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Government, Military and Veterans Affairs Committee
January 30, 2013

[LB65 LB108 LB257 LB311]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, January 30, 2013, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB65, LB257, LB108, and LB311. Senators present: Bill Avery, Chairperson; Dave Bloomfield; Russ Karpisek; Scott Lautenbaugh; John Murante; Jim Scheer; and Norm Wallman. Senators absent: Scott Price, Vice Chairperson.

SENATOR AVERY: I'm going to introduce the members of the committee first but we will proceed immediately to a gubernatorial appointment for our consideration, and then I will talk about the hearing procedures. So I'm going to invite up to the witness table Mr. Sean Conway from Omaha, who is being nominated for membership on the Nebraska Accountability and Disclosure Commission. Welcome, Mr. Conway. [CONFIRMATION]

SEAN CONWAY: Thank you, Senator Avery. [CONFIRMATION]

SENATOR AVERY: We'd like for you to tell us a little bit about yourself, your career up to this point. I know it can't be a long discussion since you're so young, but tell us a little bit about where you come from, your education, your experiences. A little bit, too, about your philosophy on accountability and disclosure and open government. [CONFIRMATION]

SEAN CONWAY: (Exhibit 1) Sure. Well, my name is Sean Conway, as you know. I live in Omaha, with my wife, Jill, who decided to come down with me here today, and our two daughters. I grew up in Omaha, went to college in Kearney, graduated there with a political science degree, and then went to UNL for law school, graduated in 2006, and I've been practicing ever since. I was in private practice for a short period of time and then did a tour of duty with the public defender's office in Omaha. So I was in the trenches for about four, four and a half years. And now I'm back out in private practice with a criminal defense-oriented firm but also does some civil work as well in downtown Omaha. You know regarding the commission, truthfully before being nominated and appointed by the Governor I was a bit ignorant about the commission's role, but I've learned a lot in my short period of time that I've been down at NADC meetings. In my short period of time, I think the commission serves a very important role in monitoring our elected and appointed officials who serve the people. You know, I think that sunshine is often the best disinfectant, particularly where political money is involved. So I think that the commission does a good job of monitoring that, but also having some perspective as to when a sanction may be appropriate, but also when something was perhaps just a technical violation of the statute and nothing more needs to be done with it. Occasionally a C-1 form gets filed late and it's not the end of the world. So that's what I've learned in my short period of time, and I hope to represent myself there in a professional manner. [CONFIRMATION]

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SENATOR AVERY: If you...you may not have had time to study the statutes yet. But you're a lawyer and I presume at some point you will get into the statutes relating to reporting requirements and open meetings laws and public records laws. This committee deals with those things all the time. I've been involved in these issues for the better part of the last 25 years in this state. Do you know of any glaring omissions or areas where we need to plug some holes in current statute? I have a few in mind, but mine don't always survive legislative scrutiny. [CONFIRMATION]

SEAN CONWAY: Well, you're right about the fact that I haven't had a terrible amount of time to study the Accountability and Disclosure Act. But from my review of it, not necessarily. That doesn't mean that they're not there but simply that, you know, my expertise is not yet developed, so... [CONFIRMATION]

SENATOR AVERY: What if you were faced with a conflict of interest on the commission, say a case came up and you knew the person, you might have maybe been involved with them politically, what would you do? [CONFIRMATION]

SEAN CONWAY: Well, I think it's my responsibility as a commission member to refrain from participating in deliberations or discussion or a determination regarding that particular case. I think I have to do that, and I would do that. You know, you're honor-bound by that when you join the commission. [CONFIRMATION]

SENATOR AVERY: Good answer. [CONFIRMATION]

SEAN CONWAY: Yeah. [CONFIRMATION]

SENATOR AVERY: I agree with it. [CONFIRMATION]

SEAN CONWAY: Oh, thanks. I appreciate it. [CONFIRMATION]

SENATOR AVERY: All right, we're going to open it up for questions from the committee. You do have to have an affirmative vote from this committee to be appointed...or to be forwarded to the Legislature for appointment...or confirmation. So I will ask any of the members of the committee if they have any questions they would like to direct to you. Senator Bloomfield. [CONFIRMATION]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Mr. Conway, I was looking this over. I see several mortgages but I don't see any assets. Can you explain what's happened on here? [CONFIRMATION]

SEAN CONWAY: Oh, that was just...I think when I filed that I was being overly cautious. [CONFIRMATION]

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SENATOR BLOOMFIELD: I understand that philosophy. [CONFIRMATION]

SEAN CONWAY: That's just simply the...we simply refinanced our mortgage this year. It's kind of a good time to do it based upon the interest rates, and so that's why it lists various mortgage companies just because, you know, you refinance with one company and then it transfers to another company. And so you pay one month to one company and then the next to the next company. So... [CONFIRMATION]

SENATOR BLOOMFIELD: Okay, thank you. [CONFIRMATION]

SEAN CONWAY: You're welcome. [CONFIRMATION]

SENATOR AVERY: I sympathize with you for still having student loans.
[CONFIRMATION]

SEAN CONWAY: Yeah, that will...I'll be filing that on the C-1 form for quite some time I think. [CONFIRMATION]

SENATOR AVERY: Yeah, I think you will. Any other questions from the committee? Don't see any. Did you come down in the snow or were you already here?
[CONFIRMATION]

SEAN CONWAY: I did. I did. My wife was gripping the passenger-side door handle on the way down because I have a tendency to drive too fast in the snow. So...
[CONFIRMATION]

SENATOR AVERY: Well, our Vice Chair is probably not going to be here today because of the snow and we had some pretty hair-raising stories told by senators who did drive down from Omaha today, so I say all that to say this. We do appreciate you coming down under these circumstances, and we very much appreciate your testimony.
[CONFIRMATION]

SEAN CONWAY: Thank you, sir. [CONFIRMATION]

SENATOR AVERY: Thank you very much. That ends the hearing on the nomination of Sean Conway to the Accountability and Disclosure Commission, and we will be voting on this in Executive Session later. [CONFIRMATION]

SEAN CONWAY: Thanks very much for your time. [CONFIRMATION]

SENATOR AVERY: Thank you. All right, now we are going to move to the formal hearing part of our work today. And before I do that, I want to introduce...I said I was

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going to introduce everybody before, but I didn't. I am now. We...I don't know if Senator Murante from Gretna is down here yet. He is?

SENATOR LAUTENBAUGH: He's in Judiciary testifying.

SENATOR AVERY: He is?

SENATOR KARPISEK: He's in Judiciary introducing.

SENATOR AVERY: Judiciary is going to be competing with us today because some of us have bills there, so we'll have to be there--and including me. But Senator Murante will be here later. He is from Gretna. Next to him is Senator Dave Bloomfield from Hoskins, and next to him is Senator Scott Lautenbaugh from Omaha. And if our Vice Chair, Senator Scott can get down here, he will arrive later. He is from Bellevue. To my immediate right is Christy Abraham, the legal counsel for the committee. And I am Bill Avery, Chair of the committee. I represent District 28 here in Lincoln. To my immediate left is Senator Russ Karpisek from Wilber. And in the absence of the Vice Chair, I'm going to ask him to take over when I have to leave to go to the Judiciary Committee. He also has bills introduced in other committees, and he may have to leave.

SENATOR KARPISEK: Actually, they're here.

SENATOR AVERY: They're all in here? Well, so...

SENATOR KARPISEK: Well, just one. I was wrong, believe it or not.

SENATOR AVERY: You were? I have never seen that.

SENATOR KARPISEK: I know, it's amazing.

SENATOR AVERY: When that happens...I understand Senator Lautenbaugh also will probably have to leave. And we've been checking around about when you need a quorum and when you don't. I think we're going to be okay based upon what we have learned. So I will be asking Senator Wallman to help us out. Senator Wallman is from Cortland. And next to him is Senator Jim Scheer, a new member of the Legislature and of this committee. He is from Norfolk. On the very end down there is Sherry Shaffer, the committee clerk. Now, the bills will be taken up in the order they are...as they appear on the agenda outside the room. They are posted. And we will start with LB65 and move then to LB257, then LB108, and LB311. If you wish to testify, we want you to fill out the green form that is available at the entrance...each entrance to the room. The green form is to record information about you and what your...what bill you're testifying on and whether you are in support or opposition. Please print this clearly for the record. When you arrive at the table, if you have any handouts that you want us to see we need 12

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copies. Give them to the clerk. She'll have the pages distribute them. Our pages are...there we are...we have two pages today, Cicely Batie from Lexington and Will Rahjes from Elwood. They will distribute whatever you have for us. If you don't have 12 copies, don't worry. The pages will get you 12 copies if you have an original. When you appear at the table to testify, we want you to state your name clearly for the record, and spell it for the record. If you don't spell it, I'll have to interrupt you and ask you to. And that includes Senator Schilz whom we know well. The...there are sign-in sheets at each entrance. This white sheet here is for you who do not wish to testify but you want to record your presence and support for or against any of these bills. There's a place here for you to do that. I am going to use the light system. The green light begins and gives you four minutes. When the amber light comes on, you should be ending your testimony. You have one minute to complete it. It's a five-minute total and when the red light comes on we ask that you terminate your testimony. You can finish a sentence, but we don't want you to start a whole new line of argument. Also you need to turn off all electronics that make noise--beeps, buzzes, rings, whatever. If it makes a noise that would disrupt this hearing, please turn it off. The introducers will be given an opportunity to make an initial statement. We do not use the light system for our senators. They will be followed by proponents, who will be followed by opponents, and they will then be followed by people testifying in a neutral position. Closing remarks are, of course, reserved for the introducing senator. So, my phone is ringing already. So let's begin with Senator Schilz, who is here to talk to us about LB something...LB65. I misplaced it. There it is.

SENATOR SCHILZ: (Exhibit 1) There we go. Thank you, Senator Avery and members of the committee. My name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I'm here to introduce LB65. LB65 was introduced at the request of a number of sheriffs from western Nebraska and the Nebraska Sheriffs' Association. During the 2012 legislative session, I introduced LB919 in an effort to bring to the attention of the Legislature that the current sheriff fee structure under Section 33-117 is inadequate to cover the actual cost for performing the statutorily mandated services provided for in this section. I have provided you with a list of the fees that show you the current statutory fees and the last time a specific fee was increased. As you can see, some of the fees haven't been increased since 1965. Prior to me bringing LB919 last year, the sheriffs have tried unsuccessfully to have the Legislature consider one fee bill or another in an effort to get the individual fees increased. Unfortunately, they have been unsuccessful and only with the passage of LB35 in 2009 were some of the fees adjusted. But only to a rate that was negotiated with the opposition and not to a rate that covers the actual cost of providing the services. Typically there has been significant opposition to this type of bill and we expect such again today. However, instead of just opposing an increase of the fees as unreasonable or too burdensome to keep track of the 93 different fee structures, I would like to ask the question and a couple of thoughts regarding a couple of these questions. Number one: Who do you think should be responsible for paying for these services? Should it be all the property tax payers or should it be those that actually use

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the services? And number two: What are some of the solutions for addressing the discrepancy between the statutory fee and the real cost for providing the service being used by a particular individual or business? These are the same questions I asked the opposition to answer last year when the bill was before the Judiciary Committee. And the committee agreed that the current fee structure probably does not cover the cost of the service. Two sessions ago we cut aid to counties. Last year legislation was introduced to eliminate the inheritance tax, and this year legislation has been introduced to reduce the inheritance tax paid to the counties. However, we also continue to introduce and pass laws that mandate the sheriffs provide specific or expanded services, whether it is service of tax deeds or the collection of DNA. There's nothing for a sheriff to do except carry out what the law requires them to carry out and without the benefit of adjusting fees so that it covers the actual cost associated with the service. This becomes even more difficult when you consider that the cost for carrying out a particular statutory duty depends greatly on the population of the county and the number of people in your office available to provide that service. The fees in Section 33-117 are service fees. Fees paid to the sheriff by an individual who needs the sheriff to perform a particular service for a specific purpose, in most cases, to benefit that individual's business. A sheriff's priority responsibility to the general taxpayers is to protect their personal safety. So why should the taxpayers subsidize a service not used by them or performed to benefit them? So again, the question that needs to be answered is who is the best able to assume the cost of the services provided by the sheriffs; the actual user of the service or the property taxpayer who must make up the difference between the fee paid and the actual cost of providing the service? As for the county board setting the fee, Nebraska is a diverse state and each county is different, especially as to size of each sheriff's office in relation to the size of the county. One size does not fit all, especially when comparing a very urban county like Douglas County with a very rural county like Cherry County. Therefore, why should it be unreasonable to allow each county to make a determination of what the fees should be based on--the actual cost to perform those services in its respective county? In some instances, it's possible that the fee that is set may even save the individual or business using the service. As for the argument that it will be burdensome for the individual or the business to keep track of 93 different fee structures, it is my understanding that the sheriff bills the individual or business using the service or they have an account with the sheriff. Even with a uniform fee structure, the actual cost that must be paid by the user is not known at the time the individual asks the sheriff to perform the specific service. Instead, the sheriff bills the individual or business once the service is complete. Businesses are so global today and are quite advanced in their ability to keep track of fee requirements in multiple states let alone in multiple counties. Please look at this legislation closely. And I ask that you take some time within your busy committee schedule to discuss this problem and try to make some determinations about where we go from here. I think the time is right as we move forward with evaluating our current tax structure along with who should be paying what to consider what we can do differently at the local level to allow local officials, who know their county best, to make the decisions on what is

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right...what is the right cost for providing a service in their county. The sheriffs stand ready to provide their insights and thoughts regarding this issue and are willing to work with the committee to arrive at a reasonable solution. Thank you for the opportunity today to introduce LB65, and I would be happy to try to answer any questions you have. [LB65]

SENATOR AVERY: Thank you, Senator. Let's just take an example of serving a search warrant. [LB65]

SENATOR SCHILZ: Uh-huh. [LB65]

SENATOR AVERY: Right now the current fee is \$2 which strikes me as pretty low. [LB65]

SENATOR SCHILZ: Correct. [LB65]

SENATOR AVERY: And the last time that was increased was in 1965. [LB65]

SENATOR SCHILZ: Right. [LB65]

SENATOR AVERY: And you have a number of examples like that. [LB65]

SENATOR SCHILZ: Right. [LB65]

SENATOR AVERY: What, though, would you say about having 93 different fees by every county would be able to set their own fees, right? Every county board? [LB65]

SENATOR SCHILZ: Right. Correct. [LB65]

SENATOR AVERY: And you could conceivably--maybe not in the practical sense--but conceivably you could have 93 different fee structures for serving a search warrant. [LB65]

SENATOR SCHILZ: Right. [LB65]

SENATOR AVERY: Would that be confusing? Would it be workable? [LB65]

SENATOR SCHILZ: Well, I look at it this way. Every county out there has the ability to set their valuations and their levy and all that on their property tax, and everybody seems to be able to figure that out. I look at the fees in the same way. And as you talk about something like a search warrant, once again let's take the example of Douglas County where you can, you know, possibly drive across that in 30 minutes to--and maybe only go 15 miles--to a county like Cherry County where you may only have one

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or two deputies that need to travel 60 to 70 miles to deliver that same search warrant. The cost in manpower and the cost in fuel costs alone can be vastly different depending on the county you're in. So I would say that, yes, they could be different, but that may not necessarily be a bad thing depending on how you're looking at making this work. [LB65]

SENATOR AVERY: Did you talk with the people in the collection industry? I carried that bill in 2009... [LB65]

SENATOR SCHILZ: Right. [LB65]

SENATOR AVERY: ...and I still have scars. [LB65]

SENATOR SCHILZ: It was a short conversation, let me put it that way. [LB65]

SENATOR AVERY: Short. [LB65]

SENATOR SCHILZ: But yes, we have talked. Yes. [LB65]

SENATOR AVERY: Thank you. Questions from the committee? Senator Scheer. [LB65]

SENATOR SCHEER: Thank you. I'm assuming--and correct me if I'm wrong, and I make a lot of wrong assumptions--the costs that we're concerned about are more in rural areas, not necessarily in Douglas or Sarpy County. Would that be the case? [LB65]

SENATOR SCHILZ: Well, I can only speak to what I know. And I can't say necessarily whether that's the case, but I know in the rural counties that there are issues with getting those paid for. And I would guess if you're looking at, you know, a \$2 fee to serve a search warrant, I would guess that no matter where you are in the state that's not going to cover the cost. [LB65]

SENATOR SCHEER: I understand. And I'm not talking specifically of a search warrant. [LB65]

SENATOR SCHILZ: Right. [LB65]

SENATOR SCHEER: I'm just talking about serving whatever papers... [LB65]

SENATOR SCHILZ: Uh-huh. [LB65]

SENATOR SCHEER: ...because I know in...I think it's in Douglas and probably Lancaster you can have constables and they're private entities and can provide the

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service, so evidently there's enough surplus that they're able to pick up the slack. And I guess when I look at the rural areas, is there a concern because we're utilizing the sheriffs' time that would be used differently during that day? [LB65]

SENATOR SCHILZ: That could be an issue. The bigger issue is--we do have some sheriffs here that are going to come testify--but I think the bigger issue is the fact that--and especially in these rural counties--what happens is a lot of times...some of these things, like I said before, with the mileage and things like that, they're just concerned that when that gets charged and they only get \$2 back, you know, the rest of that goes for the property taxpayers of the whole county to take care of. And the question today is, is that the right way to do it? Does that make sense? Or this being a user fee basically, do we want the person that's using the service to help offset those costs? [LB65]

SENATOR SCHEER: They do get paid mileage though, correct? [LB65]

SENATOR SCHILZ: Right. At times, yes. [LB65]

