

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 5, 2018

LARSON: [RECORDER MALFUNCTION] Committee. I'm Senator Tyson Larson of O'Neill, the chair of the committee. Committee members on the General Affairs Committee, to my far right: Senator Blood of Bellevue, Senator Riepe of Ralston will join us in a bit, Vice Chair Senator Thibodeau from Omaha, and Josh Eickmeier the committee legal counsel. To my far left: Aaron Bos the committee clerk, Senator Quick of Grand Island, Senator Brasch of Bancroft, Senator Krist of Omaha, and Senator Wayne of Omaha. There is one sign-in sheet located on the tables at the back of the room. Please be sure to indicate how you would like your participation in the hearing reflected on the committee's record. The first box is for those who want their presence and position noted as an exhibit in the committee records but are not testifying. The second box are for those who are here for today's committee hearing but will only submit written-- who have already submitted written testimony by last Friday in lieu of testifying, which will then be noted on the committee statement. And the third box is for anyone testifying. When it is your turn to testify, please give your sign-in sheet to the committee clerk. This will help us maintain an accurate public record. After each bill introduction the Chair will ask for testimony and support, opposition, and neutral. When you come up to testify please speak clearly into the microphone, state and spell your first and last name, and tell us whether you are representing anyone. We are using the light system for our hearings. Testifiers will have three minutes in which will be represented by a green light when you begin, an amber light when there is one minute remaining, and a red light when your time is up. Please turn up or silence your cell phones and electronic devices that make noise. And if you have a conversation, please keep it at a minimum or take it into the hallway. The General Affairs Committee is a paperless committee. We accept handouts and written testimony electronically. If you have a paper copy, we'll take it and disperse it to the committee at another time. We also do not allow visual aids or other display items. Because this committee is going paperless, senators are allowed and encouraged to use their electronic devices during the hearings. Thank you for cooperation and we'll begin today's hearing with LB734, Speaker Scheer. Welcome to your General Affairs Committee.

SCHEER: Good afternoon, colleagues. My name is Jim Scheer, S-c-h-e-e-r, representing District 19. And if you run late tonight, it's not my fault. I'm here to introduce and close on LB734. The bill had to do with SDLs and special designated liquor license and the overabundance of such. And I wanted to make sure that there was a way

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to protect local business interests in regards to the proliferation of that so that our local bars and restaurants were not taken out of the proper position by the-- on special events. In speaking with the concerned stakeholders, as well as the Liquor Commission, it appears that we can do this by two methods. One, an interim study over the summer to work out some things, and then simply rules and regulations through the Liquor Commission should suffice to take care of it. So I will kindly ask you to just simply IPP it either today or whenever your measure, or just leave it alone. But I am not asking it go any farther, and I believe everything will be worked out. If not, I'll see some of you next year.

LARSON: Thank you, Senator Scheer. All right, by the rules I think we have to accept--

SCHEER: You've got-- I know you have to accept testimony.

LARSON: I think we have to take testimony.

SCHEER: I would hope that there wouldn't be much but I would encourage those that have a stake in this to work through the process so that it's amenable to everyone concerned. So with that, I'd ask any questions on my request for an IPP. I most certainly will as well waive closing.

LARSON: All right, thank you, Speaker Scheer. Seeing no questions. Do I have any-- and mind you, if you did not hear Speaker Scheer, he is asking that this bill does not move forward. If you-- we have to open it up to testimony but please be mindful that this bill isn't going anywhere. Do I have a proponents? Seeing none, opponents? Seeing none, neutral? Come on forward. Welcome to your General Affairs Committee.

MICHAEL MURMAN: Thank you.

LARSON: Please state and spell your name.

MICHAEL MURMAN: Michael L. Murman, M-u-r-m-a-n. I'm owner of Glacial Till Vineyard and Winery, it's a partnership with my three sons. And I'll be testifying on our own winery as well as I am a member of the NWGGA. But I'm testifying on behalf of myself. The reason I'm here is as a winery in Nebraska we definitely oppose this bill as written. I know there's been discussions in the last year, year-and-a-half, about use of SDLs, numbers of SDLs, we've been at the center of some of that. After some of those questions were raised, I met with the Liquor

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Commission. We audited all of our SDLs in 2017, we happened to get probably more than many of the wineries. But what was found out was nearly 70, 80 percent of the SDLs that we took out in 2016 were for us to do farmers markets. And the only product that we brought to those markets was our wine and cider. That's the only way we've found effectively promote both our products as well as visitation at our winery. So in the current form of that bill we could continue to do that. It's kind of the 80/20 rule. We don't make a lot of money at the farmer markets, we make money at our winery. A couple of years ago, actually three years ago, met with the Liquor Commission about expanding and investing a couple of million dollars into our facility so that we could do events. The only way that we can do events, private events, at our winery is with SDLs. To give you some idea, 2016, when we audited them, we did 28 private events out at our winery. 2017, we did 37. We have 46 booked this year. Those are all private events, typically weddings, corporate events, and they like to be able to have full services when they rent our facility. The failure of us to get SDLs in their current form would cost us over half-a-million dollars in business right now. We'd cut our staff by two full-time people and about 15, because we wouldn't need them to do the events. We've had over 20,000 people visit our winery, primarily at weddings and private events, many of them from out of state, which greatly helps the tourism for not only our winery but the industry as a whole. So I'm okay with SDLs being studied, but I think what they'll find is the wine industry is not the people that are abusing them. If we have some other vehicle, some other licensing that we could receive to do private events, we would. But that's the only way we can do them.

LARSON: Thank you. Do I-- I got-- do I have any questions from the committee? Seeing none, I got one question real quick.

MICHAEL MURMAN: Sure.

LARSON: I definitely-- I have a winery in my district as well, and I think that's important as we move in to study SDLs. What if we were, and whether it can be done for rules and regs or we can do something at talking to Senator Scheer, what if it's-- if you're have an SDL on your home, at your home place, then you can have the full-range SDL but if you go off premises then it's just the product that you make? Would that be a compromise? Is that-- because that would ensure what Speaker Scheer's trying to get at, but also give you the ability to have the SDLs for weddings or whatnot. Because I understand with your

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liquor license you can only serve wine unless you have that SDL. And for the weddings, like I said, I have a winery that those SDLs are important for as well. Is that, as we look forward, is that is that a compromise or something?

MICHAEL MURMAN: I mean it's an okay compromise. I would hate to say in every case that that's going to fit every situation, but--.

LARSON: Nothing fits every situation.

MICHAEL MURMAN: But I can tell you, of all the SDLs that we've taken out that we're off-premise, we've only sold our wine on our cider, so that wouldn't greatly affect us in those situations.

LARSON: All right, well, thank you. Seeing any further questions. None? Thank you. Any more neutral testimony? Yes, Les. Welcome to your General Affairs Committee.

RIEPE: Mr. Chairman, was the last speaker in opposition or neutral?

LARSON: We're in neutral. You were in opposition? Okay, I thought you were neutral. I'm sorry. Are you opposition as well? You're neutral, okay. We'll fix that for the record. Thank you, Senator Riepe. Any further neutral testimony? Mr. Meyer, welcome to your General Affairs Committee.

LES MEYER: Thank you very much. My name is Les Meyer, last name spelled M-e-y-e-r. And I just wanted to say I appreciate Senator Scheer bringing the bill forward. I especially appreciate he's willing to work through it. And as representing the Nebraska Wine and Grape Growers, we would offer to be of any help and assistance we could in the study.

LARSON: All right, thank you, Mr. Meyer. Any questions? Seeing none, thank you for coming. Any more neutral testimony? Seeing none, that will close the hearing on LB734. And we will move to LB1120, a liquor omnibus that our legal counsel, Josh Eickmeier will introduce for me.

KRIST: Mr. Chairman, is there a reason why you're not introducing your own bill?

LARSON: Yes. And if you want to talk about it after committee, I would be happy--

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KRIST: I would just like to put it on the record, why aren't you?

LARSON: I would be happy to discuss this with you afterwards, Senator Krist.

KRIST: I think needs to go on the record, Senator.

LARSON: As I said, Senator Krist, I will discuss it with you after committee.

KRIST: So my questions won't be to the chair there, it will be the chair there?

LARSON: We do not ask questions in our committee of other senators, Senator Krist.

KRIST: My point exactly, sir.

THIBODEAU: Mr. Chairman, I would like to back up Senator Krist as to the reasons why you would not present your own bill.

LARSON: Okay. Thank you, Senator Thibodeau. I'm happy to talk to you about it afterwards as well. And Senator Blood?

BLOOD: Yes, Senator. I would ask that the Vice Chair perhaps run the meeting while your bill is up.

LARSON: No. Thank you, Senator Blood. Mr. Eickmeier.

JOSHUA EICKMEIER: Good afternoon, Chairman Larson and members of the General Affairs Committee. My name is Joshua Eickmeier, J-o-s-h-u-a E-i-c-k-m-e-i-e-r, and I'm the legal counsel for the General Affairs Committee and here to introduce LB1120 on behalf of Chairman Larson. As a reference, and for your convenience, my introduction will closely follow the summary that you were sent on Friday. LB1120 contains the following provisions in the order they appear in the introduced copy. Number one, it clarifies on page 2 the fees for beer shippers licenses go to the Nebraska Beer Industry Promotional Fund. In the State Auditor's November 16, 2017, report, it noted a perceived conflict in statute regarding where the shippers' fees were to be deposited. This provision in LB1120 clarifies the Legislature's intent that only the beer shippers' fees were to go to the beer-- to the Nebraska Beer Industry Promotional Fund. Number two, requires third-party shippers to file annual reports with the commission. This is on page 7. This provision is intended to be a resource for the Liquor Control

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Commission in identifying the entities who are directly shipping alcohol into Nebraska, and ensuring that the appropriate taxes and license fees are being paid. This provision would require third-party shippers, such as UPS or FedEx, to file an annual report with the commission. Number three, requires SDL applications to be received within 10 working days prior to the event. But this requirement may be waived by the commission's executive director. This is on page 10. This provision would codify the 10-working-day requirement that is already in the commission's rules and regulations and would address additional concerns raised by the State Auditor in its November 16, 2017, report regarding the commission's process for waiving this rule by granting the commission's executive director the authority to waive this requirement. Number four, on page 10. This is-- these are statutory references that were meant to be removed in the bill and would be removed if there is a committee amendment. Those are mistakenly left in this introduced copy. Number five, allows Class C licensees with a bottling endorsement to increase the size of their growlers from 32 ounces to 64 ounces. This is on page 11. Keep in mind that this current limitation and growler size only applies to Class C licensees with a bottling endorsement and this does not impact craft brewers. Number six, prohibits the commission from requiring a licensee that is renewing its license to submit the long-form application unless the local governing body requests in writing a hearing to determine whether there has been a change in circumstances to warrant requiring the long-form application. This is on pages 11 and 12. The long-form application and its original-- is the original application that an applicant would submit for a license under the Liquor Control Act. The renewal form is a much simpler form and process, and the approval of the renewal is quite common. Number 7, addresses delinquent alcoholic liquor accounts to avoid issues like those present in the Brix situation from a year or two ago. This is where a license, a retail licensee, purchases alcoholic liquor from a distributor on credit and then files for bankruptcy. This provision is on pages 13 and 14. This provision puts into place procedures requiring the commission to keep an updated list of overdue accounts and prohibits wholesalers from selling to retailers who are more than 34 days overdue. Number eight, allows the commission the discretion to suspend a license for a second and subsequent violations of the Liquor Control Act in addition to compliance check violations, which they currently are able to to suspend for. The commission requested this provision to give it more discretion when addressing such violations in the Liquor Control Act. Number nine, allows a party to apply for a rehearing when an application is denied. This is on page 19. Under

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current law, parties may apply for a rehearing of certain commission actions, and this provision would include the denial of an application as one of those actions. The application for rehearing would still have to be made within 30 days after the service of the action. Number 10, prohibits expenditures from the Nebraska Beer Industry Promotional Fund to be used for the salaries or compensation for employees of any licensee or entity representing licensees under the Liquor Control Act. This is on page 21. Under current law, the fund shall not be used for lobbying purposes, and this provision would extend that prohibition to compensation for employees of licensees or entities representing licensees. This additional prohibition is meant to reflect the purpose of the fund, which is to promote research and development of the craft beer industry. Number 11, this includes the Music Licensing Agency Act, and this pages 21 to 26. This act would provide protections for those entities that host live music performances and are being aggressively contacted by agencies claiming to hold the copyrights to the music being performed and demanding a licensing fee. Keep in mind not every agency has been aggressive, but there's been enough of a concern that the Les Meyer, who testified earlier, had brought this to our attention. Also to note that when we did this research for last session it was discovered that there's actually a 3 percent tax that was supposed to be collected from these agencies when they do business in Nebraska. And the fact that only only one agency had been paying that tax. And if you-- in the fiscal note you'll see the estimate of approximately \$100,000 of tax revenue that they anticipate would be collected if-- and this bill puts the responsibility with the Department of Revenue instead of the Secretary of State's Office. And part of the reason for that shift is because they're in the business of collecting and they, they understand how to pursue this I think more efficiently than what's been done in the past. The final two provisions on page 26 and 27 is the severability clause and an emergency clause. And then that's all I have for the bill.

