

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

Judiciary Committee
February 13, 2013

[LB169 LB284 LB461 LB482 LB551]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 13, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB284, LB482, LB461, LB551, and LB169. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Mark Christensen; Colby Coash; Al Davis; Amanda McGill; and Les Seiler. Senators absent: None.

SENATOR ASHFORD: Welcome to the Judiciary Committee. I'm going to change the schedule a little bit. First...Senator Conrad is first. I'm not changing that schedule. But we're going to take LB482 and put in the second position from the fourth position. And just so everybody understands at the beginning, each side will have one hour, not including the questions asked, to present their side. So LB482 will have the proponents first, and that's Senator Kintner's bill. We'll have the proponents first for an hour and then the opponents for an hour, and then a half hour for neutral testimony. It doesn't include the questions and answers. We won't include that in the hour. So with that...and then we can get into more details. Don't worry about that little baby. She can cry or he can cry as much as he or she wishes, as far as I'm concerned. So with that, we're going to get into LB284, Senator Conrad.

SENATOR CONRAD: Thank you, Chairman Ashford and members of the committee. My name is Danielle Conrad, D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I represent the "Fightin' 46th" Legislative District of north Lincoln. I'm here today to introduce LB284. LB284 makes two changes to the Political Subdivisions Tort Claim Act. One, it increases the cap on damages allowed under the act from \$1 million to \$3 million for any person for any number of claims arising from a single occurrence, and from \$5 million to \$12 million for all claims arising out of a single occurrence; and it extends the time a claimant can file a claim, from one to two years. The amount of damages allowed has not been changed since this act was enacted in 1985. It does not change the two-year statute of limitations specified in the act but simply increases the amount of time to file a claim, from one to two years, which is consistent with the State Tort Claims Act. I would be happy to answer any questions. I know there are some representatives of different groups and interests behind me, particularly the Nebraska Association of Trial Lawyers, who will testify as well and can provide some more specific expertise. I know you have a long day in front of you and we'll try to be as efficient with the committee's time as possible. Thank you for your consideration. [LB284]

SENATOR ASHFORD: Thank you, Senator Conrad. Any questions of Senator Conrad? Seeing none, are you going to stay around? [LB284]

SENATOR CONRAD: I will plan to waive my closing. Thank you. [LB284]

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

Judiciary Committee
February 13, 2013

SENATOR ASHFORD: Okay, thank you. Thank you, Senator. How many proponents do we have on this bill? John and maybe somebody else. Come on up. [LB284]

JOHN LINDSAY: (Exhibits 1 and 2) Thank you, Senator Ashford and members of the committee. For the record, my name is John Lindsay, L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of the Nebraska Association of Trial Attorneys. Senator Conrad has laid out the concepts of the bill which are pretty straightforward. One is increasing a cap that has not been changed since the inception of the legislation in 1985, and the second is to extend the claims period. I'll touch that second one, first. To make clear what we are talking about here is a treatment that goes to political subdivisions that others do not...any other person does not have to comply with, and that is the requirement that a notice of claim be filed with the political subdivision. Right now, that must be filed within one year. This would simply say that it must be filed within two years, which is the same standard that the State Tort Claims Act has. It does not change the statute of limitations. That remains. It's just that initial claims period. What I'd like to touch on a little bit more is the cap on damages. That extends back to 1985 when the act was first adopted. This bill sets forth...it actually moves it from \$1 million to \$3 million and that was intended to roughly approximate inflation. But we would...and we're asking that the committee look at that and determine what's an appropriate level. But I want to point out to you what has occurred since that time. I mean I...at that time, I think I was just fresh out of law school and now I have a lot of gray hair. I think Senator Chambers was just a young senator with only 15 years of experience at that time, and Senator Ashford I believe had not yet started his first term as senator. We're talking about a long ways back there. [LB284]

SENATOR ASHFORD: It must have been...it was dark. (Laugh) [LB284]

JOHN LINDSAY: But we also just look at what the economy has done, what have prices have done. [LB284]

SENATOR ASHFORD: The Dark Ages. [LB284]

JOHN LINDSAY: I've passed out to you two documents. The first is the CPI, what the Consumer Price Index has done. And that's a reflection of obviously what costs are. And you can see, between 1986 and 2012, an increase of 229.594 percent increase. Clearly, that million-dollar cap has not kept up with inflation, obviously, since it hasn't changed. But things have just gone up much higher. If we look at healthcare costs, which is a number which would be even higher than that, and that's what these damages typically are going to cover. The second thing I'd like to point out, or the second document that I'm handing out, looks at things, just other types of things that we see day to day. The price of corn has gone from \$2.49 a bushel up to \$7.33 a bushel. A new car, an average new car, has gone from \$9,000 to \$28,000. Average wages have gone from \$16,000 to \$44,000. And that again is something that would be covered by

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

Judiciary Committee
February 13, 2013

that cap, is when somebody is hurt by an act of negligence they would lose wages. And finally, and I think this is important, the average house has gone from \$84,000 to \$218,000. And remember, oftentimes political subdivisions are funded through property taxes. Their property taxes are based on a much higher level of valuation. But this Tort Claims Act has not kept pace with that. My time is up so I would simply ask that the committee advance the bill. [LB284]

SENATOR ASHFORD: Thank you, John. Any questions of John? I think that's...I don't see any. Do we have any other proponents for this bill? Opponents? Okay, Vince. [LB284]

VINCE VALENTINO: (Exhibit 3) I have a talking point handout I can provide you, Senator; and everybody else that's on the committee, Senator. My name is Vince Valentino. Since 1976, I've been representing governmental subdivisions in my practice. I would say that I probably have tried a great number of tort claim cases. I want you folks to understand, you know, I'm not here to talk about, you know, how the price of legal education has increased from \$3,000 when I went to law school, to \$30,000 a year, this year, for law students. But I do want to tell you that there's a public policy issue here and I don't think...maybe you don't realize this; maybe you do. Medicare and Medicaid simply come in, in these catastrophic cases. And I have a case I just tried, it went to the Supreme Court, on a police pursuit case out of Platte County. Sitting in the district court right now was a million dollars and some interest, with Medicare and Medicaid liens filed all over the place. I don't think county taxpayers ought to be subsidizing the federal government. The Tort Claims Act cap has been around for years. Many states have less time than we do to file. Some are as low as two months, three months, and some don't even have \$100,000 to \$150,000 as a cap in their government. South Carolina has 37 separate exemptions in their tort claims act that preserves sovereign immunity. We have, what...13. When the federal government comes in on these catastrophic cases, when you exceed that cap all we're going to be doing is giving that money to the federal government. And I don't think county taxpayers, frankly, ought to be subsidizing the feds, because they'll take their liens. They'll apply for disability, the folks that are on there. Typically, what I see is I see plaintiffs' attorneys cherry-picking the uninsured and underinsured motorists' benefits before we even get into the litigation process. So those are already gone. What was supposed to be a reimbursement statute for counties has been interpreted now by the Supreme Court to basically mean nothing. If you read Connelly v. City of Omaha and Werner, you're going to find that out. Both of those cases clearly indicate that the Supreme Court has parsed the Political Subdivisions Tort Claims Act to the point where there is no reimbursement. The feds are going to get the money on catastrophic cases, and I don't see the point in, as a public policy, changing that Tort Claims Act. In all the years that I've tried tort claim cases, I have never had an attorney miss the deadlines, ever, on filing a claim. [LB284]

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

Judiciary Committee
February 13, 2013

SENATOR LATHROP: I've got a question. [LB284]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB284]

VINCE VALENTINO: Yes, Senator. [LB284]

SENATOR LATHROP: Are you an opponent or a proponent? [LB284]

VINCE VALENTINO: I'm an opponent. [LB284]

SENATOR LATHROP: Were we on opponents? [LB284]

SENATOR ASHFORD: Yeah, we slipped right into opponents. [LB284]

SENATOR LATHROP: Because...okay. That's fine. I have a question or maybe a point to make with you. Somebody has a million dollars' worth of medical expenses, which you would agree now, since you've been practicing even longer than me, is not uncommon. [LB284]

VINCE VALENTINO: Not uncommon. [LB284]

SENATOR LATHROP: And when they don't have enough coverage, those people become Medicaid recipients and the state is thereby picking up the costs of their care. [LB284]

VINCE VALENTINO: Well, actually what happens... [LB284]

SENATOR LATHROP: You talk about the money going off to the feds. The reality is, a lot of these people with catastrophic injuries become Medicaid recipients and the state of Nebraska is paying for their medical care going forward. [LB284]

VINCE VALENTINO: Well, and the reality is that most attorneys will contact the Medicaid and get their bills reduced, dollar for dollar, and then reimburse Medicaid on whatever lien they have at the end. I mean, it's not like you have...they have a total bill cost that you pay, that the hospital sends you. Most recipients and most attorneys will direct their clients to get to Medicaid before we even get involved in the deep litigation. They'll collect the underinsured and uninsured benefits that are available... [LB284]

SENATOR LATHROP: Which is a credit. [LB284]

VINCE VALENTINO: Which would be a credit if, in fact, you didn't have the interpretation that's been given in the Connelly and the Werner cases. But they're not credits, in reality. [LB284]

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

Judiciary Committee
February 13, 2013

SENATOR LATHROP: Well, we do know that when the million dollars doesn't cover them, they have to...many of these people with catastrophic injuries, brain injuries, spinal cord injuries, then turn to the state of Nebraska and Medicaid to pay for a lifetime of care. Isn't that true? [LB284]

VINCE VALENTINO: Well, and the feds reimburse Medicaid expenses as well. [LB284]

SENATOR LATHROP: So that's all right, I mean? [LB284]

VINCE VALENTINO: I'm just saying the taxpayers pay for it one way or the other. Why should the county taxpayers be the ones that have to eat the entire cost? The million-dollar cap is larger than any other cap in about 37-40 states. Nebraska is one of the highest--one of the highest. [LB284]

SENATOR LATHROP: And the catastrophic case, the million dollars doesn't cover the medical expenses. Would you agree with that? [LB284]

VINCE VALENTINO: In most cases it won't in the long term. It depends on how old the person is. [LB284]

SENATOR LATHROP: Okay. Thank you. [LB284]

SENATOR ASHFORD: Yes, Senator Chambers. [LB284]

SENATOR CHAMBERS: Just one point. Before there can be any discussion of a cap, there must be liability. [LB284]

VINCE VALENTINO: True. [LB284]

SENATOR CHAMBERS: Somebody did something they should not have done and it was a proximate cause of injury to a person, and that person who was injured is the one seeking the amount of money, whatever it turns out to be. [LB284]

VINCE VALENTINO: The exception to that, Senator...and that's true, except the exception of that, as you well know, is police pursuits. That's strict liability. [LB284]

SENATOR CHAMBERS: Right. [LB284]

VINCE VALENTINO: We are the only state in the United States that has strict liability for a police pursuit. [LB284]

SENATOR CHAMBERS: Because of me. [LB284]

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

Judiciary Committee
February 13, 2013

VINCE VALENTINO: I know. [LB284]

SENATOR CHAMBERS: And I think there have been some police officers' families who have wound up being pleased, although the officers themselves had opposed it, because their cruisers were struck and they were seriously injured or a family member. So that's why I didn't want to bring that up. I didn't want to boast. [LB284]

VINCE VALENTINO: Well...(laugh). [LB284]

SENATOR CHAMBERS: But here's the thing. The county bears responsibility for what its agents or representatives do. And when I say county, now I meant the populace that comprises the county. And it's not going to cost any individual in the county that much money. It would be negligible, not even noticed in the broader scope of things, and that's what I'm looking at. Your presentation was very well thought out, delivered very persuasively but not convincingly to me, so I don't want you to think I'm playing down the work you put into it or the presentation you made. [LB284]

VINCE VALENTINO: I don't think that point that you just made will sell well in Thomas County. [LB284]

SENATOR CHAMBERS: Where? [LB284]

VINCE VALENTINO: Thomas County or Arthur County, the small counties that have less than 1,000 or 2,000 people in it. [LB284]

SENATOR CHAMBERS: Then I'll say, like some of these people against medical coverage tell their employees: Don't get sick. So I'll tell them, tell their employees: Don't do anything that creates liability. [LB284]

VINCE VALENTINO: Well, and I think we have a very generous Tort Claim Act. There's not too many states that have a million-dollar cap, I can guarantee you, Senator. [LB284]

SENATOR CHAMBERS: All right, Mr. Scrooge. (Laugh) [LB284]

VINCE VALENTINO: Scrooge or not, that's the reality. [LB284]

SENATOR CHAMBERS: No, I know. [LB284]

VINCE VALENTINO: It's good to see you, Senator. Thank you. [LB284]

SENATOR ASHFORD: Thanks, Vince. [LB284]

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

Judiciary Committee
February 13, 2013

SENATOR DAVIS: Mr. Valentino, are you here representing yourself or...? [LB284]

VINCE VALENTINO: No, I represent the Nebraska Intergovernmental Risk Management Association, which consists of 79 counties and six Area Agencies on Aging. Thank you. [LB284]

SENATOR DAVIS: Thank you. [LB284]

SENATOR CHAMBERS: And he is a good lawyer. [LB284]

VINCE VALENTINO: Thank you, Senator. [LB284]

TOM MUMGAARD: Good afternoon. My name is Tom Mumgaard, T-o-m M-u-m-g-a-a-r-d, deputy city attorney for the city of Omaha. I'm here on behalf of the city of Omaha, opposing LB284. Omaha probably has the most experience with tort claims of any city in the state. We have over 370 tort claims filed against the city of Omaha every year. About one-third of those actually go to lawsuits. The others are settled at the claim process. That number tells us that very few people, if any, are having any difficulty with the one-year statute of limitations. Tort claims are being filed. We rarely see tort claims that are filed late and have to be turned aside. The effect of the lid and increasing the lid can be seen from looking at what happens to those tort claims. I looked back from 2007 and 2013. We found that there were seven lawsuits that had been affected in some way by the million-dollar cap. That averages about 1 every two years, or about 1 every 700 claims. The Supreme Court has recently...has several times looked at this, and they most recently looked at this in 2012, and they have repeatedly found that the lid limitation is a reasonable exercise of discretion by the Legislature, coming up with a balance between access to the courts, allowing people to get full recovery for their damages, and making government as cost-efficient as possible. The access to the courts...well, our experience with the claims we have is that very few people, 1 in 700 people, are in some way not getting full recovery for their damages. Those are the catastrophic injuries that you speak about. Most of the time those are...with some exceptions, those are typically car accidents. Now if you look at it that way, well, if it's only 1 in 700 people, what's the big deal about increasing it? It isn't really what I say. What the message there is, is that very few people would be affected by increasing the cap in this manner. On the other side of the coin, it would increase the cost of local government, because obviously we have to budget based on the risk, not on what actually occurs, because any one of those 370 claims per year could be the one that hits the cap. So we budget approximately \$2 million per year in our judgment fund for judgments and litigation expenses, roughly twice what the cap is. If this increased, we would see...you know, we follow the same...if this was adopted and we followed the same rationale, we would have to increase that by about \$4 million to hit a \$6 million judgment fund. It also has a day-to-day cost in that when we hire a contractor,

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

Judiciary Committee
February 13, 2013

we require that they get insurance at the same limit as our liability, the \$1 million and \$5 million, because if they do something that causes injury, liability may flow through them and end up in the laps of the city of Omaha and the taxpayers of Omaha. So they carry an insurance policy. We find that many of them have trouble right now getting the insurance policy for the \$1 million and \$5 million, particularly the small contractors. If this was adopted, I think that would be even more troublesome. We would increase the cost of government and lessen the competition in those kinds of contracts. So we oppose LB284. I'd answer any of your questions. [LB284]

SENATOR ASHFORD: Thanks, Tom. I don't see... [LB284]

SENATOR CHAMBERS: I would like to ask. [LB284]

SENATOR ASHFORD: Wait. Senator Chambers. [LB284]

SENATOR CHAMBERS: Mr. Mumgaard, and maybe this is not within the realm of what you do. If this were increased, the cap, would that lead to an increase in the property taxes that the city council would levy? [LB284]

TOM MUMGAARD: Well, I can't speak as to where the city would get the money, but obviously if... [LB284]

SENATOR CHAMBERS: I couldn't hear you. [LB284]

TOM MUMGAARD: Yes, if we needed to budget more for liability expenses and liability risk, that has to come from... [LB284]

SENATOR CHAMBERS: Is Omaha self-insured? [LB284]

TOM MUMGAARD: Yes, it is entirely. [LB284]

SENATOR CHAMBERS: And would this come under their self-insurance plan? [LB284]

TOM MUMGAARD: Yes. [LB284]

SENATOR CHAMBERS: Or do they have excess insurance with a company? [LB284]

TOM MUMGAARD: No, we're totally self-insured for liability purposes. We've looked at the excess insurance and we find that the premium for even the \$1 million and \$5 million coverage quickly eats up any savings that we would make by going to insurance. [LB284]

SENATOR CHAMBERS: And you're here speaking as a representative of the city of

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

Judiciary Committee
February 13, 2013

Omaha. [LB284]

TOM MUMGAARD: That's correct. [LB284]

SENATOR CHAMBERS: If I were injured and you were my lawyer, would you be saying the same thing? [LB284]

TOM MUMGAARD: If you...(laugh). Well, okay, Senator. [LB284]

SENATOR CHAMBERS: And you don't even have to answer. That was unfair. [LB284]

TOM MUMGAARD: No, you know, I'll answer that question. No. If you... [LB284]

SENATOR ASHFORD: Well, yes (inaudible). [LB284]

TOM MUMGAARD: If your injury was...I've had these cases, and when the injury is catastrophic and you have \$3 million of damages, someone is being hurt, without a doubt. That's that 1 in 700 claims. I can't sit here and tell you that nobody is hurt by this. I've seen the people. They don't recover. Now, obviously, I've also seen where they get that coverage, as Senator Lathrop points out. They get that from the state. So it's not as if they're going totally uncompensated. Somebody is recovering money. And what this would do if you increase it, is essentially, by the theory proposed, the idea that, well, all that we're doing here with the cap is moving damages over to the state and Medicaid. Well, if you increase the cap all you're doing is moving it back. You're moving the expenses that are now being paid to the state back to the shoulders of the cities and counties and local government. And that was the purpose in the \$1 million cap for local government whereas there is no cap in the state. The state is presumed to have a better ability to pay those damages. [LB284]

SENATOR CHAMBERS: Has the amount budgeted for liability claims ever been exceeded by the actual claims that are filed that have to be paid? In other words, has there been a situation where not enough money was budgeted to cover the claims that had to be paid? [LB284]

TOM MUMGAARD: Oh, yes. And we have to increase it over the year when that happens. I had one last year that we lost, and it's a little over a million dollars, about \$1.4 million. Well, when that gets paid, there's going to have to be a transfer from general fund into that judgment fund to pay it. [LB284]

SENATOR CHAMBERS: Okay. Now, I won't ask you the percentage, but are there claims that have to be paid as a result of action by police officers? [LB284]

TOM MUMGAARD: Well, I would point out that very few claims against police officers

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

Judiciary Committee
February 13, 2013

fall under the Tort Claims Act. The car accidents are about the only ones that ever would. Anything else dealing with their arrest or their police activity wouldn't fall underneath the Tort Claims Act anyhow. [LB284]

SENATOR CHAMBERS: So then they're...whatever they do is insignificant in terms of the overall amount of claims that are paid by the city? [LB284]

TOM MUMGAARD: Well, the numbers that I have here...you know, good point. The numbers I have here, the 370 per year, would include a small number, a handful of claims made that are not part of the Tort Claims Act. Without, you know, spending a lot of time looking back, I can't tell you how many that would be. [LB284]

SENATOR CHAMBERS: Well, that's...right. [LB284]

TOM MUMGAARD: Most of the claims, the vast majority are torts: negligence, car accidents, those types of things. [LB284]

SENATOR CHAMBERS: Okay. That's all I have. Thank you. [LB284]

SENATOR ASHFORD: Tom, I just have...and I thought Senator Chambers was getting into that here. What...I don't know what the...the city of Omaha's budget is \$285 million or 200 and...general fund budget. [LB284]

TOM MUMGAARD: Roughly, \$2 million a year. [LB284]

SENATOR ASHFORD: So basically less than 1 percent of the overall budget is being reserved for tort claims. [LB284]

TOM MUMGAARD: Oh, you're beyond me. I don't know what percentage it is. [LB284]

SENATOR ASHFORD: Well, I mean, if it's \$2 million, or if it's \$2 million and the budget is two point...or is \$285 million. And I was just wondering. To me, even if you were to add another \$2 million to the fund, you're still...you're still well below, I would think, what the cost of insurance would be. [LB284]

TOM MUMGAARD: Well, in the past we've found that's not true, because the cost of insurance, you pay it out and it's gone. With us, we pay what would be the premium; we can put that into the judgment fund. We still have it; we can still make use of it. [LB284]

SENATOR ASHFORD: Right. But I guess what I'm trying to get at is what's reasonable to budget for claims. I mean, we...Senator Lathrop handles claims for the Legislature, and I...we budget some amount to handle claims. I don't know how much it is. Maybe it's 1 percent, I don't know what it is. But it would seem to me...and that at the end of

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

Judiciary Committee
February 13, 2013

the...at the end of a year, and let's say you've used a million of it, does the other million go into the general fund and then you...? [LB284]

TOM MUMGAARD: No, it carries over. It's one of those funds that goes from year to year, and what happens is at the budget time they end up asking me what kind of lawsuits do we have that might score for... [LB284]

SENATOR ASHFORD: Right. And you have to look in your crystal ball and try to figure out. [LB284]

TOM MUMGAARD: I look in the... [LB284]

SENATOR ASHFORD: I guess... [LB284]

TOM MUMGAARD: And you know, I can tell you that we do that routinely. In fact, we have one now pending that probably will hit that million and be affected. [LB284]

SENATOR ASHFORD: Right. [LB284]

TOM MUMGAARD: So I look at it and say, well, how many of these pending lawsuits are going to be affected by the million-dollar cap. [LB284]

SENATOR ASHFORD: Right. [LB284]

TOM MUMGAARD: And I find that the vast majority of them are not. [LB284]

SENATOR ASHFORD: Are not. And I guess what I would say is I think it's important for you to come in and give the legal basis for this, but I think what we're really talking about is a budget issue and what is the responsible amount of money that should be set aside. I mean, the city of Omaha doesn't have any reserve to speak of. I mean, the state has a significant reserve. The city of Omaha doesn't. And so this is not to your point. I mean, what you're saying, I understand your point. When you're trying to...you're almost a risk manager on this. You're looking into the future and saying, you know, it looks like we're going to get hit for potentially \$1.5 million. That's your job. But if you look at it from a budget perspective, I think what John Lindsay is getting at is, is it irresponsible...is it not responsible or is it unreasonable for the city to, let's say, put \$4 million in a fund. As a percentage of their overall budget, it's pretty small. And the cost of doing business when citizens are at risk, which is Senator Chambers' point, that's kind of part of being a city. [LB284]

TOM MUMGAARD: Well, I would say from a budgeting standpoint, because this is a dedicated fund for a specific purpose, using percentages doesn't really make any sense. [LB284]

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

Judiciary Committee
February 13, 2013

SENATOR ASHFORD: Well, but it comes out of the general fund, because you're transferring it out of the general fund. [LB284]

TOM MUMGAARD: Well, it's tax money. [LB284]

SENATOR ASHFORD: Yeah. [LB284]

TOM MUMGAARD: But, you know, it goes to a specific purpose. So because you can only spend it on that purpose, you have to look, what's the probable expense of that purpose. [LB284]

SENATOR ASHFORD: Right, I get that part. That's...but if you're looking at it from the public's perspective and you're paying tax dollars in and it's...you are potentially...you could potentially be damaged by the action of the city. You are going to want, I would think as a taxpayer, you can say, well, it's not happening to me so I'd rather the money go somewhere else. But you could be hit by a police cruiser. You could...any number of things could happen. So it would seem to me that the public would want to, say, make sure there's enough money in there and make sure, so that if I am injured or if my neighbor is injured or my family member is injured and the city is liable, that there's enough money so I don't have to go into Medicaid or...and that's not your point. I understand your point. I'm looking at it from a budgetary perspective. [LB284]

TOM MUMGAARD: You know, I guess from a budget... [LB284]

SENATOR ASHFORD: Rather than a... [LB284]

TOM MUMGAARD: Yeah, some people aren't going to recover. But if you increase the amount that can be recovered, then obviously we have to increase the amount that we stick aside to pay for that. [LB284]

SENATOR ASHFORD: Right. And I'm not...and what I'm striving for, we...I've heard this bill probably 25 times in my career here, but I'm wondering if maybe we're looking at it the wrong way. Instead of looking at liability as the driver of the policy, it's more what is a responsible amount of money to put aside to budget for damages to a member of the public. That's all I'm saying. [LB284]

TOM MUMGAARD: And I would say that if you do it that way, our history tells you, you're going to have a bunch of money sitting there doing nothing. It's put... [LB284]

SENATOR ASHFORD: Then you could give it back to the general fund or you could put it in a reserve. But anyway, thanks, Tom. Appreciate it. [LB284]

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

Judiciary Committee
February 13, 2013

SENATOR LATHROP: Wait a minute. Did you have a question? [LB284]

SENATOR ASHFORD: Yes, Senator Davis. [LB284]

SENATOR DAVIS: No, I'm good. [LB284]

SENATOR LATHROP: Oh, I do. I just want to go through a hypothetical and then I'm going to get to a question. And I always appreciate when you come down here. We're not only friends but I respect you as somebody that's representing the city of Omaha. [LB284]

TOM MUMGAARD: It's always a pleasure. [LB284]

SENATOR LATHROP: If you have someone with a catastrophic injury, this isn't an issue for the garden-variety police run into somebody who gets a sore neck. That guy gets compensated in full. It's the catastrophically injured that this bill affects, the 1 in 700. Right? [LB284]

TOM MUMGAARD: Yes. [LB284]

SENATOR LATHROP: If you have an insurance policy, somebody has a catastrophic injury and their health insurance comes to them through their employer, a private employer, and they have a million dollars in medical expenses, that insurance policy takes all of this million dollars and leaves that person with nothing. Right? [LB284]

TOM MUMGAARD: Unless some deal can be worked out with the insurance company, yeah, that's what would happen. [LB284]

SENATOR LATHROP: But the health insurance plans that are issued, an employer-sponsored health insurance plan, for a guy who has a million dollars in coverage, he gets crippled...and I'll just use somebody with a brain injury or a spinal cord injury so people understand what we're talking about, because there is the 1 in 700 case, and that person has...the health insurance company insists on taking the million dollars that they can get now and that person gets nothing for lost wages, nothing for spending the rest of their life in a wheelchair. And that's the reality for the guy who is the 1 in 700. So here's the question, Tom. At what point in time do you see the city of Omaha being okay with raising this? If today isn't the right time, if we haven't done it since 1985, when do you see it being okay? Or is the city and the political subdivisions always going to say, it's never the right time, it's never a good idea, because, by gosh, it's going to cost the city more money? Because those are real people that live in the city who get hurt by someone's negligence that have to spend the rest of their lives in a wheelchair or with a brain injury, and their families are watching them and now somebody isn't working. When? Five years? [LB284]

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

Judiciary Committee
February 13, 2013

TOM MUMGAARD: Well, let me... [LB284]

SENATOR LATHROP: Shall we stick with a million for another five? [LB284]

TOM MUMGAARD: Let me address your hypothetical...your hypothetical at one point. You're talking about something that we don't have any control over. And so if you want to stop money paid by the taxpayers for damages from flowing to an insurance company and depriving the victim of compensation, you need to change a different statute. We'd probably be in... [LB284]

SENATOR LATHROP: I don't think we can. In an ERISA control policy, I don't think we can. [LB284]

TOM MUMGAARD: Yeah, I expect you would have a problem. But we would be in favor of that. We don't like seeing taxpayer money being funneled through the victim back to the insurance company that received premiums for that insurance. But if you increase this limit, all you're doing is increasing the amount of money that flows back to the insurance company, because if they have paid \$3 million, they'll take the full \$3 million. So all that you've done is move more money from the taxpayer to the insurance company. Now, as far as your question of when, you know, frankly, I was a bit surprised with the increasing medical expenses that certainly we see in our daily life and I see in handling litigation. I thought that the numbers of cases that approached the million dollars would have increased more than it has. I was surprised to find that as I went back over the last six years, six-plus years, I could only find seven cases that I felt were affected by that lid...seven tort cases. So when you ask when, I guess the reality is, if costs continue and medical costs continue, someday, yes, it does need to be increased. But I would say you approach it in a rational sense and you don't increase it arbitrarily just because the cost of living has gone up. You don't increase it based upon a percentage,... [LB284]

SENATOR ASHFORD: But what's the basis...but what is the rationale... [LB284]

TOM MUMGAARD: ...you increase it based upon facts. [LB284]

SENATOR ASHFORD: Tom, what's the rational basis then? I mean, if as a percentage of the budget, it's 1 percent, and it was maybe 5 or 10 percent in 1985, what is the rational basis for saying don't increase? I mean, I just don't even... [LB284]

TOM MUMGAARD: Well, I would say that if the goal is to make sure that people are not unfairly deprived of their damages, you do look to see whether that's happening. And when some...you know what the measure is? I don't know what it is, but at some point, yes, if the limit is so low that it is affecting a significant number of people, then you have

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

Judiciary Committee
February 13, 2013

to step in and help those people. All I'm telling you now is we've not reached that point, at least in the city of Omaha. Thank you. I have nothing further. [LB284]

SENATOR CHAMBERS: One more. Will we reach it after you've retired and the next person would have to deal with this? [LB284]

TOM MUMGAARD: Oh, I'm sure that the next lawyer will lose more than I do. Yes, sir. [LB284]

SENATOR CHAMBERS: Okay. (Laugh) [LB284]

TOM MUMGAARD: Thank you. [LB284]

SENATOR ASHFORD: Next...let's see, opponent. [LB284]

BRIAN DOYLE: Good afternoon. My name is Brian Doyle. I'm with the Eastern Nebraska Development Council. We're a group of developers, home builders, engineers, attorneys, financial advisors. We...and my office represents a large number of sanitary and improvement districts. SIDs are taxing districts that would be affected by this bill. They are subject to the Tort Claims Act. In Douglas County, there's 152 SIDs; Sarpy County has 113. The tax bases of these districts range anywhere from less than \$1 million in taxable value up to \$175 million. Currently, all the SIDs that we represent have liability insurance up to the maximum amount under the Tort Claims Act. One district as an example, SID 419, which is located just outside of Bennington, has a total taxable valuation of \$12 million. That's all the property and their total valuation. They currently spend \$2,500 a year to insure themselves up to the current state limit. In speaking with our insurance company, there is only one underwriter in the state that provides public liability insurance to SIDs. He informs me that to go up to this cap would cost SID 419, for example, approximately \$6,000 a year. SID 419's total general fund budget is \$44,000 a year. Currently, insurance is 6 percent of their budget. That would take it up to 14 percent. This would be typical of not only this SID but every SID, the cost of insurance would go up dramatically. That's all I have today. If you have any questions, I'd be happy. [LB284]