SENATOR SCHEER: Okay. Would perhaps a solution as well be to maybe offer the constable process to all counties rather than burdening the sheriffs with that responsibility, so that if somebody would do it for less expensive or would take the burden off of those sheriffs? [LB65]

SENATOR SCHILZ: If you can get them to come out to Arthur County and Cherry County and Blaine County... [LB65]

SENATOR SCHEER: I understand that might be more difficult than sin. [LB65]

SENATOR SCHILZ: ...then that might be something we could talk about. But, you know, that's the issue out there, is access. In a county like Arthur County that has 300 residents or some of these other counties... [LB65]

SENATOR SCHEER: Yeah. [LB65]

SENATOR SCHILZ: ...there's just...that service is just not available... [LB65]

SENATOR SCHEER: Okay. [LB65]

SENATOR SCHILZ: ...as far as I know. [LB65]

SENATOR SCHEER: Okay. [LB65]

SENATOR SCHILZ: Yeah. [LB65]

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SENATOR SCHEER: Well, I don't think it's legal in other counties other than... [LB65]

SENATOR SCHILZ: Right. [LB65]

SENATOR SCHEER: ...Lancaster and Douglas now. [LB65]

SENATOR SCHILZ: Yeah. [LB65]

SENATOR SCHEER: So I didn't know if that...expanding that to other...to the rest of the counties in the state, if that would help eliminate part of the burden that we're seeing or concerns from the sheriffs' departments in those areas. [LB65]

SENATOR SCHILZ: If--and I was just thinking anecdotally--if somebody travels from Douglas County to deliver papers to somebody in Cherry County, it'd be cheaper to do this and let the county set it and the sheriff take it out. But anyway...just thinking out loud. But thank you. [LB65]

SENATOR SCHEER: Thank you. [LB65]

SENATOR KARPISEK: Thank you, Senator Scheer. Any other questions for Senator Schilz? Seeing none, thank you, Senator. We'll have the first proponent to LB65. And I would like to recognize that Senator Murante just showed up. We're working on that. It's about as easy as Karpisek, isn't it, Senator? Welcome, Mr. Dix. [LB65]

LARRY DIX: Good afternoon, Senator Karpisek and members of the committee. For the record, my name is Larry Dix. I'm executive director of the Nebraska Association of County Officials, spelled L-a-r-r-y D-i-x, and I appear today in support of LB65. We certainly appreciate Senator Schilz carrying this. And this version is a little bit different than what we've seen in previous years. And this version certainly does allow for the county boards...the latitude for the county boards to establish some of those fees. And when our board talked about this, we had...as far as a year ago, we've had some pretty specific conversations about how do we deal with property tax and the constant issue of taxpayers coming forth and saying the property tax burden is getting so significant, that it's something that we have to deal with. And many people have challenged NACO to say, well, give us some ideas. Tell us what you think. Well, the Sheriffs' Association brought forth this idea, which we think is a good one. And we think it is more to where you are paying a fee--as opposed to a tax because it is a fee based on the service--and it moves the payment more directly to the people that are receiving the fees as opposed to spreading it across the broad tax base that you'll have. One of the issues that we have had for a number of years and one of the things that makes this very, very difficult is, as Senator Schilz said, these fees. These rates have been on the books since 1965. And as we come in and talk about, okay, we need to have this fee raised or this rate,

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you know, the discussion sort of starts to go down the fact of, okay, well, if we raise this one then we get this particular fee raised, and so then you should go away. Well, the problem in county government, we have a lot of fees that are charged. And if we just sort of pick one fee at a time and take that battle, I would relate back to something that we did last year which was called LB14, which was a fee that was raised. And I would tell you, I've been executive director for ten years and I've worked on raising that one fee for ten years. It took ten years. And I think probably my predecessor was working on raising that fee. So we're sort of in this death spiral, if you will, on fees and how we deal with it. So this is an idea that was brought forward that allows some flexibility in increasing those fees--moves some of that authority to county boards. When I look at raising fees and I talk to folks I say, for a county to raise a fee there are a few things that have to happen. First I've got to have a hearing. I've got to get 25 votes. I've got to get the Governor convinced that it's a good idea so the Governor signs it before I can raise any single fee. And the cycle to get to work our way through that process is so significant that we're going to see--just like LB14--we're going to see ten years before we can get one specific fee raised. So this is an idea that was brought forward. We think it has merit. We're certainly opening...open to having the discussion. I know there are a number of sheriffs behind me that if you want to ask specific questions of the fees and what the charges are, they're going to be able to answer that. I just wanted to put NACO on the record; NACO's support for this and this concept. I know we're moving in a little bit of different direction, but I think the time has come where we have to move in a little bit different direction in order to start talking about and looking at the property tax burden in the state of Nebraska. So with that, I'll be happy to answer any questions anybody has. [LB65]

SENATOR KARPISEK: Thank you, Mr. Dix. Any questions? Senator Lautenbaugh. [LB65]

SENATOR LAUTENBAUGH: Thank you, Senator Karpisek. Thank you, sir, for your testimony. Do you see a problem though with having 93 different fees depending on where you are? [LB65]

LARRY DIX: The...that question, you know, typically will come up. Is there 93 different fees and things like that? If we don't go to something like that certainly we've got to have some type of cost-of-living indexing on the base set of fees. But the sheriffs will talk about those fees specifically. But even if I am allowed, in some instances, to charge mileage--which sometimes I am--that is going to vary from every time we do it. So it isn't like there is just this flat billing that we have no matter what we do. It is going to be a different amount from time to time. I think it's open for debate to say, should McPherson County charge \$3 and should Loup County charge \$4? That, I think, is open for debate, but I think if there's a process where we can justify, where we can state, here is the justification for that. Yeah, I think that that's fine. [LB65]

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SENATOR LAUTENBAUGH: I'm sure you recognize that if you guys got behind consolidated counties, there would be fewer disparate fees if we all up and set their own. All right? [LB65]

LARRY DIX: Yeah, I think they'd all be larger and so the fees would have to go up significantly higher because the distance traveled would be greater in each one. [LB65]

SENATOR LAUTENBAUGH: Well, if you are interested in that kind of thing, we can always do it next year; in an election year, I'm sure. (Inaudible) so... [LB65]

SENATOR KARPISEK: Thank you, Senator Lautenbaugh. Any other questions? Seeing your track record on that, Mr. Dix, we'll remember not to hire you to help increase senator salaries. [LB65]

SENATOR LAUTENBAUGH: It's not like we did great on our own. [LB65]

SENATOR KARPISEK: Welcome. [LB65]

JERRY WATSON: (Exhibit 2) My name is Jerry Watson, spelled J-e-r-r-y W-a-t-s-o-n, as in "elementary my dear." I'm the sheriff out in Hall County and I've been serving as sheriff for 14 years. In Hall County we average approximately 10,000 papers or writs that we receive every year through our legal system. The writs can vary from everything from subpoenas to protection orders, replevins, eviction notices, to pages and pages of other types of writs. There's just a multitude of different types of writs that our legal system can produce. The main users of our civil process service are attorneys and collection agencies. The rates we can charge for this service is by state Statute 33-117. After becoming...since becoming sheriff back in '99, I found it very frustrating that it's...what it's costing our taxpayers to provide this service far outweighs what we can collect. When I first took office in '99, we were working off the rate that was established--I was told--in 1988, and today I'm hearing 1965 on some of them. When it was last addressed in approximately 2007, we requested that the rates be doubled just simply to meet our...what it was costing us to provide the service. At that time, it was negotiated and a 20 percent increase was allowed, which really didn't come close to helping us recoup our costs in providing the service. So here we are again in 2013 talking about it again. You've heard this before, but sheriff's fees are not a tax. They are a users' fee. If you use the service, then you should pay for it. If I ask UPS or FedEx to deliver a package for me, I pay the entire fee for the delivery; not two-thirds of it, but all of it. It is simply wrong to put the burden of subsidizing this service on the back of our taxpayers. In Hall County in 2012, we received 9,500 writs. We collected fees totalling \$231,373.20. However, it cost our agency \$328,235.98 for each paper that we served. That's an average. In other words, as you can see, our shortfall was \$96,862.78 or, on average, we lost about \$10.20 on each paper that we served. In the packet that you got, I included a handout on my worksheet so you can check my math; so you can see I'm

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just...where the numbers are coming from. But there's two pages back there to substantiate those figures. There's got to be a better way. I reached out recently to the Sheriffs' Association in nearby states and got responses back from a few. South Dakota and Kansas are in the same boat that we are, the fees are set by state statute. Iowa advised that the state does set the fees, however, they're a home rule state. So a home rule state, basically locally they can address it to pick up...to address the shortfalls. Minnesota responded that they simply have passed law making it the responsibility of each county board in their state to set the fees. Well, that made sense to me. Why not? What LB65 does, it mirrors Minnesota statute. I've included a copy of this statute in the handout that you got; it's the last page. LB65 will allow the sheriffs the ability to collect the fees, however, will shift the responsibility of setting the fees to each individual county board across the state. What it costs me to serve a paper is not the same as what it costs Sheriff Wagner in Lancaster County or Sheriff Osburn in Cherry County. Simply because the size of Cherry County it can take up to half a day to serve a paper. The bill just makes sense, and what it's costing each county to provide this service can be recouped. Will this cause an inconvenience to those that use the service? Well, they may need to make a phone call to the county that they're working through to get the exact cost, but when I use UPS or FedEx I have to ask them what it's going to cost too. The time has come to provide tax relief to our constituents. LB65 will allow that to happen. Let's require those using our service to pay for it and allow our local elected officials to set those rates. This is an issue where one size does not fit all. I appreciate you listening to me, and I'm honored to be given the opportunity to share with you today. Thank you. [LB65]

SENATOR KARPISEK: Thank you, Sheriff Watson. Any questions? Senator Scheer. [LB65]

SENATOR SCHEER: Thank you, Senator Karpisek. Thanks for stopping down and I'll preface anything I ask. This is my first year, so I'm asking questions that perhaps everybody else in the room knows except for I, but I've got the microphone so I get to ask them. Is serving papers part of your duties by statute? [LB65]

JERRY WATSON: Yes, sir, it is. By statute I'm required...there's 400 and...over 400 statutes that refer directly to the office of sheriff. One of the responsibilities that the sheriff has is to provide that service. There are options that...collection agency or an attorney. There are other options. They can do certified mail or they can use a private service or they can use sheriffs' service. And, as you can see, averaging 10,000 writs a year they like us a lot. [LB65]

SENATOR SCHEER: Absolutely. You're a popular fella, I can tell. Would you then...am I to assume that part of those costs would be included in the funds that you receive from the county to operate your division? [LB65]

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JERRY WATSON: I'm not sure that I understand, Senator. [LB65]

SENATOR SCHEER: Well, if this is part of your duty... [LB65]

JERRY WATSON: Uh-huh. [LB65]

SENATOR SCHEER: ...your budget is made up to provide the services to the county for those duties. Is not your property tax... [LB65]

JERRY WATSON: We...the money that...right... [LB65]

SENATOR SCHEER: ...considered part of that duty so that it would cover part of those costs? [LB65]

JERRY WATSON: Right. The monies that come in are deposited back into the general fund which offset what it's costing each county to provide the service, the mandate. But the issue is, is that we're providing the service and what it's costing to provide the service, we're not getting the money back in. So, yeah, it goes into the general fund and then it...and into the big pot. And basically, then, it's redistributed to the different infrastructure within the county, and that would go toward offsetting what it's costing me to do that, yeah. Does that answer your question? [LB65]

SENATOR SCHEER: It does, which then begs one other. Then if that is producing a net loss of revenue to the county, if you changed your rates to compensate you, in your particular case, for the additional \$96,000, then am I to assume that the property tax or the valuation for a request for Hall County would go down by that commensurate amount? [LB65]

JERRY WATSON: I learned a long time ago not to speak for my county board supervisors, but I would hope that that's where it would go, yeah; towards tax relief. I mean, right now the taxpayers are subsidizing it. [LB65]

SENATOR SCHEER: Uh-huh. [LB65]

JERRY WATSON: And...I mean, I could go in...I could try to increase my budget that much, but that's not my intent here. My intent is to...this needs to stop. I mean, we just need to address the issue of the shortfall. And the taxpayers are subsidizing it right now. They're subsidizing a service that they shouldn't be. These are users that are using our service. They should be paying for it by any reasonable means found. But right now what we have in place is not working. As you can see, if we're looking at rates that were established in 1965, 1988, and 2007, respectively, it's...we're not keeping up. We're just not keeping up. The last go-around on this in 2007, we came in and asked originally for the fees to be doubled. And my question was for those using the service, you know

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what you were charging back in 1987 or 1988, would you want to go back and charge those same rates? Cost of living and, I mean, the price of gas, labor costs, everything goes up. It just does. That's a fact of life. And for government, it does too. And we're not looking to make money, we just want to recoup our costs. [LB65]

SENATOR SCHEER: Thank you very much. [LB65]

JERRY WATSON: Uh-huh. [LB65]

SENATOR SCHEER: I appreciate the information. [LB65]

SENATOR KARPISEK: Thank you, Senator Scheer. Any other questions? Sheriff, I'd ask the first question that Senator Scheer asked Senator Schilz about. If a constable were allowed to come out and serve papers, would you be in favor of that? [LB65]

JERRY WATSON: Right now, statute dictates that I can appoint somebody that's not law enforcement to come in and to provide this service, which I have done because I've made every effort that I can to reduce my costs. About 80 percent of the papers that I serve through Hall County are done by civilian employees. And some...and one of them is a part-time employee. So, you know, I've cut my costs as much as I can. Certain papers like protection orders or we call them--if they're confrontive papers where there could be an issue in serving the individual--we'll have a uniform do it. Otherwise, our civilian staff handles about 80 percent of what we see. So we've got that option now, and I utilize that option. And I can't speak to what other...some of the other smaller counties are doing but that's what we've done in Hall County. [LB65]

SENATOR KARPISEK: Thank you, Sheriff. [LB65]

JERRY WATSON: Uh-huh. [LB65]

SENATOR KARPISEK: Any further questions? Seeing none, thank you for your testimony. [LB65]

JERRY WATSON: Thank you, Senators. [LB65]

SENATOR KARPISEK: Next proponent? Welcome to the Government Committee. [LB65]

RON COUGHLIN: Good afternoon, Senators. My name is Ron Coughlin. It's R-o-n C-o-u-g-h-l-i-n. I'm with the Douglas County Sheriff's Office. I'm the supervisor of civil process. I was here back in 2007 I believe. I recognize a lot of you. Not to...I won't go over what the sheriff already talked about, but I will give you some numbers just from Douglas County. We average about 28,500 papers a year. So where the sheriff was

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talking about he has 10,000, we double that. We do not have some of the driving that the other counties do, but where we have more, obviously, is in the volume that they don't do. I would like to tell you too--it has been brought up--protection orders are not involved in this. We would...those are free. We serve those at no cost to the individual. Back in 2009 when we were going through this bill, Douglas County and the general fund was losing \$450,000 a year. We're subsidizing that private litigation. With the increase we received on some of those fees last time, it helped greatly. But even now when I did the numbers this year, in 2012 Douglas County subsidized \$287,000. So I agree totally with the sheriff. The increase helped last time, but it did not make us whole. And we are not asking for anything to try and make money here. We are just trying to break even, and to me it does make perfect sense. And I just look at it the simple way. If you're using this service, you should have to pay for it. My neighbor shouldn't have to pay if I have a lawsuit. [LB65]

SENATOR KARPISEK: Thank you, Mr. Coughlin. Any questions? Senator Bloomfield's finger looks like it wants to come up. [LB65]

SENATOR BLOOMFIELD: It's coming up slow. I'll wait a little while yet. [LB65]

SENATOR KARPISEK: Seeing none, thank you. [LB65]

RON COUGHLIN: Thank you. [LB65]

SENATOR KARPISEK: Next proponent? Welcome. [LB65]

SHAWN HEBBERT: (Exhibit 3) Good afternoon. My name is Shawn Hebbert, and it's spelled S-h-a-w-n H-e-b-b-e-r-t. I am the Grant County Sheriff, the Panhandle district's representative of the Sheriffs' Association. I also belong to the Sandhills Area Sheriff's Association. I'm here today in support of LB65. You've already heard from the large- and medium-size counties and now you get to hear from the small. We also have east, central, and western Nebraska represented. I drove a little over 300 miles to get here today, which should prove to you that it's a priority across the state to get local control. The costs are as different and diverse as the three agencies represented here. I am a one-man agency. Therefore, mileage and time are where most of the costs are incurred in my county. My average mileage on civil process is around 16 miles. Cherry County--which has been brought up several times today--to the north, has an average of over 50 miles per service. Senator Schilz's home county of Keith County averages 23 miles per service. Here in a minute you're probably going to hear the argument that we get paid for our time already, and that time should not be considered as a cost. Our primary responsibility as law enforcement, however, is public safety not civil process. And if I'm tied up serving papers, then I am neglecting my responsibilities as a public servant and, therefore, time has to be considered as a cost. I brought with me today a couple of examples of civil process to show where the taxpayer has taken the short end

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of the stick. The second page there in your handout is the front page of a summons which basically shows who's getting sued and why they're getting sued. The back page--or the third page on that handout--shows what I really want to bring to your attention. That last paragraph "requests a total Judgment of \$392.00" in this case "in principal, \$19.22 in interest and"... "check fees," and the "cost of this action." In other words, the defendant will end up paying my fees back to the plaintiff. The second example is an execution where it, again, lists the balance owed, plus postjudgment interest, plus costs, and prejudgment interest, which gives them a total amount due--and again--plus the officer's cost. Again, the plaintiff gets reimbursed their costs if they paid the sheriffs, but the loss the taxpayer takes goes unnoticed. The taxpayer does not get reimbursed. I also brought an example in the small counties of how some of these costs can be brought down with local control. The third example is a return on an execution where I collected the full amount due in cash in about 15 minutes. My fees for this execution were \$53.92. It did not cost me that much to perform that service. However, had I not got paid, I would have had to confiscate property, store the property, have it appraised, eventually sell it at auction. Fifty-three dollars and ninety-two cents doesn't even come close to covering that expense. Again, the taxpayer takes the hit. The system we have now is a tax; all pay for the service that a few use. What we need is tax relief by turning the system into a users' fee where only the people that use the process pay for it. This can be accomplished by giving local control to the boards to set sheriffs' fees at cost. I don't see any way that one set of fees statewide makes any sense when you consider the diversity of the state and the different costs associated from one agency to another. I thank you for your time, and I strongly urge you to pass LB65 and give the taxpayers some relief through local control. [LB65]

SENATOR KARPISEK: Thank you, Sheriff. Any questions? Seeing none, thank you for driving in. [LB65]

SHAWN HEBBERT: Thank you again for your time. [LB65]

SENATOR KARPISEK: Next proponent. Welcome. [LB65]

SEAN KELLEY: Thank you. Good afternoon, Senator Karpisek, members of the Government, Military and Veterans Affairs Committee. My name is Sean Kelley, S-e-a-n K-e-l-l-e-y, appearing today on behalf of the Douglas County Board of Commissioners in support of LB65. We would simply just echo the comments made prior to me coming up here, and just two quick points. Number one, it's just all about costs. It's not...the goal isn't to go above costs. And number two, unfortunately, this issue isn't just limited to sheriffs' fees. As Larry Dix mentioned, the register of deeds had an issue. Thankfully, I think that fee is probably at cost now, but in years going forward that will again be a net loser. So with that, I'd be happy to answer any questions. [LB65]

SENATOR KARPISEK: Thank you, Mr. Kelley. Any questions? Senator Bloomfield.

