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Judiciary Committee
March 05, 2013

[LB415 LB520 LB533 LB631]

The Committee on Judiciary met at 9:15 a.m. on Tuesday, March 5, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB415, LB631, LB520, and LB533. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Mark Christensen; Al Davis; Amanda McGill; and Les Seiler. Senators absent: Colby Coash.

SENATOR ASHFORD: Good morning, everyone. Welcome to the Judiciary Committee. We have four bills today that were originally scheduled for earlier and obviously postponed because of the snow. So we're going to start today with LB415, Senator Seiler's bill. Those of you who have not been here before, we ask you to confine your introductory--except for the introducer--introductory comments to three minutes. And when the yellow light comes on that's just an indication we'd like you to sum up your comments, and the three minutes obviously doesn't include questions and answers. But with that, Senator Seiler, would you like to introduce LB415, please.

SENATOR SEILER: (Exhibit 1) I would, Mr. Chairman. Members of the committee, my name is Les Seiler, L-e-s S-e-i-l-e-r. I represent the 33rd District and I bring LB415 to this committee with AM513. Basically what this involves in, is the service of summons and interrogatories on garnishments and multiple facilities. For instance, in Hastings, Grand Island, and Kearney, you'd have three Wells Fargo banks. You would get a notice that you've got an account in Wells Fargo but you don't know where; so you serve Hastings. Well, it's actually in Grand Island. And both parties have an interest in this bill because it affects all parties. For instance, the person serving the interrogatories is interested in getting to the right facility. The bank is important because if it gets to the wrong facility and they ignore it, after 10 days the bank is liable for the entire amount of the garnishment. So they have an interest in making sure service is proper. And so the first thing we start off with is AM513 defines what a financial institution is. The second is the service of multiple facilities. You can serve them three ways, basically. On the Web site the facility can place anybody serving us, serves us at this address on the Banking Department Web site. They can serve in the main office. Wherever that main office is can be served. And finally, they can file a statement with the interrogatories when they get it that you served the wrong office; you should have served the bank in Kearney, and send it back to the person issuing the interrogatories and at that point they can re-serve it. I think all parties have an interest in this to get it right and I'd say you will hear testimony from the banks on some issues, but I think we've got them mostly covered here. [LB415]

SENATOR ASHFORD: Thank you, Senator Seiler. Senator Chambers. [LB415]

SENATOR CHAMBERS: Senator Seiler on occasion looks at bills from the standpoint of a judge, so if I use that title it's just that I got him confused. Judge, I'd like to ask you a

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question this morning. [LB415]

SENATOR SEILER: Sure. [LB415]

SENATOR CHAMBERS: Would you turn to page 5 of the bill? And beginning in line 6 it says, and toward the end of the line, "in its discretion, and without violating any obligation to its customer," this institution "may elect to treat the service of summons as valid and effective as to the property" and so forth. [LB415]

SENATOR SEILER: That's correct. [LB415]

SENATOR CHAMBERS: I think when you involve the customer in this way, there should be no discretion on the bank as far as waiving what the law says is the appropriate service. Now if this language is put in, then it would be appropriate for the service to be incorrect or at the wrong site. Then the bank could make that decision. So it's left to the bank rather than the legislative policy to make that determination. So in order that you be aware of it, I will oppose that provision on this page and also on page 11 where it appears again. And I'm not trying to hurt your bill at all,... [LB415]

SENATOR SEILER: No. No, I understand. [LB415]

SENATOR CHAMBERS: ...but I think somebody needs to look out for the customer and the... [LB415]

SENATOR SEILER: I think...Senator, I think the saving grace there was "without violating any obligations to its customers." So I think they owe a paramount duty under the banking laws as they stand today to not divulge any information wrongfully. [LB415]

SENATOR CHAMBERS: I know, but the customer, I think, has the right to believe and an expectation that the bank is going to make anybody who tries to attach his or her money comply with what the law says in terms of how that should be done. I'm not interested in making it easy for the one who wants to garnish. I'm not interested it making it easy for the bank. But I want the customer--which I am one of, by the way, poor as I am--to know that when service must be made, it must be made. If I'm serving Senator Ashford, it cannot be in somebody else's discretion to say that, well, this was done in the proper way. The bank is not the one who is going to suffer, it's the customer. And here's what I mean by suffer. The customer is the one who is under the gun, not the bank. So I would want it to be, when all of these requirements are placed in here where the bank will declare the proper place for the service, then if there's a modification given to the department, the department puts it on its Web site, and these people who want to garnish have access to that information. And I don't want the bank to do the creditor's work by letting a creditor be as careless as he or she wants to. And one bank may say, no, we don't accept that, the service is incorrect. Another bank says,

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well, fine. So that's what my concern is, and I don't have other questions on the bill; so I'm trying to get it all out at this point and not prolong your sitting in that chair. [LB415]

SENATOR SEILER: I don't think that's a...in my opinion it's not a bill killer. [LB415]

SENATOR CHAMBERS: Okay. [LB415]

SENATOR SEILER: I think you'll have some bankers testify here shortly. [LB415]

SENATOR CHAMBERS: Okay. [LB415]

SENATOR SEILER: I won't be here. I've got another bill in another committee, but I'm sure you'll be glad to hold your own on that. [LB415]

SENATOR CHAMBERS: Are you sure that's why you're not here or is it because of the character of the individuals who are coming? You shouldn't have said the bankers are coming and then you're going to leave. But anyway, I appreciate that. Thank you. [LB415]

SENATOR SEILER: You're welcome. [LB415]

SENATOR ASHFORD: Thank you, Senator Chambers. Any other questions of Senator Seiler? Seeing none, thanks, Les. [LB415]

SENATOR SEILER: Okay. If I may be excused to go to Government Committee? [LB415]

SENATOR ASHFORD: Yes, you may. Bob. [LB415]

BOB HALLSTROM: (Exhibit 2) Chairman Ashford and members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB415. This issue arose from member input suggesting that it would be beneficial if they could, in their discretion, designate a central location for the receipt of garnishment summons and interrogatories. Many times a bank will designate an individual or a division of the bank to be responsible for answering and responding to interrogatories. There is work involved. You have to identify the account debtor, you have to identify the account balance. In many cases you need to determine if there are protected amounts with regard to federal electronically deposited benefits, and you train individuals to be responsible for answering the interrogatories. So it's an important aspect. We responded by asking Senator Seiler to introduce the legislation before you. And in essence it would say that an out-of-state bank, since they don't have a headquarters in Nebraska, could designate an office or a branch. An instate bank that elects to follow

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this process would need to designate their headquarters. We've attempted to address procedural or mechanical questions. The Department of Banking has indicated that they are willing to be the repository for posting designated sites on their Web site. We have provided for the timing of when those become effective. We've anticipated that there may be inevitable delays or lags between someone modifying or revoking a designation, so we've provided for a 30-day grace period that the service will be effective if a creditor, for example, has looked at the Web site, started the service of process procedure, and then within the intervening 30 days the modification or revocation of the central location has been modified. We've provided that wherever these are accepted, that all property or credits of the judgment debtor would be available by properly serving the central location so designated. Senator Seiler has indicated that there is an amendment to more clearly define the definition of financial institution, of which we are supportive. I do know that the collection agencies have also suggested that the bill be modified to require or mandate that banks designate the central location. We have not posed that issue to our members and would reject that at this point. I think they also had some additional language to designate on the Web site, the date of the posting and background information regarding the designation of central location. I'm certainly willing to look at that, but that would be an issue that I would probably look for input from the Banking Department to make sure that doesn't unduly increase their burden in being the receptacle for the designation of central location. I'd be happy to address any questions of the committee. [LB415]

SENATOR ASHFORD: Yes, Senator Chambers. [LB415]

SENATOR CHAMBERS: Mr. Hallstrom, every time somebody says he or she is happy to answer questions, I like to bring happiness; so I will have a question or two to put to you. You are a lawyer, aren't you? [LB415]

BOB HALLSTROM: Yes, sir. [LB415]

SENATOR CHAMBERS: Now when you went to law school, they had a course, because they have it at every law school, called creditors' rights. [LB415]

BOB HALLSTROM: Correct. [LB415]

SENATOR CHAMBERS: Did you take that course? [LB415]

BOB HALLSTROM: I did. [LB415]

SENATOR CHAMBERS: Did you ever see a course called debtors' rights? [LB415]

BOB HALLSTROM: Not that I'm aware of, Senator. [LB415]

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SENATOR CHAMBERS: Because debtors cannot pay lawyers their fees, might be one reason, right? Because that person is already in debt. But aside from that, which would be in a better position to enforce his or her rights, the creditor or the debtor, generally speaking? [LB415]

BOB HALLSTROM: Generally speaking, the creditor. There are indications and information on the garnishment documents that the debtor gets that gives them information regarding the ability to enforce their rights regarding exemptions, for example. [LB415]

SENATOR CHAMBERS: And the creditors have their courses in law school, but the debtors never do. So if there is to be justice, it means that the scales balance. They're not tilted in favor of one side or the other. But law schools don't deal with justice, they deal with expediency. Now if they would change the title of creditors' rights to predators' rights, they could teach the same thing and I wouldn't have a problem. Now to get to the question that I had asked Senator Seiler. Was it your group, the one you represent, which says that the bank should have the discretion as to whether or not to determine if a misdelivered or misserved summons and demand for interrogatories went to the wrong location, the bank in its discretion could waive that error and say, well, it's all right, and it's as though it were properly served? Did your group put that into the legislation? [LB415]

BOB HALLSTROM: Yes, sir. [LB415]

SENATOR CHAMBERS: And why did you do that? [LB415]

BOB HALLSTROM: Senator, in reviewing some of the other states that have done this, we came across those provisions and I would suggest that the impetus for that is probably that if there is a service received and the bank goes ahead and responds to the service received at an erroneous location, that their response could be challenged later on and potentially impose liability upon them. [LB415]

SENATOR CHAMBERS: On the bank? [LB415]

BOB HALLSTROM: Yes. [LB415]

SENATOR CHAMBERS: Well, now, if that's in the bill, I'm going to oppose it. Does it mean that much to you all to fight me to keep that provision in the bill? [LB415]

BOB HALLSTROM: Senator, it's certainly something I'd be willing to sit down and visit with you. [LB415]

SENATOR CHAMBERS: Okay. That's all that I have. [LB415]

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BOB HALLSTROM: Thank you. [LB415]

SENATOR ASHFORD: No other questions. Thanks, Bob. [LB415]

BOB HALLSTROM: Thank you. [LB415]

SENATOR ASHFORD: Other proponents? Opponents of the bill? Now before we get started with the opponents, I saw a group come in. Where are you all from? [LB415]

KEN MEYERS: Wilcox-Hildreth. [LB415]

SENATOR ASHFORD: Okay. And what grade is everybody in? [LB415]

KEN MEYERS: They're all seniors, a senior government class. [LB415]

SENATOR ASHFORD: Good, good. Well, welcome. So I hope you enjoy your time here. [LB415]

_____: (Inaudible.) [LB415]

SENATOR ASHFORD: Okay. [LB415]

TESSA HERMANSON: Good morning, Chairman Ashford and members of the committee. My name is Tessa Hermanson. I'm an attorney for a collection agency in Nebraska, but I'm here today on behalf of the Nebraska Collectors Association. We're testifying in just moderate opposition to this bill. The NCA does not oppose the concept of the bill, but it does think that there should be a few clarifications to the language as it is written. We have drafted an amendment, as Bob told you earlier, on these three things, and that we just ask...we think these changes need to be made before the bill would go forward. One of the changes we suggested was the definition of the financial institution, and that has been incorporated in the amendment that Senator Seiler referred to this morning. So the other two changes would just require that this law apply to all banks. As it's written now, it says that banks may choose whether or not to designate a location on the Web site. We think that all banks should be required to. Then there's no question whether when I'm getting on the Web site to determine where to send a garnishment if banks are on there or not on there, if they add later. If they're just all on there from the onset, that's one place and it's uniform for all of them. If it conveys the benefit that they are saying that it does to them, I think it would be beneficial for everyone to be on the Web site. The other change that we ask is for while they require the Department of Banking to maintain this Web site, we would just ask that they keep a date-stamped history of any designation changes. The bill allows the financial institution to change its location at any point. Then we would ask that there's a

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history of that kept. For legal reasons we might need to demonstrate to a court a certain point in time that we sent a garnishment interrogatory to a correct place, and we would have no way to ascertain that information if that was not kept by the Department of Banking. And then neither the creditors nor the banks have to spend any time figuring out whether it was sent to the right place at that time. And I have nothing further, but will answer any questions. [LB415]

SENATOR ASHFORD: Senator Chambers. [LB415]

SENATOR CHAMBERS: I would like to hear your definition of a financial institution and why you would ask that there be the change that you're recommending. [LB415]

TESSA HERMANSON: Senator, I believe that the amendment--and I haven't read the amendment myself--but incorporates what we proposed. And it just reads that "For purposes of this section, financial institution means a bank, savings bank, building and loan association...or credit union whether chartered by the United States, the Department of Banking and Finance, or a foreign state agency." I think we wanted to clarify that there was no question that something like a Payday Express or check cashing institution qualified under this section. [LB415]

SENATOR CHAMBERS: They want to be called financial institutions on the same par with banks and credit unions? [LB415]

TESSA HERMANSON: I don't know if they do or not. [LB415]

SENATOR CHAMBERS: They don't operate according to the same standards though, do they? [LB415]

TESSA HERMANSON: I would doubt so. [LB415]

SENATOR CHAMBERS: What about interest rates? Are their interest rates equivalent to those in banks and credit unions? [LB415]

TESSA HERMANSON: No. [LB415]

SENATOR CHAMBERS: Are they higher? [LB415]

TESSA HERMANSON: They are higher. [LB415]

SENATOR CHAMBERS: Are they considerably higher? [LB415]

TESSA HERMANSON: To my knowledge, yes. [LB415]

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SENATOR CHAMBERS: And if that alteration is not put into this bill, your organization would then oppose the bill foursquare, 100 percent, correct? [LB415]

TESSA HERMANSON: Correct. [LB415]

SENATOR CHAMBERS: And you're...what's the name of the group that you represent? [LB415]

TESSA HERMANSON: The Nebraska Collectors Association. [LB415]

SENATOR CHAMBERS: Nebraska Collectors. And the only thing they collect is money, right, and not butterflies or anything like that? All they collect is money, correct? [LB415]

TESSA HERMANSON: I believe so. [LB415]

SENATOR CHAMBERS: Now when you say the Collectors Association, PayPal is not a collector, is it? [LB415]

TESSA HERMANSON: PayPal is not a member of the Nebraska Collectors Association, no. [LB415]

SENATOR CHAMBERS: But you want them to be a part of the definition of an institution so that the Collectors Association can work for PayPal, is that correct? [LB415]

TESSA HERMANSON: No...well, not to my knowledge. What part of the definition do you think PayPal falls under? [LB415]

SENATOR CHAMBERS: Well, I thought you said you wanted organizations like PayPal and the other one to be a part of the definition of financial institutions. [LB415]

TESSA HERMANSON: I apologize if I did say that. I meant that we do not want...we want it clear that it's only banks, savings, depository institutions, not payday lenders, not those sort of things. We just don't want any question that they can try to register on this Web site. [LB415]

SENATOR CHAMBERS: Okay. Now I'm on a different track. What would your amendment add to the definition of financial institutions? [LB415]

TESSA HERMANSON: The amendment that the senator proposed this morning, I would not...if it's what we had given to him prior, we would not add anything. The bill before just said financial institution with no definition. So we said let's define it, make it only, you know, savings, banks... [LB415]

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SENATOR CHAMBERS: Oh, and Senator Seiler has your amendment? [LB415]

TESSA HERMANSON: He introduced an amendment or referenced an amendment this morning. [LB415]

SENATOR CHAMBERS: We'll have that amendment. Okay. [LB415]

TESSA HERMANSON: Yes. [LB415]

SENATOR CHAMBERS: That's all I have then. Thank you. [LB415]

TESSA HERMANSON: Okay. [LB415]

SENATOR ASHFORD: Yes, Senator Davis. [LB415]

SENATOR DAVIS: Senator Chambers brings up an interesting point which I hadn't thought about, but PayPal does have resources and revenue. Would they ever be subject to a garnishment order like this? [LB415]

TESSA HERMANSON: PayPal may receive garnishments, but my thought would be that it would be in the context of a wage garnishment and not holding money, you know, like a bank would, where it holds the money of the creditor; so I don't think so. And that's why, because I'm not sure, we wanted to carve out that this particular thing does not apply to wage garnishments. It's only applying to garnishments issued to the bank to the depository account. And somewhere...we wouldn't want somewhere like PayPal to have to get on-line and register and do that whole thing as well. [LB415]

SENATOR DAVIS: Well, I agree with you. I'm just curious about that. [LB415]

TESSA HERMANSON: Yeah. I mean, it's interesting, but I'm not sure. [LB415]

SENATOR DAVIS: Thank you. [LB415]

SENATOR ASHFORD: Thanks very much. [LB415]

TESSA HERMANSON: Thank you. [LB415]