SENATOR ASHFORD: Senator Chambers. [LB284]

SENATOR CHAMBERS: You understand I know the difference between you representing the SIDs, and the SIDs and what they do, and we who are policymakers, we have to be concerned about the people who would be harmed as a result of negligent conduct by one of these political subdivisions. So whatever burden that the subdivisions might tell me they will experience comes secondary. I have to look at what I think would be just in terms of compensating the person who was injured. [LB284]

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

Judiciary Committee
February 13, 2013

BRIAN DOYLE: Um-hum. [LB284]

SENATOR CHAMBERS: Then if the SID cannot afford the cost of doing business, I guess it goes out of business. SIDs, are they mandated by statute? [LB284]

BRIAN DOYLE: Yes. It's a taxing district much like a city or school district. It levies taxes. [LB284]

SENATOR CHAMBERS: Can they go out of business though, if they want to? [LB284]

BRIAN DOYLE: Could you abandon the SID? [LB284]

SENATOR CHAMBERS: Yes. Suppose nobody runs for the position and you have nobody serving. [LB284]

BRIAN DOYLE: There's a procedure to appoint an administrator to run the SID. I don't believe a taxing district could go out. The SIDs issue general obligation bonds, so they have an obligation to the taxpayers to pay those. I don't think that an SID could just disappear, because of the limit. [LB284]

SENATOR CHAMBERS: So who then would do the work of the SID members if they quit? [LB284]

BRIAN DOYLE: There is a procedure for a court-appointed administrator who would administer the district. [LB284]

SENATOR CHAMBERS: So the court-appointed administrator says, now we have this higher cap, and it would be a burden if we have to pay this particular claim. But if it's an existing claim, then they're just going to have to pay it. You would look at what might happen after that. Are they subject to a cap in terms of how much they can levy, the SIDs? [LB284]

BRIAN DOYLE: Yes. [LB284]

SENATOR CHAMBERS: And if the amount that they have to pay is more than...but they're insured. [LB284]

BRIAN DOYLE: Correct. [LB284]

SENATOR CHAMBERS: Well, the insurance company would pay it, wouldn't it? [LB284]

BRIAN DOYLE: Correct. [LB284]

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

Judiciary Committee
February 13, 2013

SENATOR CHAMBERS: Oh. Then I don't even sympathize with you. No, I'm just kidding. I understand what you're saying. But again, we have to be looking more, I think, at the people who are going to be harmed. [LB284]

BRIAN DOYLE: Sure. [LB284]

SENATOR CHAMBERS: Okay. [LB284]

SENATOR ASHFORD: I don't see any. Thank you. [LB284]

ROGER COX: (Exhibit 4) Senators, good afternoon. My name is Roger Cox; that's R-o-g-e-r C-o-x. I'm a lawyer in private practice here in Lincoln with the Harding and Shultz law firm. We serve as general counsel to the League of Nebraska Municipalities as well as the League Association of Risk Management, and I'm appearing on their behalf today, and would like to share some other perspectives with you. Firstly, one part of this bill, as Senator Conrad indicated, would extend the time for filing a notice of claim. That part of the bill was identically before this committee in LB115 back in 2011 that was introduced by Senator Conrad. And this committee, I believe, wisely decided to indefinitely postpone that bill. There are a number of reasons for that and I'll be happy to try to address some of those if there is time. But it sounds like most of the interest of the senators and the questioning has dealt with the issue of the cap and the catastrophic claims, so I'd like to bring some other perspectives to that if I may. The points that Senator Chambers and Senator Lathrop have raised are certainly legitimate ones. We know in this day and age that some people are going to be injured badly enough that whatever insurance or assets are there simply aren't going to be enough to cover. But let's be very careful before we talk about how political subdivisions should have to get insurance that will cover whatever a higher cap might be for the following reason. If any of us have the misfortune of getting hit by a negligent driver on our way home from this hearing, and we suffer one of those catastrophic injuries that Senator Lathrop talks about, we may have a million dollars or more in damages. And this Legislature, or at least its predecessors, has said that driver needs to have insurance and can get away with as little as...what is it, Senator, \$25,000? And if you have the good fortune to be hit by an intelligent person of some means who has an umbrella coverage, maybe they have a million-dollar umbrella policy and maybe they don't, but the reality is this: It would be wonderful if every person injured, due to the fault of another, could be fully compensated. That doesn't happen in this state or in this world. It's limited by what insurance coverage someone has; and once you get past that insurance coverage, it's limited by whatever the assets are of the person who is responsible. I'm sure Senator Lathrop has had many cases, and his partners have, in his law firm where there simply isn't enough money to cover the damages that he would seek if he went to court. And so they settle and take what's there for the insurance. There may have even been cases where you chase the tort fees or go after some personal assets. That doesn't happen real often but it's only as deep as that person's pocket. This is not a city of Omaha tort

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

Judiciary Committee
February 13, 2013

claims act. This is not a Douglas County tort claims act. This is the Political Subdivisions Tort Claims Act. And just as the gentleman representing the SIDs indicated, there are other political subdivisions. We have cities and counties and school districts. We have learning communities. We have power districts. We have all sorts of units of local government, and some of them don't have anything approaching the budget that was being discussed about Omaha. Some of them don't have any further money they could spend. Some of them are already to the wall based upon caps on the levies that are already imposed upon them by law. So I see the time has expired. The concern is what is a reasonable amount. And although we've said, yes, someone with a catastrophic brain injury would go beyond the million dollars, I haven't heard a lot of people say, here is a large group of people who's gone without being compensated. And I'll accept at face value the 1 in 700 that Tom mentioned. I'm not familiar with that data. As to the time frame... [LB284]

SENATOR ASHFORD: I guess I just don't get that argument. I mean, I just...enough said. I don't get that. I mean, it's still a risk that you take. I mean, so...the fact that there aren't a lot of them means that the cities and that you represent do a pretty good job of risk management, it seems to me. [LB284]

ROGER COX: Well, and don't forget, Senator, also the insurance is going to cost additional money... [LB284]

SENATOR ASHFORD: No, I know. But the cost...businesses have a cost of... [LB284]

ROGER COX: They do. [LB284]

SENATOR ASHFORD: I mean, at some point the costs go up, and they go up for everybody in this room. And I realize taxpayers are...a city is a conglomeration of taxpayers. I get that. But to not raise it since 1985, I just fail to see the, you know, the overriding reason to do that. But I get your point. [LB284]

ROGER COX: Right, but... [LB284]

SENATOR ASHFORD: Thank you. Do we have any other questions of...? [LB284]

SENATOR DAVIS: Yes. [LB284]

SENATOR ASHFORD: Yes, Senator Davis. [LB284]

SENATOR DAVIS: Mr. Doyle (sic--Cox), you presented us these letters from some of these various communities. [LB284]

ROGER COX: Yes, I did. [LB284]

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

Judiciary Committee
February 13, 2013

SENATOR DAVIS: Have you done any kind of an analysis on what the cost would be to these communities? [LB284]

ROGER COX: I have not done that, and I'm not able to bring that to you. The three letters--I should probably state this for the record, Mr. Chairman, with your permission--come from the mayor of Gering, the mayor of Atkinson, and the city administrator of the city of Holdrege, and they were all to their respective individual senators in opposition to the bill. [LB284]

SENATOR DAVIS: And ultimately, if we ended up raising this up, essentially what's going to happen is most of this revenue is going to be diverted into insurance company proceeds through premiums, probably. Right? [LB284]

ROGER COX: There would certainly be increased premiums. I'm not able to tell you how much, but I think it would be a strain on many small political subdivisions. [LB284]

SENATOR DAVIS: Have you seen this letter from the Nebraska Intergovernmental Risk Management Association? [LB284]

ROGER COX: I have not. [LB284]

SENATOR DAVIS: It just...of the 35 states that are listed, you know, Nebraska is second in terms of the limit for individual. Just for your information. [LB284]

ROGER COX: Second from the top or from the...? [LB284]

SENATOR DAVIS: Second to the top. Yeah. [LB284]

ROGER COX: Right. And I think that's certainly a factor that this committee should balance as it decides whether to advance the bill, which I would ask that you not do. [LB284]

SENATOR DAVIS: Okay, thank you. [LB284]

SENATOR CHAMBERS: Excuse me. [LB284]

ROGER COX: Yes, Senator. [LB284]

SENATOR CHAMBERS: Mr. Cox, you are here as a lobbyist and you are a lawyer, so--no disrespect intended--I take everything you say with a grain of salt. You're representing a client or a group of clients who don't want to spend any more money. And I don't think there's a client that you have represented who would voluntarily say,

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

Judiciary Committee
February 13, 2013

I'm willing to spend more money. So your presentation has not been convincing to me at all, and I'm just one person and I have heard on other committees I sit on, representatives of the cities, the counties, and these other smaller subdivisions, and they always have a pitiful mouth. They put a "we can't afford this, we can't afford that; we can't do this and we can't do that." Then maybe the Legislature made a mistake in creating so many of these entities, and we have to abolish them all, consolidate, and have fewer of them where each one has more in the way of assets that can be tapped. And even though some of these people might want to belong on an SID or something, say you can't form an SID until you have a certain amount of assets within that boundary. The point I'm getting to is this, and it's what I suggested to the person before you: Our interests have to be different from your interests. You representing those entities can say only what they authorized you to say. We accept what other people tell us as input, but then we have to ultimately make a judgment that we think is in the best interests of the people and not the city. The city is not a person. The county is not a person. People are whom we are concerned about. And any city manager, any city mayor, any councilmember, any SID member, as soon as he or she is no longer in that position, no longer do they have the interests that they had when they were there, and they'll stop talking like that. But what we put in place as a policy will last perhaps long after we're gone. So we look beyond today or even our presence as a member of the Legislature. And when you go back to talk to your people, tell them they can ask me if I think you gave a good presentation, and I'll say, yes, they ought to give you more money. But in the meantime, we think that the injured are entitled to more perhaps. [LB284]

ROGER COX: Senator, I appreciate your thoughts. Two very quick points. One, and I have some friends who are lobbyists... [LB284]

SENATOR ASHFORD: Those weren't bad points, so I'd maybe leave them at that. I mean, he was pretty complimentary. I don't know if...(laughter). [LB284]

ROGER COX: I understand that. And maybe I'm out there on the high wire, Mr. Chair, but I have some friends in the room who are lobbyists. Just for the record, I am not a lobbyist. I'm simply here as a lawyer appearing as a witness on behalf of the entities. So I do understand Senator Chambers' points. [LB284]

SENATOR ASHFORD: Is there a difference? [LB284]

SENATOR CHAMBERS: Are you paid? [LB284]

ROGER COX: I think there's a... [LB284]

SENATOR ASHFORD: Wait a second. [LB284]

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

Judiciary Committee
February 13, 2013

ROGER COX: There's a subtle difference. [LB284]

SENATOR CHAMBERS: Are you a volunteer? [LB284]

ROGER COX: No, I am not a volunteer, Senator. [LB284]

SENATOR CHAMBERS: Okay. Well, to me, anybody paid to represent anybody before the Legislature fulfills the role of a lobbyist, because they're pushing the interests of the person or group they represent. Those are your principals, right? P-a-l-s. [LB284]

ROGER COX: Well, at least appearing as a witness before this committee, that's accurate. [LB284]

SENATOR CHAMBERS: If they hadn't paid you, you wouldn't be here today, would you? [LB284]

ROGER COX: Probably not. [LB284]

SENATOR CHAMBERS: Probably? [LB284]

ROGER COX: Probably not. I'm an interested citizen. I might be here. I would add this last point. Senator Chambers... [LB284]

SENATOR ASHFORD: One last point and then we're going to go on. [LB284]

ROGER COX: Senator Chambers said that people like my clients come before the committee and give a sad story about how they don't want to pay any money and that his interest is to fully compensate people. If that's truly the view of this committee and the Legislature, then where is the raising of the limit of automobile liability to...what do you want, \$5 million, \$12 million? And if you think that you've heard people in the insurance industry and in government say, we can't afford it, wait till your constituents say, I can't afford a premium of what would be five-figure, six-figure numbers to get to that level of coverage. [LB284]

SENATOR CHAMBERS: I can't let that go. The idea that somebody as intelligent as you are talking to somebody as intelligent as I am, but obviously you don't think so, to try to compare... [LB284]

ROGER COX: I...that's not correct, Senator. [LB284]

SENATOR CHAMBERS: ...a private citizen and his or her assets, with the assets of a city or a county, is preposterous. [LB284]

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

Judiciary Committee
February 13, 2013

ROGER COX: What I was talking about, Senator, was the interest of the injured party, which is what you said you wanted to be sure you allowed for full compensation. [LB284]

SENATOR CHAMBERS: And we are talking about... [LB284]

ROGER COX: Shouldn't that call for auto coverage that would... [LB284]

SENATOR CHAMBERS: I said the ones you are representing. You are not representing private citizens. You're representing political subdivisions. [LB284]

ROGER COX: I'm sorry. I thought you were...I thought you were doing policy for the good of the citizens of the state. I guess I misunderstood. [LB284]

SENATOR ASHFORD: Oh, I think he is. And I think that's fine. Thank you very much. [LB284]

ROGER COX: Okay, thank you, sir. [LB284]

SENATOR ASHFORD: Yeah. John, what do you have to say? How many other opponents do we have? [LB284]

JOHN BONAIUTO: Senator Ashford, members of the committee, John Bonaiuto, J-o-h-n B-o-n-a-i-u-t-o, and I am a registered lobbyist representing the Nebraska Association of School Boards, Nebraska Council of School Administrators. And listening to the discussion and the introduction of the bill, I can appreciate why Senator Conrad brought the bill to the committee. And the folks I represent wanted me to just indicate their concern and they wanted to be on record as an opponent because of their budgetary concerns and the higher cost of what coverage might be for school districts. And with the public schools this year in this session, we know that there are a lot of moving parts. We're not sure what healthcare costs are going to look like on top of this. We have retirement issues. And I know that there will be a bill to try to figure out how to keep the retirement system solvent and we'll have to deal with state aid this year. So in the realm of moving parts, this is one that is a concern to school districts. With that, I'm going to end my testimony. [LB284]

SENATOR ASHFORD: Yes, Senator Chambers. [LB284]

SENATOR CHAMBERS: Is Omaha Public Schools a member of your association? [LB284]

JOHN BONAIUTO: Yes, it is, Senator Chambers. [LB284]

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

Judiciary Committee
February 13, 2013

SENATOR CHAMBERS: I don't feel sorry for a school district which in a five-year period will pay \$13 million to a law firm which blunders and puts them into all kind of political difficulty, and they still pay that large amount of money to a law firm from whom I think they get nothing. So as compared to them throwing that money away on those kinds of expenditures as opposed to what's happening to people who are injured, I have no sympathy. So you ought to put them out of your organization. That's all I have. [LB284]

SENATOR ASHFORD: And their dues probably haven't gone up, Senator Chambers. [LB284]

JOHN BONAIUTO: That's true. (Laugh) [LB284]

SENATOR ASHFORD: John, thank you. Let's go to...any other questions? I don't see any. Next witness. [LB284]

ROBERT HILSKE: (Exhibits 5, 27, 29, and 30) Members of the committee, my name is Bob Hilske and I'm the manager of the Nemaha Natural Resources District, and I'm representing the Nemaha NRD as well as the Nebraska Association of Resources Districts. I also am passing out testimony from Glenn Johnson who is the manager of the Lower Platte South Natural Resources District, and he has some information there from the Nebraska Water Coalition. I'm going to try to speed this up because a lot of this has been repetitive from what's been testified here before. But basically we're here simply because we're concerned that if we increase the limits as proposed in the bill, it may make it very cost-prohibitive for us to either find or pay for the additional premium costs that we see with our insurance. We do some very unique activities, some of which are very difficult for insurance companies to understand. And one of those things are the numerous dams that NRDs operate throughout the state that help protect Nebraskans from flooding. We're located in southeast Nebraska. We have over 300 such structures scattered throughout our NRD in the Tecumseh area. Nebraska has one of the best dam inspection programs and maintenance programs in the state; yet, insurance companies are very reluctant to insure us because of our dam exposure. Right now, there's only a couple of carriers that are willing to insure NRDs for the dam exposure, and that's about 15 districts out of the 23. And those carriers have been declining out of the market over the last few years. To give you an example, in fiscal year 2012, the Nemaha NRD's total premium for liability insurance was about \$12,800, and that covered the full exposure that we have in the statutes today. The same company for the same insurance, for 2013, offered it to us at a premium of \$64,000. That was a 400 percent increase in one year, and they told us it was because of our dam exposure. Throughout the 40-year history of the NRDs, we've never had a liability claim because of a dam failure within the state of Nebraska. So that was a very difficult challenge for us to swallow. And we actually, in our district, reduced our overall coverage by a couple million dollars, so we only had to face about a \$150 million increase. But what it comes down to, if we're concerned that if insurance becomes

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

Judiciary Committee
February 13, 2013

unaffordable or impossible to get, NRDs, or the burden for paying damages or insurance premiums, are going to fall on the taxpayers. And unlike the private sector, we can't raise the price of our product or service to cover additional liability costs. We've got to raise taxes or reduce some program that we have out there. And the question is, does the average citizen want to lose something like flood control because we have to pay for liability insurance? Liability insurance is important because it not only provides protection for the policyholder in the event that there is a liability, it also protects the person that is awarded the damage because it helps assure that they're going to get the damages that they were awarded. So bottom line, I think what we...you know, as you go through the process of considering this particular bill, you need to kind of weigh both sides and understand what the impacts are going to be in both directions. And with that, we definitely would urge you to postpone this bill, and I'd take any questions. [LB284]

SENATOR ASHFORD: I don't see any. Thank you very much. Next opponent. [LB284]

ELAINE MENZEL: (Exhibits 6, 7, and 8) Chairman Ashford and members of the committee, my name is Elaine Menzel. It's M-e-n-z-e-l, and I'm here on behalf of the Nebraska Association of County Officials. I am having passed out documents from both Adams County and Lancaster County in opposition to this legislation as well, and also a handout that provides a chart. I believe Senator Davis might have referred to it, but it has to do with a state-by-state comparison on the notice provisions in the other states as well as the cap limits for those other states. Not all 50 states are listed, and the reason that is, is because some of those states do not directly address the notice provisions or have a statutory cap. However, as referenced earlier, there are essentially 35 states with statutory caps. I'll try not to be repetitive, therefore, I'll just highlight a couple of things. One of the things that I did want to mention is that in my past research, I believe it was 1968 that the Legislature actually had a study related to the Political Subdivision Tort Claims Act, and they initiated the framework in 1969, I believe. And I believe that was based on the Federal Tort Claims Act, and they modeled it after Iowa as well. I'm certainly not contesting the fact that it has been 1985 since they've modified the cap limits. However, when you look at Nebraska in comparison to what the other states are doing, we are significantly higher both per individual and per occurrence. In fact, if I remember correctly, Nebraska is the highest per individual with the exception of one state that's 1.8. But then when you look at what they do per occurrence in that state, it's essentially a \$1.4 million difference. So that's the basis in large part for our contention. I won't go into...we do oppose this legislation for the two reasons that there would be modifications to the Tort Claims Act, and that's both the notice provisions and the statutory caps. There is a court case by the Nebraska Supreme Court and I don't have the name of it, but I think it's City v. Willis. But they went through about five different things as to the rationale as to why a one-year notice was a better case for doing that, such as prompt investigation, opportunities to repair, fiscal planning, and some other issues. I would certainly be glad to follow up with the committee if so desired on some of the other issues I was going to raise, but at this point I'm going to

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

Judiciary Committee
February 13, 2013

ask that you indefinitely postpone this legislation. I would be glad to open...receive any questions if you have any. [LB284]

SENATOR ASHFORD: I don't see any. Thanks. [LB284]

JAMES HAMILTON: Senator Ashford and members of the committee, my name is James Hamilton and I am an attorney for Lincoln's municipally owned electric utility, Lincoln Electric System; and I'm here testifying in opposition to LB284 on behalf of the Nebraska Power Association. Nebraska Power Association is an association of various public power providers throughout the state. Our members take very seriously and hold dear Nebraska's placement way at the bottom of all those states across the nation in having the lowest electric utility rates. That status is in jeopardy if we talk about raising the cap of the Political Subdivisions Tort Claim Act. These political subdivisions that we're talking about, power districts that Mr. Cox referenced, we have one means of raising funds and that is the cost comes from ratepayers. And I want to be clear, we are not talking about the unique concern. I think one of the testifiers mentioned the 1 in 700. I think it was Mr. Valentino talked about 1 in 700, or somebody did. One in 700 of these claims are those that hit that cap or exceed that cap. We're not talking about the rare instance where that happens where we would pass that cost along to the ratepayer. We are talking about adjusting or adjusting budget to cover that risk through the purchase of insurance or reinsurance. And that is something for a political subdivision, the smaller political subdivisions like the power districts, those that we would cover, clearly we would cover it. And I'm not here to tell you that we can't afford it. We would afford it. We would have to afford it. The way we would afford it is we would simply pass that cost along to the ratepayer. And that is our concern as an organization, because every year there are federal regulatory issues that require that we raise our rates. Every year there are other economic factors that require that we raise our rates, and every year that that happens it gets harder and harder upon citizens to raise those rates. It gets harder for us to raise those rates on our citizens. That's the problem with the raising the cap, because it has to be passed along and it is passed along to the ratepayers. That's the only way we have to pay for it. So with that, we would just ask that this committee indefinitely postpone. [LB284]

SENATOR ASHFORD: Senator Chambers. [LB284]

SENATOR CHAMBERS: How many ratepayers do you have, do your clients have, if you have any idea? [LB284]

JAMES HAMILTON: Well, Senator Chambers, that would vary, obviously, depending on...I mean, from the small municipally owned utilities in this state to Lincoln Electric System is one of the largest municipally owned utilities in the state. [LB284]

SENATOR CHAMBERS: So you're speaking of what each individual supplier would

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

Judiciary Committee
February 13, 2013

have to pay rather than the entire group... [LB284]

JAMES HAMILTON: That's correct. [LB284]

SENATOR CHAMBERS: ...putting into an insurance pool. Have they ever thought of doing anything like that? [LB284]

JAMES HAMILTON: I can't really speak to that, Senator. I would have to say I don't imagine that that's been something that's been proposed. [LB284]

SENATOR CHAMBERS: Okay. [LB284]

JAMES HAMILTON: I know currently I can tell you that Lincoln Electric System does insure for these type of scenarios. And in that particular situation we would have to increase that coverage and our premium would increase significantly. [LB284]

SENATOR CHAMBERS: And you're representing Lincoln? [LB284]

JAMES HAMILTON: I am representing the Nebraska Power Association. [LB284]

SENATOR CHAMBERS: Okay. Okay, that's all I have. Thank you. [LB284]

SENATOR ASHFORD: Yeah. And I don't know if you're correct on the rates, but you may be. I know OPPD rates have been going up, seem to be, and the caps have remained the same. So that must not have much to do with that. [LB284]

JAMES HAMILTON: Well,... [LB284]

SENATOR ASHFORD: Why do you think OPPD rates are going up every year? [LB284]

JAMES HAMILTON: I would say it's probably similar to any of the other members of the Nebraska Power Association, that those... [LB284]

SENATOR ASHFORD: Well, it doesn't have to do with caps, I guess is what... [LB284]

JAMES HAMILTON: Well, no, that's true. But it doesn't...that doesn't necessarily follow then, Senator, that if we raise the caps, that they won't go up. I guarantee you that if you... [LB284]

SENATOR ASHFORD: No, they'll probably go up. I'm just trying to understand it, if the caps...I understand your point and I understand public power. I've just...it's great, but I don't think it's had such a dramatically positive impact on rates in the last few years, the last five to ten years, even though I do accept your point. Thank you very much. [LB284]

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

Judiciary Committee
February 13, 2013

JAMES HAMILTON: Thank you. [LB284]

SENATOR ASHFORD: Do we have any other testifiers? I think you're excused. Thank you. [LB284]

JAMES HAMILTON: Thank you. [LB284]

SENATOR ASHFORD: (See also Exhibits 31-36.) Any neutral testifiers? Okay, we're going to go to Senator Kintner's LB482. Senator Kintner, now we're going to have his bill, LB482. Now does everybody know about signing the sheets that are up in the...? Okay. And you can turn...are we going to turn them into you, is that what we're doing? We'll turn them into the pages. Welcome, Senator Kintner. We have a light system, and it's designed to have the opportunity for as many people to testify as possible. And it's a three-minute light system. So when you start there will be a green light that will go on. It will remain on until about 30 seconds or so to go, then the yellow light will come on. And then, at that point, we'd ask you to sum up. And then the red light will come on. And then, when the red light comes on, your seat ejects you up into the ceiling. (Laughter) [LB284 LB482]

SENATOR KINTNER: Uh-oh. [LB482]

SENATOR ASHFORD: We haven't had...we haven't done that yet, but...well, no. Yeah, no, I understand. And then we'd have some real liability. I'm glad we've got a low cap. (Laughter). So... [LB482]

SENATOR KINTNER: So want me to do this in three minutes? [LB482]

SENATOR ASHFORD: No, you're okay, Senator Kintner. [LB482]

SENATOR KINTNER: You...so as...I can go... [LB482]

SENATOR ASHFORD: You have an unlimited period of time, within reason. [LB482]

SENATOR KINTNER: Okay, I go...okay, that's good. I like that, within reason. [LB482]

SENATOR ASHFORD: Okay. [LB482]

SENATOR KINTNER: (Exhibits 9-15) I'm reasonable. Bill Kintner, B-i-l-l K-i-n-t-n-e-r. Mr. Chairman and members of the committee, I can honestly say I am pleased to be here. LB482 is simple. It protects the private property rights of Nebraskans and ensures that this body, the Legislature, sets policy for Nebraska. The right to own property and use it to its full extent is the basis of a free society and a well-functioning economy. One of our

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

Judiciary Committee
February 13, 2013

founding fathers, James Madison, said, quote, government is instituted to protect property of every sort; as well as that which lies in the various rights of individuals...this being the end of government, that alone is a just government, which impartially secures, to every man, whatever is his own, unquote. Unfortunately, private property rights could be infringed upon by policies advocated by the United Nations and the International Council for Local Environmental Initiatives. The goals of these organizations come directly from the United Nations Agenda 21. If you haven't heard of this policy, you're not alone. I don't think many of the elected officials around the country that voted to implement the concepts in Agenda 21 are even aware of the plan they voted in favor of implementing. Gary Lawrence, the advisor for the President's Council on Sustainable Development is quoted as saying, quote, participating in a UN-advocated planning process would very likely bring out many...who would actively work to defeat any elected official...undertaking Local Agenda 21, so we will call our process something else, such as comprehensive planning, growth management, and smart growth, unquote. Now I'm in favor of being good stewards of the environment and growing sustainability. But these decisions must be made and implemented by Nebraskans, specifically the Legislature, if it's statewide, and not a foreign organization based in Bonn, Germany. Agenda 21 is a set of guidelines for global management of resources adopted by the United Nations Conference on Environment and Development in 1992 by President George Bush. It's based on extreme environmentalism and redistribution of wealth across nations. Some of the guidelines include: moving citizens off of private land into high-density urban housing projects; creating vast wilderness by reclaiming private lands; and increasing taxes, fees, and regulations. When Agenda 21 was part of the UN Convention on Biodiversity treaty, it was brought before the U.S. Senate in 1993 and was rejected because of concerns regarding erosion of private property rights. I'd like to read you a brief portion of Senator Kay Bailey Hutchison's testimony on this treaty before the U.S. Senate, quote, I am especially concerned about the effects of the treaty on private property rights in my state and throughout America. Private property is constitutionally protected, yet one of the draft protocols to this treaty proposes an increase in the area of connectivity of habitat. It envisions buffer zones and corridors connecting habitat areas where human use will be severely limited, unquote. I'd like to direct your attention to the national wildlands map I have provided for you. This is a proposed map of the United States, as Senator Hutchison referenced. It details large tracts of land that humans are prevented from using for any reason. So if you go to the orange, the orange on here is wildlands, no human activity, the yellow is limited human activity, and green is normal land use. LB482 protects private property rights and ensures that our counties maintain their current funding by prohibiting the state of Nebraska and all political subdivisions within the state of Nebraska from infringing and restricting private property rights without due process and entering into contracts with organizations related to Agenda 21. The International Council on (sic) Local Environmental Initiatives is a foreign organization based in Bonn, Germany. It's the primary vehicle for carrying out the policy guidelines of Agenda 21, and it would be prohibited from contracting with political subdivisions within the state of Nebraska under

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

Judiciary Committee
February 13, 2013

this bill. The guidelines advocated by Agenda 21 would stifle economic growth of our cities and erode the private property rights of citizens if it was fully carried out. Several decades ago the state of Florida passed a smart growth law, and in 2011 they repealed the law because of the negative economic impact. It drove up housing costs tremendously. It was...it's my intent to make sure we do not make a similar mistake in Nebraska. I'll end with a quote from Maurice Strong, the secretary general of the UN's Rio Earth Summit in 1992, quote, current lifestyles and consumption patterns of the affluent middle class involving high meat intake, use of fossil fuels, appliances, home and work air-conditioning, and suburban housing are not sustainable, unquote. Philosophies such as this are one of the many reasons I've introduced this bill. I urge you to support LB482 because we need to protect the property rights of Nebraska citizens, ensure that our counties have robust economic activity and the revenue that results from this activity. Mr. Chairman, I'll be glad to take questions. If it's something super technical in nature, I may defer to someone coming behind me. [LB482]

SENATOR ASHFORD: Thank you, Senator Kintner. Senator Chambers. [LB482]

SENATOR CHAMBERS: Excuse me. Senator Kintner, who asked you to bring this bill? [LB482]

SENATOR KINTNER: Nobody. I found out about it when I was walking door to door. Someone mentioned it to me, and someone else mentioned it to me. And I started looking into it, and I started researching it, and I thought, you know what, in the words of Benjamin Franklin, an ounce of prevention is worth a pound of cure. Let's just make sure it doesn't happen. [LB482]

SENATOR CHAMBERS: Okay. Did you realize that there is a document that comprises this Agenda 21? Is there...are you aware of a document? [LB482]

SENATOR KINTNER: I'm holding it right here. [LB482]

SENATOR CHAMBERS: Okay, and have you read it? [LB482]

SENATOR KINTNER: No, I have no intention of reading it. [LB482]

SENATOR CHAMBERS: So you don't really know what's in it, do you? [LB482]

SENATOR KINTNER: Oh, I have a pretty good idea. [LB482]

SENATOR CHAMBERS: If you haven't read it, how do you know what's in it? [LB482]

SENATOR KINTNER: I have a pretty good idea of what's in it. I've looked at enough of it to know what they're trying to do. [LB482]

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

Judiciary Committee
February 13, 2013

SENATOR CHAMBERS: I'm not asking if, if you don't mind, a pretty good idea. If you haven't read what's in there, how do you know what's in it? Could it have quotations from the Bible, as far as you know? [LB482]

SENATOR KINTNER: As far as I know, it does not. [LB482]

