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Government, Military and Veterans Affairs Committee
February 11, 2010

[LB767 LB947 LB970 LB1009 LB1039]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 11, 2010, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1009, LB970, LB1039, LB767, and LB947. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Robert Giese; Charlie Janssen; Russ Karpisek; Bob Krist; and Kate Sullivan. Senators absent: Rich Pahls. []

SENATOR AVERY: (Recorder malfunction)...the Government, Military and Veterans Affairs Committee. My name is Bill Avery, Chair of the committee, from District 28 here in Lincoln. Before we get to our agenda, I want to introduce the members of the committee who are here. Most of you know that Senator Pahls is ill and cannot be with us. But Senator Janssen is; in fact, he's first up today; Senator Janssen comes from Fremont. Sitting next to him is Senator Bob Giese from South Sioux City. He is seated next to Senator Scott Price, the Vice Chair of the committee, from Bellevue. And to my immediate right is Christy Abraham, the legal counsel. Senator Russ Karpisek sits here, and he is from Wilber and will be here later. I thought I saw Senator Kate Sullivan come in; okay, she is here; Senator Sullivan is from Cedar Rapids. Senator Bob Krist from Omaha is seated at the end here. And on the very end is Sherry Shaffer, the committee clerk. A few matters of procedure: If you are testifying for or against any of the bills on today's agenda, I wish to have you fill out this form; we ask you to print clearly all the information called for; you can find these forms at the entrance, I believe, to both--both entrances. If you do not wish to testify but wish to be recorded "for" or "against" any of these bills, fill out this form; again, print your name and indicate your position very clearly. We will take up the bills in the order of the agenda as posted on the outside of the room--starting with LB1009, followed by LB970 and then by LB1039 and LB767 and LB947. That looks like a pretty full agenda. We will not be using the light system today. I don't see a whole lot of people here to testify, so I don't believe we'll need it. But I do ask you, when you take the table there to speak, please state your name clearly, spell it for the record, and hand the sheet that I just mentioned to you to the clerk. If you have any material for distribution to the committee members, we ask that you have 12 copies prepared; if you do not have 12 copies, we can help you--the pages can get them for you. Give those to the clerk, who will have the pages distribute them. The pages for today are Lisa Cook from Omaha and Mark Woodbury from Oswego, Illinois. Please keep your remarks brief. If you are going long, you can look at me, and I will be tapping my watch. And if you see me tapping my watch, that means you've gone long and I want you to end it as soon as you can. That's a little bit more subtle than me standing up and saying: You've had enough time. (Laugh) We will begin with Mr.--Senator Janssen's bill, LB1009. He will be given an opportunity to introduce his bill; that will be followed by proponents, followed by opponents and neutral testimony. Closing remarks will be reserved for the senators introducing bills only. Please, if you have any electronic communication that makes noise, turn it off. If you want to put your cell phones on

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vibrate, that's okay; but we do not want anything to disrupt the proceedings. Cameras are not permitted, except by the press. I think the press was here already taking photographs. Okay, Senator Janssen, please come forward. Welcome. []

SENATOR JANSSEN: Thank you, Chairman Avery, fellow members of the Government Committee. If I take too long, you can always ask for cloture, Senator Avery; so don't worry about that. [LB1009]

SENATOR AVERY: (Laugh) You've had that experience. [LB1009]

SENATOR JANSSEN: We could work out a new rule. For the record my name is Charlie Janssen; it's J-a-n-s-s-e-n. I represent the 15th District, which is Dodge County; and I reside in Fremont. I appear today to introduce LB1009. LB1009 would permit county boards to establish salaries of all elected officers of the county on or before January 15--my birthday, coincidentally--of the year in which a general election will be held. Presently, the board must fix the salary prior to January 15. Many salary resolutions for county officials are tied to the federal consumer price index for the previous year, and it is always released January 15 by the Bureau of Labor Statistics, U.S. Department of Labor. County boards have to set the salaries for 2011 before they know what the 2010 salaries will be. I would like to thank the Dodge County Clerk, Fred Mytty, for bringing this to our attention. He is actually here today and will be testifying as a proponent of this. And I'd like to point out also, I did see that NACO is opposing this bill. I just saw that letter; I wasn't aware of that prior to. And I did get an e-mail, but I don't think it rises to the level of distributing it. But it was from my county board--the county board of supervisors president, Bob Missel, in Dodge County. And he sent me a letter of support for this bill and said he was not certain why NACO was opposing this. However, he, too, was going to Kearney today to the NACO convention, so he wasn't able to be here. So Fred Mytty is here, like I said. I think he's been the clerk for 34 years; he could far better answer any questions on this than I could. And with that said, I hope you don't ask me questions, but I'll entertain them if you have them. [LB1009]

SENATOR AVERY: (Laugh) Senator, do you feel like you've had enough questions for the day? [LB1009]

SENATOR JANSSEN: I think I'm going to get more--the next bill I'm introducing in HHS. [LB1009]

SENATOR AVERY: Oh, yes; you will. Any questions from this committee? Seeing none. [LB1009]

SENATOR JANSSEN: Thank you. And I'll be waiving closing. [LB1009]

SENATOR AVERY: Okay. We will now call for proponent testimony. Come forward, sir.

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Whenever you are ready. [LB1009]

FRED MYTTY: (Exhibit 1) Okay. Well, my name is Fred Mytty; I'm the Dodge County Clerk--Fred, F-r-e-d, Mytty, M-y-t-t-y. Yeah, I've been a county clerk for a few years. The problem occurred this year when the board set our salaries on the 13th of January. Normally...and that's what NACO's position was, that most of them do it in December, possibly in late January. The problem was, ours is tied to the consumer price index for the previous year. So if you look at these salaries...our board had the impression that--or the intent to freeze our salaries. And again, it's hard for me to talk about salaries when I know what your salaries are, you know; you've been frozen forever, it seems like. But in our case, if you look at this handout, our 2010 salaries--for the county attorney is going to be \$78,581. But next year, because they didn't know what the salary was going to be 2010, it's going down by \$381. And you can see that if I again win the election, I will go down \$336. If you pay your filing fee--that's another \$600--you're going to lose a thousand bucks just to stay in office, without even campaigning. And all I'm saying is, all this will do is...the consumer price index comes out January 15; the board, if they would want to, could convene on the 15th, and they would know exactly what that year's salaries are going to be. Simple as that. [LB1009]

SENATOR AVERY: Are you at all aware, sir, of the NACO objections? I haven't had... [LB1009]

FRED MYTTY: I talked to Larry Dix last Friday. He said their committee was full up--plenty of things on their agenda. He said one of the supervisors made the comment that most of them are set way before January 15 anyway, and therefore that board has passed a motion to oppose it. [LB1009]

SENATOR AVERY: Without much discussion? [LB1009]

FRED MYTTY: Without much discussion. [LB1009]

SENATOR AVERY: (Exhibit 2) Hmm. Okay. Well, we do have a letter from NACO that opposes this bill. So I will read that into the record... [LB1009]

FRED MYTTY: Yeah. [LB1009]

SENATOR AVERY: ...enter it into the record now. [LB1009]

FRED MYTTY: Okay. [LB1009]

SENATOR AVERY: Any questions from the committee? Senator Price. [LB1009]

SENATOR PRICE: Senator Avery, thank you very much, sir. Mr. Mytty, thank you for

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coming and testifying today and sharing with us. My question comes...and I just want to make sure I understand this. The salaries for fiscal year '11--calendar year '11--are going to be set up on which date? [LB1009]

FRED MYTTY: They set them January 13 of this year--a month ago, almost. [LB1009]

SENATOR PRICE: For next year. [LB1009]

FRED MYTTY: For next year. Because... [LB1009]

SENATOR PRICE: Right. [LB1009]

FRED MYTTY: ...it's a salary resolution that has to go into effect for the next five years. [LB1009]

SENATOR PRICE: Okay. Thank you very much. [LB1009]

FRED MYTTY: Okay. [LB1009]

SENATOR AVERY: Any more questions from the committee? Seeing none, thank you for your testimony, sir. And we will now take additional proponent testimony to LB1009. Seeing none, we'll move to opponent testimony. Anyone wish to testify in opposition to LB1009? Anyone wish to testify in a neutral position to LB1009? Okay. Senator Janssen, are you interested in closing? He waives closing. That ends the hearing on LB1009. We'll now...it looks like Senator Campbell is not here. [LB1009]

SHERRY SHAFFER: I think they went to get her; she's just right across the hall. [LB970]

SENATOR AVERY: Okay. The next bill to be heard is LB970, introduced by Senator Kathy Campbell of Lincoln, a bill to change provisions relating to appeals from county planning commission decisions. And we have sent someone to fetch her, so we will stand at ease. Here she is. We moved rapidly through that first bill. [LB970]

SENATOR CAMPBELL: You are; you're efficient. [LB970]

SENATOR AVERY: I saw your aide get up and leave very quickly; I figured that... [LB970]

SENATOR CAMPBELL: You are so efficient. [LB970]

SENATOR AVERY: Welcome, Senator Campbell. [LB970]

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SENATOR CAMPBELL: Thank you, Chairman Avery and members of the committee. I don't think I've ever appeared before the Government Committee before. [LB970]

SENATOR SULLIVAN: Here you are. [LB970]

SENATOR CAMPBELL: This is auspicious, yes. [LB970]

SENATOR AVERY: What a treat. [LB970]

SENATOR CAMPBELL: It is. [LB970]

SENATOR KARPISEK: You did the Environs--Capitol Environs, I think. [LB970]

SENATOR CAMPBELL: That's right. Thank you very much. How quickly we forget. I think probably that was during the time period when Senator Avery was... [LB970]

SENATOR AVERY: I was missing... [LB970]

SENATOR CAMPBELL: ...missing. []

SENATOR AVERY: Right. [LB970]

SENATOR KARPISEK: The good old days. [LB970]

SENATOR AVERY: ...in action. (Laugh) [LB970]

SENATOR CAMPBELL: LB970 was introduced on behalf of NACO and the Lancaster County Board of Commissioners. LB970 would make a small change to Nebraska Revised Statute 23-114.01: Planning commission decisions on conditional use and special exceptions or special use. The bill would allow parties who are not satisfied with the decision of a local county planning commission to appeal those decisions to a county board of commissioners. Under current law, if a county board has delegated this responsibility away to a planning commission--which is the case in Lancaster County--the only appeal allowed is directly to the district court. LB970 would allow aggrieved parties one additional opportunity to resolve their concerns before going to the district court. I believe this to be a reasonable proposal, which will cut litigation costs for the county and individuals particularly. Mike DeKalb from Lancaster County will follow me in testimony today to give the committee a better picture of why this is needed and the situations we are trying to remedy. Mr. DeKalb will be able to answer specific questions about Lancaster County's process, because I'm sure that I have forgotten more than I knew there. I'd be happy to answer any questions on the bill, however. And I should have said I'm Senator Kathy Campbell. Thank you. [LB970]

