORD: I wouldn't necessarily call them frivolous protection orders. There are protection orders that are filed that some people don't believe meet the qualifications of a protection order, but they're certainly sought for the purpose of seeking protection for that particular victim. [LB310]

SENATOR HARR: Well, then you've lost me, if you don't think frivolous protection orders are filed. I guess I would say that based on my experience I have seen frivolous protection orders filed. And I think it's a problem and it's definitely...I understand your point of view that some are and there are reasons why they're dismissed--you know, run the gamut--but there are definitely frivolous ones filed. And I think the judge...does this take away? From what I'm reading it takes away the judge's ability to determine the frivolous, if it's frivolous or not. Is that correct? [LB310]

ROBERT SANFORD: What Nebraska law currently allows is that a court order a victim to pay filing costs if the court determines that the protection order was filed falsely or in bad faith. [LB310]

SENATOR HARR: Yes. [LB310]

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ROBERT SANFORD: What federal law requires is that states receiving certain types of grants, such as a STOP grant, which Nebraska does currently receive, and the dollars through the Grants to Encourage Arrest program which the state has received in the past through the Attorney General's Office, those entities that are applying for the federal dollars have to certify that the state does not require a victim to pay filing fees. The state has submitted certifications in the past based on state law. My contention though is, is that by the practice of actually having judges order victims to pay the fee, that they are, in fact, violating other parts of the federal law which says that not only does the state law have to say that, but the policies and practices also have to implement that. [LB310]

SENATOR HARR: But you are assuming they're victims. If they're not a victim, then it's not a big deal. Then we're not violating federal statute. [LB310]

ROBERT SANFORD: I don't think that that's a correct interpretation of the federal law. They may not be a victim to the...to...and actually...when you look at the state law, the state law does not actually define a victim, that I'm aware of. It does say that this is domestic abuse. It outlines the three pieces of domestic abuse. And it certainly doesn't specify who a victim is but it says who can apply for. [LB310]

SENATOR HARR: And let me start out by saying I think this is a great bill and it's some great cleanup language in here--the difference in harassment. I mean, that's all necessary and it's good and it's well, and I'm behind that 110 percent. It's just I worry...you know, there are a lot of people who abuse this system, and I feel as though they cheapen the real victims out there by abusing the system, and I'm worried that this might go to more people abusing the system and causing more costs to the state. And that's my only concern with this language as it's currently written. [LB310]

ROBERT SANFORD: If I can offer... [LB310]

SENATOR HARR: Please, yes. [LB310]

ROBERT SANFORD: One of the things that I would go back to the original legislative intent and look at what the purpose of the Protection from Domestic Abuse Act is, which is to limit the harm and trauma to a victim. The Cloeter decision essentially requires that a victim be so close to being assaulted that law enforcement or something prevents the assault from happening. That decision ultimately removes her ability to get the protection order that should be protecting her in the first place. [LB310]

SENATOR HARR: I think that's 17 Nebraska App. 741 is where that rule...is that correct? I think...I think you're saying Cloeter, right? [LB310]

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ROBERT SANFORD: Yes. [LB310]

SENATOR HARR: Yeah, exactly. Yeah, I'm very well...I remember, and I am versed in this. I'm just worried about frivolous victims who aren't...frivolous actions where you don't have actual victims. [LB310]

ROBERT SANFORD: And one of... [LB310]

SENATOR HARR: And let me give you a situation where I file for a divorce, and I decide I'm going to file a protection order to get even with my spouse and maybe get some advantage in the divorce case. Well, now things have calmed down a little bit and I pull that away without any evidence. There never was a victim. And I think there is bad faith there and I think at that point court costs should be assessed. And that's my concern. [LB310]

ROBERT SANFORD: And I guess that what I would offer is, is that courts should have...should be required to go further than just the simple fact that somebody is not showing up, because there are a lot of reasons why somebody doesn't show up, to determine if bad faith has taken place. That's what we're asking in this. A lot of times...and if you looked at the news accounts of the Eckhout murder up in Omaha--and I don't know if I'm pronouncing that correctly--but one of the things that was noted in news reports on that was that he had been harassing her regarding other criminal charges. We don't know for sure that that prevented her from going to the hearing, but it quite possibly could have. [LB310]

SENATOR HARR: And I agree with that. But we're taking it out of the judges' discretion. And, you know, here's the problem. The judges are already overtaxed; you know, there's already a shortness of time. So you've just got to let those go, and then here's what happens. People find out that these victimless ones are never gone after so they continue to do it more and more, and now we've just logged up the system more, and so the system becomes jammed because there is no enforcement mechanism. So I think it's important...while I understand your reasoning, it's good, I do have some concerns about the actual (inaudible) and policy of it, so. Thank you for coming today. [LB310]

SENATOR ASHFORD: Senator Council. [LB310]

SENATOR COUNCIL: And just as a follow-up, Senator Harr and I'm sure Senator McGill will corroborate, I had a similar concern when we were discussing this during the interim. I mean I myself have had to defend cases where there is some disagreement, no threats, no harm, just the one partner or one person involved in a relationship is upset because they saw the guy with another woman and filed a protection order. I mean it...they happen. And but what I was...I guess made me feel more comfortable, Senator Harr, was that the language is that it shall not on its face be considered bad

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faith if someone dismisses or shows up. But in all likelihood, and what did happen in my case was the guy showed up, and the woman, the new one he was seeing, showed up and told the judge: You know, she's just mad because we started going together. And that's evidence of...that's evidence presented in bad faith, and I would expect the person who filed that to be charged with court costs. [LB310]

SENATOR HARR: Well...and maybe we can talk about this in exec, but in that situation you've just given he had to go out and hire an attorney and he showed up for court, she showed up. Now if it's just dismissed out of hand, and it's over and over and over, it's the same person doing the same thing over, same cause of action over and over again, then they probably have a pretty good--and it's always dismissed--the judge knows the system. I mean they're the ones who are on the front lines. They are the ones who would say... [LB310]

SENATOR COUNCIL: Right. [LB310]

SENATOR HARR: ...I'm pretty sure this one is frivolous; we're just...this is how we're going to stop it. [LB310]

SENATOR COUNCIL: Right. [LB310]

SENATOR ASHFORD: Good. Thanks. [LB310]

ROBERT SANFORD: Thank you. [LB310]

SENATOR ASHFORD: Next proponent. [LB310]

PATRICK RUNGE: Senator Ashford, members of the committee, good afternoon. My name is Patrick Runge, R-u-n-g-e. I am an attorney in private practice in Omaha and I am here to support LB310. Mr. Sanford has already discussed the rationale and the benefits for some of the other provisions of the proposed bill. I would like to focus on the credible threat language and why I believe making such a change is wise. The initial impetus for looking at a change to the language in 42-309 (sic--42-903) was as a result of the Cloeter decision from the Court of Appeals in 2008. The court's interpretation of the word "imminent" was so restrictive that in order to qualify for a protection order, a petitioner would have to be basically getting assaulted at the time the application was being made. Clearly, such a result defeats the purpose of the Protection from Domestic Abuse Act, which is intended to provide some degree of safety for persons in fear of domestic assault. So why the credible threat language? There are two basic reasons. First, the changing of the definition of abuse, to a credible threat to someone, addresses the imminent issue as defined by Cloeter. It does so, however, retaining the balance that a judge must make between offering protection to a petitioner claiming to have been abused with the due process protection that must be afforded the accused

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respondent. By requiring the petitioner to show that the respondent has posed a credible threat, the judge has the authority to grant a protective order when that judge believes the petitioner has presented a credible case that they feel threatened. Just as importantly, though, that judge will also have the authority to deny a protective order when that judge does not believe the petitioner has presented such a credible case. In short, the language will allow the judge to make that difficult decision without the artificial barrier of the Cloeter decision's interpretation of the "imminent" opposed upon the judge. There is another practical reason for the credible threat language. That language mirrors the language found in federal firearms law in the definition of a protective order. By using the language from 18 U.S.C. 922, we can ensure that protective orders that are issued from Nebraska courts can get the maximum enforceability by allowing federal officials to more easily use violations of Nebraska protection orders in federal prosecutions for gun crimes. We can also make it easier for Nebraska protection orders to be referenced and used when federal background checks are used prior to the purchase of firearms. In summary then, the change of 42-903(1)(b) to include the credible threat language not only has the policy result of making protective orders more effective, but it has the practical effect of using federal law to assist in their implementation. Thank you for your time and attention to this important issue. [LB310]

