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Government, Military and Veterans Affairs Committee
January 25, 2013

[LB40 LB79 LB137 LB140]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Friday, January 25, 2013, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB140, LB40, LB79, and LB137. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Dave Bloomfield; Russ Karpisek; John Murante; and Norm Wallman. Senators absent: Scott Lautenbaugh; and Jim Scheer.

SENATOR AVERY: Okay. I'm going to get started while we wait for other members of the committee to join us. We have a lot to do today so I don't want to start late. Welcome to the Government, Military and Veterans Affairs Committee. We are in our third day of hearings--seems like our third week already. My name is Bill Avery, I chair the committee. Let me introduce the members who are here before talking a bit about procedures. On the far end over here is Senator John Murante from Gretna, new member of our legislature and thus new to this committee. Next to him is Senator Dave Bloomfield from Hoskins, also new to the committee. And currently in the Judiciary presenting other bills is Senator Scott Lautenbaugh of Omaha. He will be back shortly. Next to him is Senator Scott Price, the Vice Chair of the committee, from Bellevue. And to my immediate right is Christy Abraham, the legal counsel for the committee. And the chronically late Senator Karpisek from Wilber will be here later. And next to him is Senator Norm Wallman from Cortland. And Senator Jim Scheer had a death and he has to be at a funeral today in Norfolk. Sherry Shaffer is on the far left and here she is the committee clerk. We will take up the bills as posted on the agenda outside the room starting with LB140 followed by LB40 and that will be followed by LB79 and then LB137. So we have a total of four bills to hear today. We will take them up in the order specified. There are sign-in sheets for those of you who wish to testify and the sign-in sheets are green and I don't have a copy to show you. Thank you. Yes, I do. If you're going to testify, we ask that you fill out this form. This form and all forms that you may need are available at each door. Please print your name very clearly and other information requested. If you wish to record your opposition to or support for any bills but do not wish to testify, we ask that you sign this sheet. Again, please print so we can read it. The...if you...when you appear at the table if you have anything you want us to read, a copy of your testimony or some handouts--I see that Senator Krist has some very elaborate handouts for us--the...hand those to the clerk. She will have the pages distribute them. Our pages are Will Rahjes from Elwood and we have another page also, Cicely Batie from Lexington. She's running an errand for me right now I think. And they...if you have some material you want us to see, we need 12 copies. If you don't have 12 copies, we can have the page arrange that for you. I ask you also to turn off your electronics--especially cell phones. Anything that makes noise, please turn it off or silence it in some way. The procedure will be introducers make the initial opening statements, followed by proponents, who are followed by opponents, and then neutral testifiers. Closing remarks are reserved for the introducing senators only. We ask that

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you address us and not other people in the audience. This is not a dialogue really or conversation with everybody. It's our opportunity to get information from the testifier. We will be using the light system. The green light means you have four minutes, and when the amber light comes on you have one more minute to finish up your testimony. When the red light comes on, I will have big Senator Price here take care of it. (Laughter) Usually if you need to go over a little bit, I'm not that strict but if you can't stop then we'll help you. Okay. I think that covers everything. Welcome, Senator Krist.

SENATOR KRIST: Thank you. [LB140]

SENATOR AVERY: He's going to untangle a very complicated issue here about airports in LB140. Welcome. [LB140]

SENATOR KRIST: (Exhibits 1, 2) Thank you. Thank you for the welcome, Senator Avery, and for your courtesy, and members of the committee. For the record, my name is Bob Krist, B-o-b K-r-i-s-t, and I represent the 10th Legislative District in northwest Omaha, along with the north central portion of Douglas County which includes the city of Bennington. I appear before you today in introduction and support of LB140. As a brief reminder for those who were here during our last session, Senator Lautenbaugh introduced this bill. The bill bears some resemblance to his bill. The...so we've basically been working on this subject matter for three and a half years. Thanks to Mueller Robak and Katie Zulkoski bringing a group of people together over the last year and a half, we're now down to a point where I think there's maybe one and a half amendments that are still being proposed. And hopefully we've worked out most of the issues involved with this. So I'll proceed with my prepared notes and then take any questions you might have. LB140 proposes to redefine the term "airport hazard area" found in Nebraska Revised Statute 3-301(3). The airport zoning statutes have not been updated since the '40s--since in 1945 when it was last updated. And now it's important to update these statutes to adequately protect our investment in the infrastructure. The bill intends to more precisely define the statute--the "hazard area"--and to extend the approach zones of the runway from the current three-mile limit to a ten-mile limit as applicable. And that will be an important point as we go through this discussion. The current statutory definition of an "airport hazard area" is considered by many to be both vague and outdated as it does not allow for the consideration and the effect of the safety of height structures, i.e., tall buildings, cellular towers, windmills, electrical poles, trees, silos, etcetera, etcetera, etcetera, more than three miles from the airport--particularly the approach zones. And we'll talk about those in just a second--approach zones and approach cone zones. The bill amends the existing "airport hazard area" definitions by redefining airport hazard zones and by providing descriptions of various safety zones within the hazard zone. An airport hazard endangers the lives and property of the users of the airport and occupants of the land in its vicinity. You don't like to have an airplane fall on you. An airport hazard reduces the size of the area available for landing and takeoff and maneuvering the aircraft thus tending to destroy or impair the utility of the

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aircraft. Lengthening the approach zones from three miles to ten miles helps Nebraska statutes conform with the current Federal Aviation Administration and the Nebraska Department of Aeronautics' zoning and licensing standards. And it's a very important point to realize at this point, these are not our standards. These are standards that are adopted from the FAR. It's a Federal Aviation Regulation. In other words, if you want to have an instrument approach at your runway, you need to conform with the FARs. Those were not specifically addressed or referred to in 1945. Just a real quick story. In 1945-1946 time frame the governor of the state of Minnesota who was a war veteran, his family procured and bought a B-17. And they flew it as the state airplane. He came down and picked up the governor of Iowa and Nebraska and Kansas and Oklahoma along with our beloved Sally, and took them to Hollywood, California, for a meeting of all the governors. That's the last time this regulation--this procedure--was actually updated. Technology has changed a bunch since then. Please note the entire radius of the airport is not protected--is not protected in this bill--but merely an airport's approach zone. The approach zone extends from three miles to ten miles and is required due to the advances in avionics equipment over the past five to eight years. So things have changed dramatically just in the last decade. The advance in avionics has made a lot of airports in all parts of Nebraska replace existing visual approaches with precision instrument-type approaches. I'm going to talk about that for just one second. It used to be 20 years ago if you were going to put an instrument approach in a runway, you had to invest an incredible amount of money in an infrastructure--a navaid or navigational aid--on the ground. That was a transmitter that sent azimuth and glidescope information to the airplane and the airplane had a receiver on board. That's how that whole thing happened. That doesn't happen anymore in all cases. There are GPS approaches called WAUS. That stands for Wide Area Augmentation System. And essentially, the airport can say, I've cleared out the area, I want to put an instrument approach in here, have no investment in an infrastructure, but that investment is made by the pilot in his GPS in his airplane. So that's an important point. Many of the people who are flying airplanes as small as Cessna 150s to as big as G5s, Gulfstream G5s, are flying with GPS approaches requiring no navaids. What does that do? Increases the safety margin--allows us to medevac people out of Banner County and get them to a medical facility in all weather conditions. And that really is the issue. This bill, the Airport Zoning Act, helps strengthen zoning regulations by local airport zoning boards for the protection of the airport across the state--both big and small. Legislation helps protect all airports' approach zones to provide the safety needed for the aviation industry in our state. Passage of the bill will also protect the private use of airports across Nebraska to maintain the economic vitality these airports provide to the communities. From a safety standpoint for our pilots and our communities, it will help be able to get in and out of places with goods and services that are critically needed, as I said before, and also medical services. Interested parties have been working on this legislation and these important changes over the past year. Again, we've been working on this for three and a half years. This last year and a half has been intensive. I think we've brought everyone to the table. Not everyone is going to agree behind me. And everyone may have an

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opinion--most people will have an opinion--that we need to move forward. I'd be happy to work with the committee any way I need to, to make sure that this critical piece of legislation comes out of this committee and goes to the floor for debate. I gave you two handouts that I'll touch on briefly. And then I'm going to leave these here with your permission, Chair, so that anybody who wants to talk to you about these has also a copy. The first is a map of Nebraska and it shows--and I might add not to scale, this is not to scale--but it shows an airport which the inside circle is a three-mile zone. That's currently the secure area or the safety zone area for all airports. Now if you have an instrument approach that currently exists, you'll see a red feather, if you will, coming out of there. Those are the cone zones or the protected space. So take, for example, Hartington, up in the northeastern side of the state. That runway has two instrument approaches, one coming from each direction. Only where the feather is represented are the protected zones go out to ten miles. Translation, you can put a wind tower or anything you want to right over the top of the "t" in Hartington, and it does not interfere with the instrument approaches going in and out of there. Second point, the FARs are very specific. If you want the approach, you need to match them. If you don't want the approach, you don't. If you decide as a local community and planning board you want to put a wind tower right on top of that feather, you will probably end up decommissioning, decertifying that approach. So people don't like to do that because there's a large investment in getting these done. That's for your approval. Oh, I'm sorry. The green arrows are those that are projected. In other words, they want to put an instrument approach in there, they're under process of putting an approach in there. It can take--and you'll hear our AOPA rep behind me--it can take an inordinate amount of time to approve and certify an approach depending on how it's flight tested and how much work is involved--up to two years in some cases. So when you see green, those are the airport authorities or the communities that are trying to put things in. Again, not to scale but a good representation. This other piece which is labeled LB140 gives you an idea of what the approaches actually look like. So once again, if I were going to put a wind tower in or any other obstruction and I wanted to build a silo right on top of the TYP in approach zone TYP, I could do that. I would just apply for a permit, the FAA would say, absolutely, you don't have to worry about it. There's no instrument approach procedure that complicates that issue, and you can go ahead and build it. Now you want to go right over the top of the end of that blue inside that blue area you can still do that, but it has to be below the altitude restriction. It cannot penetrate the clear zone or cone zone under there. So there's a lot of variances and really the planning board, the local--maybe the county, maybe the city, small village, the airport authority in most cases because most cities don't like the liability of running their own airport--they make the decision what is critical for them--an instrument approach or a silo? That's pretty much what it comes down to. These...the folks who will come up after me may want to use these as references to talk to you about those issues. So I will, again with your permission, Chair, just leave these here. That concludes, and I'd like to stay around for closing if I could. [LB140]

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SENATOR AVERY: Okay. Let me ask you a question first. When you're looking at this Nebraska map and all the various airports which it's a large number,... [LB140]

SENATOR KRIST: Yes, sir. [LB140]

SENATOR AVERY: ...I was surprised that we had that many--what does it mean if you have a green approach on top of a red one? [LB140]

SENATOR KRIST: It means that they are recertifying a potential...another approach at that runway, for example, instrument landing system, an ILS approach. They could be putting in a TACAN approach. They could be putting in or certifying a WAUS approach. Every one of those approaches has to be certified and approved by the FAA. [LB140]

SENATOR AVERY: It looks like Lincoln is the only one doing that. [LB140]

SENATOR KRIST: They're making a lot of improvements to the instrument runway conditions at Lincoln, yes, sir. [LB140]

SENATOR AVERY: Questions from the committee? Senator Bloomfield. [LB140]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Senator Krist you said this would help reform (sic) to federal regs. Does it, in fact, bring us totally in line with federal regs or are there other things to come yet? [LB140]

SENATOR KRIST: It does. And it doesn't attempt to try to circumvent or try to quote them, in case they change. It refers us to go back and look at that. And a good example, I had some wind folks come and talk to me this morning. They've already obtained...they know how to do business. They've already obtained that information from the FAA and have been permitted or accepted for potential building in that area. So this just helps everybody get on the same sheet of music and refer to those current regulations. And again, there was no attempt to try to stereo them or quote them because they may change. So we want to know where to go to but not necessarily echo. [LB140]

SENATOR BLOOMFIELD: Okay, thank you. [LB140]