SENATOR ASHFORD: Any other testifiers? Opponents? Opponents to this bill? Neutral testifiers? Seeing none, I think Senator Seiler waived closing, so...I think he waived, Rich. Thanks. So let's go to Senator Harr, who popped right in. LB631. [LB415]

SENATOR HARR: Good morning, Chairman Ashford and members of the Judiciary

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Committee. I'm Senator Burke Harr from Legislative District 8 in Omaha. I'm here to introduce LB631. LB631 requires judgment creditors to make payment of a "conditional," and I put that in quotation marks, \$25 fee at the time issuing a garnishment summons and interrogatories upon a financial institution. Under the bill, in the event an account exists, the conditional fee would be returned by the court to the judgment creditor. Conversely, if no account exists, the fee would be paid by the court to the financial institution as compensation for responding to a garnishment summons and interrogatories. Under LB631, a financial institution would receive a fee from the judgment creditor if no account exists. In cases in which an account exists, the financial institution would be allowed to deduct the garnishment processing fee pursuant to the deposit agreement with the customer from the deposit account proceeds prior to forwarding the balance of the account to the court for application against the judgment. I'm introducing this bill on behalf of the Bankers Association due to their desire to be properly compensated for work done by the bankers as a result of shotgun garnishments that they have encountered. What shotgun garnishments are is where a creditor will send out a number of interrogatories and notices to banks to see--it's also called fishing--to see if there are accounts out there for the creditor--the collection agency. Bankers indicate that a significant number of garnishments received involve situations in which they have no account relation with the judgment debtor. This practice exists notwithstanding other requirements of state law that judgment creditors must have good reason to believe that garnishee has property or credits of the judgment debtor. Under current law, a judgment creditor is not required to pay any fee to a garnishee for services rendered in responding to the garnishment interrogatories. Current law also requires a garnishee to freeze the assets of the judgment debtor upon receipt of the garnishment summons and interrogatories. In the case of the financial institution, this requires the amount in the account to be held for the potential applicant against the judgment upon receiving the order from the court, so usually that takes up all the money and there isn't any money left in the account to pay the bank for the cost of processing this garnishment interrogatory. This seems to be a major problem. As you may recall, I introduced a bill similar to this last year, LB812, which would have required a \$50 garnishment fee to be paid by the judgment creditor prior to implementing the proceeds. This lowers it to \$25 and it has also went from an absolute to conditional, so if there is an actual account the money is returned. With that I would ask you to please advance LB631 out of committee, and I would be happy to answer any questions. [LB631]

SENATOR ASHFORD: Senator Chambers. [LB631]

SENATOR CHAMBERS: In keeping with my promise to spread happiness, you said the magic words: You would be happy to answer to questions. So I want to give you happiness too. [LB631]

SENATOR HARR: Thank you. [LB631]

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SENATOR CHAMBERS: Senator Harr, why should the fee be lowered from \$25...I meant from \$50 to \$25, especially since it's conditional? [LB631]

SENATOR HARR: Well, actually there isn't a fee currently. It would be raising it from \$0 to \$25. Last year I introduced legislation to try to get it to \$50 and it didn't make it out of committee. [LB631]

SENATOR CHAMBERS: That's what I mean. Why did you reduce...because you...was it before the Judiciary Committee? [LB631]

SENATOR HARR: Oh. It was. It was. [LB631]

SENATOR CHAMBERS: You had a different lineup in the Judiciary Committee then, didn't you? [LB631]

SENATOR HARR: I sure did. Senator Davis wasn't here. [LB631]

SENATOR ASHFORD: Senator Davis wasn't here. [LB631]

SENATOR HARR: Senator Davis stole my spot. [LB631]

SENATOR CHAMBERS: I wasn't here. [LB631]

SENATOR ASHFORD: No, I know you weren't. [LB631]

SENATOR CHAMBERS: Okay. [LB631]

SENATOR HARR: I'm teasing. I know what you're saying. [LB631]

SENATOR ASHFORD: No, I know you weren't. I was going down the line. You were next, Senator Chambers. [LB631]

SENATOR CHAMBERS: I know, but here's what I'm kind of getting at. When we were talking about the processing of requests for public records, we had much discussion about the time that is entailed in doing that. I'm not a person who advocates for banks in the sense that they are able to look after their own interests. And this question I will put to the banks: Does it really take no more than \$25 to process this paperwork when it comes? That would be the question that I would put to them and they can prepare, or their spokesperson, in case you don't have a response. [LB631]

SENATOR HARR: I don't have a complete response and I think he probably would be better, but I would say it probably still costs more than \$25 to process. I'm not sure, so

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I'll...but I think it's a way of preventing this shotgun or fishing because of the economic cost. I think we talked about this yesterday on the floor about...or I guess it was in Business and Labor yesterday, where, you know, there's such a cost to doing it that it prevents...it discourages parties from doing that. So if the cost is...if the debt is \$75 and you send it out to four banks and it's \$25, you've lost that money; whereas right now you'd be out \$0 because the cost is all on the bank. So I think... [LB631]

SENATOR CHAMBERS: And it's just strictly a fishing expedition... [LB631]

SENATOR HARR: Yeah, it's meant to... [LB631]

SENATOR CHAMBERS: ...with no reason even to believe that the judgment debtor has assets in any or all of these institutions. [LB631]

SENATOR HARR: Exactly. [LB631]

SENATOR CHAMBERS: Okay. [LB631]

SENATOR HARR: And it's...you know, we're trying to avoid that attrition issue. But at the same time we want to make sure that if there is an account there and everyone is doing what they're supposed to be doing, then this is conditional and they get their \$25 back; so no harm, no foul. [LB631]

SENATOR CHAMBERS: Right. Thank you. That's all I have. [LB631]

SENATOR HARR: Thank you. [LB631]

SENATOR ASHFORD: Senator Davis. [LB631]

SENATOR DAVIS: Senator Harr, have you seen the financial...the fiscal note on this? [LB631]

SENATOR HARR: Yeah. The courts don't seem to like it, do they. [LB631]

SENATOR DAVIS: No, they don't. I understand what you're trying to do and I think it's logical. But can we find a way the court costs are compensated before the banks? [LB631]

SENATOR HARR: Yeah. [LB631]

SENATOR DAVIS: Because otherwise we're shifting... [LB631]

SENATOR HARR: Costs. [LB631]

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SENATOR DAVIS: ...costs to the public sector. [LB631]

SENATOR HARR: So that's the great question is how do we find a third party to do this? There's a policy, there's an abuse going on, or an alleged abuse going on, and how do we solve that solution? And so it's best to find a third-party arbitrator to determine if it was proper or not, and that's the court system. If you have a...I mean, this is a work in progress. Do you have a better idea? [LB631]

SENATOR DAVIS: I'm asking you. [LB631]

SENATOR HARR: I'm not trying to shift the burden because this is my bill, but I just...I don't know where else to turn. I think that's probably the best (inaudible). [LB631]

SENATOR DAVIS: I'm asking you to find a solution to zero out the fiscal note. [LB631]

SENATOR HARR: Yeah. Okay. [LB631]

SENATOR CHAMBERS: Senator Harr, since Senator... [LB631]

_____ : Davis. [LB631]

SENATOR CHAMBERS: ...Davis. See, I don't get to see his name there all the time, and when he sits in front of me in the Chamber I don't get to see his name, so he's going to have to put his name tag on his back. Senator Harr...thank you, Senator Davis. When a person is arrested and wants to be released, he or she posts bond, and the court will retain 10 percent of that amount and return 90 percent to the person who wants to post the bond. [LB631]

SENATOR HARR: Yeah. [LB631]

SENATOR CHAMBERS: Since this is action initiated by the creditor, then let the money be paid into court and the court retain 10 percent of whatever amount it is, or whatever the percentage would be, and the rest would be returned to the creditor, because I don't think the creditor should be able to use the courts or the banks to facilitate what the creditors are doing at no cost to themselves when they are not always reputable and aboveboard in what they do. And if there are some of them here today, I will have a chance to question them on this same score. [LB631]

SENATOR HARR: Okay. And that's a great idea. The only thing is I would say we don't go put it in judges' retirement like we do the criminal; but that's a great idea to help...to address Senator Davis' issues. Thank you. Yeah, I like that. [LB631]

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SENATOR CHAMBERS: See, when you get two people on the Judiciary Committee working on an issue, we come up with something. [LB631]

SENATOR HARR: I like that. Thank you. [LB631]

SENATOR ASHFORD: Thanks, Burke. Thank you. Let's go to the proponents. Bob. [LB631]

BOB HALLSTROM: (Exhibit 3) Chairman Ashford, members of the Judiciary Committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, and I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB631. Senator Harr has done a nice job of briefing the committee on what the design of the bill is. We did get member input encouraging us to move forward to try and get some compensation for what we view as a beneficial service provided to judgment creditors. We also feel that the fee, conditional or otherwise, is designed to have the judgment creditors pause and reflect before they go on any fishing expeditions. I would note, as Senator Harr indicated, last year it was a direct \$50 fee under LB812. It applied across the board not only to financial institutions but also to wage garnishments. Fishing expeditions probably are less likely to occur in wage garnishments. As in virtually every case, the judgment creditor is going to have a pretty good idea of where the employee is employed. Therefore, to address the issue of the fishing expeditions, we determined to limit it to financial institutions only. We have surveyed our members. Our members show that approximately 25-30 percent of garnishments are no account status, which means under the current law there's no fee paid up front by the judgment creditor. There is no fee available for the financial institution even if they have preserved that fee pursuant to the deposit agreement in what we would call a garnishment processing fee; so no compensation at all under those circumstances. Approximately 35-50 percent of the remaining garnishments are situations that Senator Harr described in which the amount of the judgment is greater than the amount of funds that are ultimately determined to be on hand. The current law, as Senator Harr indicated, from the judgment creditor's perspective, requires them to have reason to believe that the garnishee has property or credits of the judgment debtor. We would suggest that's not always the case. Secondly, at the back end, the garnishee is required, in the case of a financial institution, to freeze the account so that if the amount of the judgment is greater than the amount in the account, all of the money is upstream to the court and there is no ability for the financial institution to recover its garnishment processing fee, even if it has contractually provided for one. The other aspect of this is that, as you might expect, when individuals get their entire bank account garnished and zeroed out, they generally do not put more money into the account from which the financial institution could subsequently recover its fee. We believe we do provide a beneficial service to judgment creditors for which reasonable compensation is in order. Senator Chambers, I would suggest that \$25 probably does not account for full compensation, but it's something that we feel is doable and should be considered. If you certainly want

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to be the champion for the bankers in moving to a higher level we'd certainly visit with you on that basis. Be happy... [LB631]

SENATOR ASHFORD: Thanks, Bob. [LB631]

BOB HALLSTROM: Yup. [LB631]

SENATOR ASHFORD: Yeah, any questions of Bob? Senator Chambers. [LB631]

BOB HALLSTROM: Be less than happy to address any questions of the committee. (Laughter.) [LB631]

SENATOR CHAMBERS: Oh, wait a minute. I have to be fair. He wants some happiness this morning. Senator...I meant, Mr. Hallstrom, I don't have any idea how much time is taken in processing this paperwork, but you have stated that \$25 would not really cover the cost, the actual cost of complying with this order served on the bank from a court. So the bank cannot just ignore this paperwork when it's delivered. There's some work that the bank does have to undertake in response to these court papers that are served. Is that correct? [LB631]

BOB HALLSTROM: That is correct. [LB631]

SENATOR CHAMBERS: So since this...an obligation being placed on the bank, even if the judgment debtor has nothing in that bank, the bank is going to be out, going to be put to some expense to determine that there is no asset of any kind of the judgment debtor under their control or in their possession. Is that...? [LB631]

BOB HALLSTROM: That is correct. [LB631]

SENATOR CHAMBERS: Do you have an estimate of how much it would cost? [LB631]

BOB HALLSTROM: Senator, in my testimony--and I appreciate you asking that question--the banks responding suggested that they take, on average, 45 minutes to respond. The thing I would note in that is that if it's no account status, inevitably their time commitment would be less, so that if there is an account when we go through the process of receiving garnishment interrogatories, you identify the account debtor, you identify if there are accounts there, single or multiple accounts. You make determinations regarding is it a joint account and who's being garnished and who's the primary owner on the account. You have a situation that I know Senator Lathrop had looked into, a little bit ahead of his time, a number of years ago where we have to identify electronically deposited federal benefits and set aside a certain amount representing two months of those benefits. So all of those determinations have to be made by the bank. We freeze the account. We make sure no funds go out of the

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account until we receive the court order. Then we apply the funds upward or upstream to the court; and if we make a mistake, there's potential liability. So all of those things gathered, the bottom line is if it's 45 minutes in general, you probably have more time when there is an account and you go through those types of things. [LB631]

SENATOR CHAMBERS: And if the banks' employees were paid on an hourly basis, even under minimum wage they'd be getting more than \$25 for that amount of work. [LB631]

BOB HALLSTROM: That would be our suggestion, that it costs more than we're proposing here. It probably costs more in many cases than the bank even under its contractual agreement is assessing by agreement with the depositor for its garnishment processing fee. [LB631]

SENATOR CHAMBERS: Thank you. That's all that I have. [LB631]

SENATOR ASHFORD: Senator Davis and then Senator Christensen. [LB631]

SENATOR DAVIS: A couple of questions, Mr. Hallstrom. If there are 10 branches in the state, would a garnishee send them to one, the central headquarters, or would they go to ten? [LB631]

BOB HALLSTROM: Well, under the current law, the garnishee would only receive presumably at one location. And banks, when we tried to get this information, there may be different practices out there but I would think that in many cases, with the systems that they have in place, they have the ability to identify the property and credits of the defendant...or of the judgment debtor, at all of their locations. Some smaller banks may not be in that position. And part and parcel of LB415 that you just heard is to make sure that if you do designate the central location, you're served there, that you will be obligated to ensure that all property and credits at all locations are covered. [LB631]

SENATOR DAVIS: And so supposing I've got an account in my name, which is Albert T. Davis, and I have one with my name A. Thane Davis at another branch, so is there...there still just would be one garnishment fee, because it's based...? [LB631]

BOB HALLSTROM: If they've only served one garnishment interrogatories and summons, that would be correct. [LB631]

SENATOR DAVIS: And looking at your notes, question 5, level of garnishment fee authorized by depositor agreement, \$75 or greater--that's number e--so that the banks currently would take 13 percent of that amount? How does that work? (Inaudible) asking there? [LB631]

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BOB HALLSTROM: Well, the answer to that question, Senator, we posed to the banks that responded: What is your contractual garnishment fee? And so that sets forth, I think, 70 percent of them are \$25 or less, if I can remember. I can take a look here. [LB631]

SENATOR DAVIS: I knew it was number 5 that I just wasn't sure what... [LB631]

BOB HALLSTROM: Yeah, 86 percent are \$50 or less in terms of what...that is the contractual garnishment processing fee that the bank imposed pursuant to its deposit agreement. [LB631]

SENATOR DAVIS: Eighty-six percent. Okay, thank you. [LB631]

SENATOR ASHFORD: Senator Christensen. [LB631]

SENATOR CHRISTENSEN: Thank you, Chairman. Bob, when you're...right now, what you're trying to do is get a level field with the court ruling and the national banks, is that...? [LB631]

BOB HALLSTROM: That's one aspect of it that I didn't have time before the red light came on. There are court decisions out there that have suggested with respect to the provision of Nebraska law that currently says freeze the account and do not deduct your garnishment processing fee before sending the money forward to the court to the extent necessary to satisfy the judgment; that there's court decisions out there under federal preemption rules that indicate that national banks are not subject to that restriction. I know last year, during the testimony on this...on LB812, for example, I think the collectors said, well, we've seen banks that have done this. It could very well be that a national bank may have deducted its fee before sending the money in to the court based upon some of those court decisions that cite federal preemption as not making them subject to that provision of state law. [LB631]

SENATOR CHRISTENSEN: But you cannot do that now as a state bank. [LB631]

BOB HALLSTROM: That is correct. [LB631]

SENATOR CHRISTENSEN: So right now you take it just out of other operating expense fees, whatever. [LB631]

BOB HALLSTROM: Yeah. You simply won't get a fee. [LB631]

SENATOR CHRISTENSEN: All right. [LB631]

BOB HALLSTROM: If the amount in the account is less than the amount required to

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satisfy the judgment, you don't get a fee up front from the judgment creditor under current law and there's no money left in the account from which to take your garnishment processing fee if you've preserved it contractually. [LB631]

SENATOR CHRISTENSEN: What did you think of the suggestion that was made before you got up here that, to eliminate the fiscal note, that 10 percent of it was held for the state side of things and then the balance left, if I understood the discussion over here correctly? How does that impact your...? [LB631]

BOB HALLSTROM: I don't know how that would impact. That probably...I think Senator Chambers' remark was, or question, comment, was more geared towards keeping the courts out of the system or keeping the judgment creditors out of the court system from bogging it down. I haven't given it enough thought to know whether that type of approach would provide a solution. I'd have to look back. I don't recall last year under LB812 that there was a fiscal note. I would probably question the validity of the fiscal note. State government generally is going to be involved in filing notice of levy rather than garnishment proceedings. So I'm not sure where their cost would come from. And they are the recipients of garnishment summons, so they have costs involved today for which there is a potential for them to receive compensation. [LB631]

