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Banking, Commerce and Insurance Committee  
January 22, 2013

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[LB72 LB100 LB146 LB155]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, January 22, 2013, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB72, LB100, LB146, and LB155. Senators present: Mike Gloor, Chairperson; Mark Christensen, Vice Chairperson; Kathy Campbell; Tom Carlson; Sue Crawford; Sara Howard; Pete Pirsch; and Paul Schumacher. Senators absent: None.

SENATOR GLOOR: Welcome to the Banking, Commerce and Insurance hearing. My name is Mike Gloor. I'm the senator from District 35, which is Grand Island. I chair the committee. The committee will take up the bills in the order posted today. That would be LB72, LB100, LB146, LB155. To better facilitate today's proceedings, I ask you to abide by the following procedures which you see listed over there on your left. Please turn off cell phones, and if you think it's off, give it an extra check just to make sure. Move to the reserved chairs up front here if you would, if and when you're ready to testify. The order of testimony will be the introducer, those proponents, then opponents, then people in a neutral capacity, and finally there will be a chance for closing by the introducer. We'd ask testifiers to please sign in. I look around the audience; most of you I think know the routine, but please hand your sign-in sheet to the clerk so that we have it. Spell your name before you testify. That's not for our edification, it's for the process for those folks who do the transcribing for us. Be concise. We have a light system on this committee but we don't have to use it very often, thank goodness. So I'd ask you to try and self-regulate yourself to about five minutes. Written materials can be handed out to members of the committee, but only during your testimony. If you don't have ten copies, let the pages know so that they can get those ten copies for you. But anything handed out, please, we need ten copies. To my immediate right is our counsel, Bill Marienau; and to the end of the table, on my left, is the committee clerk, Jan Foster. They're what keep the wheels on the bus spinning all the time. Committee members with us today will have an opportunity to introduce themselves and we'll start down at the end of the table with Senator Crawford.

SENATOR CRAWFORD: Good afternoon. My name is Sue Crawford and I represent LD 45, which is Bellevue, Offutt, and eastern Sarpy County.

SENATOR SCHUMACHER: Paul Schumacher. I represent District 22, which is Platte and parts of Colfax and Stanton County.

SENATOR PIRSCH: Pete Pirsch, District 4, Boys Town, parts of Douglas County and Omaha.

SENATOR CAMPBELL: Kathy Campbell, District 25, east Lincoln and Lancaster County.

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SENATOR CHRISTENSEN: Mark Christensen, Imperial, District 44, ten counties in the southwest corner.

SENATOR CARLSON: Tom Carlson, District 38, and I represent people in parts of...all of six counties and part of a seventh, and I live in Holdrege.

SENATOR HOWARD: Sara Howard, District 9. I represent midtown Omaha.

SENATOR GLOOR: And our pages today are William Rahjes, who is from Elwood, and Nathan Funk, who is from Norfolk. And if you need things, they can help you out with that just as they help us out. With that, we'll start with LB72. Senator McCoy, welcome back to the Banking, Commerce and Insurance Committee.

SENATOR McCOY: Well, thank you, Chairman Gloor, and good afternoon, members of the Banking, Commerce and Insurance Committee. I am Beau McCoy. For the record that's B-e-a-u M-c-C-o-y, and I represent the 39th District in the Legislature. And I'm here to introduce LB72 to you this afternoon, which very simply changes the sunset date from July 1, 2014, to July 1, 2017, for the interest-bearing trust accounts under the Nebraska Real Estate License Act that were created in LB347, which I introduced in 2011. LB347 gave brokers the option to have their accounts in an interest-bearing account so long as the interest goes to a nonprofit organization. The interest does not go to the broker. LB347 also made this voluntary for the banks as well. The Nebraska Realtors Association received a grant to aid low-income individuals in home buying, and one of the requirements of the grant is to have sustainability. The Nebraska Realtors Association will use the interest in helping with that sustainability. The sunset date of July 1, 2014, was placed on these accounts to allow the Legislature to review how the process is working. Changing the sunset date to July 1, 2017, will allow additional time for that evaluation to occur. Rita Griess, with the Nebraska Realtors Association, will follow me in a moment with some additional information on this grant and the program they envision to fund with this money. I thank you for your time, and I'd be happy to answer any questions if there are any. [LB72]

SENATOR GLOOR: Thank you, Senator McCoy. Are there any questions for Senator McCoy? Senator Christensen. [LB72]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Thank you, Senator. Do you have any idea how much money was raised for nonprofits in this way through this program? [LB72]

SENATOR McCOY: I don't have that number sitting at my fingertips, Senator Christensen, but I know, as I mentioned, Rita Griess will be behind me a moment. I think she can address that and probably will also talk to you about the banks that

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they've talked to and those that they've set up at this point. But I think...clearly, I think the committee saw fit to advance this a couple years ago just because I believe it is a good idea. I think it makes sense. It just so happened, and Rita will go into this in a moment, that we just ended up with not quite enough time to really get it up and running to the point that you could really have a good idea of whether or not this will work long-term. I certainly hope that it does. But I think she would probably be able to...and I apologize I don't have that right in front of me,... [LB72]

SENATOR CHRISTENSEN: No, that's fine. [LB72]

SENATOR McCOY: ...but I think she would probably be able to probably give that to you right off the top of her head, would be my guess. [LB72]

SENATOR CHRISTENSEN: Yeah. Thank you. [LB72]

SENATOR GLOOR: Any other questions? I'm guessing, Senator McCoy, that the timing on this, even though the sunset is a year and a half away, was to take advantage of the legislative cycle and not have to come in with an E clause if you introduced this next year. Is that a fair assumption? [LB72]

SENATOR McCOY: That would be correct, Chairman. [LB72]

SENATOR GLOOR: Okay. Seeing no other questions, thank you, Senator McCoy. We'll... [LB72]

SENATOR McCOY: And I will waive closing if that would be okay. Thank you. [LB72]

SENATOR GLOOR: Okay. And I'm guessing none of the testifiers that come behind will be in bow ties, is that a safe guess? [LB72]

SENATOR McCOY: I don't know. (Laughter) Thank you. [LB72]

SENATOR GLOOR: Thank you. Proponents. Can I see a show of hands of people who wish to provide testimony that are proponents, opponents, or neutral? Okay. Thank you. Good afternoon. [LB72]

RITA GRIESS: Good afternoon, Senators. My name is Rita Griess, G-r-i-e-s-s. I'm here representing the Nebraska Realtors Association, and I am chairperson of the Nebraska Realtors Home Buyer's Assistance Foundation, which we created once this bill in the Legislature was passed in 2011. So we really are just getting started with this. We've been in the process of creating and having approved and filed all the documents we need, and beginning really to spread the word to our members. This is all voluntary. The idea of having interest-bearing trust accounts for this donation is certainly not

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mandated. It's voluntary. And we have been soliciting banks for their participation, and we've been very pleased with the response so far. But, once again, we're really just getting started, so we need an extension and more time to get things rolling. I would be happy to answer any questions you may have. [LB72]

SENATOR GLOOR: Thank you. Senator Pirsch. [LB72]

SENATOR PIRSCH: Thank you. And I'm trying to get a flavor for how this substantively is going to work then. So all realtors who desire to participate, you don't have to, but should you desire to, then would...they would...need they utilize kind of a master account like a foundation such as yours, or can they... [LB72]

RITA GRIESS: No. [LB72]

SENATOR PIRSCH: ...on an individual basis find a nonprofit to which they're... [LB72]

RITA GRIESS: It's individual banks that would participate, and agree to participate, and then the money would go...and we have designated the money at the time we began this to go to the REACH program, which is a program that provides education, pre-home buying education for first-time home buyers, primarily. But it covers the home buying process about credit, about predatory lending, about home maintenance. It's a very good class that probably all homebuyers should take. So we were funding that, and we have contributed \$2,000 to that. [LB72]

SENATOR PIRSCH: Yeah, a very worthy cause. And by the way, I think I supported this originally. [LB72]

RITA GRIESS: Yes, you did. [LB72]

SENATOR PIRSCH: But with respect to, though...I mean with respect to is it an individual realtor's discretion then of which nonprofit to participate with? Or would there be some other... [LB72]

RITA GRIESS: No. I mean, the foundation is designating the donor...the donee at the time. And so, yeah, that's how that has...that's how it's set up. I mean I think there are probably possibilities down the line, but that's the way it's been set up. [LB72]

SENATOR PIRSCH: It'll always be... [LB72]

RITA GRIESS: It has been designated to go to this program at this time. [LB72]

SENATOR PIRSCH: Okay. So it will always be the foundation then per the way things are structured... [LB72]

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RITA GRIESS: There is a board of directors on the foundation from the Nebraska Realtors Association, and we also have the ability to have two public members, and we're really excited because we now have a member whose term is beginning the first of this year from the banking industry that will be participating. [LB72]

SENATOR PIRSCH: And it will always been within the discretion of that foundation then to determine which nonprofits will be... [LB72]

RITA GRIESS: Yes, um-hum. [LB72]

SENATOR PIRSCH: So the future, it would be little...that would minimize the risks then of controversial nonprofits being selected... [LB72]

RITA GRIESS: Right, right. [LB72]

SENATOR PIRSCH: ...as opposed to individual. Okay, thank you. Appreciate it. [LB72]

SENATOR GLOOR: Senator Schumacher. [LB72]

SENATOR SCHUMACHER: Whose...as I get it, this is money held in realtors' escrow accounts pending transactions? [LB72]

RITA GRIESS: That's right. [LB72]

SENATOR SCHUMACHER: Whose money is it then, either the buyer or the sellers? [LB72]

RITA GRIESS: Yes. And traditionally that money has been in noninterest-bearing accounts. The lawyers in the state of Nebraska do something similar to this called the IOLTA, Interest on Lawyer(s) Trust Accounts, and they donate it also to charitable causes. There are also other states that have done this. [LB72]

SENATOR SCHUMACHER: Well, I suspect it's kind of academic with considering the interest rates that are being paid on deposits right now. [LB72]