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[LB65]

SENATOR BLOOMFIELD: Mr. Kelley, it has been my experience through probably too many years, that any time we give any board the ability to increase a tax or if we choose to call it a fee, that that's going to happen. And to put one out without having some guidelines on the top of it seems questionable, at best, to me. Would we maybe be better off if we put out a fee range where we could cap it somewhere? [LB65]

SEAN KELLEY: Yes, Senator Bloomfield. I think that's a great suggestion. I think the Douglas County Board of Commissioners would be amenable to that idea or if there is some sort of index you could go off of where it can't exceed that on an annual basis, I think would be a good idea. [LB65]

SENATOR BLOOMFIELD: The idea of leaving it open-ended frightens me just a little bit. [LB65]

SENATOR KARPISEK: Thank you, Senator Bloomfield. Any other questions? Senator Lautenbaugh. [LB65]

SENATOR LAUTENBAUGH: I don't know how to cast this as a question so I'm not going to even try. Thank you for coming today, Mr. Kelley, but you're here all the time. So that's great, that's your job. But to someone who traveled 300 and some miles to be here, just because we don't ask questions doesn't mean we're not interested in what you have to say or we're not reading all of this and whatnot. But, anyway, I think we're getting the gist of it, and I understand that. But I didn't want you to think that, you know, we didn't care that you came so far. I mean, I stayed here and he came 45 miles. I mean, that's a...you know, we appreciate you coming too. And so, how do you feel about that, Mr. Kelley? [LB65]

SEAN KELLEY: I think that's a great point, Senator Lautenbaugh. [LB65]

SENATOR LAUTENBAUGH: Okay, thank you. There was my question. [LB65]

SENATOR KARPISEK: Senator Scheer. [LB65]

SENATOR SCHEER: Well, Mr. Kelley, piggybacking on Senator Bloomfield's comment as far as range, would there be a concern if you had a range that we end up right back where we're at now? It seems to me any time, regardless if it's a range or a specific amount, at some point you're going to butt up against that preset limit. And regardless of if it's one year or ten years, then we sort of have to reduplicate the whole process. And I'm wondering if there's not more of a permanent solution than simply providing lids to work towards. And conversely, Senator Bloomfield, at least in my experience, if you put a lid out there, that's where it's at. And so I don't know that that necessarily is smart

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policy as well. It seems to me that it would be...make more sense to have it based on costs rather than just have some type of undocumented lid that you can go up to. Because, I mean I'll be honest, if I were a county commissioner or supervisor and I was able to collect that much on those, that's what I'd do because it would help offset my budget. So I'm not sure that that type of process might work. But maybe something that, you know, would have the flexibility of a...some type of an inflation gauge or something that would, you know, inhibit at least the growth of the service fee. [LB65]

SEAN KELLEY: Yeah, I think that you're right. I mean, it's just a matter of time before the request comes back. It would certainly be less frequent if there was a cap, but that is a concern. Although, to Senator Lautenbaugh's point of view, I think a cap would limit the variance between county fees, at least, so it would be less of a patchwork. But some sort of gauge or index might be helpful. [LB65]

SENATOR SCHEER: But following up on that limit and if I've heard the testimony correctly, it is going to cost more in Cherry County, less in Hall County, and less in Douglas County. So having that limit for...Cherry County will butt up to immediately, possibly; and three or four years later then all of a sudden Hall County starts butting up to it; and eventually in six or seven years then Douglas County butts up to it. So having that number out there... [LB65]

SEAN KELLEY: Right. [LB65]

SENATOR SCHEER: ...if I'm to believe what I've been told, doesn't solve the problem. [LB65]

SEAN KELLEY: Right. So maybe it's a cost gauge would be the best public policy way to handle the problem. [LB65]

SENATOR SCHEER: Thank you, Mr. Kelley. [LB65]

SENATOR KARPISEK: Thank you, Senator Scheer. Any other questions or comments? [LB65]

SEAN KELLEY: Thank you. [LB65]

SENATOR KARPISEK: Thank you, Mr. Kelley. Any other proponents? Seeing none, do we have any opponents? Welcome. [LB65]

GREG HOGENMILLER: Thank you. Members of the committee, my name is Greg Hogenmiller, H-o-g-e-n-m-i-l-l-e-r, and I'm here today on behalf of the Nebraska Collectors Association. I came in from Omaha. And I have, frankly, some fairly brief comments about this bill. We are in opposition to LB65. And I think primarily one of the

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things that's maybe been somewhat overlooked here is that this bill is not a fee increase bill. I mean, this bill is designed to essentially repeal and abrogate this entire statute because when you look at it, the Legislature has been...it's a matter of statewide interest. The Legislature has been delegated the authority to set these fees on a statewide basis, but what this amendment attempts to do is abrogate the entire statute and turn that duty over to county commissioners. Which...I'm not a constitutional law expert and I won't make any opinion about that, but I think there is some question about whether that's even a constitutional amendment. But in any event, I think the Legislature has the duty to set the fees and certainly has the duty to ensure that there's some level of control and oversight over those committees. Because, as has been pointed out through questions, this does not provide for any element of control by the Legislature. If a particular county sets an impressive fee of \$500 for service or \$1,000 for service, there is no mechanism here for the Legislature to do anything about that if this amendment would pass as it stands; at least not that I can see anyway. And another thing I...one other thing I'd like to point out that kind of came up through the questioning about the user fee concept. Well, yes, the plaintiffs in lawsuits do front the fees for service of process. Those fees are ultimately collected, in the majority of cases, from the defendants who...and a lot of times are people that can least afford to pay. So these are not fees that are normally paid ultimately by the users of the service. And that's...you know, yes, I guess you could say the defendant is a user but not a voluntary user by any means. And I guess the only other point I would like to make is that there was a lot of discussion about the cost of providing the service. I'm not...I have no data to refute some of the numbers that were thrown around, but I know that some of that surely has to be based on the salary being paid to sheriffs. Which...I'm assuming they receive their salary regardless of whether they're out, you know, engaging in some safety related law enforcement activity or serving process. And I think that the fees are set at a legitimate amount. And as they noted, fee increases have been brought before the Legislature a number of times, and as recently as a few years ago several of those fees were increased. But since that time the Legislature has deemed that they weren't appropriate. And so I think the fact that the Legislature made that decision is pretty telling on where the situation lies in terms of the recoupment of these costs. So I guess I'll open it up for questions. [LB65]

SENATOR KARPISEK: Thank you, Mr. Hogenmiller. Any questions? Senator Lautenbaugh. [LB65]

SENATOR LAUTENBAUGH: Thank you, Senator Karpisek. And thank you for coming today. Back in the day--I think it was a redistricting debate--we used to have what I called constitutional law open mike night where everyone who didn't like something would stand up and say, it might not be constitutional; but it was never clear why. That said, I have the exact same question that you raised there. Is...are you or anyone from your organization going to try to flush out that issue as to whether or not this is something that is constitutionally delegable to the counties? [LB65]

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GREG HOGENMILLER: We could certainly try to do some research on that. I didn't have time to look at it that closely. I just...it was just a gut feeling I had when I read the statute. And...but I don't necessarily have an opinion about it one way or the other, but it did raise a question in my mind about it. [LB65]

SENATOR LAUTENBAUGH: I had the same thought though. So if you think that's worth pursuing, I'm sure we can't have too much information; unless you already know the answer and you're just going to tell me later. [LB65]

GREG HOGENMILLER: She might be the expert sitting right here in front of us. I don't know. [LB65]

SENATOR LAUGHTENBAUGH: Chances are--so thank you. [LB65]

SENATOR KARPISEK: Thank you, Senator Lautenbaugh. Senator Wallman. [LB65]

SENATOR WALLMAN: Thank you, Senator Karpisek. Yeah, thanks for being here. Do you feel like if that's in your job description that ought to be picked up by the county? [LB65]

GREG HOGENMILLER: Well, I certainly think that's part of it, yeah. I mean, I think the taxpayers have decided they want the sheriff to perform those duties and they pay them to do it. So, yes. [LB65]

SENATOR WALLMAN: Thank you. [LB65]

SENATOR KARPISEK: Thank you, Senator Wallman. Any other questions? Seeing none, thank you. [LB65]

GREG HOGENMILLER: Okay. [LB65]

SENATOR KARPISEK: Next opponent. Welcome. [LB65]

DON WESELY: Senator Karpisek, members of the committee, my name is Don Wesely, D-o-n W-e-s-e-l-y, representing trial attorneys. We oppose this legislation. And I actually just want to follow up on Senator Lautenbaugh's question because I, excuse me, when I chaired the Health and Human Services Committee for all those many years this very issue came up, because we had a situation where we were constantly doing the legislation to raise from \$20 to \$25 a nurse's fee or a doctor's fee or whatever. So we wanted to come up with a way in which we could delegate that. And we were told, under guidance from other court decisions, that you have to have a range. You can't just say, cover the fee or the cost of the services this bill calls for. The Legislature can't delegate

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their authority on fee setting to an agency or to a subdivision without some range being applied. So that's the past precedent and I would advise you that you would need to do that, at least, with this bill. But we would oppose this bill in its current form and the sort of increase. If you look at the fiscal note from Lancaster County, they're calling for a tripling of the cost of the fees to cover their expected expenses there. And that's just not...you're not going to see that happen anywhere--a tripling of fees. So we would ask you to oppose the legislation. [LB65]

SENATOR KARPISEK: Thank you, Mr. Wesely. Senator Lautenbaugh. [LB65]

SENATOR LAUTENBAUGH: Thank you, Senator Karpisek. And as is usually the case, I'm on the same page with the Trial Attorneys Association. So it is possible to delegate the discretion as long as you provide parameters? Is that what you found? [LB65]

DON WESELY: That's what we were advised at the time. Yes, Senator. [LB65]

SENATOR LAUTENBAUGH: Do you remember who did the advising? Was it outside, was it... [LB65]

DON WESELY: That's a long time ago. But I know at the time we did work with the Attorney General. So...but this specific one on this...for the counties in this area, I can't speak to directly. I can just tell you what we had to do--back generally--on fees. So... [LB65]

SENATOR LAUTENBAUGH: Thank you. [LB65]

DON WESELY: Uh-huh. [LB65]

SENATOR KARPISEK: Thank you, Senator Lautenbaugh. Any other questions? Thank you, Senator Wesely. Any further opponents? I think Senator Wallman and I can say we had more snow south. So it was even harder for us to drive in. Welcome, Mr. Brady. [LB65]

JUSTIN BRADY: Senator Karpisek and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska REALTORS Association, opposed to this bill for a lot of the reasons that were previously stated. I guess from the realtors' standpoint, they see these duties, if you will, that the sheriffs have to perform as being laid out in state law. They were...you as the Legislature said, you, the sheriffs, will do this. And, therefore, believe it should be the same body saying, and here's the fee that should go along with that. There shouldn't be that open-ended part that you guys have talked about. Another issue I was going to bring up was there have been multiple times when that unlawful delegation of authority to a third party...similar to if you look every year--take something simple--you can't just

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say, we'll adopt the newest IRS Code. You have to come back every year. There's a cleanup bill that just changes it from 2012 to 2013, and you have to do that every year because you can't just grant an open authority to somebody. You actually...you, as this body, have to come back and take action on a regular basis. I do agree with what Don Wesely had said that, yes, I believe courts have said you can go ahead and set a range. But again, it has to be a reasonable range. And I know everybody around this table can decide...have a different opinion of what reasonable is. But...and I would argue on this bill that--there's also LB360 which is in...that Senator Karpisek has, which is in the Judiciary Committee--I would say it would probably be the better avenue to try to look at increasing fees. That actually says, let's increase the fees and lays them all out, and I think have the counties come in and say, here's what we would like in different cases. And it's not just counties in that one. It's...I mean, you've got court fees and you've got other fees. But as opposed to just saying, we want more. Give us the authority to go get whatever we want. Because as they've talked about, they don't want this to be a profit center. Well, the way the bill is currently drafted, it could be. There isn't a restriction. They talked about they wanted property tax relief; which I understand--as the realtors would understand. But I wonder if they would put in a provision that would say, for every dollar increase in fees they promise the same dollar reduction in property tax on the other end. And I wouldn't blame them if they wouldn't want it. But it's tough to...it's one thing to come up here and say we want property tax relief but then not say, and we promise or we'll sign saying we guarantee we'll do it. So with that, I'll try to answer any questions. [LB65]

SENATOR KARPISEK: Thank you, Mr. Brady. Senator Scheer. [LB65]

SENATOR SCHEER: Thank you, Senator Karpisek. Thanks for stopping down this afternoon. And you perhaps can answer my question but it gets back to the range. Do you know, is it permissible if we were putting ranges in by different categories? For example, splitting the state up, maybe the counties by population so that certain counties of certain size have one fee schedule, and as they grow in population it either is less or more--whatever the case might be. But that it doesn't necessarily have to be uniform for all counties. [LB65]

JUSTIN BRADY: I would say, yes. You, as the Legislature, has the ability to define it so long as it's a open class and there can be entry and egress from that class to divide...I mean, no different than you do with metropolitan cities, primary cities, first-class cities, and so on. That if that was something that you felt needed to be done could be done, I would go back and say, I think, again, this is a statewide responsibility and should be one standard fee across the state. But, yes. To your question, I think you could do that. [LB65]

SENATOR SCHEER: Okay. Thank you very much. [LB65]

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JUSTIN BRADY: You're welcome. [LB65]

SENATOR KARPISEK: Thank you, Senator Scheer. Any other questions? Seeing none, thank you, Mr. Brady... [LB65]

JUSTIN BRADY: Thank you. [LB65]

SENATOR KARPISEK: ...for reminding everyone I have LB360. Any further opponents? [LB65]

WILLIAM MUELLER: Senator Karpisek and members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in opposition to LB65. Let me be clear that the bar does not oppose increasing sheriffs' fees per se. The bar does oppose having 93 different fees for serving legal documents. There's been a lot said about the fact that we've not increased these fees since 1965. I think that's a little misleading. If you'll look at the bill, this section...the statute is 33-117 includes many fees. And the ones that have been increased--and they were increased as recently as 2009--are the fees for generally serving civil documents. The fees that still are the \$1 for...well, \$2 for serving a search warrant, \$2 for arresting under a search warrant are criminal fees. Those fees would generally be paid by the county when they're sending the sheriff out to serve these or they would be paid by the defendant who often times is...has his lawyer appointed by the county and the county is paying that fee. So, yes, there are some \$1 and \$2 fees. Generally, those are criminal fees. As an example, serving a summons, serving a subpoena, order of attachment, \$12 plus an additional \$6 when the sheriff files his or her return saying, I've served it. Senator Scheer, you asked about constables. If we are going to increase significantly sheriff fees, I think it makes sense to look at expanding the jurisdiction of constables outside of Sarpy...Douglas and Sarpy County. In order to get some idea what range the counties might be looking at, you just need to look at the fiscal note where Lancaster County says that currently, in their view, their cost is \$53.47 per paper, and they're currently being paid \$17.76 per paper. It is our strong preference that if sheriff fees are going to be increased, you do it uniformly across the state, you do it by statute, you don't have 93 different systems for determining what the cost to serve legal documents is. I'd be happy to answer any questions that the committee may have. [LB65]

SENATOR KARPISEK: Thank you, Mr. Mueller. Any questions? Seeing none, thank you. [LB65]

WILLIAM MUELLER: Thank you. [LB65]

SENATOR KARPISEK: Any further opponents? Anyone testifying neutral? Seeing none, Senator Schilz to close. [LB65]

