[LB395 LB435 LB448 LB462 LB611]

The Committee on Health and Human Services met at 1:30 p.m. on Friday, February 6, 2009, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB435, LB611, LB448, LB462, and LB395. Senators present: Tim Gay, Chairperson; David Pankonin, Vice Chairperson; Kathy Campbell; Mike Gloor; Gwen Howard; Arnie Stuthman; and Norman Wallman. Senators absent: None. []

SENATOR GAY: Welcome to the Health and Human Services Committee, started this afternoon. We've got five bills on the agenda and my name is Senator Tim Gay. Here to start things off, we're going to have a quick introduction starting to my right. []

JEFF SANTEMA: Good afternoon. My name is Jeff Santema. I serve as legal counsel to the committee. []

SENATOR GLOOR: I'm Senator Mike Gloor, District 35, which is Grand Island. []

SENATOR PANKONIN: I'm Senator Dave Pankonin, District 2. I live in Louisville. []

SENATOR STUTHMAN: Senator Arnie Stuthman, District 22, Platte County. []

SENATOR GAY: Erin, you want to... []

ERIN MACK: I'm Erin Mack, the committee clerk. []

SENATOR GAY: All right. Then we have Senator Campbell, of course, is a member of the committee will be testifying. And right now, Senator Howard and Senator Wallman will be joining us. They're arriving a little late or testifying on other bills that they may have. Just a few ground rules. We do have a light system here if you're testifying for the first time. If you're introducing a bill you get as much time as you need so there's no rush. But we have a five minute light that's green until four minutes, then a yellow light will go on, and at five minutes the red light will go on. We won't just cut you off in your tracks, but if you could start wrapping it up we'd appreciate it. The reason we do that is, we have a lot of bills throughout the year and it just seems, we want to make sure somebody at the end of the day gets the same attention as the beginning of the day. So we feel in fairness, that's the best way to do it. But don't feel rushed, but we would like to limit it. And that also helps if we're not repetitive on the same thing. If you've heard that somebody testified and you're in agreement with that, that probably doesn't need to be said again. But...or if you just want to be recognized for or against a position, we have testifier sheets that we'd like everybody to fill out. Print your name and then when you come up, state your name and spell it out. That's for the clerk's convenience because all of this is being transcribed, so. And if we're asking any questions of you,

take as long as you need to answer the question. We're in no rush on that, so. But we have found that helps for everybody, I think, over the course of the day. I would ask too if you could silence any cell phones you have now, we would appreciate that as well. For the record, Senator Howard is now joining us. And with that, Senator Campbell here to introduce LB448 []

SENATOR CAMPBELL: (Exhibit 1) Thank you, Senator Gay, and members of the committee. I am indeed here to open on LB448, which is a bill that would deal with a pilot program on immunizations for the flu vaccine. And I got interested in this bill because the advisory committee on immunization practices, which is a part of the National Center for Disease Control, recommends that all school age children be vaccinated against influenza. And the committee provides advice and guidance to the Assistant Secretary of Health and Human Services. So I took an interest in this bill because it is my belief that eventually we will be doing that for all children, because of the affect that a child who has influenza can have as they interact with younger children or they babysit or older grandparents or people in the neighborhood, children are the biggest spreader of the flu. And we know that from statistics. The committee that recommended this is the only entity in the federal government that can make such a recommendation. And that's partly why I took an interest in this, besides a long interest in children. Vaccinating children against the flu on a national or statewide basis would require using settings besides health facilities, because many children do not visit a doctor during the flu vaccination season. Schools offer one potential setting for providing the vaccinations. We do not really know how effective that might be. It's possible that the federal government will require flu vaccinations for all children in the future. And in that event, it would be useful to have data, and we just don't have that data. What this bill then will do would create a pilot project to be carried out for two years on a voluntary basis in Nebraska schools. The project would be funded through a variety of sources including using the vaccines for children, which comes under the Centers for Disease Control and would be Medicaid, obviously, covered. Grants from the CDC or through privately insured children, or foundations in other states, the hospital foundation helped to pay for this. Or insurance companies step forward to try to get the data to see how well we could really carry this out. Parents who choose to allow their children to be vaccinated will have a choice of nasal or injected vaccine. The pilot project is totally voluntary, no school has to do it, and no child whose school does it has to be vaccinated. The committee has several papers in front of them and I want to explain those. We have prepared an amendment and, hopefully, the committee would adopt that as the amendment to the bill. But the amendment is intended to limit the pilot, the project to a total of four schools. So it's not an entire four school districts, it's four schools. Two would be from the Class 4 or Class 5 districts, which would be either LPS or OPS, and two would be from Class 2 or 3 districts. And we've listed some examples, Loup, Alba, Giltner, McCool Junction, and so forth. This limit would reduce the potential fiscal impact greatly of the bill, but would allow data from comparable school settings to be acquired and compared. So the importance of the bill is to really give us a snapshot

view in the next two years of what a pilot would do. It would also give us, Senators, a good look, and if we had...and Nebraska has a great pandemic flu plan. But it would also give us a view on whether we could carry out such immunizations in schools. So that's what it's meant to do, is just be a pilot. We have taken great pains to try to limit the number of people that will be coming up to see you. You also have a letter and I hope you take time to read it because it's a great letter from the Immunization Task Force in Omaha, because they provide great examples. And with that, I'll conclude and I apologize, I was supposed to spell my name for the beginning. [LB448]

SENATOR GAY: Oh, we know you, so. [LB448]

SENATOR CAMPBELL: Okay. But you just never know of spelling that Kathy. [LB448]

SENATOR GAY: We know where to find you. [LB448]

SENATOR CAMPBELL: Questions? Senator Gay, or any members? [LB448]

SENATOR GAY: Any questions for Senator Campbell this time? Nope, I don't see any. Thank you. [LB448]

SENATOR CAMPBELL: Thank you. [LB448]

SENATOR GAY: Proponents who would like to speak on LB448. Come on up. We will ask you to spell your name out. [LB448]

PETER MacDONALD: I beg your pardon? [LB448]

SENATOR GAY: I said, we will ask you to spell your name out. [LB448]

PETER MacDONALD: (Exhibit 2) Mr. Chair, and members of the Legislature. My name is Dr. Peter MacDonald. First name is P-e-t-e-r, last name, M-a-c-D-o-n-a-l-d, and I'd like to say it's an honor to be here today to represent my firm MedImmune in it's support of Nebraska LB448. As Senator Campbell mentioned, the CDC's Advisory Committee on Immunization Practice or ACIP, has underscored the importance of childhood influenza vaccination with changes in the influenza vaccination recommendations. In February of 2008, ACIP expanded it's recommendations for routine seasonal influenza vaccination to include all children from 6 months to 18 years of age as soon as feasible, but no later than the 2009, 2010 influenza season. The previous ACIP recommendation included the vaccination of children between 6 months and 5 years of age, their household contacts, and their out-of-home care givers. All eligible children 6 months to 17 years of age can receive annual influenza immunization through the federally funded vaccines for children or VFC program. And all individuals who wish to be protected against influenza are encouraged to be vaccinated by ACIP. But still there's a lot of work

to be done. According to the statistics from the CDC from 2006, which are the latest figures available, of high risk school age children, only 36 percent are vaccinated against flu. Estimates suggest that vaccination rates of healthy children, whether they are household contacts or not, are even lower. And now they are all recommended for vaccination. With Nebraska bill LB448, it is clear that the Legislature has identified that influenza vaccination of school age children is a critical issue for the health of the children of Nebraska. Vaccination of eligible school age children against influenza is gaining support in the medical community because of the need to help protect this age group, which has the highest influenza attack rate. The flu is most prevalent in school age children as the virus travels easily from person to person. School age children are twice as likely to get influenza as adults, including the elderly. During a widespread outbreak, the rate of flu infections can exceed 30 percent in school age children, while the attack rate in adults and in the elderly is approximately 10 to 12 percent. School age children respond well to influenza vaccine and by supporting a pilot program to vaccinate children against influenza in an organized setting, Nebraska is among the more progressive states in the movement toward vaccination of all children against influenza. As children are often the primary spreaders of influenza in the home and in the community, effective vaccination programs directed at immunizing school age children are very important. Research has shown that statistically significant reductions exist in Influenza-Like Illness or ILI, in child doctor's office visits, in the use of medications, and in work and school absenteeism, among households whose children attended schools or day-care centers with influenza vaccination programs, compared to those whose children attended schools or day-care centers without such programs. Ideally, all healthy and high risk school age children would be vaccinated against influenza in their medical home. In other words, in the office of their primary care provider. However, this is not being adequately accomplished and is not an option for many children without a medical home. For such children, school based vaccination could provide an efficient and effective mechanism for access to vaccination. The American Academy of Pediatrics recognized the need to explore alternative settings, including community clinics and schools in their most recent statement regarding the new recommendation that all children be vaccinated against influenza, published in the journal Pediatrics in September, 2008. Finally, the establishment of a school based infrastructure for routine seasonal influenza would enhance the pandemic preparedness, the state's pandemic preparedness by providing a familiar and accessible place and a practic protocol for vaccination against pandemic influenza. Thank you. [LB448]

SENATOR GAY: Thank you, Doctor. Any questions from the committee members? I don't see...I have one question for you. When you talk about dire risk, I mean, you talk...exactly what on the high risk children? [LB448]

PETER MacDONALD: High risk children? [LB448]

SENATOR GAY: What would be a definition. [LB448]

PETER MacDONALD: Senator, children with chronic diseases basically. Diabetes, chronic lung diseases. [LB448]

SENATOR GAY: More apt to. [LB448]

PETER MacDONALD: Exactly. They're more apt to get influenza and they are the ones who are more at risk. [LB448]

SENATOR GAY: Senator Stuthman. [LB448]

SENATOR STUTHMAN: Thank you, Senator Gay. Doctor, has there ever been a study as far as the number of the kids in a school, the percent of those kids that get influenza? You know, in the rural areas, the number in the school is a lot less than the larger schools. Percentagewise, has there ever been a study as far as, you know, are people more likely to get the flu in a larger school than a smaller one? [LB448]

PETER MacDONALD: Senator, I don't know the answer to that. I can tell you that the attack rate among school age children in one study in Houston was about 40 percent, and in another study in Tecumseh, Michigan, which is a much smaller town, was around 35 percent. So I do not believe there is much difference, but I haven't seen a study that directly compares them. [LB448]

SENATOR STUTHMAN: Okay. Thank you. [LB448]

PETER MacDONALD: You're welcome. [LB448]

SENATOR GAY: Senator Gloor. [LB448]

SENATOR GLOOR: Thank you, Chairperson Gay. Doctor, can I ask, are you a pediatrician, epidemiologist, your background, specific? [LB448]

PETER MacDONALD: Yes, sir, I'm trained as a family physician, and I saw children in my practice for 24 years and for the past four years I've worked for the biotech firm. [LB448]

SENATOR GLOOR: Okay. One of my specific questions would be probably an epidemiological question, but is there any risk, and I thought I had read something about this. Most of us, I think, don't understand that when we develop a vaccine for a virus for influenza, it's for a specific virus for a specific influenza that we think is likely to be the most dominant virus that particular year. Am I correct at that? [LB448]

PETER MacDONALD: Yes, you are, sir. [LB448]

SENATOR GLOOR: With an increased population base being immunized, whether it's children or adults, is there any kind of risk of increased mutation of that virus so that later in the season, perhaps, that immunization is no longer a valid immunization for what we're most concerned about? [LB448]

PETER MacDONALD: If I understand your question correctly, sir, you're saying if we immunize more people will that drive the virus to evolve more rapidly. [LB448]

SENATOR GLOOR: Exactly, yep. [LB448]

PETER MacDONALD: I am not an epidemiologist, but my understanding is that the influenza virus mutates naturally anyway, whether people are immunized or not. And so the recommendations as to which of the three strains, the two A strains and the B strain that are in the vaccine each year, that decision is made in February by the CDC in collaboration with the World Health Organization. And a lot of that is based on what has happened in the preceding influenza season in our summer, but the winter in the southern hemisphere. So they can see the virus mutating and hopefully keep ahead of it. But to the best of my knowledge there is no evidence that immunizing more people drives that, what's called antigenic drift in the virus, any more quickly. Do I answer your questions? [LB448]

SENATOR GLOOR: Great. Thank you. Absolutely. Thank you. [LB448]

SENATOR GAY: Thank you. Any other questions? Don't see any. Thank you, doctor. [LB448]

PETER MacDONALD: Thank you. [LB448]

SENATOR GAY: Other proponents. [LB448]

MARY CAMPBELL: Chairman Gay, and members of the committee. My name is Mary Campbell, C-a-m-p-b-e-l-l, a registered lobbyist for the Lincoln Public Schools. LPS is very supportive of the public health benefits of vaccination. We know that there's certainly a correlation between healthy kids and classroom performance. Our support for this pilot program, and its possible expansion thereafter is, of course, tempered by the ability in both cases that the appropriate funding be secured for it. And that would be our only hesitation in bracing this at this time. And...because we know that personnel and supplies could become quite costly if this were to become a full-blown kind of requirement. But we're certainly very supportive of the intent. [LB448]

SENATOR GAY: Thank you, Ms. Campbell. Any questions? Senator Wallman. [LB448]

SENATOR WALLMAN: Thank you, Chairman Gay. Thank you for coming, Mary. [LB448]

MARY CAMPBELL: Thank you. [LB448]

SENATOR WALLMAN: And I would have the same concern when in two years from now if this is...are we going to continue funding this, you know, the federal government or the state government or is it going to be dropped on the school systems, so that's the only concern. Do you have a concern about that also? [LB448]

MARY CAMPBELL: I share that same concern, but we think the objective is very worthy and beneficial. [LB448]

SENATOR WALLMAN: Thank you. [LB448]

MARY CAMPBELL: But we need to watch the dollars. [LB448]

SENATOR GAY: Okay. Thank you. Any other questions? I don't see any. Thank you. [LB448]

MARY CAMPBELL: Thank you. [LB448]

SENATOR GAY: Other proponents on LB448 that would like to speak. I don't see any. We did get two letters of support: Nebraska Pharmacists Association and the Immunization Task Force that we'll put into the record of support. Any opponents who would like to speak on this bill? [LB448]

JOE MILLER: (Exhibit 4) Good afternoon, Senators. My name is Joe Miller, J-o-e M-i-l-l-e-r and I am opposed to this bill because I don't know how much the schools would be involved but our schools don't need anymore activities to do this besides manage and teach our children. But one of the things I am against this vaccine, is our kids are getting too many vaccines already, and it isn't the virus in the flu vaccine, it's all the antigens in there. Do you know what is all in each vaccine? To my knowledge is that most flu vaccines have 25 micrograms of mercury in it, and by the EPA standards, a person needs to weigh 550 pounds to meet the standard for the toxicity of mercury. And also, some vaccines have aluminum in it also. And, you know, mercury and aluminum will accumulate in our brain. And mercury and aluminum will cause brain damage and it will cause slow learners, and ADD activity, and things like that. And so, I don't think this is something that our school kids need to be added on to their toxicity in their system, especially at that age. And also, it was brought up to me just recently, how come our flu season is in the winter? The virus is...don't it...isn't it alive during the summer? What causes the difference? The only difference is it's colder and we cover up and we have

no skin exposed. And the sun on our skin produces vitamin D. And if we take a simple vitamin D supplement, we will prevent getting the flu. And that is one simple way to teach our parents that, and the hygiene of our kids when they go to school to wash their hands regular in that area. And so I am totally against it because I have read many surveys of I think, you will see on the handout I give you, that there is areas that have done surveys in child vaccines and the doctors don't see any less calls to their office because of getting vaccine and in areas that way. And so, yes, I strongly urge you to oppose this because our kids don't need more toxins in their body, and I thank you. [LB448]

SENATOR GAY: Thank you, Mr. Miller. Are there any questions from the committee for Mr. Miller? I don't see any. Thank you very much. Other opponents who would like to speak. Anyone neutral that would like to speak on this issue? [LB448]

