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Government, Military and Veterans Affairs Committee  
March 12, 2009

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[LB475 LB527 LB533]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, March 12, 2009, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB527, LB475, and LB533. Senators present: Bill Avery, Chairperson; Pete Pirsch, Vice Chairperson; Robert Giese; Rich Pahls; Scott Price; and Kate Sullivan. Senators absent: Charlie Janssen and Russ Karpisek. []

SENATOR AVERY: Welcome to the Government, Military and Veterans Affairs Committee. I think this is our last day of public hearings. And today we will take up three bills as posted on the agenda outside: LB527, LB475, and LB533. Before we start I want to introduce the few of the members who are here. Starting over to my right, Senator Rich Pahls from Omaha. Senator Janssen, Charlie Janssen from Fremont, is not here yet, but he will be. He will not be? He will not be, I'm sorry. There is some conflict today, I believe there are some basketball tournaments going on, so I know Senator Karpisek has that conflict. But Senator Giese is here from South Sioux City. Senator Pete Pirsch will be joining us later; he is Vice Chair of the Committee and from Omaha. Christy Abraham, to my right, is the legal counsel to the committee. I am Bill Avery, Chair of the committee. Senator Karpisek from Wilber will not be here today, and Senator Price, though, will be here later; he is from Bellevue. And Senator Kate Sullivan from Cedar Rapids on my extreme left. And on the end down there is Sherry Shaffer who is the committee clerk. When you are prepared to testify, we would ask you to fill out a form that's titled "For Testifiers Only." You can find them on the tables at each entrance. And we ask that you print very clearly your name and other information requested on this form. Give it to Sherry so that we have an accurate record. When you take your seat to testify, please clearly state your name and spell it so that we get it clearly entered into the record. If you wish to be recorded for or against a bill but do not wish to testify, there is a second form that you can fill out, and you do that at the tables and leave it there and we'll collect it later. The order of business, of course, is the agenda as posted. I will ask you, if you plan to testify, to please keep your comments brief. Please also pay attention to previous testimony so that you don't repeat what has already been said. I note that we have a couple of bills that will generate quite a bit of testimony. So if you keep your comments to three minutes, we'll be doing fine. If you don't, I might ask you in the middle of your testimony to speed it up or try to summarize it and bring it to an end. If you have telephones, please turn them off so as not to interrupt Senator Fulton. If you will cooperate with us on that we'd appreciate it. With that, we'll get started with LB527. Senator Fulton, welcome. []

SENATOR FULTON: Thank you, Mr. Chairman, members of the committee. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I represent Legislative District 29. I bring to you LB527. This bill is a government efficiency measure that utilizes existing technology to help ensure that state vehicles are not only being used for state

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purposes, but also to enable state agencies to better manage fleet maintenance and efficiency. I was originally prompted to introduce this bill because I and others have noticed state vehicles at locations such as playhouses, ball fields, and movie theaters--places where state business would not be expected to occur. However, this bill could accomplish much more than simply ensuring government transparency. So what is this bill? LB527 establishes an objective measure to better manage our state vehicle fleets through the use of an automatic vehicle location system. Essentially, such systems consist of a GPS device and a central tracking system. Automatic vehicle location systems are ubiquitous in the private sector, being used for everything from freight carriers to garbage crews. States and municipalities have also seen the value in AVL systems. For example, New York City has installed AVL on all of its fire trucks; San Diego uses it to monitor police dispatches; and at least 170 cities, such as Atlanta, Denver, Los Angeles, and even Lincoln, use AVL to monitor and improve their public transit systems. At least eight states use AVL systems to monitor road and highway maintenance vehicles, and the state of Oklahoma's Department of Central Services recently adopted the use of AVL for its state fleet. As stated in the fiscal note, the cost of installation and monitoring of such a system would be prohibitive up-front. However, implementation of an AVL system would produce significant cost savings. According to a 2003 report by the state auditor of Mississippi, entities implementing AVL systems saw a 20-25 percent reduction in fuel consumption. Additional cost savings can be realized in the curtailment of improper use by limiting personal use of state vehicles, and even reducing insurance rates and tort claims by utilizing available speed and seat belt sensors. Over time, these varied cost savings could cover the implementation costs by severalfold. LB527 also contains a provision that the Department of Administrative Services maintain a publicly accessible Web site to ensure citizens that the state is mindful of the use of tax dollars while operating its vehicle fleet. This provision, however, is potentially overbroad in its scope. Certainly, there are certain activities within government which will involve sensitive information, and I would therefore be willing to work with the committee to amend such language. As a matter of principle, anyway, that we should give the taxpaying public the preference of our attention, I am also hopeful that we can lean toward transparency in lieu of secrecy. Concluding, AVL systems provide an objective and scientific means of addressing needless inefficiencies at least in terms of maintaining our state vehicle fleet. LB527 would utilize existing technology to better spend the taxpayer dollars. I respectfully request your advancement of the bill. If there are any questions, I'd be glad to try to answer them. [LB527]

SENATOR AVERY: Thank you, Senator Fulton. I'll start by asking you if you've had a chance to look at the fiscal note? [LB527]

SENATOR FULTON: Yes. [LB527]

SENATOR AVERY: Would you like to comment on it? [LB527]

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SENATOR FULTON: I would. I'm...I am hopeful that we can at least discuss the merits of the bill. And if the bill is indeed meritorious, I recognize that the fiscal note is going to be cost prohibitive. I have the sense that this will save money in the long term, if we can implement it right and appropriately with respect to what should be transparent and what shouldn't within government. But it's probably more likely that I'll request an interim study be done to quantify what those long-term savings are. As you know, our fiscal analysts are not charged with conducting studies such that they can determine what the long-term cost savings are. Theirs is simply the expenditure within this biennium. And that will make...let's just put it this way: The Appropriations Committee will not look kindly on the fiscal note. [LB527]

SENATOR AVERY: You should know; you're a member. [LB527]

SENATOR FULTON: I have an idea. [LB527]

SENATOR AVERY: What has been the experience of other states with programs like this? [LB527]

SENATOR FULTON: There has...I cited one...okay, yeah, in Mississippi, the state auditor there, a 25 percent reduction in fuel consumption. We have really looked more in the private sector with...how do I say this? There is more information from the private sector than there is from the public sector. The public sector seems just to be catching on to this idea, but yeah, in Mississippi anyway, there is quantification, concretized quantification of fuel savings. And I think we have a couple of other jurisdictions also, if it would please the committee to look at it, if you'd want to pursue this any further. [LB527]

SENATOR AVERY: Will you be asking this committee to do the interim study? [LB527]

SENATOR FULTON: Haven't thought that far ahead of it, but ostensibly, yes, as this was the committee to which it was referenced. [LB527]

SENATOR AVERY: Any questions? Senator Pirsch. [LB527]

SENATOR PIRSCH: Why were there fuel savings? I mean, was that clearly delineated in the other states? [LB527]

SENATOR FULTON: I can't speak with specificity to the auditor in Mississippi, but I can tell you, from experience anyway, we...you know, part of...there's an entire section of the engineering profession which specializes in measurement. And any system where you employ measurement, there is going to be the opportunity to find efficiencies. So if you look at a fleet of vehicles that are traveling from A to B to C, or whatever place, it's

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very likely that the fuel savings found in Mississippi were because they were able to plot appropriate courses. [LB527]

SENATOR PIRSCH: You mean, this gives the operator of the vehicle, not only can their location be plotted, but it gives them kind of a Garmin type of outlook so that they can see to plot the straightest course. Is that what it is? [LB527]

SENATOR FULTON: Well, that potential exists. But I'm...yeah, that could exist, but that's not necessarily what I'm envisioning. Let's say, for instance, you have a vehicle that is in Lincoln, and--so I'm thinking out loud here--yeah, there's a vehicle that's in Lincoln and it's going to have to get its way up to Omaha, and another state employee will eventually need to come down to Lincoln. That can be envisioned if it's being planned and plotted out with the use of GPS devices, because it can be planned before the trips are made. There would be an example where one vehicle could be utilized by two people, instead of two vehicles, to get people from A to B. [LB527]

SENATOR PIRSCH: But that in other states were...I mean, is the kind of theory by which gas, you know, mileage is saved, or is it a theory of, if you're tracking, there's transparency; people tend not to take long routes or whatnot. Is that...? Which...? Both? [LB527]

SENATOR FULTON: Both. [LB527]

SENATOR PIRSCH: Okay. Why would you need to have...if it's, in part, just kind of the idea that if you're, you might be, have your activities examined under a little bit closer microscope, why would you need to have them on every vehicle? I mean, maybe...I mean, is there a mechanism by which, you know, 1 out of 20 vehicles, or whatever, is fitted, but you never know which one? I mean, the same effect would be that, you know, if that's how you're going to approach it, but at least you would...I mean, it doesn't answer the question whether that's a good paradigm or a bad paradigm, but at least you don't have to have the full 100 percent expenditures in the...I mean, if that's the paradigm you pick. I mean, I don't think necessarily... [LB527]

SENATOR FULTON: That would be...that would address the potentiality of misuse of a government vehicle. You know, I hadn't...actually I hadn't thought of that angle. That would be A. [LB527]

SENATOR PIRSCH: It was actually something that came to me with your red lights bill that was in Judiciary last night where they said you can mount kind of fabricated cameras that aren't real on just about every intersection and you don't have to pay for them, and that keeps people honest. [LB527]

SENATOR FULTON: Yeah. Well, it would, at least the concern about misuse of

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vehicles, but the measurement of vehicles that are utilized, I mean obviously it wouldn't be used for that. It's not just the gas mileage or the potential to plot courses or to long-term plan activities within a department. I mean, there's also scheduled maintenance. There's routine maintenance that's required for any moving system, and cars, if you get an oil change or you'll get tires rotated or what have you. If that can be measured by mileage and appropriated to any particular vehicle, then you can maximize the efficiency and performance of that vehicle, so that's another area. [LB527]

SENATOR PIRSCH: Okay, I just didn't understand the purpose. Obviously, that wouldn't, doing that little deal wouldn't necessarily get at what you're trying to get at with this bill, so. Thank you. [LB527]

SENATOR AVERY: Any more questions? Senator Pirsch. I'm sorry, Senator Price. [LB527]

SENATOR PRICE: Senator Avery, thank you. Senator Fulton, a couple of quick questions for you. Obviously in your opening statement, you have begun to think about the idea of our police vehicles having GPS on them might not be in the best interest. Okay, so given that, what are you envisioning for the reporting time of this data? Are you talking real time, near real time, after the fact, at some point in time? [LB527]

SENATOR FULTON: My intention wouldn't necessarily be real time. And the way...let's see, the way that we've drafted it, it doesn't necessarily have to be real time. And what's more, that would be something that I would hope that we could discuss. If there is interest on the committee in pursuing this, that's the type of thing that we would have to sit down and think through. Frankly, I wanted to be able to propose a bill and so we put this together with the idea of, you know, two aims: transparency in government, as well as efficiency within our fleets. And this Web site would have aided the former: transparency. And we didn't have the time to go through all of the agencies to determine, you know, whether or not they ought to be exempted. So that's the type of thing that hopefully we could sit down with the committee and talk about. [LB527]

SENATOR PRICE: Well, good, because the following thing is somewhat, I have from a military background, what we call elements of friendly information, and that being not necessarily classified where people are, but it sure does give you a good eye. If you knew where all the assets were and you wanted to do something nefarious, knowing where those assets are it sure does make it a lot easier. And I don't care if it's a fire truck, if it's a water guy, OPPD, or some other, or any type of utilities vehicle being utilized. I mean, it sounds to me that in all the good meaning and intention of this, like you said, the ability to save dollars and...we're really trying to say, find a manner to stop, as you said, cars, people being at places they really shouldn't be taking a vehicle at all. But we have so much more involved if that little bit were given...it looks like we may be giving up a lot to get a little bit, and I'm really concerned about that. [LB527]

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SENATOR FULTON: Well, I would say that this is just for state vehicles. So you know, public power districts or local law enforcement, that falls outside the purview of the state's fleet. [LB527]

SENATOR PRICE: I am just looking at the camel's nose under the tent-type thing. But anyway, the whole thing, and then when you talk about the state...I'm not positive on this one but what about our Guard and Reserve vehicles...or the Guard vehicles? [LB527]

SENATOR FULTON: Well, we do fund that so that would fall under the purview of the bill as drafted. [LB527]

SENATOR PRICE: That would definitely be an EP then. [LB527]

SENATOR FULTON: Yeah. And I agree. That's the type of, that's the type of thing. So I mean, if there's interest in pursuing this, then yes, that's the type of thought process that we'd have to do to exempt. I'll say this...and I'm not positive, there could be people to testify after me. I believe that presently DAS is operating a pilot program here. That's my understanding. And we haven't...I have not done as much work on this as probably I should, but I believe there's a pilot program in place, with the idea being increased efficiency. [LB527]

SENATOR PRICE: Thank you. [LB527]

SENATOR AVERY: Senator Sullivan. [LB527]

SENATOR SULLIVAN: Thank you, Senator Avery. Senator Fulton, I'm sure that probably a lot of us have seen state cars traveling down the highway or we've seen them parked in certain places and made the assumptions, as you said you did, you know, that you've heard assumptions made. But is there any documentation that there has been some flagrant misuse of state vehicles? [LB527]

SENATOR FULTON: To my office, no. And I don't know how there could be documentation to that effect. This is something that I know that the State Auditor has received contacts on. I've spoken with him about it. So I don't know. If there's documentation, perhaps it's over in that office. But the problem that you pose is actually something that could be, I believe, solved with implementation of this bill, at least in some form. So I had...the situation was during the campaign. I'm out among my constituents and they have access to me, and this came up a number of times and I received e-mails on it also. Well, how am I, as a senator, with some responsibility for taxpayer dollars, to discern those stories which are true from those which are false, or those which are only perceived versus those which are in fact a misuse? I have nothing.

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This would provide an objective means to say that, well, we took your complaint on and we checked with this agency, and according to their records that car was at such-and-such location at the time that you saw it; and they were supposed to be there to do X, Y, and Z. Or indeed you were right, we found a violation. Right now, we as senators don't have a means to go to our constituents and say, you were right or you were wrong. And that was a little frustrating for me. I don't know what to say to constituents when they complain. [LB527]

SENATOR SULLIVAN: And maybe there will be someone that follows testimony, but I'm curious also to know what currently exists among state agencies as to the management and monitoring of use of state vehicles. Do you have any idea? [LB527]

SENATOR FULTON: Hopefully there will be people behind me. There are management structures in place, and I gleaned some of this through the Appropriations Committee, but at the same time I have...they don't always work. [LB527]

SENATOR AVERY: Senator Pahls. [LB527]

SENATOR PAHLS: Senator Fulton, I mean after listening to the conversation, I do want to at least get the point across, we do have a few honest state employees. [LB527]

SENATOR FULTON: Absolutely. [LB527]

SENATOR PAHLS: It seems like, you know, that we're making this an issue, and I don't question the motive behind this but it almost sounds like, you know, there's something bad going out there and we need to capture that. That's the only question I have is, I mean, we may have some people doing it, but overall, I do have faith in the people. I do see...the three things I see in your bill. It says you want to improve efficiency, to monitor, and to provide greater transparency. Now on this Web site you're talking about, is this already up with the Roads Department, is that? [LB527]

SENATOR FULTON: No. No, not presently. Not to my knowledge anyway. [LB527]

SENATOR PAHLS: Okay. Well, then now what I'm going to do, because this morning the Executive Board, we kicked out Tom White's bill basically dealing with the Legislature having our own Web site where all this information would be there. So to me it seems like this could be some of the information that could be on that, if that bill would pass, under the leadership of the Legislature and the Exec Board. If we're looking for transparency, I'm just sort of giving a little bit of a public awareness of something that we did prioritize this morning, so we're not always having to reinvent something. But again, I do want to point out I see the need, possibly, for this, but I don't want to leave it as thinking that everybody out there is doing something. [LB527]

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SENATOR FULTON: Yeah, and if I could, just to let the record reflect...thank you, Senator Pahls. That is worth, absolutely worth saying. By and large, the state of Nebraska's employees have to be doing a pretty good job. I mean, we're appropriating money, we're researching their or scrutinizing their budgets through our fiscal analysts, and this is not brought about because of some groundswell of misuse within government. I think that the opposite is true. But when I have complaints that come in, specific complaints, I have nothing to go off of. I can say to my constituents, I'll check into it. And I can't even really do that. [LB527]

SENATOR PAHLS: Thank you. [LB527]

SENATOR AVERY: Senator Giese. [LB527]

SENATOR GIESE: Thank you, Senator Avery. Senator Fulton, a few other questions that hopefully you can answer that you haven't been asked yet. Is there any particular departments you would suggest using these automatic vehicle location systems on? And I know the idea of every twentieth vehicle, but is it a certain...are we talking all the cars? [LB527]

SENATOR FULTON: Well, I would...I mean, I haven't thought through to say which particular departments, but I would...I think we could even get beyond that by identifying those departments which have mileage provisions. I mean, part of, when we appropriate through the committee, through the Appropriations Committee, the process has certain line items delineated. And one line item that we invariably fund is gas--mileage. And so those departments which have a mileage provision that we are funding with taxpayer dollars, that's where I would go first, because those are the ones ostensibly which are utilizing state vehicles. [LB527]

SENATOR GIESE: And I haven't looked at the cost. Is there a cost per vehicle? Do you have that broken down yet? And if you don't, that's fine. My question really is, if we do this and put one of these in a particular vehicle, can we put it...can we take it out and put it in the next vehicle? How much does that cost? [LB527]

SENATOR FULTON: I do have...I don't...how do I say it? That number has been identified; I do not have it with me now, so in answer to number one. Number two, can these be interchanged? The technology I'm familiar with, yes, they could be interchanged. I'm sure there's a cost to that, but again I don't have that with me, but I will get it for you. [LB527]

SENATOR GIESE: Okay, and then the violations, if you will, or things that have been reported to you, are these mainly work hours or are these nonwork hours? [LB527]

SENATOR FULTON: One particular...and again, I don't know if it's a violation or not.