SENATOR CHRISTENSEN: And then the last question: Should there be two levels in this? Because you admitted there's less time needed if you don't have any...if they don't have any money in your bank. Should that mean that you return a higher portion of it, or a portion of that, and not be able to keep the whole fee, or...? [LB631]

BOB HALLSTROM: Well, Senator, I think if you approach it from the angle that the fee has to be set...part of it is compensation for services rendered, the other part is the dissuasive aspect of saying, make sure...you know, go conduct a debtor's exam so you're certain and you do have reason to believe, as the standard under the law currently requires, that there is going to be property or credits of the judgment debtor at the financial institution upon which you issue the garnishment summons and interrogatories. So I think part and parcel in that fee is setting it at a level that's going to make them pause and reflect before they willy-nilly send out garnishment summonses and interrogatories to multiple banks in the same city, for example. [LB631]

SENATOR CHRISTENSEN: But in the...I know that we're saying that the fee would be paid up front by the collection agency, but in the net end does this not...I guess it doesn't come out of the person's account unless it's like the federal ones. So okay, that answers my question. Thank you. [LB631]

BOB HALLSTROM: Thank you. [LB631]

SENATOR ASHFORD: Thanks, Bob. Thank you. [LB631]

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BOB HALLSTROM: Thank you. [LB631]

SENATOR ASHFORD: Next proponent. Opponents? [LB631]

TESSA HERMANSON: Chairman Ashford, members of the committee, again my name is Tessa Hermanson and I'm here today to oppose LB631 on behalf of the Nebraska Collectors Association. A few things I guess. The bankers say they're bringing this legislation to prevent the so-called shotgun garnishments or this fishing expedition. You know, this is not happening. I mean, garnishments already cost a creditor \$15, so they're not just sending out tens and hundreds of them at \$15 apiece, guessing where their banks are. Also there's a statutory obligation when I sign a garnishment affidavit that says I have reasonable belief that the consumer has an account at that institution before issuing the garnishment. I guess aside from that issue, there's a few things that they did not point out to you in the bill. The bill does allow this \$25 to be paid up front from the creditor, but it's getting taxed back to the consumer, the defendant, as a court cost. So it will just get added on to my judgment that I will later try to collect from the consumer. It's also...the bill is not written to address this no account problem that they keep complaining of. The bill would allow this fee to be paid to the bank when the bank account exists there but has no money in it. So if I issue a garnishment and the consumer has withdrawn all its funds before it reaches the bank, I still have to pay the fee; but there was a bank account there. If I issue a garnishment and there are Social Security funds in the bank, there's now a federal law that requires the bank to look back, determine what Social Security funds are in there, and answer my garnishment interrogatory to be no funds available to me; but there's still funds in the bank. And as it's written, I would still have to pay the fee which then would get taxed back to the consumer on that. And then, you know, there's also the issue of they do have contracts with their consumers. When there is money in the account, the fee can be taken out first. So...and he explained maybe there's a difference between national banks and state banks. But a national bank essentially could say there's \$75 in the account, creditor; so I'm going to take my \$75 contractual fee from the consumer and I'm going to charge your \$25 fee because now the account balance is \$0 after I take my fee, and it leaves then the consumer...it's costing the consumer \$100 for this account. Quickly, I would just also say it creates a tracking nightmare for the courts that last year it didn't require. The court has to pay attention to how the interrogatories are answered, decide to return the funds or not to return the funds, decide to tax it as court costs or not tax it as court costs, and add it to the judgment balance. And that's why the fiscal note is that it would require two more full-time employees for courts that are already understaffed and don't have enough to do. And, you know, I think that summarizes my comments and I'll answer questions. [LB631]

SENATOR ASHFORD: Senator Chambers. [LB631]

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SENATOR CHAMBERS: I don't believe that the collectors are worried about the consumer having that amount taxed as court costs, do you? That's not really a concern of theirs, is it? [LB631]

TESSA HERMANSON: Well, I do think it's a concern of theirs as far as it's just more money they're going to continue to have to collect. I mean,... [LB631]

SENATOR CHAMBERS: But they don't care about the consumer having to pay the amount, do they? [LB631]

TESSA HERMANSON: Well, I personally don't believe that consumers should have to pay excess fees... [LB631]

SENATOR CHAMBERS: But you're not here speaking personally. You're here as the lobbyist for these collectors. [LB631]

TESSA HERMANSON: Well, I'm... [LB631]

SENATOR CHAMBERS: And the collectors are not a consumer interest organization, are they? [LB631]

TESSA HERMANSON: Yeah, I am just a member of the Collectors Association; I'm not their lobbyist. But I would...I mean, I understand what you're saying, yes. [LB631]

SENATOR CHAMBERS: And are there...is your organization concerned about the courts being overburdened? [LB631]

TESSA HERMANSON: Absolutely. [LB631]

SENATOR CHAMBERS: So then when we have bills about the burden of the courts, I've never seen your organization here to speak on behalf of the courts to try to do something to relieve that burden. If they're concerned, why don't they come? They're not quite that concerned, are they? [LB631]

TESSA HERMANSON: Well, I don't know what legislation you're referring to. [LB631]

SENATOR CHAMBERS: So see, they're not too concerned, because we often have bills related to the caseload of the judges and why we ought to add additional judges, we ought to change the boundaries of the judicial districts to even out the burden. But here's what I want to ask you: Should we require more to be put into the affidavit than the mere naked statement that I have reason to believe? Make them state on what basis they believe that that judgment debtor has assets being held by the institution that will be asked to garnish. [LB631]

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TESSA HERMANSON: And the judge would decide if my statement is enough? I just don't know what standard you would hold that to. If I say... [LB631]

SENATOR CHAMBERS: Well, we would think about it. But I want to know if you all would be opposed to being required to give more than that naked statement that you think that the judgment debtor has assets being held by this institution. [LB631]

TESSA HERMANSON: I would certainly talk to the association about that. [LB631]

SENATOR CHAMBERS: I didn't understand you. [LB631]

TESSA HERMANSON: I certainly would talk to the association about that. [LB631]

SENATOR CHAMBERS: Okay. That's all I will ask you though. Thank you. [LB631]

TESSA HERMANSON: You're welcome. [LB631]

SENATOR ASHFORD: Thanks, Tessa. Any other opponents? Katie. [LB631]

KATIE ZULKOSKI: Good morning, Senator Ashford, members of the Judiciary Committee. Katie Zulkoski, Z-u-l-k-o-s-k-i, testifying in opposition to LB631 on behalf of the Nebraska State Bar Association. I will just quickly echo the concern of the previous testifier about the burden on the court. This bill does place an additional burden on the court. And certainly, Senator Chambers, we share your concern. As this committee, we spend a lot of time with this committee talking about what court employees and court staff and judges are working on. We don't necessarily feel that this bill rises to the same need as a lot of the issues the courts are working on. And certainly the bar association has an additional concern about the burdens this bill places on people that have a legitimate need to go to the banks and garnish the money that is in those accounts. And the \$25 fee up front can place a burden on some of those people, and the bar is concerned about what this bill would do to them. And with that I'll wrap up my testimony and answer any questions. [LB631]

SENATOR ASHFORD: Senator Chambers. [LB631]

SENATOR CHAMBERS: If I'm going to file an action in court, do I have to pay filing fees? [LB631]

KATIE ZULKOSKI: In most cases. [LB631]

SENATOR CHAMBERS: And up front, don't I? No matter what the action is. Why do I have to pay that filing fee? Isn't that a burden on me? So why should I have to pay a

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filing fee to the court but the creditor doesn't have to pay a fee up front to the bank? Or didn't they discuss that with you? I don't want to ask you questions beyond what the bar sent you here to talk about, because they often send women as sacrificial lambs. I wish one of those... [LB631]

KATIE ZULKOSKI: I appear here as more than a sacrificial lamb, I would hope. But I think that the...I think that's a fair question. Certainly when anyone goes to the court system to use the court system or when we...there is a fee that's put in place there because of the services that you are using, and creditors pay that just like anyone. And I think that's something that needs to go into weighing of this bill and looking at this is an issue we've talked about with the bankers last year when the bill was introduced. And I think it's something that goes into weighing all the facts here; and I'm not here, Senator, defending the creditors and their need to not pay this. The concern was from those attorneys... [LB631]

SENATOR CHAMBERS: But if I understood you, the bar was concerned about the burden put on these creditors if they would have to put that fee up front. Didn't you say that the bar was concerned about that? [LB631]

KATIE ZULKOSKI: And others. We have family law attorneys on our committee that are worried about those, the child support payments and... [LB631]

SENATOR CHAMBERS: But the bar said that they're worried about that, about the credit...about the banks--I meant, the creditors having to do that. Let me ask you this then: Have you ever gotten a traffic ticket? [LB631]

KATIE ZULKOSKI: I have. [LB631]

SENATOR CHAMBERS: Have you ever waived your court appearance and just agreed to pay the ticket without going to court? [LB631]

KATIE ZULKOSKI: I have. [LB631]

SENATOR CHAMBERS: Then why do they have court costs when there is no court action? And the court costs are far in excess of anything the court would have to do. That fee...that's to raise money for the courts and that's why they asked the Legislature to do it. So if the courts are going to be allowed to make money off the public then, and the bar association generally supports that, I'm kind of surprised that they're concerned about the creditors in the way that they've had you testify. Did you prepare your testimony or they did? [LB631]

KATIE ZULKOSKI: No, this is my handwriting. But the... [LB631]

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SENATOR CHAMBERS: Say it again. You prepared the testimony yourself? [LB631]

KATIE ZULKOSKI: I did. [LB631]

SENATOR CHAMBERS: So then you're the one concerned about the creditors. [LB631]

KATIE ZULKOSKI: No. And I apologize if it came across as being that narrow. I think the concern is for their...this is...as I read the bill, it looks to me like this is a fee that everyone would have to pay, not just the credit agencies. And I'm not here defending them. I don't...that's not specifically what our opposition is about. [LB631]

SENATOR CHAMBERS: Did the bar have a committee that reviewed this bill? [LB631]

KATIE ZULKOSKI: We do. We send all of our legislation to the legislation committee. It then goes to the executive council and then to the house of delegates; and all three of those voted to oppose this legislation. [LB631]

SENATOR CHAMBERS: Did you attend either of the meetings that was held on this bill? [LB631]

KATIE ZULKOSKI: Absolutely. [LB631]

SENATOR CHAMBERS: And what was the nature of the discussion, if you don't mind me asking, that drew them to the conclusion that they should oppose this bill? [LB631]

KATIE ZULKOSKI: Well, at first, as we discussed with this committee many times last year and over the last few years, the first question we always ask is, does this affect the administration of justice? And any time that there is an additional cost of using the court system, we think that affects the administration of justice, and that is when the bar association takes a position on this bill. [LB631]

SENATOR CHAMBERS: Okay. But they don't care if additional fees are charged to the consumers who make use of the courts, do they? I have yet to... [LB631]

KATIE ZULKOSKI: Oh, absolutely we would care about that. [LB631]

SENATOR CHAMBERS: Oh, so then they've been on record opposing the imposition of some fees. [LB631]

KATIE ZULKOSKI: I think caring and opposing aren't always the same thing, Senator. [LB631]

SENATOR CHAMBERS: But you're here to oppose this one, aren't you? [LB631]

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KATIE ZULKOSKI: In this instance we... [LB631]

SENATOR CHAMBERS: Okay, that's all I would have to ask you; thank you. [LB631]

KATIE ZULKOSKI: ...oppose LB631. [LB631]

SENATOR ASHFORD: Thanks, Senator Chambers. Thanks, Katie. Any other opponents to this bill? Neutral? [LB631]

SHERYL CONNOLLY: (Exhibit 4) Good morning, Senator Ashford, members of the committee. My name is Sheryl Connolly, C-o-n-n-o-l-l-y. I am the trial court services director for the Nebraska Supreme Court's Administrative Office of the Courts. I am here to testify in a neutral capacity on LB631. The Administrative Office of the Courts takes no position on whether or not a bank should receive compensation for the work that it incurs processing the garnishment of a depositor. We do, however, want to bring to your attention the impact that the current legislation as written would have on the Nebraska county courts. LB631 would require that the judgment creditor deposit with the court a \$25 fee which would then be paid to the financial institution or returned to the creditor depending upon the answers given in the garnishment interrogatories. The county courts in Nebraska processed 135,348 garnishments in 2012. We estimate that about 40,000 of those garnishments...or, I'm sorry, 40 percent of those garnishments went to banks and other financial institutions. Given these numbers, if LB631 is passed as currently drafted, the receipting, review of interrogatories, and payout of those deposits would require additional personnel to support our busiest county courts. I've provided you with a handout which provides the number of garnishments that were filed in the county courts in the various counties. And I just mentioned that LB631 would also affect Nebraska's district courts. However, the district courts receive fewer garnishments and so would not see the same increase in work that's expected for the county courts if this legislation is passed. Thank you for your time this morning and I'd be glad to answer any questions you might have. [LB631]

SENATOR ASHFORD: Any questions of Sheryl? Senator Chambers. [LB631]

SENATOR CHAMBERS: I'm not going to ask her any questions because she's not here looking for happiness this morning. Thank you. [LB631]

SHERYL CONNOLLY: Thank you. [LB631]

SENATOR ASHFORD: Thanks, Sheryl. Yes, Senator Davis. [LB631]

SENATOR DAVIS: Were you here when we discussed a way to deal with the fiscal note? [LB631]

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SHERYL CONNOLLY: I was, Sir, (inaudible). [LB631]

SENATOR DAVIS And do you think Senator Chambers' concept would work for that? [LB631]

SHERYL CONNOLLY: It would certainly help take care of the collecting some of the money for those necessary increases if the Legislature would allow the courts to keep those funds to apply toward the... [LB631]

SENATOR DAVIS: Keep a portion of those funds, like 10 percent I think was the figure that was talked about. [LB631]

SHERYL CONNOLLY: That would work well. Since most of our salaries come out of the General Fund, it's certainly up to you how you determine to fund that. [LB631]

SENATOR DAVIS: Thank you. [LB631]

SENATOR ASHFORD: Thanks, Sheryl. [LB631]

SHERYL CONNOLLY: Thanks. [LB631]

SENATOR ASHFORD: Any other testifiers, neutral testifiers, on this bill? Senator Harr, do you wish to say something? [LB631]

SENATOR HARR: Just quickly. So you heard the testimony there: 135,000 garnishments filed a year. What we're trying to do is save the courts' time. We're trying to cut down on the number of garnishments filed. That's exactly...we're...instead of saying this is an additional burden on the courts, the courts should be excited about this, because we're trying to make sure that there is a higher level of certainty before someone files so that we don't have so many filings, and we save the courts' time. I guess that's the big point I want to make. And as far as family law lawyers concerned about garnishment for child support, you have to remember child support is a little more personal than a third-party creditor out there trying to collect for someone else. Chances are you know where that money is, so it's not as big of an issue. You have a better idea of where the amount...and if not, you can file an interrogatory and find out where all the accounts are of the other person a little more easily than you can if you're a third party. That's usually part of the divorce decree if you have done what you are supposed to do. They're supposed to keep up to date with where the accounts are. So I understand their concern, but I don't think it's necessarily an overriding concern. And with that I would conclude and ask you to please pass this. [LB631]

SENATOR ASHFORD: Senator Chambers. [LB631]

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SENATOR CHAMBERS: Senator Harr, would you turn to page 3 where it's talking about returning the fee paid pursuant to subsection (1) of this section to the plaintiff. Then it says, "If the answers to the interrogatories indicate that no property or credits of the defendant are in the possession or control of the garnishee, the fee paid pursuant to subsection," (1) of this section, "shall be paid by the court to the garnishee." That means that that fee which was paid into court would go to the institution if there are no assets of the judgment debtor. Then it says, "which fee shall be taxed as part of the costs of the action." Is the action that we're speaking of here, this particular attempt to garnish where there, in fact, were no fees, and this amount would be taxed to the creditor? Or would it be taxed to the judgment debtor who, because the judgment is on the debtor, has to pay, has to pay something? But this action, as I read the bill, relates not to the underlying debt that's owed, but to the creditor trying to get the bank to freeze these assets or whatever they're trying to do. Is that the action which is being referred to? And if it's found that there are no properties or things of value held by the bank for the debtor, then the cost of that action of this proceeding would be taxed as part of the cost of the action. Now is the action that is referred to in this language the attempt by the creditor to have a bank freeze assets of a judgment debtor? Is that the action that's being referred to? [LB631]

SENATOR HARR: Yes, and I'm glad you...yes. We might need to clarify that language a little bit. [LB631]

SENATOR CHAMBERS: So then that money would not be added to what the debtor already owes, because this action has nothing to do with that debtor because that debtor has nothing in the bank that is the subject of the action that we're talking... [LB631]

SENATOR HARR: That is correct, yes. [LB631]

SENATOR CHAMBERS: But I can talk to you about that more later. [LB631]

SENATOR HARR: Yeah. I want to clean that language up. If this comes out of committee, we'll clean that up. [LB631]