KAY OESTMANN: (Exhibit 5) Good afternoon. My name is Kay Oestmann, O-e-s-t-m-a-n-n. I'm a local health director with the Southeast District Health Department that covers Otoe, Nemaha, Richardson, Johnson, and Pawnee Counties, and I'm here today testifying for Friends of Public Health in Nebraska on behalf of the State Association of County and City Health Officials. We're testifying in a neutral position regarding LB448. Every health district across the state supports childhood immunizations. And while some districts aren't providing the immunizations, they're assuring that the program exists within their districts. All districts have comprehensive pandemic influenza plans, and they include the recommendation that citizens get vaccinated for the seasonal flu, everybody. This year the flu vaccine has been made available to children in our immunization clinics between the ages of 6 months and 18 years. And several of our districts have made the vaccine available through school based clinics where they've gone out and given the immunizations in the schools. My point is, the public health supports immunization as a key to prevention. We do have some concerns, however, in regard to this bill. Our first concern is about the funding and the financial liability involved with the project. Vaccines for children has strict guidelines for provision of the use of the vaccines that they provide. The resources identified in the bill are all possibilities, but they're currently not in place. Our concern involves the possible need to assume the liability of the program when these resources aren't available. The second concern is that this is a two-year pilot program. It won't provide significant disease reporting data or financial impact for evaluation. This is due to the variables involved in the circulating strains of the flu viruses versus the components of the vaccine. Information on the barriers for implementation will be easily accessed through our current statewide immunization programs and partnerships that are involved with these programs. We have the data available for those. We also believe that when a program of this type is advanced, it stands to benefit by including a cooperative effort through the local health districts. We encourage you to consider our concerns before advancing this bill and all local health departments support childhood immunizations. That's...I want you to remember that if you don't take anything else away

today. It's an important prevention activity. And if you have questions, I'm sure that your local health directors would be happy to answer any questions that you have. I'd entertain questions. [LB448]

SENATOR GAY: Thank you. Are there any questions? Senator Gloor. [LB448]

SENATOR GLOOR: Thank you, Chairman Gay. Ms. Oestmann, I'm sure that you support children immunizations. [LB448]

KAY OESTMANN: You bet. [LB448]

SENATOR GLOOR: I don't understand the data component. I don't understand your objection to the data piece. Could you explain that again to me? [LB448]

KAY OESTMANN: It's not a significant amount of time to develop real data. What I said here is that...the gentleman testified on the way that they developed the vaccine every year. It's taken...a committee gets together from the CDC and the World Health Organization and identifies the flu virus that's going around in another area of the world currently. They develop the vaccine from usually three different strains that are currently circulating in that area and that's what the vaccine is comprised of for that year. Last year, they missed. (laugh) I mean, the strain that we all had was a different strain that wasn't in the flu vaccine. You know, year before, it was fine. It was right on, you know. So you need time to develop your statistics. You need to have a base line. You need to have several years of data before you can really get a significant reading on what the benefit is, you know. Last year, people that got the shot still got the flu. This year some of the people that get the shots may still have the flu, but it won't be as severe. This year it looks like the vaccine that we've been given is significant and it's going to, you know, decrease the number of flu cases that we have. So that's my point. You know, the data that you get may be hit or miss if you only do it for two years. [LB448]

SENATOR GLOOR: But are we developing a specific vaccine for the children of Nebraska? Obviously, the data from Nebraska doesn't drive all of the decision making for all of North America? I mean... [LB448]

KAY OESTMANN: The vaccine's the same around...the vaccine's the same across the United States. [LB448]

SENATOR GLOOR: So that small amount of data, is that small amount of data reason enough for us to not want to go ahead and immunize a number of children against disease? [LB448]

KAY OESTMANN: I'm not against it. I'm just saying that the statistics may not be totally valuable. [LB448]

SENATOR GLOOR: So we just need to take that into consideration as we... [LB448]

KAY OESTMANN: Yeah, that's what I'm saying. I'm not against this at all other than...other than, you know, we're data driven. We're scientific base, we're data driven. And, you know, if you're to go out and say to...and sell this to the parents and get them to signed an informed consent that says that, you know, that their children are going to benefit from this, you've got to have something to sell them. You know, you've got to have the data to back it. And that's my concern. [LB448]

SENATOR GLOOR: Okay. That last half of that explanation makes more sense to me. Thank you. [LB448]

SENATOR GAY: Thank you. Senator Wallman. [LB448]

SENATOR WALLMAN: Thank you, Chairman Gay. And Kay, thank you for coming again. And do you feel there's any side effects of flu vaccination for little children like, you know, kindergartners, first graders, second graders? [LB448]

KAY OESTMANN: There's side effects to every medication. It...you know, there again with your informed consent, possible side effects, the mothers, the parents, the guardians, have to read the entire side effects, the benefits, the side effects, the possible side effects that they can get from getting the immunization. They have to consent to giving the child the shot. They have to answer questions about whether they're allergic to certain foods. They have to answer questions about, in some cases, whether siblings have had a reaction to this because, you know, it may be family based. But that's your informed consent and that's, you know, that's...any immunization...we like to believe, though, that the immunizations outweigh the disease that we're immunizing for or else we wouldn't be giving them, you know. The disease is...had better be worse than the immunization that you're giving or you don't give it. Did that answer? [LB448]

SENATOR WALLMAN: I've had three flu shots, three times I got sick. So you think I'm going to have another flu shot? Thank you. (Laughter) [LB448]

KAY OESTMANN: I could get into the whole kill virus thing and tell you that that, you know...but I'm not going to, you've heard that. (Laughter) [LB448]

SENATOR GAY: All right. Any other questions? I don't see any. Thank you. [LB448]

KAY OESTMANN: Thank you. [LB448]

SENATOR GAY: Any other one neural on LB448? All right. Senator Campbell. [LB448]

JACKIE MILLER: (Exhibit 6) Good afternoon, Senator Gay, and members of the Health and Human Services Committee. My name is Jackie Miller, that's J-a-c-k-i-e M-i-l-l-e-r, and I'm the Chief Administrator of the Community Health Section in the Division of Public Health for the Department of Health and Human Services. I'm here today to testify in a neutral position to LB448. I have some handouts, which....for you. While the Department of Health and Human Services is not taking a formal position on LB448 at this time, the department reviewed the legislation and provides the following information for your consideration. I understand that an amendment has been put forth that limits the pilots of four schools, and I want to acknowledge that my testimony is based on the original bill. The bill states that the project will largely funded....excuse me, I'm sorry. First, it should be noted that there are existing avenues for immunizing children through age 18 and there are strategies in place through the Preparedness and Emergency Response Program of DHHS for any needed mass vaccination events. School based influenza clinics are currently being held in at least one area of Nebraska by Public Health Solutions District Health Department, which serves five counties in southeast Nebraska. Also, existing public immunization clinics and private physicians are already providing influenza services. There are no parameters established in LB448 about the number of school districts or the size of districts. It does not specify any ages or grades. The bill states that the project will be largely funded through the Vaccines for Children Program, which I will call VFC. The VFC program is a federally funded and state administered program that provides vaccines to eligible children. Eligibility is limited to children through age 18 who are either Medicaid eligible, have no insurance, or are Native American or Alaskan Native. Only immunization providers enrolled in the VFC program through the Department of Health and Human Services may use the VFC vaccine for eligible children. Providers using these publicly purchased vaccines cannot charge for the vaccine or request an administration fee from the parents. However, private providers who are enrolled in the VFC program may submit a claim to the Nebraska Medicaid program for a predetermined administration fee for their Medicaid enrolled patients. It is unclear in the bill language whether it is the intent of the bill for VFC funding to cover the costs of storing, administering, and documenting the influenza vaccinations. The federal guidelines do not allow VFC funds to be used for such clinical costs. Providers in Nebraska communities would expect to be compensated for their clinic costs associated with the project. The recommended immunization schedule that physicians and public immunizations clinics follow, currently strongly recommends influenza vaccination for all children from 6 months through 18 years of age, but does not legally require it. The schedule is supported and developed by the Advisory Committee on Immunization Practices, the American Academy of Pediatrics, and the American Academy of Family Physicians. It is recommended that school age children should be immunized for influenza, and we already have a working system to accomplish this with physicians and public clinics purchasing flu vaccine based on their patient base. If this pilot would become a mass flu campaign statewide, it may cause physicians to reduce or eliminate their influenza vaccine orders because they may fear

that they will be left to absorb the cost of unused vaccines because someone else is vaccinating their patients. Influenza vaccine orders are placed in January or February, based on past usage and anticipated usage, requiring projections to be made several months in advance. This is the time of year that vaccines for the fall 2009 influenza season are being ordered. The potential fiscal impact of this bill could be large for vaccine and staffing. The cheapest influenza vaccine is approximately $12.50 per dose for injectable influenza vaccine, packaged in multi-dose vials, which contain thimerosal to protect against contamination as individual doses are withdrawn. Vaccine without thimerosal is more expensive. Increased costs would be included if the pilot is instituted at the elementary school level. Any child, under the age of 9, who has never had a prior influenza vaccine dose, needs two doses administered one month apart the first time they get influenza vaccine. I will call your attention to...you know, there's several other things here we can talk about. Pilot programs in different parts of the state and...but I think most of the information is there in the handout, so I don't want to waste your time reading any more. [LB448]

SENATOR GAY: An you are always very thorough, and we read your...we read those too. So don't worry about it. (Laughter) Thank you. [LB448]

JACKIE MILLER: Okay. All right. [LB448]

SENATOR GAY: Any questions from the committee? I don't see any. Thank you. [LB448]

JACKIE MILLER: All right. Thank you. [LB448]

SENATOR GAY: Anyone else who would like to be neutral on this bill that would like to speak? I don't see any. Senator Campbell would you like to close on this? [LB448]

SENATOR CAMPBELL: I'll waive. [LB448]

SENATOR GAY: Okay. Senator Campbell waives closing and we will close the hearing on LB448, and Senator Dierks is here on LB462. Welcome, Senator Dierks. Welcome, Senator Dierks. [LB448]

SENATOR DIERKS: (Exhibit 1) Thank you, Chairman Tim. Members of the Health and Human Services Committee, my name is Cap Dierks, spelled C-a-p D-i-e-r-k-s, and I represent District 40. I am here today to introduce LB462. LB462 changes provisions relating to the testing for the presence of the human immunodeficiency virus, HIV. Current law requires that a person gives specific written informed consent to have an HIV test. Under LB462, a person would receive information explaining the HIV infection and the meaning of both positive and negative test results. The patient would be asked then to sign a general consent for the performance of medical tests or procedures. This

general consent would include consent for the HIV test, which may or may not be performed. No specific consent will be required for an HIV test if LB462 passes. If a person is unable to provide consent under the bill, the person's legal representative may give approval for HIV testing. A healthcare provider may also authorize the HIV test when those tests are necessary to make a diagnosis and provide medical care. I introduced a similar bill last year, LB954. This year's bill includes clear language that people will be performed that an HIV test may be performed along with other tests. Patients will be given the opportunity to refuse to have the HIV test. This bill was brought to me by the Nebraska Medical Association. The bill was drafted in accordance with a recommendation made by the Centers for Disease Control and Prevention released on September 22 in 2006. The Centers for Disease Control modified its existing guidelines concerning HIV testing to increase HIV screening of patients, including pregnant women, including foster...or to foster earlier detection of HIV infection, and to identify and counsel persons with unrecognized HIV infection and link them to clinical prevention services and further reduce perinatal transmission of HIV in the United States. I'd like to mention that we have not changed the confidentiality issues associated with HIV or AIDS. As with all medical issues, privacy is a very real issue, and I would not try to change the doctor/patient relationship concerning confidentiality. I've given the committee members a copy of the September 22, 2006, CDC report on HIV testing as well as information from the Lancaster and Douglas County Health Departments regarding their charges for HIV testing. Thank you for your time and attention to this matter, and I will try to answer your questions. [LB462]

SENATOR GAY: Thank you, Senator Dierks. Are there any questions from the committee? I don't see any right now, Senator. [LB462]

SENATOR DIERKS: Okay. Thank you. [LB462]

SENATOR GAY: Proponents who would like to speak on this issue. [LB462]

SARA JUSTER: (Exhibit 2) Thank you, Senator Gay and members of the committee. My name is Sara Juster, S-a-r-a J-u-s-t-e-r. I'm here today on behalf of Nebraska Methodist Health System, Nebraska Methodist Hospital, Methodist Physicians Clinic to testify in support of LB462. Let me first explain my involvement in this issue. It began when I received a phone call from one of our infectious disease practitioners who had a patient who was extremely confused and had several other symptoms that indicated he might be suffering from AIDS related dementia. Our physician was familiar with our policy regarding under what circumstances a patient could be tested for HIV and wanted to know how we could get this patient tested because the patient was unable to give consent. There was no court-appointed guardian available to give consent. No guardian had been appointed. In short, unless we took the step of getting a court-appointed guardian, we had our hands tied. We could not have the patient tested. We could not, therefore, treat the patient appropriately. He asked me what we could do in that

particular case and in the future to make sure that we could, in fact, provide appropriate testing and care for our patients. So we got involved in this issue because of that, and it really relates to the two main issues, I think, that LB462 addresses. One is, who can consent to an HIV test? Current Nebraska law requires that either the patient himself or a court-appointed guardian. If a patient has a durable healthcare power of attorney who can consent to every other medical treatment or make any other decision for the patient, that durable healthcare power of attorney cannot consent to an HIV test. I don't know why. I don't understand the justification for that nor do any of the physicians or medical providers I have spoken with to date. And if any member of this committee knows why, I'd really be interested to find out. We would really urge this committee to change the law if for no other reason than to allow the healthcare power of attorney to make that decision and permit consent to testing on behalf of a patient when appropriate. The second issue that LB462 addresses is the current requirement that a completely separate consent process be undertaken with respect to the HIV testing. Again, I'm not extremely familiar or I'm not familiar with any other recommended test that requires a separate consent process. Specifically, the CDC, the American Hospital Association, the Nebraska Medical Association, Health Research and Educational Trust, the Department of Health and Human Services of the state of Nebraska, they all agree that HIV testing should be a part of routine healthcare, especially in the emergency department and in prenatal care. In my written testimony, I go into a lot more detail of that. But under current law, unless the physician undergoes a lengthy and specific consent process, we cannot do the HIV testing that is recommended by almost every healthcare organization in this country. With respect to that, it also...the need for that separate consent really reinforces the stigma of HIV testing. If you need to sign a separate consent, then chances are you're going to wonder why the physician is recommending this test. You may not want to consent. You may not know that you have any reason to consent because the HIV virus can remain latent for 15 years. So maybe something that you did or something that somebody you were involved with 10, 15 years ago did exposed you to HIV and, again, you have no recollection or knowledge or have maybe put that aside and so you would not seek out or necessarily want to consent to this test. So again, we strongly urge the committee to support and pass LB462. And I'd be happy to entertain any questions. [LB462]

SENATOR GAY: Thank you. Any...Senator Gloor. [LB462]

SENATOR GLOOR: Thank you, Chairman Gay. And thank you for your testimony, Ms. Juster. You threw kind of a challenge out there if any committee member knew why it's written this way, and I will tell you what I think I remember of this. And that is that I think if we were able to go back and research the history we would find that this law went into place back at a time when there was a considerable amount of paranoia and hysteria over AIDS. I think you would also see that some of what went in place was a concern that with rampant testing of patients for AIDS we would waste a lot of money and we would also develop a false sense of complacency that if the test came back negative

that we didn't have to worry. And as you well know, I'm sure, we in this state and in healthcare are supposed to treat everybody with universal precautions and not get complacent that just because the test came back negative that that doesn't mean that they may in fact not be carrying something. So I think this bill was probably well-intentioned and I'm sort of encouraged to see it because it tells me maybe we're well past that degree of paranoia and hysteria and are treating this like a number of other infections that patients may carry. But that is what I recall of this legislation. [LB462]

SARA JUSTER: And that is what I have been able to glean as well. And certainly medical care has advanced tremendously since the early 1990s and what used to be a death sentence no longer is. It's much more like many other chronic diseases that can be treated and people live long lives even though they're HIV positive. [LB462]

SENATOR GAY: Thank you. Any other questions? I don't see any. Thank you. [LB462]

SARA JUSTER: Thank you very much. [LB462]

DAVID BUNTAIN: Senator Gay, members of the committee, my name is David Buntain. It's B-u-n-t-a-i-n. I am the registered lobbyist for the Nebraska Medical Association, and we want to thank Senator Dierks for introducing LB462 at our request. This is an issue really that was brought to the fore within the medical association in our house of delegates several years ago. And I believe that Ms. Juster's testimony, which you have in front of you, has the text of that resolution. And I think her testimony does a great job of summarizing what the issue is. It would be...I think Senator Gloor is very accurate as far as what the origin of this original requirement was. In fact, Senator Dierks in 1993-94 was involved in his capacity as Vice Chair of this committee with a task force that led to the passage of LB819, which contains the separate consent requirement that we're now dealing with. And I do think that what this reflects is the evolution of this from an hysterical or at least paranoid atmosphere, as Senator Gloor has described, to dealing with it as part of the mainstream testing. And I can tell you that, for example, our OB/GYNs were very vocal about wanting to be able to do this as a routine part of their screening that they do with expectant mothers. So and it obviously has application in a lot of different places. This bill is narrow. It addresses only the issue of consent. Last year when we introduced this, I think we had kind of a backlash of some of the concerns that came before, issues as to how the information would be used, reporting responsibilities, what the standard of care is for obtaining the consent. And we want to make clear this doesn't change any of that. Nothing is changed except the procedure for obtaining consent. And I think that's...the progress that we've made on this issue is reflected in the letter that you received from Department of Health and Human Services endorsing LB462 and indicating that some of the other concerns that were concerns that were raised last year are really matters of standard of care and they shouldn't be a part of the statute. So with that, I would encourage the committee to advance LB462.