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SENATOR AVERY: You want to spell that for us? [LB970]

SENATOR CAMPBELL: Sure. C-a-m-p-b-e-l-l. [LB970]

SENATOR AVERY: Thank you. Question from Senator Price. [LB970]

SENATOR PRICE: Senator Avery, thank you. Senator Campbell, just one quick question. By introducing another step here, by allowing an appeal, do we run the risk of crunching the time frame where people do things? You have notices, and you...so I just want to make sure that we address that somehow or another, because, normally, if you have--when you throw in appeals and you have a certain amount of time to do it in and there are other clocks that are running, I just wanted to know if...if you don't have that answer, maybe the person behind you testifying will. But that's a question I have--that we haven't artificially, then, shortened the time frame. [LB970]

SENATOR CAMPBELL: Correct. And I agree with you, Senator Price. Mr. DeKalb may have a better answer, but I would say that, in general, you're going to be able to get in front of the county board much quicker than you are going to be--get in front of the district court. And I think that's part of my concern also and why I agreed to introduce the bill, because the citizen can go from the planning commission and then still be at that localized level that could get to the county board much quicker. [LB970]

SENATOR PRICE: Thank you. [LB970]

SENATOR AVERY: Any other questions from the committee? Don't see any. [LB970]

SENATOR CAMPBELL: Okay. And I'll stick around. [LB970]

SENATOR AVERY: Thank you. Are you going to stay to close? [LB970]

SENATOR CAMPBELL: Absolutely. [LB970]

SENATOR AVERY: Okay. Proponent testimony. [LB970]

MIKE DeKALB: Good afternoon. I'm Mike DeKalb, M-i-k-e D-e-K-a-l-b. I am the county planner for Lancaster County. We have a joint city-county planning department, and I have worked there for--my pleasure--for some 32, 33 years. The legislation in front of you--I'm thankful to Senator Campbell for introducing--is a very simple one-liner--one-and-a-half-liner--that basically includes a provision for Lancaster County to be delegated the final decision, with an appeals procedure set up to go to the county board. What's going on here is that Lancaster County would like to mimic what we did in the city of Lincoln, where in the name of streamlining and speeding up our process--where the statute normally had been: you went to planning commission for a

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zoning action, special permit, or something and then went on to city council or county board--two-step process, took its period of time: 60 to 90 days. And in the city of Lincoln what has been done is the city council has delegated the authority for final action on special permits down to the planning commission. That action has...we've built it in so they have a period of time to appeal, which is two weeks. If nobody appeals, action is final, and you move ahead and you're done. And you do not take the time to move on to city council. If somebody is aggrieved, has a problem, doesn't get the decision they want, they appeal--usually very shortly afterwards, because the action is known right then, that day. And then it's scheduled accordingly to the county board--or city council, excuse me, in this particular case, as it would have been in the old ways. What Lancaster County would like to do is, again, the same thing: delegate authority to the planning commission, have final action. The existing language of the state statute...when our attorneys researched this and said: Oh, you know, I'm sorry; you can't quite do this, because an appeal from the planning commission decision, if delegated, goes to district court. What we would like to do is mirror what the city has and essentially delegate to the planning commission and let them have final action. And if everybody's happy, fine; you're good and you're on your way; the decision is final. If anybody has a problem, they can request an appeal, and it goes to county board, which essentially is the same process we do today. County board would go through their regular notification and procedure upon that case of appeal. And then the county board would act; and appeal from then would be the district court, as it is today. So we're building in a procedure to shorten the process, to delegate authority at the discretion of the county board if they choose to. And we think it's going to save--well, on the city side, it saved three to four weeks of applicants' time, public hearing time, public notification time, county board/city council's agenda, and county board's agenda. Yet it retains that option that if people have a problem, if there's an issue, somebody wants to appeal, they can, and it reverts back: the county board will hold a public hearing, as we do today. That's the simple--sweet and simple--version of it; it's just trying to get some flexibility for some speeding up of the process. [LB970]

SENATOR AVERY: Senator Krist. [LB970]

SENATOR KRIST: Thank you, Chairman. Just for my education, you said you worked at a joint planning... [LB970]

MIKE DeKALB: We have a joint planning commission and a joint city-county planning department, yes, sir. [LB970]

SENATOR KRIST: When did that happen? [LB970]

MIKE DeKALB: In the '30s. [LB970]

SENATOR KRIST: So you've been doing this the whole time, and there have been

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two... [LB970]

MIKE DeKALB: I wasn't here all that time. Yeah. (Laughter) [LB970]

SENATOR KRIST: I didn't think so. [LB970]

MIKE DeKALB: But, yes, you're right. [LB970]

SENATOR KRIST: But you had two different sets of rules, basically... [LB970]

MIKE DeKALB: Yes. [LB970]

SENATOR KRIST: ...within the same... [LB970]

MIKE DeKALB: Yes. [LB970]

SENATOR KRIST: ...office. That must have been... [LB970]

MIKE DeKALB: We have the pleasure of working with two different sets of rules--in fact, three, because we have specific legislation for cities of the primary class; general legislation for counties, which is, of course, what this is amending; and then there's actually another section that's for counties with cities of the primary class. So we get to pay attention to a lot of rules. [LB970]

SENATOR KRIST: Sir, I would love to talk to you off-time about consolidating operations--you seem to have that niche--particularly in the city of Omaha and county government, etcetera. Thanks for bringing it to us, and thank you for your time. [LB970]

MIKE DeKALB: You're welcome. [LB970]

SENATOR AVERY: Any more questions? Senator Sullivan. [LB970]

SENATOR SULLIVAN: Thank you, Senator Avery. Just so--I'm clarifying this to see how it would impact counties in my district in rural Nebraska. Are we talking about "shall" or "may"? Is there flexibility here? [LB970]

MIKE DeKALB: I think it's a "may" circumstance. If the county board were to delegate to the planning commission... [LB970]

SENATOR SULLIVAN: Okay. Okay. [LB970]

MIKE DeKALB: ...then there are some "shalls" involved. If they choose not to delegate... [LB970]

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SENATOR SULLIVAN: Um-hum. [LB970]

MIKE DeKALB: ...and leave it the way it is today... [LB970]

SENATOR SULLIVAN: Okay. All right. [LB970]

MIKE DeKALB: ...they can. [LB970]

SENATOR SULLIVAN: Very good. Thank you. [LB970]

SENATOR AVERY: Senator Price. [LB970]

SENATOR PRICE: Chairman Avery, thank you very much. And thank you for coming and testifying, sir. Do you know when it became the business practice that it go to district court? [LB970]

MIKE DeKALB: I don't. When our attorneys brought it to our attention that that would be the way the statutes are written...as far as I know, that has been there since I've been around. [LB970]

SENATOR PRICE: Great. All right. Then I guess my second question is: Why do you suspect, then, that they went to district court instead of letting it be there? What was the reason for the statute to be the way it was? Just so...that reason may not exist today... [LB970]

MIKE DeKALB: Um-hum. [LB970]

SENATOR PRICE: ...which would help--but it would be nice to know why did they do that. Do you know--have an idea? [LB970]

MIKE DeKALB: I have no idea; it would be speculation. But I guess I would bring to the point that that option would still be there, because today the procedure is planning commission, county board, appeal to district court. What we're saying is if the county board chooses to delegate, it would be planning commission final action; if there's an appeal it goes to county board, and you still--if they don't satisfy, you can still appeal to district court. [LB970]

SENATOR PRICE: Thank you. [LB970]

MIKE DeKALB: You're welcome. [LB970]

SENATOR AVERY: Any other questions? I don't see any. Thank you very much...

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[LB970]

MIKE DeKALB: Thank you. [LB970]

SENATOR AVERY: ...Mr. DeKalb. Any other proponent testimony? Anyone else wish to testify in support of LB970? Okay, we'll move to opponent testimony. Anyone wish to oppose LB970? Come forward. [LB970]

JOHN JOHNSON: (Exhibit 1) Chairman Avery, Senators, my name is John Johnson, J-o-h-n J-o-h-n-s-o-n, and I kind of hate to do this to Mike, because I know him, and we're friends, but I am the president of the NACO Planning and Zoning affiliate and first vice president of Nebraska Planning and Zoning Association, and I'm here to testify in opposition to LB970. I am not representing NACO as a whole, which took a neutral stance on this bill. Currently, as you probably know, a conditional use or special exception is heard at a public hearing in front of the planning commission. In most instances, the planning commission then makes a recommendation of approval or denial based on the facts of the case. In a few cases, where the governing board has assigned the power, the planning commission decision is final. After approval or denial, any aggrieved party can then make an appeal to district court. One of the first things the court will do is make sure the aggrieved party has standing and can bring an appeal. I have several problems with the bill. First, very few county boards have given the planning commission the power to make decisions concerning conditional use or special exceptions. Matter of fact, Knox County is in the process of revising their zoning regulations, and the county board of supervisors will assume the responsibility of approving conditional uses. County boards that have given the power of approving conditional uses or special exceptions can assume this responsibility now by passing a resolution amending their zoning regulations. Second, the procedure regarding appeals of conditional uses and special exceptions was hazy for many years until LB1008 was passed in 2004. This bill clarified appeals of conditional uses, and special exceptions would go to district court. This bill was applied to counties, villages, and cities, so the appeal procedure was the same. And basically it's in Chapter 19, which would not apply to the city of Lincoln; it would only apply to second-class cities and villages, and I believe it's also in the first-class city statutes. This bill would allow for different procedures in cities and villages than those for counties, which will spawn confusion. And just throwing in something I didn't write down: What had happened and the reason this bill was passed--that added "district court" at the end of the phrase--was in Antelope County in I believe it was 2002 or 2003, a conditional use permit was denied, and the applicant appealed it to the board of adjustment, and that went all the way to the Supreme Court. And in that case, the board of adjustment ruled--or the Supreme Court ruled that the board of adjustment would be the proper place to bring an appeal, because the--in this case the board of supervisors of Antelope County was acting in an administrative capacity. And because of that, people on the board of adjustment, which was appointed by elected officials, could then overrule the elected officials. So that's