LARSON: Thank you, Mr. Eickmeier. Senator Blood.

BLOOD: Yes, I actually have several questions for you.

JOSHUA EICKMEIER: Yes.

BLOOD: Who brought this bill to your senator?

JOSHUA EICKMEIER: What do you mean, I'm sorry?

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BLOOD: How did your office come upon this bill. Did you just say, hey, I think this needs to be fixed, or did people come to you with these issues?

JOSHUA EICKMEIER: I did not say, hey, this need to be fixed. A lot of this is from the last year's bill. I would say probably-- I'm sorry.

BLOOD: Yes, I remember very well.

JOSHUA EICKMEIER: I would say about a handful of these provisions are from that bill, and the source of some of those comes from the letter from the legislative-- legislator, excuse me, the legislative letter from the liquor Control Commission bring some of these to us, the rest are directed from the Chair for the most part.

BLOOD: So which ones came from the Liquor Commission specifically?

JOSHUA EICKMEIER: Let me look through here. I believe the third-party shippers, number two, was in their letter. Number eight, that allows the commission the discretion to suspend a license for a second and subsequent violation of the act. That's on pages 15 and 16.

BLOOD: Anything else?

JOSHUA EICKMEIER: I believe those are the only ones I have in the bill at this time.

BLOOD: Okay, so we know there are at least two segments of the bill that came from the Liquor Commission. Where did everything else come from? Just things that your office felt needed to be done? Or-- I'm just trying to get my head wrapped around this.

JOSHUA EICKMEIER: Sure.

BLOOD: I have a couple more questions and it will make those questions easier if I can understand this.

JOSHUA EICKMEIER: Of course. A couple of these were from directly from the Auditor's report from November 16. As I mentioned, the Music Licensing Act was from the Meyers. Les and Trish [PHONETIC] Meyer brought that to my attention.

BLOOD: Let's address that, because I feel like I'm making you dig through stuff and I--.

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JOSHUA EICKMEIER: That's okay.

BLOOD: Why didn't, especially after last year's fiasco, why didn't the Music Licensing Act just come as a standalone bill knowing that other things would be so controversial? Because it seems like it's so important and that it's wanted. Why did it get involved in this mess?

JOSHUA EICKMEIER: That I can't answer. The way that our policy has been in the office is that all the issues that come to me are specifically dealing with the Liquor Control Act or liquor licensees are-- I compile them into the omnibus bill.

BLOOD: Sure. And they're germane in general.

JOSHUA EICKMEIER: Yeah. Yes. Generally speaking, they'll be germane. As far as why this was not separate, I don't, that's never been our approach in the committee regarding how we handle the omnibus bill.

BLOOD: Even after what happened last year? I mean, sometimes you have to throw out the good, separate it from the bad. So I have one more question. So I'm looking at page 21, lines 14 through 16, Section 10. And my question is, why?

JOSHUA EICKMEIER: I'm sorry, could you say that again?

BLOOD: Page 21.

JOSHUA EICKMEIER: Okay.

BLOOD: Lines 14 through 16, and I believe it's Section 10, if I'm reading my notes properly.

JOSHUA EICKMEIER: Oh, so this was the-- so you have the Nebraska Beer Industry Promotional Fund, and this, this fund deals primarily with the promotion, research, and advancement of the beer brewing process. And this would be an addition to the existing language which says that none of these, none of the money credited to this account may be used for lobbying purposes. This extends that to compensation for any employee of a licensee or an entity representing licensees. So whether it would be an actual Liquor Control Act licensee or an organization representing licensees would also be prohibited.

BLOOD: Okay, so your intent was so they couldn't lobby, not so they couldn't have an employee?

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JOSHUA EICKMEIER: The original, when this was originally passed, it was the only prohibition was for lobbying. And then this language would also include in that prohibition any compensation for an employee of a licensee or an entity representing licensees.

BLOOD: Okay, I just want to make sure I'm understanding this correctly. Are you saying none of the money credited to the Nebraska Beer Industry Promotional Fund may be used for any type of compensation for any employee of a licensee period, or an entity representing licensees under the Nebraska Liquor Control Act period, or for lobbying purposes? That there's three separate things that you can't do with it. Or are you saying that they're all pertaining to lobbying purposes?

JOSHUA EICKMEIER: No these would be three separate, but I wouldn't put a period after that licensee because--.

BLOOD: No, I'm just saying that to make a point to make sure that I understand it correctly.

JOSHUA EICKMEIER: Yeah, yeah.

BLOOD: So why would we take this away from the beer industry when the wine industry has been doing it? What was the purpose?

JOSHUA EICKMEIER: That was what I was instructed to do.

BLOOD: By whom?

JOSHUA EICKMEIER: Senator Larson.

BLOOD: All right, thank you very much.

SENATOR LARSON: Senator Thibodeau.

THIBODEAU: So on a couple of questions, and I'll try to be light. I know Senator Blood asked you some questions--

JOSHUA EICKMEIER: Sure.

THIBODEAU: --a little hard for you to answer because you are not the senator introducing the bill. So I actually wanted to ask you a little bit about pages 11 and 12. On page 11, lines 27 through 31, why were those put into the bill? And who instructed you to do that?

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JOSHUA EICKMEIER: Sure. Well this has to do with the renewal of the form. Again that was the instruction of the chairman.

THIBODEAU: Okay, so at this point I feel that this committee and this bill cannot get a good hearing because, it's not your fault, but we cannot get the information out of this bill that we need to in order to make a decision on whether or not to move forward. I have no further questions.

LARSON: Thank you, Senator Thibodeau. Senator Krist.

KRIST: Thank you, Senator Thibodeau, Senator Blood, and Senator Larson for recognizing me. And just as a matter of instructional purposes, I'm not going to ask you any questions. You should not be in that chair. You don't, you did not introduce the bill, and you cannot answer every question with "I was instructed by the Chairman because it's his bill." He should be sitting there. But I'll bring to everyone's attention that in that same reference that Senator Thibodeau gave you on page 11, starting with line 27, continuing on to page 12 through line 3 to the period, it references 53-131. And I think to understand the intent of that language in the bill, because 53-131 is not there, go back to your Nebraska Statutes and read 53-131.01: License; application; form; contents; criminal history record check; verification; false statement; and penalty. We can talk about it in exec, but I think it's disingenuous that we can't have a conversation about the real reason that some of these bills are there. That's all I have. Thank you, Mr. Eickmeier.

LARSON: Thank you, Senator Krist. Seeing no further questions, thank you Mr. Eickmeier. I'll take the first proponent to LB1120. Welcome to your General Affairs Committee. How are you, Ms. Weber?

MICHELLE WEBER: Chairman Larson, members of the General Affairs Committee, good afternoon. My name is Michelle Weber, M-i-c-h-e-l-l-e W-e-b-e-r, I'm testifying today on behalf of Kum and Go. Kum and Go is the fifth-largest privately-held, company-operated convenience store chain in the United States, operating 430 convenience stores in 11 states, including 20 here in Nebraska; with stores located in Omaha, Bellevue, Gretna, Papillion, South Sioux City, and Columbus. I'm here today to respectfully request that you support LB1120, specifically Section 4, which would increase the bottling endorsement allowance for Class C license holders from 32 ounces to 64 ounces. Under current law, Class C license holders may apply for a limited bottling endorsement, known as a growler endorsement, to allow for the retail

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of off-sale beer in a sealed container currently not larger than 32 ounces. Kum and Go is interested in investing in Nebraska to offer growlers of craft beer in its stores, as the company currently does in three other states, including Iowa, Missouri, and Arkansas. It's a considerable investment to install taps, dispensing equipment, sanitizing sinks, and to train and devote staff to this endeavor. This is an investment that Kum and Go would only make in Nebraska if this change was made to allow for sales of 64-ounce growlers. This is the standard size of growlers that craft beer enthusiasts are most familiar with. It's the size that most customers want. Furthermore, the larger volume will allow for larger sales volumes to justify the investment. Under current law, the limited bottling endorsement sales can only occur on the licensed premises of the licensee during the hours the licensee is authorized to sell beer. The licensee must use sanitary containers purchased by the customer from the licensee or exchange for containers previously purchased by the customer from the licensee. The containers must prominently display the endorsement holder's trade name, logo, or some other mark that's unique to that endorsement holder, and the licensee must seal the product in a tamper-evident manner. The licensee must also provide a dated receipt to the customer and attach a copy of that receipt to the sealed product. At Kum and Go the lid is heat-sealed and then another tamper-evident seal is placed on top of that, and containers specifically identify the product and the date. Employees are specially trained to follow a standard operating procedure to ensure a quality product is safely and consistently dispensed. Kum and Go works with the distributors to ensure that lines are properly cleaned and maintained. As you can tell, this requires extensive investment, and there are numerous requirements. So bottling endorsement is not something that a license holder would enter into lightly. Kum and Go is committed to making sure that bottling is done right. Nebraska's craft beer industry is growing, and increasing this bottling endorsement allowance would offer an additional outlet for products that consumers are excited to buy. We would appreciate the opportunity to invest and make this offering in Nebraska. We appreciate your consideration and support of Section 4 of LB1120.

LARSON: Thank you, Ms. Weber. Senator Blood.

BLOOD: Thank you, Senator Larson. I want to give you a what if, and I want your honest answer. What if we were to go into executive session on this bill and decide that the only parts we liked about it were,

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say, maybe the growlers and the music licensing? Would you still be supportive of that bill?

MICHELLE WEBER: Yes, we're supportive of our section. That's the one that we're interested in having advanced.

BLOOD: All right, thank you.

LARSON: Seeing no further questions, thank you, Ms. Weber. Next proponent to LB1120. Welcome to your General Affairs Committee.

LES MEYER: Thank you, Chairman, members of the General Affairs Committee. My name is Les Meyer, last name spelled M-e-y-e-r, and I represent the Nebraska Wine and Grape Growers Association. We very much appreciate the opportunity to testify today and stand in favor of LB1120. The piece of that bill that we support is the very end of the bill, the music licensing. You might remember we had this bill introduced last year. It was included into LB632, a bill that became controversial and ended up stalling between General File and Select File. The music licensing part of LB632 was never controversial, it was just tied to some of the bill that was. There are over 2,000 groups and proprietors that deal with music licensing entities in this state. The protections and the guidance of this bill are sorely needed. Some of the horror stories of how some of our wineries and other proprietors have been treated are astounding. The tactics used by these entities are just not necessary. Transparency should be an expectation. This bill should be a step in the directing how these entities can act when dealing with Nebraska proprietors. Currently, a proprietor cannot even get the music licensing entities to tell us who they represent. They will simply say we represent almost everyone and you must license with us. This bill would require them to provide updated information of just who it is they represent so that a proprietor can decide which of the entities they need to license with or if they can even afford to offer music to their customers. This legislation will also address the need for all music licensing entities to register with the state of Nebraska and pay taxes on what they collect from Nebraska proprietors. At the time of filing LB632, only one of the four music licensing entities doing business in Nebraska was paying taxes. It would be my preference that they be required to pay back taxes for all of those years that they've done business in Nebraska. A survey by WineAmerica states that 32 percent of wineries across the United States have either canceled or plan to cancel their live music programs. I guess we're not special in Nebraska. They obviously treat proprietors this poorly all across the

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nation. The issue is being taken up by countless states, some have already passed very similar pieces of legislation and several are in the process. Federally, a bill has been introduced that deals with a part of our issue. It's H.R.3350, called Transparency in Music Licensing and Ownership Act. Congress is simply requiring a database be built by these entities that would provide an accurate and up-to-date database for a proprietor to have access to and allow them to make a good business decision. I liken the way we're treated today as going to purchase a vehicle and being told we've decided you have to buy this one. You don't need to know what color it is or if it has leather seats, and if you ask again how many miles it has on it we're going to sue you. This bill would also give a proprietor a path to file a complaint if music licensing entities treat them the way they have in the past. We would surely appreciate your support of this part of this bill. Thank you.