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Maybe there is a legitimate cause for this. There was a play downtown, actually in my district, which was occurring, and it was after work hours; it was at night. And it was a political satire, so I don't know how a government vehicle would be at such a play, but again I don't know for sure, but on its face it sure looks fishy. And that was brought to my attention and what do I say to that? Well, what can I say to that? It sure looks fishy; I'll look into it. But yeah, that was one. One that was e-mailed to me was on a weekend. It was at a Little League baseball game; it was here in Lincoln. I've got a number of other examples but those are a couple. [LB527]

SENATOR GIESE: Well, and I appreciate your concept here, and one, on a bright note if I could, the one thing that we could use, just thinking down the road is--and I've heard used before--is snow plows, you know, you get the phone calls, and maybe not so much in your district, but, you know, hey, the snow plows never come down my street, etcetera, etcetera. Well, with something like this, you'd be able to say, well, as a matter of fact, they were. They did go down your street. They did pick your garbage up, or they did this. So, anyway, thank you for the... [LB527]

SENATOR FULTON: Yeah, right. It would cut both ways. We could prove and deny...and yeah, you've got the idea. That's what I'm looking for. [LB527]

SENATOR GIESE: Thank you. [LB527]

SENATOR AVERY: I'm interested in the number of constituency complaints you're getting. I've never gotten a single one. Not a single call or e-mail. [LB527]

SENATOR FULTON: Yeah, I have probably had... [LB527]

SENATOR AVERY: Is my district that different from yours? (Laugh) [LB527]

SENATOR FULTON: Well, it's been...I will say that it probably picked up because I was out knocking on doors. Now maybe when you're going out and knocking here for the upcoming campaign, you'll get some of this. But, yeah, I had one person I know...I know the person. I've talked with him, you know, face-to-face, probably...I don't know, I could go back and count and... [LB527]

SENATOR AVERY: I've seen it myself where I thought, should that vehicle be there? But I've never heard a complaint. [LB527]

SENATOR FULTON: Yeah, I've had complaints while knocking on doors, and I've had probably, I don't know, probably about a half dozen, maybe a few more, e-mails that have come in. And after, if this gets coverage in the media, I will probably get some more. [LB527]

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SENATOR AVERY: Yeah. Maybe all of us will then. [LB527]

SENATOR FULTON: Yeah, probably. [LB527]

SENATOR PRICE: Thank you. [LB527]

SENATOR FULTON: Yeah. (Laugh) [LB527]

SENATOR AVERY: Seeing no more questions, are you going to stay for closing?  
[LB527]

SENATOR FULTON: I don't think that I can. I have another bill, so. [LB527]

SENATOR AVERY: Okay, thank you. [LB527]

SENATOR FULTON: Thank you. [LB527]

SENATOR AVERY: We will now move to proponent testimony. Anyone wish to speak in support of this legislation? Welcome. [LB527]

WILLIAM KLUMPER: (Exhibit 1) Good afternoon, Senators. My name is William Klumper. William, W-i-l-l-i-a-m, Klumper with a K, K-l-u-m-p-e-r. I represent Help System Services. I'm their director of development. We are a Nebraska corporation. We're located in the OSBN campus in north Omaha. Our company background is in information technology and communications, but we've also expanded into AVL and security technology. We're the exclusive distributors for what's called the Skytracker AVL system that is designed, manufactured in the United States of America. In reviewing what has been written on the bill, we believe, in our opinion, that a properly designed, installed, and operated AVL system can provide more than merely tracking a vehicle or generating an after-the-fact historical report. AVL can actually be the foundation of a proactive, fiscally conservative approach that provides tools for sound fleet management of both physical and human assets. More importantly, it is a suggestion and thought and consideration that when looking at an AVL system you can actually enhance worker and public safety. You can actually have total state fleet management and interoperability between the agencies. Also AVL can be very important in times of natural and man-made disasters. The units can be easily transferred; also it can be flexible, interoperable, and can present multiple communication tiers to the state. Also it can be enhanceable and can work with future needs and functions. It should also be readily transferable to many different systems, and it can be easily integrated into a state IT system. Additionally, yesterday we were with our business partners, Logisys of Montana and Skytec of Puerto Rico. We both attended the Nebraska breakfast hosted by Congressman Lee Terry and Ben Nelson in Washington, D.C. We also had meetings with Senator Max Baucus and Jon Tester of

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Montana and Congressman Pedro Pierluisi of Puerto Rico. The purpose of our trip in Washington, D.C., yesterday, was to further develop funding for a number of joint domestic and export projects for AVL systems and to create jobs in our respective districts. And based on information and belief on those conversations with Senator Tester, we believe that there could be some supportive funding for LB527, and that may be an opportunity that you could use to approach, to look for funding to make this a reality in the state of Nebraska. [LB527]

SENATOR AVERY: Is that your testimony? [LB527]

WILLIAM KLUMPER: Yes, sir. [LB527]

SENATOR AVERY: Any questions from the committee? Senator Pirsch. [LB527]

SENATOR PIRSCH: Yes. How much does one of your units cost, just the... [LB527]

WILLIAM KLUMPER: The average unit can run between \$500 to \$800. Those units are a one-time purchase that then can be transferred to multiple vehicles over multiple years. [LB527]

SENATOR PIRSCH: And would there be an additional cost, Senator Giese's question, to transfer from Vehicle A to Vehicle B? [LB527]

WILLIAM KLUMPER: No. You use the same wire, the same wiring structure. There are no differences. So that means you could transfer it from a bulldozer to a squad car, to put it on a semitrailer. So you can use it in multiple different areas, and then you can adjust the use as to how you wish it to report. [LB527]

SENATOR PIRSCH: Thank you. [LB527]

SENATOR AVERY: The fiscal note is estimating the cost per unit to be \$295. [LB527]

WILLIAM KLUMPER: There are many different AVL systems. Many of the AVL systems that we'll call...we'll call mere data loggers; that is they log information and they provide information. But if you look at AVL systems that we'll call, that are intelligent, that is they can provide two-way communications to the state worker. In other words, now the state worker has a wireless access point that they can use to communicate with the state across a secure VPN connection. So now the state worker has activity with the state. So some of those units would be more expensive. In our opinion, when you look at a more...what are called a full-featured AVL system, that's when you start to realize not only the long-term viability of an AVL system, but also you begin to realize there's a number of cost savings. In other words, tomorrow, if you wish to have an AVL system...for example, if someone operates a piece of equipment in an unsafe manner,

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and you decide to put sensors on that system to indicate, let's say, the pitch of a boom truck has now exceeded maximum allowable permission. That system could then immediately notify the supervisor that that truck has been operated in an unsafe manner. Now we can check to see, is it due to the conditions? Is it due to worker training? So we can use that not only to save injury, but also potential damage to state equipment and property, thus reducing our costs to operate state government. [LB527]

SENATOR AVERY: Senator Sullivan. [LB527]

SENATOR SULLIVAN: Thank you, Senator Avery. Do you have contracts with any state governments? [LB527]

WILLIAM KLUMPER: We do not. However, our partner company which is Skytec out of Puerto Rico, they do the border patrol which is FOLDA (phonetic). They do the municipal bus authority in San Juan. They have done various other projects throughout the United States. We have partnered with Logisys911 which is one of the largest providers of not only school bus routing and software, but also one of the larger providers of 911 and emergency decision systems in the United States. They are one of our partner companies. [LB527]

SENATOR AVERY: Senator Price. [LB527]

SENATOR PRICE: Senator, thank you. Sir, real quick, when you started talking about the intelligence systems and VPNs and maintenance and two-way communications, I think logistics, I think maintenance, I think of a very large maintenance tail there. And then would wonder about licensure, too, because you know, you have a site license. Are we going to get a bulk licensure? When you transfer from one vehicle to another, do you have to buy another license? Those, that's where the dollars end up in IT type of issues. [LB527]

WILLIAM KLUMPER: Yeah, you're looking at fair intellectual property questions there. In respect with this, since we're actually transferring across...in this case, we can use satellite, cell, radio. So, for example, a smart AVL system could actually piggyback on the existing radio EMS system of the state. You could then, if you're out of radio range, go to cell. If you're out of cell, you could then actually go to satellite. In other words, there are some systems that we use that are called LCR--least cost routing. Since you're using a public or, in this case, could be a state-owned transit medium, there are no costs associated with that. In other words, it's the mere cost of, let's say if you have a cell phone. That cell phone that you use is a BlackBerry. There is no extra cost for the license of that. Same thing if it's on the VPN side of the state, the state owns the VPN. Therefore, it becomes their property. And there are no license issues with transferring from unit to unit to unit, because there is no software. It's embedded software into the device. [LB527]

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SENATOR PRICE: Okay, and I don't want to belabor, but the last one we'll get to for the record would be some bad with concerns perhaps, and security on that because if you run it off a VPN, you're going to have to talk, make sure there's proper security. [LB527]

WILLIAM KLUMPER: Yes, everything is 256 AES VPN. Again, the border patrol uses it in Puerto Rico. The Puerto Rican police department uses it, the highway patrol for Puerto Rico uses it. I would say, in my opinion, a proper implementation, the data has to always come to the state. The state then must filter out the appropriate data to the public. I think there's some very, very major issues I would have with reviewing everything of the state. I would be concerned about arbitrary and capricious actions against a member of any state agency, you know, that they could plot their course. So there have to be those appropriate safeguards, and those can be put in place and are being done presently in many state and city governments. [LB527]

SENATOR PRICE: Thank you. [LB527]

SENATOR AVERY: Additional questions. Senator Giese. [LB527]

SENATOR GIESE: Thank you, Senator Avery. Back to your comment about the, you could transfer from car to whatever vehicle you wanted to. But what is involved in that? Let's say there's a, you have one and then you get a new car? What is...what's the process there? [LB527]

WILLIAM KLUMPER: Um-hm. The process can be as simple as removing two screws. It depends upon your mounting methodology. There is a wire harness that will consist of anywhere from four to eight wires, depending upon how many sensors you put in the AVL system. You then unplug it and you put it on a hot lead. You put it on the ignition lead and you're done. [LB527]

SENATOR GIESE: Okay, and then federal funding? [LB527]

WILLIAM KLUMPER: Federal funding. There are a number of federal fundings for Department of Homeland Security that have been provided for the use of AVL units as they're used in first responder units, for national security, and disaster recovery. So there are funds available. We just have to go through the appropriate, you know, procedure to find those funds and get that door unlocked with Congress. [LB527]

SENATOR GIESE: Thank you. [LB527]

SENATOR AVERY: Any more questions from the committee? Seeing none, thank you very much for your testimony. [LB527]

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WILLIAM KLUMPER: Thank you, Senator. [LB527]

SENATOR AVERY: Is there additional testimony in support of LB527? Anyone wish to testify in opposition? Any neutral testimony? Seeing none, that ends the hearing on LB527. We will now move to LB475, Senator Arnie Stuthman from Platte Center. Welcome, Senator. [LB527]

SENATOR STUTHMAN: Thank you. [LB475]

SENATOR AVERY: The last time you were here you packed the room. [LB475]

SENATOR STUTHMAN: That's right. It's not quite as full, but we've got a good number here today. [LB475]

SENATOR AVERY: Well, that was another committee, wasn't it? [LB475]

SENATOR STUTHMAN: Yes, that's right. That's right. Chairman Avery and members of the Government, Military and Veterans Affairs Committee, for the record my name is Arnie Stuthman, A-r-n-i-e S-t-u-t-h-m-a-n. And I represent the 22nd Legislative District, and I am here today to introduce LB475. LB475 eliminates the position of a county comptroller. Currently, in counties with a population of 300,000 or greater, the county clerk performs the duties of county comptroller in addition to other duties assigned to the county clerk. I want to start by saying that LB475 does not remove any duties or responsibilities from the county clerk's office except for the comptroller position, nor does it add responsibilities or merge different offices and different departments into one office. I will give you a brief history of the county comptroller position. In 1991, LB597 was introduced. This bill required the county clerk in counties with a population in excess of 200,000 shall also be the ex-officio comptroller. It went on to specify that the county comptroller should also act as the chief auditing office and internal auditor, and allowed for a change in the salary for those county clerks who also serve as the county comptroller. Later in the 1991 session, LB597 was amended into LB798, which was ultimately approved by the Governor. When LB597 was amended into LB798, the county population number was increased to 300,000 because Lancaster County did not want to be included. There are testifiers here today that can expand on the legislation history of the county comptroller position. Now some of you may be wondering, why does a senator from a county with a population of 31,962 care about this topic, when it clearly does not affect my constituents? I will tell you that, for me, this is a government structure issue. County government is a unique form of local government, for the county board functions as both the legislative and executive branch. Since the county board is charged with determining and approving the budget for the whole county, including the budget for each individual department, it only makes sense that the county board should also have the sole authority in conducting financial audits of the entire county. As a former eight-year member of the Platte County Board of Supervisors, I can tell you that

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we, as a county board, determined that financial audits had to be conducted annually because of statutory requirements in Section 23-1608. Again, I want to make it very clear that LB475 does not remove the other duties or responsibilities of the county clerk's office, except for the county comptroller duties. I also want to add that Lancaster County is still opposed to the clerk's office having audit authority, and I believe they sent a letter to the board, to your committee, several weeks ago. There are a number of testifiers here today from Douglas County who support this bill, and they will be able to answer the questions you may have concerning a county comptroller/clerk's office. I want to thank you, and I will try to answer any questions but I would say that there are people behind me that would be better qualified to answer some of these questions. I do want to ask the committee, hopefully, that you take a serious look at this bill, because I am requesting a speaker priority on this bill. So with that, I would attempt to answer any questions. Thank you. [LB475]

SENATOR AVERY: Thank you, Senator Stuthman. A question from Senator Pahls. [LB475]

SENATOR PAHLS: I've gotten literature on both sides of this issue. Now I want to use your expertise as a person who used to, quote, operate a county. What's the solution? [LB475]

SENATOR STUTHMAN: What is the solution? The solution, in my opinion, as serving as a county board member, is the county board is responsible of the audits that are done by the elected officials in the county. I think if I had to say, there should...in counties that want to do it or counties of 300,000 population, you know, could have an appointed position of a county comptroller but not a combination of the two offices. Because the county clerk's office, you know, is the one that does a lot of the payrolls, the drafts, the warrants, and everything like that, and I feel that is an elected office that audits should be addressed to, also. And that's what I feel. I feel that this position should be identified as an individual position, if a county chooses to have a county comptroller, and decides the county may want to do that. But I think it should be a defined position of a county comptroller; not an elected official. [LB475]

SENATOR AVERY: So you would have them appointed by the board? [LB475]

SENATOR STUTHMAN: They could be appointed by the board. They could be appointed or they could be hired by the board, in my opinion, because it's the board's responsibility to have audits done for these offices. That is in the statute. That's a responsibility of the board; not the responsibility, in my opinion, of the county comptroller. It's the responsibility of the board. But they can have a position, in my opinion, as an individual identified as the county comptroller that works under the board to do these audits. [LB475]

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SENATOR AVERY: There's no language in this bill though that would require any kind of auditing. This simply removes the comptroller. [LB475]

SENATOR STUTHMAN: Yes, this removes the comptroller is what it does. But there is language in a statute that requires the board to do, and that was identified in my statement of...in Section 23-1608, and I do have some of that language with me. And that is... [LB475]

SENATOR AVERY: That's in current law? [LB475]

SENATOR STUTHMAN: That's in current law. Yes. [LB475]

SENATOR AVERY: Section 23-1608? [LB475]

SENATOR STUTHMAN: Section 23-1608. Um-hum. [LB475]

SENATOR AVERY: It's not a part of this bill though? [LB475]

SENATOR STUTHMAN: No, it's not a part of the bill. No, but that is in current law, and that is... [LB475]

SENATOR AVERY: And it requires the county boards to appoint. [LB475]

SENATOR STUTHMAN: That is the county board's responsibility to do the audits on the elected officials. [LB475]

SENATOR AVERY: What makes an appointed position preferable to an elected position, where a person is responsible to the voters, the person has to file financial statements with Accountability and Disclosure, all the things that elected officials have to do? What makes the appointed position more preferable? [LB475]

SENATOR STUTHMAN: I think, in my opinion, you know...I think, you know, an appointed position...it could be an elected position if you wanted to put that into the statute as, you know, that it is an elected position by an individual in communities or counties that have identified population. That would be no problem. [LB475]

SENATOR AVERY: Senator Price. [LB475]

SENATOR PRICE: Senator Avery, thank you. Senator Stuthman, in your conversation there with the Chairman it helped to clarify a little bit more in my mind. So what you want to do is divorce the duties from the clerk? [LB475]

SENATOR STUTHMAN: Yes. [LB475]



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SENATOR PRICE: However, this legislation, there's no...there's no position mandated, there's no external activity identified. They still have to do it but they could do it themselves, and that's what I wanted...that was part of where Chairman Avery was going. It's not just that one needs to be done, but one needs to be done by a certain agency within that subdivision there, and that that individual is outside of the chain of command--again, back to my military days, like an IG inspection. You know, someone outside the chain of command making sure that all things are done accordingly. It helps everybody. You know, it's not a gotcha thing. So the intent of your bill then again is just to divorce it from the clerk. [LB475]

SENATOR STUTHMAN: Yes. [LB475]

SENATOR PRICE: But it kind of maybe left out some specifying an agent to do the work. [LB475]

SENATOR STUTHMAN: But that, in my opinion, that's the responsibility of the board. And I will read you one sentence of the Revised Statute 23-1608. It says, "Each county board shall cause an examination and a complete and comprehensive annual audit to be made of the books, accounts, records, and affairs of all county officers in the county." That's in the statute. [LB475]

SENATOR PRICE: Thank you. [LB475]

SENATOR AVERY: If I may follow up. That, as I hear it, simply means that financial records will be audited, but there will be no auditing of effectiveness of function, no auditing of officials in performing their duties according to law. There are different kinds of auditing. The kind that one would normally associate with an IRS-type audit or a financial audit. [LB475]

SENATOR STUTHMAN: Yes. Senator Avery, or Chairman Avery, in my opinion, you know, we're dealing with the taxpayers' dollars and the audit of the taxpayers' dollars. As far as the performance of an office or the duties of an office, that is a different issue and I don't know how you would audit that as far as the performance. But that is the responsibility of the individual offices, and each one of the elected officials, you know, are responsible for their offices. [LB475]

SENATOR AVERY: But there would be no more compliance-type auditing? [LB475]

SENATOR STUTHMAN: No. No, in my understanding, yeah. [LB475]

SENATOR AVERY: And we would also eliminate the responsibility for the comptroller being the fiscal agent of the county. I mean, that's part of what is being repealed.