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why this was added, and it was sponsored by both municipalities and NACO to bring that in to get rid of some of that confusion. Third, the Nebraska Supreme Court's decision In re: Application of Olmer said a party appealing a decision of a conditional use or special exception may choose to appeal as a petition in error or ask for a trial de novo, which is basically a new trial in front of the judge. The findings of the district court shall have the effect of a jury verdict and not set aside by an appellate court unless the court's factual findings are clearly erroneous or the court erred in its application of the law. In a previous Supreme Court ruling, the court declared the county board was acting in an administrative capacity when considering a conditional use or special exception. This is the Antelope County case. And now you are asking for the county board to act in a quasi-judicial capacity. This capacity has already been assigned to the board of adjustment by statute at the county, city, and village level. Fourth, the Supreme Court established the procedure of appeal in Olmer. If appeals were given to the county board, they could be set up much different than procedures for an appeal. They could hear it as a public hearing, much like a county board does now when charged with final approval of a conditional use or special exception; they could review the planning commission's record of proceedings, much like a petition in error; or they could start from scratch with the applicant, much like a trial de novo. This could be different in each county. This would potentially provide grounds for an appeal regarding the court appeal procedure of a county board-appealed conditional use or special exception. You're also asking the county board to rule on whether the aggrieved party actually has standing to bring an appeal. I ask you to reject this bill, as it potentially adds confusion to a system that has finally had some understanding. And in this case, especially after hearing Senator Campbell's comments and Mike's comments, this could be put in the statutes for a county of the primary class if you chose to do that. Out-state Nebraska has very few counties at this point that does have decisions on special exceptions or conditional uses made by the planning commission. Knox County is one that I'm aware of. At this point, a lot of us...myself, I deal with five cities of the second class and also a village. And right now, the appeal procedure is the same. And that was stressed when this was adopted back in 2004--when LB1008 was passed in 2004--to try to get those to be the same, at least with first-class, second-class cities; villages; and counties. So at that point, you've heard my reasons; I'd be happy to answer any questions. [LB970]

SENATOR AVERY: Thank you, Mr. Johnson. Let me start by asking you: Did the board to which you belong that is a part of NACO approve this position? [LB970]

JOHN JOHNSON: Yes. [LB970]

SENATOR AVERY: So you had a full discussion within the board. [LB970]

JOHN JOHNSON: Yeah, we have a legislative committee just in Planning and Zoning. [LB970]

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SENATOR AVERY: And NACO itself, though, is neutral. [LB970]

JOHN JOHNSON: Right. [LB970]

SENATOR AVERY: Okay. Just wanted to clarify that. Questions from the committee?
Senator Krist. [LB970]

SENATOR KRIST: Thank you, Chair. Help me understand. The city of Lincoln is doing it one way; the county in Lincoln--Lancaster--is doing it a different way. Yet you're saying that every county and city of the first class is doing it the same way, based upon your testimony. [LB970]

JOHN JOHNSON: Right. And I'm not 100 percent positive, but I would assume that a city of the primary class--there's something in there that allows--in statutes--allows them to do it differently. [LB970]

SENATOR KRIST: So your differentiation, then, becomes municipal, first class, second--whatever the class might be...not necessarily that you disagree with the legislation--making it the same inside Lancaster and the city of Lincoln. Your objection is to carrying that forward into cities of lower class. [LB970]

JOHN JOHNSON: Right. Correct. Right now, in Chapter 23 it'd apply to counties and not to anybody else. If we amended Chapter 19 and perhaps Chapter 17 as well to make it consistent in the other communities or just assign this to counties of the primary class, then we'd have some consistency built up, not only in Lancaster County but the rest of the state. [LB970]

SENATOR KRIST: Did you talk to Senator Campbell before about...? [LB970]

JOHN JOHNSON: No, I didn't. [LB970]

SENATOR KRIST: Okay. Well, the potential there is--what we have is: Good law for Lincoln and Lancaster not necessarily--in your view--would be good law for the rest of the state, in a differentiation of...I know Omaha and Lincoln do things differently than the rest of the state does 99.9 percent of the time. So thanks for that definition and differentiation. I appreciate your testimony. [LB970]

JOHN JOHNSON: You're welcome. [LB970]

SENATOR AVERY: Anyone else? Seeing none, thank you, Mr. Johnson. [LB970]

JOHN JOHNSON: Thank you. [LB970]

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SENATOR AVERY: Any other testimony in opposition? Anyone wish to testify in the neutral position? Senator Campbell. [LB970]

SENATOR CAMPBELL: Thank you, Chairman Avery. We would be glad to work with the committee in terms of whether it needs to be in a particular class of county. Senator Landis--to answer Senator Price's question a little bit--was the one who brought it forward in 2004. And I think that Mr. Johnson was very good in clarifying for you why that was brought, because the county board was actually--in the action that it had--was being appealed to, like a zoning appeals board or a board of adjustment, depending on what the county called it. And I think, at that point, probably Senator Landis thought that it would be better--if the county board was hearing it initially--that it go to district court. The practice in Lincoln and Lancaster...and Senator Krist is correct--I mean, it's been put into place, I think, to help the applicant here shorten that system time that they as a person who's bringing forth a development goes through that process. But we would be glad to work with the committee. To answer Senator Krist's question: We're very proud in Lincoln and Lancaster County; we have 42 joint departments, committees, agencies, commissions. We think we lead the nation in that. And when I was on the county board, I used to take calls from all across the country saying: How do you do that? We actually started with the joint health department many, many years ago, and then the planning department came. But it's just been a great practice for the county and the city. [LB970]

SENATOR KRIST: Can I respond? [LB970]

SENATOR AVERY: Yes, you may. [LB970]

SENATOR KRIST: Thank you so much for that. And I am serious; there are many changes that we've heard, in terms of consolidation, that bring both economic and good change to city and county government. And, as you know, down the road we have the same situation; so thank you. [LB970]

SENATOR AVERY: Thank you. [LB970]

SENATOR CAMPBELL: Thank you for your question. [LB970]

SENATOR AVERY: Any other questions? Thank you, Senator Campbell. [LB970]

SENATOR CAMPBELL: Thank you very much. [LB970]

SENATOR AVERY: That ends the hearing on LB970. I see that Senator Fulton has arrived, and we will now move to LB1039--LB1039. Welcome, Senator. [LB1039]

SENATOR FULTON: Mr. Chairman. 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

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District 29 in the Legislature. I'm introducing LB1039, which is the Fire Extinguishing Certification Act, to enhance public safety and reduce risk of property damage by requiring certification by the State Fire Marshal for servicing of certain fire extinguishing equipment, specifically: number one, portable fire extinguishers, and number two, pre-engineered fire-extinguishing systems, both of which are defined in Section 2 of the green copy of your bill. To be certified, one would have to submit proof of manufacturer's certification or other publicly recognized certification as well as proof of sufficient liability insurance. An annual certification fee of up to \$100 is required to maintain certification and to address the costs of administering the certification program. According to the State Fire Marshal, there are over 900 fire incidents in which what we are calling a "pre-engineered fire-extinguishing system" was present or partially present at the location of the incident. While hard data as to the role that improper inspection played in these incidents is not readily available, it may be stated that a standard for minimum servicing qualifications would mitigate against the number and extent of these incidents. Lastly, subsection (5) of Section 2 of the green copy of the bill defines servicing of pre-engineered fire-extinguishing systems in terms of applicable NFPA codes--National Fire Protection Association codes--as adopted by the State Fire Marshal. If the Fire Marshal were to adopt a more recent version of the NFPA code, licensing similar to that proposed in LB1039 would indeed be necessary. Concluding, I ask the committee to advance LB1039, as it will provide the public with a threshold safeguard to ensure that fire-suppression and extinguishment equipment work properly and that loss of property and life can be further mitigated. [LB1039]

SENATOR AVERY: Thank you, Senator. I'm actually surprised that we didn't already have this in law. [LB1039]

SENATOR FULTON: I was too. [LB1039]

SENATOR AVERY: Yeah. [LB1039]

SENATOR FULTON: There'll be a gentleman to follow that will testify and provide probably more-detailed information than I can. But this was a surprise to me. And that, incidentally, is why I had some interest in this. [LB1039]

SENATOR AVERY: And this does demonstrate that you're not completely opposed to government regulation. [LB1039]

SENATOR FULTON: Just a little. [LB1039]

SENATOR AVERY: (Laugh) All right. Questions from the committee? Senator Price. [LB1039]

SENATOR PRICE: Thank you, Chairman Avery. Senator Fulton, my first question just

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deals with: Where is this going to be applicable? Because, you know, like, so I have a building that has...we have certain statutes that require fire extinguishers, correct? So this isn't--this isn't going to run into problems? Because, like, I had an ice cream store; I had to have a fire extinguisher. So my fire extinguisher, then, for that store--because I had to have one because I had the store there--would have to be a certified fire extinguisher, right? [LB1039]

SENATOR FULTON: Well... [LB1039]

SENATOR PRICE: Because some other statute told me I had to have a fire extinguisher. Now we're saying anybody who is told in statute to have a fire extinguisher will now have to have one certified. [LB1039]

SENATOR FULTON: That's not...this bill specifically is for those who inspect and provide the certification. So those who inspect fire extinguishers and the other pre-engineered fire-extinguishing systems--there would be a standard in place as to certify those who are doing the inspections. [LB1039]

SENATOR PRICE: Okay. So it's not something levied on someone who owns a store--or who has to have one. Great. That's what I wanted to make sure. Thank you. [LB1039]

SENATOR AVERY: Senator Sullivan. [LB1039]

SENATOR SULLIVAN: So are you saying, right now, under present circumstances, that name on the tag of a portable fire extinguisher--that name is not certified? I mean, they--anybody that we trust can come in and check that fire extinguisher. [LB1039]

SENATOR FULTON: That... [LB1039]

SENATOR SULLIVAN: And this means that that person would have to be certified? [LB1039]

SENATOR FULTON: That's--yes; that's my understanding. Now the gentleman to follow will be able to answer this with more specificity. But that's my understanding, that those tags that we see--there's not any threshold or minimum requirement for one to be able to provide that tag. That's how I understand it. And so by putting forward LB1039, we would be putting in place a system such that one could be certified in order to test. And this isn't so...I'll tell you my experience with this. We used to have an engineer who was specifically focused on NFPA--National Fire Protection...the fire protection codes. There are a lot more moving parts these days, so you have to have an actuator in order to allow--you know, shut off water and turn off water. There's actuating devices that would enable that to put out a fire. So there needs to be, from time to time, an inspection,

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because we have moving parts in a lot of our pre-engineered fire-suppression systems. And my understanding is that there is no credential in place by the state that says that one is competent to inspect these systems. [LB1039]

SENATOR SULLIVAN: But what you're suggesting, then, is that the certification would have to apply to anybody who puts...whether it's a small fire extinguisher or one that's more complicated. [LB1039]

SENATOR FULTON: Yes. [LB1039]

SENATOR SULLIVAN: Okay. Thank you. [LB1039]