SENATOR KRIST: You bet. [LB140]

SENATOR AVERY: Anyone else? You would think we understand all this but we don't. That's why we're not asking questions. [LB140]

SENATOR KRIST: Do you have a green button? I'll just tell you, just vote green right now. [LB140]

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SENATOR AVERY: Thank you. [LB140]

SENATOR KRIST: Yes, sir. [LB140]

SENATOR AVERY: Anyone wish to speak in support? Good afternoon, sir. [LB140]

BILL AUSTIN: Good afternoon, Chairman Avery, members of the committee. My name is Bill Austin. I'm an attorney with the law firm of Erickson & Sederstrom, and I am the general counsel for the Airport Authority of the city of Lincoln. I'm here today to testify in support of LB140, and at the outset I'd like to thank Senator Krist and Senator Lautenbaugh for all the work they've put into this bill over the past couple of years. Since the last session when LB352--which related to this same issue--died at the end of the session, as Senator Krist mentioned a group of interested individuals got together during the summer, worked on a redraft of that bill, and it is here before you today in the form of LB140. This bill is an effort to update airport zoning legislation that, as Senator Krist mentioned, was enacted in 1945. And I figure that since it is something that's even older than myself it is about time that it was replaced. Obviously times have changed. The overriding goal of the working group that developed this proposal is to further the safety of air travel and to protect the investment of Nebraskans in their public-use airports. I'll very briefly attempt to highlight the revisions proposed in this piece of legislation although a number of them already have been addressed by Senator Krist. We've incorporated a number of what we believe to be important definitional terms. We've included the definition of "airport" as public-use and military airports. We have specific definitions and dimensions for the approach zones, turning zones, transitional zones, and operation zones. We've got definitions of "visual" and "instrument" runways, and there's a definition of "electric facilities." The most significant practical change I believe that Senator Krist mentioned is the expansion of the dimensions of the approach zone from what used to be three miles to now ten miles for an instrument runway. Other dimensions are those that have been previously incorporated into airport zoning ordinances consistent with what used to be the FAA standards, I believe. This proposal would continue to allow the creation of joint airport zoning boards in those situations where airport hazards overlap zoning jurisdictions. And it provides for enforcement mechanisms for regulations adopted by such boards. Otherwise the zoning is left to the...in the hands of the zoning authorities that are currently in force and effect. Recognizing that no one wishes to see airport zoning used to circumvent otherwise lawful existing uses, we tried to incorporate a number of provisions that will hopefully provide some transparency as to the procedures and what is going on. There is a provision that requires public hearings before designation of an instrument runway. There is grandfathering of any structure or tree that currently exists and which would otherwise constitute an airport hazard. Even if an instrument runway is designated by either a joint board or a zoning board and is shown on an airport layout plan, if that designation does not receive FAA approval then the restrictions imposed in relation

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thereto must be revised. As regards, in particular, electric facilities, these have been defined to include transmission and distribution lines and their supporting structures. There's a provision that provides that any such electric facility that hasn't been constructed but that has received approval before August 1, 2013, would be considered a grandfathered use even though it's not actually in place on the ground--no construction having occurred. Thereafter, any electric facility that has been grandfathered can be reconstructed, repaired, replaced without the need to obtain a permit. And the thinking there is that electric facilities, transmission lines, distribution lines are so critical and the need to repair or replace them is something that cannot be, you know, left to the permitting process, that this is what we believe to be a reasonable exception--even if they do constitute an airport hazard--as long as they're not constructed to a greater height. Finally, any nonconforming structure, whether it's an electric facility or not in the terms of the bill, can be repaired if it is the victim of a catastrophe or if the repairs do not involve an expenditure exceeding 60 percent of the value of the structure. The rest of the statute is an effort to modernize the administrative provisions relating to airport zoning. It tries to modernize and conform the board of adjustment provisions to those that exist in other parts of the statutes, 19-901, etcetera. And it attempts to update the appeal process to just, again, just put it in conformance with what otherwise applies for hearings on petitions for review. That in a nutshell is the nature and purpose of the act. I would be happy to try to answer any questions that you might have. Although if it has anything to do with those zones, I would like to defer to somebody else. [LB140]

SENATOR AVERY: Thank you, Mr. Austin. Questions from the committee? Don't see any. Thank you. [LB140]

BILL AUSTIN: Okay, thank you. [LB140]

SENATOR AVERY: Any additional proponent testimony? Welcome. [LB140]

LANCE SCHIPPOREIT: (Exhibits 3, 4) Chairman Avery and members of the Government Committee, my name is Lance Schipporeit. That spelling is S-c-h-i-p-p-o-r-e-i-t. I am testifying on behalf of the Nebraska Association of Airport Officials in support of LB140. This is a very important bill for our airports across the state and the communities that they support. As you have heard, these statutes originated in 1945 and have not been adequately updated to address the fact that airports have changed drastically since that time. I'd like to thank Senator Krist and Senator Lautenbaugh for their work on this issue. I am the director of the Ainsworth airport and this bill will better define, for all parties involved, the zoning regulations surrounding my airport. Current law provides for zoning three miles outside of the property owned by my airport--or owned by an airport. In Ainsworth specifically, where we own quite a bit of land around our runways, this gives us a wide array of zoning authority. The changes provided by LB140 would more narrowly tailor the zoning

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jurisdiction to the areas immediately around the runways. So in my case, this will actually make a smaller area of zoning. LB...passing LB140 and ensuring local zoning boards are able to adequately protect their airports. Our airports provide economic viability for our communities and access to emergency medical services. Both are essential to our communities and their continued viability of life and viability. The graphics that I handed out may be overlapping there somewhat; maybe a little difference but not much. [LB140]

SENATOR AVERY: That's okay. [LB140]

LANCE SCHIPPOREIT: They're a small copy and a large copy. Thank you. [LB140]

SENATOR AVERY: Yeah, that's fine. Thank you very much for your testimony. Any questions from the committee? I don't see any. Thank you. [LB140]

LANCE SCHIPPOREIT: Thank you. [LB140]

SENATOR AVERY: Any additional proponent testimony? Good afternoon. [LB140]

JON LARGE: (Exhibits 5, 6) Senator Avery, Senators, my name is Jon Large. That's spelled L-a-r-g-e. I'm a professional engineer in the state of Nebraska. I'm in my 13th year as a deputy director of engineering at the Lincoln airport. Prior to that, I was...I worked at the Nebraska Department of Aeronautics for 12 years. When I left there, I was the assistant state airport engineer. So I have been working with or for airports across the state for almost 25 years now. I'd like to speak in support of LB140. I think it's very important for the continued safe operation around and the protection of the investment that's been made in Nebraska's airports. To give you just a bit of background, for the last 60-plus years local cities, counties, and airport authorities--hand in hand with the state of Nebraska through the Department of Aeronautics and with the federal government through the FAA--have invested hundreds of millions of dollars in the aviation infrastructure in this state. Runways, taxiways, parking aprons, weather systems, hangar structures have all been developed, creating in Nebraska what I believe is one of the best statewide aviation systems in the country. And that investment pays off for all Nebraskans, from the traveling public using our commercial service airports bringing people and commerce to our state, to aircraft flying the day-to-day business of business. And as has been mentioned a couple of other times, from emergency medical support to those routine doctor visits allowing doctors to come to our citizens rather than making them travel to the doctors, there is a tremendous benefit to the state of Nebraska. In fact, per a 2003 study done by Wilbur Smith Associates for the Nebraska Department of Aeronautics, the economic impact on the state of Nebraska of our aviation system is about \$1.6 billion. So it's...I think it's important that we continue to protect these assets and the economic impact that they provide. So how do we protect them? Well, I think that it...there is some common

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misperception that the FAA protects our airspace. While they review and make comment on proposed structures and development in the state, the FAA really believes that that is a local issue. In fact, in every federal grant that I've seen over the last 25 years, there are conditions in the grant that require that local sponsor, that local airport authority or city, to protect the airspace around their airport, whether it is through mitigating existing hazards, preventing the establishment of future hazards, that is a requirement of that local entity. To meet that requirement, most if not all of the airports in the state have adopted height-restriction zoning around their airports. And that nominally restricts the height of structures in that airport environment, certainly in the approaches, to a 50-to-1 slope to a maximum height of 150 feet within three miles. That zoning model developed in the '70s has worked well for us in most cases protecting the aviation environment in the state. However, improvements in technology, both on the aviation side and in other industries, are really the impetus for this request or for this bill. The improvements in technology on the aviation side are allowing more and more approaches providing both vertical and horizontal guidance to pilots in the cockpit making approaches to runways. This increases the safety as we use those airports in lower weather conditions, and it increases the utility of that investment that's been made in our airports. On the flip side, improvements in technology and new technology and other industries have made possible structures with heights and in potential numbers that we could not have envisioned 40 or 50 years ago when these zoning laws were developed. By extending zoning from its current limit of three miles out to ten miles along that extended center line of the runway, I believe helps tremendously in providing those local zoning entities...provides them with the tools that they need to provide continued protection for their airspace and protect those investments into the future. I think it's important to note that this area from three miles to ten miles is an imaginary surface; does not preclude development...continued development on the ground, only restricts the height of structures in that area beginning at that 150 feet at the extent of the current zoning laws and increasing to approximately 890 feet at the ten-mile maximum. I believe that this improvement in our zoning requirements has little impact on the continued use of that current land. [LB140]

SENATOR AVERY: Mr. Large. [LB140]

JON LARGE: Sir. [LB140]

SENATOR AVERY: The red light is on... [LB140]

JON LARGE: I'm sorry. [LB140]

SENATOR AVERY: ...and I'm going to have to ask you to end. [LB140]

JON LARGE: My apologies. [LB140]

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SENATOR AVERY: No, don't leave. We might have a question for you. Does anybody have a question for Mr. Large? [LB140]

SENATOR BLOOMFIELD: I do have one, Senator Avery, thank you. [LB140]

SENATOR AVERY: Senator Bloomfield. [LB140]

SENATOR BLOOMFIELD: Out of the ten-mile range... [LB140]

JON LARGE: Yes, sir. [LB140]

SENATOR BLOOMFIELD: ...where we're at roughly 900 feet... [LB140]

JON LARGE: Uh-huh. [LB140]

SENATOR BLOOMFIELD: ...how wide an area is that ten miles out? [LB140]

JON LARGE: When you get to that ten-mile limit we are at 16,840 feet, I believe. [LB140]

SENATOR BLOOMFIELD: So about three miles. [LB140]

JON LARGE: Yes, sir. [LB140]

SENATOR BLOOMFIELD: Okay. Thank you. [LB140]

JON LARGE: Uh-huh. [LB140]

SENATOR AVERY: Let me ask you... [LB140]

JON LARGE: Yes, sir. [LB140]

SENATOR AVERY: You addressed ground construction. [LB140]

JON LARGE: Yes. [LB140]

SENATOR AVERY: That seems to be an issue with power generation facility towers and wind towers and things of that sort. Do you see these approaches limiting that development at all? It's possible if you're on a rise, for example... [LB140]

JON LARGE: Yes, uh-huh. [LB140]

SENATOR AVERY: ...that a windmill... [LB140]

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JON LARGE: Yes. [LB140]

SENATOR AVERY: ...a wind turbine could be too high. [LB140]

JON LARGE: It could be. And in some cases, I think they have been. [LB140]

SENATOR AVERY: Uh-huh. And this would restrict development. [LB140]

JON LARGE: Yes, it would... [LB140]

SENATOR AVERY: Yeah. [LB140]

JON LARGE: ...because these slopes and these height limitations are based on the end of the runway. [LB140]

SENATOR AVERY: Uh-huh. [LB140]

JON LARGE: And so we're looking at protecting that approach slope and given ground terrain in the vicinity of an airport, yes, it could restrict structures to something less than what a...what the full slope might provide. [LB140]

SENATOR AVERY: So it's possible that there are airports that might wish to have instrument approach zones... [LB140]

JON LARGE: Uh-huh. [LB140]