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[LB475]

SENATOR STUTHMAN: Yes, yes. Um-hum. [LB475]

SENATOR AVERY: Is that a good thing? [LB475]

SENATOR STUTHMAN: Well, I, you know, in counties, you know, I think it is a good thing. But if a county board feels that, you know, there is a need for an individual to be accountable for that, to be accountable to the board as an individual, not an elected office, you know, then they can, you know, hire that county comptroller. [LB475]

SENATOR AVERY: Senator Pahls. [LB475]

SENATOR PAHLS: Thank you, Senator. One more time, because I'm looking for a solution because I know we have two sides here. Your opinion as a former commissioner is what? I mean, I'm trying to figure it out. What are you...what is your idea of a solution to this? One more time. [LB475]

SENATOR STUTHMAN: My idea for a solution for this is that, in what is in the law, the responsibilities of the county board, and what we have today is a county with a population of over 300,000, that they have a county clerk/comptroller. In my opinion, if that county board feels, because of their population and the issues that they have, I feel there should be a position of a county comptroller and the elected position of the county clerk as every other county has. It should not be a combined duty. [LB475]

SENATOR AVERY: Senator Sullivan. [LB475]

SENATOR SULLIVAN: Thank you, Senator Avery. Senator Stuthman, well, then, was...why was the bill originally passed that way? What was the original intent of the bill that you are trying to change? [LB475]

SENATOR STUTHMAN: That was in 19...like, what did I have? It's been quite a... [LB475]

SENATOR SULLIVAN: Oh, quite a long time ago. [LB475]

SENATOR STUTHMAN: It was in 1991, and it was a bill that I think, you know, it got put in as...it was a bill, but the bill didn't go and it got put in as an amendment to another bill, and then that got passed. And I don't know very much of the other details. But it was... [LB475]

SENATOR SULLIVAN: So it really...and you really don't know the reasoning behind it as far as it being... [LB475]

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SENATOR STUTHMAN: Create...and if I may, creating a position of a county comptroller/clerk? No. [LB475]

SENATOR SULLIVAN: Okay. [LB475]

SENATOR AVERY: If I may interject here, I believe this goes all the way back to 1915, which was a time when Douglas County and many other communities in the country were steeped in corruption, and this was an attempt to weed some of that out. I believe that was the history. There may be others who can testify to that. [LB475]

SENATOR STUTHMAN: And if I may, that may be very possible and that might be true. [LB475]

SENATOR AVERY: The good news is, we were not around then. (Laugh) [LB475]

SENATOR STUTHMAN: Yeah. But the thing about it is, I look at this as a former county board member, and it was our responsibility to audit those books. We hired auditors to do it or got firms in to do that. [LB475]

SENATOR AVERY: More questions from the committee? Seeing none, thank you, Senator. Are you going to stay around to close? [LB475]

SENATOR STUTHMAN: Thank you. Yes. [LB475]

SENATOR AVERY: Okay. We'll now move to proponent testimony. How many people plan to testify on this issue? Oh, my goodness. All right. I'm going to ask you to keep your comments to no more than three minutes. Can you do that, Mr. Rodgers? [LB475]

CHRIS RODGERS: Yes, sir. [LB475]

SENATOR AVERY: Okay, because we have another bill to take up, and we have a recess day tomorrow and some of our senators have to drive distances. Go ahead. [LB475]

CHRIS RODGERS: Okay. Thank you, Mr. Chair. I want to first thank Senator Stuthman for introducing this bill on behalf of the county. My name is Chris Rodgers. That's spelled C-h-r-i-s R-o-d-g-e-r-s. I'm a Douglas County board member and I currently serve as the board chair. I am here on behalf of the board to ask your support for LB475. LB475 is a result of the county board's action in 2008 to make the internal audit division independent of the county clerk's office and eliminate the growing fear of political retaliation. It also wants to remove the conflict of interest in the current alignment of the internal audit division that does not meet auditing best practice

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standards, and it also wants to reestablish the role of the internal audit department in Douglas County government. Mr. Chair, you and the committee will probably hear today that by asking for passage of this bill, the county board is trying to, one, eliminate accountability; and two, eliminate the internal audit division altogether. That is by no way, or any form or fashion, true. I want to read into the record some testimony from then-Senator John Lindsay of District 9, from 1991, to put some context to what Senator Stuthman said. And it reads: I bring LB597 before you in order to provide statutory authority to add the duties to the county comptroller. Nebraska Statutes Section 23-1401 provides that in counties of 200,000 or more, the county clerk shall be the county comptroller. Two years ago, Douglas County established the internal auditing department and put it under the county clerk's office. Since specific authority for that delegation does not exist in statute--and I want to emphasize this--LB597 would ask specifically that the county comptroller position is the duties of the chief auditing officer and internal auditor. He goes to specifically state some other duties. He states that there should be a pay increase with the position and then he states later that before consideration of this bill, I would propose that the bill be amended. The word "two" should be stricken and the word "three" should be inserted, and that change from the counties of 200,000 to 300,000. That is so that the only county affected by this would be Douglas County. We did contact Lancaster County to inquire whether they wished to be considered or be included under this bill, and they indicated to us that they did not wish to be included. For that reason, we suggest that the amendment be included. Now, Mr. Chair, let me repeat that the county board is not trying to eliminate accountability, and as you heard from the testimony I read, the department would not eliminate the Douglas County auditing department because it was already established before a requirement of the law. None of the current board members were in office 18 years ago, and as a result we cannot justify past boards' rationales for placing the internal audit in the county clerk's office. But I can safely say that the provision included in law was inserted without our knowledge or consent of the county board, and in effect, became an unfunded mandate. Despite that fact, I can say that we plan to maintain the commitment to having an internal audit division. At this day and time, the board is not comfortable with the audit powers being under the authority of one elected official. Over time, this alignment has created a fear, intentional or unintentional, among county departments and fellow elected officials. Our intent is to align internal audit as a separate entity reporting to the chief administrative office--a civil service employee. The county board would continue to be the final authority on all actions with the recommendations coming from our audit committee. Lastly and quickly, I want to reiterate and emphasize that the statute change from testimony I just read in '91 made the county clerk, the chief auditing officer and internal auditor. I have heard the county clerk at times say that he was not the chief auditing officer, and that argument might be made to you at some time in future testimony. I feel what you have heard clearly states the county clerk is, by law, even intent of the spirit of the law, the chief auditing officer, and the board feels the alignment of internal audit under the clerk's jurisdiction is a clear conflict of interest and that it is not appropriate for the position responsible for payroll and payment claims to also be

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responsible for auditing itself. With that, Mr. Chair, I want to conclude my testimony. Thank you and I'll answer any questions you have. [LB475]

SENATOR AVERY: Thank you, Mr. Rodgers. Any questions from the committee? Looks like we took it all out on Senator Stuthman. (Laughter) Thank you. Additional testimony in support. [LB475]

DEB SCHORR: (Exhibits 1, 2) Good afternoon, Senator Avery and members of the Government, Military and Veterans Affairs Committee. My name is Deb Schorr, spelled D-e-b S-c-h-o-r-r. I am a member of the Lancaster County Board of Commissioners. The county board supports LB475. The basis of our position is outlined in our letter to Senator Avery, dated February 23, of which I have provided you each a copy. As stated in the letter, independence and objectivity are key to the effectiveness of a comptroller. In addition, accounting best practices indicate a comptroller should report directly to the chief executive authority of the organization. This function is served by the county board in Lancaster County. In its present form, Section 23-1401 creates an organizational structure which violates these basic tenets. The county clerk plays a large role in the day-to-day financial management of a county, including the auditing of all claims filed with the county. As a result, the clerk, as ex officio comptroller, assesses work for which it was previously responsible. Also as an elected official, the clerk may be subject to political pressures which, at the very least, creates the appearance that independence and objectivity can be compromised. Finally, as an independent elected official, the clerk does not report to the chief executive for the county, which as I mentioned before is the Lancaster County Board in Lancaster County. As was mentioned twice previously, in 1991, Lancaster County specifically opted out of the provisions of LB798 which amended Section 23-1401 to make the clerk the ex officio comptroller in Douglas County. We are now rapidly approaching the 300,000 population threshold which will make Lancaster County subject to Section 23-1401. For the reasons stated above, we respectfully request LB475 be advanced by the committee. Thank you very much for your time, and I'd be happy to answer any questions. [LB475]

SENATOR AVERY: Thank you, Commissioner. Senator Pirsch. [LB475]

SENATOR PIRSCH: Just a brief question. What is the population of Lancaster County right now? [LB475]

DEB SCHORR: We are approaching, oh, three...270,000, so I would say we are several years away. But with our current population growth, within just a few years we'd be there. [LB475]

SENATOR PIRSCH: Okay, thank you. [LB475]

SENATOR AVERY: Senator Pahls. [LB475]

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SENATOR PAHLS: Thank you, Senator. Have you been in contact with Douglas County to see why they are in disagreement or they are in agreement with you? I mean, do you talk with that organization? [LB475]

DEB SCHORR: We regularly meet...Lancaster County, Douglas County, and Sarpy County meet twice a year to discuss issues of common concern. This issue was not brought up at our most recent tri-county meeting, but we were informed by Douglas County that Lancaster County should be subject once we reach the 300,000 population. [LB475]

SENATOR PAHLS: So that caused you to become more aware... [LB475]

DEB SCHORR: To investigate it on our own. Yes, on our own, and determined it would not be in our best interest, yes. [LB475]

SENATOR PAHLS: There are just a couple of words in here that does create some concern for me. They're subject to political pressures and things like that. You truly believe? [LB475]

DEB SCHORR: Right now, we have a...we contract with an independent outside accounting firm to conduct our audits, and I believe that removes all types of political pressure from the scenario. [LB475]

SENATOR PAHLS: Okay, thank you. [LB475]

SENATOR AVERY: Any more questions? Seeing none, thank you very much. [LB475]

DEB SCHORR: Thank you. [LB475]

SENATOR AVERY: Any other supporters? Yes, sir. [LB475]

PAUL TOMOSER: Good afternoon, Senators. My name is Paul Tomoser, Omaha, Nebraska. The name is spelled P-a-u-l T-o-m-o-s-e-r. I am a career audit professional. I've been also in the external audit environment and also in the internal audit environment. I am currently serving as the audit committee chair of Douglas County, Nebraska, and have done so since January 1, 2007. I am a CPA, an active registrant, current certified internal auditor, also a certified government financial manager. I've served in various capacities with the Nebraska State Society of CPAs on their state and local government accounting and auditing committee. Also served on their not-for-profit committee. I've been an auditor or an officer in the Institute of Internal Auditors organization and also in the AGA organization. I am in favor of LB475 which repeals Nebraska Statute 23-1401 and the related statutes that reference the title county clerk

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and comptroller. In my opinion, the provisions of Nebraska Statute 23-1401 are an impediment to the effectiveness and empowerment of the Douglas County Internal Audit Division when compared to professional standards, current best practices, and the organizational placement of certain internal audit functions in other county governments. Nebraska Statute 23-1401, as already discussed, put forth in 1991, was not written with the current standards or practice advisories or best practices in mind. The key points are as follows. The statute provides for multiple roles for the county clerk and comptroller. Some of those have been enumerated. Roles such as general accountant, chief auditing officer, internal auditor, fiscal agent, and so forth. The fiscal roles call for a substantial degree of management responsibility, that being exercising general supervision over all offices of the county charged in any manner with receipt or disbursement of funds. Thirdly, the significant nonaudit roles are incompatible with the audit role in accordance with the provisions of the statutes...not the provisions of the statutes--check that--with the internal auditing standards which the Douglas County Internal Audit Division purportedly claims to follow. Generally, when one tries to protect independence and objectivity, the chief audit executive, or the internal audit activity, they have no management responsibilities at all over any of the activities audited. That apparent difference or conflict has been alluded to previously. When independence and objectivity are perceived to be impaired, the effectiveness of the audit function is negatively impacted, and you may hear some reflections on that later. Independence and objectivity are strengthened and enhanced by organizational independence and appropriate reporting lines. There are several internal auditing standards that reference the importance of organizational independence and proper placement within an organization. As it pertains to the audit role, the functional and administrative reporting lines of the clerk/comptroller are incomplete, with no administrative reporting line established to senior management. Now, in my opinion, this is a local governance issue; not a local political issue, and I think the distinction is very important to you. The board of commissioners, as was discussed, have responsibilities for all facets of county government, and should be allowed to organize an internal audit function in the manner in which they feel will best serve the board of commissioners, the elected officials, county management, and the citizens of Douglas County, Nebraska. The passage of LB475 allows the local county government to properly exercise that right and that authority. Now, the matter of organizational independence is a very important one, and it's not confined to Douglas County. In fact, the Auditor of Public Accounts of the great state of Nebraska, in a December 9, 2008, management letter regarding the University of Nebraska, cited as its first observation concerns regarding the university internal audit organization. Quote: University of Nebraska employees performing an internal audit function are not part of a single internal audit organization and are not free from organizational impairments, close quote. Don Dunlap, the assistant deputy auditor, cited various government auditing standards to support that position. I also have a quote and this is a copy of that, but you may be familiar with Orange County, California, some problems they had with bonds early in 1990s. There was basically a move to remove internal audit from the fiscal area, and the board of supervisors--I'm quoting from the

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Orange County grand jury--it says: the board of supervisors recently considered a proposal to return the internal audit department to the auditor comptroller's office--the same reporting structure held partially responsible for the county's 1994 bankruptcy. The 2007-2008 grand jury has concluded that the Orange County's internal audit department has the formal independence and procedures to meet both public and private internal audit standards. The Grand Jury recommended that the internal audit department remain independent and continue to report directly to the board of supervisors. The grand jury found that the current organizational reporting structure provides maximum auditor independence and reinforces board accountability for the financial structure of the county. Another item is that various other counties do have audit structures that are similar to the one that was proposed or has been discussed in part by Mr. Rodgers. I have a quote from a new auditing department that was put forth in Arizona, in Pinal County, Arizona, and I quote from this Web site: Internal audit's main goal is to assist the board, elected officials, and county management in their efforts to continually improve operations by providing them with independent and objective evaluations, analysis, and reviews. The office of internal audit avoids undue influence and maintains independence from management and the elected officials by reporting directly to the board of supervisors. Government auditing standards, those that were referenced by the State Auditor's Office, require that internal auditors remain unbiased, objective, and independent in all respects. So there are examples out there of county governments that are functioning under a reporting to the supervisor's model which has been briefly discussed and introduced to you today. Finally, if the Douglas County Internal Audit Division is thought to be functioning in a state auditor model. One of the things that I did was I looked at the statute 84-304 which is the State Auditor's powers, duties, and so forth statute. And as I looked at that statute, noticeably missing was any fiscal responsibilities: accounting, clerking, record keeping, for the state of Nebraska. So the argument that is being made under this bill to remove those is consistent with allowing an independent function who is not required to deal with fiscal matters or provide managerial oversight to any office, elected or otherwise, to be independent and to provide that service in the model like the State Auditor's Office. The other thing is you might hear some comments about peer review, and how in the peer review there was no findings regarding objectivity and independence. I had a discussion with the peer reviewer, and I disagreed with him. And on many occasions, persons do disagree when they have professional judgments and professional opinions are required. In my discussion with this peer reviewer, he stated that he considered Carmen Harmon, who is the internal audit supervisor, the chief executive officer, and under that guise he could see that there were no apparent or real conflicts or lack of objectivity and independence. However, by statute, Mr. Cavanaugh is in fact the chief auditing officer and the chief official, which negates that comment. I am available for questions. [LB475]

SENATOR AVERY: Let me ask you this. [LB475]

PAUL TOMOSER: Yes, sir. [LB475]



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SENATOR AVERY: You are chair of the audit committee. [LB475]

PAUL TOMOSER: Yes, sir. [LB475]

SENATOR AVERY: Does that come under the county board? [LB475]

PAUL TOMOSER: Directly. Yes, sir. [LB475]

SENATOR AVERY: So you report to the county board. [LB475]

PAUL TOMOSER: I serve at their bequest. [LB475]

SENATOR AVERY: Your job is to conduct audits? [LB475]

PAUL TOMOSER: No, sir. We are to supervise the audit activity of both the internal auditors and the external auditors. So we have a role to represent the commissioners in those functions dealing with external audit issues and dealing with internal audit issues. That's why I'm here today. [LB475]

SENATOR AVERY: Are your duties, do they overlap with those of the comptroller? [LB475]

PAUL TOMOSER: Not at all. I do not work for Douglas County. I am not a paid employee by Douglas County. I am an external party who has been asked to serve on, if you will, a subcommittee of the board of commissioners. [LB475]

SENATOR AVERY: But you report to the board. [LB475]

PAUL TOMOSER: Yes, I do. [LB475]

SENATOR AVERY: Are you paid? [LB475]

PAUL TOMOSER: No. No, sir. [LB475]

SENATOR AVERY: So what...so you're completely independent. [LB475]

PAUL TOMOSER: Yes, sir. [LB475]