[LB462]

SENATOR GAY: Thank you. Senator Pankonin. [LB462]

SENATOR PANKONIN: Thank you, Senator Gay. Mr. Buntain, do you have any idea other states what type of...if they have these laws and states around us particularly? [LB462]

DAVID BUNTAIN: I do not. I do know that this has become the standard of care through the CDC so I would assume if there are other states that have the individual requirement they're also moving in this direction. [LB462]

SENATOR PANKONIN: If you would check with the AMA maybe and get that information to Senator Gay's office, I think it would just be helpful to see what other states have done. [LB462]

DAVID BUNTAIN: Okay. We'd be happy to do that. [LB462]

SENATOR PANKONIN: Thank you. [LB462]

SENATOR GAY: Any other questions? Senator Wallman. [LB462]

SENATOR WALLMAN: Thank you, Chairman Gay. Thank you for being here too. Is there a huge cost do you feel involved with this or just... [LB462]

DAVID BUNTAIN: There shouldn't be any cost involved. I suppose there may be a cost. Some providers may have to change their consent forms because there's a provision that you have...as a part of the general consent have to advise patients that they could be consenting or could be subjected to an HIV test and then they can opt out. But as far as the state is concerned, there shouldn't be any cost to it at all. [LB462]

SENATOR WALLMAN: Thank you. Thank you, Chairman. [LB462]

SENATOR GAY: Okay. Any other questions? I don't see any. Thank you. [LB462]

DAVID BUNTAIN: Thank you. [LB462]

SENATOR GAY: Other proponents who would like to speak. [LB462]

JORDAN DELMUNDO: (Exhibit 3) Good afternoon, Senators. My name is Jordan Delmundo, it's spelled J-o-r-d-a-n, last name, D-e-l-m-u-n-d-o. I am a case manager and also a volunteer HIV test counselor at Nebraska AIDS Project. I work with individuals and their families affected by HIV, and I'm here to testify in favor of LB462. In 2003, the

Centers for Disease Control estimated that one in four people living with HIV in the United States is undiagnosed. If we apply the CDC's ratio to Nebraska, that would mean thousands of Nebraskans live with HIV and don't know it. The bottom line is that more people need to get tested to stop the spread of HIV and AIDS. HIV testing provides us the opportunity to educate people who are unfamiliar with the topic and early detection of HIV helps move people into the proper care sooner and puts them on a path to effectively manage their HIV infection. As a case manager and a testing counselor, I have witnessed the difficulties in getting people tested. Numerous barriers to HIV testing exist. People from diverse backgrounds, different levels of education, and different levels of socioeconomic status have fears and misconceptions that dissuade them from getting tested. When testing, I have seen the fear in the eyes of college students. I have spent time reassuring rural families that they are safe even though they may have heard their neighbor down the road tested positive for HIV. I have presented at community health fairs and gone over my allotted time trying to answer the questions of the people present. Fear does not discriminate between age, ethnicity, sex, socioeconomic status, or level of education. That fear comes from not knowing. One of the ways to help individuals get over that fear is to educate them through the informed consent process. According to the American Medical Association, informed consent is a process of communication between a patient and a physician that results in the patient's authorization or agreement to undergo a specific medical intervention. There have been some arguments that informed consent is a barrier to expanded testing due to time constraints and other administrative barriers. However, in 2006 the New York City Health and Hospitals Corporation implemented a pilot program to expand and routinize HIV testing. Patients watched an informational video in the waiting room and gave written informed consent. Overall, NYC HHC increased testing in its hospital system by 63 percent. In 2006, the Centers for Disease Control and Prevention revised its recommendation regarding HIV testing in medical settings. LB462 would bring Nebraska into compliance with those guidelines. The Nebraska AIDS Project, as the only AIDS service organization in the state, is in favor of meeting those standards. However, the revised guidelines from the CDC serve simply as that--as guidelines. The Nebraska AIDS Project believes the CDC guidelines should act as a floor in a solution to expanded testing, not a ceiling. State laws by design deal with societal issues in a way that is meaningful and appropriate for the state and its unique qualities. As the only ASO in the state, we see fear and misconceptions as major barriers to expanded testing in the state of Nebraska and feel that the best way to assuage that fear is to give people the correct information about HIV/AIDS and the testing process. And we would like to spend this time to show that we are in favor of LB462. I'd like to entertain any questions if you have any. [LB462]

SENATOR GAY: Thank you. Are there any questions? I don't see any. Thank you. [LB462]

JORDAN DELMUNDO: Sure. [LB462]

SENATOR GAY: Any other proponents? [LB462]

NAKIEA BOETGER: (Exhibit 4) Good afternoon. My name is Nakiea Boetger, N-a-k-i-e-a B-o-e-t-g-e-r. Thank you for the opportunity to speak this afternoon in support of LB462. I am the coordinator of all HIV testing and counseling for Nebraska AIDS Project. And as Jordan stated, we are in favor or in support of LB462. And I would just like to provide the following statement in support of and provide a few recommendations regarding said bill. First and foremost, I agree wholeheartedly that all HIV testing be performed under the notion of informed consent. However, I would like to emphasize the importance of the informed part of informed consent, and I would like to offer suggestions regarding the delivery of this information. As the bill states, the informed consent shall include an explanation of HIV as well as the meaning of both a positive and a negative result. An explanation of HIV needs to incorporate how the virus is transmitted, including the body fluids that HIV is found in as well as the most common methods of transmission and the appropriate means of protection. In my experience, testing and counseling thousands of people over the past few years, there is a general misconception regarding how HIV is transmitted. For example, I would say that more than half of the folks that I test would cite saliva as being the fluid that transmits HIV. That being said, there are several misconceptions regarding how HIV is transmitted. Regardless, unprotected sex, regardless of sexual orientation, gender, sexual practices remains the number one slot for HIV transmission, not kissing, not sharing a cigarette, not using a public rest room. There needs to be an emphasis on the benefits and necessity of using protection. While asking for each test to be accompanied by a pre and post-test counseling session may not be feasible, it has been proven to be a huge asset in educating communities about their risk of HIV infection. In addition to providing education, counseling also tends to encourage individuals to reflect on their own behaviors and give them an opportunity to ask questions regarding their own practices and their own behaviors. One aspect of counseling that needs to be strongly considered for all HIV testing is the referral process associated with a positive test result. The CDC states that providing a link between newly diagnosed patients and care is absolutely essential. Providing an individual with the positive test result is simply not enough to encourage them to seek care. Providing them with a legitimate referral to a specialty doctor or specialty clinic can motivate them enough to call with questions or make an appointment to visit with someone. With the passage of this revision, the stigma associated with HIV testing will start to dwindle. Greater education and understanding will go very far with Nebraskans in the fight against this disease. Roughly one in four persons who are HIV positive are unaware and may never test as they do not perceive themselves at risk. Therefore, the emergency does not lie with the people who are already aware of their status. The emergency lies with the folks who are not aware of their status. In each and every counseling session that I conduct, I encourage everyone, regardless of their gender, ethnicity, sexual orientation and/or sexual practices, to test once a year regardless. As I am sure you have all heard before, HIV does not

discriminate. Thank you again for the opportunity to speak this afternoon, and I will entertain any questions. [LB462]

SENATOR GAY: Thank you. Are there any questions? Senator Gloor. [LB462]

SENATOR GLOOR: Thank you, Chairman Gay. Just a...thank you for your testimony, a public health question on behalf of Nebraska. Have you seen any increase at all in HIV transmission as a result of IV drug use? [LB462]

NAKIEA BOETGER: Increase? No, I have not. [LB462]

SENATOR GLOOR: Okay. Good. Thank you. [LB462]

SENATOR GAY: I've got a...oh, I'm sorry. Go ahead, Dave. Senator Pankonin. [LB462]

SENATOR PANKONIN: A follow-up question to what Senator Gloor was asking. What do you see trends in this area of disease--increase, decrease, what are some of the more recent trends here locally? [LB462]

NAKIEA BOETGER: Unfortunately, Nebraska is carrying pretty closely with the national trends in regards to HIV transmissions, not necessarily declining by any means. In regards to specific individuals or groups of individuals contracting HIV, Nebraska is still holding steady with men that have sex with men contracting the highest numbers. Minorities are definitely increasing. Even older folks are increasing as well. Does that answer your question? [LB462]

SENATOR PANKONIN: Yes, thank you. [LB462]

NAKIEA BOETGER: Great. [LB462]

SENATOR GAY: I've got a question for you. Earlier Jordan talked about New York had a program where they're showing videos and all this. You brought up informed consent, what truly is informed consent. If you're just signing away... [LB462]

NAKIEA BOETGER: Right. [LB462]

SENATOR GAY: ...no one even reads those probably this might be... [LB462]

NAKIEA BOETGER: A lot of folks don't. [LB462]

SENATOR GAY: So would you say without some of these provisions, just putting it on there, they're not really being informed. So do you think, what you said, there should be follow-up and other things, but I mean I'm with you a little bit. How much informed

consent is there when we're signing this form? The education component that you're talking about may not necessarily isn't in this bill at this point. [LB462]

NAKIEA BOETGER: Right, right. [LB462]

SENATOR GAY: So you're saying... [LB462]

NAKIEA BOETGER: Well, these are recommendations that I... [LB462]

SENATOR GAY: Right. [LB462]

NAKIEA BOETGER: Okay. Will you rephrase your question for me? I apologize. [LB462]

SENATOR GAY: Well, my question, I think we're on the same page. Probably you'd need an amendment to get to what you want. [LB462]

NAKIEA BOETGER: Precisely. [LB462]

SENATOR GAY: Because I was thinking you're just signing a form so all right. [LB462]

NAKIEA BOETGER: Right, right. [LB462]

SENATOR GAY: It was a guess a statement rather than...Senator Gloor. [LB462]

SENATOR GLOOR: Thank you, Chairman Gay. I'm hesitant to ask this question because I'm afraid of the answer. But, and this is a serious question. We all see the world differently. I'm curious as to what you see as older Nebraskans. (Laughter) [LB462]

SENATOR GAY: You don't have to answer. [LB462]

SENATOR GLOOR: And it's not a trap. Trust me. You know, your perspective on an age category. My idea of older Nebraskans and yours may be very different so it's... [LB462]

NAKIEA BOETGER: I guess in general what statistics are saying is that folks that are 65 and older are acquiring HIV. [LB462]

SENATOR GLOOR: But that is interesting. It's amazing. [LB462]

NAKIEA BOETGER: Right. There have been reported cases of outbreaks of particular STDs within retirement communities. [LB462]

SENATOR GLOOR: Interesting. [LB462]

SENATOR HOWARD: Tim, it's Norm's birthday today too. You got to be careful (laugh). [LB462]

SENATOR GAY: I saw her scan the room real quick before she answered that question though so I... [LB462]

NAKIEA BOETGER: If you can use your senior citizen discount, I'll leave it there. [LB462]

SENATOR GLOOR: It's a good thing. [LB462]

SENATOR GAY: All right. Any other questions? Don't see any. Thank you. [LB462]

NAKIEA BOETGER: Thank you so much. [LB462]

SENATOR GAY: Any other proponents who would like to speak? How many more proponents do we have to speak on this? Looks like you're the last one. How many opponents that are going to be speaking on this? Anyone neutral? Okay, so no opponents and two neutral I think we saw. All right. Come on. You can make your way up to the front. There's a few seats up here if you want. [LB462]

CLAUDIA BALTA: (Exhibit 5) Good afternoon, Senators. My name is Claudia Balta, that is spelled C-l-a-u-d-i-a, last name, B-a-l-t-a. Thank you for the opportunity to be able to speak in front of you today. Like I said, my name is Claudia Balta and I am also a case manager with the Nebraska AIDS Project. I work with people who are HIV positive every day, assisting them in various parts of their lives--could be anywhere from getting them medical care to helping them face those challenges that come with being HIV positive. And I would like to give testimony today to all of you about the stigma and the stereotypes attached to being HIV positive and the different ways that these can be reduced, especially I want to refer to rural communities in Nebraska. There are two points that I'd like to make in reference to this bill that could change and bring positive effects to HIV testing. Basically, we would like to see more people tested, period, and we hope that the passing of this bill will help increase testing overall. First, I'd like to explain how stereotypes of people who have HIV can actually hinder the campaign to get people tested. And second, how those stereotypes can actually hinder the prognosis of someone who is a nonstereotypical person in their prognosis. So I guess from that we can start by saying...I would like to start by saying I was born and raised on a farm outside of Randolph, Nebraska. So I kind of understand a little bit more of like how it's different in rural communities to think about HIV. You think it's far away, it's not something that we deal with, right? Well, actually that's not the truth, and I think that

thinking that is what causes stigmas and stereotypes to come about. So if we were to think about the typical stereotypes of someone who has HIV, the first things that come to mind are gay, minority, drug user, but those are actually not the only people that become infected with HIV. I would like to use a case of a white female as a "nonstereotypical" person becoming infected with HIV because a white female is just as susceptible of becoming HIV positive as anyone from any of those previously mentioned groups. Also whether or not you live in Omaha or in Randolph, people are putting themselves at risk. We all know that the major risk factors for becoming HIV positive are unprotected sex and IV drug use. And those activities do take place in rural settings so people are at risk. Yet me coming from a small town, I know that the likelihood of someone getting tested for HIV part of a yearly exam in a small town is slim to none, even if having unprotected sex has been disclosed with your physician. We would like to see HIV become more of a standardized part of a yearly exam or physical, no matter if you are from rural Nebraska or from Omaha or in Lincoln, if you're white or a minority. We feel that it would help to reduce those stereotypes around getting tested. The more the people are tested, the more common it is, the more unusual it becomes, the more people will accept it and take it as just part of their normal healthcare. After time, this would help instill the idea that it's just part of a routine. So rural doctors would probably face difficulty recommending HIV testing because they feel that their patients have no connection to HIV. However, if we can promote educational tools with doctors, they can guide the patients through this process. And with increased education at the provider level, we can also work to reduce the stigmas attached to being HIV positive. I think about when I was in high school and what I knew about HIV. I think about how I thought HIV was transmitted and the ideas that I had about people who were infected. And I remember tying HIV with all those stereotypes that I previously mentioned. Now that I work every day with HIV positive individuals, I realize how wrong I was and how naive I was to think that I was a world away from HIV. My second point that I'd like to make is how testing more nontypical patients and not just targeted populations can mean the difference between a good and bad prognosis for that patient. Let's use the example of the white female. If she turns up positive for HIV, it pains me to know that she might have been living with the infection for years without ever being tested, simply because she is not one of those stereotypical people that would have HIV so her doctor would have maybe not thought to test her for it. With HIV, early detection is absolutely elemental in effective treatment and prevention of further transmission. So what that means is it is not doing anyone any benefit to not be testing them regularly if they're not a stereotypical person that we would think that would be getting HIV because we're diminishing their chance if they were to be infected...diminishing their chance of longevity and also increasing the likelihood that they're going to transmit that virus on to someone else because they don't know that they have it. So why would we not screen everyone every year so that could mean less transmission and better prognosis if infected? So I guess in conclusion I hope this bill will create some changes and help bring HIV testing to the forefront and maybe make it a more regular part of yearly exams and physicals. It could help to test all people even who are not at risk and not those who

just fit the stereotypes. Also we will give those nonstereotypical people who are positive the same chance of getting into care early and teaching them about how to reduce further transmission. I feel that it is especially important to help promote these changes in rural communities where HIV is thought of as a far-away problem and not an actual threat. I know that I feel very grateful to have the education and experience that I now have, but it really saddens me to know that maybe a woman from my hometown community might not be tested simply because she doesn't fit those false stereotypes of someone who has HIV. So thank you very much. Questions? [LB462]