SENATOR AVERY: ...that probably have too much growth around them, too much development, they may not be able to carve out the space? [LB140]

JON LARGE: Given our existing zoning, I think we've already protected those areas and carved out that existing space. I think these additional approaches really provide for that future development and protect the airspace. [LB140]

SENATOR AVERY: I'm going to ask you a question that is not related to this bill, but because you're an engineer you can probably answer it. [LB140]

JON LARGE: Uh-huh, yeah. Sure. [LB140]

SENATOR AVERY: There are some communities that carve out noise-abatement zones. [LB140]

JON LARGE: Yes. [LB140]

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SENATOR AVERY: For example, if you fly into Reagan National... [LB140]

JON LARGE: Uh-huh. [LB140]

SENATOR AVERY: ...in D.C., you don't fly over the city... [LB140]

JON LARGE: Correct. [LB140]

SENATOR AVERY: ...you fly over the Potomac and largely that...well, some of that's security related... [LB140]

JON LARGE: Uh-huh. [LB140]

SENATOR AVERY: ...some of it has to do with noise abatement. Do we have any of that in this...in the state of Nebraska any noise abatement zones? [LB140]

JON LARGE: No, we do not. We have... [LB140]

SENATOR AVERY: I know not in Lincoln... [LB140]

JON LARGE: Yeah. Certainly. Yes, we've done a Part 150... [LB140]

SENATOR AVERY: ...because they fly above my house all the time, Jon. [LB140]

JON LARGE: We do not. No, sir. [LB140]

SENATOR AVERY: All right. That was just a left field question. Anyone else wish to...Senator Karpisek. [LB140]

SENATOR KARPISEK: Thank you. [LB140]

JON LARGE: Yes, sir. [LB140]

SENATOR KARPISEK: I was just going to ask, is there anything like Jake brakes on planes so they could throw them on as they go over Senator Avery's house? [LB140]

JON LARGE: I would have to defer to a pilot for that, sir. [LB140]

SENATOR KARPISEK: Okay, well... [LB140]

_____ : Afterburners. [LB140]

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SENATOR KARPISEK: Afterburners, right. All right, thank you. [LB140]

SENATOR AVERY: Thank you, Mr. Large. [LB140]

JON LARGE: Thank you, sir. [LB140]

SENATOR AVERY: Any other proponent testimony? Good afternoon. [LB140]

YASMINA PLATT: (Exhibit 7) Thank you. Thank you, Senator Avery and members of the committee. Good afternoon to everybody. I wanted to thank you for allowing me to speak today--an opportunity in support of LB140--and thank Senator Krist and Senator Lautenbaugh for all that they've done last year and this year with this bill and LB352 last year. My name is Yasmina Platt, spelled P-I-a-t-t, and I am a pilot and Nebraska's regional manager for the Aircraft Owners and Pilots Association. AOPA is a not-for-profit membership organization that represents the general aviation interests of over 400,000 members nationwide, including over 2,600 of them here in the state of Nebraska. I hope you received an e-mail and a letter from me either late last week or early this week. It included a letter supporting the bill as well as a handout explaining the highlights of the bill and the importance of the bill. Today, since I have already submitted that information to you, I just want to leave you with three important points about this bill. Taller structures built too close to airports create an obvious serious safety hazard, not only for the pilots or the passengers in those aircraft, but also those on the ground. LB140 would provide the necessary airspace protection by defining the hazard area and extending the approach zones from the current three miles to ten miles from the ends of instrument approaches to protect the lives of your constituents, pilots, their passengers, and those on the ground while flying in the state. And, of course, this does not only include people that live here in Nebraska but also people that come to visit Nebraska or are on their way from one state to another. Without the passage of this bill and if the structures are built close to airports the FAA, the Federal Aviation Administration, is known for raising instrument approach minimums. This does two things--two negative things--to a community. It not only limits how and under what conditions aircraft utilize that runway and that airport. By raising those instrument approach minimums, pilots might find themselves having to divert to other airports and putting their lives and those of their passengers and people on the ground in jeopardy should the approach minimums be higher than the weather conditions in the area. So essentially, if you're trying to get to an airport, you know, conducting some kind of public safety activity, whether you're picking up an ill person or whatnot, if that weather is bad enough that the pilot cannot get into that community, they might have to go to a community where the weather's a little better. But now they're not close to picking up that passenger, therefore putting that passenger in jeopardy, I'm sorry, that ill person in jeopardy. In addition, the second thing is it reduces the potential positive impacts of the airport to the community. The bill helps warranty airports will be able to continue to provide Nebraska's rural communities with the ability to provide emergency and routine

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medical services in a variety of weather conditions, while continuing to promote over \$700 million in economic development by Nebraska's general aviation airports. That is in addition to what the commercial airports provide to the state. And third and to conclude, the state has done a great job in ensuring that most airports in the state have instrument approaches into the airports, as you can see in your handout. However, without this bill the hundreds of millions of dollars that have already been spent in Nebraska's airports as well as over \$500 million in future investments, could be spent in vain. Just want to thank you for your time and consideration of this important bill. It's passage is really critical to safety. Thank you. [LB140]

SENATOR AVERY: Thank you. Questions. Senator Price. [LB140]

SENATOR PRICE: Thank you, Chairman Avery. Thank you for coming and testifying, and I have a couple of questions--fairly generic. If you can't answer, that's fine, maybe someone else will. First of all, we've heard a lot of discussion about technology and improvement via going to the GPS-type thing, whether it's ILS or whatever is out there. Has the FAA looked at this zone that they're creating? If I get more accurate and more improvement in my technologies, do I still need as broad a swath because that's what...a thing we keep hearing that seems to be somewhat in conflict? I need the big area, no doubt. [LB140]

YASMINA PLATT: Uh-huh. [LB140]

SENATOR PRICE: But I'm more accurate. Okay. I sometimes begin to wonder. That's one part, and the second part would be as we talk about the FAA rescinding approaches. I mean, have we seen this as a practice going on that's on as a trend upwards in existing communities? Is it flat? I mean, so we don't get into hyperbole or anything like that about what might of, could of, should or could happen, but what have they been doing? [LB140]

YASMINA PLATT: Okay, so to answer your first question... [LB140]

SENATOR PRICE Thank you. [LB140]

YASMINA PLATT: ...instrument approaches are actually have...there's two different types of instrument approaches: precision approaches and nonprecision approaches. Nonprecision approaches are more broad. They allow the pilot to have directional control down to the runway. They don't have vertical control. So in those situations it does, you know, the airspace needs to be further protected because that pilot does not have any guidance vertically. Precision approaches, on the other hand, are more precise--that's why they're called precision approaches--and have both horizontal and vertical guidance. So that is the difference between the two and how the FAA then protects more airspace or less airspace depending on the type of approach. Does that

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answer your question? [LB140]

SENATOR PRICE: It does but is this one paintbrush to encompass the least accurate approach? Or will we have another...do we have to be concerned that some of these will have different configurations because they're all going to be precision? [LB140]

SENATOR AVERY: No, you have to address us. [LB140]

YASMINA PLATT: Oh. [LB140]

SENATOR PRICE: Okay. And again, anybody can address it. If you can't, that's fine. We'll...just...thank you. [LB140]

YASMINA PLATT: Yeah, we'll just...I'll let Senator Krist cover that. The second question was have we seen that the FAA limiting or restricting minimums? Yes, we have. In fact, I used to work at an airport where one of my duties was to review airspace and talk with the FAA about it. And, yes, any time they...any time the FAA feels that the obstruction to be built penetrates airspace surfaces, creates an aviation hazard, or violates the current Nebraska statutes then they will raise the minimums. And, of course, by raising the minimums then now if, you know, the weather is lower than those minimums that pilot will not be able to come into that airport. So, yes. They do do it. It's standard practice. [LB140]

SENATOR PRICE: Thank you. [LB140]

YASMINA PLATT: Thank you. Any other questions? [LB140]

SENATOR AVERY: Any other questions? I don't see any more. Thank you for your testimony. [LB140]

YASMINA PLATT: Thank you. [LB140]

SENATOR AVERY: Additional proponent testimony? Welcome, sir. [LB140]

RODNEY STORM: (Exhibit 8) Chairman Avery, committee members, my name is Rodney Storm, R-o-d-n-e-y S-t-o-r-m. I am the city administrator and airport manager for the city of Blair, Nebraska, and the Blair Airport Authority. I'm here today testifying on behalf of both the city, the airport authority, and the Nebraska, excuse me, the Nebraska League of Municipalities on LB140. I could sit here and read my testimony that's being passed out to you, but I think everything that's been included in that has been said more eloquently by Senator Krist and other members that have...individuals that have testified prior to me. Airport zoning is important for the future of our airports and of our communities statewide. It's vital that we protect that infrastructure that we've

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developed over the last number of years in our communities. Our rural communities, if they're going to survive, are going to be dependent upon those airports for not only the possibility of economic development, the ability to hopefully attract that new industry and that business out there, but also for the welfare of those...members of those communities from the health field in emergencies getting in and out of those airports. So we feel it's vital that we protect the airspace to give us the ability to access those airports in all weather, to the best of our ability, for our communities. I'm going to address a couple of issues. I think, Chairman Avery, you had requested as I understood the question, on existing utilities or how they may grow in the future. Airport zoning--although this is lack of a better term--it's kind of an overlay for just dealing with the height of structures and so forth. It runs hand in hand with our land use regulations. Those existing structures that are out there, those existing electric utilities and so forth, they're covered. They're grandfathered. They can continue to exist and airports have to plan around those. We can only get the type of approaches that we can get with what's there today. In some cases, there's going to be communities that aren't going to get what would be ideal just because there's been development at this point that's going to preclude that in the future. We understand that. But we also know that by protecting those zones today, that we can prohibit additional structures and facilities going in that would limit or restrict the viability of those airports in the future. So we view this as hand in hand with land use to make sure that we don't develop things in the future that's going to intrude into those airspaces. With that, I would be happy to answer any questions that you might have. [LB140]

SENATOR AVERY: Thank you very much, Mr. Storm. You're from Blair, right? [LB140]

RODNEY STORM: Yes. [LB140]

SENATOR AVERY: You had a problem some years ago when you were trying to get this legislation passed. I believe it originated in Blair? [LB140]

RODNEY STORM: Yeah, we've been the sponsors of it for the past number of years trying to not only access it, you know, for our airport but for some of the smaller rural airports across the state. If I was to look at this...lay this map of...the Senator gave you earlier and laid that on my airport, that probably has less impact for my airport than it does probably 90 percent of the airports across the state. If you look at where my airport is located, we're on the top of the hill. Everything drops to the...as you get away from our airport so that height restriction that currently is 150 feet is probably 200 to 300 feet. You get out into some of the other airports that...I'll say in the Platte Valley that are in some of the other communities where you have hills and so forth, they don't have that luxury that we have in Blair. So from our standpoint, it's an issue of good, quality land-use planning to help us make sure we can protect those approach zones that aren't interfered with today. But it also helps every airport statewide. [LB140]

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SENATOR AVERY: Well, thank you for bringing this to us. [LB140]

RODNEY STORM: Thank you. [LB140]

SENATOR AVERY: I think this is the third time we've looked at it. [LB140]

RODNEY STORM: You're welcome. [LB140]

SENATOR AVERY: Any other questions? Senator Bloomfield. [LB140]

SENATOR BLOOMFIELD: Thank you, Senator Avery. I'm going to ask you this and perhaps you can't answer it, Mr. Storm, but in hopes that Senator Krist will then include it in his closing if you can't. I live away from Norfolk, probably outside of the ten-mile range but close enough to be concerned with it. My farm ground sits quite a little higher than the Norfolk airport. How do people nine and a half, ten miles out, know whether or not for sure they are in that three-mile-wide zone? Who do they have to contact? Who contacts them if I go to put up a grain bin or something like that? [LB140]

RODNEY STORM: Okay. This bill here is regulated based upon the local governing permitting agencies--county, city, or whoever that's in charge of planning, zoning, and construction issues--of being able to enforce those rules and regulations. So as you work with the local county or whoever it is on your building permit or your building requirements, they would have that information so that they would know what the height and so forth were in those locations. [LB140]