RITA GRIESS: Right. [LB72]

SENATOR SCHUMACHER: But arguably, at some point, interest...banks will begin paying interest again. [LB72]

RITA GRIESS: That's right. [LB72]

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SENATOR SCHUMACHER: And why shouldn't the people who own the principal will get the interest on that money, I mean? [LB72]

RITA GRIESS: They could. You know, as I said before, it has the law...the statute has read that it goes into a noninterest-bearing account... [LB72]

SENATOR SCHUMACHER: But why we don't just say... [LB72]

RITA GRIESS: ...unless the parties...unless the parties both agree and wish to have it in an interest-bearing account. I think part of the reason is, typically money...one individual's money or one party's individual's money does not stay in the account long enough to accrue a lot of interest. However, the cumulative amount of money that could potentially be raised with an account such as this would be a different matter. So usually a buyer that is purchasing a home wouldn't gain much money by it anyway. So it's never been too controversial, the fact that it is in a noninterest-bearing account. [LB72]

SENATOR SCHUMACHER: Is there any limits? And let's suppose a transaction hangs up for 60 days because the title survey or something isn't quite right. [LB72]

RITA GRIESS: Uh-huh. [LB72]

SENATOR SCHUMACHER: And let's suppose it's a sizable amount of money: half a million, a million dollars, maybe more. I mean, that interest is a lot and that should belong to somebody besides just be given away. [LB72]

RITA GRIESS: Well, the agreement is made in the beginning. And in today's world, or previous to this bill being passed, if the buyers and sellers both wanted it to be in an interest-bearing account and designate who it would go to, they had the ability to do that. [LB72]

SENATOR SCHUMACHER: And can they still do that? [LB72]

RITA GRIESS: Um-hum. [LB72]

SENATOR SCHUMACHER: Okay. Thank you. [LB72]

SENATOR GLOOR: Other questions? Senator Carlson. [LB72]

SENATOR CARLSON: Thank you, Senator Gloor. When you started you indicated how this money was going to be used, and I think you indicated an acronym. But what does that stand for again? [LB72]

RITA GRIESS: It stands for...it's REACH, and it stands for Readiness Education

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Awareness Collaborative for Homebuyers and Homeowners. [LB72]

SENATOR CARLSON: Good. It's an acronym then. (Laughter) [LB72]

RITA GRIESS: Rather difficult. I have it written down. [LB72]

SENATOR CARLSON: All right. [LB72]

RITA GRIESS: But it is a collaborative that does this education that many loan programs require for first-time homebuyers. And it is a good thing. There are potentially other good causes where the money could go. The overall mission of the foundation is to ensure that we have affordable, safe, decent housing across the state of Nebraska. And this is just a small attempt on the part of the Nebraska Realtors Association to help make that happen and to contribute to it. [LB72]

SENATOR CARLSON: Okay. Thank you. [LB72]

SENATOR GLOOR: Other questions? I think Senator Christensen asked Senator McCoy what kind of dollars had piled up at this point in time. Maybe piled isn't the right word. [LB72]

RITA GRIESS: We started with \$50,000 to begin, and we are still in the process of getting people to participate. We have one broker that is actively participating. The amount of dollars has not been significant that we have put in there so far. Some of the other numbers I could give you. We have five realtors that have signed...or five banks, excuse me, that have signed up with realtors in the state that have been requested. There are 21 banks right now that are in the process of researching and they have indicated an interest potentially to participate, and again the Nebraska Realtors Association started, just last year, educating our members about the ability to do this and soliciting their participation. So we, on caravan, our educational caravan that we do every fall that goes across the state of Nebraska, it was really pushed. But we are just so in the beginning stages of it, it's not really measurable. We did however donate \$2,000 last year to this program, and we have \$2,000 designated to be donated this year. [LB72]

SENATOR GLOOR: And again, the \$50,000 really came from a startup grant. [LB72]

RITA GRIESS: It came from...it was seed funds that were...it was a grant we received from the National Association of Realtors. [LB72]

SENATOR GLOOR: And a reminder to us as a committee is really all we're talking about is extending the sunset... [LB72]

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RITA GRIESS: That's right. [LB72]

SENATOR GLOOR: ...to give you a little more time to see whether it catches on or not. [LB72]

RITA GRIESS: Exactly. [LB72]

SENATOR GLOOR: But along the lines of Senator Schumacher's question, so what if we decide...what if we allow it to sunset, what happens with those dollars? [LB72]

RITA GRIESS: It has to go for the purpose that I just stated, and my assumption would be--and this is just purely my guessing--that it would be donated for that type...it would probably be disbursed for that same purpose. [LB72]

SENATOR GLOOR: Until all gone. [LB72]

RITA GRIESS: Until it was gone. [LB72]

SENATOR GLOOR: Okay. Any other questions? Seeing none, thank you, Ms. Griess. [LB72]

RITA GRIESS: Thank you. [LB72]

SENATOR GLOOR: Other proponents? No other proponents. Are there any opponents? Neutral capacity? [LB72]

ROBERT HALLSTROM: Mr. Chairman, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in a neutral capacity on LB72. We worked with Senator McCoy and the Realtors Association when LB347 was originally considered by the Legislature, and indicated that we had no objection to proceeding with the legislation. It is a bit of a departure from the traditional position of the NBA, as we have supported the noninterest-bearing status of the real estate broker trust accounts. We were approached by Senator McCoy and the realtors again over the summer suggesting, I think, that the front-end startup of the program had taken longer than anybody had anticipated in terms of setting up the foundation and then getting out with the educational efforts to both the brokers and the bankers, so we submitted and indicated that we would like to see an extension or a sunset extension out to 2017 to allow additional time for interest-bearing accounts for this purpose to be set up and organized and coordinated by banks and real estate brokers. So I'd be happy to address any questions that the committee might have. [LB72]

SENATOR GLOOR: Thank you, Mr. Hallstrom. Any questions? Senator Schumacher.

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[LB72]

SENATOR SCHUMACHER: Mr. Hallstrom, is the deal still in force that as long as an account is noninterest-bearing there is no limit on the FDIC coverage, or did that expire? [LB72]

ROBERT HALLSTROM: That is expired, Senator, as of the end of 2012. We did have unlimited insurance coverage for noninterest-bearing transaction accounts, which obviously would have been one of the considerations with anybody setting up these accounts as a trade-off between unlimited insurance company if it was noninterest-bearing under those rules or perhaps having some interest. At this point, with that program having been terminated by inaction by Congress, we no longer have that alternative. [LB72]

SENATOR SCHUMACHER: Now if a brokerage account has more than a quarter-million in now, basically there's no FDIC coverage on it? [LB72]

ROBERT HALLSTROM: There's insurance coverage up to \$250,000 and that would be the coverage that they have for that, presumably based on the amount you may have more than one individual who has funds in that account; so there is, I believe, pass-through coverage based on the individuals who have funds in. So you may have a larger amount in the account, but it may represent a multiple of clients or owners or buyers who have entitlement ultimately to those funds, so that you could have more than a single \$250,000 in coverage for that account. [LB72]

SENATOR SCHUMACHER: Thank you. [LB72]

SENATOR GLOOR: Senator Pirsch. [LB72]

SENATOR PIRSCH: Just briefly. Since as I've looked at the original language of the bill Senator McCoy introduced and so the department had promulgated policies and procedures for the processing of and distributions from interest-bearing trust accounts by rule and regulation, is there...is there anything in there that you recollect that deals with what type of nonprofit may be the subject? Are you familiar with those rules and regulations? [LB72]

ROBERT HALLSTROM: I have not looked at the specific rules and regulations if they have been adopted. I just know that it is a nonprofit that carries out some mission with regard to educational opportunities for, I believe, low-income homebuyers. [LB72]

SENATOR PIRSCH: Yeah. That's the specific envisioned or targeted plan that the realtors had. I just didn't know if you have familiarities with the rules and regulations, and so thanks. [LB72]

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ROBERT HALLSTROM: I am not. [LB72]

SENATOR PIRSCH: Okay. Appreciate it. [LB72]

SENATOR GLOOR: Other questions? Seeing none, thank you. [LB72]

ROBERT HALLSTROM: Thank you. [LB72]

SENATOR GLOOR: Anyone else in a neutral capacity? Senator McCoy has waived closing, and this closes the hearing then on LB72. Thank you. We'll now move to LB100, Senator Watermeier. Good afternoon and welcome. [LB72]

SENATOR WATERMEIER: Thank you. Thank you, Chairman Gloor and members of the Banking, Commerce and Insurance Committee. I am Dan Watermeier, spelled Watermeier, W-a-t-e-r-m-e-i-e-r, representing District 1 in the southeast corner of the state. I am here today to introduce LB100 which proposes to bring state law into conformity with the current provisions of federal law relating to automatic teller machines, ATMs, fees disclosure requirements. Under current law, financial institutions operating ATMs are required to display notices in two separate places notifying consumers that they might be charged fees for withdrawing cash from the ATM. One notice is required to be posted in a prominent and conspicuous location on or at the ATM, with the second notice required to appear on the screen of the ATM or on a paper notice issued from the machine after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction. The requirements of our state law essentially codify the ATM disclosure provisions of the federal law. Congress recently adopted legislation, H.R. 4367, which eliminates the requirements that ATM fee notices be affixed to or displayed on ATMs. Congress recognized that the requirement was no longer necessary since ATM operators are separately required to disclose fees on ATM screens, and consumers have the right to decline the transaction without being charged. Furthermore, the requirement under federal law that the fee notice be posted on the ATM had exposed banks to frivolous class action lawsuits. It has been estimated that approximately 2,000 lawsuits have been filed across the country alleging noncompliance with the posted disclosure requirement. It has been insinuated that individuals may actually seek out ATMs with misplaced placards. The nuisance value of the lawsuit frequently resulted in financial institutions settling the case rather than incurring expenses associated with litigation of the claims. Therefore, LB100 will allow Nebraska law to remain in conformity with the current provisions of federal law in respect to ATM fee disclosure requirements by eliminating the requirement that the ATM fee notices be posted in a prominent and conspicuous location on or at the ATM. Consumers are provided with adequate protection since they will continue to receive a notice that appears on the screen of the ATM or appears on a paper notice issued from the machine prior to consummating a transaction for which a fee may be imposed. I