SENATOR ASHFORD: Any questions of Patrick? Seeing none, thanks, Patrick. Other proponents? [LB310]

BOB MOYER: My name is Bob Moyer, M-o-y-e-r. I'm the executive director of the Family Violence Council in Lincoln, Nebraska. The Family Violence Council coordinates efforts in Lancaster County to stop violence against women and their children. We coordinate two coordinated response teams that involve law enforcement, police, victim service agencies--one relating to adult sexual assault, the other relating to domestic abuse. I do maintain a database on all protection orders that are filed in Lancaster County, and have done so for more than a decade, and review those annually and produce reports on what happens with those protection orders. I'm also a chair of the Nebraska Domestic Violence Sexual Assault Coalition's standards and review committee for men's domestic violence programs. I'm not an attorney so I don't know that I can get into the legal issues as well, but I will say I'm really worried about some trends in my county. We...and you have some statistics, and I don't know if my county is like the others, but in 2007 we had 547 one-year protection orders granted; last year we had 236. The Cloeter ruling is one of the factors that has clearly played a role in that. The thing is, the reason we created protection orders, I believe, is because there's a chance people could get killed. If you look at homicides, in most jurisdictions a goodly share of them involve domestic abuse issues. And the statistics, nationally, show that 75 percent of the people who are killed are killed either in the process of leaving or after they've left. We've had 16 homicides in my county since I've been on the job in 1996. At least 13 of these, if not all of them, involved people who were in the process of leaving.

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And this is the very thing that protection orders are trying to address. I think that the laws were set up in a way that makes the assumption that people in dire distress, they have the potential of being killed or seriously harmed, and that historically we had a culture that did not recognize--I know that's not true anymore--but we had a culture that did not recognize domestic abuse at all and there were great fears on the part of victims coming forward that are very reasonable about their life being put into jeopardy. And the more barriers we created to keep them away from that, including fears of being...having to pay court costs and those kinds of things, the more likely they weren't going to come forward and weren't going to get the relief they needed. So I really hope you will support this bill because it makes some key steps. I know my time is about out but I'll quickly say: Anybody who has seriously looked at threat assessment will identify the protection order violators are among the people who are most likely to commit homicides, and do. So enhancing provisions for the penalties is a crucial step, because these are people who don't respect the law and are liable to do great harm. Thank you. [LB310]

SENATOR ASHFORD: Any questions? Thanks. And thanks for all your work. [LB310]

BOB MOYER: Thank you. [LB310]

SENATOR ASHFORD: I know you've been here before. Next, Katie. [LB310]

KATIE ZULKOSKI: Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Katie Zulkoski and I'm representing the Nebraska State Bar Association. My last name is spelled Z-u-l-k-o-s-k-i. We are testifying today in support of LB310, and specifically in support of the language that would change the definition of abuse. That's on page 7 of the bill. And we do appreciate Senator McGill and her office working with us. There was a concern on the first section of the bill and we understand there is a proposed amendment to address that concern, so we do appreciate Senator McGill working on that with us. And I'd be happy to answer any questions. [LB310]

SENATOR ASHFORD: Any questions of Katie? Thank you. Next proponent. Opponents? Neutral testifiers? Senator McGill. [LB310]

_____: (Inaudible). [LB310]

ELAINE MENZEL: Chairman Ashford and members of the Judiciary Committee, my name is Elaine Menzel. It's M-e-n-z-e-l, and I'm here on behalf of NACO, Nebraska Association of County Officials, and we're testifying in a neutral capacity. The intent of Senator McGill's bill is laudable. However, we do have concerns about the potential increased costs to counties for the enactment of the provisions for indigent clients. When our legislative committee took a position on this bill, it was our impression that the impact would be minimal to counties, and therefore, we conditionally supported the bill. After reviewing the fiscal note, I would just point out that the impact to the counties and

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the concern that any additional costs to counties will be a burden in light of other bills that are being considered by the Legislature this session, particularly the reduction in state aid to counties, which is a bill that's being heard today (laugh) and tomorrow. So with that, I'll answer any questions. I can defer to one of our clerks of the district court on specifics for the measures. [LB310]

SENATOR ASHFORD: Any questions of Elaine? Thanks for your comments. [LB310]

ELAINE MENZEL: Thank you. [LB310]

JANET WIECHELMAN: (Exhibit 11) Good afternoon, Senator Ashford and committee members. My name is Janet Wiechelman, J-a-n-e-t W-i-e-c-h-e-l-m-a-n. I'm the elected clerk of the district court for Cedar County and also the legislative liaison for the Clerks of District Court Association. We were intending to be in opposition to this bill, but in speaking with Senator McGill, I understand that there may be an amendment offered to this which would strike the issue of the indigent counsel. The reason why we were in opposition to it originally was, of course, the cost to the county, and specifically Cedar County. It would have been additional costs for us because it was not covered in our contract with the public defender. And also we had the issue of the fact of the hearing being continued. Most times we don't find that there's an attorney until the time of hearing, and we know we want to make sure the court is efficient, and it definitely would not have been in the best interest of the court to continue for one week. So we've basically changed it to neutral due to the fact of it being removed from the language. So I would answer any questions, so. [LB310]

SENATOR ASHFORD: Thanks, Janet. Pretty clear. Thanks. Senator McGill. [LB310]

SENATOR MCGILL: I'll just close and say I look forward to working with the committee to add that amendment and deal with any other language issues or discuss some of Senator Harr's issues. I can appreciate our culture of frivolous lawsuits. I think it goes beyond protection orders though, you know. And when we see the impact this court ruling had on protection orders in Lancaster County--you know, we'll try to get that data in other counties as well, to show the true impact that is having. And, you know, I want to make sure that the women who really need it, who are really fearful for their lives, can get them when they need them. Thank you. [LB310]

SENATOR ASHFORD: Thanks, Senator McGill. [LB310]

SENATOR HARR: And men. [LB310]

SENATOR MCGILL: (Laugh) And men. I've had male friends be abused by their girlfriends, so. [LB310]

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SENATOR ASHFORD: All right. Well, there you go. Thanks, Senator McGill. Last bill of the day is LB251, Senator Council. Yes. [LB310]

SENATOR COUNCIL: (Exhibit 17) Chairman Ashford and members of the Judiciary Committee, I am Brenda Council, B-r-e-n-d-a, last name C-o-u-n-c-i-l. I am the senator representing the 11th Legislative District out of Omaha, Nebraska, and I'm here today to introduce LB251. And to put LB251 in perspective, I was going to say particularly for our new members--but at least one of our new members, as the previous Judiciary Committee members were aware, we were charged through LR542 to arrive at cuts in General Fund budgets of agencies and departments within the jurisdiction of the Judiciary Committee by 10 percent. In response to that, the Judiciary Committee received recommendations from those various departments and agencies, the primary one being the judiciary. And as you'll recall, the Judiciary Committee...the judiciary's budget and proposed recommendations to arrive at a 10 percent General Fund reduction amounted to approximately \$8 million over the biennium, and provided various options to be implemented to arrive at that 10 percent General Fund reduction. One was to rely on the assumption that the court would continue to be able to allow...be allowed to utilize probation cash funds in lieu of General Funds, so that would cover a portion of the loss associated with the 10 percent reduction, but the courts also outlined a number of other actions they believed would need to be taken in order to achieve a 10 percent reduction in General Fund expenditures. One of those options was to close 30 county courts in order to meet the budgetary requirements set out in LR542. This committee did not take any specific action with regard to the options that were presented by the judiciary, but instead, just forwarded those options on for consideration during the Appropriations Committee's deliberations. In view of the fact that the judiciary options for arriving at that 10 percent reduction would result or could result in the closing of 30 county courts, we began...some of us began looking at some alternatives to such a dramatic reduction, in my opinion, and access to the judicial system, and I want it to be made clear that I am very concerned about access to the judicial system. And I know some questioned whether LB251, which provides for an increase in filing fees, is contrary to that stated belief. Well, in my opinion, we are being placed with making a decision of six of one and half-dozen of the other. I don't think there's anyone that can dispute that the closure of 30 county courts affects access to the judicial system, particularly for those residents of those counties who are used to accessing judicial services right there at their local courts. The LB251 provides for a \$20 fee increase on all filings in all courts: Supreme Court, district court, county court, civil and criminal, juvenile court, probate court. The \$20 was the proposed amount of the increase, because based upon filings in all of those courts in 2009, increasing the fees at all of those courts by \$20 would generate a little over \$8 million, which would cover the reduction for the judiciary. When looking at surrounding states, and I recognize that there will be opposition, I have met with representatives of entities that are opposed to the increase. I can only state for the committee that even with the increase, comparatively speaking to neighboring states, our filing fees would still be below those.