SENATOR GAY: Thank you. Are there any questions? I don't see any. Thank you. [LB462]

CLAUDIA BALTA: All right, you're welcome. [LB462]

SENATOR GAY: Last call for proponents. Any more proponents who would like to talk? Okay, we'll go to opponents. Anyone who would like to speak, opponents? Come forward. All right. Neutral. Anyone neutral would like to...come on up. [LB462]

CINDY WHITE: Could somebody help me? I'm blind. [LB462]

SENATOR GAY: You bet. We've got someone right there with you. [LB462]

CINDY WHITE: (Exhibit 6) My name is Cindy White, C-i-n-d-y W-h-i-t-e. I'm a woman living in Nebraska HIV positive AIDS. I thank you for your time and attention. I appreciate this opportunity to speak to you today. I've submitted written testimony and obviously I am totally black blind so I will not belabor the point and even begin to try to impress you with my reading. I'll leave that to you. I am an active educator in my community, and I talk specifically to children usually, middle school students and high school students all the way up to geriatric-aged populations. And you'll have to forgive me, Senator Gloor, if you were the one who asked about the age of that older category. I have to admit at 48 years old I tell my kids that I educate 50 and over is the second fastest growing group of individuals testing HIV positive in Nebraska and that's your grandparents. And, boy, do they shudder. So, you know, it never hurts them to realize that we're all human and that there's no certain age that we either choose to participate or don't choose to participate necessarily in an activity that it's kind of a free-for-all. If we've got the wherewithal and the imagination, we can make anything happen so. I'm here to tell you that I was diagnosed HIV positive in October of 1990. I'd received a call from my ex-husband who had moved away to another state, left my young son and I here. And I had moved into another relationship before I had received the call from my ex-husband. He tested in a blood bank and that was how he was found to be positive and alerted me to that fact, which is something very unusual for partners to do. Most partners are too embarrassed, too much in denial to make those phone calls. So I appreciate that. However, since I started a new relationship I went and got tested

through my OB/GYN. I told her that I had had this phone call. She told me what that meant if I was positive. Basically, like Claudia alluded to, I was one of those white women who should not be at risk for HIV. I had a healthy, bouncing 9 pound, 7 ounce baby boy in 1987 who is healthy to this day at 22 years old next year. I'm extremely happy and blessed to be alive for that. However, during that period of time even thinking that you could be HIV positive meant a short life. And as a mother, I was horrified by that. Also in this new relationship, went and got tested, the doctor was very good to me. At that time it took the better part of two, three weeks I say, 14 working days too get your test results. I had forgotten I took the test. I was alerted by the doctor's office that they had botched the test, and that's the guise that they got me to return to the doctor's office. That is where I was given the information I was, in fact, HIV positive by my doctor. The key for me with this particular bill and why I am neutral is that, first of all, I believe that everyone should be tested for HIV. And as someone pointed out earlier, the CDC report of the universal testing models in larger metropolitan areas is very prudent. With Nebraska being considered by the CDC to be a low-incident state, I don't think that that lessens our liability to our fellow Nebraskans not to give an opportunity for universal consent when signing any medical form for a doctor to treat them. However, my problem with this is as being someone HIV positive who has been disparaged now that they've been diagnosed, in some medical settings I'm still considered a threat to the medical care professional. After saying that, I think that in cases where a patient who is possibly looking like someone's judgment of what a stereotype should be would possibly be tested without their knowledge. If a friend of mine would present to a doctor setting with a cold and somehow sneeze on a practitioner that did not have enough education and was not aware, would be given the information that they're HIV positive after giving blood by a doctor saying let's check you for anemia, for instance, where they do have to draw my blood product to know what my hemoglobin looks like. The biggest thing for me as someone living with HIV/AIDS in this state is that we promote testing as much as possible without stigmas. And I believe that somehow this bill could be a part of that answer for Nebraskans. However, some kind of information pre and post-testing counseling I think is beneficial to this particular law because of the stigma and the stereotype that is ensued over decades of this epidemic. I myself know that after I got diagnosed and educated, found out I had actually transmitted HIV to my lover, Dan, who has since died in my arms December 26 of 2001 due to complications of not having an immune system, I started educating and unlayering my life and realized I was that white woman who unknowingly got HIV transmitted to her in 1983 due to unprotected sex. When I got pregnant in 1987, no doctor even said the least of have you ever had unprotected sex with someone, would have been an indicator that I was a typical candidate to test for all, if not just HIV, any STD. And I'm not sure that was even done in '87. So I thank you for your time and attention. I'd appreciate answering any questions. The last final comment I'd like to make is I do appreciate what Senator Dierks has done with this particular bill. However, the portion of the bill that specifically speaks to opting out with prenatal care again would be an opportunity for a healthcare professional to provide information. And I don't know a single woman who, with a child in utero, would

deny anything that would give her healthcare professionals information about her pending pregnancy or moreover, the health of her child. Secretly in '87 the scourge was herpes. I prayed that I did not have herpes when I was pregnant with my son. Little did I know how big and how far that prayer was going to reach in my life. So I thank you for your attention. I appreciate it. [LB462]

SENATOR GAY: Thank you. Any questions? Hold on one minute, we'll see. Any questions? I don't see any questions for you. Thank you for your testimony. [LB462]

KAY OESTMANN: (Exhibit 7) I'm still Kay Oestmann (laugh), K-a-y O-e-s-t-m-a-n-n, and I'm not going to be redundant. Some of my testimony has been already explored by most of the people that are here. I'm representing...I'm president of the Public Health Association in Nebraska and we have members that are involved in HIV counseling and testing and are colleagues of the Nebraska AIDS Project and many of these people that have already testified. Our concern with this bill is the provision involving the duty to report. While this is standard in care for hospitals and physicians' offices and the CDC recommends it and we use this in all the HIV counseling and testing sites, it needs to be spelled out clearly to include these guidelines for insurance companies and mobile testing areas. We think that the...we strongly support the need to include a delivery of counseling and referral services in reporting the results to individuals with positive results. We support the concept of this bill and after having read the resolution by the NMA House of Delegates in 2007, trust the intent. We just have the concerns about the duty to report. [LB462]

SENATOR GAY: Thank you. Any questions? I don't see any. Thank you. [LB462]

KAY OESTMANN: Thank you. [LB462]

SENATOR GAY: (Exhibits 8, 9, 10) And then for the record we had two letters of support: one from Nebraska Hospital Association, one from the Department of Health and Human Services, one against from the ACLU. Those are written letters and those will be in the record. And with that, Senator Dierks is not here to close. He'll waive his closing and we will close the public hearing on LB462. Senator Fulton has been patiently waiting on LB395. [LB462]

SENATOR FULTON: Thank you, Mr. Chairman, members of the committee. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I represent District 29. I'm pleased to bring to you today LB395. According to the American Heart Association, stroke is the third leading cause of death after heart disease and cancer. State policy with regard to the care and treatment of stroke within our healthcare system should, therefore, promote best outcomes for instances of stroke throughout our state. Institution of a statewide stroke registry, as proposed by LB395 is a means of ensuring best outcomes for residents of our state that experience a stroke from diagnosis to

recovery. In 2001, Congress charged the centers for disease control with establishing stroke registries in eight states to test models for measuring the quality of care delivered to stroke patients. An assessment conducted three years later indicated the existence of substantial gaps between recommended guidelines and actual hospital practice in each of these states. As a result, these states were able to implement measures that improved stroke care from emergency responsiveness to rehabilitation. LB395 seeks a similar result for the treatment and care of stroke in Nebraska. Similar in scope to other disease registries, the Stroke Registry Act requires the Department of Health and Human Services to adopt rules to carry out the compilation of information and statistics on stroke care. Section 6 of the bill requires either a licensed physician or a hospital or rehabilitation center to furnish the department with all information deemed necessary by the department to effectuate the act within 30 days after treatment or discharge. Incidents of stroke occurring at a nursing home must be treated at a physician office or hospital. Therefore, the term "rehabilitation center" does not constitute a nursing home or assisted living facility. As with other registries, patient information used for compiling the stroke registry shall be deemed confidential and classified in accord with Section 81-667. Implementation of LB395 will enable the department to better identify and close any gaps in stroke care such as improving the identification of the signs and symptoms of stroke such that stroke victims are able to be treated within the critical three hours following the onset of stroke, determining the incidents of private transport and ambulance transport to the hospital so as to improve education and treatment time, and lastly, identifying and targeting treatment gaps with regard to underserved populations based on any empirical gender and ethnicity treatment disparities. Concluding, national studies indicate that stroke as compared with other life altering illnesses causes the greatest out-of-pocket cost to family caregivers. The incidents of stroke also substantially contributes to our state long-term care costs. LB395 is a necessary step to mitigate these costs by ensuring the victims of stroke in our state receive optimized care. And I will endeavor...I believe you did receive a letter also which, hopefully, I can get submitted into the record. [LB395]

SENATOR GAY: Yeah, Senator Fulton, for the record, we received a neutral testimony...we have a letter here and this is from the Nebraska Hospital Association and the department is neutral, the Department of Health and Human Services. And we do have a letter here... I don't know if Madonna is going to testify or not, but there's...Madonna has a letter of support, so we do have that. Let's see if...any questions for Senator Fulton? [LB395]

SENATOR FULTON: Any questions I would be happy to answer. [LB395]

SENATOR GAY: How many people will be testifying on this? Any, just...three. David, do you want to come up a little bit. Come on up and we'll get going. Proponents...are you proponents? Any opponents to this at all? So looks like all proponents. And anyone in the neutral? We have letters in neutral? Okay, come on forward. [LB395]

JILL DUIS: (Exhibit 1) Good afternoon, members of the committee. My name is Jill Duis. I am a volunteer for the American Heart Association, and I currently sit on the Nebraska Stroke Advisory Council. I'm also a wife, a mother, a grandmother, a registered nurse, and a stroke survivor. I suffered my stroke while eating a meal with my family, and unable to move my left side and talking, but not making any sense at all. My husband recognized the signs and symptoms of a stroke. I was 45. It was purely by chance that my family recognized the symptoms of a stroke, and that was only because of my recent involvement in bringing the use of tPA, the clot-busting drug to our rural community hospital. I had worked with a team to educate physicians and nurses, put protocols in place, and most importantly, educate the public. It was one of the most rewarding experiences of my life because now something could be done for those with stroke. During my stroke, I was taken to the emergency department of the area hospital I worked at, evaluated, and eventually given tPA. My symptoms began to resolve. After months of physical and occupational therapy, I returned to work, and I now lead a productive life. I have learned to walk a flight of stairs, jump, skip, and even dance. My balance and my depth perception remain problematic, but manageable. Even though for the stroke survivor, rehabilitation never stops, and, in fact, it becomes a lifelong process. I cannot impress upon you the feeling...rewarding feeling of independence I had when I learned to drive a car again, and ordered iced tea in a drive-thru. However, none of this would have been possible had my family not known the signs and symptoms of stroke, and the importance of rapid intervention. Care provided for a stroke patient can never be left purely to chance. By having a stroke registry, we would be able to collect and provide valuable information about where the cracks in our system are located. Targeting education to specific areas, whether it be risk factors for stroke or educating prehospital providers or hospitals, rehab services, or the general public could potentially make a dramatic impact on care--dollars wisely spent and lives saved. While most of the public may know that there is a drug available to treat strokes, they may not know the time frame of use or even the signs and symptoms of strokes. Every EMS service in Nebraska should have the opportunity to use approved scientific based best practiced, standardized protocols for the treatment of stroke; every hospital should as well. We should not leave to chance whether or not a patient will receive the best care. We should do all that we can to ensure it, but are we? Well, simply put, we just don't know because we don't have the data. I recently attended the National Public Health Stroke Summit where presenters from Colorado, North Carolina, and Utah discussed the establishment of stroke registries in their states, and the positive impact they had on stroke care. The information collected was invaluable. Most importantly, it improved the use of tPA which improves stroke patient outcomes. We know the financial burden stroke places on patients, their families, and our healthcare system. We know because we collect the data at the back end after the stroke has happened. It is time for us to reverse this and focus on what we need to do to positively impact stroke care for all Nebraskans. We need to be working on the front end of stroke care by establishing a stroke registry. Data drives change, and change will improve lives. This is too important

to leave purely to chance. Thank you. And as an aside, I'd like to thank you all for passing the statewide smoking ban last year. [LB395]

SENATOR GAY: All right. Thank you for your testimony. Senator Stuthman. [LB395]

SENATOR STUTHMAN: Thank you, Senator Gay. Jill, thank you for your testimony. In your situation, when you...the symptoms were noticed with your stroke, what do you say there would have been a time frame as to when you couldn't have been helped had not somebody been there or somebody was aware of your symptoms, if you'd have been alone or maybe a child was only there? [LB395]

JILL DUIS: The current recommendation for the administration of tPA is to administer within three hours of onset of the stroke. There are some studies currently looking at expanding that time to 4.5 hours, although those are inconclusive. If a child would have recognized it, it's interesting that you ask that, because that's one of the cracks in our system right now is that we don't teach our children signs and symptoms of stroke that their parent or their grandparent could be experiencing. I received my tPA in 2 hours and 55 minutes. The committee may assume that because of my background, and because of my family situation that my husband called the ambulance. He did not. He placed me in the car, thinking that we had a better opportunity to go to the hospital and make it there in time. I live one mile from the Kansas-Nebraska border. [LB395]

SENATOR STUTHMAN: Well, thank you very much. [LB395]

JILL DUIS: You're welcome. [LB395]

SENATOR GAY: Any other questions? Well, I've got a question for you, and you don't have to answer this if you don't want to because it's somewhat personal, but...and then I'll tell you why I'm asking this. Three of us...Senator Stuthman, Senator Campbell, and myself are on the Transportation Committee, and there was a bill that dealt with adults getting learners' permits to drive. And the bill didn't go anywhere, but part of that...why we didn't want to limit how many times you could get that was because people out of medical necessity might need to do that, and it might take longer than a certain time period. And we just didn't want to get in that way is what I felt the committee was doing. But was that a challenge, and how long would something like that take? I mean, you wrote in your testimony; that's why I ask that. I'm sure it's... [LB395]

JILL DUIS: If you're asking about how long it took me to learn to drive? [LB395]

SENATOR GAY: Yeah, we take it for granted, but yeah, is it something you had to utilize that? [LB395]

JILL DUIS: I did not need to utilize that. My husband is in the audience, and he will tell

you that we purchased a riding lawn mower, and our grass was clipped very short that summer (laughter). That's how I... [LB395]

SENATOR GAY: Well, we...it didn't go anywhere, because we didn't want to screw anything up as far as people that needed a little extra time to do that, but. Well, thank you very much for your testimony today. Appreciate it. [LB395]

JILL DUIS: Thank you very much. [LB395]

SENATOR GAY: All right. Other proponents who would like to speak. [LB395]

JOSE CARDENAS: (Exhibit 2) Good afternoon, Senators. My name is Jose Cardenas, J-o-s-e C-a-r-d-e-n-a-s. I am a vascular neurologist. I practice in North Platte, and I am also a chairperson of the Nebraska Stroke Advisory Council. As a healthcare professional, educator, research and constituents, the members of the Nebraska Stroke Advisory Council wish to testify in support of the LB395 introduced by Senator Fulton in January of 2009. The purpose of this bill is to establish and maintain a stroke registry for the state of Nebraska. Stroke accounts for over 1,000 deaths in Nebraska each year, and approximately 3 percent of Nebraskans are living with stroke-related disabilities. In the past decade, there have been major advances in the diagnosis and treatment of acute stroke, but there is still obviously much work to be done. The report An Assessment of Acute Stroke Treatment in Nebraska Hospitals published in September of 2006 recommended the establishment of the Nebraska Stroke Advisory Council and documented the likelihood of disparities in acute stroke care in the state of Nebraska. It showed that Nebraskans living in the eastern more urban areas of the state are two to five times more likely to receive evidence-based clot busting treatment for acute stroke than Nebraskans in the central and western parts of the state. In addition, just 2 percent of Nebraska hospitals reported having an organized team of providers to treat acute stroke. The report specifically recommended that the state of Nebraska create a stroke registry to track the numbers and types of strokes within Nebraska, the treatment received, the time to provide the treatment, and, obviously, outcomes of these provisions. According to the Centers for Disease Control and Prevention, the purpose of a registry is to measure, track, and improve the quality of care for acute stroke patients; decrease the rate of premature death and disability from acute stroke through secondary prevention; increase public awareness of stroke treatment and prevention; and reduce disparities in acute stroke care providing underserved populations with better access to care that is consistent with evidence based guidelines. Disease registries exist to collect data and measure health outcomes so organizations receive the feedback that allows them to improve. For example, if one hospital in a region is providing the clot busting drug to 80 percent or more of the eligible patients, we can use the procedures that this hospital uses to set benchmarks for other institutions and overall improve stroke care. A stroke registry will also provide the data needed to support community and professional education about a stroke, support quality

improvement activities for providers, and measure the outcomes of this quality improvement's activities. For example, if hospitals have an organized acute stroke team and these teams have better outcomes than those organizations that do not have a team approach, we can then educate these facilities as to the role of the team in acute stroke care, and we can target specific organizations by these means. Nebraska Medicaid spends over $33 million on stroke care each year, and a Nebraska Medicaid recipient is nearly twice as likely to be hospitalized due to stroke as Nebraskans not receiving Medicaid. According to the U.S. Census, Nebraskans aged 40 to 64 years account for nearly 32 percent of our state population, and individuals that are 65 years and older make up 30 percent of the population. As the population ages, the burden of stroke care on public and private healthcare funding is likely to increase. In summary, there is strong evidence that disparities in stroke care exist across Nebraska. And we know that the process of stroke care is often not consistent with the current guidelines. A registry will enable data to be transformed into powerful information that will drive change. The Nebraska Stroke Advisory Council supports the establishment of a statewide stroke registry to help prevent stroke, minimize the likelihood of death and disability due to stroke, and to improve the quality of stroke care overall. [LB395]