SENATOR CHAMBERS: Could it have a recitation of provisions of the U.S. Constitution that prohibit what you're talking about happening? Could that be in that document, as far as you know? [LB482]

SENATOR KINTNER: As far as I know, it could not be in that document, as far as I know. [LB482]

SENATOR CHAMBERS: But you don't know it from having read it, do you? [LB482]

SENATOR KINTNER: I do not. [LB482]

SENATOR CHAMBERS: Do you know it because somebody told you? [LB482]

SENATOR KINTNER: Yes. [LB482]

SENATOR CHAMBERS: Who told you? [LB482]

SENATOR KINTNER: I have...one of my staffers, without me telling him, read the entire thing, front to back. [LB482]

SENATOR CHAMBERS: And he told you that there are no biblical quotations in it? [LB482]

SENATOR KINTNER: I don't know; I didn't ask him. [LB482]

SENATOR CHAMBERS: Senator Kintner, do you know what the U.S. Constitution is? [LB482]

SENATOR KINTNER: I have an idea, yes. [LB482]

SENATOR CHAMBERS: In your mind, just briefly, what is the United States Constitution? [LB482]

SENATOR KINTNER: It... [LB482]

SENATOR CHAMBERS: I don't mean quote it. [LB482]

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

Judiciary Committee
February 13, 2013

SENATOR KINTNER: Yeah, it...what it does is it limits our government and secures our rights. It doesn't limit us, it limits the government. [LB482]

SENATOR CHAMBERS: Now does that constitution, as far as you know, have a provision that says a person cannot be deprived of life, liberty, or property without due process of law? Are you aware of that language being in the U.S. Constitution? [LB482]

SENATOR KINTNER: Yes, yes. [LB482]

SENATOR CHAMBERS: You know it's there? [LB482]

SENATOR KINTNER: Yes, it's there; yes, it does. [LB482]

SENATOR CHAMBERS: Now even though that... [LB482]

SENATOR KINTNER: We have a Bill of Rights that does that, yes. [LB482]

SENATOR CHAMBERS: Even though that language is there, a legislature can pass a bill saying, we will take your property without paying you. The Legislature could pass that, couldn't it? [LB482]

SENATOR KINTNER: It could, sure. [LB482]

SENATOR CHAMBERS: Would it have any legal effect? [LB482]

SENATOR KINTNER: It would, unless it was taken to court and challenged. [LB482]

SENATOR CHAMBERS: It couldn't be enforced under the laws of this country, could it? [LB482]

SENATOR KINTNER: It shouldn't be enforced. That doesn't mean they wouldn't try doing it. It'd have to be taken to court and adjudicated. [LB482]

SENATOR CHAMBERS: You're not hearing me. I'm going to back up and say it slowly. The U.S. Constitution says that property cannot be taken without due process of law. The Legislature, nevertheless, could pass an unconstitutional law saying it will be taken. That law would be null and void, isn't that true? [LB482]

SENATOR KINTNER: It would have to be challenged in court before it was null and void. You'd have to go to court, get it adjudicated, before it was null and void. [LB482]

SENATOR CHAMBERS: And it would be struck down, wouldn't it? [LB482]

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

Judiciary Committee
February 13, 2013

SENATOR KINTNER: It should be. I would hope it would be. [LB482]

SENATOR CHAMBERS: It would be, I assure you. I don't think your staff understands the constitution if they told you that if this Legislature passed a bill saying that property can be taken without due process of law it would stand. You need some additional or better counsel. Now let me ask you this question. It says the state of Nebraska--and forgetting what it says about the political subdivisions--cannot pass certain types of legislation. Are you aware that the legislature of a state has absolute authority to legislate any way it wants to other than what its constitution limits it from doing? You know that, don't you? [LB482]

SENATOR KINTNER: That is correct. [LB482]

SENATOR CHAMBERS: So a statute cannot limit the state of Nebraska in terms of what it can and cannot legislate on, isn't that true? [LB482]

SENATOR KINTNER: That is correct. Normally, it could not. [LB482]

SENATOR CHAMBERS: So even if this says that the state of Nebraska cannot legislate on these things that are in this bill, it has no impact on what the state of Nebraska can do, does it? [LB482]

SENATOR KINTNER: It's making a statement of intent. Obviously, the Legislature could do anything they wanted. [LB482]

SENATOR CHAMBERS: No, I'm talking...Senator Kintner, would you listen to me, please? The statute cannot limit what the Legislature can do. In other words, the Legislature itself cannot limit its ability to legislate. The only thing it can do along that line is to refuse to legislate. But it cannot pass a document that restricts the Legislature in a way that the state constitution does not. Whoever gave you this doesn't know what he's talking about. But let's go beyond that. Let's say, because I want us to see what's actually in this, if you go to line 7, on page 1, the state of Nebraska and all political subdivisions shall not adopt or implement policy recommendations that deliberately or inadvertently infringe or restrict private property rights without due process. Even if that's there, a county could try to do this, couldn't it? Even if this became law, a county could try to do it, couldn't it? [LB482]

SENATOR KINTNER: Yes, it could try. [LB482]

SENATOR CHAMBERS: So you cannot stop them from doing it. All you can do is say that, if they do it, then they can go to court and it will be struck down, and that's what the law is now. What does this change, if it's enacted, that is not in the law of the United

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

Judiciary Committee
February 13, 2013

States and the state of Nebraska right now? What change does it make? [LB482]

SENATOR KINTNER: It...let me tell you what I want to do. I...look at the statement of intent. That is what I am attempting to do with this law. Now if this law is not written in a way that accomplishes that, I would welcome the help. I would welcome the advice of this committee,... [LB482]

SENATOR CHAMBERS: No, here's what I'm asking. [LB482]

SENATOR KINTNER: ...to make sure that this legislation accomplishes what I am attempting to accomplish. [LB482]

SENATOR CHAMBERS: Senator Kintner, people...you had a staff member who read that document from cover to cover. What did that staff member tell you that is changed in the Nebraska law and in the constitutional law of the United States? What change did he tell you that this Agenda 21 will make in the law of the United States or the law of the state of Nebraska? What change will it make? [LB482]

SENATOR KINTNER: What we don't want is we don't want local governments becoming a part of ICLEI, that organization that I referenced, and we don't want them using their documents to set policy. We don't want them going around the citizens of this state and taking the documents and the wishes of... [LB482]

SENATOR CHAMBERS: What documents? [LB482]

SENATOR KINTNER: Right here. [LB482]

SENATOR CHAMBERS: You mean this...your purpose in asking us to pass this is that local officials cannot take that document and go, door to door, and try to indoctrinate the citizens? Is that what you're talking about? [LB482]

SENATOR KINTNER: No. [LB482]

SENATOR CHAMBERS: So what would they take it...you said they wouldn't be able to take that document. Where would they take it if we don't pass this law? [LB482]

SENATOR KINTNER: The International Council for Local Environmental Initiatives is an organization that provides planning advice for cities that they can use their software and they can design software to put in these areas right here, and they can start to move toward getting people to live in multifamily housing. They would start to move to take farmland out of agriculture and put it into... [LB482]

SENATOR CHAMBERS: Do you believe that's what's going to happen if this thing that

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

Judiciary Committee
February 13, 2013

you gave us is not enacted? Do you think one person is going to be taken off his or her land as a result of this Agenda 21? You believe that? [LB482]

AUDIENCE: Yes. [LB482]

SENATOR CHAMBERS: I'm asking the witness, and there is no allowance of any audience participation. This is a democracy. That means it's an ordered... [LB482]

SENATOR ASHFORD: Time out. Here's... [LB482]

SENATOR CHAMBERS: That means it's... [LB482]

SENATOR ASHFORD: No, time out, time out. Excuse me, Senator Chambers, if I might take... [LB482]

SENATOR CHAMBERS: I was going to explain it to them if they don't understand, but... [LB482]

SENATOR ASHFORD: But I may... [LB482]

SENATOR CHAMBERS: Okay. [LB482]

SENATOR ASHFORD: I'm going to do that, if I could. I appreciate that. In order to have an orderly conversation, to respect the comments of Senator Kintner and Senator Chambers and that conversation, it's imperative that they are the only two people that speak and talk at once. So everybody will have a chance or, hopefully, as many people as possible will have a chance to speak. The rule is, in this Capitol, is if anybody else gets involved in this discussion, other than Senator Chambers and Senator Kintner, we will have them...ask them to leave. And it's...we don't want to do that, so let's keep our comments to the witness and to the senator who is asking the questions, and I...thank you. Senator Chambers. [LB482]

SENATOR CHAMBERS: Now, Senator Kintner, you brought this, so I'm going to question you on it. You go on to say, as I pointed out, that no property can be taken without due process of law. That's already the law of Nebraska. That's already the law of the United States. What will be added to that if the Legislature enacts this bill? Nothing. It won't add anything to that law, will it, since that's already the law? [LB482]

SENATOR KINTNER: It will state that our intention, as a Legislature, that if laws are going to be made, they're going to be made by us, and that we are not going to contract with... [LB482]

SENATOR CHAMBERS: Senator Kintner, can you hear what I'm asking you? What

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

Judiciary Committee
February 13, 2013

does this add to the existing law, this bill? [LB482]

SENATOR KINTNER: It strengthens it. [LB482]

SENATOR CHAMBERS: I'll go on. It says, any policy recommendations originating in or traceable to Agenda 21. If a political subdivision adopts a zoning ordinance that says certain types of establishments cannot be constructed in a certain area, that could sound exactly like something in Agenda 21, couldn't it? [LB482]

SENATOR KINTNER: Could be, yeah. [LB482]

SENATOR CHAMBERS: So would you then say, since it sounds like something in Agenda 21, it's traceable to Agenda 21, it originates in Agenda 21, therefore, LB482 enacted into law gives me a cause of action to go into court and say, strike down that zoning ordinance because it can be traced to Agenda 21? Is that your intention? [LB482]

SENATOR KINTNER: No. [LB482]

SENATOR CHAMBERS: But that could happen, couldn't it? [LB482]

SENATOR KINTNER: No. [LB482]

SENATOR CHAMBERS: Oh, okay. [LB482]

SENATOR KINTNER: They would have to be a member of the International Council for Local Environmental Initiatives. So if they're a member of that, they're using their software, they're implementing the policies from that, I think that's an indication where it came from. [LB482]

SENATOR CHAMBERS: When you go on in this, it talks about this United Nations Agenda 21 of being...having been adopted in 1992 at its Conference on Environment and Development. Now you cannot, under this bill, adopt anything originating or traceable to that operation or such things as required by any other international law or ancillary plan. When you say any other international law, you're assuming that Agenda 21 is an international law. It's not a law. You're aware of that, aren't you? [LB482]

SENATOR KINTNER: That's correct. [LB482]

SENATOR CHAMBERS: So when you say "any other international law," you should have just said "any international law," because Agenda 21 is not an international law. You agree, don't you? [LB482]

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

Judiciary Committee
February 13, 2013

SENATOR KINTNER: I agree with that, yeah. [LB482]

SENATOR CHAMBERS: It's not binding on anybody, is it? [LB482]

SENATOR KINTNER: That's correct. [LB482]

SENATOR CHAMBERS: It cannot mandate that Nebraska or the United States do anything, correct? [LB482]

SENATOR KINTNER: That is correct. [LB482]

SENATOR CHAMBERS: Okay, now what is an ancillary plan of action? What is that? [LB482]

SENATOR KINTNER: I would say that would be a plan associated with Agenda 21 with...from a nongovernment organization or from an intergovernment organization of some type. [LB482]

SENATOR CHAMBERS: Now it says that none of these things can be adopted if they contradict the Constitution of the United States. That's the way it is right now, isn't it? [LB482]

SENATOR KINTNER: It should be. [LB482]

SENATOR CHAMBERS: It is right now. [LB482]

SENATOR KINTNER: It should be. [LB482]

SENATOR CHAMBERS: If you don't know, then it is. You need to talk to your staff or, if you've got, a lawyer or somebody you have confidence in. A city council can pass any ordinance it chooses. A city council can pass an ordinance that says the moon is made out of green cheese. A county board can pass a resolution that says the law of gravity is hereby repealed. They can pass anything they want to. But the issue is that they have no legal force or effect. You don't have to be afraid of your land being taken because of Agenda 21. Nobody is going to fly over your home in a black helicopter that makes no noise; they're not going to place you under surveillance; they're not going to use mind-control tactics to force through land-use agendas, as some people in other states who support this have said. That's not going to happen, in my opinion. Do you think it will happen if we don't pass this? [LB482]

SENATOR KINTNER: I would hope it doesn't. Now I don't...would happen? I certainly hope not. Now I will defer to some people coming up behind me; they'll give you more specific examples. [LB482]

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

Judiciary Committee
February 13, 2013

SENATOR CHAMBERS: Okay, I'll be through here in a second. I'm going to go to the last paragraph: Since the United States (sic--Nations) has accredited and enlisted numerous nongovernmental or intergovernmental organizations to assist in the implementation of its policies relative to Agenda 21 around the world, the State of Nebraska and all political subdivisions shall not enter into any agreement, expend any sum of money, receive funds, contract for services, or give financial aid to or receive financial aid from those nongovernmental and intergovernmental organizations as defined in Agenda 21. Now you say accredited and enlisted nongovernmental agencies. Is this an agency accredited and enlisted by the UN, the American Association of Engineering Societies? Does the UN accredit and enlist them? [LB482]

SENATOR KINTNER: They very well may. I don't know, I don't know. [LB482]

SENATOR CHAMBERS: And you think that the state should not be allowed, or any of the political subdivisions, to have any kind of contact or dealings with them? That would follow if we enact LB482, wouldn't it? Another such organization, the American Association of Jurists, there could be no involvement with them and the state or a political subdivision. The American Cancer Society...these are some of the nongovernmental agencies who are enlisted and accredited by the UN that this...that you gave us would prohibit the state or a political subdivision from having anything to do with. The American Civil Liberties Union, you probably think that's okay to go after them. [LB482]

SENATOR KINTNER: Yeah, I kind of do. [LB482]

SENATOR CHAMBERS: The American Association of Retired Persons, they're on the forbidden list. The American Planning Association, the American Psychological Association, the Association of American Railroads, Girl Scouts of the United States, Habitat for Humanity International, International Chamber of Commerce, Rotary International, Planned Parenthood Federation of America, Pro-Life Campaign, United Way International, to name a few, were you aware that those types and these specific groups would be on the list that no...that the state nor any political subdivision could expend any sum of money toward or for, contract for services, give financial aid to, or receive financial aid from? These are the types of organizations you feel are a threat to your private property rights? [LB482]

SENATOR KINTNER: Well, I'm probably not a fan of most of those organizations, but, no, they're not...it was organizations that are part of the United Nations or affiliated with the United Nations or certified by the United Nations and engaged in these types of activities--the resource planning, land use maps, that kind of stuff. So if Planned Parenthood wants to engage in land use maps then, yes, we...they would be prohibited from receiving money from any unit of government here. [LB482]

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

Judiciary Committee
February 13, 2013

SENATOR CHAMBERS: Do you think that mind control tactics are being used to force through land use agendas, as some of those in other states who support this legislation have said? [LB482]

SENATOR KINTNER: I'm not aware of any of that happening, no,... [LB482]

SENATOR CHAMBERS: You don't believe that, okay. [LB482]

SENATOR KINTNER: ...especially in our state. [LB482]

SENATOR CHAMBERS: Now suppose these organizations are not international. Then it's okay to deal with them if they're engaged in this kind of activity if they're not international organizations, correct, because your concern is with international organizations? So if they're not international, then they're okay, even if they're doing this activity, right? [LB482]

SENATOR KINTNER: Senator Chambers, the intent of this legislation is to prevent any of this from being implemented. If we can come up with a more concise, better way to say it, I would welcome this committee to have at it. [LB482]

SENATOR CHAMBERS: It's all... [LB482]

SENATOR KINTNER: I can't say that everything written here is perfect. [LB482]

SENATOR CHAMBERS: It's already been said in the Nebraska Constitution, no person shall be deprived of life, liberty, or property without due process of law. The same has been said in the United States Constitution, and in numerous federal and state court decisions they've said it much better than this. So now that I've assured you that it has been said already, we can just get rid of this, can't we? [LB482]

SENATOR KINTNER: No, because it doesn't cut off the funding and money going to those organizations. [LB482]

SENATOR CHAMBERS: One other question: If these entities that we are asked to tell in this bill cannot do these things, if they did it anyway, so what? What would happen to them? If a city did this, what would happen to the city? [LB482]

SENATOR KINTNER: Well, you could go to court and you could say, here's the law, here's what they're doing, and get them to stop it. [LB482]

SENATOR CHAMBERS: And what would happen? [LB482]

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

Judiciary Committee
February 13, 2013

SENATOR KINTNER: Well, if they got a court order, they'd have to stop it. [LB482]

SENATOR CHAMBERS: And isn't that what would happen right now if they tried to take your property without due process? [LB482]

SENATOR KINTNER: Yeah, but not if they tried to spend money, not if they tried to give money to these organizations. [LB482]

SENATOR CHAMBERS: That's all I will ask. Oh, one other thing: How do you...does anybody know all of the organizations that are involved? [LB482]

SENATOR KINTNER: You got me. I don't know. There are probably some we don't know. We'll do the best we can, Senator Chambers. [LB482]

SENATOR CHAMBERS: And that's the kind of legislation you bring for this Legislature? You ask us to do something that you don't even know how it can be done, correct? [LB482]

SENATOR KINTNER: Senator Chambers, if you have a more concise, better way to do it, let's work together and get it done. [LB482]

SENATOR CHAMBERS: No, this is your bill. Senator Kintner, you're asking us to do something that you don't even know how or whether it can be done, isn't that true? [LB482]

SENATOR KINTNER: It's never been done in this state, and I'm trying to do it, so I want to find the best way to do it. This is what I propose we do. [LB482]

SENATOR CHAMBERS: Here's what I mean... [LB482]

SENATOR KINTNER: There may be some good minds, some good attorneys around in this room that might help us do it. [LB482]

SENATOR CHAMBERS: No, here's what I'm asking you. You, yourself, don't know which organizations are involved. In this legislation you're bringing us, you don't know which organizations are involved, do you? [LB482]

SENATOR KINTNER: Do I know? [LB482]

SENATOR CHAMBERS: Yes. [LB482]

SENATOR KINTNER: I will defer to people who will be testifying behind me as to what organizations are involved, the scope of them. I've listed seven or eight here. My

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

Judiciary Committee
February 13, 2013

notes... [LB482]

SENATOR CHAMBERS: But you, as the introducer bringing this bill to us, don't know what it involves, do you? [LB482]

SENATOR KINTNER: Yes, I do. It involves exactly what it says on the paper here, absolutely. [LB482]

SENATOR CHAMBERS: Then tell me ten organizations that the state would be prohibited from dealing with. [LB482]

SENATOR KINTNER: I will give you one, two, three, four, five, seven...I brought eight with me. [LB482]

SENATOR CHAMBERS: You brought how many? [LB482]

SENATOR KINTNER: Natural Resources Defense Council... [LB482]

SENATOR CHAMBERS: How many? [LB482]

SENATOR KINTNER: One, two, three, four, five, six, seven, eight. [LB482]

SENATOR CHAMBERS: I want ten. [LB482]

SENATOR KINTNER: Well, I've got eight. I brought eight. [LB482]

SENATOR CHAMBERS: So you don't know ten, do you? [LB482]

SENATOR KINTNER: I brought eight. [LB482]

SENATOR CHAMBERS: Okay, so you don't know that. Now you talk about nongovernmental organizations. If they're governmental organizations, then it's all right, correct? [LB482]

SENATOR KINTNER: Well, no, no, it says nongovernmental organizations. [LB482]

SENATOR CHAMBERS: Well, you're... [LB482]

SENATOR KINTNER: It also says intergovernmental organizations. [LB482]

SENATOR CHAMBERS: No, intergovernmental would be more than one. [LB482]

SENATOR KINTNER: Right. [LB482]

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

Judiciary Committee
February 13, 2013

SENATOR CHAMBERS: Well, if this is not intergovernmental, if it's one governmental organization acting on its own, it's all right, isn't it? It can do these things, and the state can deal with them, can't they? [LB482]

SENATOR KINTNER: Yeah, yeah, you know, yeah. If it's the EPA, we can handle that ourselves, yes, that's correct. [LB482]

SENATOR CHAMBERS: No, here's what I'm saying. This bill says that you're concerned about nongovernmental organizations. If they are governmental organizations, then you're not worried about them. They can be governmental organizations in other states, can't they? [LB482]

SENATOR KINTNER: Yes, yes, that... [LB482]

SENATOR CHAMBERS: And you don't mind dealing with them and having contracts with them, even if they are carrying out Agenda 21, as long as they're governmental. It's all right then, right? [LB482]

SENATOR KINTNER: Yes. We have recourse against those. We have...we elect congressmen to handle that,... [LB482]

SENATOR CHAMBERS: That's... [LB482]

SENATOR KINTNER: ...and senators. [LB482]

SENATOR CHAMBERS: I'm talking about what your law says. Your law would make it all right to deal with them, wouldn't it? [LB482]

SENATOR KINTNER: Yes, the law is fine. [LB482]

SENATOR CHAMBERS: Okay. That's all I have. Thank you. [LB482]

SENATOR KINTNER: Thank you. [LB482]

SENATOR ASHFORD: Senator McGill, then Senator Davis. [LB482]

SENATOR MCGILL: My question is really quick. I've been reading over some of the letters up here, and they...several of them make reference to an amendment. Do you have said amendment? [LB482]

SENATOR KINTNER: No. [LB482]

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

Judiciary Committee
February 13, 2013

SENATOR MCGILL: Because both proponents and opponents have made reference to an amendment that strikes most of the bill, and... [LB482]

SENATOR KINTNER: No. No amendments. [LB482]

SENATOR MCGILL: Okay, well, I'm even more confused then. All right. [LB482]

SENATOR KINTNER: Yeah, I try to keep it simple. I like one-page laws and one-page bills. That's kind of the way we like to do things. [LB482]

SENATOR MCGILL: All right, thank you. [LB482]

SENATOR ASHFORD: Senator Davis, I... [LB482]

SENATOR DAVIS: Same question that Senator McGill had. I've got two letters that make reference to modification of environmental perpetuity rights that were going to be part of this bill. [LB482]

SENATOR KINTNER: Nope, not at all. [LB482]

SENATOR DAVIS: Well,... [LB482]

SENATOR MCGILL: Well, can we have staff look at...because one of these specifically says AM180 to LB482, like it even has an amendment number. [LB482]

SENATOR KINTNER: Well,... [LB482]

SENATOR ASHFORD: All right, yeah, I don't... [LB482]

SENATOR MCGILL: I...okay. [LB482]

SENATOR ASHFORD: Do we know about AM180? [LB482]

SENATOR MCGILL: All right, okay. [LB482]

SENATOR ASHFORD: We have to say we don't, but we'll discuss... [LB482]

SENATOR DAVIS: Are any of these... [LB482]

SENATOR ASHFORD: Senator Davis, are... [LB482]

SENATOR DAVIS: Are any of these people in the audience? [LB482]

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

Judiciary Committee
February 13, 2013

SENATOR ASHFORD: Who are these people? Just a second. [LB482]

SENATOR MCGILL: Maybe. I don't know. [LB482]

SENATOR DAVIS: Jim Bendfeldt, I think, is one of them. [LB482]

SENATOR ASHFORD: All right, let me look. [LB482]

SENATOR DAVIS: And who's the other one? Senator McGill, can you find the other one? [LB482]

SENATOR MCGILL: I think they're all people who submitted testimony because they couldn't be here. [LB482]

SENATOR ASHFORD: I have, for the record, I do have an e-mail from Bill Whitney. [LB482]

SENATOR MCGILL: That's one of the three, yeah. [LB482]

SENATOR ASHFORD: AM180, and I don't know of AM180. But we'll discuss it with Senator Kintner later. Any other questions, aside from the AM180? Thanks, Bill. [LB482]

SENATOR KINTNER: I'll stick around for closing comments. [LB482]

SENATOR ASHFORD: Okay. Proponents. Let me just, for the...go...come on up. Sorry. Go ahead and come on up, whoever is first. Doctor, how are you? [LB482]

BRYAN VAN DEUN: Hello again. [LB482]

SENATOR ASHFORD: Could I ask how many are proponents? Okay, and how many are opponents? Okay. Good afternoon. [LB482]

BRYAN VAN DEUN: (Exhibit 16) Good afternoon, Chairman and Senators. Thank you for having me here to offer my testimony. I am a volunteer private citizen. I'm not being paid to be here. I believe that, as a private citizen, I have a responsibility in a republic to engage in the deliberative process, so I am here today. When the concept of United Nations Agenda 21 came to my attention about four years ago, some of its identified plans seemed to foreign to U.S. republican government based on power coming from the electorate to elected officials, with those officials subject to recall if their actions were unconstitutional or contrary to wishes of the electorate. I don't plan to read every word of this, but I would like to highlight a few things. In the next paragraph you'll see in 1993 President Clinton created the President's Council on Sustainable Development in response to the United Nations' proposed Convention on Bio(logical) Diversity, first

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

Judiciary Committee
February 13, 2013

signed by President George H.W. Bush, and that was referred to by Senator Kintner. It is significant that the U.S. Senate, then controlled by a Democrat majority, would not ratify this treaty. The PCSD structure includes federal agencies, such as Environmental Protection Agency, the U.S. Department of Agriculture, and the Department of Transportation, resulting in such recent trial balloons as regulating farm dust, prohibiting detasseling by teenagers, and requiring over-the-road drivers' licenses for teens to use the family tractor on the farm. The American Planning Association adopted this plan of Agenda 21 wholesale so that local city planners today think it is an American-initiated plan instead of being promoted by ICLEI--the International Council for Local Environmental Initiatives, headquartered in Bonn, Germany--which is a UN agency. This planning is currently voluntary but is quickly gathering traction in some places, while at the same time it is receiving some pushback from citizens. ICLEI membership is open to cities in the U.S. and other countries. Lincoln's mayor used TARP funds to join ICLEI several years ago without telling his city council. The mayor admitted that the planning software is the reason for which he joined. The mayor said that Lincoln would no longer pay dues starting in 2012, but a check this week of the ICLEI Web site showed Lincoln still listed, along with Omaha. It is my understanding that Hastings was once a member of ICLEI. More than 150 cities and counties have left ICLEI in the last several years as they learned its real purpose. I have offered three pages from the ICLEI Web site to show that it exists and that it has large plans for the world as they see it, particularly see the commentary highlighted by Konrad Otto-Zimmermann. It is very telling. So I hope we can celebrate our system of strategies being proposed by our elected officials rather than being imposed by ICLEI software and policies, therefore, I support LB482. [LB482]

SENATOR LATHROP: Senator Chambers. [LB482]

SENATOR CHAMBERS: Doctor, if an idea is good, does it matter what the source of the idea is? [LB482]

BRYAN VAN DEUN: No. If the idea is good, it can come from any source. [LB482]

SENATOR CHAMBERS: Right. Now I'm going to ask you what I asked Senator Kintner, not all of those questions. One of the...the main point in this document that is labeled LB482 is that the state of Nebraska and all political subdivisions shall not adopt or implement policy recommendations that deliberately or inadvertently infringe or restrict private property rights without due process. You know that the Nebraska Constitution and the U.S. Constitution prohibit the taking of private property--and sometimes it doesn't just deal with wood and land--without due process of law. You know that that's the law right now, don't you? [LB482]

BRYAN VAN DEUN: I do know that. [LB482]

SENATOR CHAMBERS: Now even though that is the law, a legislature could pass an

unconstitutional bill, a city council could pass an unconstitutional ordinance. So merely putting it in words on paper doesn't mean they won't do that, but we know that it would be null and void and of no effect. So here's the point that I'm trying to get to and trying to understand: If LB482 is enacted, what will it change that already exists in the law relative to the protection of private property? [LB482]

BRYAN VAN DEUN: One of the strategies of ICLEI is to create supergovernmental agencies where they take several counties and create a new organization that is an umbrella for those several counties, such as MAPA in your home area, which even goes over, I think, into Iowa, the western part of Iowa. And what they do is they take elected officials but then appoint them by a mayor or a governor or--I'm talking about around the country--by some other official, and they appoint them to a new board, and this new board is not subject to the electorate any longer. [LB482]

SENATOR CHAMBERS: So what? They don't have any legislating authority. [LB482]

BRYAN VAN DEUN: Well, they have policies and procedures that they can adopt from ICLEI, from the planning software that ICLEI proposes, which is a cookie-cutter approach to try to get all cities and towns to look alike, whether they're in Minneapolis/St. Paul for bicycle lanes or... [LB482]

SENATOR CHAMBERS: But you're going beyond what's necessary to answer my question. They don't have legislating authority. [LB482]

BRYAN VAN DEUN: But they have policy authority. [LB482]

SENATOR CHAMBERS: But that is not binding on a city; it is not binding on a state or a county. This is just a collection of people, like the chamber of commerce is a group. There are interlocal agreements that exist. Are you going to say that any agreements between two governmental bodies is a part of this one-world conspiracy. [LB482]

BRYAN VAN DEUN: No, sir. It's not a one-world conspiracy. It is an attempt to create zoning policies and land use policies that take away individual decision making. [LB482]

SENATOR CHAMBERS: And you think this bill, if it's enacted into law, would stop whatever it is you're worried about? [LB482]

BRYAN VAN DEUN: I'm neither a lawyer nor a legislator, so I can't address that specifically. But I know the intent of the bill tries to do that. [LB482]

SENATOR CHAMBERS: Are you...do you...are you in fear of what's going to happen to private property in America? [LB482]

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

Judiciary Committee
February 13, 2013

BRYAN VAN DEUN: Yes, I am. [LB482]

SENATOR CHAMBERS: And, therefore, you think this is the only way to keep that from happening. [LB482]

BRYAN VAN DEUN: That's not the only way, but that's one good step. I believe that each state has to enact legislation like this to make sure that they retain their right to make decisions relative to the property. [LB482]

SENATOR CHAMBERS: You don't think that the Constitution of Nebraska determines what can legally be considered law? You don't think the Constitution of Nebraska governs what happens in this state? [LB482]

BRYAN VAN DEUN: I believe that it governs it, but I also believe that there are strategies afoot that are creating these new, supergovernmental... [LB482]

SENATOR CHAMBERS: I don't care about that. I'm talking about the law. These organizations can't come in and run somebody off their property. [LB482]

BRYAN VAN DEUN: Yes, they can. [LB482]

SENATOR CHAMBERS: Then you call the sheriff. Then you call the sheriff. You're talking about vigilantism, and there are already law enforcement agencies that would stop that. If a group of people in black uniforms would rappel down from noiseless, black helicopters and tell a farmer, pack up your family and get off this land, then they call 911. [LB482]

BRYAN VAN DEUN: And that has happened to some farmers. In Michigan, for example, there have been farmers who have been raided by the EPA because they were doing things that... [LB482]

AUDIENCE: Amen. [LB482]