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would ask for your favorable vote on advancement of LB100. If you have any questions I will try to answer them. Mr. Hallstrom, with the Nebraska Bankers Association, will also testify following me. Thank you for your time. [LB100]

SENATOR GLOOR: Thank you, Senator Watermeier. Questions for the senator? Seeing none, thank you. Do you plan to stay around and close? [LB100]

SENATOR WATERMEIER: I will. Yes. [LB100]

SENATOR GLOOR: Okay. Can I see a show of hands of those who would like to speak either for or against or a neutral capacity? Okay. We'll move to proponents. Mr. Hallstrom, you seem to be it. [LB100]

ROBERT HALLSTROM: (Exhibit 1) Chairman Gloor, members of the committee, my name is Robert J. Hallstrom. For both purposes of this record and the last hearing, I'll spell my last name, H-a-l-l-s-t-r-o-m, registered lobbyist for the Nebraska Bankers Association in support of LB100. Senator Watermeier has done a nice concise job of providing the background for this issue. I might just add a little bit to the discussion. In a lot of cases, and the committee will find later this year, the Department of Banking will introduce a bill that contains provisions that we commonly refer to as the state bank and the state S&L and the state credit union wild card provisions; and in many cases that is sufficient to allow a state-chartered institution to benefit from the same powers and authorities that Congress has granted to national banks. In this particular instance, that may be have been enough, but we also took the further step a number of years ago to codify in state law the same provisions that applied under federal law with regard to ATM disclosure requirements. So essentially, if you as a bank customer take your card to put into an ATM, the machine established by another financial institution, there could be a fee imposed for that particular transaction. The notice obviously is designed to let the consumer know that there will be or could be a fee imposed and they have the right to decide not to finalize the transaction if they don't want to incur the fee that's going to be imposed. Congress and state law had a two-tiered or two-pronged approach to notice. One was a physical posting on the machine and the other was either on the screen itself or in a piece of paper issued after you had started the transaction, but before you had consummated it and became responsible for paying the fee. What we found, as Senator Watermeier pointed out, is that federal law, unlike state law, has some provisions for specific damages in individual cases, and also has up to \$500,000 that can be recovered in class action lawsuits. We've seen approximately 2,000 lawsuits across the country, including some banks in Nebraska that for the nuisance value of the suits in some cases have been settled. The Nebraska Bank is currently, I think, in the federal Court of Appeals on appeal with regard to a standing issue that we hope they're successful on because the change in federal law is not retroactive, so there is still the potential exposure to damages in some of those cases. But simply put, by the changes incorporated into LB100, we would bring state law again, as it was always intended to

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be, into conformity with the federal law by only requiring the on-screen or on-paper disclosure or notice to be provided to the customers. With that I'd be happy to address any questions of the committee. [LB100]

SENATOR GLOOR: Are there questions of Mr. Hallstrom? Senator Crawford. [LB100]

SENATOR CRAWFORD: Do those laws as we've codified them here in Nebraska require a particular size of that on-screen notice or other protections about how prominent the on-screen or paper notice must be? [LB100]

ROBERT HALLSTROM: I think the law simply provides a prominent and conspicuous under the federal law. I don't think there's ever been an issue or a problem. To my knowledge it's up front and personal on the screen. It comes at a time before the consumer is committed to finalizing the transaction and paying the fee or being subject to the fee, so that they can terminate by simply pressing another button not to incur that fee if that's their desire. [LB100]

SENATOR CRAWFORD: Um-hum. [LB100]

SENATOR GLOOR: Go ahead. [LB100]

SENATOR CRAWFORD: So I guess I'm not familiar with the paper version of this notice. So there are some screens that would not provide that notice on the screen, but instead paper spits out, and so you need to make sure you pull the paper to read what it says. [LB100]

ROBERT HALLSTROM: Yeah. I will...I think over the passage of time my belief would be that almost every machine now is accommodating the screen notice. [LB100]

SENATOR CRAWFORD: Right. [LB100]

ROBERT HALLSTROM: This was from back in the '90s and into the 2000s when not all the machines had the same capabilities, and I think we've probably advanced to the point where virtually all, if not all, of the machines have a screen notice for the customer, which I think is the most effective. [LB100]

SENATOR GLOOR: Senator Campbell, then Senator Schumacher. [LB100]

SENATOR CAMPBELL: Thank you, Senator Gloor. So I just wanted to clarify for the record, so all of this came into play in the '90s, Mr. Hallstrom? [LB100]

ROBERT HALLSTROM: That's whenever the surcharging issue came about. I'd have to look back through to see when we first codified this in state law. I know the current

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statute refers to certain requirements that came into play or went out of play as of 2005, which we've now deleted since we've passed that date. But it was probably in the '90s and the early 2000s. [LB100]

SENATOR CAMPBELL: Thank you. [LB100]

SENATOR GLOOR: Senator Schumacher. [LB100]

SENATOR SCHUMACHER: Mr. Hallstrom, on the way these machines are programmed, maybe you could educate me a little bit. The notice comes up on the screen saying you'll be charged a, whatever, X percent fee or an X dollar fee. And as we all do, we all read all those notices on the machines, and whenever we buy anything on Amazon.com or anything else (laugh) and you click "accept," it goes right on through. Now that's one way of doing it. Another way of doing it would be or might be a pop-up screen comes up and said, "You will be charged \$15; accept, not accept." So you affirmatively have got to accept the fee rather than it just defaulting to an acceptance of the fee. Do you know which way these things are programmed? [LB100]

ROBERT HALLSTROM: I think you simply decide to decline to go any further on the transaction, so you don't complete the transaction so you don't incur the fee. [LB100]

SENATOR SCHUMACHER: So if...do you have to hit "decline" at that point, or do you have to affirmatively say, "yeah, I'm in agreement with the fee?" [LB100]

ROBERT HALLSTROM: No, I think you just decline...decline to continue the transaction, so you terminate the transaction. [LB100]

SENATOR SCHUMACHER: All right. So there's no extra step that makes you think. [LB100]

ROBERT HALLSTROM: Well, there's a lot of things that make me think. I'm not sure whether...(laugh). [LB100]

SENATOR SCHUMACHER: But I mean when you program these things you set it up so that if you want something to indeed be called to somebody's attention, you increase the probability if they've got to hit a "yes, go ahead," rather than the default is "yeah, I accepted it and who cares." [LB100]

ROBERT HALLSTROM: I think they...quite frankly, I've never paid the fee, but I think you... [LB100]

SENATOR SCHUMACHER: Okay. That's my problem, too. [LB100]

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ROBERT HALLSTROM: Yeah. I'll check into that and let you know. [LB100]

SENATOR GLOOR: Other questions? Senator Carlson. [LB100]

SENATOR CARLSON: Thank you, Senator Gloor. Are there any machines that give both printed...printing on paper as well as show it on the screen, or is it...? You seemed to say that in the '90s there was a lot of them printed and now there's...the newer ones won't have that on it at all; it'll just be the one. [LB100]

ROBERT HALLSTROM: Yeah, I believe the screen capability is probably most prevalent. [LB100]

SENATOR CARLSON: But there aren't machines that do both? [LB100]

ROBERT HALLSTROM: That I don't know, Senator. I'd have to check and see. [LB100]

SENATOR CARLSON: It would be confusing if it did, I think. But as Senator Schumacher said, I know that it's easy to see something on the screen and in a sense ignore it, but you saw it, and then you let that fee go through. But that's where we're taught, read before you react. [LB100]

ROBERT HALLSTROM: And I think most people understand with the passage of time that there are fees associated with those transactions, so they are familiar that there will be some type of fee that may apply. [LB100]

SENATOR CARLSON: Thank you. [LB100]

SENATOR GLOOR: Seeing no other questions, thank you. [LB100]

ROBERT HALLSTROM: Thank you. [LB100]

SENATOR GLOOR: Other proponents? [LB100]

BRANDON LUETKENHAUS: (Exhibit 2) Good afternoon, Chairman Gloor, members of the Banking, Commerce and Insurance Committee. My name is Brandon Luetkenhaus. It's B-r-a-n-d-o-n L-u-e-t-k-e-n-h-a-u-s, and I'm here on behalf of the Nebraska Credit Union League. The trade association for credit unions represents 69 credit unions throughout the state, and there are 440,000 members. I want to thank Senator Watermeier for introducing LB100, and the league is fully supportive of this legislation. Our credit unions take very seriously their responsibility to ensure that consumers, both members and the general public, understand what costs, if any, they can expect when utilizing a service or in this case the ATM. Credit unions appreciate and support sound regulations that protect consumers and promote fair play in the market place. However,

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sometimes well-intended regulation can be unnecessary and burdensome and we believe that's the case with these physical disclosures. We, too, in the credit union industry have seen frivolous lawsuits across the country and in Nebraska. When it comes to these physical disclosures the electronic disclosure we believe is sufficient, and actually the best way for consumers to understand what they're getting into when they use a foreign ATM and are charged a fee for that usage. To Senator Schumacher's question, I have used ATMs and have paid those fees before, and typically what happens is when you're going through the transaction it says, "You're going to be charged a fee of some sort. Do you accept? Press yes. If you don't accept, press no." And so traditionally people would press yes or if they don't want to accept that fee they would press no. And if they accept yes, on your printed receipt if you take out \$40, typically it shows you took out \$42.50, let's say. Let's say the fee is \$2.50. That's typically what happens on these types of transactions. So the person that utilizes that machine and accepts the fee, they know full well that they are incurring a fee on that transaction, otherwise they would press the "no" and then the fee...or the transaction would be cancelled. So with that, the league does support this legislation and I'd be happy to answer any questions that the committee might have. [LB100]