SENATOR FULTON: Yeah. [LB1039]

SENATOR AVERY: Senator Price. [LB1039]

SENATOR PRICE: Thank you, Chairman Avery. Now I can finish up my thought; I had multiple things going on. Okay. So now we go and we do this. Are we going to end up having a bottleneck of people who are certified, because we don't know--we haven't...I haven't seen yet what that level of training is to be certified--to certify a person that can ensure a fire-extinguishing system...when we talk about a system, it may be quite expansive. A charged cylinder is another deal. Are we...if we enact this and we have 1,500 places that are due for an inspection--because, obviously, they have a cycle, a life cycle there--all of a sudden, now we can't get enough inspectors? [LB1039]

SENATOR FULTON: I'm not positive that potential exists. But that's part of the reason I'm bringing the bill. [LB1039]

SENATOR PRICE: Great. [LB1039]

SENATOR FULTON: I mean, let's find out. I mean, there's a certain level of safety that the public expects. And so at this point I'm saying that there is no, you know, there's no minimum threshold by which one would go and affix a tag or to inspect a pre-engineered...and it's the pre-engineered systems that is the most, you know, that has caught my attention the most. And we'll hear more about that. [LB1039]

SENATOR PRICE: Well, I appreciate that, and I fully agree with you, Senator Fulton. I just want to make sure that--we do this, and now every single...you'd have to have a lot of people out there over an expanse of the state. And we may have to have a incremental--or phase it in... [LB1039]

SENATOR FULTON: Sure. [LB1039]

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SENATOR PRICE: ...to make sure that we're not shutting things down in all the different...and you just think of the restaurants and hotels... [LB1039]

SENATOR FULTON: Right. [LB1039]

SENATOR PRICE: ...where we'd be hurting in short order. But thank you. [LB1039]

SENATOR FULTON: Yup. [LB1039]

SENATOR AVERY: Senator Krist. [LB1039]

SENATOR KRIST: Thanks, Chair. Senator Fulton, I was going to ask till the closing, but I'll just ask it now: Who brought the bill to you or brought it to your attention? [LB1039]

SENATOR FULTON: Actually it was a gentleman that's going to follow me--his name is R. J. Lipert--first put this on my radar screen. And it came to me...I mean, this is--for lack of a better term--an organic, grass-roots bill. I mean, it was something that...he knew I was a senator; he knew that I had--I was an engineer and I had some interest in public safety and brought this to me back last summer. And we've looked into it and said: Yeah, indeed there appears to be a need. So, yeah. [LB1039]

SENATOR KRIST: Do you know what the opposition will be? [LB1039]

SENATOR FULTON: I don't; I guess we'll find out. [LB1039]

SENATOR KRIST: Okay. Thank you. [LB1039]

SENATOR AVERY: Okay, thank you. [LB1039]

SENATOR FULTON: Okay. Thank you, Mr. Chairman. [LB1039]

SENATOR AVERY: We'll now take proponent testimony. Welcome. [LB1039]

R. J. LIPERT: (Exhibit 1) Good afternoon, Senator Avery and committee. R. J. Lipert, L-i-p-e-r-t. I am a...should I begin? [LB1039]

SENATOR AVERY: Sure. [LB1039]

R. J. LIPERT: Okay. R. J. Lipert, which...I am president of General Fire and Safety Equipment Company. I am also chairperson for the legislative committee on portable fire extinguishers and pre-engineered wet and dry chemical fire-suppression systems for the Nebraska Association of Alarm Companies here in Nebraska. The alarm...the Nebraska Association of Alarm Companies is made up of 26 companies in fire alarm

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and security businesses throughout Nebraska. I currently sit on several committees, including the state of Nebraska Fire Appeals Board, the city of Lincoln Fire Sprinkler and Chemical Examining Board. I am a graduate of Oklahoma State fire protection and safety engineering technology school, with a B.S. in science. This bill came to the State Fire Marshal back in 2006. At that time we discussed the bill with them--or information about this type of bill. At that time they recommended that we bring the bill forward as an industry, and we've been working on it the last couple years and are now bringing it forward to you. We believe that technicians servicing fire protection systems, including the restaurant, dry chemical, spray-booth types of operation systems and lifesaving devices--fire extinguishers--should have factory-trained certifications--the persons servicing them--or certified by a trained and testing agency and requiring a minimal amount of liability insurance. This legislation would give the State Fire Marshal the approval to accept such certifications and insurance to protect lives and assets throughout Nebraska. People who may benefit from this legislation would include, but not be limited to, manufacturing, industrial, hospital, schools, small businesses, local fire departments, insurance companies--including Joe Elliott, who may be for this type of legislation. [LB1039]

SENATOR AVERY: Does that conclude your testimony? [LB1039]

R. J. LIPERT: It does. [LB1039]

SENATOR AVERY: Okay. Questions from the committee? Senator Sullivan. [LB1039]

SENATOR SULLIVAN: Thank you, Senator Avery. Well, first of all, I'd like to know the degree of complexity between a portable fire extinguisher and a pre-engineered fire-extinguishing system. And is the level of expertise needed the same for both of them? [LB1039]

R. J. LIPERT: We actually propose two different certifications: one for fire extinguisher servicing technician--portable fire extinguisher technician--and one for pre-engineered fire-suppression systems. So there actually would be...and this would fall into the State Fire Marshal--I guess it would fall into their decision-making process on setting up the two different licenses. But there would be two different licenses for these types of technicians. [LB1039]

SENATOR SULLIVAN: Same fee? Same certification process? [LB1039]

R. J. LIPERT: There would be...the certification process would...again, it's somewhat left up in the air at this point--just either factory-training certification or a other agency that would certify the technician that they were certified to work--install, maintain--whether it be a fire-suppression system or a portable fire extinguisher. [LB1039]

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SENATOR SULLIVAN: Who might that agency be? [LB1039]

R. J. LIPERT: There are several agencies out there that do this type of testing. One is Fire Protection Consultants; another one is the National Association of Fire Equipment Distributors. [LB1039]

SENATOR SULLIVAN: So, in other words, they would have to pay the certification fee, but then they'd probably also have to pay this agency to get them certified? [LB1039]

R. J. LIPERT: Or factory training. I guess one of the three of those types of ideas, yes. So it would be some expense for the person to become certified. [LB1039]

SENATOR SULLIVAN: That might only inspect one in a community, potentially. [LB1039]

R. J. LIPERT: Then they only inspect one system or one fire extinguisher? [LB1039]

SENATOR SULLIVAN: Yeah. Um-hum. Um-hum. [LB1039]

R. J. LIPERT: If they wish to inspect, I believe that they should be certified to do that, and that's why we're here today, I believe. [LB1039]

SENATOR SULLIVAN: Okay. [LB1039]

SENATOR AVERY: Senator Price is next. [LB1039]

SENATOR PRICE: Thank you, Chairman Avery. I know it pains you. (Laughter) Mr. Lipert... [LB1039]

R. J. LIPERT: Yes, sir. [LB1039]

SENATOR PRICE: ...in my limited exposure to fire equipment and everything in the military, what we had to do was run down to our fire station--our military fire station--and our firefighters station would check all of our gear, and they would certify the gear; and we'd go to jail if we didn't do it right. So my question is: Could not a local fire office already have a certification to a level required...I mean, aren't they already required to have...and couldn't they be the technicians to do this without training from some outside, independent organization? Are they qualified? [LB1039]

R. J. LIPERT: Fire professionals out there, the fire service--oftentimes we don't find that they have the training to do this. It's not part of their normal activities and training to...especially in systems. Portable fire extinguishers, possibly. A lot of the communities--most communities don't have a person who's trained to do that, though, at

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the local fire department. [LB1039]

SENATOR PRICE: So then the next logical step is we have fire marshals granting certificates of occupancy that aren't qualified to know if the system is properly charged and set up? [LB1039]

R. J. LIPERT: Correct. At this time, the State Fire--or fire marshal agencies may look at a system to see if it's in place, then they look for the service technician's tag, and then he--then there's always a report that follows the tag--especially on a system--that would explain any deficiencies, things that may or may not be right with the system. So a company such as ours, General Fire and Safety, would go out and maintain those types of systems. And then the code officials would then come in there, review the paperwork, and make sure that it met proper standards and make sure the system was up to date, charged, things of that nature. Does that answer your question? [LB1039]

SENATOR PRICE: And the fire marshals are on board with you on this? Or have you talked to the fire marshal association of Nebraska--I don't know if that exists, but you understand what I'm saying. [LB1039]

R. J. LIPERT: We have spoke with them. They were for it in 2006, and I believe that they are still for it today. [LB1039]

SENATOR PRICE: All right. Thank you very much, Mr. Lipert. [LB1039]

R. J. LIPERT: Yeah, no problem. [LB1039]

SENATOR AVERY: Senator Krist has a question. [LB1039]

SENATOR KRIST: Chairman. Thank you, Mr. Lipert, for coming in. I sit on another committee, and in that other committee we are currently looking at legislation that would make it mandatory for new home construction to have fire-suppression systems in the home. And the firefighting folks in the state would like to make that mandatory for every home. Now I'm hearing that we're going to have to have a certification process for every sprinkler system, whether it's pre-design or whether it's a bottle that sits in place. I'm concerned that what we're inventing is a new industry. I love fire safety. In fact, I'm going to put a suppression system in my kitchen in my home, and I'm looking at a whole-house system. But it seems to me that what I'm hearing--in fragments, in different committees--is that we are--we're, no pun intended, we're charging your extinguishers for you, because now we've got another layer involved with the certification and testing. So my question, specifically, is: You're a private business; you sell extinguishers; you service extinguishers; you service certain kinds of systems--not all systems. So another company who installs certain kinds of systems--not all systems--in rural Nebraska has the same mandate here, maybe, in the near future; and they have installers that install

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certain kinds of systems, are qualified on the systems--not all systems. How do you propose that you're going to be certified in this state--to be licensed or certified to be a certifier, if you will, to inspect systems? Are we inventing...? And my question goes back to kind of dovetail with Senator Price, in a way: Where are the fire marshals on this? Because it seems to me that it's all their certification system that we're ultimately getting to. Is that question specific enough for you? [LB1039]

R. J. LIPERT: I'll do my best in answering. [LB1039]

SENATOR KRIST: Okay. Thank you. [LB1039]