SENATOR CHAMBERS: That's...you're not even hearing what I'm talking about. Are you saying that every federal agency that has regulatory authority is controlled by forces outside of the United States? [LB482]

BRYAN VAN DEUN: I believe that the ideas are coming from UN Agenda 21, and that was the basis for the President's Council on Sustainable Development, and it's the reason that we had this attempt to regulate dust on farms. [LB482]

SENATOR CHAMBERS: Do you believe that the United States Constitution is still the governing document in this country? [LB482]

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

Judiciary Committee
February 13, 2013

BRYAN VAN DEUN: I'm not sure of that anymore, Senator. [LB482]

SENATOR CHAMBERS: Okay, I don't have any more questions. [LB482]

SENATOR LATHROP: Very good, and I...Senator Seiler has got some. [LB482]

SENATOR SEILER: Just a couple. In your written testimony, you allude to the fact that there was a treaty supporting Agenda 21 submitted to the U.S. Senate. [LB482]

BRYAN VAN DEUN: That's correct. [LB482]

SENATOR SEILER: Has that...and you said about four years ago. Has that been ratified since then? [LB482]

BRYAN VAN DEUN: No, that was actually in 1993. It had never been ratified. What happened was... [LB482]

SENATOR SEILER: You mean it hasn't been passed since then? [LB482]

BRYAN VAN DEUN: No, it has not. [LB482]

SENATOR SEILER: Okay. [LB482]

BRYAN VAN DEUN: Senator Kay Bailey Hutchison brought an expert in who explained what was entailed in that convention, and they didn't pass it. [LB482]

SENATOR SEILER: As long as it's not to the status of a treaty, then this is just a...Agenda 21 is just a suggestion then. [LB482]

BRYAN VAN DEUN: Except that it is the policy of the President's Council on Sustainable Development, and that filters down into all the federal agencies, as...I listed a few of them there--the Department of Transportation, the Environmental Protection Agency, and so forth. [LB482]

SENATOR SEILER: But even that would not have the ability to override a constitution, either federal or state. [LB482]

BRYAN VAN DEUN: It is part of the regulatory process, and that's why people are so concerned that the EPA is running amok. [LB482]

SENATOR SEILER: It still won't override the constitution. [LB482]

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

Judiciary Committee
February 13, 2013

BRYAN VAN DEUN: No, it doesn't. [LB482]

SENATOR SEILER: Would you agree with that? [LB482]

BRYAN VAN DEUN: I would agree that it doesn't override the constitution. [LB482]

SENATOR SEILER: Okay, but a treaty might. [LB482]

BRYAN VAN DEUN: A treaty would. [LB482]

SENATOR SEILER: Yes. Okay, thank you. [LB482]

BRYAN VAN DEUN: Um-hum. [LB482]

SENATOR LATHROP: Senator Davis. [LB482]

BRYAN VAN DEUN: Yes. [LB482]

SENATOR DAVIS: You talk about this particular treaty that Senator Seiler asked you about and the President's Council on Sustainable Development, which was appointed by President Clinton then. Is that still in existence? [LB482]

BRYAN VAN DEUN: It is. [LB482]

SENATOR DAVIS: And each president fills that position with appointees, is that how that works? [LB482]

BRYAN VAN DEUN: That's correct. [LB482]

SENATOR DAVIS: So who are the people that are on that today, and how do we know that they are still pushing this agenda? [LB482]

BRYAN VAN DEUN: I haven't looked at the list lately. I had looked at the list at one time. But they are people appointed, through the agencies, to this President's Council on Sustainable Development. Both Senator Kintner and I gave a quote from the chief advisor to President Clinton when he set it up. And he said, we're not going to call this Agenda 21, and that's why you don't hear about it as Agenda 21. You hear about it as smart growth or other terms that sound good on their face--I want our growth to be smart--but they're using language to turn what their intent is. [LB482]

SENATOR DAVIS: I guess if we could get a copy of who those people are, I would like to know that. [LB482]

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

Judiciary Committee
February 13, 2013

BRYAN VAN DEUN: Okay, we can do that. [LB482]

SENATOR DAVIS: Okay, thank you. [LB482]

SENATOR ASHFORD: Thank you, Senator Davis. I don't see any...thank you, Doctor. [LB482]

BRYAN VAN DEUN: Yes, sir, thank you. [LB482]

SENATOR ASHFORD: Our next proponent. [LB482]

GILLIAM BOYKIN: Proponent. [LB482]

SENATOR ASHFORD: Come on up. [LB482]

GILLIAM BOYKIN: Mine is strictly verbal. My name is Gilliam Boykin. I'm from Papillion, Nebraska. I spent a quarter century of my life protecting this country. And I've been to a lot of other countries--the Middle East, the Asiatic countries, and all--and if you don't think things can change you are very mistaken. I've seen them change, and I've seen how they've changed. They come in psychologically and change people. They get politicians and change them, and then they make laws and change laws. You think Agenda 21 can't happen? Oh, yes, it can, and we're here...I think this bill might not stop it, but at least it will put the idea out there so people will know what it is. And if you're not ready to do that, then there's something wrong. That's my statement. [LB482]

SENATOR ASHFORD: Thank you very much. Any questions? Senator Chambers. [LB482]

GILLIAM BOYKIN: Yes. [LB482]

SENATOR CHAMBERS: Mr. Boykin, do you think they could have changed me and I don't know it and, therefore, I'm a tool of them in opposing this bill? [LB482]

GILLIAM BOYKIN: Sir, I said they can change politicians. I didn't say you. [LB482]

SENATOR CHAMBERS: No, I'm asking, do you think that could be... [LB482]

GILLIAM BOYKIN: I said that they could change politicians, and the politicians in Washington can change your mind. [LB482]

SENATOR CHAMBERS: Could they have changed me, I'm saying, without me being aware of it? I mean, we can't be too careful. [LB482]

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

Judiciary Committee
February 13, 2013

GILLIAM BOYKIN: Yes. The politicians in Washington can change you without you being aware of it. [LB482]

SENATOR CHAMBERS: So it would have to be the politicians in Washington doing it. [LB482]

GILLIAM BOYKIN: It would have to come from high up. It wouldn't come from this state. [LB482]

SENATOR CHAMBERS: So then if I don't know... [LB482]

GILLIAM BOYKIN: But we should start here and protect ourselves. I believe that. [LB482]

SENATOR CHAMBERS: So then if I don't have any contact with any politicians in Washington, then I'm safe. [LB482]

GILLIAM BOYKIN: No, you're not safe. [LB482]

SENATOR CHAMBERS: So then they could have gotten me without me knowing it. [LB482]

GILLIAM BOYKIN: Sir, I've seen people like you and a lot of other people in a lot of other countries. [LB482]

SENATOR CHAMBERS: Uh-huh, and they got us. [LB482]

GILLIAM BOYKIN: And they can change anybody. [LB482]

SENATOR CHAMBERS: And we're tools. [LB482]

GILLIAM BOYKIN: And they can kill anybody too. [LB482]

SENATOR CHAMBERS: I know that. And we're tools in their hands and don't even realize it though. [LB482]

GILLIAM BOYKIN: We are tools in a lot of people's hands. [LB482]

SENATOR CHAMBERS: Okay. [LB482]

SENATOR ASHFORD: Thank you, Mr. Boykin, for your comments. A gentleman here with the very attractive, good-looking cane...I love that silver handle. [LB482]

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

Judiciary Committee
February 13, 2013

SENATOR CHAMBERS: You watch it, Brad. I saw a werewolf killed with one of those kind of canes. [LB482]

SENATOR ASHFORD: I was wondering. I just better be very still and quiet, or I'll get my head whacked in. [LB482]

HARVEY SANKEY: It's my equalizer. [LB482]

SENATOR ASHFORD: Okay. [LB482]

SENATOR CHAMBERS: Right. He doesn't know that. (Laughter) [LB482]

SENATOR ASHFORD: Okay. Good afternoon. [LB482]

HARVEY SANKEY: (Exhibit 17) Good afternoon, Senator Ashford and members of the committee. My name is Harvey Sankey, H-a-r-v-e-y S-a-n-k-e-y. I live on 3204 North 157th Street in Omaha, Nebraska, and I am representing myself here as a taxpayer and as a person who doesn't...who enjoys his freedom that he has right now. I don't want it taken away from me. Agenda 21 pushes sustainable development and ICLEI implements it. What is sustainable development? According to its authors, the objectives of sustainable development is to integrate economic, social, and environmental policies in order to achieve reduced consumption, social equity, and the preservation of restoration of biodiversity. "Sustainablists" insist that every societal decision be based on environmental impact, focused on three components: global land use; global education; and global population control and reduction. Who is behind it? ICLEI--Local Governments for Sustainability, formally, International Council for Local Environmental Initiatives. Communities pay ICLEI dues to provide local community plans, software, training, etcetera. Additional groups include the American Planning Council (sic), the Renaissance Planning Group, International City/County Management Corp. (sic), aided by the U.S. Mayors Conference, National Governors Association, National League of Cities, National Association of County Administrators, and many more private organizations and official government agencies. Foundation and government grants drive this process. The term was first offered as an official UN policy in 1992 in a document called "UN Sustainability (sic) Development Agenda 21," issued at the UN's Earth Summit, today referred to, simply, as Agenda 21. More than 178 nations have adopted Agenda 21 as official policy during a signing ceremony at the Earth Summit. U.S. President George H. Bush signed the document for the U.S. In signing, each nation pledged to adopt the goals of Agenda 21. In 1993 the Senate did reject it. However, President Bill Clinton, in compliance with Agenda 21, signed Executive Order number 12858 (sic) to create the President's Council on Sustainable Development in order to harmonize U.S. environmental policy with UN directives, as outlined in Agenda 21. The EO directed all agencies of the federal government to work with the state and local community governments in a joint effort to reinvent government

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

Judiciary Committee
February 13, 2013

using the guidelines outlined in Agenda 21. As a result, with the assistance of the groups like ICLEI, sustainable development is now emerging as government policy in every town, county, and state in the nation. [LB482]

SENATOR ASHFORD: Thank you, Harvey. [LB482]

HARVEY SANKEY: Thank you. [LB482]

SENATOR ASHFORD: Do we have any questions? [LB482]

SENATOR CHAMBERS: I just have two,... [LB482]

HARVEY SANKEY: Yes. [LB482]

SENATOR CHAMBERS: ...maybe three. [LB482]

HARVEY SANKEY: All right. [LB482]

SENATOR CHAMBERS: Do you think this is a part of a communist plot to take over the world? [LB482]

HARVEY SANKEY: I don't think it's a communist plot, but you could say it's socialist. [LB482]

SENATOR CHAMBERS: Do you think the communists have been suckered also? Russia, do you think Russia has been suckered? [LB482]

HARVEY SANKEY: Well, my grandfather had his farm taken away from him by the communists, and he came over here to the United States to farm land. [LB482]

SENATOR CHAMBERS: But here's what I'm asking you: Do you think that the communists have been suckered by this plot also? [LB482]

HARVEY SANKEY: I don't know. [LB482]

SENATOR CHAMBERS: Okay. Do you think that the Nuclear Nonproliferation Treaty is a part of this kind of plot to weaken the United States and other nations that have nuclear power? [LB482]

HARVEY SANKEY: I don't think so. [LB482]

SENATOR CHAMBERS: You don't think that every international agreement is a part of this plot? [LB482]

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

Judiciary Committee
February 13, 2013

HARVEY SANKEY: No. [LB482]

SENATOR CHAMBERS: Hmm. We can't be too careful, you know, though. [LB482]

HARVEY SANKEY: Yeah, I know. [LB482]

SENATOR CHAMBERS: Okay, that's all I have. Thank you. [LB482]

SENATOR ASHFORD: Yes, Senator Davis. [LB482]

SENATOR DAVIS: Just a couple questions. In your...in the first paragraph of this,... [LB482]

HARVEY SANKEY: Uh-huh. [LB482]

SENATOR DAVIS: ...it talks about the objectives of this, and I'm just going to make, I guess, some questions. Do you think global population is something we need to worry about in this...in the world? [LB482]

HARVEY SANKEY: Some people are worried about it right now, they are, overpopulation. [LB482]

SENATOR DAVIS: Education, do you think that's something we need to focus on and try to work on in the world? [LB482]

HARVEY SANKEY: Education is really important right now, especially in this city and Omaha and the state of Nebraska. [LB482]

SENATOR DAVIS: And global land use, is that something we ought to focus on, if you've got to feed people? [LB482]

HARVEY SANKEY: Yeah, sometimes they could come in, like my grandfather, what happened to my grandfather. They told him what he could grow and how he can grow it and where he can grow it. Yeah, I think that's possible. [LB482]

SENATOR DAVIS: So I guess what I'm trying to say is you've got these three components of things that I think are probably worthy things to look at, in terms of trying to make a world which has to feed 8 billion people in 40 years. [LB482]

HARVEY SANKEY: But I don't think farmers should be told what to produce. They have their freedom to choose what they should produce. [LB482]

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

Judiciary Committee
February 13, 2013

SENATOR DAVIS: And I don't see that there's anything in this that is saying to me, you can't grow cattle anymore, you can't grow wheat anymore, you can't grow corn anymore. [LB482]

HARVEY SANKEY: You might limit it. The government could limit that. [LB482]

SENATOR DAVIS: And do you think that's really realistic, that the government will come in and say to farmers in Nebraska, we're not going to grow anymore corn? [LB482]

HARVEY SANKEY: Well, they do now. I think they... [LB482]

SENATOR DAVIS: Do you think, if we're going to do that, the way to do that would be to do away with ethanol subsidies and do away with all of the other benefits that kind of work towards what was a project that the government wanted to do, which was to stimulate green production? [LB482]

HARVEY SANKEY: They could tell you how...I'm...does the government pay subsidies to farmers up...so they don't produce certain items? [LB482]

SENATOR DAVIS: Yes. [LB482]

HARVEY SANKEY: Okay. [LB482]

SENATOR DAVIS: No further questions. [LB482]

SENATOR ASHFORD: Well, we have some agreement there. Thanks, Harvey. [LB482]

HARVEY SANKEY: All right, thank you. [LB482]

SENATOR ASHFORD: Okay, next proponent. Yes, sir. Where was your grandfather from, Harvey? [LB482]

HARVEY SANKEY: The Ukraine. [LB482]

SENATOR ASHFORD: Oh. They grew a lot of, at one time, a lot of wheat, didn't they? [LB482]

HARVEY SANKEY: Wheat, yeah. Yeah, and the communists came in and took over his farm,... [LB482]

SENATOR ASHFORD: Yeah. [LB482]

HARVEY SANKEY: ...told him what he could grow and what he couldn't grow and what

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

Judiciary Committee
February 13, 2013

to do with it. And he came over here to America to establish a farm in Ohio. [LB482]

SENATOR ASHFORD: I bet it was pretty productive. [LB482]

HARVEY SANKEY: It was, up until the Depression. [LB482]

SENATOR ASHFORD: Okay. [LB482]

HARVEY SANKEY: Then he had a little problem. [LB482]

SENATOR ASHFORD: Yeah. Yes, sir. [LB482]

DEAN JOCHEM: (Exhibit 18) Okay, thank you for your time. You're kind of tough here, Senator Chambers. [LB482]

SENATOR ASHFORD: Oh, we're not that tough. Well, go ahead and sit down, or you can stand up. Would you rather stand up? [LB482]

DEAN JOCHEM: Well, I'll tell you what, I'm a retired teacher of 38 years, and I'm a... [LB482]

SENATOR ASHFORD: Okay. What's your name, sir, just so we can get it? [LB482]

DEAN JOCHEM: My name is Dean Jochem. [LB482]

SENATOR ASHFORD: Okay. [LB482]

DEAN JOCHEM: D-e-a-n J-o-c-h-e-m. [LB482]

SENATOR CHAMBERS: Here's the only problem. [LB482]

SENATOR ASHFORD: Yeah, I know. [LB482]

SENATOR CHAMBERS: Excuse me. [LB482]

SENATOR ASHFORD: Yeah. [LB482]

SENATOR CHAMBERS: The only problem is that everything that's said is... [LB482]

DEAN JOCHEM: You don't get it in the mike? [LB482]

SENATOR ASHFORD: You can't hear it. [LB482]

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

Judiciary Committee
February 13, 2013

SENATOR CHAMBERS: Right. [LB482]

DEAN JOCHEM: Okay. All right. [LB482]

SENATOR ASHFORD: So if... [LB482]

DEAN JOCHEM: Okay. [LB482]

SENATOR ASHFORD: Only if you would rather be... [LB482]

DEAN JOCHEM: Thank you. [LB482]

SENATOR ASHFORD: Okay, there you go. [LB482]

DEAN JOCHEM: I'm used to standing in front of a class. And, by the way, I just gave you your homework assignment, and I want to be sure you get that read and report back to me, okay? (Laughter) Really, I think what I see here...I live at Ainsworth, Nebraska, drove for six hours to get here. It's all on my own. I believe in what's going on here with Agenda 21. Let me ask this question: How many of you, prior to today, knew what Agenda 21 was? [LB482]

SENATOR ASHFORD: Well, we don't have to...(laughter). [LB482]

SENATOR MCGILL: We've gotten a lot of e-mails. [LB482]

DEAN JOCHEM: Come on. [LB482]

SENATOR ASHFORD: We get to ask. Now that's just a rule that I've now established, so... [LB482]

DEAN JOCHEM: (Laugh) I've given a test. Well, okay. But my point is... [LB482]

SENATOR ASHFORD: No question asking. No, go ahead. [LB482]

DEAN JOCHEM: My point was...is that it's not understood. People don't...the people that should know what it is, even if it doesn't affect them, you should be aware of it, you should know what it is. And I asked an employee of the federal government, FSA office, just before I came down here, I said, do you know what Agenda 21 is? No, and there's so many people I've asked. So one thing that I am happy about this bill...and I want to compliment Senator Kintner for having the guts to bring this thing forward because it should show us quite well that we all need an education. And if nothing else happens out of this, I hope that that's what happens, that you all learn more about Agenda 21. Agenda 21's basic concern that you should have is that they are interested in taking

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

Judiciary Committee
February 13, 2013

away private property rights and returning this to the government, and to some extent we're seeing that in this day and age, that we think the government can do a better job of managing what we have. One of the primary tools that they use is the perpetual conservation easement, and Nebraska does have a statute on that. If you're not aware of it, it's the Conservation and Preservation Easements Act. I am a zoning administrator right now. We are working on a perpetual easement on the Niobrara Scenic River, and we were able to, because of that law, deny that easement. I don't want to go into it, and I hope I don't have to. But, the thing of it is, if we go to the federal level the supremacy clause of the constitution is quoted. We can't say a thing about wetland reserve programs, about grassland reserve programs, because of the federal constitution, and it becomes a matter of interpretation of that constitution. [LB482]

SENATOR ASHFORD: Dean, thank you. [LB482]

DEAN JOCHEM: Yeah. [LB482]

SENATOR ASHFORD: I'm going to...do we have any questions of Dean? And we do have some information that you've provided us, so we... [LB482]

DEAN JOCHEM: Well, I hope you've got some questions. Come on, Mr. Chambers. [LB482]

SENATOR ASHFORD: Well, I don't know if we do. Anybody have a...I don't...well, actually, Senator Davis has a question. [LB482]

DEAN JOCHEM: I came a long ways to...(laughter). [LB482]

SENATOR MCGILL: And we appreciate that. [LB482]

SENATOR ASHFORD: Senator Davis has one. [LB482]

DEAN JOCHEM: Yeah. [LB482]

SENATOR ASHFORD: Senator McGill will take over for a minute. [LB482]

SENATOR MCGILL: Okay, I'd be happy to. Senator Davis. [LB482]

SENATOR DAVIS: Mr. Jochem, you drove from Ainsworth, which is a long way, and I think he has some valid points to make. But, Dean, I guess I think it would be helpful if you talked a little bit--and you take five minutes or two minutes--and talk about the Niobrara River corridor and what has happened there in terms of property rights. [LB482]

DEAN JOCHEM: The Niobrara Scenic River was created in 1991. It originated out of an attempt by the people in that area of the state to put a dam in and develop an irrigation project which would irrigate a vast amount of acreages in the O'Neill and Atkinson area. The...there's a few landowners that were floating the river, had a canoe service there. They fought it, and they formed the Save the Niobrara River Association. And, as a result of that, it brought every environmentalist in, from Nebraska to all across the United States. And, as a result of that, the dam was stopped and we were designated a scenic river. And there's a process there of subtly taking this land, and the first one is perpetual easements. We'll get all we can with perpetual easements. And perpetual easements should be property rights. I have the right to sell this because I own it. I can sell the rights to it. It's all about money. You take the money away, and that wouldn't happen. And so the sad thing about those, they are until, if you'll excuse me, until the second coming of Christ. And how in the world can anybody know what's going to happen in the next 1,000 years if we didn't know very well what happened in the last 200? And so, as it proceeded on...most of that land is privately owned, but they're slowly, methodically, taking that over. And it's my hope that it...right now, the corridor is a quarter of a mile wide on each side of the river. But they have a new boundary that they're trying to get the Legislature here to adopt which will greatly increase their encroachment on privately held land. That's still privately held land, but now it's in the corridor. And the federal government has designated this as a wild and scenic river so, therefore, local people that live there, you've got to do what we tell you to. They didn't ask for them. They're there. But I guess I just would like to emphasize--in fact, I'd be willing to spend time with any of you--I am 74 years old. I have...there's a letter in there that tells how my...I'm only the third, fourth generation from Germany. They came here, and I'm still sitting on the place that my father established. And there are threats to that every day from outside. And the federal government is the one that you've got to worry more about than the state government, you know. But the state, why in the world did the state adopt perpetual easements? They...we had a rule against perpetuities, and that was changed back in about 2005. And now perpetuities are fine. Why did they adopt that? And one of the rules it has on it is the federal government will give you tax breaks and so forth only if these easements are issued in perpetuity. So there's all kinds of ways that the federal government is getting into it. And, Senator Chambers, in regard to the federal laws and the constitution, it depends upon how the powers that be interpret that constitution. Part VI, which has the supremacy clause in it, which is only about three or four sentences long, is interpreted, like I said earlier, that we, at the state level, don't have anything to say about it. We have a law that covers it, but our law is no good. And I have read other interpretations of it by other people in other states, lawyers, that say if the state has a law that relates to that and the specific job is not given specifically to the NRCS and the fish and wildlife, that it reverts back to the state. But the only way you'll find out whether that's right or wrong is you take it to the Supreme Court or whatever court, you know. And I hope I'm not boring you, and I'm...thank you for the extra time. [LB482]

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

Judiciary Committee
February 13, 2013

SENATOR MCGILL: Well, thank you very much. [LB482]

DEAN JOCHEM: Yeah. [LB482]

SENATOR MCGILL: Are there any other questions? I don't see any. Thank you very much for making the drive. [LB482]

DEAN JOCHEM: But please, please, get educated on this and... [LB482]

SENATOR MCGILL: You're helping us, trust me. [LB482]

DEAN JOCHEM: And I feel...I really think that Senator Kintner deserves a pat on the back because it's the first time I ever heard anybody say anything about that, and especially from the eastern part of the state. I'm out there in the tulips with Senator Davis. [LB482]

SENATOR MCGILL: Well, thank you. [LB482]

SENATOR DAVIS: Thanks, Dean. [LB482]

SENATOR MCGILL: Next proponent. Go ahead. [LB482]

SENATOR LATHROP: Good afternoon. [LB482]

DEREK FUGATE: (Exhibit 19) Good afternoon, Senators. Thank you for taking time to hear us today. My name is Derek Fugate, F-u-g-a-t-e. I'm a citizen, a volunteer, and a resident homeowner in Papillion, Nebraska. And I'd like just to take a moment...I won't have time to read through this that I've provided in your copy, but let's take a look from the big picture and take our stance out a little bit from just looking at the details. And, big picture, this is happening all around us. Agenda 21 is a guideline, a framework of goals, objectives, suggestions on how to apply these ideas, and they're working both top down and bottoms up. So, from bottoms-up approach, they're trying to influence the...either...environmental groups, the wetlands, the natural wildlife, habitat reserves, everything that they can, they're influencing to adopt these ideas. And to go further than that, they've provided legal codes that you can use. And whatever kind of code you're looking at, whether it's construction, whether it's human population, an interaction/intersection with wildlife areas, they have codes for all this. This is on the public Internet. Those are drag and drop, ready to use for these groups that want, at the lower levels in their communities, to start pushing these ideas. And whether we accept the fact that it's possible or not--I agree, the constitution gives the Bill of Rights protection of all private property--we still have to explain...how is it happening today in state after state after state? These areas, the groups that are influencing it have the authority to designate certain lands as restricted use, limited use. And once that

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

Judiciary Committee
February 13, 2013

designation is changed, those people don't have the freedom to continue using it. It's set aside for zero or limited human development. And so, somehow, those people are not being represented, and those decisions are being made. So that was one of my points. I'll quickly summarize the first level point. There is a lot of national organizations with credibility that have done study on this and have strongly come out to oppose it. Whether you look at...the National Federation of Republican Assemblies is adopting a resolution to oppose it. The National Republican Committee (sic) adopted opposing a resolution. They use phrases, as they describe Agenda 21, to include the extreme environmentalism, social engineering, global political control, social injustice, destructive, insidious. I mean, these are their summaries of what this Agenda 21 is. It's at least worth investigating why is it being pushed. I have read multiple chapters in this, not the entire document, that's full of ambiguous but qualitative words, such as, the land will be used for the best possible use, or, what is the most sustainable, best possible use of land with particular role to agricultural land. You know, nowhere does it define what that is or measure how do you know what's best. They leave that to the environmental organizations that are the ones that are putting the policy in place through their local government levels to define what is the best use of the land. But, I assure you, it's the best use for the land, the animals, and not for the humans that want to be productive in using the land. [LB482]

SENATOR LATHROP: Very good. Thank you for your testimony. Let's see if there's... [LB482]

SENATOR CHAMBERS: Just one thing. [LB482]

SENATOR LATHROP: Senator Chambers has a question. [LB482]

SENATOR CHAMBERS: You mentioned that they, this, and they. Who are they? Everybody says "they." [LB482]

DEREK FUGATE: Right. [LB482]

SENATOR CHAMBERS: Who are they? [LB482]

DEREK FUGATE: Yes, sir. So the United Nations started the Agenda 21 bill, and they have worked... [LB482]

SENATOR CHAMBERS: Who are they? [LB482]

DEREK FUGATE: Uh-huh. [LB482]

SENATOR CHAMBERS: The they that you keep referring to,... [LB482]

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

Judiciary Committee
February 13, 2013

DEREK FUGATE: Yes. [LB482]

SENATOR CHAMBERS: ...name them. [LB482]

DEREK FUGATE: Yeah, so the second organization that's the most closely associated with this, Senator Kintner mentioned, the International Council of Local Environmental Initiatives, and many other nongovernmental environmentalist groups. He came with a list of eight. I could give you... [LB482]

SENATOR CHAMBERS: But you don't know the names of all of the "theys," all of those that are in the way. [LB482]

DEREK FUGATE: You're correct, sir. I've not memorized the list. If you give me 24 hours, I'll give you 50 of them. [LB482]

SENATOR CHAMBERS: You mentioned that they have codes for all these different... [LB482]

DEREK FUGATE: Yes, sir. There are many codes written for this. [LB482]

SENATOR CHAMBERS: In grocery stores, every product has a barcode. Is that a part of the conspiracy? [LB482]

DEREK FUGATE: That's a different type of code, sir. [LB482]

SENATOR CHAMBERS: But it's along the same line. A code is a code is a code. [LB482]

DEREK FUGATE: Yeah, and there are many, many types of codes. [LB482]

SENATOR CHAMBERS: Are you saying, and I'm asking it, anything that relates to technology is a part of this conspiracy? [LB482]

DEREK FUGATE: No, sir. There's a list of defined codes that is a discrete list that they have that addresses... [LB482]

SENATOR CHAMBERS: Do you see this as a conspiracy? [LB482]

DEREK FUGATE: No, it's not a conspiracy. It's a fact. It's out there. It's being accomplished and implemented all over multiple states. [LB482]

SENATOR CHAMBERS: Is it driven by foreign forces outside of this country or foreign forces who have spies and infiltrators in this country? [LB482]

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

Judiciary Committee
February 13, 2013

DEREK FUGATE: Neither. It is a recommendation that's being voluntarily agreed and implemented by people inside our country and foreign organizations. [LB482]

SENATOR CHAMBERS: So if it's voluntarily agreed upon, that's the way elections are and activity in every legislature and every organization, whether it's the church or a Boy Scout group, isn't that true? [LB482]

DEREK FUGATE: Yes, sir. So the voluntary actually has a boundary. It stops. The voluntary election is what the legislators had agreed from these environmental groups to adopt these new policies. But, as I mentioned in my point 3,... [LB482]

SENATOR CHAMBERS: But there's no power to impose that on anything, I mean, on the United States government or any political subdivision, is there? [LB482]

DEREK FUGATE: Well, they do have deputized power. The UN will deputize inspectors that will inspect areas that have been rezoned. And if there's teeth to this, they have the ability to fine heavily. [LB482]

SENATOR CHAMBERS: Well, here's what I'm asking--not that there are not employees who carry out the duties of lawfully, constitutionally established agencies and departments of government--is there something or some group outside of the governmental structure of this country which can impose Agenda 21 on this country against this country's will? [LB482]

DEREK FUGATE: That answer would be no. [LB482]

SENATOR CHAMBERS: Okay. [LB482]

DEREK FUGATE: In Washington they're voluntarily agreeing to implement this. But, as taxpayers and as landowners, we need to recognize it's a threat to private property. [LB482]

SENATOR CHAMBERS: That's all I have though. You answered my question. Thank you. [LB482]

SENATOR LATHROP: I do have one question for you, if I may. [LB482]

DEREK FUGATE: Yes, sir. [LB482]

SENATOR LATHROP: Is there a book or an author that is connecting the dots for you on this subject matter? [LB482]

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

Judiciary Committee
February 13, 2013

DEREK FUGATE: I looked at many, many different sources, so I don't have one book or author, sir. [LB482]

SENATOR LATHROP: So there's not one guy who is espousing this theory or the concerns about Agenda 21. [LB482]

DEREK FUGATE: It's actually very largely supported by multiple organizations. As I mentioned, there are many, far more organizations. [LB482]

SENATOR LATHROP: Okay. [LB482]

DEREK FUGATE: It's not one or two, no. It's all pervasive. [LB482]

SENATOR LATHROP: No, I'm not talking about the people who...yeah, I'm talking about who is connecting the dots and telling you this is the problem and this is what the danger is of Agenda 21. [LB482]

DEREK FUGATE: For me, personally, or...? [LB482]

SENATOR LATHROP: Yeah, let's try that. [LB482]

DEREK FUGATE: I don't have a personal, unique source that's connecting the dots for me. [LB482]

SENATOR LATHROP: Okay. [LB482]

DEREK FUGATE: I've done my research. I'm not the expert. I try to think I'm an informed volunteer voter. [LB482]

SENATOR LATHROP: Okay, thank you, I appreciate that. [LB482]

