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Government, Military and Veterans Affairs Committee
January 23, 2009

[LB7 LB8 LB33 LB55]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. Friday, January 23, 2009, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB7, LB8, LB55, and LB33. Senators present: Bill Avery, Chairperson; Pete Pirsch, Vice Chairperson; Robert Giese; Charlie Janssen; Russ Karpisek; Rich Pahls; Scott Price; and Kate Sullivan. Senators absent: None. []

SENATOR AVERY: Welcome to the Friday, January 23 hearing of the Government, Military and Veterans Affairs Committee. My name is Bill Avery from District 28, and that's where you are right now, in District 28. I'm going to introduce the members of the committee. We have a few who have yet to arrive. I will introduce them when they get here. Starting at my extreme right, Senator Pahls from Omaha; and he is sitting next to Senator Charlie Janssen from Fremont; Senator Giese from South Sioux City is not here yet, but will be shortly; and Senator Pete Pirsch from Omaha, the Vice Chair of the committee. He is sitting next to the legal counsel for the committee, Christy Abraham; and Senator Karpisek from Wilber will be here; Senator Price from Omaha will be here; and we have over there all by herself almost is Kate Sullivan from Cedar Rapids; and our committee clerk, Sherry Shaffer. We have two interns over here who will help you distribute any materials that you have: Nick Bussey from Lincoln and Courtney Lyons from Plattsmouth. The order of business today will be to take up the agenda that is posted on the outside of the room: LB7, LB8, LB55, and LB33. Before we start, a few items that I would like to point out. There are sign-in sheets at the entrance to each door. If you are testifying, the form looks like this. We ask you to fill this out and to print very clearly the information requested. And then when you take the witness chair, give a copy to the committee clerk. There is another form: this is for people who are not planning to testify but wish to record your presence for or against a bill. Those are also available at the tables. Please, if you are testifying, please spell your name for the record, even if it's a simple name because we have to get that clear. Introducers will be allowed to make an opening statement. That will be followed by proponents and opponents and people who wish to testify in the neutral capacity. Closing remarks are reserved, of course, for the introducing senator only. Please listen carefully and try not to repeat what has already been said. And try to keep your remarks to five minutes. That, of course, does not apply to the introducer. If you get too windy, we might have to ask you to stop. But I think we have plenty of time to fully discuss what we have. If you have anything you want to give to the committee: any exhibits, charts, documents, whatever; make sure you have 12 copies so everybody has one. We will begin with Senator John Wightman from Lexington, LB7. Welcome, Senator. [LB7]

SENATOR WIGHTMAN: Thank you, Chairman Avery, members of the committee. I am John Wightman, spelled J-o-h-n W-i-g-h-t-m-a-n. I represent the 36th Legislative District. LB7 will not take five minutes by probably four and a half minutes for me to

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introduce. It's a very short bill. Actually we had one last year similar to this that the assistant clerk of the district court did not have to be a resident, and when the county officials started researching their statute, they found that even though it's an elected office, the clerk of the district court also didn't have to be. And the assistant apparently did have to be, but at any rate, now they would like to have that changed, and it should be. It's an elected office. They should be a resident of the county in which they're being elected. We have a provision that says they do not have; they have to meet the qualifications by the time of the general election or the time they take office. So they could actually run and be a nonresident at the time. But at least it will tighten up the provision that's in effect right now that they would have to...they would have to be a resident of the county from which they were elected. And then that is...that you'll hear support, I think, from the county officials in support of that for they are in support of this bill. So if you have any questions, I would be happy to try to answer them, but it's a pretty short, straightforward bill. [LB7]

SENATOR AVERY: Thank you, Senator Wightman. Any questions from the committee? [LB7]

SENATOR PIRSCH: Thank you very much for your introduction of this bill. So the bill just states that the clerk of the district court elected after 2008 need not be a resident of the county when he or she files for election, but the clerk of the district court shall reside in the county for which he or she holds office. [LB7]

SENATOR WIGHTMAN: Right. [LB7]

SENATOR PIRSCH: So it's creating the residency standard. And you said, and thank you for explaining...was it last year that we dealt with the assistant clerk of the district court, and we did away with the residency requirement for that? Did that pass? [LB7]

SENATOR WIGHTMAN: Right. That was passed and the reason for that was that particularly in small counties, to get an assistant, they have frequently had to go out of counties to find somebody. And if they ran, if they later ran, they could become the clerk of the district court, perhaps by appointment. But by the time they ran again for that office, they would have to have met the residency requirements and be elected then. But they could be appointed to fill out a term. [LB7]

SENATOR PIRSCH: I see, just whenever they came up. Were any of the policy reasons that were used as a basis to support them...making the assistant clerk of the district court be eligible even if they're not a resident of the county. Those kind of concerns are not present when you're talking about the clerk of the district court? [LB7]

SENATOR WIGHTMAN: Well, one is elected and one is not elected. And that makes a big difference to have somebody come in and run for the office when they're running in

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that particular county would create some problems. As a practical manner, I think all of them have been. But in researching the statute, the county official found that there was not such a requirement. There is for, I think, all of the other elective offices. So somehow that passed or had gotten passed by. [LB7]

SENATOR PIRSCH: So right now, technically you wouldn't have to live in the district to get elected by the residents of...I'm sorry, the county. You wouldn't have to live in the county to be technically elected by the people in the county to be the clerk of the district court. [LB7]

SENATOR WIGHTMAN: You would have to have made assurance that you were going to be there or you wouldn't be able to be sworn in by the time that you were to be seated as the clerk of the district court. [LB7]

SENATOR PIRSCH: Well, I mean, currently, under current law. [LB7]

SENATOR WIGHTMAN: Currently, you would not. Excuse me, I misunderstood. [LB7]

SENATOR PIRSCH: So I could live in Douglas County theoretically, and be elected clerk of the district court in Scotts Bluff. [LB7]

SENATOR WIGHTMAN: Or even Dawson County perhaps. [LB7]

SENATOR PIRSCH: In Dawson County, or maybe even not a resident, right? [LB7]

SENATOR WIGHTMAN: The odds are maybe low, but. [LB7]

SENATOR PIRSCH: Not even a resident, right? A resident of Iowa or something, out of state or something? [LB7]

SENATOR WIGHTMAN: Yeah. Well, yeah, I guess it would probably allow you to be a nonresident of the state. [LB7]

SENATOR PIRSCH: Okay. And the county, the counties when they're looking at filling these or having an official serve in this capacity, there's not a lack of availability of qualified candidates such that it, this is; that this should be required, that this needs to exist. That we shouldn't put this residency requirement in, right? [LB7]

SENATOR WIGHTMAN: That's my understanding. [LB7]

SENATOR PIRSCH: Okay. [LB7]

SENATOR WIGHTMAN: The county officials have certainly studied this situation, and

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they will be here to testify. [LB7]

SENATOR PIRSCH: Okay. That's all I wanted to clarify. Thanks. [LB7]

SENATOR AVERY: Any more questions from the committee? Seeing none, thank you, Senator. Do you plan to...you have to be here anyway. [LB7]

SENATOR WIGHTMAN: I'll be here for the next bill anyway, so if I need to close, I will. [LB7]

SENATOR AVERY: All right. Anyone wish to testify in support? [LB7]

