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Government, Military and Veterans Affairs Committee
February 04, 2009

[LB131 LB133 LB273]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, February 4, 2009, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB133, LB273, and LB131. Senators present: Pete Pirsch, Vice Chairperson; Robert Giese; Charlie Janssen; Russ Karpisek; Rich Pahls; Scott Price; and Kate Sullivan. Senators absent: Bill Avery, Chairperson. []

SENATOR PIRSCH: Good afternoon. We'll start. Welcome to the Government, Military and Veterans Affairs Committee. I'm Senator Pete Pirsch representing Legislative District 4 out of Omaha. I'll be chairing today's committee. Why don't we, at this point in time, go around, and I'll have the members of the Government Committee introduce themselves. I'll start on my right: []

SENATOR PAHLS: Rich Pahls, representing the Millard area of Omaha. []

SENATOR JANSSEN: Charlie Janssen representing Fremont and Dodge County. []

SENATOR GIESE: Bob Giese, District 17, Dakota, Dixon, and Wayne Counties. []

SENATOR PRICE: Scott Price, Sarpy County, Bellevue to Gretna. []

SENATOR SULLIVAN: Kate Sullivan, Cedar Rapids, 41st District, central part of the state. []

SENATOR PIRSCH: Good. And Sherry Shaffer is the committee clerk on the end there, so. Bills are going to be taken up in the following order--this is the agenda here today: LB133, that's Senator Heidemann's; then LB273, and finally, the third bill today, LB131. They are posted outside the door. Sign-in sheets are at both entrances. Sign-in only if you're going to testify, and give the sign-in sheet, as you're coming up to testify, to the committee clerk as well. And those sign-in sheets are for testifying, beige in color. Now if you're not going to testify, but you would like to be on the record, either as a proponent or opponent of a given bill, there's another sheet you can fill out and these are on the table near the entrances. Those are white in color. So please print your name and indicate who you are representing before testifying. If you are testifying here today, please spell your name for the record for the benefit of our clerk here, even if it is a simple name. Introducers will make initial statements. We will follow that with proponents who are testifying in favor of a bill. Then we'll move, once that's completed, to all opponents of the bill, and finally to anyone who wants to testify in the neutral capacity. Closing remarks are reserved for the introducing senator only. We just ask as you, as the testifiers come through, if your point has already been made, you know, we'd ask that you try not to, not to be too repetitive for time's sake. If you have a prepared statement or exhibit, please give it to one of the pages who will distribute it

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

Government, Military and Veterans Affairs Committee
February 04, 2009

here to the committee or make copies. We do need 12 copies. If you do not have 12 copies of that, let the page know so that we can...they'll make the needed number of copies. Just ask you to turn off your cell phones and pagers at this time. And I just want to introduce the pages: it's Nick Bussey from Lincoln, and also Courtney Lyons from Plattsmouth who is with us here today. So with that, we...I see Senator Heidemann is here. Let me initially start and get an idea. Are there any...how many people are here planning to testify as a proponent in favor of the first bill, LB133? Okay. I see two in the back. How many are planning on appearing here as an opponent or in the neutral capacity for the first bill, LB133? Very good. Okay. That said, we'll start. Senator Heidemann, if you'd like to take the chair there and start with LB133. []

SENATOR HEIDEMANN: Good afternoon, Senator Pirsch and members of the Government Committee. I am Senator Lavon Heidemann, spelled H-e-i-d-e-m-a-n-n, and I represent District 1 in southeast Nebraska. And I am here today to introduce LB133. LB133 would remove the requirement that a county postprimary convention of a political party shall be held in the courthouse or other suitable place at the county seat, instead requiring that it is to be held in the county. County postprimary conventions are to be held during the first ten days in June following the statewide primary election at an hour and place to be designated by the chairperson of the county's central committee of a political party. I introduced this legislation on behalf of a constituent in Otoe County who is here to testify following me. In Otoe County, the county seat is in Nebraska City, which is about as far east as you can get within Otoe County. If the county postprimary conventions could be held in a more centralized location, it could be more convenient for the delegates and maybe more people would be able to participate at that time. This bill allows for more flexibility, giving the central committee chairperson the authority to determine where the convention is held within the county rather than specifying in state law that it be held at the county seat. I ran this proposal by the Deputy Secretary of State for Elections who didn't see any problems with it, and he questioned why we tell them what to do in the first place. I also contacted the political party when I was working on the legislation, and they indicated that it sounds like something that the party would be in support of. They mentioned that this issue had come up in other areas of the state at this past, at the past convention season, and that the legislation seemed like a reasonable solution. I would urge you to look favorably upon the advancement of LB133 to the floor of the Legislature, and if you have any questions, I will try to answer them at this time. [LB133]

SENATOR PIRSCH: Thank you. Are there any questions for Senator Heidemann. Seeing none, thank you very much Senator, and are you planning on making a closing? [LB133]

SENATOR HEIDEMANN: I will waive closing, I've got to get back to Appropriations. [LB133]

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

Government, Military and Veterans Affairs Committee
February 04, 2009

SENATOR PIRSCH: Very good, we'll count on that then. Appreciate your testimony. Okay, then we'll move to proponents. Are there any proponents of LB133? If you'd like to come forward. [LB133]

TIM NELSEN: Thank you, Senator. My name is Timothy Nelsen, N-e-l-s-e-n. I'm a partner in the law firm of Fankhauser, Nelsen and Wurtz in Nebraska City, and I'm chairman of the county board for Otoe County, Nebraska. In a previous life, I served as the first congressional district chairman for the Republican Party. This issue has been coming back and forth for a number of years, and yes, I was the one who contacted my senator and said, this is noncontroversial, both the parties agree to this. We shouldn't tell a county party where they have to meet. We should let the county chairperson make it convenient. I don't know of any opposition by either party or anyone that I've talked to about the bill over a number of years, and I certainly ask for your support. Thank you very much. [LB133]

SENATOR PIRSCH: Thank you very much for your testimony. Are there any questions? Senator Janssen. [LB133]

SENATOR JANSSEN: This is not really a question, it's a comment. I do support this. It happened in Dodge County actually this summer. [LB133]

TIM NELSEN: It did. [LB133]

SENATOR JANSSEN: We had a...our, the Democratic convention which I thought was kind of funny, but they held it in Scribner and they actually had to come back and meet in Fremont and so it's kind of an end-around. It wasn't really necessary and they did the proper function, and they got to a coffeehouse in Fremont and it was good, so. That's why I would support the bill. [LB133]

TIM NELSEN: I would tell you Senator that it's my experience working with the party over a number of years that this has been a common problem when a party appeared to be having an issue someone would raise that they didn't meet and the delegates weren't properly seated, and it's just something that the state doesn't need to cause a problem with. We need to make it as simple as possible. [LB133]

SENATOR PIRSCH: Thank you. Any further...Senator Karpisek. [LB133]

SENATOR KARPISEK: Thank you, Senator Pirsch. Thank you. Is there any other time other than postprimary that is in statute? [LB133]

TIM NELSEN: There is not. The only time that it, as I understand the history of it, the only time that...the reason that the Legislature did it is they wanted to designate the first ten days to make sure that everyone could get the state delegates done as opposed to

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

Government, Military and Veterans Affairs Committee
February 04, 2009

letting 93 county chairs decide when they were going to hold it. So certainly there is a state interest in making sure that we have the delegates so that we can elect a president ultimately in the beginning of the process. I just don't understand where the state interest is in determining that I have to stay in Nebraska City, which I can see Iowa from my office, and in reality, I can--from western Otoe County where I live and work--I can practically see the Capitol. [LB133]

SENATOR KARPISEK: And I just wondered if there was more than one, let's do them all at once. [LB133]

TIM NELSEN: There is not. To my knowledge. [LB133]

SENATOR KARPISEK: The other thing is previously owning a business in a county seat, then I would have had my mind different. That way we get people to town. Thank you, Senator Pirsch. [LB133]

SENATOR PIRSCH: You bet. Any other questions for this testifier? [LB133]

TIM NELSEN: Thank you very much. [LB133]

SENATOR PIRSCH: You bet. Thank you very much. Okay, we'll go on to other proponents, LB133. [LB133]

ROSS BAKER: My name is Ross Baker, B-a-k-e-r. I am the chairman of the Otoe County Republican Party, and I am supporting LB133. In fact, I urged Tim to contact the senator on this. That the reason for it is we, in the past, have had a good turnout for our county conventions, but recently it's been going down to where we might have five or six people. And that, the biggest reason we hear for that is that we are on the far east side of the county. And I don't imagine that this is only Otoe County that suffers from this or that our party is the only one that deals with it. So for those reasons, to try and make it a more inclusive process and allow more people to become more involved and remove the roadblocks, I sure would appreciate the support for this bill. [LB133]

SENATOR PIRSCH: Right. Thank you for your testimony. Are there any questions of this testifier? And could you just, I do have one question. So the default, the way this bill would read then as far as choosing a venue would be, it would be at the call of the county chairperson, is that correct? [LB133]

ROSS BAKER: The county chair which is the way it stands now. It's just a matter of, it specifies which town or the county seat. That it has to be in the county seat. And it was simply to say it had to be within the county. [LB133]

SENATOR PIRSCH: Very good. Okay. Well, thank you for coming down and testifying

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

Government, Military and Veterans Affairs Committee
February 04, 2009

here today. Any other questions? Seeing none, we'll move on then. Are there any other proponents to LB133? Seeing none, we'll move to opponents. Are there any opponents of LB133? Seeing none, are there any individuals here to testify in a neutral capacity with respect to this bill. Very good. Well, Senator Heidemann has indicated that he is going to waive closing, and so we will move on then to the second bill that is before the committee today. That is LB273. Senator Ashford is the sponsor. He is here now. Very good. [LB133]