DEREK FUGATE: Any other questions, Senators? [LB482]

SENATOR ASHFORD: Yes, Senator Davis. [LB482]

SENATOR DAVIS: You said you could have a list of 50? [LB482]

DEREK FUGATE: I'll do my best to come up with that. I think it's achievable. [LB482]

SENATOR DAVIS: It might be helpful. [LB482]

DEREK FUGATE: Yes, sir. I will e-mail you tomorrow with whatever I come up with. Thank you for that opportunity. [LB482]

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

Judiciary Committee
February 13, 2013

SENATOR ASHFORD: I don't see any other questions. Thank you. [LB482]

DEREK FUGATE: Yeah, thank you, Senator Ashford. [LB482]

SENATOR ASHFORD: Thank you. [LB482]

DEREK FUGATE: Gentlemen, have a good day, and ladies. [LB482]

SENATOR ASHFORD: Yeah, you too. [LB482]

SENATOR LATHROP: Senator, Mr. Chair,... [LB482]

SENATOR ASHFORD: Yes. [LB482]

SENATOR LATHROP: ...they are literally turning the water off at 6:30 in the building. [LB482]

SENATOR ASHFORD: Right. [LB482]

SENATOR LATHROP: And I think we have three more bills besides this one. [LB482]

SENATOR ASHFORD: Here's what... [LB482]

SENATOR LATHROP: So I'm wondering if we need to set some limitation for the duration of the hearing. [LB482]

SENATOR ASHFORD: Well, here's what we're going to do. We're going to see where we are at 4:30. So let's just keep going, and at 4:30...how many opponents do we have again? I think only a couple. Okay, and proponents? Okay, proponents, I know we have a number of proponents, so we're going to examine where we are at 4:30. [LB482]

SENATOR COASH: Let's just keep it going. [LB482]

SENATOR ASHFORD: So let's keep going on this. Go ahead. [LB482]

WESLEY DICKINSON: (Exhibit 20) Okay. Chairman Ashford, members of the Judiciary Committee, my name is Wesley Dickinson, D-i-c-k-i-n-s-o-n, and today I'll be speaking on behalf of the Nebraska Firearm Owners Association. We're a statewide, nonprofit coalition of firearm owners. So my focus today and discussion of this legislative bill is going to look directly at that firearm ownership aspect of it. And, if it's okay with everyone, I'm just going to quickly read through the written statement, and then, if there's questions, we can field those. Hopefully that can keep everything moving on

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

Judiciary Committee
February 13, 2013

quickly. Members of the Judiciary Committee, I am speaking on behalf of the Nebraska Firearm Owners Association and testifying in support of LB482 as proposed by Senator Bill Kintner of Papillion. Our members have firsthand experience and are very knowledgeable about issues of private property rights, as well as the results that bureaucratic rules and arbitrary government regulations have on our celebrated freedoms. As firearm owners, we strongly support the United States Constitution and the Bill of Rights. UN Agenda 21 does not. Washington's current attempt to register guns is one step of inventorying our private property. Inventorying all private property and then limiting its use is the ultimate goal of UN Agenda 21. We have learned that the plans imposed by the International Council for Local Environmental Initiatives, of which Omaha is a member and Lincoln formerly was, will further restrict the opportunities for using personally owned private property through onerous planning controls and limits. Through zoning restrictions and smart phone implementation, recreational and target shooting on privately owned property could be limited, restricted, or even eliminated. Furthermore, if Agenda 21 is allowed to be fully implemented in Nebraska, unelected bureaucrats would be able to control the, quote, sustainable management of open spaces, which could potentially limit, restrict, or even eliminate public access to public lands for hunting. NFOA members want to encourage personal responsibility, local control by our duly elected officials, and the opportunity for hardworking Nebraskans to have full control of property they worked to earn. Therefore, the NFOA fully supports LB482 and looks forward to retaining control of Nebraska's cities and counties by Nebraska residents and taxpayers through our elected officials, not international bureaucrats and their plans that do not recognize the specific needs of the diverse regions of the U.S. Thank you for your time and consideration. [LB482]

SENATOR ASHFORD: Thank you, Wesley. Any questions of Wesley? I don't see any. Thank you very much. [LB482]

SENATOR CHAMBERS: Where is that baby? [LB482]

SENATOR ASHFORD: Yeah, where is... [LB482]

WESLEY DICKINSON: Oh, she's out in the hall. [LB482]

SENATOR CHAMBERS: Oh, okay. [LB482]

WESLEY DICKINSON: She's...it's nap time. I was hoping we would be a little bit farther in the day, so we planned the naps for the drive here, and she is ready to snooze. She's looking for the car seat. [LB482]

SENATOR ASHFORD: Well, she does add a lot to the process, so thank her. [LB482]

WESLEY DICKINSON: Something for certain. [LB482]

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

Judiciary Committee
February 13, 2013

SENATOR ASHFORD: Thank her for coming. [LB482]

WESLEY DICKINSON: Will do. Thank you, Senators. [LB482]

SENATOR ASHFORD: Good afternoon. [LB482]

DON GERBELING: My name is Don Gerbeling. I live at 7901 Lowell Court here in Lincoln. I'm here representing myself. Senator Ashford and members of the committee, thank you for hearing me today, which kind of leads me to where I'm...what I want to say to you. First of all, my concern is Agenda 21 may try to affect how we govern the...here in United States. I believe that our Judiciary Committee, our senate (sic) here in Nebraska, our Governor, and our legislators here in the United States are doing a very good job of running our country under our constitution and our Bill of Rights. I did Google Agenda 21, and there were some statements in there that, if true, have me concerned about the purpose of this agenda, and I'll read them to you. This is Harvey Ruvlin, vice chairman, ICLEI. That's the International Council for Local Environmental Initiatives. The Wildlands Project...he says, individual rights will have to take the backseat to the collective. We must make this place an insecure and inhospitable place for capitalists and their projects. We must reclaim the roads and the plowed lands, halt dam construction, tear down existing dams, free shackled rivers, and return to wilderness the tens of millions of acres on presently settled land. That's what...that was supposed to be from Don (sic) Foreman, Earth First!. This would be from the United Nations' biodiversity assessment report, if these are true quotes. What is not sustainable: ski runs, grazing of livestock, plowing of soil, building of fences, industry, single-family homes, paved and tarred roads, logging activities, dams, and reservoirs, power line construction, and economic systems that fail to set proper value on the environment. My concern is I don't want a foreign entity or a foreign country interfering with our legislatures and our people that we have running our country. [LB482]

SENATOR ASHFORD: Thank you, Don. Any questions of Don? I don't see any. Thank you, sir. Next proponent. [LB482]

LEVI LIPPINCOTT: Mr. Chairman, members of the committee, thank you for allowing me time to speak to you regarding this matter. My name is Levi Lippincott, L-i-p-p-i-n-c-o-t-t. I reside in La Vista, Nebraska. The reason I'm here speaking on behalf of LB482 is because I believe that Agenda 21 could have the largest impact on my family's life within the foreseeable future. In looking around the room, it's clear that I'm one of the youngest people here. That's not, of course, including the little babies that were here. But it's...I'm...I, personally, am at that stage in my life where I am looking to...my wife and I are looking to buy a home for our three children and actually get settled down, and the rights to maintain that property could be in jeopardy due to Agenda 21. Now, first, let me clarify, I'm not some conspiracy theorist that's here that

thinks that Agenda 21 is some sort of gateway drug to a global government or some sort of wolf in sheep's clothing. But what it is, is it's a basic framework for a system of governments to lower humanity's impact on climate change and to foster a sustainable lifestyle and live in harmony with nature, which sounds good on the surface--I mean, who wouldn't want to have sustainable future?--until you look at the programs that are advocated within Agenda 21. It sets aside massive portions of land to be returned to the wilderness where humans aren't even allowed to enter. It's designed to curb the economic growth, as well as the size, of various cities and...by lowering the carbon emissions that those generate. And it makes it difficult to travel within the city and to encourage people to stop using automobiles. Mr. Chairman and various senators, you might be asking yourself, how is Agenda 21 going to impact my constituents, because not only to the state of Nebraska do you have any sort of role, but you also report back to your own elected constituents. And one of the main tenets is slowing economic growth down within cities and limiting property usage. So whether your district is primarily agricultural or you're in an urban, dense environment or if it's a mixture of both of them, it's going to affect both of them. It could affect farmers by not allowing them to grow or graze on their land, worst-case scenario, have their lands taken by them through eminent domain. And it could affect citizens in Omaha, Lincoln, and any other of the larger cities by driving good-paying jobs away and increasing the numbers of those that are unemployed. So why am I personally concerned? Because I want to continue living in the state I was born and raised and call home in. I want my children not to feel obligated to move out of the state when they get older because there are no opportunities for them. And heaven forbid implementation of Agenda 21 programs occur at a quicker pace than what they have been and forces me to relocate as well. So thank you for your time. [LB482]

SENATOR ASHFORD: Thank you. Any questions? Thank you. [LB482]

LEVI LIPPINCOTT: All right. [LB482]

SENATOR ASHFORD: I don't see any. Next proponent. [LB482]

RICHARD CARTER: My name is Richard Carter. That's R-i-c-h-a-r-d C-a-r-t-e-r. I have the privilege of being an educator. I work in education at Metro Community College and I also teach economics, so I get to live the world of both an economist and an educator. And unfortunately Senator Chambers is not here. I work in his district. I am a member of the NSEA, a member of the NEA. But I would like to point out that I am not here testifying on behalf of either one of those organizations, just as myself and as someone who is concerned about education. I understand there's a great need for conservation. I am someone who believes in outdoors and hunting and participate in multiple conservation programs. And I don't subscribe to any extreme conspiracy theories or anything the likes as some accusations have been made of some of the members that have testified here. However, my concern stems from...that conservation, if it becomes

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

Judiciary Committee
February 13, 2013

too extreme or too overburdensome, can slow down economic growth and economic development. And, as many have testified, that is the exact purpose of some of these regulations, to stifle economic development and economic growth, thus, my concern comes in as an educator. As we slow down our economic growth, economic activity, the states lose revenue. That revenue is what funds education. So I'll make it real brief and real straightforward. I'm concerned that the long-term impacts of these conservation efforts could be slowing down local municipalities' revenues. That will adversely impact education, and I will leave it at that. [LB482]

SENATOR ASHFORD: Thanks, Richard. [LB482]

RICHARD CARTER: Thank you. [LB482]

SENATOR ASHFORD: Any questions? Thank you. Good to see you again. [LB482]

RICHARD CARTER: Thank you. [LB482]

SENATOR ASHFORD: Next proponent. Any...yes, sir. [LB482]

ROB ROHRBOUGH: I apologize for not wearing my jacket up here. My name is Rob Rohrbough, Rob, R-o-b, Rohrbough, R-o-h-r-b-o-u-g-h. I live at 9215 Dorcas Street in Senator Ashford's district. [LB482]

SENATOR ASHFORD: Um-hum. That's a good neighborhood over there. [LB482]

ROB ROHRBOUGH: Yes, it is, thank you, Senator. I don't have much to say. I think some of it's been said very well. I just want to let you know that I am here representing myself because I think this agenda item of the United Nations is a threat. I do think it threatens property rights, and I think that the impact may be felt in spite of our laws. And I'm very definitely in favor of LB482 because I would like to see us focus and become aware of this agenda item and its potential impact at all levels of government. Senator Lathrop, I'd just like to answer your question. There are people that have been studying this and connecting the dots. One book that I could mention...and you can take it for what it is. I don't know that it will be persuasive to you, but I want you to know that there has been a book written. It's called Behind the Green Mask, by Rosa Koire. I think you spell her last name K-... [LB482]

_____ : ...o-... [LB482]

ROB ROHRBOUGH: ...o-i-something. Yeah, can somebody help me, because it's an unusual spelling? [LB482]

_____ : ...o-i-r-e. [LB482]

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

Judiciary Committee
February 13, 2013

ROB ROHRBOUGH: Did you get that, Senator? [LB482]

SENATOR LATHROP: Yes, I did. Thank you. [LB482]

ROB ROHRBOUGH: All right. There have been numerous articles written both for and against Agenda 21. There is a challenge that's on...that I am also a member. I'm not representing them, but I...there is an article written on the Nebraska Taxpayers for Freedom's Web site with a challenge, that's called the "Amazon.Com Challenge," that will help you document the masses of articles and books that have been written on Agenda 21. And, if you're in Omaha and you're interested in learning more, I'm going to put a plug in for their meeting. I don't know if that's permissible. But a week from today, on February 20 at 6:30 p.m., at the Millard Public Library, Dr. Van Deun will be speaking, and it will be very worth your while if you want to learn more about Agenda 21. Thank you. [LB482]

SENATOR ASHFORD: Thanks. Thank you very much for coming down. Next proponent. Do we have any opponents or...proponent. [LB482]

RANDAL CLIMER: Good afternoon. My name is Randal Climer, C-l-i-m-e-r. I am from the Ralston school district in Omaha. I want to let you know that I am a lifelong Democrat. [LB482]

SENATOR ASHFORD: That's quite an admission. (Laughter) [LB482]

RANDAL CLIMER: I know. [LB482]

SENATOR LATHROP: Be careful, we'll haul you out of here. (Laughter) [LB482]

RANDAL CLIMER: I voted for George McGovern, and I voted for Barack Obama in 2008. And, Senator Lathrop, I think I've thrown a vote your way, so. [LB482]

SENATOR ASHFORD: How is he doing? (Laughter) [LB482]

RANDAL CLIMER: That depends. I was a lifelong Democrat until a year ago, and that's when I became familiar with Agenda 21. I've spent, literally, hundreds--I'm not exaggerating--hundreds of hours researching this, reading books. Everything that you have heard today is true, and I agree with it. Time is short. Let me just give you a couple of statements. If you will go to www.america2050.org, this is a UN-affiliated Web site. And if you go to the right-hand side, there is a section called "Maps," and if you will click on that you will see a series of maps. A couple of the maps show a United States Map and, right through the middle of it, virtually all of Nebraska is what they call an underperforming region. There is another associated map that says, these are the

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

Judiciary Committee
February 13, 2013

underperforming counties in the United States. Nebraska is big time on both of those maps. I suggest that we all find out what that means. I think it has something to do with the Wildlands Project myself, but I can't prove that. While you are also in this set of maps, if you click, you also will find a map of megacities, and you will find a map of major rail plans. If you wonder why President Obama always talks about high-speed rail, you will find an answer on one of those maps. I was going to tell you a story about the FFA. I don't know if I have time. The Superbowl commercial,... [LB482]

SENATOR ASHFORD: The Future Farmers of America? [LB482]

RANDAL CLIME: ...the really good one about the farmers, I wondered who sponsored that thing. And I waited until the end, and it was Dodge trucks, excellent commercial. I'm a farm boy from northeast Nebraska. At the very bottom, and you couldn't hardly see it, was the FFA logo. Now I belonged to the FFA for four years, all through high school. I haven't looked at the Web site for a while. Am I done? (Laughter) [LB482]

SENATOR ASHFORD: You are finished, unless we have some questions. I don't see any. Thank you, sir, for coming down. [LB482]

RANDAL CLIME: Thank you. [LB482]

SENATOR LATHROP: Thanks. [LB482]

SENATOR ASHFORD: Any other proponents? How about opponents? Why don't we go here, and then the gentleman in the back? [LB482]

ROBERT HALLER: (Exhibit 21) Hi. Senator Ashford and members of the committee, I'm happy that you are holding this hearing. My name is Robert Haller, H-a-l-l-e-r. I live in Lincoln, Nebraska. I'm here representing the Nebraska chapter of the United Nations Association of the U.S.A., and I'm here to urge you to reject this bill out of hand as not deserving of your time to debate it. It claims a UN conspiracy embodied in Agenda 21, which is a 300-page collection of best practices for forestalling climate change and creating a sustainable environment, which was the outcome of the Rio conference of 1992. There have been two such conferences since then, and the 190-plus members of the UN who participated have yet to bind themselves to anything more than continued discussion and recognition of the need for action. The sovereign states who make up the UN, in other words, have voted quite openly not to bind themselves to Agenda 21 or any other agenda, hidden or explicit. There is no such thing as the UN, apart from the member states and the persons hired to carry out the programs approved by the member states. By the same token, NGOs follow policies and work for the goals assigned them by those who fund them and sit on their boards, just as the actions and policies of IGOs are determined by the governmental units which are its members. The UN does not create them or govern them, nor does it require them to alter their missions

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

Judiciary Committee
February 13, 2013

in order to achieve UN recognition. Agenda 21 is now over 20 years old. It, doubtless, has many good suggestions among its proposals. But science and policy have advanced since that time. No nation, state, or governmental unit pursuing sustainability would adopt a program from it without adapting it to new knowledge and local conditions, including the applicable legal requirements within their jurisdiction. LB482 imagines some magical power in the language of Agenda 21, as we have heard this evening, some virus which eats away at property rights of governmental entities that adopt a version of the program or a policy found in it. The bill imagines that the UN has some occult power to infect NGOs and IGOs which receive its approval or recognition. Of course, no one wants a governmental unit to approve an unconstitutional program or policy or accept financial support requiring a violation of property rights. But nothing in this bill represents a finding that it will protect our state's constitutional rights. Instead, its clear purpose is to forbid the state or any governmental unit from adopting any program or policy to forestall global warming or to create the conditions of sustainability, and it also forbids accepting financial or other help from outside agencies to that end. It constructs a fantasy narrative which completely ignores not only the evidence, which would support a program of sustainability, but also the realities of the institutions which make our democracy and engagement with the rest of the world effective. The state of Nebraska should not be in the business of buying into this fantasy. [LB482]

SENATOR ASHFORD: Thank you, Randal (sic). Any questions? I don't see any. Thanks for your comments. Other opponents? Then, yeah, come on up to the front if you want, and...the next opponent. [LB482]

JOHN KNAPP: I have to fill out a form. I didn't get it filled out. Sorry. [LB482]

SENATOR ASHFORD: Okay, well, you can do it after you're done. Just give us your name and your... [LB482]

JOHN KNAPP: Okay. My name is John Knapp, J-o-h-n K-n-a-p-p, and I'm opposed to the legislation as written. Contrary to...it was brought up about easements and perpetual easements. And I live in rural southwest Sarpy County, and our county planning and zoning has conservation easements included in them. And they are to qualify...I'm not sure about the state law. I'm not that familiar with it. But at least for federal assistance you need a perpetual easement to get any federal assistance to start these. And it looks to me like this statute would prohibit, or could possibly prohibit, the, you know, the federal government participation. The easement, the government does not own the easement. It's an easement that I would put on my land, and it would just be...it would be like a pipeline easement, except I make the easement. And the government does back...help me put that easement in place. And so...and for property rights, I feel if I want to put my farm into a perpetual farm ground, that I should have the right to do that just...I mean, if a developer bought the land, he could put a Walmart in there, and that would be a perpetual...I mean, essentially, that's a perpetual. The next guy that buys the

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

Judiciary Committee
February 13, 2013

land, he's got to deal with the Walmart. And so I see it no different than what the developers are doing with property. And in Sarpy County, to give you an idea, our planning and zoning, when we were fighting subdivisions, the planning department said, well, fight it as a property right. If I didn't want the housing project next to me, I could have bought the land to do what I want with it. And, a few years later, somebody wanted to put a wind tower up in Sarpy County, and they prohibited commercial wind towers because the neighbors might not like the sound or the view from their house. And I see, you know, my view...and the same individual that told me I could buy the land to prevent the housing was the one that told me that the neighbors might not like a wind tower next to them. And I look at it...I told him, why would my property rights be just like...if they didn't like that, they could have bought the land to do what they want with it. But anyway, that's basically my testimony. And thank you for the time and... [LB482]

SENATOR ASHFORD: Well, thank you for your time. Thank you very much, sir. I don't see any other questions. Thank you. Yes, sir. [LB482]

JAREL VINDUSKA: Senators, thank you for listening to my testimony. I'm Jarel Vinduska, J-a-r-e-l, last name spelled V-i-n-d-u-s-k-a. My family has 320 acres in southern Sarpy County next to Schramm State Park. And I'm chairman of a group called the Schramm Association for a Viable Environment. Now if people heard that name, some people would think, well, I'm part of the UN, you know, that I'm part of Agenda 21 just by the name. But I can assure you that I'm not no part of the UN, and neither is anyone in our group that I know of. In fact, the members of our group are property owners, long-term property owners that own a lot of the farmland along the Platte River Corridor, around Schramm State Park. And we worked several years, through the county, to create the first conservation development area in the state, the first and only one. It's the southern part of Sarpy County. And the reason we worked hard for that is because we wanted to preserve some agriculture in Sarpy County and preserve the viability of the Platte River Corridor, which is a very important environmental area. And some would say, oh, we're hindering development there, but actually we're not. Why is necessarily farmland or wildlife on the hills, why is that any lesser of a use than the urban sprawl that's going to cover 99 percent of Sarpy County? And, like I say, these people were here since we took the property rights from the Indians and shuffled them off on a reservation. They've been there from...and so why isn't their right to say that, hey, I want...I mean, it's not going to be like in the future we're going to decide as a society that we don't need to eat anymore. Preserving farmland is a viable thing, and it won't be preserved in Sarpy County unless we have something...conservation easements, and that's really how I ended up here today. I looked at this bill and I said, jeez, it's a bunch of nothingness. We already have the Constitution of Nebraska, we have the Constitution of the United States, so why are we all of a sudden worrying about some voluntary thing? But I suspect what happened, and I'm not going to speak for the people behind me, but, you know, the...I hear Glenn Beck, you know, conservative talk show host, he's all riled up about this, and I think he's inflamed a lot of

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

Judiciary Committee
February 13, 2013

people. But really, you know, on a farm you have lots of government restrictions and, as of yet, I haven't seen any that I can tie to the United Nations. But what reason I came down here is we've got 120 acres of our land in a conservation easement, and I got this notice about LB...I mean, the AM180 to this bill that's eight pages long, and it basically would kill conservation easements in Nebraska. And when I went... [LB482]

SENATOR ASHFORD: And we haven't seen that amendment. I don't know who...maybe Bill. [LB482]

JAREL VINDUSKA: It wasn't submitted. But when I went to see...ask Senator Kintner where it came from, I got to talk to his aide. And he says, oh, that isn't there. That was leaked out. Well, I really hated that term, "leaked out," because he's our senator. And, to his credit--once he got a lot of calls from people, once I called people and the Nebraska Land Trust called people--to his credit he realized that it was an infringement on private property rights, and so he withdrew it. [LB482]

SENATOR ASHFORD: Okay, so that's why we don't have it. [LB482]

JAREL VINDUSKA: Yeah. [LB482]

SENATOR ASHFORD: So that... [LB482]

JAREL VINDUSKA: Yeah, and that's the reason I came down here. But then, while I was here, I figured I might as well testify on this because... [LB482]

SENATOR ASHFORD: Well, you might as well, and... [LB482]

JAREL VINDUSKA: Well, because it's really...it... [LB482]

SENATOR ASHFORD: No, I mean, no, I mean, I'm serious. I mean, I wish I knew more about the conservation...well, the Platte Corridor generally. I mean, there's a lot to learn and know about it, and... [LB482]

JAREL VINDUSKA: It's a...there's hundreds of acres been put...around Schramm State...but it's still farmed just like it always was. It's a voluntary thing. When it's sold, the people will know what restrictions are on it. It's no different than an easement that TransCanada is getting. No one would ask TransCanada to say, oh, this ease... [LB482]

SENATOR ASHFORD: The good...the difference there though is that we get to have...the...you're there on the land. [LB482]

JAREL VINDUSKA: Yeah. [LB482]

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

Judiciary Committee
February 13, 2013

SENATOR ASHFORD: I'd feel more...I feel very comfortable with you on the land. I'm not sure I totally feel comfortable with TransCanada zipping through here. [LB482]

JAREL VINDUSKA: Well, no. What I'm getting at... [LB482]

SENATOR ASHFORD: But I... [LB482]

JAREL VINDUSKA: And this amendment called for an easement to be reevaluated every 20 years. [LB482]

SENATOR ASHFORD: Yeah. [LB482]

JAREL VINDUSKA: Well, nobody would tell TransCanada, we've got to reevaluate your pipeline easement in 20 years. [LB482]

SENATOR ASHFORD: Well, actually, yeah, we do have a bill that does that. But I... [LB482]

JAREL VINDUSKA: But they wouldn't go along with it, I'll guarantee you. [LB482]

SENATOR ASHFORD: Okay, but I think your comments and points are well taken and very interesting. [LB482]

JAREL VINDUSKA: Yeah. [LB482]

SENATOR ASHFORD: So I think you've added to the conversation. Thank you. Senator Davis. [LB482]

SENATOR DAVIS: Mr. Vinduska, with regards to your conservation easements, did that change the valuation then of your property, of the taxation that you pay? [LB482]

JAREL VINDUSKA: No, we still...it still has agricultural greenbelt designation, so you're taxed on ag value of the land. [LB482]

SENATOR DAVIS: So why did you agree to enter into a conservation easement on your property? [LB482]

JAREL VINDUSKA: Because I've spent the last 30 years restoring prairies, putting in structures to control erosion on streams, ponds, trying to farm in a sustainable way. And I know that's a bad word to a lot of people, but that's what's so unfortunate about 21. All those words are good words. When we've got 8 billion people on earth, you've got to think "sustainably" and "plannably." So I put it in because why would I spend 30 years of my life and the rest of my life trying to make this land be the best it can as agricultural

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

Judiciary Committee
February 13, 2013

and for nature and wildlife only to have urban sprawl come in and scrape clean everything that I've worked for my whole life? Future generations are going to want these little threads of nature to enjoy these views. It's an economic engine. People don't leave I-80 to look at a cornfield. They leave I-80 to go to Mahoney Park and see the view along the Platte River and for the sake of that. It's not a waste. It's not taking from our society. It's giving to society and for the future. [LB482]

SENATOR DAVIS: And who has the conservation easements? [LB482]

JAREL VINDUSKA: The Nebraska Land Trust. [LB482]

SENATOR DAVIS: So that was the environmental trust then? [LB482]

JAREL VINDUSKA: That was the environmental trust my...they got a grant, and they paid up the difference between development value and ag value. [LB482]

SENATOR DAVIS: And who did they pay that to? [LB482]

JAREL VINDUSKA: The landowners. [LB482]

SENATOR DAVIS: Okay, so there was some revenue that came from the state of Nebraska into your property. [LB482]

JAREL VINDUSKA: Correct, but it wasn't...I think it was a worthy investment. Some would think it wasn't, but... [LB482]

SENATOR CHRISTENSEN: Senator Ashford. [LB482]

SENATOR ASHFORD: Senator Christensen. [LB482]

SENATOR CHRISTENSEN: Thank you, Chairman. When you was testifying earlier, it sounded to me like you were saying that you were trying to preserve farm ground. But, really, what you have done is preserved bank...protecting riverbanks and protecting grass ways and things this way, correct? [LB482]

JAREL VINDUSKA: Correct. [LB482]

SENATOR CHRISTENSEN: And so, really, it did change tax structure. [LB482]

JAREL VINDUSKA: How did it do that? [LB482]

SENATOR CHRISTENSEN: Because you converted it from farm ground to grass, correct? [LB482]

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

Judiciary Committee
February 13, 2013

JAREL VINDUSKA: Farm ground that should have never been plowed. [LB482]

SENATOR CHRISTENSEN: Well, that could be. I'm not arguing that point. But I thought you said nothing had changed tax breaks or things that way. [LB482]

JAREL VINDUSKA: Yeah. [LB482]

SENATOR CHRISTENSEN: So I just wanted to clarify. [LB482]

JAREL VINDUSKA: And since it didn't...since it should have never been plowed, now the sediment that would have come off of that land taxpayers aren't paying to dredge it out of the Mississippi and Missouri. And we're percolating water in the ground so irrigators will have water to suck up into the fields. We're not having to pay for remediation of endangered species and things like that. There's a public benefit, a great public benefit for it. Like I said, the people that are driving down the highway and looking, that come off the interstate to spend money at the cafes and things, they're looking at that beautiful Platte corridor. They won't get off the interstate and go to those parks if it's all just urban sprawl. [LB482]

SENATOR CHRISTENSEN: I'll agree with protecting the sediments and things this way. But when you say you increase the percolation, there's a lot of proof that grass uses more water than crops do. So you're not increasing percolation because the consumptive use of grass is higher. But otherwise I can agree. [LB482]

JAREL VINDUSKA: That isn't true on hill ground--on flat ground, maybe. But on hill ground, if that was in crops, you get a three-inch rain, that three-inch rain is in the crick and down to Louisiana. Grass lets it percolate into the ground. [LB482]

SENATOR CHRISTENSEN: But it also...we use more (inaudible). [LB482]

JAREL VINDUSKA: They why streams are drying up in Nebraska is because there's not as much percolate...that's why they're degrading into the ground and getting lesser flows in all of them. [LB482]

SENATOR CHRISTENSEN: Well, that I would disagree with, but let's go on. Thank you. [LB482]

SENATOR ASHFORD: Okay. Well, I appreciate what you're doing for your land, and I also...it brings up a point. I think if...we need to get people off the interstate and come and look at what our farmers and landowners are doing across the state because it is amazing. And I wish there was a way to encourage...well, there is a way, but, I mean, to help encourage people to just take some time and come visit our parks. [LB482]

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

Judiciary Committee
February 13, 2013

JAREL VINDUSKA: Well, yeah, like our parks. Could I just say one thing? [LB482]

SENATOR ASHFORD: And I...you know, what we should do for the sesquicentennial, if we really...what would really be fun is...then I'll let you go, and I know this is a long afternoon. But I've been thinking of 2017, our sesquicentennial. I won't be in the Legislature. Senator Kintner will be, Senator Seiler will be, Senator Davis will be, and that's about it. Well, there will be others. But the...it would be fun to have a...get kind of a project whereby we promote Nebraska's sesquicentennial by kind of exposing the country and the world to all the things we've done in the last 150 years to not only feed the world but also to preserve the assets that we have here and the parks and, you know...so I don't know how we do that exactly, but I think we should encourage state tourism to do that because I think it's wondrous. [LB482]

JAREL VINDUSKA: Can I make one quick comment on that? [LB482]

SENATOR ASHFORD: Yeah. [LB482]

JAREL VINDUSKA: Last week...the Game Commission is trying to figure out how to keep our parks from deteriorating and... [LB482]

SENATOR ASHFORD: Right, right. [LB482]

JAREL VINDUSKA: ...and because they don't have the funds to take care of them. [LB482]

SENATOR ASHFORD: Right, they don't, yeah. [LB482]

JAREL VINDUSKA: These conservation easements, they're still paying taxes, and yet private property is taking care...private people are taking care of it. [LB482]

SENATOR ASHFORD: Right. [LB482]

JAREL VINDUSKA: So look at what...look what the state is getting for free: extra land around the... [LB482]

SENATOR ASHFORD: No, that's...I agree with that, and I...yeah, I wish there was a way we could fund our parks where the whole...where everybody paid for the parks. It's only the people that use them, but they are a resource for all of us and...anyway, you've made some good points. Thank you very much. [LB482]