LARSON: Senator Blood.

BLOOD: I actually have two questions for you. You heard me ask the previous person this question as a what if. What if we were to meet into executive session and maybe only amend it to address the growlers and music licensing fees. Would I be right in what I just heard that you would be okay with that?

LES MEYER: Yes, ma'am.

BLOOD: And then do you think it's important that the craft brewers and the wine industry have, in Nebraska, have an even playing field?

LES MEYER: I think there should always be an even playing field. There are certainly differences in how we operate, but I wouldn't want an advantage over someone else.

BLOOD: So how has the wine industry in Nebraska utilized their promotional fund?

LES MEYER: Well, the way it currently stands, it can't be used for lobbying. We understand that and don't. But I don't have any idea how you could get along without having those funds to, to have an executive director or even administrative help.

BLOOD: Thank you, that was very valuable.

LARSON: Senator Thibodeau.

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THIBODEAU: Thank you, Chairman Larson. Thank you for coming and testifying today. So if I am correct, this portion of the bill that you're interested in is just dealing with the music licensing act. It doesn't affect the way you serve wine, the way you're, you know, handling the liquor license on your wine. It's just dealing strictly with the music licensing, correct?

LES MEYER: That is correct. We were one-- there are 34 wineries in Nebraska, but this, the music licensing problem, exists for 2,000 proprietors: restaurants, bars, and so.

THIBODEAU: So would you think that the music licensing should be a standalone bill since it really is not addressing the alcohol portion of it, it's addressing the licensing portion of music?

LES MEYER: Yes, ma'am.

THIBODEAU: Thank you, no further questions.

LARSON: Senator Krist.

KRIST: I think you and I might be the only people in this room that remember when the wineries were ready to give their taxes to research different kinds of grapes to the University of Nebraska. And I applaud you for that, and the industry that you built. I think that was a good hand-in-glove partnership between the Legislature and your industry. And you should be proud of doing that because I think it's paid big dividends for you in the grapes that you currently grow have been adjusted over the last few years, if you will. If that's the right way to say that.

LES MEYER: Thank you.

KRIST: You bet.

LARSON: Thank you, Senator Krist. Seeing no further questions, thank you Mr. Meyer. Welcome to the General Affairs Committee, Mr. Kelley.

SEAN KELLEY: Good afternoon, Chairman Larson, members of the General Affairs Committee. My name is Sean Kelly, S-e-a-n K-e-l-l-e-y, appearing today in support of LB1120. And specifically on page 19 you'll note there's a provision regarding reconsiderations of denial of applications before the Nebraska Liquor Control Commission. As a practicing attorney in this area, this is more of a cleanup provision. The Liquor Control Commission does allow these reconsiderations,

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however, it appears that every district court judge does not. So this would clarify that reconsiderations are appropriate in the case of the denial of a retail application. With that, I'll be happy to answer any questions you may have.

LARSON: Thank you, Mr. Kelley. Senator Blood.

BLOOD: Thank you, Senator Larson. I'm sorry somebody sneezed when you said who you were representing today.

SEAN KELLEY: I'm here on my own behalf, just as a practicing attorney.

BLOOD: Thank you.

LARSON: Thank you, Senator Blood. Senator Thibodeau.

THIBODEAU: Thank you, Chairman Larson. So as far as the portion of this bill, you are a proponent of just the certain section that you're speaking on today?

SEAN KELLEY: That's correct.

THIBODEAU: Okay. Any other sections in the bill that you are a proponent, opposition, neutral?

SEAN KELLEY: No position on either side.

THIBODEAU: Okay, so it's just this section?

SEAN KELLEY: That's correct.

THIBODEAU: Thank you.

LARSON: Senator Thibodeau. Seeing no further questions, thank you, Mr. Kelley. The next proponent to LB1120. Welcome to the General Affairs Committee.

RICHARD HILSKE: Chairman Larson and the rest of the committee members, my name is Richard Hilske, R-i-c-h-a-r-d H-i-l-s-k-e. I'm the owner of Cellar 426 Winery up by Ashland. I come in support of the portion of LB1120 that deals with the music licensing. We are a small winery located between Omaha and Lincoln that opened in 2012. After numerous customer requests we began with a limited amount of music in 2013 about once a month in June, July, and August. Now we're up to about 12 to 15 events a year, hardly a large number. And many those musical acts play their own music. But once we started playing music, the

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calls, e-mails and letters from these licensing organizations came at a staggering rate. Some of them sent literally one piece of mail a week, along with several e-mails and phone calls. When they called they don't identify themselves, but typically ask vague questions about if we had entertainment coming up. And only after some pressing would you get them to tell me-- tell them who they were. They threatened legal action from the get-go if you don't sign up with them right away. From 2014, I paid the royalties to one of the companies, thinking that would cover me, but the others kept on my tail. I sent letters back indicating I'm registered with a competitor and we allowed the musical acts only to play music from that organization. From one of the others I got back the statement: It's virtually impossible not to utilize our music catalog. When pressed for this catalog they never would provide it. I would tell them I can't sign up for something that I don't know what I'm receiving. They didn't seem to care. The other troubling issue is their rates. I've often talked to the other wineries of similar size and they're paying less than what I pay or they might pay more than what I pay. And I pointed this out to one company and they claimed, no, everybody pays the same rate. But the other winery I talked to would have no reason to lie to me about what they paid. They charge you by your square footage but they want more money if you allow dancing, more money if you want a cover charge, more money for other things. The song being played is heard by the same number of ears, regardless of the people pay to cover or are dancing. I don't charge a cover and don't have dancing, but these items, along with the way they come after you to register, make me question their business ethics. I am now registered with two companies, pay over a thousand dollars, the second of which is ASCAP. I will still get letters once a year indicating I need to sign up or face consequences. I then send back their letter indicating I am signed up with your check-- with you, check your records. Earlier in 2017, ASCAP struck a deal with our national organization, WineAmerica, so I pay less than what I previously do, which is great. When I sent this lower amount in with my-- with a note on my invoice, I received a bill back wanting the difference to what I paid before. WineAmerica gave me a direct phone number, indicating this was the one person at ASCAP that was in on the discussion and knew about the winery rate. It took me over 25 phone calls to get this straightened out. So basically they figure let's make it difficult for these wineries to actually receive this rate. To me, this shows how their industry is run. I would honestly like to see the bill go further. They all indicate you have to register with all the companies but from my understanding there are now five or six companies, you know, where does that end? I

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kind of liken it to the cell phone industry. I'm not having-- I'm a Verizon customer but I'm not paying U.S. Cellular, AT&T, and Sprint because I ping off their towers. That's all kind of done behind the scenes. In conclusion, I understand the musicians who created the music needed to get compensated. With all the staff and mailing costs that constantly contact just one winery, I would really be interested to know how much of the dollar of each dollar collected actually makes it to the pocket of the singer-songwriter. As a small winery business owner we need to watch every dollar spent and ensure it makes sense. I think LB1120 helps to make the process more transparent and understandable for us business owners, plus requires that music groups represent themselves like any reasonable business should. Thank you so much for your time.

LARSON: Thank you, Mr. Hilske. Any questions from the committee? Seeing none, thank you for coming today. Any further proponents? Seeing none, we'll move to opponents. So I'll take the first opponent to LB1120. Welcome to the General Affairs Committee.

DENNIS CARLSON: My name is Dennis Carlson, Carlson is spelled C-a-r-l-s-o-n. My address is 3133 South 31st, Lincoln, Nebraska. Prior to my retirement, I headed the attorney disciplinary system for the state of Nebraska for over 33 years. I have reviewed the proposed change to the liquor license renewal process and I urge you to reject it. The proposed change grants too much authority to the local county board and does not provide an avenue of appeal to the state board. The recent experience in Whiteclay offers clear evidence why a local county board should not have the sole and final say on a liquor license. For decades the county board of Sheridan County ignored the problems of Whiteclay, allowing that tiny village to become an open sewer of hopelessness, intoxication, lawlessness, filth, beer, urine, and crime. If the county board had the final say, the beer stores of Whiteclay would still be in business. Like Nebraskans, I believe in law and order. Neither existed in Whiteclay when the beer stores were open. Before you make a change to the alcohol regulatory system, I would urge you to ask what is the problem that we're trying to fix? I would submit to you that the current system is not broken. There is no problem to fix. The public interest was served to the Whiteclay case. The system of checks and balances worked as they were designed to work. The interest of the beer stores and the protesters were both protected. Parties dissatisfied with the decision of the Liquor Control Commission had appeals to the district court and to the Nebraska Supreme Court. I believe in personal responsibility. If the

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Whiteclay beer stores are unhappy with the decision of the Nebraska Supreme Court they should blame themselves or their agents, rather than the regulatory system. The beer stores failed to file a proper appeal. That's their fault. The regulatory system worked. I urge you not to proceed with the proposed change. Sir.

LARSON: Senator Krist.

KRIST: Tell us again what you retired from and what those responsibilities were.

DENNIS CARLSON: Yeah, I'd be glad to. I was-- I held the position of council for discipline for the Nebraska Supreme Court. And what that means is that I prosecuted attorneys for many, many years, and I was basically the head person for the attorney regulatory system.

KRIST: So that would make you somewhat of an expert on the oversight process.

DENNIS CARLSON: Some would argue that point, but I-- yes.

KRIST: I tried to compliment you. So then is it fair to say that you did not consider what the Liquor Control Commission did as overreach to handle that problem in Whiteclay.

DENNIS CARLSON: Oh, absolutely not. Absolutely not. Senator, I'm very familiar with what was going on in Whiteclay, and, you know, I should tell you, I don't-- I don't have a dog in this fight really. I'm just-- I'm just an old retired guy trying to enjoy my retirement when I drove through Whiteclay and on a vacation. And what I saw so shocked me and so appalled me, I just could not turn my head. I just knew I had to do something. And I thought, why, why would Nebraska be doing something like this? And we would not allow what was going on at Whiteclay in Lincoln or Omaha. I mean, Whiteclay, for those of you who have been there, it's only a block and a half long. Think what would happen if on O Street there were four beer stores that had all these problems and people were passed out in front of the beer stores, people were urinating and defecating, there were fights. There have been homicides in this little village of Whiteclay. People of eight-- a village of eight people. It was so shocking that I knew I had to do something. But no, the Liquor Control Commission was acting perfectly within the balance of the law. They did, the system worked like it was supposed to work. And if we had a system where the county board of Sheridan County could make the final decision, you know, they have

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input under the present rule, but there's another process. protesters can file protests and it can go to the state board. And the system worked, it has checks and balances. And the way this system is designed, the proposed change that it would put sole discretion with the county board, and we know what happened in Whiteclay. It went on for decades and decades and decades. What an embarrassment to the state of Nebraska, We should be ashamed of that. And for us to even think that we want to go back to that sort of system just shocks me. It's a slap in the face to all the people that have suffered up Pine Ridge for years and years and years. And those beer stores are closed, but that doesn't mean the suffering has ended. It doesn't mean the misery has ended. And I can give you many, many examples, but let give you an example one. A 5-year-old friend of mine is a little Lakota girl who was literally born on the dusty streets of Whiteclay. She took her first breath in Whiteclay. Her mother had suffered from fetal alcohol syndrome, she suffers from fetal alcohol syndrome. She wasn't born with a digestive system. She's five years old and she's had 22 surgeries. She's never had a bite of food. We went out to eat with her and her mother a couple of weeks ago and her brothers and sisters. It was a night of celebration and so they got brownie sundaes. And like any five-year-old, this little girl-- her name is Ariana [PHONETIC] . Ariana wanted to be part of the group. She wanted to be a normal child, so she pretended like she was eating a brownie sundae. But she can't eat anything, she's fed by a tube. And for us to try to backtrack things and say, no, what what went on in Whiteclay is okay, I'm just shocked that we would even consider it. I'm shocked we have to be here and even talk about this.

