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Urban Affairs Committee
November 19, 2010

[LR384 LR468 LR533]

The Committee on Urban Affairs met at 1:30 p.m. on Friday, November 19, 2010, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR384, LR468, and LR533. Senators present: Amanda McGill, Chairperson; Colby Coash, Vice Chairperson; Tanya Cook; Bob Krist; and Kent Rogert. Senators absent: Steve Lathrop and Tom White. []

SENATOR MCGILL: (Recorder malfunction)...get started here. I know Senator Coash is in the building and, I'm sure, on his way. But just to get things kicked off, welcome to the Urban Affairs Committee. You always know when you have an interesting, contentious issue--when you get a room this full in an interim hearing (laugh). On my right is Senator Krist, who...yes, we just finally know that he is coming back to be with us next year. We're waiting on Senator Coash. Laurie Holman is my research analyst and new mother again. On my left, Tanya Cook from Omaha and Senator Rogert from Tekamah. And Katie Chatters is our clerk here today. Basic reminders: Make sure your cell phone is on silent. We are going to be enforcing the light system today. We're going to take an hour on LR384 and then an hour on LR468 this morning. There is no testimony, either, that's technically in support or against in a hearing like this; we're just collecting information. So we don't have a particular order, whether you're supportive of the sprinklers in homes or not. You can just come up and get in line to speak; you don't have to all come at once on one side. And with that, I think we'll go ahead and get started--going to let Senator Krist open on his resolution. []

SENATOR KRIST: Thank you. Morning, Madam Chair McGill and fellow members of the Urban Affairs Committee. For the record, my name is Bob Krist, K-r-i-s-t, and I represent the 10th Legislative District in northwest Omaha, and it's good to be back. I appear before you today to introduce LR384, an interim study to examine the fire sprinkler mandate contained in the 2009 building codes. I introduced this resolution following testimony presented earlier this year at the committee hearing for LB949, a bill

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introduced by Senator Gloor. And let me take this quick opportunity to thank you for your rescheduling because of our unavailability during the process; that was very nice of the committee. Although this bill failed to advance from our committee last session, I made a commitment both to Senator Gloor and to you, the committee, to continue to dialogue on the installation of the fire sprinklers. When it comes to this matter, I believe our time is well spent discussing important public safety issues, not to mention sound legislation and legislative policy. It is our obligation as elected officials not to ignore issues such as these, even if serious disagreement for completely valid reasons remain. Coming to a consensus requires thoughtful discussion, and that's another reason why I introduced LR384. LR384 was written in consultation with Senator Gloor's office, and I want to thank Senator Gloor and his staff for their assistance in drafting it. The resolution covers a broad range of topics and concerns related to fire sprinklers. And rather than trying to rehash old arguments, which I think is inappropriate at this...both pro and con, which are already part of the record from previous hearings, it is my desire today to have a thoughtful conversation regarding the merits and drawbacks of having a fire sprinkler mandate in Nebraska and discuss any noteworthy developments on this matter since we talked last. Based on the testimony previously offered, the installation of the sprinkler systems in single-family homes, duplexes, townhomes is mandated in the 2009 version of the International Residential Code, the IRC. And as I understand it, that particular provision and the rest of the updated code becomes effective...is not in effect yet but becomes effective early next year. While I expect the thrust of today's testimony to be focused, and appropriately so, on the overriding public policy question of whether or not our state should mandate the installation of the sprinkler systems in residential dwellings, some have voiced concerns regarding our Legislature improperly delegating its statutory authority in the adoption of certain codes by allowing this code to be automatically updated without proper legislative oversight, much less deliberation and approval by the members of the Legislature. If that is the case, I welcome comments on both these issues as well. And I'm sure you do too. As I understand, historical precedent with the Legislature's approval of other codes may provide an example of how we possibly could proceed in this case with the 2009 IBC. I am referring

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to this legislative action of updating certain state codes and allowing local zoning jurisdictions an opportunity to opt out. I believe that that option is worth exploring on this instance. Certainly that scenario gives the Legislature the chance to express its position on the matter while supporting local control, something many in this body have strongly supported as "the Nebraska way." Since our time here is limited and it appears that we have many that want to speak on the issue, I'll close by thanking everyone in advance for taking the time. I also want to thank my colleagues Senator Gloor and Chairperson McGill for allowing us the opportunity to revisit this important issue. As I've previously stated, this public safety matter is one that we should seek to resolve for everyone's benefit if not just the legislative process and policy in general. I look forward to the discussion. Thank you very much. And I will be here. [LR384]

SENATOR MCGILL: Thank you, Senator Krist. [LR384]

SENATOR KRIST: You bet. [LR384]

SENATOR MCGILL: I'm going to let Senator Gloor come up and speak next here. [LR384]

SENATOR GLOOR: (Exhibit 2) Good morning. [LR384]

SENATOR MCGILL: Good morning. [LR384]

SENATOR GLOOR: For the record, my name is Mike Gloor, G-l-o-o-r. My thanks also to the Chair for persistence in trying to get this scheduled. It is an issue of importance, I think, for a lot of individuals. My thanks for the committee for great attendance at this particular hearing, given the fact that you've heard a lot of this before. I'd also like to thank Senator Krist for his willingness to carry this resolution so we could have discussion about this important issue. I am, surprisingly--and maybe disappointingly for some in the audience--not going to spend a lot of time talking about fire sprinklers. I'm

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going to talk about some of--as is often the case when we began to look into policies, regulations, statutes--some of what we've uncovered that is a surprise to us. And Senator Krist made reference to that. I'm here to talk about, specifically, policy issues surrounding the building code statute, introduce some new information, which is what we should be doing, obviously, at this hearing, related to policy setting. I'll also have some updated information on sprinkler code. I have a packet of material here--and I'll hand that and leave it with you--that talks, in part, about some of the differences in city building code. The updated information I'm going to share with you comes as a result of an Attorney General Opinion on unlawful delegation. I've also got some information on temporary interim amendments by the National Fire Protection Association on antifreeze in fire sprinklers, also some information on other agency code overlap with the International Residential Code, all of which kind of adds up to a degree of confusion and maybe some poorly thought-out policy that the committee may itself want to address. At the end of last session, I requested an opinion from the Nebraska Attorney General's Office in order to prepare potential legislation for the 2011 session. The question I asked was this: Would passage of language to remove the automatic adoption of code that was in my sprinkler bill, LB949, avoid an unlawful delegation of legislative authority? The informal opinion received back--and a copy of that opinion is here, from the A.G.--states: Yes, LB949 language would avoid an unlawful delegation of legislative authority. Stating that in reverse, the current automatic adoption of the International Building Code and International Residential Code that we have in statute is an unlawful delegation of authority. By leaving an unlawful delegation of legislative authority in statute, we open ourselves up to a lawsuit against provisions of the statute. Let me clarify this one more time in different language. By stating in current statute that the state building code automatically adopts the newest version of ICC codes, we are adopting code before it's published and, you could argue, even before it's written. As stated in the A.G.'s Opinion, the Legislature cannot adopt code or regulation that does not yet exist. Doing so is a breach of separation of powers clause of the Nebraska Constitution, and such automatic adoptions have been struck down in previous Supreme Court rulings. This unlawful delegation of authority is a policy issue that we're

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going to have to address, because it has--it's one of those uncomfortable things that's hanging out there that is going to have to be addressed sooner or later. And I would suggest sooner. Secondly, in the process of the International Code Council, the cycle for publishing new code is every three years. But things come up in between. Sometimes they're important safety issues. Those are called TIAs, or temporary interim amendments. TIAs are issued to amend portions of the code that need immediate attention, can't wait until the end of that next three-year cycle. And we have one of those TIAs on the issue of fire sprinklers. It relates to antifreeze in fire sprinkler systems in areas that have to deal with freezing temperatures, like Nebraska. The circumstances behind this TIA were tragic. There was a new home. It was code compliant, a fire sprinkler system installed. Antifreeze was placed in it because it was in a environment in our country where there was freezing temperatures. There was a grease fire in a kitchen stove. When the sprinkler was tripped, antifreeze and the grease in the grease fire interacted in a way that resulted in one fatality and one serious injury. In August the National Fire Protection Association Standards Council--which the ICC defers to when it comes to a degree of specificity and things like sprinklers--banned the use of antifreeze solution in residential fire sprinkler systems for new construction. Since August they've issued even new guidelines, and that has to do with the appropriate mixture of antifreeze and water or other solutions in the line, a specific titration that, hopefully, will avoid this type of tragedy. The situation confirms what I have felt from the very beginning, that I have tried to relay to this committee and others; and that is, we're still working on the technology. And it's premature for us to mandate sprinklers in every new home when we're still working out the specifics of this type of new technology. Now, we could also adopt temporary interim amendments, but because they're not recognized in our statute, we can't do that. So we've got this issue, also, of interim amendments not being part of the published edition of the code, and nowhere in our statute does it speak to adopting amendments. That's another area that we're going to have to take a look at. Another new piece of information to me is the overlap between the International Residential Code and the energy regulations issued by the U.S. Department of Energy. Energy code has funding tied to it through federal legislation. They suggest a set of

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amendments to the IRC to correlate them with energy regulations. These suggested amendments also need individual legislation for us to adopt them into the state building code. I'm sure Senator Mello, whose hearing follows next, will be speaking to this, but I lay that out for you so you understand there is a continuation of this overlap issue on setting policy and adopting code that, once again, is going to continue to overlap in a number of decisions we have to make. The conclusion I've reached through all of this is that these codes are more complicated, in need of more customizing than the Legislature is capable of doing. Pieces of the residential code have a reviewing body at the state level, like the State Electrical Board, the plumbing board, the Energy Office. However, there are 868 pages in the new codes, and these three boards don't address all of those. Clearly, there's huge portions of this that are probably going to find their way to us to be able to have to wrestle with. Does this perhaps mean there needs to be another reviewing body? Or do we want these codes all to come to the Urban Affairs Committee and to the Legislature? One of the questions, again, that we've uncovered that has to be addressed. I'd like to move from broad policy to finishing my comments with a couple of specific references to sprinklers. And I don't want to be redundant here, so I'll flip over a few things. In the spring legislative sessions around the country, 7 more states have stopped this mandate for sprinklers, for a total of 11. And now I am speaking specifically about sprinklers. Additional states have delayed implementation or created a review process. Some of those are contiguous states to us, like Iowa, Missouri, Kansas. According to The Journal of Light Construction, while numerous municipalities across the country have adopted the 2009 IRC with the sprinkler mandate, only one state, California, has adopted the mandate statewide. Iowa, South Dakota have stopped the mandate. Missouri and Kansas have delayed it, put it in a review process to discuss a little further. For me, exploration of the building code started with the question: Is this fire sprinkler mandate reasonable and efficient at this period of time? Since then, my concern has broadened to a larger picture full of policy issues that I've tried to lay out for you. I will leave it with that. Again, a packet of material I'll leave with you. And I'm glad to answer any questions. I would also tell you I'm in a hearing across the hall and will probably head over there to deal with my HHS Committee

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issues. But I'd be glad to answer questions. [LR 384]

SENATOR MCGILL: Any questions? I appreciate the new information you brought to us and hope that that is a guide for other people in the audience, because this was very helpful... [LR384]

SENATOR GLOOR: Thank you very much. [LR384]

SENATOR MCGILL: ...and added to the discussion. Okay, at this point we'll take anyone interested in testifying on this. And it would be nice if, you know, as people are interested in that, if we kind of started a line of chairs for people in waiting. But whoever would like to start the ball rolling... [LR384]

ALLEN BARBER: Good morning and thank you for the opportunity to be here with you folks this morning. I'm Allen Barber, a resident here, of Lincoln, Nebraska, past president of the home builders association, and the current president-elect for the Nebraska State Home Builders Association, here to represent those individuals from Lincoln, Norfolk, Columbus, Grand Island, and Kearney as well as North Platte. Sprinklers have been mandated for over 20 years because they've proven to be effective in saving lives and injuries. The fire risk--it appears to be very low. In the 2009 IRC code, fire sprinklers were added as an additional fire protection. It is a very costly measure, very costly measure. Fire sprinklers are not effective for every fire that is in a home. Smoke alarms have proven to be very effective and protective of life and limb, already required by the building code. And the Nebraska State Home Builders Association contends that residential fire sprinklers should be an option left to the purchasers or the buyers, not a mandated choice. [LR 384]

SENATOR MCGILL: Keep going. [LR384]

ALLEN BARBER: Home structure fires have fallen 45 percent from 5,200 in 1980 to

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2,865 in 2007. Almost two-thirds of the deaths that resulted from the fires in the homes were without working smoke alarms. When working smoke alarms are present, the chances are 99.5 percent survival of a structure fire. Today's code has changed significantly, that in--I'm going to use a two-story, four-bedroom house as an example--that each bedroom has to have a smoke detector in it, the hallway has to have a smoke detector, and there needs to be one smoke detector on each level. So if you have three bedrooms on the top floor and a hallway, there's four. The first level--if you have another bedroom down there, there's one for that; there's also one for the first floor. If you have a change in elevation heights or the ceiling height changes, then that also requires one more additional smoke detector. And the basement--if you have a bedroom, a study, and then one down there, there's two more. So I mean, in a typical home--average home today, you're talking nine smoke detectors. With that, as a quick response to that, there are security companies out there today that you can hard-wire that, and that would be directly mandated through your service and then go directly to the fire department. So I mean, if you're talking somewhere in the neighborhood of, you know, two minutes' response time, that is huge in a particular case like this. Affordable housing--I mean that is what the home builders is all about, is making the dream come true for individuals that have worked all their life in fulfilling that dream of owning a home. It is devastating, devastating to that housing industry right now. The climate that we're in, according to the statistics of the national home builders association, for every \$1,000 that is added to the cost of the home, 250,000 people can no longer qualify for that home. So if you add, say, \$4,000 or \$8,000 to the cost of that, you know, you've taken out 2 million individuals that can no longer afford a home. I've had the privilege of taking and working with some youth, children with the Lincoln Action Program that...we built a Habitat for Humanity home there. And if you take a situation like that, where you're trying to go out there and do a service and provide a need, if you add this additional cost to that, that is no longer a viable factor. That is almost impossible. Along with that, I've also done a charity home for some individuals, some severely handicapped children, where we've done that, and, I mean, every single dollar counts. So when you take special-interest projects like that and you try to put that package

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together and you add this on top of that--the additional dollars...and it's not only the installation, but it's the monthly--or the yearly, annual fee of having somebody come out and service that, flush the system, check it out. So I mean, it's not just the initial installation, but it's also the maintenance and inspections of that every year. That's all I have at this time. I'll pass it on to my colleagues. [LR384]

SENATOR MCGILL: Well, thank you, Allen. Are there any questions? No? Thank you very much. [LR 384]

ALLEN BARBER: Thank you. [LR384]

SENATOR MCGILL: I see Senator Schimek has moved to the front (laugh). [LR384]