SENATOR ASHFORD: (Exhibit 1) Thank you, Senator Pirsch and members of the committee. Let me start out by saying, I have some...could I get this distributed, I guess...to the? This is a big bill. There's a lot of money in it. And it's something that you, it's important that you as the committee take a hard look at it. Because obviously what we're doing here is we're raising fees collected by county sheriffs significantly. And what is being passed out to you is a list of, on the back, of the fees that are currently charged and fees that would be charged under this bill. A fairly straightforward history. The fees have not been increased for 20 years, 22 years. The money from the fees go to the general fund of each county. It's not necessarily the case that those, the costs over and above the fees necessarily go into property tax increases, and that's; one would have to look at the data carefully to determine whether or not that's the case. But clearly the general fund of the county is shorted by some amount as the costs for serving this particular documents or processing these documents has gone up. Simply put, we're asking this committee and the Legislature to consider an increase in fees to bring them into some...somewhat commensurate with the increased costs. And I do, there are a number of...a few, maybe not, I don't...I wouldn't want to say a number, to scare you. But there are going to be other individuals behind me who will talk about some of these costs that have, are incurred by the counties. There is one fee in here that I actually didn't realize would be increased by this bill, and I don't think it should be increased. And that is the gun permit purchase fee. That, a little history...years ago, when I was in the Legislature, we passed a bill for a permit to purchase handguns which actually was my bill. I think it is...it was a piece of legislation that has worked by making certain that handguns are sold to law-abiding citizens throughout the state. It is, to me, I think, a public policy for a lesser fee, for those permits is, um, is balanced against the not getting the permit, and I just feel strongly that that permit is an important process for the protection of the state. And I believe there's a gentleman from the National Rifle Association here with an amendment on that particular fee, and I absolutely support the National Rifle Association's position on that fee increase, and would ask that it not be increased. With that, I would defer to those who are coming behind me. [LB273]

SENATOR PIRSCH: Very good. Are there any questions for Senator Ashford? Seeing none, we'll move to the proponents. [LB273]

SENATOR ASHFORD: And I think I'd waive, Senator Pirsch. [LB273]

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

Government, Military and Veterans Affairs Committee
February 04, 2009

SENATOR PIRSCH: Very good. We will move to the proponents of LB273. [LB273]

TERRY WAGNER: (Exhibit 2) Good afternoon, Senator Pirsch. Thank you. Members of the committee, my name is Terry Wagner, T-e-r-r-y W-a-g-n-e-r. I am the Sheriff of Lancaster County, and I am here today as a representative of the Nebraska Sheriffs Association. And also I have been authorized by the Lancaster County Board of Commissioners to support this bill on their behalf. There will be other testifiers behind me, specifically Mr. Phil Woodward who is a retired supervisor from the Douglas County Sheriffs office civil process division, and he will have some answers for technical questions, should they arise. I do appreciate Senator Ashford introducing this bill on our behalf. We are here today to provide information on LB273 and why it is necessary. Most people don't realize that the statutes require users' fees for certain services sheriffs provide. The most common of these fees are for the service of court process or court documents commonly referred to as civil process or court process. Summonses to court, petitions outlining a litigant's claim for damages, execution of court orders, garnishments, processes in landlord-tenant disputes, subpoenas in civil and criminal cases are a few examples of the documents that are served on behalf of the litigants and the courts. Most of these documents require personal service upon an individual. Often, multiple attempts are necessary to accomplish that personal service. Statutory fees are intended to cover the costs of providing this service but have fallen behind simply because of the years that have passed and the increase in the costs to provide that service. We conducted a survey of sheriffs' offices across the state, and I think Mr. Woodward will pass out a sample copy of that--that survey of about 16 counties--and what we wanted to do was to determine the actual costs of providing those statutory services. Those costs were those any business would have: employees wages and benefits (for processing the incoming writs, service the documents, returning the documents to court); vehicles (cost of maintenance, gas, oil, insurance); and other support costs. I think Senator Ashford's handout on the back had what is...we've called Exhibit 2 and shows the actual costs of service for various court documents and the fees collected under that fee structure. I think when...I'm sorry, when Mr. Woodward passes out that document, you will see that the current fees collected cover less than half the costs of service. The taxpayers of the state, through their property tax statements, are then left paying for any unrecovered costs. And I think I would disagree with Senator Ashford, this really is about property tax relief. The other fees addressed in LB273 are criminal fees. On the bottom of the sheet that Senator Ashford passed out, on the back side, were the proposed increases for the criminal fees. Many of those haven't been increased since 1965. I think it's...it might seem a little strange that someone must pay the sheriff to arrest them and...but the fact is, these fees are very seldom collected. In those cases where the court does assess sheriffs fees as part of the court cost, the fees should be more in line with the actual cost of service. We know that the Bar Association and bill collectors are opposed to this bill. We have met with these organizations to address their opposition. I will tell you the percentages of increase in LB273 are...they'll tell you that the percentages are simply too high. But the

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

Government, Military and Veterans Affairs Committee
February 04, 2009

problem is, it's not...the percentages really don't tell the story. It's really just the dollar amounts. For example, the proposed fee for serving a summons will raise under this bill from \$10 to \$20. While \$10 doesn't seem a lot of money for an increase of service, a 200 percent increase is pretty shocking to the mind. I will tell you that the wages of a deputy sheriff in my office who started in 1987, the year the last bill was passed, have risen over 300 percent since that time. I would suspect the billing rates for attorneys have probably increased nearly as much in the intervening 22 years. But the fact is, the costs for process service are passed on to the litigants, their clients, as a cost of litigation. Businesses who hire bill collectors pay for the costs of collection which include sheriffs fees. It simply isn't fair that taxpayers should subsidize the service of process for the relatively small segment of the population involved in that litigation. In 2008, Lancaster County received 28,884 documents for service. With an average shortfall of about \$14.74 per document, Lancaster County taxpayers paid \$425,750 for my office to serve those documents. The Legislature has determined those who are indigent and the service of Protection from Domestic Abuse Orders should be exempt from these fees and that will continue to be the case. We have also spoken to almost senator, or their legislative aide, and many have asked why we waited so long to raise these fees. The fact is similar bills were introduced in 1996, 2003, and 2005, and all were unsuccessful. We don't believe the fees should be raised simply because they haven't been raised since 1987. We believe the fees should be raised because the actual cost of providing the service has increased. The intent of the statutes setting forth these fees has always been to recover the actual costs of service and should continue to do so. For these reasons, we would urge this committee to send LB273 to the floor. I would be glad to answer any questions you might have, and as I said, Mr. Woodward will follow me for any technical questions. [LB273]

SENATOR PIRSCH: Thank you very much, Sheriff. We are joined now by Senator Karpisek. And we understand that Mr. Woodward will be here to answer...will testify shortly after you in case somebody has any questions. Does anybody have any questions for Sheriff Wagner at this time? Senator Price. [LB273]

SENATOR PRICE: Senator Pirsch, thank you. Sheriff Wagner, I'd like to ask, I have a multitude of questions, but I think I could wrap them up into a statement I hope. Do you believe that the county will be compelled to reduce current property tax equal to the funds generated from these increased fees? [LB273]

TERRY WAGNER: Well, you know, in my budget every year, I submit a revenue budget and an expense budget. And hopefully the revenue budget that I submit offsets the costs of my expense budget. So I don't know the exact answer to your question, and I'm not trying to dance around that too much, but hopefully the increase in revenue that I generate will offset the costs of the operation of my office. [LB273]

SENATOR PRICE: I understand that, but when we get back and we talk about property

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

Government, Military and Veterans Affairs Committee
February 04, 2009

taxes and property tax relief, there's really no guarantee that if we move forward with this; property taxes would be relieved. That's in another office and is another; there are other driving factors. So we would see an increase in fees and maybe still see the same property taxes. [LB273]

TERRY WAGNER: Well, I guess it would make sense to me that if I can generate a half a million dollars more in revenue that the county board would lower the levy by that half million...whatever that half million dollars would be. That would be the logical sense. I can't answer for the board in that regard, but that would be my sense. [LB273]

SENATOR PRICE: All right. Thank you. [LB273]

SENATOR PIRSCH: Very good. Any other questions? Senator Janssen. [LB273]

SENATOR JANSSEN: Thank you, Senator Pirsch. Sheriff Wagner. Thanks for your e-mail today, by the way. [LB273]

TERRY WAGNER: You're welcome. Thank you. [LB273]

SENATOR JANSSEN: You had mentioned something just right at the end there and it got me to thinking and I'm not sure if you were quoting from the statute or from the years this came about, but you said the intent of these fees is to cover the costs. And I'm just wondering if that is actually expressly put anywhere that that is indeed the intent of these fees--to cover the actual costs? [LB273]

TERRY WAGNER: You know what, when I wrote that, I should have researched the statutes back when they were passed back when. That would be my sense, but I haven't read the statute and can't answer that question. [LB273]

SENATOR JANSSEN: Yeah, it's just...if it was put out like that, that's why, I thought, okay, it would make sense then if that was the intent. [LB273]

TERRY WAGNER: I have not, I have not read when the statutes were first passed. [LB273]

SENATOR JANSSEN: Okay, thanks. [LB273]

SENATOR PIRSCH: Very good. Any other questions? Well, we'll start with Senator Karpisek. [LB273]

SENATOR KARPISEK: Thank you, Senator Pirsch. Sheriff Wagner, thank you also for the e-mail this morning. You've been busy. [LB273]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 04, 2009

TERRY WAGNER: You're welcome. I was busy. (Laughter) [LB273]

SENATOR KARPISEK: I was watching Senator Janssen get pounded on the floor so I had time to e-mail you. That's part of being the new guy. I've been there. I still am. Are there other people who serve these warrants? I know on TV, you see the guy run up and are you Senator Price? Yeah, you've been served. And run away. [LB273]

TERRY WAGNER: There are. The statutes provide for a number of different methods of service, and perhaps I should defer this to Mr. Woodward, but I know that there are constables that can be appointed by county court to serve process. We have those in Lancaster County. There are civil process servers. In other counties of less, or counties less than 100,000; and process can be served by certified mail. The litigants involved can also waive service and agree to receive it by first class mail if they choose. [LB273]

SENATOR KARPISEK: So I guess my question is is if these are raised, then does that raise the constable's rates and why don't we use certified mail more and why do you have such a huge amount of them? [LB273]

TERRY WAGNER: Well, I guess it's been my experience that if someone is being sued or if they're being foreclosed upon or if they haven't paid bills and it's, you know, headed for court; they're not going to pick up certified mail either. You know, they just don't answer the door or don't; when they get their little note in the mailbox, they're not going to pick it up and so it's undelivered. And the statute requires us to serve personally in most cases. We have the means to do that and so I think, I think at times, having a deputy sheriff in uniform serve somebody a document gives that document a whole lot more official credence than getting something in the mail and saying, agh, you know, maybe, maybe not. I think they might realize the gravity of the situation more when a uniformed officer serves it. And I can also tell you that it's a lot of times people are in deep financial straights when it comes to this point in whatever process it is, and we have had pretty violent encounters during the civil, during the service process. So there are a lot of factors involved there, and I can only speculate. But those are some of the reasons, I believe. [LB273]