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But unquestionably, it does represent a significant increase in filing fees. It's about a 40 percent increase. And another concern that was expressed was that over the last decade filing fees have been increased at various times during that last ten-year period, all upon the representation that those increases were to be used to address issues identified by the judiciary. But in those instances where those filing fees were increased, the increased revenue simply went into the General Fund and were distributed through the General Fund, and many of those dollars did not reach the stated purposes of the judiciary. Recognizing that, and appreciating that information being brought to my attention, I have prepared an amendment that I would ask the committee's consideration, along with the base bill. And in the amendment it specifically establishes a Supreme Court Operations Cash Fund which is to receive the amount of the increase here. And if you look through the amendment, everywhere that the filing fee is increased by \$20, it sets forth that that \$20 will go...it's to be transferred into the Supreme Court Operations Cash Fund, and the remaining amount of any filing fee will be divided in the manner in which it is currently divided in statute. Currently in statute, some portion of the fee is designated for the judges' retirement fund, some portion of fees remain with the county governments. And with this amendment, the \$20 increase that is called for under LB251 would be required to be transferred to the Supreme Court Operations Fund. And with that, I'll answer any questions that the committee may have. [LB251]

SENATOR ASHFORD: And there are testifiers, I assume. There are numbers of people here, so. [LB251]

SENATOR COUNCIL: Yes. Well, either that or there's some bills that aren't showing up on the agenda. (Laughter) [LB251]

SENATOR ASHFORD: We usually don't get a big crowd for court cost bills, but you never know. Thanks, Senator Council. [LB251]

SENATOR COUNCIL: Thank you. [LB251]

SENATOR ASHFORD: And let me get a show of hands of who intends to testify today. Okay. Why don't we go to the proponents of LB251. Bob. [LB251]

ROBERT BARTLE: (Exhibits 12 and 13) Good afternoon, Mr. Chairman, members of the committee. I'm Robert Bartle, that's B-a-r-t-l-e. I'm a lawyer in Lincoln, Nebraska, and I currently serve as the president of the Nebraska State Bar Association. Let me first offer my appreciation and thanks to Senator Council for bringing this bill to you. I am here on behalf of not only the Bar Association that supports the bill institutionally, but in support of the Supreme Court. We have worked very closely with all members of the Supreme Court, as well as the courts throughout the state, in contemplation of this legislation. The Bar Association, through its legislative committee, through its executive council, through its house of delegates, supports this because we support the notion of

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access to justice and because we support the reality of keeping courthouses open. We do have a reservation. The Bar Association does not support the concept of justice being funded by user fees. We are a coequal branch of government, the judicial branch of government that I represent in part, and we do not support the notion of user fees entirely supporting the administration of justice. That said, we appreciate the reality articulated to you by Senator Council that we face the prospect, as the Supreme Court reported out this summer, of closing courthouses. To assist you in understanding that concept, I've passed out a map in greater detail. I'm sure my successor, I think the Supreme Court Administrator is here and Ms. Walker can give more detail. But essentially... [LB251]

SENATOR ASHFORD: And the committee...and I just, Bob, just for...so that just... [LB251]

SENATOR MCGILL: We have seen this. [LB251]

SENATOR ASHFORD: ...we have reviewed this ad nauseam. [LB251]

ROBERT BARTLE: Yes. I'll... [LB251]

SENATOR ASHFORD: So not to stop your testimony but just so everybody knows, we have pondered this map about as much as you can ponder any map. (Laughter) [LB251]

ROBERT BARTLE: (Laugh) And I will move on. I will move on, Mr. Chairman, and just highlight the second handout I provided to members of the committee, that being a report out of the state filing fees in the contiguous states, the states around Nebraska. I hope that helps your understanding that not only do some of our sister states, like Colorado and Indiana, have higher fees, but you have in many states, as I've become aware of as a bar president, answer fees, motion fees. We don't even approach that in Nebraska and I'm not suggesting we ought to. I'm simply pointing out in relative terms that you find two states, Wyoming and North Dakota--I'm told by my friends in North Dakota, the only state where the recession doesn't exist because of mineral resources, and I think Wyoming--where you have fees less than that in Nebraska. Our filing fees here in Nebraska are less than a third of the federal filing fees. So recognizing it is an impact on my colleagues in the bar, we support this bill because of, simply, the reality of making hard choices, and we're going to have to keep the courthouses open. We know, as the court has told us, that 95 percent of the court's budget is personnel. We don't have brick and mortar to cut here. That's the counties' concerns. We're talking about people, not just judges, but the clerks of the court that make the system work. That's why the Bar Association supports it. And my red light is up. Can I answer any questions? [LB251]

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SENATOR ASHFORD: Yes, Senator McGill has a question. [LB251]

SENATOR MCGILL: I would like to see a map or a chart like this that is more detailed about what types of cases are being handled in those areas. So like, for instance, in these yellow ones, it's 800 or less. But what type are those? [LB251]

ROBERT BARTLE: Sure. Sure. [LB251]

SENATOR MCGILL: Because I think that has an impact on our decision in looking at how many staff really are needed or not, and how many hours are needed. [LB251]

ROBERT BARTLE: Basically, in the states where you have the yellow, the closing, that basically is the clerk of the court, Senator. And I can... [LB251]

SENATOR MCGILL: Uh-huh, and I appreciate that. [LB251]

ROBERT BARTLE: Sure, and I can... [LB251]

SENATOR MCGILL: I would still like to know what kind of things are being handled in those. [LB251]

ROBERT BARTLE: I understand. [LB251]

SENATOR MCGILL: Yeah. [LB251]

ROBERT BARTLE: I think a significant part of it is in the domestic protective order area, but I... [LB251]

SENATOR MCGILL: Okay, yeah. [LB251]

ROBERT BARTLE: ...I'll see if we can find further material for you. [LB251]

SENATOR MCGILL: I just think that would be useful. [LB251]

SENATOR ASHFORD: Yeah, I think breaking down this data, because we do know the numbers and we've had the numbers for quite some time but... [LB251]

SENATOR MCGILL: Yeah. [LB251]

ROBERT BARTLE: Okay. [LB251]

SENATOR ASHFORD: Senator Lathrop, and then Senator Council. [LB251]

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SENATOR LATHROP: I am going to make this comment, and maybe it's not so much a question but a comment, and that is if we increase court fees by \$20, \$10, \$5, it doesn't matter. There's no guarantee that the...it seems to me that...and the fear that I have is that if we increase court fees by...and I'll use \$10--we split the baby and make it 10 bucks--that just means that we're going to get \$10 times whatever that turns into. What's \$10 going to get us, \$4 million? [LB251]

SENATOR COUNCIL: Yes. [LB251]

ROBERT BARTLE: I think a dollar translates to about \$350,000. [LB251]