SENATOR CHAMBERS: Okay. [LB631]

SENATOR HARR: Thank you. [LB631]

SENATOR ASHFORD: Thank you, Senator Harr. [LB631]

SENATOR HARR: Thank you. [LB631]

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SENATOR ASHFORD: Okay. You're up next, Senator Christensen. LB520. [LB520]

SENATOR CHRISTENSEN: Good after...or good morning, Chairman Ashford and members of the Judiciary Committee. I'm Senator Mark Christensen. I represent the 44th Legislative District. I'm here today to present LB520. LB520 would provide for the right of entry upon private property for registered surveyors in performance of their duties. This bill would limit their ability to enter onto the premises of another in order to engage in the following activities: to determine section quarters, quarter corners and property corners, boundary lines, and right of way and easements; to make surveys; to conduct examinations or investigations; or to acquire other necessary and relevant data in contemplation of establishing the location of a street, road or highway; acquiring the land, property and road-building materials; or performing other operations incidental to the construction, reconstruction, or maintenance of a road, street, or highway. LB520 would require a good faith effort on the part of the surveyor to make a good faith attempt to announce and identify themselves and the purpose of entry to the owner. The surveyor would be responsible for any actual or demonstrable damage to the property. This legislation was introduced to this committee two years ago and has changed from that version. This version now includes exemptions for railroads from the provision of the act, (2) it provides for a mechanism where individuals who are threatened with physical violence by landowners or landowners otherwise prohibit entry, that the landowner may go to the county court for an order allowing the surveyor onto the property. (2) LB520 provides additional clarification of the previous version and what kinds of information that the surveyor must provide to the landowner prior to entry. LB520 was brought to me by the Professional Surveyors Association of Nebraska. Several of their members will follow me in testimony this morning and so I would recommend that you direct questions to them that you might have. I appreciate your consideration of LB520, and I'd be glad to try to answer any questions though. [LB520]

SENATOR LATHROP: Senator Chambers. [LB520]

SENATOR CHAMBERS: Senator Christensen, I will hold my questions until whoever follows you takes the chair. [LB520]

SENATOR CHRISTENSEN: Okay. Thank you. [LB520]

SENATOR LATHROP: I see no questions. Thanks. Those who are here in support, proponents, may come forward. [LB520]

TODD WHITFIELD: (Exhibit 5) Good morning, members of the committee. My name is Todd Whitfield, W-h-i-t-f-i-e-l-d. I'm a registered land surveyor in the state of Nebraska and I appear before you today in support of LB520. Current statutes provide right of entry for surveying only permitted to county surveyors and state surveyors performing their official duties, but do not address the need for registered land surveyors in private

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practice this right to enter onto property to perform their job of gathering information and evidence for establishing land boundaries to the best of their ability as directed by the U.S. Department of the Interior and outlined by the survey methods established by the Manual of Survey Instructions for Public Lands first established in Nebraska in 1855. The intent of the bill is to provide the private practice surveyor a legal avenue to enter onto a property in order to...without that threat of trespass, to locate section corners and property corners, to establish lines per deed and plat. There are times it's necessary to go multiple lots away from a property that we're surveying, whether it be in a private subdivision, a small division, or lands, public lands where there's sections, townships, and whatnot. The surveys can be performed for multiple reasons: to establish acreage for the sale of a property; to establish property lines for discovery of encroachments; for control for placement of structures for new constructions, easements, etcetera. Without having some avenue for entry onto these properties to search for and locate these monuments, we as professional land surveyors cannot perform our duties to safeguard life, health and property as stated in Statute 81-8 (sic--81-8,108). LB520 requires us to make a good faith effort to announce ourselves onto these properties. If access is denied, we can, you know, go to the court and ask for permission to get onto the property to perform our services. I'm not going to read the entire thing. But in conclusion, Mr. Chairman and committee members, as you may hear in other testimony, legislation is just providing us an avenue to do our job to the best of our ability, to protect our clients and other landowners that, you know, we're doing the survey for in the area. I would be glad to help or answer any questions that you might have, and be happy, Mr. Chambers, if you had any. Thank you. [LB520]

SENATOR LATHROP: Senator Chambers. [LB520]

SENATOR CHAMBERS: You can go first. [LB520]

SENATOR DAVIS: You go first. [LB520]

SENATOR CHAMBERS: Okay. Mr. Whitfield, you have a copy of the bill before you, don't you? [LB520]

TODD WHITFIELD: I can get a copy. [LB520]

SENATOR CHAMBERS: And while it's coming to you, who drafted the language in this bill? [LB520]

TODD WHITFIELD: We hired a lobbyist--Kissel--to help us draft the bill. [LB520]

SENATOR CHAMBERS: Did you review this language? [LB520]

TODD WHITFIELD: We did, yes. [LB520]

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SENATOR CHAMBERS: And it's satisfactory to you? [LB520]

TODD WHITFIELD: For the most part, yes. We actually discovered an area in there today that may...we'd be willing to change or work with the committee to... [LB520]

SENATOR CHAMBERS: And maybe to save me questioning, tell me what you discovered, Columbus. [LB520]

TODD WHITFIELD: In the good faith attempt section, Section 2, at the end of that section it says that it does "not apply to a survey along previously...boundaries within a platted subdivision" for the announcement of the properties...or announcement of us going onto the property. It's not our intent to... [LB520]

SENATOR CHAMBERS: Okay. Then let me go on with my questioning. [LB520]

TODD WHITFIELD: Okay. [LB520]

SENATOR CHAMBERS: When we look on page 1, you mention in the first paragraph about the certification processes in 81-8,108 to 81-8,127. [LB520]

SENATOR LATHROP: You mean page 2. [LB520]

SENATOR CHAMBERS: Oh yeah, page 2. [LB520]

SENATOR LATHROP: Okay. [LB520]

SENATOR CHAMBERS: Yes. Thank you. All those statutes do is deal with this board that...and lays out the examination that's given, the course of study, the qualifications that have to be made. Then you get this certification. But it doesn't talk about granting any authority under those statutes for these private surveyors to enter on the property of anybody. Isn't that correct? [LB520]

TODD WHITFIELD: True. [LB520]

SENATOR CHAMBERS: And that's why you're bringing this bill. [LB520]

TODD WHITFIELD: Yes, sir. [LB520]

SENATOR CHAMBERS: And you make an exception for the railroads and it says because of the danger you would have to get a permit from the railroads before you could enter on their property. [LB520]

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TODD WHITFIELD: Yes, sir. [LB520]

SENATOR CHAMBERS: Suppose they refuse to give you the permit. [LB520]

TODD WHITFIELD: Then we would have to try to find some other course of action to enter onto the property, whether going to the courts... [LB520]

SENATOR CHAMBERS: And when your lobbyist was drafting this legislation for you, what did he suggest ought to be done if that permit is denied? [LB520]

TODD WHITFIELD: We actually never discussed that. We actually added that clause in there at the request of the railroads. Two years ago they... [LB520]

SENATOR CHAMBERS: But that's not what I'm...I'm not asking why it's there. If they deny you the permit--and then I can leave this area of questioning--you haven't considered any action that would be taken to get around the denial of that permit. [LB520]

TODD WHITFIELD: On the railroads, yes. [LB520]

SENATOR CHAMBERS: Okay. What about going to court? Do you think you would be able to persuade a court to compel a railroad to let you come on their property to do this surveying for a private entity which is paying you to do it? [LB520]

TODD WHITFIELD: I don't know if I can answer that for them, but... [LB520]

SENATOR CHAMBERS: Okay, then I don't want you to have to. Now you want to go on this land to make surveys. It also says, if you're on page 2, in line 11...well, let's go to 10 first. "To conduct examinations or investigations." What kind of investigations do you as a surveyor conduct? [LB520]

TODD WHITFIELD: Typically we'll perform investigations as far as evidence to establish a boundary line, whether it be a fence line, some type of ownership line. [LB520]

SENATOR CHAMBERS: But this doesn't indicate that, does it? [LB520]

TODD WHITFIELD: No, this is actually just taken right out of the intent of--I don't want to (inaudible) that. It doesn't say it exactly like that, no. [LB520]

SENATOR CHAMBERS: Well, what's the difference between examinations or investigations? Are they both designed to give you the same thing? [LB520]

TODD WHITFIELD: Yes. [LB520]

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SENATOR CHAMBERS: So you have some surplusage here. Which word would you rather have if you could only have one: "examinations" or the word "investigations"? [LB520]

TODD WHITFIELD: Myself I would prefer investigations. [LB520]

SENATOR CHAMBERS: Because that seems to be broader in its scope and that's what you're after. [LB520]

TODD WHITFIELD: Right. [LB520]

SENATOR CHAMBERS: But the landowner--and I as a public official have no idea what you mean by investigations, for your lobbyist's information. Is that lobbyist going to testify on this bill, do you know? [LB520]

TODD WHITFIELD: I'm not sure. I don't believe so, no. [LB520]

SENATOR CHAMBERS: Okay. Now "To acquire other necessary and relevant data in contemplation of (i) establishing the location," then you talk about these various things. From whom are you going to acquire this necessary and relevant data? [LB520]

TODD WHITFIELD: The intent is to...well, in order to do our jobs, the data that we acquire is...maybe it would be a monument, a boundary monument, a fence, a building could... [LB520]

SENATOR CHAMBERS: From whom would you acquire it? Will you acquire that from the landowner? [LB520]

TODD WHITFIELD: No, we would actually be on site and digging up these lot corners and physically locating them in the field. [LB520]

SENATOR CHAMBERS: Why should the law require a landowner to allow a private entrepreneur onto his or her property to do that private entrepreneur's work? Why should that be? [LB520]

TODD WHITFIELD: The sole purpose of the survey is to establish the boundary lines so we can establish those ownership lines. [LB520]

SENATOR CHAMBERS: But why should a private...why should a landowner allow you to come on his or her property if he or she doesn't want you on there? You're not a governmental representative. You're not doing work for the government. [LB520]

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TODD WHITFIELD: No, we're not. [LB520]

SENATOR CHAMBERS: You're doing it for a private individual or company, isn't that true? [LB520]

TODD WHITFIELD: A private individual, typically, yes. [LB520]

SENATOR CHAMBERS: Why should anybody be allowed to go on somebody's property if the person doesn't want them there, without it being a criminal trespass? [LB520]

TODD WHITFIELD: In order for us to do our job correctly, we need to be able to locate land corners. [LB520]

SENATOR CHAMBERS: I understand that, but why should it be of any interest to the private landowner who is not part of what you're doing? [LB520]

TODD WHITFIELD: In my opinion, it would be advantageous for them to know where their boundary lines are. [LB520]

SENATOR CHAMBERS: For you but not the landowner whose land you want to go onto. Isn't that true? What you do may have no benefit whatsoever to the person whose property you want to enter. Isn't that true? [LB520]

TODD WHITFIELD: I don't believe so, no. [LB520]

SENATOR CHAMBERS: So you're doing work for the landowner too. [LB520]

TODD WHITFIELD: Exactly. [LB520]

SENATOR CHAMBERS: Then why wouldn't the landowner want you on his or her property? [LB520]

TODD WHITFIELD: Typically we...there isn't a lot of instances where we run into that, but there are some where some people just do not want you on their property; and it would be helpful to have some kind of statute in place to at least give us an avenue to get on and to perform our job. [LB520]

SENATOR CHAMBERS: Well, why don't you go to court now and get a court order if you can show it's in the public interest for you to be on that person's land when they don't want you there? [LB520]

TODD WHITFIELD: Part of the reason now is it's cost--cost-prohibitive. Well, if we have

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to do, we will go do it. And we actually have gone and... [LB520]

SENATOR CHAMBERS: It costs whom? [LB520]

TODD WHITFIELD: Well, us; our client. [LB520]

SENATOR CHAMBERS: But you're in business, aren't you? [LB520]

TODD WHITFIELD: Yes. And a lot of times our owners don't want to pay that extra fee in order to get onto...to allow us to get on and do a survey. It's all price-based for the most part. [LB520]

SENATOR CHAMBERS: So then you just wouldn't survey for that person if that person doesn't want to pay the cost of gaining you access to an unwilling landowner's land. [LB520]

TODD WHITFIELD: Or they might hire some surveyor that would just go on and do the survey anyway, and potentially not have a very valid survey. [LB520]

SENATOR CHAMBERS: I've only got a couple more things. When it says at the bottom of page 3, continuing on to page 4, that the surveyor will have on his or her person identification--and we won't go into all the details of it--but identification which will be shown upon request. Why don't you just have it out there and show it without somebody requesting it? [LB520]

TODD WHITFIELD: I'm sorry. What? [LB520]

SENATOR CHAMBERS: Why don't you just show it when you come without having somebody request it? [LB520]

TODD WHITFIELD: We can. We do now. [LB520]

SENATOR CHAMBERS: So why did you put that in here about it will be shown upon request? [LB520]

TODD WHITFIELD: That was the bill writers. (Laugh) We can strike that if you'd like. [LB520]

SENATOR CHAMBERS: Well, it's not what I'd like. It's what you want to try to get, which under this bill I have doubts. Now what is a good faith attempt to identify yourself? I'll read the language on page 2. "Before entering into or upon property pursuant to subsection (1) of this section, a land surveyor shall make a good faith attempt to notify and identify himself or herself and his or her intention to the owner of such property in

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person or by regular mail prior to performing his or her surveying duties. A notification under this subsection...", then it lists what will be included. Why do you put a good faith attempt? Either they give the notice or they don't. [LB520]

TODD WHITFIELD: Well, we were just trying to make sure that we are aware that people like some kind of notification before a surveyor enters onto a property. So in order to give that good faith attempt to knock on the door or send out a letter to say, hey, we're in the area, and not just go on the land without... [LB520]

SENATOR CHAMBERS: Okay. A good faith attempt is knocking on the door and nobody answers. Is that the good faith attempt, because you tried to let them know you're coming? Is that enough to satisfy good faith? [LB520]

TODD WHITFIELD: Yes. [LB520]

SENATOR CHAMBERS: Okay. And if nobody is there, would you cry out at the top of your voice, "Here I am and I'm going to survey your land," and you do these other things? Let's change it. When you knock on the door, it's just one of those houses where they have a window still in the door and a curtain, and the curtains part and a face appears in the curtain in the window and peers out at you, and they say, "What do you want?" [LB520]

TODD WHITFIELD: We'll typically announce ourselves as we're a surveyor. We're here... [LB520]

SENATOR CHAMBERS: Tell me. We're going to have this so we can see what good faith is. "What do you want?" [LB520]

TODD WHITFIELD: "Hi. I'm a surveyor. I'm going to be doing some..." [LB520]

SENATOR CHAMBERS: "I don't care what you are. Get off my property." [LB520]

TODD WHITFIELD: "Sir, I'd really like you to..." [LB520]

SENATOR CHAMBERS: "No. Get off my property. I don't care who you are. I don't want you on my property. Get off." Then what would you do? [LB520]

TODD WHITFIELD: "Thank you, sir." [LB520]

SENATOR CHAMBERS: And you would leave? [LB520]

TODD WHITFIELD: Just walk away. Yes. [LB520]

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SENATOR CHAMBERS: Was that a good faith attempt though? [LB520]

TODD WHITFIELD: Yes. [LB520]

SENATOR CHAMBERS: Then because you made the good faith attempt, does that now entitle you to come onto my property and conduct your survey? [LB520]

TODD WHITFIELD: I probably wouldn't if somebody would tell me that, to get off. [LB520]

SENATOR CHAMBERS: So then the good faith is not designed to create the right for you to enter that property and conduct the survey. [LB520]

TODD WHITFIELD: Okay. Yes, sure. [LB520]

SENATOR CHAMBERS: And if a person refuses, that's when you then go to court. [LB520]

TODD WHITFIELD: Yes, sir. [LB520]

SENATOR CHAMBERS: Can you try to get a court order now, do you know? [LB520]

TODD WHITFIELD: Yes, we can. [LB520]

SENATOR CHAMBERS: And has the court granted entry onto a private property of somebody who doesn't want you on that property? [LB520]

TODD WHITFIELD: Yes. [LB520]

SENATOR CHAMBERS: And have you seen such a court order? [LB520]

TODD WHITFIELD: Personally, no. [LB520]

SENATOR CHAMBERS: If you have an idea, what does the order say, just in general? [LB520]

TODD WHITFIELD: I would believe that it would say that it would provide entry onto the property for the surveyor to perform his duties to establish land corners or do research for land corners. [LB520]

SENATOR CHAMBERS: And if damage is done, does the surveyor have to pay it? Pay for the damage? [LB520]

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TODD WHITFIELD: Yes, we would be responsible for if there's any damages. [LB520]

SENATOR CHAMBERS: I'm going to read some language on page 3. Are you the only one who is going to testify? [LB520]

TODD WHITFIELD: No, sir. [LB520]

SENATOR CHAMBERS: Then I can wait and then I'll ask somebody else so you don't have to carry the whole load. [LB520]

TODD WHITFIELD: I appreciate that. [LB520]

SENATOR CHAMBERS: Okay. That's all I'll have. [LB520]

SENATOR LATHROP: Oh, Senator Davis has a question for you. [LB520]