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SENATOR SCHILZ: Thank you, Senator Karpisek. Well, if everybody would like to look at a fee increase bill as just a technical bill that gets to go through, you know, like doing an IRS thing or something like that to get up with the fed stuff, I'd be more than happy to talk to you about that because those usually sail through like 42 to nothing or whatever. So just a couple little things. First thing is that I think that we've all heard here that there are issues in covering the cost of these fees and making sure that we're trying to keep the sheriffs' office, the counties more whole--as far as it goes--to the taxpayers themselves. I would ask that, you know...one of my questions as you look at it is back in 1965 when these were set, I'm sure they were set in order to try to offset the cost. I don't know why else you'd do it. I mean, at least at some point. And I would guess that we would want to consider that. One of my...Senator Bloomfield had asked about, you know, a "tax increase." Well, if you look at this and the fees aren't being covered by those that are using it, then the taxes are being paid--and they're already continuing to go up for the property tax--that isn't getting paid by those that are using the service. So either way, one way or the other, something...somebody's going to pay it. The question is--and where it should be at is--who should pay that? I don't disagree with Bill Mueller and says, you know, if you guys want to do this, and put it in the fees, and send it out, and make it work in the state level, we'd be more than happy to do that. We tried that last year with LB919--good luck on LB360--but I can tell you that any time that gets thrown out there, there are many people that don't want to see it. And there's all sorts of reasons for them to oppose that. But it doesn't solve the problem that these costs are impacting local sheriffs' office and local taxpayers on their property tax bills. And that's what we're trying to get to. So any help that the committee can give us, the sheriffs, and the state of Nebraska, to help alleviate that would be greatly appreciated. Thank you very much for your time, and I'd be happy to answer any additional questions if you need it. [LB65]

SENATOR KARPISEK: Thank you, Senator Schilz. Do we have any further questions? I think we had a good discussion on it. [LB65]

SENATOR SCHILZ: Thank you. [LB65]

SENATOR KARPISEK: Thank you, Senator Schilz. [LB65]

SENATOR SCHILZ: Thank you very much. [LB65]

SENATOR KARPISEK: And that will end the hearing on LB65. We will now move to LB257 introduced by Senator McCoy. Welcome, Senator McCoy. [LB65]

SENATOR MCCOY: Thank you, Senator Karpisek, members of the committee. For the record, I am Beau McCoy, B-e-a-u M-c-C-o-y, and I represent the 39th District in the Legislature. And I am here to introduce LB257 to you this afternoon which seeks to add

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requirements to an interjurisdictional planning commission as a study and possibly plan for the creation of a municipal county. As many of you know, we've had a lot of discussions. Looks like we're going to be able to get the chance to look at some maps on the floor again tomorrow, which harkens back to a discussion we had a couple of years ago with redistricting as we all dealt with some changes in our legislative districts. Mine was one that probably changed more than most, I would say. I...and I now represent a good portion of unincorporated--well, most of--unincorporated Douglas County. Specifically the areas 180th Street west, which includes the village of Waterloo, town of Valley, a lot of unincorporated Douglas County, including a lot of agricultural lands as well. Some of you may recall Senator Ashford had LB344 that we...that he introduced in 2011 and we discussed on General File last year, in the 2012 session. After a lot of discussion on that bill on General File, last year I filed an amendment to address a lot of concerns from constituents, particularly in unincorporated Douglas County, as to the purposes of that bill. And that bill really talked about a move towards a city/county merger. I expressed my concerns then. I filed an amendment before it would get taken up on Select File and that's where it ended because we never had time to discuss it. Those concerns that were in that amendment are what we're talking about today in LB257. No action was taken on that bill. Again, the amendment wasn't discussed on the floor or voted on. And I would go back to a report that was done--a joint committee to study city/county mergers back in 2003--that was jointly put together by the city council of Omaha and the Douglas County board. And I think that report is very helpful, if anybody has the opportunity to go back and look at it, in that it brought up some concerns which we, again, talked about last year. And one of those is that, you know, it really became unclear how rural fire districts would function under a merged government, because--as all of you know if you've been through the areas of my district and a lot of other places in the state--but there's a pretty big difference between the village of Waterloo and just a few short miles away when you get really into the heart of Omaha. And what I'm seeking to do...what we're seeking to do with LB257 is just to put up a couple of additional safeguards, I believe, to make sure that if we're going to have a discussion--a serious discussion--over a city/county merger that the public is involved, that we're looking into...that we're not assuming automatically that such a merger is going to occur. It may make sense, it may not, but that we're making sure that the public has the ability to provide inputs through three public hearings that would need to take place. One is the threshold now. I think it also is helpful that we would involve ag landowners in this discussion as well, along with the rural fire districts of which we have some. And I think that would prove helpful if we ever go down the road again of having a discussion over a city/county merger. I think that provides some safeguards to interests and particularly...in particular in Douglas County, that really feel like their voices may not be heard unless these additional safeguards are put in place. I think that...and I won't get so much into the discussion over city/county merger except to say that I think there are a lot of interlocal agreements in place. There's over 120 of them in Douglas County, and I think we're doing some good work there. In fact, we were here this morning on the floor. But, of course, with weather we'll talk about LB49 tomorrow

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morning which is a merger of Omaha Housing Authority and the Douglas County Housing Authority. And there, I think, is a merger that appears, at least from--if you look at a committee statement on that bill--to be a mutually beneficial piece of legislation that all parties seem to agree is in the best interest of the citizens that are...that need those services and makes the most cost-efficient sense. I don't know if we'll ever get to that point in the discussion with a city/county merger, but what I'm hoping to do with this piece of legislation is to make sure that if we ever get to that point, that we've laid the groundwork to make sure that the citizens feel like they are able to have input. In particular, citizens that represent interests that are very important to the county whether it be agriculture, rural fire districts, and whatnot. So that is the genesis of this legislation and what we are trying to accomplish. And with that, I would conclude and take any questions if there are any. [LB257]

SENATOR AVERY: Thank you, Senator McCoy. Questions from the committee? Oh, Senator Murante. [LB257]

SENATOR MURANTE: Senator McCoy, I'm wondering...thank you for the bill. I think it's a good one. How many counties have gone down this road of even having public hearings on the subject of consolidating? [LB257]

SENATOR McCOY: You know, Senator Murante, that's a good question. And honestly, off the top of my head--and I could do some...we could do some checking into that--I don't know the answer to that. I don't believe it's been very many. In fact, I don't know that it's any other ones that I'm aware of, other than Douglas County. And we've kind of tap-danced around this subject in Douglas County for, well, for a long time. You know, there's some geographic factors involved, being they the Elkhorn River, and flood plain, and whatnot, that kind of inhibit some economic development into the far reaches of western Douglas County. And I'm not sure we're ever going to get to discussion, potentially, that all parties are going to say makes common sense to do this. But I think that if we ever have that discussion, or any other county does, it seems to make sense to me that we make certain sure that all citizens not only are protected but have the ability to contribute to this discussion, and that we don't just have this automatic assumption that, okay, well, we're just on the slippery slope towards an automatic merger. It's a matter of when. Let's just figure out how it's going to work. I think it needs to...we need to step back and say, let's make sure we're putting safeguards in place so that it makes sense--all the taxpayers money--from a cost efficiency standpoint and every other way. [LB257]

SENATOR AVERY: Any other questions? Senator Scheer. [LB257]

SENATOR SCHEER: Thank you, Senator Avery. Senator McCoy...and I don't know. I'm not trying to suggest something that's overly burdensome--but especially when we're looking at Douglas County and really any county--looking at people's living habits to the

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extent of jobs and so forth, would there be some benefit in...I like the idea of the three public hearings but perhaps specifying that they have to be at different time fragments somehow because I know--not a large community that I'm from--but if you have something at 7:00 o'clock at night, you know, I'll constantly have somebody the next day or two say, well, you know, I work 3:00 to 11:00. How was I supposed to get there? Or if it's at...over the noon hour, that's great, but I don't get to leave over the noon hour or that type of thing. And especially in larger areas such as yours, you've got transportation issues to where even you could specify three different locations. And I don't want to call it transparency just, literally, public involvement in giving everyone an opportunity. And the time frame might not be right in their specific area, but at least it gives them the opportunity to go somewhere when they have that time available to them. Would that make sense to you? [LB257]

SENATOR McCOY: Oh, I certainly appreciate that concern, Senator Scheer. I think we certainly didn't go into that great of detail with this legislation as it's currently written. I don't know, as I recall, that we usually...it seems when we talk about public meetings I think it's state statute. I don't know that we ever get to that degree of detail, not that perhaps that wouldn't be a good idea. I don't recall that we have anyway, and perhaps I'm wrong. But I certainly understand that, yes, given people's busy work schedules, the fast-paced lifestyle that many of us lead these days, that perhaps it isn't a bad idea. [LB257]

SENATOR SCHEER: I guess I just look at terminology. And you're probably right, it's probably not in the statute. But I think if we look back at when statutes are written, a majority of the people if they worked it was, you know, 8:00 to 5:00 or 9:00 to 5:00. No one worked nights. You know, businesses were not open other than those store hours. So I mean, other than probably public safety people, there really wasn't a lot that was going on that would prohibit people from participating in night events. And it's, you know, our society has changed with 24-hour manufacturing and other things that I just think that that might be a concept that we look at. And I'm not trying to change law, I just...and maybe it's just one of those things that would have happened anyhow. I just don't see it happening a lot in governmental entities. So it was just a thought. Thank you, Senator. Thank you, Senator Avery. [LB257]

SENATOR AVERY: Any other questions? I don't see any. Senator, are you going to stay for closing? [LB257]

SENATOR McCOY: I need to return to the Revenue Committee. With your indulgence, I'll waive closing. [LB257]

SENATOR AVERY: You have a lot of work to do there. [LB257]

SENATOR McCOY: Yes, sir. Thank you. [LB257]

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SENATOR AVERY: Thank you very much. All right. Proponent testimony on LB257. Welcome. [LB257]

ELAINE MENZEL: Thank you. Chairman Avery and members of the Government, Military and Veterans Affairs Committee, my name is Elaine Menzel. It's M-e-n-z-e-l is how you spell my last name. I'm here on behalf of the Nebraska Association of County Officials. And rather than be repetitive, I will simply indicate that our association supports LB257 for the reasons identified by Senator McCoy. A couple of points I would like to make is LB257 would provide additional considerations if a municipal county were to be formed; this would give additional analysis opportunities for a government of this nature being formed. In response to your question, Senator Murante, this goes back several years and I don't remember specifically how the language to this legislation was written, but LB1085--I believe it was in 1995. It was about the same time as the levy limits were imposed upon political subdivisions. And it did require all counties at that time--and I don't recall if it was all governments totally or not but--to look at how they could become more efficient and merge their services. So all counties, at one point, have done something of the nature that you ask in terms of a municipal/county evaluation. I don't know that that has happened since this has been modified recently. If there's any additional questions, I'll certainly attempt to answer them. [LB257]

SENATOR AVERY: (Exhibit 1) Thank you. Questions? I don't see any. Thank you for your testimony. Additional proponent testimony? All right. We'll go to opponent testimony. Anyone wish to testify in opposition to LB257? All right. Anybody wish to testify neutral? It looks like we're finished. No one wishes to testify. We will then close the hearing on LB257. And we will take up next LB108. Oh, I must first of all before I close that, let me read into the record a letter of support on behalf of the Nebraska State Volunteer Firefighters Association and the Nebraska Fire Chiefs Association, a letter of support from Jerry Stilmock. Now we go to LB108 and Senator Karpisek. Welcome, sir. [LB257]

SENATOR KARPISEK: Thank you, Senator Avery and members of the Government Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. LB108 intends to remove a layer of cumbersome bureaucracy without limiting local controls or protections whatsoever. Currently cities and counties, to some extent, have the power to pass ordinances to set building regulations within their jurisdictions. They also have the power to require permits for building construction, remodeling, and major repairs, and carry authority to inspect those permitted projects to ensure their completion is up to code and according to ordinance. Most people would agree these powers better our communities greatly in terms of uniformity and safety. Recently, however, some cities have begun to force the additional requirement of licensure for certain professions, mainly general contractors at this point, and more are considering such measures. Bellevue, for example, requires a

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license to be a tree trimmer within the city limits. Many professions such as general contractors are mobile professions, meaning companies large and small do business in numerous cities. If, for example, every city in the Omaha metro decided to license contractors, a carpenter would have to obtain roughly ten licenses for the cities within Douglas and Sarpy County. While this may not be a major issue for Verano Construction or ABC Seamless Roofing, companies that have hundreds of employees, the sole--excuse me--proprietor would simply be overwhelmed with paperwork and fees and governmental red tape. Though there will be several people behind me to share their reasoning on why licensing should not be only at the state level, but I think it--why it should only be at the state level, excuse me--but I think it is safe to say that we have given cities plenty of avenues to ensure the safety of their residents through current permitting and ordinance powers. I also met with HHS and there was a concern about licensing swimming pools. I would be happy to work with HHS and our legal counsel to come up with some appropriate language to make sure that we have things that are...the state delegated down to city to be licensed. I'd be glad to try to answer any questions. [LB108]

SENATOR AVERY: Let me ask you one. Would this affect permits and credentialing of people who do business with the city or people who conduct business in the city? [LB108]

SENATOR KARPISEK: Yes. [LB108]

SENATOR AVERY: Okay. So let's take a hypothetical. You have a bar owner. Currently cities require people to serve alcohol to have certain training. [LB108]

SENATOR KARPISEK: Correct. [LB108]

SENATOR AVERY: How do you recognize when somebody is intoxicated, things of that sort? Would this impede that ability on the part of a city? [LB108]

SENATOR KARPISEK: I think the way it's written, Senator, it would. And we've had some talk about that, that we may have to look into grandfathering some things in or if there would be a state mandate to do such things, of course, then that superimpose on that so...supersede that. So... [LB108]

SENATOR AVERY: There are a lot of things that cities do to protect public safety, health, that might be affected by this. I think we discussed this last year, didn't we? [LB108]

SENATOR KARPISEK: We did, yes. And nothing happened other than the cities imposing more fees. So here we are again. [LB108]

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SENATOR AVERY: So it's the fees what you're most concerned about or is it the permitting and the credentialing and licensing? [LB108]

SENATOR KARPISEK: Well, it's a little bit of both. But I think, myself, it's more the fees because all of a sudden they're very concerned about public safety so you need to go get a license and pay for it. And right now, I don't know that there's any reciprocity so everybody wants their own license to do business in their city. [LB108]

SENATOR AVERY: Would you make a distinction between cities of the primary class and metropolitan areas and smaller cities in terms of the need for public safety and health regulations and permitting? [LB108]

SENATOR KARPISEK: No, I would rather not make any. I think it's all the same. A house being built in Omaha is the same as one being built in Cortland. [LB108]

SENATOR AVERY: So you would do away with the electrical codes, building codes? [LB108]

SENATOR KARPISEK: No. No. That's a state...that's state that inspected. [LB108]

SENATOR AVERY: There are also local codes. [LB108]

SENATOR KARPISEK: And there are local, but you don't have to go normally to get your license through the city to do inspections. Well, you have to have it inspected probably by the city. This would...what this would do is not let them have an electrician come in and get a permit to work in the city of Lincoln. [LB108]

SENATOR AVERY: Any other questions from the committee? Senator Scheer. [LB108]

SENATOR SCHEER: Thank you, Senator Avery. Senator Karpisek, just so I'm talking about the same thing that you are, so what your bill would do is prohibit the city of Ashland from having Joe Blow fill out a license form as an electrician, and normally part of that form...I mean, obviously there would be a fee, I understand that. But it also has address contact information and more times than not that I'm familiar with it also has a requirement of insurance. Would that not be correct? [LB108]

SENATOR KARPISEK: I think you are correct and there will be people behind that can answer that better. However, when you are an electrician, you have your certification. What I'm trying to do is make sure that the city can't say, okay, now you need to pay me \$100 and take our test to be okay to work here. [LB108]

SENATOR SCHEER: Are you suggesting that you just don't want them to have to take some type of a examination to prove that they've got the ability? [LB108]

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SENATOR KARPISEK: Right, because they've already done so. [LB108]

SENATOR SCHEER: But what I think you're talking is doing away with the licensing of those individuals. [LB108]

SENATOR KARPISEK: In the cities. [LB108]

SENATOR SCHEER: Okay. All right, so we're talking about the same thing. And, you know, it's been a long time since I was involved in municipal government. But part of that was public safety to the extent that if you're going to wire my home, as a consumer I may just assume that you have insurance. The city, by that licensure is, in fact, verifying that that coverage is in place. Because I'm going to tell you that even a city inspector that would go and look at the electricity perhaps makes a mistake, and your house ends up getting torched. You as a homeowner...who then is responsible? If... [LB108]

SENATOR KARPISEK: Well, I would say that the city's responsible if they're charging a fee and they're inspecting. [LB108]

SENATOR SCHEER: Well, they didn't do the work. They may have done the inspection but they didn't do the work. And if it falls back on--I don't care if it was plumbing or electrical or HVAC work, whatever it is--if there's no insurance there then that really creates a public concern, at least for me. I would want to, at least personally, would like to believe that the city is following their...protection of their consumers by not only making sure that whoever is doing work on a home or a business or an industry not only has the capabilities and the knowledge to perform that work, but is insured to do that work. That is a big deal. So...and... [LB108]

SENATOR KARPISEK: And plumbing and HVAC are a state license so they are exempted in this bill. My point, and I'm sure someone behind me will make it much better, is for not every city to be able to charge you a permit to come in. And I think if the city has an inspector and charges a fee to inspect something and then they don't have any liability in it, why do we even have the inspector? [LB108]

SENATOR SCHEER: Well, I would just...my concern with this bill, Senator, is this. Norfolk has had hailstorms the last couple of years. And I will tell you without what you're talking about, we would have had literally 20-30 "contractors" within the city and when something went wrong have no address back to them. And I will tell you I had clients of mine that got quotes from the folks, and decided they wanted to break that contract the next day, and mailed back to the address on their contracts. And guess what? It came back as undeliverable. So I think there is benefit for even those, like you had mentioned, those general contractors because that's what these folks portrayed