R. J. LIPERT: I believe that...well, first of all, the NFPA, the National Association of Fire Protection--they mandate where fire extinguishers are supposed to be located; they mandate how many fire extinguishers you must have; they mandate if you must have a system and how often it should be maintained. NFPA 10, for portable fire extinguishers, 2009 or 2010, states that a person must be certified to inspect fire extinguishers. So at some point this could come down the line anyway. The state of Nebraska has not adopted that edition yet; they're still back a few more years. But as soon as they adopt that, there could be something that they will have to look into anyway. This is sort of moving it in the right direction. So right now, as a company--and I also am here for the Nebraska Association of Alarm Companies--but we service the extinguishers that are out there and the systems that are out there that are required by code to be there. So there's not additional sales that will happen due to this certification; it will just maintain that anybody servicing this equipment is certified to do so. As for the different types of systems, somewhat...and I have to be very careful here to say that a fire extinguisher is a fire extinguisher. There are different types; there are different manufacturers--but they all fall along the same basic line of inspection. We provide a 13-point inspection of each fire extinguisher. As for systems, all throughout the country...and I think you were alluding to the fact that if we install one type of system, how are we going to--or somebody else is--inspect that type of system? Well, to inspect that system that we install, a person would need to be trained on that type of system, maintain the proper manufacturer's documentation--a service manual to do that type of work. If they have been certified by the manufacturer and have a service manual, then they would be able to service that type of system. [LB1039]

SENATOR KRIST: And you see that certification being managed by the Fire Marshal? [LB1039]

R. J. LIPERT: That type of certification and/or an outside agency. When a person...what we're asking for and hoping for is that a person will bring that type of certification along with an insurance to the State Fire Marshal and say: Here is my certification; here is my insurance; here is my fee--and ask for a licence, I guess. [LB1039]

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SENATOR KRIST: Thanks for a great answer to a very lengthy question. [LB1039]

R. J. LIPERT: No problem. And, I believe, one other point on that, as for the...to Senator Fulton, on the time line. We have a time line developed so that during the first several years, that there would be a...even a new technician could get a--kind of a apprentice type of license and pay a small fee to get this license, so that then they could be working towards their full license. Maybe it's a year period; I'm not sure what it is. But that's something that--some sort of apprentice license that we've come up with to alleviate some of the bottleneaking problems that could occur. [LB1039]

SENATOR AVERY: Let me ask you: Does the State Fire Marshal have jurisdiction to regulate private residences? [LB1039]

R. J. LIPERT: No. I don't believe so. This bill would only pertain to...this would not include households. So it'd only be commercial, industrial, public buildings that the State Fire Marshal has jurisdiction. [LB1039]

SENATOR AVERY: So the Fire Marshal cannot tell me in my private residence whether or not I can have fire hazards, right? [LB1039]

R. J. LIPERT: That's correct. [LB1039]

SENATOR AVERY: So I can establish--I can create fire hazards in my home, and there's not much or anything that the Fire Marshal can do about that. [LB1039]

R. J. LIPERT: They would not regulate if you had...they would not regulate a fire extinguisher in your facility or a fire-suppression system in your facility. Now I think there might...Senator Krist might be talking about some other types of systems; that's another ball game. But at this point, no, there's not another system that needs oversight. [LB1039]

SENATOR AVERY: So my fire extinguisher in my kitchen is...I mean, I can hire anyone to service that, to inspect it, that I want, whether they're certified or not. Right? [LB1039]

R. J. LIPERT: Correct. [LB1039]

SENATOR AVERY: If, however, I used my home as a day care, the Fire Marshal would be able to regulate that, and it would come under the authority of this bill. [LB1039]

R. J. LIPERT: That's correct. [LB1039]

SENATOR AVERY: Okay. Any other questions? Seeing none, thank you for your testimony. [LB1039]

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R. J. LIPERT: I have one other letter I'd like to have read into the... [LB1039]

SENATOR AVERY: The record. [LB1039]

R. J. LIPERT: ...the record, yes, if I may. [LB1039]

SENATOR AVERY: Yes, you may distribute that. [LB1039]

R. J. LIPERT: Okay. [LB1039]

SENATOR AVERY: Give it to the page. [LB1039]

R. J. LIPERT: All right. Thank you. [LB1039]

SENATOR AVERY: We will get a copy. Are you finished? [LB1039]

R. J. LIPERT: I am finished, yes. [LB1039]

SENATOR AVERY: Okay. Thank you very much for your testimony. [LB1039]

R. J. LIPERT: Thank you very much. Yes. Have a nice day. [LB1039]

SENATOR AVERY: Additional proponent testimony. Welcome, Mr. Stilmock. [LB1039]

JERRY STILMOCK: Thank you, sir. My name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my client, the Nebraska State Volunteer Firefighters Association, in support of LB1039. My client has taken a position of support primarily because of the life-safety issues that we believe are present in the bill. I think it's important to recognize that--the astonishment of Senator Fulton--that there wasn't a certification process for something, in terms of the level of the pre-engineered fire-extinguishing service; frankly, it caught me by surprise as well. Listening to the testimony, I would offer, please, a couple of comments. Number one, if there were paid or volunteer departments that had the appropriate training that they should be able to obtain certification from the Fire Marshal, we'd ask that that fire department member not have to pay a fee to the Fire Marshal, as a public servant, if they are providing that type of service. And, frankly, I'll have to find that out--and if you'd allow me to respond back to the committee whether or not paid or volunteer firefighters are, in fact, performing a service in looking at the hand-helds. But I...certainly if the committee felt that they should be--the bill should go forward and certification should take place and certification then should require payment of a fee, I'd ask that the committee consider, then, allowing the Fire Marshal to waive the fee for a member of a volunteer or paid fire department. I haven't spoken specifically with the Fire Marshal on this issue, but, Senator, you raise a

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good point in asking about a home, in that it's not clear from the bill. And perhaps that might be a area of clarification that certification would not be required for a service person servicing an in-home hand-held device. The only other thing I gathered in having an opportunity while you were listening and I was doing some additional reading was in the fiscal note. Cathy Wann from the Fire Marshal's office was the one that authored the information, and she estimated--and I haven't spoken to her; I don't know what her estimate was based upon--that she would anticipate 69 people or 69 entities obtaining certification. So the number, at least she estimated, was somewhat smaller than the discussion by the committee. Are we going to have a bottleneck of trying to get certification and not having service provided to the community--communities in Nebraska? But, overall, I just want to express our support for the measure and ask the committee to consider this in moving forward to General File. Thank you. [LB1039]

SENATOR AVERY: Thank you, sir. Questions from the committee? Senator Sullivan. [LB1039]

SENATOR SULLIVAN: Thank you, Senator Avery. Well, Jerry, I'm just trying to figure out the impact that this will have on our rural fire departments--you know, number one, the cost. I think the bill also said something about requirement...liability insurance. How often do they have to be recertified? I mean, these departments are stretched already. And I don't know that...and they probably have the capabilities to do this right now; I know ours does. And so what other steps are we putting on these people? [LB1039]

JERRY STILMOCK: Certainly none that...on the volunteer side of life, it was merely looked upon as a lifesaving measure, not so much that the volunteers would be the ones out certifying. [LB1039]

SENATOR SULLIVAN: No, but they're the ones that are going to have to be certified. [LB1039]

JERRY STILMOCK: Well, if the volunteers are the ones out certifying the hand-held, then we want to make sure that we have specific provisions for a public servant, such as that--as a volunteer firefighter--that there not be a certification fee that it would have to be paid. Nor would there need to be separate insurance paid--or proof of insurance be produced, because that person under the authorship of the governmental entity would have protection from that governmental entity anyway, because they would have liability insurance as a public servant under the statutes already existing for volunteer firefighters. But you raise a very good point--is right now it would read one and two: pay the certification fee--actually, three--pay the certification fee, become certified, and, three, become certified upon proof of carrying liability insurance, which dovetails into another piece--of it probably would be helpful to have a dollar amount of what that liability insurance would be. But as I stepped up, I looked, and I didn't notice anybody by appearance from the Fire Marshal's office, so I don't take it that there's anybody in the

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room to testify as to what they believe a reasonable amount would be for those that are not in the governmental sector, such as volunteer or paid firefighters. [LB1039]

SENATOR SULLIVAN: And then do you have any idea where they came up with the 69 individuals? [LB1039]

JERRY STILMOCK: I don't. I don't know where Ms. Wann came up with 69 individuals. [LB1039]

SENATOR SULLIVAN: Hmm. Okay. [LB1039]

SENATOR AVERY: Senator Karpisek. [LB1039]

SENATOR KARPISEK: Thank you, Chairman Avery. Mr. Stilmock... [LB1039]

JERRY STILMOCK: Sir. [LB1039]

SENATOR KARPISEK: ...if Senator Janssen was here, I bet he could take a stab at how much insurance they should have. (Laughter) Is this a big problem? Are we...? Does somebody have a fire and it's not charged properly or...? [LB1039]

JERRY STILMOCK: I don't have any factual situations that this has occurred and the fire extinguisher has failed. I think the bottom line is my client wants to do whatever it can to ensure in a life-safety area that the state of Nebraska is doing whatever it can to ensure that when that trigger is pulled, that the mechanism works. Other than that, Senator, no, I do not have any situations. [LB1039]

SENATOR KARPISEK: And I agree with that 100 percent, but I understand what Senator Sullivan is saying. We've got people out there volunteering, spending enormous amounts of time and probably money to be on a department. Now if they have to get certified and do all these things...and if there was a problem, then I...okay, let's look into it. But I don't want to put any more on them and then make it even harder for someone who--Scotty's ice cream shop--that needs to get certified that can't, because he doesn't have anybody out there to certify it in western Nebraska, and so he has to pay somebody to drive out from Lincoln to certify his fire extinguisher. [LB1039]

JERRY STILMOCK: And point well taken. In parallel to what Senator Sullivan raised is if there are additional burdens placed on volunteers, then we would want to work with the committee to make sure that, number one, there wasn't additional tasks being placed on volunteers unknowingly; two, that they wouldn't be required to pay a fee, that that fee be waived; and, three, that liability insurance not be a requirement for a paid or volunteer firefighter that would be doing certification. [LB1039]

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SENATOR KARPISEK: Great. Thanks, Jerry. [LB1039]

JERRY STILMOCK: Thank you, sir. [LB1039]

SENATOR KARPISEK: Thank you. [LB1039]

SENATOR AVERY: Senator Krist. [LB1039]

SENATOR KRIST: Thank you, Chair. Thanks for testifying, Jerry. I don't want to get into a conflict of interest between two of your clients potentially, but I see a huge issue on the horizon. If new home builders are going to be required, based upon other bills that are pending... [LB1039]

JERRY STILMOCK: Yes, sir; I'm with you. [LB1039]

SENATOR KRIST: ...legislation pending. [LB1039]

JERRY STILMOCK: Yes. [LB1039]