BETH BAZYN FERRELL: Good afternoon, Chairman Avery, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm an assistant legal counsel with the Nebraska Association of County Officials. I won't explain the bill, Senator Wightman has done that. But I'll address some of the questions that you raised, Senator Pirsch. When we were dealing with the deputy bill last year, our intent was to make that position consistent with the other elected officials. In the other offices, deputies are not required to be a resident. Our intent with this bill is to do the same thing with the elected officials. This, the language that is in this bill is pulled right out of, I think it's the clerk's section, but the treasurers would be identical to that. With respect to your question about a lack of possible candidates, the clerk of the district court isn't an office that requires someone to be certified or hold a license like, for example, a county assessor or a county attorney. So we have not had any difficulty in that department. I'd be happy to try and answer any questions. [LB7]

SENATOR AVERY: Thank you. Senator Price. [LB7]

SENATOR PRICE: Thank you, Senator. Ma'am, a quick question. This doesn't, when we say to reside in the county, this wouldn't mean that someone would be living in a hotel that had to be paid per diem or anything like that? [LB7]

BETH BAZYN FERRELL: No. This would be residence. They would have to live within the county. Now, I do have to say that there have been questions at some point of what is considered a residence. But we really don't have much enforcement ability when it comes down to, you know, like filing or that department. And I know there's some county clerks here that may be able to talk a little bit more about their process if you'd like to have them come up. [LB7]

SENATOR PRICE: Thank you. [LB7]

SENATOR AVERY: Any more questions from the committee? Senator Giese. [LB7]

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SENATOR GIESE: No. [LB7]

SENATOR AVERY: Well, thank you. Anyone else wish to testify in support? [LB7]

PAMELA SCOTT: (Exhibit 1) Good afternoon. My name is Pamela Scott, P-a-m-e-l-a. I am the clerk of the district court in Richardson County, and I currently serve as the president of the Clerk of the District Court Association. Everything I have... [LB7]

SENATOR AVERY: And you spell your last name S-c-o-t-t? Right. [LB7]

PAMELA SCOTT: Correct. S-c-o-t-t. I'm here to support LB7 as it was introduced. Senator Wightman had brought this legislation on behalf of our association. As they mentioned last year looking through the residency requirements, we found there was not one for the clerk of the district courts. We found that in 1986 the statutes regarding residency for the elected county officials was amended. However, it failed to include the residency requirements for the clerk of the district court. And we just feel that the elected clerk of the district court should live in the county that they were elected in. So thank you. And do you have any questions. [LB7]

SENATOR AVERY: Any questions from the committee? Seeing none, thank you very much. [LB7]

PAMELA SCOTT: Thank you. [LB7]

SENATOR AVERY: Anyone else wish to testify in support? Anyone wish to testify in opposition? Any neutral testimony? Seeing none, Senator, do you wish to close? That then closes the hearing on LB7. We will now move to LB8 which is also introduced by Senator Wightman. Welcome back. [LB7]

SENATOR WIGHTMAN: Thank you, Senator Avery, members of the Committee. LB8 is a bill that I introduced last year, which probably indicates that it wasn't looked upon with a hundred percent favor a year ago. We hope it will be this time. LB8 would seek to change the fees--increase the fees--charged by the register of deeds. It would increase the recording fees for recording documents such as deeds, mortgages, and other legal documents. The fees would be increased from \$3 for filing a mortgage foreclosure and \$5 for other documents, to \$10 for the first page of a document and \$6 for subsequent pages. Today, you not only pay \$5 on the first page, if you record a deed or if you record a mortgage or a deed of trust, you actually pay \$5.50 because there's going to be a minimum indexing of one index. Every time that it's indexed against the lot or a section number, there's an additional 50 cents; we would be removing that. We'd be changing it to \$10 for the first page, \$6 for a subsequent page. In addition, as I stated, the increase would eliminate the indexing fee that's in effect now which will affect--I can't give you any idea of what percentage of the total documents filed have a second

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page--but many of the deeds have only a single page. The change will simplify the system for both the users, the people who are recording the documents; and the register of deeds. The increase in fees will adjust the fees to take into account, at least partially, not wholly, the substantial increase in costs in the fees since the bill was last amended with regard to fees, and that was in 1983 so that's 26 years ago. We had them checked with regard to the Consumer Price Index over that 26 years, that would really result in \$11.16 for the \$10 that we'd be comparing it to, so it would not quite match that. But the big difference is, we are really only increasing by \$1 second and subsequent pages. I've talked to our register of deeds, Ruth Meyer, and she tells me that the first page--the document itself--creates quite a bit of additional work. Frequently, she makes calls; she may have to write letters because the fees aren't correct or there's a correction with regard to when they check the description, it may be incorrect, and so the first page results in a lot more expense to the register of deeds than the second and third pages because the document itself creates the problem. And the first page would result in that additional work for the register of deeds. So to give you a little idea about the nature of recording and probably most of you have been involved with recording...I know that the attorneys here certainly would have...don't see so many of them here in this group. We're a dime a dozen in some groups. But at any rate, the recording does two things. It creates a permanent index which is used by the entire public, but primarily it's protecting the person who files the document. And so it's extremely important that that be done, but it ought to be primarily a user fee. And that does not pay for all of the salaries of the positions in the registers of deeds and many of the counties have one or several deputy or assistant register of deeds that assist in this. So all it would be doing is bearing some of the cost of inflation over the last 23 years. The bill also increases the fees paid to the Nebraska Secretary of State for recording documents under the Uniform Federal Lien Registration Act and the Uniform State Tax Lien Registration and Enforcement Act. And that is raised to \$6 or two times the fee required for filing the same document with the register of deeds. Since these documents must be filed both with the Secretary of State and the county, this fee is split evenly between the Secretary of State and each designated county. So you will see a fiscal note attached to this. The county officials have...and particularly the register of deeds have requested this bill. Also the county commissioners have requested this bill. The increased fees will help the counties balance their budget without resort to additional tax revenues in the form of real estate taxes to pay it. It's not a tremendous amount...wouldn't be with regard to the mill levy. But if we don't keep these fees, the user fees, at least paying a major share of the cost of handling these recordings, we are going to result in additional taxes, and this is just one part of it in this register of deeds charge. So we feel that the increased fees will be more commensurate with the services rendered rather than subsidize these services by the taxpayer which they have been doing for the last 23 years. Assuming that it represented the cost of service when the bill was changed in 1983, we are way below that cost today. And we're not taking, you know, we're being sensitive in not taking the amount that would have increased over the past 23 years because the second page is only going up by 20 percent. It's going from \$5 to \$6. So we would

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appreciate your consideration in forwarding this bill on to General File. Any questions?
[LB8]

SENATOR AVERY: Thank you, Senator Wightman. Are there any questions? Senator Pirsch. [LB8]

SENATOR PIRSCH: Thank you. Do you know currently how much is a percentage, for instance, to these...do the actual collected fees cover as far as the costs of the services provided? You said, they're not quite, they're not breaking even and even under an increase, they're not going to break even with this. Do you know how much more is?
[LB8]

SENATOR WIGHTMAN: I couldn't give you that, Senator Pirsch, and I'm told it varies a lot from county to county and the costs of personnel within a county. [LB8]

SENATOR PIRSCH: Okay. [LB8]

SENATOR WIGHTMAN: So I'm not sure I can really do that. It makes a lot of difference whether you're in a small county and you have one person there doing all of this work or you have a larger county that maybe has ten times as many filings, I suspect, too. So I think it would be very difficult to really arrive at that. But not only do they pay the personnel, but they maintain all of these books, assist the public when they come into the office, and that part probably should not be paid by the user. But the part of providing the permanent record, that obviously should be the expense. [LB8]