SENATOR LATHROP: So that would get us \$4 million. That's just going to be \$4 million these guys are going to give the judiciary less from somewhere else, and we're going to move to user fees. And that's my concern, it really is. I appreciate that we're cheaper, but the idea that if we...if the Bar Association comes in and the lawyers all agree--and believe me, I'm sure we're not going to hear that they do--but if they did, that we all agreed that we would raise it by \$20, that suddenly we would solve this problem. I think what would happen is they would give us less General Funds money, and say: You just got \$8 million from that \$20 increase in your fees. And we would find ourselves moving towards the user fee that you're concerned with, and that's... [LB251]

ROBERT BARTLE: And that discussion was echoed, Senator Lathrop, in legislative commissions of the bar. That is a concern and that's why I qualified when I said we do not support that concept of simply turning the court into a user-fee-operated court. [LB251]

SENATOR LATHROP: And it's a practical effect of... [LB251]

ROBERT BARTLE: Yeah. [LB251]

SENATOR LATHROP: ...if we increase fees on ourselves, and I mean the lawyers and the people that use the courts. That just means that the Appropriations Committee is going to give us less money and they're going to say: Well, you fellows already have \$8 million more from your increase in fees last time. So I don't think that keeps the courthouses open. And frankly, I'm going to just say this because we, as Senator Ashford said, we've listened to this ad nauseam: I think we're headed this way, and the crisis for the money is an excuse; that in reality, when you have courthouses that have fewer than 800 county court filings--that's traffic tickets and little puny matters, that it's time to have the clerk of the district court take those very few filings. And I have a problem with the judges not going there. And I asked the Chief when he was here this fall, specifically: Are the judges still going to go to those districts where we see them in yellow on the map? And my understanding is the answer is yes, but the clerks won't be there, and that will be done by the district court clerk. And that just seems to be

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somebody's idea of an efficiency and bumping the fees up, getting eight more grand into their operating account. I don't think that's going to change this map at all. And maybe that's the thing that we need some assurance, if we're going to see fees go up, that we'll have a clerk in every one of those courthouses and the judges will be doing their rotation. But I don't hear that happening. [LB251]

ROBERT BARTLE: The concern is... [LB251]

SENATOR LATHROP: So that wasn't a question. It was a sermon. [LB251]

ROBERT BARTLE: The concern is my colleagues in greater Nebraska, and the concern is to have the judge and the clerk there so you have the access to the protective order, so you have access that doesn't turn us into a series of regional courts. We don't appreciate that in Omaha and Lincoln like my colleagues in Burwell and Broken Bow appreciate it, and there is a legitimate concern about losing that access in greater Nebraska. [LB251]

SENATOR LATHROP: Certainly. [LB251]

SENATOR ASHFORD: Well said, I think. And we are going to talk about the idea of a restructuring through the court system and asking the Supreme Court to look at that, because we have faced this question not only the four years that most of us or some of us have been here together but also the many years before that when I was here before. So I think at some point we have to come to some...but we appreciate your comments, Bob. [LB251]

ROBERT BARTLE: I thank you for your time. [LB251]

SENATOR ASHFORD: Thank you. Yeah. Janice. [LB251]

JANICE WALKER: Good afternoon, Senator Ashford and members of the committee. And not to be ad nauseam about this, but (laughter) my name is Janice Walker. I'm the state... [LB251]

SENATOR ASHFORD: Well, that isn't ad nauseam. The map is ad nauseam. You're not. [LB251]

JANICE WALKER: Good. Good. Just wanted to wanted to clarify that. [LB251]

SENATOR ASHFORD: I didn't include you in the definition of ad nauseam. [LB251]

JANICE WALKER: (Exhibit 14) My name is Janice Walker. I'm the State Court Administrator, and I'm here speaking in support of LB251 with the amendment

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presented this afternoon by Senator Council. And I want to speak, first of all, to the Supreme Court's position on the use of court fees to support the operation of the judicial branch. The Supreme Court has consistently held the position that court fees should be at a level where citizens are not prohibited by costs from bringing matters to the court. Our constitution provides that all citizens of Nebraska have a right to access to the courts, and the Legislature has in the past worked to maintain court fees at a reasonable level. And as a result, as Senator Council and Mr. Bartle have stated, court fees in Nebraska are considerably less than surrounding states. Second, although court fees have been used for many years to support a variety of programs, including the state General Fund, the Supreme Court believes if fees are to be increased, they should be increased only to support court operations. LB251 with amendments would provide that direct support to offset anticipated cuts to the Supreme Court's budget. But I'd like you to see the many and varied uses of court fees currently, in the document I've handed out to you. I've used the example of filing fees in the county courts for criminal, traffic, and civil cases, and show in the right column there where those fees are directed. You'll see that the only court fees directly supporting court operations at this time are the automation fee, which is the only funding source for our statewide JUSTICE system; the judicial branch education fee, which supports training and education for all 1,100 judges and employees of the branch; and the judges' retirement fee which, along with judges' contributions, entirely funds judges retirement under the administration of the Public Employees Retirement Board. The state does not make a contribution to the judges' retirement fund as it does for other employees of the state. It is difficult at this moment to pinpoint the amount of a fee increase that might be needed by the courts, because the budget process is in its very early stages. And it's the Supreme Court's position that the increase should be only what is necessary to preserve current court operations. I've had preliminary discussions with Senator Council about the level that might ultimately be necessary, and I will be happy to continue working with her and with this committee as the budget process goes forward. And as always, I will answer any questions. [LB251]

SENATOR ASHFORD: Any questions of Janice? Yes, Senator Coash. [LB251]

SENATOR COASH: Thank you, Chairman. Thanks, Janice. In the beginning of your statement, you illustrated the Supreme Court's position that you don't want to use court fees because you believe that higher fees reduce access? [LB251]

JANICE WALKER: It's possible at some point. [LB251]

SENATOR COASH: It's possible. Don't you think \$20 would do that? [LB251]

JANICE WALKER: I really...I don't know. I don't know. [LB251]

SENATOR COASH: I mean I know it's not an exact science: for every \$3 in increased

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fee, X amount of people will drop out of the ability to access the justice. [LB251]

JANICE WALKER: Right. [LB251]

SENATOR COASH: So I know it's not an exact science. But \$20 just seems like that would really...that may be a big enough jump that it really would impact access. [LB251]

JANICE WALKER: Uh-huh. I think above and beyond that, Senator Coash, is the philosophical statement that Senator Lathrop has alluded to that this is a branch of government that should be supported by all taxpayers. I agree with that. The situation that we're in now has made us consider a source of funding that really is not our preferred source of funding. And so I'm grateful to Senator Council and to the committee for considering it. [LB251]

SENATOR COASH: I understand why Senator Council brought it. We have to...we've got to have it out here. So thank you. [LB251]

SENATOR ASHFORD: Thanks, Janice, as always. [LB251]

JANICE WALKER: You're welcome. [LB251]

SENATOR ASHFORD: Proponents? John. [LB251]

JOHN LINDSAY: Thank you, Senator Ashford. And I did that slowly so I wouldn't make the same mistake with your name as I did last time I was up here. I just want to start with some maps, if that's all right? (Laughter) [LB251]

SENATOR ASHFORD: Yeah. I hope you have this one because we would... [LB251]

SENATOR MCGILL: The same map? It's always the same map. [LB251]

SENATOR ASHFORD: We would love to review it again. (Laughter) [LB251]

JOHN LINDSAY: My name is John Lindsay, L-i-n-d-s-a-y, appearing on behalf of the Nebraska County Judges Association in support of this bill. We have the same...about everything that's been said we agree with. There's concerns about the courts going to become user-fee funded, which we don't believe that the judicial branch should be user-fee funded. By the same token, we do support this because of the budget situation that we find ourselves in. You, much more than anyone, are aware of that situation with respect to county court closures, proposed staff layoffs. We believe we already have problems with how much work our staff does. And we have concerns about what those impacts...the impact that those cuts in our budget and potential court closures can have on the administration of justice. We appreciate Senator Council offering another option

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out there, having another option on the table for addressing the problems that you all have been studying over the entire fall. We do support the amendment Senator Council offered. We do think that if the court costs are going to go up they should be geared towards the courts and should go to a cash fund within the court. Be happy to answer any questions. [LB251]