SENATOR DAVIS: Obviously, we've gotten along fine without this legislation for a long time now, and suddenly we need it. So tell me what's the motivating force? How did this come into being? [LB520]

TODD WHITFIELD: The main motivator was we just do not have a legal avenue to be able to enter on the property. [LB520]

SENATOR DAVIS: There must have been some reason for this issue to come up. [LB520]

TODD WHITFIELD: You know, the main issue was over the years there's been surveyors that have had issues with being able to enter onto property, and it was discovered by reading the statutes that we really don't have the right to enter onto property to do... [LB520]

SENATOR DAVIS: Well, I'm sure that's probably true, but how was it discovered? What was the instigating factor? [LB520]

TODD WHITFIELD: I guess I'm not sure how it was discovered. [LB520]

SENATOR DAVIS: Can I make a suggestion that it might have been something that...the pipeline perhaps, that might have been going through Nebraska? Would that probably be possibly one of the reasons? [LB520]

TODD WHITFIELD: I don't believe so, no. We've never had issue...personally, myself, I've never had an issue with, you know, entry to do that type of survey. Typically our issue is usually just doing the surveys for, you know, transfer of ownership or property

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and whatnot. [LB520]

SENATOR DAVIS: Have you ever...as a...you know, I come from ranch country. I've had this happen to me where people come on without knowing it, and I don't care for it; but I don't think your explanation of good faith is a satisfactory answer. You know, I think you need to document that you've done this. But aren't there other ways of going about finding corners? Can't you go to the next township over and work your way back? [LB520]

TODD WHITFIELD: Not to do a proper job, no. You want to start as centrally located around your property and go out from there. You don't want to have to go too far because you could overlook... [LB520]

SENATOR DAVIS: And what happens if you can't find that corner? [LB520]

TODD WHITFIELD: If that corner is not there, if it's a government land corner and it's not there, we'll call the county surveyor and have them go reestablish that corner. But in order for us to say that it's not there, we actually have to look for it. We can't just tell them to go out and establish it. [LB520]

SENATOR DAVIS: But really you've already got the...you can get this done through the court system. Senator Chambers demonstrated that, correct? So what you really are trying to do is erode property rights. [LB520]

TODD WHITFIELD: That's not our intent. [LB520]

SENATOR DAVIS: That is what the result is though. [LB520]

TODD WHITFIELD: Okay. [LB520]

SENATOR DAVIS: Okay. Thank you. [LB520]

SENATOR LATHROP: I think that's it with the questions you were glad to answer. Thanks for your testimony and coming down here today. [LB520]

TODD WHITFIELD: Thank you. [LB520]

SENATOR LATHROP: Anyone else here in support of the bill? Welcome to the Judiciary Committee. [LB520]

DOUGLAS STEVENSON: (Exhibit 6) Thank you. Thank you. I've got to use my glasses so I can see something here. Good morning, Mr. Chairman, members of the Judiciary Committee. My name is Douglas J. Stevenson, that's S-t-e-v-e-n-s-o-n. I am

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past-president of the Professional Land Surveyors Association of Nebraska and I've been a registered land surveyor in the state of Nebraska since 1992. I appear before you today in support of LB520 on behalf of the Professional Surveyors Association of Nebraska. LB520 is intended to allow the surveyor to enter properties without the threat of trespass so lines/corners can be located as per deed or plat. This does not give the land surveyor free reign to enter properties, damage property, or abuse the rights of that property owner. We still have to make a good faith effort/attempt to announce, identify himself or herself, and his or her purpose for entering onto or upon such property. But it gives us an avenue, if still denied, access after this good faith attempt to still enter property, respect the property, do our job, not abuse the property owner's rights, etcetera. I'm not going to read my example here. I'm going to skip to the second page. Every monument a land surveyor sets will affect at least three property owners. This will or could inadvertently affect that property owner's ability to produce income, the county to tax fairly, or the property owner to simply use and enjoy his property. When the land surveyor is engaged to identify a deed line or property corner, he does not do this solely for the advantage of his client. His purpose is to identify this deed line or property corner as accurately as possible whether it is to his client's advantage or not. In order for the land surveyor to retrace the deeds of these property owners, it requires the land surveyor to search for and locate land monuments not only on his client's property but also on adjoining properties. If access to these land monuments is denied, the line cannot be accurately defined, the property corner cannot be accurately be placed, and we not only do a disservice to our client but we also do a disservice to every property owner in the area. In conclusion, Mr. Chairman, members, this legislation is necessary in order to provide surveyors across the state with peace of mind, do their job without fear of trespass actions against them, but it also holds the surveyor accountable for their actions on that property to the property owner. I hope the committee advances this LB520. And yes, I will be happy to answer any questions. [LB520]

SENATOR ASHFORD: Senator Chambers. [LB520]

SENATOR CHAMBERS: And, Mr. Stevenson, I'm not going to carry you through all the questions that I asked Mr. Whitfield, and I hope he understands that we ask questions to whomever comes with a bill, to try to get information. Nothing to disparage his integrity or anything like that. We're being asked to formulate a policy that covers the entire state, every situation, every individual who would be affected by it. So we have a duty to do what we're doing, and we carry out our individual duties according to the way we as individuals see the need. So I did take the time to read the case that you included in your testimony because I take seriously what people bring to us. And you were hired by the district court to conduct your survey, so you were a part of the judicial apparatus at that time carrying out the wishes of the court to settle this dispute between two sisters, if I understand it correctly. [LB520]

DOUGLAS STEVENSON: Exactly. Yes. [LB520]

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SENATOR CHAMBERS: But because the river might have been involved, a river bank, and the river meandered, you needed access to another piece of property that neither of the sisters owned. [LB520]

DOUGLAS STEVENSON: Right. [LB520]

SENATOR CHAMBERS: And when you first went there, you approached an elderly gentleman, such as myself, who was the owner, the father. And he said, "No, you can't come on my property, but I want you to talk to my son." So then you go to a fresh-faced young guy like Senator Lathrop, who is the son... [LB520]

SENATOR ASHFORD: I noticed you were looking down this area but then switched. [LB520]

SENATOR CHAMBERS: Right--but those were all rejects. And Senator Lathrop said, "No, you cannot come on the property. I appreciate you asking and I thank you for asking, however if I had seen you on the property I would have called the sheriff and had you arrested." Is that accurate so far? [LB520]

DOUGLAS STEVENSON: Yes. [LB520]

SENATOR CHAMBERS: Then the story ends and left me hanging. How was that issue resolved? [LB520]

DOUGLAS STEVENSON: Okay, at that point in time I contacted the court and I was able to get an order from the court and they notified the property owners to the north to allow me on their property, and then I was able to conduct that business. Yes. [LB520]

SENATOR CHAMBERS: So there is a way to gain access even now without this legislation. [LB520]

DOUGLAS STEVENSON: Right. [LB520]

SENATOR CHAMBERS: Okay. Now let me tell you...have you ever heard of Daniel Webster? [LB520]

DOUGLAS STEVENSON: Vaguely, yes. [LB520]

SENATOR CHAMBERS: Okay. He was known to be a very bright guy, so...and the river made me think of it. This guy was sitting on the river bank fishing, catching nothing. And that's the only enterprise where you can totally fail at what you're doing but they'll still say you're doing it. So he was fishing, catching nothing. And Daniel Webster came

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along and he said, "What are you doing?" He said, "I'm fishing." So he said, "What have you caught?" He said, "Nothing." Daniel Webster said, "Well, I wouldn't want your time to be wasted. Is there some kind of little wager we can make?" So the guy said, "I like your hat." Daniel Webster said, "What kind of wager can we make about my hat?" He said, "Mr. Webster, both of us are right here, right?" Daniel Webster said, "Right." He said, "Mr. Webster, I will bet my fishing rod against your hat that you're on the other side of the river." And Daniel Webster thought about it. He said, "You're on." So the guy said, "Mr. Webster, that's one side of the river, isn't it?" Daniel Webster said, "Yes." He said, "This is the other side of the river, isn't it?" Daniel Webster took his hat off and gave it to him. Here's the point in all of that just to get a little chuckle and lighten the mood. But as long as there is a means by which access can be gained to an unwilling landowner--that's the only one we're dealing with--if somebody is willing to let you on, there is no problem. So we have to be dealing with somebody who either doesn't or has made it clear that he or she would not want a surveyor on his or her property. It doesn't seem to me that it would make sense for a surveyor to want to go on that property anyway. It seems to me that a prudent person would then go to court and get a cloak of protection from the law, so that if there is a justifiable reason, this reluctant landowner would still have to let the person there knowing that it's under the auspices of the court. That's my view. Now I'm going to ask you a question. If you came upon a person who didn't want you on the land, as you did, would you ever just say, "Well, I'm coming on the land anyway because I have a job to do and I have to get on your land to do it, so ready or not here I come." You wouldn't do that, would you? [LB520]

DOUGLAS STEVENSON: No, I would not. [LB520]

SENATOR CHAMBERS: And the bill contemplates that because it says you can go to court, doesn't it? [LB520]

DOUGLAS STEVENSON: Right. [LB520]

SENATOR CHAMBERS: So why do we need this bill when that's what you would do right now, and you would have to do it even under this bill? [LB520]

DOUGLAS STEVENSON: A lot of times when we're out in the field doing this work, we'll come across somebody that's not excited about us being on their property. We'll talk to them and we'll make an effort to, you know, we're not going to damage your property. If you are, you can bill us. You know, we do what we can. Sometimes that's not enough, and yes, they'll turn us away. With this bill here, it gives us a little bit more, I guess not really teeth--not the way I want to put it--but it gives us something to say we have a bill that says we can do this. They might not like it, but they might turn around and say, okay sure, go ahead and do it. [LB520]

SENATOR CHAMBERS: But suppose a person says, "I don't take your word for it. This

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is America, this is my land and you can't just come walking on my land and you're going to hold up some piece of paper and tell me what it is. I don't see Furnas County Court on there anywhere. I don't see the judge's signature. You're up to no good. Get off my land." All right, now if something like that arose, how would the mere fact that this is on the books going to help you get on that property? [LB520]

DOUGLAS STEVENSON: There is no bill out there that will protect us from that instance. [LB520]

SENATOR CHAMBERS: Right, and this won't either. [LB520]

DOUGLAS STEVENSON: So yes, at that point in time, yes, we will have to turn away and go to the court and burden the court with this problem. [LB520]

SENATOR CHAMBERS: And you'd have to do it even with this bill, wouldn't you? [LB520]

DOUGLAS STEVENSON: Right. [LB520]

SENATOR CHAMBERS: So it's a bill that really doesn't do anything, does it? [LB520]

DOUGLAS STEVENSON: It'll help in some instances. It won't help in all. [LB520]

SENATOR CHAMBERS: That's all that I have. Thank you. And by the way, I was going to say something about Mr. Whitfield got the short straw, but you were so tall I thought I wouldn't say that. [LB520]

DOUGLAS STEVENSON Don't allow that to be an issue. [LB520]

SENATOR ASHFORD: All right. Thank you. [LB520]

DOUGLAS STEVENSON: Anybody else? [LB520]

SENATOR ASHFORD: I don't think there are any other questions. Do we have other proponents to this bill? How many other testifiers do we have on this particular bill, on the surveyor's bill? Are you all on the surveyor's bill? Okay. That's fine. [LB520]

LaVERN SCHROEDER: Good morning, Mr. Chairman and members of the committee. I'm LaVern Schroeder, spelled S-c-h-r-o-e-d-e-r. I'm a registered land surveyor in the state of Nebraska and I appear in support of LB520. I am the president of the Surveyors Association of Nebraska, who unanimously support this bill. I'm a county surveyor and I also have a private practice. And as a county surveyor, I have the right of entry, but as a private surveyor I'm not granted the same privilege. And basically, as surveyors, we are

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all required by instructions from the Bureau of Land Management that we, on our surveys, we are required to tie into such things as quarter-section lines or sixteenth lines. Sixteenth lines are the lines that divide the section up into sixteen 40-acre tracts. Now what we are here to do is we're asking for relief so that we can get into these tracts of land. This is a requirement by the Bureau of Land Management, which is referred to as the blue book. As I understand the law, I don't think we have a clear avenue to go straight to the court for relief. As a surveyor, I...we don't have the right of trespass. We have to notify everyone. Under LB520, I believe, it's my understanding this would allow us cause to go to the court to...and make it...streamline the process or maybe cut the cost of the process so that...to allow us to get on the land of people that don't want us there. As the county surveyor, I have been denied access, but in almost all cases I have been able to convince them what I was doing and I had to do, and I was allowed access without going to the courts. I'll answer any questions if I can. Mr. Chambers. Yes.
[LB520]

SENATOR CHAMBERS: I just have a couple. You do see the difference between your functioning as a county employee and as a private entrepreneur. [LB520]

LaVERN SCHROEDER: Yes. [LB520]

SENATOR CHAMBERS: Okay. In your capacity as a private practitioner, how many times have you been turned away in the situations that you describe in your presentation? [LB520]

LaVERN SCHROEDER: Oh, I've never ever been denied entry, but there have been several times that I've had to...it's taken a while to get entry. I've had to talk to them. But I've never had to go to the court. [LB520]

SENATOR CHAMBERS: Well, you'd still have to do that even with this bill, wouldn't you? [LB520]

LaVERN SCHROEDER: Yes, I think I would still have to do the same thing. But I would think this bill what it would do, it would allow us to notify the landowner by mail. There's a lot of absentee landowners where I live up along the Missouri River, the Niobrara River. And we could notify them by mail, and if they don't respond to us then we would...we could take that as an assumption that we could go in. [LB520]

SENATOR CHAMBERS: Well, is that what you do now? Do you notify them now?
[LB520]

LaVERN SCHROEDER: Yes. Yes, I do. [LB520]

SENATOR CHAMBERS: And if you don't get any response, what do you do? [LB520]

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LaVERN SCHROEDER: Well, I never notify them by mail. I just keep calling until I find somebody. [LB520]

SENATOR CHAMBERS: And you can do that with or without this bill, couldn't you? [LB520]

LaVERN SCHROEDER: Yes. Yes, but I think this would allow us to notify them even if we have to notify them by registered mail that we know that they've had that, that they have no objection, that we could go in and perform our duties as required by the Bureau of Land Management. [LB520]

SENATOR CHAMBERS: Well, I read these bills and it says you notify the person by regular mail. [LB520]

LaVERN SCHROEDER: I read...I understand that. But I said we could work with the committee and I could see where that could be a problem because you have no idea whether the person has received the letter or not. But if you have it registered, someone has to sign for it. [LB520]

SENATOR CHAMBERS: But that's not in the statute. [LB520]

LaVERN SCHROEDER: Correct. [LB520]

SENATOR CHAMBERS: Mr. Schroeder, I'm not trying to be difficult, but none of the three of you persuaded me that this bill changes anything other than the feeling you might have about what you're doing. It doesn't alter any legal relationships. It doesn't bestow any right on you to enter a property if the person doesn't want you there. It says if the person denies entry or threatens violence, it doesn't even say you can go to the sheriff and say you were threatened. It says you can go to court. [LB520]

LaVERN SCHROEDER: Right. I don't know if there is any other statute that we have--not being an attorney--that says that we can go to court and get entrance. [LB520]

SENATOR CHAMBERS: Well, one of the testifiers said he was aware of some court orders that had been granted. But nevertheless, I don't see that this bill does anything. And that's all that I would have. Thank you. [LB520]

LaVERN SCHROEDER: Okay. [LB520]

SENATOR ASHFORD: Thanks. [LB520]

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LaVERN SCHROEDER: Any other questions? [LB520]

SENATOR ASHFORD: No, I don't see any other questions. Thank you. [LB520]

LaVERN SCHROEDER: All right. Thank you. [LB520]

SENATOR ASHFORD: Do we have any other proponents? Any opponents? Any neutral testifiers? Okay, we have an opponent? [LB520]

AUDIENCE: Yeah, lots of them. [LB520]

SENATOR ASHFORD: Oh, okay. All right, let me just tell everybody that there will be another hearing that will start in here at 1:30, and so we are going to be concluding all of our hearings by about 1:15 if we're not concluding before that. So with that in mind, let's proceed. But I know we have another bill with a number of testifiers, so when we get to the testimony, this opponent testimony, let's try to be conscious of that time. So go ahead. [LB520]

KEN WINSTON: Good morning, Chairman Ashford and members of the Judiciary Committee. My name is Ken Winston. I'm appearing on behalf of the Nebraska Sierra Club. My name is spelled K-e-n W-i-n-s-t-o-n. We're opposing LB520 because it would weaken property rights of Nebraskans and grant more power to government agents. Allowing surveyors to enter private property without permission violates fundamental rights to own property. LB520 raises questions about whether it would violate Fourth Amendment rights against search and seizure, and Fifth Amendment rights to due process related to private property. To the extent that these governmental intrusions may be extended to foreign companies, that only heightens our concerns. We recommend that LB520 be indefinitely postponed. [LB520]

SENATOR ASHFORD: I don't see any questions, Ken. [LB520]

KEN WINSTON: Thank you. [LB520]

SENATOR ASHFORD: Thank you. Okay, let's go to the opponents now. [LB520]