SENATOR GLOOR: Thank you. Questions? Senator Carlson. [LB100]

SENATOR CARLSON: Thank you, Senator Gloor. So when it shows up on the screen "Do you accept this?" does it also show what the fee is? [LB100]

BRANDON LUETKENHAUS: Yes. It usually says "You'll be charged such a fee. Do you accept or not accept this fee?" [LB100]

SENATOR CARLSON: Okay. Thank you. [LB100]

SENATOR GLOOR: Senator Howard. [LB100]

SENATOR HOWARD: Both you and Mr. Hallstrom mentioned these class action lawsuits. When was the most recent one in Nebraska and what was the recovery on that? [LB100]

BRANDON LUETKENHAUS: Well, I don't know the most recent or the latest one, but I know of one credit union in the Omaha area that faced this, and essentially they settled out of court because the costs of taking it to court would be such that they might as well just settle out of court. And unfortunately that's what many banks and credit unions are doing is just settling out of court, and these folks that are unscrupulous, going around the country ripping off placards and suing financial institutions, it not only hurts the financial institution, but in the case of credit unions hurts our members as well because our credit unions are paying these people off just to go away even though these credit unions are following law. [LB100]

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SENATOR HOWARD: Thank you. Thank you. [LB100]

SENATOR GLOOR: Senator Schumacher. [LB100]

SENATOR SCHUMACHER: Mr. Luetkenhaus, your testimony is then that the machines, as they're now programmed, require the affirmative acknowledgement of the fee before it lets you proceed. [LB100]

BRANDON LUETKENHAUS: Every machine that I know of, that's how they work. There could be some that have the paper receipt as has been described. I personally have never ran into that. I don't know of any that spit out a receipt and then tell you that way. Usually it is "accept, yes or no," on those machines. [LB100]

SENATOR SCHUMACHER: Okay. And so, at least to your knowledge, there's no machine which would display it down at the bottom of the screen or something, and in the normal course of just proceeding through the transaction you'd click over and without you getting hit over the head with the notice. [LB100]

BRANDON LUETKENHAUS: To my knowledge I don't know of any ATM that would default and just simply charge you that fee. Every ATM that I'm aware of requires that the consumer press "yes" or "no" to move on with that transaction. [LB100]

SENATOR SCHUMACHER: Okay. As I read this particular bill though, that is not required by this bill. All that is required is that it appears somewhere on that closing screen. Is there a...would there be a problem with us requiring that that notice be affirmatively acknowledged? Would that cause the industry heartburn because they'd have to redesign a machine or something, or is that the way they're built anyway? [LB100]

BRANDON LUETKENHAUS: Well, I think that's the way they're built. That's the way I see it. I mean I would have to defer and go back and ask our credit unions, but like I said, Senator, every machine that I've ever went to, whether it be a credit union machine or a bank machine that's foreign to my institutions, have required the "yes" or "no." [LB100]

SENATOR SCHUMACHER: So that by default right now the machines on the market are already doing more than what we're requiring them to do in this bill. [LB100]

BRANDON LUETKENHAUS: That's what I would offer if...yeah. [LB100]

SENATOR SCHUMACHER: Thank you. [LB100]

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SENATOR GLOOR: Other questions? Seeing none, thank you, Mr. Luetkenhaus.  
[LB100]

BRANDON LUETKENHAUS: Thank you. [LB100]

SENATOR GLOOR: Next testifier. [LB100]

KATHY SIEFKEN: Chairman Gloor and members of the committee, my name is Kathy Siefken, Kathy with a K, S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association here in support of LB100. And we thank Senator Watermeier for bringing this bill. There have been...the most recent lawsuit that I'm aware of was down in Missouri, and there were five ATM retailers that ended up paying \$100,000 and it did go through court. And we support this just simply to keep that out of Nebraska. There are people that have been known to go through and pull those placards off of the machines and then take pictures, and then we have a class action lawsuit. The...back when the initial bill was...or the initial law was passed that required that signage, we had a lot of ATMs in grocery stores that did not have the capability to put the message on the screen, and that's why we worked to get the signage on the placard that went on the outside of the machine, because they would have had to pull those machines. They just weren't capable. Those were old machines, or they're old machines now, and I don't believe any of them are around anymore. Any ATM machine that I've ever used has the screen and you opt in or opt out. You can't just start a transaction and then walk away with your card and your information in there. So I think you have to hit "yes" or "no" to either go forward or to stop and get your card back. So with that, if you have any questions I'd be happy to try to answer them. [LB100]

SENATOR GLOOR: Thank you. Questions? Seeing none, thank you for your testimony.  
[LB100]

KATHY SIEFKEN: Thank you. [LB100]

SENATOR GLOOR: Any other proponents? Anyone who would like to speak in opposition? Anyone in a neutral capacity? Senator Watermeier, you're welcome to close. Senator Watermeier waives closing and we'll close the hearing on LB100. The next two bills are LB146 and (LB)155, which are my bills, so I will be handing the gavel over to Senator Christensen and go out and do my introductions. [LB100]

SENATOR CHRISTENSEN: Welcome, Senator Gloor. [LB146]

SENATOR GLOOR: Thank you, Senator Christensen and committee members. My name is Mike Gloor, G-l-o-o-r, introducing LB146. LB146 would make a needed adjustment in Uniform Commercial Code Section 4A-108, which I'll refer to from now on as UCC Article 4A and I'll refer to it a lot. This change is needed because the

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Dodd-Frank Wall Street Reform and Consumer Protection Act made amendments in the federal Electronic Fund Transfer Act, the EFTA, that have unintended consequences for UCC Article 4A. UCC Article 4A governs a specialized method of payment referred to as a funds transfer, but also commonly referred to in the commercial community as a wholesale wire transfer. The amendments in this bill are recommended by the Permanent Editorial Board for the Uniform Commercial Code. Similar bills will be appearing in legislatures all across the country as a result. If amendments like this bill are not enacted, then there could be legal uncertainty for a class of remittance transfers currently governed by UCC Article 4A. More than 20 years ago, UCC Article 4A was drafted to govern transfers between commercial parties. At that time, the federal EFTA--that's the Electronic Fund Transfer Act--the federal EFTA governed only consumer wire transfers. UCC Section 4A-108 was originally drafted with that in mind. When the Dodd-Frank amendments to the federal EFTA go into effect, the federal EFTA will govern "remittance transfers," whether or not those remittance transfers are also "electronic fund transfers" as defined in the federal EFTA. The result will be that a fund transfer initiated by a remittance transfer will be entirely outside the coverage of UCC Article 4A, even if the remittance transfer is not an electronic fund transfer, that is, not a consumer remittance transfer. Thus--important sentence--thus, a number of important issues in those remittance transfers will be governed neither by UCC Article 4A or the federal EFTA. The proposed amendment would revise UCC Section 4A-108 to provide that UCC Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the federal EFTA. In summary, here are the important parts: Congress identified a problem, that being the need to provide additional protections for senders of remittance transfers. Congress with Dodd-Frank allows remittance transfers to be governed, in part, by the federal EFTA, providing consumer protections to senders of remittance transfers in the form of disclosure requirements and dispute resolution procedures. The solution crafted by Congress ultimately does not consider remittance transfers to be electronic fund transfers, creating a problem under state law by allowing such transfers to fall entirely outside the coverage of UCC Article 4A. However, LB146 solves the problem created by Congress by reinstating coverage under UCC Article 4A for remittance transfers that are not electronic fund transfers under the federal EFTA, thereby ensuring that state law will govern the relations between banks--those would be originator banks, intermediary banks, beneficiary banks--that are part of the payment claims in connection with these transfers. This bill contains the language of the recommended fix from the Uniform Law Commissioners to restore the balance between state and federal law, and thereby closing any gaps in consumer protection. There will be testifiers behind me that might be able to help you work your way through this complicated, but a very important law. Although I'd be glad to answer questions, I would encourage you to wait until you hear some of the additional presenters. [LB146]

SENATOR CHRISTENSEN: Are there any questions for Senator Gloor? Thank you, Senator. Proponents? [LB146]

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STEVE WILLBORN: (Exhibit 1) Good afternoon and thank you. My name is Steve Willborn, W-i-l-l-b-o-r-n. I'm a faculty member at the University of Nebraska College of Law, but I'm here today primarily in my role as one of Nebraska's commissioners on the National Conference of Commissioners on Uniform State Laws--the Uniform Law Commission. Nebraska's other commissioners, current commissioners, are the Honorable C. Arlen Beam, Jill Robb Ackerman, Joanne Pepperl, Harvey Perlman, and Larry Ruth. I appear in support of the bill and speak for the commissioners as well. My main point here is to let you know that this is a product of the Uniform Law Commission. The Uniform Law Commission is in its 120th year. It produces laws of the highest technical quality in areas where uniformity across the states is desirable. There are currently about 200 uniform state laws, including many that this state has adopted, such as the Uniform Commercial Code, the Uniform Probate Code, the Uniform Prudent Investor Act, and by my best count, about 40 other acts. Many of those laws have gone through this committee. The Unicameral and before that the Bicameral Legislature has supported our work for decades, and we appreciate it primarily because we provide good value. That value I think is especially important and evident on bills such as this one when we're talking about highly technical adjustments in legislation that's close to the core of what the Uniform Law Commission does, and that is especially multidisciplinary. Now, in my written comments, I have a short description of the purpose of the bill, but Senator Gloor has described it more completely and more lucidly than I have, so I'll defer to him. And immediately behind me is...will be testifying, Professor Wilson, who is an expert in the area. So I'm a labor lawyer; I'd probably just screw it up anyway. So I want to thank Senator Gloor for introducing the bill to solve this technical problem. So thank you so much. [LB146]

SENATOR CHRISTENSEN: Thank you, Mr. Willborn. Is there any questions? Seeing none, thank you. Go ahead. [LB146]