SENATOR AVERY: And do you think then that the current structure that you serve in, is sufficient to maintain independent organizational oversight or audit oversight here? [LB475]

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PAUL TOMOSER: Are you referring to the audit committee or the audit division?  
[LB475]

SENATOR AVERY: I don't know what I'm referring to. (Laughter) [LB475]

PAUL TOMOSER: Sorry. As far as the audit committee, I believe that we're set up reasonably well. We're looking at our charter now in lieu of the recent changes and board resolutions that were done in December. So we're undertaking a project to look at the audit committee's roles and responsibilities. As far as the division and its leadership being the clerk/comptroller, I am pretty much firm in saying that that is not the right structure to be able to go forward. And part of the issue is not so much in fact; it's the appearance. It was mentioned here, a tenet of internal auditing, the bread and butter, is independence and objectivity. If those things are lost in a real sense or even lost in a perception sense, the actual effectiveness of the whole activity decreases. You're dealing here with that situation. [LB475]

SENATOR AVERY: What I'm trying to get at... [LB475]

PAUL TOMOSER: Yes, sir. [LB475]

SENATOR AVERY: ...is what is the problem we're trying to fix? Now, if we do away with...if this becomes law, if this bill becomes law and we do away with the comptroller entirely, will there be internal auditing? [LB475]

PAUL TOMOSER: Yes, sir. My recommendation to the county commissioners was to elevate the current audit supervisor to the chief audit executive, and have that person report to the county administrator and also to the person, the commissioner on the audit committee who is responsible for financial affairs and the auditing. So that would take... [LB475]

SENATOR AVERY: That would be a recommendation from you. [LB475]

PAUL TOMOSER: Yes, sir. [LB475]

SENATOR AVERY: And the board would be free to reject the recommendation. [LB475]

PAUL TOMOSER: That's true, but my understanding is, is that they feel that moving along those lines is what they probably will do, and you might have someone later on say that is what they will do. I can't say that. I can't speak for them. I'm advisory only. [LB475]

SENATOR AVERY: Is it your professional opinion that this would be adequate to fulfill the internal auditing needs of the county? [LB475]

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PAUL TOMOSER: Yes, it is. It would take away the organizational independence concerns. [LB475]

SENATOR AVERY: And this would be an appointed position, within, under the...? [LB475]

PAUL TOMOSER: Appointed; hired. It would not be a political process position. I am a chief audit executive at another organization. I was hired and I report directly to the president of that organization, and I report as a dotted line to the director of the audit committee, the chair of the audit committee. So that's sort of what the best practices are, sir. [LB475]

SENATOR AVERY: So the audit committee hires a firm to do the auditing. You work for that firm. [LB475]

PAUL TOMOSER: Pardon me? [LB475]

SENATOR AVERY: The audit committee hires a firm to do the auditing, and you work for that firm? [LB475]

PAUL TOMOSER: No, sir. I'm internal. I work for Creighton University and I am a Creighton University employee. I'm the chief audit executive. My boss is the president of the university, John Schlegel, and the other person that I report to is Mr. Bruce Lauritzen who is the chairman of the Creighton University Board of Directors Audit Committee. So that's a very common organizational structure to retain that organizational independence. [LB475]

SENATOR AVERY: What's your opinion of the value of having this position an elected position versus a part of the internal structure of county government? [LB475]

PAUL TOMOSER: I think the conflicts are too inherent and too apparent even for the best-intending man or woman. It's just, by its structure it's very difficult to do that. [LB475]

SENATOR AVERY: But we do that at the state level. Would you make the same argument that the State Auditor of Public Accounts... [LB475]

PAUL TOMOSER: Well, I'd just refer you to my previous comments. The State Auditor has no fiscal responsibilities. The State Auditor is not the accountant for the state. The State Auditor doesn't do warrants and payroll for the state employees. The State Auditor, if you look at the statute that basically outlines their responsibilities, there's nothing there that says you will keep the records, you will do the accounting, you will

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pay the claims, and oh, by the way, you'll also audit. What you have over here for the State Auditor is you audit, you report to the Legislature, and you report to the Governor certain things. It's not the same model at all, sir. [LB475]

SENATOR AVERY: I'm suggesting the new model. [LB475]

PAUL TOMOSER: Yes, sir. [LB475]

SENATOR AVERY: I'm suggesting that perhaps one way to get this resolved is to create an elected position for a county officer. [LB475]

PAUL TOMOSER: I don't have a comment on that. That could possibly have more bureaucracy than its worth, for one county at the moment, but that would be a decision for you folks to decide. I do think that, overall, there is a lot of benefit to restructuring the office and to separating fiscal duties with the accounting...or fiscal duties over here with the auditing duties over here. That should be obvious to you, hopefully, by...based on your research and your deliberations. There is definite value to that. It's a standard practice. The standards require it and it's very beneficial. [LB475]

SENATOR AVERY: Aren't there some international standards? [LB475]

PAUL TOMOSER: These are the ones that I was referring to. The International Standards for the Professional Practice of Internal Auditing, and they are promulgated by the Institute of Internal Auditors, Inc. They're out of Altamonte, Florida, and they basically set standards and are advocates for effectiveness and quality of internal auditing throughout the world. These standards by the Douglas County Internal Audit Division's charter, they follow. [LB475]

SENATOR AVERY: Any questions from the committee? Seeing none, thank you for your testimony. [LB475]

PAUL TOMOSER: Very well. Thank you, sir. [LB475]

SENATOR AVERY: Next proponent. [LB475]

CLARE DUDA: Good afternoon, Mr. Chairman, members of the committee. Appreciate your time. My name is Clare Duda, C-l-a-r-e D-u-d-a. I am a Douglas County Commissioner. I was the chairman of the board last year when all this started, and that is part of the reason that I am speaking before you today. I would like to reiterate a point that keeps coming up here, and say that Douglas County is not trying to eliminate internal audit. I want to be very clear about that. We are not trying to eliminate internal audit. We are just trying to change its reporting structure. By the very nature of its reporting structure--and I'm sorry to drag you into this but it was the Legislature that

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created it and only the Legislature can address the situation we have. We have no alternative on that. But under its current reporting structure, I will tell you that it is very ineffective, and by and large, a waste of money. Let me talk budgets with you for a moment. Comparing Douglas County to Sarpy County and Lancaster County, the other two largest counties in the state, their bills for auditing annually--they only have external auditors--their bills last year were \$50,000 and \$60,000, respectively. Our bill for our external auditor, KPMG, was \$150,000. We're a bigger county; that's okay. Our bill for internal auditing was over \$300,000. We get very, very little bang for our buck. I am here largely as a budgetary item. I have been, as I have researched this, convinced that internal audit can serve a useful function and I think that it would be good for us to retain an internal audit function in one form or another, but it has to be effective. It has to report somehow to the governing board. For it to be effective, it is not enough for it to be objective. It has to be deemed as objective and impartial, and regardless of what anybody tells you about how this really ought to be objective, it's not, and it is not perceived that way. I am here because every elected official in Douglas County last year, with the exception of the clerk/comptroller, came to the county board and said we need help; we have a problem; what can you do to help us? And that's what started this trip that has led to this bill, was their request seeking help from us. Having any one elected official overseeing this, changes its perception. It is viewed as a political tool of one person, and it is not, therefore, effective. And we aren't getting our bang for the buck and there's not a darn thing we can do about it. I can't...we'll hear about how we need to be transparent. I can't figure out who our chief accountant is. I mean, the law says one thing but I hear other people say another, and you may get two answers, if you ask that question today. Depending on what seems appropriate at the moment is who we're told it is. This is not transparency. We do seek transparency. We are accredited in every department that we can be accredited in, and are seeking it in a few more. I mean, we strive to be as professional as we can, to observe the best practices that we can. We are all for transparency. We are all for people knowing everything that is going on in Douglas County. We do not have that today, and that is what we are striving for. We will still have the same public disclosure laws as every other county, if this succeeds. Bear in mind, when we talk about what will the role of the clerk be, it will be just the same as the other 92 county clerks in the state of Nebraska. Nothing different. But today we are different and it is not working, and we need your help. And that's why I implore you to pass this bill. Thank you. [LB475]

SENATOR AVERY: Let me ask you--I'll get to you in a minute, Senator Pahls--let me ask what do you think you're trying to achieve with an internal audit? [LB475]

CLARE DUDA: Again, I've learned a lot. It should be a support...a function that comes in. If you hear...if you are a county department head and you hear that an internal audit is going to be looking at your department, you should welcome them. You should say these people are coming in to help me see how I can improve the processes in my office; what I can be doing better. They're here in support. Right now, I can tell you that

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we operate in an atmosphere of fear and gotcha politics. It is not doing what it ought to be doing. [LB475]

SENATOR AVERY: And that's different from a kind of IRS, nuts and bolts, numbers kind of audit. So this is more a process, efficiency, and compliance kind of audit. [LB475]

CLARE DUDA: Yes, sir. Absolutely. [LB475]

SENATOR AVERY: And it's your opinion that you're getting more a political audit than a compliance audit? [LB475]

CLARE DUDA: Yeah, uh, yes. Yes, sir. Reading some of the audits that are there, these people...well, I shouldn't get into the quality of the performance audits. What I am seeking is a change in the reporting structure. I believe it can be more effective with a different reporting structure. [LB475]

SENATOR AVERY: Senator Pahls. [LB475]

SENATOR PAHLS: Thank you, Senator. The thing that concerned me in the first part of your testimony is you said you don't know what you're going to do. I mean, you're not going to do away with the concept of an internal audit, if this were to... [LB475]

CLARE DUDA: I'm sorry if I said I didn't know what we going to do. [LB475]

SENATOR PAHLS: That's how I interpreted it. [LB475]

CLARE DUDA: I'm trying to be very clear that it is our intent to maintain an internal audit function. We are not trying to eliminate the internal audit function. [LB475]

SENATOR PAHLS: So there would be, and I'm going to use the word "a body." I mean, there would be somebody filling a position. [LB475]

CLARE DUDA: There are many ways that internal audit can be...or I'm sorry, yes, internal audit. There's many ways it can be performed. It can be outsourced. I have talked to accountants who say you don't use your external auditor, you use a different company. But you can potentially outsource those functions. I don't know exactly what it is going to look like. What I can tell you is I've been in numerous meetings with our audit committee, and they have convinced me of the value of internal audit; that it is a function we want and that it is something we would continue to have. I don't think it would be necessarily the same people at the same salaries, but those decisions have not been made. I don't know what it would look like; I just know who it would report to. [LB475]

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SENATOR PAHLS: But see, we may make that decision for you. [LB475]

CLARE DUDA: If you, in your wisdom, determine that Douglas County and Douglas County alone--I would point out, no cities, no other counties have internal audit in the state of Nebraska--but if it is the Legislature's wisdom that Douglas County should have it, we would be fine with that so long as it reports to the governing board. [LB475]

SENATOR PAHLS: See, I've worked in a government agency, and we had an internal auditor, an individual, and even though there's sometimes when that person comes talk to us, you know, you shake a little bit, what am I doing wrong? But it was for clarification or were you doing this, this and this. They were actually trying to keep us honest as much as possible. You see what I mean? [LB475]

CLARE DUDA: Yes. [LB475]

SENATOR PAHLS: So you may be going down this not intentionally, but you're going down this path, and we're saying, hey, you can't go, that's not the way it's supposed to be done. But I just want to make it clear here, you're not doing away with the concept of internal auditor. [LB475]

CLARE DUDA: The internal audit function. [LB475]

SENATOR PAHLS: Function, okay. Thank you. [LB475]

CLARE DUDA: What it will look like, I do not know yet, sir. [LB475]

SENATOR AVERY: So the board has not decided what they would do if this law passes. [LB475]

CLARE DUDA: We...no. No, sir. And that is a decision...as I say, I have been meeting with our audit committee, these are people from outside of county government, and they have convinced...I have learned a lot from meeting with them and I would hope that we would have their help, such as Paul Tomoser that just spoke. We would look to people like them for help in determining the best way to be structured. Yes, sir. [LB475]

SENATOR AVERY: So if we wanted to amend this to specify some conditions on what you ought to do if we were to advance this to the floor. [LB475]

CLARE DUDA: If there is still an internal audit function in there, we're fine with that. I hope that we have some flexibility as we come into tighter budget times. As I say, I don't think we're getting \$300,000 worth of bang for the buck from that department today. So I hope that we have some flexibility in what it would look like. But I am fine if the Legislature determines we should still have the function. [LB475]

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SENATOR AVERY: Senator Price. [LB475]

SENATOR PRICE: Yes, Chairman Avery, thank you. Commissioner Duda, thank you for coming down here. You mentioned in your testimony that Sarpy County and Lancaster County, I may have it transposed, but spent approximately \$50,000 to \$60,000 each for their auditing function. Correct? [LB475]

CLARE DUDA: Last year. Correct, sir. [LB475]

SENATOR PRICE: Okay. But then you also said that neither one of them have been charged with the duties of an internal audit. [LB475]

CLARE DUDA: Right. [LB475]

SENATOR PRICE: So we really don't know. That's apples and oranges, kind of, sort of. [LB475]

CLARE DUDA: I'm saying our external audit costs were \$150,000. [LB475]

SENATOR PRICE: Yeah, okay. [LB475]

CLARE DUDA: So I'm saying, you know, part of the rationale we were told for internal audit was to keep down the price of our external audit. And what I'm saying...I'm just trying to show that we aren't trying to get away from having a KPMG, somebody like that, still do our audit. We need them, we want them; they'll still be there. [LB475]

SENATOR PRICE: Okay, but I was just talking to the \$300,000 you referred to that your current internal audits are costing... [LB475]

CLARE DUDA: Yes. [LB475]

SENATOR PRICE: ..with no one else to benchmark against in the state. [LB475]

CLARE DUDA: Correct, correct. [LB475]

SENATOR PRICE: Okay. Next, who signs the checks or who has the authority or responsibility for payment in Douglas County? [LB475]

CLARE DUDA: By and large, the clerk. [LB475]

SENATOR PRICE: Okay. Thank you. [LB475]



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SENATOR AVERY: Any more questions? Seeing none, thank you, Mr. Duda. [LB475]

CLARE DUDA: Thank you. [LB475]

SENATOR AVERY: Any more proponent testimony? How many other proponent testifiers do we have? Okay. Please remember my admonition earlier: short and nonrepetitive. [LB475]

PAUL KOEHLER: Good afternoon, Mr. Chairman, members of the committee. My name is Paul Koehler. For the record, that's P-a-u-l K-o-e-h-l-e-r, and I'm here on behalf of Douglas County and myself, speaking as an expert in auditing. I'm a certified public accountant here in Lincoln, have been for 32 years. I've been a longtime member of the American Institute of Certified Public Accountants and the Nebraska Society of CPAs, having been the chairman of their state and local government accounting and auditing committee in the past. I personally perform audits of local governments, of financial statements in accordance with generally accepted auditing standards and government auditing standards, both of which include an independence requirement. But most of my professional time is actually spent providing training and consulting services to other auditors nationwide, and I participate in formal peer reviews of other auditors' activities. You might call me an auditor's auditor. Sounds pretty exciting, doesn't it? When this get out every kid in America is going to want to be me. (Laughter) Auditors follow professional auditing standards to provide for consistent work effort, as well as credibility of work product so that auditors' reports can be used and relied upon. This credibility is a direct result of the auditor's independence from the auditee. The independence has two aspects to it. The first is that auditors must be independent, in fact. They must have an objective, unbiased mental attitude. But secondly, auditors must also be independent in appearance to reasonable users of their reports. Any perceived conflicts of interest destroy credibility. And as I've often told other auditors, if reasonable users of your audit reports don't think you're independent, well that's the answer: You're not. Section 23-1401 presently requires the Douglas County Clerk to be county comptroller, as you know, whose statutory duties include both general accountant and chief auditing officer. Those are duties that contain an inherent conflict of interest in appearance to reasonable audit report users. This would also appear to violate internal auditing Standard 1130, which is published by the Institute of Internal Auditors and followed by Douglas County's internal audit division headed by the Douglas County Clerk. And let me quote that standard for you. It says, quote, a conflict of interest can create an appearance of impropriety that can undermine confidence in the internal auditor, the internal audit activity, and the profession, unquote. LB475 would repeal Section 23-1401, thereby eliminating this conflict of interest. In conclusion, I support this bill and believe it represents good legislation. Thank you. [LB475]

SENATOR AVERY: Thank you for your brevity. Senator Pahls. [LB475]

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SENATOR PAHLS: I just have one because you've indicated that the current practices is not true to form by your standards. [LB475]

PAUL KOEHLER: Yes, sir. [LB475]

SENATOR PAHLS: Where were you in 1991? Not you personally, but where were the people in 1991 when this was initiated? [LB475]

PAUL KOEHLER: I'm sorry, I can't respond to that. [LB475]

SENATOR PAHLS: Okay. [LB475]

SENATOR AVERY: There may be somebody who can later. Any other questions? Thank you, sir. [LB475]

PAUL KOEHLER: Thank you. [LB475]

SENATOR AVERY: Appreciate your testimony. We are now approaching one hour on proponent testimony. At a quarter after 3 I am going to move to opponent testimony. So if some of you out there who wish to speak in support of this want to put your heads together and decide who goes next, that would be helpful. Thank you, sir. [LB475]

TIM DUNNING: Good afternoon, Chairman Avery. My name is Tim Dunning. I'm the Douglas County Sheriff. T-i-m, last name D-u-n-n-i-n-g. I'm here to testify in support of LB475. I believe there are three issues here. One is objectivity. Auditing in the hands of a single elected official is dangerous and could be retaliatory. I can tell you that I'm concerned that my office will be retaliated against because I am testifying here today or because I have testified in front of my county board in favor of this legislation. I would favor this power be given to the county board for oversight, as there are seven elected officials as opposed to one. The second issue is competency. The current language in the comptroller statute, 23-1401, mandates the Douglas County comptroller shall be an accountant and a competent bookkeeper. However, in Douglas County we have neither. When we hear that a person is a comptroller as the two gentlemen that you've seen here today--very professional--we immediately assume that person has an accounting background and most likely has attained their CPA certification. Not so in Douglas County. One only has to be a high school graduate. State statute requires that one be a professional and an accountant. A 1998 Supreme Court case, Jorgensen v. State Bank and Trust Company, defined accountants as professionals, and that a college degree was a necessity for a professional trade. The argument could be made that the comptroller employ accountants, however the obvious counterargument could be, how could that person supervise professional accountants without an accounting background themselves? You have to be an engineer to be the county engineer; you have to be an appraiser to be the county assessor; you have to be an attorney to be the