SENATOR KARPISEK: Thank you, Sheriff. Thank you, Senator Pirsch. [LB273]

SENATOR PIRSCH: Sure. Senator Sullivan. [LB273]

SENATOR SULLIVAN: Thank you, Senator Pirsch. Maybe I am overlooking something, but in your testimony you referred to Exhibit 2 that shows the actual cost of service. Where is that? [LB273]

TERRY WAGNER: Mr. Woodward has got that handout and I'm sorry. [LB273]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 04, 2009

SENATOR SULLIVAN: Oh, okay, it will be forthcoming. Okay. [LB273]

TERRY WAGNER: I guess our initial plan was to try to do this tag team, and we changed, so. [LB273]

SENATOR SULLIVAN: Okay, all right. Very good. [LB273]

SENATOR PIRSCH: Anything else? Very good. We'll move on to the next proponent. Thank you very much. [LB273]

PHILIP WOODWARD: (Exhibit 3) Thank you, Senator Pirsch. I am Phil Woodward, W-o-o-d-w-a-r-d, and I am with the Douglas County Sheriffs Office, and I am here in favor of LB273. I won't recap everything that the Sheriff has just said, but I would like to say on behalf of Douglas County, the last calendar years...we did our figures again, and the shortfall between what it costs us to serve papers and what we are able then to recover through the fee structure as it is now by Statute 33-117, that we had a shortfall of some \$413,000 between the cost and what we were able to recover. We have a fiscal responsibility to our taxpayers as anyone who is in civil service, and that brings us to the point of wanting this bill to be passed so that...those monies that we have a shortfall do not come out of the pockets of the taxpayers, but of...from those people who are actually using that service and would also say that in a lot of cases in private litigation even though they have a fee that they've paid under their attorney fees and costs, if found in favor of, they also have an opportunity to recover those fees. And if those fees are then...go back to the litigant, the plaintiff, I would say then again, the taxpayer is in a situation where the person using that process has been recovering the cost, and again, we fall short because we don't have the means of doing that unless we cover the cost in the fee itself. And again, if you have any questions at this point, I'd be more than happy to try to answer those. [LB273]

SENATOR PIRSCH: Great. Does anybody have any questions for Mr. Woodward? Senator Price. [LB273]

SENATOR PRICE: Senator Pirsch, thank you. Mr. Woodward, to the bill itself, to talk on Exhibit B...we see in Exhibit B, we have a, we're using averages? [LB273]

PHILIP WOODWARD: Yes. [LB273]

SENATOR PRICE: Okay. And then if we turn in our green copy and we go to page 2, line...let's go to line 13, we talk there that for each dollar not exceeding \$400, you're going to change it from six cents to seven cents. That's one fee. So we're moving a penny. Yet when we go, let's say, to line 8; we're going from \$5 to \$25. So when we start averaging, those numbers really don't represent and I see a big, a big spectrum of difference either way you want to slice this for serving a piece of paper or whatever it is

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

Government, Military and Veterans Affairs Committee
February 04, 2009

we're doing with that piece of paper. And so I'm wondering if you could talk to why that change is so great for one and not so much for the other. And could you address it also with regards to serving. Does that mean each time or through the whole process when you finally get it. So I believe Sheriff Wagner said, he may have to go four or five times to a domicile to serve a piece of paper. Is that all included in that serving cost? [LB273]

PHILIP WOODWARD: Yes. Okay, to take the first part. The \$10 to \$20 or the fee itself is for the delivery of a particular document. When you refer to the penny raise, that would refer to a commission. For an example, if we have an execution where the judgment debtor has not responded to the court judgment, now we have to move and we have to go either seize properties or monies to satisfy that judgment, then when we handle that particular judgment, and we can collect on it, and then the commissions are based onto the sheriffs' offices, based on the dollar amount and I believe it comes...it starts at \$400, anything under that and then above \$400 to less than a thousand dollars. So those commissions vary drastically based on whatever we're trying to collect or levy against and sell. That is a fluctuating thing based on the judgment itself where the fee for the document itself, the execution, is for that document to be served upon and given notice to that person. Does that answer that? [LB273]

SENATOR PRICE: Yes. That includes the multiple, if there are multiple trips or one trip? [LB273]

PHILIP WOODWARD: Okay, when you are levying against something, let's take an execution again example, now we're moving against, we will levy against properties. What we will do is there will be a judgment or a list from the attorney for property, known property or anticipated property. The deputy would have to go out and number one identify that property, make sure it's not encumbered and then also have it appraised to see if value would be enough, if we did seize that and go through the whole process to do that, that it would then satisfy the judgment. So that could be...that could be a series of actions based on particularly what we're trying to do. Referring back to a particular...let's take a summons for example. And we have that summons to be served on, say an individual. Because that would be more of a problem situation rather than a business because the businesses are there, they're pretty up front and they receive process. We go to that individual's home and they're not home. What we do in Douglas County is we require the server then to leave a card notifying that person that we are trying to get in touch with them to effect service so that notice is given so the court can proceed. If they're not there, they don't respond to the card, and then it's...and as a matter of fact, the most costly papers that we actually handle are not the ones we serve. It's the ones that we return, unable to serve, because we have attempt after attempt after attempt, again, all that does is escalate the cost of having someone out there trying to do that process. And we will make more than a diligent effort. By statute, it says one attempt. We won't do that. We'll try to find an alternate address and make sure that the court is being served well as far as getting that process in place, notice given so the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 04, 2009

court can proceed. [LB273]

SENATOR PRICE: Thank you. [LB273]

SENATOR PIRSCH: Very good. Additional questions? Senator Janssen. [LB273]

SENATOR JANSSEN: Thank you, Senator Pirsch. Mr. Woodward, I probably should have asked this to...this question to Deputy Wagner, I'll ask it to you and if you can't answer it, possibly somebody else will. But while you're out serving these papers that sheriffs...is it their only priority to do that or I'm kind of getting caught up in the cost of the personnel. If I'm out, say I'm a police officer and I'm out and I'm driving to your house to serve you. And let's use Senator Price, we're serving him. And I go past you and you're speeding or something, and do I stop and make that...am I still acting in the capacity that I'm on the job and this is just something else that oh, and I don't know how that works. [LB273]

PHILIP WOODWARD: That's going to vary from county. It depends on what they have for staff as far as the sheriffs' offices. And you get into the western counties where they may only have one deputy and the sheriff. And I'm sure that depending upon what law is being violated, that certainly, I would think the immediacy of that would take place by a law enforcement officer. Then the civil part of that, that's a civil action, not a criminal action, that would take a back seat until that could be remedied, the criminal or the, whatever is happening is satisfied, then they would continue on. For an example, in Douglas County, we have three deputies that are dedicated to executable writs which requires a sworn officer to do. If they were to go to a residence and they have an execution, for an example, and they're going to start taking property and the person calls and says somebody is stealing my furniture; what would happen is the deputy would go ahead and perform his duty as the person effecting the execution and levy. They would then notify like Omaha police, and Omaha police then would take and control the situation as far as the civilian whatever is beginning to arise from that particular activity. Because a lot of times when you're doing this, these are not people who are happy that we're there, so. [LB273]

SENATOR JANSSEN: Certainly, is there any...I'm sorry, Senator Pirsch, may I ask one more question? [LB273]

SENATOR PIRSCH: Go ahead. [LB273]

SENATOR JANSSEN: Is there any, I looked at these numbers and I agree with Senator Price. Some of them to me just seemed a little bit wide. I didn't, one cent here, you know, huge percentages as Deputy Wagner had pointed out. But is there any common ground there? Is there any wiggle room, if you will, to raise it, but maybe not to the level to which you're seeking? [LB273]

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Transcriber's Office

Government, Military and Veterans Affairs Committee
February 04, 2009

PHILIP WOODWARD: To me, as far as accountable for the fiscal situation that we're in, what we have is we have what we can collect by the statute currently. This is, in fact, what, in hard dollars, this is what it's costing us on an average to serve these papers. I don't know that I should be empowered to say how that should be subsidized by the taxpayer. I think that's a concern that I would have, what I would have to say is, you know, this is what, this is what it's costing. We're doing it as efficiently and effectively as we can. This is what it's costing us. I think that's what should be levied against the users for covering that cost. It's just like any other business. I don't think you discount to the point where you're losing money. You don't stay in business very long. Well, government does, but we still have a responsibility to make sure we collect those dollars. [LB273]

SENATOR JANSSEN: And then I'll follow up, I believe we want to get into if that is the intent of it? You know. [LB273]

PHILIP WOODWARD: Sure. [LB273]

SENATOR JANSSEN: And see if that, and maybe if possibly it is supposed to be subsidized a bit. I don't know that for sure. Thank you. [LB273]

SENATOR PIRSCH: Very good. Any other questions? Senator Price. [LB273]

SENATOR PRICE: Just out of curiosity, for Douglas County, how much, how much money is brought in under the current structure for fees for Douglas County? [LB273]

PHILIP WOODWARD: Right now, we would be collecting right around \$400,000 on the current fee structure. [LB273]

SENATOR PRICE: And how much would the fee structures increase the amount brought in? [LB273]

PHILIP WOODWARD: To meet the costs of, you know... [LB273]

SENATOR PRICE: Just if you had to do last year's fees and service and you had this fee structure, how much would you have brought in? [LB273]

PHILIP WOODWARD: It would bring in somewhere between \$800,000 and \$900,000. [LB273]

SENATOR PRICE: About double it. [LB273]

PHILIP WOODWARD: Right. [LB273]

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

Government, Military and Veterans Affairs Committee
February 04, 2009

SENATOR PRICE: Thank you. [LB273]

PHILIP WOODWARD: Yes, sir. [LB273]

SENATOR SULLIVAN: Senator Pirsch. [LB273]

SENATOR PIRSCH: Senator Sullivan. [LB273]

SENATOR SULLIVAN: Thank you. Perhaps I should have asked this of Sheriff Wagner, but I noticed in his testimony that it's been, I think four years that this has been attempted. Was always the issue in the past the amount of the increase that was maybe a stumbling block in why this bill didn't move forward? [LB273]