SENATOR ASHFORD: John, my only...and obviously we've served together, this same issue, different year. We really need to get to some resolution on how we're going to structure the court system in Nebraska, especially as it relates to technology. I think the Chief made a great presentation at the State of the Judiciary in his speech and really underlined the great effort that's been undertaken to do technology. And now with JUSTICE actually being completed with the juvenile court, it's being expedited, getting done this fall. That's great work. I don't want to leave here again, I left here once, and but when I leave here again it will probably be the last time I leave here, but that I would hate to have not some change, some resolution and some effort to...not to run around trying to...with the object of closing the court. That's not the goal. The goal is to give people...I think Senator Lathrop said it very well. The goal is to provide access to the courts in a way that is efficient, that's appropriate, it's funded appropriately. And for me, I guess I feel like it's an unresolved matter for me or for us in the Judiciary Committee that's gone on for years: How do we structure our court system and our judges and our resource allocation in a manner that's more efficient than what we've got now? And having said that, I know I brought a bill on, and I have done this before, on city-county merger. And every time I do it, everybody says: Well, we're doing such a great job in county government, we're doing such a great job in city government. And that's absolutely correct. That's why you look for these consolidations and restructuring because people are doing a good job. It's like you bring together operations and consolidate them because they're doing a good job, because you don't consolidate inefficient operations. You consolidate efficient operations in my view, and that's just my feeling. You don't...I think we all have to really think hard over the next few years on a mechanism to address the nature of our state, which is, as Bob absolutely correctly tells us, and we all know, is significantly rural. So I don't know the answer, but I wish, I hope, this bill that's asking the Supreme Court to really dig into this issue this year and we all work together, collaborate and not get territorial and find a way to resolve this, would be great. Anyway. [LB251]

SENATOR LATHROP: Can I ask a question? [LB251]

SENATOR ASHFORD: Yeah. [LB251]

SENATOR LATHROP: Do you know, John, or have you talked to the...you're representing the county court judges, right? [LB251]

JOHN LINDSAY: Yes. [LB251]

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SENATOR LATHROP: Do you know what their understanding of this map is? In other words, if there's...and I'll just take Greeley County, as I seem to always do, which is a...it's set for closing on this map. Are the judges still going to rotate through there and just not have staff? Is that their understanding of what this means? Because I'm not entirely clear. [LB251]

JOHN LINDSAY: I don't know that there is an understanding of what it means. I think that would be, I assume would be by Supreme Court rule or direction from the court. I think you...I believe there has to be a county court, pursuant to the constitution, so my assumption would be that, yes, they would have to go...at some point, hold court in that county. [LB251]

SENATOR LATHROP: And I appreciate that we talked about this ad nauseam, but this is a little bit different perspective and I apologize to the committee. [LB251]

SENATOR ASHFORD: No, no, I wasn't precluding questioning. [LB251]

SENATOR LATHROP: No. No, but I...we did. We talked about it. And we've had hearings on hearings, and then asked the Chief to come in and have more hearings. But I am interested in this question, and that would be the position of the county court judges if this were the new look in Nebraska. And that is we have the map, and if there are counties where...and I'll use the yellow counties on this map. You may not have one of these in front of you, but those are the counties that are set for closing. They have 800 or less cases. And this is in county court, so we're talking about traffic tickets, collection cases--small stuff. [LB251]

JOHN LINDSAY: Probate. [LB251]

SENATOR LATHROP: Probate. Probate matters. In total, they have less than 800. If we go to a model where the district court clerk also serves as the county court clerk, and the judges still make a rotation through there, ride the circuit, is that going to work? [LB251]

JOHN LINDSAY: I don't know that...our executive committee did discuss this. I don't know how much we got into the details. I do know that I'm probably not authorized to jump on and say, yeah, we're all for that. But they, bottom line, they'll make it work. I mean it's...people will find a way to make it work as long as the adequate resources are there to provide the staff. Which, you know, I don't think you want to get into a situation where you're not efficiently using judicial resources by understaffing. Maybe the better educated, better...well, more experience, the judges. You don't want to be inefficiently using their time by having them doing functions that could be done by staff that is more appropriately trained and more appropriately compensated for that particular work.

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[LB251]

SENATOR LATHROP: Yeah. And maybe what we're talking about is some kind of an interim study where we bring in the clerks of the county court, the district court, and some of the county and district court judges from outstate to find out. And because I think we've taken a leap in technology too, which is also something the Chief talked about, which is I can file a case in Greeley County from my office. [LB251]

JOHN LINDSAY: And first, we would be happy to participate in that, and second...just anecdotally, visiting with a friend or I guess law school classmate who will be testifying on the other side of this issue, he mentioned that... [LB251]

SENATOR LATHROP: He does all the time. (Laughter) And one time I... [LB251]

JOHN LINDSAY: Most of my classmates testify against me. [LB251]

SENATOR LATHROP: ...one time I think Senator Chambers lit into him, if I remember (inaudible). (Laughter) [LB251]

SENATOR HARR: Was that Mr. Reisdorff? [LB251]

SENATOR LATHROP: (Inaudible). [LB251]

SENATOR MCGILL: (Inaudible). [LB251]

JOHN LINDSAY: But the interesting thought about some of the paperwork and maybe some systems that could be in place, I would encourage the committee to also seek input from some of the maybe volume users of the court to see if they see efficiencies that could be achieved as well. [LB251]

SENATOR LATHROP: Thanks, John. [LB251]

SENATOR ASHFORD: Thank you. [LB251]

JOE KOHOUT: Chairman Ashford, members of the Judiciary Committee, my name is Joe Kohout, K-o-h-o-u-t, registered lobbyist appearing today on behalf of the Nebraska County Court Association, which is an association made up of the individual employees of the county courts around the state. I think the testimony before me highlights the reason why I'm sitting in the chair before you today. Mr. Bartle referred to the fact that 95 percent of the court's budget is, in fact, salaries and benefits. We're those 95 percent. So I think it's self-explanatory why I'm here today. The last few years we've been in front of the Appropriations Committee talking about full funding for these positions, and now we're in front of you talking about we don't see many other options.

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So with that, Senator Lathrop, you mentioned the interim study. I think, Senator Ashford, you have a bill up to talk about that. We would be happy to be part of that conversation as we proceed to realize in a lot of those counties that you see around there on that map, Senator Lathrop, I would say our employees are already traveling to those county courts, doing the work, moving county to county on different days of the week, and, in fact, in some cases having very little if any reimbursement for that travel. So just to be clear about that. [LB251]

SENATOR ASHFORD: Yes, Senator McGill, then Senator Council. [LB251]

SENATOR MCGILL: Yeah, can you talk about that a little bit more, what exactly the role is for the average, you know, employee out there, how many counties they're serving right now, and...? [LB251]

JOE KOHOUT: You know, it really depends I think--and Janice, I think you would have a little bit better idea about what specific ones are going to which specific courts--but it's not unusual in my experience with past presidents of these... [LB251]

SENATOR MCGILL: Uh-huh. What we need is another map that color coordinates like... [LB251]

JOE KOHOUT: (Laugh) That moves them around? [LB251]

SENATOR MCGILL: ...for each employee out here... [LB251]

JOE KOHOUT: I'd be happy to do that for you. [LB251]

SENATOR MCGILL: ...how many they're willing...how many they cover. (Laugh) [LB251]

JOE KOHOUT: Yeah. We'd be happy to do that. [LB251]

SENATOR MCGILL: Because that would be helpful. [LB251]

JOE KOHOUT: But I think, you know, based on my experience with past presidents of this association who were in those rural courts, you know, being told: Oh, I won't be in my court today; I'll be in a different county, and therefore, you have to get me on my cell phone. It's pretty typical. [LB251]

SENATOR ASHFORD: Senator Council. [LB251]

SENATOR COUNCIL: Yes, I'm was going to ask that question too...well, or a related question, Joe, and thank you for being here. Because it was my understanding--and, Janice, you can also correct me if I'm wrong--that in many of the counties with the low

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filings, that the county court employees, many of them are already part-time employees. [LB251]

JOE KOHOUT: Uh-huh. [LB251]