SENATOR BLOOMFIELD: I'm pleased to say that my county is not zoned, so I don't have to ask them. [LB140]

RODNEY STORM: But you know minus that, it falls back to each of the airports to--lack of a better term--to work with to make sure that there's no more construction going in for those obstructions and so forth. [LB140]

SENATOR BLOOMFIELD: Thank you. [LB140]

SENATOR AVERY: I don't see any more questions. Thank you, sir. [LB140]

RODNEY STORM: Thank you. [LB140]

SENATOR AVERY: Any more support testimony for LB140? All right, we'll move to opposition testimony. Good afternoon, sir. [LB140]

DAVID LEVY: (Exhibit 9) Good afternoon, Chairman Avery and members of the committee. Thank you for your time today. My name is David Levy, L-e-v-y. I'm an

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attorney with Baird Holm law firm in Omaha. I'm also a registered lobbyist for Edison Mission Energy. Edison Mission has invested over \$600 million in Nebraska since 2008 and may invest another \$150 million this year at Broken Bow. We also represent NextEra Energy, the biggest wind energy owner and operator in the nation who is currently working on projects in both Senators Wallman's and Karpisek's districts. My clients oppose this bill because it threatens existing wind projects, approved but not built wind projects, and future wind projects by imposing substantive zoning regulations, including a height limit that, as Senator Avery pointed out or pointed toward, could go as low as zero if the terrain goes up away from the airport across large areas of the state. The bill includes language regarding existing structures, and I thank Senator Krist and the bill's proponents for putting that in there. We have been working with them for some time on this, and the list that you have there of potential conceptual amendments is actually something that I had provided about a year ago during our negotiations. Nonetheless, the bill as currently drafted does not contain protection other than for transmission lines for approved but not yet built structures. And doing that and creating height limits so low as to effectively preclude any development potentially may render the bill unconstitutional. And the bill as written conflicts with existing law regarding the continuation of uses that no longer conform with zoning but were legal when they were constructed. We have proposed language regarding the approved projects to grandfather those in--the ones that are approved but not yet built--like Broken Bow II--but the proponents of this bill have rejected that thus far. More generally, this bill represents an unprecedented shift from local control. It requires political subdivisions of all kinds to adopt and enforce specific, substantive zoning requirements over large areas, even for airports outside of their jurisdictions. You heard from the Blair airport. Their ten-mile clear zone not only goes into Washington County but, in fact, would go into the zoning area that's under the jurisdiction of the city of Omaha. Nonetheless, the city of Omaha, as this bill is drafted, would be required to adopt zoning regulations to protect the Blair airport. Counties or other political subdivisions could adopt these same regulations today if they wanted to. And it should be left to them, in our opinion, to balance appropriate protection of their airport with other land uses and economic development. My clients have always worked with the airport authorities in the areas where they've constructed wind projects and this bill, frankly, would make that very difficult for both parties because it imposes very strict restrictions that the county must adopt. This bill also goes beyond what the FAA recommends and in some cases well beyond that. And our neighboring states, Iowa for example, do not have this type of thing. This bill would cover 81 airports across the state and the exhibit prepared by the proponents, which Senator Krist gave you today and is here before me, shows the Xs or the areas of the state that would be taken from wind development potentially, and potentially for various other types of private property rights--grain silos, communications towers, and even if, again, the terrain goes up as you go away from the airport, homes, barns, whatever it might be. At 81 airports assuming 1 runway per airport that has the 10-mile zoning jurisdiction, that would cover over 2,400 square miles of the state. Some airports have two runways as you can see, and as you can also see on that map, some

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runway zoning areas nearly overlap. Therefore, the actual territory that would be affected by this state-mandated substantive height limit zoning requirement is even much larger than that. I'd like to close by saying that airports are undoubtedly important. There is no question about that and my clients in no way dispute that. But with this bill as it's written, we feel there is no balance between airports and other...or little balance between airports and other important land uses or between state mandates and local control. So we urge you to focus on that balance and to ensure that, if you do advance this bill, it is advanced with amendments that minimize its unintended consequences and so that it goes only as far as it truly needs to go to solve a real problem. As I mentioned, I provided a list of potential conceptual amendments. And as always, we are more than happy to work with the bill's proponents or anybody else on those. I thank you for your time, and I'm happy to answer any questions you may have. [LB140]

SENATOR AVERY: Thank you very much, Mr. Levy. Let me ask you, you have six items here. You called them conceptual. They look pretty specific to me. But of these six, could you designate which one or ones are most important to you and your clients? [LB140]

DAVID LEVY: Sure. I think I gave my...all of my copies away, but...let me do it this way. And I called them conceptual because it's not bill language... [LB140]

SENATOR AVERY: Uh-huh. [LB140]

DAVID LEVY: ...but I will say this, protecting projects--wind projects--but I think any other type of development project that is approved but not yet built, is absolutely fundamental. That's a constitutional matter--thank you--that this bill should stay away from. And it's very important. As I mentioned Edison Mission, for example, is considering another \$150 million investment at Broken Bow. They're ready to go. This could potentially lay a whole new zoning regime on there that could upset all the work that's been done to date. So protecting approved projects I think is an absolute minimum. To the extent--and I think the proponents may disagree with me--but I would suggest that this bill applies too broadly across the state. For example, it exceeds by far the FAA's recommendations for nonprecision instrument runways. So I would submit that the next category, if you will, of amendments would be some way to limit the number of airports to which this ten-mile-zoning jurisdiction is available or is mandated. As I mentioned, this bill mandates that counties, cities, airport authorities, political subdivisions adopt those zoning regulations. That's a pretty direct thing and it applies to all of those 81 airports across the state at this point. So we would suggest that that number should be reduced. [LB140]

SENATOR AVERY: Well, you may not have had your notes but you named the first two. [LB140]

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DAVID LEVY: Thank you. As Senator Krist mentioned, we have been working on this for a long time. [LB140]

SENATOR AVERY: Questions from the committee? [LB140]

SENATOR PRICE: Yes. [LB140]

SENATOR AVERY: Senator Price. [LB140]

SENATOR PRICE: Thank you, Chairman. Thank you for your testimony, sir. Your point three when you're talking about a category of aircraft being defined by wingspan, not weight, but am I to understand you're saying that there are airports that are incapable of these Lockheed C-5s and 747s that have different requirements? I mean, if you're going to land a C-5 on a runway--obviously we have different requirements--you're only capable of landing one of these smaller category I and II aircraft. So the instrumentation then and the airspace would be different based on the capability of the airspace they have. [LB140]

DAVID LEVY: That's the idea. And I don't...honestly, I don't have the answer. I don't know what the best way to draw a line... [LB140]

SENATOR PRICE: Uh-huh. [LB140]

DAVID LEVY: ...and include some airports or mandate this on some airports but allow it for others. I mean, again, the counties today--yesterday--could adopt these same zoning regulations. So even if it was only mandated on certain airports, the counties around the other airports can adopt whatever zoning regulations they prefer locally and that they can justify. But that is the idea would be some way to draw some line, whether it's runway length, whether it's the size of a city within the county where the airport is located. You know, like I said, I don't have the answer but that's the concept. [LB140]

SENATOR PRICE: Thank you. [LB140]

SENATOR AVERY: Senator Bloomfield. [LB140]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Mr. Levy, can you give me a guesstimated height of the typical generator that we will be building these days... [LB140]

DAVID LEVY: Sure. [LB140]

SENATOR BLOOMFIELD: ...how far is it from the top of the blade when it's at its zenith to the ground? [LB140]

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DAVID LEVY: So a commercial wind turbine when the top of the blade is at the 12 o'clock position, the models that they're designing and building right now, that's between 400 and 410 feet off the ground typically. There are some that can be higher than that but that's what we're seeing today. One of the other issues with the bill as currently drafted is that it does include some grandfathering language for transmission lines and includes language that would allow you to repair or replace a turbine that's destroyed by tornado, let's say, but only if it doesn't get any taller. Well, you know, turbine technology is going to change. Turbines may get taller. They may get even just a little bit taller but that, again, is a very black-and-white requirement in there. But the short answer is around 400 feet, a little bit more. [LB140]

SENATOR BLOOMFIELD: What's the tallest one we would see, that you know of now? [LB140]

DAVID LEVY: Probably 410 feet... [LB140]

SENATOR BLOOMFIELD: Okay, thank you. [LB140]

DAVID LEVY: ...maybe 425 feet, something like that. [LB140]

SENATOR BLOOMFIELD: So the ground being level, it wouldn't affect anything at the ten-mile (inaudible)... [LB140]

DAVID LEVY: If the ground were level... [LB140]

SENATOR BLOOMFIELD: Yeah. [LB140]

DAVID LEVY: ...out from the airport, that's correct. But if like at Broken Bow the ground... [LB140]

SENATOR BLOOMFIELD: Absolutely. [LB140]

DAVID LEVY: ...the ground goes up, then it does. [LB140]

SENATOR BLOOMFIELD: Thank you. [LB140]

DAVID LEVY: Uh-huh. [LB140]

SENATOR AVERY: How much clearance do you have to have from the...when the plane is in descent, let's say, at ten miles out and you need to have...you need to be at an elevation of at least 889 feet, how much clearance do you have to have if there were a wind structure underneath that at ten miles? How much clearance from the blade tip

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to the plane? [LB140]

DAVID LEVY: I don't know. I believe that's something the FAA would tell you. [LB140]

SENATOR AVERY: You only need a foot, right? [LB140]

DAVID LEVY: What's that? [LB140]

SENATOR AVERY: You only need a foot. [LB140]

DAVID LEVY: As long as the wheels are up. No, I don't know what that requirement is. [LB140]

SENATOR AVERY: Okay. But it is possible that you could have a need for this bill and these kind of prescriptions as to what you could...in order to do instrument landings around airports like Blair where you may have so much development that you really would be flying over some of these tall structures in order to make the landing. So if you grandfather in that, are you then making this kind of legislation impossible? [LB140]

DAVID LEVY: I don't think you make it impossible. I think you balance the protection of airports with other land uses and, again, even more fundamentally than that, our view is that it should be left to the local jurisdictions, the counties, to do that balancing. You know there's the old saying, "land use is local." And typically state law and zoning is about procedures and due process, not about what you can build or how tall it can be. And this would take that away from the local jurisdictions. [LB140]

SENATOR AVERY: We made note of your objections and we have your memo and we'll take these into account when we go into Executive Session to consider possible amendments. [LB140]

DAVID LEVY: Thank you very much. [LB140]

SENATOR AVERY: You're helpful. Thank you. [LB140]

DAVID LEVY: Thank you, Senators. [LB140]

SENATOR AVERY: Any other opponent testimony? [LB140]

RICHARD LOMBARDI: Good afternoon. [LB140]

SENATOR AVERY: Good afternoon, sir. [LB140]