PHILIP WOODWARD: My understanding is and as far as the committee itself, my understanding is that each time it has come out of committee without dissenting vote. But from that point on, I don't know if it was because of the environment that was at that time governmentally or whatever, but for some reason, it just didn't have the catalyst to take it on into being heard on the floor. And what we're trying to do now is educate ourselves; that's why we started about a year, a year and a half ago, Ron Coughlin and I from the Douglas County Sheriffs office, representing the Nebraska Sheriffs Association was we need to get ourselves educated in the process of getting a bill through so that this can be done and meeting with a good number of senators who received us very graciously, spent time with us. Senator Karpisek was on that...we met briefly with you. But a lot of the Senators we met with, so that we could tell them what we were trying to accomplish to give them some insight as to when this came up, what it was going to be, so that maybe with that in hand, that if this goes through committee like we hope it is, that our next step then, we will know what we need to do and then we will certainly follow up to see if this can be passed. [LB273]

SENATOR SULLIVAN: Okay, thank you. [LB273]

SENATOR PIRSCH: Senator Karpisek. [LB273]

SENATOR KARPISEK: Thank you, Senator Pirsch. Mr. Woodward, when you talk about it would bring in \$800,000; was that \$800,000 more, so we'd be at \$1.2 million rather than \$400,000? [LB273]

PHILIP WOODWARD: No. That would be, under the new fee structure, that would...it would come up to \$800,000 as a gross amount. [LB273]

SENATOR KARPISEK: So it would only about double. Okay. And I will say you guys did a very good job of coming around and hitting people...I shouldn't say hitting, talking with

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 04, 2009

us. Looking at the fee increase now, I have to say, it gives me a little bit of heart palpitations, but anyway, you are learning how to do it, that's for sure. But, thank you. [LB273]

PHILIP WOODWARD: Thank you. It was an...it was enjoyable meeting you. [LB273]

SENATOR KARPISEK: Yeah, it was. Thank you, Senator Pirsch. [LB273]

SENATOR PIRSCH: Very good. Any other questions? Senator Giese. [LB273]

SENATOR GIESE: Thank you, Senator Pirsch. Mr. Woodward, so who then administers or delivers these warrants. Is it spread throughout the Sheriffs Department? And is there overtime involved during this process? [LB273]

PHILIP WOODWARD: I can only speak to Douglas County for sure. We have designated people. We have a large enough department where we can specialize, so we use civilian process servers for the nonexecutable writs and then also sheriffs. We do not go into an overtime situation on the civil actions. And then some of those things that we do on the civil side, primarily like the domestic violence issues where we need to be available 24 hours day, then that is covered and we make requests for grants that help cover that cost. And then still provide that needed immediacy the forthwith papers that have to be served at any time and any day. [LB273]

SENATOR GIESE: Thank you. [LB273]

SENATOR PIRSCH: Any other questions? Seeing none, we'll move on to...thank you very much. [LB273]

PHILIP WOODWARD: Thank you, Senator Pirsch and senators. [LB273]

SENATOR PIRSCH: Any other proponents of this LB273? Mr. Boucher. [LB273]

RICK BOUCHER: (Exhibit 4) Mr. Chairman, members of the committee, my name is Rick Boucher, B-o-u-c-h-e-r. I am the legislative advocate and legal counsel to the Sheriffs Association. I come here in support of LB273, and I'm certainly not going to cover the same areas as the sheriffs and deputies before you. It is my understanding Senator Avery is up and about and doing well. And our thoughts are certainly with him. The...and we appreciate Senator Ashford bringing the bill. I have just one handout that I hope will kind of put it in...kind of the challenge of serving warrants. Sometimes it can be fairly abstract. And this one talks about a case here in Lancaster County where the sheriffs office was actually ordered to seize some horses to satisfy a judgment. The owner of the horses, when the sheriffs office came out, said well, you know, the person that you are taking them to couldn't take care of a good dog, let alone a good horse and

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

Government, Military and Veterans Affairs Committee
February 04, 2009

a foal. So that went on and on, and they took them to a different location. Ultimately, what was going to happen and it supposedly happened in a couple of days actually turned into several months and the foal died and the lawsuit ensued against the sheriff as well as the rancher that had them. All the material, I think the guts of it, especially the sheriff's office, you'll find in the center column of the article where it talks about how the seizure occurred, and that they transported them, things like that. I guess what that particular case is to let you know is that all of these, and we'll probably see more with the downturn in the economy, can be fairly complicated. In this case, it was horses. Sometimes it's cattle. Sometimes it's personal property that sheriffs are ordered to go out and seize. And in this instance, as you could see, something tragic happened which evolved into a three-day trial and ultimately, neither the county nor the rancher were held accountable, but the seizure actually was one of the large issues. What I mention on that point, when we sometimes look past these, and I only have one copy. I wish I had brought others, but this is of a statute, it's called 25-1545. And in essence, the law says that sheriff, when you get this, whether it's Douglas County with a hundred deputies or Furnas County with three deputies, you really need to pay attention to it. If you're seizing, whether it's a combine or cars or things like that, the law provides, and it's not an unusual part of the law in most states that says: if you fail, refuse, or neglect to go out and serve it right away, and the property was there, that you as sheriff or you as county, the county can be held accountable. Not only for the actual amount of the combine, if that's what your judgment was for, but also an additional 10 percent is tacked on to that. It used to be, kind of part of the history was that, for instance, let's assume that someone got a judgment against someone in Omaha and there was a combine out in Kimball. And the sheriff calls up and says, hey I've got this. I know it's in the middle of harvest, but I'm going to come out, I have to seize it. And the farmer or rancher says, yeah, you can do that. Why don't you come out in a couple of days? Well, lo and behold, the combine is no longer there, it's in Wyoming. So I think it leaves just certainly the enforcement value of a court order is certainly important. That's also when we talk about, you know, does an officer have an unlimited amount of time? No. They're really supposed to take action right away. I think what you'll see...at least across the state, that has become certainly enhanced in terms of the demands for law enforcement officers through very aggressive, but appropriate representation through lawyers across the state. I think, you know, whether part of the question Senator Janssen asked is, you know, what is the function? Are we supposed to be subsidizing a legal system, you know, and I think at least when you look at the organization of county government really to serve three purposes. I think roads was certainly an important one. Sheriffs as crime fighters, the department of...or the register of deeds for titles and the like. So this became kind of another, an added function of county government. I think, at least from a couple of the statements, and I'll try to respond to them, Senator Karpisek, there are lots of ways that you can serve papers. Not only can you do it by certified mail, which a lot of people do, but some people avoid service of process. There is also, in the event, personal service by a sheriff or certified mail doesn't work, you can also do it by publication, putting it in a newspaper. Our firm does a lot simply by certified mail. I

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 04, 2009

would tell you, in some instances, we would put them in without a return address simply because occasionally the postal service will, someone will ask who's it from and when you say a lawyer, they'll say, oh, I think I'm going to pass on that. There's no complicity there, and you know, it's simply left there. So publication is also...Senator Sullivan, what I would tell you is I've been here since 1983 and there are lots of reasons that bills go through and get stuck and all of those. I can only tell you the last one, I believe, was Senator Wehrbein who put a lot of effort into it. At some point though, each of you kind of look to organizations and say, tell us what your priority is. You know, you've got four bills sitting here. Is this fee bill the priority or is a retirement bill the priority? And sometimes that falls by the wayside. Sometimes it's substantive, but I think in all of those instances, you really need to pick, at least for law enforcement, whether it's DUIs or whether it's fees or those sorts of things, because as you know, you've got more on your plate that you can deal with in a session or two sessions. With regards to the immersement and the challenges, I think that it's important. I think that, you know, you look at Douglas County and Lancaster represented today, some sheriffs office and I don't, I haven't had the chance to contact Cherry County--the largest county in the state, and if they get one, it may require them to go across, you know, just a large geographical area, and they may not be able to serve it. Are they focused, you know, in most instances, they try to be, but when you have two or three officers, if someone, if an accident occurs and someone, they're going to stop and that's certainly going to take their...the preservation of human life or all of those emergent situations are probably going to take precedence over it. So I, we ask that, I know you will give it serious consideration. And again, passage of time is not a reason to increase anything. If so, there are many that haven't been increased for years. I think the time, effort, the likelihood of an increased demand, and I think the likelihood that, whether additional equipment or personnel or others are going to be called into play is important. Sheriffs do not have a monopoly on it, on this particular service. Constables can do it, postal service, as well as other people. We hope that you will advance LB273 out of committee. [LB273]

SENATOR PIRSCH: Thank you. Any questions for Mr. Boucher. Senator Price. [LB273]

SENATOR PRICE: Senator Pirsch, thank you. And thank you for indulging me. Mr. Boucher, I have a question for you. You brought up the statute by where the sheriff or a law enforcement entity could be held liable. In the last 20 years have there been any judgments or findings because of that. [LB273]

RICK BOUCHER: Yes. [LB273]

SENATOR PRICE: In the state of Nebraska? [LB273]

RICK BOUCHER: In the state of Nebraska. [LB273]

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

Government, Military and Veterans Affairs Committee
February 04, 2009

SENATOR PRICE: Great. And then also with this fee structure and dealing with other legislation that we've had before us, they've built in a ceiling that forecasts into the future. Because if this is the cost today, what is our cost, and you've been dealing with this for 20-plus years, give or take, what is...is there is a ceiling in here that sees out 20 years? [LB273]

RICK BOUCHER: Well, I don't think there's a ceiling. I think there is a language that, for instance, if you, and it may well be. We did it a couple of years ago when it was talked about, the actual cost of a photocopy. And if I wheel up and say, clerk, I need, you know, copies of a six-volume file, you know, there was a way that it worked. And you may consider the language here. So I don't think it's been looked at, projecting out 20 years. I think that if you, that if you're looking to get more to a, oh, kind of the data sort of, how do you set the fees, you could, for instance, if something is going to be raised to \$20, I think there is room certainly for language to say, the actual cost, but not to exceed \$20. Because I think, for instance, the one that I gave you senators, it was clearly kind of a dramatic case where all sorts of horse trading and that sort of thing, and got the officers in kind of a difficulty. Fortunately, within the sheriffs office here in Lancaster County, they called and got someone who's experienced in horses, saying hey, here they are, these are expensive horses, what should we do with them. So I think you may want to consider that, and I would tell you that it's happened, I would say, not within the last, within the last probably six or seven years, notably because of the money and those sorts of things, that we do some work for county government by way of their insurance carrier. I think Sarpy County is part of it, the Intergovernmental Risk Management Association. So these things have been subject of seminars to say, you know, you really need to take these things, move them along, so there have been a couple of instances where property was there, whether a car or any of the range of personal property was there. They couldn't get it served for a good reason, but they were immersed in the statute and was paid. So I don't think it was looking out 20 years. I think at least part of the stimulus here was, you know, that they are seeing increased activity across the state. Senator Mines has also...Senator Janssen, again, another question I usually ask them, is this the best you can do? Not meaning, in terms of costwise, because you know, if something is a dollar and you raise it to five, that has an impact. Has the, at least part of our system, ours is a pay as you go. You pay your own attorney fees. There is an ability to recoup costs though at the end of a civil case. That imposes it on the other side, whether they're sheriffs service of process fees or for deposition fees. And as you know, there can be no guarantee, Senator Price, there can be no guarantee that there's going to be property tax relief. At least my experience has been that, and I think it's through one of your, Sarpy County, there has always been kind of a tug of war, more with the public defender than the prosecutor on fees for personnel. The public defender finds it very hard to generate revenue. Hopefully whatever, somehow this will be translated either into personnel or equipment that wouldn't otherwise be covered and prompted by some sort of tax increase. It goes into the general fund and not directly to the sheriffs office. But I think in most offices, they do