CATHERINE WILSON: (Exhibit 2) Senator Christensen. Good afternoon, members of the Banking, Commerce and Insurance Committee. My name is Catherine Wilson. I serve as an associate professor at the University of Nebraska College of Law. I teach Payments and a number of other commercial and banking law courses at the law school. Senator Gloor and Dean Willborn have made a wonderful foundation for my testimony here this morning. Consumers send billions of dollars in remittance transfers each year. The term "remittance transfers" describes a transaction where a consumer sends funds to a relative or a business located in another country. The consumer might be sending the funds back to their country of origin or to a college-age son or daughter living in another country. Traditionally, remittance transfers are made via nondepository companies known as money transmitters, but you can also send them through banks, credit unions, and use an ACH transaction. The studies that were presented to Congress indicated that sometimes the fees were not properly disclosed to consumers, and sometimes even the funds didn't reach the intended beneficiary. So Congress, with the Dodd-Frank Act, which was enacted in 2010, sought to harmonize some of the rules

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and provide some consumer protection rules for these transactions. If you look at Dean Willborn's testimony, there's a box there, and I'll use that for my hypotheticals, and I think that's probably the easiest way to think about it. My hypothetical focuses on the differences between boxes A and B. So assume that I am a consumer. I want to send my money to my children who are studying overseas in Spain. Assume that I, for the first transaction, I'm going to send my son some money, and I take the appropriate steps with my computer. With a few key strokes I direct my bank, the Gigantic Bank of Nebraska, to send money to my son in Spain. By definition, this is a remittance transfer because it's an electronic transfer of funds via a remittance transfer provider, my bank, to a person in a foreign country at the request of me, a consumer. This is also an electronic funds transfer as defined by federal law because it's initiated electronically with my computer and it seeks to move funds from my consumer account; that is, a bank account that's held for personal or household purposes. Let's say I also need to send some money to my daughter. So this is a hypothetical over in part B because I'm going to take a thousand dollars' worth of cash into the bank and give it to the bank teller, and then make the transaction. By definition again, this is a remittance transfer, however, it's not an electronic funds transfer as defined by federal law, the EFTA, because it's not initiated by an electronic means. Now to consumers both these transfers probably seem similar, but under...prior to Dodd-Frank a different set of laws applied to the transactions. So prior to Dodd-Frank, that transaction to my son was covered by the Electronic Funds Transfer Act, the EFTA, and prior to Dodd-Frank, the Dodd-Frank law, the remittance transfer to my daughter was not covered by the EFTA, but rather by Article 4A, the law that Senator Gloor mentioned. So these two transactions are similar to consumers, so Congress wanted uniformity; so under the Dodd-Frank Act all remittance transfers will now be governed by federal law, the EFTA. By declaring that the EFTA will apply to all remittance transfers, a problem arose, as Senator Gloor mentioned, that our current state law will not apply. The EFTA says that if any part of the transaction...well, Article 4A says that if any part of the transaction is governed by the EFTA, the Article 4A will not apply. So that's what we're changing here with this bill. Article 4A reaches beyond just that consumer relationship with the initial bank to the other relationships between the various banks as the funds move from the sender to the ultimate recipient. LB146 provides that Article 4A will continue to apply to funds transfers like the one to my daughter, to the extent that its rules are consistent with the EFTA. The legislation will maintain the certainty that the banks and consumers will benefit. Let me illustrate very quickly another hypothetical, just taking it one step further. Let's say that I give Gigantic Bank information to send the money to my daughter with her name and her bank account, but then Gigantic Bank, when they send a payment order over to a New York bank in order to push those funds towards Spain, the bank account is incorrect because Gigantic transposes a couple of numbers. So at that point, the name on the payment order is correct, but the account number is incorrect. With Nebraska's adoption of LB146, this error by Giant Bank of Nebraska will continue to be governed by our state law, UCC Article 4A, specifically 4A's provision on mistakes in identifying the designated beneficiary, specifically Section 4A-207 will apply

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as long it's not inconsistent with the governing EFTA. What protections does Dodd-Frank provide for remittance transfers? As I said, it's really looking at that relationship between the consumer and the remittance provider. It's governing some disclosures and some fees and those sorts of things for the consumer relationship. So I urge you to consider LB146 and provide continuity in the law for this area of type of transfers. [LB146]

SENATOR CHRISTENSEN: Thank you, Professor Wilson. Is there any questions? Seeing none, thank you. [LB146]

CATHERINE WILSON: Thank you. [LB146]

ROBERT HALLSTROM: (Exhibit 3) Chairman Christensen, members of the committee, my name is Bob Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB146. I think all of the witnesses before me have done a nice job of capsulizing what's incorporated not only with the existing law, the problems that have been created by the amendments under the Dodd-Frank Act, but also how we resolve that problem through the provisions of LB146. I'll take a little bit different approach. Senator Gloor has used the terminology "UCC Article 4A." I looked up the term "foray" before I came in here and it's described as a raid or a sudden attack or excursion into enemy territory. While we don't have enemy territory involved here, we do have a foray by Congress into an area that's been traditionally governed by state law, specifically UCC Article 4A. LB146 simply put, as Professor Wilson noted, will take those transactions consisting of what federal law now defines as remittance transfers that do have additional protections under federal law, and will bring them back into the confines of state law for purposes of those protections that are granted under UCC Article 4A that accrue both to the benefit of the consumer and the banks that are involved in the payment cycle for these wire transfers and remittance transfers. And we would ask the committee to favorably look upon LB146 and advance it to General File for further consideration. I'd be happy to address any questions that you may have. [LB146]

SENATOR CHRISTENSEN: Thank you, Mr. Hallstrom. Is there any questions? Seeing none, thank you. [LB146]

ROBERT HALLSTROM: Thank you. [LB146]

SENATOR CHRISTENSEN: Any other proponents? Are there any opponents? Anybody care to testify in the neutral? Senator Gloor, would you like to close? He waives closing. That will end the hearing on LB146, and I'll ask Senator Gloor to come up and open on LB155. [LB146]

SENATOR GLOOR: Thank you, Senator Christensen. I have another scintillating bill

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that will be a fun way to end this first session of ours. LB155 would amend two sections of the Public Fund(s) Deposit Security Act. That act sets forth the mechanisms by which financial institutions acting as depositories of public funds may satisfy their requirements to secure deposits in excess of amounts insured or guaranteed by the Federal Deposit Insurance Corporation. Generally, depositories give security by either furnishing securities or providing a deposit guaranteed bond. We've had laws of this sort in place for a long time. When your city, county, or school district has funds on deposit with a local bank, we require that security must be placed in deposits...for deposits in excess of FDIC limits, just in case the bank might fail. The bank gives that security. The bill...this bill would expand the definition of "securities" that may be furnished to include mortgage-backed securities and collateralized mortgage obligations that are backed by collateral 100 percent guaranteed by the Federal Home Loan Mortgage Corporation, the Federal Farm Credit System, a Federal Home Loan Bank, or the Federal National Mortgage Association. The bill would further expand the definition of "securities" to include a letter of credit issued by any Federal Home Loan Bank, not just the Federal Home Loan Bank of Topeka. The bill would amend provisions which currently allow a depository to secure the deposits of one or more governmental units by depositing, pledging, or granting a security interest in a single pool of securities to secure repayment of all public funds deposited in the depository. The bill would provide that a pool of securities shall include shares of investment companies, the assets of which are limited to obligations that are eligible for investment by the depository financial institution and are limited by their prospectuses to owning securities that are defined as securities for the Public Funds Deposit Security Act. There's no fiscal note with this bill. And again, we have testifiers who I think can do a far better job of laying out specifics and answering some questions of yours, although I'm happy to do so. [LB155]

SENATOR CHRISTENSEN: Thank you, Senator Gloor. Is there any questions for the senator? Seeing none, thank you. [LB155]

SENATOR GLOOR: Thank you. [LB155]

SENATOR CHRISTENSEN: Proponents? [LB155]

ROBERT HALLSTROM: (Exhibit 1) Chairman Christensen, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB155. Senator Gloor has done a nice job of noting the current status of state law which has been in place for a long time, which is that banks are required to provide securities or collateral for the safekeeping of public deposits on anything that's in excess of the \$250,000 per account level of FDIC insurance coverage. The state law requires those securities or that collateral to be in an amount equal to 102 percent of the amount of deposits. The par value of the securities must be 102 percent of the deposits on hand that are in excess of FDIC insurance coverage. This issue arose when the BBW Capital Advisors,

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who operate a government bond fund, among other things that many community banks invest in or use as securities for public funds, approached the Department of Banking in early 2012. At that time, if you look at the LB155, I believe on page...I don't know, I've got the request. Now what we're doing is we're taking out the term "mortgage-backed obligations." Mortgage-backed obligations is kind of a hybrid reference to what are some terminology that has evolved in the banking industry known as mortgage-backed securities, and another element which is collateralized mortgage obligations. When the Department of Banking was approached, the bond fund that was involved had both mortgage-backed securities and collateralized mortgage obligations within the bond fund. Since the statute only referred to mortgage-backed obligations, the department determined that that single term could not include both mortgage-backed securities and collateralized mortgage obligations, even though they have been routinely used by banks for many, many years in this context. So we decided that it was necessary not to expand the law, but to clarify the law so that the existing practice of using mortgage-backed securities and collateralized mortgage obligations in the narrow context of those that are issued by or guaranteed by collateral 100 percent issued by the five specified or designated government sponsored enterprises would continue to be eligible to be used as securities or collateral for public funds. The second element of the bill, which we also support, is expansion of the use of irrevocable letters of credit issued by Federal Home Loan Banks. When the original law was passed, we did not have any banks that were headquartered but located and operating in Nebraska in a region other than the Federal Home Loan Bank of Topeka. So when the original law was adopted, we simply provided for the ability to use as security for the protection of public funds irrevocable letters of credit issued by the Federal Home Loan Bank of Topeka. Since that time, we do have a number of institutions who have moved their headquarters to another state while continuing to operate branch offices in Nebraska who are eligible to acquire letters of credit from a different region of the Federal Home Loan Bank. Forty-seven states I believe currently have broad authorization to use letters of credit issued by any Federal Home Loan Bank. Nebraska would come into vogue with those states with the changes incorporated within LB155. I'd be happy to address any questions. I do have following me Mr. Kendrick de Koning, who is a representative of BBW Capital Advisors, who probably can give you more background information on any of the technical questions that you may have, but I'd be happy to try and address anything that you may be interested in. [LB155]