DiANNA SCHIMEK: Good morning. Chairman McGill and members of the Urban Affairs Committee, it's a pleasure to be back with you. I am here representing Habitat for Humanity chapters across the state and have a brief statement to make. I thought it was appropriate that I follow this speaker, because he was also talking about affordable housing. So I have a prepared statement, and I'll read it: Whole-house sprinkler systems would add a significant cost to our home construction, and the cost would have to be passed on to our families. Habitat homeowners are already at the very lowest levels of income for home ownership. The families that we choose are at 30 percent to 50 percent of median income. We are doing everything we can to see that they can be served. And, incidentally, you know that a lot of the costs are ameliorated through volunteers helping to build these homes. A sprinkler system for a simple, 1,100-square-foot house would cost about \$2,400. And in some cases, a new designated water line may be needed, which would add more cost to the home buyer. And, you just heard, inspections might follow that, which would be more cost. We feel addition of the system is unnecessary in these modest homes because each is equipped with a hard-wired battery-backed-up smoke detector and ample means of escape. We also submit to nine inspections here in Lincoln before occupancy. The

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ever-growing number of new requirements is pricing already-burdened lower-income families out of safe homes. One of the requirements set forth by some of our land-grant funders is Energy Star certification. In new construction, we feel this is an improvement that will have day-to-day impact on our homeowners; therefore we have found a way to add this feature. However, if more requirements are forced on us, our program's impact will be significantly reduced. And I should mention here that our homes don't include extras, like, for instance, garages or anything like that. They're very simple homes. Please help us serve more families in need by eliminating the mandatory fire sprinkler requirement. Thank you very much. [LR384]

SENATOR MCGILL: Thank you, DiAnna. Any questions? No? [LR384]

DiANNA SCHIMEK: I also might mention... [LR384]

SENATOR MCGILL: Uh-huh. [LR384]

DiANNA SCHIMEK: ...that one of the Habitat staff members is here with me today. She also serves on the mayor's task force on codes here in Lincoln, and she's knowledgeable about a lot of these issues that have been brought forth already this morning. So Michelle Williams--if you would like... [LR384]

SENATOR MCGILL: Yes. [LR384]

DiANNA SCHIMEK: ...at any point to ask her questions, she would be available. [LR384]

SENATOR MCGILL: Okay. Sounds good. Thank you. [LR384]

DiANNA SCHIMEK: Thank you. [LR384]

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PAUL CUNNINGHAM: Morning. [LR384]

SENATOR MCGILL: Good morning. [LR384]

PAUL CUNNINGHAM: My name is Paul Cunningham. I'm with the Sprinklerfitters, and I just felt a need to come up here. I originally wasn't going to speak, but what I wanted to talk about was the Habitat for Humanity issue. Across the United States, my organization has done volunteer work for Habitat for Humanity. Last summer in Oklahoma--we did a string of houses down there to pretty much cover the costs for Habitat for Humanity. After last session, I went down to speak with Dan Brewer, one of the construction managers with Habitat for Humanity in Omaha, Nebraska, and I also offered to do pro bono work for Habitat for Humanity. So I just--I feel the need to speak this morning because I wanted to directly speak to this issue. My industry is on board with this humanitarian issue, helping people to get affordable housing. And I just want to let the body know that we are on board with doing pro bono work for Habitat for Humanity so sprinklers can be an affordable issue for Habitat. And I didn't have a whole lot of other issues I was going to speak to this morning, but this was the one I wanted to get up here and say that we would like to offer our services to Habitat if they're willing to take it. So that's all I got to say. [LR384]

SENATOR MCGILL: Well, thank you, Paul. [LR384]

PAUL CUNNINGHAM: Absolutely. [LR384]

SENATOR MCGILL: That's really great of you. Any questions? No? [LR384]

PAUL CUNNINGHAM: All right. Thank you. [LR384]

SENATOR MCGILL: All right, after you we'll take the rest of the front row folks. Um-hum. [LR384]

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BRIAN DOYLE: Madam Chair, my name is Brian Doyle, B-r-i-a-n D-o-y-l-e. I'm here on behalf of the Omaha area building associations. That includes MOBA, the Metropolitan Omaha Builders Association; the Home Building Professionals of Greater Omaha; and the Home Builders Association of Omaha. First I'd like to thank the Chair for having this hearing. Obviously, this is a very important issue to us. I'd also like to thank Senator Krist and Senator Gloor in particular and their staff for the leadership and the consideration that they've shown on this issue. I'm here on behalf of the Omaha builders in that we are opposed to the mandate for fire sprinklers. You've heard a lot about affordability of homes. I think all of us are aware of the tremendous decline in business for the home builders. The cost of fire sprinklers would be an enormous detriment to this industry. It's likely to cost numerous jobs; it will keep people out of homes; it will make houses less affordable and would be a severe detriment to this industry, to this economy, and to this state. I think it's important to note that homes are safer than they've ever been. And smoke detectors are effective. And I know you've heard a lot of testimony about this, but I think it's important to repeat: Smoke detectors work; they're cost effective; they definitely save lives. We know they work. I promised I would be brief today. I appreciate everyone that's here and wants to comment on this issue; I think it's very important. I thank each and every one of you for your time today. [LR384]

SENATOR MCGILL: Well, thank you very much. And next I'd like to hear from one of the gentlemen in uniform. [LR384]

PAUL PEDERSEN: (Exhibit 3) Good morning, ladies and gentlemen. My name is Paul Pedersen, P-e-d-e-r-s-e-n. I'm chief of the North Platte Fire Department. And I'm also a member of the Nebraska Municipal Fire Chiefs Association; we represent the chiefs of the paid and combination fire departments in Nebraska. And the handouts I sent around may help with some of the things I may be talking about, specifically flashover. But when we leave the fire station on a fire call, we're in...I'm in support of and the municipal chiefs are in support of residential fire sprinklers. We leave the fire station on a call, we

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know we're in a race against time. We need to be on-scene and fighting the fire before flashover takes place. Now, flashover typically will take place within 7 to 11 minutes of when the fire starts. There are some things that will shorten that time period--a heavy plastic load or if accelerants were used to start a fire. And it's been shown to flash over within as early as 3 minutes in some of those cases. But what happens with a fire is it starts and then there's a buildup of heat and fire gases, and it continues if the fire is unchecked to a point where everything in the room reaches ignition temperature and the entire contents of the room and all the unburned fire gases flash. And then you have a very intense atmosphere there, and the residents of that room or that house don't survive. And by that time there's so much damage from the fire that the firefight is going to be very long and hard. And when we get there, depending on what we see, we size up the situation, and we may select anything from 1.75-inch to 2.5-inch hand line capable of delivering 175 up to 300-400 gallons per minute. We typically will have multiple lines; most of the time there'll be at least two and sometimes more than that. And it'll take several minutes to extinguish the fire at this point. With the residential fire sprinklers, just looking at that same fire, what happens is that fire starts, and within about 1.5 to 2 minutes the temperature at the ceiling, where the heat rises and the unburned fire gases go, will set off--will melt a little fusible link in that sprinkler head. And it'll start that sprinkler head running in the immediate vicinity of that fire. And in 90 percent of the fires, one sprinkler head is all it takes to put that fire out or contain it. Now those sprinkler heads operate at a--they're very low but anywhere between about 18 and 25 gallons per minute. So the thing is we're keeping that fire small; we're getting it attacked when it is still small and getting it put out. Firefighters will still have to show up, because they're going to need to check for extension into the walls or the ceilings or other concealed spaces and mop the fire scene up and make sure it's safe for habitation. But the atmosphere doesn't get as toxic; the heat buildup doesn't get as intense; and the fire is kept small. And we are definitely in support of residential fire sprinklers. Are there any questions that I can...? [LR384]

SENATOR MCGILL: Questions? Thank you, Chief. [LR384]

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PAUL PEDERSEN: Thank you. [LR384]

SENATOR MCGILL: And I'd like to take the woman here next, because I saw her move to the front awhile ago. Yes. Yeah. Trying to be fair to who I saw move up first. And then we'll take you over there. [LR384]

SUSAN JACOBUS: Thank you. [LR384]

SENATOR MCGILL: Sorry for calling you "you" and "woman" and...sorry about that. (Laugh) [LR384]

SUSAN JACOBUS: I answer to a lot. (Laughter) Thank you for taking the time to hear the group of us that are here. I am Susan Jacobus. I am from Schuyler, Nebraska; I am a volunteer firefighter and medic and have been for many years within our small town. I also am a director for a national organization, NAEMT, and as such, I travel a lot. But the issue I want to talk about was the sprinklers and being in support. Sprinklers save lives. They are a suppression system. They allow time. It's that simple. In three to five minutes, which takes--that's the amount of time it takes for us in our small community of under 6,000 to respond to the fire station to get geared up and into our trucks to respond to a fire. It takes another three to five minutes once we get to the scene. And then the additional time is expended in order to set up. We have to connect our LDH to our hydrants; we have to start pumping; and we have to get our hoses manned. We're on reduced manpower: we're volunteers. And that's what you're dealing with--the majority in the state of Nebraska. Somebody brought up smoke detectors. They are just another system. They're supposed to work. But in the fires that I've been in and involved in in suppressing the fire...because by the time we get there, of course, it's engulfed--and we have had fatalities in recent years--it's too late. Fire sprinklers will buy time to let an individual survive the fire and get them out. They'll suppress the fire long enough, suppress the heat, suppress that poisonous cyanide-filled smoke to allow an

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individual to escape. People are told to sleep with their doors closed. They have smoke detectors outside their doorways. They don't hear the smoke detectors. And if they're downstairs and in the basement, they don't hear them. TVs are on, radios on; they're not hearing them. A sprinkler system going off will save their life and allow them time to get out. Once those detectors go off--because smoke rises, and that's where the smoke has to go to set off the detectors--it's often too late. Three or four breaths of cyanide-filled smoke is enough to kill a person and prevent them from being able to get out. The heat alone will sear their lungs. It isn't the actual fire that are killing our individuals in fires; it's the smoke itself and what's in that smoke. A fire-suppression system such as sprinklers will help save that life and buy time, which in our community would help that individual get out, because we're not going to be there on time. It's going to take us ten minutes to get to scene to set up. And then we still have to get into the building and figure out where that individual is at. And that time is of essence, and it takes three to five minutes to die without oxygen. We don't have that kind of time. So I'd appreciate your support. Thank you. [LR384]

SENATOR MCGILL: Thank you, Susan. [LR384]

SUSAN JACOBUS: Questions? [LR384]

SENATOR MCGILL: No. [LR384]

SUSAN JACOBUS: Thank you very much for your time. [LR384]

SENATOR MCGILL: Committee is quiet today. [LR384]

SUSAN JACOBUS: Yes, it is. You made it easy. [LR384]

SENATOR MCGILL: Oh, oh... [LR384]

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SUSAN JACOBUS: Oh. [LR384]

SENATOR MCGILL: ...Senator Cook has a question. [LR384]

SUSAN JACOBUS: Yes, ma'am. [LR384]

SENATOR COOK: Do you have an earthquake plan at your...on file? [LR 384]

SUSAN JACOBUS: You know... [LR384]

SENATOR COOK: I'm just morbidly curious. [LR384]

SUSAN JACOBUS: ...we didn't. And there's been a lot of comments about the earth moving over there, and this is a first for us. And it was rather interesting. [LR384]

SENATOR COOK: Okay. [LR384]

SUSAN JACOBUS: But, no, we don't have that earthquake plan, but I think we should start. It would be a good incident system to plan. [LR384]

SENATOR COOK: Just to have one on hand. Thank you. [LR384]

SUSAN JACOBUS: Thank you. [LR384]

SENATOR KRIST: Chair. [LR384]

SENATOR MCGILL: Yeah, hold on. [LR384]

SUSAN JACOBUS: Oh, I'm sorry; I apologize. [LR384]

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SENATOR KRIST: I'm not supposed to ask questions, but... [LR384]

SENATOR MCGILL: No, you can. Go ahead. [LR384]

SENATOR KRIST: Okay. [LR384]

SENATOR MCGILL: It's just a hearing, so... [LR384]

SENATOR KRIST: Along with the earthquake plan, the disruption of underground natural gas and gas lines... [LR384]

SUSAN JACOBUS: Yes. [LR384]

SENATOR KRIST: ...which most people at this point think we don't really have to inspect all that much. It became an issue this morning on talk radio, and I think it's a good one. But Schuyler saw the 3.5, then look at... [LR384]

SUSAN JACOBUS: Yes. [LR384]

SENATOR KRIST: Yeah, exactly. So. [LR384]

SUSAN JACOBUS: We do have a tabletop plan that we have done, and several of us did attend a pipeline planning session that was held in Blair, and they have held them throughout the state. But it is an important issue, and it's an important plan, especially with our 3.5 earthquake. [LR384]

SENATOR MCGILL: It's just crazy. [LR384]

SUSAN JACOBUS: Thank you. [LR384]

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SENATOR MCGILL: Mother Nature is unpredictable. Okay. Welcome. [LR384]

MIKE BENKER: Good morning. My name is Mike Benker, spelled B-e-n-k-e-r. And I represent the Lincoln Home Builders Association; I'm a past president, a builder in Lincoln, Lancaster, and surrounding counties market. And the thing that I'd like to remind everyone of this morning has to do with the costs of these systems. Current quotes in Nebraska to install fire sprinklers in a home currently range around \$1.75 to \$2 a square foot. We requested quotes based on a 1,525-square-foot ranch and a 2,200-square-foot walk-out basement. At \$1.75 a square foot, that amounts to \$2,668 for the ranch home and \$3,850 for the two-story home with a walk-out basement--actually, that's a--just a ranch with a walk-out basement. These numbers do not include the costs to upgrade from a 0.75-inch water service to a 1.5-inch, which may be necessary to get the 26 gallons per minute required by the residential fire sprinkler system. Keeping it short, I'll summarize how we built to these numbers. But in Lincoln, the cost of sprinklers, upgraded water service, and impact fee may be, for these houses, \$11,259. An Omaha number with the same requirements would be \$8,700. Where homes are not connected to the public water supply--which is where I live--you'll have to have an additional cost for a reservoir and the expense to protect it from freezing in order to have that much water available at all. Plus, there are additional costs which are not quantifiable, such as annual inspection fees, alarm monitoring systems to alert someone if there are leaks for when you're out of town or you're gone for holidays or whatever. What this means on the cost of the home, at the \$1.75-per-square-foot for a basic starter home, you would be looking at an additional down payment of \$394 and a monthly mortgage increase of about \$61.36. And when you factor this into the life of the loan for your home, which--most of us have to have a mortgage in order to purchase and pay off our homes--you're looking at a total of \$22,089 in interest and principal over the life of that loan. And that's just some facts and figures that I wanted to share. One home that we finished and had a family move into just before Labor Day--I looked at that home, and in 1980 that house would have had 1 smoke detector in that house. And by the mid- to late '80s, that house would have had 2

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smoke detectors in that house. By the early '90s, with code updates and changes, that house would have had 6 or 7 smoke detectors in that house. And the way that we built it in 2010, it has 12 smoke detectors in that house, all hard-wired together. And when 1 of them goes off, it is very ear piercing. And so our homes have continued to become more and more safe. The public safety and people being able to get out of their house in case of a fire is very, very important. But we do have to watch, especially in an economy like this, our business budgets and our personal budgets and keep things affordable so that we can afford to live in houses. That's all I've got. And if there's any questions... [LR384]

SENATOR MCGILL: Senator Coash. [LR384]

SENATOR COASH: Thank you. Right now, you can--if a customer requests it--you can put in a sprinkler if they want... [LR384]