KRIST: I have a follow-up for you. First of all, a comment. When I first came into the Legislature ten years ago I visited with the legislature in Pierre, South Dakota. We met several times, we took action in trying to put law enforcement in place. We tried to intervene in local control. None of that worked. We tried everything in terms of local control and local government, none of it worked. And I would applaud Mr. Batt, Commissioner Batt, and the Liquor Control Commission for taking the action that they did. I, too, think that it is not an overreach. I have visited white clay professionally as a legislator and also as a pilot, taking people back and forth to Whiteclay. And I think the environment, even though it's not completely settled right now, is much better than what it was. And now it's time for us to stand up and make sure that there are programs in place both on this side and that side of the border. And rest assured there aren't very many people around this table that want to talk

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about this issue because we're proud of what we did. And I thank you for coming.

DENNIS CARLSON: Good, thank you.

LARSON: Thank you, Senator Krist. Any further questions? Senator Blood.

BLOOD: I want to thank you for your very eloquent testimony. I just kind of have a-- I'm really having a hard time, as you can hear, getting my head wrapped around this bill in so many aspects. Can you, since you are so much more experienced in this area than I, can you even fathom why this part of the bill could have been brought forward? Like what could possibly have been their reasoning?

DENNIS CARLSON: I have no idea. I can't imagine a reasonable person would think this is a good idea. And where it came from, I don't know.

BLOOD: Well that makes two of us, so thank you very much.

LARSON: Thank you, Senator Blood. Seeing no further questions, thanks for joining us, Mr. Carlson.

DENNIS CARLSON: Thank you.

LARSON: We'll take the next opponent. Welcome to your General Affairs Committee.

ALAN JACOBSEN: Thank you very much. Good afternoon, senators. Senator Larson, I'm Alan Jacobsen. I'm a local businessman, I'm a member of the Fix Whiteclay group that Dennis Carlson who was just here and his wife Nancy started back in April of 2016. And did the same thing that they did when I went through Whiteclay, was astounded by what was going on and couldn't believe what I saw. Changing the word, and I'm going to just jump in here because I think one of the things that's disturbing, Senator Krist, for me as a conservative, if I may, Republican, I don't think the Nebraska Liquor Control Commission overstepped their bounds at all. A lot of times we get told, well, we're against free enterprise and the government overstepped themselves. If anything, they didn't move quickly enough. And that's, that's a constructive criticism, not one. But if you change the word from "may" to "shall" with regards to the renewal, you take away the whole idea of a liquor license being a right and not a privilege to maintain, which is definitely contrary to current statute. Peter Drucker said something I thought was very appropriate: transferring

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the responsibility to a county or a city board is reckless. Peter Drucker said that authority and responsibility must be congruent and commensurate to each other. Authority without responsibility is illegitimate. But so is responsibility without authority. Both lead to tyranny. You don't have to go very far to see that in Whiteclay. The oversight part of the Nebraska Liquor Control Commission becomes ambiguous. It transfers this-- it makes people or towns like Whiteclay vulnerable to county governments who may have ulterior agendas, that safeguard is removed. Maybe just share this, in 2015, September of 2015, one of the merchants of Whiteclay called the governor and said, my wife was just accosted. It's getting violent here. He's a third-generation business person in the Whiteclay and said it's getting very violent. So the governor appointed a task force, and in that task force Commissioner Krotz said that 35 percent of the county's law enforcement budget was being consumed by Whiteclay. And then later Jamian Simmons, the county attorney who was also on the Whiteclay task force, said there was only 20 percent. They get \$3,223 but they only-- they pay out \$350. And then there was also things like Sherry Wounded Foot who was murdered in Whiteclay in August of 2016. Her homicide is still under investigation by Sheridan County. And then the fourth thing was is that Jack Anderson came here and testified on behalf of the Sheridan County Board and said that they absolutely did not have adequate law enforcement. And therefore the Nebraska Liquor Control Commission voted 3-0 to go ahead and proceed. If I-- do I-- could I take just a minute. If I may.

LARSON: Not quite a minute, but get your last thoughts across. I won't stop you.

ALAN JACOBSEN: I guess the thing that, that is troubling is that in January, just to show you, maybe get an idea of why this should not be transferred to a county, is that at that county hearing, Sheriff Robbins, his deputy, and the Gordon police chief were there and the Nebraska Liquor Control Commission said specifically: we want to know, do you have adequate law enforcement? They were never to be deposed or asked in any way whether they did or not. There's a few other things that they didn't take into consideration, the Oglala Sioux people who-- and Red Owl testified at the Nebraska Liquor Control Commission that every three to four days they dispatch an ambulance to Whiteclay with an alcohol-related crime. I could go on.

LARSON: I'm sure you could. Thank you, Mr. Jacobsen.

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ALAN JACOBSEN: And I just appreciate it. I would just, I would just urge you and encourage you to vote against this. It worked, didn't work perfectly, but it worked. And to change it would mean that Whiteclay would still be going on today.

LARSON: Thank you, Mr. Jacobsen. Any questions from the committee? Real quick, would LB1120 reopen Whiteclay?

ALAN JACOBSEN: Would LB1120?

LARSON: No.

ALAN JACOBSEN: I don't know that LB1120 by itself would reopen Whiteclay, because if you go to apply for a liquor license you would have to-- you would have to show all the things that they had to show on renewal. And just the idea of law enforcement. I mean, when you--

LARSON: I guess that was my question.

ALAN JACOBSEN: No, it's--

LARSON: LB1120 would not open, reopen Whiteclay.

ALAN JACOBSEN: But Senator Larson, in all fairness, sir. It would have kept it open. Because Sheridan County did not do anything in January, it would have kept Whiteclay open.

LARSON: That was my--

ALAN JACOBSEN: The devastation would have kept going.

LARSON: I just wanted to make sure that we understood for the rest of everybody testifying LB1120 will not reopen Whiteclay.

ALAN JACOBSEN: No, but I just--

LARSON: Senator Krist.

KRIST: A question can be asked in many ways, and yes or no's are not always the entire message that needs to be transmitted. There are other places around the state that going to local control could cause or would cause the same kind of problems. This is me saying this, I'm not asking you a question. Might cause the same problem because local control will not step in and do what it needs to do. We have a couple other bad actors out there that would not have-- if we didn't have the liquor Control Commission that had the current authority we could have

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other issues. You can comment on that if you want to, but I wanted to get that opinion on the record.

ALAN JACOBSEN: I appreciate that because, you know, if you look at the Grand Island case of the Latin Club, it's interesting to look at it in comparison to Whiteclay. And the Nebraska Liquor Control Commission overrode both of those counties, they overrode the city who said we don't want you to have a liquor license anymore. Which really would have, in my opinion, humble opinion, and I'm not a regulator, an attorney, or anything, but it would-- it really showed some prejudice on the part of that city government taking away their license. The Nebraska Liquor Control Commission acknowledged that and fixed it. In fact, Judge Roberts is the one who responded to Mr. Snyder at the Supreme Court when he said to him: if the Nebraska Liquor Control Commission does not have control over renewing, issuing and renewing liquor licenses, who does? And he's the one who wrote the Latin Club decision. And so when you look at it, I think that city and county governments, it really undermines the 21st Amendment to the Constitution. The Nebraska-- the Nebraska Legislature was given the authority and they wrote, they developed the Nebraska Liquor Control Commission. I'm not telling you anything you don't know, but just change it to the city or to a county who could have ulterior motives like the county party, if I may just share this. I went up at the January hearing to Commissioner Krotz, and I said, there were four hearings, in the middle of the second one when we had a break I went up to him and I said, you know, Jim, I don't understand as two conservative guys here, I don't understand how you can look your constituents in the eye in Sheridan County and tell them that spending 20 to 35 percent of your law enforcement budget is a frugal business up in Whiteclay. And he looked around the room, make sure we're alone, looked over at the press table, and says, you know, Alan, I've got constituents telling me to keep that up there and pointed north. Keep that up there in Whiteclay, we don't want it down here. And yet, 15 days after the beer stores close, Rushville City Council passed five ordinances basically doing what they were doing up in Whiteclay, saying we don't want this down here. But Whiteclay didn't have the ability to do that, it's an unincorporated town. It has no political subdivisions or any way of protecting itself, so it's vulnerable to a county who wants to keep it "up there." And we all know what that means, it's that reference is we don't want them down here. And yet, in all fairness, they've benefited because the sales of alcohol into Sheridan County have only been the last 10 percent. So Sheridan-- Rushville and Gordon have increased revenues of \$4,500 to \$6,000 a

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month because the sales moved to a law-abiding town instead of a lawless town. And so in a way it really, I mean, there was a benefit to them not even being acknowledged.

KRIST: Thank you.

ALAN JACOBSEN: Sorry. Didn't mean to be so long-winded.

KRIST: No, but thank you for putting it on the record.

LARSON: Thank you, Senator Krist.

ALAN JACOBSEN: Thank you.

LARSON: Seeing no further questions, thank you, Mr. Jacobsen. I'll take the next opponent. Welcome to the General Affairs Committee.

CHANDRA WALKER: My name is Chandra Walker, C-h-a-n-d-r-a W-a-l-k-e-r. I live at 5118-- or 5123 West Kingsley, represented here on behalf of the chair of the Native American Caucus for the Democratic Party and I am opposing the bill. This bill is truthfully is a strong-arm bill. This should be thrown out because you're having all these other owners from winery and gas stations that are trying to support this bill because they need it for themselves, but we're overlooking this major point of what happened in Whiteclay. Now, the President Roosevelt created his buffer zone of Whiteclay to separate Nebraska and South Dakota. But original treaty lands, Whiteclay belongs to the Oglalas. That is treaty lands to them. But when the president created this also of Whiteclay, it was also their first original grounds for sun dance ceremony. And that is a spiritual practice among the Oglalas. This president created this because he wanted to genocide the Oglala the best way he knew how: to crush their religion practice and to drown them in alcoholism. You know, this LB1120, what it is really trying to do is trying to give the governing power back to the county, which the county has been over 150 years don't care about Native Americans. They know what it was doing, they know what it was doing to the tribes. All these years they knew what it was doing and they did nothing. No law enforcement, nothing. Now the federal law is there should be no liquor store within 50 miles of a reservation. All reservations are dry. You give this power. You know, I'm looking at my reservation in Macy, in Winnebago, in Santee, a high population of Native Americans, a high population of minorities in Douglas County, Lancaster County. You give them that power. Alcohol destroys a lot. Like I said, this bill should be thrown out. All it's doing is it has a lot of things in here that

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everybody needs to support but the one about Whiteclay. It's strong-arming.

LARSON: Thank you, Mrs. Walker. Senator Thibodeau.

THIBODEAU: Yes, thank you, Mrs. Walker. And thank you, Chairman Larson. So great testimony and I would like to commend you for coming down here today. And there was a question asked earlier about if this were, if this bill were to go through, would Whiteclay be undone?

CHANDRA WALKER: Yes. Yes, because it's about money. It's always been about money.

THIBODEAU: And then secondarily, from what I'm hearing from you, if this bill were to go through there are many other places to where the same thing could happen that did happen in Whiteclay, and you feel very strongly that that will happen.

CHANDRA WALKER: Yes. There's also the issue, about two years ago my tribe fought against the-- we took it to us the United States Supreme Court. When we talk about treaty lands, it's the original area where we was at. Then we got moved to reservation, but under the treaty land law we're basically still landowners. And like I want to say the landlord over that. So we took, my tribe, took Pender up to court because they were selling, they had so much alcohol sales we said, hey, we want to tax that, we need that revenue. And they fought us all the way to the Supreme Court. And the Supreme Court said, yeah, this is treaty land, you owe the tribe. Just like Whiteclay is treaty land to the Oglalas, but they never got paid. Nothing ever good came from Whiteclay. Like I said, it was the original place of their sun dance and the president seen that he wanted to exterminate them and that was the best way he could, was take away their belief practice that kept them strong, kept them sober, and kept them balanced. And through them in chaos and drowned them with alcohol.