SENATOR KRIST: If new home builders are going to be required to put home--residential--extinguishers in, then potentially that 69 figure could become 169 overnight. And potentially, the folks who are going to be hurt by this are going to be the volunteer fire departments who are going to have those new communities that they're going to have to handle. Now, granted, this just might be a boon for business--creating businesses--which is what I was alluding to earlier. And I'm--again, I'm all about safety, and I'm doing it for my own family. But when all these things dovetail together...and we'll exec on it. But talk to me about what you're, if you don't mind, about what you potentially would see should that all come together in the perfect storm. [LB1039]

JERRY STILMOCK: The households...I did speak with the Fire Marshal in relation to the household sprinklers. And because the Fire Marshal does not regulate household sprinklers, the position was: No comment--related to me. The jurisdiction over the residential structures is going to be the local community, as to whether or not...and so I guess that's the Fire Marshal's piece of it. The estimate of 69 by the Fire Marshal's office in the fiscal note for this measure would not enter into the homeowners' portion of it; it would just be on the commercial side, Senator. So I need to keep trying to understand the impact that you have in your mind, because I'm not tracking right now, sir. [LB1039]

SENATOR KRIST: Okay, here, I'll help you a little bit. And then maybe I'm off track, so maybe you can help me. But my track is we were told that fire extinguisher systems, when they're not correctly serviced and certified and inspected, were less than 40 percent. Those that were certified and inspected, as per the manufacturers'

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specifications, ran above 90 percent. [LB1039]

JERRY STILMOCK: Um-hum. [LB1039]

SENATOR KRIST: So, obviously, if that code that we're discussing goes forward and if everybody accepts the fact that residential is in there, this is going to apply to fire extinguisher systems across the state. So there's far-reaching implications that a bill that we would look at here--and it would require any fire-extinguisher system, whether it's commercial...and I don't see a differentiation in here between commercial or residential when it comes to the inspection cycle. That's the track I'm on. [LB1039]

JERRY STILMOCK: Okay. The...it...I don't see it in LB1039... [LB1039]

SENATOR KRIST: Okay. [LB1039]

JERRY STILMOCK: ...that the Fire Marshal is governing only over commercial. But that's the only area that the office governs over, is commercial. The Fire Marshal's office doesn't have any jurisdiction over residential. [LB1039]

SENATOR KRIST: Okay. [LB1039]

JERRY STILMOCK: The pre-engineered fire-extinguishing system is restricted, as I understand it, to those areas that are outlined only in Senator Fulton's bill--that it's only as shows up for the specific, listed items: the grease-removal systems, so on and so forth, the paint systems--those items specifically listed. [LB1039]

SENATOR KRIST: So you see a clear line between residential and all other. [LB1039]

JERRY STILMOCK: In terms of the certification process? Yes. [LB1039]

SENATOR KRIST: Okay. [LB1039]

SENATOR AVERY: Any more questions? [LB1039]

SENATOR PRICE: I would just make a statement. [LB1039]

SENATOR AVERY: Senator Price. [LB1039]

SENATOR PRICE: Mr. Chairman, thank you. For Senator Krist, that it does point out on page 3, line 2: "occupancy regulated by the State Fire Marshal." So accordingly, those under the jurisdiction would be regulated by the Fire Marshal. [LB1039]

SENATOR KRIST: Thank you for that clarification, Senator. [LB1039]

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SENATOR AVERY: Which does not currently include residential homes. [LB1039]

JERRY STILMOCK: Correct, sir. Yeah. [LB1039]

SENATOR AVERY: Any more questions? Okay. [LB1039]

JERRY STILMOCK: Okay. [LB1039]

SENATOR AVERY: Thank you. [LB1039]

JERRY STILMOCK: Thank you, Senators. [LB1039]

SENATOR AVERY: Additional proponent testimony? All right. We'll move now to opponent testimony. Anyone wish to oppose LB1039? Any neutral testimony? Senator Fulton, welcome back to the table. [LB1039]

SENATOR FULTON: Thank you, Mr. Chairman. I'll just go quick, and if there are any other questions, then so be it; otherwise, I'll be on my merry way. The...Senator Price beat me to the punch, pointing out this falls under the purview of that which is regulated at present. So I think it was page 3, line 2, as Senator Price said. So we're not talking about residential; that wasn't my intention--so to make that clear. Let's see, small towns facing a hardship: good point; had not considered that thoroughly. If there is a way to go forward, perhaps we could look at pre-engineered systems--something that catches my eye, at least right now, the most. And if indeed the committee decides to move incrementally, as Senator Price has suggested, that could be a way forward. There are also some questions about, you know, level of insurance; I think Senator Karpisek brought that up. And we've left a lot of the authority under the Fire Marshal's office. Rather than spell out with specificity in this bill--you know, this insurance and this rate and whatnot--we've put a maximum rate. And the Fire Marshal can determine whether...up to \$100...and then the appropriate level of insurance. If that's something that this committee would like to see the legislative branch take greater control of, I'm certainly open to that. And lastly, this...there's another point about compelling need, and Senator Karpisek is following my line of thought with respect to legislation: Is it a good idea? Is there compelling need? Is there support? Is...? The need--I touched on it a little bit here, but I'll highlight it a little bit more. We actually--we worked with the Fire Marshal's office over the course of the summer. And he, you know, went out in the field, so to speak, to hear from folks across the state as to whether there might be a problem. And what we learned is--according to the State Fire Marshal--there were over 900 fire incidents in which a pre-engineered fire-extinguishing system was present or partially present; and so even though they were present, there was still an incident. So at least there is...that does not empirically say that, you know, if we had a higher level of inspection, it would have made those 900 fires go away; I mean, we can't draw that

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conclusion. But certainly we can conclude that some of those fires should have not occurred, because there was fire-suppression systems in place. So I don't know if it's a compelling need, but I think there is some need at least--anecdotally. And then lastly, I mentioned this also, and I want to point it out, because I did receive a letter from the Fire Marshal indicating that we have, let's see, in place right now...the NFPA codes that are in effect for Nebraska are the 2001 and 2000 year editions of NFPA code. The more updated, the newer code--specifically the 2007 edition--actually requires that the technicians be licensed. So were we to enact that NFPA code, then we would indeed have to conduct something that's envisioned in LB1039. So those are my closing shots. Are there any other questions? [LB1039]

SENATOR AVERY: Thank you. Thank you. Any more questions from the committee? Seeing none, thank you for that. [LB1039]

SENATOR FULTON: Thank you. [LB1039]

SENATOR AVERY: That ends the hearing on LB1039. We will now move to the next item on the agenda, LB767. Senator Scott Price. Welcome, Senator Price. [LB1039]

SENATOR PRICE: (Exhibit 1) Yes, good afternoon, Chairman Avery, members of the Government, Military and Veterans Affairs, and co-workers. My name is Scott Price, S-c-o-t-t P-r-i-c-e, and I represent the Legislative District 3, and I appear before you as a sponsor of LB767. Before I get into the details of LB767, I think it might be helpful to give some background. As you may recall, my priority bill last year was LB532. This bill authorized counties to enact ordinances to address a menu of issues. One of the issues counties can now address by ordinance is abandoned vehicles. And after LB532 passed the first round of debate on the floor, the Nebraska Bankers Association approached me about including language to require counties to contact owners and lien holders of abandoned vehicles before the county disposes of the vehicle. I believed then, as I do now, the issue they raised is worth considering. My concern last year was in bringing a new issue into the bill on Select File, an issue which was not vetted through the committee process. So I promised the bankers I would introduce the bill this year. LB767 requires any county which enacts an ordinance relating to abandoned motor vehicles to include provisions to notify the last registered owner and/or lien holder of the motor vehicle prior to the sale or disposal of the motor vehicle. Since introducing LB767, my office has worked with the Nebraska Bankers Association and the Nebraska Association of County Officials to address some concerns with the bill as introduced. The disagreement wasn't about whether or not counties should be required to contact the last known owner or lien holder of the vehicle but, instead, on how to approach the issue in statute. I have distributed an amendment which I believe is a more appropriate way to approach this issue. The amendment simply clarifies that a county ordinance is subject to notification requirements already in statute. They are found in Chapter 60-1903. As a representative of the Nebraska Bankers is here to provide a more

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detailed explanation, I will defer to him any questions; of course, I would answer if you have them to me. And I appreciate your attention to this issue and am happy, again, at this time to answer any of your questions. [LB767]

SENATOR AVERY: Thank you, Senator Price. Questions from the committee? Senator Giese. [LB767]

SENATOR GIESE: Thank you, Chairman Avery. Senator Price, most counties do this now anyway, or...? [LB767]

SENATOR PRICE: It is my belief that they have a way to go about contacting. We just wanted to make sure, well, that...it was in statute of 60-1903; there's a way. We just want to make sure that if an ordinance were enacted by a county now, that they would make sure that they followed those same procedures. And the testifier behind me can talk in much greater detail to that. [LB767]

SENATOR GIESE: All right. [LB767]

SENATOR AVERY: Any other questions from the committee? Seeing none, thank you. [LB767]

SENATOR PRICE: Thank you, Chairman Avery and the committee. [LB767]

SENATOR AVERY: Proponent testimony. Welcome. [LB767]

ROBERT J. HALLSTROM: Thank you, Chairman Avery, members of the committee. My name is Robert J. Hallstrom; I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB767. Senator Price has accurately...and that's H-a-l-l-s-t-r-o-m, excuse me. Senator Price has accurately described what happened last session. There were a number of changes to the bill. And I think between General and Select File, we identified that there was going to be specific authority granted to the counties under this new ordinance authority to deal with abandoned vehicles. The bankers association has been involved through the years with regard to not only the issues of seizure and disposition of property but abandoned motor vehicles, primarily with an eye--as we are with LB767--towards ensuring that there is a methodology or a mechanism in place for the lender, along with the owner, to be notified if their vehicle has been towed either by a public company or a private company or if it has been seized and subject to disposition by a governmental agency or the State Patrol. And we've been consistent in trying to make sure that, (a) there's notice provisions to the lien holder, (b) that any vesting of title in the county will only happen after those notice procedures have been satisfied, and that any disposition of the property is going to adequately address and take care of the interest of the lien holder. That is what LB767 is designed to do. We have a situation here where the

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ordinance--the NBA, with the eyes and ears of our membership, would still have a hard time chasing after 93 separate counties and the propensity for ordinances to be adopted. So we were interested in LB767 as initially drafted in putting something in that would say the county specifically has to have the notification provisions to provide the lien holder protection. We've dealt with it in the Nebraska Association of County Officials; they had suggested that they don't want a litany of folks coming up and suggesting specific changes to their ordinance authority. And so we found a, potentially, a little bit different way to skin the cat by referencing or cross-referencing to existing state law--under Chapter 60, the provisions that currently exist with regard to abandoned vehicles--in a little bit different context. We virtually were working up with--till the noon hour, with Senator Price's staff on putting together alternative language that would have tied in to Section 60-1903. The policy research folks had suggested that they would prefer for that cross-reference to identify all of the sections under 60-1901 through 60-1911. I don't know that the folks from NACO have had an opportunity to vet that particular issue. The NBA is satisfied with either approach, because it provides additional protection to the lien holders. With that, I'd be happy to address any questions. [LB767]