JAREL VINDUSKA: Thanks. [LB482]

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

Judiciary Committee
February 13, 2013

SENATOR ASHFORD: How many other...go ahead. How many other...let's see, we have opponent. How many other opponents do we have here? Do we have any neutral testifiers today? Okay, there's one. We're going to...come ahead, and then one more after you. And then we really are going to go to the next bill, so... [LB482]

SENATOR SEILER: Senator Ashford, two neutrals want to... [LB482]

SENATOR ASHFORD: Okay, two neutrals. [LB482]

KRISTI WAMSTAD-EVANS: All right, thank you. My name is Kristi Wamstad-Evans. It's K-r-i-s-t-i W-a-m-s-t-a-d-E-v-a-n-s. I'm from the city of Omaha. I work for the Planning Department and also with the mayor's office, other city departments, nonprofits, businesses, citizen stakeholders, and others to elevate actions and policies that promote the principles of sustainable development and smart growth in Nebraska's largest municipality and throughout the region. I can tell you firsthand that I do not report to the United Nations nor to the International Council of Local Environmental Initiatives, or ICLEI. The city of Omaha was a member of ICLEI from 2011 to 2012. ICLEI, in the U.S., is a consortium of local governments that works to share best practices, create tools for tracking performance, and open channels of communication between communities experiencing challenges presented by our environmental, economic, and social conditions. I am not here today to defend ICLEI but, rather, to provide some context for the organization that some have claimed is an extension of a global effort to control local and national decision making. In 2013 the city of Omaha did not renew our membership with ICLEI. Our reason for renewing had nothing to do with feeling forced to comply with a global treaty or compelled to implement any agenda. It had to do with the simple reason that we had already crafted our own local tools for tracking energy and climate performance. And there were many opportunities we'd found, other opportunities we found for sharing best practices and communicating with other cities to discuss ours and their challenges. But my testimony today is not about ICLEI nor really about the United Nations Agenda 21. It's about the implications that proposed legislation such as this might pose on communities throughout Nebraska. Sustainability is not a conspiracy. It's not an extreme environmentalism or an effort to redistribute wealth. It's not an attempt to deprive citizens of their property rights. It is a concept intended to promote critical thinking about our collective future based on decisions and investments we choose to make today. It's determining how we can invest in new technologies and promote social interactions that will help us be good stewards of the public investment and tax dollars while also serving to protect health, safety, and welfare of our citizens both today and in the future. In 2010 the Omaha City Council unanimously passed the environment element, a new element to our comprehensive plan. It contains many of the elements that are discussed as associated with Agenda 21. As a part of it we've also been implementing a number of activities, and we recently replaced 60 percent of our traffic signals, saving the city \$200,000 and reducing our consumption of gold-based electricity, which is a key source of greenhouse gas emissions. We have a

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

Judiciary Committee
February 13, 2013

comprehensive energy management plan that helps us track what our energy use is, both the facilities, as well as the municipal-wide or the community-wide level, and a number of other items/activities that are probably reflected in Agenda 21 that we would not be able to implement under this bill. Thank you. [LB482]

SENATOR ASHFORD: Well, I think you're doing a good job, so thank you for what you're doing. Thanks, Kristi. I don't see any questions though. [LB482]

KRISTI WAMSTAD-EVANS: All right. [LB482]

SENATOR ASHFORD: So you must be doing a good job. [LB482]

KRISTI WAMSTAD-EVANS: I guess we'll see. Thank you. [LB482]

SENATOR ASHFORD: Okay, let's go to the neutral testifiers. [LB482]

COBY MACH: (Exhibit 22) Good afternoon. My name is Coby Mach, C-o-b-y M-a-c-h. I'm the president of the Lincoln Independent Business Association. Senator Coash, I know you don't like neutral testimony. But we are neutral because we do feel that there are some flaws with this bill as it is written, as it exists. We did want to provide though a firsthand account of ICLEI. There has been a lot of discussion about ICLEI today, and we have experienced it here in the city of Lincoln. And so we want to provide a few facts to you. The city of Lincoln was a member of ICLEI until we asked the mayor to drop our membership. Mayor Beutler agreed and dropped our membership just over a year ago. I asked for confirmation today or this week from the chief of staff for Mayor Beutler, and he has confirmed we still are not a member of ICLEI. I'll provide you with a document that was downloaded from the city of Lincoln Web site today. It is an ICLEI document that makes the following assertions: that businesses should be required to provide shower facilities for all employees to encourage riding your bicycle to work; encourage businesses to offer cash payments to employees if they don't use a parking stall to encourage them to ride a bike to work; to raise the gasoline tax to discourage driving your vehicle; ICLEI wants our city council to raise parking fees and reduce the number of parking stalls; ICLEI wants us to implement a carbon tax--it's item number 57 on the document that I'll provide to you. Another document that I downloaded today from the icleiusa.org Web site is the star community rating system. [LB482]

SENATOR ASHFORD: Coby, Coby, just for the record, I'm happy to have you come and testify, but this is not neutral testimony. But I respect what you're saying, but please don't tell us it's neutral when it is, okay, when it's not neutral. But... [LB482]

COBY MACH: Well, I can't...we can't support this bill as it is written. [LB482]

SENATOR ASHFORD: Well, okay, you want it to be tougher or what it...I mean, the

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

Judiciary Committee
February 13, 2013

point is...just go ahead and... [LB482]

COBY MACH: No, I'm not saying we even want it to be... [LB482]

SENATOR ASHFORD: Well, just go ahead and finish your testimony, but, I mean, I think...that's fine. I'm not...try not to be... [LB482]

COBY MACH: I apologize if you feel that I'm... [LB482]

SENATOR ASHFORD: Well, I feel that what you're doing is attacking this organization, and I...and that's fine that you have the perfect right to do that. But just proceed, that's fine. [LB482]

COBY MACH: We just wanted to point out that we feel that there are problems with ICLEI itself. [LB482]

SENATOR ASHFORD: I get it, and go ahead. I didn't... [LB482]

COBY MACH: The star community rating system from ICLEI would have the city council adopt a menu labeling requirement. It's on page 66 of this document that you will find at icleiusa.org...require regulations that discourage or tax or prohibit or tax or prohibit the sale of unhealthy foods, such as, in a restaurant, french fries, onion rings, and so forth; require private employers and businesses to provide employer-assisted housing or financial incentives for housing, and the list goes on. I see I'm running out of time. I would happily answer any questions that you may have. [LB482]

SENATOR ASHFORD: Yes, Senator Christensen. [LB482]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Coby. Is there other cities that are...have been involved with ICLEI except Nebraska other than Lincoln and Omaha that you're aware of? [LB482]

COBY MACH: I cannot answer that. We did not research that when we asked Mayor Beutler to withdraw, although I did hear testimony today that others have been. [LB482]

SENATOR CHRISTENSEN: Is there...did the city of Lincoln ever ask businesses to implement anything that you've mentioned is on the Web site things and the things you've been mentioning? [LB482]

COBY MACH: Did... [LB482]

SENATOR CHRISTENSEN: Did you...did they try to get businesses to implement any of these things that you just mentioned? [LB482]

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

Judiciary Committee
February 13, 2013

COBY MACH: This is all an ongoing discussion as we speak, and there is a highlighted document that I'll share with you, some of which the city of Lincoln has already adopted, some of which it is considering, and others that are not highlighted, which would be not being considered at this time. [LB482]

SENATOR CHRISTENSEN: Well, I appreciate that because I hate to see a lot of things forced down onto business owners. And, conspiracy or not, I won't call it that, but I think there is an outlying framework that has been voluntarily accepted by people that does, from permanent easements to a number of other things, affect the longevity of the state and things. And I just think this has been a good hearing, so I appreciate you coming in. [LB482]

COBY MACH: Thank you. [LB482]

SENATOR ASHFORD: Thank you, Coby. Any questions here? I don't see any more. Thank you, sir. [LB482]

COBY MACH: Thank you. [LB482]

SENATOR ASHFORD: Next neutral. Thank you. [LB482]

DAVID SANDS: (Exhibit 23) Good afternoon, Senator Ashford, members of the committee. My name is David Sands, S-a-n-d-s. I am the executive director of the Nebraska Land Trust. Conservation easements have been beat up pretty good here today and, given the shortness of the hour, I've handed you information. And if you'd like me to return to my seat, I can do that. [LB482]

SENATOR ASHFORD: Well, we don't have...we're not going to have any water. I don't know where it's gone. Maybe we should have tried to have some sustainable...go ahead. [LB482]

DAVID SANDS: Okay. Nearly ten years ago I wanted to hear what opponents of conservation easements had to say, so I went to...attended an informational presentation in Valentine on the subject given by a man from New Mexico. The speaker assured the crowd he wasn't there to say conservation easements were good or bad, he just wanted to give them the facts. Then he proceeded to portray these voluntary agreements as a United Nations assault on American property rights. To gauge the crowd's reaction, I went up to a rancher I could count on for his unvarnished opinion. Without blinking he said, what I heard is they don't think I'm smart enough to make my own decisions about the future of my land. At the end of the day, that's exactly what conservation easements do. They offer landowners an option when making a decision about the future of their land, which often includes productive uses like ranching,

farming, hunting, and recreation. Every agreement is different, tailored to meet each landowner's goals. I understand that some people don't like permanent decisions, but people make permanent decisions about land all the time. When ranches and farms are developed, that land will never grow food again or provide an income from agriculture. It will never be unfragmented habitat for wildlife nor will it be admired as an unspoiled scenic view. If a native plant community is destroyed, its diversity is lost forever. Developed land also won't buffer our rivers and streams from polluted runoff after a gullywasher and...like grasslands, woodlands, and wetlands do. If a Native American cultural site is bulldozed it can't be replaced. Now, thankfully, a very few landowners sometimes make a permanent decision on the side of conservation. Critics are quick to point out that landowners often get paid for their development rights or a tax break from donating those rights. The fact is, development rights have value just like mineral rights, so compensation is appropriate. This is especially true when the public receives many benefits from undeveloped land, including scenic views, food production, wildlife habitat, historic and cultural sites, clean water, flood protection, recreation, and tourism. It is also true that development is almost always more lucrative than preservation for a landowner. So what is driving these landowners? In most cases, the people who have granted conservation easements have lived, farmed, hunted, or ranched on their land for a very long time. The land is a part of who they are, a part of their family history, something they have cared for, and something that has cared for them. In some cases, their land is something they have fought to preserve, and they want to leave a lasting legacy for future generations. To some, land is almost like a member of the family, and they never want to see it harmed. If such people want to protect their land for agriculture or wildlife or history, it is their property right to do so. Let me put a face on this for you. Last summer our board and staff were honored to host a group of Northern Cheyenne from Montana at Fort Robinson State Park. A small Northern Cheyenne college owns 1,121 acres adjacent to the park, and we wanted to thank them in person for preserving their land forever. They did so because it is hallowed ground where many of their ancestors died during the Cheyenne outbreak of 1879. The college board wanted to make sure that the land is always preserved as a place to learn about an American tragedy, and they protected it with a conservation easement held by the NLT and funded in part by the environmental trust. [LB482]

SENATOR ASHFORD: David, I'm going to stop you there. Do we have any questions of David? Thanks for your comments. And we have your information here, so that's good. [LB482]

DAVID SANDS: Okay, thank you. [LB482]

SENATOR ASHFORD: Any other neutral testifiers? They're coming out of the woodwork. How many more do we have back there? No, I'm just kidding you. How many more neutral testifiers? Okay, go ahead. [LB482]

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

Judiciary Committee
February 13, 2013

CHARLOTTE RALSTON: Hello, thank you. I wasn't planning to testify until I had heard everything today, and I just thought I would just offer you a couple of thoughts. I am an organic farmer, a small organic farmer who... [LB482]

SENATOR ASHFORD: Now can you tell us your name? [LB482]

CHARLOTTE RALSTON: Oh, I'm sorry. Charlotte Ralston. [LB482]

SENATOR ASHFORD: Okay. [LB482]

CHARLOTTE RALSTON: What else do you need? [LB482]

SENATOR MCGILL: Spell it for us, please. [LB482]

CHARLOTTE RALSTON: C-h-a-r-l-o-t-t-e R-a-l-s-t-o-n. [LB482]

SENATOR MCGILL: Thanks. [LB482]

CHARLOTTE RALSTON: Thank you. Haven't done this... [LB482]

SENATOR ASHFORD: Okay, where do you live? [LB482]

CHARLOTTE RALSTON: Right outside of Lincoln. [LB482]

SENATOR ASHFORD: Okay. [LB482]

CHARLOTTE RALSTON: And we have chosen to develop our farm out of our own resources by saving and developing it as we are able to. And if we decide we want that--prairie is what we've planted it to--to be handed down to the next generation or future generations, we'll create a family trust. We won't ask the taxpayers, through a conservation easement, to pay for it. We'll continue to pay the property taxes on it. And if we so think that we cannot trust the next generation to make their own decisions about it, we'll make sure it's bound up in a contract as a family trust, that it has to stay the way it is for future generations. And that is what philanthropy is and, as a taxpayer, I don't believe it is my role to do philanthropy for other people. I don't believe it is right to tax me so someone else can make a philanthropic decision, including the government. And so I would ask you to consider that. And I believe the power to tax is the power to impose, and you have that power here. You can impose sustainable development by where you choose to tax me and fund different types of organizations and nonprofits so that they can purchase these lands. That's what happening outside of our community. There is an entire corridor that the city and county...the city bid on it, and the NRD ended up buying it in order to preserve the prairie. And so my tax dollars were used to preserve the prairie when I'm trying to grow prairie at my own expense. So there are

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

Judiciary Committee
February 13, 2013

some contradictions going on. And, as I observed this happen today, whether you call it Agenda 21 or whether you call...whatever you want to call it, I just think it does deserve some study and some consideration. Thank you. [LB482]

SENATOR ASHFORD: Okay, thank you very much. That's going to conclude the hearing. We're going...Senator Kintner, would you like to close or not? But you may close, most certainly. [LB482]

SENATOR KINTNER: Mr. Chairman, members of the committee, thank you for your patience. You have an amazing tolerance. Just to kind of go back and just hit a couple points, one thing that Senator Chambers said, he said, well, what would be different? And I want to just...the point, I think, that would be different is that no money would be spent on anything related to Agenda 21. Are we going to reinforce some rights? Probably. Does that change anything? Probably not, but...so I think that's probably the number one thing is that we cut off any taxpayer money going to any of these groups that may not have our best interest at heart. The...everything, as Senator Chambers talked about, was organizations. All those organizations he named, remember that the key here is that only the ones participating in this program are the ones, you know, with United Nations. So if the ACLU is not participating in Agenda 21, then that would have nothing to do with any of this legislation. The other thing I want to point out is that we're talking...we're not talking about taking land, people coming with black helmets on and black helicopters and taking your land. But they can infringe upon your land, they can make it unusable, they can drive up the cost, they can make it so you can't use it for what you want to use it for, and that's the...that's much bigger of a threat than, I think, than someone physically taking your land from you, throwing you off your land. I don't have any examples of that, but you can find a lot of examples of government policies making land unusable. And that's a problem, and that's something we want to address here. This, right here, was my best attempt. By the way, we went through three different drafts of this bill trying to figure out what would work and what wouldn't work. And we're still...I'm still not totally happy that it does everything that I want it to do. But this is my best attempt to try to use that ounce of prevention so we don't have to use the pound of cure somewhere down the road, to make sure we're not like Florida, where we put a bunch of restrictive policies in place at some point in the future and then have to back out after we have disastrous results. I just think this is a prudent thing to do. I invite the committee, if you've got a better way to do it, if you can look at my bill and say, well, jeez, that doesn't quite accomplish it, maybe if we did it that way...so I would encourage the members of this committee to come up with ideas and see if we can make this bill workable so it does what we're trying to do. Thank you very much, Chairman and committee members. [LB482]

SENATOR ASHFORD: (See also Exhibits 24-26, 28, 49, 51, 53, and 58.) Okay, thank you. Thank you, Senator Kintner. And that will conclude this hearing. And we'll go to Senator Karpisek now, who is...thank you, Senator Karpisek, for your rearrangement of

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

Judiciary Committee
February 13, 2013

the schedule. Senator Karpisek, I'm not sure that you are responsible for the vacation of the room or whether it's something else. [LB482 LB461]

SENATOR KARPISEK: I seem to be doing that a lot lately, Senator Ashford. [LB461]

SENATOR ASHFORD: I certainly wouldn't think of this as a personal thing. All right, we're going on to Senator...LB461, about bucking bull activities. [LB461]

SENATOR KARPISEK: Thank you, Senator Ashford. [LB461]

SENATOR ASHFORD: This has nothing to do with the bull semen sales tax exemption, does it? [LB461]

SENATOR KARPISEK: No, no. Not yet. Not yet, but it could be amended possibly. 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. LB461 was drafted after state statutes 25-21,249 through 25-21,253, which are the equine activities statutes. This bill is intended to protect a bovine activity sponsor, bovine professional, or any other person from liability for an injury to or death of a participant resulting in the inherent risks of bovine activities. Senators, what this is, is just taking the equine statutes, going through, seeing what is even applicable to riding bulls, and switching the words out. We have people here today that can talk to you more about that particular sport and tell you why...my thing is, if you're riding a bucking bronc, why is it any different than a bull? Thank you. [LB461]

SENATOR ASHFORD: Well, that was a question I had, and I'll reserve that for future testimony. Thank you. I'm sorry. Senator Seiler. [LB461]

SENATOR SEILER: On your statute, do you intend it to cover the county rodeos and the state high school competition? [LB461]

SENATOR KARPISEK: Yes. [LB461]

SENATOR SEILER: I don't think it does, but I'll let you take a look at that. [LB461]

SENATOR KARPISEK: Okay. Thank you. [LB461]

SENATOR ASHFORD: Thank you. Senator Davis. [LB461]

SENATOR DAVIS: A couple questions, Senator Karpisek. On page 2, you put an exemption in--and this is a question more than anything else--number (c), on the protections, boarding bucking bulls. So my question is, does that same protection extend to people that just have bulls, agricultural people? [LB461]

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

Judiciary Committee
February 13, 2013

SENATOR KARPISEK: I don't think that that is the intent. This is if... [LB461]

SENATOR DAVIS: I understand that. But kind of wondering if you know the answer to that, because to me that's probably the majority of the bulls in the country, and if we're covering bucking bulls we ought to be covering all bulls from exemptions. [LB461]

SENATOR KARPISEK: Well, I think this is where you know that there is an inherent risk when you are getting on this bull. [LB461]

SENATOR DAVIS: But you're talking about boarding bucking bulls here. That's my point. [LB461]

SENATOR KARPISEK: And I'll let someone who knows more about bucking bulls... [LB461]

SENATOR DAVIS: Okay. Then the next question is, do we have any kind of an age limit on this? [LB461]

SENATOR KARPISEK: No. [LB461]

SENATOR DAVIS: So we could have a 5-year-old kid, his parents said it was okay to stick a kid on there. [LB461]

SENATOR KARPISEK: Kind of the same as it is for a bucking bronc; again, drafted right off the same thing. [LB461]

SENATOR DAVIS: Okay. Thank you. [LB461]

SENATOR ASHFORD: Thank you, Russ. Okay, proponents. Do we have any proponents of this bill, those who are in favor of the bill? Come on up. And you may want to just kind of get up on the...and those who are going to testify, just if you get up in the front row and be ready to go. Good afternoon. [LB461]

ROGER MAAS: Good afternoon. Senator Ashford and committee, thank you for allowing me the time to be a proponent for LB461. [LB461]

SENATOR ASHFORD: Well, thanks for coming all the way down here to tell us about it. [LB461]

ROGER MAAS: My name is Roger Maas, M-a-a-s. I live in Denton. My family is engaged in raising bucking bulls and horses. Over the years, we've been fortunate enough to have raised two reserve world champion paint horses. [LB461]

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

Judiciary Committee
February 13, 2013

SENATOR ASHFORD: Wow. [LB461]

ROGER MAAS: And we've raised one bull that went on to the Built Ford Tough circuit and got on the Professional Bull Riders and was at the world finals in Las Vegas. [LB461]

SENATOR ASHFORD: Congratulations. [LB461]

ROGER MAAS: I give you those stats not to emulate my status as such. I tell you that to demonstrate that we're very serious about what we do and we are having success at what we're doing. I'm here today to support this bill. I've been in the equine business longer than the bovine and I think that since we are covered by limited liability in the equine, we should also be in the bovine. We have a facility that is approved...you know, is safe as can be. We have riders that want to come and ride our bulls, and we have the bulls that need the riding; but we're just a little bit scared of the liability. Everybody is your friend until something happens and then things kind of look different. So in support of this, I'm here to say that's why I'm here. We want...feel like it would be just fair to cover bovine as well as equine. [LB461]

SENATOR ASHFORD: Well, thank you. Thanks for coming. Whoops. Senator Lathrop, then Senator Davis. Yes. [LB461]

SENATOR LATHROP: I've got to ask you a couple questions. [LB461]

ROGER MAAS: Okay. [LB461]

SENATOR LATHROP: This starts out by recognizing that the activity is something that people may incur injuries as a result of the risks involved in the activity. So this is...you can ride horses and not necessarily run into injuries. You get on one of these things, you're going to get hurt. [LB461]

ROGER MAAS: There's...the chance is always there. Yes. [LB461]

SENATOR LATHROP: Okay. And do you think that the people that get on these animals know what the risks are? [LB461]

ROGER MAAS: Yes, they do. [LB461]

SENATOR LATHROP: Common sense would dictate what the risks are. [LB461]

ROGER MAAS: That is correct. [LB461]

SENATOR LATHROP: And people that get on one and ride it assume the risk that

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

Judiciary Committee
February 13, 2013

they're going to get hurt. Wouldn't you say that's true? [LB461]

ROGER MAAS: Yes, that is true. And the saying is not if it happens, it's when it happens. [LB461]

SENATOR LATHROP: It's that commonplace. The injuries are that common and people are going to get hurt doing this, and everybody that does it, knows it. [LB461]

ROGER MAAS: They should. [LB461]

SENATOR LATHROP: It does strike me that it's different than horses. Okay? And people can ride horses. We have trail rides and people can do that perfectly safe. [LB461]

ROGER MAAS: Right. [LB461]

SENATOR LATHROP: Some horses will spook and we have made provision for that in the equine liability act. But that's different than something that's going to hurt people. And I don't think you need the immunity because people already have assumed the risk; and assumption of risk is already a complete defense. So if I know I'm going to get hurt, I know I get on this thing, it's going to jump around and throw me up in the air onto the dirt and then it's going to try to stomp on me--and that's happens; I don't have a claim. [LB461]

ROGER MAAS: I would let you ride one of our bulls. (Laughter) [LB461]

SENATOR LATHROP: I don't want to. [LB461]

ROGER MAAS: But that doesn't hold true (laughter)...that everybody doesn't see it in that light, you know. [LB461]

SENATOR ASHFORD: I'd sure like to watch Senator Lathrop ride one of your bulls. [LB461]

SENATOR MCGILL: Yes. [LB461]

SENATOR LATHROP: I don't want to. But are we... [LB461]

ROGER MAAS: We have... [LB461]

SENATOR LATHROP: No, you don't. [LB461]

SENATOR ASHFORD: That would be worth... [LB461]

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

Judiciary Committee
February 13, 2013

ROGER MAAS: We talked to other people in the industry... [LB461]

SENATOR LATHROP: No, not even when I was younger. [LB461]

ROGER MAAS: I'm sorry, go ahead. [LB461]

SENATOR LATHROP: No, go ahead and tell...what's the problem,... [LB461]

ROGER MAAS: We talked to other people in the... [LB461]

SENATOR LATHROP: ...because you can't tell me that people won't participate in a rodeo because they're worried about liability, because no one in the world can get on one of these things in a rodeo and have it throw them, break their arm, and then sue somebody over it. You can't do it. [LB461]

ROGER MAAS: It happens. It happens. [LB461]

SENATOR LATHROP: You show me where it's happened. Have somebody bring me some example of when someone voluntarily rode a bull and got hurt doing it and then sued the guy who managed... [LB461]

ROGER MAAS: I don't have stats but I will surely try to... [LB461]

SENATOR LATHROP: Okay. I would be happy to read that. [LB461]

ROGER MAAS: Yes. Okay. Yes, sir. Senator Davis. [LB461]

SENATOR ASHFORD: Senator Davis. [LB461]

SENATOR DAVIS: First of all, I'm sure you probably are familiar with Steve and Julie Ravenscroft, who raise bucking bulls out of Hyannis. [LB461]

ROGER MAAS: Yes, we are. [LB461]

SENATOR DAVIS: My wife does their Web site. So they're good friends of ours. [LB461]

ROGER MAAS: Black Pearl was their world champion. [LB461]

SENATOR DAVIS: Yeah, Black Pearl. It was a famous bull. I guess I'll come back to the issue of children. That's the thing probably that bothers me most about this bill. [LB461]

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

Judiciary Committee
February 13, 2013

ROGER MAAS: Well, when that...when you asked that question of Senator Karpisek, it just...as a responsible adult or a responsible promoter, I would say that can't happen. I don't care if the parents both said we want him to ride, I would say it's not going to happen. That's just plum foolish and, you know, you're asking for trouble. [LB461]

SENATOR DAVIS: You're probably... [LB461]

ROGER MAAS: And I'm not looking for protection. [LB461]

SENATOR DAVIS: You are a safe and reliable and honest and sensible man. But I wonder if that rule could be applied all across the board? [LB461]

ROGER MAAS: A lot of the people that I know that are in the business feel the same way. There's no use asking for trouble. It can happen easy enough when you don't want it to, and there's no use asking for it. And that would definitely be asking for trouble. [LB461]

SENATOR DAVIS: Is there insurance for this already? Can you buy insurance? [LB461]

ROGER MAAS: You can buy insurance, but it's... [LB461]

SENATOR DAVIS: And how expensive is it? [LB461]

ROGER MAAS: It's very costly. And in our situation... [LB461]

SENATOR DAVIS: Can you give me any idea as to what the costs would be for something like that? [LB461]

ROGER MAAS: No, I don't. I mean, we're talking probably somewhere from \$600 to \$800, maybe \$1,000 for a one-day event depending on how much liability you would want to...you know, there's variables. But, you know, the bottom would be \$500. It would be from \$500 up for a one-day event. [LB461]

SENATOR DAVIS: So like when a fair has a rodeo, are they...I'm sure they must be covered by insurance. They can't be just... [LB461]

ROGER MAAS: I'm sure they'd have a blanket liability. I can't answer that for sure. [LB461]

SENATOR DAVIS: Okay, thank you. I think that probably answers my questions. [LB461]

SENATOR ASHFORD: Thank you, sir. And thanks for coming down. [LB461]

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

Judiciary Committee
February 13, 2013

ROGER MAAS: Okay, thank you for... [LB461]

SENATOR ASHFORD: Next testifier. Proponent. [LB461]

TONY WEBORG: Hi. My name is Tony Weborg. It's W-e-b-o-r-g. I am from and grew up in Pender, Nebraska. My family and I own and operate a farm and feedlot. I also own and operate a bucking bull business. I haul bulls to rodeos and bull ridings across Nebraska and Iowa. I'm here to support LB461. Nebraska is a rural state, a state that has deep roots in the agriculture industry, and we celebrate the ag industry with county fairs. Pretty much every person in this state can get in their car with their family and drive 15 minutes to a county fair. I think what this bill would do is help promote more and more rural towns to put on rodeos and bull ridings. The fact is that these liability insurance policies are becoming more and more costly. Rodeo committees and stock contractors are being held at the mercy of insurance companies. Towns and event venues are scared off by the amount of dollars they have to put up for insurance. It is starting to not make sense financially for the stock contractor or the town to put the rodeo on. And yes, like you talked about earlier, bull riding is a dangerous sport without question. (Laugh) But the bull riders...I used to ride bulls, and all the bull riders that I know, they know the risk. They know the risks when they go to these events and so do the people that are going to the events that are just spectators. So anyway, I think by passing this bill, you will create more opportunities for towns in Nebraska to get an economic boost by keeping these events in their towns. The state of Iowa already has a law like this on the books. What that law has done is allow for these fair boards more freedom to put on rodeos and bull ridings for their communities during their fairs without the restraints of some massive insurance policy. I think this bill makes perfect sense for a state like Nebraska. Rodeo is a part of life for many in this state. This state holds some of the biggest rodeos in the country, from the River City Roundup in Omaha, to Burwell, Nebraska's pro rodeo and the Mid-States Rodeo in Madison, Nebraska. These are just a few examples of how economically important rodeo is to the state for tourism and economic growth for towns that host them. These are traditions that this state should want to continue. It puts Nebraska's small rural towns on the map. We should do whatever we can to help these great events stay alive in Nebraska. If we don't act now, it is going to get even harder for these great family events to continue. Whether it's a cattle rancher in the Sandhills, a farmer in eastern Nebraska, or a businessman in Omaha, everyone can appreciate an event that brings contestants, spectators, and families together. Passing this bill, you are not only backing me and my business, but you are backing the future of rodeo. [LB461]

SENATOR LATHROP: Have you ever been sued? [LB461]

TONY WEBORG: No, sir. [LB461]

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

Judiciary Committee
February 13, 2013

SENATOR LATHROP: No questions. Thanks. [LB461]

SENATOR ASHFORD: Thanks for coming down. And I do agree that what you do is important to the state of Nebraska, and hopefully we can do a better job of letting people around the country know about what you do. [LB461]

TONY WEBORG: Yeah. [LB461]

SENATOR ASHFORD: So that's important. [LB461]

TONY WEBORG: Um-hum. [LB461]

SENATOR ASHFORD: So thanks for doing what you're doing, making a better life for us. Any other proponents? [LB461]

KIRT LUKASIEWICZ: Good afternoon, Senators. My name is Kirt Lukasiewicz. I'm from a small town: Farwell, Nebraska. It's about 40 miles northwest of Grand Island, out in the middle of nowhere. Me and my family have grown up around rodeo pretty much our whole life. It's the way of our children, it's the way our family has...ranching has been a way of our life for a long time, along with farming in a rural community. A lot of the rural communities survive and do a lot of improvements through different summer activities, bull riding being one of them. I personally am involved with the Howard County Fairgrounds on a winter lease. We've been doing it now for I think four years. We buck bulls out in the wintertime. We have a lot of kids come in. They range in ages from...we've had them as young as 13, 14, up to college. We've had the University of Nebraska team come out and ride. We've had kids from Chadron State College come out and ride. We've had kids from Iowa, South Dakota, Kansas. We have a number of producers that come into our venue during the winter. One of the things...we're in a unique situation, with the Howard County Fairgrounds, is we rent their building, their indoor facility for the winter months, October 1 through March 31. One of the things that's been a big, I wouldn't say a thorn in anybody's side, but one thing that's been impossible to get is insurance. We can get insurance on spectators. We can get insurance on the building. We can get insurance on the pair of boots we walk into that building with. We cannot get insurance on the riders, and nobody knows where we can get that or how we can get that. Nobody knows the cost and nobody knows a company that has it. So it's not that we're opposed to paying for insurance. There is a very gray area out there. And in our situation, being with the Howard County Fairgrounds and working with their board, they are just as scared about being sued as we are. Senator Lathrop, you bring a good point: Has anybody ever been sued? I don't personally know of anybody. I don't want to be the first one, because I know what that would do to my business. I know what that would do to my farming, my aspirations of keeping my children and my family into the rodeo business. I also understand where we're in a unique situation of renting a facility. It puts Howard County Fair Board--Howard County