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county attorney or the public defender; you have to be a certified law enforcement officer to be the sheriff. A third issue is the desire to have transparency in government. I think I've heard transparency several times this afternoon. Many entities in Douglas County government have national accreditation certificates, meaning that an outside, nationally recognized agency experienced in analyzing that particular entity of county government has provided an overall assessment and audit of that agency. The process was very objective and available to the public. External audits of the nonaccredited entities can provide that necessary feedback: transparent and objectivity. Thank you for your time and I would be happy to answer any questions you might have. [LB475]

SENATOR AVERY: Thank you, Sheriff. Senator Sullivan. [LB475]

SENATOR SULLIVAN: Thank you. Yes, how long have you been in your position? [LB475]

TIM DUNNING: This is my fifteenth year as sheriff. I'm retired from the Omaha Police Department. [LB475]

SENATOR SULLIVAN: Okay. So were you...you weren't on staff in 1991. [LB475]

TIM DUNNING: Well, I wasn't in 1991, but I'm glad you brought that up, because in researching that issue I don't think you'll find any floor debate at that time. That was something that took place very quickly but there was never a floor debate on that particular issue. I wasn't here in 1991. I was with Omaha Police. [LB475]

SENATOR SULLIVAN: Okay. [LB475]

SENATOR AVERY: It was my understanding that the comptroller role goes back earlier than that. Was it... [LB475]

TIM DUNNING: Yes, sir. I think the earlier date of 1915 is correct. And I think I heard...if I may answer what I heard some of the things today. You sir, Mr. Price, had mentioned the Inspector General's Office, and I'm familiar with that function in the federal government. That's exactly what we're trying to achieve, is that objectivity. That individual does not write checks. He simply makes sure that all the policies and procedures have a checks and balance, and we welcome that type of a process. Senator Avery, I think earlier I heard you...I know you were searching for the words of the internal auditing function, and that was a performance audit. And when I mentioned the accreditation that most of the agencies within Douglas County have, that's exactly what we had. We had outside agencies experienced in those particular areas come in and inspect us. The Douglas County Sheriffs Office, for example, just went through an accreditation process where we had to meet 460 nationally recognized standards, and we passed that muster. We didn't have anybody that didn't have that experience come

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in and do that. I didn't know any of them before they got there--and I was glad when they were gone. [LB475]

SENATOR AVERY: (Laugh) Any other questions? Senator Pahls. [LB475]

SENATOR PAHLS: Thank you, Senator. And another thing that bothers me when you said earlier that there could be some flak because you're just testifying. [LB475]

TIM DUNNING: Absolutely. [LB475]

SENATOR PAHLS: We're that, you know...and I hope everybody on this side, if that's true, this is made public, and that would really irritate me if anybody could testify in front of this committee and then all of sudden there is what I call pain, that would not be well received by this group I can assure you. Thank you. [LB475]

TIM DUNNING: Thank you. I appreciate that. [LB475]

SENATOR AVERY: I'll support that comment. Thank you. Next testifier. [LB475]

TOM DOYLE: (Exhibit 3) Mr. Chairman and members of this committee, my name is Tom Doyle, T-o-m D-o-y-l-e. I have a prepared statement but it's all been gone over so you can read it or not read it, but I will attempt to answer Senator Sullivan's question about 1991. I left the Legislature in 1983 and took the position at that time that was open of county surveyor, and I've been...I've continually held that office since 1983, so I was here in 1991. The county administrator, Kathleen Kelley, is not going to testify; she'll submit a statement. But she authorized me to advise you that she has talked with three of the four surviving county board members who were members at the time of the 1991 amendment, and none of those members recalls knowing anything at all about the amendment in 1991. I would also refer you to the legislative history. In the committee--this was your committee--in 1991 the introducer of the bill who was then also a member of this committee was the only person that spoke on the bill. No one for or against. But at a later time then it became apparent that Lancaster County obviously did not support the bill, and it was amended. And on one...it's Senator Lowell Johnson's, on Select File, his...it was amended into his priority bill which also had the emergency clause, and it became law. And there was no reference in any of the committee testimony or the comments on the floor referring to any contacts that were made with any county officials other than that Lancaster County had objected to the inclusion. I will say though that there is one...I'm the dean of the courthouse, I've been around since 1983 and I don't know if that's good or bad. But at my age I don't worry too much about what the future might bring, retaliationwise. I don't even buy green bananas very often anymore. (Laughter) But...and I'm so glad to see you back here, Senator Avery, back in your chair. I'm glad to see that. But I will say that you will be hearing testimony, I suspect, from our current county clerk, and I believe...and he was here in 1991 and

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therefore he may be able to answer some of your questions. And if you have any questions of me I'd be glad to attempt to answer them, but that's all that I have to offer at this time. [LB475]

SENATOR AVERY: Thank you, Mr. Doyle. Any questions from the committee? Thank you for your testimony. [LB475]

TOM DOYLE: Thank you for your time. [LB475]

SENATOR AVERY: We will take one more proponent. [LB475]

JOHN FRIEND: I'm a proponent. Mr. Chairman, members of the committee, my name is John Friend, J-o-h-n, for the record, F-r-i-e-n-d. I am the clerk of the district court and jury commissioner for Douglas County. We have our grandfather of the courthouse. I'm probably one of the newest guys there. I was elected in November '06, took office January '07, so I'm new to this. I don't have any personal feelings one way or another personally about the folks that are involved in the internal audit division. I don't know them personally. I personally have no issues with them. But based on what I've heard since I've been there, I would be hard-pressed to voluntarily expose myself to an internal audit at this stage of the game. I feel from everything that I've heard about that scenario that it would be poisonous to do so. I would love to avail myself to an independent, with checks and balances, internal audit division that I could invite into my office and look at the current policies that I have, and have them go over with a fine-tooth comb, and show me what the best practices are. I think we're doing that now but it's nice to have an independent auditor come in and look at that. That won't happen as it currently is structured. I would love to have that happen if we had one that was independent, professionally trained in forensic auditing and the internal audit function, that I could avail myself to them--which would improve my office, because I'm all about best practices and the latest in technology. If you help us get a truly independent audit function in Douglas County by passing this bill, I will certainly avail myself to that, and the Douglas County taxpayers will be much better off. Because right now, I'm sorry, but that won't happen. [LB475]

SENATOR AVERY: Thank you. Senator Sullivan. [LB475]

SENATOR SULLIVAN: Thank you, Senator Avery. And why don't you think that will happen? [LB475]

JOHN FRIEND: Not based on anything that I personally have known other than what I've seen since I've been there. There's been a couple of controversial things that's happened in the last year that has really started to make me look at how it's structured. Because before, I was busy learning my own office and I didn't really pay attention to anybody else or how they ran their offices or the structure of their office unless it

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actually intertwined with my own duties. And you basically have, now, somebody who writes all the checks, pays all the bills, and does all the payroll. And he's also the auditor? I'm surprised in 1991 that that serious conflict did not come up. I'm shocked by that. I hear it now; I didn't know that. But there was no testimony on it; there was no floor debate. It appears that it was pushed into another bill. Maybe that explains that; I'm not exactly sure. I'm not an auditor. I am not, by trade, an accountant, but sometimes I stumble across a little bit of common sense. And let me ask you this: If you're running a \$320 million business, which is what the county board does, would you, if you're running a \$320 million business, hire an auditor and have that person also write checks and do the payroll? And then when it's time to audit, have them come up and tell you everything is wonderful, all the checks are going where they're supposed to, all the bills are being paid? I'm not saying that that's not happening now; I'm sure it is. But wouldn't it be nice to have an independent auditor to be able to trust and verify that that's actually happening? If your answer is you would run a \$320 million business and you would have that as an independent person coming in with no other fiduciary responsibility than to check on others, then if your answer is yes to that, then please vote for this bill and move it forward. [LB475]

SENATOR AVERY: Thank you. Any other questions? Seeing none, thank you, sir. [LB475]

JOHN FRIEND: Thank you. [LB475]

JON EDWARDS: Senator Avery, can I just go on the record? [LB475]

SENATOR AVERY: Yes, you can. You've got 2 minutes. [LB475]

JON EDWARDS: Thanks. [LB475]

SENATOR AVERY: No, actually a minute and a half. [LB475]

JON EDWARDS: Committee members, my name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I am assistant legal counsel with Nebraska Association of County Officials, and due to the time constraint will just register our support for LB475. [LB475]

SENATOR AVERY: Would you be available for consultation later? [LB475]

JON EDWARDS: Absolutely. We'll do whatever we can to help this bill. [LB475]

SENATOR AVERY: Okay. Thank you. Any questions? All right, thank you very much. [LB475]

JON EDWARDS: Thank you, Senator. [LB475]

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SENATOR AVERY: All right, we're going to move now...I apologize to those of you who came prepared to testify and we ran out of time. One hour for one side of the debate I think is all we have time for. We'll now move to the opponents. How many plan to testify in opposition? Okay. Please come forward. [LB475]

CARMEN HARMON: (Exhibits 4 and 5) Good afternoon, Chairman Avery and senators of the Government Committee. My name is Carmen Harmon and I am speaking in opposition to LB475. I am a Douglas County resident, a taxpayer. I'm a single parent, mother of two daughters: one a student at Holy Name and the other one pursuing a graduate degree at UNO. [LB475]

SENATOR AVERY: Would you spell your name for the record? [LB475]

CARMEN HARMON: I'm sorry. C-a-r-m-e-n H-a-r-m-o-n. My spare time is primarily occupied with sports, music lessons with my daughters, and devoting time to my community by participating in numerous church activities, where I'm a secretary for our women's department and a Sunday school teacher for students between the ages of 7 through 11. Currently, I serve as the Douglas County internal audit administrator. I began my public service career in 1989 when I worked for the clerk/comptroller in the motor vehicle division, and I worked in the payroll, records, finance, and internal audit divisions of that office with over 12 years of experience in internal audit. While working for the clerk/comptroller, I received my bachelor's degree of science and continued to stay abreast of the current standards and related audit issues by receiving a minimum of 40 continuing professional credits annually, in accordance with standards propagated by a number of national audit organizations of which I belong. LB475 would eliminate the position of county comptroller in Douglas County, Nebraska, including the internal audit functions. The proponents remove internal audit and offer no alternative or guaranteed replacement of the function. In fact, the statute is the only assurance this function will exist in Douglas County. To help illustrate internal audit's responsibilities I will briefly review our mission, independence, professional standards, and quality of work. The mission of the Douglas County Internal Audit Division is to assure financial and compliance audits, the highest degree of accountability to our citizens. In order to be able to use our annual test work, the county's external auditors, KPMG, have expressed their opinion that the work of the Douglas County Internal Audit Division is independent, and that independence is strengthened by the fact the Douglas County audit committee approves our annual work plan. I would like to take a moment of your time to read a statement to you from the internal audit charter, which was developed in accordance with established professional standards. "All internal audit activities shall remain free of influence by any element in the organization, including matters of audit selection, scope, procedures, frequency, timing, or report content to permit maintenance of an independent or objective mental attitude necessary in rendering services and writing reports. Internal auditors shall have no direct operational responsibility or

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authority over any of the activities they review. Accordingly, they shall not develop nor install systems or procedures, prepare records, or engage in any other activity which would normally be audited." We, as internal auditors, are also governed by The Institute of Internal Auditors' Code of Ethics, the Institute's International Standards for the Professional Practice of Internal Auditing, and the ethics policies of the Douglas County clerk/comptroller's office where they require us to file an annual financial disclosure statement. We have successfully completed a self-assessment with independent validation from the Institute of Internal Auditors. Upon completion, the quality director acknowledged, in a letter to Mr. Cavanaugh, his leadership in ensuring our internal audit activity walks the walk and further commended the clerk/comptroller's office for submitting our operations to the same level of scrutiny as that of the audits we perform. In addition to these statements from the IIA, the requests we receive from many county departments to review internal controls and provide assistance, and the fact at least 85 percent of our recommendations are followed on a routine basis, demonstrate the value added to Douglas County government by our internal audit division. Not only have we never been denied access to county offices, they routinely ask for our assistance. As internal auditors, we possess a variety of degrees and certifications to assure we have the required skills and competencies to perform our jobs in our chosen profession, and as stated previously, each member of the division completes a minimum of 40 hours of continuing education annually, as recommended by the professional standards we adhere to. Further, our employees continue to work on additional degrees and certifications today. We are dedicated professionals who are passionate about maintaining the highest standards of accountability to the citizens of Douglas County. In summary, I would like to again state that I am in opposition to LB475. As a taxpayer in Douglas County, as an audit professional, I want the transparency and accountability provided by the comptroller statutes to continue. I respectfully request you vote to indefinitely postpone LB475. Thank you for your time, and I would be happy to answer any questions you may have. [LB475]

SENATOR AVERY: Thank you, Ms. Harmon. Any questions? Senator Price. [LB475]

SENATOR PRICE: Chairman Avery, thank you. Ms. Harmon, thank you for coming down and testifying today. In reading your testimony, you state you have a Bachelor of Science. Is that like in an auditing field? [LB475]

CARMEN HARMON: It's in business administration. [LB475]

SENATOR PRICE: Business administration. Great. And that when you do the auditing for the department you're in now, are you auditing numbers or are you auditing processes? What are you auditing in your area? [LB475]

CARMEN HARMON: The majority of our audits that we've completed are internal control and compliance audits. [LB475]



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SENATOR PRICE: To be more specific, are they dealing with the processes within a department or are they dealing with the budgets within departments? [LB475]

CARMEN HARMON: We would look at the budgets. When we go in, we have a system where we have to look at risk, first, when we go into look at an entity, and then we would go in and look at their budget, and we have to see how they're spending their money, see if they're following the state law, if there's any local laws that they need to adhere to. We need to make sure that they're in compliance with everything, even if we're looking at finances. [LB475]

SENATOR PRICE: Great. And then just two more questions if I may. You stated that 85 percent of your recommendations are followed on a routine basis. [LB475]

CARMEN HARMON: Yes. [LB475]

SENATOR PRICE: I'm concerned with the number 85 percent and then routine. Those two don't balance. I mean, I sometimes...85 percent of the time I do something sometimes. That leaves a little degree of laxity there, you know. So what I'm wondering, is it 85 percent or is it sometimes? [LB475]

CARMEN HARMON: I have a...I can get a copy of something for you that I have. Our audit findings...a disposition of our audit findings that we have, by department, from the last two years, and that's what I used for that data. From year 2007-2008, the number of recommendations that we have for each department, the number that was implemented and partially implemented equal to 85 percent. That's what I used for that. [LB475]

SENATOR PRICE: Okay. So 85 percent is actually the whole thing, not the routinely what's not really needed. [LB475]

CARMEN HARMON: Okay. [LB475]

SENATOR PRICE: Okay. Then in the second sentence following that, we say not only have we never been denied access to county offices, they routinely ask for our assistance. And I would submit that there had been testimony today that would be somewhat in conflict with that statement. And again, when we (inaudible), they routinely ask for our assistance. That's open-ended. Are there mandatory time periods when internal audits must be performed? [LB475]

CARMEN HARMON: We have some compliance work that we conduct annually for KPMG. It's the normal testing that goes along with the financial audit that's produced. But I'd like to get back to the assistance that we've been asked. We've also gone into our Department of Corrections and we've been working on a project there for a few

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years. They've asked for our assistance. They've asked us to come in and look at some operations there. And they've been welcoming to us. We've also been welcomed by the Douglas County Treasurer to come in when he took office, so. [LB475]

SENATOR PRICE: Okay. So when we say county office, I'm not sure how many county offices there are but we've heard from your testimony that two of them have called for it, "welcomingly." And that, just talking to the tenor of what's laying over this and that's why I was asking, so thank you very much. [LB475]

CARMEN HARMON: You're welcome. [LB475]

SENATOR AVERY: Senator Sullivan. [LB475]

SENATOR SULLIVAN: Thank you, Senator Avery. So let me...just so I can get kind of flow of information and authority, who do you report to? [LB475]

CARMEN HARMON: I report to Mr. Cavanaugh. [LB475]

SENATOR SULLIVAN: Okay. And then you report to him as the comptroller? [LB475]

CARMEN HARMON: As the chief audit executive. He's the chief audit executive by statute, but I receive my direction from the audit plan. It's approved by the audit committee. [LB475]

SENATOR SULLIVAN: Okay. And he heads up the audit committee? [LB475]

CARMEN HARMON: No, he does not. He is not a member of the audit committee. Mr. Tomoser is the chair. Mr. Rodgers, the chair of the county board is also a member, and we have three outside members. [LB475]

SENATOR SULLIVAN: So then in your capacity, do you also audit the functions of the clerk and the comptroller? [LB475]

CARMEN HARMON: Yes, I do. [LB475]

SENATOR SULLIVAN: Okay. Thank you. [LB475]

SENATOR AVERY: Any more questions? [LB475]

SENATOR PAHLS: Thank you, Senator. You audit...and I'm the top guy and you work for him. [LB475]

CARMEN HARMON: Yes, sir. [LB475]

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SENATOR PAHLS: So you're actually auditing yourself indirectly. [LB475]

CARMEN HARMON: No, because I don't produce any of that work so I don't audit myself. [LB475]

SENATOR PAHLS: Not you, but I mean...okay, to me...okay, thank you. [LB475]