MIKE BENKER: Very much so. And there are houses that are being built this year, last year, and the year before that people do request sprinklers in their homes. I just feel that it should not be mandated. It's been an option, I think...previously testified that sprinklers have been available for 20 years, and if you would like to have a house built with sprinklers, we'd be happy to oblige. But I just feel that it should be an option. [LR384]

SENATOR COASH: Thank you. [LR384]

SENATOR MCGILL: Other questions? I appreciate you giving us the hard dollars; that's something I'd been waiting to hear. So... [LR384]

MIKE BENKER: Thank you. [LR384]

SENATOR MCGILL: ...thank you. All right. [LR384]

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LYN WINTER: (Exhibits 4, 5, and 6) Good morning. [LR384]

SENATOR MCGILL: Morning. [LR384]

LYN WINTER: Chairperson McGill and members of the committee, my name is Lyn Winter, W-i-n-t-e-r, and I'm here today representing State Farm Insurance as a member of the management team here in Lincoln, Nebraska. State Farm appreciates the opportunity to participate in this discussion about residential fire sprinkler provisions contained in the 2009 International Residential Code. As background for our high level of interest in this discussion, State Farm insures approximately 33 percent of the Nebraska homeowners market. State Farm is here today to support the adoption of the most recent IRC, with no modifications to the residential fire sprinkler provisions. Removing current sprinkler provisions as a requirement under the code weakens a part of the code that has been shown to reduce the chances of dying in a fire and to reduce the average property loss by more than one-half to two-thirds compared to where sprinklers are not present. The toll in lives and costs from residential fires is enormous. Fire kills more people in the United States every year than all other natural disasters combined. The average is 4,000 people a year. And more people have been killed in residential fires in the United States than all of our military deaths in seven major wars over the last 92 years. Eighty-one percent of all fire deaths occur in the home. Between 1997 and 2006, civilian deaths due to residential fires averaged 3,000 yearly, and another 15,340 people are injured every year in residential fires. In addition, property damage due to fire is reduced in sprinklered homes. State Farm's data shows that average loss in an unsprinklered home is \$17,067 and the average loss in a sprinklered home is \$1,945. The Scottsdale, Arizona, report supports the fact that property damage is reduced with sprinklers. Scottsdale, Arizona, implemented a sprinkler ordinance January 1, 1986. Fifteen years later their data shows that there was less water damage in sprinklered homes. This is due to the fact that only the sprinkler closest to the fire will activate, spraying water directly on the fire. Ninety percent of those fires are contained

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by the operation of just that one sprinkler. Sprinkler systems discharged an average of 341 gallons of water per fire; firefighter hoses dispense an average of 2,935 gallons of water per fire. The average fire loss per single-family sprinklered fire incident was \$2,166. And then the average fire loss per unsprinklered residential incident was \$45,019. Our company believes it is our social responsibility to provide a premium discount for those homes with residential fire sprinkler systems meeting nationally recognized standards. So State Farm will offer a 5 percent discount for a partial fire sprinkler system and a 10 percent discount on a full fire sprinkler system on our homeowners insurance products. The discount is not designed to recoup the cost of the sprinkler system. In closing, I would like to say, the benefits of installing a sprinkler system in a home far outweigh any possible downside. On the behalf of our policyholders we must all take reasonable steps to reduce the 3,000 national yearly deaths and the over \$5.7 billion in direct property loss caused by residential fires. It's beyond dispute that when properly installed, sprinklers save lives, protect property, and reduce the risk to firefighters and first responders. Again, State Farm appreciates the opportunity to be here today, and I'd be happy to answer any questions. [LR384]

SENATOR MCGILL: With that 10 percent discount, how long do you think it would take the average homeowner to recoup the money they've invested in a sprinkler? [LR384]

LYN WINTER: Well, the discount is not designed to recoup the expense. [LR384]

SENATOR MCGILL: Okay. [LR384]

LYN WINTER: Yeah. [LR384]

SENATOR MCGILL: Okay. All right. [LR384]

LYN WINTER: Thank you. [LR384]

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SENATOR MCGILL: Um-hum. [LR384]

RITA GRIESS: Good morning... [LR384]

SENATOR MCGILL: Good morning. [LR384]

RITA GRIESS: ...Senator McGill and committee. My name is Rita Griess; it's spelled G-r-i-e-s-s. I'm currently the president of the Nebraska Realtors Association, and I'm here speaking on behalf of that group. In the early 1980s, legislation was passed which required the placement of smoke detectors in residential real estate at the time of transfer, when the property was sold, and it remains in effect today. The Realtors have been very supportive of that. And it's a way that existing residential property is assured that the smoke detectors are going to be there on a recurring basis. Also, many Realtors take part in community activities that go and supply smoke detectors for residential homes and help replace the battery, and reminders to replace the batteries. So Realtors do support, certainly, safety and take part in ensuring that these properties are safe. And as has been testified by the builders here, the building code is such that it's an even greater requirement for smoke detectors in new construction than it is in existing homes, where I suspect a higher percentage of fire danger does exist--is in the older and existing homes that are out there. I also would like to say to you that we are coming out of or along with a very challenging time in the sale of residential real estate and also the building of new homes that are needed. There was an article in the paper a couple days ago stating Lincoln's growth has continued, but certainly we're not building the new homes to replace them. And there is a thing in real estate called cost-benefit. And I have no doubt that fire sprinklers are the very best method of taking care of fires when they start, but when the cost is so high that the home can't be built and there is another avenue, such as smoke detectors, that can prevent death and damage from fires, you have to weigh the cost-benefit. I think that it's wonderful that there are discounts for insurance and that these sprinkler systems are being marketed and promoted to the public. And I think the cost-benefit will cause that to take off and to be

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installed in homes of people that desire them. But I think the term "mandatory" is what is so challenging. If there is another method that works--and smoke detectors do work--then that has to be an option as well. So I hope you will consider that and think about the cost-benefit. As the sprinkler systems move into showing their benefit and that the cost is worth it, I think you will start seeing the public voluntarily, instead of involuntarily, installing them. [LR384]

SENATOR MCGILL: Well, thank you. [LR384]

RITA GRIESS: Thank you. [LR384]

SENATOR MCGILL: Don't see any questions. Go ahead. We're getting close to the top of the hour, so go ahead and come on up and try to fit as many people in as we can. [LR384]

CROSBY GRINDLE: I'll be quick. [LR384]

SENATOR MCGILL: Okay. [LR384]

CROSBY GRINDLE: Hi, Senator McGill, members of the committee. My name is Crosby Grindle, G-r-i-n-d-l-e. I'm with the National Fire Protection Association, or NFPA. For over 100 years we've worked to advance fire and life safety initiatives through research, education, and the development and use of consensus codes and standards. And we're a leading source of research and data on fire-related incidents, and we use this data to identify trends and recommendations to help improve fire safety for everybody. There's three of your study questions that I'd like to provide you some information for, if I can, in my five minutes. The first one is for Study Question 5: A study of the effect of a fire sprinkler mandate on the new residential housing market, particularly the affordable housing market. I wanted to refer to a June 2009 NFPA report, "Comparative Analysis of Housing Costs and Supply Impacts of Sprinkler

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Ordinances at the Community Level." We did a study where we looked at two different communities in two different states that were very similar as far as demographics and geography and all the other factors like that. But one community had a sprinkler ordinance, and one didn't, in each state. And so we were able to do a comparison to see what the impact of that would be. We found there was no reduction in housing starts in those two communities. We found there was actually a relative increase in construction, I mean, not enough to imply that it actually increases construction, but that was found. The analysis revealed no detrimental effects. And through dozens of interviews with home builders and Realtors and building officials, they said that basically there were no detrimental effects. In fact, the Realtors ended up using it as a selling point: We're selling the safest homes in the area, for the communities that had residential sprinkler ordinances. We also just released a report, in October of 2010, on incentives for use of the residential fire sprinklers. And my point in bringing this up is it's not a direct--you can't always do a direct cost comparison. You can't say: What is the cost of the sprinkler system? Well, that means that's what it's going to add to the cost of the home. There's other incentives, both financial and design flexibility, for developers and builders in many communities, that allow for an offset of some of those costs. So those are just a couple of points I wanted to bring out for that study question. The next one is Item 6: A study of the effects of installed fire sprinklers on the valuation of residential dwellings. I wanted to refer to a NIST study that was published in September of 2007. This was a benefit-cost analysis of residential fire sprinklers. And basically, to get to the point, is it found the present value of net benefits--the term they use--in 2005 dollars, was anywhere from \$3,000 to \$4,000 per home, depending on the style of home; and this is in 2005 dollars. It also found, of course, a reduction in the risk for civilian and property damage or injury, a reduction in homeowner insurance premiums, and a reduction in direct and indirect property losses--uninsured property losses. We're seeing appraisers associations in other states recognize and give credit, for when they do evaluations on home value, because of the added cost of the sprinkler system. And homeowners believe there's value too. In a Harris poll done in 2005, 69 percent of homeowners felt that residential sprinkler systems added value to their home. So those

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are just a few points I wanted to bring for that study question. And then the last one is Item 8: A study of the safety and effectiveness of fire sprinklers. As we've heard a lot of discussion about fire sprinklers today--and smoke alarms--basically, as you already know, the fire sprinklers are designed to operate by heat of the fire, not of smoke. And just the one sprinkler head will react in 90 percent of the time and extinguish that fire. We found that to be true in a study we just released in September of this year called "U.S. Experience with Sprinklers and Other Automatic Fire Extinguishing Equipment." Fire sprinklers: When they're present, the death rate is lower. Your chance of dying in a home fire that's potentially fatal is lower by 83 percent; property damage is lower by 71 percent. And the other point I wanted to make with this is we've done hundreds of side-by-side live burn demonstrations. I don't know if you've had a chance to see them in Nebraska; I know they've been done here too. And it's pretty dramatic, because we'll have one side that's sprinklered, one side that's not. So you--I see several of you nodding--you've seen that, where the fire development is very rapid in the unsprinklered side and, basically, complete destruction; whereas the sprinkler side, that doesn't happen. And I wanted to just take this time to talk about smoke alarms. We've heard a lot about smoke alarms today, and certainly they're very effective and important safety equipment. NFPA supports the use of smoke alarms, but...smoke alarms do a great job of alerting you to the presence and danger of a fire, but they don't do anything to stop the spread of fire. And what's happened, the reason that the fire risk is so dangerous in homes today is with all the new synthetic furnishings. There's been some dramatic studies that showed fire development in newer homes and newer-furnished homes is actually quite rapid, compared to older-style homes. With the new open style and the synthetics and lightweight construction, the fire development is very fast. So it decreases your chance for escape. And those at higher risk, the children under 5 and adults over 65 and those with disabilities, might not be able to escape without assistance; and that fire sprinkler system does that. So I see the yellow light. Thank you for your time; thank you for allowing me to present information to you today. Of course, I'd be glad to answer any questions. [LR384]

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SENATOR MCGILL: One quick question. [LR384]

_____: Are those reports available on your Web site, that you referenced? [LR384]

CROSBY GRINDLE: They are, and I believe they've been provided to you. If they haven't, I'll make sure that they are. Yeah. And, of course, I've provided my contact information; if you need reports you can't find, I'll be glad to provide them. [LR384]

_____: Thank you. [LR384]

SENATOR MCGILL: All right, thank you. [LR384]

CROSBY GRINDLE: Thank you. [LR384]

SENATOR MCGILL: Might as well try to fit a couple more people in, so--real quick. [LR384]

PATRICK COUGHLIN: I'm going to be real brief. My name is Patrick Coughlin; I represent the International Code Council. I submitted a letter to you. I'll be very brief and succinct. I just want to remind you that there are some negative impacts of an arbitrary prohibition of cities to use this as a risk management tool. And I can provide you with cases of communities in other parts of the country where home builders have actually made homes more affordable, because they took these infrastructure requirements--you know, denser housing and so on--and with the low cost of plumbing-based systems actually reduced the cost of homes. So there are good cases and, you know, others; I just wanted to let you know. [LR384]

SENATOR MCGILL: Thank you very much. [LR384]

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PATRICK COUGHLIN: Okay, you're welcome. [LR384]

SENATOR MCGILL: And you were very brief. Very quickly. [LR384]

PAT OHMBERGER: Senator McGill, thank you and thank the committee. I am Pat Ohmberger; I am representing the Nebraska Realtors Association. I have been a Realtor for 19 years. And just--our approach is not to object to fire sprinklers, firefighters, public safety, or building codes. But we are looking for a common-sense approach to this solution. And mandatory costs here could be a problem for buyers and sellers. When we...I guess I'm going to reiterate what the home builders said, briefly, as far as having options when they build. And if you look at that, I think, you know, the option for people to put sprinklers in their homes is wonderful and to reduce their cost on insurance and so forth. But to mandate it as a state across the board may be detrimental to having home building and affordability going forward. Also, you know, when you're working with a buyer and a seller--we have so much negativity with the banks right now and trying to get their loans through, even on very qualified people that I'm working with right now. Even a closing for today, for instance: yesterday they found out they had to close two credit cards out with zero balances on them to even get loan approval. So if we mandate sprinklers and cost factors on top of everything else that we are dealing with right now...and in, you know, in essence, everything is local. So wherever those two side-by-side comparisons are as far as getting, you know, whether they get insurance or not or whether it's cheaper or not, I do feel that we really owe it to the consumer out there to let them know that we're working in their favor and in their best interest for affordability here as far as building is concerned. [LR384]

SENATOR MCGILL: Okay, thank you, Pat. Can you do it in 60 seconds? [LR384]

MIKE DURST: I can do it. Yeah. Mike Durst, D-u-r-s-t. Senator McGill, thank you very much. Representing Mike Durst. I'm not unemployed; I'm a retired fire inspector and former State Fire Marshal. There's a lot of questions here that were asked and a lot of

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things that went through. Smoke detectors, of course, were great 40 years ago, when they first came in. I heard the same objections 40 years ago--and no affordable housing if we put a smoke detector in. And a smoke detector is a wonderful appliance, but it's never saved a life; it's given you an opportunity to save your own life...where fire sprinklers do. There are some questions in here that were brought up about if the state of Nebraska should actually write codes. Well, they don't write the building code; they don't write the plumbing code, the electrical, the residential code, heating, planning, boiler code. And, believe me, I was stuck with the Americans with Disabilities code when it came in--and I think that was in '96 or '97--and the Fair Housing code that was pumped down from the federal government. Nobody...getting back to our original LB949, I don't think any city wants the state to come in and tell them what to do, just like we in state government don't want a federal regulation coming in and telling us what to do. There are some other quick subjects that people haven't got to here, and I'll make it very, very quick. And a lot of it--some of these have to do with the Fire Marshal's authority and city regulations. All codes are adopted at the city level, all the ones I mentioned earlier. The Fire Marshal's office--they do not do anything with local codes. They do not do anything as far as residential housing; they don't want to do residential housing. They do not own an ICC code. All of their...if they do anything on structural, it all comes out of the NFPA structural codes. So going to them and telling them, okay, we want you to supervise or to take over the residential housing market, they don't have the people available. We look at...it was covered a little earlier on loss, and one of the big things that the home builders and Realtors forget here is there's a \$6 billion rebuild market out there on differences between a sprinklered home and an unsprinklered home--\$6 billion. If, in fact, we start cutting it down, it takes...if you have a fire in your house, they come in, you got a sprinkler system, that's \$2,000, \$2,100, they testify to. That's ServiceMaster coming in and cleaning up the walls and vacuuming the carpet. If you have a fire without a sprinkler system, you're up to \$40,000 to \$100,000, maybe a total damage. The home builder gets to come in and rebuild the whole house. Which one do you want, if you're a home builder? So let's just look at it in reality. I'll make that quick, and that's all I have. If any questions--anything you guys want to know about

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codes, after 31 years in code enforcement, I could probably help you out. I'm not speaking, again, for the city codes, and I'm not speaking for the State Fire Marshal. [LR384]

SENATOR MCGILL: All right. Thank you. We'll wrap up now. Senator Krist, do you want to say anything? [LR384]

SENATOR KRIST: Sure. I thank the committee for its time and for its indulgence in moving and accommodating, again, Senator Gloor and I in bringing this forward. We could debate this all day long. And I'm sure next session we will continue to debate it again; I'm almost positive that either Senator Gloor or both will reintroduce this issue. But I think it's important for everyone in this room to realize this is a legislative policy decision that needs to be made. That point was made clearly by Senator Gloor. And the time that it took us not to bring this out of committee to begin with and to--or to bring the discussion back to the table as a resolution is time well spent for both safety--saving lives--and making the right legislative decision so that we don't tie ourself up in the Supreme Court. I will wrap by saying one thing. In my conversation over the last few months, I have heard everything from our past Fire Marshal's comment about they fought us on the smoke detectors, they fought us on the GFIs, they're fighting us on this one--to, on the other side, a very, very diligent and very educated discussion about what's going on. But again, it's...our issue is legislative policy at this point. And I'm sure we'll hear the subject again. And again, I thank you for your time. And thank you, everyone, for coming. [LR384]

SENATOR MCGILL: I appreciate that. I know, at the very least, I'm going to go home and make sure my smoke detectors are working. (Laugh) So thank you very much. (See also Exhibits 1 and 7) If you...no kidding. And so if people want to flood out who were here just for this hearing, and we can make the transition to the next one. If people could go ahead and take their conversations outside if they are leaving, that would be really great so we can move on to the next hearing before lunch. Senator Mello is here.