RICHARD LOMBARDI: (Exhibits 10, 11) Members of the committee, my name is

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Richard Lombardi, L-o-m-b-a-r-d-i. I'm appearing today on behalf of The Wind Coalition which is a regional trade association of wind manufacturers, wind developers. Edison Mission, of course, is a member of our company, and they've been leading discussions over the last couple of years on this particular issue. I want to preface my remarks by saying that this Legislature and this state over the last four or five years has engaged in a very incredibly positive effort that has begun to reap some very huge dividends in the area of wind development. Four or five years ago, this Legislature embarked upon removing a series of barriers, whether it be eminent domain, regulatory processes, personal property tax, there's been a lot of heavy lifting done by this Legislature. And subsequently, as has been pointed out, that in the last four years over \$600 million has been invested in developing Nebraska's wind capacity. I have circulated to you several maps. And I guess the points that I would like to make is on this particular issue, that this is...we're coming in on testimony that is really trying to deal with that unintended consequences aspect of some legislative policy. I think with all the companies that we work with that do wind, I don't think there's a wind project where the wind company actually owns the property. So I guess one of the things I'd like to ask of the members of this committee that have wind landowner associations in their district is to query them about their project areas because the...one of the great benefits of wind development--and there are many in this state--is the fact that this is a revenue stream that is provided in rural Nebraska to ranchers and farmers. Depending upon the size of the turbine and the arrangement, the lease arrangement, you're talking somewhere between \$6,000 and \$12,000 a year in a revenue stream. And I think it has been pointed out before, the wind industry...we deal with FAA approval all the time. That's required. Every utility-size project, we do that. And what I want to do is just kind of...just a couple of different pictures here. One, obviously this is the first one from NREL is the wind map of the United States. And the trade association I represent, where all that purple is, this is world-class wind. And we are going to have a banner 18 months here because of some great work--frankly, our congressional delegation did, our Governor, Lieutenant Governor, with the extension of the production tax credit--we could be approaching doubling the amount of wind in the next 18 months in this state. That is...that's easily another \$600 million of investment. Over the life of that, that will be \$25 million to lease payments alone, \$300 million in wages over that period--very, very significant. And I just...what I...land use is what the wind industry deals with all the time. And these last two maps I want to show you is the wildlife maps in the state of Nebraska that has to be navigated by wind developers. And then when you put an overlay in as to the expansion that is called for in Section 1 of the bill, moving from three to ten miles and doing that overlay, all of a sudden you can see where these are...in the wildlife area. These are sensitive areas that a lot of wind development tries to avoid. But what's interesting with...in dealing with Game and Parks that we realize that the topography, it always differs at a local level. And it is very good relations that have been developed by the wind developers and Game and Parks to take a look hard at those. I suspect that there is a real solution to this, and I think we're going to move that way. What I wanted to do is just to indicate that this is a...there are a lot of people in this state that are really

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committed and are really making commitments to grow wind. I...and it's a really exciting time and the work that everybody has been doing has really moved the ball on this. And we're going to see some of the benefits this year, and I...and again, these are...I think these are workable. I think first and foremost greatest concern is to do no harm to the...to existing projects that are already there and then to determine what are the necessary requirements going forward to meet the objections...the objectives of the...modernizing the existing statutes. And I'll stop talking there but I thank you all very much for the work that you're doing on this, and we look forward to working with the committee and others going forward. [LB140]

SENATOR AVERY: Thank you, Mr. Lombardi. Senator Bloomfield [LB140]

SENATOR BLOOMFIELD: Thank you, Senator Avery. If I go to your wildlife map, one of the things I've always kind of questioned on wind energy is everybody tells me we're killing half the birds in the country with windmills. Why haven't we not put a screen-type shield around that blade? [LB140]

RICHARD LOMBARDI: Well, those of us in the industry say that there's probably more birds killed going into that window out there than probably into wind generators. There's a lot of innovation being done on that front, Senator. And what's interesting about working with the wind industry is that we had a big controversy a couple of years back with killing of bats, particularly in West Virginia. The industry immediately raised \$5 million and ran a very aggressive study with regard to bats...that was--there was a big kill in West Virginia--and trying to figure out whether it's color, whether there are noise levels--there's a lot of research being done on that front. And I have to say that Game and Parks has been pretty good to work with on really looking at the specifics of the site, specifically, where the projects will go in to try to mitigate that. And...but the amount of inventions and efficiency that's going on in turbine design is absolutely phenomenal. Some of the newest projects we've seen put in in Nebraska are getting efficiencies far higher than we ever thought, as well as the size of these projects have gotten a lot bigger in the last ten years. And I just want to note, too, is that a third of all the electricity in this country over the last five years has come from wind. And as everyone knows...obviously with the first map, we're going to try to develop that resource. And there's not too many silver bullets, as you know, in rural economic development, but every time we put a wind project in it becomes the largest supporter of the local school district. And...but this is all part of the juggle that we have with land use planning and we really...we work with that all the time. I mean, my clients work with it all the time in this business so very long and probably nondirect answer to your question. I'm sorry. [LB140]

SENATOR BLOOMFIELD: Thank you. [LB140]

SENATOR AVERY: Any more questions? I don't see any. Thank you for your testimony.

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[LB140]

RICHARD LOMBARDI: Thank you very much. [LB140]

SENATOR AVERY: Any more opponent testimony? Okay. I thought we had a testifier. Any...we'll move now to neutral testimony. Anyone wish to testify in a neutral position? Welcome, sir. [LB140]

JOHN JOHNSON: Thank you. My name is John Johnson, J-o-h-n-s-o-n. Thank you, Chairman Avery and Senators. I'm here as the zoning administrator for Madison and Pierce Counties. I am also the immediate past president of the NACO planning and zoning affiliate and current president for the Nebraska Planning and Zoning Association, but I'm not representing those groups here. Thank you for your opportunity to address you today. As neutral...and I'd also like to report that the NACO legislative conference did meet across the street prior, this morning, and they are also officially neutral on this bill. I'm going to try to point out some things. I did have a copy of my testimony, but as I'm listening to other testifiers I've kind of edited it on the fly so it wouldn't match what I said. So I thought I'd do it this way. The ten-mile approach zone would likely include many different local governments, some of which may not have zoning. Would this require governments without zoning to adopt zoning? A question Senator Bloomfield asked earlier in the Hoskins area, if the Norfolk airport went through there he might be responsible for getting a permit; he might not, nothing intended, have a clue because it is in Wayne County, which does not have zoning. Also the residents outside of Columbus, as well--Platte County does not have zoning. Butler County does not have zoning. Currently there are 12 counties without zoning in the state of Nebraska. So would this require those governments to adopt zoning or would that require, for those particular airports, to have an airport zoning board regardless of other folks in that area like Madison County and the city of Norfolk had zoning? Zoning must be based, by statute, on a comprehensive plan. That has also been upheld not only by Nebraska courts but the U.S. Supreme Court in Euclid v. Ambler Realty, which was the original Supreme Court case that put zoning on the map, zoning control over entities with eminent domain. Nebraska Public Power District could come up and tell me that they're going to put a substation that's 250 feet high, 2.5 miles south of the airport under current regulations, and I'd say, I hope none of your guys fall off the top. I cannot stop it. The Nebraska Supreme Court has removed zoning from applying to anyone with eminent domain, so that would include not only public power districts but also school districts and other governments. So I think that's also something to consider. We can't do anything with...I get asked by the Norfolk airport, why are those power poles there? Sorry, I can't do anything with those. I think right now there's a lot of confusion over the role of a joint airport zoning board. Would this make...would this board be the final say or make recommendations to the airport board or recommendations to a local government board? Would a airport zoning board have jurisdiction over all zoning in the airport hazard zones or just projects concerning height? I could also foresee us

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requiring if someone was building a project--not on a shed, but on something fairly substantial--having them to give elevations like they do in a flood plain so we can make sure where they're going to be. Just a couple other things as I see my time is running out here. It also requires local government if there's any objects like trees, they have to be lit. There's no height on those trees. They expect us to give permits for people to plant trees and require the local government to light those trees. The one problem I see with that, besides generally giving permits to anybody that wants, natural growth trees. And then the other thing is other people might want us to start regulation...regulating vegetation and things like that. And you could even have a tall cornfield on a hill that would be in violation of this at some point. Now hopefully we'll have enough water to have a tall cornfield. So I'm out of time. [LB140]

SENATOR AVERY: Can you help us with that? [LB140]

JOHN JOHNSON: I'll be happy to answer any questions. [LB140]

SENATOR AVERY: Thank you. Any questions for Mr. Johnson? [LB140]

JOHN JOHNSON: May I say one quick thing? [LB140]

SENATOR AVERY: Sure. [LB140]

JOHN JOHNSON: The zoning community, myself, and several others, we'd be happy to sit down with Senator Krist and try to work some of these things out and try to make this...we're not opposed to this. We think a lot of this is good, but we've just got to make sure we have all of our i's dotted and t's crossed. [LB140]

SENATOR AVERY: Okay, thank you. Any other neutral testimony? Welcome. [LB140]

KRISTEN GOTTSCHALK: (Exhibit 12) Thank you, Senator Avery and members of the Government, Military and Veterans Affairs Committee. My name is Kristen Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k. I'm the government relations director and registered lobbyist for the Nebraska Rural Electric Association. My neutral testimony today is on behalf of my membership and our 34 members across the state and in a neutral capacity on LB140. And as you heard in previous testimony, this is a revision of bills from days gone by. In LB352 that Senator Lautenbaugh introduced in 2011, I was the only opposition testimony at that time. The bill was and currently is very technical in nature, and at the time it was very difficult to discern what the impacts would be from airports and the land area that they could impact with these additional zoning regulations. Members of NREA were very concerned about the broad expansion of zoning authority for airport precision instrument runways. NREA was not opposed to the expansion for airports or some limited zoning authority to protect airports. It was just the manner in that current draft in the way that it was applied. Our concerns really focus on

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the potential impact to existing electric utility infrastructure as well as the potential for misuse by entities that were opposed to newer or existing transmission or distribution lines. The overly broad interpretation of proposed runway and no clear justification or qualification process in that original bill were what the major concerns focused on. But I really want to thank Senator Krist for his willingness to work with us on this issue and his clear understanding of our issues. And I think what happened over the last two years through a partnership with the groups involved is that this is a much better bill overall. Rural electric utilities are cognizant of the need for rural economic development and for air traffic access for health and safety concerns in rural communities. Those are important to us and they're an important economic development tool. But access to affordable and reliable electricity is also an important piece of that puzzle, and it's important that we look at the big picture as we expand zoning authority so that it accounts for a broader base of use of land. And we think that this bill and the response has done that. And a number of concessions or refinements were made to the original bill that I think really have improved it. The definitions of proposed runways--which clearly indicates they must appear on those airport layout plans that have been approved or submitted to the FAA for approval--we do understand that that ALP process is not a simple thing. You can't scratch it on the back of a napkin. It requires investment, research, and a large financial commitment on behalf of the airport authority or they wouldn't do it. So that was important to us. Limiting the authority to public-use airports also was an improvement to the process. Changes in the operation zone being measured from the end of the runway versus the end of the property boundary of the airport reduced the amount of area that would be impacted by additional zoning. And the more coordination and the coordinated notice of zoning brings other jurisdictional entities into the process so you're not having a single-focus, single-use entity making the decisions in a vacuum. Protection for existing electric utility infrastructures so that it can be rebuilt or repaired without a permit as long as the structures didn't get higher in the process, and this aspect was absolutely critical to our membership. Obviously I don't think the bill is absolutely perfect. I think it is a huge improvement. Otherwise I'd be testifying in support. So I would suggest the committee...there are a couple amendments that would further improve this. When they define "electric facility," my membership feels that in addition to referring to lines, poles, and supporting structures we also need to include generation in that. Now caution has to be taken when making that change, and there would be additional language change in the bill needed to ensure that it was...it confined that definition to public power utilities and didn't go out to the broader definition of electric supplier. We also believe that a time limit needs to be placed for the board of adjustments when making decisions. Anything beyond 60 days waiting will mean a utility is likely going to have to abandon that particular route for a structure. And if you put a time limit on there, the answer is really "no." A sooner answer is better than a later answer because you can move on and do what you need to do. Again, we do appreciate the support that we've gotten from Senator Krist on this, and I would be happy to answer any questions you may have... [LB140]

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SENATOR AVERY: Thank you. [LB140]

KRISTEN GOTTSCHALK: ...or attempt to answer any questions you may have. [LB140]

SENATOR AVERY: You almost came close to support. [LB140]

KRISTEN GOTTSCHALK: Well, we are close. [LB140]

SENATOR AVERY: But it's not perfect. [LB140]

KRISTEN GOTTSCHALK: It's not perfect. [LB140]

SENATOR AVERY: Any questions from the committee? Thank you, Ms. Gottschalk. [LB140]

KRISTEN GOTTSCHALK: You're welcome. [LB140]

SENATOR AVERY: Final neutral testimony? Mr. Lindsay. [LB140]