SENATOR AVERY: Thank you, sir. Any questions from the committee? Senator Karpisek. [LB767]

SENATOR KARPISEK: Thank you, Senator Avery. Mr. Hallstrom, I agree. I think this is the way to go, to find something already in statute. And I do understand where you're coming from. I just...my question is...sorry I'm babbling around. Is it that much money? I mean, if someone thinks it's an abandoned junk vehicle, is it really...? [LB767]

ROBERT J. HALLSTROM: Well, "abandoned," Senator, is a term of art; I don't think it necessarily means "junker." It's something by statute, and when you look at Section 60-1901 to 60-1911, it's got definitions. There are different statutes. It may be something--"abandoned vehicle" may be something that's left unattended for 24 hours on public property or in the highway right of way, and then it depends on whether a state agency--the State Patrol--or a county or a city or a village picks it up. So it's not necessarily...just because we use the term "abandoned"--doesn't mean "junker." So it could be a very valuable automobile that's subject to a security interest that for one reason or another someone doesn't come to pick up promptly. And we just want to make sure that if it gets to the point where somebody is going to either vest title in the county or dispose of it, that we have an opportunity to protect our interests. [LB767]

SENATOR KARPISEK: And I do understand that; it's hard to un-smash a car. [LB767]

ROBERT J. HALLSTROM: Or to get it back after it's been sold without having been notified. [LB767]

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SENATOR KARPISEK: Right. Is it going...do you think that this will make it any harder for, if the county does want to clean up a junkyard or a bunch of just junk vehicles, to try to find the last owner if there's not a title? Or how will that work, do you think? [LB767]

ROBERT J. HALLSTROM: I don't know, Senator. I suppose there could be some situations in that respect. Perhaps, you know, if...just haven't thought about this to any great detail--if there's some de minimus dollar amount below which you wouldn't mess with. Perhaps that's a way to address the junker. [LB767]

SENATOR KARPISEK: Most people that have them sitting around--they're worth a lot; that's why they have them, (laugh) in their opinion. [LB767]

ROBERT J. HALLSTROM: Yeah. [LB767]

SENATOR KARPISEK: Thank you, Bob. And I do see where you're coming from, and I agree. I guess my whole...the reason I liked Senator Price's bill last year was to clean up some of these junkyards. You wouldn't want it in the city. However, sometimes they're a mile outside of city limits, and it's terrible. So... [LB767]

ROBERT J. HALLSTROM: Um-hum. [LB767]

SENATOR KARPISEK: ...that's why I like it, and I just want to make sure that we can still do that sort of thing, but... [LB767]

ROBERT J. HALLSTROM: Yeah. I think in most cases you're going to have a motor vehicle certificate of title. The liens can be checked, identified--provide notice, and you're done with the system. [LB767]

SENATOR KARPISEK: It may be hard to find the title, like from your first car--an old Model T or something. [LB767]

SENATOR KRIST: Wow. [LB767]

SENATOR KARPISEK: I'm a little ornery today, I'm sorry. Thank you, Senator. [LB767]

SENATOR AVERY: It's all right. Any other questions? [LB767]

ROBERT J. HALLSTROM: That I expected. [LB767]

SENATOR AVERY: (Laugh) Thank you. [LB767]

ROBERT J. HALLSTROM: Thank you. [LB767]

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SENATOR AVERY: Any more proponent testimony? Any opponent testimony? You're going to be neutral; all right. Anybody in the neutral capacity? Welcome. [LB767]

BEVERLY NETH: (Exhibit 2) Thank you, Chairman Avery, members of the committee. I am Beverly Neth, B-e-v-e-r-l-y N-e-t-h, director of the Department of Motor Vehicles, appearing today to offer neutral testimony regarding LB767. I'm here to provide some information to the committee about the existing laws and regulations that govern abandoned motor vehicles. The DMV administers the abandoned motor vehicle statutes, found at Nebraska Revised Statutes 60-1901 to 60-1911. These statutes define the abandoned vehicles and set forth, among other things, the procedures regarding notice to owners and/or lien holders, vesting of title, state and local authority powers and duties, and law enforcement duties. The department has promulgated rules and regulations governing the disposition of abandoned motor vehicles, pursuant to these statutes, at 24 NAC 3. Section 003 of those regulations currently contains specific procedures for counties, cities, or villages for the disposition of abandoned vehicles. There are notice requirements for registered owners and lien holders and alternate procedures if the motor vehicle owner is unknown. The existing statute and regulations allow the title to the abandoned motor vehicle to vest in the government subdivision if the motor vehicle remains unclaimed after the required notice. The current statute and regulations have worked well for the disposal of abandoned vehicles for several years. Section 3 of LB767 includes very broad language regarding notice requirements. The lack of specificity could result in a variety of ordinances that differ from county to county regarding abandoned vehicles and possibly result in inconsistent public policy on when the DMV provides for vesting of titles. I understand there is an amendment that has been offered. However, we believe that the amendment should incorporate all of the existing statutes regarding abandoned vehicles. Nebraska Revised Statute 60-628 in the Rules of the Road provides for the definition of "local authority." "Local authority" includes "every county, municipal, and other local board or body having the power to enact laws, rules, or regulations relating to traffic." Local authorities have long had the power to enact traffic ordinances within their own jurisdictions, but they have to enact those ordinances consistent with the existing Rules of the Road. Uniformity in traffic laws is sound public policy. Likewise, the existing statutes at 60-1901 through 60-1911 occupy the field for dealing with abandoned vehicles and prescribe the process that local authorities, including counties, must follow with regard to abandoned vehicles. This ensures that, with regard to abandoned vehicles, the definition of abandoned vehicles, of public and private property, and the process for vesting titles will be uniform within the state of Nebraska. The existing laws do not take away a county's authority to deal with abandoned vehicles within its jurisdiction, but they are intended to harmonize the process. For the sake of uniformity and clarity, I respectfully request that the committee specifically reference existing statutes Nebraska Revised Statutes 60-1901 through 60-1911 within Section 3 of LB767. I'll be happy to answer any questions you might have. [LB767]

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SENATOR AVERY: Thank you, Ms. Neth. Any questions from the committee? I don't see any. [LB767]

BEVERLY NETH: Okay. I could offer a clarifying issue with respect to the de minimus value of a motor vehicle. Section 60-1902, I believe, speaks specifically to if a vehicle is untitled and without In Transits and the value of the vehicle is less than \$250. Title can vest in the authority immediately; they don't have to go through the notice procedures and all the process. So if you look at the statutes that are in place, they're certainly broad; they do offer good guidelines for the locals as well as law enforcement with respect to how to deal with abandoned vehicles when titling and vesting the titles of those vehicles. [LB767]

SENATOR AVERY: I think you sparked a question. [LB767]

BEVERLY NETH: Yeah. [LB767]

SENATOR AVERY: Senator Krist. [LB767]

SENATOR KRIST: Too late to get out of it now. [LB767]

BEVERLY NETH: Should have run. [LB767]

SENATOR KRIST: Don't...under the existing 60-1901 and 60-1911--refer me to the one...we...one of these laws covers having to be current-licensed to be in Nebraska, correct? I mean, you can't just have a car in your back yard that doesn't have a license plate on it. It either has to be in storage or it has to be licensed. [LB767]

BEVERLY NETH: You can have a car that doesn't have a license on it within your yard. However, locals have adopted ordinances, I believe, that determine how long that vehicle can sit there. Certainly our statute does talk about vehicles on private property. If you look at Section 60-1901, that really defines the variety of--what are the various mechanics of an abandoned vehicle: Is it on public property, with an In Transit, for more than six hours? Is it on public property unattended for 24 hours? Is it on private property without the owner's permission? Those kinds of things. I think specific to unlicensed vehicles, that flows towards those local ordinances--what they consider to be a nuisance within that jurisdiction. [LB767]

SENATOR KRIST: And does that 60-1900-series give the local jurisdiction the right to do...? [LB767]

BEVERLY NETH: It speaks specifically to local authority and the process that a local authority needs to go through to, one, determine a vehicle has been abandoned and, two, vest title. So I think, yes, it does give them the authority. And it is used every day

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across the state of Nebraska in every county; we do abandoned vehicles all the time.
[LB767]

SENATOR KRIST: Thank you. [LB767]

BEVERLY NETH: Um-hum. [LB767]

SENATOR AVERY: Senator Sullivan. [LB767]

SENATOR SULLIVAN: Thank you, Senator Avery. So it begs the question: Do we really need this legislation? [LB767]

BEVERLY NETH: Well, I think there is some need to give the locals the authority to adopt the ordinances within their own jurisdiction. But where we're talking about there's a clear state process that's governed by the agency that does the titling process, our preference would be that...you know, we believe we have occupied the field that the state has determined this is the process that will be followed for determining an abandoned vehicle and then vesting title in an abandoned vehicle. And for our purposes--I know that Mr. Hallstrom talked about the difficulty in understanding 93 counties' ordinances--we could be talking about city ordinances as well here--local ordinances beyond that. And that really becomes problematic for an agency like the Department of Motor Vehicles to try to find out the nuances of every single local governmental subdivision--what they determine their notice requirements to be or what they determine an abandoned vehicle to be. So for preference for titling and vesting of title, it would really be, I think, the best public policy to retain the state statutes as it currently is written. [LB767]

SENATOR SULLIVAN: Thank you. [LB767]

SENATOR AVERY: Any more questions? Thank you very much... [LB767]

BEVERLY NETH: Thank you. [LB767]

SENATOR AVERY: ...for your testimony. Any more neutral? [LB767]

JON EDWARDS: Good afternoon, Senator Avery. Members of the committee, my name is Jon Edwards, J-o-n E-d-w-a-r-d-s; I'm here today representing Nebraska Association of County Officials. We are here today in a neutral capacity on LB767. And, really, we reached that position by having the ability to work with the bankers' representative, through Mr. Hallstrom, and with Senator Price and trying to find some sort of a middle ground where we felt like we could kind of reach towards their concerns and yet maintain this statutory scheme as it was just introduced and passed last year. So with that, I would tell you that we are able to accept the amendment that Senator Price has