SENATOR CHRISTENSEN: Thank you, Mr. Hallstrom. Is there any questions? Senator Carlson. [LB155]

SENATOR CARLSON: Thank you, Senator Christensen. Bob, in layman's terms, tell me the difference between mortgage-backed securities and collateralized mortgage obligations. [LB155]

ROBERT HALLSTROM: If you don't mind, Senator, that's why I've got Mr. de Koning

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here to provide you with that, and I know he's listened to your question and will come up and address that in his testimony. [LB155]

SENATOR CARLSON: Okay. Thank you. [LB155]

SENATOR CHRISTENSEN: Yes, Senator Campbell. [LB155]

SENATOR CAMPBELL: Thank you, Senator Christensen. Mr. Hallstrom, and I realize that it only used to be of Topeka, but could you give us some other examples where there are other federal... [LB155]

ROBERT HALLSTROM: There are, I believe, 12 Federal Home Loan Banks that have regions across the country. There's one in Sacramento, Boston...so there are 12 different regions that are covered, and Federal Home Loan Banks have their areas or their regions where, in this case, where banks are located within that particular region; then they are able to utilize, in this case, the letters of credit that are issued by that particular Federal Home Loan Bank. So if a bank has a headquarters...they're located and operating in Nebraska, but they have their headquarters in California, they may be in the Federal Home Loan Bank of Sacramento region, so the letters of credit that would be issued and authorized by removing the restrictive nature of Topeka only would then allow them to use a letter of credit issued by the Federal Home Loan Bank of Sacramento. [LB155]

SENATOR CAMPBELL: So it has really more relation to where the banks in... [LB155]

ROBERT HALLSTROM: Where they're headquartered. [LB155]

SENATOR CAMPBELL: ...Nebraska's headquarters is than the fact that Topeka would be close to us as a region. [LB155]

ROBERT HALLSTROM: Right. And most banks are eligible and can only get letters of credit issued by the Federal Home Loan Bank of Topeka, but there are a few that are headquartered outside of the Topeka region that would need the flexibility to use those same letters of credit, only issued by a different Federal Home Loan Bank. [LB155]

SENATOR CAMPBELL: I worked with this for a very different scenario in low-income housing and trying to get loans through the federal banks, and you had to work within that region and it didn't have anything to do with the banks. [LB155]

ROBERT HALLSTROM: Um-hum. [LB155]

SENATOR CAMPBELL: So that's helpful. Thank you. [LB155]

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ROBERT HALLSTROM: Okay. Thank you. [LB155]

SENATOR CHRISTENSEN: Any other questions? Seeing none, thank you. [LB155]

ROBERT HALLSTROM: Thank you, Senator. [LB155]

KENDRIK de KONING: (Exhibit 2) Well, good afternoon. Thank you. Members of the committee, my name is Kendrik de Koning, as Mr. Hallstrom said. That is K-e-n-d-r-i-k d-e K-o-n-i-n-g. I've got some prepared remarks that the gentleman is passing around right now. I thought that I might hit on some of the highlights, including the question that Senator Carlson quite appropriately raised. I get this question from bankers quite often, maybe a couple times a week. So it's a...I hope I'm the person to answer that one. In any case, thank you, Senator Gloor, and thank you, committee, for considering LB155, which as Mr. Hallstrom indicated earlier, is quite simply an exercise in clarification. In my view doesn't do anything to expand the menu of securities which banks might pledge to further secure public deposits, but rather clarifies. The language of the statute as its currently drafted, in my view, is ambiguous and it is ambiguous, also in my view, strictly because of the often confusing and evolving, perhaps, nomenclature of the securities industry. There seems to be another acronym every month that comes out of Wall Street, and I've been on it for 20 years and I have trouble keeping up. But, quite simply, what the...as the statute reads currently, it refers to something called mortgage-backed obligations, which within the industry don't exist, quite frankly. It's sort of a morphing, if you will, of the two terms mortgage-backed security and collateralized mortgage obligation. And I believe that's where they came up with mortgage-backed obligation. I have one or two clients that refer to it as that, as well, and I think they're just sort of in their mind combining the two. There are a lot of similarities and really one slight difference, which I'll address momentarily. But I'd like to say, because I think it's important to note that what we're discussing here, what is in the statute currently, what is in LB155 are securities where...mortgage securities, I should say, that are expressly limited to those that are agency mortgage securities, which are as both the senator and Mr. Hallstrom said, these are securities that are 100 percent guaranteed or backed by collateral that are 100 percent guaranteed by one of the federal housing agencies. This is distinct from nonagency mortgage securities or those that are not guaranteed by any of the federal agencies which grabbed up so many headlines during the crisis, and which market remains dormant to this day, quite rightly, in my view. So I just wanted to be clear that again there's no expansion whatsoever. We're talking about mortgage...agency mortgage securities, all of which are guaranteed or their collateral is guaranteed. So finally, to Senator Carlson's question. A mortgage-backed security, or MBS as it's quite often referred to, it's also I should note...and this is not in my prepared remarks...also I should note sometimes referred to as a pass-through security. It is really a securitized pool of individual home loans that are guaranteed by one of the federal agencies: Ginnie Mae, Fannie Mae, Freddie Mac, etcetera. They take pools of these loans that are all similar in their characteristics--origination year; coupon; quite

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often, loan-to-value ratios, etcetera, etcetera--and they put them in a pool. They all have to be conforming to certain characteristics and they can't fall with...outside of those boundaries and remain eligible for inclusion in the pool. So they go and they purchase these loans or these pools from Fannie Mae and put a number on them, and Fannie Mae or Freddie Mac issues the pool. It is a...again it's what we call a pass-through security because at the end of the day what happens is that the homeowner makes his or her monthly payment of principal and interest, and that goes through the service or...and eventually to the security owner of record. So it's both principal and interest are received every month. These federal agencies will guarantee the return of that principal and that interest, but to move on to the collateralized mortgage definition, not the timing of that. So they all get passed through, meaning...and when I say, not the timing, you're going to get the principal and interest every month; it's just that as far as when there's a refinancing, let's say, with one of those homeowners refinances their home or they move or they pass away, and all that principal gets paid down, that is what they call accelerated amortization. So that loan gets paid off in one day. That means that the investor ultimately gets that bit of money back faster than he or she anticipated. What a CMO does, or a collateralized mortgage obligation, is really nothing more or nothing less than take these agency...in the case of agency CMOs, which is what we're talking about, agency mortgage-backed securities, and carves out different cash flows out of those. So that...let's say there's a...life insurance companies like to own very long bonds. They will take that pool of securities and redirect the cash flow so that they create a long security out of that which a life insurance company might want to own. They will also create things like floating rate pieces out of that pool which we like to buy quite a lot of because they reset every month. It's a very, very conservative and defensive instrument. So you might have a lot of banks, for instance, when they're buying individual bonds, might want to own something with a two- to five-year principal repayment profile. And so that's one of the tranches, if you will, or securities--tranche is the name they assign to these things from slices--that they'll create. And so the long-winded answer, Senator, to your question is that a mortgage-backed security is just a pass-through pool of exactly as the payments come through from the homeowner, and a collateralized mortgage obligation is one that redirects them to different time buckets, if you will. And the reason they came up with that is it just appealed to a broader array of investors way back when in the, I believe it was the late 1970s or early '80s when they came up with the REMIC legislation. The ultimate effect was such that it brought more investors into that market and it ultimately lowered the borrowing cost for the homeowner with the larger and more liquid market. Again, as Mr. Hallstrom observed, this is...number (1) it is a clarifying bill, and number (2) it in my view codifies something that's already actively in practice. So I would guess at least several hundred million dollars of agency mortgage-backed securities and collateralized mortgage obligations are pledged to these agencies...or I should say, to secure the deposits of these public institutions right now. And so the bill clarifies that, and I hope that did just that, but in any case, thank you. I welcome all your questions. [LB155]

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SENATOR CHRISTENSEN: Are there any questions? Yes, Senator Schumacher. [LB155]

SENATOR SCHUMACHER: Thank you for your testimony here today. I want to start out with what I think is an easy question. The paragraph (n) which says, "which are rated within the two highest classifications of prime by at least one of the standard rating services." By deleting the two words "of prime," what are we gaining or what are we losing? [LB155]

KENDRIK de KONING: Neither. It's really a clarifying...I'm not...as I read the statute I wasn't sure what was in...why that was in there, but prime ratings refer to money market instruments, not to bonds. So they refer to overnight obligations of the issuer. And so as I read that and we looked at it, here it very clearly seeks to address municipal bonds that are issued by a non-Nebraskan entity. [LB155]

SENATOR SCHUMACHER: What then are the two highest classifications by one of the standard rating services? [LB155]

KENDRIK de KONING: Well, then that simply means in the case of let's say an S&P or a Moody's or Fitch or one of those groups, the two highest standard classifications would be AAA and AA. [LB155]

SENATOR SCHUMACHER: So under (n), one of the things that is okay as a security is a bond, which is either a AAA or AA. [LB155]

KENDRIK de KONING: Right. If it's a municipal...but right. And then there are municipals outside of the state of Nebraska. [LB155]

SENATOR SCHUMACHER: What if it's not a municipal? What if it is a...well, I guess it's a state bond here. So this...whatever we're authorizing under (d) has to be either AA-rated or AAA-rated. Is that correct? [LB155]

KENDRIK de KONING: Well, what this...this is a list of permissible securities by banks. And (n) here is specifically talking about municipal bonds. And I'm sorry, when I say municipal, in the industry of municipal it would include a state as well. And I understand the word "municipality" would lead you to think it's a city, but...so whether it is a state or a subdivision thereof, is a county, a city, a hospital, a school district, this paragraph is specifically talking about municipal issuers. [LB155]