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

Government, Military and Veterans Affairs Committee
February 04, 2009

a good job in kind of the pass-throughs that, you know, you've had this much more. And if there are any other questions, I'd be glad to answer. Sorry for going long. [LB273]

SENATOR PIRSCH: Great. Are there any other questions? Seeing none, thank you very much, Mr. Boucher, for testifying. [LB273]

RICK BOUCHER: Thank you. [LB273]

SENATOR PIRSCH: Are there any other proponents of this measure, LB273? [LB273]

JON EDWARDS: Good afternoon, Senators. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s. And I am with the Nebraska Association of County Officials, and we are here today in support of LB273. Typically in the past, I think, you know, all the details and there's been a lot of information presented to you today, so I don't need to take any unnecessary time, but we typically try to support these bills as they've come along in the last 10 or 15 years in the different attempts and tried to incrementally increase these fees that are necessary. I think there's been a good faith effort to try to determine where these fees need to go. And so with that, I'll just say that we are in support of this bill, and try to answer any questions if there are any. [LB273]

SENATOR PIRSCH: Very good. Any questions for Mr. Edwards? Seeing none, thank you very much for coming down and testifying. [LB273]

JON EDWARDS: Thanks. [LB273]

SENATOR PIRSCH: Any other proponents of LB273? Anyone else? Seeing none, we'll move on then to opponents. Is there anyone here to testify in opposition to LB273? [LB273]

JEREMIAH LUEBBE: (Exhibit 5) Thank you, Senator Pirsch, members of the committee. My name is Jeremiah Luebbe. I am general counsel for Credit Management Services, Incorporated. It's a Grand Island corporation with 155 employees in the state of Nebraska. We have a branch that we just opened in Lincoln with 14 employees, and we also have a branch in Kearney. I am here to testify in opposition on behalf of Credit Management to the bill before you, LB273. The portion of the statute specifically that would amend Nebraska Statute 33-117 that increases the sheriffs' fees we have been talking about this afternoon. The first point I want to make has to do with the state of the economy in the United States and in Nebraska specifically. A debt collection agency--a little bit about what Credit Management does. We, on behalf of main street retailers in the state of Nebraska, such as your electricians, plumbers, other contractors, utility companies, contractors that produce sales and property taxes for the state. We help those businesses stay in business by collecting their unpaid accounts; their account receivables. Every time an account receivable is closed, that helps pay some of that

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

Government, Military and Veterans Affairs Committee
February 04, 2009

business' operating expenses, helps them stay open and employ people, keep them off the government welfare rolls. Part of collecting, Credit Management does represent about half of the hospitals in the state of Nebraska. These fees would, I think, present, at least an impairment, some sort of a disincentive for these main street businesses, hospitals, to recoup their, the cost, their charges for the services and the goods that they provide. By collecting and paying off unpaid accounts, these businesses staying open lower our healthcare rates for every insured person in the state. Now the much larger out-of-pocket expense we have in this bill to just serve the process, the summons of the complaint, is not the only increased cost we've got. Even after, and we've heard some testimony today, after the judgment is eventually obtained, this bill does raise the fees to enforce that bill. And a debt collection agency or even a first-party creditor such as your landlord that goes down or an eyeglass place that would file a suit in small claims court, these agencies, they really are the last line of defense for keeping some of these businesses open. Unfortunately, in this state and across the country, bills are harder and harder to pay, it seems like. And um, a collection agency, unfortunately, has to file suit to get that bill paid. We see it all the time that people say yes, I'll send you a payment, but it never happens unless you have the ability to enforce a judgment through a garnishment or an execution, the bill simply does not get paid. So in that case or in that sense, ladies and gentlemen, this bill does serve as a disincentive for a business to stay open because the up front fees that we've got, this large increase at this time with an emergency clause attached to the bill is going to hit people right where it hurts. The...part of the penny raise that we talked, that was discussed earlier, I don't know that I heard testimony justifying the increase of that cost. I know we've got testimony that Douglas County and Lancaster County had some budget shortfalls. Part of from serving process, but I don't see how reducing the percentage that the third-party creditor, meaning the debt collection agency; or the first-party creditor, I don't see how reducing the percentage of what, if a piece of property, a vehicle is sold by an execution, how taking that money out of the business, out of main street's pocket and putting it into government, I don't see how that helps our...the current economic situation we've got. The current economic conditions in Nebraska are getting worse. There was a report February 2 of this week, 2009, by the Mid-American Business Condition...this is the Mid-American Business Condition's Index prepared by the Creighton economic professor, Ernie Goss, that does show that the higher--we've got higher unemployment in Nebraska. Nebraska's index in the survey fell from 35.9 in January, fell to that mark, excuse me, 35.9 from 37.1 in December. So for at least the first six months of 2009, the esteemed Professor Goss, he is saying that the economy in Nebraska is going to get worse. And the problem we've got with these fees is it is a large increase, and it's going to prevent these bills from being paid. I would say that Credit Management and the debt collection industry in general, they are large users--probably one of the larger users, I would admit--of the sheriffs in their effort to serve process. I do note that in 2008 Credit Management spent about four times more for public, meaning constable or sheriff service of process, as opposed to private service of process, the fill of process servers. And my point in that respect is that if we have this large, this sudden increase in the

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

Government, Military and Veterans Affairs Committee
February 04, 2009

sheriffs' fees, some up to 1,900 percent, as we have seen in the handout that I have provided everybody, we could...you could come to a point where you have a revenue spiral. You're going to force--it's possible, these businesses will have to reevaluate their business practices, look at the other alternatives for serving process--and you could have a revenue spiral for these counties. It's possible, at least I would raise that possibility. Because of the moving, the collection agencies and the large users of sheriffs to the other entities that perform these services. I would also note this goes to back to the economic points I was making, that it is, these fees are regressive in nature. In other words, they hit, they take a larger percentage of the average working class citizen, a larger percentage of that person's income, their net income than it would the corporate tycoon. To that person, a \$10 increase is not a large increase to a wealthy person. But to the average working Nebraskan, these fees, just for a speeding ticket, if you've sued and owed a bill; these fees, eventually--if there is a judgment and we've have had some testimony today already on this point--if a judgment is rendered for a principal amount against someone for owing a bill, then the court costs according to the current statutes, the court costs are put back on that, on the defendant. In that case, these raised fees will eventually, they'll hit your average Nebraska citizen, not just the large corporate user. I would direct your attention at this point to the chart that we've passed out. The percent increases are on the far right-hand column. You know, I look at the proposed increase to \$20 service plus a return charge of \$32 is what it would cost to serve one defendant by sheriff in Nebraska should this bill pass. I note that in Iowa, the fee to serve process on a defendant is \$15 plus mileage. Mileage is in the bill already. That's not, um, in the law, excuse me, already. That's not part of the increase. In Kansas, for a Kansas lawsuit, the fee to serve process is \$5. And so that would put Nebraska far, far, much higher than those similar states. That is essentially all I have. I would welcome any questions. [LB273]

SENATOR PIRSCH: Great. Are there any questions here for Mr. Luebbe? Senator Karpisek. [LB273]

SENATOR KARPISEK: Thank you, Senator Pirsch. Mr. Luebbe, did you say that there's already mileage in the statute? [LB273]

JEREMIAH LUEBBE: I believe 33-117, it references another Nebraska Statute with that Statute references the IRS rate which for 2009 is 55 cents a mile. [LB273]

SENATOR KARPISEK: Okay, thank you. And thank you, Senator Pirsch. [LB273]

SENATOR PIRSCH: Very good. Any other questions for Mr. Luebbe? Senator Price. [LB273]

SENATOR PRICE: Senator Pirsch. Mr. Luebbe, just to make sure I have a good understanding here. For you and your client, the issue is you're the ones going to the

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

Government, Military and Veterans Affairs Committee
February 04, 2009

sheriffs office on behalf of a customer to collect bills that haven't been paid, correct?
[LB273]

JEREMIAH LUEBBE: That's correct. The customer would, is by and large, main street retailers and Nebraska hospitals. [LB273]

SENATOR PRICE: Okay, so you go and you ask for it to be collected, and it is my understanding, I was in a conversation in the hallway, so I want to make sure I have it correct. You go and you ask the sheriffs department to serve whatever paperwork. They go and they do their business and then the person collecting, who has been served, says gosh, I guess these people are serious. They actually want their money back, and they go off and they pay the hospital or whoever it is they owe, and I'm saying hospital is probably the biggest one, medical bills. They go ahead and they pay that bill and now all of the sudden, there's no cause, but you've already incurred a cost for asking the sheriffs department to serve the paperwork. Am I correct in that? [LB273]

JEREMIAH LUEBBE: That's correct, Senator. It's an up front cost that is paid at the time, I believe, the summons and the complaint is forwarded by the court to the sheriffs office. It's out of my client's pocket or out of whoever is attempting to collect their bill or some bill on behalf of somebody else's. And the second part of your question, if the person that owes the debt, the consumer, if they go to the hospital and it's a \$300 bill, per se, and they cut a check at the hospital for \$300, the statute for recovery of costs says that basically you're out. That's, the 25-1708, that statute says you have to get a judgment for a principle amount. You have to obtain a judgment before you're awarded your costs. That's the current version of Nebraska Statute 25-1708. [LB273]

SENATOR PRICE: Okay. So, and your company knows that this is a risk when you go ahead and serve the paperwork. It's part of your business model, okay, that this could be the eventual outcome? [LB273]

JEREMIAH LUEBBE: Certainly. I'm not...I do more of the legal part, as opposed to the business of the debt collection business. However, we are, we outstrip the national average for collection of accounts and collection rate of that account. We feel we are one of the better agencies, if not in the state, in the entire country. And no debt collection agency can recoup 100 percent of their expended court costs. It's just not possible. [LB273]