THIBODEAU: Thank you.

LARSON: Thank you, Senator Thibodeau. Any further questions? Seeing none, thank you, Mrs. Walker. If you want to come up and sit in front so you know you're next, you're more than welcome to. Welcome to your general Affairs Committee.

CHRIS WAGNER: Good afternoon, Chairman Larson and members of the committee. My name is Chris Wagner, I'm the executive director for

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Project Extra Mile, a network of community partnerships across the state working to prevent excessive alcohol consumption, including underage drinking and its tragic consequences. We're here today in opposition to LB1120. LB1120 contains two provisions that would have serious negative consequences for our public health and safety in communities across our state, while exacerbating our state's well-established excessive drinking problem. First, this bill would require the Liquor Control Commission to automatically renew a retail liquor license unless the local governing body requests a formal hearing in writing, thereby limiting the commission's opportunity to reevaluate the circumstances surrounding the renewal of existing licenses. One of the most important duties that the commission is tasked with is to protect or promote public health and safety through the regulation of alcohol. The current statutory language allows this type of oversight by the commission and is imperative to protecting Nebraskans. This moment of pause before granting a liquor license renewal provides a regulatory safeguard that permits the commission to evaluate the information before them. It is entirely plausible that a situation could develop with or without the intimate knowledge of the local governing body. It is also possible that due to personal and social relationships, as well as economic factors, the local governing body might choose to not request a hearing when in fact the current circumstances surrounding a liquor license warrant further review. We also oppose increasing the size of growlers for Class C liquor licenses from 32 to 64 ounces. When we testified against this provision in LB632 last year, Nebraska was ranked as the eighth worst binge-drinking state in the 50 states and the District of Columbia with a rate of 19.5 percent of its adult population aged 19 or 18 or older that were reporting binge drinking. As I speak to you today, our state has dropped to sixth worst with a rate of 20 percent. Furthermore, three of our communities rank in the top 30 worst out of 143 indexed across the country. We have all seen the tragic consequences of excessive alcohol consumption in local headlines across our state. According to data released as part of the state's epidemiological profile, an estimated 703 individuals died alcohol-related deaths in Nebraska during 2015. But there are also economic costs. Excessive drinking cost our state over \$1.1 billion in 2010, \$491 of which was paid by state taxpayers and more than 75 percent of which was attributable to binge drinking. The scope of the problem is vast and will no doubt expand if we continue to pass one bill after another that appeases the industry while ignoring public health and safety consequences of these decisions. It's also my understanding that Health and Human Services CEO Courtney Phillips has

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convened a health rankings workgroup in order to reduce our state's binge drinking rate. Clearly it's a priority of the Ricketts administration and we would encourage this committee to prioritize it as well. We would respect-- respectfully urge the committee to indefinitely postpone LB1120.

LARSON: Thank you, Mr. Wagner. Questions from the committee? Seeing none, thank you for coming today.

CHRIS WAGNER: Thank you.

LARSON: Next opponent. Welcome to the General Affairs Committee.

CLINT DENSBERGER: Good afternoon, Chairman and senators. My name is Clint Densberger, last name is D-e-n-s-b-e-r-g-e-r, and I am a concerned citizen of Nebraska. And I don't have a lot of boring statistics, what I do have is some personal experience with drugs and alcohol and I'm recently celebrating 12 years clean and sober. So I'm personally aware of the destruction that a community like Whiteclay can have on a personal level. And I've recently befriended several of the folks in the community in and around Whiteclay in order to understand the problem a little more broader. And the senators here seem to already be concerned about issues like why did Mr. Eickmeier bring this bill forward as opposed to Mr. Larson, and I think their concerns are valid. As far as I can see it, the only real reason that this bill has been brought forward with the exception of the other points in the bill that proponents have had, which seemed to make sense, that the writer that includes the Liquor Control Commission's inability to do their job, seems to be added as a way to promote profit for a handful of people. And I presume if I may that those people are pretty healthy contributors to certain campaigns. I think that just sitting here for a few minutes and listening to the hearing I was reflecting on the artwork on the wall and I noticed that it seems to be showing earlier Nebraskans putting roots into Nebraska and working in community and in collaboration with native peoples and building roots and building this fine state that we call home. And I can only hope that this committee considers removing this bill from their docket in a small measure, in a way to help continue that collaboration, and respecting all the peoples in Nebraska as opposed to a few wealthy business interests. That's all I have, thank you.

LARSON: Thank you, Mr. Densberger. Senator Krist.

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KRIST: Congratulations on your sobriety. Keep it up.

CLINT DENSBERGER: Thank you, sir. Appreciate it.

SENATOR LARSON: Thank you, Senator Krist.

CLINT DENSBERGER: Thank you, senators.

LARSON: Welcome to the General Affairs Committee.

JIM OTTO: Senator Larson, members of the committee, my name is Jim Otto. That is J-i-m O-t-t-o. I am president of the Nebraska Retail Federation and I'm here today to testify in opposition to LB1120. Specifically, the clause or part of the bill that we are opposed to is on page 14, lines 1 through 4, which says that any wholesaler must notify the commission on the thirty-fourth day if the bill has not been paid. I would submit that the law is already there that you can't-- you must be within 30 days. And actually stating this in law is, is putting something into law that should be up to the discretion and the enforcement of the commission. The commission is more than capable of enacting policies to enforce this. To me, it's comparable to the state sets the speed limit but they leave it up to the State Patrol to enforce the speed limit. It's comparable to saying, okay, the speed limit is 70 or 75. If you're 4 miles over the speed limit, you must be ticketed. And we would never say that to the State Patrol, but that's kind of what we're saying to the commission.

LARSON: Thank you, Mr. Otto. Any questions from the committee? Senator Thibodeau.

THIBODEAU: Thank you, Chairman Larson. So if you could explain a little bit, because you mentioned that that already is part of the law, to report in 30 days. Can you go into a little further detail for me on that?

JIM OTTO: I don't think it's part of the law to report in 30 days.

THIBODEAU: Okay.

JIM OTTO: It's against the law to sell it to someone who is more than 30 days past due. People must be current. But presently the wholesaler is not required to report that in writing.

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THIBODEAU: Okay. However, if this were to go it basically we would be just making something that's already illegal more illegal?

JIM OTTO: Yes. Well, I don't know if it would be more illegal. It would be putting in statute the exact action that must be taken by the by the commission. Kind of like putting in statute the exact action the State Patrol must take at a certain point. To me, that seems like that's why we have the commission: to enforce the law. That's why we have the State Patrol: to enforce the law. Seems like actually putting that in statute is a step too far.

THIBODEAU: Great. Thank you for clarifying that for me.

LARSON: Thank you, Senator Thibodeau. I kind of want to clarify this for Senator Thibodeau, who wasn't here last year, and other members of the committee. I'm sure you're aware that this part of the bill arose from the situation that happened with Brix in Omaha last year, correct?

JIM OTTO: I'm aware of that.

LARSON: And the reason, and you're not wrong in the sense that to continue to sell to a retail license after 30 days they are not supposed to do that. But the issue arose because there are many, and this is dealing specifically with the liquor portion of the law, because liquor is only what can be sold on credit. All beer sales are done on COD. So the liquor distributors they can't necessarily talk to each other legally for antitrust reasons, so they don't know if you're 30 days behind with Senator Blood's liquor distributorship or Senator Riepe's, even though they might be with Senator Thibodeau's. So this idea was so they all know they were behind with one and all of them shouldn't sell that. That's kind of the basis of this, correct?

JIM OTTO: I understand that but to me that's something the commission can do without it being in statute. The commission has the-- I mean, I would assume the commission has the ability to formulate a policy and say this is what you're going to do. And if in fact the commission were to in fact say they have to do it in 34 days, I probably wouldn't object to that. For it to be a statute is a problem.

LARSON: So you're-- and I think what I heard what Senator Thibodeau said-- heard was you said and stated it was already in law, and it's not. I know the commission's been working on this issue over the past year and that's something that we need to continue. But it is a

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problem when a licensee is behind on their-- on their payments and are you-- do you agree?

JIM OTTO: I agree with that but I just--

LARSON: And would you agree that the other liquor distributors should have the right to know that they're behind with one liquor distributor?

JIM OTTO: Yes they should. I still think the commission can do that without this being in statute.

LARSON: Okay. So you're just, you're saying you'd prefer the commission do it rather--.

JIM OTTO: Exactly.

LARSON: Instead of we put it in statute.

JIM OTTO: Exactly.

LARSON: Okay. Thank you, Mr. Otto. Any further questions from the committee? Thank you. Welcome to the General Affairs Committee.

LANETTE RICHARDS: Thank you. Good afternoon. My name is Lanette Richards and I'm executive director of Monument Prevention in Scottsbluff. And more importantly, I'm a grandmother for 10 grandchildren and I'm devoted to those and helping them make healthy lifestyle choices. Our coalition focuses on prevention of underage and excessive alcohol consumption. I come to you today on behalf of the coalition and carry a voice from western Nebraska in opposition for LB1120, introduced by Senator Larson. We believe that bills such as this are counterproductive to what is in the best interest of our state. With LB1120 there are pieces to this bill that are not in the best interest to the citizens of Nebraska. Monument Prevention's work is based on effective strategies that have been proven to work. We use an environmental prevention approach along with evidence-based recommendations laid out by the Community Preventive Services Task Force to prevent excessive alcohol consumption and related harms in our communities. One of our concerns is the automatic renewal of record-- retail liquor licenses unless local governing bodies request a hearing. This automatic renewal would limit the Liquor Control Commission's ability to adequately protect public health and safety. As senators of the state of Nebraska, I would hope that one of your top priorities is to protect the health and safety of your

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constituents. This bill unnecessarily removes an important backstop by requiring that the commission not be allowed to use its knowledge and expertise to re-evaluate certain liquor licenses during the renewal processes. Unfortunately, there are instances where the local governing body may not be immediately aware of problems or may even have reasons for not being forthcoming with this, some of the information. Another concern we have is the increase of the growler size for Class C licenses from 32 to 64 ounces. This would only make our already high rankings of excessive binge drinking rates worse. Instead, we need to work collaboratively for policies that would make Nebraska a healthier and safer state. According to America's health ratings, Nebraska is the sixth-worst state for excessive drinking in the country. This is not something to be proud of. With excessive drinking there are many health concerns, including certain cancers, high blood pressure, stroke, and other cardiovascular diseases. This is a public health issue and a concern to all of us. In closing, it appears that we are a state where alcohol is involved in everything we do. Whether it is recreational or whether it is the loss of life. LB1120 has the potential to harm Nebraska, and we ask you as senators to indefinitely postponed LB1120. Thank you for your consideration.

LARSON: Thank you, Mrs. Richards. Any questions from the committee? Seeing none, thank you for making the drive. Next opponent. Welcome to the General Affairs Committee.

KIM KAVULAK: Good afternoon, Chairman Larson. Senators, thank you for taking the time. My name is Kim Kavulak, spelled K-a-v-u-l-a-k, and I am the co-founder of Nebraska Brewing Company and I represent the Nebraska Craft Brewers Guild as its current president. We currently represent 48 craft breweries and breweries in planning, so we're very excited about that growth. The guild opposes specifically one provision that in LB1120, located on page 21, Section 10, lines 14 through 16. As written, this provision would eliminate a key source of funding for the guild to promote, market, and develop craft beer in Nebraska by precluding the use of the funds for any employee of a licensee or group of licensees. In 2016 the guild worked collaboratively with Senator Larson, industry partners including the wholesalers, and Director Rupe at the Liquor Control Commission to enact LB1105, which in part created the beer fund and the beer board, the Craft Brewery Board. So the beer fund and the beer board were modeled and developed based on the Grape and Winery Board's fund, which has existed for many years, and also for many years has provided funds to hire an executive director. Each of the stakeholders involved

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in that process were very aware of the intent to model that and use those funds to hire a director. In 2017 the beer board awarded funds to the guild to hire its very first ever direct executive director. We joined over 35 other states across the country in having a full-time executive director. Gabby Ayala is personally is our executive director and she is responsible for many things. She started in September of 2017. She's coordinating regulatory compliance with the Liquor Control Commission, creating tourism opportunities, working with our industry partners in the agricultural field. We recently held a conference in Omaha for our growers and brewers. So those are things that we rely on her to do. The primary purpose of the beer fund is to again continue to market and grow the craft beer industry in Nebraska. This requires the focus and attention of a single individual. We are all small brewers, we are all small business owners. We are busy running our own businesses and have an employee like Miss Ayala promoting this, the guild, and what we're trying to grow is critical. For these reasons I ask that you not advance LB1120 as written unless lines 14 to 16 in Section 10 of page 21 can be amended out. Thank you for your time.