SENATOR PIRSCH: Okay, thanks. Just one other question. The users of these services then by the register of deeds, are these...I'm assuming because they're deeds and these kinds of things, typically they're not everyday occurrences. In other words, you're not coming back day after day after day utilizing the services. Typically, your average user of these are...say you're registering a deed, you purchased a house or something of that sort--once in a great while--correct? So it's... [LB8]

SENATOR WIGHTMAN: For an individual. [LB8]

SENATOR PIRSCH: For an individual. Well, these will be pass off, if you're, you know, utilizing a title company or whatnot, you'll pass that fee along anyhow, you would imagine, wouldn't you? Or? [LB8]

SENATOR WIGHTMAN: You mean whoever is paying it? Of course, if it's an individual paying it, he's not going to be able to pass it on. If a realtor is paying it or a title company is paying it, they will pass it on to their client or whoever it may be. [LB8]

SENATOR PIRSCH: Particularly whoever ends up paying for it is typically, it's not an

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everyday kind of occurrence, coming back day after day? [LB8]

SENATOR WIGHTMAN: Right. [LB8]

SENATOR PIRSCH: An extra \$6 increase in an unusual type of transaction is not, you're saying, an undue burden for this kind of a transaction. [LB8]

SENATOR WIGHTMAN: Right, to most people. Many people, it may be once in a lifetime, with regard to a home mortgage. However, many of them get mortgages maybe several times on their home, and that would be passed on by the mortgage loan company to the individual who gave the mortgage. [LB8]

SENATOR PIRSCH: Yeah, thank you. [LB8]

SENATOR AVERY: Senator Wightman, have you heard of any cities and municipalities about the impact this might have on their budgets? Say like Lincoln and its Urban Development Department might have a lot of filings on behalf of public assistance programs? Have you heard anything? [LB8]

SENATOR WIGHTMAN: I have not heard. I have heard only from the counties. Last year, and I think we'll hear from the realtors again, who will be in opposition to this bill; and I'll address that in my closing. [LB8]

SENATOR AVERY: (Exhibit 1) Well, I will be entering into the record a letter from the City of Lincoln. The finance director estimates about \$10,000 increase to the city of Lincoln just in the Urban Affairs Department. So I wanted you to be aware of that. [LB8]

SENATOR WIGHTMAN: And I guess my response to that would be that we're still talking about a cost of service and the cost ought to be to whomever is requiring that service. And if it is a fair and reasonable cost and I suspect it's quite a bit below yet of the cost of that service; the party that's benefitting from the service ought to pay it. So it seems to be that the county probably has been subsidizing the city during some of the past 23 years in that regard, if they are going to have that much increase. [LB8]

SENATOR AVERY: They have not been complaining about that. [LB8]

SENATOR WIGHTMAN: What? [LB8]

SENATOR AVERY: They have not been complaining about that. [LB8]

SENATOR WIGHTMAN: They didn't mention that. I'm not surprised. [LB8]

SENATOR SULLIVAN: Chairman? [LB8]

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SENATOR AVERY: Yes. [LB8]

SENATOR SULLIVAN: Thank you. Senator, apparently there is some interest in increasing fees in a lot of these different areas at the county level. Has there been any attempt to coordinate this, either from the Association of County Officials or at the local county level, to look at all the fees assessed, that there might be some coordination? [LB8]

SENATOR WIGHTMAN: Not that I'm aware of. At least I wasn't requested to include that in my bill, but when you get down to recording, certainly, the register of deeds is probably the number one office in the courthouse that does handle the recording. Now there is also some in the clerk's office and the courts are under a separate situation. The clerk of the district court also would handle some of that and the county court, but they really would come in through the Supreme Court probably to request that increase. So I would not expect that to come through the county officials. That's pretty much...would be done through the courts, but now the clerk would be a possibility and probably the treasurers office, as far as handling licenses and driver's licenses, and that would be the primary one probably would be titling vehicles. It used to be that was in the clerk's office. Now it's in the treasurers office. [LB8]

SENATOR SULLIVAN: Okay. [LB8]

SENATOR AVERY: Any more questions from the committee? Seeing none, thank you Senator Wightman. [LB8]

SENATOR WIGHTMAN: Thank you. [LB8]

SENATOR AVERY: Will you be staying for closing? [LB8]

SENATOR WIGHTMAN: I will be staying on this one. [LB8]

SENATOR AVERY: Are there any people who wish to testify in support? Welcome. [LB8]

SANDRA STELLING: Thank you. Senator Avery and committee, I'm Sandra Stelling, S-a-n-d-r-a S-t-e-l-l-i-n-g. I'm the Jefferson County clerk, register of deeds and election commissioner and cochair of our legislative committee for our association. I am here today to ask your support on LB8 to increase the fees for the register of deeds. The fees have not been increased since 1983, which were \$3.25 for the indexing. The current fee is the \$5.50. I have checked with Washington County, Kansas, and their first page is \$8 and \$4 for the second. That's for deeds. You go to releases, they're \$7. Financing statements are \$15. Mortgages are .0026 times the amount of the mortgage. And I

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pulled these up off of their Web site last night. Jefferson County, Colorado, is \$5 a page. Jefferson County, Texas, is \$16 for the first page and then \$4 after that. And these are the only ones that I got a chance to pull up last night and from our association, we feel that after 25 plus years, that we would like to see a fee increase in this. So I ask again for your support on LB8. [LB8]

SENATOR AVERY: Thank you. [LB8]

SANDRA STELLING: If you've got any questions, I'll try to answer them. [LB8]

SENATOR AVERY: Any questions from the committee? Seeing none, thank you for your testimony. [LB8]

SANDRA STELLING: Thank you. [LB8]

SENATOR AVERY: Anyone else wish to speak in support? Welcome. [LB8]

MARY EICKHOFF: Good afternoon. My name is Mary L. Eickhoff, Mary, M-a-r-y L. E-i-c-k-h-o-f-f. And I'm the Richardson County clerk and I also am the cochairman of our association's legislative committee. And I want to agree with everything that Sandy had given you. And I also want to add that by eliminating the 50 cents for each legal description that is on the document, the filing fee for that, and you'd eliminate that; it would eliminate also a lot of confusion with filing. We get a lot of filings down in Falls City along the Missouri and Kansas border, from attorneys from there and different places, and they get confused with the filing fees. So \$10 for the first page would eliminate that confusion, and it would eliminate us having to send documents back for the proper recording fees and such. Also by increasing these fees, we would also gain some revenues for our general fund. It would help alleviate a little bit of property tax burden. And it is a user fee and so we should pass that on to the users that use that service. I guess that's all I have, except maybe the cost of our books that we have to record these documents in, we are going electronic. Everything will, you know, we're working on that, but we still keep the paper copies and we still have to have the books and the binders to put things in. And they're about \$90 with the book and the paper and we fill up about ten of those a year, so down in Richardson County. So if that would help, and I'll answer any questions. [LB8]

SENATOR AVERY: Questions from the committee? Seeing none, thank you very much. [LB8]

MARY EICKHOFF: Okay. [LB8]

SENATOR AVERY: Anyone else wish to speak in support? [LB8]