SENATOR AVERY: You audit the county clerk/comptroller. [LB475]

CARMEN HARMON: Correct. [LB475]

SENATOR AVERY: And he's your boss. [LB475]

CARMEN HARMON: He's my boss. [LB475]

SENATOR AVERY: Okay. Any other questions? [LB475]

CARMEN HARMON: I also brought copies of the, if you would like, the independence section from the Government Accountability Office if you would like a copy of that. [LB475]

SENATOR AVERY: Do you have enough copies for all of us? [LB475]

CARMEN HARMON: Yes. Yes, I do. [LB475]

SENATOR AVERY: The page will take that and distribute it. Thank you, Ms. Harmon. [LB475]

CARMEN HARMON: Thank you. [LB475]

SENATOR AVERY: Next testifier. [LB475]

LAUREL TAGUE: (Exhibit 6) Good afternoon, Chairman Avery and members of the committee. Thank you for the opportunity to speak with you today. I would like to begin with a brief introduction of myself. My name is Laurel Tague, L-a-u-r-e-l T-a-g-u-e. I'm an internal audit analyst for and a citizen of Douglas County. I have two Bachelor of Science degrees. I am a certified fraud examiner. I am vice president of the Heartland Chapter of the Association of Certified Fraud Examiners and vice president of my chapter of the American Business Women's Association, and I maintain a minimum of 40 continuing professional education units per year. I have had the pleasure of working with many different department heads, elected officials, county employees, and KPMG, the county's external auditor. The Douglas County Internal Audit Division strives to bring

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transparency to county government through an independent audit process. The fact, not perception, is that we follow an audit plan determined by a risk assessment process, reviewed by our external auditor, KPMG, and approved by an independent audit committee appointed by the county board. The Douglas County Internal Audit Division strives to uphold auditing standards and professionalism at all times. Techniques utilized are industry standard and our service is to the citizens of Douglas County. In this era of government accountability and transparency, I am proud to be part of the state of Nebraska, who proactively passed a bill years ago to promote these concepts that supported the creation of the internal audit division in Douglas County and to be part of the division itself that not only embraces these principles but help promulgate them amongst other leaders in government. My hope today is that LB475 is indefinitely postponed so that the Douglas County Internal Audit Division can continue to be a service to the citizens of Douglas County and facilitate positive change within our government. Thank you for your time. [LB475]

SENATOR AVERY: Thank you, Ms. Tague. Any questions from the committee? Seeing none, thank you for your testimony. Additional opponent testimony. [LB475]

BRANDON CLARK: (Exhibit 7) Good afternoon, Chairman Avery, members of the committee. My name is Brandon Clark; that is B-r-a-n-d-o-n C-l-a-r-k, and I am an internal audit analyst for Douglas County, Nebraska. I am here to testify in opposition of LB475. I come before you today to testify as a citizen and an employee of Douglas County. I honorably served four years in the United States Marine Corps, and in doing so I have become accustomed to three simple words: honor, courage, and commitment. These words are the backbone and the core values instilled in every Marine who swears to protect and keep this country from harm's way; and those three word are how I carry myself today as an internal audit professional for Douglas County. I believe every elected official and all government employees, whether on a local, state, or federal level, owe due diligence to every United States citizen. The citizens have a right to demand transparency and know how their tax dollars are being appropriated. If you vote for this bill, you move Douglas County away from transparent government. Each year, Douglas County internal auditors...excuse me, let me rephrase that. Each year, the Douglas County Internal Audit Division provides reassurance to Douglas County's external auditors, KPMG, on internal audit controls for Douglas County. As an audit professional, we follow every standard possible to have working relationships with the public and employees of Douglas County. Senators, taking action to eliminate accountability and transparency will not only negatively affect the lives of four individuals and their families, it will affect the public's voice and the trust in government. So I ask you to indefinitely postpone LB475 and save Douglas County's citizens watchdogs. Thank you and at this time I will take any questions. [LB475]

SENATOR AVERY: Thank you, Mr. Clark. Senator Pahls. [LB475]

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BRANDON CLARK: Yes, sir. [LB475]

SENATOR PAHLS: Thank you. Mr. Clark, first of all, thank you for what you've done for our country. And any questions we ask today has nothing to do with your integrity. We're just trying to find...if there is a solution to be needed or found, that's what we're trying to do. It has nothing to do with your work and I appreciate what you've done for us. [LB475]

BRANDON CLARK: Thank you, sir. [LB475]

SENATOR AVERY: Senator Sullivan. [LB475]

SENATOR SULLIVAN: Thank you, Senator Avery. So based on what you just said at the end of your testimony, do you expect that your basically division will be done away with if we pass this legislation? [LB475]

BRANDON CLARK: Yes, ma'am. I currently do believe that and the reason for that is, there has not been any plan put forth. There's been talks and a lot of speculation on what happens with internal audit, whether it be four individuals or whether it be one or whether maybe sometime down the road they may come up with a solution. But currently, right now in the state of this economy, I believe this is definitely needed, because who's going to watch our taxpayer dollars? And that's why we're in a mess that we're in right now, due to the economic portion of this country, and I definitely think that internal audit is needed, ma'am. [LB475]

SENATOR SULLIVAN: Thank you. [LB475]

SENATOR AVERY: Senator Price. [LB475]

SENATOR PRICE: Semper fi. [LB475]

BRANDON CLARK: Semper fi. [LB475]

SENATOR PRICE: Thank you. [LB475]

SENATOR AVERY: That was not a question. (Laughter) Any other semper fi's? Thank you, Mr. Clark. [LB475]

BRANDON CLARK: Thank you, sir. [LB475]

SENATOR AVERY: Any other opponent testimony? [LB475]

RICHARD FILE: My name is Richard File, F-i-l-e. I'm the Spencer professor of

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accounting at the University of Nebraska at Omaha. I am with UNO but I am not representing UNO. These are my thoughts and opinions. And I will say that I have spoken with one of my colleagues who is on the audit committee, and he felt like it was inappropriate for him to speak here but he does oppose this bill. As a professor at UNO, I regularly teach the governmental accounting class, and a section of that does deal with auditing. In a prior life I was a CPA with Arthur Andersen, and then with KPMG, never in Nebraska; in other states. And I want to point out that as an external auditor I had to rely on the work of the internal auditors. If I felt like they were not independent, if they did not do an excellent job I did not trust their work. I did not rely on their work at all. And the fact that KPMG does rely on the internal audit group here, to me speaks volumes. And as a taxpayer, I like paying people's salaries to do the audit work as opposed to paying KPMG's fees. When I was bidding and billing jobs, we would take the salary and multiply it by four and that was what we would bid and charge. So it's imperative that we keep an internal audit function in Douglas County. I guess my experience in terms of auditing was nobody ever wanted to see me come in. Everyone is a little bit intimidated because even if you haven't done anything wrong, they might find something wrong, you know. There's an old joke about auditors. They're the ones who go out on the battlefield after the war and spear the dying and wounded. Okay? People really don't like to see us. That's not to say we don't do a good job, we don't have reasonable relations. In terms of reporting structure, that can...it can work very well if they are under the same individual. Another one of my former lives I was an executive with a large insurance company--multiple billions of dollars, not just hundreds of millions--and we had the internal auditor or the chief internal auditor of the internal audit staff reported to the controller, as did all of the financial accounting people. There was no conflict. They maintained their independence. It worked well. What is important is for the internal auditors to have independence and to have courage. If they find something, they've got to have the guts to disclose. And if you don't believe that, you should listen to the internal auditor who discovered the problems at WorldCom. Her staff was sneaking into the building at night to conduct their audits. They were living in hotels. They were afraid to go home. But they blew the whistle. That courage, that independence is what's called for. And the fact that KPMG relies on the internal auditors just says that they believe that this group has the independence, the technical abilities, the courage to do what's right. I really don't want this bill to pass, given we have vague assurances. Okay, we're going to maintain internal audit. We don't know where it's going to go. We don't know how it's going to work but we're going to keep it. This bill came up very, very quickly. To me it looks rushed through. And I think it should really go back and be thought out carefully so as to make sure that the internal audit function is maintained and maintained at least the level that it has been maintained. I'd be happy to answer. [LB475]

SENATOR AVERY: Thank you, Professor File. Any questions from the committee?  
Senator Price. [LB475]

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SENATOR PRICE: Chairman Avery, thank you. Mr. File, thank you very much for coming forward here and testifying today. Am I to take it from your testimony that if the structure were kept the same and there were at least four auditors, and if that cost is nearly \$300,000 now--I'm not saying it is, I don't know for sure of that, four people in a shop equal to \$300,000--that that cost would go up if it were let out of house? [LB475]

RICHARD FILE: Okay. If...if all of the work that internal audit is currently doing was taken outside, yes, it would cost several multiples of the current cost. Yeah, you can bring in another CPA firm to do the internal audit function. That's done all the time. But you don't bring them in at their pay scale. [LB475]

SENATOR PRICE: Right. [LB475]

RICHARD FILE: There's got to be some profit in there. [LB475]

SENATOR PRICE: Thank you. [LB475]

SENATOR AVERY: Senator Pahls. [LB475]

SENATOR PAHLS: Yes. Right, I believe personally that we need...we can't do away with the internal auditor. I don't know what the answer is. Because that's why we have amendments. We could amend this bill if we choose. But if you're saying we're moving this bill too fast, just by listening to the testimony it sounded like in '91 it was really moved really fast, and that's why we could be in the predicament we are today. Would you be...would it be acceptable with you if this...the issue here is it's in one person's control. If it were separated, would that be upsetting to you? [LB475]

RICHARD FILE: It would depend upon how it was handled and are the duties going to change in addition to just the reporting structure. Are you going to...are they going to be restricted to financial audits or compliance audits or performance audits? Are you going to provide an independent channel for whistle-blowing? Those things need to be assured. [LB475]

SENATOR PAHLS: Okay. Thank you. [LB475]

SENATOR AVERY: Let me ask you one question. We heard a lot of criticism of the auditor, internal auditor, also having responsibility for payrolls, writing checks, and that sort of thing. Do you see that this has any negative effect on independence and objectivity as alleged by the proponents of this bill? [LB475]

RICHARD FILE: I can just point back to my experience with American National, where we were much bigger than Douglas County and had a very similar situation. Ultimately, everybody reports up to the top wherever that is, and...you could make a claim that if

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the internal auditor reports to the, say, a president of, say, an organization, well, payroll is under the president also. He may not want to hear about problems in this other area. So if the reports are public information, I don't really see a problem with it. [LB475]

SENATOR AVERY: You do however, I think, agree that independence and objectivity are important in an auditing process. [LB475]

RICHARD FILE: Yes. [LB475]

SENATOR AVERY: And the perception of independence and objectivity is also important. [LB475]

RICHARD FILE: It's important. I really...I think that this is...perception issue is only an issue with a very, very small number of people. The financial reporting process is very, very good. I don't know if you're aware of it but Douglas County's comprehensive annual financial report regularly receives a certificate of achievement for excellence in reporting disclosure. It's...I use it every semester as a teaching tool. [LB475]

SENATOR AVERY: Well, do you use it as an example of best practices? [LB475]

RICHARD FILE: I'm using it to give some concrete real-world examples of the theoretical stuff that we're teaching. Okay, here's what we're trying to get to. And since it does have that certificate of achievement, I feel like I can hold that out as something that we're striving for. [LB475]

SENATOR AVERY: Senator Pahls. [LB475]

SENATOR PAHLS: Okay, I'm trying to find...having this wrapped into one office, that is what you would recommend. [LB475]

RICHARD FILE: Nope. What I'm saying is, it can be done that way. It can be done in other ways. To me, the key thing is having independence, and I think you can have it within the same office. Maintaining independence, maintaining the internal audit function, maintaining it at, at least the level that it's operating at now, and really I would recommend expanding it. I think that that's...that would probably save taxpayer dollars in the long run. [LB475]

SENATOR PAHLS: Okay. And where I have conflict with that on the proponents...and I'm not talking the commissioners (inaudible) but the accountants. They are acting like this is not best practices. [LB475]

RICHARD FILE: Well, it's the...The Institute of Internal Auditors has taken a look at it specifically, and it's their opinion that it works. You know, that's a matter of professional



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judgment. [LB475]

SENATOR PAHLS: Okay. Thank you. [LB475]

SENATOR AVERY: But if you were starting afresh, building from the ground up, would you structure it the way it is now to get best practices? Assume I'm a student of yours and I want to know. [LB475]

RICHARD FILE: Yeah, and I'm trying to decide how really what I would want to do and I guess if it was really totally up to me, this would be...the head of internal audit would be an elected position responsible to the taxpayers, not to some administrator. [LB475]

SENATOR AVERY: Let me see if I get this right. You're saying the current situation is okay. [LB475]

RICHARD FILE: Yes. [LB475]

SENATOR AVERY: But perhaps there are better ways to do it. [LB475]

RICHARD FILE: I'm saying there are other ways that you could accomplish the same thing. If you separated the internal audit function out, made it an elective office, and then you're going to have the issues of are we going to be able to pay someone enough to run for that position and make it worthwhile, giving up their professional practice to do it. [LB475]

SENATOR AVERY: Yeah. Any more questions from the committee. And we kept you here a long time. Sorry about that. [LB475]

RICHARD FILE: That's fine. [LB475]

SENATOR AVERY: Thank you. [LB475]

RICHARD FILE: Thank you. [LB475]

SENATOR AVERY: Any other opponent testimony? [LB475]

JAMES BRODERICK: Mr. Chairman, members of the committee, my name is James Broderick, J-a-m-e-s B-r-o-d-e-r-i-c-k. I'll say as in opposition to this bill that the way the bill allows things to come out is not acceptable. To take an example from previous testimony here, the question was asked previously, who signs the checks in Douglas County? The answer was given: the county clerk. That's factually true. The county clerk does sign the checks in Douglas County. However, the signature that makes the checks a financial instrument is the signature of the chairman of the county board. As previous

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testimony by proponents has pointed out, Douglas County expends over \$300 million a year. The budget of the county clerk's office is about a million. The budget of the other elected officials, the sheriff, the treasurer, and so forth, might be \$10 million, \$20 million, \$30 million. The remaining quarter of a billion or more is expended by the county board under the county board's authority. If this bill is passed as it's written, the management and auditing functions that are presently assigned to the county controller will devolve on the county board: the county board that already manages a quarter of a billion dollars. This is simply unacceptable. I could address a few other things that have come up. There's been some discussion about the section of the statutes, 23-1608, I believe, which empowers the county boards to hire external auditors. That has to do with the topic of external audit. We're discussing here today a different topic: the topic of internal audit. No other county in Nebraska outside Douglas County has internal audit. The city of Omaha used to have an internal audit department but when Mayor Fahey came into office he fired them. No statutory authority one way or the other. But this discussion today is regarding internal audit, which includes a level of scrutiny that the external auditors are not attuned to. I was a Douglas County auditor. I'm a certified auditor and an attorney, and I have discussed things with the external auditors of Douglas County. And at one point one of the external auditors, I can't remember if it was Deloitte or KPMG, was asked how much money badly reported--I don't want to say missing or wasted, but money in issue was an immaterial amount for an entity the size of Douglas County. The answer was a million dollars. In other words, if the financial statements of Douglas County were off by less than a million dollars, in the opinion of this accounting firm it would not be off by a material amount. That would not be the standard for internal audit. Internal audit, when I was there, routinely used state statutes as policy. And so if postage was missing, we could report that. I think I could point to the fact that it was mentioned here: fear of retaliation by internal audit. The only method that the auditors have of retaliating against anybody is by issuing an audit report, a five or ten page report. Each audit report from Douglas County has, in the past, characteristically included a section for rebuttal wherein the remarks of the auditee are included in the report verbatim, submitted to the auditors, and simply appended to the report. So I'm not sure if there was some implication that they would be going around with baseball bats or some other methodology, but the audit reports are all public record. Anybody on this committee, anybody on the county board can request a Douglas County internal audit report and read it, and as far as I know, submit it to the World-Herald or the Lincoln Star for publication. These are just some thoughts that have struck me during this testimony and I guess I won't say anymore. If anybody has any questions I'd be glad to address them. [LB475]

SENATOR AVERY: Thank you, Mr. Broderick. Questions from Senator Pahls. [LB475]

SENATOR PAHLS: I just have one. You said you did work for Douglas County? [LB475]

JAMES BRODERICK: Yes. [LB475]

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SENATOR PAHLS: Were you around in 1991? [LB475]

JAMES BRODERICK: Yes. [LB475]

SENATOR PAHLS: Is it true, what we're hearing, that this was a mystery how this all evolved, or are you familiar with that? [LB475]

JAMES BRODERICK: Is what true? [LB475]

SENATOR PAHLS: Well, how this position came to be what it is today: under one individual or one office. [LB475]

JAMES BRODERICK: I think what you've heard here is probably true. I can't...I'm not sure what I would take issue with. [LB475]

SENATOR PAHLS: Okay. Well, that's fine. Thank you. I appreciate it. [LB475]

SENATOR AVERY: Any more questions from the committee? Seeing none, thank you, Mr. Broderick. We have time for some more opponent testimony. Mr. Cavanaugh. [LB475]

TOM CAVANAUGH: Good morning, Mr. Chairman, members of the Government, Military and Veterans Affairs Committee. [LB475]

SENATOR AVERY: Not morning. (Laugh) [LB475]

TOM CAVANAUGH: Or good afternoon. It seems like I've been here for a long time. [LB475]

SENATOR AVERY: It's late afternoon. (Laugh) [LB475]

TOM CAVANAUGH: My name is Thomas F. Cavanaugh. I'm the Douglas County clerk/comptroller. Cavanaugh, C-a-v-a-n-a-u-g-h. If the page could accommodate me, I'm kind of bearing gifts out of my own pocket: refrigerator magnets for Sunshine Week, which is next week. Please do not put it by your computer or you could shut down state government as we know it. They're strong magnets. That would not let the sunshine in. A lot of it is going to be responding, obviously, to the proponents of LB475. Please keep in mind, LB475 that's before you, that's in black and white here, wipes out everything. There's no plan. There's nothing in LB475 that says it's going to be replaced with anything. It not only wipes out the accountability but it also wipes out the authority of an auditor to go in and audit the books. Now the history of this--it's not 1991 even though I'll get to that--the history of this goes back to the early 1900s which I've provided all of