SENATOR SCHUMACHER: What I'm trying to do is get it...make it clear that as to (n), anything that a bank relies upon as being under (n) in the legislative history must be either AAA- or AA-rated. [LB155]

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KENDRIK de KONING: And that's...my belief is that's what they were after. [LB155]

SENATOR SCHUMACHER: I mean, then should we say that, instead of saying within the two highest classifications by one of the standard rating? Isn't AA and AAA kind of known in the trade as something that the people understand? [LB155]

KENDRIK de KONING: Well, it's a very good point. And we...I thought about this as we were looking at that. And the problem is, and I've seen a whole host of states and statutory language on this point, as well as specific investment policies for the banks that for whom we manage money, tend to ape this sort of language. The problem, particularly when you're talking about something like a statute, rather than an investment policy which you can change on a dime, is that the rating agencies themselves are evolving or changing, I should say. I'm not sure if they're evolving. That's a matter for another debate, but...so that there are...it might...I could easily foresee, I should say, another rating agency that didn't use the specific AA, AAA, Aa1. Even between the two, they're not the same. So not to get off into the weeds, but if we're talking about Moody's, Baa1 is the same as S&P's BBB+. They just have different ways of enumerating their rating levels. [LB155]

SENATOR SCHUMACHER: So does this have meaning at all if a rating agency can kind of just change the labels? [LB155]

KENDRIK de KONING: Well... [LB155]

SENATOR SCHUMACHER: Does this have any meaning? Is this is a poor standard for number (n)? And remember, this is the easy question. (Laughter) [LB155]

KENDRIK de KONING: I think it is because it leaves the flexibility for the bank to go out and buy that non-Nebraskan municipal issue, but it says very clearly by very highly rated. Even if it's...I agree it is to degrees a subjective standard, absolutely. But to remove all subjectivity and make this strictly objective is going to I think put one in a corner, put the bank in the corner of not being able to purchase anything on which it can earn...in that arena, I should say, of buying a muni out of state. [LB155]

SENATOR SCHUMACHER: Well, I mean, we're dealing with the piggy bank of counties, of towns, of taxpayers' money here. And shouldn't we be just crystal-clear as to what we are satisfied is okay to back that deposits of their piggy bank over a quarter of a million and what is not okay? I mean, should we just paint a...be unclear or vague about it? I mean, if we mean something, then let's say, "Hey, this is it," or not. Or, instead of a banker, kind of, "What do you feel? If it feels good, it's good enough to fit under (n)." [LB155]

KENDRIK de KONING: Right. And I follow you completely. [LB155]

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SENATOR SCHUMACHER: Well, I hope so. [LB155]

KENDRIK de KONING: But let's say, so again I think if we specify...let's say, a new rating agency comes out, which in my view there ought to be several new rating agencies in this country, and they decide that their top two ratings are going to be 1 and 2 out of 10, as opposed to AAA, Aa1, Aa3, etcetera, etcetera. And then you go back and you decide whether you want to include those rating agencies or not, and then change those highest classifications. Here to me, in my view, the only subjective bit would be the term "standard rating" agency. And I think that's where it becomes difficult; theoretically, becomes difficult and labor intensive. But I don't...in my view, to make this, to sort of standardize this to what I in my personal opinion deem to be workable, you know, rational, workable policies to follow, then simply saying two highest classifications by one of the standard rating agencies does it. And I might also point out that whether we're talking about this or any other section in here, the reality is that what we're discussing here are securities that are acceptable collateral to secure those public deposits. So whether that is...it's described thusly or some other way, these bonds are going to be priced every month and they're going to look and see whether the value of that collateral is sufficient to cover those deposits in the event of a failure by the bank and the necessity of then seizing or converting that collateral to cash to give it back to the public entity that left their money at the bank. And so the price can certainly change, if anything, every day. And the other thing is that the ratings might change. Quite frankly, they ought to change maybe more responsibly than they do. [LB155]

SENATOR SCHUMACHER: Then let's move on to the next harder question. We start out in (g) with "Bonds or obligations." I think I can understand that. That's kind of like a note, a promise to pay. Okay, including mortgage-backed obligations. Okay, so I've got a note, I've got a promise to pay, and if I don't pay, you can go sell a piece of property called a mortgage and get your money; if you don't pay, I'll take it away. Okay, I'm following the old language pretty good, I think, to that point. Would that be a fair interpretation up to that point, the first two lines of (g), as it used to be? [LB155]

KENDRIK de KONING: Sure. Yeah, I think so. Yeah. [LB155]

SENATOR SCHUMACHER: Okay. All right. So we've got it "issued by," so this promise to pay is issued by these outfits, the Home Loan Mortgage Corporation, Farm Credit System, a Federal Home Loan Bank, Federal National Mortgage Association. So it has to be a direct promise to pay by one of those organizations. Is that correct...as it used to be? [LB155]

KENDRIK de KONING: As it used to be...and I'm sorry, I've got the updated version. Let me just strip out the updated language...mortgage obligations. Yes. [LB155]

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SENATOR SCHUMACHER: Okay. Now that should make us feel warm and fuzzy because these all have got the word "federal" in them, and so that obviously is good backing, just like the Freddie Mae and Fannie...these are cousins of them, right? Set up kind of the same way. [LB155]

KENDRIK de KONING: They are them. They are Fannie Mae, Freddie Mac, Ginnie Mae. [LB155]

SENATOR SCHUMACHER: So we should have warm and fuzzy already. Okay. So we have a, what we were authorizing in the past was something fairly simple to understand if one of these sound federal institutions issued its promise to pay and backed it by a mortgage, a piece of real estate that we could physically look at, and we figured it was worth something because it was a big, pretty building; then we said, okay, this is good enough to back our town's piggy bank. Now, let's move to where we then become, something harder for me to understand, but maybe you can explain it. We are now saying that it is a promise to pay including mortgaged-backed securities and collateralized mortgage obligations...and I need some explanation. What is now, in the event that banker goes belly up, the FDIC says here's your \$250,000, what do I have to chase now? I don't have my building anymore to chase because it's no longer backed by a mortgage-backed...a mortgage; it's backed by mortgaged-backed securities and collateralized mortgage obligations. So I'm the mayor of "Little Town" and I say, who do I chase? Who do I chase? [LB155]

KENDRIK de KONING: Very good question. The...let me first say that the language of the bill doesn't change that line of security by one iota. [LB155]

SENATOR SCHUMACHER: I want to know, as a practical matter now, it changes something. I knew who to chase before. I knew I ultimately had a mortgaged building I could foreclose on, and I hope like heck it was worth what the mortgage was against it; but now I'm not sure who I chase. Who do I chase when I'm looking for a...the mortgage-backed security and collateralized mortgage obligation? [LB155]

KENDRIK de KONING: Well, the distinction I believe, Senator, that you're talking about really focuses on bonds or obligations so that in the scenario where you have got security in a particular building or parcel of land or whatever it might be, that would be the purchase of a direct mortgage. In my experience, what the banks buy are bonds that are backed by mortgages that are guaranteed by the federal agencies themselves, so that as it is right now, nobody...the line of recourse right now in the event that these properties default are the agencies themselves. And needless to say, it's been happening in waves over the last several years, defaults, underlying mortgages that are owned by the different federal agencies. The agencies then pay the security holder in timely fashion. So the...what you're...the premise was that right now we've got the ability to go grab the...I believe, if I'm saying it right, right now we've got the ability to go attach

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a certain property, and I've got security in that. That's not the case. The case is that the Fannie Mae or Freddie Mac or one of these agencies has that position, and our recourse as owners of the securities are to go to Fannie and Freddie in the event that they didn't forward that payment along, as they have done. But in the event that they didn't, our recourse would be to those agencies themselves. There is not and has never been in the world of agency mortgage obligations direct recourse to the property itself. So it didn't exist before and it's not being removed now. [LB155]

SENATOR SCHUMACHER: Are our banks short on these other types of securities that we had up to this point? I mean, is there...do we need this? [LB155]

KENDRIK de KONING: Well, as I say, what this does is really not...it doesn't add anything because right now a mortgage-backed obligation is a vague term that doesn't spec to specificity, and I agree that specificity is helpful within...in many instances; that right now a mortgage-backed obligation neither defines...neither gives you the ability to buy an agency mortgage-backed security nor a collateralized mortgage obligation. Neither, quite frankly. If you were to walk in and say, show me your mortgage-backed obligations, I wouldn't have any to show you. I'd have a list of mortgage-backed securities and collateralized mortgage... [LB155]

SENATOR SCHUMACHER: What would we lose by just striking all of (g)? [LB155]

KENDRIK de KONING: Well, the ability to buy agency-backed mortgage securities, which are...I mean, it's a \$5.5 trillion market. This comprises I would estimate 40-70 percent of most banks' investments in their investment portfolio. [LB155]

SENATOR SCHUMACHER: But, I mean, we're just talking here about the government piggy banks. How do we secure the government piggy bank so if the bank goes under, the taxpayers aren't out? Do we need (g) in order to secure the taxpayers' piggy bank? [LB155]

KENDRIK de KONING: Well, you do, because I think if you were to eliminate (g)...what is happening right now, as you quite rightly pointed out on a different bill actually, look, interest rates right now are bouncing along zero. The reality is that most banks that we talk to, when that public entity walks in the door, the school district comes in the door and says, "Listen, I've got \$3 million I'd like to drop off; it might be here for six months; it might be here for six years, I don't know. Are you able to take this in?" Right now, with rates where they are, most banks would prefer not to take that money in. That's to the detriment of the public institution. It's to the detriment of that relationship between that Nebraska bank and that institution, because what we're seeing, not to jump topics with the expiration of that transaction, a guarantee that we talked about earlier or you talked about earlier, money is now fleeing from the state banks to the quote, unquote, too-big-to-fail banks. And so they're moving it over to Wells Fargo and Citibank and so