SENATOR GAY: Thank you. Any questions? Senator Wallman. [LB395]

SENATOR WALLMAN: Thank you, Senator Gay...Chairman Gay. Yeah, thank you for testifying here. I think this is a good idea, but as of right now, do not hospitals keep track of who has strokes in their daily patient care? [LB395]

JOSE CARDENAS: Not necessarily. This is not something that a hospital needs to have. This is a...at this time, by choice. Not all hospitals have a stroke registry with different mechanisms of gathering information, you know, by electronic records, paper records. At this point, every hospital can choose whether or not to keep this information, and they can choose which variables to include on this data basis. [LB395]

SENATOR WALLMAN: I guess if I was administrator, I'd want to know heart attacks, strokes, you know down, each thing. But thank you. [LB395]

SENATOR GAY: Thank you. Any other questions? Senator Gloor. [LB395]

SENATOR GLOOR: Yes, thank you, Chairman Gay. Doctor, I'm looking for a comment in your testimony. I don't see it, but I know it's in here someplace. It had to do with the fact that hospitals in the eastern part of Nebraska were two to three times more likely to use protocols than hospitals in the central and western part of Nebraska. Is that correct? [LB395]

JOSE CARDENAS: Correct. [LB395]

SENATOR GLOOR: Well, the challenge here would seem to be there are already treatment protocols, are there not, that those hospitals are following? We hope that as a result of the registry, we will come up with even better treatment protocols. The challenge would seem to be, there are protocols already. We would like to be more specific, but the challenge would seem to be getting institutions, physicians in those institutions to still use the protocols, many of which already exist; tPA being the most obvious one we've heard testimony about. So therein lies the challenge, and how would you see specifically the results of a registry used to decrease that gap of utilization? I mean, I'm looking for some specific, everyday sort of utilizations that could make a difference. [LB395]

JOSE CARDENAS: Well, I see the creation of a registry providing enough data that can be used in many different ways. As requesting those for day-to-day stroke care, a registry will, of course, be public. Folks in communities will know how their hospital is coming up to par with guidelines and with outcomes. The same constituents can just address the situation with a hospital and ask hospital administrators to step up to the care and to be more like other hospitals that are setting benchmarks. Also, this data would serve as a measure of setting internal benchmarks. Hospitals that have never done this, they may realize that there are several areas that can allow for significant improvement, and without anybody telling them to do so, they may choose to just for the sake of providing better patient care, they may choose to step up and improve the overall continuity of care. [LB395]

SENATOR GLOOR: Are you employed by a hospital? [LB395]

JOSE CARDENAS: Yes. Yes, I am. [LB395]

SENATOR GLOOR: Okay. Do you think most of your peers are employed by a hospital? [LB395]

JOSE CARDENAS: I would say that, at this point in neurology, more neurologists are in private practice than employed by hospitals. [LB395]

SENATOR GLOOR: How will we carry this message outside of hospitals to the practitioners who aren't employed at hospitals since hospitals don't write prescriptions for tPA; physicians write prescriptions for tPA? I mean, how do we bridge that gap, would you think? [LB395]

JOSE CARDENAS: Well, in the specific case of tPA, tPA is given almost always in the emergency department. You don't require to have a neurologist to...in order to provide a...to give tPA to a patient. An emergency department physician can do it; an internist can do it; a family practitioner can do it. Definitely, education is a big factor here, and that's another challenge that we need to overcome. [LB395]

SENATOR GLOOR: But the bias we have to be careful we don't fall into here is that we're thinking in terms of larger hospitals with emergency departments staffed by emergency physicians as opposed to some of our smaller hospitals where the phone call goes to the family practitioner who is also the obstetrician, the pediatrician, the emergency physician. I'm looking at how we might be able to bridge that gap to make sure that as a result of this data, they are just as informed as that emergency physician or the trauma care coordinator in a large hospital. [LB395]

JOSE CARDENAS: To put it in one word, I would say, education. [LB395]

SENATOR GLOOR: Okay. It's a big word. Yeah. [LB395]

JOSE CARDENAS: Yeah. We just need to roll the word out and try to educate all practitioners in the availability of this drug, the availability of the protocol in the hope that that will make them more likely to follow this protocol, because, obviously, the first step is if you had to know, that is how their...and if you don't know their protocols, how their (inaudible) condition. That's not going to be used. [LB395]

SENATOR GLOOR: Well, and I hope you don't think that I'm not...don't recognize this as a serious issue or a serious problem. But collecting data for data's sake is a frustrating thing for people in healthcare, I think, and making sure that that data is used in ways that make a difference is what we want this bill to actually accomplish, and that's the reason for my questions. [LB395]

JOSE CARDENAS: Yes, I share your concern, because definitely I will be the one filling those extra forms of my stroke patients, and I would like to see the data being used in a very positive way. [LB395]

SENATOR GLOOR: Thank you. [LB395]

SENATOR GAY: Thank you. Any other questions? I don't see any. Thank you. Other proponents who would like to speak? Opponents? Neutral? [LB395]

DAVID BUNTAIN: Senator Gay, members of the committee, my name is David Buntain, B-u-n-t-a-i-n. I'm a registered lobbyist for the Nebraska Medical Association, and we are neutral on the bill, but I do want to just touch on a couple of things that I think the committee needs to consider in looking at this...the colloquy between Senator Gloor and your previous witness, I think, point to the issue that physicians have generally with these registry bills, and that is that every mandate you have to make a record and turn in a record to somebody adds to the cost, and the issue always is, is there a...does the public benefit to that, justify that? And I think what we're seeing is kind of an evolution of the registry as a mechanism within our state law. We've had a cancer registry for about

30 years, and the cancer registry was formed because people thought it would be helpful to gather data on the incidents of cancer in Nebraska for epidemiological reasons, so that researchers could determine if there were common, you know, exposure to industrial chemicals, exposure to pesticides. If you could find within the data those kinds of indicators so that you could effect the care that's being provided to patients. There was a similar motivation to forming a Parkinson's disease registry, and the Parkinson's disease registry formed because people had observed that through this part of the country there is a higher incidence of Parkinson's disease. And we had some researchers...I believe they were from Creighton who wanted to be able to research whether this might be due...I mean, one of the theories has been that it's because we use more pesticides, and it could be the exposure to that. And this would provide a way to gather the data to do that kind of research. The next registry that was created was the brain injury registry, and that was created for a different purpose. And, basically, the proponents said, we need to find out who all of the brain-injured people are, so that we can provide services for them, and that's really what's involved here is it's...we need to identify who all the stroke victims are, so that we can use that to guide the choices we're making to educate patients, to find where the gaps are, and services. And so, the question really is, from the standpoint of expending the public dollars that are shown in the fiscal note, and also requiring the providers to gather that data, is this the best use of these public dollars to address this issue? And we don't have the answer to that. I guess you're going to have to decide whether that's the case. But our concern is, as these registries are created, that there be a clear reason for doing it, and that also, if you're going to spend $200,000 in the next two fiscal years, $143,000 the next year, that this is the best way to address stroke issues on a statewide basis. It sounds to me like we already have a lot of the data. It may not be comprehensive or complete, but we have some ideas already about gaps in service. Would it make more sense to spend this money, if that money is available, on addressing those needs rather than collecting the data so that you could come back later and have additional appropriations in order to address the need? So that, as I say, you know, we...I guess our bottom line is we want to do what we can to be...improve the care for stroke victims as well, and it's really a question of, is this the best way to get to the next level? [LB395]

SENATOR GAY: Thank you. Any questions? I don't see any. Thank you. All right, anyone else who would like to speak neutral? You want to close, Senator Fulton? Any questions for Senator Fulton? Senator Fulton waives his closing, and we'll close the public hearing on LB395. I see Senator Janssen is here on LB435. (See also Exhibits 3, 4, and 5.) [LB395]

SENATOR JANSSEN: Good afternoon, Chairman Gay and members of the Health and Human Services Committee. For the record, my name is Charlie Janssen, C-h-a-r-l-i-e J-a-n-s-s-e-n. I represent Legislative District 15 in the Nebraska Unicameral. I appear before you today to introduce LB435, and I also want to thank Chairman Gay for cosponsoring LB435. LB435 was brought to me by the Public Service Commission. The

PSC is responsible for a state inspection program for modular housing units and manufactured housing homes/recreational vehicles. The PSC has experienced cash fund pressures regarding these inspection programs for several years. LB435 would consolidate the cash funds of both the modular housing and manufactured housing, recreational vehicles, inspections programs into one Public Service Commission housing and recreational vehicle cash fund. By combining these cash funds, the PSC will be better able to cash flow the inspection programs and functions. The PSC has also asked for the ability to annually determine the correct inspection fee for the manufactured home inspection program. While I always approach the delegation of fee structures to agencies with a high degree of skepticism, I do feel that the PSC is able to make a fairly persuasive case that this program has long cost more than the statutorily provided maximum fee, and the industry has assured the PSC staff that they are on board with this fee proposal. Thank you for your time. I'd be happy to answer questions. This bill, again, was brought to me by the Public Service Commission, and I believe, if not them, others will be testifying to the more technical matters, nature of this bill. [LB435]

SENATOR GAY: Thank you, Senator Janssen. Are there any questions? I don't see any right now. Thank you. Oh, I'm sorry. Senator Stuthman. [LB435]

SENATOR STUTHMAN: Thank you, Senator Gay. Senator Janssen, in the bill it takes out the part of the dollar amount, the ten dollars, and not more than seventy-five dollars. And now it's going to go any amount that is established by the commission, right? The fee. [LB435]

SENATOR JANSSEN: Thank you for your question, Senator Stuthman. Sitting on Transportation with you, I knew you'd have a question, so. (Laughter) I believe they'll get up and make an argument for that and explain that for you. [LB435]

SENATOR STUTHMAN: Okay, thank you. [LB435]

SENATOR GAY: Thank you, Senator Janssen. [LB435]

SENATOR JANSSEN: And I plan on waiving closing. [LB435]

SENATOR GAY: Okay, thank you. Proponents who would like to speak. [LB435]

TIM SCHRAM: (Exhibit 1) Good afternoon, Chairman Gay and members of the Health Committee. I'm Commissioner Tim Schram, T-i-m S-c-h-r-a-m. I am a member of the Nebraska Public Service Commission, representing the 3rd District. I'm here today to support LB435. I'd like to take this opportunity to thank Senator Janssen for introducing LB435. Also with me today is Executive Director Mike Hybl and Housing Director Mark Lundak. The provisions of LB435 will merge two cash funds administered by the

commission's housing department, the Modular Housing Units Act, and the Uniform Standard Code for Manufactured Homes and Recreational Vehicles. The bill will also remove the cap on the seal fees for manufactured homes and RVs. The housing industry in Nebraska has seen significant declines due to the recent economic downturn in housing markets throughout the country. The manufactured housing program has been especially hard hit. Merging the cash funds of the two programs and removing the cap on the manufactured housing seal fees are needed steps towards saving the manufactured housing program in Nebraska. Manufactured housing regulation was preempted by HUD back in the mid-1970s. Any state continuing with a manufactured housing program was required to become an exclusive agent for HUD and follow all of HUD's rules and regulations. Nebraska decided to continue with its manufactured housing program and the department became the exclusive agency for plan review, home inspections, and customer complaints for the manufactured housing in Nebraska. However, minimal funding is received from HUD, and the meager funding we do receive falls far short of covering the cost of administrating the program. The program is far from self-sustaining at the current maximum statutory seal fee and is failing. Nebraska's program is losing funds at such a rate that the program will be totally nonviable in mere months. In meetings with the industry, it was made clear to the commission that the industry would like the commission's housing department to continue to be the exclusive inspection agency in Nebraska. You will hear from representatives of the industry here today on that issue. However, to do that, the commission needs the flexibility to set fee schedules that allow us to cover the costs of administrating the manufactured housing program and allow the program to be self-sustaining. Combining the cash funds from all the housing programs and removing the cap on seal fees for manufactured homes are necessary steps toward maintaining the existing manufactured housing program in Nebraska. I'd also like to add in addition to our written testimony, last year the commission did see the decline in the housing industry, and we took the necessary action and reduced 1.5 positions in the housing department to 1.5 inspectors. I thank you for your attention this afternoon and urge your support of LB435. If you have any questions, I'd be pleased to answer them. [LB435]

SENATOR GAY: Thank you, Commissioner Schram. Are there any questions from the committee? Senator Stuthman. [LB435]

SENATOR STUTHMAN: Thank you, Senator Gay. Commissioner Schram? [LB435]

TIM SCHRAM: Yes. [LB435]

SENATOR STUTHMAN: In the bill, it...well, it's deleting the amount of funds...the permit fee, and it's open-ended now. And also in there, you stated that, you know, it's not able to fund the need. But also in the bill it has in there, you know, any money...extra money in that fund, you know, available for investing should be invested in state investment officer pursuant to the Capital Expansion Fund. Why are you concerned about investing

the money when you're short? [LB435]

TIM SCHRAM: Well, I think in the event that, hopefully, the economy does turn around, if the fees would generate any excess, that there would be an appropriate place for those fees. Now, currently, in the past three months, we have not issued one seal for fees, so...but I think our staff that wrote that probably felt that that question would be asked that we needed to have it in case of...in the economic turnaround in the event that there would be an excess in that fund that there would be a designated place for it. [LB435]

SENATOR STUTHMAN: Okay, thank you. [LB435]

SENATOR GAY: Any other questions? Senator Campbell. [LB435]

SENATOR CAMPBELL: To take off from that...thank you, Chairman Gay. How many in a usual year would you have? [LB435]

TIM SCHRAM: Oh, I think, for instance, in manufactured homes, 2004 was 760; '05 was 780; '06, 426; 2007, 264; and 2008, 276. On the modular housing side, we've went from 760 in 2004 to 276 in 2008. Recreational vehicles has remained fairly consistent in the economy, but manufactured and modular housing, we've seen a drastic reduction. [LB435]

SENATOR CAMPBELL: That's amazing to go from those numbers to (inaudible)... [LB435]

TIM SCHRAM: Yeah, yeah. So...and, you know, you'll hear from the industry later. You know, it's hard to say what those fees are...will need to be, but we have been told by the industry that other states do not have a program, and they have to hire independent inspectors. Those inspections could be as much as $1,300 per unit. So. [LB435]

SENATOR GAY: Any other questions for Commissioner Schram? I don't see any. Thank you. [LB435]

TIM SCHRAM: Thank you for your consideration. [LB435]

SENATOR GAY: Yeah. Other proponents. [LB435]