KEN WINSTON: That was opposing testimony. [LB520]

SENATOR ASHFORD: I know. We're going to go to the other opponents. Thank you, Ken. [LB520]

RANDY THOMPSON: But we're opponents, right? [LB520]

SENATOR ASHFORD: You are...opponents. [LB520]

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RANDY THOMPSON: Opponent. [LB520]

SENATOR ASHFORD: Those against the bill. [LB520]

RANDY THOMPSON: Yes. [LB520]

SENATOR ASHFORD: And I know you know that. I was just...(laugh). [LB520]

RANDY THOMPSON: (Exhibit 7) Thank you, Mr. Chairman and the committee, for the opportunity to be here. My name is Randy, R-a-n-d-y, Thompson, T-h-o-m-p-s-o-n, and I am here as a concerned Nebraska landowner. You know, for perhaps the first time in history, mega corporations such as TransCanada and others are facing something they are not accustomed to dealing with. It is large-scale resistance from farmers and ranchers from all across this country. Unfortunately, for the big corporations, these folks are no longer uninformed and susceptible to their unethical and bullying techniques. Instead we are united, organized, and knowledgeable of our rights as American citizens, and we are more than willing to stand up for those rights. It seems that these ordinary citizens, armed with only their individual property rights, have become a threat to the ambitions of these big corporations. To remedy this situation, the corporate giants are once again turning to their political allies in hopes of having their problems solved through legislation. They seek to have our existing laws rewritten or bent to meet their specific needs. LB520 is a perfect example of the type of actions that they are requesting. This bill, if passed, would enhance their position by abolishing some of the basic individual property rights held by Nebraska landowners. As Nebraska legislators, I think each one of you has to ask yourself how far you are willing to go to appease these corporate giants. Are you really willing to strip your fellow Nebraskans of their basic individual property rights? Are you willing to legalize trespassing for a select few at the expense of all Nebraska property owners? I hope that you're not and I hope that you will defeat this ill-conceived piece of legislation. Thank you. [LB520]

SENATOR ASHFORD: Thank you, sir. [LB520]

RANDY THOMPSON: Yes, sir. [LB520]

SENATOR ASHFORD: Next opponent. And I understand there's a class from Hartington here. Is that...am I right? Okay. Well, welcome. Why don't we introduce for your benefit, because you're not here every day, are you? Very rarely here, but I'm glad you're here today. Senator Seiler is a senator from Hastings, Nebraska. And Senator Christensen is a senator from Imperial, Nebraska. And Senator Lathrop over here is from Ralston, but he's really from Omaha and Ralston. And Senator Chambers, you may recognize Senator Chambers. Senator Chambers is our most senior senator. He's been...this is his thirty-ninth year in the Legislature and in honor of Senator Chambers'

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service you're actually in the Ernie Chambers Judiciary Hearing Room. So that's an honor. And Stacey Conroy...I always forget her married name. Stacey Conroy is the legal counsel. She's my lawyer on these bills and she's been on the...working with the committee for, this is her seventh year. And she just had a baby, Henry, and so. And then Oliver VanDervoort is our committee clerk. And the two interns in the back take care of all our needs. They hand out papers and get us coffee, and they're very helpful. So why don't we go ahead. [LB520]

SUSAN DUNAVAN: (Exhibit 8) Okay. My name is Susan Dunavan, S-u-s-a-n D-u-n-a-v-a-n. I'm a landowner from York, Nebraska. Thank you to the members of the Judiciary Committee for the opportunity to speak. I am here today to speak in opposition to LB520. A lot of the information was covered earlier, but I do want to reiterate a few things. I have to wonder what Senator Christensen's reasons are for introducing this bill. As Nebraska citizens we elected our senators believing that they would protect our rights. With each passing year, the Nebraska State Legislature seems to be directing their legislation to erode the rights of its citizens. Each year I see senators introducing bills that do not respect or honor the citizens of this state, but instead show disrespect and dishonor to Nebraska landowners. The Nebraska state motto is Equality Before The Law. This bill gives more equality to entities than to the landowners and does nothing to protect Nebraska citizens. [LB520]

SENATOR ASHFORD: Okay. Thank you. Any questions? I don't see any. Or comments? Thank you. Next testifier who...opponent. [LB520]

MAX NELSON: (Exhibit 9) My name is Max Nelson, M-a-x N-e-l-s-o-n. What is a good faith effort? You tell the people no and that should be the end of it. This bill is being promoted to give TransCanada a legal right to come on private property to survey for a tar sands pipeline. In my opinion, all tar sand pipelines should be outlawed in the state of Nebraska. Why should the people of Nebraska give up their rights to own and protect their property whether it is underground irrigation systems, electric lines, or sewer systems. The people of Nebraska have been easygoing people and have helped each other and have enjoyed the good life. Why would a foreign company who has substantial backing from China, who already owns over 60 percent of the tar sands development in Canada, want to have a pipeline go through Nebraska other than for personal gain or to ruin our water and oxygen supply? The enormous amount of money they have already spent for television advertising, newspaper ads, lobbyists, and to support or pay off politicians would have built a refinery in Canada. Then they could transport the refined product to the west coast of Canada and ship it to China. I do believe the people will rise up in large numbers when they realize that they could lose their water and oxygen supply. If I had to give my land to a foreign company because of a law that was passed by a government on eminent domain, I would ask for the value of the land in gold. Why? So I could leave the country, and gold has value anywhere in the world. Once you have to sign a lease that is forever, and if the pipe breaks on your land,

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you could be sued by all the people who lose their water and incur health problems, for insurance companies won't provide coverage for such possible catastrophes for it could break their companies. I urge you to kill LB520 in committee. Any questions? [LB520]

SENATOR ASHFORD: I don't see any, but thank you, sir. [LB520]

NINA NELSON: (Exhibit 10) I'm Nina Nelson, N-i-n-a N-e-l-s-o-n. Senators, I appear today before you to express my opposition to LB520. We as property owners and citizens of Nebraska have a right to our privacy and protection from outsiders. Yet you propose this bill which would give a right of entry to our property without the owner's permission. Years ago we saw farm homes and outer buildings on nearly every farm. One could stop by and usually found the farmer at home or his wife. But today's agricultural landscape has changed drastically. Many fields and pastures do not have buildings and the landowner lives at another location. You will say, well, this is why we need this bill. I say this is why we do not want this bill. This land was purchased with our money, upkeep and liability are the owner's responsibility, and we pay high real estate taxes each year. And yet you would give precedence to an outsider's interests over ours as landowners. We have every right to know who is on our property and for what intended purpose. Surveyors do not represent themselves. They are there because some outside interest or cooperation has hired them. I have read your introducer's statement of intent, Senator Christensen, and I feel there are loopholes that would allow numerous folks to ultimately trespass on my property. You say registered surveyors. Well, what's involved in becoming a registered surveyor? And even if they're registered, who is to say they are not being bought out by some outside interests of which I wouldn't even know about? I think I have a right to know who supposedly sent them out and what company or utility I'm dealing with. You list limitations to their ability to enter the premises, but then you follow that up with the last paragraph where you state the legislation would require a good faith effort on the part of the surveyor to make an attempt to announce and identify themselves and the purpose for entry to the owner. I consider these words totally meaningless. What constitutes a good faith effort and who determines if it's valid? Today we're concerned about pipelines for natural gas and tar sand crude oil. In the future I feel certain we'll be even more concerned about our water supply. So let's not rush into laws that will provide yet another erosion into the rights of property owners. I admire many of you state senators, and I still like to think that you're elected to represent and protect the citizens of Nebraska, so I urge each member to vote against this LB520. [LB520]

SENATOR ASHFORD: Thank you. I don't see any questions of anyone. Thanks. Next opponent. [LB520]

BEN GOTSCHALL: Hello and thank you, senators on the committee. My name is Ben Gotschall; that's B-e-n G-o-t-s-c-h-a-l-l, and I am a landowner outreach coordinator for NEAT, which is an acronym for the Nebraska Easement Action Team working with

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landowners along the Keystone XL pipeline route. And I'm also the District 5 in Lancaster County president of the Nebraska Farmers Union. I'm not testifying as an official representative of the members of those groups, but my experiences in working with those folks and in that capacity are what lead me to be here today. I'm not going to go into too much detail. I think a lot has already been said. I think probably the biggest problem with this bill is the lack of need for it, for one. But also the good faith attempt is what most of the rest of the bill...or what the, you know, all the provisions inside it all hinge on a good faith attempt. To me, an in-person attempt is not really enough grounds to allow someone to legally trespass. Just because someone comes to my house and says that they tried to talk to me, whether I was there or not, I don't think that's grounds to allow them to trespass. By regular mail instead of registered mail I think is a problem. It's already been brought up. The absentee landowner issue is a problem. We have absentee landowners that maybe live far away. Maybe they don't get their regular mail in as timely a fashion or maybe they don't respond to it in as timely a fashion as a surveyor would want. So I just...there's problems with all of those things. As I see it, no permission is even required and this bill creates a loophole to allow trespass without permission. Again, Senator Chambers brought up earlier what if the landowner says no. There already is a legal avenue for surveyors to go through. I don't see why we need to give them again the legal ability to trespass under the auspices of a good faith attempt. Another one last thing is that as I read it the bill says that the court shall give the surveyor an order. I don't know if there's a process by which the court determines whether or not an order should be given, but as the bill reads, it says they shall give the order. And I think they should have the option to not give the order as well. And with that I will answer questions, maybe not happily, maybe I won't answer them at all. Maybe I will just attempt to answer them maybe begrudgingly even. [LB520]

SENATOR ASHFORD: Well, that's fine. No, thanks for your comment. Yes, Senator Chambers. [LB520]

SENATOR CHAMBERS: You actually made the very good point, because when a matter goes to court, the Legislature cannot dictate how a dispute between two people would be resolved. So even if that were to be in the law, a court is not bound by that. They are a third branch of government, so that language means nothing even if it's there, but it's just another problem with the legislation as it's drafted. [LB520]

BEN GOTSCHALL: Yeah. It's on page 4. The language says that after the surveyor petitions for the order, the court shall enter such an order. I think it's within 10 days. So I guess I don't see why we should...I think the court can decide whether or not an order is valid or necessary. I don't think this bill or our laws should force them into a corner. [LB520]

SENATOR CHAMBERS: I'm just going to use you as a sounding board, because you've raised that issue. It's what I had asked in the beginning: Who drafted this bill? Who gave

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this language? And that's just another indication that whoever put it together didn't know what he was talking about, or he knew and was going to try to slip something past. I just don't know because he didn't come here to say anything. [LB520]

BEN GOTSCHALL: I don't know either. And a couple of previous testifiers have mentioned pipelines. Senator Davis mentioned the, you know, pipeline earlier. My experience with the pipeline, with landowners surrounding survey documents and things, for example, with TransCanada, they attempt to have landowners sign survey documents allowing them access to survey. Landowners don't always do that. And, in fact, landowners that have not signed that and have not given their permission have then found surveyors trespassing on their property. And so I think this bill, you know, by basically legalizing trespassing has a little...has some of those landowners a little bit concerned, to say the least. [LB520]

SENATOR ASHFORD: Okay. Thank you. [LB520]

BEN GOTSCHALL: Thank you. [LB520]

JIM TARNICK: My name is Jim Tarnick, J-i-m T-a-r-n-i-c-k. I am a landowner, farmer and rancher in Nance County, Nebraska, and I oppose LB520. There is no reason to give companies any right to lawfully access private property without the landowner's permission. There is no reason for a company to need access until they have their permits in place. All LB520 would do is give companies, such as TransCanada, more power to harass and hound landowners, as they have my neighbors and myself, in their pursuit of easements on the proposed Keystone XL pipeline route. What is a good faith attempt to obtain permission? Is that when they came to me and said, sign my farms over now and get what you can because we're going to take it anyway? Is that what you consider good faith? If surveys need to be done, then the permits should be in place and the project spelled out. If you want to have good faith, then the landowner should have all the information. And until then, this is another bill that benefits private entities and continues to erode our property rights. Thank you. [LB520]

SENATOR ASHFORD: Okay. I don't see any questions. [LB520]

SENATOR CHAMBERS: I'll just say one thing. [LB520]

SENATOR ASHFORD: Yes, Senator Chambers. [LB520]

SENATOR CHAMBERS: The other side had a tall gentleman on their side, so now I think the record is even. Thank you. [LB520]

BRUCE BOETTCHER: (Exhibit 11) Bruce Boettcher, B-r-u-c-e B-o-e-t-t...we as Nebraskans are all property owners in some shape or form. LB520 is in direct violation

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of property owners' rights whether in Omaha or western part of the state. Unless all permits are approved and there is a purpose shown, no surveyor should be allowed on your property. As I read through this bill, I see where the word "violence" comes up. This bill invokes violence because it directly violates people's property rights. This is the same as TransCanada soliciting intimate (sic--eminent) domain without their permits approved. Any questions? [LB520]

SENATOR ASHFORD: Okay. Any questions? Seeing none, thanks. Have a good day, everybody. Thanks for coming. [LB520]

SHERRY LOSEKE: Hello. My name is Sherry Loseke, S-h-e-r-r-y L-o-s-e-k-e, and I'm from Omaha and I'm here to speak in opposition to LB520. I'll reduce my comments because I think that I would echo especially the remarks by Mr. Thompson and Mr. Gotschall. But a couple of points that came to mind as I think about my parents and the only power that they have found to protect personally the rights of their property to be entered is the requirement that the state has put on the party interested in their land has requirements in place that once those are fulfilled I'm certain my parents, no matter how reluctantly, would recognize that it would be in the best interest to allow the land surveyors on the land. But up to this point that is the power...the only power that they've felt in terms of protecting their land. And I do not think it is incumbent upon the state of Nebraska or for landowners to make it easier or more convenient for private parties, any party to allow land surveyors to come on their land in order to meet their (inaudible). There are laws in place. It also presupposes that the motives of the party that is the employer of the surveyor, their motives are more valid or more informed than the individuals who actually own the property. And I think from that premise that's not the place or appropriate to start. So I think that those are two things that came to my mind as I wished to state my objection to this legislation. Thank you. [LB520]

SENATOR ASHFORD: Thank you. Other opponents? [LB520]

ABBI KLEINSCHMIDT: Good morning. My name is Abbi Kleinschmidt, A-b-b-i K-l-e-i-n-s-c-h-m-i-d-t. I oppose this bill. This would allow surveyors to access private property without permission. Is this what our world is coming to? Private property rights are paramount. No one should have access to my land, given to me by my forefathers five generations ago, without permission. There is no need for this bill. Nebraska farmers do not want oil pipelines contaminating our water and our soil. There must be due process. The landowner has a right to a hearing before a neutral person before we would be forced to give up the right to what happens to our land. I think there has to be actual notice to the landowner, not just a mailing. The landowner needs to be personally served with a notice. It needs to be handed to them in person, and there needs to be at least 30 days to respond and to object. I strongly object to this unfair proposed legislation. Thank you. [LB520]

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AMY SCHAFFER: Good morning. Amy Schaffer, S-c-h-a-f-f-e-r. And I didn't prepare anything formal, but I will echo, you know, the same issues that the other opponents have spoke to. You know, when I first saw this bill, I was like what's the purpose of this? It doesn't seem to be benefiting property owners; instead it's benefiting entities. And then, you know, you think about this and if surveyors are surveying land before they have the project permits, that wastes everyone's time, that wastes everyone's money. And we have seen where once you give...the property owner gives them permission to survey, then that gives them a reason to then start harassing the property owner for, oh, let's sign this easement or I'll drive by your house five times a day; I'll send five different people to come visit you. And so, you know, by them allowing them one, you know, just to survey, then this gives them the opportunity to continue to harass the property owner. I think a better bill would have been not allowing the surveyors onto property owners' property until they have all their project permits. That would make all of the people in this room happy and that would protect the property rights of Nebraskans, and those are the kind of bills and legislation that we need. [LB520]

SENATOR ASHFORD: Okay, thank you. [LB520]

DONNA ROLLER: (Exhibit 12) My name is Donna Roller, D-o-n-n-a R-o-l-l-e-r. I have a small family farm in York County that is near the KXL pipeline. I'm opposed to this bill. And the testimony already given by the other opponents I agree with and are well-stated, so I don't need to say a lot of what I've prepared. But based on what those that propose this bill, there were things that were brought up that concern me and I think you as well, and that this bill was written by a lobbyist. And so what is the true intent and what is the motivation behind this? And no doubt TransCanada is involved, and there's a little known organization by most citizens and it's called ALEC. It's an organization where they have big conferences and legislators are members with a \$100 fee. And they go to these conferences and they accept bills from companies who write these bills, and they institute this in many states to get those bills passed that are beneficial to those companies that will help them make money. And this is a little known organization that people don't know about. So I'm wondering, is ALEC really behind this and what member of this Legislature is a member of that organization? And so there should be no streamlining process to negate citizens' rights, because we hold our property very dear. And I have one quote that I will say to you from our Founding Fathers. John Adams, who wrote the Constitution, was part of it. And the intent of the Fifth Amendment is to protect citizens' rights, and this is what he said. "The moment the idea is admitted into society that property is not as sacred as the law of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence. Property must be secured or liberty cannot exist." And it was the intent of our United States Constitution to protect us as equally; what we should not do to our neighbors, our government should not do to us. [LB520]