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(Laugh) Yes, we'd like to start, so if people could go ahead and clear the room, unless you're here for this hearing. Okay, this is for the interim study hearing on LR468.

Senator Mello has joined us again. Welcome. [LR384]

SENATOR MELLO: (Exhibit 8) Good morning, Chairwoman McGill and members of the Urban Affairs Committee. My name is Heath Mello, M-e-l-l-o, and I represent the 5th Legislative District, which includes south Omaha and Bellevue. Currently the state of Nebraska has adopted the 2003 International Energy Conservation Code as the Nebraska Energy Code. As a condition of receiving our share of nearly \$31 million from the State Energy Program under the American Recovery and Reinvestment Act of 2009, the state of Nebraska was required to provide assurances that we would update our building codes to the standards required under ARRA. Since giving those assurances, no attempt to update the code has been made by the Governor, the Nebraska Energy Office, or by the Nebraska Legislature. Section 410 of the American Recovery and Reinvestment Act requires that the state of Nebraska implement a building energy code or codes for residential buildings that meets or exceeds the most-recent published IECC or achieves equivalent or greater energy savings. At the time of ARRA's passage, the most recent IECC was the 2009 version. And while Section 410 does not specifically require that the code be updated by a certain date, it does require that we demonstrate compliance to the 2009 IECC within eight years of ARRA's enactment in at least 90 percent of new and renovated residential buildings. Based on the information provided by the U.S. Department of Energy and United States Senator Ben Nelson's office, my office has determined that failure to adopt the 2009 IECC could potentially spur efforts by the U.S. Department of Energy to recoup the \$30.91 million in State Energy Program funds received by the Nebraska Energy Office. Again, while ARRA did not set a specific deadline for updating the code, it is left to the discretion of the Secretary of Energy to seek recovery of federal funds that were granted to each state if the conditions those funds were contingent upon are not met. Under the Energy Policy and Conservation Act, an existing federal law, each time a new edition of the IECC is adopted, the U.S. Department of Energy is required to review that

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code to determine whether the new code is more energy efficient than the previous code and to publish their findings in the Federal Register. States then have two years from the date of the publication to certify to the U.S. Department of Energy that they have reviewed their energy codes and stating whether it is appropriate for the state to update their energy code at that time. Findings with regard to the 2009 IECC were published in September, which means that if Nebraska has not updated their energy code by September 2012, we will have to justify that decision to the U.S. Department of Energy and could potentially trigger an effort by the Secretary of Energy to recoup the nearly \$31 million in previously spent ARRA federal funds. Aside from the requirements of ARRA, there are many beneficial reasons to update our current energy code to the 2009 IECC. An analysis by the Vandemusser Design that was commissioned by the Nebraska Energy Office found that a new home in Omaha with a 15 percent window-to-wall ratio would cost just \$476 more to construct under the 2009 IECC code. That same home, however, would experience \$164 in annual energy savings, providing the homeowner with a less-than-three-year payback window. Furthermore, the Vandemusser study found that an Omaha home with an 18 percent window-to-wall ratio, as well as most homes in most other Nebraska cities, would actually cost less to construct under the 2009 IECC while still providing significant energy savings to the homeowners. As I understand it, there is some concerns in the building community as whether there are sufficient training resources available throughout the state to meet some of the requirements of the 2009 IECC. Fortunately, Nebraska was one of 24 states to recently receive a portion of grants totaling \$7 million for energy code activities, which could help fund code official and builder training and ARRA code compliance activities by the Nebraska Energy Office. I'm more than happy to work with the building community as well as the Nebraska Energy Office in preparing legislation that will provide for the adoption of the 2009 IECC in a way that complies with the requirements of ARRA while ensuring that there are sufficient resources to assist the building community with the transition. My office has put together a few materials that should help the committee to understand the ARRA requirements, as well as information about the benefits of adopting the 2009 IECC. I'd be happy to take any

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questions but, otherwise, will turn things over to the other testifiers. [LR468]

SENATOR MCGILL: Any questions? No? Thank you, Senator. [LR468]

SENATOR MELLO: Thank you. [LR468]

SENATOR MCGILL: First testifier. [LR468]

PATRICK COUGHLIN: Senator McGill, members of the committee, I'm Patrick Coughlin from the International Code Council. We are the publishers of the International Energy Conservation Code. Just wanted to mention a couple things. I am involved, along with the fire sprinkler issues, in green codes and am following several projects around the country. I just wanted to let you know that there are some very positive impacts following the IECC. Farmington, New Mexico, is one I just wanted to mention--that they have land to expand on; they own their electrical utility; they cannot expand it because they will have to comply with new EPA guidelines, and it's simply too expensive. So they don't have the electricity. They don't have the water: they have enough water for their existing community, but if they expand, it's going to strain their water system. So they have...there is a prototype home being built--it's been built, and I just wrote an article about it for our magazine--that demonstrates just how much you can save with these things. They've cut their electrical use by 50 percent and their water use, daily water use, by 50 percent by reclaiming the water and using it to flush toilets and irrigate the outside. So very practical issues are at stake here. It's going to impact communities on their ability to grow. And so this impact goes beyond the, you know, the savings to the homeowner; it also goes to the savings to the communities. And I will also mention it reduces demand on community services, because they build smaller water mains, they have less water to treat, and so on. So there are a lot of positive impacts. The only other thing I want to mention is that we also have training available, and we'll be happy to bid on the training funds, to take grants to do that very training for building officials, builders, and anyone involved with the IECC. Thank you. [LR468]

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SENATOR MCGILL: Questions? No? [LR468]

PATRICK COUGHLIN: Okay. [LR468]

SENATOR MCGILL: Hello and welcome. [LR468]

CAMMY WATKINS: Hi. Hello, my name is Cammy Watkins; I represent the Sierra Club--it's C-a-m-m-y W-a-t-k-i-n-s. And I'm also the campaign coordinator for the Sierra Club's national energy-efficient building codes campaign. I--just to brief--I know that Senator Mello and previous speakers from the ICC had addressed a lot of this, but I kind of wanted to just touch on the basic efficiency and what this can mean for the state of Nebraska. As we know, the Department of Energy has called for an increase in 30 percent to the energy code in our buildings by 2012. And we just recently adopted a code that's going to get us there. Adoption of the 2009 IECC will really help put Nebraska on the path and make it much simpler or actually kind of push us a little quicker to reaching that 30 percent goal, which is coming down the pipeline in terms of the IECC adoption. We know that buildings account for 40 percent of our greenhouse gas emissions and are about 75 percent of the electricity that's used across the country. So bringing down this helps not only for our homeowners but also societal benefits in terms of reducing greenhouse gas emissions, reducing our needs on imports of energy--so security for the country. In regard to specific Nebraska savings, Senator Mello had mentioned that it would cost less. In fact, it's--the study that was done--it's about \$1,019 less to build to the 2009 IECC for most cities, with an 18 percent window-to-wall ratio. In Omaha the increase would be, with a 15 percent window-to-wall ratio, would be about \$476 per home, but the annual savings would be \$164, making it a simple three-year payback, in terms of just adopting this code. And that \$164 annual savings will continue after that three-year period. So we're seeing an annual savings for the homeowner. So that's definitely a benefit, which is something that we should recognize, especially when we talk about the low-income housing industry and others,

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the first-time home buyers. So I just kind of wanted to point out those two things. And I'll just leave it at that. [LR468]

SENATOR MCGILL: Thank you very much. [LR468]

CAMMY WATKINS: Thanks. [LR468]

SENATOR MCGILL: No questions. Anyone else? Justin. [LR468]

JUSTIN BRADY: Senator McGill and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I'm here representing the Nebraska State Home Builders. And I just want to start by saying, the home builders are looking positively and forward to working with Senator Mello and the Nebraska Energy Office. And they do have some concerns, but we believe through discussions and partly education and understanding from the home builders' side but partly education and understanding on the other side, we can come to some agreements, so...in all honesty. So we are back here doing the fire sprinkler deal again in front of all of you. (Laughter) But...so they do feel they're having positive discussions and hope we can get there. But I'd be remiss--I want to lay out the three main points that they have concerns with. One is with the issue of there's a mandatory blower-door testing, as I understand, where they seal the house up and put a door on it that blows air, and I couldn't tell you whether it blows air in or out, but it tests how much air goes into the house and how tight the house is sealed. That's an issue that they have. Another one is the number of energy raters; that was already discussed, on how many would be available. If this was something that was phased in or delayed, could we then--the state have enough so you wouldn't have delays in the building of homes, waiting for those energy raters to show up and do that? And the third one deals with the R-value that's required in exterior walls. As I understand it, 2x4 walls that--used as exterior walls are kind of at their max now. If you increase that R-value, you then would be requiring to go to 2x6 exterior walls or some different form of insulation that's currently used, of which all adds cost. And so, like I said, some of that's just the

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understanding of what's there and how they'll proceed. But right now they're looking forward to working with the Energy Office and Senator Mello on those concerns. So with...any questions? [LR468]

SENATOR MCGILL: Thank you for your cooperative attitude. (Laughter) Any questions? No? Next. Hello. [LR468]

JIM HARPER: Good morning, Senator McGill, committee. My name is Jim Harper. I am the interim permit superintendent for the city of Omaha, and I just wanted to make you aware, at least, of what the city of Omaha is doing. As recently as two days ago I attended a two-hour meeting on sustainability, and the topic that we discussed at that meeting was an energy management plan for the city of Omaha. So we're moving along on this issue right now. And there's a more comprehensive document called "Environment Omaha," which this energy management plan is just an element of, that the city is moving forward on. So this is important to the city of Omaha. And the whole idea of sustainability, of which energy is just one component, is something that we consider very seriously. So as a regulator, do you have any questions for me? Senator Krist? [LR468]

SENATOR MCGILL: No? [LR468]

SENATOR KRIST: Not right now. [LR468]

JIM HARPER: Okay. [LR468]

SENATOR MCGILL: Any questions? No, I don't see any right now. [LR468]

JIM HARPER: Okay. We use the 2006 version of the IECC right now, so we're one edition up from what the state of Nebraska uses. And one of the reasons we did that is because we thought it was a little more streamlined and user friendly and therefore it

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was more easily implemented. So probably next year, when the 2012 energy code is available--it's out, actually, a year ahead--we will be looking at that code to complement our other 2012 editions of the I-codes: we'll be adopting the 2012 IBC, 2012 IRC, and that body of code. [LR468]

SENATOR MCGILL: Oh, now he has a question. [LR468]

SENATOR KRIST: You just have to bait the trap, I guess. Thank you. The question is more in terms of your opinion than fact, so I won't... [LR468]

JIM HARPER: I'd better say I'm kind of representing myself here; I wasn't really authorized to speak for the city. But since I'm here... [LR468]

SENATOR KRIST: That's okay. [LR468]

JIM HARPER: Okay. [LR468]

SENATOR KRIST: They're busy with other stuff today. Since you phrase it that way, when a new code comes out and an effective date for that code, on a federal level, is stated as February of 2015, how does the city treat the implementation of all of the code, some of the code, adapting the code? How do you go about looking at the code difference? [LR468]

JIM HARPER: I think that we take that as a mandate that we need to get moving, and we convene our code study committees, which takes us about a year to go through a code study if we've got a mandate on...maybe it's accessibility or maybe it's the new building code or whatever it is. And we take that as a mandate, that it's really not optional. Hope I'm getting the drift of your question. [LR468]

SENATOR KRIST: Absolutely. And so to follow onto that--not to mix and match two

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hours, but I will--when you saw, or when we saw, in the city of Omaha a mandate that new home sprinklers were going to have to be, how did you treat that in the past year? [LR468]

JIM HARPER: Well, we're under the 2006 right now, so we don't have to deal with it yet. But the way we looked at that is we thought it should be a local issue--boy, I shouldn't blend hearings. We don't like the...we recognize, first off, that the dynamics of houses have changed; there's way more fuel in them than there used to be, that they burn more rapidly. But we want to be in a position of being able to adopt that code if we need to, use it as we need to. We don't...we, for sure, don't want to see sprinklers taken away from us as a tool, that there would be some prohibition of some kind saying, as a city, you cannot have any kind of an ordinance that would mandate sprinklers, because we truly do see value in sprinklers. We're looking at high-density housing, housing where we may be building very close to one unit to another, and sprinklers play into that. [LR468]

SENATOR KRIST: So in the case of the energy or of any new mandate, any new code, you prepare yourself to get to that point if you need to, but you don't necessarily implement on the day that... [LR468]

JIM HARPER: Well, I'll be honest with you, on the energy code, we were ahead of the game... [LR468]

SENATOR KRIST: Okay. [LR468]

JIM HARPER: ...on that. So... [LR468]

SENATOR KRIST: All right. Thank you. [LR468]

JIM HARPER: You bet. [LR468]

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SENATOR KRIST: Thank you, Chairman. [LR468]

SENATOR MCGILL: All right, thank you. That's helpful. I think we're good. [LR468]

JIM HARPER: Okay. Thank you. [LR468]

SENATOR MCGILL: Thank you very much. Anyone else here to testify? Going once, going twice. Senator Mello waives. Okay, so we're done now for the morning. We will reconvene to have our last hearing in a little bit, after lunch, 1:30. [LR468]