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BETH BAZYN FERRELL: Good afternoon, Chairman Avery and members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. I won't repeat the testimony that you've heard for the reasons why we would like this fee increased. It is a user fee. It's to help maintain the permanent records. In response to your question, Senator Sullivan, about looking at sort of a comprehensive look at all fees, probably five years ago, maybe a little longer than that, we did take a pretty comprehensive look at that. We really haven't done so since, but we have worked; the sheriffs have a bill in another committee that would increase their fees. There are a couple of bills in other committees that deal with not the amount of motor vehicle fees that counties collect, motor vehicle taxes, necessarily, but some tweaking of those formulas and some redistributions and that sort of thing. But we'd certainly be interested in taking a look at the overall fees if that would be something that you would like us to do. I'd be happy to try to answer questions. [LB8]

SENATOR AVERY: Any questions? Senator Pahls. [LB8]

SENATOR PAHLS: This is, in a round about, is a question. Are you like the lobbyist for this association? What...would you explain your role? [LB8]

BETH BAZYN FERRELL: I am a registered lobbyist for the County Officials Association. There are four of us in the office that are lobbyists. I am also one of the staff attorneys. [LB8]

SENATOR PAHLS: Okay, well, then how many lobbyists does the county have? [LB8]

BETH BAZYN FERRELL: We have four registered lobbyists, and of course, we have a great deal of help from our county officials. [LB8]

SENATOR PAHLS: Yeah. And the reason why I'm bringing this issue is not that I'm against having a lot of people come, but over the last five years, I have seen a lot of what I call the people who work in the county, testifying. Well, that's good that they're testifying, but I'm also wondering who's running the show at home? I'm serious on this because it--over the last, you know, four or five years, I have seen a number of county officials who are testifying--and I'm just curious. It's a good thing to have them testify, but also if we have...there are four of you to testify, I'm having sort of mixed feelings of how the money is being spent at the county level for the employees? I'm just being very honest with you. I've been here long enough to see this. And we will see a number of bills that will come in front of this committee and I see...and I know it's true testimony because it's sincere because those people are actually doing the work. But I've just come to question over the years what's happening when they're gone. I'm just being very frank with you. [LB8]

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BETH BAZYN FERRELL: Well, and I think that's a legitimate question, Senator. [LB8]

SENATOR PAHLS: Because there are four of you, is what you're telling me? [LB8]

BETH BAZYN FERRELL: There are four of us registered lobbyists for NACO. Yes. [LB8]

SENATOR PAHLS: Yeah. And the testimony that they give is great, but also that can be done on paper, and it would be less time away from the county. And I'm assuming that the association pays for the driving and all that, or that comes out of their personal pocket? [LB8]

BETH BAZYN FERRELL: No. It comes out of their personal pocket. There may be some help from the affiliate organizations. [LB8]

SENATOR PAHLS: You know, I mean, I commend them for doing that. I mean that's going above and beyond but I just...I've sat here over a number of years and even though I appreciate their testimony and their sincerity, I'm thinking sometimes by a paper and it can be introduced into the, you know, into our file so we understand. I'm just, I mean, it just caught me today for some reason, you know. Okay, thank you. You don't need to answer that question. [LB8]

SENATOR AVERY: Senator Price. [LB8]

SENATOR PRICE: Thank you, Senator. Ma'am, I just have a quick question in the entire NACO, and in this area, we heard a little bit about e-filing or electronic filing of these. Do you have an event horizon, sometime you see where that will become the predominant methodology used for filing documents of this nature? [LB8]

BETH BAZYN FERRELL: We don't at this point. We do have another bill that we asked to have introduced this year, and I can't tell you the bill number right off; but it would create a standardized format for documents that are filed in the register of deeds office. That's really the first step before we can do a standardized filing. We need to have everything come in in the same format. It's something that other states are looking at. Iowa has done that. They did that, the attorneys, the bar association wanted to do that. They promoted that, but there was an agreement reached that the register of deeds would sort of figure out a system. And they all worked together, the register of deeds, the state, the bar association to come up with sort of an on-line filing system that was searchable statewide. It was a statewide database. That probably goes a bit beyond what you're talking about, but it is down the road a possibility, certainly, once we're standard. [LB8]

SENATOR PRICE: That goes right to the heart of it because once we can have an

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e-filing system, we're not talking pages. A realtor can sit in an office, a digital signature can be garnered, a button could be pushed, and it's done. And we're not talking about a first page, second page or all of them. And we can do that for pennies on the page versus dollars which reduces the burden on the counties also. I just wanted to ask that question, if we've had a...what the process was, so thank you. [LB8]

SENATOR AVERY: Any additional questions? Senator Janssen. [LB8]

SENATOR JANSSEN: Thank you, Senator. I'm sorry, I missed your name? [LB8]

BETH BAZYN FERRELL: Beth Bazyn Ferrell, Ferrell is my... [LB8]

SENATOR JANSSEN: Thanks, Ms. Ferrell. What is the actual cost when you say that? Is it an actual cost of the paper, actual cost of your books, or is it, are you factoring in the actual time that it's taking the clerk to do this? And saying that they could be doing something else instead of this, or? [LB8]

BETH BAZYN FERRELL: I think it's a combination of those things. As you heard, in Richardson County, the books are \$90 apiece. Those, they go through ten a year, and that's a relatively small county. There are costs associated with maintaining those records; the proper archival kinds of paper and that sort of thing. All of those have to be microfilmed. They're the permanent records of the land in this state so it's important to keep those so they're accessible and in the proper format. It really covers the whole scope of the things that are done in the office. [LB8]

SENATOR JANSSEN: Okay, and I do agree with Senator Price, I'd like to see more electronic filing, but I guess it's somewhat hypocritical because I've only been on the Legislature for a couple of weeks, and the amount of paper I see flushed out of this place is staggering. But you said in your books, how much...how many pages do you record in those books? [LB8]

BETH BAZYN FERRELL: That's probably a question that could be better answered by one of the actual registers of deeds. I believe that it depends on a number of factors, like the legal description, the length of that, and those kinds of things. [LB8]

SENATOR JANSSEN: Sure. I didn't know if there was a capacity size of these books that could only get so big and? [LB8]

BETH BAZYN FERRELL: Oh, in that respect, yes. Yes. [LB8]

SENATOR JANSSEN: And I was kind of curious to see how much fees per book that you're going through? [LB8]

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BETH BAZYN FERRELL: And I don't know the answer to that, but we could find that out for you. [LB8]

SENATOR JANSSEN: It could be a staggering number, right? It could be several thousand dollars per book, I would assume, which would double pretty much. So thank you. [LB8]

SENATOR AVERY: Any more questions from the committee? [LB8]

SENATOR PIRSCH: Very quickly, the same question I posed to Senator Wightman, statistically, whether it be anecdotal or empirical, do you have a sense of currently how many...when you're looking at the cost of the register of deeds office that are incurring now and providing these services; how much the fees are generating as a percentage, and if you have it--and just kind of, even if it's a gut feeling of yours--and then again, under this law, if enacted, how much more of those as a percentage would be covered? [LB8]

BETH BAZYN FERRELL: I'm sorry, I don't have anything on that. I think it would really vary from county to county. And I think the way the economy has dived and so on would make a difference in that proportion, too. [LB8]

SENATOR PIRSCH: Is it currently coming even close to do it, would you say, you know, not even half of the costs or, and I know it's county to county, there's a lot of variabilities, but take your county, you know, as, do you have kind of an understanding of in your county? [LB8]

BETH BAZYN FERRELL: And I couldn't come up with a number for that, I'm sorry. [LB8]

SENATOR PIRSCH: Okay. That's okay. Thank you. [LB8]

SENATOR AVERY: Any more questions from the committee? Seeing none, thank you very much for your testimony. Anyone else wish to testify in support? Okay, we'll now move to the opponents. [LB8]