SENATOR CHAMBERS: Just one comment. [LB520]

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SENATOR ASHFORD: Senator Chambers. [LB520]

SENATOR CHAMBERS: I think you stated by quoting Mr. Adams exactly why Native Americans are so distressed at what people who came from Europe did in taking all their property and putting them on reservations. [LB520]

DONNA ROLLER: I agree with you wholeheartedly. [LB520]

SENATOR CHAMBERS: Okay. [LB520]

SENATOR ASHFORD: What we're going to do is we're going to take one more opponent and then we're going to ask for any neutral testifiers, and then we're going to move to Senator Avery's bill. [LB520]

TOM GENUNG: Good morning. My name is Tom Genung; that's T-o-m G-e-n-u-n-g. I happen to live in Hastings, Nebraska, with my wife Cathy, but both of us grew up in northern Nebraska, specifically Holt County. And we still have a little holding up there and have been affected by all of the things that these folks have referred to as far as--and you brought it up--the pipeline concerns. So I'm not going to...you know, I didn't prepare anything and so I'm not going to repeat a lot of stuff, but I appreciate everything that I've heard this morning. I guess I would point out that the majority of the people that spoke, we're all here independently. We're not employed by any organization or professional lobbyists or that kind of thing. And so it's not a very...at least for me, it's not a very comfortable situation to come and have to try to represent things. But it's also a duty. As landowners, we don't really...our name happens to be on the deed, but we're just supposed to be taking care of things for a little while in this life. And when it comes to this bill, giving an organization or entities the opportunity to go ahead and allow trespassing is just absolutely wrong, and I just wanted to state that. The other thing that I would mention, I too am a member of the Nebraska Easement Action Team. In fact, I have the opportunity to serve as one of the board members. And I'm not actually speaking for that group, but if any of you have any questions I'd be glad to try to answer the questions because over the last year, two years, I've had the opportunity to listen to landowners about the concerns and listen to landowners that have chased people off their ground and different things like that. And so...and encourage them to use the proper channels, like call the sheriff and things like that. So if anybody has any questions, I'd be glad to try to answer them. [LB520]

SENATOR ASHFORD: I don't see any. Thank you, sir. Do we have any neutral testifiers? Senator Christensen, do you...? And then we'll move to Senator Avery's bill. [LB520]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. I just come up...I've already sent

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you a note that I just want everybody sitting out here that's testified to be at peace. I will motion to kill the bill myself in Exec, and you won't have to worry about that part. Thank you. [LB520]

AUDIENCE: (Applause) [LB520]

SENATOR ASHFORD: All right. Normally we don't allow applause or emotional outbursts, but in this case it's probably just fine. Senator. [LB520]

SENATOR AVERY: I will not be making a statement like that. I would just like to point out that I left the Government Committee a few moments ago and the Hartington Public High School students were there as well. So they are witnessing some riveting testimony, I'm sure. Not in my committee though. [LB533]

SENATOR ASHFORD: No. Well, I'm sure it's very stimulating. [LB533]

SENATOR AVERY: I am...thank you, Mr. Chair. I am here today...my name is Bill Avery, B-i-l A-v-e-r-y. I represent District 28 here in south-central Lincoln. I am bringing to you LB533 that requires entities that are granted authority under the Major Oil Pipeline Siting statute that is 57-1101 to give timely and reasonable notice to landowners prior to exercising the intent to negotiate for land for a public purpose. Eminent domain is defined by Black's Law as the power to take private property for public use by state municipalities and private persons or corporations authorized to exercise functions of public character. The power to exercise eminent domain exemplifies a very careful balancing exercise between private rights and public purpose. This is something that should not be undertaken lightly. A little background on this bill: It had its origins in the XL pipeline special session. I introduced a bill during that special session which would have protected landowners from threats of eminent domain by preventing a foreign corporation from acting as a sovereign when it did not have that authority yet. And, of course, eminent domain is given to entities to act as sovereign. But the process that we were following with the XL pipeline, it seemed to me, was granting the authority to act as sovereign prior to the pipeline company having their permits in place. During that last session, I again...during this last legislative session, I again introduced a bill aimed at reining in persons and corporations and companies from exercising eminent domain over private landowners without adequate due process. That bill was never acted on by the committee. Again this summer, I sponsored a legislative resolution to authorize an interim study of the historical authority and use of eminent domain in condemnation proceedings in the state. I spoke with several entities who are authorized in law to exercise eminent domain for public projects. During those discussions I got a much better understanding of the process used for negotiations with landowners when acquiring land for a public purpose. We talked to the cities of Lincoln and we talked to Omaha, we talked to public power districts, and I discovered that it is a process that they have been using for many, many years--no surprise there. But I also

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found out that they had procedures in place that I was not aware of that had been implemented successfully and protected property rights of owners. What I'm hopeful is that here today is to tell you a little bit about what I'm seeking to do with this bill and what I heard from those meetings. What I found out was that previous eminent domain work was quite extensive. I found out as well that the laws that currently exist in our statutes are fairly antiquated, unclear, and at a minimum that it was perhaps time for a thorough legislative review of those laws. They exist in many, many parts of our statutes. I've tried to address some of those concerns in the past. I think probably what I did in the past was a bit too broad and probably touched on some public entities' eminent domain procedures that perhaps did not need to be changed. So I bring today a bill that keeps in place those practices that do appear to be adequate, but I am extending those practices to other entities that are not adequately covered. LB533 makes clear in law that if a person, company, or corporation is granted statutory authority under 57-1101, that's our pipeline siting statute, that entity must provide a 10-day notice to landowners or agents of the estate. In that 10-day notice, which by the way, must be hand-delivered or delivered by certified or registered mail, in that notice the entity must include a description of property needed for proposed projects and compensation to be given for that property; a statement of authority for acquisition; necessity for the project and the purpose of the acquired land. This is important because it raises the issue of public interest and public purpose, which, of course, is the basis for any eminent domain proceeding. The notice must also provide title, right, or interest in the property; exact amount of property needed for the public project and no more; explanations for proposed location of the route, including a map or a project description in great detail; identification of agency approval, if applicable; a list of owner property rights including but not limited to the right to retain counsel for negotiations and proper legal jurisdiction to appeal should the decision go against the landowner. As you recall, TransCanada sent threatening letters to landowners across the proposed route of access for a pipeline project. The threatening content of those letters was, of course, debatable between attorneys. But the feelings of coercion, confusion, panic, and anxiety among landowners was not in dispute or debate. It was real. I read one of those letters and they were, it seems to me, quite threatening and they said we will take your land if you do not immediately sign these papers. And that was before they even had a permit. My intent today is to continue to provide timely and reasonable notice to landowners that their property may be in the path of a public project and that they will be given an opportunity to negotiate fair compensation with the entities seeking condemnation. This is not intended to open debate on the merits of the pipeline. This Legislature has already settled that issue to my satisfaction anyway. I bring this today because Nebraska landowners still deserve as much protection as we can afford them, and I would point out that this bill was developed in careful consultation with public power districts and cities who have in place already workable procedures, and the rights of landowners in those instances are protected. With that, I would ask you to give serious consideration to advancing this bill. [LB533]

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SENATOR ASHFORD: Senator Christensen. [LB533]

SENATOR CHRISTENSEN: Thank you, Chairman. Senator, on page 2, (e) there, it says "specify the amount of property needed for the project." Are you talking on an individual easement basis or are you talking on what is the whole project? I guess my thought when I read that this morning was the fact that I hope that's specified to each individual easement, so somebody doesn't see this as a 160-acre project, they own a quarter, and think you're trying to condemn by not reading carefully. [LB533]

SENATOR AVERY: It's just the amount needed for the project--just the amount. [LB533]

SENATOR CHRISTENSEN: On that individual easement though. [LB533]

SENATOR AVERY: Right. Right. Correct. [LB533]

SENATOR CHRISTENSEN: Okay. I think that might be a good clarification so things aren't misunderstood. [LB533]

SENATOR AVERY: What I'm trying to do here is avoid an expensive definition of what the public purpose might be. The intent here is to allow these entities to discuss with the landowner only that land they need, not more and not less. [LB533]

SENATOR CHRISTENSEN: Thank you. [LB533]

SENATOR LATHROP: Senator Seiler. [LB533]

SENATOR SEILER: Senator Avery, when you did your legislative resolution, did you get into the formula for the damages, the value before the taking versus the value after the taking? [LB533]

SENATOR AVERY: We talked about it but... [LB533]

SENATOR SEILER: Did you find a better compensation program? [LB533]

SENATOR AVERY: You know what, I've talked to lawyers, I mean very good lawyers, and talked to policymakers, talked to a lot of entities that actually have eminent domain authority, and that is a murky world. It's a... [LB533]

SENATOR SEILER: Yeah. I say let the liars begin. [LB533]

SENATOR AVERY: Yeah. It is a very murky world, and I decided not to try to define what is just compensation. I figure that if you get into a dispute, the courts will decide. [LB533]

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SENATOR SEILER: Well, the Legislature could decide... [LB533]

SENATOR AVERY: Yes. [LB533]

SENATOR SEILER: ...that they could give different parameters for the court. [LB533]

SENATOR AVERY: We could. But I don't know how we could do that in a rational way. [LB533]

SENATOR SEILER: I just wondered if you had found any other solution. Thank you. [LB533]

SENATOR LATHROP: I see no other questions, Bill. [LB533]

SENATOR AVERY: Thank you. [LB533]

SENATOR LATHROP: Thanks for putting the bill in, and we'll take proponents, first, on LB533. [LB533]

SHELLEY SAHLING-ZART: Good morning, still. Senator Lathrop, members of the Judiciary Committee, for the record my name is Shelley Sahling-Zart, S-h-e-l-l-e-y, Sahling-Zart is S-a-h-l-i-n-g hyphen Z-a-r-t. I am vice president and general counsel for Lincoln Electric System, the municipal utility here in Lincoln, and I'm testifying today in support of LB533 on behalf of Lincoln Electric System and the Nebraska Public Power District. We appreciate Senator Avery's willingness to have the discussions we've had over the past few months and come up with what we think is a solution to the problem that has at least been identified with regard to the Keystone XL pipeline. Some of the past versions kind of painted a broad brush and changed eminent domain provisions that have been in place for quite a while. I know that the utilities that I work with, and most of the political subdivisions, take the right of eminent domain very seriously, and we believe that right comes with responsibilities: responsibilities to the property owners and the responsibility to treat landowners fairly. I think Chapter 25, which is where these similar provisions, the provisions you find in LB533, are very similar to the provisions of Chapter 25, specifically 25-2503. Those are the provisions under which we operate when we are doing really the precondemnation process and the notification to property owners. We do not find the process to be burdensome. It's a letter. I think it's proper that you provide notice. You know, the other thing that we do is we have very public routing processes, for example, for our transmission lines. They're very public. These processes go on for months. And by the time we actually get to this negotiation and actually getting the easement phase, no one should be surprised at that point. I'm not saying that never happens, but it really shouldn't. And notifying people and letting them know about why you're doing the project, the need for your project is part of getting that

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acceptance. And at the end of the day, yeah, people don't like to have big transmission towers on their property. We understand that. But if they also understand the need for what that transmission line provides and keeping the lights on, eventually they get bought in and we then have a discussion about what fair compensation is for that easement. It's a process that I think has worked really well. I don't see any reason why it can't work here. And with that, Senator Chambers is gone, but I would be happy to take any questions. [LB533]

SENATOR LATHROP: We might find somebody happy to ask you one. [LB533]

SENATOR MCGILL: Or not. [LB533]

SENATOR LATHROP: Or not. It doesn't look like it. Thanks for coming down. [LB533]

SHELLEY SAHLING-ZART: You bet. [LB533]

SENATOR LATHROP: We appreciate your testimony. [LB533]

NINA NELSON: (Exhibit 13) I'm Nina Nelson, N-i-n-a N-e-l-s-o-n, and I'm here to express my support for LB533. We know these lofty words of eminent domain have been around for a long time, and I'm not sure people have always understood them. But it just seems like all too often they've never really been fully explained to landowners or our landowners just haven't understood them or they haven't necessarily always been clearly outlined by Nebraska laws. Senator Bill Avery's proposal appears to do a good job of legally requiring that a property owner be properly notified of such intentions 10 days prior to negotiations. It covers how it must be delivered and what it must include. Property owners have every right to know this important information and to know it ahead with ample time to seriously consider the proposal and to acquire legal consultation if they desire. I personally am not sure 10 days is long enough, but I realize a limit would have to be placed. These are commonsense provisions to which every property owner in Nebraska should be entitled, and I thank Senator Avery for standing up for these rights. So with that I'd just urge the committee to vote this out of committee and onto the floor for further consideration. [LB533]

SENATOR LATHROP: Very good. Thank you, Ms. Nelson. Next proponent. [LB533]

SUSAN DUNAVAN: (Exhibit 14) My name is Susan Dunavan, S-u-s-a-n D-u-n-a-v-a-n. I'm a landowner from York, Nebraska, and I'm here to speak in support of LB533. The bill lays a foundation for protecting Nebraska citizens from eminent domain abuse. However, I do want to add some things that I would like to see with this bill. This bill does not go quite far enough. The notice to property owners should be given more than 10 days before the beginning of negotiations for the property. A 30-day notice would allow landowners to be more prepared for negotiations. This bill should include that the

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information given to the property owner must be accurate and not misleading, and I think that there should be penalties for false or inaccurate information given. The information must show that the project has proven to be for a public purpose. When the public purpose is questionable or is actually for private gain, the condemner must be held accountable for their actions. The proper permits must be obtained before exercising the power of eminent domain. Landowners must be entitled to compensation for violations of their rights by threats or intimidation before permits are issued. [LB533]

SENATOR LATHROP: Very good. Thank you for your testimony. Next proponent. [LB533]

BEN GOTTSCHALL: Hello, and thank you. My name is Ben Gotschall, B-e-n G-o-t-s-c-h-a-l-l, and I am the landowner outreach coordinator...a landowner outreach coordinator for NEAT, the Nebraska Easement Action Team, and the District 5 in Lancaster County president of the Nebraska Farmers Union. I am supporting this bill and I'm echoing what the testifier before me just said about penalties. And mostly because of the things that have happened again with the TransCanada Keystone export pipeline, they...one of the things that...some of the things...the problems that have happened in the past that I've tried to help landowners with or they've complained about is that idea of arbitrary deadlines. In many cases, on the initial notification of negotiations, landowners were given arbitrary 30-day deadlines to sign easements or else they would go through eminent domain proceedings. Landowners are not always aware of their rights. This bill would...they don't get answers from state or local leaders. They don't get answers from the federal government. They sometimes don't get answers or don't get good ones from their lawyers even. This bill, I think, would seek to educate them, or the provisions of this bill would. But once again, it goes back to the problem that we have and it's that many landowners have signed easements not just with TransCanada, but in my experience, many with TransCanada because they felt they didn't have the time or the options or the rights to do anything differently. And this bill again, I think, would provide for them to know their rights, to have the time, and to be aware of their options. And again, the problem that I've stated in this committee before is TransCanada currently owns permanent perpetual easements for a project they've never had a permit to build on a route that they are never going to use, and that's a problem. And so with that I will answer any questions if there are any questions. [LB533]

SENATOR LATHROP: I see no questions. And that may be a function of the fact that you've been here a number of times and we're pretty clear on where you're at. [LB533]

BEN GOTTSCHALL: That's fine with me. Thank you. [LB533]

SENATOR LATHROP: But thanks for your testimony, Ben. Next proponent. And just by a show of hands, how many proponents do we have? Two, three, four more. And opponents? Okay, thank you. [LB533]

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DONNA ROLLER: (Exhibit 15) My name is Donna Roller, D-o-n-n-a R-o-l-l-e-r, and I'm still the landowner near the pipeline route in York County. I'm here to support this bill and I have done my research and checked on what kind of laws are on the books in our state constitution and our laws and what's happening in the United States, as well in other states, and through my research I found that the rights of property owners are in jeopardy all over, and Nebraska is behind in protecting landowners of any kind. We don't have enough laws to protect us, and that is our given right, and so I want you to move this bill forward and strengthen it if necessary and I think the last part (g) and (h) should remain intact and even strengthened; that it ensures citizens are treated fairly and ethically and with legal representation. [LB533]

SENATOR LATHROP: Very good. Thank you once again for your testimony. Next proponent. [LB533]

RANDY THOMPSON: I don't have any written testimony for this. [LB533]

SENATOR LATHROP: You're welcome to tell us your thoughts just the same. [LB533]

RANDY THOMPSON: My name is Randy Thompson, R-a-n-d-y T-h-o-m-p-s-o-n. Thank you again for the opportunity to speak. As I stated, I really don't have any written testimony, but I'd like to share just a little story with all of you that might really amplify the need for some clarification in our eminent domain laws. After we received two written threats from TransCanada taking our land through eminent domain, I pursued a trail of trying to find out if they actually had that authority, and finally ended up at the Attorney General's Office. And I was told by the legal counsel at the Attorney General's Office that she really didn't know if TransCanada had that authority at that particular time because her statement was our eminent domain laws seem somewhat fuzzy and hard to interpret. So I think it's definitely time that we get rid of the fuzziness in our eminent domain laws, so I support this bill. Thank you. [LB533]