THOMAS GARDNER: Good afternoon. My name is Thomas Gardner, T-h-o-m-a-s G-a-r-d-n-e-r. I come to the committee this afternoon to speak on behalf of our industry. I represent one of the largest manufacturers in the state of Nebraska, in York, Nebraska, as a matter of fact. We've been in business in the state of Nebraska since 1960, and just so that we all understand, our industry has ebbs and flows much like

others. We've seen highs in the '70s and the late '90s, and we've seen lows as low as this year has been. I would guess we're probably running about 25 percent capacity. Knowledgeable of that, we have the ability to adjust our production rate, but what we cannot afford to do is to lose the Nebraska Public Service Commission's ability to be our third-party agency to do our inspections and our plan approvals. So what we're asking for is to be able to combine the fees that we currently collect and send in for HUD, as well as modular, and to make that one fund. In years past, we've seen...as the numbers you just heard, state would see maybe one year where HUD business is stronger than the modular business, and the next year it would be just the opposite. In my eyes and my customers' eyes, it's the same product in the sense that it's a home to them. So we're just asking to combine that to keep ourselves solid. It's been a self-funding program for many years, and we'd like to keep it that way. That's all I have to say. [LB435]

SENATOR GAY: Thank you. Any questions from the committee? I don't see any. Thank you. Any other proponents who would like to speak on this issue? Any opponents? Anyone neutral? And Senator Janssen waived his close, and we'll close the public hearing on LB435, and open the public hearing on LB611. Oh, you might have to open it for him. We'll wait a little bit for Senator Karpisek. Oh, there he is. Take your time. [LB435]

SENATOR KARPISEK: (Exhibit 1) Hello, Senator Gay, members of the Health Committee. I don't know that I've ever been over here before. You guys are pretty daunting, aren't you? (Laughter) For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. And I am the senator of the 32nd Legislative District. I'm here today to introduce LB611 which deals with the local opt-out for the state's imposed smoking ban, or as most of us remember, LB395 from the past two years. I'm sure that you're asking yourself, why am I bringing the issue up. We had this discussion; it's over, it's dead. There's two reasons. Number one for me is personal property rights, and number two was the way that the Legislature conducted its business on LB395 for the past two years. I am not here to advocate for smoking, smokers' rights, tobacco, nor tobacco companies. I'm here to advocate for personal property rights of businesses. Kansas and Colorado are thinking and rethinking their smoking bans. And if I can find my article on Kansas...I can't find it. I was getting ready too much. Anyway, Kansas is having some interim studies on what to do. Most of...and they've had antitobacco, of course, and tobacco. People get together. Most of the senators that are on that task force are not in favor of a statewide ban. One of the senators even responded, saying, "Topeka thinks it knows best" and I don't believe that, believe that our local communities do. Well, in our case, it's Lincoln. I do not believe Lincoln and/or Omaha believe best. I think our local communities do. Back to point number one, I think that we are confusing public property and private property. I looked up on Wikipedia.com yesterday. It defined public property as property owned by government. Private property is defined as property that is not public property. A business that is owned by an individual or individuals then is private

property. No one has the right to enter any private property they're invited. You're invited to a house; you're invited to a business. If it is publicly owned, the public owns it; government owns it. In my thinking, as long as signs are posted, people know what goes in there. I do not feel that government should have the authority to control a legal activity on private property. They also...the people that don't have to go in also do not have to work there. I know these are arguments you've heard before, but I believe it. If I know that a job is dangerous, I can decide whether I will take the job or not. If they think there really is a health issue or health concern, call the Bureau of Foods and Dairies or OSHA. We hear from them quite often. I'm not going to belabor the smoking issue again; that is not what I am after. Number two, this bill would put in place the exact amendment that was offered by Senator Johnson as an opt-out for local subdivisions. Senator Johnson offered this amendment on General File to stop a filibuster. I'm going to read some of the floor debate from 2007. That is the amendment that you have. LB395 did not have enough votes to advance off General File, as drafted. Senator Mines and Senator White worked with Senator Johnson, the introducer on amendments, and the main part of those discussions were on the issue of an opt-out for local subdivisions. In regards to this opt-out, Senator Johnson had this to say on General File, March 6, 2007. "In regard to cities, it can be put on the ballot by initiative by the voters." Obviously, we'd have no problem with that. It could be put on the ballot by a vote of the governing body, the council, as an example. Again, this would seem acceptable. But here's where the real problem comes in. The governing body can vote itself to opt out, and our question here is, whereas our opponents would say that this is representative government. We would suggest that here three people on a city council might be making the decision, and would it not be better to have a vote of the people? But that is the question. Senator Johnson went on to say, "what I'd like to do at this point in time is say, let's vote for this amendment. Let's vote for this amendment, advance the bill to Select File. That will give us a chance to keep working on a compromise," and I will go back and say that if it was a vote of the local government, 5 percent of the people could overrule that. It's in that amendment. In a town of 100 people, that's 5 people to come forward and say no. We move on to...let's see, the amendment was adopted 31-0, and the bill was advanced 32-6 because the majority of opponents took Johnson at his word. Select File: After working with interested parties, Senator Johnson introduced AM852 on March 28, 2007, and Senator Johnson even stated then, "I have agreed to an amendment with Senator Mines to add an opt-out provision." Johnson went on to say, "We wish that we had the votes to make the Lincoln city ordinance universal throughout the state of Nebraska. We do not have the votes to do that. That is why we are in a compromised situation." With the amendment, the bill advanced to Final Reading, 35-4. Final Reading: The bill laid over for a year to allow an Attorney General's opinion on the opt-out. The Attorney General said it was all right. However, Senator Mines had left the Legislature by now, and on Final Reading, Senator Johnson amended his bill back to the green copy and passed it, thus misleading the Legislature that he was working with his colleagues in good faith, and got past the major hurdles of General File and Select File by compromising with the opponents. So, there it

is. Every time I bring this up, I see a lot of smiles, and I see them again. Boy, did we pull a fast one there. This would have never have happened, allowed by anyone else on any other subject, but it's all right. I've learned from that, and I hope that we'll see that coming again. And I hope that if that's the way the Legislature is going to conduct business, that's the way we'll do it. I will have to say Speaker Flood was more than cordial. He gave us about eight hours of filibuster time, but compared to eight hours on General File, four hours on Select, maybe a couple on Final, that's 14 hours plus the threat of a filibuster will usually keep something off the agenda. Again, I'm not here advocating for smoking, but personal rights. I'm sure there will testimony today talking about the harmful effects of smoking, secondhand smoke which is more the issue here. I am not refuting any of those issues. I worry, where will these issues stop? Thank you. And if you have any questions, again, the amendments are exact what transpired through Senator Johnson's amendments. [LB611]

SENATOR GAY: Thank you, Senator Karpisek. Are there any questions for Senator Karpisek from the committee? Senator Howard. [LB611]

SENATOR HOWARD: Hi, Senator Karpisek. I remember that debate, and I remember that going to Final Reading, and Senator Johnson standing on the floor. You probably remember it too, saying he had made a mistake, and he wanted to go back to the original bill. And so I think he was pretty up front with people in admitting where he was at and the reason that he did that. But I understand what you're saying as well. And not to be sarcastic, but I suppose you wouldn't support my no smoking in cars with children in them (laughter). [LB611]

SENATOR KARPISEK: I don't think I...I think I was quoted last time, Senator, of not. [LB611]

SENATOR HOWARD: Not that you have to answer that, but (laugh). [LB611]

SENATOR KARPISEK: Again, it's not the smoking issue, and a car is my personal property also. [LB611]

SENATOR HOWARD: Thank you. [LB611]

SENATOR KARPISEK: If I may, Senator Howard, I do remember that. I feel...maybe it was because of term limits, Senator Johnson was leaving. I feel the right thing would have been to pull the bill and start over, start back at square one. It seems like a real jump on how that worked, but thank you for that question. [LB611]

SENATOR GAY: Thank you, Senator Karpisek. Senator Pankonin. [LB611]

SENATOR PANKONIN: Thank you, Senator Gay, and thank you, Senator Karpisek.

Notwithstanding the smoking issue, you know, the idea of rights and private property. Obviously, I think admirably, you've brought some legislation and had one pass last year about fines for marijuana smoking. And I'm realizing that's not a legal product. There's a difference there. But I guess that argument about private property, what you can do, can cut a lot of different ways, and even sometimes with legal activities, we don't allow those things to go to a certain extent on private property. I mean, that's a judgment call on some of those issues as well. Would you agree? [LB611]

SENATOR KARPISEK: I would agree, Senator, and you have me on that one, and I will agree. Marijuana is probably one of my biggest fights that I'll ever put up in my life. It is a good argument. It is illegal. This is a legal...a legal substance, a legal activity. I do know where you're coming from, and, yes, you sure can make that argument. [LB611]

SENATOR PANKONIN: Thank you. [LB611]

SENATOR GAY: Thank you. Any other questions? I would...I'm going to see. How many proponents want to speak on this bill? About three. How many opponents? About three or four, so not too many. This issue can be...we do have quite a few letters, actually, in opposition that I'll read into the record later, that I don't think will be testifying; they're not here. But this bill is to amend the Clean Indoor Act for an opt out. This isn't the smoking bill, so on our testimony here, I mean, I'd like to keep it somewhat to that and not go...and we do have a light system really for...so you get a fair hearing. But I would like to keep it on that issue. The issue today is, should cities, villages have the opt-out provision, not the merits of the smoking ban, or not...and of course, I do know that's hard to separate those two? And I'm not saying you can't speak on that, but I do think Senator Karpisek brought that bill for that reason. [LB611]

SENATOR KARPISEK: I absolutely did, Senator Gay, and I appreciate that. That is absolutely my...I wish it wasn't smoking. I wish this was any other subject. Some of you remember, I tried to liken it with something else on the floor, and I kind of didn't do a very good job of that, so we won't go there again. [LB611]

SENATOR GAY: So. Thank you. And also, Senator Karpisek, I would say in our conversations on this bill, he's been very straight forward what his intentions are, and I sure appreciate that. So, with that, we will...I don't see any further questions. We'll hear from proponents. [LB611]

SENATOR KARPISEK: Thank you. [LB611]

WALT RADCLIFFE: Senator Karpisek, or excuse me, you're Senator Karpisek. You're Senator Gay (laughter). [LB611]

SENATOR GAY: We look a little alike. [LB611]

WALT RADCLIFFE: Yes, you do. Senator Gay, members of the Health Committee, my name is Walter Radcliffe, and I'm appearing before you today as a registered lobbyist on behalf of Big John Billiards in support of LB611. And I was...Big John's has another bill up on smoking which is going to be heard in the General Affairs Committee, but they asked me...they had followed this debate for the last three years, and they said to me, you know, Walt, I know we didn't really hire you on that bill, but would you mind going and speaking on LB611? And I said no, I'd be very happy to. They kind of looked at me, and they said, you don't want any more for doing that? And I said, no, I don't (laughter). I said, because I watched...I watched what happened on the bill two years ago. Shame, shame. This bill should be reported out of committee before you go home today, so the Legislature has a chance to rectify, at least address, what was just really a bad deal. You know, there's one thing we all have here that we rely upon, and that's our word. If I tell you I'm going to do something, I'd better do it or you aren't going to talk to me again. You shouldn't. I can think of three other times when something like this happened, and the Legislature rectified all three of them. In the year '80, Senator Rumery offered a bill to a multi-bank holding company, or an amendment to multi-bank holding company bill. Senator Rumery misrepresented the amendment. It wasn't his fault. He'd been given wrong information. He got up and said...Senator Rumery is from North Platte. He got up and said, I misrepresented it, we need to bring the bill back. It was one of these 25, 24, 26, 23 bills, brought it back and got it changed. Another year, Senator Hoagland, we had a bill that dealt with...it's still in effect today...the litter tax that you pay on certain things that goes into the environmental fund, and you use it for cleanup. We had a tax on goods that was expressed in fractions. I think it was like one one-thousands or one-ten thousandths. Bill comes up on...I don't know if it was the 58th day or if it was the 88th day, but it was right at the end. I don't remember if it was a long session or short session. Senator Hoagland was never in favor of the bill, but he offered what he said was a good faith amendment that changed the fraction equivalent to a decimal equivalent. We adopted it. The bill advances. None of us were very good in math, and, of course, you couldn't return the bill. It was the short session, because the bill didn't hang over. The amendment didn't double, didn't triple, but it...100 times the tax. Came back the next year, and there were some of the same smiles, but the bill was passed. A few years ago, if you recall, Senator Foley stood on the floor on a women's healthcare amendment, and said, oh no, I'm not trying to do that at all. I'm not...that's not what this amendment is intended to do. Some of us said to the contrary, but the amendment was adopted. Senator Foley sent e-mails to people, saying just the contrary, that that is what he intended to do. And, Senator Howard, you remember... [LB611]

SENATOR HOWARD: I do. [LB611]

WALT RADCLIFFE: ...the amendment was taken off. That's what happened when people don't tell the truth or when they renege. Yes, I think Senator Johnson was well-meaning. I think he acted in good faith as he saw it. But Senator Karpisek is right.

He should have pulled it back to General File. That bill wouldn't have advanced. So do the right thing, and put this bill out, and let the Legislature look at it again. Thank you. I'll answer any questions. [LB611]

SENATOR GAY: Thank you, Mr. Radcliffe. Are there any questions from the committee? Senator Howard. [LB611]

SENATOR HOWARD: What happened about the math problem? Was that corrected? [LB611]

WALT RADCLIFFE: It was corrected when a new bill was introduced,... [LB611]

SENATOR HOWARD: The next session? [LB611]

WALT RADCLIFFE: ...heard the very first day, and passed before the end of January. I kind of had to explain to my clients, I was a poli sci major, and not a math major. [LB611]

SENATOR GAY: Senator Pankonin. [LB611]

SENATOR PANKONIN: Thank you, Senator Gay. Mr. Radcliffe, I do...I like history, and I appreciate the history lesson. But I've got a question for you. Has things changed in the Legislature with term limits? [LB611]

WALT RADCLIFFE: I don't think truth and veracity has changed, no, Senator. [LB611]

SENATOR PANKONIN: Well, but the point being that the three senators you mentioned, I didn't serve with any of them. I didn't know about any of those circumstances. [LB611]

WALT RADCLIFFE: No, and neither did Senator Gloor, Senator Campbell serve two years ago. And that's one of the reasons I wanted to give the history. Both ancient, if you will, but also just the last year which Senator Karpisek did. [LB611]

SENATOR PANKONIN: Well, the point being, I think things have changed, and I think those are good examples. I don't know that they're exactly an analogy here. But I think that's part of the...right or wrong, that's part of the changes that have happened here. [LB611]

WALT RADCLIFFE: I would agree, Senator Pankonin, they probably are not good analogies, because those three that I gave you...I think with the exception of Senator Foley, because I'll take that back. I think the first two were honest mistakes. I think the last two were just plain reneges or outright lies. I think the facts speak for themselves.