WALT RADCLIFFE: Senator Avery and members of the committee, my name is Walter Radcliffe, and I'm appearing before you as a registered lobbyist on behalf of the Nebraska Realtors Association in opposition to LB8. [LB8]

SENATOR AVERY: Would you spell your name for the record? [LB8]

WALT RADCLIFFE: R-a-d-c-l-i-f-f-e, W-a-l-t. Thank you. [LB8]

SENATOR AVERY: Thank you, Mr. Radcliffe. [LB8]

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WALT RADCLIFFE: Senator Wightman is right. We keep having this bill come back, similar bills come back. And I don't know why the realtors have decided to put me up here every year. I think I was probably here in 1983 opposing that increase, Senator Wightman. Somehow it got through. But I tell you what I'd like to do, I'd like to speak to the committee generally about just public records and what they are. I'd like to talk briefly about this particular bill, but then I would like to offer--I think, I don't want to say a solution--but a direction and perhaps a method where we can resolve some of the issues and address what I think is a very legitimate point and issue that Senator Wightman's bill raises. But the issue of public records, and this is something you're going to hear; this committee is going to hear all year in one form or another. And I may be here or I may not or I may have a different client that's interested. But public records are just that. They're public records. That's the function of government. That's one of the things that we pay taxes for: is to maintain our records so that they serve the purpose that they're designated to serve. User fees, you know, sound fine, but we seem to want to implement them without any consistency. We don't charge a user fee for how many times you use the fire department or how many times you have to call the police department or how many times you flush your toilet with the sewer. I guess maybe water, but I mean, you should think about it when you say, oh, we'll let user fees cover this. We don't use it on our road system. We certainly don't have any toll roads in the state of Nebraska. It sounds good but underscore that with the fact that what is the function of government? It's to do collectively what we can't do individually. And a sound public record system for the benefit of the public is one of those things. So when you talk just in terms of user fees here, gird it a little bit with that type of thinking. It's something that, frankly, we all do pay taxes for. And I don't know, I disagree with one thing that, probably the only thing substantively that I disagree with, with what Senator Wightman said, with regards that the--maybe it wasn't Senator--but that the benefitting party should pay for it. Well, again, to what extent do we carry that? I go back to my fire department analogy. Obviously the party it benefits is the party whose house didn't burn down. But it still...the community collectively has chosen to spread those costs. So that's just kind of a foundational underpinning, if you will, when you think about government costs, user fees, and then bring that back to public records and specifically to this bill. I want to make about three points on the bill. Granted, it hasn't been raised since 1983. There is a lot of things that haven't gone up for a period of years. And I'm sure Senator Wightman is going to hear that in Appropriations this year. We haven't had an increase in costs and fees that are paid to mental health practitioners. It hasn't kept up with the cost of living. We haven't seen that for X number of years. The mere fact that something hasn't gone up in price in a certain number of years doesn't mean that it's time for it to...except, of course, for my fees. If they haven't gone up recently, there's something wrong with the way I'm pricing here. But nonetheless, that is a standalone axiom, really isn't applicable. Another interesting thing, you've kind of got mixed testimony that hey, it costs X amount of money to do this and that's why the county needs more money. But it's going to go into the General Fund. It's not earmarked for the register of deeds office

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to enhance their systems as Senator Price was saying, for instance, with regards to e-filing. I recognize that the county boards then determine what the various budgets are. I, frankly, think you'd hear a different tune from the realtors if the money was going directly to the register of deeds office. Diane Battiato, who is the register of deeds in Douglas County, is also a member of the Realtors Association. And Diane is a very, very, very strong advocate in favor of increasing fees, but she always adds parenthetically, I wish we could get this...quote, our fair share in the register of deeds office. But that's, you know, that's LB8. I mean, the realtors have traditionally said don't raise fees. Well, I tend to agree with Senator Wightman. At some point in time, you're going to have to raise them. And the issue has come back and it has come back and come back. Beth mentioned another bill that the counties had introduced and that's LB295. Senator Campbell introduced that. It's been referred to your committee, Senator Avery, and when I checked, I don't think you'd set it yet for a hearing. But it does two things: the one thing which Beth mentioned, which is reformatting the filing, and secondly, it also changes the fee structure. I would like to see us work with--by us, I mean, the realtors and other interested parties--work with the county officials. I know Korby Gilbertson in my office has visited with Larry Dix, the chief executive in NACO, about sitting down, working together, and trying to come back with something that addresses the issues raised in LB8 with regards to fees, and LB295 with regards to some unified formatting. This isn't going to...you're not going to get a good result, frankly, if we're just...if we're at each other or if all we're doing is attending an auction, trying to negotiate how much a fee goes up. We've got a meeting with the realtors next week. This is something they've tentatively agreed to do. We'll work out the details. This isn't a speech from me of saying, oh gee, we'll try to work with you and hold the bill. Do what you want with the bill, but what I'd rather see is I'd rather see everything looked at and come back with something that really does go towards what Senator Price is speaking of with regards to a uniform system and e-filing. So with that, Mr. Chairman, I'll be quiet, and I'll be happy to try to answer any questions. [LB8]

SENATOR AVERY: Let me start by asking you about LB279? [LB8]

WALT RADCLIFFE: LB295 was the bill that Senator Campbell introduced. [LB8]

SENATOR AVERY: Does that address e-filing? [LB8]

WALT RADCLIFFE: No, it doesn't address e-filing. As Beth said, it addresses some formatting and also addresses the...some fees. It does not address e-filing, no. And I think one...let's be candid, I think one of the problems we're going to have with e-filing, it's going to be very hard to ever--ever is a long time--it's going to be hard to mandate on an across-the-board system for 93 counties. Okay? We've probably got some counties out there that are still on book two in their index. But I think that we should work towards being able to do it in counties where it can be implemented. And I'll tell you what, in those counties, the realtors would be happy to pay if that money went

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towards those systems. [LB8]

SENATOR AVERY: All right, Senator Price. [LB8]

SENATOR PRICE: Thank you, Mr. Chairman. Mr. Radcliffe, I had a question and I think it comes to mind with what Senator Pirsch was asking. Obviously, the costs incurred don't cover or the fees don't cover the costs. That's pretty evident. But is there...and you mentioned about public records, the reason the public records are there. My question is who; does not the owner or the new owner derive a benefit from the deed being recorded? [LB8]

WALT RADCLIFFE: Oh certainly. I mean I think a clear title is obviously a benefit. Otherwise we'd have, but it's all...it's a benefit to everybody in society that we have a clear title so we know who owns the land, who's going to pay the taxes on it. To be very honest, I could argue it's a greater benefit to the political subdivision, because without clear title, they'd never be able to establish who, in fact, is going to pay the taxes. [LB8]

SENATOR PRICE: But we could apportion the benefit. You know, the public has a benefit and the buyer has a benefit and I could see that, like as you said in your analogy, with your fees being raised based on the benefit you're providing your client. So if there's a benefit being applied to a client, an apportionment could be made of the total costs. [LB8]

WALT RADCLIFFE: I think it's always dangerous to mix public and private sector analogies. But besides that, I would ask the question, in what instances is that user-benefit formula applied? And I would submit to you that if you are going to come up with some kind of a user-benefit formula, then you should come up with some policies as to where and when it will be applied. This might be an easy one to...this might be an easy one to point to. But I keep going back to public safety. You can go down the list of all that government services provide. Most of them, probably not all of them, but most of them are a benefit to somebody. But how do you then proportion that out? I don't have that answer. [LB8]