SENATOR COUNCIL: So when we're talking about the kind of closing the courts, we're not talking about closing, you know, full FTEs in each of those. Many of those are half FTEs, because they're part-time or they spend half their time in county A and half their time in county B and neither county A or county B have a full-time equivalency. [LB251]

JOE KOHOUT: Exactly. [LB251]

SENATOR COUNCIL: Is that correct? Okay. [LB251]

JOE KOHOUT: Exactly. [LB251]

SENATOR COUNCIL: Thank you. [LB251]

SENATOR ASHFORD: And, of course, we're talking about a budget item that's relatively small compared to the \$8 million increase in...or the need, the \$8 million deficit that we're talking about with court costs. [LB251]

JOE KOHOUT: Exactly. [LB251]

SENATOR ASHFORD: The county court employees are a small fraction of that, so. [LB251]

JOE KOHOUT: Correct. [LB251]

SENATOR ASHFORD: Thanks, Joe. [LB251]

JOE KOHOUT: Thank you. [LB251]

SENATOR ASHFORD: Next proponent. Opponent? [LB251]

PATRICK HENG: Senator, my name is Pat Heng, H-e-n-g. I'm an attorney in Omaha; own the Credit Bureau of Hastings in Hastings, Nebraska, a collection agency, and I'm here on behalf of the Nebraska Collector's Association. I think, as Senator Council pointed out, the increases over the years have...the last eight years, and as Senator Lathrop has indicated, I've been down here every other year it seems like talking about it. Again, I don't need to go through, but what we do is provide a service to the communities, the medical providers and so forth. So obviously, when you're increasing those fees 44 percent, it has a drastic impact on us. Talking about it with some of my

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colleagues here, in the county courts we probably file over 60, probably closer to 70 percent of the cases. Of those cases, we probably provide 90 percent of the paperwork that's generated. And so I say that from a standpoint, and that's where I think John Lindsay was indicating, you know, at least talking. We haven't really had a lot of input as to what we see from our side, from the standpoint of, you know, there's a lot of savings left on the table every single day. And so then when you come in and say, we want \$20 because it makes us an easy 400 times \$20 equals the \$8 million shortage we're looking at. You know, from the people who are going to be impacted, the private industry who's going to be most impacted by these fees are us. I guess, Senator Coash, if that's the correct pronunciation,... [LB251]

SENATOR COASH: Coash. [LB251]

PATRICK HENG: ...you know, yeah, that \$20 maybe figure on the day to day... [LB251]

SENATOR ASHFORD: Whatever, I mean it's...(laughter). [LB251]

SENATOR HARR: Feel free to call him "Mr. Reisdorff." [LB251]

SENATOR MCGILL: Yeah, let's do that. (Laugh) [LB251]

PATRICK HENG: But yeah, it's going to...and as I thought when you asked that question, you know, the increase to me and my agency--I'm a smaller agency in the state--would be about the equivalent of salary of one of my employees. I know I'm not going to collect, in this economy, 44 percent more of my filing fees in order to cover that. So then I have a decision: Do I serve my clientele, which are the small businesses in the community, or do I lay off somebody and...? Because I know I'm not going to...one way or the other, I'm not going to make ends meet on that. So, you know, and probably for the one- or two-time user in the month, it's not going to be a big deal. For the people who file 70 percent of the cases it becomes a big deal. Like the largest is, I think, you know, over a half-million dollars a year increase to them. [LB251]

SENATOR COASH: Chair? [LB251]

SENATOR ASHFORD: Yes, Senator. [LB251]

SENATOR COASH: Hey, how are you? Now you provide a service in the Omaha area? [LB251]

PATRICK HENG: No. Central Nebraska. [LB251]

SENATOR COASH: Central Nebraska. [LB251]

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PATRICK HENG: Yes. Hastings, Grand Island. [LB251]

SENATOR COASH: Hastings. [LB251]

PATRICK HENG: South-central Nebraska. [LB251]

SENATOR COASH: I have lost my map here. (Laughter) [LB251]

PATRICK HENG: I hear there's a lot floating around. [LB251]

SENATOR MCGILL: I've got five. [LB251]

SENATOR ASHFORD: Yeah, we've got 30 of them here. [LB251]

SENATOR COASH: So you're out here. I mean the flip side of this, you use these courts. I'm assuming you use several of the county courts. [LB251]

PATRICK HENG: I've probably been in 15 of the 30. I've filed in all 30 of them. [LB251]

SENATOR COASH: Fifteen. Okay. All right. If the ones that you use close, what does that do to your bottom line? [LB251]

PATRICK HENG: To my bottom... [LB251]

SENATOR COASH: If the ones that you use, you all of a sudden have to drive an hour further to go to court, doesn't that affect you as well? [LB251]

PATRICK HENG: Well, that's one of the other things I was talking to Senator Lindsay. Quite honestly, my agency may be one of the few that's 100 percent e-filing. So everything I do is e-filing. And the courts are very, all of them are very, you know, telephonic, and because of where I live, most of them. But, no, they've become very automated. You've put in...or the state has put in place the technology to streamline this stuff. The users haven't caught up with that technology, and until they do, you know, then that's when we see these inefficiencies. As an attorney, I should never get a mailing from the court. I should never see postage coming from the court. Everything should be e-filed back to...or not e-filed...or e-mailed to me. But every day, I probably--I was adding up--about \$30-50 of postage every day. I'm a small agency. I can't even imagine a Credit Management, the amount of postage a year that's spent when all the courts have the technology, some do it and some don't, of just e-filing or e-mailing back to me. I mean just little things like that. But again, as a big user as our industry is, those are things we see, and we may comment on it but those changes haven't been made. [LB251]

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SENATOR COASH: All right. But if this map comes to fruition, you may be filing in a county that used to have a clerk there, part of the time, and then all of a sudden doesn't have a clerk there. I mean I just... [LB251]

PATRICK HENG: Yeah, I think... [LB251]

SENATOR COASH: I think there's a flip side to it that your industry has to realize, which is you need people in those courthouses to get your filings, right? [LB251]

PATRICK HENG: And I think we...I mean I think even the way it's set up now with the part-time employees, we have, quite honestly, judges...I watched judges in Adams County today file default judgments in Fillmore and Webster County because of the technologies in place. I mean they have access. The clerks in Red Willow have access to Custer County's information. So I mean there's a lot of things within your system, within the current system, that can be done to...the closures, you know...the whole issue. You know, I'm not here to speak one way or the other on that. But from a standpoint of access to the courts, at least from our industry--I know there's issues with, you know, pro se, domestic protection orders, and things like that, it's a little bit different. But from our industry's standpoint, which is a major user of the court system, the technology the state has provided the people who use the court system as we do, is there to eliminate and really streamline a lot of what we have in place right now. [LB251]

SENATOR COASH: Thank you. [LB251]

SENATOR ASHFORD: Senator Council. [LB251]

SENATOR COUNCIL: Yes, and thank you, Mr. Heng, for coming in. And I guess just for the record, I did attempt to receive input from most if not all users, and I did have a meeting with one of the largest members of your industry with regard to this. And I want to thank them. They provided me quite a bit of information. In fact, they provided me with the 42 or 43 percent number in the total increase over the last eight years. So I was not unmindful of that. And in fact, it was because of comments made by them in that information that led to the amendment. I said, you know, you're right. I never had given thought to it. It gets to the point that Senator Lathrop was making about the General Fund. But the question I want to ask, and it's kind of like the great unknown, and in introducing this bill I knew that I was introducing a bill in the great unknown. Senator Lathrop asked the question of Ms. Walker, and we don't know if the county court is closed in a particular county. And I recognize and appreciate the fact that practitioners can e-file, and you recognize the fact that pro se people don't have that ability ordinarily. But if the judges aren't going to be, for lack of a better term, riding the circuit, if the county court in Logan is closed...let's say the county courts in Logan, Thomas, Blaine, and Loup are closed, and there's one judge who's going to hear...one county court judge or two county court judges who are going to hear all filings from those counties in