SENATOR PRICE: Okay, thank you. [LB273]

SENATOR PIRSCH: Thank you. Any further questions? Seeing none, we'll move on then. Thank you very much, Mr. Luebbe for testifying. Are there any other opponents of LB273 here to testify? Very good. Mr. Austin. [LB273]

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

Government, Military and Veterans Affairs Committee
February 04, 2009

JORDAN AUSTIN: (Exhibit 6) Good afternoon, Mr. Chairman, members of the committee. My name is Jordan Austin, J-o-r-d-a-n A-u-s-t-i-n, and I'm here on behalf of the National Rifle Association. While we don't have a direct opposition to the bill itself as in entirety, we have a problem with section 2 that was referenced by Senator Ashford before. This is dealing with an increase in the fee for the permit to purchase system. We feel this fee is unnecessary. The increase will be a deterrent in exercising a right. And with the agreement of Senator Ashford, we have drafted an amendment which I have distributed also with my testimony that I feel will accomplish what we're trying to do. Delete the section, renumber the remaining sections accordingly and you know, with Senator Ashford's testimony, and he is in agreement with it, I'll stand for any questions you might have. [LB273]

SENATOR PIRSCH: Very good. Are there any questions for Mr. Austin? Senator Price. [LB273]

SENATOR PRICE: Thank you, Senator Pirsch. Mr. Austin, can you offer why this would be put into this bill, if it wasn't really intended by Senator Ashford, how this made its way into a bill? [LB273]

JORDAN AUSTIN: I have no reason or no answer for that. I'm not quite sure why it was put in with this bill. Without a very good understanding of where the money for that permit to purchase goes, I'm not sure if it goes directly to the General Fund or the sheriffs office and, you know, what the actual program, whether it runs a budget or a deficit, I'm not quite sure what the understanding was or the need for the increase at all. [LB273]

SENATOR PRICE: Okay, thank you. [LB273]

SENATOR PIRSCH: Very good, thank you. Are there any other questions? Seeing none, thank you very much. Are there any other opponents of LB273 here today? Any other opponents? Mr. Mueller, welcome. [LB273]

BILL MUELLER: Thank you, Senator. Senator Pirsch, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association as well as the Nebraska Collectors Association to oppose LB273. As you have already heard from the prior opponents, the increases that are contained in this bill are substantial. We acknowledge that the fees have not been changed for over 20 years. What I want to point out is that in the handout with the chart that you've been provided, there is a cost for serving a court document upon one defendant, including a summons, garnishment, exams, discovery, subpoenas; the current fee is \$10. The proposed fee would be \$20. But what you also have to do, you also have to add the fee for filing a return of that. So currently you pay a fee to the sheriff or to the constable to file that document or serve that document. That's \$10. Then you pay another fee for the

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

Government, Military and Veterans Affairs Committee
February 04, 2009

sheriff or the constable to file a return with the court saying I served someone, this is how I did it. So what is practically happening is if this bill were to become law, you would be increasing that total cost from \$15 to \$32. So we're talking about substantial increases. There are other increases in the bill. This is the one that I think has the most activity included within it. In other words, this is where the volume is, in this area. You should know that, as you've heard before, there are more than one way to serve documents. You can have a sheriff serve it. In Lancaster or Douglas County, we have constables who are appointed by the county judges, and they can serve documents in the county courts in Douglas and Lancaster County. Then we also have a statute that allows private process servers, private parties to serve legal documents and that's 25-507, and any person can exercise the powers of a sheriff or a constable provided that they're not a party to the action, that they're not related to a party to the action, that they do not have an interest in the action, and that they furnish a good and sufficient surety. They have to post a bond. Now, this only applies in counties that don't have a constable. So you can use a private process server, and I understand the private process servers are used throughout the state, but you cannot use them in Douglas and Lancaster County because the statute says that if you have a constable, you can't use a private process server. Why do I bring that up? If we are going to have a discussion about sheriffs fees and obviously, with LB273, we are having that discussion, we believe that we should broaden that discussion to include, are there situations where someone other than a sheriff should be serving these documents? And we believe that by using the current private process servers statute, you can broaden that so that it would be an option in all 93 counties to either use the sheriff, or if you're in Lancaster or Douglas County, you could use a constable for county court documents, or you could use a private process server. There's also another bill introduced that's actually in front of the Judiciary Committee that would say that you could also use a commercial courier to serve legal documents. You could use Federal Express. You could use UPS. We, the Bar, support that, as do the collectors as a way to again provide other opportunities to take some of the pressure off the sheriffs office to serve legal documents. We, the Bar and the collectors are more than willing to sit down with the sheriffs--we have met with them already--and see if we can come to some agreement. The bill as introduced is too much, in our view. I'd be happy to answer any questions you may have. [LB273]

SENATOR PIRSCH: Thank you very much, Mr. Mueller. Are there any questions for Mr. Mueller at this time? Senator Karpisek. [LB273]

SENATOR KARPISEK: Thank you, Senator Pirsch. Mr. Mueller, so is the private process server the guy that you see on TV that runs up and asks who you are and then runs away. [LB273]

BILL MUELLER: I suppose that that person would be a private process server. [LB273]

SENATOR KARPISEK: It doesn't all work just like you see it on TV? [LB273]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 04, 2009

BILL MUELLER: No. [LB273]

SENATOR KARPISEK: Okay, why, why would someone use them rather than the sheriffs? [LB273]

BILL MUELLER: My understanding is that there are situations where someone is having a difficult time locating a defendant and perhaps a private process server will, might be more diligent pursuing that person. There may be parts of the state where, because of distances, it's just difficult for the sheriff to serve someone. [LB273]

SENATOR KARPISEK: Do you know, are their fees generally higher or lower, I suppose? [LB273]

BILL MUELLER: My understanding, and again, I don't do this kind of work. I've asked the same question. I believe that those fees are negotiated between the plaintiff, the person bringing the action, or the plaintiff's lawyer and the private process server. The only fees that would be taxable, in other words, the only fees that someone could recover in a court action would be the lesser of the statutory fee or the actual fee. So if I filed a lawsuit for Senator Pirsch and we decide to use a private process server, and that private process server charges us more than what the statute provides, we could still only recover the statutory amount. The rest would come out of our pocket. In this case, it would come out of Senator Pirsch's pocket, being the client. [LB273]

SENATOR KARPISEK: Okay, thank you, Mr. Mueller. Thank you, Senator Pirsch. [LB273]

SENATOR PIRSCH: You bet. Any other questions for Mr. Mueller. Very good. Seeing none, then we'll move on. [LB273]

BILL MUELLER: Thank you. [LB273]

SENATOR PIRSCH: Thank you very much for coming down and testifying. Any other opponents for LB273? Seeing none, we'll move to any individual who's here to testify in a neutral capacity with respect to LB273. [LB273]

CHRIS ZEEB: Good afternoon, Senators. My name is Chris Zeeb, C-h-r-i-s Z-e-e-b. I'm here representing the Nebraska Firearms Owners Association. We're neutral on this bill. Glad to hear about the amendment. Do want to offer one suggestion to take some of the burden off of the sheriffs office with the handgun purchase permit. We have a concealed handgun permit in the state that individuals pay, including training, about \$200 to \$250 for and they go through a much...they go through a pretty good training session and a much more vigorous background check is my understanding. What I would suggest is in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 04, 2009

the statute 69-2403 which lists exceptions to who does not need a handgun purchase permit, that you add in there a concealed handgun permit holder. Therefore, you know, you have less people who have already had extensive background checks going to the sheriffs office, doing this redundant task. And that's all I have, if you have any questions. [LB273]

SENATOR PIRSCH: Super. Are there any questions? Very good. Seeing none, thank you. [LB273]

CHRIS ZEEB: All right, thank you. [LB273]

SENATOR PIRSCH: Thank you for coming down and testifying here today. Are there any other individuals who are here to testify in the neutral capacity with regards to LB273? Seeing none, I believe Senator Ashford had indicated that he would waive closing, and so we will then proceed to the next bill for consideration here today. That's LB131. Senator Dubas is here. Good afternoon, Senator. [LB273]

SENATOR DUBAS: (Exhibits 1, 2) Good afternoon, Senator Pirsch, members of the Government Committee. My name is Senator Annette Dubas. That's A-n-n-e-t-t-e D-u-b-a-s, and I represent the 34th Legislative District. LB131 was brought to me in 2007 by members of the Merrick and Polk County Boards. They were interested in the issue presented by the boundary that separates them, specifically the Platte River. The language in the existing statute that both counties wanted changed reads: The middle of the south channel of the Platte River. They asked if they could redefine the middle of the south channel of the Platte River by using global positioning coordinates--a very sophisticated and precise way to detail exact location. Their innovation doesn't surprise me, and I think we'll be seeing many more counties who will be doing the same. I agreed to carry this legislation. I hope you won't ask me to explain the bill because it is totally filled with numbers and degrees and positions, etcetera. But that goes to show the preciseness of what they're trying to achieve. This is an amenable agreement with both counties, and they brought it to me in a very respectable fashion. Both counties have put a great deal of work into this, and I do appreciate their diligence. They made it much easier for my staff. I have two letters here from both of the counties, basically laying out their support for this bill and their agreement to this legislation, and I hope that you will advance this legislation, and I would be happy to try to answer any questions. [LB131]

SENATOR PIRSCH: Great. Thank you. Senator Pahls. [LB131]

SENATOR PAHLS: Thank you, Senator Pirsch. You know, it is a very detailed bill and on page 3, line 22, it says 55 degrees and 41 minutes and 50 seconds, could I substitute an amendment in, just make sure that it's not 51 seconds? (Laughter) This is a very, I have to be honest with you, this is a very detailed, and I understand the

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

Government, Military and Veterans Affairs Committee
February 04, 2009

rationale behind that. [LB131]

SENATOR DUBAS: Exactly, and it just goes to show the preciseness of GPS positioning and you know, when you're talking about river channels and that river changes on a regular basis and so that makes that boundary movable, but by doing it this way, it's very precise. [LB131]

SENATOR PAHLS: And I'm wondering if we could use this same type of...to remove Sarpy County over to Iowa. Oh sorry. No. (Laughter) No, I'm impressed with the degree of sophistication that they're using. [LB131]

SENATOR PIRSCH: Thank you. Senator Sullivan. [LB131]

SENATOR SULLIVAN: Thank you, Senator Pirsch and Senator Dubas. So are they still using the channel or are they using the ground that's the middle of the? [LB131]