LARSON: Senator Blood.

BLOOD: Thank you, Senator Larson. So if I remember correctly last year's fiasco of a bill, you guys weren't really brought to the table when that was crafted, was that correct?

KIM KAVULAK: That's absolutely correct.

BLOOD: What about this year's bill? Were you guys brought to the table to help craft this bill in a way that maybe would not have eliminated that funding?

KIM KAVULAK: Not at all. And after last year's extensive fights we had hoped that we had established an opportunity to showcase how well things can happen like they did under LB1105 as a result of one of the issues that came to light in LB632. The Craft Brewers Guild and the board of the wholesalers, the Associated Beverage Distributors of Nebraska, actually sat down recently, table to table, industry to industry, and resolved one of the major issues that existed in LB632. So when people can sit at the table together and talk out the issues and work together we can see exactly how those issues can be resolved without legislation, without floor fight, without wasting the time of people who have much more important things to do.

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BLOOD: That's a very valid point and, by the way, kudos for doing that. I was aware of that then. So can you again help me get my head wrapped around this? Is there any reason you can think of why they would want to take away your funding and your executive director when it's been done for quite a long time in the wine industry, your up and coming entrepreneurs who have really strongly supported economic development in Nebraska and tourism? And can you fathom why that possibly could be?

KIM KAVULAK: We can't begin to understand how or why or where this provision of the bill came from. Again, it was under LB1105 it was clear that we were modeling after the what the winery group had done for many years. It was clear that it was always the intention to hire this type of a position and be funded in part by the Craft Brewery Board and the craft brewery fund. I think the growth that we've seen over the last five years, but certainly even the growth over the last couple of years, and the extensive work that our executive director is doing, we can't understand for a minute where this might have come from or what, who would benefit.

BLOOD: And so if I hear you correctly, she has already become an intricate important part of the craft brewing community in helping to move it forward, helping to promote it, helping to sort through things so you can better address issues that pertain to tourism, economic development. Because you guys are making beer.

KIM KAVULAK: Absolutely, and not just in Nebraska. She's working with other guilds across the country to help promote Nebraska beer in the states that surround us in other places. So she's she's already, in the short 4 or 5 months that she's been part of our organization, had a significant impact.

BLOOD: And then on a side note, is my favorite beer-- doesn't it come out again in February?

KIM KAVULAK: It might, yes.

LARSON: Thank you, Senator Blood. Senator Thibodeau.

THIBODEAU: Thank you, Chairman Larson. And Senator Blood you actually asked most of my questions.

BLOOD: I'm sorry.

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THIBODEAU: That's okay, that helps me out. I just have one last follow-up question, so it was helpful because I was going to ask, with regards to the grape and winery fund and that you modeled yourself after that. So my follow-up question to that would be are there any provisions like this that apply to the grape and winery fund?

KIM KAVULAK: Not to the best of my knowledge. I don't think they're-- I think the only thing that they're not allowed to use their funds for is lobbying as well.

THIBODEAU: Is lobbying, okay? And do they have a position similar to the one we're talking about today?

KIM KAVULAK: They do. They have an executive director and it is funded by their winery fund.

THIBODEAU: Okay, great. Thank you. As Senator Larson pointed out, I am still [INAUDIBLE].

KIM KAVULAK: Thank you, Mrs. Kavulak. Is that how you--

KIM KAVULAK: Close enough.

LARSON: Real quick. And I heard Senator Blood mention earlier, and you talked a little bit about it, she talked about leveling the playing field. And then also the concept of the beer fund is to grow beer in all of Nebraska. And you guys do that as breweries, that retailers do it as retailers, the distributors to it as distributors. Would, and I can understand where you're saying that this is a fund that helps fund your executive director, would it be fair to say, you know, possible compromise on language that-- because right now the guild is made up of licensees.

KIM KAVULAK: Correct.

LARSON: And the group of licensees makes the guild, and then the guild applies for the executive director-- or through the beer board. So any-- how do I want to say this? Would it be more fair, instead of just taking away the money, to say that any entity representing licensees that applies to the beer fund for funds it may be awarded but they all have to be awarded equal amounts? That way it's fair, equal across the board for for any licensee applying, and you get to keep your funds. But anybody else that, whether it's the retail association, or-- because in essence we've heard that the bar fund-- it's about growing beer and helping that entity. Or it might be a

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specific entity, a specific person within the retail federation. Would you guys be opposed to that still, if you got to keep your money but any group of licensees would be able to access that, would be guaranteed access to that money if they gave it to one-- we give it to all to continue a fair and level playing field?

KIM KAVULAK: Well, I don't know that to guarantee-- I think the key point that you probably bring up is that the beer board has the authority to grant or deny any grant requests. So anybody can apply and there is a board, as you probably know, the Craft Beer Board is appointed by the governor. It has representatives from the craft beer industry, from wholesalers association, and I believe three other at-large positions. So that's very well represented, very well rounded, and they have, they currently have, the authority to approve or deny funds based on grant applications. So I think that's where that authority should continue to reside, and not necessarily in legislation.

LARSON: But as we've seen in lots of boards they could choose to politicize it or anything of that nature. And that's what I'm really trying to say is let's focus on ensuring that it is equal across the board so if-- regardless of, you know, if the governor appoints members going to one way or the other that I guess my point is, is don't you want to ensure that every, every aspect of the three-tier system has the ability to, to access these funds to help promote the industry because they are all promoting the industry in the end, whether it's the retail distribution or manufacturing side of it? Because they all rely on each other in the end as well, that they should all have access to the funds.

KIM KAVULAK: Yet again, we are all partners in the industry and we all have our piece of the pie in the industry. But again, I think it goes back to the Craft Brewery Board being able to make those decisions. That was the intent of it from the very beginning and I think that's where it should continue to reside.

LARSON: Thank you. Seeing no further questions, thank you, Mrs. Kavulak. Right?

KIM KAVULAK: Kavulak.

LARSON: Kavulak, I'm sorry.

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KIM KAVULAK: That's all right. Thank you.

LARSON: Welcome to the General Affairs Committee.

JAMES ENGELBART: Hello, senators. I'm Jim, James Engelbart, with Emyrean Brewing Company. We're the brewing side of Lazlo's Brewery and Grill. I'm also speaking on behalf of the Craft Brewers Guild, I am the current vice president of the Brewers Guild. I've been an active member with our brewing entities as they have existed in the state. I've been in the business for 21 years and played a part, sat at the table I guess where we formed the first association of brewers in the state of Nebraska back in 1998. There were six breweries in the state at that point in time. And as we sit here today we have 51 total brewing licenses that exist in the state of Nebraska in one way, shape, or form, and a few of those have yet to open. So to have watched that growth in the last 21 years has been really, really awesome. I single-handedly led our brewers association for about the first decade that we existed from roughly 2000 through 2009, I was the acting president. And for the most part, the only member of the guild responsible for pulling any functions in terms of finding new members, finding any sort of source of funding. Typically we put an event together in conjunction with the Omaha Summer Arts Festival for a good decade, where they leased us space to be able to sell beer through our wholesalers to the public at that event on an SDL. So, boy, I just touched on everything in this bill, didn't I? Good stuff. But at any rate, I'm here speaking in opposition to that very specific part of this bill, again page 21, Section 10, lines 14 through 16. A very mean-spirited portion of the bill that, for all intents and purposes, as we have identified as a group here today, serves no real purpose whatsoever. The Agricultural-- Department of Ag, of which the brewery board is a part and receives its funds from, is open to anybody to apply for funding. Anybody. Just so happens in the previous year the majority of the people that applied for funds from the brewers board were researchers at the University of Nebraska, which is precisely what we want to have happen. Most of this research is done, a section of this year's, 2017's anyway, went to further the research of the potential to grow hops in a state in Nebraska. Very interested in using local ingredients whenever we can. Our consumers expect it and demand it from us anymore these days. And in terms of a farm-to-table type setup, we very much find that appealing on the brewery side of the business just like restaurants do, and find again our consumers are very interested in doing that and proceeding along those lines as well. I see many good possibilities for barley as another crop that

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has a lot of potential in Nebraska going forward. But at any rate, I just wanted to make the point that the money we received as a Brewers Guild this year we received because we applied for a grant and the grant funds were awarded. And because those funds are rewarded they also have the ability to oversee how they're spent and there's steps that we have to do as a guild to prove to the board--

LARSON: Please wrap up.

JAMES ENGELBART: -- that the funds were spent appropriately and not on lobbying. This mean-spirited section of the bill seems intent on making a point that perhaps we were too vocal in last year's legislative session and perhaps funds were used inappropriately. And that was not the case.

LARSON: Thank you, Mr. Engelbart. Any questions from the committee? Seeing none, have a nice day. Any further opponents to LB1120? Welcome to the General Affairs Committee, Mr. Rupe.

HOBERT RUPE: Good afternoon, Chairman Larson and senators of the General Affairs Committee. Thank you. Once again, my name's Hobert, H-o-b-e-r-t, Rupe, R-u-p-e. I serve as the executive director of the Nebraska Liquor Control Commission, and I'm placed in sort of a strange position. Normally on a bill that has proponents we like and issues we don't like we would testify neutral. However, in this case, although there are many lauded benefits in there, including two from our legislative letter, the third-party reports, which would allow us to we think have a better control over the growing direct shipping laws under the S1 licenses allow that second point of contact we think is very important. We think there is a lot of a lot of revenue that we're not tracking because people are utilizing the Internet and there is not, you know, they're small enough I think they're flying underneath the radar and there's no way for us to double-check that unless they get a license. This would allow us to have third-party shippers, have them keep track of them, have their records come in and be able to do it. So we support that. We also support what's in the, if you look at the introduction statement, number 8, which was gives the commission more discretion on second or subsequent offenses within the four-year period to do limited mandatory suspensions. So currently when-- the commission currently doesn't fine. When we suspend a license, it was the first offense they paid \$50 a day or subsequent within a 10-- they can pay \$100 per day except for on sales to a minor, including compliance checks or other minors. So where we have a limited amount of mandatory suspension days. I'll be honest with you,

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they cry more about that than than the fee. The fines, I think that's part of the cost of doing business for violating the law. And this would give us that discretion and we would strongly appreciate that, and we actually would thank Senator Larson for putting those two parts in the bill. There are also a couple of technical changes which the legal counsel set, including the-- the some of the things that were brought out of the audit that was conducted last year. But as I am already running out of time, I have to get to the commission they asked me to represent their opposition primarily on we think is a fundamental change in the philosophy of how liquor license renewals. Currently, a liquor license renewal may be reviewed, and there is a check and balance system inherent there. If a local governing body asks for a hearing they generally will get it. The statutes say they should get it all the time. The Latin Club case earlier reference does have some changes to that. The commission has a very-- has administrative procedure of how they handle those requests and also how ones which generate from ourselves or from law enforcement about existing license, including oftentimes it will come through law enforcement then a person who has now been convicted of a crime which may or may not disqualify them, and so we'll have them file a long-form application so we can do the background check, we can look at it, see what's going on. And so it's a very-- it's a very good tool. But there is a checks and balances system. The proposal, as we look in the commission, and I'll wrap up, I see I'm on the red time. But I'd be happy answer any questions. Really fundamentally changes the philosophy of what the commission is, where it's supposed to be the final authority and try to be apolitical as much as it can be. We're all human, we all acknowledge that. But try to take it outside of local politics as much as possible to be the finder of fact. With that, I see I'm out of time already, so I'd be happy to answer any questions about this or any other part of the bill.

LARSON: Senator Blood.