BREAK

SENATOR MCGILL: (Recorder malfunction)...LR533. As a reminder, make sure your phones are on silent for us, so not disruptive. This is, you know, an interim hearing, so there isn't a for or an against side. So as you want to testify, just come up to the front row and we'll just take you in the order of which you bring yourself to the front, and hopefully we hear a lot from both sides. We are going to use the light system. It would be great to be done by 3:00, an hour and a half; we'll see how it goes. And with that I think you know the senators here: Senator Krist; Senator Coash; Laurie Holman, the research analyst; and Senator Kent Rogert. I think Senator Cook will be joining us again this afternoon; and Katie Chatters, our committee clerk. With that, I'm going to have Laurie, here, open on the resolution. [LR533]

LAURIE HOLMAN: Good afternoon, Chairman McGill and members of the committee. My name is Laurie Holman, spelled L-a-u-r-i-e H-o-l-m-a-n, and I am the research analyst for the Urban Affairs Committee, and I'm here to introduce LR533. This interim study was introduced by the committee with the purpose of studying the Natural Gas Regulation Act of 2003, specifically, the office of the public advocate created by Section 66-1830. In March of 2009, State Auditor Mike Foley's office issued a report on their

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findings with respect to statutory compliance of the public advocate and the expenses incurred when handling rate increase cases. In April of this year, the Legislative Audit Office issued a report of their own from their examination into the statutory compliance and efficiency and effectiveness of the current contract between the Public Service Commission and the public advocate. These two reports reached very different conclusions regarding several overlapping issues. Additionally, during the last legislative session, LB811 raised issues concerning natural gas rate case appeals under the Natural Gas Act. This study was introduced to investigate those issues. I believe that there are several individuals here to testify about the different reports and how the rate case process is currently working under the Natural Gas Act. We had requested an Attorney General's Opinion regarding this and which our office received yesterday, and a copy of that has been included in your folders. If you have any questions for me, I'd be happy to answer them. If not, I can turn the time over to people who would answer them better than I could probably. [LR533]

SENATOR MCGILL: No? I don't see any questions? [LR533]

LAURIE HOLMAN: Thank you. [LR533]

SENATOR MCGILL: All right. Thank you. All right, who would like to start the ball rolling? [LR533]

JERRY VAP: (Exhibit 1) Good afternoon, Madam Chairperson and members of the Urban Affairs Committee. I'm Jerry Vap and I'm chairman of the Public Service Commission. I'm here to provide information in response to LR533. I'd like to start with some recent activity of the natural gas department. During the previous two years, the commission has completed two fully litigated rate cases. The commission entered an order regarding SourceGas on March 9, 2010. The matter is currently on appeal to the Lancaster County District Court, and the hearing was held on October 7, 2010. We're still awaiting a ruling by the court. The commission also entered an order establishing

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rates for Black Hills on August 27, 2010. That matter has been appealed by the public advocate, and the hearing is currently scheduled for December 22, 2010. Additionally, the commission conducted a review of SourceGas's gas cost adjustment. Through that process, certain errors were discovered, and adjustments totaling over \$1 million were made in the favor of the ratepayers. The commission recently opened an investigation to examine the prosecution of general rate applications in an effort to streamline the process and reduce overall costs. We are examining filing requirements, changes to the conduct of discovery, progression standards, the role of the recommendations from the commission consultants, and ways to allow for a meaningful reconsideration once final rates are adopted. We have received written comments from several interested parties and held a workshop to discuss the issues, on November 1, 2010. Currently, in Rule and Regulation 173, the commission is addressing the legislation performance evaluation committee's recommendation that we have specific rules regarding the location of the public advocate. Hearing on the rules was held on October 4, 2010, and the rules, with certain amendments, were adopted by the commission on November 9, 2010. Also, on September 21, 2010, the commission released a Request for Proposal for new consultants to assist the commission in the review of general rate applications, gas cost adjustment reviews, and other commission dockets. A new contract was awarded on November 9, 2010. I'll now turn to interim rates. Throughout the commission's experience with general rate case filing, issues related to interim rates continue to arise. Ratepayers are confused by interim rates. Further, we consistently receive complaints that utilities should not be allowed to implement rates prior to commission approval. Additionally, the filing of a refund plan and the need to calculate refunds further complicates an already complex proceeding and presents another opportunity for litigation between the utility and the public advocate. If the committee should decide to re-examine the State Natural Gas Regulation Act, interim rates may need to be a part of that discussion. Legislation: During the previous legislative session, the commission supported LB811 regarding the process of appealing commission orders. LB811 directed appeals from decisions of the commission to be filed with the Court of Appeals rather than pursuant to the Administrative Procedures Act which

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requires appeals to be filed in the district court. Prior to LB187 in 2003, appeals from orders of the commission were appealed to the Court of Appeals. The change in 2003 was intended to address ongoing disputes between telecommunications companies and the effect of the automatic stay of commission orders. Unfortunately, with respect to the conduct of general rate cases, the additional layer of appellate review further delays the implementation of final rates and refunds to customers. With a typical three-year period between the filing of rate applications, we are faced with just completing one case as that same utility is back at the commission filing for a new case. The natural gas industry objected to the legislation. The commission is considering whether it should again pursue a change in the appellate process in order to reduce the significant delay in the implementation of final rates and getting refunds to customers. I want to thank you for the opportunity to address you today. The commission welcomes any opportunity to work with you and other interested parties on any of these issues. I am happy to answer any questions you may have. [LR533]

SENATOR MCGILL: Questions from the committee? Senator Coash. [LR533]

SENATOR COASH: Thank you. Thank you, Commissioner. I have two questions related to your testimony here. So on the first things that you said, I just want to get some clarification. You mentioned the commission has conducted a review of SourceGas's gas cost adjustment. Was that review done by the public advocate or by the commission? [LR533]

JERRY VAP: That was done by the commission. It's a...SourceGas and the companies that owned it prior had signed a long-term agreement with a gas producer in Montana to provide gas to the SourceGas ratepayers over the life of the well field. And a minimum price was set for that gas, and any time that gas price goes below that minimum price, then the ratepayers have to pay additional money into a fund to meet the demand or that price that has then been set. If it goes over, then that rate is reduced. And we, the commission, instituted the inquiry into where that fund stood and requested a complete

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review, and the commissions's consultants at the time did conduct that review, and the result was a significant refund to the ratepayers. [LR533]

SENATOR COASH: But the commission's consultants, you didn't give that particular view as a duty to the public advocate. [LR533]

JERRY VAP: Not to the public advocate. [LR533]

SENATOR COASH: That was your own... [LR533]

JERRY VAP: It's a routine-type thing that we do look every once in a while, every few years, to just check to see if that gas cost adjustment is working the way it's supposed to, and it's not something that normally the public advocate may enter into. [LR533]

SENATOR COASH: Okay. Thank you. And then my next question: You mentioned that you, the commission, is examining filing requirements, changes to the conduct of discovery, progression standards, the role of recommendations, and all those things, and you had kind of a workshop on November 1. [LR533]

JERRY VAP: Um-hum. [LR533]

SENATOR COASH: That's three weeks ago, give or take. Where are we with...or where is the commission with...were you going to take that information that you learned in the workshop or your own internal investigation? I mean what are...what could come out of this? Some changes in the way the commission does their... [LR533]

JERRY VAP: There will be proposed changes, a rulemaking, proposed changes which will require further comment by the industry, as well as other interested parties, and then a public hearing will be held on the new rules. Then they would have to be adopted by the commission, as amended. Then that goes to the Attorney General, the Secretary

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of State, and the Governor's Office for approval to the rules. [LR533]

SENATOR COASH: So what we anticipate to come out of all those examinations is changes to the rules and regulations related... [LR533]

JERRY VAP: It would be the way we proceed with a rate case, would be there may be...what we want to do is tighten up the amount of time that it takes for discovery. We may, in the application form or the process they do to file the application, we may want to include more discovery-type questions for them to fill out in advance so that we don't have such a long list of discovery requests from the public advocate or from the industry, either way. And we'd like to narrow down the amount of time it takes for discovery, the amount of discovery questions. We want to get this so that it's tightened up enough that the time limit we have to conduct a rate case will have more time to maybe have some negotiated reconsiderations rather than going to court. And the way it's set up right now, by the time we get down to almost the time line, we don't have much time for reconsiderations. It just...right now, it ends up, just ends up in court. And that will be...that's the goal of the rulemaking, and we'll have to see how it plays out. [LR533]

SENATOR COASH: Can you hazard a guess as to how close you are to being able to submit some proposed rules and regulations changes? I mean we're...I'm just trying to get a gauge on how close you are to this, the process of making these adjustments. [LR533]

JERRY VAP: I don't have a good answer but I'll get it for you. [LR533]

SENATOR COASH: Okay. Thank you. [LR533]

SENATOR MCGILL: Senator Krist. [LR533]

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SENATOR KRIST: Thank you, Senator McGill. Is this process working? [LR533]

JERRY VAP: As it plays out right now? It works, but it's very costly because of the appeals process. And as we get into it, we've had four rate cases that two of them were fully litigated, two were settled between the public advocate and the companies. And it works pretty good, it's just that when everybody does their job and the company does their...a good job of putting on a rate case, it works great. Occasionally we find that not enough work has been done to get the rate case put together, and that's where we've come into some problems with appeals. And I don't see any reason to change it drastically, but we do need to tighten up the time lines so that we may be able to save the taxpayers some money by not getting into court...or not...the ratepayer...not the taxpayer, but the ratepayers. [LR533]

SENATOR KRIST: Is your legal counsel on staff or is he independent? [LR533]

JERRY VAP: We have a legal counsel for the commission. The public advocate also is an attorney, and that is not a staff person. That person is an independent contractor that the commission contracts with to provide the public advocate's services. [LR533]

SENATOR KRIST: Would it be a conflict of interest to bring that legal advice back on to the payroll as opposed to paying the fees that we're paying? [LR533]

JERRY VAP: Well, there's a difficulty in our minds. The public advocate can't be housed in the commission to remain independent. It has to have separate offices. They would have to have full-time staff and it would be a full-time public advocate. And there are going to be a lot of times when with rate cases typically being three years apart, where because of the way the law is written, that advocate works only on natural gas, nothing else. And that public advocate would have a lot of free time to be doing absolutely nothing on the taxpayers' money... [LR533]

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SENATOR KRIST: The way the law is written,... [LR533]

JERRY VAP: ...or the ratepayers' money. [LR533]

SENATOR KRIST: ...you mean he couldn't be part of the Attorney General's staff and have an additional duty doing... [LR533]

JERRY VAP: Nope. The law is very clear. The public advocate strictly works on natural gas cases. [LR533]

SENATOR KRIST: Okay, thank you. [LR533]

SENATOR MCGILL: What suggestions do you have on the front end in rate cases? For instance, you know, the first couple of cases were settled but all the others have been full-blown. And how do we try to encourage more negotiation up front? You know, I've heard that when these start, there tends to be a lot of just contentiousness, I don't know, right from the git-go. And how do...what do we do on that front end that can be helpful? I know that's something members of the committee are interested in. [LR533]

JERRY VAP: Well, we think that it would be very helpful in rewriting these rules that the application process itself contains a whole lot more discovery-type questions in it to be filled out prior to the actual filing of the case. And that would limit...be able to limit the amount of time that both sides have for discovery. And if we can limit the discovery to a certain number of pertinent questions in discovery, that would help considerably as well. If a gas company does everything they should to put their case together, as it appears that Black Hills did in this recent rate case, things go pretty smoothly. The public advocate is appealing based on just one question that they have, where others have had multiple questions of whether it's proper or not, or whether the rate was set properly and things like that, so. One thing that I think should be done by every gas company, and we're pretty much as a requirement now, they do a cost of service study for all rate

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classes that they serve. There are some rate classes that are not regulated by the commission--two of them in one company's domain. Then the consumer and the small businesses, the households and small businesses are regulated. A cost of service study between all rate classes will determine whether the rates that the homeowner and the small businesses are paying are not subsidizing negotiated rates on behalf of the other rate classes, and those would be agriculture users for irrigation and things of that type, and high-volume users. They negotiate their own rates. And if a good cost of service study is done and it shows no subsidization and everything is proper that's in that case for determining what the rates ought to be for rate of return and everything, it's a fairly smooth process. [LR533]

SENATOR MCGILL: Okay. Other questions? No. Thank you, Commissioner. [LR533]

JERRY VAP: Thank you for your time. [LR533]

SENATOR MCGILL: Um-hum. Commissioner Boyle, welcome. [LR533]

ANNE BOYLE: (Exhibit 2) Thank you. I think I need a high chair. [LR533]

SENATOR MCGILL: A booster seat? (Laugh) [LR533]

ANNE BOYLE: Good afternoon, Madam Chairperson and members of the Urban Affairs Committee. And before I start, Commissioner (sic) Rogert, it's nice to see you and I wish you...on behalf of the commission, we wish you well in your future endeavors. [LR533]

SENATOR ROGERT: Thank you. [LR533]

ANNE BOYLE: I am Anne Boyle and I am a commissioner representing the second district. I am here to provide information in response to LR533 with respect to the public advocate. The public advocate is charged with representing the interests of Nebraska

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citizens and all classes of jurisdictional utility ratepayers. And frankly, in other words, he is the attorney to represent the ratepayers of Nebraska. Other than high-volume ratepayers, he is the only one that represents the ratepayers of Nebraska. Should the committee decide to propose changes to the office of the public advocate, two concepts must be considered: The public advocate must remain independent, and the office must have the resources necessary to represent the ratepayers of Nebraska. The industry continues to express concern regarding the cost of the public advocate. It is important to note that this is not a cost borne by the industry but is instead assessed to ratepayers who are paying for their representation. To date, the difference between what the utilities have filed and requested in rates and the final rates established by the commission either through settlement or a litigated proceeding, including judicial review of commission decisions, exceeds \$40 million in favor of the ratepayers. Also, whether an appeal of a commission decision has been made by the utility or by the public advocate, our decisions have, to date, been upheld following review by the courts. I believe it is important for the commission in order to make a proper and fully informed decision in these very complex, financially significant cases, that the utility and the ratepayer both have the necessary resources and expertise to develop a complete record for the commission to make appropriate and fair decisions. Limits on the public advocate's budget exist through the assessment process outlined in Nebraska Revised Statute 66-1841. Assessments are based upon a utility's proportionate share of meters in the state. Every invoice submitted by the public advocate is reviewed by the commission, and a process exists for the utilities to object to the assessment. The bulk of public advocate expenses result from participation in general rate cases which are, by their very nature, complex and costly. Utilities have suggested that the public advocate's budget for an individual rate case be approved by the commission during an open meeting. Such a process would create a burden for the public advocate not shared by utilities. More importantly, it infringes on the independence of the office and creates a conflict for commissioners who would be asked to approve a budget for a party to a matter pending before it. Furthermore, it adds an additional layer to an already time sensitive process which would necessarily increase costs and delay.