[LB611]

SENATOR GAY: Mr. Radcliffe,... [LB611]

WALT RADCLIFFE: And if times have changed that allow that, Senator Pankonin, term limits is a lot worse than I ever thought they were. [LB611]

SENATOR PANKONIN: And I'm not arguing that judgment call, but I'm just pointing that out that I think that's part of it. [LB611]

SENATOR GAY: Mr. Radcliffe, I've got a question for you. Some of what you say, of course, you know, I think a person should stick to their word. When you're creating legislation, and there's changes, those of us that were here that weren't involved in some side negotiation or something that still voted for the ban, I mean, we vote how we feel the best interest. That was not part of any deal or anything like that, voting for the bill, how can we be held responsible for other people's actions? And I would say this is very high profile. Senator Johnson waited one year and brought it back. It wasn't like people didn't know what was going on, I think. [LB611]

WALT RADCLIFFE: He waited...oh, excuse me, Senator Gay, finish. [LB611]

SENATOR GAY: Well, I'm sorry, hold on. But I think it was the way you described it. It went...got an Attorney General's opinion. Senator Johnson then came and said, I've made a terrible mistake, apologized to the Legislature. Everyone that had a vote on that had a chance to understand what was going on, and I assume, it had a veto-proof or a filibuster proof passage. I don't know the amount of votes that it ended up getting. But at that point, I think what you're trying to say is, you know, hold everyone accountable for a few actions. Many of us probably on this committee even that were there were not part of some deal. So, how do we hold 48 other people accountable to their...I don't know how you do that. I mean, you each got to... [LB611]

WALT RADCLIFFE: I'll be happy to respond. First of all, when you say you waited a year to get an AG's Opinion, you're right, because he was trying to show that the amendment, the opt-out provision was unconstitutional. The Attorney General's Opinion came back and said that, no, it was constitutional. So, therefore, it wasn't the Attorney General's Opinion that occasioned his reconsideration. I would submit to you it was the absence of Senator Mines who was no longer there on the floor to stand up and speak up on the deal. No, you cannot...you can be responsible only for your own actions, Senator. But individual actions, when taken collectively by a body, reflect upon the whole. And I'm just saying, we...anybody that was there knows that bill would not have moved but for the deal that was made. Why wouldn't it have moved? Because the votes weren't there. Senator Johnson admitted it on the floor. It moved twice...not once, but twice, because of the deal. Now, I'm saying to you, you're not responsible for what

happened, but rather, you have the opportunity; you have the opportunity to do something about it. You have the opportunity to go back and say, we are good on our word. The body is good on its word. We are going to hold people accountable for the truth and veracity of what they say. Now, if there were changed circumstances, everybody changes their mind when there's changed circumstances. Had the Attorney General's Opinion come back the other way, that would have been a changed circumstance. It didn't. There was no circumstance to change except for the absence of Senator Mines. I'm not saying you're responsible for anybody else's action other than your own. But I think everybody's action individually is reflective of what they believe and what they support. I don't think anybody on this committee would say today they would do one thing. Circumstances stay the same, and a year from now, do the exact opposite. I don't think you would. And that's what happened here. [LB611]

SENATOR GAY: Thank you. Senator Stuthman. [LB611]

SENATOR STUTHMAN: Thank you, Senator Gay. Mr. Radcliffe, the fact...you think is the issue of Senator Mines not being there. [LB611]

WALT RADCLIFFE: I think that that had a lot to do with it, Senator Stuthman, yes. [LB611]

SENATOR STUTHMAN: But... [LB611]

WALT RADCLIFFE: That's an opinion on my part. [LB611]

SENATOR STUTHMAN: Yes. But the fact that one individual decided to resign, and there was enough support, as you say, behind it, behind it, why couldn't have someone else taken over that ball and carried it? [LB611]

WALT RADCLIFFE: I don't know. I have no idea why...I don't think anybody else probably thought it was worth the fight, to be very honest with you. [LB611]

SENATOR STUTHMAN: But, you know, and as far as I'm concerned, just because one individual of the Legislature decided to resign...in my opinion, and I was a cosponsor of that bill...that wasn't...didn't enter into my mind. [LB611]

WALT RADCLIFFE: No, I'm sure it didn't enter into your mind, Senator Stuthman. But what I'm saying is, it's not that one senator decided to resign. It's that one senator went back on what he said. One senator said one thing, and a year later, did the other absent any changed circumstance. And I don't think that's acceptable behavior. You wouldn't let me do that. [LB611]

SENATOR STUTHMAN: Thank you. [LB611]

SENATOR GAY: Thank you. Any other questions? And we broke our own rule. What I just said is I think we're getting into...and I guess this is going to be hard to separate, I suppose, but we are getting into some...how the Legislature works, and everyone has an opinion, and the changes of the Legislature. Still at some point, I think the amendment is the...the opt-out provision is still the bill, and that's sort of the discussion if we can, get back to that. And I apologize, I took us off-track too. But that's kind of where we're at. [LB611]

WALT RADCLIFFE: No, Senator Gay, I would agree with you. That is the subject. And you have an opportunity now to put that back out before the body the way it was. [LB611]

SENATOR GAY: All right, thank you. Any other questions? I don't see any. Thank you. [LB611]

WALT RADCLIFFE: Thank you. [LB611]

SENATOR GAY: Any other proponents? [LB611]

JIM MOYLAN: Mr. Chairman and members of the committee, I'm Jim Moylan, appearing on behalf of the Nebraska Licensed Beverage Association, which is a state association of liquor retailers. That's Jim, J-i-m M-o-y-l-a-n, 8424 West Center Road in Omaha. I was involved in this bill last year, and I worked with Senator Johnson regularly all during both sessions on this, you know. I thought we had it worked out, and it went back and forth, you know, and I want to say, he was an honorable guy to work with, and a pleasure to work with. Never did he get excited or lose his temper or anything. It was always a good conversation. He understood my points, you know, but being the old doctor he was, he just had a health feeling about it, you know. He just wanted it the way that it was passed. Now, there's 4,600 liquor retailers in the state of Nebraska. And the population in the state of Nebraska, on the border of counties is probably 55, 56 percent, all within an area a half-mile drive to another state where a lot of them you can smoke in. If you go to the casino in Council Bluffs, probably seven out of ten people in there are smoking. That's where you see a lot of the people go that want to do their entertainment. They go across the river to Iowa to smoke. Now, we just advocated, and I think it's a reasonable classification, and this bill would give the local governing bodies the right to decide what is all right for their community. You might be a little town of 200 and have one bar, and it is your restaurant, and could find a few smokers. They might say, fine, let's go ahead and allow it in our little town. Omaha might do it. But probably the only place they're going to allow it is going to be in places with liquor licenses, and maybe not all of them. Maybe just the on-sale liquor licenses. It's a logical place for smoking to continue, you know, to be had. Now, I know in Omaha, this past year, there's several of them that have spent a fortune adding decks to their particular

establishments. And some of them have put roofs across them, you know, with enough...the 20 percent rule...the rule is open, so that they can go out. And also, they're putting heaters out there, you know, and people are running back and forth, in and out, you know, so they can smoke. I think the logical place is for a liquor license. Now, the rest of the businesses in town probably...and I'm not...I'm just representing liquor retailers...that's the logical place to allow it to happen. So why don't we advance this, allow...and I'm going to go through the history. Senator Karpisek, I thank him for putting it in, and I also think he did an excellent job of explaining the past two years. Advance it, let the local governing bodies decide what is best for their community, so advance it to the floor. If there's any questions, I'd be happy to try to answer. [LB611]

SENATOR GAY: Thank you, Mr. Moylan. Any questions from the committee? I don't see any at this time. Thank you. [LB611]

JIM MOYLAN: Thank you. [LB611]

SENATOR GAY: Other proponents? [LB611]

PAUL SCHUMACHER: (Exhibit 2) Ladies and gentlemen of the committee, my name is Paul Schumacher spelled S-c-h-u-m-a-c-h-e-r. I'm an attorney from Columbus, Nebraska. As a bit of brief background on myself and why I'm sitting here today, I'm a lawyer, went to school back in D.C. at Georgetown University, came back to Nebraska, liked the Platte County Attorney, served for two terms, probably could still be serving but I kind of do believe in two terms. And since that time, probably if you added up the number of years times the number of villages I've represented, I've probably got a hundred years in as a city attorney, way too long on that. But in 1989, I became a community organizer, okay? And I organized about a hundred communities, cities, counties, and villages into one of the largest interlocal agreements in the country called the Nebraska Cooperative Government, originally organized to raise lottery money for little towns. Turned out to be a very successful venture, and the communities, I think, appreciated it. Along that line, the structure that we put together and the organization we put together, we began to see we had a broader capacity. And that broader capacity was to organize and posture ourselves for dealing with some of the unbelievable challenges that small communities face. They're dying. No matter what good intention from the USDA, from the state, from wherever, it's pretty clear that a lot of those programs are more fizzled than soda pop. And so, we began to try to struggle with dealing with how do we deal with 65,000 square miles of basically depopulating area? And how do we make ourselves into the 21st century? One of the ways and things that we became involved in was by invitation, a program at Harvard University on innovations in government. The general purpose of the program is trying to define a new way to create public value to structure government so that it works in the 21st century. And as such, maybe disregard some of our older ideas or newer ideas. And one concept kind of can be thought of as vertical and horizontal sovereignty, up and

down sovereignty, and criss-cross, across land sovereignty. Vertical sovereignty we recognize as where a decision should be made. And in our society, those vertical steps on the ladder are the individual, the local government, the state government, the federal government, international organizations and treaties. Okay? In our society, marriage, the right place to make that decision is at the personal level even though some organizations and some countries horizontally own the plane make that by a tribal leader or someone else. Different decisions at different levels. The argument on the carbon gas emissions, most of the world says it should be done on an international level. The Bush administration said, no, that should be done on a national level. Different arguments. So addressing specifically, Senator Gay, what you're, I think, trying to address in this bill and this hearing, is where should this decision be made? Not only where should it be made in our up and down ladder, but in context of the horizontal ladder. They've crossed this bridge, for example, in the Netherlands. The Netherlands, what they did is they said, no smoking except for marijuana. So, you know, that's their way and their area on the spectrum. But here, where should it be made? Now, I didn't want to kill a lot of trees, but I thought it was probably...serves a purpose of demonstrating something on that list you have before you. There are a lot of towns in Nebraska, 500. A different world within a 60-mile magic circle from Omaha than the rest of the state facing different challenges. Some of those communities, the bar is one of the very few institutions left. It's an older bar owner, smokes like a chimney. Nobody wants to buy that bar. If he sold it, he'd have to carry back the mortgage on it. And if he carries back the mortgage on it, he's probably going to get it back and back again like a bad penny; he's stuck with it. That bar closes, chances are the school is gone; the church may be gone. The bar is gone, and pretty soon the final part of the infrastructure is gone. That decision whether to prod that bar to close is better made in Lyman, Nebraska, than in Lincoln, Nebraska. That is where in our little world, we should make that decision. I understand Omaha has made the decision, fine. Understand Lincoln has made the decision, fine. It's working, the system there. And the local government is having its say, because they evaluate everything. That decision, the right decision, might be entirely different when that bar is one of your last friends to survival. Let a little liberty out there; it won't hurt much in the big picture. If you've got any questions, be happy to answer them. [LB611]

SENATOR GAY: Thank you, Mr. Schumacher. Any questions from the committee? Senator Wallman. [LB611]

SENATOR WALLMAN: Thank you, Chairman Gay. As far as tobacco use, do you think it's higher in rural Nebraska than cities? [LB611]

PAUL SCHUMACHER: God, I'd have no way of really guesstimating that. I know, as far as patronship to bars, there's heavy tobacco use in bars. I mean, in fact, it may be even healthy to have it in a bar. Because right now, from my experience, I have to deal with bars and the keno games and things. In my experience, the people that come home

from work at 5 o'clock, stop by the bar for a drink or two and smoke, because Mama won't let them smoke in the house with the kids. So where are they going to smoke otherwise? Drive around in the car? I mean, some of these bars are even going so creative as saying they're going to put a tepee out back, because they think a tepee is exempt from the rules, apparently, so they're going to put a tepee with a heater in. Other guys are saying, we're going to use the Altoid exemption. Every smoker in the bar is going to have an Altoid can. If they see somebody strange coming in, you snuff it out, and put it in your pocket. I mean, you know, but they're struggling to deal with this thing. A little freedom won't hurt. [LB611]

SENATOR WALLMAN: Thanks. [LB611]

PAUL SCHUMACHER: It's not going to blow any economic things or big insurance budgets in these little towns. [LB611]

SENATOR WALLMAN: Thanks. [LB611]

SENATOR GAY: Thank you. Any other questions? Senator Pankonin. [LB611]

SENATOR PANKONIN: Mr. Schumacher, thanks for this list. This is a real interesting list. I'm going to take it home and study it. I know a lot of these towns, and there's one that starts with two, so, thank you for that list. [LB611]

PAUL SCHUMACHER: Okay. Well, I'm currently on the first page. [LB611]

SENATOR PANKONIN: All right. [LB611]

PAUL SCHUMACHER: Okay. Thank you, folks. [LB611]

SENATOR GAY: All right, thank you. Any other proponents who would like to speak? All right, I'll take testimony from opponents, and come on forward, and I do have some letters here for the record, opponents...Big Red Keno; Diane Olmer from Columbus, Nebraska, as an individual; American Lung Association; Public Health Association of Nebraska; Friends of Public Health; Nebraska Hospital Association; Nebraska Dental Association; and the City of Lincoln. They've all submitted opposition letters that we have received. And I'm going to turn this hearing over to Vice Chairman Pankonin at this time. (See also Exhibits 5, 6, 7, 8, 9, 10, 11, 12) [LB611]

MARK WELSCH: Good afternoon. My name is Mark Welsch. I'm the president of GASP of Nebraska, the Group to Alleviate Smoking Pollution. We're a small, nonprofit organization, been around for just over 20 years now. And I live at...I'll spell my name. It's M-a-r-k, last name is W-e-l-s-c-h, and my address is 5611 Howard Street in Omaha, Nebraska, just a short block from my senator (laughter), so it's fun to see her walking

her dog back and forth. So I feel like if I ever have a hot issue, I can come up and talk to her very easily. [LB611]

SENATOR HOWARD: When I get home in time to do that (laugh). [LB611]

MARK WELSCH: Yeah. But I think I'll be uncharacteristically short today. People in small towns which have been mentioned today are worried that you're going to pass this on to the rest of the Unicameral. Some of those people haven't been out to eat in a restaurant near their town for years, because the only restaurant is smoky, and they refuse to go into that business because they care about their health, because their doctor has told them, keep your kids out of smoky places, keep yourself out of smoky places. Studies have shown that when we do this, you know, heart attacks go down. That I don't really want to talk about the health issues today. It's a right to go into a restaurant, and I think people should have that right. We don't allow businesses to restrict people because of their color, you know, their race, their religion, and anything else. I don't think we should allow a business to restrict who's able to come into their business, because they have asthma or COPD, or small children in the home that they don't want to leave at home. They want to take them with them to a restaurant to go out to eat. So, you know, just about all the laws that are on the books apply to private businesses, apply to private property. That's what laws do, and this is just another example of those laws. So, you know, Senator Pankonin, you hit it right on the head, I think earlier, that, you know, we do have restrictions. In California, which is just one of several states, I think that are communities that have studied what happens when businesses go smoke-free. What happens when we require all restaurants and all bars to go smoke-free? When California and other places and most places, they just found no real change. You know, the business stayed the same. You know, some smokers quit going; some nonsmokers started to go more often. In my hometown, there's a small restaurant there that has since closed just in the last year or so, and they told me that they agonized over this for years, and they finally went smoke-free, and when they did, they said, you know, some people came in, they were mad, and they didn't have to. They did it on their own. But some of their customers were mad, and they stormed out, saying I'm never coming back here again. And they said, you know, two weeks later, they were back just as regular as they were before because they like our food. And I think the same is going to be true in bars and other restaurants in our small towns, and, you know, it's really going to make our Sandhills area more accommodating to tourists, because tourists are...most tourists are coming from smoke-free cities and smoke-free states. And when they come into Nebraska and they're asked "smoking or nonsmoking," or they find out that it's all smoking, they're shocked. You know, I get calls and e-mails from people, saying, you know, what's going on in Nebraska? Why do you let people smoke there? And so, of course, I'm very happy that come June 1st, that's not going to be the case anymore. But in California, there's a graph on a Web site, it's tobacco scam.org, and you can click on that, and you can see a graph where it goes up and down, you know, with the seasons. But then the state law went into effect and made all

restaurants go smoke-free, and business started to go up faster in restaurants. And then a year or two later, bars went smoke-free, according to the state law. And then the business went up even faster, so it's good for businesses to go smoke-free. So please kill this bill today. You know, you'll, you know, just kill it today. You know, somebody wanted you to pass it today, on to the Chamber, I think you should kill it today and be done with this so we can move on to much more important things. Thank you very much. [LB611]

SENATOR PANKONIN: Mr. Welsch, hold on. We might have a question or so, and, you know, we are taking this bill into consideration. But I'll tell you, we're not having Executive Session today, so we can't help you on that one. So, any questions? Senator Wallman. [LB611]

SENATOR WALLMAN: Thank you, Chairman Pankonin. Yeah, I agree with what you say, but if you go to like San Diego, and a lot of people eat outside. Outside eateries increased tremendous, so maybe that's why their business increased; they can smoke outside. And also, you know, they smoke in the alleys here in Lincoln. And or football games, you go outside. You probably have more smoke go in front of a bar or restaurant than you would if they had it inside, because they do have technology now like in your Legion Clubs and your VFWs. They call them smoke eaters, and they do a pretty decent job. I don't smoke, but if I own a business, if I own a tavern or a smoke shop or something, I can't smoke in my own house if it's rented out of the house. So you think that's right, you know? I think that infringes on my personal rights. Our country was founded on personal rights, and that's all. [LB611]

MARK WELSCH: But if I could comment on that, there are a lot of towns in California that are not like San Diego. I think it was Mark Twain that said, the coldest winter I ever spent was a summer in San Francisco (laughter), and so, and there are a lot of mountain communities in California. So, you know, I don't think that that really had... [LB611]

SENATOR WALLMAN: Well, I'll agree with that but, yeah. [LB611]