SENATOR AVERY: Any more questions from the committee? Seeing none, thank you, Mr. Radcliffe. [LB8]

WALT RADCLIFFE: Thank you, Senator Avery. [LB8]

SENATOR AVERY: Any other opponents who wish to testify on LB8? Anyone wishing to testify in the neutral capacity? Seeing none, Senator Wightman, do you wish to close? [LB8]

SENATOR WIGHTMAN: Thank you. I would like to close on this one. Mr. Radcliffe

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makes some points, I think legitimate points. But by the same token, I think the realtors have been in--and he suggests they have--perhaps since 1983 and before. I'm not old enough to know whether he was in testifying in 1983 or not. Well, maybe I am. But at any rate, I'd like to analyze this on the basis of what realtors charge, and they seem to be in--and I don't know whether they're suggesting that the expense is a big thing to their clients, to their customers--or on quite what basis he makes that argument. But I would suggest to you that on a \$150,000 sale, at least realtors in our area would charge \$9,000; 6 percent of \$150,000. If it was a \$300,000 sale, they would be charging 6 percent of \$300,000 because I haven't noticed a reduction based upon the size of that sale. That would be \$18,000, and I guess I would like you to just consider how much a \$4.50 increase on the first page would be of that total fee or commission, whatever they charge. Oh, they call it a commission. I would also suggest to you that a commission such as that, based upon a percentage of a price, inflation has taken care of over the years because as the price of that house or farmland or commercial building rises, that commission goes up right with it. But we're talking about a county official who is locked in to what they are charging on dollars, not a percentage. Now, you did hear a suggestion that in Kansas, on mortgages, they were charging a percentage. Now, I agree a lot with what Senator Price is saying, that we probably will move toward electronic filing, but I sit on the Appropriations Committee, as most of you know. And I can tell you that just because it's electronic filing, it may be for the ease of the users, but whether the cost goes down--we've purchased new mainframe computers to the extent of hundreds of thousands of dollars for the university, millions of dollars--so that's not free just because it's electronic filing. The cost is still there. It's more convenience of user than it is the reducing costs probably. So, and furthermore, I agree with Mr. Radcliffe that probably you're never going to go entirely away from a paper trail on this type of records. Sure, these records protect not only the public, but also the owner of that property; if he owns a property for a hundred years, it protects him for a hundred years. But it protects his purchaser, and in the chain of title, for two and three hundred years. So there is protection that continues, and it's not just a matter of filing that document, but it's also a matter of providing records that are going to last for hopefully hundreds of years, and they have now. Some of the cities here would have 150 years of recorded records that they have preserved that records; they stay in the county. Some of that is to the public, and I agree, I don't know how we allocate that cost. It would be very difficult. But it just seems to me, and it's easy to say well, we ought to get together--which maybe never happens--and look at the entire fee structure. But I don't think that justifies holding off what we are talking about right now where the current user fees are not paying anywhere near the cost. If you factor in the salaries, if you factor in the equipment, the storage capacity, and everything, I would suggest that we aren't even close. And so there is a lot of it being done because it is of use to the public generally. So I do hope that the committee will pass this on to General File. I think it deserves a debate on the floor, and I appreciate your consideration. Thank you. [LB8]

SENATOR AVERY: (Exhibit 1) Thank you, Senator. Any questions? Seeing none,

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that...I have to enter into the record here one letter in opposition to LB8 from Don Herz, the financial director for the City of Lincoln. That ends the hearing on LB8. We will now move to the next item on the agenda, LB55, and we are pleased to welcome back Senator Deb Fischer from Valentine. [LB8 LB55]

SENATOR FISCHER: Thank you, Chairman Avery. And that you to the members of the Government, Military and Veterans Affairs Committee. For the record, my name is Deb Fischer, F-i-s-c-h-e-r, and I am the Senator representing the 43rd District in the Nebraska Unicameral. LB55 proposes to change the qualifications for county attorneys, as well as the qualifications for Nebraska's Attorney General. I believe that these qualifications are very straightforward and are a matter of common sense. LB55 requires that those seeking the nomination for county attorney or attorney general shall be practicing law in the state of Nebraska. While this may seem fundamental to such positions, the statute currently only requires this standards for counties of Class 4, 5, 6, and 7 which have populations of 20,000 or more. Additionally, state statute also requires that the individual practice of law for two years in the state prior to taking office in these counties. No such conditions exist for those seeking the position of county attorney in our smaller counties or for the position of our state attorney general. Therefore, LB55 requires the person seeking the office of county attorney in Class 1, 2, and 3 counties--those are counties with less than 20,000 in population--be admitted to the practice of law in Nebraska. This classification of counties is referred to in the current statute as well as in my bill as previously indicated. However, no statutory reference currently exists so the bill also specifies the appropriate statute in reference to the classes of counties. Lastly, LB55 includes a provision that the candidate for Attorney General shall be admitted to the practice of law in Nebraska for a minimum of two years prior to taking office. I became aware of the lack of the qualifications for county attorneys when an individual was elected as county attorney in my legislative district prior to passing the bar. While this is no longer an existing concern in my district or in the state, the implications of a nonpracticing attorney serving in this capacity are very apparent. It's very costly for a county to have to hire another attorney to carry out the duties of the office that only a practicing attorney is authorized to complete. LB55 creates uniformity for the qualifications of county attorneys across the state, so regardless of the size of the county, a practicing attorney will hold this key county position. The Nebraska Bar Association brought to my attention the fact that there are currently no existing qualifications for Nebraska Attorney General candidates. Again, it is only appropriate to set professional standards for this elected office by requiring that a nominee has at least two years experience practicing law in Nebraska. Thank you, and I'd be happy to answer any questions. [LB55]

SENATOR AVERY: Senator, I would like to start. [LB55]

SENATOR FISCHER: Yes, Senator. [LB55]

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SENATOR AVERY: You did, you consulted with the bar on this? [LB55]

SENATOR FISCHER: Yes. [LB55]

SENATOR AVERY: Did they comment or talk to you at all about the constitutionality of the Legislature setting qualifications for a state constitutional office like the Attorney General? [LB55]

SENATOR FISCHER: No, we did not discuss that. [LB55]

SENATOR AVERY: Didn't discuss that. [LB55]

SENATOR FISCHER: I would assume since it was the bar association, they would have a pretty good idea if it was constitutional or not. [LB55]

SENATOR AVERY: Yeah, we will probably want to ask them about that. Any questions for Senator Fischer? Seeing none, are you going to stay for closing? [LB55]

SENATOR FISCHER: I will waive closing. [LB55]

SENATOR AVERY: You will waive closing. Thank you. [LB55]

SENATOR FISCHER: Thank you very much. [LB55]

SENATOR AVERY: Anyone wish to speak in support of this? [LB55]

AMY PRENDA: Good afternoon, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. My name is Amy Prenda, it's P-r-e-n-d-a, and I'm testifying in support of the bill on behalf of the Nebraska County Attorneys Association. I am a registered lobbyist for them. And I would be happy to answer any questions if you have them. except for the one about the bar association. [LB55]

SENATOR AVERY: Okay, I was going to ask that. Does anybody have any other questions? Senator Pirsch. [LB55]

SENATOR PIRSCH: Just out of curiosity, other than the case in which Senator Fischer mentioned, are you aware of any other incident in which someone has either taken either office who had, wouldn't meet the criteria that's set forth here. [LB55]