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you the history of that, that the county was so corrupt, there were no checks and balances. So your predecessors down here had the good judgment to say, well, in Douglas County, because it is so large as far as financially, has so much money, we're going to impose something that's a basic foundation of good government in our nation, and that is checks and balance system. Now if you read the legislative history of 1914 when the bill passed with the emergency clause, you'll see that they were kind of kicking around the idea of, well, where should we put it? Should we put it under a committee, the comptroller duties, or should be put it under the clerk of the district court, or? And what they ended up doing was putting it in the county clerk's office. And to a large part, because of what little the clerk has to do. Contrary to Commissioner Duda's comment, I do not put out money. I am not the cashier of Douglas County. I prepare the documents for the board every Tuesday, as in counties across Nebraska, to authorize whether they're going to pay the bills. I perform a ministerial function, have county attorney opinion saying you don't have any judgment call on what's paid or what's not paid. I don't have that judgment call. That's the call of the county board. And that's what clerks do throughout the state of Nebraska. Now, so there's some duties that I didn't know that I had; that the comptroller duties, I've been very clear. In fact, when I started my job 23 years ago--and like you, I got elected--and two years after I was appointed to fill a vacancy, I was elected to the office. Had to run in front of the citizens of Douglas County. Fortunately, last year I was unopposed. Just got reelected with over 170,000 citizens of Douglas County thinking I'm doing okay with the jobs that I'm doing, statutory duty. Twenty-three years ago I'm not in the job weeks, and a claim comes through our office for \$60,000. Pay so-and-so \$60,000. It was written on a cocktail napkin. No explanation as to why or what for or whatever. I kind of got off on a bad foot with the county board because I walked upstairs and I said, I'm sorry, is this a joke? They said, no, pay it. And which would have been placed before the board of commissioners to pay \$60,000 to somebody who I had--I knew where the money was coming from, it was coming from the county fair fund--but it seemed like I should probably ask some questions. Because like you, before we were elected officials, before we took an oath of office to uphold the laws of the state of Nebraska, before we had to file our financial disclosure and accountability reports, before all of that we were private citizens. And whether we're sitting here today, we still want to know where the money goes. We want to know where the state money goes. We want to know where the city money goes and the county money and the federal money. And as citizens, if for no other reason we have that right to find that out. And that's how I have viewed this job over the last 23 years. That's what I've instilled in the staff, whether they're auditors or whether they're processing any other paper in the office. As a citizen, as a taxpayer, do you know what it's going for? Very basic, because we might have Joe or Jane walk through the door and ask that question, and it's our job to answer it. The only one specifically that I'll address is the chairman of the Douglas County Audit Committee...by the way, in the early '90s after I pushed for the inclusion of internal audit. And Commissioner Mike Albert, at the time, knew full well that that was being done down here in the Nebraska Legislature, and Jim Moylan was the lobbyist for the Douglas County board at the time.

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He knew full well. We had discussions about it. It inserted two words into the comptroller statutes. Prior to those two words "internal audit," it had been 60 years before...or since that statute had been amended. It had been back in the '40s. But in 1991 there were two words inserted, "internal audit," added to the duties and responsibilities. But the chairman of the audit committee testified before you. And sometimes it's important not just what a person says but what a person doesn't say. What a person didn't say, what Mr. Tomoser didn't say was that the best practices of his profession dictates that the audit committee be comprised of the governing board. And if the governing board, in his opinion, is the county board of commissioners, which in general view it's viewed that way, then his recommendation to the county board when they rearranged the audit committee just two months ago should have been that they sit in their entirety as the audit committee. He didn't make that recommendation. He didn't mention that today, that that's a best practice that he knows about--because we've talked about it--that he didn't recommend. There's been no alternative plan presented today. I would like to suggest an alternative plan to this committee before I finish my testimony if that would be appropriate. Mr. Tomoser also didn't mention that at the last audit committee meeting just last month, he proposed, which I thought was a great idea and I'd be willing to participate in this, that there be a blue ribbon committee to study the legal, political, professional issues that are contained in this debate. And I believe that's what you should do is send us packing back to our courthouse so we can sit down at a table and, like professionals, sit down and try to come to an idea with academic, professional business interests, the professional internal auditors, and have their input as to what is the best practice for this. And finally, with Mr. Tomoser apparently representing himself or Creighton University, because there was no vote on this issue at the last audit committee meeting or any audit committee meeting relative to the audit committee's position on LB475. In fact, that's when he recommended that a study be done rather than take a position on this legislation. So those are the things that weren't mentioned. I'll entertain questions here. Very quickly I just wanted to let you know that this morning, Senator Giese, I was catching your testimony on the floor relative to the county assessor's issue. And 16 years ago I was down here pushing for legislation to merge the motor vehicle operations in the county, that the clerk would no longer do the titles, the assessor would no longer do the assessment, and the treasurer wouldn't just do registration. Douglas County was the first, after the Legislature passed that, they were the first county to implement that. And so now, for the last 15 years, the county treasurer has had a one-stop-shop operation. That was a good result. Very efficient and very good for the citizens of Douglas County. You made the remark this morning, Senator, relative to the assessor's issue, that sometimes there are issues that come back to haunt the Legislature. I believe if this committee and this Legislature passes LB475 and eliminates everything. I mean this issue has only been alive for 120 days, Senators, and in 120 days Commissioner Duda says they can't come up with a plan; they haven't been able to put together a plan to replace the issue. Well, in 120 days, if you're going to eliminate something, because 120 days go, when this issue first appeared, you know, this...in 91 years, 94 years, we haven't been down here haunting

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the Legislature with the county clerk/comptroller issue. This has only been around for 120 days but yet they have not been able to come up with something in black and white. What would that something be? My suggestion, as the Chairman here wisely pointed out, that a freestanding elected position for the county to provide for checks and balances. I do not in any way...any one that knows me remotely doesn't know I have...I don't have a bone in my body that would cause me to retaliate against anybody. I had the good fortune of growing up in a political family where it was instilled in us there's the football field and then there's the off-football field. And when you're on the football field, duke it out. You know, that's the political issue. When you're off the football field, it's nothing personal. I'm not taking this as personal. And the interesting thing about the retaliation is, that if retaliation came like Mr. Friend here, who just last month had the first audit ever of the clerk of the district courts, authorized not by Tom Cavanaugh because I don't authorize audits, but by Chris Rodgers, Commissioner Rodgers, by Mr. Tomoser, and the rest of the county board-appointed audit committee. That's who audits, that's who issues the audits. That's who authorizes the audits. I don't authorize audits. It's either the audit committee that's appointed by the county board themselves. And they just approved internal audit just last month, to go in to audit Mr. Friend's office for the first time in history. Or the external auditors, whether it be KPMG or another accounting firm, are the ones that issue or instruct, authorize the internal auditors, the people, the professionals, the good people that were here before you today that do their work very professionally. But Mr. Chairman, I would suggest if this committee wants to instruct, that we go back to Omaha, that we go back to Douglas County, convene a blue ribbon commission, and come up with something. I believe the ideal situation would be that the county board follow what this body, legislative body, recommended a decade ago, and put to the vote of the people whether to merge the register of deeds office with the assessor or the clerk. You eliminate one elected office like you have in Lancaster County here, allowing you to have another countywide, independent--not a Democrat or Republican--on the ballot with qualifications required as the county attorney has required, and let the citizens of Douglas County vote for that position for their protection, for accountability, for checks and balances. With that I'll... [LB475]

SENATOR AVERY: Thank you. Thank you for your testimony. Questions for Mr. Cavanaugh? Senator Pahls. [LB475]

SENATOR PAHLS: To be honest with you, I do not know you as a person. I mean, our paths have crossed. But for some reason...I mean, I'm listening to your testimony and it sounds...okay, let's do this. But there's something...there has to be some angst out there because this issue would not have been brought up. Something is happening and I don't know what that happening is. What is that? Why do people...? I see a group of people over here and I see a group of people over here. There's some push-pull or something. What's your thinking on that? Because you said you're not vindictive. [LB475]

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TOM CAVANAUGH: Well, I'm not vindictive, and even if I were I wouldn't have the ability to do it because I don't direct the auditors. The audit committee is the one--and they'll present you with audit plans and the approved audits. Senator, something that's been missing in this whole discussion for 120 days is the audits--the contents of the audits. I would strongly recommend...you can go to our Web site, and the audits are available to the public, and see. I think what's at play here and what was mentioned over and over and over again in December with the elected officials--and by the way, the majority of the courthouse does not support LB475. And by the way, I'm asking, what specific example were you given today in the testimony of my misbehavior? The specifics of what I've done. Anybody? I think the fear is possible embarrassment of a finding...and if...I mean, the audits contain findings of things that I don't think are criminally intended but of things that need to be fixed in the accounting systems of the county. And they are used quite frequently by departments and elected officials as a helping tool. But I think there are some in the county that are concerned about those findings being disclosed. [LB475]

SENATOR PAHLS: Okay. My answer to this: If you were--because I'm sure that you have enough to do without having this responsibility--if you were removed from that and that went to another person within the county, would you be agreeable with that? [LB475]

TOM CAVANAUGH: If the person is elected, as for the citizens and accountable to the citizens. You don't solve a problem; in fact, it comes back to haunt you, to move from one elected official because of all these perceived--even though there's not been one specific example given today, problems--to seven elected officials with an appointed administrator. And which reminds me, you know, this unfunded mandate that keeps coming up. It's, first of all, not \$300,000. It's more like \$250,000 for internal audit, which saves the county a lot with external auditors. But the county board has no statutory authority for having three-quarters of a million dollar staff that the taxpayers are supporting. There's nothing in statute. And if you want to do a comparison with other counties, all the other counties staff their county boards with county clerk staff. They don't go out and hire three-quarters of a million dollars a year, their own staff, without any statutory mandates. But if...to answer you question, Senator, would I be in favor of having the comptroller being prestanding? I just suggested that I think that's a great idea as long as they're elected. [LB475]

SENATOR PAHLS: In other words, if they were appointed, that would be an issue with you. [LB475]

TOM CAVANAUGH: That would be an issue because then it's who are they accountable to? Are they accountable to the people that I don't spend the \$300 million a year in Douglas County. I don't authorize that. My budget is \$1.8 million. I have 28 staff. So you would move it from somebody that has 28 staff and a \$1.8 million budget, to a

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group that has a quarter of a billion dollar budget and over 1,000 staff. [LB475]

SENATOR PAHLS: Okay. Thank you. [LB475]

SENATOR AVERY: Senator Price. [LB475]

SENATOR PRICE: Mr. Chairman, thank you. Mr. Cavanaugh, to talk to the \$250,000 for the staff, is that tied up primarily in personnel costs? [LB475]

TOM CAVANAUGH: Primarily, for four people in internal audit. And I believe we did...I don't know if you have it in your books: the fiscal note breaking it down in terms of what the personnel cost is, what the nonpersonnel cost is, for LB475. [LB475]

SENATOR PRICE: All right. Thank you. And just out of...could you see that an internal audit would probably be seen as before the internal affairs is by the police department? You know, I brought up the IG before, you know, with the Inspector General in the military. You know, you don't want to see those folks around either, even though we have mandatory IG inspections set up at different times. You have mandatory inspections and an internal audit being viewed as internal affairs. So I'm trying to...you know, we basically unfortunately we're getting the dirty laundry of the county aired here in the state in front of everybody's eyes. It's not probably a win-win situation. But now that we're here, you know, is that one of the errors that we see, that internal affairs, internal audit, all these different functions tend to come about with some trepidation? [LB475]

TOM CAVANAUGH: Well, sure. I mean, if your question is do they welcome internal auditors with open arms and balloons and whistles and everything when they come in the office? No. But they're not IRS auditors. They're there to help. And part of this, earlier last year in the mid-summer last year, you may have heard this or may not have heard this--I saw the Douglas County election commissioner here earlier. In as long as I can remember, for the first time I went public with audit findings that the internal auditors had done at the behest of the audit committee and the external auditors, because we were coming up within a 90-day period of an election. And I didn't want a Florida and I didn't want an Ohio to happen in Nebraska. And they came up with some very basic recommendations. I mean, these were...they took the manufacturer of the voting machine and went out at the election commissioner's invitation on primary day in 2008 to do their audit; to observe whether...it was a compliance audit, complying with the standards of the election machine manufacturers. And they found out that the election commissioner at the time, primary day when they were there, invited at his request, found out that only one person was handling all the computer operations. That the discs weren't properly identified with which disc belonged to which computer to...and that they weren't secured. And his response was less than kind to the auditors, as mentioned...anyone that's audited can respond back--basically was, you know...well, it



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was not kind. I felt again, Senators, because I take an oath like you do to uphold the laws of the state of Nebraska. I take a...I file all the papers that you do to hold the office. I felt due diligence, that I was required--there was no financial issue and there wasn't any money involved--but the citizens of Douglas County needed to know that these conditions, not of the auditors--they didn't make up these rules. They were just reading the owner's manual of the voting machines. That the owners manual's own recommendation weren't being followed by the election commissioner. And I felt an obligation to go public and say the election commissioner is not...only has one person handling all the computer equipment when the manufacturer says you should have at least two people for separation of duties, segregation of duties. Should have your discs identified, should have them secured. Shortly after I went public, the election commissioner wasn't too happy, still isn't happy and had you not run out of time for him he would have testified and told you how unhappy he is. I didn't try to tell him to do his job or how to do his job. I just tried to point out that these are the recommendations of the company that made the machines; this is what the election commissioner is doing. The public, you have a right to know, because in 90 days you're going to have an election and if something goes wrong and there's a recount or something like that, you should know ahead of time that this is what the findings are instead of finding, the day after the election, oh yeah, there was an audit and the one guy that was running all of it didn't show up for the job or misidentified the discs or whatever. So if that's what they're concerned about, that type of embarrassment, I could I suppose, if I wanted to, tell you about this audit and that audit and this audit. I don't think that's my job. They're out there. You can read them. They're available to the citizens of Douglas County. As I said, if they were criminally involved I would probably pass them along to the sheriff and say you might want to check this out. But most of it's just missing the numbers, missing the wrong column or not having the right structure--and when I'm talking about structure I'm talking about accounting structure--in place. And as Carmen Harmon said, most of that's welcomed but most of it's implemented. And they have--they being the proponents of wiping out all of this--have not given you one specific example of my abuse--or of where this would go. [LB475]

SENATOR PRICE: Thank you. [LB475]

SENATOR AVERY: Any more questions? [LB475]

TOM CAVANAUGH: Well, I thank you, and I appreciate your time. I probably went way over my 3 minutes. [LB475]

SENATOR AVERY: Actually, we devoted exactly one hour to opponent testimony. I presume you're the last one because... [LB475]

TOM CAVANAUGH: I believe I am. If there are any other.... [LB475]

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SENATOR AVERY: We are going to move to neutral testimony now, and in the interest of fairness we gave each side one hour. [LB475]

TOM CAVANAUGH: Thank you. [LB475]

SENATOR AVERY: Thank you. Any neutral testimony? Please come forward. [LB475]

MICHAEL O'HARA: Hello, Chairman Avery, and members of the committee. My name is Michael O'Hara, O'H-a-r-a. I'm a faculty member at the University of Nebraska at Omaha. I'm not appearing to represent them. My area of expertise is in business law and regulation of business, and I have previously served as an elected official. I served on OPPD's board, Omaha Public Power District's board for a term, and in that function served as our board treasurer and was a consumer and director of our internal audits for awhile. I understand fully the experience. I learned a lot. I'm not an accountant and so when was responsible for internal auditing, learned a lot. And bang for the buck, I certainly understand that. There's always a drive you have. I was a little surprised that anyone would propose, with an organization spending hundreds of millions of dollars, that you get rid of a comptroller and an independent auditor function. I mean, that's bizarre, as far as I could tell, and that those two functions are different and very appropriate, and they really help management get a grasp. The internal audit is very important because it helps inform the external audit. The fiscal note for the bill, you can do a very quick ballpark of what this is going to cost as you have the hourly wage for the external and the internal. A work year is about 2,000 work hours, and you have four people. So take that wage difference and you come up with a low estimate of \$800,000 for passing the bill. But that's on Douglas County taxpayers. I don't see where they get a gain. And that would be a low estimate, because you would have to add the travel from the other work site to that...from the auditors' work site to the Douglas County offices. There are many ways to achieve being unbiased and independent. And you've been working through some of them, and there are many ways to do it and some of them are better than others. And it was mentioned that it's good to have the actual independence as well as the appearance of independence. I don't know about you, but I would much rather have actual independence than the appearance of independence. And the actual independence, you go to the structure, how you set it up, and the independence comes from performing certain functions and not having control over them. As it was noted, the control the clerk's office has is ministerial in some respects--and that's not management. And if someone thinks that ministerial duties are managerial duties, they're confused about both of them, and I would have to wonder about their advice on designing an internal audit. The main thing I would suggest is that you focus on who you want to be accountable to--the discussion near the end on whether or not you should have a freestanding one. I certainly think having your auditor be as freestanding as possible is good, and that would be elected. And as elected officials, you know how jealously an elected official guards that elected official's authority and power, because no matter how well-meaning and hardworking staff are, they just don't quite get that contact with the