JOHN LINDSAY: (Exhibit 13) Thank you, Chairman Avery, members of the committee. For the record, my name is John Lindsay, L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of Omaha Public Power District. OPPD has worked with Senator Krist's office and he's been...has accommodated almost all of our concerns with basically one left. He is aware of the amendment as well, if I could offer an amendment to the committee. And Ms. Gottschalk just alluded to that, and that is the issue of the time frame for the board of adjustment to make a decision. The amendment would say that if the board does not...or the board shall decide within 30 days. If it does not...if they have not decided within that 30-day period, that the...it would be deemed approved. And again, as Ms. Gottschalk mentioned, the problem is that having an answer, having that certainty is what's important. The 30 days is simply...that's an offer. You can work with the numbers but we concur, again, with the prior testifier that if you get beyond 60 days it poses problems for siting of those lines and would require reengineering, etcetera. So we would simply ask that the committee consider adopting that amendment to provide that certainty. [LB140]

SENATOR AVERY: And would you be okay with the rest of the bill? [LB140]

JOHN LINDSAY: Yes. [LB140]

SENATOR AVERY: Okay. Questions from the committee? Senator Wallman. [LB140]

SENATOR WALLMAN: Thank you, Chairman Avery. Thank you, Mr. Lindsay. This kind of piques my interest as far as wind towers, wind generation transmission lines. If I hit

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one of those or somebody hits one of those on my property, am I liable? I mean, if an airplane or something hits it. [LB140]

JOHN LINDSAY: If it's your transmission line or your... [LB140]

SENATOR WALLMAN: It'd be the power company's. [LB140]

JOHN LINDSAY: No, I don't think as a landowner--I don't think you would have any responsibility because I think all duties would lie with the owner of that. [LB140]

SENATOR WALLMAN: Thank you. [LB140]

SENATOR AVERY: Any other questions? Thank you for your testimony. Any other neutral testimony? Thanks. Senator, we finally got to the end. [LB140]

SENATOR KRIST: Being respectful of your time, I won't point out all of the inconsistencies that came from the opposition, but I will say this just to make a few. First of all to answer your question, there is a different swath capability on a precision and a nonprecision--nonnegotiable--the FAA tells you what you need to do. The maximum is up to three-miles wide at ten miles out. It can get narrower than that with a precision approach. It can also require--in answer to your question, sir--1,000 foot at the obstacle at some point, and as we get more precision in terms of where we go, your precision height...decision height is 200 feet on a precision approach. In most cases, that's it. Two hundred feet is--I mean, you could potentially have a car parked underneath there--but that's what you need to have to get in. I'll remind this committee of the work that we did several years ago when I was actually part of the committee. If we allow people to put anything where they want to any time they want to and not communicate with these proposed regulations and/or other regulations, they will build a hospital on final approach onto a major Air Force base and require that that approach be decertified by the FAA or turned. Your legislation, Senator Avery, corrected that problem. It simply brought it into focus. There's a set of regulations that you need to comply with, and if you're going to build something that penetrates that cone zone, you need to coordinate with the airport. I believe the bill says specifically for military installations and we also went into the Guard and Reserve kind of occupation of our airports. That's essentially what this does. It makes them aware. Mr. Levy is absolutely incorrect. We do not require the airport authorities to comply with this regulation. We allow them to look at the Aeronautics--at this regulation and the Department of Aeronautics--and they can either put an instrument approach in or they can build a windmill. It doesn't make any difference to us. That's local control. They can do whatever they want to do. But they have to make the decision not based upon the state's criteria, but the FAA. The FAA tells us how to build the approach. So we're not asking them all tomorrow secure ten miles around. We're asking them to make sure that if you intend to develop the airport, you should take into a concern that there are development areas that should be paid

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attention to. I've been accused of being pro aviation. Guilty. But I've also been accused of being antibusiness and antiwind. Absolutely not. I understand the need for wind energy. I understand that we did a great thing a couple of years ago putting us on a fast track. I understand that that needs to be there. But does it need to be here? Or does it need to be three miles over here? If the wind is so favorable in Nebraska, can't we negotiate as local control to say where that windmill might be? I think we can. I think we give the folks the tools and let them do their thing. As far as jurisdiction issues, we've looked at those jurisdiction issues. But once again, if you want an instrument approach, the way it works is you're going to have somebody go out and survey that piece of property. They're going to come and ask you, Senator Bloomfield, if they can come on your property and measure your silo. And if your silo--your existing silo--comes into the cone zone, they can't put an instrument approach in there because that's an existing facility. It's plain and simple. So it really doesn't make any difference whether there's jurisdiction there telling you how to build your farm because once the survey process happens to build the instrument approach, they'll communicate with you. That's how it should be--local control. I think most of what I've heard in my five years so far here is if you don't like it, call it unconstitutional. Clearly, call it unconstitutional. So I guess we'll go back and we'll look at the language and look at the accusations which, again, I don't have enough time to deal with the things that I think are inaccuracies. But I thank you for listening, and I thank you for your attention to the detail of this very technical issue. I think we've given the Department of Aeronautics what they wanted. By the way, I would also for the record say that Director Mitchell was asked to attend. He attended, or his people attended, four of our planning sessions. We had their total support but, as always happens, the executive branch decided not to allow him to come and testify. So I have the approval of the Department of Aviation...Department of Aeronautics that this is required update to a 1945 statute. Thank you, Senator. [LB140]

SENATOR AVERY: Thank you. Any other...Senator Price has one final question. [LB140]

SENATOR PRICE: Yeah, a brief one and it has to do with frangibility. Do we foresee the FAA--I know out at Offutt frangibility became a big issue and they started raising everything above the height of a blade of grass. So in the near future, are we going to be revisiting this because we protected an airspace but now we have frangibility issues? Is that something that's on the horizon? [LB140]

SENATOR KRIST: I don't believe so, and I will check on that and get back to you with an absolute "yes" or "no." [LB140]

SENATOR PRICE: Okay. [LB140]

SENATOR KRIST: And the reason I don't agree...I don't think so, and I would like to get this on the record as well, the reason we don't tell you what those requirements are

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except to refer to the FAA is that if there are changes in the regulation and there's a potential decertification or changes in the actual height, those things are controlled. You know, it's like asking the EPA to come in and tell you how to do business. Once they tell you how to do business, there is no negotiation--same thing with building an instrument approach. [LB140]

SENATOR PRICE: All right, thanks. [LB140]

SENATOR AVERY: Thank you, Senator Krist. [LB140]

SENATOR KRIST: Thank you, sir. [LB140]

SENATOR AVERY: That ends the hearing on LB140. (See also Exhibit 14) And we now move to LB40 and invite Senator Harms to the witness table. Two days in a row, sir. [LB140]

SENATOR HARMS: Yeah, that's good. Thank you. Thank you, Senator Avery and colleagues. For the record, my name is John N. Harms, H-a-r-m-s. I represent the 48th District and I am presently serving as the Legislative Performance Audit Committee Chair. LB40 is simply just a clean-up bill that simply updates the statutory references to the Government Auditing Standards, published by the federal Government Accountability Office. Both our Legislative Audit office and the Auditor of Public Accounts are required by law to follow these standards. The bill covers both office statutes and would strike references to the 2007 version of the standards and replace them with references to the 2011 version. GAO describes these standards as providing, "a framework for performing high quality audit work." They are revised periodically, therefore we have to update the statutory references because the Nebraska Supreme Court dictates that these kinds of references be specific to the current version. And I thank you very much for coming. And if you have any questions, I'd be very happy to answer them. [LB40]

SENATOR AVERY: That was short...brief. [LB40]

SENATOR HARMS: It was brief. [LB40]

SENATOR AVERY: Short and brief. [LB40]

SENATOR HARMS: That's right, but to the point. [LB40]

SENATOR AVERY: Yes. Questions from the committee? I don't see any. [LB40]

SENATOR HARMS: That's the best news I've had all day. Thank you. [LB40]

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SENATOR AVERY: All right. We'll move to proponent testimony. Welcome, Mr. Auditor. Glad that you're in favor of this. [LB40]

MIKE FOLEY: Thank you, Chairman Avery and members of the committee. I'm going to be even more brief than Senator Harms. My name is Mike Foley, F-o-l-e-y, Auditor of Public Accounts. As Senator Harms indicated, this bill is a clean-up bill. It changes the year 2007 to 2011, with reference to the compendium of auditing standards known commonly as "the yellow book." That's all the bill does; nothing more, nothing less. As a former senator I know that those who testify in support of the bill get their names published on the committee report, and I think it's important that the committee report show that my office does support the bill. Thank you very much, Senator. [LB40]

SENATOR AVERY: Thank you. So this is the famous yellow book that we hear about. [LB40]

MIKE FOLEY: This is the famous yellow book. Yes, Senator, that we talked about the other day. [LB40]

SENATOR AVERY: Okay. So...and that's the latest version, 2011? [LB40]

MIKE FOLEY: Yes, that's right. [LB40]

SENATOR AVERY: Okay. Any questions from the committee? Well, thank you for your patience. You've waited through a lot of testimony. [LB40]

MIKE FOLEY: I learned a lot today. [LB40]

SENATOR AVERY: Thank you. [LB40]

MIKE FOLEY: Thank you. [LB40]

SENATOR AVERY: Any other proponent testimony? Any opponent testimony? Neutral testimony? Senator Harms? He waived. Senator Harms waives closing. That ends the hearing on LB40. That must be a record, Senator Harms. Okay, since the next two bills are mine, I'm going to turn the Chair over to Senator Price, the Vice Chair, for the remainder of the hearing. [LB40]

SENATOR PRICE: Senator Avery. [LB79]

SENATOR AVERY: LB79? [LB79]

SENATOR PRICE: Yes, sir. LB79. [LB79]

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SENATOR AVERY: Thank you. Good afternoon, colleagues. My name is Bill Avery, A-v-e-r-y. I represent District 28 here in Lincoln. I appear before you today to talk to you about LB79. It has three main components. First is a proposal to repeal the Campaign Finance Limitation Act. That's hard for me to say because I worked very hard on that bill some 20 years ago. But two years ago, the U.S. Supreme Court ruled in Arizona Free Enterprise Club's Freedom Club PAC v. Bennett, that Arizona's campaign finance law was unconstitutional. That decision led the Nebraska Accountability and Disclosure Commission to request an Opinion from the Attorney General about whether Nebraska's campaign finance laws, which had similar components as Arizona's, was also unconstitutional. The Attorney General opined that the law was unconstitutional. In 2012 the Nebraska Supreme Court ruled that the campaign finance law of this state was, in fact, unconstitutional. So because of these developments, LB79 is necessary to repeal the Campaign Finance Limitation Act. There is a second component to the bill, and that is some proposed changes in the thresholds for reporting various contributions and expenditures. Many of the thresholds are being lowered from \$250, where they presently are, to \$100. For example, a campaign committee statement will include the name of each person that contributes \$100 or more. Also the campaign statement will include the name of each person to whom expenditures totaling \$100 or more were made. Similar thresholds are proposed for political party contributions. Independent expenditures also would be reported at \$100 or more. Corporations, labor organizations or industry or trade associations that make contributions or expenditures with the value of \$100 or more will file a report with the commission under this proposal as well. The name of each person making an out-of-state contribution of \$100 or more will be disclosed. In all of these examples, the current reporting threshold is \$250 so we're proposing that we lower that threshold from \$250 to \$100. Some reporting thresholds in this proposal are lowered to \$500. For example, late contribution reporting thresholds are changed from \$1,000 to \$500 or more. The bill also changes the reporting threshold for late independent expenditures from \$1,000 to \$500. So in the course of the past 20 years when I worked on campaign finance reform, I've often come up against the argument, you don't really need to limit expenditures. What you need to do is lower the threshold for reporting contributions and have greater access to that on the part of the public; that is, more transparency and accountability. The third component of this bill is to require all filings with the commission to be electronic as of January 1, 2016. This is something we've been talking about in this committee for quite a long time. It is something that I think all of us would like to see happen, where you can make an electronic filing and it would become immediately available to the public. The problem has been that the A&D Commission doesn't have the money to do that. So what this bill will do will direct them to develop, implement, and maintain an electronic filing system for all campaign statements and other reports required to be filed with the commission and will make such statements and reports available on its Web site as soon as it is possible. In order to pay for this, because it is not free, the money in the Campaign Finance Limitation Cash Fund would be transferred to the Accountability and Disclosure Commission's Cash Fund to be used for the implementation and the maintenance of an