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Custer. I mean I don't know. I mean that's one of the great unknowns. I don't know if judges are going to be rotating or if judges are going to be sitting. But does that not add to your cost to have to go to...I mean if that were the circumstance, that you'd have to...you could e-file it in the county... [LB251]

PATRICK HENG: Right. [LB251]

SENATOR COUNCIL: ...but you'd have to go litigate it in another county. [LB251]

PATRICK HENG: You know, from our standpoint, those scenarios in my industry would be, you know, the 1 or 2, if that, percent of total filings. And accesswise, I know a lot of those counties we're talking about usually see a judge once or twice a month the way it is right now. And, you know, and again I'm not qualified...I think Senator Lathrop made some points as to the...you know, and Senator Ashford talked about the consolidation of a lot of things just to be able to do. But there's...I mean, quite honestly, it's not like all day long there's a judge standing by and, you know, to have court. So it's...the judge issue, I guess I'm not really uncertain of, because they seem to ride around, and they show up once or twice a month the way it is in these smaller counties. But, yeah, from our access standpoint, and like I said, the technology is such we never really have to show up very often. There may be a, you know, once in a blue moon trial, so. But, yeah, that issue is really not an issue for our industry, so to speak. [LB251]

SENATOR COUNCIL: Okay. At least that's not my experience in Douglas County Court. I mean they're there every filing every day. [LB251]

SENATOR ASHFORD: No. But I think...I think...yeah, Pat brings a great...I think we've just got to get our arms around this problem. We have technology that's...the court has done a great job and working with the practitioners, in my view, of getting this automation up and going with a relatively small amount of money--\$8 in court fees in the automation budget. We just...in the next couple years, we just have to make it our highest priority to get our arms around how best to deliver these services. The reason that Pat's clients go to court and file a lot of cases is because that's there to protect the defendant. I mean we have civil cases. We have a civil...whether they defend them or not, they have the right to defend them. [LB251]

PATRICK HENG: Right. [LB251]

SENATOR ASHFORD: And so every collection case is a case, and though many of them are not litigated by defendants, obviously, but they potentially are. And it's there to protect...that system is there to protect both the plaintiff and the defendant, but even if it's a \$50 case. You know, it's amazing to me, is that the dollar amount in so many of these issues that come before the court system is not really the big issue. It's, you know, the personal issues involved in being...having...owing somebody money or trying

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to collect money, whether it's \$200 or \$300 or \$1,000. When somebody charged me \$12 for an overcharge on an old MasterCard, I almost went through the roof. I mean I think people take this stuff very, very personally, and that's why we have a court system so that there is a way. And that's why you have a challenge in your industry because you have legitimate clients who need to be paid and you have potential...and you have people who theoretically owe money, and both those parties have a right to have that litigated in some way, shape, or form. So you're all performing a service and I think in the right way, I think legitimately, and you do a good job. I think it's our job to find the best delivery system possible for you and the defendants and everybody who's involved in the legal system, because you're all important. And we just don't have it, we don't have it yet. We just don't have it, but the pieces are there to get us there. And we need to dig down on what technology really means and what does it allow us to do; talk to our friends in the district court and county court, as suggested; talk to the litigants, like you, your group--and they're in court all the time--what can we do to make the system work better and more efficiently? We really have to do that. I mean it's got to be a top priority. And the people are here to do it. We just have to do it, do it. I mean we have to make it a high priority. So we appreciate your comments. [LB251]

PATRICK HENG: Thank you. [LB251]

SENATOR ASHFORD: Thanks, Patrick. Next testifier. I'm sorry, go ahead. [LB251]

TESSA HERMANSON: Oh, that's okay. [LB251]

SENATOR ASHFORD: I was just musing over it. It's what I do. [LB251]

TESSA HERMANSON: (Exhibit 15) Okay. Good afternoon, Senator Ashford, members of the committee. My name is Tessa Hermanson, T-e-s-s-a H-e-r-m-a-n-s-o-n, and I'm here today in my capacity as general counsel for a large Nebraska collection agency, Credit Management Services. I will start by saying I am also a member of the bar who opposes this bill versus I know you heard their testimony in support of earlier. Credit Management is one of the largest collection agencies in Nebraska. They provide collection services to over 55 hospitals and 2,000 other clients across the state, including various medical clinics, utilities, and banks. In doing so, we file about 3,500 civil county court cases a month, so we are a large user of the civil county court. You know, I've met with several of the senators. The concern is it's such a great increase. I do appreciate...Senator Council, I haven't had an opportunity to read your amendment to the bill. Our large concern was, with the money going to the General Fund, that it might not get used by the courts. With it going back to the Supreme Court Operations Cash Fund, there's less of a concern, you know, that it won't be used for that purpose. I have maybe come with a lot of questions or concerns today rather than answers. I appreciate what this committee is doing and has done in looking into the structuring of the courts and making them more efficient. I want to address a couple of the comments

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that were made. Senator Coash talked about, and Senator Council, about what we would do in the event of these county courts closing. So much of our practice...we do e-file. We do participate in the e-filing, so we file 3,500 complaints a month. So much of our practice is done by telephone and done by Skype, and I think technology has been and will continue to improve the system. I mean I've been on hearings out in western Nebraska that the defendant even appeared at a courthouse where the judge was at another courthouse, and we were all on the phone by Skype. I think that it won't restrict access. You know, if those four county courts close, we will be still practicing. You know, the very few times we actually attend court is when they go to trial, which is less than, you know, 1 percent or something like that. So from a civil perspective, I realize it's different. I also realize that Douglas County is different than the western counties, yes. I know my time is limited. I would like to make one remark. When I talked to Senator Council, she talked about the fear of draining the probationary cash fund. And I've spoken with several people at the Court Administrator's Office, who are probably sick of me by now, but trying to understand, you know, what that entails. I'm told that there's over \$7 million in excess in the probationary cash fund. [LB251]

SENATOR ASHFORD: But it could be drained very quickly. I think we're very... [LB251]

SENATOR COUNCIL: It was a year. It was a year. [LB251]

SENATOR ASHFORD: Yeah, we're very concerned about the probation aspect, you know. [LB251]

TESSA HERMANSON: Okay. And you know the information that I received was just that it's been there since the beginning of this fund. It's there to expand the reporting centers, which I understand have a significant purpose. But, you know, if we're looking at closing courts, do we need to expand the reporting centers at this time? Can that fund...can some of those funds be borrowed, you know? [LB251]

SENATOR ASHFORD: Those are great questions and you're definitely asking the right question. That's what we ask ourselves. [LB251]

TESSA HERMANSON: Yeah, and which I appreciate. And I'm willing to answer any other questions. [LB251]

SENATOR ASHFORD: Any questions? [LB251]

SENATOR COUNCIL: No, I just want to thank Tessa. She's been very open to sitting down and discussing these issues with me as we try to arrive at some solution. [LB251]

SENATOR ASHFORD: Yeah. And these are thoughtful comments, Tessa. [LB251]

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TESSA HERMANSON: It's a large task you have. [LB251]

SENATOR ASHFORD: Thank you for...I mean you've spent a lot of time with this, on this. And I think that's really the point and I think Tessa brings, is we have our own specific interests, we have our own clients,... [LB251]

TESSA HERMANSON: Yep. [LB251]

SENATOR ASHFORD: ...so to say, I mean. But we also have a greater interest that we all have which is to do the right thing, to make a more efficient system, because we're all going to work in it. Some longer than others. Bob and I not so long--but others. But seriously, I appreciate the fact that you're looking at the bigger picture, because we're struggling. If we...we have to have probation officers, because if those people are in prison it's costing us an arm and a leg. We got to think about all these pieces and you're right to bring it up. Thanks. [LB251]

TESSA HERMANSON: Thank you. [LB251]

SENATOR ASHFORD: Any other...I don't know where we are. Opponents? The helpful opponents, I think is what we call them. Neutral testifiers? [LB251]