AMY PRENDA: We were talking about that in the Rotunda today, and it's my understanding that there might be another case, I'm not sure of the county, but the person took office before and did not pass the bar. And so they were in office, not passing the bar, and they had to wait until they took the bar again. So that's the only

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other instance that I'm aware of. But I could find out more. [LB55]

SENATOR PIRSCH: Oh, that's okay. Just out of curiosity. Thank you very much. [LB55]

SENATOR AVERY: Any more questions from the committee? Seeing none, thank you Ms. Prenda. [LB55]

ANY PRENDA: Thank you very much. [LB55]

SENATOR AVERY: Additional testimony in support? [LB55]

KATIE ZULKOSKI: Good afternoon, Senator Avery, members of the committee. My name is Katie Zulkoski, Z-u-l-k-o-s-k-i. I am testifying today on behalf of the Nebraska State Bar Association, and we are testifying in support of this bill. As to Section 1 of the bill, as Senator Fischer said, the bar association is concerned that anyone could run for county attorney before they have been accepted into the practice of law. And as a practical matter, a person could even take the bar exam, pass the exam, and have the Bar Commissioners reserve judgment on the character and fitness portion. So even after you have passed the bar exam, the second portion of that which would be being accepted under the character and fitness could have been reserved, and you would still not know under that if you have been admitted to the practice. And I'd be happy to answer any questions. [LB55]

SENATOR AVERY: Thank you. Any questions? [LB55]

SENATOR SULLIVAN: I have to ask, or excuse me, Chairman. I'd have to ask, since you are representing the bar association, if they did address Senator Avery's concern about the qualifications for the Attorney General being included in this proposed legislation? [LB55]

KATIE ZULKOSKI: We have looked at that, and we have looked at the constitution, and we have looked at case law concerning that matter. And since the constitution states that the Attorney General is a constitutional officer, the constitution does not set forth any qualifications. And so since the Legislature would not be contradicting any qualifications or would not be supplanting anything that the constitution says, then they would not be, you would be able to set that as well. [LB55]

SENATOR AVERY: If I may restate that, if you don't mind. Since the constitution does not specify qualifications for the Attorney General, then the Legislature is free to add qualifications to that office. Is that what you were saying? [LB55]

KATIE ZULKOSKI: The case law that I have looked at on this is in regards to reasons that you could be, the word escapes me, but reasons that you could be taken out of

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office, and if the constitution sets the reasons that you would be taken out of office, then the Legislature is not free to think of more reasons that you would want to remove someone from an office. And so based on that reading, we read that that would be...since there are not terms and qualifications set forth in the constitution, then you're not contradicting any of that. [LB55]

SENATOR AVERY: Okay. Do you have more questions? Anyone else? Thank you. [LB55]

KATIE ZULKOSKI: Thank you. [LB55]

SENATOR AVERY: Any more testimony in support? [LB55]

BETH BAZYN FERRELL: Good afternoon, Chairman Avery, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. We do support this bill. We were involved in looking at this issue when an individual filed for office, was the candidate that made it through the primary in May, and was not scheduled to take the bar exam until July. And when we looked at this, there were no requirements in this regard, and we would like to see some kind of policy in place for this. I'd be happy to try and answer questions. [LB55]

SENATOR AVERY: You are a lawyer admitted to the bar? [LB55]

BETH BAZYN FERRELL: Yes, I am. [LB55]

SENATOR AVERY: Do you have an opinion on the question I asked Senator Fischer about the Attorney General? [LB55]

BETH BAZYN FERRELL: We had not looked at the Attorney General portion of this. We had only looked at the county attorney part of it. [LB55]

SENATOR AVERY: Any other questions? Seeing none, thank you. Anyone else wish to testify in support? Anyone wish to testify in opposition to LB55? Any neutral testimony? Seeing none, Senator Fischer has waived closing so that ends the hearing on LB55. We will now move to LB33, and invite Senator Fulton to the table. Welcome Senator Fulton. [LB55 LB33]

SENATOR FULTON: Thank you for having me. Good afternoon, Chairman, Mr. Chairman and members of the Government Committee. My name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I represent Legislative District 29 here in Lincoln. I am bringing LB33 on behalf of my home county of Lancaster. The bill itself is limited to counties with a primary class city which would be Lancaster here in the state of Nebraska. And is in

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response to an interim study conducted in 2006. I believe Senator Schimek brought this the last go around, and it was originally broached by Senator Landis. So we feel that this is the result of a collaborative process over the course of many years and now three Lancaster County Senators. LB33 provides Lancaster County with the zoning authority to transfer noncontiguous property development rights for residential use so long as that transfer is a voluntary one. Initiated over 40 years ago, Transfer of Development Rights programs have proven to be useful tools for directed development in well over a hundred communities in at least 23 states. Generally, TDR programs enable counties to preserve certain areas from residential development; whether it be for agricultural use, historic preservation, open space, or another purpose and transfer the right of development to another area in which greater residential growth is desired. It should be noted that the TDR program enabled by LB33 requires the same type of legal notice and hearing as other county zoning actions and any transfer of development rights requires the volition of both the owner, the owner of the sending tract and the owner of the receiving tract, thus preempting any opportunity for a government land grab as has been envisioned or anticipated or feared in past years. Concluding, LB33 provides Lancaster County land owners and developers the opportunity to direct residential population density and land preservation across noncontiguous property with a voluntary market-based approach. Thank you, Committee, for your consideration. There will be people to follow after me who can speak more intelligently to the bill, but I will try to answer any questions if you have any. [LB33]

SENATOR AVERY: Thank you, Senator Fulton. Any questions from the committee? Seeing none, oh, I'm sorry, Senator Pahls. [LB33]

SENATOR PAHLS: I just have one because this has been before, it's starting to ring some of the cobwebs loose. Why did it not, what was the reason why it didn't go in the past? Do you have any idea? If you don't, that's fine. [LB33]

SENATOR FULTON: I did. I read through a lot of what has occurred with this bill in the past. I think there was a question as to whether or not indeed it was needed in the past. I think it was Senator Mines who was bringing those questions. There has been a county attorney's opinion issued. There is also now a legislative resolution. The results of the legislative resolution which brought forward a study as to whether this is indeed needed. But this has occurred over the course of some time. At the beginning, it was presented such that it would be effectual for all counties in Nebraska, and I think there was some concern there. It has been since whittled down to Lancaster County. And there have been issues in the past that I believe have been worked through. And I'll leave that to your better, your better judgment. [LB33]

SENATOR PAHLS: Thank you, Senator. I appreciate that. [LB33]

SENATOR AVERY: Any other questions from the committee? Seeing none, thank you,

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Senator Fulton. Are you going to stay for closing? [LB33]

SENATOR FULTON: I think so, yeah. [LB33]

SENATOR AVERY: Okay. Anyone wish to testify in support? [LB33]