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electronic filing system. There are some miscellaneous provisions as well. One would require each committee to submit to the A&D Commission periodic account statements from the financial institution designated as having the official depository of all contributions of that committee. It would also add limited liability company or partnerships to the list of entities that must establish a separate segregated political fund in order to receive contributions and clarify that campaign statements and other reports required to be filed with the commission will be filed at or before 5:00 p.m. Central time on the due date. Those last two points there are recommended by the staff...actually, the last three points were recommended by the staff of the Accountability and Disclosure Commission to better facilitate their work. So with that, I would ask you to consider advancing this to General File. [LB79]

SENATOR PRICE: Thank you, Senator Avery. Are there any questions from the committee? Senator Bloomfield. [LB79]

SENATOR BLOOMFIELD: Senator Price, thank you. Senator Avery, as I look at this and quite possibly I'm mistaken, the first section of this we have to do? The next two we want to do, is that correct? [LB79]

SENATOR AVERY: Well, we have an unconstitutional statute right now. [LB79]

SENATOR BLOOMFIELD: Yeah, and the second two are something you would like to do. But the first one we have to do. [LB79]

SENATOR AVERY: Yeah, I think...Senator Lautenbaugh actually had a bill last year that would repeal the Campaign Finance Limitation Act and would have lowered the reporting threshold to \$50 and have almost immediate reporting. That we didn't think was very doable because it would have been an undue burden on campaign committees. But \$100 is...seemed to me to strike the right threshold balance and to balance that against an undue burden on committees but at the same time enhance accountability and transparency of the contributions. And if we can go to electronic filing, that would make a huge, huge difference. [LB79]

SENATOR BLOOMFIELD: Yeah. Okay, thank you. [LB79]

SENATOR PRICE: Thank you, Senator Bloomfield. Seeing no further questions, thank you, Senator Avery. [LB79]

SENATOR AVERY: Thank you. [LB79]

SENATOR PRICE: We'll move on to proponent testimony. Good afternoon. [LB79]

JACK GOULD: Good afternoon. Senator Price, members of the committee, my name is

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Jack Gould. I'm here representing Common Cause Nebraska. And that's G-o-u-l-d. I never thought I would be here either advocating the demise of the CFLA. I think that we were here at the beginning when the CFLA was created, and we're here at the end. It's been a very bumpy road but it was a noble experience, and I think it's something that with a new Supreme Court we may want to revisit it sometime in the future. We want to thank Senator Avery for his creativity. In the very beginning when we put this bill together, he was the leader. And he has been a great advocate over 20 years, which was a very bumpy road. And we appreciate the work that he's done and his commitment to a very good cause. I think Senator Avery has pointed out that there are really three things that we find really important in his bill. Obviously on...I think the repeal is necessary, as you've pointed out. But the CFLA funds were really allocated in the very beginning to improve campaign finance and reporting and the entire system of the CFLA. The Legislature delegated fine money to be used for the same thing, campaign finance reform. And there's a checkoff on the income tax, which I checked off and I hope everybody did, which allocated funds directly for the use of the CFLA. It seems completely reasonable that that money which was delegated for that purpose should be used at this point to develop a high-speed reporting system. It's good for you, it's been advocated by--well, Senator Lautenbaugh--but it's also been advocated by a lot of senators who can be frustrated with the long gaps in reporting, which are necessary only because we didn't have the money. And at the time that the CFLA was created, most everything was on paper, and there was no way that we could go any faster than what the paper permitted. Now we have the ability to do it properly, and other states have done it. I think it's time for Nebraska to use that money, update the system, and develop a good reporting system. The second thing that I think is important is the lowering of the disclosure rate. I think Senator Lautenbaugh's bill, as Senator Avery said, was...requested a \$50 disclosure and Common Cause supports that. If you choose to make it \$50, we're with you. The \$100 is a very acceptable number as well, but it's difficult to keep track of campaign money if it's just at \$250. There's a lot of cash floating around, and it's difficult to keep track of it and to account for it. But if you lower it to \$100, there's a lot more visibility. And for...really for the average person and most people are donating \$10, \$20, \$50 to a campaign. Two hundred and fifty steps into a category of both wealth and maybe corporate interests. So if you lower the rate, you are exposing more and making it more visible to the public and to yourselves so that you know what you're running against and where the money is coming from. I think another area that's important--and this is...I'm not sure if it's all been mentioned--but in Senator Avery's bill it points out the fact that at least once a year the bank statements of the committees would be submitted to the Accountability and Disclosure Commission. The auditors do a tremendous job in going through and looking at contributions over \$250. They do a good job at looking at expenditures making sure everything is legal, but if you don't have the bank account, you can't see the full picture of where the money is going. And I think the unfortunate situation with Senator Council could have been avoided if we had had that kind of visibility. It was over a period of time money was taken out of the account. If we had those bank account statements provided, it would have been caught

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very early on and probably a lot of the problems that came up could have been avoided. So I think it's a very important part of the bill. Other than that, I see my yellow light is on and I know that Senator...I don't want Senator Price carrying me out of here. So I am stepping aside. If there are any questions, I would be glad to deal with them. [LB79]

SENATOR PRICE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you for your testimony today. [LB79]

JACK GOULD: Thank you. I almost didn't recognize you the other day, you know that? [LB79]

SENATOR PRICE: Do we have any further proponent testimony? Welcome, sir. [LB79]

FRANK DALEY: Thank you very much, Vice Chairman Price and members of the Government, Military and Veterans Affairs Committee. My name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Nebraska Accountability and Disclosure Commission, and I'm here to express the commission's support of LB79. Both Senator Avery and Mr. Gould described very well what this bill does. Let me just mention a couple of things that will help you decide whether or not these things are good things. First of all, obviously we need to repeal the CFLA. It's been found to be unconstitutional and it's always a bad thing to have unconstitutional laws on our books, and so I think that in a sense is a no-brainer. The next thing that the bill does, it mandates the electronic filing of all types of campaign filings by January of 2016. Electronic filing, in my mind, is a good thing for the main reason that if we receive filings on paper, in order to make that information available on our Web site it requires a form of manual data entry. That is, state employees have to sit there and type things into the system. Whereas with electronic filing, that information can be posted on our Web site virtually immediately, and that's the real advantage. That information becomes available to the public and it becomes available to the press on a virtually immediate basis. The next thing that the...that LB79 does is it provides a funding source other than the General Fund for the development of a comprehensive electronic filing program and for the maintenance of that program. As I think Mr. Gould or perhaps Senator Avery said, we've been in fits and starts trying to move more and more to electronic filing. And we've been doing that but we're always limited by money. Virtually all of the money that has gone into our minimal electronic filing programs has come through grants, and those are kind of hard to get. So in order to have a comprehensive, well developed, appropriate plan which is appropriate for this state, we obviously need money. And currently there's some money available that, frankly in many cases, was designated by individual taxpayers on their individual income tax forms for use in disclosure in campaign finance and those areas. The next thing that LB79 does is that it lowers some of the reporting thresholds, as Senator Avery mentioned. And he mentioned the example, a candidate committee currently discloses the names of contributors of more than \$250. Under LB79 they would disclose the names of contributors of \$100 or more.

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And other reporting thresholds would be lowered as well. Why is that a good thing? Well, obviously the more information that's available to the public the better. Why is \$100 magic and \$250 not? Actually one of the reasons for the \$250 range was in the old days of paper, if you had reams and reams of paper you could disguise so many things if the threshold was too low. Whereas with electronic filing with the right program, you can screen that out if you're looking for something specific. And so the amounts...you can lower the amount without causing any problems. A couple of other things that LB79 does which are probably useful and I think are worthy of your consideration--first of all, it requires limited liability companies and limited liability partnerships to report their campaign activity in the same way that corporations and unions and industry trade and professional associations do currently. And I think that probably what happened was that when the Accountability and Disclosure Act was passed back in 1976, limited liability companies and limited liability partnerships were not a common way of doing business and so they simply were not included in the act. As a practical matter, some of these types of entities already file these reports thinking they have to, and people are kind of confused as to why a corporation must file reports of these contributions but a limited liability company doesn't. So this essentially brings the Accountability and Disclosure Commission up to date with current business practices. Mr. Gould mentioned that it requires campaign committees to periodically provide the commission with copies of essentially their bank statements for the committee accounts. There are really two basic reasons for this. Number one, it would assist our auditors in discovering if the reports that are filed--the balance of cash and the reports filed--reconciled to the bank accounts. What we find over and over is that, you know, maybe there's some small discrepancy. But what happens is a campaign committee goes on for years and years, the discrepancy gets greater, then they want to dissolve the committee, and we're looking at years of records in order to figure out what that discrepancy is. Also, as was also mentioned, sometimes if there's a misuse of campaign funds we can discover it sooner rather than later. I see that my time is up so I do want to thank the committee for listening to this testimony, considering this bill, and to Senator Avery for bringing LB79. [LB79]

SENATOR PRICE: Thank you, Mr. Daley. I'd ask a question about when we go to an all electronic...we've heard in other testimony...so the reason we don't do that for newspaper reporting we have to do it in print, is not everybody has access to electronic reporting capability. I mean, for whatever reason there could be a smaller race or whatever. And since we have to be encompassing in what we're doing, is there a way that we could address that through allowing for--whatever, say someone faxed it to you--that you could put it through a scanner and just add it as a PDF to a file on-line versus having to enter the data set itself? I know that would limit some ability to sort the data but it would be...it still would be available and it could be done. So, I mean, I want to make sure that we're looking at that eventuality. [LB79]

FRANK DALEY: Sure. There are a couple of ways to address that. First of all, one thing

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to consider is that committees aren't even required to file with us--inform--register with us unless they spend more than \$5,000. And I think once you're getting to that level, you're getting into areas where folks are perhaps a little bit more sophisticated. Even in some of the rural areas there's always access to the local library, most of which are connected to the Internet and you can make use of the computer. You're right. We accept faxes now. People can fax their campaign statements. That's perfectly okay but that, in essence, is a paper filing. And we could scan it in, but then it's not really part of our searchable database. It's merely a picture that's on the Web site. So ultimately that requires data entry again. So certainly there could be exceptions that could be made or built into the bill or maybe there'd be a different type of threshold. But it seems to me we're quickly reaching the stage where most people have access to a computer and electronic...and I gather that most people are really pushing more...for more and more opportunities to file electronically rather than less. [LB79]

SENATOR PRICE: Right. Great. And I would myself. I just know that we've heard many years with the newspaper that's coming out on the bills that being a concern, and I wanted to have that. Are there any other questions from the committee? Senator Murante. [LB79]

SENATOR MURANTE: Yes. First of all, thank you very much, Mr. Daley, for coming. And I'd like to apologize to both you, Chairman Avery, and I believe Jack, I've heard has already testified. I had a 3:00 meeting that we were negotiating a compromise on a different bill and that's why I wasn't here. So if I have a question that you've already covered, please just let me know. So I heard you touch briefly about how in a couple of different sections of this bill you're adding limited liability companies and limited liability partnerships--or Senator Avery is. Is there a practical example of something that's happened in the last--a limited liability company or partnership--in the last two or four years which is not currently falling under law that would be? [LB79]

FRANK DALEY: Sure. It happens on a regular basis. [LB79]

SENATOR MURANTE: Uh-huh. [LB79]

FRANK DALEY: Let us say you are the XYZ Company, Inc. and you sell widgets. [LB79]

SENATOR MURANTE: Okay. [LB79]

FRANK DALEY: And you make a campaign contribution of \$500 to a candidate. As a corporation, you are required to file what's known as a B-7 Report within ten days after the end of the calendar month disclosing that contribution to the candidate. Presumably the candidate will report that contribution as well, and that's part of the reconciliation process that our auditors engage in to be sure that everybody's reporting everything. Let