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

Judiciary Committee
February 13, 2013

Ag Society--in jeopardy of a lawsuit. And I feel like this bill would cover that gray area that's out there as who is actually liable for the actions of those people involved, whether it be the rider, the contractor, the help that we get. If one of our help gets hurt...they assume that risk before they get in there and work with them. So that's all I have to say. Thanks. [LB461]

SENATOR ASHFORD: I don't see any questions but thank you. Next proponent. Any opponents? [LB461]

PETE WEGMAN: Good afternoon, Mr. Chairman. My name is Pete Wegman, W-e-g-m-a-n. I'm an attorney with the Rembolt Ludtke law firm here in Lincoln. I primarily represent injured people in my practice. I appear here as president of the Nebraska Association of Trial Attorneys speaking in opposition to the bill, essentially because it simply restates current Nebraska law. I am a big fan of bull riding. I've been to the world championships in Las Vegas twice. I watched my friend Justin McBride, a native Nebraskan, become world champion twice. I've been to well-organized and well-run bull riding events in Kearney, in Lincoln, and in Omaha. And in each of those events, the sponsors, the promoters were already well-protected by Nebraska law. They were well-protected because of our negligence law. Before anybody can recover, you have to convince a jury of 12 people in Nebraska that somebody did something wrong. We have sensible juries here; that is hard to do. And there's also protection by the assumption of risk defense that's already in Nebraska law. I think several of the proponents have already admitted, in response to Senator Lathrop's questions, that these riders understand the risks of riding a bull. Here's what our Nebraska jury instruction says what assumption of risk is. This is a complete defense: if the injured person knew and understood the specific danger--the statute uses the phrase "inherent risk"; if the plaintiff, the injured person, voluntarily exposes himself to that danger; if the injury was as a result of being exposed to that danger. We already have the law to protect this type of activity. I can almost guarantee you, if you pass this bill, it's not going to make any effect on insurance rates to get this kind of coverage, if you can't get it now or if it's expensive already. You know, there are lots of activities that we have in Nebraska that many people participate in that I think are good for the state that have the inherent risk of personal injury or death. And do you want to have, next year, we talked about...I heard about the State Fair or the fairs. Stock car racing, are you going to have a stock car racing bill? Amusement rides, fishing tournaments, indoor hockey, skydiving, rodeo, all kinds of things, the Nebraska law that we already have is adequate to protect against these activities, to protect people who get sued in these activities, and we just don't need another law. Thank you. [LB461]

SENATOR ASHFORD: Do we have any questions? I don't see any. Though I would say, Senator Coash has brought us legislation similar to this, I believe, involved with tourism and...haven't you, Senator Coash? [LB461]

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

Judiciary Committee
February 13, 2013

SENATOR COASH: Senator Schilz is going to bring it this year. [LB461]

SENATOR ASHFORD: Senator Schilz has one on the same thing. I will say, I understand your point, because the...and I certainly respect what you do and obviously is a very... [LB461]

SENATOR COASH: Okay, Senator... [LB461]

SENATOR ASHFORD: But I will say this: I do have some degree of sympathy for these guys. I mean, what we're trying to do is encourage activities of this kind to grow in Nebraska. And they invest their livelihoods and I get the counter argument about the lack of suits and the lack of...you know, the risk is small. I get that. But at some point we're going to have to start encouraging these ranchers and people in rural Nebraska that are trying to find alternatives to--you know, for us--to increase economic development and bring people to the state. I just...I don't know what we do. But I...and I get the point about liability. But I do...every time I hear these, and this isn't the first one we've heard, I do have a real sense of sympathy for these people. They do a lot for us, I think, quite frankly. [LB461]

PETE WEGMAN: And I totally agree. This bill doesn't give them any more protection than the law already gives them. [LB461]

SENATOR ASHFORD: Well, I know, but...I know, but Senator Coash had... [LB461]

SENATOR COASH: Mr. Wegman, on that note, and I certainly don't want to be a party of putting unnecessary laws on the books. But if it truly doesn't do anything, why would you come oppose it? [LB461]

PETE WEGMAN: Well, I think the last thing we need is a whole lot of laws on the books that don't do anything. [LB461]

SENATOR ASHFORD: Well, we have a bunch of them. I mean, why not add another one? We have about ten volumes that (inaudible). [LB461]

PETE WEGMAN: I mean, at some point, you reach a limit, I mean. [LB461]

SENATOR ASHFORD: What would we do down here if we didn't...? [LB461]

PETE WEGMAN: Exactly. I mean, I just don't think it adds anything to what's already there. And I mean, if a bull rider came to me and said, hey, I broke my arm riding the bull, I'd like you to sue the promoter, or whatever, I don't know how in the world I would take that case. [LB461]

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

Judiciary Committee
February 13, 2013

SENATOR COASH: But you would, wouldn't you? [LB461]

PETE WEGMAN: Why? I only get paid if I can convince 12 jurors that somebody was negligent and that he didn't voluntarily assume that risk. I can't imagine ever winning that case. [LB461]

SENATOR ASHFORD: I just...I think your points are well-taken. I just...I think in all these matters that have been brought to us where I see people out there who are risking their money and their livelihoods to help themselves, certainly, of course, it's their quality of life. But it really is a big deal for Nebraska. We do it...and for athletes. Anyway, thank you for coming down. [LB461]

PETE WEGMAN: Thank you, Senator. [LB461]

SENATOR ASHFORD: Well, that's all right. Do we have any other testifiers? Senator Karpisek, do you want to close? [LB461]

SENATOR KARPISEK: I would love to close, Senator Ashford. And thank you. If an amendment about the age limit would make anyone feel better, I'd be more than happy to look into that. I don't know what age exactly it would be, but we could look at that. And as you suggested, Senator Seiler, if you don't think the county fairs and that was protected, I'd be more...I would want to get that in there. I will try to find some case where one of these people has been sued. We'll see. And Senator Lathrop didn't think that you could be sued, but as the trial attorney stated, juries are smart and they'll rule the right way. But that doesn't mean anything about who's going to pay the attorneys to go to court, and...but I am, along with you, Senator Coash, I think glad that the trial attorneys are concerned about putting too many laws on the books. And I will remember that the next time I carry a bill. I wish I would have known this before the last one I just introduced for them. Thank you. [LB461]

SENATOR ASHFORD: (See also Exhibits 50 and 57) All right. Thanks. Thanks for that. I'm going to turn the...that concludes the hearing on this bill. We're going to go to Senator Schilz, LB551. Senator Lathrop will be in charge. [LB461]

SENATOR COASH: Senator Schilz. [LB551]

SENATOR SCHILZ: (Exhibits 37-41) Thank you. Appreciate that. Good afternoon, Senators and members of the Judiciary Committee. My name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I represent the 47th Legislative District. Today I bring you LB551 which is an important bill that will enable farmers and ranchers across the state to add value to their businesses through diversification. The purpose of LB551 is to encourage landowners to grant access to their farm and ranch land for recreation and tourism activities by reducing the risk of liability. Agritourism is a growing industry in Nebraska

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

Judiciary Committee
February 13, 2013

and across the country. Hunters, anglers, bird watchers, and others, are increasingly looking for access to private lands to pursue their activities in as natural a setting as possible. They aren't looking for a canned experience. That's not why they go out there. They go out there to experience the wilds, to experience nature, and to experience the solitude that that can offer. As you know, the vast majority of land in Nebraska is privately owned, as much as 95-97 percent; and that is why access to private lands is important to sportsmen and women and nature enthusiasts alike. This bill recognizes the reality of farm and ranch land. To put it simply, we are not talking about small manageable plots. We're talking about vast acres of land. The expanse of land owned by farmers and ranchers makes it impossible to inspect and maintain those lands in the same way as a business, like a retail store, a museum, or even an amusement park. The land is not purchased for recreation and tourism purposes. It is bought for ag purposes, but agritourism is a way to add value to that land. On the flip side, hunters, anglers, birders, hikers, and others expect to encounter natural hazards to the land, like ravines, poisonous plants, dangerous animals like snakes, surface conditions, and other conditions inherent to virtually wild land. To envision landowners roping off such inherent risks seems absurd and is not what hunters and birders want. LB551 would encourage landowners in the state to grant access to their lands either free of charge or for a fee. It is modeled after similar laws in numerous other states. It's also similar to the equine liability laws that were adopted by this Legislature in 1997. Those laws of other states and the equine liability laws talk in terms of inherent risks. So does LB551. As you'll note, LB551 revises existing recreation liability laws, which have been the subject of significant disagreement and litigation. It provides protection from the liability for landowners for allowing persons--I'll call them participants as the term is used in the bill--on their land for recreation and tourism activities such as hunting, fishing, birding, hiking, water sports, and even archeological work. It allows landowners to charge a fee for such activities, but it requires notice be given of inherent risks on the land in order for the landowner to be protected from liability if they do charge a fee. In that regard it's also similar to the equine liability laws. The landowner, if charging a fee, has to give the participant notice of inherent risks. That notice has to be either in a written agreement or posted where it's easy to see. The language for the warning notice is specifically set forth in the bill. LB551 does not provide absolute immunity from liability. We spent a lot of time looking through the transcript from the hearing on LB153, which was heard by this committee in 2009. Some of you got to sit in on that hearing. That bill also attempted to change the recreation liability laws, but there were many concerns raised with that legislation. We attempted to address those concerns in LB551. First, as I mentioned, the focus of LB551 is on protecting landowners from liability arising from injuries and damages caused by inherent risks of the land. The focus is on those inherent risks, a term defined in the bill, because of the vast size of the farm and ranch land we are talking about, as I said earlier. Second, LB551 does not change the ordinary standards of care the landowner has for things that are within his or her control; and let me walk you through them. The landowner still has the duty to notify participants of particular hazards the landowner knew of or should have known of. If the landowner

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

Judiciary Committee
February 13, 2013

knows about an abandoned well that he hasn't had a chance to cap, he has an obligation to tell the participant about that. The bill does not change the landowner's duty to maintain equipment the participant uses. Senator Lathrop's questioning during the 2009 hearing, he had questions about the leaky canoe; and he was right on target. We should not let the landowner off the hook for the leaky canoe. He should make sure the canoe won't sink. He should make sure the ATV he lets the participant use is inspected and maintained in a safe condition. The bill does not change the landowner's duty to properly train his or her employees. Let's say the landowner supplies a hunting guide to the participant. The landowner still has a duty to train the guide on the proper use of weapons, steering clear of particular known hazards, of what to do if a lightning storm approaches in open country. Finally, we removed the cap on damages that was in the bill in 2009. As you can see, we took seriously the concerns raised in 2009, and I hope we've presented you a much better bill for that reason. I would offer one amendment which you have received that requires that when a landowner posts warning notice on a sign, the lettering must be a specific height. It's the exact same requirement as what appears in the equine liability law. There will be several witnesses who follow me, including landowners, sportsmen, and a lawyer, if they haven't all gone home for dinner. I ask for your serious consideration of this important legislation and would be glad to try and answer any questions. [LB551]

SENATOR LATHROP: Thanks, Ken. Senator Christensen. [LB551]

SENATOR CHRISTENSEN: Thank you, Chairman. Senator Schilz, would you say this now mirrors the protection people have if they don't lease out their land? Because there are protections if people... [LB551]

SENATOR SCHILZ: Right, and I would say it gets much closer to that. So I would say it is falling in line with that. Yes. [LB551]

SENATOR CHRISTENSEN: Would it be a fair assumption to say currently if you lease out your land you have to try and buy insurance to protect yourself for the activities of the unknown? [LB551]

SENATOR SCHILZ: Today, under current law, I would suggest that very highly. Yes. [LB551]

SENATOR CHRISTENSEN: And sometimes maybe the cost of the insurance for the return is probably the prohibitive reason why people don't let people on? [LB551]

SENATOR SCHILZ: I think you're exactly right, Senator Christensen. But I think it's also just the idea of not only the cost of the insurance, which does play a role, but it's also just the threat of, hey, I could possibly be sued for this; and I think that's part of the barrier, as well. [LB551]

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

Judiciary Committee
February 13, 2013

SENATOR CHRISTENSEN: One last question: inherent risks. I know there's a washout over there; it's been there for 40 years. They walk off the edge of it. They should be able to see it. Is that an inherent risk? [LB551]

SENATOR SCHILZ: You know, I would say, you know, as I said in my testimony earlier, that's part of the experience that folks are looking for. If that has been there for a long time and you can see it and it's not covered up or it's not in any way not able to be seen, I would say that that should be covered under this. [LB551]

SENATOR CHRISTENSEN: Okay. Then I agree with you, and now I'll turn that around. You and I both know sometimes you'll have a badger hole or something in the bottom of a terrace. And water runs; but all you see is the little hole, and you step on it and you drop four feet because it caved out. [LB551]

SENATOR SCHILZ: Right. [LB551]

SENATOR CHRISTENSEN: Is that an inherent risk? [LB551]

SENATOR SCHILZ: Right. Well, as I would look to that, as you heard in my testimony, inherent risk comes down to whether or not the landowner should know about it or did know about it. And in some of those instances to know that the land is suspect around that hole, you probably wouldn't know that until you step on it. So I would say that that would be one of those inherent risks that wouldn't be covered under this. [LB551]

SENATOR CHRISTENSEN: One last one. We know there's badger holes out there. We know there's other animals' holes. That's just assumed to be a normal experience. Correct? [LB551]

SENATOR SCHILZ: Yes. [LB551]

SENATOR CHRISTENSEN: I just wanted to have it on the mike. Thank you. [LB551]

SENATOR SCHILZ: Okay. Thank you. [LB551]

SENATOR LATHROP: How about...oh, I'm sorry. Senator Davis. [LB551]

SENATOR DAVIS: The signage issue... [LB551]

SENATOR SCHILZ: Um-hum. [LB551]

SENATOR DAVIS: ...which is very logical unless you consider the vastness of some of the regions we're talking about. How are you going to... [LB551]

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

Judiciary Committee
February 13, 2013

SENATOR SCHILZ: Yeah. And that's why you can also do it in a contract or on a sheet of paper. And that way that's addressed in that manner as well. [LB551]

SENATOR DAVIS: But you added that specific language about the signage, so that's why I wanted to ask you the question. [LB551]

SENATOR SCHILZ: Right. Sure, yeah. No, I don't disagree, and that's why you have the other option of using a piece of paper to explain to them. Thank you. [LB551]

SENATOR LATHROP: What...Ken, what about the city slicker that's caught up in a power takeoff unit? Tractor is there, rumbling along, and the power takeoff unit, as it happens from time to time, gets farmers and people that work in the industry. What about the city guy that comes out to have this experience and gets caught up in the power takeoff unit of the tractor? [LB551]

SENATOR SCHILZ: Here's what I say about that. [LB551]

SENATOR LATHROP: Not covered. Go ahead. [LB551]

SENATOR SCHILZ: I would say that that is one of those risks that needs to be reported to that person, that they understand that they need to stay away from running equipment. And I think that that's...I mean, when somebody comes out to our farm to hunt, we do not charge, but we always tell them that if there's an irrigation engine or anything like that, you know, best just to stay away from it, because there are risks there and people can get hurt. [LB551]

SENATOR LATHROP: Would the landowner have immunity or liability if they allowed a city slicker that doesn't know any better to get caught up in a power takeoff, under your bill? [LB551]

SENATOR SCHILZ: It would depend on whether or not they were told of that risk. [LB551]

SENATOR DAVIS: Senator Schilz, you are looking to cover people coming out to the farm or ranch, participating in the work part of that? [LB551]

SENATOR SCHILZ: Possibly, yes. Yes, it could be that as well, and in that case all of those things... [LB551]

SENATOR DAVIS: Which leads into the question of Senator... [LB551]

SENATOR SCHILZ: All of those things would have to be disclosed to that participant,

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

Judiciary Committee
February 13, 2013

absolutely, in whatever they were doing. And then that could differ from any operation on the farm. [LB551]

SENATOR MCGILL: Senator Christensen. [LB551]

SENATOR CHRISTENSEN: Thank you, Chairman. To follow up a little bit, the PTO shaft. I guess if all those safety shields and everything are in place that should be there, I guess I don't see why there should be any notice have to be given. It's great to, but I guess I don't understand where the liability should come in. [LB551]

SENATOR SCHILZ: And I don't disagree with you, except for there...and when the safety stuff is in place it is much harder to find yourself tangled up in that. But I would think that anybody that's doing their job that is allowing people to go on their land, running equipment could have all sorts of implications and problems. So you just want to stay away from them. [LB551]

SENATOR CHRISTENSEN: You and I both know a ragged shirt can easily get around that shield and get caught. [LB551]

SENATOR SCHILZ: (Laugh) Yeah. [LB551]

SENATOR CHRISTENSEN: So I appreciate your saying that it has to be notified but at the same time, you know, it's not something that's going to sneak up on them. It's noisy. They should be able to see it. You know, I just...I get nervous about saying there's additional liability that I don't think should be. [LB551]

SENATOR SCHILZ: Right. I understand that. [LB551]

SENATOR CHRISTENSEN: Thank you. [LB551]

SENATOR MCGILL: Senator Seiler. [LB551]

SENATOR SEILER: You seem to codify the current status of the law as to an invitee and as to a paid person. What's not in here is the other person, the trespasser. [LB551]

SENATOR SCHILZ: Right. [LB551]

SENATOR SEILER: I'm wondering if you should...since you're codifying those two, if you shouldn't put in there that you owe no duty except for a...like a trap gun. [LB551]

SENATOR SCHILZ: Sure. [LB551]

SENATOR SEILER: And then you wouldn't have codified the current existence of the

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

Judiciary Committee
February 13, 2013

law today. [LB551]

SENATOR SCHILZ: I appreciate that... [LB551]

SENATOR SEILER: Just my suggestion. [LB551]

SENATOR SCHILZ: I appreciate that. Thank you. [LB551]

SENATOR LATHROP: Thank you, Senator Schilz. We were sharing the Chair position there. [LB551]

SENATOR MCGILL: Yes. (Laugh) He wasn't calling on the people, so... [LB551]

SENATOR LATHROP: I'm running out of gas is what is happening. [LB551]

SENATOR SCHILZ: I was just going to say, things work a little differently in Judiciary, I guess. [LB551]

SENATOR LATHROP: No, I'm running out of gas. That's what that (inaudible) stimulating hearing this afternoon. [LB551]

SENATOR SCHILZ: Thank you. [LB551]

SENATOR LATHROP: We will take proponents. So if you would like to testify in favor of the bill, you may come forward. And I would say, since we're late and they're going to, literally, going to turn the water off here before too long and we need to get through the hearings so that people aren't here when they shouldn't be, let's have you move forward if you intend to testify... [LB551]

SENATOR MCGILL: Yeah. [LB551]

SENATOR LATHROP: ...if you don't mind. Welcome to Judiciary Committee. You may proceed. [LB551]

DEB LOSEKE: (Exhibit 43) Thank you. Senator Ashford and members of the Judiciary Committee, my name is Deb Loseke, D-e-b L-o-s-e-k-e, and I am appearing on behalf of the Nebraska Travel Association, also known as NETA, to support LB551. Our membership consists of a wide range of tourism entities throughout the entire state of Nebraska. Our members are highly engaged in making Nebraska a tourism destination and want to offer all that our resources can provide. Tourism is Nebraska's third largest industry, and NETA's goal is to help it grow; and LB551 allows those who are sitting on the sidelines, waiting to get a chance to contribute. We hear from our NETA members all the time about the risk of offering agritourism opportunities due to the threat of

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

Judiciary Committee
February 13, 2013

litigation by allowing people onto their private land. They are encouraged by lawyers and insurance companies not to engage because of the high risk. As an industry, we want the opportunity to encourage farmers and landowners to open their lands to tourism, and we want to do that by eliminating the barriers that keep them from starting an agritourism experience. Agritourism is especially important to the western end of the state. Tourists want an experience. They want to touch, they want to feel, and they want to learn. Nebraska's landscape offers great opportunity to offer these experiences, especially in western Nebraska. Farmers and ranchers need an opportunity to share what they love to those who want to experience it, and NETA stands ready to do what we can to allow them to do it without having possible liability stand in the way. I would be happy to address any questions you may have. [LB551]

SENATOR LATHROP: Very good. Thank you for your testimony. I do not see any questions. [LB551]

DEB LOSEKE: Okay. Scott Smathers, from Nebraska Sportsmen's Foundation, had to leave because it was so late. [LB551]

SENATOR LATHROP: It is getting late. [LB551]

DEB LOSEKE: So he would like the committee to have this sheet of paper. [LB551]

SENATOR LATHROP: Perfect. We'll pass it around and make copies. Thank you very much for your testimony. [LB551]

DEB LOSEKE: Thank you very much. [LB551]

SENATOR LATHROP: Next proponent. [LB551]

DANIEL KELLER: (Exhibits 42 and 44) Thanks for your patience today. My name is Dan Keller. I'm from Lexington, Nebraska. I'm a small business owner. Come from a background of family ranch and farm and ranch; family members still involved. And I'm also a pilot and an aviation enthusiast, and I'm here in support of LB551, with the proposed new amendments there to include aviation and aviation activities. The Nebraska LB551 would provide tort liability protection for private owners of public use aviation landing facilities by simply adding aviation activities to the RUS statute. While other privately owned, publicly consumed recreational areas afford the same liability protections under Nebraska law, private airfields which are utilized in the same recreational manner, and their owners, may be held liable for a pilot's negligent activity at the airfield. With this possibility present, many private airfield owners choose to limit their runway to their usage only. Amending the statute does not change the restricted or private use status of the airfield. Pilots continue to ask permission to land at private airfields. General aviation's reach across the back country in Nebraska could be

expanded. Private landowners are more prone to allowing public access without fear of being held liable for the incidents occurring on their property. If you look at just an aeronautical map of Nebraska, there's an impressive 200 airfields across Nebraska. However, 145 of those are private airfields right now, for private use. This is the number of potential airports that could be opened up to the public if LB551 is passed, in addition to the many other unregistered airports. Aviation has an annual economic impact of over \$700 million in our state. Urban Nebraska people are continuing to seek out property owners for the extra benefits that such a property has to offer, and rural Nebraska is seeking ways to increase tourism and visitors to their areas. Property owners are willing to help but are held back sometimes by the potential liability exposure. This revision to LB551 and the addition of the proposed amendment has the ability to unite both rural and urban Nebraska goals, along with a wide selection of out-of-state visitors, with a large beneficial economic impact. This amendment does have the support of the Aircraft Owners and Pilots Association, representing 2,600 Nebraskans and 400,000 members nationwide, and the Recreational Aircraft Foundation that has helped 18 states, to date, add language adding aviation activities to their recreational use statute. Like Senator Ashford brought up, just another way to try to get people off the interstate and out into rural Nebraska to show them everything that's out there. [LB551]

SENATOR LATHROP: Can I ask a question? [LB551]

DANIEL KELLER: Yes, sir. [LB551]

SENATOR LATHROP: If I have a ranch out in western Nebraska and I own a plane and I have my own airstrip, is that what you're talking about? [LB551]

DANIEL KELLER: That is one of the ideas that I'm talking about. Correct. [LB551]

SENATOR LATHROP: It's not...but it wouldn't...we're not talking about municipal airports, county airports. [LB551]

DANIEL KELLER: Correct. [LB551]

SENATOR LATHROP: You're talking about some airstrip that's... [LB551]

DANIEL KELLER: Private airfields. [LB551]

SENATOR LATHROP: ...on a guy's farm or ranch. [LB551]

DANIEL KELLER: That's correct. [LB551]

SENATOR LATHROP: So who do you think needs the protection? The guy that owns

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

Judiciary Committee
February 13, 2013

the airstrip? [LB551]

DANIEL KELLER: Yes. The land...the property owners themselves. [LB551]

SENATOR LATHROP: Okay. And are these typically grass strips? [LB551]

DANIEL KELLER: They could be. Due to finance... [LB551]

SENATOR LATHROP: Half of them? [LB551]

DANIEL KELLER: The majority of them. [LB551]

SENATOR LATHROP: Okay. [LB551]

DANIEL KELLER: Correct. [LB551]

SENATOR LATHROP: So when a guy wants to land his airplane in his own strip, he goes out there and mows it and does whatever he does to make sure that it's safe for him to land the plane, right? [LB551]

DANIEL KELLER: That's correct. [LB551]

SENATOR LATHROP: And don't you...you fly. You said you fly, right? [LB551]

DANIEL KELLER: Correct. [LB551]

SENATOR LATHROP: Okay. My dad used to fly and I used to go around in one of those smaller planes, so I get it. And I've actually been in a plane that's landed on the grass fields, so that's not entirely foreign to me either. But we talked about badger holes, and I'm thinking, hey, you got a wheel going down the runway at 120-180 miles an hour, and it lands on the runway. And now the nose of the plane just went in a badger hole and the guy who owns it, who may have charged you for it, too, has no responsibility. Do you think that's right or do you think that guy ought to be out there making sure the badger holes in the runway are filled in before he charges you to land there? [LB551]

DANIEL KELLER: Well, I think you bring up several different situations there between charging and noncharging, and maintaining. [LB551]

SENATOR LATHROP: This is about charging people. [LB551]

DANIEL KELLER: Okay. In a charging situation, I would think that he would be bringing liability upon himself... [LB551]

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

Judiciary Committee
February 13, 2013

SENATOR LATHROP: Not after this bill, though. [LB551]

DANIEL KELLER: ...for maintaining that. [LB551]

SENATOR LATHROP: Do you think he should...see, here's the question. If you are landing the plane on Ken Schilz's ranch, on his airstrip, and you're paying him \$50 to do it, do you think he should have a duty to go out and fill in the badger holes or do you think you should take your chances and if it turns out poorly, Schilz, who you paid, doesn't have to account for your damaged plane? [LB551]

DANIEL KELLER: That's a great question. And I think there's an inherent risk in flying, and people understand that. [LB551]

SENATOR LATHROP: I would agree. Turbulence, things like that. [LB551]

DANIEL KELLER: Grass field says a lot right there. It's not paved. We do have badgers in Nebraska. The public use airports that I have been at take practice to go out and check for badger holes. [LB551]

SENATOR LATHROP: You said public ones? [LB551]

DANIEL KELLER: Yes. I'm sorry. The public ones do and the private ones I've been on have done the same. [LB551]

SENATOR LATHROP: But here's the question. If you want us to change the policy, okay...and we're not here with the idea that it will never happen, because if it would never happen then we don't need any of this. [LB551]

DANIEL KELLER: Right. [LB551]

SENATOR LATHROP: The question is, do you think the guy who is charging you to land on his private airstrip has a duty to make sure that it's safe when you're landing? Because if you do, this... [LB551]

DANIEL KELLER: I think he will try to. [LB551]

SENATOR LATHROP: Pardon me? [LB551]

DANIEL KELLER: I believe they have a duty to...yeah, occasionally inspect it, if they're going to charge a fee for it. [LB551]

SENATOR LATHROP: This bill will relieve them of that responsibility to go out and look

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

Judiciary Committee
February 13, 2013

for the badger hole in the middle of the grass runway before you pay to land on it. And that's my point. I get the tourism thing. I really do. But what we're talking about is, now, if this happened to you, where are you at? Because if it ruins your airplane, you're going to go, I paid you money for that; I paid you \$25 so I could land on your airstrip and you needed to fill the badger holes in, or at least look for it. [LB551]

DANIEL KELLER: Right. [LB551]

SENATOR LATHROP: Right? [LB551]

DANIEL KELLER: But there's nothing to say that they didn't, and badgers are...you know, so. [LB551]

SENATOR LATHROP We have to assume they did when we're trying to figure out whether your amendment makes sense. I get the hunter. I've hunted and I've run into badger holes. I've fallen into them. That's my own fault and I need to look out. But when you're landing an airplane, what, 180 miles an hour? And you hit a badger hole... [LB551]

DANIEL KELLER: It's about 60 knots, but yeah. [LB551]

SENATOR LATHROP: Whatever the knots are. Well, okay, it's very helpful and I appreciate your candid answers. [LB551]

DANIEL KELLER Okay. Any other questions? [LB551]

SENATOR LATHROP Senator Davis. [LB551]

SENATOR DAVIS: A couple questions. First of all, has this been run by Senator Schilz, this language that was added here? [LB551]

DANIEL KELLER: Yes, it has. [LB551]

SENATOR DAVIS: Okay. Second question is, my fair board has an aviation event at the day of the fair. So people come in and they have a fly-in and they take up people in planes. So is that going to relieve those people of their liability? Is that what your objective would be? [LB551]

DANIEL KELLER: The primary objective is to reduce the landowners' liability exposure. So I guess if the fair board...I'm not for sure where they're having their event, but if it's random out in the field, yes, that would be the intent of it: to encourage more aviation activities. [LB551]

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

Judiciary Committee
February 13, 2013

SENATOR DAVIS: Okay. Thank you. [LB551]

DANIEL KELLER: Any other questions? [LB551]

SENATOR LATHROP: I think that's it. Thanks for your testimony... [LB551]

DANIEL KELLER: You bet. [LB551]

SENATOR LATHROP: ...and your candid answers. Next proponent. [LB551]

AMY SANDEEN: (Exhibit 45) Good evening. [LB551]

SENATOR LATHROP: Hello. [LB551]

AMY SANDEEN: Thank you for giving me the opportunity to speak. My name is Amy Sandeen, S-a-n-d-e-e-n. I am the executive director of Prairie Loft Center for Outdoor and Agricultural Learning, in Hastings, Nebraska. Prairie Loft is a 501(c)(3) independent nonprofit focused on teaching agriculture appreciation and outdoor education. We are currently in our fifth year of place-based, experiential programming. Since starting programs five years ago, over 18,000 people have attended education programs and other activities on site at our program. We provide these events at low or no cost, thanks to supportive sponsors in the agriculture and business communities. I've seen the positive impact of active outdoor learning in an agrarian setting. This bill is a great step forward in incentivizing landowners to make their land available to visitors not only for tourism and recreation but also as a way to incorporate education into those activities. Prairie Loft holds an insurance policy and we understand the risks of hosting visitors in a natural outdoor environment. I don't think we have badgers but I know we have skunks. We also see the immeasurable benefits of healthy, active outdoor learning and recreation. If you ask students where milk comes from, they'll generally say the grocery store. Ask about the origins of pizza or hamburger, and you get a lot of blank stares. But if you can take them into the cornfield and point out the difference between sweet corn and field corn, those paths toward deeper learning really open up. With familiarity comes appreciation and further exploration, and this is important for a lot of reasons. One, in 1900, 40 percent of Americans lived on farms and now it's less than 2 percent. Yet throughout that time 100 percent of us eat. So knowing where our food comes from is important. And we're three generations away from the farm. So let's get Nebraskans outside and we'll promote appreciation for the culture and technology of food and fiber production, and increase respect for what farmers do, also increasing that foundation of our economy. Also, kids are spending less and less time outdoors, but that outdoor time is essential to their proper development physically, mentally, and socially. Outdoor experiential programs make a positive difference in the lives of Nebraskans. We support this bill so that people will have many opportunities for such activities statewide. Ninety-seven percent of land in Nebraska is privately owned.