MARK WELSCH: ...a lot of sway there. And, of course, people are smoking outside, you know, we're not going to be able to debate this, this year, but I would like to see you ban smoking outdoors as well, because there...you know, in the Old Market in Omaha, my girlfriend has asthma, and we can't walk in the Old Market within a block of some of those outdoor eating areas because of her asthma. So we can't go to any businesses, not just that one that allows smoking outside in their dining area, but we can't go to half a dozen or more other businesses, depending on which way the wind is blowing that particular night. And the smoke eaters, if you smelled natural gas in your home or in your business, would you get a gas eater to eat up the smell, so that you didn't smell it anymore? Because that's really all that those smoke eaters do is they take out the big

pieces of smoke that stink, but they leave the tiny pieces of smoke that kill people. So I don't think smoke eaters are a very good idea, and those that produce ozone, according to the Surgeon General, the ozone generating smoke eaters are actually more harmful because ozone attacks living tissue, and it hurts people. So, you know, those also are bad things to allow. [LB611]

SENATOR PANKONIN: Any other questions? Seeing none, thank you, Mr. Welsch, for coming today. [LB611]

MARK WELSCH: Thank you very much. [LB611]

SENATOR PANKONIN: Next testifier opponent? Welcome. [LB611]

CINDY JEFFREY: (Exhibit 3) Good afternoon. Afternoon, Vice Chairman Pankonin, members of the Health and Human Services Committee. My name is Cindy Jeffrey, J-e-f-f-r-e-y. I'm from 7524 South 37th Street here in Lincoln. I'm the state lead ambassador for the American Cancer Society, and I'm executive director of Health Education Inc. I'm also having comments distributed to you from the American Heart Association, also asking you to vote against this bill. I come before you today to ask you to support the vote of last year's Legislature, and to vote against LB611 which would undermine the intent of Nebraska's smoke-free work sites law which was designed to protect Nebraskans from secondhand smoke at their place of employment. I'd like to share a few points for consideration. Nebraska has always had local control of the smoke-free air issue. LB395, the Nebraska Clean Indoor Air Act of 2008, which is scheduled to take effect this June 1st doesn't change that. It amends the existing Nebraska Clean Indoor Air Act, simply updating the state minimum standard regarding smoke-free air to reflect current research that wasn't available when the Nebraska Clean Indooor Air Act was originally passed in 1979. Under that act, for almost 30 years, local communities have retained local control to pass legislation stronger than the state law. Communities throughout the state have voiced their opinions on smoke-free air, and they will continue to do so under the amended Nebraska Clean Indoor Air Act, the smoke-free work site laws in Lincoln and Omaha have passed that are well-known. Since the debate on LB395 and last year's Legislature and previous legislative sessions, Grand Island and Humboldt also have passed similar measures. In addition, various communities have passed various measures regarding smoke-free air. These measures, including banning smoking at pools, near fireworks stands, and in city vehicles. Under the amended Nebraska Clean Indoor Air Act, local communities will retain those powers. An opt-out provision isn't needed to protect local control of the issue. Opt out also undermines the intent of the legislation which is to protect Nebraskans throughout the state from secondhand smoke, and to provide a level playing field for businesses throughout the state. The amended Nebraska Clean Indoor Air Act without opt out passed with widespread support on a legislative vote of 34-14, and with support not just from the health community, but from the restaurant and keno

industries, and from communities themselves including the city of Grand Island, the city of Hastings, the city of Lexington, the city of North Platte, the Scotts Bluff County Commission, and the United Cities of Sarpy County which includes Bellevue, Gretna, LaVista, Papillion, and Springfield. It's also important to note that Governor Dave Heineman signed this legislation, stating that public health merits were his overriding concern. Since that time, a tobacco-free Nebraska survey has shown that an overwhelming 81 percent of Nebraskans approve of the new law. On behalf of Health Education Inc. and the American Cancer Society, I urge you to vote against LB611. [LB611]

SENATOR PANKONIN: Thank you, Ms. Jeffrey. We'll see if we have some questions. I may ask one. I'm a little confused when you talk about the opt-out provisions. What I read is that, obviously, if this bill takes effect June 1st, maybe some communities can even have tougher restrictions, but... [LB611]

CINDY JEFFREY: That's correct, and in fact... [LB611]

SENATOR PANKONIN: ...but they can't opt...I mean, I think that's the issue. They can't opt out of the basic provisions of the law. [LB611]

CINDY JEFFREY: That's correct. [LB611]

SENATOR PANKONIN: I think that's the question probably Senator Karpisek would ask you if he could. I think it's a little bit...I think really the way it should be stated is that some communities can go beyond this bill or beyond this potential law. Would that be an accurate statement? [LB611]

CINDY JEFFREY: That's exactly right. Yes. [LB611]

SENATOR PANKONIN: Okay. Thank you. Any other questions? Seeing none, thank you for coming today. [LB611]

CINDY JEFFREY: Thank you. [LB611]

SENATOR PANKONIN: Next opponent testimony? If there's others, if you'd come forward closer...that would be you, Mr. Otto? Welcome. [LB611]

KATHY BURSON: (Exhibit 4) Good afternoon, Senator Pankonin and the members of the committee. My name is Kathy Burson, B-u-r-s-o-n, and my address is 6143 Whitmore Street, Omaha, Nebraska. I am co-executive director of PRIDE Omaha, which is a parent community organization dedicated to preventing the use of alcohol, tobacco, and other drugs by our young people. We've been around for around 30 years. I'm also a volunteer of the American Cancer Society and the American Heart

Association, but I am here today to oppose LB611, a bill that would allow the cities, counties, villages to opt out of the smoke-free work site law. The Nebraska Clean Indoor Air Act is a simple, strong, and fair law that is widely supported by the public, the Legislature, and many business interest. I am here to request that this committee leave it intact as voted by the majority of senators in 2008. Some of the key reasons not to meddle with the law include, and I'll try not to be redundant, but again, any weakening of the law will deny protection from secondhand smoke to employees and the public. I'd like to reiterate that every employee deserves the right to breathe smoke-free air. The language of the Nebraska Clean Indoor Act is supported by the Nebraska Restaurant Association and Big Red Keno, and numerous others in the hospitality industry, because it creates a fair level playing field that treats all hospitality establishments and liquor license holders equally. Personally, I have visited a number of restaurant and bar owners in Omaha, and they have shared with me that they are anxious for the smoke-free state law to go into effect June 1, 2009, in order to create that fair and level playing field, especially with neighboring towns and communities close to Omaha. This bill would disrupt that agreement that was supported by both the public health and health community and those of the health organizations. Laws should be used to strengthen important public health measures, not weaken them. It is not a common practice to have the state laws presented to communities like a menu to decide which ones they like and don't like. Last year's Legislature made specific votes against giving loopholes to specific businesses and to ensure that residents of all Nebraska communities were given a basic protection from secondhand smoke and work sites. For this reason, I urge that this committee kill LB611, not this afternoon (laugh) and not allow it to go to the floor for debate. Thank you for your time, and I'm here for questions. [LB611]

SENATOR PANKONIN: Any questions for Ms. Burson? Seeing none, thank you for attending today and testifying. Welcome. [LB611]

JIM OTTO: Thank you. Senator Pankonin, members of the committee, my name is Jim Otto, O-t-t-o, and I'm a registered lobbyist for the Nebraska Restaurant Association. I'm here today to make it clear that the Nebraska Restaurant Association is opposed to LB611. I'd like to go back just a little bit and give a little bit of history. Prior to two years ago, the Nebraska Restaurant Association was actually opposed to any kind of a smoking ban, and just when Senator Johnson decided to come forward with this, they changed their position, so I've been on both sides of the issue. And the reason they changed their position is that there were several efforts--Lincoln enacted its own smoking ban; Omaha had a partial ban. Other communities, Kearney, other--Grand Island, were considering bans, and the last thing that restaurant owners across the state, especially those who own more than one restaurant, and different communities wanted was a patchwork solution. And they decided to get on the side of a total ban as long as it was a total ban, and so that has been the position of the Nebraska Restaurant for the last two years. And I just wanted to make that clear. Another point I would make

is if this was...I think Lincoln proved that if this were up to a vote of the people, it would pass overwhelmingly, a smoking ban, a total smoking ban. Lincoln proves that because that's what took place in Lincoln. And so the people are kind of out ahead of the issue on this, and maybe that's because most people don't smoke, but Lincoln is an example of that. And I would point out, I think Senator Wallman asked a question earlier, are there more smokers in rural areas or...I don't have the statistics, but I'd be willing to bet that approximately the same percentage of people smoke in any given geographic area, and the same percentage of people drink beer, and the same percentage of people eat out, and it's probably very, very close. And I would just point out that one of our sports bar members of the Nebraska Restaurant Association was very concerned about the ban before it went into effect in Lincoln, and they will...and we can get you the specific owner if you'd like to talk to him, but there sales are very close within 1 percent of the same after the smoking ban. But they're selling more food and less alcohol, and as a result, upgrading their menu because there's probably more profit in alcohol than there is in food, but they're very, very supportive of the ban now. And so I think that we're very concerned about the sky falling when this gets enacted, and I think we'll be pleasantly surprised. I do want to make one point. If we ever want to eliminate smoking outside, I will be here on the other side (laughter), so with that, I'll shut up. [LB611]

SENATOR PANKONIN: Thank you, Mr. Otto. Any questions? Senator Wallman. [LB611]

SENATOR WALLMAN: Thank you, Chairman Pankonin. Thank you, Jim, for testifying. I would be on the other side too. How many restaurants and bars in small communities are members of your association? [LB611]

JIM OTTO: I wish I...I don't have that number for you, Senator. I could get it for you, but I don't know right off the top of my... [LB611]

SENATOR WALLMAN: Are there a lot of them, do you think or,...? [LB611]

JIM OTTO: I would have to say most of our members are in larger communities. [LB611]

SENATOR WALLMAN: Okay. Thank you. [LB611]

SENATOR PANKONIN: Thank you, Senator Wallman. Any other questions? Seeing none, Mr. Otto, thank you. [LB611]

SENATOR PANKONIN: Any other opponent testimony today on LB611? Seeing none, any neutral testimony? Seeing none, Senator Karpisek, looks like you want to close (laughter). [LB611]

SENATOR KARPISEK: For some reason, I can't let...not get the last word on this one, because this will probably be the last word. Thank you for hearing this issue. I know this committee has had a lot on its plate this year, and I sincerely do want to thank you for the BSDC work you're doing. I think that you are making the whole body look very good, and I appreciate that. Lincoln and Omaha got to vote on this issue, and the rest of the state is getting it shoved on them. Almost every testifier in opposition said, oh, well, it would pass, it would pass. Well, then what are you worried about? Put it on the ballot. What are you so scared of then? It'll pass. Good. Let's find out. I think I'll get elected in two years too, but I bet you that they're going to make me get on the ballot (laughter). I do not agree that this is going to help our economic situation. If so, why are the restaurants opposed to this or for the smoking ban when they were opposed to it, a level playing field. Mr. Welsch will have us believe that profits will increase. If that is the case, then why would we worry about a level playing field? I will also say that if any business right now wanted to not have smoking, they could. If they thought that it was such a boon, then they would do it, and some have, and some have done very well at it. Don't forget, this cuts both ways. Someone that has a niche market, nonsmoking bar, won't have their niche anymore. We talked about California. We are not California. Senator Wallman, there's nothing that I could say about California that we are. We've heard the level playing fields again. It's going to raise money when it goes into effect. It's all about money, folks. It's money. We're in a tough time. You think this is going to help? It's not going to help. Senator Pankonin hit on that it will amend...this would still, with my amendment, the town's locals could still make it more stringent. Absolutely, that was Senator Johnson's...again, this is Senator Johnson's amendment. What about other pollution? We have a lot of other pollution. Senator Stuthman, I'm sure that maybe your hog lot puts off a little dust. Senator Pankonin, I bet you some of the (laughter)...some of the combines that you sell probably go through a little bit of diesel. That is what it is. It's up to you guys to have those things, and I certainly do not want to attack your hog lot nor your combines or tractors. Again, if we're so worried that it's going to pass...that's just it. We're worried it might pass. Oh, my God, those poor hicks out there might not realize what the heck they're doing to themselves, and they might pass this because this is democracy. Heaven forbid. Again, thank you for taking the time on this. I know it's a tough issue. I appreciate it. [LB611]

SENATOR PANKONIN: Thank you. Senator Stuthman has a question for you (laughter). [LB611]

SENATOR KARPISEK: I figured (laughter). [LB611]

SENATOR STUTHMAN: Thank you, Senator Pankonin. Senator Karpisek, in my opinion, what we have today with LB395, you know, it's straight across the board. It's a workplace smoking ban is what it is. If communities would opt out, and I'll just give you an illustration. If my small community would decide to opt out and allow smoking in the community, but there's only one or two places that would want smoke, and the other

workplaces would not want smoke, so if that community would opt out, does that mean smoking would be allowed in all of the community, or would the property...the business owners still have the right to not allow smoking? [LB611]

SENATOR KARPISEK: Oh, I'm sure that a business owner would still have the right to not allow smoking. [LB611]

SENATOR STUTHMAN: But the community voted to allow smoking. [LB611]

SENATOR KARPISEK: To allow it. Well, if I had my way, we wouldn't be here with a local ban, because, again, personal property rights...this is as close as I can get to not taking away personal property rights, so... [LB611]

SENATOR STUTHMAN: Would you say that if you allow communities to opt out, it gets to be a competitive market then, because if you got a town every seven miles down the road... [LB611]

SENATOR KARPISEK: Yes, yes. [LB611]

SENATOR STUTHMAN: ...one decides not to, one decides to, then the smokers will all go to one. Then for sure, that other community may have to fold. But as long as we have the level playing field, everyone has an opportunity to... [LB611]

SENATOR KARPISEK: Not every town has a steakhouse; not every town has a meat market nor an implement dealer. Economic development, private business. [LB611]

SENATOR STUTHMAN: But I still think that, you know, if it's straight across the board and everybody knows it's a workplace smoking ban is the best option. Thank you for your (inaudible)... [LB611]

SENATOR KARPISEK: And that's your opinion, and I will more than respect your opinion, Senator Stuthman. [LB611]

SENATOR STUTHMAN: And I respect you for what you're trying to do. Thank you. [LB611]

SENATOR KARPISEK: Thank you. [LB611]

SENATOR PANKONIN: Thank you, Senator Stuthman. Any other questions? Senator Gloor. [LB611]

SENATOR GLOOR: Thank you, Chairman Pankonin, and I also, Senator Karpisek, appreciate your point of view. Although this has never been a property rights issue for

me, I have a career dedicated, at least in the past, towards public health, and to me this is a public health issue. And as government, we make a lot of decisions and infringe upon private property and property rights. People don't put outhouses in their backyards anymore, and the reverse of that would be, there are times when we don't allow people to come and go from private residences because we slap a quarantine on their house. And that's all because it's in the better interest of society on issues related to public health. To me, this has always been a public health issue, and it may be one small step in the direction of getting people to hopefully reduce the amount of smoking, and to reduce people to pollutants, but it's still a step in the right direction, and cost is an issue, because the kind of money that we spend as a society, and the kind of money that this state spends on Medicaid related to pulmonary disease, coronary disease, a host of issues related to what happens with people with bad health habits, of which smoking is one. It becomes a money issue, and that, by way of trying to reduce the amount of money this state spends on smoking. So I understand the private property rights argument, but to me it's the bigger issue and the trumping issue is public health. [LB611]

SENATOR KARPISEK: And, again, I think we're trying to get people to stop smoking, and, in my opinion, if that's what we want to do, then let's not be hypocrites and let's ban smoking and not take the tax money from it. [LB611]

SENATOR GLOOR: Are you introducing a bill along those lines? [LB611]

SENATOR KARPISEK: I don't think that will be mine (laughter). No, not ever. [LB611]

SENATOR GLOOR: Would you like to cosign one with me if I (inaudible)...? [LB611]

SENATOR KARPISEK: No. I will be back on that one also if we go that route. [LB611]

SENATOR GLOOR: Just...thank you. [LB611]

SENATOR PANKONIN: Thank you, Senator Gloor. Any other questions for Senator Karpisek? Seeing none, thank you for presenting today. [LB611]

SENATOR KARPISEK: Thank you for your time. [LB611]

SENATOR KARPISEK: And this will close the hearing on LB611 and also it's the close of all our hearings today. Thank you everyone for... [LB611]

Disposition of Bills:

LB385 - Held in committee.
LB435 - Held in committee.
LB448 - Held in committee.
LB462 - Placed on General File.
LB611 - Indefinitely postponed.

Chairperson

Committee Clerk