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themselves as... [LB108]

SENATOR KARPISEK: Uh-huh. [LB108]

SENATOR SCHEER: ...were general contractors. And I do think there is an interest in the city to protect its citizens from that nature. [LB108]

SENATOR KARPISEK: But did Norfolk make them buy a permit and take a test to do work in town? [LB108]

SENATOR SCHEER: They certainly had to buy a permit, I do know that. Now I don't...I can't...again, Senator, I can't speak to how they verified their expertise in any industry. I truly won't try to guess at that. But they do have a fee just more for a paper trail of being able to find those individuals if they do, indeed, do work and there becomes a danger or a loss from that. A way to go back and find those individuals. So... [LB108]

SENATOR KARPISEK: And I do understand that. And again, hopefully someone behind me will be able to clear this up a little bit better but... [LB108]

SENATOR SCHEER: Hopefully they'll be able to...I certainly hope so too. But that really is a concern. [LB108]

SENATOR KARPISEK: And I understand the fly-by-night people that come through, and these people, of course, don't like them either because they're taking work from them. [LB108]

SENATOR SCHEER: I understand, but that sort of leaves the door for those, I would say. [LB108]

SENATOR KARPISEK: Well, I'm sure we'll have an argument. [LB108]

SENATOR SCHEER: Okay. Thank you, Senator Avery. [LB108]

SENATOR KARPISEK: I didn't mean an argument. [LB108]

SENATOR AVERY: Would you be at all surprised if this were to pass? I know that you exempt plumbers because they're licensed by the state. You exempt HVAC because they have to have a certificate from the state. What's to stop the Legislature from just passing all kinds of state laws requiring certification in order to do business in towns and villages and cities? I mean, that would...because you exempt...you would...presumably they'd be exempted because they were controlled by the state. [LB108]

SENATOR KARPISEK: Uh-huh, right. [LB108]

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SENATOR AVERY: So this could be a great bill for the lobbyists, couldn't it? [LB108]

SENATOR KARPISEK: Oh, gosh. I suppose. [LB108]

SENATOR AVERY: Tremendous amount of work there to get other bills passed. [LB108]

SENATOR KARPISEK: I think every bill is a great bill for the lobbyists but I think it may be a...if we wanted to go that way. And I don't know why general contractors that are roofers aren't licensed through the state. I don't know why only those two are. Or electricians, for that matter, and maybe we'll hear more about that. But... [LB108]

SENATOR AVERY: Your public purpose here is to protect small businesses from having to pay a fee when they go from Seward to Lincoln to do work? [LB108]

SENATOR KARPISEK: Yes. And take another test and if the tests aren't the same, if they're not reciprocal, a one-man person or a small crew would be constantly taking tests and paying fees. And a lot of this didn't come up until we took the city and county state aid away. So my thought here is it's not so much about public safety as it is a revenue stream. [LB108]

SENATOR AVERY: I think I know what you're talking about. I've gone into it in another bill. Any other questions? Thank you, Senator. [LB108]

SENATOR KARPISEK: Thank you. [LB108]

SENATOR AVERY: Proponent testimony? Welcome, sir. [LB108]

JOHN CHATELAIN: (Exhibit 1) Yes. My name is John Chatelain, C-h-a-t-e-l-a-i-n. I'm representing the Metropolitan Omaha Property Owners Association and the Statewide Property Owners' Association, and our support of this LB108 is to clarify that cities do not have the power to license occupations. In other words, the credentialing doesn't start with the city. I think what Senator Scheer was talking about was some type of a registration program where a contractor could be required to register with the city in order to do business. That's not what we're talking about. Examples of what we're talking about are currently being imposed by Omaha and Bellevue and Council Bluffs for contractors where the contractor has to go to the city, take an exam, pay a fee, perform certain licensing requirements, and then have continuing education, and then renew the license every three years. That's a full-blown license for contractors. Bellevue requires tree trimmers' licenses. I understand Lincoln requires trash hauler licenses. It's undisputed that the cities can regulate these activities, but that's not the same as actually creating the licensing structure for those contractors. In a sort of a slight of hand

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argument, the city will argue the need for safety and quality work which we don't dispute. Those things have historically been settled, however, through pulling permits and having inspections. The trend towards licensing then could come into other things. It could become about, as Senator Karpisek was talking about, revenue raising, or it could be used to eliminate competition, or maybe cronyism among a small town that would keep other...or create barriers for contractors from other towns to come into that town. Nebraska has the power to license occupations, clearly. And doctors, lawyers--such as myself--we get our license from the state, and then we can go to any county or any city to practice. We're not required to take a new license for each locality that we go to. Now this doctrine has been pretty well fleshed out in the courts--by the Supreme Court. In Gray v. City of Omaha, the city passed an ordinance requiring licensing in order to make sidewalks. And there was a fee and a bond required for the licensure. The Court ruled that the power to license must be plainly and literally conferred by the city charter. The city conceded that it has no express power to license but argued that the power to license was necessarily implied from the right to regulate the manner and construction of sidewalks. The Supreme Court found that the restrictions imposed by the ordinance were unreasonable, oppressive, unnecessary to exercise the power to designate the material and the manner of construction. The Court also opined that these types of ordinances tended to be monopolistic; they created a local monopoly for those contractors. If a sidewalk disintegrated after it was constructed, that was really the problem of the property owner. And if the property owner had to take out a new permit, have a new one made, then it would be actually between the property owner and the contractor to resolve. The problem of the itinerant contractor that's not to be found after the storm is over I think is a problem. And that could perhaps be dealt with through some type of registration program; but not a licensing requirement. Also the state dealt with a licensing requirement in Lincoln which required a person to become licensed in order to paint or install a advertisement sign in State v. Wiggenjost, and the Court knocked down this licensing statute as well and, again, talked about how it was creating more unemployment and how it was tending to interfere with commerce. It also said that these types of licenses were another way for cities to raise revenue and that that was untenable. We certainly are concerned about safety and quality of work as well, but taking a licensing examination really has nothing to do with the quality of the work. And in the Omaha contractor's license, one license is required per firm no matter how large the firm is. And so you could have a firm of 50 employees, one person must have that license. It doesn't mean that the people that are doing the work are going to do quality work. Another firm might just have one employee and that person has to get the license then. And it's a burden on that license holder and it's disproportionate to the size of the firm. [LB108]

SENATOR AVERY: Thank you for your testimony. Questions from the committee?
Senator Scheer. [LB108]

SENATOR SCHEER: Thank you, Senator Avery. Thank you for your testimony, sir. Just

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something to clarify in my own mind--city charters are unique to each city, correct?
[LB108]

JOHN CHATELAIN: Correct. [LB108]

SENATOR SCHEER: So in your court cases where it talks about the city charter authorizing it, that would...this is not a carte blanche for the state. This is just specific to the city of Omaha or in the other case the city of Lincoln. There may, indeed, be a city charter that has that available to it by its charter. So these cases don't necessarily state that it is illegal to do so, it just simply said it was not specific in the charter. So a city could technically amend its charter by vote and have that authority to do so. Would that be correct? And I'm not an attorney, so I'm just...I'm asking more... [LB108]

JOHN CHATELAIN: And the charter might require a vote of the population... [LB108]

SENATOR SCHEER: Right. A vote of the public, yes. [LB108]

JOHN CHATELAIN: ...of the city to do it. So that is correct. And in these cases the city charter for Omaha and Lincoln did not allow licenses. And I suspect they haven't been changed to allow licensing. So there may be a good court case here as well. I cited the two cases for sort of a discussion of public policy... [LB108]

SENATOR SCHEER: Uh-huh. [LB108]

JOHN CHATELAIN: ...as to why you don't want local licensing, not necessarily that they would be controlling on what this committee would do or what the Legislature would do. [LB108]

SENATOR SCHEER: No. I just wanted to make... [LB108]

JOHN CHATELAIN: Uh-huh. [LB108]

SENATOR SCHEER: ...I guess I just wanted to clarify for myself that those were specific, though, to those communities by city charter and that different communities do, indeed, have different charters that may or may not allow whatever was happening within both those two court cases. [LB108]

JOHN CHATELAIN: That is correct. I think theoretically the city charter could be amended to specifically provide that cities could license occupations. [LB108]

SENATOR SCHEER: And if that were the case then certainly what they were doing would be lawful. [LB108]

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JOHN CHATELAIN: Right. It's very likely that the Omaha contractor licensing is illegal under the city charter as well. [LB108]

SENATOR SCHEER: Uh-huh. [LB108]

JOHN CHATELAIN: We would rather have it addressed through the Legislature than to have to take it up case by case in the courts because I think a more general answer is needed to this problem. [LB108]

SENATOR SCHEER: Okay. Thank you very much. [LB108]

JOHN CHATELAIN: Uh-huh. [LB108]

SENATOR SCHEER: Thank you, Senator Avery. [LB108]

SENATOR AVERY: Thank you. Any other questions? I don't see any. [LB108]

JOHN CHATELAIN: Thank you. [LB108]

SENATOR AVERY: Thank you, Mr. Chatelain. Additional testimony in support? Welcome, sir. [LB108]

JEREMY ASPEN: Thank you, Chairman Avery and the rest of the good Senators. My name is Jeremy Aspen, J-e-r-e-m-y A-s-p-e-n. The nature--to frame it a little bit--the nature of licensure is to impose impediments so that certain people or quality rises to the top. And in having licensure in these different municipalities, what it's doing is causing all those little impediments for people in an industry that they're working in. By having it be run by the state or licensure at the state level, what you would essentially be doing is having a consolidation of the inefficiencies that are inherent in licensure. We have a licensee at our organization. It's not only way more expensive than was originally posed but it's quite difficult also; and that's good. But no quality...there's been no enhancement to the quality of the work that's come from our organization. And I guess one other thing is...that's scary for me is I was at dinner with a friend of mine--she's an interior designer--and she mentioned that she's going to go to the Legislature and she's going to try to get a law passed that would make sure that people from Metro Tech can't get her job. So I guess that...it seems wholly unfair but by having all of these licenses at these...in all these cities where we do do business, it is so much more difficult. It opens up opportunities for many mistakes. And those mistakes, of course, are illegal and not intentional. So the consolidation of inefficiencies would be welcomed if it is, indeed, the case that licensure is necessary to protect the safety of the community. One-stop shopping would, I think, be the better way to do it. [LB108]

SENATOR AVERY: Thank you. Do you represent your organization, and what is it?

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[LB108]

JEREMY ASPEN: Yes. Certified Property Management president. [LB108]

SENATOR AVERY: Okay. [LB108]

JEREMY ASPEN: Uh-huh. [LB108]

SENATOR AVERY: Questions? Senator Scheer. [LB108]

SENATOR SCHEER: Thank you, Senator Avery. Just real quickly, I guess perhaps a difference of opinion. You stated that licensure was an impediment to have the quality raised to the top. And from my understanding and when I was involved with municipalities, it wasn't necessarily to have anyone try to prove that a different contractor was better than another. It was really trying to maintain minimum standards for the public safety. So... [LB108]

JEREMY ASPEN: I think that's right. It is, it's to...and maybe I did misspeak. But that is the intent. I mean, the city of Omaha, I think they do a fantastic job. I think that their intentions are perfectly legitimate. I think they wholeheartedly believe that they're doing...establishing a minimal requirement for the industry. But if there is such thing as a minimal requirement for the industry, it would be nice if that were applied to the entire area where we go to work. [LB108]

SENATOR SCHEER: Okay. So you're not necessarily opposed to the licensure? It's just simply... [LB108]

JEREMY ASPEN: No. And I don't think this bill actually addresses that or says that licensure is necessarily bad. I, myself, do not think that licensure necessarily offers much, but if it is determined by the senators--the organization that runs our state--that it is beneficial to the safety and well-being of the citizens of Nebraska, then it would be established...those minimum requirements would be established and we'd be able to cross municipal lines without having to worry about whether or not you need a license and whether or not we have a license. [LB108]

SENATOR SCHEER: Sure. Okay. Thank you very much. Thank you, Senator Avery. [LB108]

SENATOR AVERY: Any other questions? Thank you, Mr. Aspen. [LB108]

JEREMY ASPEN: Thank you for your time. [LB108]

SENATOR AVERY: Additional proponent testimony? [LB108]

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HOUSTON McKELL III: Good afternoon, everyone. All right. My name is Houston McKell, III. That's H-o-u-s-t-o-n, first name. Last name, M-c-K-e-l-l, the Third. I represent North Omaha Contractors Alliance. I'm the president, okay? And we here today pretty much to try to explain a whole lot of different avenues about this bill. This bill right here, we are proponent for this because my job is everything east of 72nd, I'm to have minority participation somewhere along those lines, to help reduce poverty and crime; which in the area that is really so small to have so much crime and poverty. I also grow small companies--contractors. I got contractors bidding in my organization, they quit school to be contractors. They in their 60s--early 60s-- and folks are, you know, they just been doing this work all they life. I got ex-cons, single baby mothers, I got all kind of folks that's trying now to become small business men and women into the construction field because there's so much money to be made. Now here in Omaha we have what you call the Tier 1 program. In order to be a contractor, to be sufficient enough to do work inside of Omaha, you have to be on this Tier program. It's signed by Mayor Suttle. You have efficient enough insurance, you have references, and you've been doing work for at least one to three years with no deaths, no problems, no nothing. So we already have those kind of things in place for us. Then I got sole proprietorships. They working on trying to get they Two Men And A Truck--two men and, you know, a man and a woman, husband/wife team. And here we is, we just got through that hurdle with the Tier program. Now here come another hurdle in the way--licensing. We hate storm chasers too. We don't have a problem with if you want to go rebuild a deck you go pull a permit. Inspector come out and make sure you got your footings in and everything right. That's all perfect, but to keep imposing more licenses, more and more--some of them can't read, some can't write that good. And three people in a company that has to hold so many licenses they can't even function. So we just like, you know, where do we draw the line? I mean, what else do we need to do to just try to do business in this city? We sick of the crime every day. We sick of all the poverty going on--the dilapidated buildings. We trying to get in and get to work and we can't even do that because now we got to take a book--a test like a telephone book--for the test and the answers. And, wow, we just bombarded with things like that. So we just trying to do business in the city of Omaha and grow with the city of Omaha. And, wow, this is just a little too much. [LB108]

SENATOR AVERY: Let me ask you... [LB108]

HOUSTON McKELL III: Yes, sir. [LB108]

SENATOR AVERY: McKell, right? [LB108]

HOUSTON McKELL III: Yes. [LB108]

SENATOR AVERY: Have you seen a change recently, say in the last two to three

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years, in the number of permits that you're required to purchase? [LB108]

HOUSTON McKELL III: Well, no, not really because right now I got 265 members in the organization. All right? And the permits that we're pulling like for the storm that just happened, the hailstorm, roofing permits. You know, nothing changed there or nothing. You know, ice and water shield now is legal. No more than two...a layer. Three, four layers is illegal. So, you know, we pretty much doing that, and I haven't seen too much of change because it's a gray area right now. A lot of people don't...they go down there and have to pull a permit to remodel a home. Lot of them is backing out of it because they ain't even got the Class A, B or C, D license. And then some of us trying to save up \$2,500 to see if we can get grandfathered in, then if your references is not up to par you lost that money. And then you have to still go by and try to get licensed and then you done lost \$2,500 here, now you got to take some more tests, you got to save up some more money. And it's just...you know, you build a house like he said--the one way is 16 off center, that's a wall. You tear that drywall down and you put up new. You know, it's just the same way. I mean, we been doing it for 25, 30 years the same way. [LB108]

SENATOR AVERY: I asked that question because Senator Karpisek suggested that a lot of this permitting and licensing and credentialing has increased because of the action by the Legislature a couple of years ago to end state aid to counties and cities. So I was just wondering if you had seen an increase in the amount of money you were having to pay out in fees... [LB108]

HOUSTON McKELL III: Oh, yeah. [LB108]

SENATOR AVERY: ...that cities are trying to collect to make up for some of their lost revenue. [LB108]

HOUSTON McKELL III: Yeah, well, I've seen a lot of companies going out of business because they can't even keep up with it. Every time they turn around they like, wow, what I'm going to do now? So I'm even trying to partner it up with Nebraska Enterprise Fund. And this is a company that's supposed to loan money for you to expand your business, but they finding "theyself"...they trying to loan money to help you even get started. You know, so a small business owner right now, he's...oh, man, it ain't even right to start a business right now. It's kind of hard. So I haven't seen that many increases, decreases. I'm seeing people going out of business and that's even worse. [LB108]

SENATOR AVERY: Senator Scheer has a question. [LB108]

HOUSTON McKELL III: Yes, sir. [LB108]

SENATOR SCHEER: Thank you. Thank you, Senator Avery. Thanks for coming, Mr.