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Utilities are in complete control of the timing and resources dedicated to the filing of a general rate case application. Unlike the public advocate, no limit exists on the amount of resources a utility may devote to lobbying, the preparation of a rate case filing, or any other activity. In their 2006 rate filing, Aquila incurred costs of \$1.2 million in rate case expenses, not including in-house staff, accounting, and legal costs. In that case, the costs of the public advocate charged to the ratepayers were \$557,592, of which \$313,152 were for costs for the work of the public advocate, and \$244,440 were consultant costs. It is important to note that his consultants also serve as witnesses in a proceeding. The public advocate puts on his case through the testimony of his consultants. The public advocate is faced with a 210-day statutory time limit to review and analyze the rate filing based upon the information provided by the utility. That time limit may be increased to 270 days, but that time must be set aside for commission deliberations and the issuance of an order determining the final rates. While the utilities have separate counsel--although in the last Black Hills case they now have in-house counsel, but they also were second-chaired by outside counsel--and they have consultants to devote to the presentation of their case, the commission and the public advocate do not. In the Kinder Morgan and Aquila rate filings in 2006-2007, and the SourceGas and Black Hills cases of 2009 and 2010, there was an overlap in the statutory time window, requiring both the public advocate and the commission to attend to the detail of two rate cases simultaneously, whereas the utilities were able to focus on their own individual proceedings. Utilities collect their own external costs for general rate cases through their rates. Although it is true that the rate case expenses of a utility is examined in the context of a rate case, it is not capped. A utility is free to spend more than the commission approves in rates. Also, a similar examination of the public advocate's expenses occurs through the assessment and invoice process. The public advocate must have sufficient resources to employ technical consultants to review filings by the utilities in order to maintain a level playing field. From the inception of the Natural Gas Act through mid-October 2010, the public advocate has billed \$2,063,067.27 in legal fees and an additional \$904,039.95 in consultant fees. It is difficult for us to estimate the cost of employing an in-house public advocate with the

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necessary support staff. However, commission staff calculates that the cost of employing an in-house public advocate during the same period of time would have been approximately \$1,491,290. This estimate does not include any costs that may have been needed to retain additional legal support either for commission-level or appeal-level litigation. Further, it does not include additional operational costs if the public advocate's offices were located at a place other than the commission's existing offices. Therefore, the number is understated. If the costs of the consultants were included, the estimate rises to \$2,395,330. And, senators, as an aside, I've done some checking throughout the country, and I cannot find any public advocate's office that is included within the offices of the commission. They are supposed to be independent. They are supposed to be the legal...they are the legal counsel for consumers, so they are the other party that we always have when we have contested cases. And I have also been told that there's an organization called NASUCA, it's the National Association of State Utility Consumer Advocates, and they are paid for by the state. But again, they are not housed within the offices of a commission, and those attorneys do not ever comment or talk to any commissioner during the process of a case because they must be independent, just like legal counsel for the utilities must be independent. If they do talk to us, they usually talk through staff, and if they ever talk to us during the outcome of a case, then that is an ex parte filing that must be filed and so that everybody knows what has taken place. The public advocate plays an important role in ensuring that the issues are carefully examined and the record fully developed so that the commission has sufficient information on which to base its decisions. It is natural that a certain tension exists between the public advocate and the industry. The commission is currently examining ways to streamline the rate case process in order to reduce costs, and as Commissioner Vap mentioned to you, we are right in the process of doing that. And as an aside I would like to state this: The commission has not been doing this very long. The Legislature just gave us that responsibility a few years ago, and it is probably very, very normal for new legislation, as you enact it, to find the problems that may be there or other ways to do things that are more efficient. And so this is a natural outcome of what we have been dealing with in a very short period of time, and I think if you give

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us the time to explore that, that we will find some things that we could be doing more efficiently, along with the providers. Finally, making structural changes to our office of the public advocate is unnecessary and risks undermining the effectiveness of the position and the interests of our ratepayers. Thank you for your opportunity to address you today. The commission welcomes the opportunity to work with you and other interested parties on any issue, and I'm happy to answer any questions that you may have. [LR533]

SENATOR MCGILL: Commissioner, I'm going to ask you the same question I asked before. I mean is there anything we can be doing, a mediation step at the beginning or something, to get sides together to try to...I mean best-case scenario is a settlement that doesn't cost ratepayers much at all. How do we try to encourage more cooperation at the beginning to maybe try to avoid, every once in a while, avoid a long rate case? [LR533]

ANNE BOYLE: Well, my answer to that is similar to Commissioner Vap's, and that is this: We recently had two rate cases in the last year. One of them that was sent to us was practically nil of evidence, and the commission had a very hard time with that. The second rate case was filed by Black Hills. Their counsel was there for the SourceGas hearing that we had where the problems existed--and this is all public record so I'm not saying anything that is not on the record. They came in and they had a case that they were ready to...they listened carefully to what we were asking, what we wanted, so that we could have the information that we needed to settle...or to make a case. If that kind of information was submitted first, so that by the time it came to the commission that most problems have already been taken care of, it would be fine. The other piece is, in the case itself under appeal today, as Commissioner Vap said, it goes to the district court, it would be more efficient for the commission to go to the Court of Appeals. We brought that up last year and I hope it's brought up again this year so that the Court of Appeals looks at what we do, because they have the entire record in front of them, and I think that that would be an efficiency in costs. [LR533]

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SENATOR MCGILL: All right. Thank you. Any other questions? Senator Krist. [LR533]

SENATOR KRIST: Commissioner Boyle, what I hear you saying is if there's a standard format for the appeal process--that is items 1 through 10 need to be submitted before an appeal would be considered--I mean the language is obviously different, but I hear you saying that some people come with very little, some people come with a form all filled out. It's easier to deal with the form that's all filled out. Is that correct? [LR533]

ANNE BOYLE: What I'm saying is that before the case is filed, when they have all the...they are asked to provide, both counsel, the public advocate and the opposing attorney for the industry, if they can come together and they can work out all these issues and if they provide all the information, some of that can be settled...a lot of that can be settled before it ever comes to the commission, and then we deal with only those very issues that have not been settled. But oftentimes there is not enough information. In one case in particular, there was so little information that, if I recall correctly the number was, that they asked for, was \$12 million. We gave them \$2 million--and they have appealed that case. I'm not sure where that is yet, where that is going to be decided. But the next case after that was for Black Hills. And I can't recall the numbers, but the difference between what they asked for, and even after the public advocate review, was probably not even 10 percent if I recall correctly--and I could provide that to you. But it tells you there was an egregious difference between one and the other. One was...has looked at the statute and says, well, this is what we need. And to decide a case, if it's all provided, we will not have very many questions. So the burden, I think, belongs to them. [LR533]

SENATOR KRIST: Will that be a result of the study that was mentioned earlier? [LR533]

ANNE BOYLE: That is part of it. And the other case is, if to go to the Court of Appeals, if there were no appeal, rather than going through the district court and then to the Court

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of Appeals and then possibly to the Supreme Court. [LR533]

SENATOR KRIST: Thank you, ma'am. [LR533]

SENATOR MCGILL: Other questions? No. Thank you, Commissioner. [LR533]

ANNE BOYLE: Thank you. [LR533]

STEPHANIE MEESE: (Exhibit 3) Good afternoon, Senator McGill and members of the committee. My name is Stephanie Meese, and that's M-e-e-s-e, and I'm the legal counsel for the Legislative Performance Audit Section. And I acted as lead auditor on the audit I'm here to discuss today. As Laurie stated, in April 2010, the Performance Audit Committee issued a report examining the statutory compliance, as well as the efficiency and effectiveness of the Public Service Commission's office of the public advocate. The topic for this audit was brought to the committee by the Auditor of Public Accounts who questioned whether contracting to fill the public advocate position complied with statutory requirements. In the report the committee directed the office to answer the following questions: 1) Does the Public Service Commission's contract for legal services meet the duties of the public advocate, and 2) efficiency and effectiveness of the current public advocate contract? We found in our audit that the Public Service Commission's decision to outsource the public advocate position was not prohibited by law and was, therefore, compliant with the relevant statutes. We also found that outsourcing the duties of the position was more cost-effective and efficient than hiring a state employee. To give you a little bit more detail as to how we came to those findings, regarding the statutory compliance question we found that there are no restrictions in statutes regarding the use of a contracted attorney for the public advocate position. While the language used in that section of law--including "his or her powers" and "no person"--indicates that the Legislature envisioned an individual serving in this position, the language contains no clear statement about whether the position should be filled by a state employee. In addition, the statute also requires that the individual serve

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a four-year term, which suggests a contractual agreement. When statutory language can be interpreted in more than one way, we typically look to the legislative history to see if the debate clarifies the Legislature's intention. In this case, however, there is no legislative history because the relevant language was added as a Select File amendment with no discussion. The statute also emphasizes that the office of the public advocate must be separate and independent and that no employees of the public advocate be supervised or directed by the PSC. The law requires that the public advocate's physical office be at the same location as the commission but be kept separate from the PSC's other offices as provided by PSC rules and regulation. The public advocate's current office--that of the office of the law firm under contract--is located in the same city block as the PSC office. We found the language requiring the office to be at the same location as the commission somewhat vague. While it might be read strictly as requiring the office to be in the same office or building as the PSC, it also might be read less strictly to mean nearby. We believe that when the requirements for the office are read together, they reflect the Legislature's attempt to ensure that the public advocate's office would be physically located near the PSC in order to be accessible, but separate enough to ensure its independence. Consequently, we believe that the current location of the public advocate office reflects a reasonable interpretation of the relevant statutory provisions. Regarding the second question which was that of the cost and overall effectiveness of outsourcing the public advocate position, which Senator Krist touched on his question earlier, we were not able to identify any advantages to employing an in-house public advocate. According to the Public Service Commission, they had attempted to fill the position in-house but were unsuccessful in finding the right individual for the position. After consulting with Senator David Landis, the introducer of the legislation that created the office of the public advocate, the PSC then issued a Request for Proposals. We also contacted Senator Landis, who confirmed his support of the PSC's decision to outsource the position. In addition, we found the PSC had several credible arguments for outsourcing the position, including: the inherent conflict of interest in requiring an attorney employed by the PSC, a party to the rate cases, to represent the ratepayers' interests; an individual well-versed in this complex

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and specialized area of law is unlikely to accept the compensation available in a state position; and the nature of rate cases, which require intense work for several months alternating with months in which little work is needed; and the potential difficulty in assigning other work during those downtimes. We also agree with the PSC's analysis that hiring an in-house public advocate is unlikely to result in significant cost savings because a large portion of the current expense--the need for expert testimony--would remain even if the public advocate were a state employee. We also acknowledged in our report that the PSC has spent a significant amount of money on the contract with the law firm that does the public advocate work. However, we also noted that, based on our review of the A bill for the enacting legislation, the PSC has not spent more on the public advocate than was originally envisioned. I would just like to close by indicating that the only recommendation made by the Legislative Performance Audit Committee regarding the audit was that the PSC needed to promulgate regulations as required, which Commissioner Vap stated in his testimony has been done. The committee has taken no position on the policy question of whether the public advocate position should be filled by a state employee or a contractor. I have with me today a few copies of our report and it's available on-line in its entirety, as well, on the Legislature's Web site. With that, I'd be happy to answer any questions any of you might have. Thank you. [LR533]

SENATOR MCGILL: And I'll note real quick that the Attorney General's Opinion basically backed up exactly what you found. [LR533]

STEPHANIE MEESE: Yeah. Yeah. [LR533]

SENATOR MCGILL: Senator Rogert. [LR533]

SENATOR ROBERT: What was the original A bill? What did they originally think they would spend? [LR533]

STEPHANIE MEESE: Um, that's a good question. I don't think I have that with me. Let

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me look if it's just easily accessible here in the report. [LR533]

SENATOR MCGILL: Yeah, just take a second. Go ahead. [LR533]

STEPHANIE MEESE: Yeah, sorry. It's been a little while since we did this, so. Okay. It was LB790. It estimated a combined cost for the newly created natural gas department and the public advocate: \$844,452 for fiscal year 2003-2004, and then \$748,719 for fiscal year 2004-2005. And those amounts were expected to cover the three positions: the public advocate, the director of the natural gas department, and an administrative assistant for those, as well as the operating and contractual costs, so. And then the PSC's actual expenses were \$310,000 in fiscal year 2003-2004, and \$185,000 in '04-05, so. [LR533]

SENATOR ROBERT: Thank you. [LR533]

STEPHANIE MEESE: Yes, you're welcome. Sorry, it took me a second to find that. [LR533]

SENATOR ROBERT: Not a problem. [LR533]

SENATOR MCGILL That's okay, yeah. It's great that you... [LR533]

SENATOR ROBERT: Should have that memorized but it's all right. (Laughter) [LR533]

STEPHANIE MEESE: Yeah. I'm really slacking and I apologize. (Laugh) [LR533]

SENATOR MCGILL: Are there other questions? Well, thank you very much. [LR533]

STEPHANIE MEESE: Yeah. Thank you. [LR533]

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SENATOR MCGILL: Who else would like to testify? [LR533]

JOHN LINDSAY: Senator McGill, members of the committee, for the record my name is John Lindsay, L-i-n-d-s-a-y, appearing on behalf of the Nebraska Natural Gas Association. And let me, right at the very outset, start off with making it clear: The Nebraska Natural Gas Association does not support elimination of the public advocate. The NNGA does not support a public advocate that is not independent. So I think some of the...many of the principles that you've heard already are uncontested. And let me first tell you that Nebraska Natural Gas Association is the jurisdictional utilities, basically, that are covered by the State Natural Gas Regulation Act, collectively provide natural gas service to about 329,000 customers in 297 communities around the state. The NNGA members own and operate thousands of miles of infrastructure, of pipe in the state, and provide natural gas for a variety of uses, whether it's agricultural, irrigation, etcetera, or whether it's for business use, for residential use, for ethanol plants or whatever that might be. The members are Black Hills Energy, and you've heard these members mentioned in earlier testimony...but Black Hills Energy, which basically serves the eastern two-thirds of the state outside of the Metropolitan Utilities District; SourceGas Distribution, which basically serves the western two-thirds of the state, those areas that are not served by NorthWestern Energy. NorthWestern Energy serves about 41,000 people in the communities of North Platte, Kearney, Grand Island, and the village of Alda. That is the jurisdictional utilities with which we are dealing. I think to start off we should look at the principles of ratemaking and remind ourselves of what the goal of ratemaking is. I would suggest that it's not like a political environment where no new taxes--we're never going to raise taxes. It just doesn't work for a variety of reasons. First, ratemaking must allow a utility sufficient revenue to reflect the investment that they have in that infrastructure, that they have in their utility. It must recover the cost of providing safe and reliable natural gas service. Every time it gets cold you should be able to turn on your furnace and your house should be warm. It should be reliable, should be safe. That's what the companies have to spend enough money to do. And finally, it should provide an opportunity to earn a fair and reasonable return on the

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property that is dedicated to the public service. The goal of ratemaking is not to drive rates to the lowest possible level so that a utility cannot cover its costs and earn a fair return. And where do these principles come from? They come from the United States Supreme Court in well-established law from 1923 forward, a case called Bluefield Water Works v. Public Service Commission, out of I believe it was West Virginia, dealing with water rates. What...it stated in that opinion that the rate of recovery for a public utility must maintain the financial integrity and credit rating of the business and must allow the company to attract additional capital as needed to serve the public interest, and it must achieve a return on common equity that is comparable to those of other companies with corresponding risks. These are all the principles when the Public Service Commission tries to determine rates that they take into account in setting those rates. Now the Nebraska Supreme Court has adopted those ratemaking principles in...the Bluefield principles in KN Energy v. City of Broken Bow, a case out of 1993. So that is...those ratemaking principles are the well-settled law in Nebraska. In the--I'm going to run out of time so I better speak very quickly. [LR533]