BLOOD: Thank you, Senator Larson. And thank you for helping to verify some of the questions I asked at the very beginning as to what had actually been discussed with you. Have you, since last year's fiasco, worked at all with the craft brewing community on some of the issues that had been concerns?

HOBERT RUPE: Very closely. A couple of things what we've done with craft breweries is oftentimes as they ex-- I mean, there's been rapid explosion of numbers, as you can all see.

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BLOOD: Oh, absolutely.

HOBERT RUPE: And not only in their gallons but the number of payees. And so we've used an outreach, we've done at least two and we're going to be doing a couple more where we've gone out to areas and coordinate through that guild, through the board to have meetings. So I got to thank Gabby for that. She was able to help coordinate and get people there.

BLOOD: Just for clarification, Gabby is who?

HOBERT RUPE: She is the director of the craft and wine-- I'm not sure what her title is.

BLOOD: The one that's being paid for by the funds they're trying to take out?

HOBERT RUPE: The one being paid for out of these funds, exactly.

BLOOD: Okay, just making sure.

HOBERT RUPE: You know, and the theory behind that is the craft breweries are spread throughout the state. They're busy. So we've gone out and done, we did one in Kearney, we did one here in Lincoln, and they were going to do one in Omaha, and another one we're at a point to be yet determined. And the big problem that we find a lot of times with craft breweries is as they get into the business they don't understand some of the intricacies. And of course the big problem is is, trying not to get too much in the weeds here, is that a craft brewery license exists at two-tier-- two of the three tiers: they're a producer with limitations and a retailer with certain limitations. And oftentimes they think they're acting as a retailer but they're really acting as a manufacturer and they're doing things they shouldn't do. And so a lot of times they're violating that not because of, I believe, malfeasance, but because of lack of institutional knowledge. And so we try to go out there. And so that's another benefit about having Gabby in that. Now if there's a-- if we come down with an interpretation or directive, instead of making sure that, you know, I can give it to her and make sure I know that all her members are going to get it, you know? Or at least if they don't, they can blame her and not me because we tried to send it out. And so as a single point of contact, it's very similar to what we do with the farm winery bill with the farm wineries, there's single point of contact. It also serves as a method for them to bring issues to us because they might

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not want to bring it individually because they might be in violation of law. They can sort of bring it-- what is the position on this one. So it sort of serves as a buffer. The other area where we worked very closely with craft breweries brewers is also with the wholesalers is after LB632 and after that fight there, where the commission really was getting put in the middle of it, I think, we said what do we-- what kind of rules do we need to make sure that the commission can accurately access this tax, track where it goes, and make sure that somebody's not violating, i.e. doing self-distribution? I worked with both of those industries. I've got to give Mike Madigan for the ABDN and Vanessa Silke for the craft brewers and lawyers, you know, for help crafting an idea that is currently going through the rule-making process. We submitted it over to this building. Hopefully we'll have the public hearing on that bill in March and adoption in April. So but a big part of that was they sat around, they talked to each other what they needed, they talked with us about what we needed from a regulatory standpoint, and it's gone forward in that method.

BLOOD: And well done on that, by the way. That's so much easier than having us have to fight it out on the legislative floor. I have one more question for you, and I'm going to put you in an awkward position, and I apologize.

HOBERT RUPE: Okay.

BLOOD: So knowing that there are concerns with this bill on your end, did you discuss those with Senator Larson? Those concerns?

HOBERT RUPE: The only communications prior to the-- prior to the introduction of the bill, I had a couple conversations with Josh on some technical aspects and some language. And the only conversation I had after the bill introduced was after the bill was introduced, I had a conversation with Senator Larson. Not before it was introduced.

BLOOD: So your opinion on all these other wonky things that are going on was never asked?

HOBERT RUPE: No. I mean, I think you can assume some of them, some of them are-- were in our legislative letter.

BLOOD: Right, and I saw that.

HOBERT RUPE: And some of them I think, you know, like the administrative, some of the stuff that came up in the audit, you know,

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Josh I were talking about that. You know, the tactical changes and that kind of stuff. So, you know, those two policy wonks talking about how to do it right.

BLOOD: Okay. I appreciate it. I know that was an uncomfortable question and I'm sorry to put you on the spot.

LARSON: Thank you, Senator Blood. Senator Thibodeau.

THIBODEAU: Thank you, Chairman Larson. And thank you for your detailed explanation, because I'm still trying to figure out all the players in this game versus the craft brewery and wholesalers and distributors. So I can understand probably why the new businesses have a hard time as well. My-- I have two questions for you. The first one does go back to Senator Larson kind of explaining to me that whole late payment thing and it was because of what happened with Brix. So I just want to ask you does the commission have a plan in place to address this?

HOBERT RUPE: Yes.

THIBODEAU: Okay. And how is that-- how does that work?

HOBERT RUPE: We worked with the liquor wholesalers, and I've got to give LeAnna Prange, my head in my wholesale-- my auditing division, most of the credit because it's numbers. And I'm a lawyer, numbers hurt my head. And she worked it out. And so what we worked out is a streamlined process where a complaint can be filed by a wholesaler that a retailer may be in-- maybe is over the 34, we do 34 days because the mailing aspect we did it. At that point in time we'll send notice setting it for a hearing. And because it is a violation to receive to accept credit for more than time. It's also a violation to extend it. So the wholesalers are complying with the law by notifying us of that. That program went into effect in December. We've had three cases thus far. One we just sent out we're not sure that her-- we haven't got back. One is sort of a moot point because the licensee closed business at the end of October and they're out of business and we have no jurisdiction over them. And the third one is the person paid up in full and they're looking to see what kind of penalty we're going to give them for violation. The proposal that Senator Larson has put in here would be probably a better one, honestly. The problem with it is the method it works is a lot more-- it is much more time-intensive for personal staff. I mean, with staff. And the way we've got it is about as much as we can do with our existing staffing, which is one reason why we were to go in there there would be a fiscal

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note attached to that, because, you know, we've only got 17 employees as it is. Okay, 16 who work and me. But, excuse me. But so, you know, so that's one reason why there's a fiscal on there. So I'm not saying that the method, method he came up with, is wrong, it would be great a perfect world. But we're trying to address those issues as best we can. And so far the feedback that we're getting back from the-- from at least the wholesale tier is that it seems to be working, that people are being more tied up, you know, the problem with Brix was, you know, there's a whole bunch of problems with Brix. You know, the problem, the thing where we all got at the end was was the amount, the high-end quality that were going on, and the fact that when he did go into bankruptcy a lot of those people realized that they had 30-day credit, they had no terms, and that their turn at the trough as we usually say to get reimbursed was toward the back because the bankers have had it sewn up. So I can understand why trying to address Brix. Now of course the problem of course is underneath, without this system, we hope it's going to work. I mean, it's a policy right now because we're trying to see how it works, and then we'll probably do rulemaking internally on how to do it after we do it. You know, do rulemaking until we know it's going to work or not and tweak it. But hopefully, knock on wood, it's going to supply.

THIBODEAU: Thank you. And then my next question, actually I saved it. I wrote it down a lot earlier, but I saved it for you because I know you're an attorney so.

HOBERT RUPE: Oh gosh.

THIBODEAU: Sorry. Somebody referenced the 21st Amendment to our state constitution, which obviously is what gives that Liquor Control the ability to do what they do for the state. So wouldn't we have to amend our state constitution for that portion of the bill to go into place, changing the "may" to "shall"?

HOBERT RUPE: No, no. What the 21st Amendment allows is the state has primacy.

THIBODEAU: Okay.

HOBERT RUPE: And so the state has primacy and can, I mean, technically if we wanted to go dry, I know that would probably make a lot of people behind me either happy or upset, the state has the authority to go dry. We could go dry the entire state. What the-- what the current Liquor Control Act does is the legislature has created an independent

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body to do the primary enforcement of those rules and regulations, and because otherwise they're going to be coming to you guys every time, and that's going to be work. And so but you guys can change how that method is. You guys have the authority. The 21st Amendment, that's the state. The state has the Liquor Control vested authority with the commission, so you guys can change and alter that. So, you know, that's a lawyer, you know. So I have to answer, even though the proposal we don't like because it alters it too much, you have the authority to do that.

THIBODEAU: Okay.

LARSON: Senator Blood.

BLOOD: Thank you, Senator Larson. You were kind of cut short on your testimony. I'd be curious where the reference to Whiteclay.

HOBERT RUPE: Whiteclay was an-- it was a, you know, as you know, I mean, that is-- Whiteclay's been an issue for years for the Legislature and the commission. What really sparked the commission's review in this case was we had a sitting county commissioner come before a legislative body and state that, to a question from a senator. I can't remember exactly who asked it. I think it might have been Senator Coash, I can't be 100 percent certain of that. Do you have adequate law enforcement? And he said, absolutely not. Now, if you look at the requirements to get a liquor license, one of the findings the commission has got defined is that there is adequate law enforcement to enforce the act. So given that we've got at least a person representing the county board in front of the Legislature making that statement, we start the inquiry. So we started looking at some usage of resources, how much was be resourced, and decided that there was an issue that the commission needed to look at. And so although the statute clearly says we should be able to last for long for any time, it has been modified because of the Grand Island Latin Club. And the Grand Island Latin Club, post Grand Island Latin Club, the procedure the commission has adopted directly created by then senior-- then Deputy Attorney General Laurie Smith Camp, now senior federal judge Laurie Smith Camp, was that we would have at a hearing in front of the commission on basically like a show-- basically like a probable cause. Is there an issue for us to ask this? And if something changed where we needed to do an inquiry then that's a procedure the commission would follow. We have the evidence of I believe Mr. Anderson's statements, we had requested some information from both local law enforcement and from the patrol about law enforcement and

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criminal activity in the area, and said this was an issue that we need to. And so the best method we have is to have them follow long-form application. And the method of that is because the long-form application is the best way for us to look into the nuts and bolts of what's going on with business, how does business operate, and how is it going to work. Also allows a recommendation from the local governing body and also then allows input from the citizens who can file a complaint. Now citizens either have to be from the city, if it's a city, or from the county, if it's out in the county. You you can't be-- somebody from Omaha couldn't file a complaint about something in Sheridan County for instance. And then the rest of the act clearly states that if we get receipts from three or more of those businesses we have to have a hearing. If we get a recommendation of denial from the local governing body we have to have a hearing. And also the act, I mean, you know, somewhat modified by liquor by Grand Island, says that if we're asked by the city in long-form, we should. We shall. It says we shall. That has been modified somewhat by law, by Grand Island Latin Club. So as it went, as we had 12-hour case, 12-hour hearing, I served as administrative law judge, three commissioners sat and made the final decision. After the decision not to renew those licenses they availed themselves of the rights of the Administrative Procedures Act. They appealed to the Lancaster County District Court. Lancaster District Court actually found in favor of them because they rely upon Grand Island Latin Club. Behind the scenes we wrote the Grand Island Latin Club needed to be looked at because it was really a case of judicial overreach. And then they went to the Supreme Court. Well, at the Supreme Court, they-- I mean, they got rid of it because they failed to perfect their appeal. I mean, that's not really on us, that's on them and their attorney. But that's why where we're sitting at. I mean, I actually would have loved for that, for the Supreme Court to get to the merits of the case because I would have really liked them to at least refer or at least prune back Latin Club. But regardless, that was the procedure followed. We believe we followed procedure according to the act, and that's how we set out in response to the case law. So that's-- that was a whole lot of work in about a minute and a half. So hopefully I answered your question.

BLOOD: I think you did. Thank you.