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public. I mean, people will get up in the face of staff a certain way, but when they meet the elected official it's, okay, I'm no longer talking to my employee's employee; I'm talking directly to my employee, and they communicate unambiguously just how you are their employee. And that's right and that's good. And one of the privileges...that's where you get that privilege of serving. I would suggest that as you work through this, because it is difficult, it is complex, that you focus on good policy and what is good governance, and try to ignore all the personality stuff. Because when you're doing an audit, I have not known anyone to go through an internal audit that they smiled at the internal auditor unless it was that smile that you never want to receive, and it usually comes with a box of doughnuts. (Laugh) I'm here to help you help me. And they're usually hiding something. Nobody wants someone to show up and say you did something wrong; you could do it better. And that's what internal auditors do. You want them to be independent. Looking at these people, I don't think they look like they're slouches and they don't, to me, look like they're aren't going to do hard work and do it well. And if you were to switch them from one county office to another, I don't get it. When I look at this structure, most of the money is going through the people who want to now be in charge of the audit. And to me that looks like less independence for the auditor. When the chair of the audit committee spoke, you asked him, well, how did he get his job, and he was fishing with that answer: I serve at the pleasure. You really don't want your auditor serving at the pleasure, because the auditor delivers unpleasant information, and that always invokes someone to be displeased, and then they try to get rid of the auditor. I'm pleased to say that having done politics in Douglas County for over a decade, that I don't see and have not seen any evidence of people behaving like they were when the bill was first passed by the Legislature. I was very worried when I ran, that I might run into that, but it's a very clean operation, and I even had people who were coming in from the outside lobbying, commenting on just how clean Nebraska politics are. How do you ruin that? Get rid of the internal auditing process and create the opportunity where people can do things and get away with it easily. You want to have someone looking over their shoulders and you want someone that does it consistently and honestly. And I was just mystified that anyone thinking LB475 is a good idea, just from how do you structure business and how do you get the best out of people when they're doing it. If you have any questions, of course I'd be willing to answer them. [LB475]

SENATOR AVERY: Thank you, Mr. O'Hara. Senator Pahls. [LB475]

SENATOR PAHLS: And again, of course, this is a bill, we can amend it. That's the thing about it. I'm hearing you say it could or should be a separate office. [LB475]

MICHAEL O'HARA: You're always going to have your auditors compromise because they're getting a paycheck from Douglas County unless you're going to put it on the State Auditor. Your internal auditor for the county is going to be with the county and in some sense, compromised. The more independent you can make it, the better. At a minimal level, from governance standpoint, you make them elected. If what we're

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worried about is politics, you can make them nonpartisan, and as each of you know so well, being a nonpartisan elected person, you never do politics. Yeah. (Laughter) It comes in, but it is a lot less. I mean, I, the office I held was nonpartisan and I think politics was usually something we did that was fun, on the side. But it never came in the board room. [LB475]

SENATOR PAHLS: Okay. Thank you. [LB475]

SENATOR AVERY: Senator Sullivan. [LB475]

SENATOR SULLIVAN: So in other words an independent internal is almost like an oxymoron? [LB475]

MICHAEL O'HARA: Almost. It's a matter of degree. And that's why people will comment about you need actual independence and the appearance of independence. You're always compromised unless you're outside, and you know how well everyone receives the State Auditor. (Laughter) You can't, they're completely separate from some divisions, and when they go in, everyone gets hacked off at them, just because you're looking over my shoulders. And if you haven't ever read an external auditor's report, I would certainly urge you to do so. I read the University's on occasion, and I think a low number of complaints by an external auditor about the internal would be in the neighborhood of 10, 20 complaints per campus. That would be low. Because they're always picking notes. They can always make a little better. And in terms of the internal audit, I would have thought that if this internal auditing process now was not functioning well, they would have led off with...the external auditor has consistently found problems with the internal audit. If they didn't lead off with the external auditor has consistently found problems with the internal audit, what did the external auditor say about the internal audit? [LB475]

SENATOR AVERY: Thank you. Any more questions? Seeing none, thank you for your testimony. [LB475]

MICHAEL O'HARA: Thank you very much. [LB475]

SENATOR AVERY: Any other neutral testimony? Seeing none, Senator Stuthman has come back to the room to close. Welcome back. [LB475]

SENATOR STUTHMAN: Thank you. Good evening. First of all, Senator Avery and members of the committee, in closing, I would just like to thank all of the individuals that testified, and I especially want to thank, you know, the Douglas County Board for giving their testimony and the fact that we did not make this a personal issue. I did not want to see this, anything entered into it as a personal issue, and I wanted to make sure that, you know, the testifiers also did not make it a personal issue, and I think they did not do

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that. One of the things that I kind of listened to and the fact that in some of the opposition, it was the fact that, you know, they thought we were eliminating these internal audits. This bill has nothing to do with the internal audits. There...this is the only county that has internal audits, that is performed. Other counties do not have that. There is nothing in statute that states that a county has to have internal audits. We're not eliminating that. We're not, we're allowing the board to do what they want to do, and I think, in my opinion, as serving on a county board, the county board is a board that is elected by the people to, you know, be in control of their county and the county functions of that. Although county elected officials are in control of their offices. I think by listening to the county board members, they said, you know, there are some problems there. And I think, you know, probably now is the time that we need to address that because, you know, this was put into statute in 1991. And if there are problems, you know, we do this continually. If things aren't working, working out, we try to address them or try to change it so it is workable. Another thing that I also, also would mention that, you know, I would request that we could, you know, move this out of your committee. I would like to have this moved out of the committee and so that we can have a chance to duke it out on the floor. And I think that's it. We are not eliminating anything except the fact of the double position. If a county board wants to appoint someone or if a county board wants to put in a bill next year that would require a certain population counties, that they want to have a county comptroller and an elected official, come forward and bring us that. With that, I would like to, I would hope to answer any questions, but I would like to ask that you, you know, move this bill out so that we can have an opportunity to debate it on the floor. [LB475]

SENATOR AVERY: Thank you, Senator. Senator Pahls. [LB475]

SENATOR PAHLS: Would...could we entertain you with maybe an amendment or two if we do some thinking about some of the questions that have been raised? [LB475]

SENATOR STUTHMAN: Yes. Yes, I am very receptive to an amendment as, you know, depending on, you know, what it is. If there still is the opinion that counties that have a population of over 300,000 or 350,000 or a size like that, that, you know, they want to still have a county comptroller, and separation of the comptroller/clerk duty, I'm very receptive to that. [LB475]

SENATOR PAHLS: And you're saying if we do mess up and come back next year with an elected official, if that's not one of our choices? Is that? I mean, you're saying that they should come forth with another bill? [LB475]

SENATOR STUTHMAN: Senator Pahls, I'm not familiar with the process of how do you establish elected officials in county offices. I'm not aware of that. [LB475]

SENATOR PAHLS: You're a county commissioner. [LB475]

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SENATOR AVERY: We'll figure that out. [LB475]

SENATOR STUTHMAN: Thank you. Thank you very much, and I apologize for bringing a bill that had so much controversy, but I really appreciate the fact that your willingness to listen and hopefully we can work... [LB475]

SENATOR AVERY: Everybody got equal time, Senator. [LB475]

SENATOR STUTHMAN: And I appreciate that, yes. [LB475]

SENATOR AVERY: (Exhibits 8, 9) I thank all of you. We'll now go to...that ends the hearing on LB475. You don't want to stick around for the next one? (Laughter) I have to read, I'm going to read into the record some letters of support. Here is one from the Douglas County Emergency Management Agency supporting LB475. We have here an e-mail of opposition from Roger R. Holthaus. That ends the hearing on LB475. Thank you. Senator Price. [LB475]

SENATOR PRICE: Thank you, Senator Pahls. Thank you, Committee of Government, Military and Veterans Affairs. It is my pleasure to bring to you yet another bill; yet at the end of another day before a long weekend. My name is Scott Price, P-r-i-c-e, and I represent the 3rd Legislative District. I'm here to introduce LB533. And I introduce this bill at the request of the Department of Administrative Services. LB533 makes what I believe are common sense changes to the policies governing expense reimbursement for state employees traveling on state business. The bill would require employees to submit a receipt for meal expenses incurred while on official government travel. In 2008, the state spent approximately \$2.5 million to reimburse employees for expenses. Of the 13,620 expense reimbursements processed last year by the state, more than 6,300 were for \$50 or less. The size of these numbers is why I decided to introduce this bill. Under current statute, the DAS and DAS policies, the common practice for employees on official travel is to keep a log of their expenses. The log is supposed to include details such as when, where, why, and the amount of the expense. However, the details that employees must provide are vague and largely subject to the preferences of the employee. I believe that receipts will be less burdensome than the current policy for state employees. Most receipts already include all the necessary information for reimbursement. The amount, the date, the place, and the character of the expense. I assume that most people already use their receipts to enter the necessary information into their log. Based on that rationale, my sense is that we could save employees this step by asking them to submit the receipt instead. This bill would also extend to 60 days the time in which expenses must be submitted for reimbursement. The one issue I raised when the department approached me about introducing this bill is how would it handle situations where a receipt could not be produced. It's not hard to imagine a situation where a receipt is misplaced, illegible, or may not be available. And I was

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assured by the department that accommodation would be made in these situations, and I will work with the committee and the department to make sure that this happens should this bill move forward in the legislative process. Now a representative from the department will be testifying after me to give you additional details and that individual will also be more able to answer your specific questions. But I am happy to answer any questions you may have for me. Thank you for your time and your attention. [LB533]

SENATOR PAHLS: Seeing...oh, Senator. [LB533]

SENATOR SULLIVAN: So this is being brought...thank you, Senator Pahls. This is being brought, you're bringing this legislation on behalf of DAS? [LB533]

SENATOR PRICE: Yes. ma'am. [LB533]

SENATOR SULLIVAN: Okay, thank you. [LB533]

SENATOR PAHLS: Thank you. Are you sticking around for closing? [LB533]

SENATOR PRICE: Absolutely. Wouldn't miss it. [LB533]

SENATOR PAHLS: Proponents? How many proponents do I see? How many opponents? Neutral? Looks like we're in pretty good shape. [LB533]

LAURA PETERSON: And I only have one page, so. Good afternoon, Senator Pahls, members of the committee. My name is Laura Peterson, P-e-t-e-r-s-o-n. I'm general counsel for the Department of Administrative Services. I am here in support of LB533 which was brought at the request of the department. In this bill, like the others you have considered on behalf of our department, we are seeking administrative flexibility to have appropriate policies that provide for accountable government without compromising efficiency. In LB533, we are seeking to accomplish several things. First, we seek to clarify current statutory language that is unclear, such as the term license number, which could apply either to a driver's license number or an automobile license plate number. Second, we seek to make the language in the Nebraska statute consistent with IRS language related to expense reimbursements. Third, and most importantly, we seek authority to implement common reimbursement practices such as requiring receipts for meals when it is appropriate to do so. I want to explain that the statute would require receipts to be submitted for meals unless Administrative Services, through its accounting policy which applies to all state agencies, made an exception. We understand there may be times when an employee cannot obtain a receipt such as a purchase of a sandwich in a vending machine at an airport or when an employee may lose a receipt. We are not looking to prohibit individuals with these or other reasonable circumstances from receiving reimbursement; rather, through our accounting policy, we would provide an alternative procedure for these types of situations. Finally, we are

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seeking to expand the time that's currently allowed for employees to submit expense reimbursement requests; from the current requirement to submit the requests each month to a requirement that is proposed in LB533 which would be within 60 days of the final day on which expenses were incurred. I encourage you to advance the bill and to assist us in continuing our attempts to ensure government operates as efficiently and effectively as possible. And I would be happy to answer any questions. [LB533]

SENATOR PAHLS: I have a question. [LB533]

LAURA PETERSON: Sure. [LB533]

SENATOR PAHLS: Right now, if I...if I don't have my receipt, but I still wanted reimbursement, is there a limit, in other words, for breakfast which you can spend \$4; for lunch, \$6; and for dinner, \$12? Is that how this works? [LB533]

LAURA PETERSON: There really is no current limit. There are some guidelines at which there's probably an extra review, but you can be reimbursed for your actual expenditures. [LB533]

SENATOR PAHLS: But as I can recall, and in fact, many years ago when I worked for Wayne State, they say your breakfast, you get this many dollars and at the end, you just say, okay, I spent \$20 or whatever. [LB533]

LAURA PETERSON: And right now you can submit a log that says those dollar amounts, and you're not required to have a receipt, but there is actually no...there is no per diem limit. [LB533]

SENATOR PAHLS: Oh, okay. [LB533]

LAURA PETERSON: There may be for the state colleges, I don't know. They operate under a separate system. But as of right now, there's no actual maximum. But we do provide some guidelines for employees to use in the state accounting policy. [LB533]

SENATOR PAHLS: And the amount of money that you think we'd save on this would be? [LB533]

LAURA PETERSON: We're not, we really haven't estimated in the fiscal note a savings. We're also not anticipating that it's any cost; it's really more an accountability rule where right now, we are prohibited from requiring receipts for meals, no matter how much you spend, we're not allowed to require you to submit a receipt. And so we just think it's a good idea to submit a receipt. We don't think it's going to be an extra burden either on employees who are submitting the expense documentation or on the folks who review expense documentation because you're currently required to fill out a log. So I mean,



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what I do is I keep my receipts and then I write up a little log from the receipts and turn it in. Now that's actually eliminated that step for me, and I'll just turn in my receipts and whoever is reviewing my expense reimbursement will see receipts instead of a log. [LB533]

SENATOR PAHLS: Okay. And just, do you have an internal auditor? [LB533]

LAURA PETERSON: We did have an internal audit review process. State accounting has responsibility for internal audits. [LB533]

SENATOR PAHLS: Senator Sullivan. [LB533]

SENATOR SULLIVAN: Thank you, Senator Pahls. But there's still going to be some judgment calls apparently in reviewing those receipts. I mean, you know, because I could see like, I don't eat lunch, I don't eat breakfast, but you go out to dinner and you spend \$50 or something, well, you aren't probably going to allow for? [LB533]

LAURA PETERSON: You know, really again, there is no actual cap. [LB533]

SENATOR SULLIVAN: That's what I'm wondering. [LB533]

LAURA PETERSON: And so I mean, I think as an employer, you want to look at whether what your employees are doing is reasonable. But in the policy itself nor in the statute is there a hard, you may not spend over X number of dollars per day. [LB533]

SENATOR SULLIVAN: Is that a problem? Should we, should there be? [LB533]

LAURA PETERSON: You know, I think really, for the most part, when we look at employee expense reimbursements, either internally at our own or statewide when we're looking at them, there's very rarely questions. And I think you can see by the numbers that Senator Price gave you that we process over 13,000 expense reimbursements, not just for meals; but for all employee expenses. Last year, 6,300 or over 6,300 of those were for less than \$50. So I mean, I think it's very conservative within the state of Nebraska and one of the things that has been talked about, you know, some organizations have a per diem amount. And then you get that amount, whether you've spent it or not. We...our accounting folks tell us that likely would cost the state of Nebraska because most expense reimbursements come in under what, for example, the federal per diem would be. So we really think we're probably much more conservative in our expenditures than you would be under that kind of system. I also think that, but there have been, you know, allegations, for example, agencies will come and say, we think that this log that was turned in, that the person probably didn't spend quite that much. Somebody else who was with them said, no, you know, we ate at Burger King, not at wherever and it wasn't that expensive. And there just isn't anything

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we can do about it, because we're not allowed to require receipts. So I think, you know, requiring the receipts allows people to do a little bit more review. You can see actually what was spent and see was \$50 reasonable? I mean, in some locations, you're lucky to get a meal for \$50 depending on where you're traveling to. [LB533]

SENATOR SULLIVAN: Okay. And then why have you decided, recommended lengthening the time from 30 days to 60 days? [LB533]

LAURA PETERSON: We have had some that have gone past the time, and there's this question, you don't want to deny somebody their receipt or their reimbursement. The other thing is the current language doesn't say, doesn't provide a number of days and from when very clearly. It almost indicates that you need to submit an expense reimbursement each month. And so there's no real clear start and end time. So really I think we're just trying to make it clear to everybody what the rules are. And 60 days from a specific date is clearer, and a little bit more flexible for people. [LB533]

SENATOR SULLIVAN: Okay, thank you. [LB533]

SENATOR PAHLS: Seeing no more...oh. [LB533]

SENATOR AVERY: I have a question. I know I'm...I'm sorry I missed the testimony, but suppose someone is out of state and they go to a conference while they're out of state, but they're not coming back to Nebraska for maybe three or four weeks, how are they going to make a, how are they going to file their reimbursement forms in 60 days? Or in 30 days? Thirty days was the old. [LB533]

LAURA PETERSON: The current rule is each, is to submit it each month, so you could say 30 days. The new rule would be within 60 days of the final day on which the expenses were incurred. [LB533]

SENATOR AVERY: I...are you sure that the current rule is 30 days? [LB533]

LAURA PETERSON: Yeah, it's actually, if you read in the green copy of the bill... [LB533]

SENATOR AVERY: But didn't you say it was ambiguous? [LB533]

LAURA PETERSON: Well, it says each, that you must submit an expense reimbursement each month. So there's the potential you could maybe get beyond 30 days, but you're not probably going to get beyond 60 days because presumably it would have to be each month. So it may be if you traveled over the end of a month and started into the new month, maybe you would have until the next month, but it would be very hard under this, even this slightly ambiguous language, I think, to get beyond 60 days.

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[LB533]

SENATOR AVERY: And that's all expenses including airfare and whatever? [LB533]

LAURA PETERSON: Yes. It's all in there, and the numbers that Senator Price gave you too were all employee expense reimbursements but which would include airfare, commercial travel, noncommercial travel, lodging. [LB533]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. [LB533]

LAURA PETERSON: Thank you. [LB533]

SENATOR PAHLS: Any other proponents? Opponents? Neutral. Senator? [LB533]

SENATOR PRICE: Oh yeah, I want to take advantage of a really long closing. [LB533]

SENATOR AVERY: It's a quarter to five. (Laughter) That ends the hearing for today and for the session. [LB533]

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Disposition of Bills:

LB475 - Placed on General File with amendments.

LB527 - Held in committee.

LB533 - Placed on General File with amendments.

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Chairperson

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Committee Clerk