SENATOR MCGILL: It's okay. You are kind of speaking for many groups, so it's okay. [LR533]

JOHN LINDSAY: Actually yeah, for three companies, I guess. But the Nebraska statutes, if you look at the statutes in the Nebraska Natural Gas Regulation Act, the Public Service Commission, for example in 66-18...well, statutes just after that, the Public Service Commission must establish "just and reasonable rates" for natural gas distribution service. The public advocate in Section 66-1830 must "consider all relevant factors, including, but not limited to, the provision of safe, efficient, and reliable utility services at just and reasonable rates." That "just and reasonable" language comes from those Supreme Court cases. So that is what we have to be looking at, and that's, I think, what the state policy has to be, is balancing the public interests in low rates with the rights of the companies to get a return on their investment while providing safe and reliable rates. The problems that we see right now is that the cases, these ratemaking

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cases, have become contentious. It seems that at every step there's fighting with--I think we heard that reflected in some earlier testimony--not enough settlement or not enough limiting issues. Every issue seems to be contentious and it's something that we believe is, in the companies, is a significant problem. We would, as you've heard, the last four rate cases have resulted in appeals to the court system in either an appeal or a collateral litigation. Number two, the ratemaking that we have right now for some reason is becoming very expensive. And as Commissioner Boyle, I believe, mentioned, those rates aren't borne necessarily by the companies, but we'll bear our piece of it, but that's a pass-through to the ratepayers so I think it's incumbent upon state policy to establish a ratemaking process that is cost-efficient because it is the ratepayers who have to pay for that. The recent examples of costs in the most recent SourceGas case--and I think Commissioner Vap mentioned both of these cases, described them a little bit--the SourceGas case, the cost was \$1.5 million. In the Black Hills case the cost was \$1.6 million. I believe the most recent NorthWestern Energy case, which does not have the public advocate included, was about \$150,000. If we compare the costs of that ratemaking to some of our surrounding states--and I just pulled the last two cases that...these are both 2010 cases that SourceGas was involved in--their Wyoming rate case cost \$400,000. The SourceGas case in Colorado in 2010 cost \$150,000. So there is a disparity. And we can talk about whether...what the costs are, but something is driving up the cost. And I think that's what the goal of the committee should be, is to figure out what that cost is. Now the problem that we run into is that the cost, when we have...if we have ratemaking that is unpredictable--or actually I shouldn't...can't even say that because the Public Service Commission generally does a pretty good job at arriving at a justifiable rate of return and justifiable rates. But when we have expensive ratemaking, it can...and if it results in unjust rates, that can make it difficult for a company. If you can't get the return on the investment, the company can't make the investment. The company can't put the pipes in the ground if they can't make money doing it. And there's a limited amount of capital available in the world, and if that capital can have a return that is more favorable in Wyoming or South Dakota or Iowa, that's where that investment is going to go. And so that is a part of the policy that this

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committee, I believe, has to consider. Again, if I could just...and I'm trying to...cutting this out. But if I could just conclude with repeating: The Nebraska Natural Gas Association does not support elimination of the public advocate. We agree there should be an independent public advocate. We agree the public advocate should be housed outside of the Public Service Commission. Those are not the issues, but what we point out is that costs have gone up, every case; every case they've continued to expand, and we think that needs to be addressed. [LR533]

SENATOR MCGILL: We gave you a little bit of eternal yellow light there to let you fill in a little more time. (Laugh) [LR533]

JOHN LINDSAY: I appreciate that. [LR533]

SENATOR MCGILL: My first question would be, are your clients participating in this process the commissioners talked about where they did the workshop on November 1? [LR533]

JOHN LINDSAY: I believe so. And I would tell you, we applaud what the Public Service Commission we think is making an effort through their rulemaking process to address some of those concerns, and we do applaud that. I think some of those are making...some of those rules are making it clearer what should be filed up front in a rate case, and I think those are helping to address some of the issues. [LR533]

SENATOR MCGILL: What do you think would be a good solution in terms of...I mean, is it something I've asked them about, some sort of mediation or negotiation at the beginning, but what would that look like, you know, to try to reach settlement or something sooner in the process? [LR533]

JOHN LINDSAY: It would be to have the Urban Affairs Committee sit through all rate cases. (Laughter) [LR533]

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SENATOR MCGILL: No, thank you. (Laugh) [LR533]

JOHN LINDSAY: I should speak...I am speaking for an association, and all members would have...the members would have different perspectives. [LR533]

SENATOR MCGILL: Okay. [LR533]

JOHN LINDSAY: I can tell you what some of the suggestions are, and that is somehow getting a handle on public advocate costs. Just how to do that is maybe another issue. We are...don't know if that is the deciding factor or not, but we are the only state in the country that, what our research shows, we are the only state in the country that contracts out to a private law firm the public advocate services. Whether that is the issue or not, it's probably something that the committee should look at. But I mean there's a little bit of a reinventing the wheel issue... [LR533]

SENATOR MCGILL: Um-hum. [LR533]

JOHN LINDSAY: ...that maybe we look to see what other states do. I think a lot of our act I believe was pulled from...when we first did the act, was pulled from Kansas. Then I think it pulled in some additional language from Colorado and Wyoming. But the...I think that is looking to other states to see how they do it and does it work and who has comparable...who has the most efficient and fair ways of doing ratemaking would probably be the direction we'd take. But I apologize, we don't have unanimity among our members in what that approach is. [LR533]

SENATOR MCGILL: I understand. Senator Krist. [LR533]

SENATOR KRIST: Senator Lindsay. When you...I guess I want to ask you a pilot question because that's the way I think. If you have an established rate and that rate

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needs to be negotiated based upon some outside influence, and you have a baseline, shouldn't it be--and I alluded to this when I had a question with Commissioner Boyle--shouldn't it be a matter of filling in the blanks? I mean, why are we reinventing the wheel? Why is one lawyer not asking the question the other lawyer is asking? If I have a problem with the rate case, here's my problem, and I filled out 1 through 10 and I'm presenting it back to you, I heard that Black Hills does a much better job or did a much better job in the last one than did--I can't remember... [LR533]

SENATOR MCGILL: SourceGas. [LR533]

SENATOR KRIST: Source. How about a standard format? How about beginning with a checklist that says, in my old pilot mentality, this is what is wrong with this scenario and let's go forward from there? And I'm hoping that that's a part of the workshop environment. Do you think...so rather than a question, that question, I'll ask you this one: Do you think you can have a unanimous buy-in from your clients that says if I have to go back and renegotiate a rate, this is what I need to do? [LR533]

JOHN LINDSAY: Well, I don't know that... [LR533]

SENATOR KRIST: Or is that too simple? [LR533]

JOHN LINDSAY: I think a lot of it, it may be a little bit simple, but I think the Public Service Commission is already moving down that path through the rulemaking process on some initial requirements on what those cases should be or what should be included in the initial rate filing. But there's...I don't pretend to be anything close to an expert. I don't even pretend to be a novice on ratemaking. There's a lot of...it's just complex stuff. But I will tell you this: I never want to run for Public Service Commission (laughter) because I don't want to have to make those decisions, but the...it's complex stuff. And like I say, I think what the Public Service Commission is doing in trying to get a "here's what should be filed in your rate case." I think that's good stuff. But I...is that the

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answer? Well, I think if we...we heard from the commission that Black Hills...they said the Black Hills case was very well done and efficient and the SourceGas case was not. But the costs, public advocate costs, were \$1.6 million in the Black Hills case and \$1.5 million in the SourceGas case. So is that...will that streamlining resolve the issue? I don't know. You had similar issue in the cost anyway when you had a case that was admittedly well-prepared. And so I think it's...again I think the answer is a little bit more complex than that, in the...and maybe those costs are what we want for Nebraska ratepayers for whatever the...but I think, again comparing to other states, they do a, I think, a fair job. And my guess is...I don't have any numbers for you, but my guess is the rates are probably fairly comparable. [LR533]

SENATOR MCGILL: Other questions? Thank you. Senator Landis. [LR533]

DAVE LANDIS: Dave. Dave. I apologize. I wish we had done better. I don't know what we were thinking. Silly me. I'm sorry. Now we dump it back to you. Save us, please. David Landis, citizen and nothing more, on vacation time from the city of Lincoln--on my own time. Very little to dispute with anything that I've heard so far except I think there's some pieces that have been left out, but I don't dispute much of anything that I've heard from any of the poets. First, it is absolutely the obligation that we get a fair and equitable rate of return for natural gas companies. It won't work without it; they've got to get it. They're entitled to it as a matter of law, and it's our intent to make sure they get it. The system to produce that, however, is very expensive--and I don't know if it's unconscionably expensive. I'm not sure I would be there yet with that, but that's an important consideration. It is very complex, very expensive work. The three principles I think that go into the public advocate are: it needs to be independent; it needs to be competent; it needs to have adequate resources. And the reason is, it is expensive. It could be in-house; it could be out-house as far as I'm concerned. I mean, that's not the question, and I think it's an open question for you to decide as to what you think is good policy. Wherever it rests, it needs to be genuinely independent and not subject to the kind of lobbying or activity or even relationship to the PSC that they would treat them as

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an employee--or an attorney general or any elected official, thank you very much. They need to be independent; answerable to ratepayers--and competent; adequate resources. Okay. What I've seen up until today when I look at the conversations has been this is an examination of public advocates. The question should be, what's the system--not the public advocate. It's like saying, you know, oh, we're not going to talk about court costs; we're not going to talk about the plaintiff and the defendant and the judge; we're only going to talk about the defendant's costs. And there's a system here. The only case that I know that I can get a comparative data between the natural gas companies and the public advocate was the third of the five cases. And in that case I think the number for the public advocate was \$600,000 and the number for the natural gas company was \$1,200,000--twice as much. Nobody has asked how much the natural gas companies have been paying or spending for their part of the rate case. I would guess that if we were to check this system to find out the cost to the system, we would want to know that, because I think there's a really good chance that we're spending more on the natural gas company side than we are on the public advocate. And up until now the question has been, well, what are those defendants doing, and not asking about the plaintiffs. And the reason is: It's expensive. Natural gas companies have to have excellent lawyers and excellent engineers, and their data is immensely important. Recommendations for the future: Number one, simplify the discovery system. Make it clear. The checklist idea of Senator Krist makes perfect sense to me. If you do that and you give the target, then we won't have fights as to whether you've met it or not. And if you haven't come to the table with your checklist, perhaps you could be disciplined. Perhaps the costs that you've spent to do an inadequate filing doesn't get charged to the ratepayers as they do now from the natural gas companies. So maybe there's a way of tightening the discovery process that would make some sense. And in answer to Senator McGill's question, "Is there anything that could promote settlement?": The telecom piece of the PSC has a list of mediators that the two parties can choose to mediate telecom cases. We don't have the same kind of a situation here. If you wanted to, you could consider the use of a special master. A special master would be somebody...I think they would have these credentials: 1) they'd have to be competent;

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and, 2) they ought to be mutually satisfactory to both parties. What would you do with a special master? You'd have them do what is essentially like a summary jury trial where you say to both parties: Come in and tell your story, in a day, to an expert. Expert listens to everything; go through the papers; and then say, you know what, if I was the PSC, I would give you a \$6 million increase. I wouldn't give you the \$9 million you asked for but I would give you \$6 million. That number from an expert reviewing it to say, you know, the two of you, if you could agree to a number around that \$6 million, we don't have to take it to the PSC. Nobody provides that realistic perspective of the judge to the plaintiff, than defendants. Right now, they are contentious and they're taking it, you know: What, they asked for \$12 million and \$2 million? That's not a pretty extreme result, pretty extreme contentiousness? I think there is. The voice of somebody who says, I'm pretty aware of this stuff and I can tell you where a judge might come out on this, would give people a place to settle rather than going through the whole process. That would save you some money. The third thing you could consider is: take the size of the case that's being asked for; pick a reasonable amount of resources that should represent, and divide them equally between the two sides. Because right now you have no idea where there is an equal distribution of resources. One side's resources are hidden by the way that we account. And the reason is the costs for the ratemaking case from the natural gas companies doesn't appear in the case it is handling. The public advocate's numbers do, but the natural gas company doesn't. It goes down to the next time when they file and say, we need to get back the costs we spent three years ago or four years ago. So you can't...it's really hard to get apples and apples. What you get is an apple and an orange, three year's later from the other side, if you get the apple at all. And that's problematical. If you wanted to, it seems to me you might be able to create a system in which you have created a pie and divided it equally, so that everybody had adequate resources but also equivalent resources. Because that question is unasked, and it's unasked by the nature of the public auditor who didn't ask how much the natural gas companies were spending. And if you take a look at the results of the Legislative Performance Committee, it didn't either. Nobody said, how is the system operating? One concluding set of remarks about the system itself: It is expensive. But no case has

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ever been overturned that the Public Service Commission has been done. And every case up until now, except for the last one, has had appeals by both sides. What I am disturbed by is the sense that only one party is at fault for a system that seems to be expensive. I think there are systemic costs that should be the focus of the attack--not, oh darn, those defendants, we ought to really tie one of the hands behind their back because we plaintiffs are, you know, treated badly by the....no. I think this is at the end of Romeo and Juliet: "A plague on both your houses." (Laughter) Sorry to quote Shakespeare at you, and I'll answer any questions. [LR533]

SENATOR MCGILL: Well, I think you should be allowed to travel with your dry erase board for these presentations. Any questions? It was very helpful. So I don't see any. Thank you very much, Dave. Anyone else interested? We've got another taker. Oh, hello. [LR533]

CHRIS DIBBERN: (Exhibit 4) Good afternoon, Senator McGill. My name is Chris Dibbern, C-h-r-i-s D-i-b-b-e-r-n, and I am the general counsel and a registered lobbyist for the Nebraska Municipal Power Pool. We represent 200 communities in the Midwest and 71 communities under the Public Alliance for Community Energy. We're communities under the Choice Gas program that SourceGas offers. And I'm here to ask for your consideration of three items: 1) that the laws are doing the job you intended them to do; that the public advocate is the voice of the people; and 3) that the current system is vital and effective for the public. Our 27,000 retail customers of Choice Gas met, on Wednesday, and asked our organization to attend this hearing and support the public advocate and also make some suggestions about the law. But...and we think the public advocate is effective. And I won't read what I've written because it's been covered, but don't take my word for it. It is in the report that you have commissioned the Legislature to do. As the writer of the report said...said that hiring...the "decision to outsource the public advocate position is more effective and efficient than hiring an in-house public advocate. The PSC's annual expenditure for the public advocate service has never exceeded what the Legislature authorized,"--those two important good