LARSON: Thank you, Senator Blood. Real quick, and I was here for the hearing where Mr. Anderson made those comments. And it was kind of an off-hand comment that sparked that long-form. And I just want to play a hypothetical [INAUDIBLE] Hobie. So if Sheriff Dunning in Douglas

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County, who has been openly critical of our current mayor-- or Jean Stothert, the mayor of Omaha-- were to say that because of the long times for police and everything else to west Omaha we're affecting the liquor license out there, inadequate law enforcement for the number of liquor licenses out there. Regardless, because I mean, that was-- I mean that was the main issue. Would you require all those entities to file that long-form because we have a highly-elected official that is representing obviously a constituency who, like I said, has been very vocal about that specific issue against Mayor Stothert. Are all those due a long-form because--

HOBERT RUPE: Well, the procedure we would follow, chairman, is first, you know, that would be one evidence. I mean, the long-form request on Whiteclay was not based solely upon the statements of Mr. Anderson, it was also we requested incident data from the patrol hours that from the sheriff's office, reports like that. So the idea that somebody can make a statement and that's going to cause a hearing I think is overstating it. And the second is, is I don't know. If there was evidence that came forward that I as the law judge, I mean, I would be wearing my legal hat at that point, would say that this should be an issue brought to the three commissioners attention. I would place it on the agenda for the three commissioners, I would then submit that, it would be much like a probable cause more, saying, you know, here's the information. Do we believe this is legitimate? Do we believe this needs to go forward? Do we believe this needs more? That would be up to the commissioners to decide. So, you know, I mean, so there's a multi-layered thing. I just can't decide long-form because they've upset Hobie Rupe or they've made some comments. I mean, there's a legal procedure we would follow to make sure that everybody's rights and liabilities under the act are protected and viewed. So I can tell you that if a, senator, if somebody like Sheriff Dunning were to make those comments would I feel compelled as an administrator to do, to do an inquiry to believe that there is validation behind those or factual basis underneath it? Yes. That's all I could really say would happen. I would look into is there an issue that needs to be brought to the commission's attention.

LARSON: And what would, like, I mean, so it's at your discretion. So what would the wait times have to be? I mean, I know we've had-- you said there were a couple hours at Whiteclay at times.

HOBERT RUPE: So sometimes there were never-- there was no response on Whiteclay. That was one of the issues we looked at is there would be

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the assault charge, assault charge going, call going in and the, you know, because, you know, they wouldn't get there until the next day if they got there. So we're not talking about a stretching of thin resources. In this case here, I mean, unfortunately and this came out unlikely, is you've got the sheriff and I think like three full-time deputies handling it, you know, a large geographic area. And there was no, you know, how much time they were keeping in Whiteclay he didn't even start tracking until after we long-formed him. So a lot of it was anecdotal coming in. To use his as an example, I'll give you where happened something similar, where we're looking at the usage of law enforcement, was the Maria Sangria case in downtown Omaha. Downtown Omaha, Maria Sangria sort of-- they were a restaurant as how they applied, they were going to Spanish restaurant. What they were were they were a restaurant during the day then they went through what's called license morph they became a big nightclub at the end. And that nightclub proponent was having a huge drain on Omaha law enforcement. So they brought the issue to us to long-form and to go through their system to look to look at them. And so that's another thing where we're working in conjunction. And so, you know, I mean, you know, I just use that as an example where we're getting information from the law enforcement agencies as to what's going on in the location. So the idea that we're going to start long-forming anybody just because there was a late report I think is, you know, it goes further than what we would do it. The commission has used this methodology-- this power very rarely. You know, I believe in the most clear cases.

LARSON: I see. Thank you, Mr. Rupe. Senator Krist.

KRIST: Sorry, I had to step out for a minute. But did it-- was it put on the record yet that you actually took care of the Brix and policy?

HOBERT RUPE: Yes, we did. We've got a policy in place and hope it's going to work. I mean, we might have to tweak it, but so far the or the wholesalers seem happy with what we, what we've done thus far.

KRIST: Okay, thank you.

LARSON: Thank you, Senator Krist. Seeing no further questions, thank you, Mr. Rupe.

HOBERT RUPE: Thank you very much.

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LARSON: Any further opponents? Seeing none, neutral? Welcome to the General Affairs Committee.

JIM PARTINGTON: Thank you. Senator Larson, members of the committee, my name is Jim Partington, P-a-r-t-i-n-g-t-o-n. And I appreciate the opportunity to represent the Nebraska Restaurant Association and testify neutral on LB1120. I'm testifying neutral because I oppose one section of the bill and support another. That's not a classic definition of neutrality but it seems to best describe what I'm doing today. And what we oppose is on page 14, lines 1 through 4. The Nebraska Liquor Control Commission regulations allow for net 30 term for sales and this bill requires that invoices not paid within 34 days after the date of purchase be reported. These payments are only four days overdue in accordance with the net 30 terms of the sale and in many cases they may not be the result of late payment but are more likely due to administrative processing or mail service delays. Establishing a reporting requirement based on payments overdue relative to terms of sale is a possible correction for this, but since similar standards already exist in Nebraska Liquor Control Regulations a better choice is to delete that section of the bill and rely on the enforcement agency to carry out the policies they've already established. Also I, in the interest of full disclosure, in addition to representing the restaurants I also own a farm winery so I understand this issue from both sides: wholesaler and retailer. Regarding the Music Licensing Act, I believe greater transparency regarding copyright products and easier access to repertory databases would allow for timely identification of copyrights covered by each of the PROs. With this knowledge, facilities could work with entertainers to limit their playlists to music that is covered by a specific PRO of their choice and not be required to sign up with all three to avoid infringing on copyright privileges. The limits proposed on facility access and contracts would also be beneficial. I support and subscribe to the testimony of Mr. Meyer regarding this. I think it covered the issue very well and I support that. And with that, I'll conclude my testimony and I appreciate the opportunity to testify on LB1120, and I'll be happy to answer any questions you may have.

LARSON: Thank you, Mr. Partington. Any questions from the committee? Seeing none, thank you.

JIM PARTINGTON: Thank you.

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LARSON: Any further neutral testimony? Welcome to the General Affairs Committee.

ERIC FROESCHL: My name is Eric Froeschl, E-r-i-c F-r-o-e-s-c-h-l. I am here to basically make a few statements of the severity of the harassment from ASCAP and BMI and what they do. Because I own a bar and grill in Falls City, I've held a liquor license since I was 21 years old. And but I do not understand how they call, they harass, they call, they harass. And when I'm working, I say I'm in the middle of cooking. They say I don't give a-- you know, I mean they are rude. They say they're going to sue us. They say all this, they send us letters. I already pay for like touch tunes, like my jukebox. We pay 22 percent in royalties. So last year it was \$3,432 I repaid in royalties. And now they tell me that, you know, I owe back in future and I don't know who's who. And so it is completely and totally unfair, the harassments. And it truly needs to be stopped somehow because, you know, there's bars closing all over because of the fines. We've got another bar down our area just got a letter could be sued up for a couple hundred-thousand dollars. We're a small town, rural Falls City. We have small bands, we are minute. So basically I just want you guys to understand how mean those people are, and it needs to be stopped. Because I don't know who I'm supposed to pay, there's three of them. And so up that is basically all I have to tell you. I want you guys to understand how ruthless they are.

LARSON: Thank you. Thank you, Mr. Froeschl. Froeschel?

ERIC FROESCHL: Froeschl.

LARSON: Froeschl, I'm sorry. Any questions from the committee? Seeing none, thanks for making the drive today.

ERIC FROESCHL: Thank you.

LARSON: Welcome to the General Affairs Committee.

SHAWN COLE: My name is Shawn Cole, S-h-a-w-n C-o-l-e, and I'm a full-time musician. I have been for 10 years. I also operate a music agency, so last year I was responsible for connecting small bars, typically with over 500 acts. So I think I understand this music licensing thing maybe even more than some of the bars that are being approached. Sorry, I didn't expect to be nervous. I'm also a member of ASCAP, I'm a licensed songwriter. So as a songwriter when you take a CD to market you have to have a license. I think I'm support of this

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bill because I think it's-- I assume that you're hearing from your constituents that they're being treated unfairly and so I think that's what the bill is trying to address. I think it still misses the mark because these companies are just supposed to collect royalties and distribute those royalties. And these small bars, they have no way of knowing what songs are played so there's no way for them fairly do this. They're still going to do it because they own the rights to the songs. So when you break it down, I think what you have to do is look at it by what they're actually charging based on what a standard royalty rate is. And then I think you could see how unfair it is. So for example if you go to Pandora, listen to one of my songs, I'd get half a penny per play. Thank you. Because I work with so many bars there's a lot of them that I usually educate the bars on what this licensing scene is just so that they don't get sued without maybe knowing what could happen to them. Friday, one of the bars that I play in and work with had a cop show up at their house, they're being sued for playing seven songs in 2016. And I think if I could just show you the numbers as it pertains to that bar maybe you'll understand a little better. BMI wanted \$3,000 for them for that year, ASCAP wanted \$3,000, SESAC wanted \$3,000, so that's \$9,000 for them to have music 20 times. If you-- a typical band performance is 45 songs per night, so they had 900 songs played in their bar that year. At \$9,000 that's \$10 a song royalty. The average-- if you had on television a royalty for 1011 News that broadcast it or something that was prime time 1011 TV, it would cost maybe \$2.50 cents for a royalty. So there's nothing in this bill-- I think this bill helps and I'm glad to see it because I've been fighting these guys for a long time but at some point you have to regulate the price somehow. Or at least make it fair. They have, ASCAP, one the companies, has a fee for what the rates are for private clubs. If a bar spends less than \$10,000 the rate is \$231 for the year per fee. So how can they charge an Eagle's Club that much and charge the bar right across the street so much more? And there again, they have no way of knowing what songs are played. It's impossible for them to do due diligence and get the money back to where it's supposed to go. So that's-- I'd like to see, you know, maybe it can't be done at this point, but at some point this bill has to get better or it's not going to help. It's going to make them jump through some hoops, might buy them some time. But in that-- so the bar it's strong. Yeah.

LARSON: There's questions and I think--

SHAWN COLE: There's so much to say.

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LARSON: You'll probably be able to extrapolate a little bit through the questions. Senator Blood.

BLOOD: Thank you, Senator Larson. I actually have two questions. So you have had mentioned that you thought that we could go further and make this a better bill. Do you know of any other states that have done a better job in reference to this type of legislation and crafting better language?

SHAWN COLE: I do not. I know there's, you know, I'm working with bars in Kansas and stuff that want something done here so we can try to duplicate it in other states. That's what I'm hoping to do. I know they're suing or bars it seems in Nebraska and New Jersey than some other states. I don't know if they just picked in put in place to start. But they are suing more and more bars here.

BLOOD: And then if I heard you correctly, really, that's the only component of this bill that you really care about is in reference to the licensing. So the rest you could take or leave? All right, thank you.

LARSON: Thank you, Senator Blood. Senator Krist.

KRIST: I've heard anecdotal information and I've heard the bars, especially the last testifier come up and tell us that he's being abused in terms of the sales process. I've heard that a lot. I've never seen real data, real numbers, and you wanted to give us that. Can I suggest that potentially you could give us a couple of solid examples of what's happening out there? So that we can look at it?

SHAWN COLE: Sure.

KRIST: Oftentimes, you know, I tell people I'm a pilot. Houses get bigger, houses get smaller, I go fast or I go slow. I don't know all about what you do. Ask me about aviation. So if you tell me what's happening out there we can potentially make the statutes better. So I would ask you to do that, please.

SHAWN COLE: I'd be happy to. I've emailed Senator Larson several times in the last couple weeks and I'll try to--

KRIST: Good, thank you.

SHAWN COLE: Thank you. One other thing, if I can. There's 93 music licensing companies now. It's not four or five, there's only four of

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them coming after our businesses or trying to get this money. But there's 93 of them now.

LARSON: Real quick, Mr. Cole. I'm sorry, I forgot to write your name. And I appreciate you coming, and I appreciate emailing back and forth. And obviously there's, there's comfort level that we all have. One thing that I think we're a little bit on LB1120, it would require that all of these music licensing companies pay the tax, and you said you are a member of ASCAP. And they're the only one in the state currently paying it. There's three-- so and essentially any company that would have to be licensed or any company that licenses them they'd have to publish all the songs that they cover. So it creates a lot more transparency, because right now none of them refused to do that. Also, I think one thing that we have to remember is those companies that don't license in the state want to be able to come after anybody and they'd have to prove what songs are playing. So I understand that the price controls and what not, and your feeling there, but we have to be very mindful moving forward and the progress that LB1120 does make.

SHAWN COLE: Yeah, and I think it does help.

LARSON: Thank you.

SHAWN COLE: Thank you.

LARSON: Any further neutral testimony? Seeing none, that will close the hearing on LB1120 and our day in General Affairs.