SENATOR DUBAS: Well, before it was the channel and now with this degree of explanation, I mean, when they look at it, look at the maps, from my understanding there will be a line that they'll be able to determine as the boundary. [LB131]

SENATOR SULLIVAN: It still follows the channel of the river, not the actual ground that's in the middle of the river. Because the channel obviously changes? [LB131]

SENATOR DUBAS: Right, right. Exactly, yes. That's my understanding that it will follow. [LB131]

SENATOR SULLIVAN: So that's better than using the ground? I wonder what, why they're, I mean, the ground doesn't move. The channel does. [LB131]

SENATOR DUBAS: But the channel will change, change the shape of the ground within the river, if I'm making any sense here. Again, just by using the global positioning maps, you're going to have an exact picture of that boundary, rather than before you just had the visual of the river and the channel that the water was flowing in, if I'm making it any clearer for you at all. [LB131]

SENATOR SULLIVAN: Well, yeah, I think so, but I'm just...and I'm trying to figure out their rationale because yeah, the channel some days could be closer to that opposite bank that's closer than, but yet the ground that's in the middle of the river doesn't change? [LB131]

SENATOR DUBAS: It was currently stated as the channel. [LB131]

SENATOR SULLIVAN: Okay. [LB131]

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

Government, Military and Veterans Affairs Committee
February 04, 2009

SENATOR DUBAS: And so they're trying to get away from using that channel as the boundary demarcation. [LB131]

SENATOR PIRSCH: As it pertains to the water body as opposed to the ground underneath the water bodies. [LB131]

SENATOR DUBAS: It is my understanding. [LB131]

SENATOR PIRSCH: Senator Price. [LB131]

SENATOR PRICE: Senator Pirsch, thank you. Senator Dubas, if we removed the surface water feature, then they will be using these GPS position points to demark the boundaries, correct? [LB131]

SENATOR DUBAS: That would be my understanding, yes. [LB131]

SENATOR PRICE: So if the river rechannels and 35 acres, 40 acres, a quarter mile moves into one county or the other, they would never come back to say, let me have that land back; we're going to follow the new river or the existing, what we laid out here in the grid point? [LB131]

SENATOR DUBAS: What would be laid out in the grid, to my understanding. [LB131]

SENATOR PRICE: Okay, because I understood you to say that it would be...follow the grid points down the channel and not down, and not just directly to the ground. I mean, that could be wrong here. So. [LB131]

SENATOR DUBAS: Well, my understanding of GPS, and I don't know if there's anybody in the room who can clarify that, but my understanding is that it provides through satellite imaging exact markings of where boundaries are. So no matter what changes in the physical appearance, those markings will remain the same. And so that boundary isn't going to be... [LB131]

SENATOR PRICE: Subject to the whims of the water? [LB131]

SENATOR DUBAS: Fluid, correct. [LB131]

SENATOR PRICE: Now, to further go into that, then; water being an issue within the state, what does this do to water rights and things like that that a county may have or a land owner may have? Have we looked at any implications there? If there's a redirection of the water, now someone doesn't have it any more, they always believe that, you know, I just want to make sure that we've had the two counties look at that and address

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 04, 2009

what would happen if a redirection of the channel and water rights. [LB131]

SENATOR DUBAS: My understanding from the counties is they've looked at this in a very detailed fashion. Now to give you an exact answer to your question, I'm afraid I can't, but I sure would. [LB131]

SENATOR PRICE: But they did look? [LB131]

SENATOR DUBAS: Yes. I mean, that's my understanding and they've been working on this, this has been a work in progress for a while and so I'm thinking that they're all on the same page, so. But I will try to get a more definite answer for you out of that question. [LB131]

SENATOR PIRSCH: Thank you, Senator Dubas. Does this shift any home owners or businesses who believe that, or last year would be in County A and now would find themselves in County B subject to different representation or taxation or those kind of things? [LB131]

SENATOR DUBAS: No. No, it shouldn't impact anything along that line. It just has to do with the river and using the river as a boundary. [LB131]

SENATOR PIRSCH: This is just empty land. Right. And with respect, why is it that this has come to light...this situation has developed between Merrick and Polk Counties or is this an issue perhaps for other, to other counties or other counties in the state? [LB131]

SENATOR DUBAS: It is my understanding that other counties that have rivers as boundaries for their counties are looking at this. I don't know if there's anyone in the audience today from Merrick or Polk County who might be able to answer that question for you better, but you could ask if there is anyone here who would be able to give you a little more of the background. But I do understand that there are other counties that are looking at this, that have river boundaries. [LB131]

SENATOR PIRSCH: And that's my question, should we be approaching this from a more holistic type of approach as opposed to, you know, two counties coming in; each, you know, year. What was the catalyst by which...led these two counties to believe that it was important to approach the Legislature? Was there a, was it just a matter of settling it for settling it's sake or? [LB131]

SENATOR DUBAS: Yeah, I think it was just a clarification on their parts. But as I said, I believe there might be a representative from one of the counties here who would...could give you those answers. [LB131]

SENATOR PIRSCH: Okay. And is it by statute then that we set, I mean, are there

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

Government, Military and Veterans Affairs Committee
February 04, 2009

any...there's no State Constitutional implications here in going forward whereby the ability to set county lines is intrinsically the province of the Legislative branch, and there is no right or wrong but. [LB131]

SENATOR DUBAS: It's my understanding that there's other boundary definitions within current statute and legal counsel might be able to help you understand that issue also. [LB131]

SENATOR PIRSCH: Well, thank you very much for your testimony today. [LB131]

SENATOR DUBAS: You're welcome. [LB131]

SENATOR KARPISEK: Senator Pirsch. [LB131]

SENATOR PIRSCH: Oh, thank you, Senator Karpisek, sorry. [LB131]

SENATOR KARPISEK: Oh, I just wanted to make a comment maybe Senator Dubas, and I agree with Senator Pirsch is, should this be the way the state does it rather than just two counties. Also, is it going to set a way even for state boundaries? And then will that coincide with Iowa per se? So I'm not asking you, but I'm just bringing up, does this really change how everything is done? Not that I disagree. I'm trying to think in my mind about, when you have the channel now and so they set it and the channel moves, how that works if your land is, if you have someone with land on this side then? With a half an acre...I don't know, I guess I'm confusing myself more than normal. But um, that's something. Anyway, I just wanted to...my comment is the same as Senator Pirsch is, should we look at this as a whole state issue rather than just two counties. [LB131]

SENATOR DUBAS: I think GPS is going to be much more viable and reliable type of measurement stick for a lot of different things and so I would not be surprised to see that used more in the future. [LB131]

SENATOR KARPISEK: Thank you, Senator Dubas. [LB131]

SENATOR PIRSCH: Senator Price, you look like you wanted to ask a question. [LB131]

SENATOR PRICE: Yes, Senator Pirsch, thank you very much. Senator Dubas, let me ask this question. Have the current surveying techniques, I mean, we've probably all seen surveyors out there with their lenses and measurements and lasers. When they pick their, and by surveying standards, pick the point from which they survey from, that segment that they measure from one to the other, because you know, we obviously don't have just straight lines. We're talking a lot of movement in a line. Are these GPS coordinates, you may not have the answer, but are these GPS coordinates taken at the same interval that a standard survey would be taken, because I would submit, there

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 04, 2009

have been wars fought over surveys that changed from, you know, a practice from one year to the next on the intervals and sections. So that standard surveying practice doesn't tell us whether it's GPS or not, the standard surveying practices we use for picking those way points. [LB131]

SENATOR DUBAS: Yeah, I think that's my understanding. The GPS gets it down to a much more finite degree of demarcation versus the more standard mechanical way of doing surveys if that's the correct term. [LB131]

SENATOR PRICE: Okay, thank you. [LB131]

SENATOR PIRSCH: Senator Pahls. [LB131]

SENATOR PAHLS: Senator Pirsch. You know, this, my first look at this bill, oh, this sounds pretty good. But it also brings to mind that the land of Carter Lake in Nebraska and Iowa, that had to be even settled at the federal level because the river has moved there. So this is, you know, first thought...this is, it sounds like a good way of doing things, but that had to be settled in a federal court, so this may really have much, many more tentacles than we've... [LB131]

SENATOR DUBAS: I think that might have been some of the drive behind their wanting to do things to make sure that, you know, whether it comes to Census or property taxes or whatever, this might alleviate some of those. [LB131]

SENATOR PAHLS: Okay. So that...yeah. And it's also, you can pull down your house, like, for example, somebody pulled my house down, and there I am getting the mail out of the mailbox. You know, there's a picture of me going to and I mean, I'll tell you. So we can do lots of things, but that has brought some curiosity to mind about the potential and also the litigation that could be involved in this. So I think you're causing us to think here. [LB131]

SENATOR PIRSCH: Any other questions? Well, we've thrown a lot at you today, Senator Dubas. [LB131]

SENATOR DUBAS: There was supposed to be no questions on this bill. [LB131]

SENATOR PIRSCH: Okay. I'll hold my question for those who testify after. Okay. We will now ask for proponents of LB131. Thank you very much for coming down. State your name and spell it. [LB131]

JIM GRAVES: I am Jim Graves, G-r-a-v-e-s. I'm the deputy county surveyor for Merrick County, and in the past, until the last two years, I was the county surveyor for oh, about 20 years. Can I just tell what brought this on? And in Merrick County, the center of the

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

Government, Military and Veterans Affairs Committee
February 04, 2009

Platte River is the county line except where there is a south channel which means that originally there was an island in the Platte River. And when that island was in the Platte River, then the channel on the south side of that island was the county line. And in some cases, we have a huge island out there that's probably 20 miles long, and it just has a south channel. And that south channel in the summertime, you can probably if you run real fast, you could jump across that south channel. And that south channel hasn't moved hardly any. I lived just within a half mile of that south channel for most of my childhood anyway. And I would go out there in the wintertime and see it, and so it very seldom moves and now that we're getting into where the value of the accretion is getting so high, before nobody cared if they had accretion but now everybody wants accretion and the value jumps from \$10 to acre up to \$2,000 or \$3,000 an acre. So that accretion ground makes a lot of difference and so then the county line makes a big difference. And so the two counties we've always worked really close together and so what we tried to do and what we actually did in this is that we...the old way that the county line was done was the two high banks on both sides, the center of that was the county line. So now they've changed the law a little bit and you can go to the center of the stream. And so we defined where the county line was and then after we defined where it was, then we took global positioning on that line. And we took it several, you know, a lot finer-tuned closer spots than we would when the old original survey was done in the 1800's. So when both counties looked at...both county surveyors looked at this and made sure that we was, was agreeable on this, we both took them back to the county boards and went over it with them and everything, and then everybody was in agreement on it. Well, just about the time that we started this, there was a subdivision done around a lake development, and that lake development--in the middle of that lake--the county line went through the middle of that lake, and we wanted to make sure that we didn't split any lots around that lake into one, you know, half of it was in one county and half of it was in the other. So we made an agreement on where the county line was going to go through that lake and by doing so, that started the movement of trying to do what we're doing today. I think if you look back in your records, Platte County and Butler County, they did the same thing. Cuming County and somebody else did. So we're about the third county that went through this avenue to try to set our boundary of the, of Merrick County. And I think it's going to happen more. The value of that accretion along that river is going to make it so that we're going to define that really to a really fine point where that is. And so that somebody can come out there and, you know, a year from now and find exactly where that point is, where now you can't do that. I mean, unless you go this way. That's why, that's why we went this avenue. I guess I'll try to answer any questions that you might have. [LB131]