ELAINE MENZEL: Senator Ashford and members of the Judiciary Committee, for the record my name is Elaine Menzel. It's M-e-n-z-e-l, and I'm appearing here today on behalf of the Nebraska Association of County Officials. We would like to first express our appreciation to Senator Council for attempting to raise additional funds to support the courts throughout Nebraska and continue to provide ready access to the courts by the young and the elderly alike. Sustaining and improving the court is an important function of the government. NACO is very supportive of the efforts to improve efficiency through technology. The comments that I have are not necessarily intended to delay the passage of LB251. Rather, they are intended to emphasize an area of concern to counties that was identified during discussions. It's my understanding that the fees in some situations are provided up front by the counties, and the concern would be that the increase would then be additional cost to counties. But to get further clarification on that aspect, I would defer to clerk of the district court. There were a number of issues that were raised today and I'm not prepared to specifically talk about some of those other issues, but I would offer our assistance in the future to discuss other issues that pertain to counties and county courts that were related to. If you have any questions, I'd attempt to answer them. [LB251]

SENATOR ASHFORD: Thanks, Elaine. Any questions? Senator Council. [LB251]

SENATOR COUNCIL: Yes, and thank you, Elaine. I hope that the amendment addressed some of those concerns about how the...because it didn't affect how the

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fees...at the amount that they're currently being collected. [LB251]

ELAINE MENZEL: And I haven't had... [LB251]

SENATOR COUNCIL: Okay. [LB251]

ELAINE MENZEL: ...an opportunity to look at it, so it very well could have. [LB251]

SENATOR COUNCIL: Okay. So it didn't alter that. You know, if \$10 was going here and \$5 was going there, that it still does that. The amendment says the additional \$20 now goes to the... [LB251]

ELAINE MENZEL: And it may clarify it more...better from our perspective. [LB251]

SENATOR COUNCIL: So it may clarify it more. But one of the options that has been discussed after I proposed LB251 was to have the county governments pick up the cost of the county clerk operations. [LB251]

ELAINE MENZEL: (Laugh) Umm... [LB251]

SENATOR COUNCIL: Any discussions? I just think all of the... [LB251]

ELAINE MENZEL: I have not been authorized specifically to say one way or the other, but I think I can safely say that's not something we would be jumping up and down for. [LB251]

SENATOR COUNCIL: Okay. I don't mean...I just...thank you. I just think we need to have all of the options on the table and... [LB251]

SENATOR ASHFORD: It's only \$16 million. (Laughter) [LB251]

ELAINE MENZEL: Like I said, I think I'm safe saying that we would not readily accept that. [LB251]

SENATOR COUNCIL: Thank you. [LB251]

ELAINE MENZEL: Interestingly, today is the day that the county aid bills or one of the county aid bill is up. [LB251]

SENATOR COUNCIL: Exactly. [LB251]

ELAINE MENZEL: So it dovetails into the discussion. [LB251]

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SENATOR COUNCIL: That had nothing to do with my asking that question. [LB251]

ELAINE MENZEL: Well,... (Laughter) [LB251]

SENATOR ASHFORD: We're all going to...we'll make it through this. Thanks, Elaine. [LB251]

ELAINE MENZEL: Okay. Yeah, it's been an interesting session already and, as you know, been around a while, so it will... [LB251]

SENATOR ASHFORD: Okay. We've only got five months left so (laughter) good luck. [LB251]

ELAINE MENZEL: You too. Thank you. [LB251]

SENATOR ASHFORD: Okay. [LB251]

JANET WIECHELMAN: (Exhibit 16) Good afternoon, Senator Ashford and committee members. My name is Janet Wiechelman. I'm the elected clerk of district court for Cedar County, which is in Senator Larson's district, and I am the legislative liaison for the clerk of district court. Our association is in support of this bill in the concept that it does provide some funding to the Supreme Court and the Court Administrator's Office. However, we are concerned of the financial constraints it will cause in the county, and I'll explain to that. When cases are filed in district court, the criminal cases that have been bound over to the district court, when we have cases where the court has allowed the complaint...the plaintiff to file their case without paying the filing fee in an in forma pauperis case, and in cases where we have a IV-D case filed, in other words, it's filed by the county attorney or filed by someone who's authorized by HHS to file those cases, when those cases are filed those filing fees are paid by the county. We make a claim to the county. And in my statement I have provided some of my claim forms to show we do claim all the fees, all the individual pocket fees are all included on that. The problem is, is those are often claimed to the county, and when the case has a disposition, either the court does not order a party to pay the costs back, the county gets no reimbursement from that, or perhaps the court does order that one party or another pay the court cost. And, Senator Ashford, I'm sure you're aware of the fact that we have a hard time collecting those court costs, sometimes it's very difficult to do so. And just in Cedar County, I took my figure from last year what I claimed to the county based on what is \$5 at this time. I took into effect increasing \$20. It was going to increase, just last year, it would have been \$340 more just in Cedar County alone that the county would have to pay up front. If we could find some way that could be done so we're not paying the fees up front but somehow finding perhaps upon disposition we would make a claim, and in those cases where there's no court costs ordered, that those would be considered waivable. Because the county is not getting the money back, it's kind of hard to keep

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putting money out there but nothing coming back. So we do have concern about that. I understand Senator Council is filing an amendment, and the part about making sure this money goes to the Supreme Court is something we did want to make sure was guaranteed because that's where the money needs to go to support the staff and the judges. I am concerned though the original language in the bill did not cover the distribution on cases when they've been filed as a transcribed judgment or in a criminal appeal, that there was not appropriate distribution to the amount going to the state. So I just want to make sure that amendment does clarify that issue. I would be happy to answer any questions you may have. [LB251]

SENATOR ASHFORD: Okay. Any questions of Janet? This is helpful information. And these are examples of cases and... [LB251]

JANET WIECHELMAN: Yes, examples of Cedar County. [LB251]

SENATOR ASHFORD: Filing fees that are collected. Okay. Thank you very much, Janet. Any other opponents...or neutral, I'm sorry. Neutral? Any other neutral testifiers? Okay, thanks. Senator Council, do you wish to... [LB251]

SENATOR COUNCIL: Just a quick statement. Thank you, Mr. Chair and fellow committee members, for your patience. I just want to make it clear that I introduced LB251 as a means for the committee to begin to address the best way to address and resolve these issues around funding. I don't disagree with Senator Lathrop at all. And Janice would tell you during our conversations I stated repeatedly my concern with the fact that we're talking about a coequal branch of government being placed in a position where we are having to look for ways to fund their operations and then not having sufficient funds coming from General Fund. I also wanted to be clear that I introduced LB251 as a way of reducing the pain statewide and to have as little impact on access to the judicial system as I believed possible, again operating on the basis of speculation as to how the courts would operate if we closed 30 county courts or eliminated 30 county court clerk positions. So this was all introduced in that vacuum. But I wanted to be clear that if it were not for the concern about access to the judicial system in the yellow counties, I would not have introduced this, because in terms of the district that I represent, my district would prefer not to see an increase in filing fees. But if that means...not having that increase in filing fees means that the residents of 30 other counties don't have access, I don't believe that I'm carrying out my responsibility as a representative of the state of Nebraska. So I'm concerned about access to the judicial system statewide. The option is before us. Maybe we can in the interim period here, between now and whenever this may be advanced, you may want to hold it to see what Appropriations is thinking about, but at a minimum I wanted to have a bill in that we can have some options. If the Appropriations Committee doesn't do the right thing, then the Judiciary Committee is going to have to decide whether or not we need to step up and make sure that the courts operate at least at its current level of operations. So with that,

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I thank you for your time and attention. [LB251]

SENATOR ASHFORD: Thanks, Senator Council. One thing I know...no, that's all right, I was just going to mention generally Friday we do have the bill on the idea of having the Supreme Court come up with a restructuring plan. I think it would be very helpful at least to get some discussion, Janice, on what technology has done so far to the costs, the employee costs of the court system. I mean obviously that's an in-depth question, but I would be...I would appreciate some comment on that issue because I think Pat has brought up some, you know, some...the real empirical discussion about what is happening out there with technology, because it's got...it has to have had some impact somewhere because it's such a dramatic change that you've been able to do. So if you could think about that and talk about that a little bit Friday, that would be helpful. Okay. Thank you. That concludes the hearing. [LB251]