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McKell, I appreciate it. And I don't know that what I'm asking is specific to Omaha--maybe it is. I'm not that familiar with all those. But in your testimony you were talking about people having to take tests from books or whatever. Just for my own curiosity, are those tests generic, broad-based over a lot of different avenues of... [LB108]

HOUSTON McKELL III: Yeah. [LB108]

SENATOR SCHEER: ...construction or whatever or are they specific if you're doing electrical work or plumbing, specific to those trades? [LB108]

HOUSTON McKELL III: Okay, yeah. For one thing like HVAC, electrical and plumbing, we know that's statewide. They got to be licensed for that. So now this other test, this ordinance test, it's a variety of certain things you got to know; like painting is in a whole subsection. And you got different subsections, different levels that you got to try to pick. This subsection 0043 will be answered--number one. You know it. It's there. It's a...you just jump around so much. I got a contractor been in business 20 years, took the test 6 times, and can't pass it just because of the wording and the referencing into the book, you know. And like the tests that we are taking right now. Say, for instance, the EPA testing. In order to scrape or paint a house, to scrape lead from a house, we go to a class. You learn how to...you go to learn how to remove lead safely from the general public. Then, you know, that certificate lasts for five years. Then you go retest on that. To do soil, you take another little test from the EPA. You know, it specifically deals with that item. This test right here, wow, the book and the questions...the book is just some things that just like, wow, a general contractor should know these things. If we sit here building brand new, then I would want somebody to build my house that knows this book by the back of the hand. But if I'm just looking for me and my nephew, me and my cousin to come in here and remodel this wall and paint, there's no really need for all of that. But the testing that I've seen, the practice test, the book is just, wow, it's overwhelming. The fees--all the money I did. If I don't pass I still got to keep on paying for the test, keep paying for the test, keep paying for the test. And I'm not even bringing in that volume of work to even try to get on that list. So it's the testing, like I said. I'm trying to even work with like the city of Omaha to come to our organization, help go over that with us if this thing pass. But if it don't pass, then pretty much a lot of companies can breath easier, you know. So we just here to try to see if we can do business in the city of Omaha as usual. It's no really significant amount of deaths, tragedies, or nothing like that happened in the last ten years, you know. We just...the test is just, wow. It's something that is for general contractors because you got to know a little bit of everything so when you sub out work you're not only just trusting that company, you also know a little bit about what they doing under your watch. [LB108]

SENATOR SCHEER: Okay. Thank you very much. [LB108]

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HOUSTON McKELL III: Yeah. [LB108]

SENATOR SCHEER: I appreciate it. Thank you, Senator Avery. [LB108]

SENATOR AVERY: Senator Wallman. [LB108]

SENATOR WALLMAN: Thank you, Chairman Avery. Yeah, thanks for coming down. [LB108]

HOUSTON McKELL III: Right. [LB108]

SENATOR WALLMAN: Appreciate what you're talking about. How much does it cost for a test? [LB108]

HOUSTON McKELL III: I think the test itself is \$100 and it's \$300 for the license. [LB108]

SENATOR WALLMAN: And how long is that good for? [LB108]

HOUSTON McKELL III: Three years. [LB108]

SENATOR WALLMAN: Three. [LB108]

HOUSTON McKELL III: So every three years. [LB108]

SENATOR WALLMAN: Sorry, I missed that. [LB108]

HOUSTON McKELL III: Oh, okay. [LB108]

SENATOR WALLMAN: Thank you. [LB108]

HOUSTON McKELL III: Yeah, you're welcome. [LB108]

SENATOR AVERY: I don't see any more questions. Thank you for your testimony, sir. Additional proponent testimony? Welcome, sir. [LB108]

TOM JIZBA: Good afternoon. My name is Tom Jizba, T-o-m J-i-z-b-a. I am a professional engineer licensed in the state of Nebraska, state of Iowa, and the state of Colorado. I am by trade and by discipline, by education, by experience, I focus in the structural engineering side of civil engineering. I do reside in Bennington, Nebraska. So I see quite a bit of need with respect to my structural engineering services and consulting in the greater Omaha area, although I do see probably a radius of 150 miles around the greater Omaha area, including Iowa. I am a proponent of this LB108

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primarily because it provides a statewide vehicle for credentialing or licensing. And it is in the negative in that if we don't pass LB108, then it opens up to the credentialing, again, at the county, at the municipal, and the village level. And my experience in working with customers who are landowners, who are contractors, who are insurance companies, is that there is confusion because of the local licensing or credentialing, not necessarily that the education of contractors isn't a good thing. I see the gamut. But what I am seeing in the Omaha area because of the contractor licensing are that small contractors that I use for referral to my customers, whether they be homeowners or businesses or contractors, that they are going out of business or they're staying out of Omaha and Council Bluffs. That's Iowa, but it's the same effect. They're just not providing the work anymore because it's not worth their time for that credentialing. So what does that mean? It means you have a fewer supply of good contractors at the lower level--smaller business level--to provide to property owners at large. So it seems to me that at this point...and I might say that licensed contractors who are coming in I'm finding are not necessarily professionally capable of doing the work. But they are larger and they are capable of going through the bureaucracy that this requires. So my comment, again, is that LB108 requires any further credentialing to be done at the state level to prevent this plethora of every county, village, metropolitan area of creating more confusion and restricting trade, if you will. And so that's really where I stand. And I'm seeing it happening in the negative right now in its current, wide-open form. [LB108]

SENATOR AVERY: Thank you, sir. Questions? Senator Wallman [LB108]

SENATOR WALLMAN: Thank you, Chairman Avery. Thanks for coming. [LB108]

TOM JIZBA: You bet. [LB108]

SENATOR WALLMAN: And do you feel the way it is now construction management is...favors the large operations, you know, over the... [LB108]

TOM JIZBA: It is favored if a county, municipality, or village does enact the contractor licensing requirements that we see in the city of Omaha, as an example. [LB108]

SENATOR WALLMAN: Uh-huh. Thank you. [LB108]

TOM JIZBA: Okay. And I might just mention, as Mr. Chatelain mentioned, really what perhaps would be great if there was a registration capability at the state level. That way you do have company name, you have address, you have proprietor, just as you do with your corporate requirements. I see no problem with that. I see no problem with continuing education and promotion of that at the county, municipal, village level. That's all great. But the hodgepodge approach now really creates, I think, a negative environment for the smaller to mid-size contractors. [LB108]

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SENATOR AVERY: Thank you. Any other questions? Senator Murante. [LB108]

SENATOR MURANTE: Previously Mr. McKell had testified about onerous burdens of the difference between general contractors and the simple task... [LB108]

TOM JIZBA: Right. [LB108]

SENATOR MURANTE: ...of just putting up a wall and painting it. My question is, is...municipalities...I represent Gretna, Nebraska, and western Sarpy County. Would there be reciprocity on any of these sorts of permits or licensures? Or if I'm permitted to paint a wall in Gretna and I want to go do one in La Vista and then Papillion and then Omaha and Ralston, do I have to get a permit in each and every one--just take the same test over again five times? [LB108]

TOM JIZBA: Yeah, okay. That's a great question because it brings up some things I should have probably homed in on. One is that--and I think those from the city of Omaha will testify to the point that--reciprocity within respect to the national test that we talked about, is certainly available. And you take the test once and likely every municipality, village, and county would provide reciprocity but there is no guarantee of that either. Okay? There is no state statute that says because the city of Omaha accepts the International Code Council test that Gretna necessarily will. We, as private industry, don't know that. There is no guarantee. The other thing I'll say is that don't confuse taking out permits with the contractor licensing. Those are again--electrical, mechanical, plumbing--are at the state level. You have to essentially be licensed to do that, and in most municipalities in order to take out a permit for electrical, that has to be done by the electrical...the licensed electrical contractor. Those safeguards are already in place. What we're talking about is, although it's not stated that way, it's the general contractor and the subs that essentially provide the shell for these various systems--mechanical, electrical, plumbing. So I hope I answered your question there. [LB108]

SENATOR MURANTE: I think so. Well, in your opinion...Senator Karpisek is seeking to prohibit credentialing by counties, cities, and villages. [LB108]

TOM JIZBA: Right. [LB108]

SENATOR MURANTE: Would it perhaps be better public policy today that if a person is qualified to paint a house in Gretna, then they're qualified to paint a house in La Vista, and just provide that by state policy? [LB108]

TOM JIZBA: I...that's where I...and that's a slippery slope, I think. The point being at certain levels, registration at a statewide level is a good thing. And, you know, you get down into at what point are we the nanny state that, you know, my cousin Vinny's

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painting my back wall of my home? So...but I think, as an example, if there was a bill to require registration of general contractors of a certain specificity, I wouldn't have a problem with that. What I do have a problem with is that now think about every city, county, village doing that to whatever whim and idiosyncrasy that they want. That's where I think the chaos comes into play. So, you know, let's be careful what you ask for. You might get it. And it's the law of consequences here. I'm seeing that in my profession with respect to referring good small- to medium-size contractors that really are subcontractors. They're doing repairs to fire escapes or they're putting in reinforcing around an old building. These are trades where you rely on the experience, and you're not necessarily wanting to hire somebody because they know how to go through a 300-page book and see which chapter has to do with fire protection versus masonry walls. You know, I don't even try to memorize the International Council...Code Council books. What I do is understand, because of my profession, which chapters to go to and then do the search through word searches. It's impossible. These books are, you know, like this and then they're growing in terms of disciplines. That isn't where we need to educate our contractors. Again, that's my opinion. [LB108]

SENATOR MURANTE: Okay. Thank you. [LB108]

SENATOR AVERY: Any more questions? Thank you, sir. [LB108]

TOM JIZBA: You're welcome. [LB108]

SENATOR AVERY: Next testifier. [LB108]

JUSTIN BRADY: Senator Avery and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska REALTORS Association in support of LB108. From the realtors' standpoint, they look at it as they are licensed. They are credentialed and licensed by the Real Estate Commission set out by criteria by the Legislature and by their rules and regs. They have education requirements, they have continuing education requirements, they have ethics codes that they have to follow, that they are "the public is being protected," if you will. So for a city then to move out and say, well, to come operate in the city of Norfolk, you also have to come take our test and get credentialed by our city, is a step that's not needed. That it truly is--from their standpoint--a duplication that appears to be a money generator, if you will, for the cities. And so that's their objection from that to a couple of questions that were raised. Senator Avery, you had asked about codes. I don't think this bill touches or would affect what locals do on building codes. It would affect the individual who has to follow that code, potentially, if they have to get a license from that city. But I don't think it would change the code that was...for instance, if Lincoln wanted to adopt an addition or subtraction from the state Building Code, I think that leeway would still be there. The other thing as I understand it...and I know Lynn Rex is in the back of the room and will more than likely come up in opposition to this bill. But

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she taught me a long time ago about Dillon's Rule, which in Nebraska it says a city, county cannot...has no power unless the state gives it to them--it's a quick summary--other than unless you're a home rule chartered city, which is Lincoln and Omaha. So the reason the cases were cited were Lincoln and Omaha is they can act on their own. The rest of the city actually needs this body to give them the authority to go license or credential individuals. So I'd argue that this bill truly is looking at prohibiting the city of Lincoln and Omaha from being able to do this because, as Dillon's Rule says, if you don't give them the power they can't do it--other than Lincoln and Omaha can do everything unless you take it away. So that's why I think it's worded the way that it says no city shall be able to, because that way it protects Lincoln and Omaha, is my understanding. The last thing. I know like with plumbers and A/C individuals that's in the bill. Specifically, state law says you guys have directed to the locals that they must credential plumbing and A/C. So that's why I think you see that exception for them here. With that, I'd try to answer any questions. [LB108]

SENATOR AVERY: Any questions from the committee? I don't see any. Thank you. [LB108]

JUSTIN BRADY: Thank you. [LB108]

SENATOR AVERY: Next testifier? This is in support of LB108. Welcome. [LB108]

KATHY SIEFKEN: Senator Avery and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n. I am the executive director and lobbyist for the Nebraska Grocery Industry Association here today in support of LB108. And, specifically, why we are interested in this bill is, as Senator Avery mentioned earlier, we have a certification...no. We have a permit in the city of Lincoln for all of our servers and sellers where they are required to not only be certified by the state but to obtain a permit from the city of Lincoln. And what the city council passed and what in reality we ended up with are basically two different things. Our people can go through, and the city council members were told, that any program that was certified by the Liquor Control Commission--and there are probably 12 of those programs that are certified by the Liquor Control Commission--any of those would be available to use, and then you would have to get a permit and test out of the Lincoln ordinances. In reality what happens if you take any training program other than the one that the city of Lincoln wants you to take, you are required not only to get your state certification but you are also required to test out of state certification and to test out of the permit. So if this bill were to pass, it seems that one certification should be enough--that the city of Lincoln shouldn't be able to require our people to not only take and pass the state certification. That should suffice. But in addition to that, they make them test out of their own state test plus they make them test out of their permit. And if this bill were changed just a little bit so that on page 2, line 6 it says "required," if you added the words "or offered" by the state. Those programs are put together on a state level for a reason. It doesn't make any difference

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who you are. If you're selling alcohol those certification...those certified programs meet those requirements. And for the city of Lincoln to come in and require us to do additional testing seems a little bit over the top. In addition to that, we have other cities that are requiring certification because we're not required to be certified to the people that get into trouble--have violations. They go to the Liquor Control Commission and the Liquor Control Commission has the authority to require every one of their people to become certified. There are other communities that are passing certification requirements. We have North Platte who has their own proprietary program that we haven't even seen. The Liquor Control Commission hasn't approved it. The people out there are required to do...to take their training. The people in Kearney, as long as they take certified training by the Liquor Control Commission, they're good to go. Lincoln is different in that it requires more training than anyone else. And then you have Nebraska City who is talking about it. So we would like to see the cities be required...this isn't really about whether they can permit you or not. What we're talking about is that the certification, once the state approves or establishes a certified program, that's the program that everyone in the state really should be...should come under, and that's what they should test for. If you have any questions, I would be happy to try to answer them. Oh, one other thing that I wanted to mention is, if you would change this to "required or offered"...in Lincoln we have a food handler permit. And that would not come under this because a food handler permit is not established by the state of Nebraska, so that would stand as-is and would not be affected. [LB108]

SENATOR AVERY: Thank you. Have you seen an increase in the permitting requirements in the city of Lincoln in, say, the last five years? [LB108]

KATHY SIEFKEN: I would say that the permit for the server/seller training for alcohol is phenomenally huge. It will involve thousands of our employees who are entry-level workers. [LB108]

SENATOR AVERY: And is this a new requirement? [LB108]

KATHY SIEFKEN: Yes, it is. And it will cost each one of those people \$15 to take this...to obtain this permit. The first three years they say are free and then after that it'll be \$15. I will guarantee you that it will not be \$15 in three years. The cost of operating that program is way...it's much more expensive than \$15 per person. It will...I think it will quadruple in three years, that permit fee. [LB108]

SENATOR AVERY: So you think you're seeing cities--well, you operate out of Lincoln a lot--go to more fees for service and licensing fees, permitting fees to pay for things that... [LB108]

KATHY SIEFKEN: Uh-huh. [LB108]

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SENATOR AVERY: ...general tax revenue used to pay for? [LB108]

KATHY SIEFKEN: A perfect example is the alarm fee now. If your alarm goes off at your business--I'm not sure--more than three times in any given year, then you get assessed a higher fee. But now we...anyone that has an alarm in their building--and that's been within the last few years--you pay a fee every year. I believe it's \$50 for the privilege of protecting your property. And then if you have false alarms that go off--you get maybe three a year--and then they charge you an additional fee. So I would say, yes. [LB108]

SENATOR AVERY: Burglary...burglar alarms, fire alarms, what? Smoke alarms? [LB108]

KATHY SIEFKEN: Uh-huh. It's security alarms. [LB108]

SENATOR AVERY: Security alarms? [LB108]

KATHY SIEFKEN: Uh-huh. So if a grocery store is broken into. [LB108]

SENATOR AVERY: Yeah. Senator Scheer. [LB108]

SENATOR SCHEER: Thank you, Senator Avery. Not to speak of the alarm we just had because, honestly, I think I understand where Senator Avery is going, but those have been in place for 20 years as far as, you know, registering your security system with the community. And I got to tell you it sort of makes sense to me because you pay a fee and you get two or three false alarms...well, it goes back to some of our other testimony that you're using a service, the police come out if that alarm goes off, and you wouldn't not want them to because it went off. They had nothing to do with it being a false alarm; they still provided the service. And as they continue to provide that service based on your alarm or the defective alarm, they probably ought to be able to be compensated for some of their time for that service that was moot at the point that they got there. But that's neither here nor there. [LB108]

KATHY SIEFKEN: That is a new fee, though, in Lincoln. [LB108]

SENATOR SCHEER: It might be, but I'm going to tell you that that has been around in a lot of communities for a long, long, long time. So I can't address Lincoln. I'm from Norfolk... [LB108]

KATHY SIEFKEN: Uh-huh. [LB108]

SENATOR SCHEER: ...and I got to tell you that's been around for 25-30 years, that I'm aware of. But one of the other things that...I guess that I wanted to talk to you about was

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you were talking about Lincoln having a different form or somebody--oh, North Platte--having a different test. And I guess as I'm looking at this...and you can correct me if you think I'm wrong. I guess I'm looking at some of the state requirements...I've always looked at any type of requirement that the state has as minimum requirements. And so when you're talking about Lincoln or North Platte or somebody else, regardless--if it's checking to make sure that your servers have the correct...or what they perceive to be the appropriate training and ability to do that, or drywallers, or whatever it might be--it's maybe that those communities have set the bar perhaps higher for the quality or the content of what they're expecting in their community. And to a certain extent then you're...are we not sort of taking that local option away to have a higher bar--that they may not be satisfied with the level that the state may set? I mean, I'm just devil's advocate. Couldn't we perceive it to be as such? [LB108]

KATHY SIEFKEN: In the case of Lincoln, the training program that they are steering...the path they're steering people onto is a low-quality program that has not been updated for years. There are other programs out there that are accurate, that the language is at a level where everyone can understand, and you can actually go in and learn something about the environment that you're in. In Lincoln they are steering everyone down the path of how do you handle an incident in a bar? And, frankly, grocery stores don't care about bars. [LB108]

SENATOR SCHEER: Sure. [LB108]

KATHY SIEFKEN: And we want to train our people what to do when you're in our environment and when you're working for us. [LB108]

SENATOR SCHEER: Sure. [LB108]