MIKE DEKALB: (Exhibits 1 and 2) Good afternoon, members of the committee, my name is Mike DeKalb. It's D-e-K-a-l-b, just like the seed corn. I am the county planner for Lancaster County, and I've had the pleasure of being involved in this for the last four years. And cobwebs and otherwise, and hopefully I can answer those questions for you. I'm passing out two sheets of paper for you. One is my testimony, the back side is a concept of the transfer development rights, and the second sheet is an example of what we call a cluster subdivision. And I'd like to start with telling, with showing you these two examples of a subdivision in Lancaster County that uses the technique of cluster subdivision. This is a local provision that we utilize and which is actually being done here and is shown in these two examples. It's much like a monopoly board where all of those potential lots under our zoning have been scraped over and slid over to one corner, "clustered" if you will; that's the nickname for it. It has been very successful in Lancaster County and in the city of Lincoln. It typically allows a land owner to get full development out of their land where if you couldn't build down in there in the flood plain or the wetland or the saline wetlands or what have you, or in the rough area. You can pull the houses out of that, create buildable, salable lots, preserve the wetland, the saline wetland, the good farmland. Oftentimes the area for acreage development, they want that pristine rugged treed, rocky spot which isn't the spot you want to farm to begin with. So this works very well. This has been on our books for 40 years or so, since the '60s in both Lancaster County and the City of Lincoln. We would like to expand that concept to noncontiguous parcels. Those that are across the road or maybe a mile or two away. Our county attorney has told us, sorry guys, you can't do that under the statutes as they're written today, thus this legislation request to you. To go to my testimony, again, on item or tick mark 1 is to expand that concept of a "cluster" subdivision that we use today. We find it very beneficial in minimizing the impact of acreage development. It reduces access conflicts to the county roads. It preserves farmland. It's been used to preserve environmental resources. As I said, we like to be able to be flexible to expand that beyond contiguous. This specification legislation...this goes back to some of the prior versions of it, is now limited only to residential uses. It's limited to a county with a city of the primary class, so that's only Lancaster County. We'll be your guinea pig very happily on this. It does not impact the authority of any towns or any jurisdictions of any towns. It's been asked in the past, why don't you just do a change of zone. And that certainly is the, something that local jurisdiction could do, but what we feel is that that then raises the question of the overall density of the county and the impact on county services, as well as creation of spot zoning and equity between neighbors in the fulfillment of your comprehensive plan and your public policy. What this does is it shifts that residential out, that residential density out of areas of high impact or

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high sensitivity and into areas where dwellings could be better accommodated. In Lancaster County, we've got saline wetlands. We've got a federally listed Salt Creek Tiger Beetle that has its own issues. We have areas of good and poor, good and bad groundwater, and a fairly good distinction of soil production. We put areas of the county that have very good roads and lots of towns to serve folks and other areas that are mostly gravel roads or nonexistent roads. We think this gives us the ability to let a landowner sell his rights on the open market for a parcel of land that he couldn't fully develop or chooses to preserve, whether it's for long-term farm purposes or for environmental protection, and transfer those rights as the illustration on the back would show, moving it to another area and putting it onto another parcel of land where perhaps there's already some acreages in the development that perhaps is an area where we've got rural water districts, good groundwater, paved roads, and acreages already there with impacts on the fire and school and so on. So the concept is to be able to create this transfer. This would be a zoning action. I think it was mentioned earlier; it would follow the normal procedure that we utilize today of legal ads, posting signs on the property, notification to property owners by letter, public hearings at the planning commission, and at the county board. As with any zoning action, you know, it's not forever cast in concrete. It would be limited by the terms of the special permit, and the laws at that time. If the county commissioner should change or change zone, those agreements in that contract agreement within that zoning provision could be modified. The bottom line is we think this adds flexibility. It extends the methods that we can do to respond to development of our county and managing our resources in the county, and we think it's clearly a win-win for the property owners, the environment, and for the community at large. And with that, I'd be happy to answer any questions for you. [LB33]

SENATOR AVERY: Thank you. Senator Price. [LB33]

SENATOR PRICE: Mr. Chairman, thank you. Sir, I would have one question for you, Mr. DeKalb. What about adjacent property owners? If you're in a noncontiguous area, you have multiple property owners, and you transfer and the ones adjacent to it aren't, aren't agreeable. Isn't, do we set ourselves up for more conflict then? [LB33]

MIKE DEKALB: I think absolutely not. It's a very good question. But the procedure and the process and the potential impact is exactly the same as a change of zone today. If you were to ask for a change of zone from ag zoning to acreage zoning, we notify the neighbors and tell them of this potential change and the density impact on them, and notify them through normal procedures and public hearings. So they have the opportunity to say, we don't want it, we don't want this impact, we don't want this increase in density. This would follow exactly that same procedure. But on the balance, we are looking at the overall impact on the larger area of the county would be substantially the same, essentially 32 dwelling units per square mile. [LB33]

SENATOR PRICE: So then, it escapes me why we do it. If it's the same thing and it

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follows the same procedures and we have the same availability then we have really not done anything different, why are we doing it? [LB33]

MIKE DEKALB: It's a point of expanding the concept of flexibility like the illustration I gave you. If you as the neighbor across the road wanted an increase in density, yes, you could ask for a change of zone. The way our zoning, our zoning district in our county is written, and all 93 counties have their own rules. But in Lancaster County, when you go from ag zoning one per 20, to AGR zoning, one per three acres, it's a seven unit, seven times the number of units. So you're asking, number one, for a substantial increase in density. Number two, you're asking to be treated different than everybody else in the county by asking for this unique thing, which we think gives us the circumstance of being vulnerable to charges of favoritism, spot zoning, and equity unfairness. If you get it and everybody else doesn't, I mean, what's the basis within a comp plan, the general policy is the community? And in Lancaster County, our general policy is keeping the overall density at 32 dwellings units per square mile tends to not, to preserve farmland, to reduce impact on county services and in fact, is just below the trigger as far as average traffic coming out of those...that development of where we have to go from gravel county roads to paved county roads. On this flexibility provision here, what we're trying to do is expand that. Our initial thought was up in the northern part of Lancaster County where we have those saline wetlands in environmentally sensitive areas. Certainly we have areas in the county that have flood plain. There are farmers who can't utilize the density that's there. But the impact on the road system and the impact on the school and the rural fire district and the overall level of services in the county would be about the same if that was moved a couple of miles away, was put on a gravel, off of a gravel county road onto let's say, not the best of farmland, but out of the flood plain, out of the wetland, out of the saline area on a paved county road, we could accommodate that development much better. The impact on the rural fire district, the school district, is going to be about the same. And all we've really done is shifted it, and we've given the owner of that, that other parcel of land that was the donor parcel, the ability to cash in on some of the value, potential value of that land that he couldn't really fully utilize because he didn't have a dry spot to put it at. So we're looking for the flexibility. You're right. We could do a change of zone. This would be a change of zone. It's using a technique or a variation of the changes on, but to go to another zoning district would be, in my mind, using a sledge hammer to club a fly; if we can just entice to fly over a little bit instead. A long answer, I apologize. [LB33]

SENATOR PRICE: Okay, thank you. [LB33]

SENATOR AVERY: Any more questions from the committee? Seeing none, thank you, sir. [LB33]

MIKE DEKALB: You're welcome. [LB33]

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SENATOR AVERY: Anyone else wish to testify in support of LB33? [LB33]

BETH BAZYN FERRELL: Good afternoon, Senator Avery and members of the committee. For the record, my name is Beth Bazyn B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. NACO supports this bill because of the flexibility that it would offer Lancaster County in helping determine their population density. I'd be happy to try and answer questions. [LB33]

SENATOR AVERY: Are there any questions from the committee? I see none. Thank you. Anyone else wish to testify in support? Anyone wish to testify in opposition to LB33? Any neutral testimony. Senator, you're going to waive? Thank you, folks. That ends the hearing on LB33, and the hearings for today. I will ask the committee to stay. [LB33]

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Disposition of Bills:

LB7 - Placed on General File.
LB8 - Indefinitely postponed.
LB33 - Held in committee.
LB55 - Placed on General File.

Chairperson

Committee Clerk