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us say you are the ABC Company, LLC--limited liability company--and you're in the business of selling widgets. And you make a campaign contribution of \$500 to the opponent of the candidate. Under current law, you're not required to report anything. So you're two business entities engaged in the same business making identical campaign contributions in the same race and one is reportable and one is not. And because limited liability companies are a very, very common way of doing business now, that seems to be an appropriate addition. [LB79]

SENATOR MURANTE: Okay, that makes sense. The second question I had for you--and I'll turn to the exact page so that I can make sure--on page 19 of the bill, current law requires that...are you following me on page 19? [LB79]

FRANK DALEY: I'm there, yes. [LB79]

SENATOR MURANTE: Okay. You're taking out the necessity for statements...certain statements to be filed in writing. You seem to...just any statements now would be fine. Is there a purpose for why we're saying that they don't have to be written anymore? [LB79]

FRANK DALEY: That was actually a Bill Drafter's suggestion. [LB79]

SENATOR MURANTE: Okay. [LB79]

FRANK DALEY: Since we're filing electronically, there was some concern that the term "written" would be confusing. [LB79]

SENATOR MURANTE: Okay. [LB79]

FRANK DALEY: So that's the purpose there. [LB79]

SENATOR MURANTE: Okay. And is there a concern that aside from the capabilities of constituents, that there would be perhaps a lack of technological acumen of certain candidates or campaign committees and campaign treasurers that just are going to be much more proficient and able to write these campaign statements out in the typical form that most candidates have used in the past? And that they just simply...they find using technology very difficult? I'll put it that way. I can think of a couple of candidates just right off the top of my head that would fit that description. [LB79]

FRANK DALEY: As could I. Sure. That's always a concern but I think there are a variety of options. Typically the treasurer of the committee is the one that files the campaign statements; probably sits down and types things in or writes things in. And that's fine. But you know just like everyone else, if I'm having a real problem with technology first thing I do is either ask one of my children or ask one of my grandchildren how to do it. And I think that would be the same way with any committee. There's certainly enough

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tech-savvy people around, even minimally, that could handle an electronic filing program. So if the treasurer were to essentially prepare the report and then have someone...okay, can you do the data entry here to get it into the system? You know, that's an approach. The other thing I suppose is if we are finding that people just can't do this--I doubt that's going to happen--but if we find that people can't do this, maybe that's time to come back to the Legislature and seek some sort of adjustment or some sort of list of exemptions, things of that nature. But at this stage, it would seem to me that most of the races that are very, very local, where there's not much money spent, they're not going to be subject to the accountability and disclosure reporting anyway. And once you start spending \$5,000, \$10,000, it would seem to me that someone at that stage needs to have that level of expertise or probably has that level of expertise that they can type some things into a system. [LB79]

SENATOR MURANTE: Okay. [LB79]

SENATOR PRICE: Thank you, Senator Murante. Well, I think for now we'll be done and then we'll...if we have more questions later on, we'll know how to reach to you because I think we were developing one. But thank you very much for your testimony today. [LB79]

FRANK DALEY: Thank you very much. I'm at your service. [LB79]

SENATOR PRICE: Thank you. Is there any further proponent testimony for LB79? Seeing none, is there any opponent testimony? Would anybody like to testify in the neutral? Seeing none, Senator Avery, you are free to close. [LB79]

SENATOR AVERY: Actually, I think Mr. Daley probably did a better job than I did, but I don't have anything to add. But since Senator Murante was not here for my introduction, I'd be happy to take any questions if you have any. [LB79]

SENATOR MURANTE: I'm sure it was a compelling introduction at that. [LB79]

SENATOR PRICE: Well, thank you very much. There is one question so I can stick it in the record there. I'm looking at the fiscal note, and I was somewhat perplexed by it. And maybe it's just my reading skills. But we noted that there is a first year of \$102,185, and are we talking about an FTE to handle the issue of going on data entry or...I mean, to maintain the system of \$30,000? And I'm trying to figure out how does an annual fee, excuse me, an annual fee of \$102,000 be worked up on... [LB79]

SENATOR AVERY: That would include maintenance of the Web site, and the costs plus benefits of an IT person. If you go to the last page of the fiscal note, you will see benefits are estimated to be just over \$20,000. And if you go to the page prior to that, the position itself would be somewhere around \$41,500. [LB79]

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SENATOR PRICE: So we have \$41,000 for the person and then we have benefits of \$20,000, giving you...roughly is \$60,000. And then we need another \$30,000--I thought there was another \$30,000 in here on the first page third...roughly third from the bottom. It says the ongoing maintenance costs will be about \$30,000. So I'm just...so... [LB79]

SENATOR AVERY: Well, you have material to educate candidates and committees that would need to be published. You have changes that need to be made to current reporting forms. You would have...I think they've earmarked \$10,000 to notify and educate filers, \$5,000 for the content of agency...changing the content of the agency's Web site. And then, of course, you have the cost of the new IT person. What you would need for this to work right, is you would need somebody on staff who could staff a help desk. Because I can imagine if it's true, as Senator Murante suggested and you did earlier, that there are a lot of people that may not be quite so friendly with electronic filing and might get confused or have questions. You need somebody on staff who can answer that. [LB79]

SENATOR PRICE: Oh, absolutely. And then when I look at that FTE, my concern was, is that an IT professional who's going to maintain the system to keep it working or a person who's going to help people who call in at a help desk, level one. I'm looking at nodding in the room, and I'm seeing that... [LB79]

SENATOR AVERY: Yeah. My guess is it's the same person doing both. [LB79]

SENATOR PRICE: Okay. Well, I appreciate it. We can always inspect it a little bit more. Senator Murante I believe has another remark. [LB79]

SENATOR MURANTE: Yeah, I have another question for you with respect to the costs and the fiscal note. So we already have a system that is at least somewhat capable of accepting electronic filings from candidates. I've submitted most of my campaign filings through the electronic processes on the NADC's Web site. Is this new system...is it going to be substantively different than that? I'm having a tough time understanding where the \$420,000 is on--for just the electronic filing elements of the fiscal note--where that \$420,000 is coming from if we already have a system that at least is getting some candidates filing electronically. [LB79]

SENATOR AVERY: Well, I have not found it to be a very sophisticated system right now. [LB79]

SENATOR MURANTE: Uh-huh. [LB79]

SENATOR AVERY: In fact, I think the way typically it works is you submit a written document and then there's a staff person that physically, manually enters that into an

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electronic form that's published then on the Web site. And I've from time to time found errors in mine. I'd go to look to see if it's the way I submitted it and, you know, human error creeps in. I think that this would be a much more sophisticated system and one that would be less subject to error because you'd be publishing what you submit, not what you submit to somebody else who then keys it in manually. That's my initial response. I suspect that Mr. Daley could give you a more detailed and accurate answer to that. [LB79]

SENATOR MURANTE: All right. Thank you. [LB79]

SENATOR PRICE: Thank you, Senator Murante. Are there any other questions or anything? Okay. Seeing none, that will close the hearing on LB79. And we will proceed to LB137. [LB79]

SENATOR AVERY: Okay. Thank you, Senator Price. And my name is Bill Avery, B-i-l-l A-v-e-r-y, representing District 28. I am bringing this bill, LB137, at the request of the State Treasurer's Office. It creates a state fleet card program. These programs allow state agencies to have a payment card that can be used to purchase gasoline, other fuels, diesel, for state vehicles. The card can also be used to pay for vehicle and equipment maintenance and expenses. According to the State Treasurer's Office, the Department of Roads currently administers a state fleet card program. It was started around 1999 when the state contracted for the state purchasing card and the fleet card was added. In 2010, the state purchasing card contract was rebid and under that new contract rebates for use of the state fleet card were offered. And those rebates, of course, generate a little bit of extra income for the agencies. The problem is that there are no provisions in statute currently to distribute the rebates because there are no provisions in law establishing the actual card program, and there is nothing in law to establish a fleet card fund. The University of Nebraska also has a state fleet card program. With LB137, the fleet card programs will be administered separately by the University of Nebraska and the Department of Roads. The Department of Roads will administer the program on behalf of the state government other than the University of Nebraska. Political subdivisions may also utilize a fleet card for lawful purposes of these subdivisions. The State Treasurer will determine the type of fleet card or cards utilized in the program as well as contract with financial institutions capable of operating a fleet card program on behalf of the state. The bill also outlines what detailed transaction information is needed for tracking expenditures including fleet card identification, merchant name, transaction number, date, time, produce, the quantity and cost. No officer or employee of the state or political subdivision will use the card for any unauthorized use; that would be, of course, personal. Finally, the bill creates the State Fleet Card Distributive Fund. All rebates received by the state from the program will be credited to that fund. The rebates then will be distributed by the State Treasurer to the state agencies and political subdivisions based on volume spent and on contract terms. You may remember that last year Senator Fulton introduced a similar bill that was

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amended by this committee and advanced to the floor. It was not debated because we ran out of time and it was not prioritized. The State Treasurer has asked me to bring this bill back, and I am happy to do that. And I believe he is here to provide more detailed information about the program. Thank you for your time, and I would be happy to refer all your questions to the State Treasurer. (Laughter) [LB137]

SENATOR PRICE: Thank you, Senator Avery. And on that note, we will proceed then to the first proponent testimony. Welcome, sir. [LB137]

DON STENBERG: (Exhibits 1, 2, 3) Thank you very much, Vice Chairman, members of the committee. Let me begin by thanking Senator Avery for bringing this legislation. This is one of those nuts and bolts of state government type bills. I don't think it should be controversial, I don't know why it would be. Frankly, Senator Avery did such a good job of explaining the bill that pretty much my testimony is what he said, and you probably don't need to hear it a second time. But basically, kind of in layman's terms, what's been going on for probably 10 or 11 years now or a little more is we've had a fleet card program operating under a separate section of the statutes--of the purchasing card statutes. And it's kind of like putting a square peg in a round hole. And if you've got a small enough square peg and a big enough hammer, you can make it go in. But it still doesn't fit right. And so that's what this legislation is designed to do, to clearly specify a fleet card, what its use is--which as Senator Avery said, is primarily fuel, maintenance of motor vehicles. The...any political subdivision that wants to participate under the contract and get rebates under this legislation may do so. OPPD is one of our larger users right now, as a political subdivision. And the way the program has developed over the years with...in the absence of legislation is, as Senator Avery said, there's two main...there's two program administrators: Department of Roads that administers the program for all the state agencies and the political subdivisions that participate, and the University of Nebraska that operates under the same contract that we...that the Treasurer's Office has but they administer their own program for the university system. I have...I'd like for the record, I'd like to submit letters of support from Nebraska Game and Parks Commission, from the University of Nebraska, and from OPPD. I don't know if we have a page here. And that really is the essence of the bill, and I respectfully request the committee approve the bill and send it to the Legislature for the body's review. [LB137]

SENATOR KARPISEK: Thank you. Any questions? [LB137]

DON STENBERG: It's Friday afternoon and late. [LB137]

SENATOR KARPISEK: And we found out more about airports than anyone thought. [LB137]

DON STENBERG: I heard. I was listening in on that. Yeah. [LB137]

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SENATOR KARPISEK: I have a suspicion that Senator Krist will pay for that. [LB137]

SENATOR MURANTE: I'll second that motion. [LB137]

SENATOR KARPISEK: Okay. Thank you. Seeing no questions... [LB137]

DON STENBERG: Thank you very much. [LB137]

SENATOR KARPISEK: Do we...I'm sorry. [LB137]

DON STENBERG: And let me again thank Senator Avery for his...for bringing the bill. And this is one of those nuts and bolts deals. It's not a glamorous thing but it's one of those things that needs to be done to keep things running smoothly in state government. Thank you very much. [LB137]

SENATOR KARPISEK: Thank you. [LB137]

DON STENBERG: Thank you, Senator. [LB137]

SENATOR KARPISEK: Any other proponents? Any opponents? Anyone testifying neutral? Seeing none, Senator Avery waives closing. And that will close our hearings for the day and for the week. Thank you, have a good weekend. [LB137]