KATHY SIEFKEN: In the case of North Platte, I understand maybe someone would want to raise the bar. But why can't you raise that at the state level? There are many good, high-quality training programs that are already available. And to come in and actually sort of turn things upside down...we have people that own stores across the state. So they go to...so someone from North Platte comes and, oh, I've already been trained. They're going to have to be retrained in Lincoln and retrained in Kearney because everything is different. It makes it much more difficult to be a good retailer, a good, responsible retailer when you have a patchwork of certification programs across the state. [LB108]

SENATOR SCHEER: You're talking about--just to clarify in my own mind--you're talking about those companies that would have multiple locations throughout the state... [LB108]

KATHY SIEFKEN: Yes. [LB108]

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SENATOR SCHEER: ...providing those services. [LB108]

KATHY SIEFKEN: Yes. Or if people came from Kearney and moved to Lincoln. [LB108]

SENATOR SCHEER: And went to work for somebody else. Sure. [LB108]

KATHY SIEFKEN: And went to work for, you know, the same type. They already have their state certification but that wouldn't be enough for Lincoln. [LB108]

SENATOR SCHEER: Sure. Okay. Thank you very much. I appreciate it. [LB108]

KATHY SIEFKEN: Uh-huh. [LB108]

SENATOR SCHEER: Thank you, Senator Avery. [LB108]

SENATOR AVERY: Thank you. Any other questions? Thank you Ms. Siefken. [LB108]

KATHY SIEFKEN: Thank you. [LB108]

SENATOR AVERY: Any more proponent testimony? How many more do we have that wish to testify on this bill? Raise your hand. Okay, I see two. Thank you. Welcome, sir. [LB108]

DOUGLAS LANE: Doug Lane. Last name is L-a-n-e. And I wanted to thank all of you for serving in case your monetary compensation doesn't say it already. That's been talked about today. I have a state real estate license and I have a state pesticide license and a state driver's license. So I can drive anywhere, I can apply pesticides anywhere in the state of Nebraska, or I can sell real estate anywhere in the state of Nebraska. Cities I have worked in recently are Omaha, Bellevue, La Vista, West Point, Plattsmouth, Blair. And I tossed around the idea of building a house here in Lincoln, as I have four kids that will probably be going through the university program. I got one there now and three more to follow. So how many licenses would all of that require, each city, and at what level? It's my...well, there's a side note here. Thirty to forty people a day, I understand, are turned away from getting a permit in the city of Omaha because they don't have the license required, and I don't think they're very happy when they leave that place. That's projects that can't get started. If it's about following the building code, where are the code books? I have been to I don't know how many of these meetings. I have not seen a code book from Mr. Jay Davis. I've got one from 1982. I graduated from Milford, Nebraska, the trade school, and that's...I still got the same one. They should be...why aren't they for sale at every lumberyard and supply house? They should be in a magazine rack--code books, plumbing, electrical, building. You know, easily available if that's what this is about. The city and the contractors should be on the same team, not

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working against each other trying to collect fees or, you know, go underground and not do any of the above. So some of the projects I have work on...worked on has made the city or saved the city of Omaha a lot of money. I've saved several houses from demolition. One I bought for \$1, the other one I paid \$8,000 for. I also saved a commercial building, and that would require another license--a higher level--under Omaha's current whatever, tiered licensing system. I built two homes on a vacant lot near 83rd and Maple Street. Currently I could build the first one but not the second one. Well, if you built the first one, wouldn't you get better at it? And then there's the second one. And I built them at the same time in 90 days start to finish. There's a lot of economies of scale working in your favor when you're building two houses side by side. I cleared two lots for the LRC in the past--that's tax-delinquent lots. I prepared them for development, I sold them to a father and son team, and they built two houses there. So that was a big win for the city, I think. I never got the thank you letter. But anyway, a license, I think, suggests that the government has checked you out and that you'll do good work. That's not true. The consumer must still exercise due diligence. The city will not get involved in workmanship or contractual issues, as stated right in the Omaha's new ordinance. So if they're not going to get involved in workmanship or contractual issues, what else is there? What else is there? I think that's a really good question. Workmanship is quality, it's everything. It's not code, but you can build...you can put a roof on to code and it'll leak and it may not be quality. There would be a lot of things wrong with it and still meet code. But the city won't...they're not going to...they're not...they're going to...they've got their fee. They're not going to be there for you. The most problem I've ever had in 30 some years of doing construction work was with a licensed plumber. And the city was there...not there for me. I built the two houses on 83rd and Maple Street; very simple homes. They're rental homes and the--I got a little bit of time left here--the plumber put his high-efficiency water heaters in. He put the exhaust too close to the intake of the high-efficiency furnace. Of course, I got all the inspections and I have this licensed plumber do the work, although the two young men he sent out were...well, anyway, very young and he never...he was never on the job site. Never--not once. So the idea that you're going to have...you know, he has the license but he sends out these two little kids, basically. And after they left I had to fix some of their work because, you know, a floor drain should be typically lower than your finish elevation, not higher. So anyway, I know I had the red light. So... [LB108]

SENATOR WALLMAN: Thank you, Mr. Lane. Anybody have questions? You had a question? [LB108]

_____ : No, thank you. [LB108]

SENATOR WALLMAN: Okay. Thank you. [LB108]

DOUGLAS LANE: Okay. All right. Thank you. [LB108]

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SENATOR WALLMAN: Next testifier. [LB108]

JOHN SEIGEL: Thank you, Senator. My name is John Seigel, J-o-h-n S-e-i-g-e-l. I'm a real estate broker in the state of Nebraska and I can sell homes, as it was mentioned earlier, anywhere in the state of Nebraska. I have some rental properties in various communities in Douglas and Sarpy County. And I...if I were to work in the city of Omaha on one of my own homes under the current rules and licensing requirements, I would have to have a license to replace siding or windows or something like this. Now, I'm not qualified to do those things so I hire somebody. A carpenter I have known for about 30 years who has probably framed 300 or 400 homes with his crew over his lifetime, cannot replace a piece of siding, as I understand it, in the city of Omaha without a special license from the city of Omaha. And he could probably not do that in La Vista if they were to have a similar law or in Gretna if that were the case. So being uniform and statewide would be, of course, much more acceptable if you were to do that. I have an experience also with a tree trimmer who has cut trees up to 80- 90-year-old trees on properties I was involved in and in Douglas County. And I recommended his service to one of my clients in Bellevue. And because, as he explains it to me--and I take it from his word. I did not independently verify that with Bellevue--he did have...he has a second tier national certification which does not include that he climbs on the trees. And these were like 10- or 12-year-old volunteer trees near the property line that should be...would have been cut down on the property I attempted to sell. And he could not do it. And it probably cost the homeowner 30 or 40 percent more to work with one of the 4 or 5 people who were licensed in the city of Bellevue. I understand from his comments that the city of Bellevue may be looking at changing some of that, so we don't want to throw out the kid with the bathwater on this. So I would encourage you, for uniformity, to approve LB108. One more comment--if I understand it correctly, the original bill as it is approved in the city of Omaha had a grandfather clause in. So if you, as a contractor, could prove that you had done this kind of work--and I'm talking carpenter and painters and those kind of people--and you pay a mere fee of mere \$2,500, you don't have to go through the test. So it looks more like a revenue item than it does to improving the safety of the community. Thank you. [LB108]

SENATOR WALLMAN: Thank you. Have any questions? Thank you, sir, for coming. Next testifier proponent. Opponent--have any opponents? [LB108]

JAY DAVIS: Good afternoon, members of the committee. I'm the reason you're all here today. Thanks. I'm Jay Davis, J-a-y D-a-v-i-s. I'm assistant planning director and superintendent of Permits and Inspection division of the City of Omaha. Last year I started this LB813 by apologizing to everybody. This year I'm not going to apologize, and it's not because I'm being arrogant. It's because I've got some facts you probably need to know. As of this morning I have 697 licensed contractors in the city of Omaha. Most of those have either been by test although we have reciprocity with Council Bluffs, and the city of Bellevue, and Olathe, Kansas, and Topeka, Kansas, Miami, Florida. So

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we take reciprocity. So if these individuals take a test elsewhere, they can bring it into us. We accept it on the qualifications of that test. The problem that I've been listening to all afternoon and kind of I understand it and I don't understand it. We're asking individuals who build homes and buildings that we work, live, and play in to a minimum standard. That minimum standard was actually adopted by the state. Currently it's the 2009 International Building and 2009 International Residential Code. The city of Omaha, like most jurisdictions around us, work every three years or every six years, in our case, to update the codes and bring us into compliance with both state law and the most current code. The codes are just that, they are a minimum standard. And if a builder wants to build something and can't answer simple questions on a minimum standard then there's some concern. Has it been a problem in the past? Not necessarily, because in the past there have been ways for young people to understand or learn the trades up through the process--not necessarily the case. Are there people out there that do substandard work all the time? Absolutely. Even with a test? Yes, sir, it happens. The problem is that what you're hearing is people don't want the license because they don't want to take out the permits anyway. Now when we did this ordinance last year the first thing that went through was we changed it so that anything that was a maintenance item on any property that you own, whether you live in it or not, if it fell under qualifications of a maintenance item--and the list is very lengthy--then a permit wasn't required. And if a permit wasn't required, a licensed contractor was not required. Basic premise--you can work on your own property. What we did limit you to was building one house in a five-year period on a piece of property because we saw where people were starting to build houses, live in them a year, sell them out, do the same thing over and over and over. They weren't considering themselves contractors but they were acting as such. To answer Mr. McKell's question, the Tier 1, Tier 2 Program in the city of Omaha--it's an excellent program but it's not without flaw. And the mayor and I have actually talked about this, that the Tier 1, Tier 2 Program is a self certification program. What does that program do? If I go in and say that I paid my \$40 with the state--by the way, that is the state registration Workforce Development today to be a contractor--if I pay that \$40, and I go in and get on the Tier 1 to Tier 2 list because my wife owns the company, and I say that well, you know, I do flatwork concrete--sidewalks and driveways--all my life, but I think I can now build a First National tower building--a 40-story tower. You heard this last year. That's the fallacy in the system. You can't do that. Not because they couldn't do it physically, but to understand the complexity of building a 40-story building is not something I would try to tackle if all I did in my life was concrete work. So that's to put one of those to rest. We would like to work through that process. And, in fact, Mr. Chatelain and anybody else back there is welcome to come to my office any time and talk to me about what they think is right and wrong with the program. But for now it's working. We're seeing an improvement in our inspection qualities, we're seeing an improvement in the number of red tags we're not receiving in the field, which is excellent. We did 40,000 permits last year. I have 26 inspectors to do 40,000 permits--roughly 1,500 apiece. That's a lot of inspections for a person to do on a daily basis, whether it's a simple inspection or a complex inspection. I answer a

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question about realtors. I don't license realtors, state of Nebraska does. I don't require a license of any additional things for a realtor unless they build a home. And you'll hear from people behind me in the Home Builders Association who say that they're in alliance with this bill. They're not. In fact, I believe one of them here today is actually a licensed realtor and a licensed contractor. So that being said, we worked very diligently to move this thing forward. It's not perfect. We have worked with Council Bluffs, we have worked with Bellevue to see that as we start to move forward across the entire region that eventually--somebody's got to kind of blaze the trail a little bit--but eventually it'll get down to where hopefully that test that you took for Bellevue, Council Bluffs, or Omaha, Papillion, or anybody else that does it, will allow you to have basically a registration in another community, which is what the state does now in the Electrical Act. Plumbing and mechanical are actually done by jurisdiction. In the case of Omaha, we do both mechanical and plumbing by test there. So in closing, there's a lot of reasons to not like this bill but I think there's equally as many reasons to like what we have done in Omaha. We don't use it for a money grab. You know, if you look at one of my...and, as a matter of fact, one of our contractor's licenses now no longer requires a test because the city council took that away last year. I think that was a perfect thing to do. So I can answer any questions. [LB108]

SENATOR WALLMAN: Thank you, Mr. Davis. Any questions? Senator Bloomfield. [LB108]

SENATOR BLOOMFIELD: Thank you, Senator Wallman. Mr. Davis, I've heard tree trimmers mentioned here several times. What are your regulations concerning tree trimmers? [LB108]

JAY DAVIS: Quite honestly, sir, I have no regulations on tree trimmers. And that may be a difference because Bellevue sort of throws everything under one permit department. The city of Omaha has different...the Parks Department actually controls arborists in the city. I believe they currently have a license procedure for them. [LB108]

SENATOR BLOOMFIELD: Okay. Thank you. [LB108]

JAY DAVIS: Uh-huh. [LB108]

SENATOR WALLMAN: Any other questions? Thank you, Mr. Davis, for coming. [LB108]

JAY DAVIS: You're welcome. [LB108]

SENATOR WALLMAN: Next testifier. [LB108]

LYNN REX: Senator Wallman and members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We do strongly

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oppose this bill. This has impact on municipalities all across the state. Municipalities do have authority, through the Legislature, of granting police powers. Police powers and those general authorities are the basis for building codes, zoning, and these kinds of licensures and inspections. For a different reason, today I was meeting with the city manager administrators in Seward, Alliance, Columbus, and Nebraska City. And during that meeting I asked them about this and asked them, are any of you doing testing on any of these issues? And they said, no, but we absolutely do permits. We do licensing to make sure that certainly...after storms and other sorts of things, every one of those cities have had experiences where you have folks coming in with roofing. And many times what happens is it is your local contractors and others that come and ask the cities, make sure something is happening here because they want to make sure, too, that when it's all said and done, if someone pays \$5,000 for a new roof they can find that person. And it's not...obviously, the folks that are coming in--I want to say the fly-by-night type organizations and contractors that come from Texas and all over the place. Frankly, once there's been a disaster those folks come in and they do some damage to municipalities. They do the damage in this way: They go out and they talk to folks, and they see somebody that's got a roof that's been collapsed or whatever it may be. And they tell them, okay, we can take care of that for you. If you just give us \$2,000 up front, we'll take care of that. And this particular person--maybe that person is elderly or not--or maybe naive. But in any event, they leave, the roof is never repaired, and no one knows how to find them. Now an answer to that might be, well, those kind of people aren't going to register anyway. But the reality is once these cities--and most of these cities do pretty careful training and a lot of radio blitzes and everything else. After a hailstorm in Scottsbluff, for example, saying, make sure, check with the city. Make sure whoever you're talking to has proof of insurance. You know, check with us because the cities...as a former mayor said, they require proof of insurance, they require addresses, and corporation papers, and other sorts of things to protect the public. So police power is the general authority by which they need to do this. Certainly Lincoln and Omaha have charters which enable to do different things and more things than cities can do, frankly, than without charters. But we're always willing to sit down and work with the committee and others on measures like this. But I think this is extremely important to understand that it is for public health, safety, and welfare. And we've had cities that have been doing permits and doing this for years and years and years. There is nothing new. It's not in the last couple of years. However, I will say this. There's no question that removal of state aid from municipalities and counties and other political subdivisions has had an impact. But that's...we don't have cities doing anything uniquely to try to go after generating monies for that particular purpose. That's not what this is about. That's not what's happening in Omaha, it's not what's happening in Lincoln. Not to say that everything that cities do happen to be perfect, but by the same token there's some real basis for what's going on here and it's public health, safety, and welfare. And I can assure you that if cities were not doing these kinds of permits and licensing, that somebody at the state level is going to have to pick that up and do it and enforce it because these are things that need to be done. And I don't think...interestingly enough

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when I think a couple of you may have asked the question of the people that were proponents of this bill, well, do you want state licensure then? I didn't see anybody scrambling saying, oh, we want state licensure across the board. And, again, I know of no city--we did some just quick survey work on LISTSERV--I know of no city that is licensing or trying to do duplicate licensing on realtors, certainly not contractors. I do think that the bill can have a conflict here with a provision in chapter 60 that relates to pawn brokers because the state does licensing in that. And where the state does that, cities don't. So in any event, I think that this bill at a minimum needs a lot of work, but I do think that it's important to understand that there are...there is a solid basis for what cities are doing and why. I'd be happy to respond to any questions that you might have. [LB108]

SENATOR WALLMAN: Senator Murante. [LB108]

SENATOR MURANTE: Yes, Lynn. Thanks for coming and testifying. Is there a reason why we, as a state policy, have set it such that you have to get these permits in every single city and every single county that's...you're trying to do business in? I mean, why is it that if you're qualified to roof a house in Papillion and you cross a street into La Vista, you have to get a whole different set of licenses? What's...is there a rationale for that? [LB108]

LYNN REX: Well, it would seem to me that in those kinds of instances there's a lot of reciprocity. But in terms of having a license so that someone comes in and says, yes, we've got the ABC corporation that is doing work in La Vista. We want to make sure that that ABC corporation has also provided proof of insurance to Papillion. We want to make sure that...now it's different when your talking about testing. And my understanding from talking to our city administrators is, there's a lot of reciprocity as Jay Davis indicated from Omaha. And I think that that's something that's extremely important because I understand the concern here if the issue is you're supposed to, you know, have separate tests in every single city. Especially when you're in the metro area. That is separate and distinct from what we're talking about, which is when you've got a hailstorm someplace and you have contractors coming in from all over the place. And in fact, again, in talking to our city administrators, in many cases it was the local contractors that came forward and asked the city to make sure that they had a process in place, and they made sure that there is a process for proof of insurance, and that folks could not be taken advantage of, especially when you're dealing with emergency situations. Is that responsive to your question, Senator, or not? [LB108]

SENATOR MURANTE: It is. I...in the case of the city of Omaha it...the gentleman had listed a number of cities where they accepted reciprocity. I think only one of them was in Nebraska, and I don't know how Miami, Florida, got included in that. But apparently if you're qualified to roof a house in Miami, you're qualified to do it in Omaha. But if you're from Valley, you're not. That's what I'm not...that's what I'm failing to understand.