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brought forward to you, and we're willing to go along with that. What I will tell you is the other information that's been brought forward today is information that we really haven't had time to look at thoroughly. I can make a general assessment of it, but my sense is we're not willing to go all the way there. And, really, I'll tell you, it's based mainly on the idea that as we looked at this originally...I think Senator Price did a nice job of reflecting back to what happened last year. And I'll just add to that that, in that process, we committed to Mr. Hallstrom that we would certainly work with him and his group to try to alleviate any concerns he had going forward in the coming year. And this is where that legislation came from. Our...as we look at it and as we read it...and the question has been presented today by Senator Sullivan: Is it really necessary? And our position would be: Well, not really; we don't think it is, because there's already the provisions in statute. Now, what I would say is if we're going to do this, here, it seems to me we have a long list of statutes that we're going to need to start tying back to other statutes that grant authorities and rules and regulations about how you do things that's implied in the law that you actually have in front of you. So I think our concern was just what's happened today. Once we start to go down the road of: Well, we have this interest--we need this language, we have this interest--we need this language; we kind of end up where we're at. All that being said, we're willing to work with the amendment that's been presented. We think that that makes sense if it, you know, it addresses a real concern that's there. We can go along with that. I'm a little skeptical of the other request that's in front of you today, without having some time to take a look at that and see if there might be some other issues that pop up that might be problematic in that broad of language. But I think, with that, I don't need to take any unnecessary time of the committee. But I'll just say that we're here neutral on LB767, and I can try to answer some questions if there are any. [LB767]

SENATOR AVERY: Any questions from the committee? I can assure you that you can have access to amendments. Senator Price will make sure that happens. [LB767]

JON EDWARDS: All right. [LB767]

SENATOR KRIST: So that takes you out of the negative on the neutral. [LB767]

JON EDWARDS: Understood. [LB767]

SENATOR AVERY: Any other questions or comments? All right, thank you, Mr. Edwards. [LB767]

JON EDWARDS: Thank you. [LB767]

SENATOR AVERY: Any other neutral testimony? All right. Senator Price, do you wish to close? All right, he waives closing. That ends the hearing on LB767. We will now move to LB947. And I will turn the Chair over to Senator Price. [LB767]

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_____ : He can be taught. [LB767]

SENATOR PRICE: Good afternoon again there, Senator Avery. The floor is yours for LB947. [LB947]

SENATOR AVERY: Thank you, Senator Price. Good afternoon, committee. My name is Bill Avery, B-i-l A-v-e-r-y; I represent District 28. I appear before you to introduce LB947. Before I do that, let me just give you a little bit of background on what we're doing. As most of you know, the Government Committee conducts a survey every four years of all the state boards and commissions, asking them to report information about their board, their activities, and their--how many times they meet, and the accomplishments they have accumulated for the past four years; after these surveys are compiled, they're put into a report. And the Government Committee reviews the surveys, makes recommendations as to which boards and commissions are no longer needed and are candidates for elimination. I believe it is important that we do this every four years--perhaps we could do it more often--to find out how much of the boards and commissions that we have in the state--I think we're somewhere around 230 now, because we eliminated a few--find out whether or not we are duplicating services, duplicating activities, and whether or not these commissions need to exist. Last year the Legislature passed a bill that eliminated around 20 boards. So I think we had about 250 before we did that. And I did pledge to the Legislature at that time to continue looking for additional boards and commissions that could be eliminated. And this bill, LB947, does eliminate the Community Development Block Grant Program Advisory Committee. Under the terms of this bill, the duties of that committee will be assigned to the Economic Development Commission. According to the 2008 Government Committee Report on Boards and Commissions, the purpose of this particular committee is to provide regular consultation of the Community Development Block Grant program to the Economic Development Commission. It's already reporting to the commission; keep that in mind. The committee typically meets about once a year. The Community Development Block Grant program is primarily designed to provide safe, affordable, and accessible housing and infrastructure for low- and middle-income Nebraskans. It was created under the Housing and Community Development Act of 1974. It's estimated that the cost of this committee is about \$8,000 a year. That includes staff, mileage, and meals. Since the committee was typically meeting only about once a year and it was reporting to the Economic Development Commission, it is clear to me and to others in the Department of Economic Development that the commission itself can perform these duties and that the advisory committee is not really necessary. So I am proposing to eliminate it with this bill. What do we gain by doing this? We gain two things that we all have expressed support for: streamlining government and saving money in these critical times. That's what I am trying to do; I hope that you will agree. And with that, I will shut up and listen to you ask me questions. Thank you. [LB947]

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SENATOR PRICE: Thank you, Senator Avery. Are there any questions for Senator Avery? Seeing none, thank you for your testimony. [LB947]

SENATOR AVERY: Thank you. [LB947]

SENATOR PRICE: The first proponent, Mr. Baier. [LB947]

RICHARD BAIER: (Exhibit 1) Good afternoon, Vice Chairman Price, members of the committee. I'm just wondering what I did--I cleared out a room back there behind me. (Laughter) [LB947]

SENATOR KARPISEK: It wasn't you; it was the introducer. [LB947]

RICHARD BAIER: Could have been, could have been. I don't bring forward banking, cars, and fire extinguishers, I guess. For the record my name is Richard Baier; the last name is spelled B-a-i-e-r. I'm the director for the Department of Economic Development, and I'm here today to testify in support of LB947, give you just a little bit of background, and answer any questions that you might have. I also want to thank Senator Avery for his introduction of this legislation. My agency's Community and Rural Development Division administers roughly \$10 million to \$12 million annually in CDBG funds, which is allocated to Nebraska by the U.S. Department of Housing and Urban Development. DED then distributes CDBG grants and loans across Nebraska, except in the cities of Omaha and Lincoln; those communities receive their own allocation of CDBG funds. The department makes funding decisions within six categories that we believe provide for comprehensive growth that fosters our local economic development efforts. Those categories of funding include comprehensive revitalization, downtown rehab, economic development, planning, public works, and water and wastewater projects. We believe this consistently fits with our mission. The statute currently requires that the department have an advisory committee consisting of 12 people representing a variety of areas and organizations. The committee then, as Senator Avery pointed out, is to provide regular consultation on the program and is supposed to meet twice a year; sometimes, because of quorum, we only meet once a year. In addition, over the last couple of years, I've been working with our Economic Development advisory board--which is really sort of our umbrella group in the department--to look closely at our advisory groups and our commissions and committees to see whether or not there's an opportunity for efficiencies. And as the senator laid out very well, we believe that we have the expertise within the ED Commission and the resources available to be able to fill the need for the CDBG advisory role. This will lead to efficiency, reduced cost and, to be quite honest with you, to free up staff time for other productive efforts. We will continue to hold public hearings like we do now in the CDBG program across the state, giving communities a chance to offer their input. We also believe that adding someone for the community development background to our Economic Development Commission will help us continue to ensure the program is run efficiently and effectively. With that, I would be

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happy to answer any questions since I sit between you and wrapping up for the day.
[LB947]

SENATOR PRICE: Thank you, Mr. Baier. Are there any questions from the committee?
Yes, Senator Sullivan. [LB947]

SENATOR SULLIVAN: Just by way of background, who sits on the--not by name--but I
mean, what sort of representation do you have right now on the commission? [LB947]

RICHARD BAIER: Well, we're in a process of transition, because as we've kind of
consolidated committees, we've eliminated a couple of them over the last couple of
years within the agency. And so now we have folks that represent agriculture,
manufacturing, travel and tourism, logistics, financial services, biotech, and then now
community development. So it's kind of a nice mix of folks. Our challenge, to be quite
honest with you, is that they have to be a mix of political party and a mix of
congressional district. So plugging people from the right industries gets a little
complicated. But right now we've got a really good group, chaired by Bob Unzicker, who
is an entrepreneur from Scottsbluff; and the vice chair is Craig Madson from here in
Lincoln, with one of the banking institutions; and the past chair is Janet Palmtag, who is
a Realtor from Nebraska City. [LB947]

SENATOR SULLIVAN: So the bottom line is that even though we're getting rid of this
particular commission, you will still have not only citizen involvement but also
representation across the state. [LB947]

RICHARD BAIER: Absolutely. [LB947]

SENATOR SULLIVAN: Okay. [LB947]

SENATOR PRICE: Are there any other questions? Yes, Senator Karpisek. [LB947]

SENATOR KARPISEK: Thank you, Senator Price. Thank you, Mr. Baier. [LB947]

RICHARD BAIER: You bet. [LB947]

SENATOR KARPISEK: I really think this is a great program, although I've still never
quite been able to capture one of these grants, but I think I've chased them for years.
But I'll get one someday, somehow. I guess I'm just concerned that we're going to miss
out on something here, but I don't know. It sounds like by your testimony that maybe it'll
even be better. [LB947]

RICHARD BAIER: One of the things, Senator--as we've kind of consistently inherited
programs--and my agency seems to inherit a lot of them--every time we get one, we get

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another board and commission. And so I think what Senator Avery is urging and the Governor is urging we (inaudible) sort of step back and say: Where can we find opportunities to become more efficient and still provide the level of service? I think we can do that. You know, one of the other things we do in terms of getting input in terms of this program is that we do have our field staff; we have about 12 people scattered across the state that spend day to day in the communities and really get to know the communities and the challenges. So we have that feedback about what's out there, where should we be putting our resources. You know, we're doing some things right now that are kind of new to this program. For example, we're investing in some sizable spec parks around the state for industrial purposes; one of them happens to be in South Sioux City. And we've done some of those kinds of things to begin to match up where we think our opportunities are in investing our resources in the best places. [LB947]

SENATOR KARPISEK: Well, I give you kudos on the project. I think it's very valuable, and it does a lot of good. I'm fine with this. Again, I just...if it helps, great. I just don't want to see it be hurt, and I don't see that it will. So thank you for your testimony. [LB947]

RICHARD BAIER: You bet. [LB947]

SENATOR KARPISEK: Thank you, Senator Price. [LB947]

SENATOR PRICE: Thank you, Senator Karpisek. Any further questions? Senator Giese, please. [LB947]

SENATOR GIESE: Just a statement. You're going to have to move to South Sioux. [LB947]

SENATOR KARPISEK: I'm going to have to take lessons from you on how to get it. [LB947]

SENATOR GIESE: That's all there is to it. Thank you. [LB947]

RICHARD BAIER: You bet. [LB947]

SENATOR GIESE: Thank you. [LB947]

RICHARD BAIER: Glad to do it. [LB947]

SENATOR PRICE: I believe that pretty much wraps it up. Thank you very much for your testimony. [LB947]

RICHARD BAIER: Thank you. [LB947]

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SENATOR PRICE: Are there any further proponents? Or anybody like to testify in opposition? Do I have any takers for neutral? Seeing none--Senator Avery. Senator Avery chooses to waive closing. And that concludes our hearing on LB947 and our hearings for the day--and the week. [LB947]