SENATOR PIRSCH: Great. Could you just clarify right quickly what you said, value of the accretion, property with accretion has gone up, is that right? [LB131]

JIM GRAVES: Right. [LB131]

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

Government, Military and Veterans Affairs Committee
February 04, 2009

SENATOR PIRSCH: Could you just briefly and succinctly explain what that means?
[LB131]

JIM GRAVES: Say what that is. Well, on the old surveys, you had the high bank and everything between the high bank was water. Well, now that water has dwindled and islands and trees and ground and brush and hunting has really come to be quite an extensive value there. And so that ground never was deeded, I mean, was never platted and never deeded. It was always accretions. And those...and that's what really, a lot of people are paying high dollar for that ground, and it really becomes important that they can tie the ownership down and even though the thread of the stream might move, it might move from one county to the other, but their ground will still stay where it is. You know, but it might switch from one county to another which is no problem, you still have the ground. But it's probably not going to. [LB131]

SENATOR PIRSCH: Oh, I'm sorry, was there anything else? [LB131]

JIM GRAVES: Well, I mean, hopefully we've looked at this and looked at it probably for 30 years and it hasn't changed very little in that 30 years, so we're hoping that it really, you know, stays pretty constant. [LB131]

SENATOR PIRSCH: Senator Price. [LB131]

SENATOR PRICE: Senator Pirsch, thank you. I have two questions, sir. If you would indulge me and the board, just so I know, I think I know the answer, but I want to be sure. Could you tell me what a minute and what a second equals to in distance?
[LB131]

JIM GRAVES: Well, they're not in distance, they're angles. [LB131]

SENATOR PRICE: Okay. [LB131]

JIM GRAVES: So you know, you have 360 degrees and then you have a degree and then break down one degree and it is 60 minutes and break down one minute and it is 60 seconds. And that's an angle of an arc or a curve. [LB131]

SENATOR PRICE: An angle or an arc, not in the old days where we're reading maps and it would be 60 miles would equal to one degree. [LB131]

JIM GRAVES: Right. [LB131]

SENATOR PRICE: Okay. The unit of measurement has changed. Also I would like to ask, in the event that the river moves substantially and a land owner has been getting water from the river, now that river has moved away from him, and now they're

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

Government, Military and Veterans Affairs Committee
February 04, 2009

landlocked, how does he get to the water without incurring, I could just see... [LB131]

JIM GRAVES: We're not changing his ownership to the thread of the stream. All we're doing is saying where the county line is. So if that water moved, he can move across the county line to that water and get usage of that water. All we're doing is putting in which county is, you know, where, you know, where the county line is. The thread of the stream and the ownership of that ground could move from one county to the other, but probably won't, but it could. If something really drastically happened with the dams and stuff on the Platte River to the west, it's very seldom likely to do that, but it can. And it, there's still no problem, but the landowner, he's not going to lose his, he's just going to be able to move over to where the water is to water his cows where, or what's, that's what the original is. Now not too many cattle graze along the Platte River, but you know, in the middle of the river, anyway, it's more for duck hunting and deer hunting and stuff like that. But I mean, the ownership will still go to the thread of the stream. All we're doing is tying down where the county line is. And if it moves across the county line, all of the sudden the problem is the assessor will probably change the assessment on which county his ground is in. [LB131]

SENATOR PRICE: So you could only assess to his county line and then another assessor would have to come in and assess the other portion? [LB131]

JIM GRAVES: Right. The two, they do have to work together. And that's what we're going to do when this is all done. We'll set up how many acres is in each county. [LB131]

SENATOR PRICE: So there are no mechanisms in place now to deal with that? [LB131]

JIM GRAVES: Not on, not on this, what I say is the accretion boundary. It's kind of vague how much, you know, because it was done with a buggy and on maps and saying how many acres of accretion that you had out in that river. And now when we get done with this, it will all actually be worked out with computers and stuff and will actually tell them how many, how many acres of water they'll have and that. [LB131]

SENATOR PRICE: Do you know the narrowest part of the channel or this area between, between the two counties? [LB131]

JIM GRAVES: Well, the narrowest part is going to be on that south channel where we have a south channel, and some of that, that narrowness is probably, oh, 100 feet. [LB131]

SENATOR PRICE: Okay, thank you. [LB131]

SENATOR PIRSCH: Senator Pahls. [LB131]

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

Government, Military and Veterans Affairs Committee
February 04, 2009

SENATOR PAHLS: Senator Pirsch. I just, Mr. Graves, I have a question. I heard you say this land is not deeded. [LB131]

JIM GRAVES: Well, on the original deeds, your ground that was, was just deeded up to the high water mark which would be the bank of the river. Out in the middle of the river, unless there was an island out there, that was not deeded. That was water and sand and back in the 1800's, and it wasn't deeded. And if there was an island bigger than three acres, then that was deeded, but the rest of it wasn't. [LB131]

SENATOR PAHLS: So we do have parts of that land that is not deeded today is what you're telling me? [LB131]

JIM GRAVES: Yes. [LB131]

SENATOR PAHLS: Okay. [LB131]

SENATOR PIRSCH: Are there any other questions? Senator Sullivan. [LB131]

SENATOR SULLIVAN: Oh, thank you. It just makes me wonder then is that, are you going to sell that land? [LB131]

JIM GRAVES: The person that owns it, in most cases, unless they've already sold it to the person that owns the ground on the high bank, they also own the accretion. [LB131]

SENATOR SULLIVAN: Oh, they do. Oh, okay. All right. I thought it belonged to the county. [LB131]

JIM GRAVES: And now they're, and a lot of that is being sold, but they actually have the ownership of it. But they have a hard time, you know, getting clear title to it. [LB131]

SENATOR SULLIVAN: I see. Okay. Right, okay, got you. [LB131]

SENATOR PIRSCH: Senator Pahls. [LB131]

SENATOR PAHLS: Senator Pirsch. Then it makes me curious because I have to buy all this title insurance to make sure my title, and you're saying now, this land; there's not a title to this land? [LB131]

JIM GRAVES: No. But there is avenues that they can go through to get, to pacify the title insurance. I did quite a little surveying on the river and the title people came in, and they'll question me a lot and um, they're pretty, then usually the end result is they do a quiet title action and see if anybody else has any action of title to that. And then if not,

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Transcriber's Office
Government, Military and Veterans Affairs Committee
February 04, 2009

then they'll usually issue a, you know, an action, you know, that they're going to guarantee the title. [LB131]

SENATOR PAHLS: But if that land has passed through generations in different families, I could see that that could, you know, this is really, Senator Dubas, this is an intriguing issue that you brought forth. So that land, I mean, that title insurance; that's the reason why you have title insurance. So you, these things don't happen. Okay. I was just, okay. Thank you. [LB131]

JIM GRAVES: And courts. [LB131]

SENATOR PAHLS: Yeah, good answer. Thank you. [LB131]

SENATOR PIRSCH: I do have a question with respect to how other, I assume that we're not unique here in Nebraska, that other, at least Midwestern states, utilize the same system. We're now entering a new age of technology, better geomapping and those kind of...how do other, have other states approached this issue and have they approached it piecemeal county by county, wherever the counties feel that they want greater delineation or has a state, to your knowledge, gone back and said, we're going to have some kind of big wholesale remapping of everything utilizing the new technology or utilizing this geomapping? [LB131]

JIM GRAVES: I don't know. The problem that I, when I look at it, I probably don't think they do, because there's probably not very many states that have a Platte River that did flow, you know, bank to bank for years and years and years, and then there was dams put in and then there's very little water that goes down it, so it has a lot, you know, it has accretion on it. And a lot of them have water in them all the time, and they are flowable waters and the state or the federal government might own the bottom of that. But in Nebraska, the people own the ground that's underneath the water, but Nebraska owns the water. But somebody owns the ground underneath the water, and so it's, I think it's unique there. And I can't answer that question. [LB131]

SENATOR PIRSCH: So this deals with, this comes about because of accretion, the value of accretion land? [LB131]

JIM GRAVES: Well, that, and trying to say exactly where the county line is going to be. And the value of it, that's what brought the value up. [LB131]

SENATOR PIRSCH: And do these coordinates or new lines represent the entirety of the county lines between the two counties or is this just a portion of it? [LB131]

JIM GRAVES: No, it's all of it. [LB131]

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Government, Military and Veterans Affairs Committee
February 04, 2009

SENATOR PIRSCH: Okay. That's all the questions I have. Any other questions?
[LB131]

SENATOR SULLIVAN: Thank you. [LB131]

SENATOR PIRSCH: Seeing none, thank you for coming down and testifying. [LB131]

JIM GRAVES: You're welcome. [LB131]

SENATOR PIRSCH: Are there any other proponents here today? Any other proponents of LB131? Seeing none, are there any opponents here today for LB131? Seeing none, are there any individuals here to testify in the neutral capacity? Very good. Seeing none, that would conclude the...well, I'm sorry, Senator Dubas, I cut you off. Would you like to make a final closing remarks? [LB131]

SENATOR DUBAS: I don't want any more questions. (Laughter) [LB131]

SENATOR PIRSCH: With that then, I will close the hearing on LB131 and the committee meeting today. I appreciate you all coming down. [LB131]

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Government, Military and Veterans Affairs Committee
February 04, 2009

Disposition of Bills:

LB131 - Placed on General File.

LB133 - Placed on General File.

LB273 - Placed on General File with amendments.

Chairperson

Committee Clerk