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on and so forth. So without the option to take that money and turn around and invest that money in something that is going to (a) be secure and stable enough, but also generate sufficient return to cover the cost of taking in that deposit, because there are costs associated with taking in the deposit. Whether or not you're paying interest there are costs certainly associated with that deposit. Then banks and the entire system is helped by having something--as long as it is secure enough--by having something that can generate enough return to warrant even maintaining that relationship. So I would suggest if you eliminated all of (g), you would ipso facto be severing a whole larger number of relationships between these small depositors...or I should say municipal depositors with large deposits, and these Nebraska banks. And you'd see that money go straight to New York and San Francisco and Chicago and, quote, unquote, too-big-to-fail banks. [LB155]

SENATOR SCHUMACHER: Well, so you're saying the bankers on that trip, \$3 million, that right now would just as soon not have that money. [LB155]

KENDRIK de KONING: A lot of them, that's right. Yeah. [LB155]

SENATOR SCHUMACHER: Okay. So last year we had a bill allowing credit unions...that would allow credit unions to take those monies and...would that be a good idea now if the credit unions are willing to take those monies? [LB155]

KENDRIK de KONING: I don't know enough about credit unions to talk to that. [LB155]

SENATOR SCHUMACHER: Then let's go on to the last one, the last thing. It says as an alternative to all this stuff, then a bank can grant a security interest into a pool of securities if at all times the total guarantee is "at least equal to one hundred five percent of the...excess," a lot of extra language. But then we have the new language. "For purposes of this section, a pool of securities shall include shares of investment companies registered under the federal Investment Company...", "so shall include the shares of private companies that are registered under this federal act, "when the investment companies' assets are limited to obligations that are eligible for investment by the bank, capital stock financial institution, or qualifying mutual financial institution and limited by their prospectuses to owning securities enumerated in section 77-2387." So what substitutes here is a pool of securities of some private companies. We're now getting away from the government actually securing these things, but a pool of securities of private companies. [LB155]

KENDRIK de KONING: To clarify I would say, no, that's not what it's saying. What it's saying is...let me back up because you emphasize, I think with very good reason, a particular fragment, which is, "investment companies registered under the Investment Company Act of 1940." That is legalese for a mutual fund. So a 1940 act company is a mutual fund, nothing more or nothing less. So that's just long-winded legalese for what a

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mutual fund is. [LB155]

SENATOR SCHUMACHER: So is the translation, long and short then, that as long as this coverage above \$250,000 is secured by the stock of a mutual company...mutual fund companies were happy? [LB155]

KENDRIK de KONING: As long as...well, right now, the statute says, number (1) you can pledge certain bonds as collateral against public deposits. Number (2) the statute as it's written right now says you can invest in a pool of the aforementioned securities. As I...and this is where we started to get interested. I looked at that and I thought, okay, well and good, but I don't know what a pool of securities is. I mean, to me a pool is like an oil deal or something like that. So to clarify, we thought at a minimum a pool ought to include a registered mutual fund that posts its price every day, that consists exclusively of the bonds that are already permissible under the statute, because all that that really does is create diversification and professional management, and so on and so forth. So as...the language that we put in or suggested was, or that the bill suggested, I'm sorry, is that number (1) you can buy these bonds or you can buy a pool that owns these bonds. And what the bills says is, and whatever pool means it is to include certainly a registered mutual fund that is limited by its very terms to only owning what's on, let's call it list A, the list of acceptable securities. Because the...I'm assuming, as it is with most statutes, the intent is that if it's acceptable collateral for these public institutions' deposits--it's their money, the taxpayers' money that's dropped off--if it's acceptable to security for one bond, it's better for a diversified pool of bonds. And if...and just to bring it up-to-date, pool most certainly ought to include a mutual fund which is about the most innocuous legal structure for any such pooling of investment interests. But to clarify, it doesn't open the door then to buying shares in private companies by any stretch. [LB155]

SENATOR SCHUMACHER: What bothers me about all this is these are fairly sophisticated financial instruments that at least have the same tint as the fairly sophisticated financial instruments that were deployed prior to 2008, in which worthless mortgages were put into a pool, leveled off into tranches, with the top tranches sold off as AAA, AA, to some poor schmuck in Iceland who ended up losing his pension. And when you get this level of sophistication in a financial environment that is still not entirely stable and may not be for some time, and we're talking about putting the public piggy bank in there, I'm not getting a warm and fuzzy from your testimony. (Laugh) [LB155]

KENDRIK de KONING: And I don't blame you. So let me clarify further. The same tint...the same tint I would agree with. There is a colossal distinction, however, between the whole owner nonguaranteed mortgage securities that went into the CDOs or collateralized debt obligations, and all of the acronym stew that Wall Street produces on a daily basis, levered and levered and relevered. That, and what we're talking about

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now, and what has been the practice and is the practice today of buying agency-backed mortgage securities, whether they be pass-through securities or collateralized mortgage obligations, is completely different than buying the nonguaranteed variety, number one. Number two, I operate every day of my life thinking about the tail risk and the what-if doomsday scenario; and I, like all of us, lived through it, and I, in the markets with bonds to sell and bonds to buy. And I could tell you that while plenty of securities saw themselves trading at somewhere between zero and 80 cents on the dollar, the agency-backed mortgage securities, which are...which fit squarely between and don't bleed outside of the statute and the bill, did not have such problems. And that is through the darkest days of the modern markets period--I mean in the last 100 years, I would say. As far as dislocation in this colossal fixed income market, the agency securities...and that's why I take great pains to distinguish between the stuff that the Icelandic folks fell in love with and thought that they had figured a better way to slice the apple, and found out that they didn't, they weren't playing with U.S. agency mortgage securities. They were playing with nonagency guaranteed whole loans is the... [LB155]

SENATOR SCHUMACHER: May I ask you one final question? [LB155]

KENDRIK de KONING: Sure. [LB155]

SENATOR SCHUMACHER: If we don't pass this, how will our communities, our local governments, be hurt? [LB155]

KENDRIK de KONING: They could very easily see a reluctance or unwillingness of people to...banks willing to take these deposits in and pay them rates of return, which everyone needs to eke out as much as they can. Even though we're bouncing around zero, every basis point counts. [LB155]

SENATOR SCHUMACHER: So not very much, in other words, that we will... [LB155]

KENDRIK de KONING: Well, no, I think quite a bit. I think in terms of nominal dollars I think quite a bit, because the dollars would leave. Whether we're talking about 1 or 2 basis points or hundredths of a percentage point, I think the dollars would leave and they would go out of state. [LB155]

SENATOR SCHUMACHER: So if the banks are allowed to reinvest this money in something that pays a higher percent of interest, the banks get the spread. And the very fact that it pays a higher percent of interest, isn't that indicative of the market valuing it as a riskier thing? [LB155]

KENDRIK de KONING: Well, it...let me clarify again. We're not looking to add to what they can do with those deposits. They're doing it right now to the tune of several hundreds of millions of dollars. So in terms of what might happen if this doesn't get

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passed, then I would assume that at some point the regulator might walk in and say, hey, you know, show me mortgage-backed obligations. And the truth is, if I'm an attorney for the regulatory agency, I'm going to say, you don't own any mortgage-backed obligations; show me your...and I'm going to...because they fall into one of those two buckets. So all this does is say, look, what we're talking about, this mortgage-backed obligation term, is really two different instruments and it just modernizes the label on them. [LB155]

SENATOR SCHUMACHER: Should we rework this whole area of the law then if all this is either old or not been used in practice or doesn't have a lot of meaning? I mean, are we securing our public obligations insecurely? [LB155]

KENDRIK de KONING: I don't think so, and I looked very...I looked comprehensively for quite a long time at the entire statute, and I would say that the adjustments, the clarifications that are LB155, do just that; they modernize it and they've looked at everything. That's why we got off really into the classifications of prime. That's got nothing to do with our fund or anything else, but it's just sort of a...it's a clarification. And so I think that LB155 does exactly as you suggest, Senator. [LB155]

SENATOR SCHUMACHER: I've taken enough of your time and the committee's time. Thank you. [LB155]

KENDRIK de KONING: No, no. Good questions. Thank you. [LB155]

SENATOR CHRISTENSEN: Senator Crawford. [LB155]

SENATOR CRAWFORD: Thanks, Senator Christensen. Is it true that the language at the end that is the mutual...the pool of securities language, provides a new or different option for those local banks? [LB155]

KENDRIK de KONING: No. No, because it is a subset of this definition of pool. This is clear that whatever the intention was, it was to create the ability for someone to buy into a diversified set of securities. This just clarifies that amongst those options, maybe they're private pools of securities, maybe they're governed by a limited liability company operating agreement, just...which might be just fine, but it's going to be inherently a lot less liquid and transparent than, say, a mutual fund. This just clarifies that whatever a pool is, it includes a registered mutual fund. So it doesn't add anything else. It just provides clarification. [LB155]

SENATOR CRAWFORD: I mean it doesn't add any new types of investments that aren't described here, right? [LB155]

KENDRIK de KONING: Correct. Exactly right. [LB155]

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SENATOR CRAWFORD: But is it adding a new tool or packaging for the banks?  
[LB155]

KENDRIK de KONING: Vis-a-vis the term "pool," I would say no; but it provides more clarity. Because whether I'm a regulator or a banker or that public agency, I'm looking at the word "pool" and saying, "I don't know if I could buy this mutual fund or not, and boy, my gut says a mutual fund is certainly a lot more straightforward than..." [LB155]

SENATOR CRAWFORD: It's defining more clearly, I see. [LB155]

KENDRIK de KONING: Yeah. It just really defines it more clearly. [LB155]

SENATOR CHRISTENSEN: Are there any other questions? Thank you, Mr. de Koning.  
[LB155]

KENDRIK de KONING: Thank you. [LB155]

SENATOR CHRISTENSEN: Any other proponents? Any in the opposition? In neutral? Would you like to close, Senator? He waives. That will close the hearing on LB155 and our hearings for today. [LB155]

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Banking, Commerce and Insurance Committee  
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Disposition of Bills: