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Transcriber's Office

Banking, Commerce and Insurance Committee
February 01, 2016

[LB837 LB942 LB1035 CONFIRMATION]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, February 1, 2016, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB837, LB942, LB1035, and a gubernatorial appointment. Senators present: Jim Scheer, Chairperson; Matt Williams, Vice Chairperson; Kathy Campbell; Nicole Fox; Mike Gloor; Brett Lindstrom; and Paul Schumacher. Senators absent: Joni Craighead.

SENATOR SCHEER: Welcome to the Banking, Commerce and Insurance Committee hearing. My name is Jim Scheer. I'm from Norfolk; I represent the 19th Legislative District. I serve as Chair of the committee. The committee will take up the bills and confirmation hearings as they are posted. Our hearing today is your part of the public process. This is your opportunity to express your position on a proposed legislation before us today, or in this case--hearing. The committee members will be coming and going during the hearing. It's not that we don't have interest in the things that are going on in front of us, but we all have bills that we need to introduce in other committees and we may have to leave for a short period of time. Please don't take that as our lack of interest. To better facilitate today's proceeding, I would ask you to abide by a few of the following procedures. First of all, make sure your phones are on silence or at least...or turn them off. The seats in the front, if you could move to those reserved chairs if you're going to testify so that we have an idea of how many people are left to testify. The order of testimony will be an introducer, proponents, opponents, neutral capacity, and closing. Testifiers need to sign in. There are pink sheets in the back that look a lot like this. If you're going to testify on either one of the bills or for the confirmation hearing, you will need to fill that out and hand it to Jan, the committee clerk, to your far right. When you testify, please...the first thing I would request you do is to spell your name so that it can be recorded correctly in the testimony. I would ask you to be concise, and we request that your testimony be limited to no more than five minutes. You will notice that there are some lights in front of the testifier's chair. There's a green light; it will be on for the first four minutes of your testimony. There is a yellow light that will turn on for the last minute. The red light comes on at the end of the fourth minute at five minutes. That is your cue that you should be done by then. And if you haven't gotten that clue, I will help you determine that. So it's always better for you to do that than me. If you do not want to testify, but want to go on the record as being supportive of anyone or anything, there are some sign-in sheets in the back that you can notate your support or opposition to. And those will become part of the record. The sign-in sheets will become exhibits in the permanent record of today's hearing. So if you choose not to and you would still like to be on the record of anything, those are your opportunities to do so. If you have written testimony and you don't have ten copies, which we will need, either one of the pages will be more than happy to make those for you. But please come up and get a hold of them before you testify so that they can be handed out during your testimony. To my immediate right is my committee counsel, Bill Marienau, who has served 37 years and 38 sessions. Not sure how that has worked, but that's the case. To my

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left...the far left is committee clerk, Jan Foster. Again, one of those anomalies, she has been here for 33 years, but 34 sessions. I would now like the committee members to introduce themselves. We'll start with Senator Schumacher.

SENATOR SCHUMACHER: Paul Schumacher, I represent District 22 in the Legislature. That's Platte, and parts of Colfax and Stanton Counties.

SENATOR FOX: Senator Nicole Fox, District 7, south Omaha and downtown.

SENATOR LINDSTROM: Brett Lindstrom, District 18, northwest Omaha.

SENATOR WILLIAMS: Matt Williams, District 36, Dawson, Custer, and the north part of Buffalo Counties.

SENATOR CAMPBELL: Kathy Campbell, District 25, east Lincoln.

SENATOR GLOOR: Mike Gloor, District 35, Grand Island.

SENATOR SCHEER: And Senator Craighead is absent today. She will not be able to attend. Our pages are Kaylee Hartman from Douglas and Jake Kawamoto from Omaha, sitting over here. The committee, as I said, will take up in order. I would be remiss not to say that there are not, sort of, an unusually high number of turnouts for a banking and insurance hearing. (Laughter) I see a lot of familiar faces out there. For those of you that are down, you, as well, are welcome to testify during the hearing process or confirmation hearing if you so like. It's not limited to anyone in particular. This is your process, so by all means feel free to. Again, going back to the pink sheet, fill that out so at least you can hand it to Jan when you come forward. And with that we will start today's hearing. The first one will be the confirmation hearing of Courtney Dentlinger for the Department of Economic Development. Welcome, Courtney.

COURTNEY DENTLINGER: Thank you, Senator. [CONFIRMATION]

SENATOR SCHEER: And I understand that you have a prepared statement that you'd like to discuss with us and so I will let you open on behalf of yourself. [CONFIRMATION]

COURTNEY DENTLINGER: (Exhibit 1) Thank you. Good afternoon, Chairman Scheer, and members of the Banking, Commerce and Insurance Committee. For the record my name is Courtney Dentlinger, C-o-u-r-t-n-e-y D-e-n-t-l-i-n-g-e-r. It's an honor to appear before you today

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as the professional selected by Governor Ricketts to serve as Nebraska's Director of the Department of Economic Development. I'm excited to serve in this role and am elated to have the opportunity to work hand-in-hand with communities and economic development partners to help grow my home state. There truly is no place like Nebraska. A little bit of background about myself for those of you who are not familiar with me. I was born and raised in Nebraska and pursued my undergraduate studies here and then moved to Washington, D.C., to pursue my law degree at the George Washington University. I remained in D.C. for a number of years after graduating and thoroughly enjoyed my time in our nation's Capitol. I had the opportunity to work on policy at the federal level, which was very rewarding. But I missed my home state; I missed the people. I wanted to raise my children here because I wanted to have them to have a childhood like mine surrounded by caring, hardworking, community-minded people. And I wanted, as so many young professionals do, the opportunity to truly engage in my community and make it a better place. I moved back to Nebraska in late 2004, and since that time have had many opportunities which put me on the path to this position. After spending a couple of years practicing law in Norfolk, I was recruited by Northeast Community College to join its administration and help lead its efforts to build resources for innovative partnerships and programs it was developing to serve its students and all of northeast Nebraska. My time in higher education and the relationships I built within the business community during that time helped me to understand the significant work force shortage our employers are dealing with. With the city of Norfolk...when the city of Norfolk and Madison County decided to partner and revitalize their economic development efforts, I was chosen to build an economic development department from the ground up. Working to grow the Norfolk area was a labor of love. Being entrenched in economic development work at the municipal and county level gave me a clear understanding and appreciation of some of the hurdles we need to surmount in order to increase development in our state. My work experience has provided me with significant knowledge of business attraction, existing business development, entrepreneurial assistance, targeted industries, site and infrastructure development, project management, and program administration. It's also allowed me to build relationships across the state within the economic development community. In my role as the director of the Department of Economic Development, I will work tirelessly to promote our state, welcome business investment, and help our existing businesses grow. The department has a dedicated staff who have built a solid foundation for community and business development. I would like to share a few of the business incentive programs administered by the department. The Site and Building Development program is used to make industrial and commercial sites ready for business operations and growth. The Business Innovation Act programs assist start-up companies with innovative and technological ideas to pursue necessary research, build prototype of a product or process, and work toward commercialization and growth of their business. The job training grant program provides financial resources to businesses that maintain, expand and diversify the state's economic base by retaining and creating jobs in our economy. These are essential tools for growing our state. And I want to thank you for your support of these programs. I will also work in this capacity to let others know

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that Nebraska has good jobs in great communities. We want to attract talented work force to our state. In order to do this, we need to have strong communities. The department will continue to make investments in communities through the Community Development Block Grant program, the HOME Investment Partnership program, the Nebraska Affordable Housing program, and the Civic and Community Center Financing Fund. It's important that we make investments in our work force by providing them with the right training and education. The Department of Economic Development, in concert with our partners at the Departments of Education and Labor will focus on retaining existing talent, attracting new talent to our state. The Governor's Developing Youth Talent Initiative is helping to create a talent pipeline to attract and retain high-skill, high-wage jobs in Nebraska. Through this program, the department selects up to two private industry grant recipients in the manufacturing and technology sectors. These grant recipients administer a program that offers career exploration to students beginning in the seventh and eighth grades. We are excited about the opportunities that this new initiative is going to bring to our state. I want to build on Nebraska's strengths while seeking innovative approaches to economic development here in our state. In order for us to remain competitive, we need to continue to review, evaluate, and modernize our state incentive programs. We also need to strategically and effectively market our state. Nebraska is a great place to live and work. And while humility is a very noble quality in an individual, I believe we've been too humble as a state. The department is currently working on revamping its branding and marketing strategy. I look forward to sharing that with you as we finalize it and look toward rolling it out. In addition, the department has hired SRI International, a nonprofit, independent research center to do a comprehensive review of our state's economic development programs. Their report will help to inform our incentive modernization efforts with the ultimate goal of revamping existing programs where needed, determining whether there are new programs that should be implemented here in Nebraska, and finding ways to measure the success of these programs. We'll be involving key stakeholders in this process as we lead the effort. I've already been meeting with individuals and groups representing economic development, business and industry, education, community development, and housing interests across the state of Nebraska. I'm excited to visit additional communities, businesses, and organizations to build upon the partnerships necessary for successful economic development. Strengthening Nebraska's economy, continuing to improve our communities, and creating quality, good-paying jobs will not only be my mission, but my passion. I am proud to serve with Governor Ricketts and to serve my home state. Thank you for your time. And I'm happy to answer any questions you may have. [CONFIRMATION]

SENATOR SCHEER: Thank you. I just wanted to clarify, you grew up in Nebraska, could you be more specific about that. (Laughter) [CONFIRMATION]

COURTNEY DENTLINGER: I grew up in the 19th District, Senator. [CONFIRMATION]

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SENATOR SCHEER: The 19th District. [CONFIRMATION]

COURTNEY DENTLINGER: The 19th District. [CONFIRMATION]

SENATOR SCHEER: Well, this hearing is closed then. [CONFIRMATION]

COURTNEY DENTLINGER: In beautiful northeast Nebraska. [CONFIRMATION]

SENATOR SCHEER: I thought there was just something that resembled a very good intelligent person. Are there questions? Senator Williams. [CONFIRMATION]

SENATOR WILLIAMS: Thank you, Senator Scheer. And thank you, Ms. Dentlinger, for being here and serving our state. There is probably nothing more important than finding ways to grow our state. And I'm sure that that's what Governor Ricketts has asked you to do. Two questions...or a two-part question: in my district and primarily in the larger communities: Gothenburg, Cozad, Lexington, Broken Bow, what I hear constantly from employers is that we have jobs that they cannot fill because we do not have the availability of housing in our communities. So I'd like you to address your thoughts about that. The second issue is that I hear consistently, not just there, but across the state in my economic development work is the need to protect Tax Increment Financing in its current form because it is one of the most important tools that has consistently helped our communities grow. And I'd like to hear your comments on both the housing and Tax Increment Financing. [CONFIRMATION]

COURTNEY DENTLINGER: Absolutely. And I think this is where coming from a community perspective helps me to understand some of the very real issues that our communities are facing. We had the same issues in Norfolk and in Madison County with respect to housing. It's not an issue that economic developers would typically work in, but we heard over and over from employers that they were unable to attract the work force that they needed because these folks simply couldn't find places to live in their communities. And so it's something that I want to take a close look at--what can be done from a state perspective. How can we help communities to solve their housing issues. I headed up a task force when I was in Norfolk in partnership with the Norfolk Area Chamber of Commerce to look at this over a period of a year working with developers, real estate professionals, builders, bankers, and employers, to determine really what are the causes of this problem and what can be done to address it. Unfortunately, it appears there are myriad issues at play when it comes to housing, all the way from wages of varying work force to increasing costs for development, lack of economies of scale, particularly in more rural areas like Dawson County and Madison County. The financial crisis of 2008 with banks tightening up access to funds for developers and for builders to go out and do speculative builds. So it's going to take a concerted effort to really understand all of the issues at play so that we can

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focus on solving this issue. And I'll be looking at what role the state can play in that issue. With respect to Tax Increment Financing--it's a great tool for local community development. We utilized it in Norfolk very conservatively. But I believe that communities need to have tools at their disposal. There are limited options, typically, for communities. TIF and what we refer to typically as LB840 or LOMEDA (Local Option Municipal Economic Development Act) funds are generally the two options available at the municipal level. If we don't have tools available at the municipal level, it makes it much more difficult, folks are then looking to the state for other very limited resources. [CONFIRMATION]

SENATOR WILLIAMS: Thank you. [CONFIRMATION]

SENATOR SCHEER: Thank you, Senator Williams. Senator Schumacher. [CONFIRMATION]

SENATOR SCHUMACHER: Thank you, Senator Scheer. And thank you for your testimony and your interest in serving Nebraska. Let's propose for a moment that we weren't so preoccupied about taxes and just take taxes off the table. What do you see as the greatest efficiency the state needs to address in order to at least be somewhat competitive with the Sun Belt states and the states that don't have to worry about a blizzard tomorrow. And what's our biggest structural, inherent deficiency? [CONFIRMATION]

COURTNEY DENTLINGER: I'd have a hard time picking between two challenges that we face right now. One is work force, lack of people with our low unemployment rate. It's difficult to find the number of folks that you need, quality applicants for jobs. And so I hear over and over from employers who are trying to fill positions that the sheer lack of people available. We have very high-quality people in this state, hardworking people. We just don't have enough of them at the moment, and so I'd like us to look at what we can do to retain our youth, to keep them here and tell them about all the great opportunities that we have in the state. And also to recruit back people to the state, especially those who continue to have ties so that we can fill those jobs. We have thousands of open jobs in the state right now. I see this as a great opportunity for us to recruit people here. The second item that I'd say would be a tie would be infrastructure and available sites for development. Quality sites under control that we can use to market our state to potential businesses. [CONFIRMATION]

SENATOR SCHUMACHER: Are you talking office buildings or...? [CONFIRMATION]

COURTNEY DENTLINGER: I'm talking more industrial sites. [CONFIRMATION]

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SENATOR SCHUMACHER: Why are you targeting industrial rather than some of the more sophisticated, high-paying, financial control things? Isn't industrial kind of putting us in a position to compete for...with, essentially a international marketplace of a lot more industrially minded Third World developing countries? [CONFIRMATION]

COURTNEY DENTLINGER: I think we need to take a look at both--at recruiting both the office jobs and industry. We're seeing right now a period where industry is reshoring to the United States because we're seeing some benefits. Labor rates are going up overseas. Energy rates are going down in the United States, and so this is a good opportunity for us to build on what's the second largest part of our state's economy right now. So I'm not saying, certainly, to the exclusion of recruiting office jobs. Those are absolutely something that we'll be targeting as well. I don't see that we have a deficiency there, except from, perhaps, the work force perspective and recruitment of those types of jobs. [CONFIRMATION]

SENATOR SCHUMACHER: The demographics would suggest that at least for rural Nebraska, we are in a decline because the people that we will need have not been born and the people that we have are going to die. And so short of some immigration policy that would bring in masses of people, how do you propose an approach that would cancel out the efforts of the other states to build their work forces as well. Isn't it a known...you know, it's a ball game in which all sides are playing for limited population, limited talent. [CONFIRMATION]

COURTNEY DENTLINGER: I do believe there are some challenges there. We have seen some communities that have done a great job of recruiting folks back, even very rural communities like Ord, Nebraska. They've got a gem there, they've really promoted it. And I think what they've done is challenge a misperception held by young people and their parents who are increasingly making decisions for them about what they're going to study in college and where they're going to go off to be successful, but there aren't opportunities here. I was told growing up--if you want to be successful, you need to move away. And it took someone challenging that with me that I could come back to this state and be successful. Someone challenging that over and over and is actually a former member of this body, Senator Mike Flood, who every time I would see him would ask when I was moving back to Nebraska. And my first thought, which was a misperception, was what opportunities would I have here? So it's unfortunate. And I think there's a lot of work that can be done to counteract the youth out-migration that we have to show folks all the opportunities we have in this state and help them to realize what a great place this is to live and work. Sometimes you don't appreciate what you have until you no longer have it. And that was certainly the case for me. I wanted nothing more than to move when I was young, but once I left, I started to realize all of the special things about the state of Nebraska, and every time I came back, I felt at home. So I'm glad that I returned and I think that's a story that we can tell to others and encourage them to come back and give back to their communities and help us build again. [CONFIRMATION]

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SENATOR SCHUMACHER: Thank you. [CONFIRMATION]

SENATOR SCHEER: Thank you, Senator Schumacher. Other questions? Senator Gloor.
[CONFIRMATION]

SENATOR GLOOR: Thank you, Mr. Chair. And welcome. [CONFIRMATION]

COURTNEY DENTLINGER: Thank you. [CONFIRMATION]

SENATOR GLOOR: If you can bring half the energy that the current and past senators from Norfolk have brought to this job, we're in good hands. And he doesn't have any bills that he is holding of mine that I need to cozy up to him, be nice to him. But you are...it's no secret, you're the second person to fill this position in the past year. And I have no doubt, since you're from Norfolk, that you're up to the challenge. But I don't worry about you so much as...and I agree with you, there are a lot of dedicated staff within the department, you've been on the ground with them now for how long? [CONFIRMATION]

COURTNEY DENTLINGER: Three weeks. I'm starting my fourth. [CONFIRMATION]

SENATOR GLOOR: So how would you measure the attitude and the environment over there? Because this can be a bit unsettling for a department to have gone through what, basically, amounts to a couple of changes in a couple of years. [CONFIRMATION]

COURTNEY DENTLINGER: Um-hum, absolutely. I can tell you that they've been incredibly welcoming at the department. And I feel a very high level of energy. We have a lot of good people that really want to get to work. And they're excited. I'll be working together and in one direction and have someone who is going to be at the department and providing some guidance for a longer period of time. [CONFIRMATION]

SENATOR GLOOR: And I'm impressed with your resume and think you bring a knowledge base that will be helpful. But I really do think your challenge is going to be providing leadership to a group that's probably unsettled, as I said, because of all those changes that have gone on recently. So you seem to have the demeanor for it. And you've certainly been in some positions that would have required you to be a settling presence. But I do think rather than the job detail and expertise you bring, your challenge is going to be within the department getting things settled down a little bit with all of the things that they've been through. [CONFIRMATION]

COURTNEY DENTLINGER: Absolutely, I agree with you, Senator. [CONFIRMATION]

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SENATOR GLOOR: And welcome. [CONFIRMATION]

COURTNEY DENTLINGER: Thank you. [CONFIRMATION]

SENATOR SCHEER: Thank you, Senator Gloor. Senator Campbell. [CONFIRMATION]

SENATOR CAMPBELL: Thank you, Chairman Scheer. And thank you for coming today and appearing before us. What sector of the Nebraska business, if you divided it into sectors, is doing the best job of recruiting a work force, either new people or people back to Nebraska?
[CONFIRMATION]

COURTNEY DENTLINGER: That's a good question and I don't know that I could answer it with just three weeks under my belt. But I'd be happy to inquire and get back to your office. I do think we have a lot of work to do in all sectors with respect to recruiting people to the state of Nebraska. I think we have some pockets of some communities that are doing a very commendable job. One thing that I would like to see and that we're getting under way now at the department is a little more guidance from the state level on how communities could do a better job at recruitment. Some of the metro areas who have some more staff can focus on some of this; rural areas, it's very difficult for them, there's limited staff and limited resources. I'd like to see the department assist in sort of an umbrella role to help communities and businesses in recruiting those folks back. [CONFIRMATION]

SENATOR CAMPBELL: Can I follow up with that? I would have to say...I'm going to put in one...I hope that you talk to them, a suggestion, and that is a company called Hudl in Lincoln, which in my estimation is doing a great job of recruiting people to the technology field. And they would be a very young entrepreneurial firm to talk to. My second question has to do...and I totally agree with you in terms of the communities. There are several of us who sit on the state planning committee which is a committee of senators that looks at issues...big issues down the road. And we would be happy to put you in contact with the gentleman who testified who has looked at communities across the state from a small business perspective and he makes notes and said to us--these are the communities that are going to make it and why. One of the issues that he brought before us, and I just wondered if there had been any discussion for you when you were in your previous job on helping businesses...small businesses on succession planning in the communities across the state. [CONFIRMATION]

COURTNEY DENTLINGER: And may I ask a question to clarify, Senator?
[CONFIRMATION]

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SENATOR CAMPBELL: Sure. [CONFIRMATION]

COURTNEY DENTLINGER: Are you talking about small businesses that are owned by individuals who are looking at retiring? [CONFIRMATION]

SENATOR CAMPBELL: Pretty much so, yes. That are a family business or they've had it and who will keep that business going in our communities across the state? [CONFIRMATION]

COURTNEY DENTLINGER: Yeah, absolutely. I think that's critical, especially for smaller, rural communities if they don't have someone lined up to take over that business, a lot of times what happens is it closes up and it ceases to exist which then begins a downward spiral for the community, especially when those are some essential services. And at the same time, we have a lot of folks who are graduating who may have an interest in moving back to a community and have expertise in that same field, but don't know of the opportunity. It's something that we were working on in Norfolk. There are some challenges. One specifically is that those businesses, oftentimes, are very hesitant to share with anyone that they're looking at closing up or transitioning because they don't want to risk losing clients. So confidential counseling is really what is most important, I think, in those instances. And then somehow finding a way to play matchmaker; to find those individuals who are interested in moving back to their communities, say someone who is just completing dental school, coming back and taking over a dental practice, or an accountant, an attorney, a pharmacist, you name it. [CONFIRMATION]

SENATOR CAMPBELL: Thank you. [CONFIRMATION]

SENATOR SCHEER: Any other questions? I guess I would just close with the comment that I have talked to people in relationship to Norfolk's success in the last four or five years. And they said, oh gosh, boy, she's really been lucky. And my response would be--she's not lucky. People make their own luck and I don't know of anyone that is a harder working, confident, self-driven expert in the field of economic development than you. And I made the point, oh, three or four months ago when some of this started to transpire. And I remember Mr. Shively that was a predecessor years ago, and he did just a phenomenal job and we lost him as well. I think Norfolk is a better place because of you. It will mourn your loss, but we're thankful for all the hard work you did. So thank you. [CONFIRMATION]

COURTNEY DENTLINGER: I very much appreciate that, Senator. And it's very humbling to hear those words. I care greatly about that community. I care greatly about this state. I'm going to bring the same level of passion to this position. But I do want to note that one of my biggest goals is to continue to build upon the partnerships that are in existence and create new partnerships because I certainly didn't do anything alone in the Norfolk area. I worked with a

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number of people and organizations and I plan to do the same thing at the state level because that's where you find true success. [CONFIRMATION]

SENATOR SCHEER: Thank you very much. And we will now open the hearing for any proponents of the nomination. Anyone wishing to speak in favor? And those that might be wishing to testify, if you could move up into the front row so that we can move things a little bit more efficiently if anyone is wishing to testify as well. Welcome, Dr. Chipps.
[CONFIRMATION]

MIKE CHIPPS: Senator Scheer and committee, I'm Mike Chipps, M-i-k-e C-h-i-p-p-s. I'm the president of Northeast Community College, which is headquartered in Norfolk, Nebraska; covers 20 counties and 14,000 square miles, to give you kind of a feel of the vast territory that we cover. So I think that it gives me an opportunity to speak on behalf of Courtney as a proponent. Listening to you senators, I'm not sure why I'm sitting up here to be a proponent, because it seems like you all believe already in what she's doing. So I just want to have a chance to echo that. As the new state director of economic development, I was very pleased...surprised, but pleased that she was considered for this position. Again, like Senator Scheer said, she certainly will be sorely missed in the northeast area, and her work there has been next to none. And I can also speak on behalf of the college; her work at the college has been exceptional as well. So it was disappointing for me to see her leave for the economic development position of the city, but she did an excellent job and so we were able to collaborate with her over the time that she was with us. I spent 35 years in Nebraska community colleges. This is my third community college, and that...and so I've had an opportunity to work with many, many people in economic development. And to be frank with you, I don't know of anybody better than Courtney Dentlinger. She's very bright as you can tell. She's very engaging. And she's extremely articulate. And not only that, she's knowledgeable of multiple levels of government. And she's successfully been able to demonstrate those skills over the years that she's worked at the college and for the city of Norfolk and with her background in Washington, D.C. Courtney has mastered what I call the gifts of negotiation and collaboration. She's exceptional at it. It's natural for her to do that. I watched her many...many different opportunities to see her engage in that way. One example of that is what happened with Tenaska Corporation who was with us and then did not continue with us. In that conversation she turned around with many others, she always gave credit to others. And so it's always a collaborative venture to turn that over to OCT and be able to bring it right back. Now many people would have walked away from that at a great loss and said--well, we just suffered a terrible loss and we can't recover from it. And Courtney is the type of individual that says--let's just figure out how to get this done, maybe with a different company. That shows the type of individual that she is, but to me that was amazing of what she was able to pull off. In summary, Courtney...I think some of the greatest assets she has is that she listens actively, she speaks carefully, she acts deliberately, and accomplishes significantly. And finally, I believe you're making an excellent choice for the state of Nebraska to put her in this position. And

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definitely not on my performance, I'm one of her greatest cheerleaders in this effort. And her dad, Lee, behind me said if I didn't make comments that I'd pay the price. Just kidding. (Laughter) Thank you. Oh, do you have any questions? I doubt if you. [CONFIRMATION]

SENATOR SCHEER: Thank you. Any questions for Dr. Chipps? [CONFIRMATION]

MIKE CHIPPS: Thank you. [CONFIRMATION]

SENATOR SCHEER: Seeing none, thank you. Next proponent. Welcome, Mr. Zimmerer. [CONFIRMATION]

MARK ZIMMERER: Thank you, Chairman Scheer and committee members. I'm Mark Zimmerer; president and CEO of the Norfolk Chamber of Commerce. Last name Z-i-m-m-e-r-e-r. And first of all, I believe probably is not one person in this room that's worked with Courtney more than I have on a daily basis. We would frequently exchange e-mails and texts throughout the day and on weekends. And I can remember one we were talking about OCT, a new company coming to town. And it was a weekend and I texted her with some ideas and she said--get to enjoying your family, Mark, quit thinking about this. So she is a very good leader. She is family oriented. I think the one word that comes to mind when talking about Courtney is "inclusive." She is a very inclusive leader. She brought partnerships together. I believe we were working...we formed the mayor's work force task force to address some of the issues we talked about today with work force recruitment in Norfolk. Had a steering committee we worked on for over a year. In the efforts we hired a full-time work force recruiter that's housed in the chamber. And I remember putting together the PowerPoint presentation for that and I'm only saying this because it kind of echos what was said here today. We have...we're asking sponsors to come in and help us pay for this position. And at the end of our PowerPoint we put at the end--and yes, we're also working on housing. (Laugh) And so we were just doing those in concert with one another because we know the importance of that. But she really did help drive Norfolk into being forward thinking, and maybe even further ahead than where the state was as far as work force recruitment and so forth. So we're very excited. We always look to the state to help us kind of push us along. But in a sense, Norfolk was really proactive in the work force recruitment area. And so we're very excited about what she brought to the table. You know, I'm not an eloquent speech maker like my fellow...Dr. Chipps is, but I just had...I felt compelled to come up and tell you what an excellent choice you guys have made. And I couldn't be prouder of her. Any questions? [CONFIRMATION]

SENATOR SCHEER: Thank you. Any questions? Seeing none, thank you very much. Any other proponents? Welcome. [CONFIRMATION]

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PAT HAVERTY: Good afternoon, Senator Scheer, members of the committee. My name is Pat Haverty. H-a-v-e-r-t-y. I'm the vice president for Economic Development at the Lincoln Chamber of Commerce. I'm actually here today representing the Nebraska Economic Developers Association. I'm the secretary of that board. I'm here in support of the pending confirmation of Courtney Dentlinger as the Director the Nebraska Department of Economic Development. As a board member of the statewide association of economic development professionals I'm proud to support the confirmation of one of our own to this important position. Our board of directors has voted to recommend this action. Department of Economic Development is a lead agency for our profession and we believe the selection of Courtney is an excellent combination of local experience, state familiarity, and proven professional abilities as witnessed in the great projects happening in the Norfolk area recently. While we're assured Norfolk is sad to lose her, we're confident her skills will be well suited to lead the agency into the future. Please give her confirmation all due consideration and name her as the next director of the Nebraska Department of Economic Development. Thank you. I'd be happy to answer any questions.

[CONFIRMATION]

SENATOR SCHEER: Thank you. Any questions? Seeing none, thank you very much. Are there any others that wish to speak as a proponent to the nomination? Seeing none, are there any opponents to the nomination? And are there any that would wish to speak in a neutral capacity? Seeing none, this confirmation hearing will be closed and we should be making a determination of our support probably this evening in executive session. So we will get back to you at that point. Thank you for coming. We will now move to the first item on today's agenda, LB837. Senator Williams, the Vice Chair. [CONFIRMATION]

SENATOR WILLIAMS: Thank you, Chairman Scheer. We will now be opening the hearing on LB837 which is Chairman Scheer's bill to introduce. Again, we would ask anyone who is going to be testifying in favor of this legislation to move to the seats in front and we'll use the same format. Senator Scheer, you're welcome to open on your legislation. [LB837]

SENATOR SCHEER: Thank you, Vice Chairman Williams. This bill would amend the manner in which premium taxes are computed and paid by surplus lines licensees when they are placed nonadmitted and casualty insurance. Currently when nonadmitted insurance covers risks solely in Nebraska on behalf of an insured whose home state is Nebraska, premium tax in Nebraska is computed at the Nebraska's 3 percent rate. When nonadmitted insurers covers risk both in and out of Nebraska, then the portion of the insurance attributable to the in-state risk the premium tax is computed at the Nebraska rate of 3 percent and for the portion of insurance attributable to out-of-state risk, the premium tax is computed at the rate applicable in the state where each risk is located. These amounts are paid to our Director of Insurance. Under the bill, this process is streamlined. The focus shifts more to the home state of the insured. The surplus lines licensee would collect and pay the director a sum based on total gross premiums charged for surplus lines

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insurance provided by the licensee on behalf of an insured whose home state is Nebraska. The sum payable would be 3 percent of the premiums for the insurance that covers risks anywhere in the United States. That is one rate for risk anywhere when the insured home state is Nebraska. The bill would also eliminate authorization for our Director of Insurance to enter into nonadmitted insurance multi-state agreement to facilitate the collection, allocation, and disbursement of the premium taxes attributed to the placement of the nonadmitted insurance that dates to 2011. Apparently, all that did not pan out as expected. The bill would become more operative on January 1, 2017, to give those concerned time to gear up for the new system. I would urge the bill to be advanced to the General File. I'd be glad to answer whatever questions I might know or have knowledge of. Otherwise, there will be others testifying after me that will have more knowledge in this area. [LB837]

SENATOR WILLIAMS: Questions for Senator Scheer? Yes, Senator Campbell. [LB837]

SENATOR CAMPBELL: Did you want to talk about the fiscal note at all, Senator Scheer? Thank you, Senator Williams. Thought you might want to make comment about it. [LB837]

SENATOR SCHEER: I guess I hadn't noted it. I was gone when it came back Thursday when I was gone. [LB837]

SENATOR CAMPBELL: And we can look at it later, Senator, that's fine. [LB837]

SENATOR SCHEER: Okay. And perhaps somebody else will acknowledge that later as well. [LB837]

SENATOR WILLIAMS: Any additional questions? If not, thank you. We would invite the first proponent of this legislation to the stand. [LB837]

JOHN MEETZ: (Exhibits 1 and 2.) Thank you, Senator Williams. Members of the committee, my name is John Meetz, J-o-h-n M-e-e-t-z, and I represent the National Association of Professional Surplus Lines Offices. We are located in Kansas City, Missouri; affectionately termed NAPSLO. We represent surplus lines insurers and brokers who...give you a little background on surplus lines. It's not something most folks know a lot about. Essentially, surplus lines covers unique and high-capacity risks that are declined by the admitted market. These are anything from huge oil rigs off of the Gulf Coast to a baseball player's arm, something like that, and everything in between. We brought this bill forward, but to give you a little background on how it came about, there's a bit of a narrative. The Nonadmitted and Reinsurance Reform Act is a federal law that passed in 2010. And this was a great bill for our industry because what it did

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was it standardized the regulation and taxation of multi-state surplus lines transactions. If I can direct you to my testimony, on page 2, there is a graphic that kind of gives you an idea of what the process was like prior to the passage of the NRRRA. As you can see, it is significantly streamlined. Now only one state has control over the regulation and tax of the surplus lines transaction. That being said, the NRRRA also allowed states to voluntarily join into compacts. One of these compacts that was developed early in the process was the Nonadmitted Insurance Multistate Agreement. I'm going to kill you with acronyms today. The NIMA agreement essentially allowed states to share their multi-state risk so that if somebody was placing...if a Nebraska insurer was placing insurance on a risk that's located in both Kansas and Nebraska, essentially the states would share the portion of the tax revenue based upon where that risk is located. The problem with this agreement is that we quickly found out that it was costing more money to collect and redistribute this tax than the amount of money that was actually being redistributed. And Nebraska wisely and prudently withdrew from NIMA before it ever got started. Now, however, part of the enabling legislation actually required Nebraska to collect their tax based upon an allocated basis. So currently Nebraska is collecting taxes at other states' rates for multi-state insurance risk. We don't think that makes a lot of sense from the regulator perspective, from the broker perspective, so we're bringing this bill forward. There were a number of states that went through with this kind of preemptive allocation approach. And at this point with kind of the failure of the compacts we're now asking states to go back to the 100 percent home state approach. It is by far the most efficient and prudent way for states to collect this tax, we believe, going forward. So we would ask this committee to recommend our bill favorably. There's one other provision in the bill that I would like to note. It standardizes tax payment and reporting dates for our brokers. The current dates are just a little bit out of line with some of the other states in the region, so we're hoping to try to get as many states on board with the same filing dates as possible just to make things easier for our brokers. With that, Senator, I'll stand for any questions. [LB837]

SENATOR WILLIAMS: Thank you, Mr. Meetz. Can you define for me or give me an example so I understand whether the home state is the domicile of the insured or...tell me what that is. [LB837]

JOHN MEETZ: Yeah, so the home state is defined in the NRRRA as the location of the insured. So the first thing you do is you determine the place of business or the residence of that insured. And as long as even 1 percent of the risk being insured is in that same state as the place of residence, that becomes the home state. If 100 percent of that risk is located outside of the state of residence, that...the other state...the state that has the majority of the risk would then become the home state. [LB837]

SENATOR WILLIAMS: Thank you. Questions for Mr. Meetz. Are you sure? Going...seeing no questions...go ahead. [LB837]

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JOHN MEETZ: Can I note one more thing? About the fiscal note, I think the writers of the fiscal note probably used their best judgment to come up with that number and it probably makes sense. But I would like to note that going forward it's kind of hard to anticipate who will be placing multi-state risks with Nebraska as the home state. So it...I think the writer of the fiscal note probably can see that that note could maybe in the future go either way. [LB837]

SENATOR WILLIAMS: Yes, Senator Campbell. [LB837]

SENATOR CAMPBELL: And we should just note that actually the greater amounts are by the Department of Insurance rather than by the Legislative Fiscal Office. And so it's what's on the front page that we as senators have to pay attention to. Not that we don't take the department into account... [LB837]

JOHN MEETZ: Sure. [LB837]

SENATOR CAMPBELL: ...I'm looking at the director, but for a fiscal note, what we go by is what's up here. So I just wanted to add that to your testimony. [LB837]

JOHN MEETZ: Thank you. [LB837]

SENATOR WILLIAMS: Thank you, Mr. Meetz. [LB837]

JOHN MEETZ: Thank you. [LB837]

SENATOR WILLIAMS: Invite the next proponent. Are there any opponents to this legislation? Anyone here to testify in the neutral capacity? Director Ramage. [LB837]

BRUCE RAMGE: (Exhibit 3) Good afternoon, Vice Chair Williams and members of the Banking, Commerce and Insurance Committee. My name is Bruce Ramage, spelled B-r-u-c-e R-a-m-g-e. I'm the Director of Insurance for the state of Nebraska. I'm here today to testify neutrally on LB837. As you have already heard, LB837 makes a couple of changes to the collection of surplus lines insurance taxation which is administered by the Department of Insurance. The changes that were proposed by the department in 2011 were necessary to address the federal Nonadmitted Reinsurance Reform Act and the manner of the change, a tax collection based on the location of risk was done in anticipation of a compact being formed between the states to share the revenue. After passage of the 2011 law, it became clear that a compact was not in the best interest of our state surplus lines licensees or the businesses that must utilize surplus lines insurance so the compact language being deleted by LB837 has become unnecessary. This

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proposed change, by the way, is my understanding that it still keeps...would keep the Nebraska law in compliance with the Nonadmitted Reinsurance Reform Act. It would also streamline the tax filings by surplus lines licensees and bring the filing dates into conformance with many other states. I am neutral because of a small reduction in state revenue which is indicated on the fiscal note. It is my understanding that this change would place Nebraska revenue from surplus lines tax at a similar level had the department entered into the sharing compact allowed for under the current law. I'd like to note that NAPSLO spoke to the department as they were working up their proposal and they worked well with us in suggestions on the effective dates. I'd like to thank you for the opportunity to testify this afternoon, and I will answer any questions the committee might have. [LB837]

SENATOR WILLIAMS: Questions for Director Ramge? Senator Schumacher. [LB837]

SENATOR SCHUMACHER: Thank you, Senator Williams. Welcome back for the committee. [LB837]

BRUCE RAMGE: Thank you. [LB837]

SENATOR SCHUMACHER: We had no negative testimony. And I take it you're familiar with the pros and cons... [LB837]

BRUCE RAMGE: Yes, yes. [LB837]

SENATOR SCHUMACHER: ...at least if they exist. [LB837]

BRUCE RAMGE: Yes. [LB837]

SENATOR SCHUMACHER: If we had had negative testimony, what would the negative side of this be? [LB837]

BRUCE RAMGE: It would be on the small fiscal impact. I don't see any other downside to this because the way that surplus lines tax is remitted to the state, it's all calculated by the brokers or insurance agent. There's not someone in the large home office company with doing these calculations for them. So it is a little labor intensive for them. And then also just a complicated...complicates the collection process as well. [LB837]

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SENATOR SCHUMACHER: And is that why the initial thoughts of some state regional thing... [LB837]

BRUCE RAMGE: The reason why the compact didn't work out...a couple of reasons from our perspective. First of all, Nebraska was a smaller premium state as the compact was being developed. And the other states were not doing to adjust the timing of how...when they collect the reports, and that was contrary then to the rest of our law. Also, the filing fees were really, we thought, kind of a deterrent to joining a compact. [LB837]

SENATOR SCHUMACHER: Thank you. [LB837]

BRUCE RAMGE: You're welcome. [LB837]

SENATOR WILLIAMS: Senator Campbell. [LB837]

SENATOR CAMPBELL: Thank you, Senator Williams. Director, I just want to give you the opportunity if you wanted to make any comment on the fiscal note versus what the department estimated would be the loss versus what the fiscal office did. And I have a...I've read this several times, but I'm trying to find exactly why there's a discrepancy there. [LB837]

BRUCE RAMGE: Yeah, and, you know, I really don't know...it may be because when the department looked at the amount, we included the TEEOSA amount in there. And I think maybe they backed out the TEEOSA estimate. If that could be the difference. [LB837]

SENATOR CAMPBELL: That could well be. [LB837]

BRUCE RAMGE: But again, it is just...like previously mentioned, it is just an estimate. [LB837]

SENATOR CAMPBELL: It's not a great amount, it's just... [LB837]

BRUCE RAMGE: Yeah, every year the total amount collected on surplus lines tax runs just shy of \$5 million. It's between the \$4 million and \$5 million amount. So this is what part of that amount would be the odd rates. [LB837]

SENATOR CAMPBELL: Thank you. [LB837]

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BRUCE RAMGE: Yes. [LB837]

SENATOR WILLIAMS: Other questions for the director? Seeing none, thank you. [LB837]

BRUCE RAMGE: Thank you, Senator. [LB837]

SENATOR WILLIAMS: Any one else here to testify in the neutral? If not, Senator Scheer. Senator Scheer waives closing. That will close the public hearing on LB837. We'll now open the public hearing on LB942. Again, welcome, Chairman Scheer. [LB837]

SENATOR SCHEER: Thank you, Senator Williams. LB942 would amend the Seller-Assisted Marketing Plan Act and the Franchise Practices Act with regard to the disclosure and enforcement of non-compete agreements. The bill would amend the Franchise Agreements Act to provide that if restrictions in a non-compete agreement are found by an arbitrator or a court to be unreasonable and restrain the competition, arbitrator or court shall reform the terms of the non-compete agreement to the extent necessary to cause the restrictions to be reasonable and enforceable. This section would further provide that the arbitrator or court shall then enforce the non-compete agreement against the franchisee in accordance with reformed terms of the non-compete agreement. The bill would define a non-compete agreement as an agreement between a franchise or a franchisee that restricts the business activities in which such person being engaged during or after the term of the franchise. The bill would also amend the Seller-Assisted Marketing Plan Act to provide that if a seller requires a purchaser to enter into a non-compete agreement in a side agreement or an ancillary agreement, the seller shall include a disclosure of existence of the side agreement or ancillary agreement in its updated disclosure document to be filed with the Department of Banking and Finance. That's the outline of the bill. There will be witnesses behind me that can give you greater detail. I would be glad to try to comment on anything that you may have. [LB942]

SENATOR WILLIAMS: Questions for Chairman Scheer? Seeing none, first person to testify in favor of this legislation. [LB942]

JIM OTTO: (Exhibit 1) Senator Williams, members of the committee, my name is Jim Otto, that is J-i-m O-t-t-o; I'm president of the Nebraska Retail Federation. Also a registered lobbyist for the Nebraska Retail Federation and a registered lobbyist for the Nebraska Restaurant Association. I'm here today to testify in favor of LB942 on behalf of both associations. First of all, we would like to sincerely thank Senator Scheer for introducing LB942. We view this as an economic development issue because passage of LB942 will put Nebraska on an equal footing with at least 39 other states when it comes to franchise law. I would call your attention to the third bullet point on the handout that you just received and I would like to just read that bullet

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point. It says: "Legislative action is needed to protect both franchisors and franchisees under franchise agreements governed by Nebraska law. In doing so, Nebraska would join the majority of states that allow the severability and judicial reformation of non-compete contracts. At least 39 other states permit or require judicial reformation or..." what they call blue penciling of restrictive covenants. I'd like to go on. Currently under Nebraska law, the courts and arbitrators take an all-or-nothing approach to non-competes in a franchise agreement. If the non-compete is over broad in any of its parts, the whole thing is tossed out and the franchise network is left unprotected from unfair competition. This hurts both franchisors and franchisees. This bill would put Nebraska with the majority of states that allow what's called blue penciling or judicial modification. In short, it will allow the arbitrator or the court to determine a reasonable amount of compete clause rather than throwing the entire non-compete clause out. Let me give you a quick example that shows the benefits of franchise agreements for both the franchisor and the franchisee. Bear with me on this: let's say a franchisor called "Otto's Omelettes" has developed a very successful and highly sought after restaurant franchise and there are two Otto's Omelettes franchises in Lincoln. Oscar has the north of O Street franchise and Felix has the south of O Street franchise. Business is good. Oscar decides to open up another restaurant, but does not want to compete with his existing restaurant north of O Street. He knows the recipes; he knows the equipment that works best, and he will even use the same menu. He'll just change the name to Oscar's Omelettes instead of Otto's Omelettes and open a restaurant on the south side of O to compete with Felix. What would Otto's Omelettes do? They would look to the courts or an arbitrator to uphold the non-compete agreement to keep Oscar from setting up a store in Felix's territory. Under present Nebraska law, the court or arbitrator would throw out the entire non-compete clause which financially damages both franchise or franchisee significantly. LB942 would allow courts and arbitrators to determine a reasonable non-compete like 39 other states do. This bill would provide a remedy in the situation described above and put Nebraska in sync with the majority of states that allow what's called blue penciling or judicial non-modification and it would just apply to non-competes in the franchise context. It would not apply to non-competes in the employer/employee relationship. I would simply urge you to move the bill forward and that ends my testimony. Thank you. [LB942]

SENATOR WILLIAMS: Questions for Mr. Otto? Seeing none, thank you for your testimony. Next proponent. [LB942]

DEAN HEYL: (Exhibits 2 and 3) Senator Williams, members of the committee, my name is Dean Heyl, that's D-e-a-n H-e-y-l. I'm the vice president of government relations for the International Franchise Association and I'm happy to support this bill. The IFA, International Franchise Association, we represent franchisees, franchisors, and also the suppliers that assist both the franchisee and franchisor community. And I'd just like to give you kind of an overview of how franchising impacts Nebraska right now. We're responsible for about 136,000 jobs. Additionally, there's about 8,000 establishments statewide. And these businesses range from the

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quick-service restaurants to professional services, and also to hotels. And LB942 provides the necessary certainty for franchisors and franchisees regarding the protection of proprietary information and also protected territories. And that's why all three groups are in support of the bill. I'm happy to take any questions that you may have. [LB942]

SENATOR WILLIAMS: Questions for Mr. Heyl? Yes, Senator Schumacher. [LB942]

SENATOR SCHUMACHER: Thank you, Senator Williams. And thank you for your testimony today. Essentially what this is, is the parties come to an agreement, franchise agreement, they all signed off in blood and that's how they're going to conduct their affairs. And this, as well, as to the non-competes if for some reason a court or one of the parties raises a question before a court or an arbitrator the arbitrator or the court can rewrite that part of their agreement. [LB942]

DEAN HEYL: Senator, correct, the provision, the unreasonable provision of the non-compete agreement. Now a non-compete agreement may have many, many sections to it. But all this says is that the court and arbitrator, rather than throwing out the complete non-compete agreement, this says--look, we will modify it and fix it so it is reasonable so the entire non-compete agreement can move forward rather than throwing out the entire non-compete agreement. [LB942]

SENATOR SCHUMACHER: So it can edit out a sentence or change the terms of a sentence or the measuring sticks of a sentence? [LB942]

DEAN HEYL: To give an example of an unreasonable provision: suppose there was like a provision in the non-compete agreement that said 2,000 miles that you couldn't ever establish another Otto's Omelette. The court could say--look, we'll bring it down to ten and make it reasonable. And then that would be what the non-compete agreement would be between the two parties. [LB942]

SENATOR SCHUMACHER: So is there any other place in law where we have an agreement where if there is a sticky issue the court can rewrite the agreement? [LB942]

DEAN HEYL: If I may, I think you may be trying to get to the retroactivity (inaudible). [LB942]

SENATOR SCHUMACHER: (Inaudible) I'm just asking, I mean if we... [LB942]

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DEAN HEYL: To answer the question, and I'm sorry to interrupt, what this is, is that the right of the non-compete agreement, the provisions that are in it, they do not vest until there's a natural breach. So what all this is saying is that the nonreasonable provision of the non-compete agreement, if it's brought up, is that it allows the courts to remedy it. Now currently...under current law, the parties have reached a non-compete agreement that they had signed and the courts have the ability to throw the entire thing out. What this says is that if you have 99 out of 100 provisions that you agree with and that are reasonable, the courts are only going to modify the unreasonable provision of that non-compete agreement. So currently, there is that ability of the courts to come in and change the agreement between the two parties. [LB942]

SENATOR SCHUMACHER: By throwing out the whole... [LB942]

DEAN HEYL: By throwing out the entire thing. [LB942]

SENATOR SCHUMACHER: Well, but how is this different than if I take out a loan and the loan has got a mortgage attached to it and some of the mortgage has some really extreme provisions in it that say that if I default I lose my equity and I just got to go home with no equity. And I signed that up with the banker and now the law changed to say, well, you know, if a court finds that is an unreasonable provision of the mortgage, instead of declaring the mortgage invalid, the court can come in and rewrite that provision of the mortgage. That right doesn't exist anywhere else in the system unless you can tell me where...where a court or an arbitrator can rewrite an agreement that's been entered into by two parties with legal counsel and maybe one of the parties is saying with advice from legal counsel, you know, this dumb franchise agreement has got a 2,000 mile range. Courts will never uphold that, don't worry about that part of the agreement because it's never going to be upheld. Go ahead and enter into it. I mean, this monkeys with an established agreement, and in some respects retroactively. [LB942]

DEAN HEYL: Well, I...if I may answer, my expertise rests with franchising, it does not extend to mortgages and I think we are looking at non-compete agreements, which I do believe are different than mortgage agreements. And I understand your...the basis of your concern about the retroactivity, but from my position and from the IFA and from the franchisees and the franchisors we believe that the courts have that ability now to throw out an entire agreement. And I would say throwing out an entire agreement is different and probably more egregious than throwing out just one small unreasonable section. [LB942]

SENATOR SCHUMACHER: What if one of the parties negotiated for that knowing that the courts would throw it out? And that was part of the deal that they...the one side came--hey I want a 2,000-mile restriction. And the other guy says--fine, you can have your 2,000 mile restriction, I'll take that deal because I know it won't be enforced. [LB942]

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DEAN HEYL: To be quite honest, I'm not aware of that many franchisees offering to have a poison pill within their franchise agreements. [LB942]

SENATOR SCHUMACHER: It isn't necessarily a poison pill. They may throw out the agreement. [LB942]

DEAN HEYL: The entire... [LB942]

SENATOR SCHUMACHER: Well, and by that time you know the secrets of the franchisor and everything else and that's what you negotiated for. [LB942]

DEAN HEYL: And that would be putting the onus on the franchisor to draft their non-competes. [LB942]

SENATOR SCHUMACHER: They do anyway, don't they? For the most part, the franchisees don't draft them. [LB942]

DEAN HEYL: It's a give and take between the two parties. [LB942]

SENATOR SCHUMACHER: So the pressure...generally the courts throw out...sympathize in the decision...sympathize with the little guy...the restricted party. [LB942]

DEAN HEYL: Yes. Absolutely. Because in these non-compete agreements, if I as a franchisee signed a non-compete agreement that had an unreasonable provision, let's say 2,000 miles, I would benefit from the example I gave earlier of the court winnowing it down to 10 miles. So it would...the benefits would almost always...and I can't think of a situation where they wouldn't (inaudible) to the franchisee. [LB942]

SENATOR SCHUMACHER: (Inaudible) if they threw it out entirely wouldn't you? [LB942]

DEAN HEYL: Depending on the other provisions in that agreement. [LB942]

SENATOR SCHUMACHER: And isn't by having the fear and the cost and the prospect of legal costs and arbitration and all that, having a fall-back position to--oh, they'll just fix it for you if you're overreaching as a franchisor...encourage the overreaching rather than--oh, if I overreach, I may really get zapped and lose it entirely. [LB942]

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DEAN HEYL: I would respectfully disagree in that the loss of the complete non-compete agreement would create more instability than the loss of one unreasonable provision. [LB942]

SENATOR SCHUMACHER: But when one person hears that, oh, his agreement was reformed or rewritten by the judge, doesn't that create a cascading effect? [LB942]

DEAN HEYL: Depending on the franchisees. Other franchisees may be fine to operate under the current non-compete agreement. [LB942]

SENATOR SCHUMACHER: Thank you. [LB942]

DEAN HEYL: You're welcome. [LB942]

SENATOR WILLIAMS: Other questions for Mr. Heyl? Thank you for your testimony. [LB942]

DEAN HEYL: Thank you. [LB942]

SENATOR WILLIAMS: Proponents? Welcome, Mr. Sedlacek. [LB942]

RON SEDLACEK: Thank you. Senator Williams and members of the Banking, Commerce and Insurance Committee, for the record my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k. I'm here on behalf of the Nebraska Chambers of Commerce and Industry in support of the legislation today. When we first were asked to take a look at this legislation prior to session, Mr. Otto with the Retail Federation contacted us and began a little bit of research in regard to the issue. And it wasn't until last week that the state chamber's counsel recommended that we come in support after review. When you have over...thousands of members looking over your shoulder, you want to make sure that the legislation is not affecting one segment to the detriment of another. And after we thoroughly examined the issue, we believe that it is a fair provision for both parties. What I'd like to do is just mention a couple of things here that just for the record have not been covered. One provision of the bill does apply to the seller-assisted marketing program (sic: plan) or SAMP. If you think of back at school and you saw the Venn diagrams, not all SAMPs are franchises and not all franchises will fall in that SAMP category, but there will be a meeting of one place or another once in awhile. And the issue there is if you have a situation where someone or a business enters into an SAMP agreement and then after that agreement is executed, there are provisions that would require the triggering of an ancillary or sight agreement dealing with non-competes then that should be disclosed. Right now the...essentially, the current Nebraska law requires a filing with the Department of Banking and Finance to disclose the SAMP. But as I say, if it's done on the side, then that disclosure doesn't necessarily take place as a side agreement. So

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this would just provide that if that's the case, then the public...that is, the consumer, the business, whomever enters into that agreement, at least is aware that that is triggered on the annual statement. And that's one provision of the bill. So it's kind of a business or consumer protection disclosure measure. The second part of the bill we talked about a little bit. When looking at other states and how they address the issue, we do...at least what I find in common in research is it appears to be 39 states. It could be actually more, but I think it's 39 states as mentioned before, that either by common law or by statute allow for this type of modification reform. It's kind of like a little bit of a conscionability clause in a contract where that can be thrown out, but not the entire contract. That's a possibility there. But what we're dealing with here is a situation where...actually when it comes down to the meeting of the minds between the franchisor and the franchisee, I think you're promoting a public policy where there's going to be more reasonableness because, essentially, it's a protection of both parties. A non-compete can be either the amount of time after you enter the agreement that you can compete after the agreement is finished or it could be location, geographic, that had been talked about before. It can be where the franchisee is not to set up a second business in competition with the franchise during the term of the agreement. People don't often think of that, they think of it after the agreement or premature breach of the agreement, then there's, you know, to trigger the non-compete provision. So what it does is essentially provide some protection for the franchisor, as well as fellow franchisees. Thirty-nine states, as I say, have said that...or are on board saying--we're not going to throw the baby out with the bath water and devalue the franchise to the detriment of the franchisor and all the franchisees; or even a business partner within that franchise, but rather we're going to...we are empowered to make a modification. Now as a practical matter, we can talk about courts, but I would say...and I don't know if Mr. Heyl would have the statistics available, but it could be north of 90 percent of these agreements are going to go to arbitration. And courts are probably not going to be involved first level in the vast majority of times. So we're dealing really with an arbitration issue as well. And what we're dealing with, too, is a remedy. Remember the classes on remedies is how to keep the contract and keep the provisions best alive just as if you had a severability clause in a statute and take out those particular provisions that are unreasonable. And if there is a challenge and the court or arbitrator finds it to be reasonable, no harm/no foul. If they find it to be unreasonable, the benefit goes, as you noted, Senator, to the franchisee as a general rule. So that gives incentive, also, for the franchisor to be sure that that agreement is as reasonable as possible because otherwise it would devalue the franchise for other franchisees as well as the franchisor itself and the business model would essentially go south. My time is up. [LB942]

SENATOR WILLIAMS: Thank you, Mr. Sedlacek. You talked just long enough for Senator Schumacher to have to leave for another hearing. (Laughter) [LB942]

RON SEDLACEK: And I wanted his questions...to address them. [LB942]

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SENATOR WILLIAMS: Other questions for Ron? Seeing no questions, thank you. [LB942]

RON SEDLACEK: Thank you, Senator. [LB942]

SENATOR WILLIAMS: Other proponents? Opponents? Anyone here to testify in opposition? Seeing none, anyone here to testify in neutral? Welcome, Director Quandahl. [LB942]

MARK QUANDAHL: (Exhibit 4) Thank you. Vice Chair Williams, members of the BCI Committee, my name is Mark Quandahl, Q-u-a-n-d-a-h-l. I'm Director of the Nebraska Department of Banking and Finance appearing here today in a neutral capacity with respect to LB942. The department is charged with enforcing the Nebraska Seller-Assisted Marketing Plan Act, otherwise known as the SAMP Act. The law requires specific disclosures relating to business opportunity plans and the filing of disclosure documents with the department. Sellers who comply with the Federal Trade Commission's rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising" are exempted as long as the franchisor files a simple notice with the department containing its contact information and a brief description of the plan. Annual notices are required if the SAMP or franchise continues to be offered in the state. The overwhelming majority of the filings under this act are made by companies which qualify for the FTC exemption. Over the last ten fiscal years, FTC exemption filings with the department averaged 216 per year, while SAMP filings averaged four per year. LB942 would amend the SAMP Act to require a seller to disclose the existence of any non-compete agreement that it requires of a purchaser. Such agreements may be a side agreement or ancillary agreement. The disclosure is to be made in an original filing or in an update to a disclosure document filing. Our review of the FTC rules show that franchisors are currently required to disclose the existence of non-compete agreements as an integral part of the franchise relationship. As a result, the disclosure proposed by LB942 for SAMP Act filings is expected to have little or no effect on persons who offer these plans. As set forth in our fiscal note, the department anticipates no fiscal impact if the bill is adopted. The department takes no position on the provisions of LB942 which relate to the reformation of the terms of a non-compete agreement. I'd be happy to answer any questions. [LB942]

SENATOR WILLIAMS: Director Quandahl, one question that I have, if they file a notice that there is the existence of a non-compete, do they file the terms of that agreement? [LB942]

MARK QUANDAHL: I believe they do, yes. [LB942]

SENATOR WILLIAMS: Are those public then? [LB942]

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MARK QUANDAHL: Yes. [LB942]

SENATOR WILLIAMS: Okay. Questions? Thank you, Director Quandahl. [LB942]

MARK QUANDAHL: Thank you. [LB942]

SENATOR WILLIAMS: Any other testifiers in the neutral capacity? Seeing none, Senator Scheer, would you be sure that Otto's Omelettes delivers tomorrow? (Laughter) [LB942]

SENATOR SCHEER: Actually, I'm not sure they have a snowmobile to do that. I was not going to close, but just wanted to make a couple of comments just for clarification. What we're really talking about is non-competes here and trying to protect both the franchisor and the franchisee so that neither one can be unreasonable. In doing some work with our committee counsel, I just wanted to make note that there's really three types of agreements...or that the way courts will look at this. It's the all or nothing and that's what Nebraska utilizes. If any part of it is nonenforceable then it's all gone and that puts both parties at risk as well, right now what we're doing. The second one would be a strict rule line which means the unreasonable part of a non-compete agreement is severed, but the...and the agreement is not reformed, but the rest of it stays in place. The third would be a reasonable modification and in that case it's the, I guess probably, the liberal blue pencil doctrine which the court would reform an unreasonable non-compete agreement in order to make it enforceable and it protects both sides as well. As was stated earlier in testimony, 39 other states already do one, either the strict blue line or the liberal or both. This legislation simply allows Nebraska to join those other 39 states and not to do either the strict or the liberal, but anything in between...one or the other or a combination of both. So it is much more responsive to the needs of those within the state of Nebraska. So I...and I think it protects...a lot of times I get very curious when I see somebody come in and talk about, well, the franchisor is wanting to have this. But this is something that both sides want. This isn't the big McDonald's Corporate saying--we need this in order to sell burgers in Nebraska. And it's not the franchisees of the McDonald's saying--gee, you got to protect me from Goliath. These are both sides saying, look, we don't want to lose our value in a franchise either as one that bought it or the one that sold it. We want to make sure it's reasonable, and if things change, then we ought to be able to let that do that. And this is not rocket science; it's not trying to reinvent the wheel. This is something that's already being done, literally, in 80 percent of the other states. So this is not a bad item as when I first looked at it. Because I really, I'll be honest with you, when they first brought it to me I looked at it like, oh, I don't know that I want to get involved with, you know, big guy versus little guy. And this is all guys want to protect everything on both sides. So I'd be glad to try to answer any other questions, but I just wanted to clarify, this isn't one versus the other, this is everybody trying to protect a financial investment they've made. [LB942]

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SENATOR WILLIAMS: (Exhibit 5) Questions for Chairman Scheer? Seeing none, thank you. We also have a letter that we will note in the record from the vice president of finance of Hobby Town, Bill Graeve, supporting LB942. Did I say enough? [LB942]

JAN FOSTER: Yes. [LB942]

SENATOR WILLIAMS: Thank you. We'll go ahead and close the hearing then on (LB)942. [LB942]

SENATOR SCHEER: Thank you, Senator Williams. With that, we will undertake our last bill today which would be LB1035. Senator Williams. [LB1035]

SENATOR WILLIAMS: (Exhibit 1) Thank you, Chairman Scheer and members of the committee. My name is Matt Williams, M-a-t-t W-i-l-l-i-a-m-s, and I represent Legislative District 36. I introduced LB1035 at the request of the Secretary of State's Office to update the method by which the master lien list is distributed. By way of background, the master lien list is a central filing system for buyers of agricultural products to verify whether or not there is a lien against the farm products they are purchasing. If there is a lien on the products, the buyer would include on the check the name of the person or the businesses with the secured interest in the product. This gives the buyer assurance and protection that the product they have purchased is cleared of any liens. A buyer who purchases a farm product without checking the master lien list does so at their own risk. The primary users of the master lien list are cooperatives, livestock auctions, and other agricultural business such as cattle feeders who purchase corn for their feed. Currently, the Secretary of State's Office compiles and distributes the master lien list quarterly. The list is mailed to users in a couple of formats. It's either in a CD, microfiche, or paper. Statute also requires the lien list be sent via registered mail. The intent of LB1035 is to allow the Secretary of State's Office to move away from these outdated methods and move the list to its Website. The bill would also strike the requirement that the list be published quarterly so that it can actually be updated more often. Finally, LB1035 changes the definition of farm products to add the term "llamas" and remove "legumes" to match the federal definition. I certainly hope you have questions to me about legumes before the day is over. Since the bill was introduced, we have been working with the Nebraska Livestock Marketers Association to address some questions and concerns that they have about the way the bill is drafted. Specifically, they would like to cap the fee as the Secretary of State charge for no more than \$200 annually for the list and also establish a minimum time frame of monthly between reports. I believe their suggestions improve the bill, and we will circulate an amendment that will incorporate these changes into the provisions. Colleen Byelick from the Secretary of State's Office is here to provide some additional background, as well as some insight into how they plan to manage this list going forward. If you have any questions, I'd be happy to answer them. [LB1035]

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SENATOR SCHEER: Any questions? Seeing none, thank you, Senator. First proponent? I shouldn't say first...are there any proponents? Maybe no one likes it, I don't know. [LB1035]

COLLEEN BYELICK: Well, let's not start on that note. [LB1035]

SENATOR SCHEER: I think everybody is in love with it. [LB1035]

COLLEEN BYELICK: Much better. Okay. Good afternoon Chairperson Scheer, members of the Banking, Commerce and Insurance Committee, my name is Colleen Byelick, I'm the General Counsel and Chief Deputy for the Secretary of State's Office here on behalf of Secretary of State, John Gale, testifying in support of LB1035. First I'd like to thank Senator Williams for introducing the bill on behalf of the Secretary of State's Office. Nebraska is 1 of 19 central filing states for farm products which is certified by the USDA. The Secretary of State is the system operator of the Central Filing System in Nebraska, and in that capacity files effect financing statements, or what we refer to as EFS in our office, as well as amendments and continuations related to those financing statements as statutory agricultural liens. That information is compiled into what's known as the master lien list or sometimes, quarterly buyers report is the more common term for it, in accordance with state and federal law. The central filing system was enacted to promote commerce for agricultural products, protects lending institutions by reporting their financial interests in farm products, and ensuring that they will be repaid when those farm products are sold. In addition, the system allows purchasers of farm products to take those products with clear title, as long as they register to receive the master lien list and tender payment for the product to the seller and any lienholder. Currently, the list is published in a variety of formats on a quarterly basis including CD, microfiche, and paper. The technology that our office uses to produce the list is outdated and costly. During our last budget cycle, the office submitted a technology budget request that included replacement of our existing business services system. That's the system that encompasses all of our corporate filings, our UCC filings, our EFS filings, our statutory ag liens, our state and federal tax liens, etcetera. So over the next two years, our office will be selecting a vendor and migrating our current information and system to a new filing system. And we're hopeful that that will be completed by the end of 2017. While providing this list on CD and microfiche has worked, those mediums are becoming less common and obsolete today. We believe that moving the list to an on-line medium and more easily facilitate the transfer of information in an affordable manner. We believe that this will provide cost savings and the elimination of microfiche production, CD production, and certified mail costs, and would like to move in that direction with the hope that we could implement this for calendar year 2018. With respect to the timing of the list, now it's currently quarterly, in discussions with users of the system and also in looking at what some other states are doing we noted that some are running on a monthly basis and that appears like that may be preferable to a quarterly basis. So legislation allows us to move in that direction. We also, as part of this, understand that we have to update our rules and regulations, as well as our amendment and our

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certification to the USDA. In addition, this legislation, as mentioned, updates the list of farm products that list have changed over time, but the legislation had not been appropriately updated. We understand that this is going to be a change for buyers of farm products and we want to do what we can to ease that transition, however, we do believe that the time is right to make this change due to the larger transition we're making to replace our business services filing system and due to the outdated nature of the current technology and mediums that are being used to provide the list. Thank you for allowing me to appear today. I'll try and answer questions that you may have. [LB1035]

SENATOR SCHEER: Thank you. Any questions? Seeing none, thank you very much for coming down. [LB1035]

COLLEEN BYELICK: Thank you. [LB1035]

SENATOR SCHEER: Good afternoon. [LB1035]

ROCKY WEBER: (Exhibit 2) Good afternoon. Mr. Chairman, members of the committee, my name is Rocky Weber, I'm general counsel to the Nebraska Cooperative Council. We represent 96 percent of the farmer-owned cooperatives across the state of Nebraska. Many of which are grain cooperatives who buy literally hundreds of millions of bushels of grain a year. The Secretary of State's Office has been very cooperative and asked us to be part of the process in reviewing the proposed changes they are making, and we've been able to have input from our members into this process. Like the Secretary of State's Office, our members believe that the current methods of transmitting lienholder information are outdated. It's costly to maintain these old systems. And with electronic communication available today, going to an electronic system would be much more preferable and cost effective and efficient for our members. Basically, the master lien list for buyers of farm products, including the cooperatives, has really worked extraordinarily well in protecting buyers against claims by lienholders for payment made to producers without putting lienholders names on checks. As long as the buyer is registered with the Secretary of State's Office and has not had actual knowledge of any lien that is not listed on the list, then they are protected when they write a check to the producer and just those listed on the master lien list, they don't have to worry about being sued by a lienholder that is not registered with the master lien list. Today that is on a quarterly basis. We agree that the frequency of updating this to a monthly basis would be fine. A little concerned about getting any more than a monthly basis because of the burdens that could put on people writing thousands of checks a day in terms of keeping up with that list. But this has been an indispensable part of commerce with regard to the sale of farm products. And we urge the committee to approve and move on this bill to the floor. Thank you. Any questions? [LB1035]

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SENATOR SCHEER: Thank you, Mr. Weber. Any questions? Seeing none, thank you very much for joining us. Another proponent. Welcome this afternoon. [LB1035]

JERRY STILMOCK: (Exhibit 3) Thank you. Chairman Scheer, members of the committee, my name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my client, the Nebraska Bankers Association, in support of LB1035. The reasoning, the rationale for the bill has been given. I think it would be sufficient to submit my written testimony. Just say that we at the NBA believe the electronic system will be of benefit; certainly support the measure. This wasn't always a law because of the farm crisis that occurred in the 1980s we ended up with this item. It's time to upgrade it, change it, modify it, and we believe the electronic basis would be a way to go about that. Thank you, Senators. [LB1035]

SENATOR SCHEER: Thank you. Any questions for Mr. Stilmock? Seeing none, thanks again. [LB1035]

JERRY STILMOCK: Thank you. Yes. [LB1035]

SENATOR SCHEER: Good afternoon. Welcome. [LB1035]

ROY BARTA: (Exhibit 4) Good afternoon, Senator Scheer, committee, my name is Roy Barta, and I serve as the executive director for the Nebraska Livestock Markets Association. On behalf of the membership of the Nebraska Livestock Markets, we'd like to thank you all for giving us the opportunity to convey to you and the rest of the committee that the Nebraska Livestock Markets Association is a proponent of LB1035 per the amendments. The Nebraska Livestock Markets Association wants to extend their appreciation and acknowledge the cooperative approach with Senator Williams' office in bringing forward the amendments that will all...that with all involved will help achieve the common goal here. By defining the time line in which the master lien list would be updated and establishing the cost associated with it, the members of the Nebraska Livestock Markets feel that LB1035 will accomplish the intended results being sought here. On behalf of the Nebraska Livestock Markets, we'd like to thank Chairperson Scheer and the rest of the committee for acknowledging our comments on LB1035. I'll take any questions if anybody has any. [LB1035]

SENATOR SCHEER: Thank you, Mr. Barta. Any questions? Seeing none, thank you very much. [LB1035]

RAY BARTA: Thank you. [LB1035]

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SENATOR SCHEER: Any other proponents? Are there any opponents to LB1035? Anyone wishing to speak in a neutral capacity? Seeing none, there's nothing to be read into the file. Senator Williams waives closing...without the opportunity to talk about llamas and legumes. [LB1035]

SENATOR CAMPBELL: I know it. I had my...I had like 15 questions. I don't know. [LB1035]

SENATOR WILLIAMS: Would you like me to start reading... [LB1035]

SENATOR SCHEER: They can't hear you when you don't speak. But no, you're excused, Senator Williams. [LB1035]

SENATOR WILLIAMS: Thank you. [LB1035]

SENATOR SCHEER: And that ends the hearing on (LB)1035. Thank you very much. [LB1035]