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[LB108]

LYNN REX: And my understanding was, Senator, and I may be wrong and I can ask Mr. Davis if he needs to clarify this. But when you're talking about reciprocity on testing, that's one thing. [LB108]

SENATOR MURANTE: Uh-huh. [LB108]

LYNN REX: But when you're talking about if I'm going to...if I'm a contractor and I'm doing a roof in La Vista, and then now I'm going to go over and I'm going to do some things in Papillion, Papillion is going to want to know, first of all, you know, show your proof of insurance to us as well, because if somebody gets ripped off in Papillion they're not calling the city officials in La Vista. They're calling Papillion, and I think that's what's critically important. Every municipality--and there are 530 of them--have an obligation...and by the way, not all 530 require licensures. Not all of them do. Certainly a lot of our villages don't. They don't have anybody to enforce it. We've always said to folks, if you can't enforce it, don't do it. But I can assure you the first-class cities do, and they're careful about what they do. They're not doing it just for the sake of making money. That's not why they're doing it. As the former mayor indicated, this has been going on for years and years and years. I've been with the League for over 30 years and one of the first sessions that I was asked to talk about was with dealing with building codes and licensure and inspection. It's been going on for a very long time. That, again, doesn't mean everything cities are doing is perfect, but we're always willing to work with the committee, work with others. And I can just assure you there's a solid basis in law for what the cities are doing with respect to police powers and the implementation of that with zoning codes, building inspections, and so forth. [LB108]

SENATOR WALLMAN: Senator Bloomfield. [LB108]

SENATOR BLOOMFIELD: Thank you, Senator Wallman. Ms. Rex, if there were to be a storm come through Omaha, a big hailstorm destroyed a lot of roofs; things are little slow up in Wayne, we didn't have that problem. How long would it take a contractor from Wayne to get licensed to come down and repair roofs in Omaha? [LB108]

LYNN REX: That's a good point and the answer...I don't know the answer to that. [LB108]

SENATOR BLOOMFIELD: Okay, thank you. [LB108]

LYNN REX: That's an excellent point. By the same token, I can tell you from experience because we also run a risk management pool, and we have 62 municipalities that are members of that. And certainly when the hailstorms went through last summer, there were folks coming from Oklahoma, Colorado, Wyoming, Montana, Texas, and California

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putting...going...just literally, anybody that had any damage walking up to the front door and saying, you give me \$1,000. I can get this done, you know, right away for you. So I know that they can book it there pretty fast from another state. I know your question is, how long does it take to go through the testing process in Omaha? And I don't know that. [LB108]

SENATOR BLOOMFIELD: Yeah. Senator Scheer alluded to it a while ago that we had that problem up in Norfolk last summer. There...and I think people did come in from other states, and there was probably some shoddy work done. But if you have a legitimate contractor, I'd like to know how long it takes them to be able to go in legally and do the work. [LB108]

LYNN REX: I'm sure Mr. Davis can get back to you after the hearing... [LB108]

SENATOR BLOOMFIELD: Okay, thank you. [LB108]

LYNN REX: ...with that information. It's a good question. [LB108]

SENATOR WALLMAN: Thank you. [LB108]

LYNN REX: Thank you very much. [LB108]

SENATOR WALLMAN: Any other questions? Okay, thank you, Lynn. [LB108]

SENATOR AVERY: Okay. Thank you, Senator. Any other opponent testimony? Welcome, sir. Good afternoon. [LB108]

DENNIS VAN MOORLEGHEM: Good afternoon. My name is Denny Van Moorleghem, V-a-n M-o-o-r-l-e-g-h-e-m. I've been a building and land developer in Omaha for 43 years. I represent ENDC, MOBA, and the Home Building Professionals which encompass most of the land developers and builders in the city of Omaha and the surrounding building jurisdictions. We do represent several of the materials suppliers and the trade contractors also, whether they're a 1-man shop or a 30-man shop. Okay. To answer your question, it takes five minutes to get a license to put a roof on in Omaha. There is no test required. You get on it...that's what you were just asking a little while ago--to get a Class 3 license. [LB108]

SENATOR BLOOMFIELD: Yeah, that's what I was asking, but if you're telling me it takes five minutes to get a license, what's the good of a license? Have you verified this man's any good? [LB108]

DENNIS VAN MOORLEGHEM: It's basically, as I understand it, a registration system in case of an emergency so they know who it is. Okay. And it probably requires...it doesn't

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probably require insurance. And in the case...I'm also a licensed contractor in the city, it requires bonding. Okay? Well, I'm going to tell you a little story, I guess. First of all, of course we support licensing. [LB108]

SENATOR AVERY: Could you do me a favor? Would you spell your name slower?
[LB108]

DENNIS VAN MOORLEGHEM: V-a-n M-o-o-r-l-e-g-h-e-m. But nobody ever asked me to slow down. [LB108]

SENATOR AVERY: All right, we have it now. Thank you. Proceed. [LB108]

DENNIS VAN MOORLEGHEM: Okay. We support licensing and we have for the last four or five years. Ten or fifteen years ago, I testified at several of these hearings against licensing, and so did most of the volume builders in the city of Omaha, for fear of governmental control and the word "slippery slide" and all the things that we fight as businesspeople. Unfortunately, today isn't like 15 years ago. Houses are tougher to build, contractors are less reliable, the building codes change to such a degree every three to six years it's a whole education process. As you well know, in 2005 our whole country took a big step back in terms of housing. In Omaha permits were cut, I don't know, half to two-thirds, as an example. A company...our company used to build 100 houses a year. We're lucky to do 35 now, as hard as we try. When that happened, beginning in 2006, we watched all of our contractor base go away, get other jobs, because they couldn't make a living. And about two-thirds of our builder competitors are gone also. We got together--the home builders associations--oh, four or five years ago hoping for a rebound, and realizing that it was going to happen in my lifetime, at least. And understanding that even in those days, the good trade contractors are leaving. The ones that are on the job every day. The ones that actually have to be there and watch that footing go in. Our superintendents and our employees were finding other work too. So we went to the city four or five years ago...well, we actually started on a state level and that didn't work. We went--and I'm going to jump around more than I thought I would--but as we went down the state process to try to get a state law because it made sense to us, we found out that the different areas--not necessarily building jurisdictions--but the different areas of the state had different perspectives on what should be built and how to build it. Also the climate has changed enough that it made a difference. So we couldn't get a consensus across the state for the different builders on what we should be going after. So after fighting that for two years, the builders in Omaha decided that we were going to try to do our own thing. We thought that the turn around in housing was eminent, and we knew that it was going to take two or three years to at least get something going. And it did. We went to the city and tried to work out some type of licensing program as we went forth. We used other states and other cities as models. Came up with the current testing standard of the 2000...today it's the 2006 IRC test. I'm licensed. I can build houses in 23 other states because of my testing;

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because I tested out of that. Assuming each building jurisdiction accepts that test that I took. Okay, so it's kind of a double-edged sword there. Okay? So it's all across the country. We do have to be bonded. We do have to be insured in the city of Omaha. That was part of the criteria. As we...the testing...I took the test. Okay? I've been doing this for 43 years. I failed it the first time, okay? Because I didn't know how to test it...know how to take it. Built a lot of houses--5,000 of them. Okay? I took it the second time and passed it. Learned how to do it, and there are people that will show contractors how to pass those tests. Not as in cheating, but as in, you know, it's just like any test that's involved. We changed several of the things we do at the way we build houses because of that test review that I was forced to look at. Our trade contractors, many of them, went through the same process. The...nobody liked to do it. Okay? It cost \$300 for three years. It wasn't a big deal. The city cooperated and I believe--and I'm speaking for Jay and the people at the city--they had a problem with the storm chasers, and they had a problem with people not taking out permits. The builders that were doing it for a long time knew better than not to take that permit out, because our neck was on the line. I mean, and we're talking about a ten-year statute of limitations where we had some exposure. So we worked hand in hand to make this whole program go. We...they worked a long time trying to get it to work. They changed the test criteria, they told us what they could do, what we could do. It wasn't a generator...it wasn't a fee generator. As a matter of fact, we thought they undercharged for the services they were provided. It was supposed to be a break even. Grandfathering was brought up many, many times. As I said, we modeled the...what we could find on other building jurisdictions and several years earlier the Kansas City area had a similar program they called a master builder program, which was a licensing program. They allowed grandfathering. They let 1,500 guys in there because they were their friends, and--qualified or not--and the program lasted less than five years. And they were on 60 Minutes because the houses were falling in and licensed contractors, who weren't tested, who didn't know what they were doing, were allowed to have that license. [LB108]

SENATOR AVERY: Could you get to your points real quickly because your red light has been on for a while. [LB108]

DENNIS VAN MOORLEGHEM: Oh, I'm so sorry. Okay. [LB108]

SENATOR AVERY: And I have to be fair to everybody else. [LB108]

DENNIS VAN MOORLEGHEM: Okay. That's right. I'm sorry. This is about knowledge. This is about contractors learning how to build a house as they go through the process, and that's how things change. You could only do that with education, and that's continuing education classes. The small guys, the deck builders and that, I understand it's a burden for them. They have to do it. They have to be qualified in doing what they're doing. I've been around 40 years. I've seen decks fall off houses, and I've seen houses rot so bad from window leaks that they had to tear the whole front of the house

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off from people not knowing what they're doing. So there's a balancing act here. We do support the licensing. We do support what we're trying to do in the state, and we're trying to upgrade our industry. [LB108]

SENATOR AVERY: Thank you. Thank you. And is Van Moorleghem, is that all part of your last name or is Van your first name? [LB108]

DENNIS VAN MOORLEGHEM: No, it's Dennis and then Van and Moorleghem. Yeah, it's Van Moorleghem; 13 letters. [LB108]

SENATOR AVERY: Moorleghem. Yeah, okay. So this is the first time anybody's asked you to spell it, right? [LB108]

DENNIS VAN MOORLEGHEM: Well, it...had it paid attention, yeah. Are there any questions? [LB108]

SENATOR AVERY: All right. Questions from the committee? Thank you, sir, for your testimony. [LB108]

DENNIS VAN MOORLEGHEM: Okay, thank you. [LB108]

SENATOR AVERY: Any other opponent testimony? All right. Any neutral testimony? Looks like you're up, Senator Karpisek. [LB108]

SENATOR KARPISEK: Senator Avery and committee, thank you. I think we had a good discussion on this but I will start out by saying that I confused the situation right off talking about permits rather than licenses. And Senator Scheer, I'm sure that's where you and I weren't quite on the same page. You were on the right one. I wasn't. We're confusing building permits with licenses or a permit to work. This isn't...we're not talking about building permits. I'm not trying to say building permits shouldn't be or permits to come in and register to work to know that you're in town. Okay? What I'm talking about is the fact of coming in, having to take a test, and be credentialed. Okay? So what I'm trying to do would have nothing to do with what you talked about in Norfolk, and I agree that we don't want to do that. We want to know who's in town. We want to get their...all their information, who they are, all those sort of things. Again, we're confusing the permits with the licenses. Cities can pass ordinances and codes, they can require permits for building and rebuilding, they inspect the work that is done, and they can approve or disapprove permitted construction. So to talk about these people having to get a license to work in that town and then we have the inspectors, to me sounds like, well, we have the inspectors, we have to know--and I don't care who says what--I think this is a money issue. And I...we've all been involved in--most of us--in cities. Come on. Mr. Davis said if people build a house and then sell it in a year...was it inspected? If your city inspected it and it passed inspection, so what? I guess the person then that

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built it knew what they were doing if it passed inspection. Also said that codes are to build to minimum standards. I don't agree that our codes are minimum standards at all. Some of those codes are pretty hard to get up to, and I think they should be. Now, do cities want to do more? Okay. But I don't think they're minimum standards. The last testifier talked about that they used to build 100 homes a year and now it's 35. He's built 35...5,000 homes in his lifetime. I understand. Maybe it sounds like a pretty big company. They're probably one person, if it's him, needs to be licensed. Is everyone? No, one person in the company. Mr. Davis also said 697 are licensed in Omaha. I would guess that there are thousands that can't get through the process. To build a fence requires a permit. Should John's fence company have to test about roofing, siding, and remodeling? I don't think so. A drywall company has to take a test on fencing codes. Again, I apologize that I mixed up the permits and licenses. I think as I said last year, this will all change as soon as they want to start licensing attorneys. And I'll bet you there will be a whole different idea then because those people already have that. Well, I guess in my opinion, what's the difference? With that, I'd be glad to take some questions. [LB108]

SENATOR AVERY: You've worn us out. [LB108]

SENATOR KARPISEK: That's what I intend to do. [LB108]

SENATOR AVERY: (Exhibit 2) I have to read into the record here a letter of opposition from the City of Lincoln, the finance director, Steve Hubka. With that, we end the hearing on LB108 and we move to our last item on the agenda, LB311, and invite Senator Scheer to the table. Welcome, sir. [LB108]

SENATOR SCHEER: Thank you, Senator Avery, and I would hope that mine might be... [LB311]

SENATOR AVERY: You're clearing the room. [LB311]

SENATOR SCHEER: Yeah. Well, you know, I have a tendency to do that, but...and I'll hope because it's just mundane and just a technical and hopefully there's no one here to even testify either way and things will move out and we'll be gone in 30 seconds. Thank you, Senator Avery. For the record, my name is Jim Scheer, S-c-h-e-e-r, and I represent the 19th District in the Nebraska Legislature. I'm here before you today to introduce LB311 which amends Section 1, Section 11-105, Revise...Reissue Revised Statutes of Nebraska with regard to official bonds. Filing time is amended to include: following receipt of their certificate. The amendment also clarifies the official action prior to taking office, but after the filing of the bond is not authorized. And lastly, the provision clarifies that certain county officers are exempt from timing requirements with regard to filing their official bond but not to regard of their official oaths of office. Next in Section 2, 11-115, the Reissue Revised Statutes of Nebraska is amended to harmonize the

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technical language with regards to gender. And finally, a nonapplicable to "county officers covered pursuant to subdivision (22) of Section 11-119" that is added to this section. And the bill was brought to me by the Nebraska Association of County Officials as a result of numerous requests for clarifications from their membership as far as regarding the filing requirements. And Elaine is here from NACO that will testify after me if there are any technical questions. I would just clarify, just so that everybody has got an understanding of what I just said on a technical basis. The first portion where we added "following receipt," you are not technically assumed to be the officeholder...the elected officeholder until you technically get that receipt of an election from the Secretary of State. So that falls into place there so that you don't have to file. You would...they may have had somebody come try to file a bond before they really were ever notified that they were the elected officeholder. It also clarifies that once they file the bond as an officeholder pursuant to this statute, they have no legal authority to do anything. They have just filed the bond that they're required to by law. And the other portion regarding to bonds, for those of you that are not familiar with bonds, you can have a bond that is specific to Jim Scheer as the county treasurer of Madison County. And so if I were not running again and being replaced, you would need a new bond for Senator Murante to serve as that position. So you'd have two different bonds. A lot of counties now have gone to a blanket bond that the bond covers the office and whoever is in that office as the officeholder. So it would cover the treasurer regardless if it was me or Senator Murante or Senator Wallman. So in those cases, you don't have to continue to file a new bond every time someone is elected to that separate position. So that's clarifying that part of it. And with that, I'll shut up and see if there's any questions so that we can all go home. [LB311]

SENATOR AVERY: Thank you, Senator. Questions? They wouldn't dare. [LB311]

SENATOR SCHEER: And I will waive any closing. [LB311]

SENATOR AVERY: First proponent. [LB311]

ELAINE MENZEL: Chairman Avery and members of the committee, again, my name is Elaine Menzel, it's M-e-n-z-e-l. The first thing I'd like to do is thank Senator Scheer for introducing LB311 on our behalf. I...he did a very good job explaining the bill and some nuances between the different types of bonds that are available for county officials. Part of the basis for this legislation related to an article that I wrote for purposes of trying to make people more informed about their bonds requirements and that type of thing in November-December time frame. And as a result of that, we got a lot of questions in terms of interpretation, and this is just for purposes of trying to clarify some of those things that arose during the time frame and just to...one of the things that was particularly problematic to the individuals seemed to be the ten-day requirement that they have to get that ten days before taking office...the time frame for when they would be a newly elected office. That ten-day time requirement was a result of LB534 in 1976.

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And that came about as a result of some...an action here in Lancaster, actually, where a county board member had thought that he had gotten his bond but had failed to do so. And so as a result, because of the way the statutes are written, that office was declared vacant. Well, in that situation the appointing officers did go ahead and appoint and reaffirm what the voters had done. And for county board members--that's the county treasurer, county attorney, and county clerk--that would appoint that office. With that, I'll leave it off and if you have any questions, I will certainly attempt to answer them. [LB311]

SENATOR AVERY: Did this originate with NACO? [LB311]

ELAINE MENZEL: LB311 did, yeah. [LB311]

SENATOR AVERY: Uh-huh. And you always have a board meeting and a vote of the board. Was there any dissension or was it unanimous? [LB311]

ELAINE MENZEL: Not on this issue. [LB311]

SENATOR AVERY: Just on my stuff, right? [LB311]

ELAINE MENZEL: No. [LB311]

SENATOR AVERY: I'm kidding. [LB311]

ELAINE MENZEL: I had to miss part of that meeting so I didn't get in on some of those...because I had the pleasure of testifying before another legislative committee. [LB311]

SENATOR AVERY: Okay. Questions for Ms. Menzel? Don't see any. Thank you. [LB311]

ELAINE MENZEL: Thank you. [LB311]

SENATOR AVERY: Any other proponent testimony? Any opposition testimony? Any neutral? No more testimony requested and Senator Scheer has waived closing. That ends the hearing on LB311 and the hearings for today. Thank you very much for attending. Remind the committee, check your e-mail. There is an agenda there for Exec Session. [LB311]