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

Judiciary Committee
February 13, 2013

Farming comprises 94 percent of Nebraska's land use. That's 46 million acres of opportunity. So let's support the current and future health of our statewide community and the strength of our statewide economy through the passage of this bill that will provide landowners an incentive to allow education, recreation, and tourism activities on their land. Thank you for your time and consideration. [LB551]

SENATOR LATHROP: Thank you. You timed that just, like, perfectly. [LB551]

AMY SANDEEN: Thank you. [LB551]

SENATOR LATHROP: You must have written it out in a way that you knew it was going to end in three minutes. [LB551]

AMY SANDEEN: I crossed out a lot, actually. (Laughter) [LB551]

SENATOR MCGILL: Thank you. [LB551]

SENATOR LATHROP: Thank you, Ms. Sandeen. Does anybody have any questions for Ms. Sandeen? I don't see any. Thank you for your testimony. [LB551]

AMY SANDEEN: Thank you. [LB551]

SENATOR MCGILL: And you could always send us your full testimony in an e-mail or something. [LB551]

AMY SANDEEN: I just handed it out. [LB551]

SENATOR MCGILL: Okay. Yeah, it's right there. [LB551]

SENATOR LATHROP: Perfect. Thank you. [LB551]

ROGER KUHN: Senator Lathrop, members of the committee, my name is Roger Kuhn. It's R-o-g-e-r K-u-h-n. I'm here today representing the Nebraska Game and Parks Commission in support of LB551. The Game and Parks Commission provides and supports recreation and tourism throughout the state. We operate 81 park areas statewide. Recreation and tourism are valuable economic resources for many areas of Nebraska and offers opportunities to attract people across the state that can provide an economic benefit to the areas in which they travel and recreate. The primary goal of this bill is to expand opportunities for recreation and tourism activities to more private landowners. If more people can offer tourism services, this would provide additional benefits to our citizens, both economically and socially. We feel this is a good bill for the tourism industry and Nebraska as a whole. I'd try to answer any questions if you have any. [LB551]

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

Judiciary Committee
February 13, 2013

SENATOR LATHROP: Thanks, Roger. Senator Coash. [LB551]

SENATOR COASH: Thank you, Senator Lathrop. Roger, do you see this bill as applying to the Game and Parks, to your parks? [LB551]

ROGER KUHN: Yeah, I believe possibly it could. I think right now if there is an incident at one of our park areas, there is opportunity for people to file a claim; and we have paid out for those claims, etcetera. I think some of the activities, there are inherent risks; you know, say, a swimming pool, for an example. It's wet. The surface is wet. Somebody slips and falls, has an injury. I think that would be an assumption of an inherent risk. Currently, they could file a claim and in some cases there has been payout for that claim. [LB551]

SENATOR COASH: But do you see LB551 as...in your reading of it, do you think it limits the liability of Game and Parks? [LB551]

ROGER KUHN: I don't think it would remove liability. I think still they'd have the opportunity of due process if there's negligence. [LB551]

SENATOR COASH: Right. But you see this as applying to state parks as well. [LB551]

ROGER KUHN: Yeah, I think there would be some benefit to the Game and Parks Commission, yes. With some of the activities that we provide to the public, yes. [LB551]

SENATOR COASH: Okay. Thank you. [LB551]

ROGER KUHN: You bet. [LB551]

SENATOR LATHROP: Senator Seiler. [LB551]

SENATOR SEILER: Don't you rent out blinds for duck hunting, the Game and Parks? [LB551]

ROGER KUHN: Yeah. We offer blinds. [LB551]

SENATOR SEILER: That would be covered under this. [LB551]

ROGER KUHN: Yeah. I mean, the inherent risk that one assumes in a blind or that type of activity, yes, it would be, I believe. Yes. Okay, thank you. [LB551]

SENATOR LATHROP: Okay. Thanks, Roger. Next proponent. You must be the lawyer. [LB551]

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

Judiciary Committee
February 13, 2013

ROBERT KEITH: I am the...(laughter). [LB551]

SENATOR LATHROP: Everybody has got to come in here with one. We might as well hear what Schilz's says. [LB551]

ROBERT KEITH: Well, it's funny, because Senator Chambers' comments earlier indicated that, well, if you're not a lobbyist, you're a lawyer or you're here for somebody. I'm actually here for nobody but myself. I actually have been asked to...I came to testify mainly because I thought it would be at 1:30 and I'd be back at my desk by 3:30. So no more...(laughter). But I get much more appreciation now for what you folks have to do on a daily basis. My name is Rob Keith, K-e-i-t-h. I'm a lawyer from Omaha, Nebraska. I spent the last 17 years primarily in the insurance defense industry where I represent insurance companies and their insureds in the property and casualty business. My experience...well, first of all, as I said, I'm not being paid. This actually hurts my business but I still think it's the right thing to do to come down here and testify on behalf of this bill in support of LB551. I think it strikes a balance between the protection that we're seeking from two interests that want to meet in the middle, and one is we have a large amount of landowners that want to make their land available for these particular recreation purposes. We have a lot of people that want to use the land for these purposes. And what it does is it kind of meets in the middle. It doesn't provide an absolute protection from liability. What it does is it encourages what I consider to be the biggest...or it takes away what I consider to be one of the biggest fears of landowners and that is not just a verdict or a settlement but it's the fear of, or being, sued. Not only the stigma that comes as a business owner from being sued in a personal injury action but the cost of paying me to defend them. And by way of example, I have represented landowners in these situations before where you have several individuals that are hunting on a piece of land and one accidentally shoots the other while they're hunting pheasant. Takes an eye out. Well, neither of them have any insurance, so they turn around and they sue the landowner who did charge them a fee to allow them to hunt on their land. And even though there was no discussions or warnings and it wasn't inherent risk, there's thousands and thousands of dollars that that particular landowner had to spend out of his own pocket to defend the case, because his homeowners insurance would not provide coverage for that particular loss. Now, on the flip side of that, what I like about the bill is it does allow for continued claims to be asserted in certain instances, and I think it's important to note that those three instances still allow for claims in the appropriate setting when the facts apply, including knowledge of the dangerous conditions, such as a badger hole on a runway; if the equipment is dangerous. They can't get away with giving you a leaky canoe, and when the owner fails to properly train a guide. Those claims are all still valid and they're still allowed under any circumstances to file a claim for gross negligence, which is when there's greater excessive negligence. The landowner still has that exposure. But I believe that the balance that's found in this bill is positive for the landowners who want to make their

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

Judiciary Committee
February 13, 2013

land available as well as positive for the people that want to use the land in a responsible way. I'll answer any questions you may have. [LB551]

SENATOR LATHROP: I've got a question for you. [LB551]

ROBERT KEITH: I thought you might. [LB551]

SENATOR LATHROP: We have a Recreation Liability Act right now... [LB551]

ROBERT KEITH: That's correct. [LB551]

SENATOR LATHROP: ...that immunizes or provides a protection up to gross negligence for a landowner who allows somebody on their property for free. [LB551]

ROBERT KEITH: Correct. [LB551]

SENATOR LATHROP: That was intended, when passed, to provide an incentive for landowners to let people on their property for free, and the inducement is we're going to pare back the possibilities for exposure to liability. This would essentially take that standard and apply it regardless of whether you do it for free or you do it for pay. [LB551]

ROBERT KEITH: Exactly. [LB551]

SENATOR LATHROP: Do you think we're disincentivizing people to do it for free now? Or what incentive does the guy have to let somebody on to hunt for...without charging them? [LB551]

ROBERT KEITH: Well, I don't think that's going to... [LB551]

SENATOR LATHROP: Go ahead. [LB551]

ROBERT KEITH: I don't think that's necessarily going to change. And I can't speak because I've got to be honest, I'm not a hunter. You know, I have grandparents that lend their ground out to hunters and they charge them a fee for a couple of reasons. One is because it creates hard feelings when they allow some people in their community to hunt for free and not others. So they do allow it...charge a fee, which does pare down the list. Number two, it also allows them to put their money that they earn back into their land. It doesn't disincentivize them from allowing them, but it allows them to pay the costs of having vehicles coming in across their property and the road that leads to the hunting area. And they do...you know, the thing that I've noticed from just growing up in a farm family is the profit is not necessarily what they're interested in. It's making sure that the land is kept in pristine condition to allow continued use over

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

Judiciary Committee
February 13, 2013

generations. [LB551]

SENATOR LATHROP: Is there a problem with folks in the agricultural industry, farmers and ranchers, with getting liability insurance? [LB551]

ROBERT KEITH: I think there is. And that's a very difficult question to answer in the short term. I think one of the issues is because this is such an unusual combination of risk. You do have a commercial farming industry that does have a set of policies that you can buy for it. You have individual event policies, such as a fair or a rodeo. But having a continuous use for recreational purposes that's different than the primary use of the property, those policies are extremely difficult to find. [LB551]

SENATOR LATHROP: Rob, if I am running a farm in...out... [LB551]

ROBERT KEITH: Wherever. [LB551]

SENATOR LATHROP: ...wherever, but in Nebraska,... [LB551]

ROBERT KEITH: Okay. [LB551]

SENATOR LATHROP: ...my farmer's liability policy would cover a circumstance where, for example, I had something on the order of a...some kind of a hazard I knew about and didn't warn a hunter about. [LB551]

ROBERT KEITH: Yes. [LB551]

SENATOR LATHROP: Would you agree? [LB551]

ROBERT KEITH: It could. It depends now because they've all changed with their exclusions to a certain degree as to what would be defined as a known hazard, under that particular policy, or an intentional act. [LB551]

SENATOR LATHROP: But it's...obviously an intentional act is never an insurable thing. [LB551]

ROBERT KEITH: Yeah. It's never going to be insured. [LB551]

SENATOR LATHROP: But a farm policy, if I let somebody on...I own the farm, somebody comes along and wants to hunt and I let him on and they get hurt, that's what you have the farm liability policy for. It would cover that. [LB551]

ROBERT KEITH: Not in my experience. I've had people actually deny coverage on those circumstances. [LB551]

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

Judiciary Committee
February 13, 2013

SENATOR LATHROP: Because they're making money off of it? [LB551]

ROBERT KEITH: It is a commercial enterprise. It's not primary. [LB551]

SENATOR LATHROP: Okay. So right now they don't have exposure because their liability policies will cover them. It's when they want to start charging people that the exclusion applies. [LB551]

ROBERT KEITH: That's exactly when you run into some problem under some policies. [LB551]

SENATOR LATHROP: Okay. So we are...actually the coverage is there, the protections are there as long as you do it voluntarily. And as soon as you want to try to make money at it, then your policy requires that you get some kind of a rider that says if you're making money at something, then you have to have a rider. And then you pay something else. [LB551]

ROBERT KEITH: That's assuming that they are...assuming that they're allowing hunters on to their land for free and not excluding them for the concern that they have of having being sued in the first place. I think what we're confusing with is there's coverage but I think a lot of people are limiting the use of their land out of the fear of litigation, period, regardless of their insurance. I mean, you know as well as I do, I can guarantee you most people don't know what their insurance covers or doesn't cover. [LB551]

SENATOR LATHROP: Well, probably. Probably. But the reality is, this Legislature has afforded them protection, and it's available to them in their policy up to the point where they start charging people. [LB551]

ROBERT KEITH: It could be. Possible. [LB551]

SENATOR LATHROP: Okay. Senator Seiler. [LB551]

SENATOR SEILER: I think you're going back to the old law school theory of the invitee versus the business invitee, and the minute you charge you change your policy. [LB551]

ROBERT KEITH: Yeah. You have a higher burden. [LB551]

SENATOR SEILER: Almost an absolute risk if you charge except for intentional or... [LB551]

SENATOR LATHROP: Yeah. We don't...after Heins. Heins got rid of the... [LB551]

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

Judiciary Committee
February 13, 2013

ROBERT KEITH: Heins got rid of it all. So there's no more classifications of it. It's a reasonable duty standard. The real problem that I think we have in this particular industry is that it's the vastness of the property we're making available. To take a corner shop here on, you know, on 10th and O, to say versus 10,000 acres and say you have to inspect that property and make sure there aren't badger holes, it's a much different game. And I would assume that a large majority of these landowners are deciding not to give access just out of the fear of the costs of litigation and the stigma of litigation regardless of coverage or not. [LB551]

SENATOR SEILER: I think the Nebraska Supreme Court changed the test but I don't think the insurance companies have. [LB551]

SENATOR LATHROP: Yeah, you know, I think that they exclude it and I actually had an airplane case where the coverage didn't apply in the event you were making money. Somebody had a fare, charged \$10, got in a crash, and the coverage didn't apply. So it's an exclusion in the policy if it turns into a moneymaking enterprise. [LB551]

ROBERT KEITH: Yeah. [LB551]

SENATOR LATHROP: The one concern I do have is, I think when Senator Coash introduced this, it really was about dude ranches, okay? My own personal view is that most of the problem with getting on property is every time I got anywhere to hunt, it's all posted. [LB551]

ROBERT KEITH: Um-hum. [LB551]

SENATOR LATHROP: I mean, it's all posted or leased or...I don't know if this is going to open up anything, but there are dude ranches, then there's guys that want to get on Christensen's place to hunt. The risks getting on Mark's farm are probably few. If you cross the fence carefully and you walk around and you...you know, you try to shoot pheasants or whatever. [LB551]

ROBERT KEITH: Um-hum. [LB551]

SENATOR LATHROP: But a dude ranch, if they're around power equipment, around the combine, whatever they can be exposed to, there's a lot more risk there, don't you think? [LB551]

ROBERT KEITH: Well, I think that there is. And I think philosophically you and I are going to be on the opposite sides of that issue. I think, like Senator Christensen mentioned, at some point we have a personal responsibility issue when you're going to put yourself in that situation to not stand near operating equipment with loose clothing. I mean, we understand that. Okay? And I understand where you're coming from on that,

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

Judiciary Committee
February 13, 2013

that there is more risk... [LB551]

SENATOR LATHROP: I'm not sure the Ken Schilzes and the Mark Christensens of the world know how dumb the city guys are. [LB551]

ROBERT KEITH: Are you referring to me? [LB551]

SENATOR LATHROP: I mean, it might look to them like, oh, that's pretty obvious, and the city guy is just wandering right over there. But anyway, I've taken too long. [LB551]

ROBERT KEITH: It's all right. I appreciate the questions. Any others? [LB551]

SENATOR LATHROP: Yeah. Thanks for coming down. [LB551]

ROBERT KEITH: Thank you. I appreciate it. [LB551]

SENATOR LATHROP: Any other proponents? Anyone here in opposition? [LB551]

SENATOR COASH: Nope--seeing none--next. (Laughter) [LB551]

SENATOR LATHROP: We're getting a little punchy and trying to have a little fun because it's five to 6:00. [LB551]

JOHN LINDSAY: Good afternoon, Senator Lathrop and members of the committee. My name is John Lindsay, L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of the Nebraska Association of Trial Attorneys. A couple of things that have come up are, I think, the problem with this bill. The first thing to remember, before liability can attach somebody has to have done something wrong. Unless you're in a situation with strict liability, you have to have somebody that was careless in some way. And what this bill does, it kind of turns things up on its head and says, okay, to some extent we're going to allow that carelessness. We are going to allow you to be negligent and you're not going to have responsibility for your actions, but we will to some extent allow negligence. If that wasn't what was happening, they wouldn't need the bill, because you don't have liability without negligence. The primary thing, and I think it came up in some questioning, that this bill does, the primary departure from the Recreational Liability Act is that we are now applying this for people who are in it for a profit. That is why this bill is here. It's to allow the charging of a fee. Right now, anybody can allow people on their land to go hunting, and I think as Senator Lathrop brought out, we have a lower standard of care. They don't have to go out and inspect for badger holes. They don't have to provide the same thing that you would do if you were running an amusement park. It's just a different level because you have now introduced the concept of business principles, the idea that you are being compensated for that. And that is where our objection starts is that if somebody is in the business of doing something, there should

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

Judiciary Committee
February 13, 2013

be a little bit higher standard of care. Senator Seiler, as we learned in law school, the business invitee rule at that time did provide a higher standard of care. Running out of time, that's the primary thing. I would also ask you to look at the overbroad nature of this. Right now, Senator Lathrop, you were talking a bit about airfields. I believe this applies to Eppley Airfield, to the Lincoln Airport, because they are owners who fall within that definition; they charge a fee. I think this would, just like with everybody else, provide a disincentive to inspect their land for defects, because you're rewarded if you don't. I think it would apply to any amusement park in Omaha or wherever else. The final thing I'll say is Senator Lathrop nailed it and I had it here in my notes to mention: Don't underestimate how ignorant city folk are about what goes on, on farms. If we knew how to operate farm equipment, if we knew how to farm, we might be doing it. But we don't, and it's...so when we get around that equipment, Senator Christensen, that you're very familiar with, very comfortable with, we don't know what we're doing. And because of that I think the assumption is, if somebody is charging me to go out and do that, they'll take care of me. And I don't think that's the public perception. We'd ask that the bill be indefinitely postponed. [LB551]

SENATOR LATHROP: Okay. Thank you, John Lindsay. Any questions for Mr. Lindsay? I see none. Any other opponents? Anyone here in a neutral capacity? Oh my, I didn't expect that. I'm trying to think who could be neutral on this? You're either a yea or a nay. Welcome to the Judiciary Committee, evening version. [LB551]

KATHY McKILLIP: Thank you. It's great to be here. [LB551]

SENATOR COASH: I hope nobody has to go to the bathroom when we're done, because the water is off. [LB551]

SENATOR LATHROP: We're complaining, and Senator Davis told me that this is a typical time for Education Committee to be moving on, so. [LB551]

KATHY McKILLIP: To be going on? Yeah. I will be brief because I have what I'm presenting also in handout, so I will not take up your time or the committee's time here. [LB551]

SENATOR LATHROP: Okay. That's all right. Thank you. [LB551]

KATHY McKILLIP: (Exhibit 46) So thank you, Chair Lathrop, for having us here today, and for the members of the Judiciary Committee. I am Kathy McKillip, K-a-t-h-y M-c-K-i-l-l-i-p, and I'm the executive director with the Nebraska Tourism Commission. As many of you may be aware, we recently, as a commission, completed the development of a statewide strategic plan. This plan, under the direction of LB684, charged the commission with evaluating several elements within our industry. Several components that were under review were the organizational structures, staffing,

marketing, regional growth, funding sources, and an overall statewide assessment and assets of the tourism potential. Many of these discussions occurred throughout 28 focus groups that were held statewide. As a commission, we constantly survey and evaluate the emerging trends and traveler interests throughout several different categories. Outdoor recreation, scenic beauty, and environmental exploration rank among the highest. Through our research and surveys we have discovered that Nebraska is prime for targeting visitors in these specific markets. However, we need businesses and land access to be available and adequately qualified to execute such marketing surges. Some of the commission's recently gathered scientific research and data provided by Equation Research as part of the strategic plan are as follows. And I'm not going to read all those there, but you can see how the percentages break out. And to let you know how that is, is that the survey asked those who were seeking information about Nebraska what their ideal vacation offering was. Most of them, or 72 percent, were seeking natural beauty and scenery, while the perception of what Nebraska has to offer was only 22 percent that we have this, which means they're not for sure that we even have these opportunities available and if we do, how we are promoting those. Now that could be a marketing or promotional issue, but really it's the fact that we have what they want. We also need the support from the business sector and the private industry to support what they're looking for. So if you go ahead, you have some of those percentages there on the next page. And in conclusion, the agri- and ecotourism industries are growing not only in Nebraska but across the country not only for just hunters, fishermen, birders, and others alike. The general public enjoys access to public lands and they're increasingly looking for access to private lands to pursue these specific activities in a natural setting. LB551 would encourage the landowners in the state to grant access to their lands either free of charge or for a fee. It is modeled in similar laws for other states. We would like to thank Senator Schilz for bringing the value and importance of tourism before the body and believe that the future of tourism plays an important role when it comes to generating revenue. As the state's third largest industry, tourism does play that critical role in the vitality of our state. And I would entertain any questions should you have any at this time. [LB551]

SENATOR LATHROP: Senator Coash. [LB551]

KATHY McKILLIP: Yes. [LB551]

SENATOR COASH: Thank you, Senator Lathrop. Do you think if we passed Senator Schilz's bill that would increase tourism in our state? [LB551]

KATHY McKILLIP: I think that with some of the testimony that was here prior before me, I think there is an area where there is that concern that we don't want to run the risk of being sued, so why would we even go into that? Do we counsel with private business owners and landowners that want to go into certain types of activities? Yes, on a regular basis. Are they fearful whether or not it's their insurance costs, whether...it's not...it's the

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

Judiciary Committee
February 13, 2013

understanding of the liability act. We're unsure at that point but we do know that it is a hindrance for them to go into some markets. [LB551]

SENATOR COASH: Okay. I'm just struggling with your neutrality, but I struggle with that every hearing I'm in. So that's okay. [LB551]

KATHY McKILLIP: Well, the neutrality of it, Senator, is the fact that we realize there are people out there that want that. However, it is private business. I mean, our job is to market the opportunities. We would like to see more opportunities, however they look at that, and that this is a growing trend and an emerging field for this industry. [LB551]

SENATOR COASH: That makes sense. Thank you, Kathy. [LB551]

KATHY McKILLIP: Um-hum. [LB551]

SENATOR LATHROP: I would say you need some money to promote tourism... [LB551]

KATHY McKILLIP: Yeah. [LB551]

SENATOR LATHROP: ...if only 22 percent of the people perceive that Nebraska has natural beauty and scenery. [LB551]

SENATOR MCGILL: And that somebody thinks we have mountains. [LB551]

KATHY McKILLIP: Isn't that nice? I always thought we had to apologize for not having mountains. And I'd love to talk to you about that, Senator Lathrop, about funding for tourism. So, yes, we have lots of opportunities. [LB551]

SENATOR LATHROP: Great. Thank you, Kathy. [LB551]

KATHY McKILLIP: You're welcome. [LB551]

SENATOR LATHROP: Anyone else in a neutral capacity? Senator Schilz to close. [LB551]

SENATOR SCHILZ: Thank you, everyone, and sorry that we went on as long as we did. [LB551]

SENATOR LATHROP: No, no. You don't have to apologize. [LB551]

SENATOR MCGILL: It's not your fault. [LB551]

SENATOR SCHILZ: I just want to take this opportunity to say that I appreciate the

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

Judiciary Committee
February 13, 2013

questions. I appreciate the concerns that were brought up. We will work to address those and I will circle back around with everyone at a later date to bring up some of my other concerns and opportunities. [LB551]

SENATOR LATHROP: Yes, Senator Davis. [LB551]

SENATOR DAVIS: I just wonder if you had any opinions on Agenda 21, Senator Schilz? [LB551]

SENATOR MCGILL: Everyone else does. [LB551]

SENATOR SCHILZ: (See also Exhibit 48) Well, let's see. It's now...what? What time is it? Yeah, we could have done...yeah, nevermind. [LB551]

SENATOR LATHROP: Okay. Senator Gloor on LB169. [LB169]

SENATOR MCGILL: Oh, dear. We're all getting silly now. I like the continued clearing of the room. [LB169]

SENATOR COASH: Bet you can't do this in two minutes. [LB169]

SENATOR MCGILL: Senator Gloor, you are welcome to open on LB169. [LB169]

SENATOR GLOOR: (Exhibit 47) Thank you, Senator McGill, and good afternoon, members of the Judiciary Committee. I will be...it's been a long day. It's sort of like Health and Human Services, too, except no tears on the...on here. My name is Mike Gloor, G-l-o-o-r. Grand Island is a growing community. It just reached 50,000, just over 50,000, which means it's a metropolitan statistical area. It's a good thing for the community. It opens up some federal and state programs and funds that can help with economic development. But unfortunately, it also changed how Nebraska statutes handle the duties of jury commissioner. A couple of years ago Senator Lautenbaugh had a bill, I think it came to this committee; and it transferred duties from the district court clerk to either an election commissioner or a jury commissioner...separate jury commissioner. The bill also changed I think the end of the population range from 150,000 to 200,000. That worked perfect for Sarpy County. The bill went through. There really wasn't much discussion about it. And at the time it went through, Hall County was under 50,000. But we have a new census. The census comes out, Grand Island becomes 50,000, and all of a sudden, this bill catches it. What the amendment does that's been handed out is become the bill. So if you're reading the green copy, it doesn't pertain anymore. This bill doesn't affect Sarpy County at all. It just affects Hall County. And what the amendment does is the same thing we would try to do in the bill but with a lot fewer complexities and with a lot less concern. AM232 replaces the proposed changes in LB169 by simply raising the 50,000 threshold to 75,000. And so now our

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

Judiciary Committee
February 13, 2013

district clerk continue to operate as the jury commissioner, as has been the case in the past. It's as simple as that. It's got agreement from the Hall County board, from the judges, from the district court clerk, from the Sarpy County election commissioner who is also the jury commissioner, from NACO, and from Senator Lautenbaugh. And that's the simplicity of this bill. But it can make a difference, I think, in some efficiencies with our district clerk. [LB169]

SENATOR LATHROP: Senator Coash. [LB169]

SENATOR COASH: Thank you, Senator Lathrop. Senator Gloor, since nobody has had a chance to see the amendment, will raising this from 50,000 to 75,000 scoop in some other cities... [LB169]

SENATOR GLOOR: No. [LB169]

SENATOR COASH: ...that we're worried they'll come back in two years and say... [LB169]

SENATOR GLOOR: That's a great question, Senator Coash, and I get a little too provincial. Grand Island is, you know, as it relates to separate metropolitan areas, Grand Island at 50,000 is the largest outstate community outside of the Omaha and Lincoln areas. The next closest is Kearney, which is at 38,000, or maybe the last census had them at 42,000; but they're a...it will take decades for Grand Island to hit the 75,000 mark, which is one of the reasons we picked it. It's so far out there. [LB169]

SENATOR COASH: But we're not scooping up another community with this change. [LB169]

SENATOR GLOOR: There's nobody larger than Grand Island. There's no other community... [LB169]

SENATOR COASH: That's not already, like, okay... [LB169]

SENATOR GLOOR: Sarpy County was the one that was the next largest, and that's what Senator Lautenbaugh took care of in his bill. So great question, but no, we've set it high enough so that it's not likely we have to revisit this issue for decades and decades and decades. [LB169]

SENATOR MCGILL: I was glad to see that you brought this amendment. After reading the bill, I was just going to suggest that, because there are tons of places in statute based on the size of county...you know, we have weird pockets that only Lancaster County falls into. And so, yeah, I think this is probably the best solution. [LB169]

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

Judiciary Committee
February 13, 2013

SENATOR GLOOR: Yeah. We had two options. One is to be inclusive and the other is to be exclusive. And after discussions yesterday, decided, you know, it's just a lot less and it's certainly easier to explain if we just say let's go from 50,000 to 75,000 on the same statute. [LB169]

SENATOR LATHROP: Very good. I see no other questions. Thanks, Mike. [LB169]

SENATOR GLOOR: Thank you. [LB169]

SENATOR LATHROP: And we appear to have two witnesses. I'm guessing they're both for. [LB169]

JANET WIECHELMAN: (Exhibit 56) Good evening, Senator Lathrop and committee members. I am Janet Wiechelman. Wiechelman is W-i-e-c-h-e-l-m-a-n. I am the clerk of district court in Cedar County and I'm also the legislative liaison for the Clerks of the District Court Association. We thank Senator Gloor for bringing this legislation and we are here in support of LB169 and specifically the amendment. This legislation was brought to Senator Gloor from Hall County due to the issue of them realizing they were over the 50,000 population. In reviewing the statutes, a county having more than 50,000, the jury commissioner is a separate office in county government or the judges of the district court can determine that the election commissioner shall perform the duties. With the increase of the population to 75,000 in subparagraph (2) of the amendment, it will allow the clerk of the district court in Hall County to continue the duties of the jury commissioner ex officio instead of having the functions of the jury commissioner handled by another office or by the election commissioner. With this bill, though, there is no additional compensation for the clerk of the district court to perform those duties. Currently, those counties that are over the 50,000 to 200,000 is Sarpy and Lancaster County, the election commissioner currently completes the duties of that. And in Douglas County the clerk of the district court does that. This increase of the population to 75,000 will not affect these counties at all. Buffalo County is the next county that would possibly reach that 50,000 population, and we have conversed with the commissioners, the judges, and the clerk of district court from those counties, so that they are aware of the fact of this legislation and the increase from 50,000 to 75,000. I've also included with my statement the estimated populations of 2011 of the six largest counties. The intent of this bill is to allow the clerk of district court to continue performing those duties of jury commissioner to provide more efficiency with the jury trial process. Clerks of district court already receive training for the jury trial process, and the continuing experience will allow a smooth and efficient jury process. As I stated, we are in favor of this legislation and specifically the amendment. And with my statement I have included a letter from Valorie Bendixen, who is the Hall County Clerk of district court, and her letter of support. I'd be willing to answer any questions. Short and sweet. [LB169]

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

Judiciary Committee
February 13, 2013

SENATOR LATHROP: I think you were perfectly clear and there are no questions.
[LB169]

JANET WIECHELMAN: Thank you very much for your time. [LB169]

SENATOR LATHROP: Thank you. [LB169]

JANET WIECHELMAN: Thank you. [LB169]

SENATOR LATHROP: Didn't we see you about three hours ago on the first bill?
[LB169]

ELAINE MENZEL: Well, I was in the... [LB169]

SENATOR LATHROP: Was it the first bill? [LB169]

ELAINE MENZEL: Yeah, yeah. (Laugh) [LB169]

SENATOR MCGILL: Oh, sorry. [LB169]

SENATOR LATHROP: Yeah, that's too bad. You could be back home if we would have just taken this short of you. [LB169]

ELAINE MENZEL: First and last, but...and you are correct. I'm here on behalf of the...in support of the bill. And for the record, my name is Elaine Menzel; it's M-e-n-z-e-l. And I appreciate, first of all, Senator Gloor introducing this on behalf of the clerk of the district court in Hall County. And we are supportive of the amendment as proposed. And given the time that you have spent on bills this afternoon, in that deference to that as well as the quickly approaching water shutoff deadline, I will end with that and just ask for your support in advancing the bill. [LB169]

SENATOR LATHROP: Thank you for your testimony and your brevity. [LB169]

ELAINE MENZEL: Thank you. [LB169]

SENATOR LATHROP: I see no...and believe it or not, Senator Gloor is going to close.
[LB169]

SENATOR GLOOR: Yeah. I'm going to say about 16 words. Good bill. Please advance consent agenda. Thank you. [LB169]

SENATOR LATHROP: Oh, right. Thanks, Mike. (See also Exhibits 52, 54, 55, and 59)
[LB169]