SENATOR ASHFORD: Thank you, sir. [LB533]

AMY SCHAFFER: Good morning. Amy Schaffer, A-m-y S-c-h-a-f-f-e-r. I support this bill. Again I didn't write up anything formal, but it's a step in the right direction. But as I spoke on the last bill, I think we can do better and I think that's what a lot of the people in this room are saying. We need an eminent domain bill that requires entities to have all their project permits before they can solicit eminent domain. I've spoken with many, many, many landowners who have signed easements with TransCanada, 2009, 2010, that wish they wouldn't have--and they still don't have a permit; they still don't have a project. We need to protect the property rights of the citizens in this state. So we've been asking for two years for an eminent domain bill to protect the rights of the property owners, and that's what we need. I ask that you pass this bill out of committee, but we need an

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eminent domain bill for the citizens of this state this session. That's what everyone wants. Thank you. [LB533]

SENATOR ASHFORD: Thank you. Thanks for your comments. [LB533]

KEN WINSTON: Good morning, again. Ken Winston for the Nebraska Sierra Club, K-e-n W-i-n-s-t-o-n. We support LB533 for many of the reasons previously stated. I wanted to talk about a couple of things that are just slightly different from what I've heard so far. LB1161 created a special procedure for oil pipelines by granting the decision to determine whether eminent domain is exercised to one person: the Governor. There's no other place in the law where one person has the authority to determine eminent domain in the state of Nebraska that I'm aware of. And the other problem with that is that there were no standards to determine whether the Governor could decide to exercise eminent domain or not, or to allow...to grant the authority of eminent domain to a private company. And since, in general, private companies are...there's a number of statutory provisions that are negative towards the exercise of eminent domain by private companies. This is an unusual situation. LB1161 is currently being challenged in Lancaster County District Court. It's likely to be heard on the merits in June or July of this year, and at which time there's a good likelihood that the provisions will be thrown out. One of the things that we would ask for is that many of the provisions that are contained in LB152, which was heard on January 30 by this committee, be narrowed to apply only to oil pipelines and combined with LB533. This would address many of the issues that are of concern related to LB1161. And with that I would close. [LB533]

SENATOR ASHFORD: I don't see any questions, Ken. Thanks. [LB533]

KEN WINSTON: Thank you. [LB533]

SENATOR ASHFORD: Other proponents. [LB533]

BRUCE BOETTCHER: Bruce Boettcher, B-r-u-c-e B-o-e-t-t-c-h-e-r. I pretty much echo what everybody else has said here. I am in support of this. I think there needs to be legislation that definitely is black and white to where everything is approved before somebody can come in here and solicit eminent domain. [LB533]

SENATOR ASHFORD: Thanks, Bruce. Other supporters. [LB533]

TOM GENUNG: Tom Genung, T-o-m G-e-n-u-n-g. I'll be real brief. What I've heard so far I totally agree with. The eminent domain situation needs to be addressed and it needs to be in favor of the citizens of Nebraska, not private entities that roll in here and have a lot of dollars to spend on advertising and lobbying and such as that. Our personal story, once again, goes to Holt County. And my mother-in-law found herself in

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a position to either sign an easement or endure what she heard about eminent domain. And so about three years ago our family did enter into an agreement with TransCanada, an easement agreement. That part of the proposed route has allegedly been abandoned and there that easement sits. And that's not an unusual situation. As has been pointed out, there's a lot of people throughout Nebraska that found themselves in that same situation, and regret--regret--the fact that they found themselves in a position to sign an easement. That doesn't necessarily represent everybody, because some people are interested in, you know, getting the payment for an easement and moving on. As a part of the NEAT organization, Nebraska Easement Action Team, one of the things that we've heard and learned quite a bit about is that terms within an easement are probably more important, in a lot of cases, than the actual payment itself. And once again I would conclude with that and just say that I agree with the proponents that I've heard so far and answer any questions if there are any. [LB533]

SENATOR ASHFORD: I don't see any, Tom. Thank you. [LB533]

JAMES TARNICK: My name is Jim Tarnick, J-i-m T-a-r-n-i-c-k, and I am a landowner, farmer, and rancher in Nance County, Nebraska, and I support LB533. I am a landowner on the proposed Keystone XL pipeline. Twice within the last year I have been threatened with the use of eminent domain on my land and have never received any information from the company, TransCanada, providing project information, why my land is being considered, or if they even received their permits to go forward with the said project. The bullying tactics of TransCanada have caused much undue stress on my family and me. LB533 is a step in the right direction. LB533 should be combined with LB152 and give landowners some protection of our property rights. I ask this committee to move forward with this bill. Put the faith and trust of Nebraska's landowners back into this Legislature by approving this bill. Thank you. [LB533]

SENATOR ASHFORD: Okay, thanks. I don't see any questions from either Mark or I. So anyone else? [LB533]

SHERRY LOSEKE: My name is Sherry Loseke, L-o-s-e-k-e, and I am from Omaha. And in the interest of not being redundant, I will limit my comments simply to acknowledge that I think that most individuals that have sat here already have been most eloquent. But I do want to sit here in support of the landowners, in particular, who sit in the path of the Keystone pipeline, and advocate for this bill, LB533, because I think it is an acknowledgement that Nebraska landowners who have been under threat of the eminent domain by private pipeline companies do require protections that are not presently available to them in current eminent domain laws and that these landowners deserve to be treated fairly. As a whole, I think the bill represents to landowners that knowledge is power, and I think it's important that both parties to this kind of situation deserve to have full information and I think it will also serve to relieve a lot of landowners of the...just the feelings that are evoked by the words "eminent domain" and

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knowing fully what their rights are. And I'd like to take a little license because I think there has been, in my opinion, a remarkable lack of concern for the rights of landowners for present and future concerns as it relates to pipelines, particularly the Keystone XL. LB533 is an excellent first start in the right direction. But I want to remind everyone that landowners, these are business people too, and they have been put in the position to be...to enter into negotiation to relinquish the land and natural resources that they have, in most instances, worked their whole life to protect and preserve, all for a project that contains numerous what-ifs, promises, and unknowns. And I think that we owe it to move this quickly through committee. And if we are unable to get this commonsense set of solutions through committee, then I seriously have to question the motives of the legislators that we have sent to protect us. Thank you. [LB533]

SENATOR ASHFORD: Okay. Any other testifiers? Any neutral testimony? Oh, I'm sorry. Opposition; do we have opposition? [LB533]

JOHN LINDSAY: Senator Ashford, members of the committee, for the record my name is John Lindsay, L-i-n-d-s-a-y, and I am here today as a registered lobbyist on behalf of SourceGas, Black Hills Energy, and Northern Natural Gas in opposition to LB533. We are concerned with various provisions of this bill, both intrastate and interstate pipelines such as Black Hills Energy and SourceGas and Northern. We believe the current process works very well and we pride ourselves on the fact that we rarely use eminent domain. And while it appears the intent of this legislation at least may have been oil pipelines, it does, as drafted, include gas pipelines as well, and as drafted, would also include local distribution companies such as Black Hills and SourceGas. And they would be impacted because they do, in fact, transport gas. For interstate pipelines such as Northern Natural, the bill could impermissibly conflict with the federal Natural Gas Act and the Federal Energy Regulation Commission's--the FERC's--regulations promulgated under the Natural Gas Act. Federal law already, for natural gas pipelines, addresses routing authority and landowner notification. State law is allowed only to prescribe the procedures to be followed to determine just compensation for the taking. Specifically, Northern is already required by FERC regulation, it's in 18 CFR 157.6, to notify landowners of construction applications for certificates of public convenience and necessity. The landowner notification is to be provided within three business days following the date the commission issues a notice of the application, and is to include a description of the proposed project, it's location, purpose, timing, a map, and summary of landowner rights, among other things. The early notification provision of LB533 would directly conflict with federal law. To be clear, we are not opposed to the concept of notifying landowners with some of the prescribed information. In fact, as we mentioned, federal law requires that, certainly for an interstate pipe. But we're concerned with some of the timing laid out in the bill and some of the redundancies with federal law. The information required may not be available early in the projects. Additionally, since we...our companies start trying to talk to landowners early, we are concerned any contacts with landowners could be construed as commencing negotiations, and thus,

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creating maybe a more adversarial position with the landowners that we are dealing with. We're also concerned with the portion of the bill that requires that we notify landowners of their legal rights, raising a question of whether or not lawyers potentially are advising landowners of legal rights and whether all of those legal rights are specifically included. I'm out of time so I will wind up and just suggest that if there are attempts to amend this bill, we'd be happy to assist, and I'd be happy to answer any questions you might have. [LB533]

SENATOR ASHFORD: Senator Christensen. [LB533]

SENATOR CHRISTENSEN: Thank you, Chairman. John, why would federal law trump anything here? This is a notification and I guess I want you to bring me, so I can see, how it is conflicting, for one. But I guess I can't see when this is a notification of the project, intended project, route, and just warning or announcement--I should say announcement, not warning--that someone is looking at a proposed project, or I guess I'm a little bit confused how it's going to conflict. So I'll just wait for your information, I guess, and you can address it. [LB533]

JOHN LINDSAY: I will. Senator Christensen, it's...with respect to an interstate gas pipeline, as opposed to the local distribution companies, the reason is that federal law limits, on an interstate pipe, limits that to describing how you are paid compensation for the taking, and certainly state law can step in at that point. But the others are addressed by the FERC, Federal Energy Regulatory Commission, and one of those things that they have...and this is the reason why it would conflict: Under federal law we can't talk to the landowner about many of these things until three days after that application has been accepted by the FERC. Under state law we can't do that until 10 days...or we have to talk to them 10 days prior to making that application. So it creates an inconsistency between when we can do that. The secondary thing, the more restrictions there are that are in conflict, an interstate pipe can condemn either in state court or federal court. If they go to federal court to assert these rights, it actually drives up the cost, we believe, for the landowners. And again, our...I have not heard complaints today about gas pipelines and I think that's because we've been doing it right. But I will be happy, Senator Christensen...I will get you that federal law so you can take a look at that. [LB533]

SENATOR CHRISTENSEN: But do we not, like I would say the gas line is similar to the oil line that was proposed in the fact that we have the right to require some additional things the state doesn't, and I guess that's how I'm seeing this. But again, like I said, I'll wait and see your information and...but I just wanted to...wouldn't it, the same way, apply to gas as does the oil, we have some rights to set in the process? [LB533]

JOHN LINDSAY: I don't know that. I have no connection with any oil pipelines. I know that's an international type that I think takes... [LB533]

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SENATOR CHRISTENSEN: Would you like to have connections with it? [LB533]

JOHN LINDSAY: Absolutely not. The natural gas, though, is very explicitly spelled out in the Natural Gas Act at the federal level that applies to natural gas, and then with FERC regulations along with it. But I will get you that language of the federal law so you can see it. [LB533]

SENATOR CHRISTENSEN: I think it would be good for the whole committee. [LB533]

JOHN LINDSAY: Absolutely. I'll distribute it to the entire committee. [LB533]

SENATOR CHRISTENSEN: Thank you. [LB533]

SENATOR ASHFORD: John, just tell me real brief, I don't want to open up a whole new topic here, but if you have a taking now under current law and the use changes, there is no provision for that, for what happens if the use changes. Is there, I mean? [LB533]

JOHN LINDSAY: I don't believe there is. I don't think there is. From my recollection of...and I'm more familiar with the eminent domain dealing with natural gas takings. [LB533]

SENATOR ASHFORD: Fair. And this wouldn't most likely apply in this case. [LB533]

JOHN LINDSAY: Right. [LB533]

SENATOR ASHFORD: Because you're going to take the land and put the pipeline in and you're not going to...that's why you're doing it. And these...and it's fairly clear that's what you're doing. But if there is a...okay, so if we get to have a taking by a private company for a particular purpose and that purpose is laid out, but the actual event that...you know, the actual construction, if there is construction, does not occur...I mean, to me that's always bothered me. Why should there not be some kind of a kind of time limit or...I suppose theoretically you've made...you've paid for the easement, in effect. And you don't proceed, but you have purchased the easement. So I don't know how that plays exactly. [LB533]

JOHN LINDSAY: Yeah, and I'm not... [LB533]

SENATOR ASHFORD: We talked about it last year on a number of these bills to try to figure out...I mean, at some point there's a taking. There's compensation paid. It's a legitimate purpose, at least under current law. Nothing happens. You have sold your easement, in effect; gotten compensated; but nothing happens, which could impact or could most definitely impact your land in some way, it would seem. [LB533]

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JOHN LINDSAY: Yeah, and I think it would. Ideally... [LB533]

SENATOR ASHFORD: Roads, for example, or road construction or right of ways or... [LB533]

JOHN LINDSAY: Right. Now in a natural gas taking, it's going to be a quarter for typically...for Black Hills or a SourceGas, typically it's going to be as a town expands and you add a new political subdivision... [LB533]

SENATOR ASHFORD: Right. [LB533]

JOHN LINDSAY: ...or I mean a new subdivision for housing. [LB533]

SENATOR ASHFORD: Well, that's why I'm saying it may not apply. It probably would be rare where it would apply to... [LB533]

JOHN LINDSAY: Yeah, the circumstance I think may be if the subdivision housing markets go down in the subdivision and then it's not built but you've acquired the right of way to pipe that neighborhood. [LB533]

SENATOR ASHFORD: Well, you get complaints from SID residents who have half their road completed or not completed or not...and they've taken it...they have, you know, access to that part of the land to build a road. Anyway, that's maybe another topic for another time. [LB533]

JOHN LINDSAY: Yeah, and that's...of course, roads would be typically, I think, would be a different political...a political subdivision as opposed to private sector. [LB533]

SENATOR ASHFORD: It could be the SID, but. [LB533]

JOHN LINDSAY: It could be the SID, yes. [LB533]

SENATOR ASHFORD: Okay, thanks. [LB533]

JOHN LINDSAY: Thank you. [LB533]

SENATOR ASHFORD: Do we have any other opponents? [LB533]

ANDY POLLOCK: Chairman Ashford, members of the Judiciary Committee, my name is Andy Pollock. That's A-n-d-y, Pollock is P-o-l-l-o-c-k. I'm here as a registered lobbyist on behalf of NorthWestern Energy, which is a local distribution provider for the cities of Alda, North Platte, Grand Island, and Kearney. So my focus will be on the intrastate

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nature of this legislation. I won't get into the FERC preemption that Mr. Lindsay got into. I want to start off by saying that NorthWestern highly values its relations not only with its customers in the cities that it serves, but also with the landowners on whose property their infrastructure crosses. I spoke with a gentleman in relation to another bill that was heard earlier by this committee. He's been with NorthWestern for 33 years and his primary job is acquisition of rights of way. In those 33 years he has never faced a situation where the company has had to utilize its power of eminent domain. It's always been able to successfully negotiate those easements. It approaches the landowners, provides them notice, and takes seriously treating those landowners fair. So I say that and I certainly say that in light of a recognition that the concerns that you've heard by the landowners that have appeared today are legitimate and sincere. Our concern with this bill is not in Senator Avery's overarching goal and I've spent some time talking with his staff about this. We have no objection to everybody who has the power of eminent domain being treated equally, I'd say with the caveat that it not be preempted by federal law, which was Mr. Lindsay's point. But today, natural gas utilizes are currently subject to almost exactly these same standards, Senators. If you look at Sections 25-2501 through 2503, you'll see the natural gas companies are already covered by similar standards in those provisions, and you heard Ms. Sahling-Zart say earlier that the language from this bill actually came from those sections. As privately owned public utility corporations--I'm looking at 25-2501--NorthWestern Natural Gas and all jurisdictional utilities would already be covered by almost exactly the same notice requirement. So this bill, in fact, would create a redundancy under state law. I think the biggest reason that's a concern is there are some slight inconsistencies between what you see in Senator Avery's bill and current law, and it would leave a natural gas company with the complicated question of deciding which body of law to follow: this LB533 or existing law. For that reason I really think that there's something simpler, perhaps less confusing, a more consistent way to skin this cat, and we'd be happy to sit down with Senator Avery and this committee and discuss that. [LB533]

SENATOR ASHFORD: Okay, Andy. Thanks. I don't see any questions from Mark. Thank you. [LB533]

ANDY POLLOCK: All right. Thank you. [LB533]

SENATOR ASHFORD: Any other opponents? Neutral? Senator Avery. [LB533]

SENATOR AVERY: I know you're tired of hearing from everybody but I do have... [LB533]

SENATOR ASHFORD: No, we're not tired. These are comfortable chairs. [LB533]

SENATOR AVERY: I just wanted to say that you did not hear any testimony in opposition to this bill that cannot be reconciled with the overall purpose of the bill. And I

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would just say, just finally, let's not let perfection be the enemy of good. Thank you.
[LB533]

SENATOR ASHFORD: (See also Exhibit 16) Okay. Thank you, Senator Avery. And that concludes the hearing on this bill and all the bills. [LB533]