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questions. Secondly, this issue about the public advocate being the voice of the people, our board members complimented the Public Service Commission and the public advocate for scheduling open rate hearings out in the areas when there were rate cases. And at those meetings the company, the public advocate, and the PSC staff explained their findings of rate cases. The public really appreciated an advocate for them. The public allows the Public Service Commission and their staff to be a neutral decision maker. You've heard a little bit about all the independence. Well, that neutral staff is important that they have balanced litigators in front of them so that they can decide the case neutrally. The public advocate plays a vital role in representing Nebraska utility ratepayers. You've heard the words, "complex rate cases, disputes, and regulatory matters." You need a highly experienced litigator and negotiator. There is a need for an independent advocate. And John Lindsay kept saying, you know, this is just complex stuff. It has. I have done natural gas regulation for 20 years. Outsourcing this position has been effective in the long run for ratepayers. Heating and cooling in Nebraska is a necessity. Money saved on a rate case is very important to ratepayers. If you look...I looked at my natural gas bill last month, the Black Hills bill. I had a 9-cent regulatory surcharge on the bill to pay for a rate case. I'm very happy to pay that 9 cents, and I think most of our ratepayers are when they saw a rate case. One of the discussions that we've heard today is that utilities need to prove their case--not just ask for the rate increase, but prove it. And you've talked about ways that maybe they can do that. If...and I'll try to take the fighting words out of my discussions here because I think you've had a great debate. But in summary, the private advocate may be expensive. Private gas companies also pay their attorneys well. The cost range of the public advocate is comparable to other states and other attorneys. States like Colorado and Wyoming, which we also have electric ratepayers in, have regulated longer. So you have a longer history, you have more precedent. It might be easier to regulate natural gas. You've asked for a couple of things that might be helpful. I agree with Commissioner Vap that a straight appeal to the Court of Appeals would save time and money. And customers suffer under rate increases that are not proved by interim rates when those rates are not justified. So I have customers out in western Nebraska that

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are paying a rate that has not been approved by the commission, and they will pay that rate until it is approved or disapproved by the Supreme Court. Interim rates: Having fully allocated cost of service studies I think are very important. There's another option. NorthWestern negotiates with the municipalities, and they seem to have a system that is a model that works for their area. The Natural Gas Act allows for negotiated cases back with the municipalities, and NorthWestern has used that approach. And lastly, there were some suggestions. Right now, we've been focusing a lot on how to save ratepayers money, and the most effective way to save ratepayers money is conservation and energy efficiency. And if we could recommend legislation that incentivizes educational programs for private gas companies to achieve energy savings through insulation, better windows, blankets around water heaters, low-flowing showerheads, weather stripping, rather than watering down the role of the public advocate, I think we could find a win-win. [LR533]

SENATOR MCGILL: Thank you for those new suggestions. Are there any questions? No. Thank you very much, Chris. Next. [LR533]

ROGER COX: (Exhibits 5 and 6) Senator McGill and members of the committee, good afternoon. I'm Roger Cox with the Lincoln law firm of Harding and Shultz. Depending upon who you listen to, I'm either the bad guy or the good guy, so I'll let you decide. I know that I won't be nearly as charming as Ms. Dibbern, so I was glad she... [LR533]

SENATOR MCGILL: Well, everyone agrees your job shouldn't be taken away. The public advocate should exist anyway. (Laugh) [LR533]

ROGER COX: Excellent. As you've heard from some other witnesses and from the reports that are before you, I and my law firm have served as the public advocate, and provided those functions since 2003. You heard that despite a search there is not a large quantity and large pool of people who know about utility ratemaking and have the experience to do it, and the commission was not able to find someone qualified to be

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that in-house public advocate. They were faced with a rate case right off the bat, in 2003, when the State Natural Gas Regulation Act went into effect. We have been re-upped because everyone thought that was working well and working efficiently. We understand there are some big dollars here, but I think the critical thought I would leave you with at the outset is there are some immense dollars in utility rate regulation. Just as an example, I'll use the two utilities that have been before the commission in contested cases, rough numbers--and the customer counts change from time to time--but in the SourceGas rate area, about 97,000 customers; for Black Hills, about 195,000, 197,000 customers, just to round that to the nearest hundred thousand. If the rates charged to customers are only \$1 too high per customer, in SourceGas, that is \$100,000 a month. That's \$1.2 million a year that continues until the rates are finally reviewed and corrected in the future. With Black Hills, we have a problem that's twice as big. Now I'm not saying anyone's rates are too high, but that's what we do in this incredibly complex rate case process is decide what are the right rates. And it's not as simple as just having a checklist of ten items. It's a much more complex thing. But what Senator Krist was saying is true, and what the commission is doing, trying to come up with ways to say, let's make everybody do this in their filing. One utility did and another didn't, and I have a couple handouts here that I've given to the committee. One of them is what we call the "Public Advocate Cost Benefit Analysis." This will show you, at least what our figures show, for the total amounts that have been paid to my law firm for legal services--that's under the PA column; the consultant, which is all of our expert witnesses and consultants, which would be there regardless of who you had as public advocate; and the total. The first thing you will notice is that these numbers are nowhere near to what Mr. Lindsay was talking about. I don't have a clue where he is getting his numbers but they certainly do not represent anything approaching the cost to the public advocate. But what I would say is this: If you look at the end of the it, with some updating there's been nearly \$42 million of savings to ratepayers from the efforts of the public advocate, just in the first three rate cases that are fully final and no longer subject to any appeals. The cost figures for us here include all five of those rate cases. If...and two of those are under appeal; the court may change them. But if the commission would

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be fully affirmed--I've also given you numbers here--those savings would jump to nearly \$53 million. And to get that we have spent under \$2,200,000. I would challenge anyone to find a rate of return, a rate of efficiency, a rate of effectiveness like that anywhere in state government. I don't think you're going to find it. Let me say this: I would like to acknowledge the commission, the staff, and Executive Director Hybl. They have an incredibly tough job. And what Commissioner Boyle said is true: This commission had to hit the ground running, without any background in natural gas regulation, and learn how to do it. It's been a learning process for everyone and they've done an extraordinary job. I think that Commissioner (sic) Foley's report raised a question. It didn't answer it; it didn't look at the underlying evidence. But it says: Hey, is this cost-effective? We're very proud of our record. I think this summary sheet shows you it's been incredibly cost-effective. We'd like to acknowledge the Legislative Performance Audit, because they did...they looked at, okay, is it cost-effective? And they looked at everything in their usual degree of detail. You have their report. I think it's fully supportive not just of the public advocate but of the efforts that we have done in our performance of that job. Important to remember a basic point: Why do we have utility regulation? It's a substitute for competition. We cannot have competition with natural gas companies because we can't have multiple companies with all of the lines so that you have two or three you can choose from at your home. So that's why you have it. That's why it's important. That's why the commission has to do its job. The utility lawyers, the officers of the utility companies, the employees of the utilities all represent the shareholders. That's what they're supposed to do. Their job is to maximize profits. That is their fiduciary and sacred duty to their shareholders. That's capitalism; that's good, that's fine. However, my job under the statute that this legislative body passed is to represent the citizens of the state of Nebraska and all classes of jurisdictional ratepayers. They have no other voice. They have no one to represent them. And that's how you get the two views out there so the commission can do the balancing that the act talks about: look at the costs, look at what a reasonable rate of return is. I do feel obliged to comment on one thing that Mr. Lindsay said. If I understood him correctly, he said: Well, we have unjust rates. I haven't liked every decision of the Public Service Commission...Commissioners, with all

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due respect. My job is to advocate. You won't find any lawyer whose had every judge decide every case in his or her favor. But with the possible exception of a case that's under appeal right now, there has been no case where the rates determined by the commission have been decided not to be just and reasonable. So if you've been through the process and the commission has ruled and the courts have said this is a just and reasonable rate, I don't think it's appropriate to come before this body and say, well, the rates have been unjust. By definition, the rates have been just and reasonable because that's what the courts have decided. The utilities hire the best and the brightest for their lawyers, both in-house and out-house. In fact, there's a herd of them here today, and that's fine. (Laughter) That's what they do, okay? Shouldn't the ratepayers also have someone who is competent and experienced, as opposed to somebody who is straight out of school and may not have any background in this? I think the question answers itself. I have provided you with a list of some typical tasks, nonexhaustive, of what the public advocate does in the course of a rate case. That's to give you some idea of it. Every rate case is different. They're very complex. Some have more issues than others. Sometimes the case is better prepared by the utility than others, and sometimes we have more cooperation or less cooperation from the utility, and that directly impacts the cost. I do feel obliged to say one thing. Any suggestion that there is contentiousness or negativity or that I'm a barrier to doing settlement--not at all true. In every single case we evaluate the matter. We look at it as to whether a settlement makes sense. We determine, if we think it does, if the utility wants to talk settlement, and we have discussions when we can. But sometimes you simply can't. The utilities outspend the public advocate by a huge amount. If you're serious about looking at that issue, you could ask them: Provide us with data as to every dime you've spent for outside attorneys and outside consultants. In the one case that we have data on, the utilities outspent both the public advocate and the commission's consultants by more than 2-3 to 1. Is that a level playing field? It doesn't seem to be. But that does not include any of the in-house time. And understand, there are employees for our utilities that do things they need to do, but they're essentially in a rate case data-gathering and preparation mode 365 days a year, every single year. They can take as much time as

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they want to prepare their rate case and present it. As soon as it's filed, the clock starts running on us and we have to do our job and do it quickly. The last comment I will make and leave with you if I may have permission to exceed the red, red light, Senator?
[LR533]

SENATOR MCGILL: Yes. [LR533]

ROGER COX: You've heard some comments that there are times that even an in-house public advocate wouldn't have much to do. Because of the independence, I do not believe you could say: Would you work on this other aspect of Public Service Commission legal work? And so you may literally have the problem of somebody, taxpayer-funded, twiddling their thumbs. That's not a good, good scenario. But there are other times--and I can give you as many specifics as someone would want--when this job is way too big for one person to do, just due to what has to happen at a given time. So there have been times that we have had multiple folks from our firm having to work at the same time. I'll give you an example. Folks talk about the dollars. I'd like to talk a little bit about the hours. In the SourceGas rate case, up through--and this includes through the month of October--we've had to expend just under 2,000 hours of time among eight full-time professionals in my office. Now they're not working on that 24/7 every single day, but that's how the work has hit. In the Black Hills case it was just over 1,400 hours, spread among six people. That's a lot of work and a lot of people. There is no way that an in-house person could do all of that himself or herself. And any way you slice it, if you even had an in-house public advocate, that person would have to hire outside attorneys to help them, and probably hire more staff than you need. As to other states, I think if you looked at it you would find they have staffs that are much, much larger. If you would figure out what their in-house costs are, the costs may not be all that much different. But I'd submit to you that the ratepayers of the state of Nebraska are being well represented under the act. I think it's clearly cost-effective. And if you ask the ratepayers, would you rather spend too many of your dollars for rates or would you rather spend just a little bit on the regulation to hold those rates down to where they

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truly are just and reasonable, the question answers itself. The ratepayers deserve that representation. If you have questions I'll be happy to try to answer them. [LR533]

SENATOR MCGILL: Yeah. You know, like Dave Landis was saying, my concern isn't so much about where the public advocate is housed or, you know, the existence of your role in any of that. I'm more concerned about the system and the overall costs on both sides, and, you know, what's put on the taxpayers then...or the ratepayers, excuse me. How do you feel about some actual organized mediation stage beforehand? [LR533]

ROGER COX: We'd be entirely open to discussing any of those options. I do feel obliged to say this: These cases are so complex and the amount of information that has to be gathered, it's not something you can sit down and talk about the day you see the utility's application. [LR533]

SENATOR MCGILL: Yeah. [LR533]

ROGER COX: And a lot of this is stuff that takes due diligence--a lot of people with little beady eyes who know what line to look at on the computer. There's a lot of background work that would have to be done before you could have meaningful and intelligent negotiations. [LR533]

SENATOR MCGILL: Okay. [LR533]

ROGER COX: From my perspective--and I applaud you looking at that option, Senator McGill--I believe that already the counsel for both parties, they're all thinking about the possibility of settlement as cases go on. As an example to you without disclosing any of the confidential communications, in the Black Hills rate case that was tried here recently and is under appeal, we had a full day meeting involving my partner Mr. Shultz, myself, one of our consultants, and multiple representatives of the utility, and we all did our best to see how we could close that gap. At the end of the day, we weren't able to do so. We

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all shook hands and said, you know, we did the best job we could and here are some issues we simply cannot agree upon. We did identify some things that were not in serious dispute. And although we didn't have an agreement to a settlement, they were things that, you know, the evidence came in and there was no dispute as to those items at the hearing. So certainly we would look at that, but it's important that both sides have enough information. The utility has all the information from the day they file... [LR533]

SENATOR MCGILL: Yes, I understand. [LR533]

ROGER COX: It's our side that's playing catch-up while the clock is running. [LR533]

SENATOR MCGILL: Absolutely. Senator Krist. [LR533]

SENATOR KRIST: Okay. Back to the old pilot mentality. [LR533]

ROGER COX: Yes, sir. [LR533]

SENATOR KRIST: It costs me X amount of dollars for the gas running into my house on day one. [LR533]

ROGER COX: Yes, sir. [LR533]

SENATOR KRIST: On day two, there is this complex issue that no one can understand that causes the gas to change. I'm not buying it. [LR533]

ROGER COX: No. And it isn't that at all, Senator. What we're talking about, firstly, the cost of gas is not something that is regulated in terms of the...the Public Service Commission can't set that. That's a market force matter. What the commission can do and has done with SourceGas is this gas supply cost adjustment, just to see if the utility has been properly tracking and determining the cost of the gas. What we're talking

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about regulating in these cases is, to borrow kind of a rough analogy, the cost of trucking the gas to your home or your neighbor's business. And it's the cost not just of the infrastructure--you know, the pipes, the compressors, the converter stations, all those sorts of things, the utility office, the administrative people, the person that either reads your meter physically or drives by with a little truck with the electronic unit that does it--and those costs go up and down over time. And the reason rate cases are done at points in time and they look at a particular year, what a utility's costs are in year one may be completely different from what they are in year three or four or five. And what the rate case does, Senator, is give us an opportunity and gives the regulator the opportunity to look at everything. Here's a quick example for you. Let's say that I was a utility, and I came to you and said, you know, Mr. Ratepayer, since the last case, the rent for all of our office space and all of the garages where we put trucks on, that's gone up a combined \$1 million, so I need another million dollars in rates. Would you just pay that or would you say, well, let's look at the whole picture. What winners and losers have you had on other expense or revenue issues? Are you really a million dollars short, or is it something closer to \$200,000 short or \$800,000 short? The only way you can know that is to look at all the books and records of the utility and go through this detailed process, and it is agonizing. I do wish there were just a 10- or 15-question checklist we could check off on. It's a good analogy to start with, but things change. The circumstances changed very, very markedly. And I think if you would look in detail at the opinions of the commission, each time they've decided a rate case they have decided that the overall expenses of the utility have changed markedly. And they've taken all those winners and losers, as I call them--the things that have gone up and down--into account, and they say, here's what the right rates are. There's also a huge issue, and I won't spend a lot of time talking about it, about what is the right rate of return. Some of us, as we hear people complain about their mortgage rates, I remember when my wife and I first got married. The first house we bought we had a mortgage at, like 12.75 percent, and we were thrilled to get it, given the market. Obviously, over time, that changes. And that's an extreme example, but right now nobody would pay that for a mortgage. We'd say that's crazy if all other costs held the same. And so we'd look at

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that rate of return. And the rate of return gets decided, Senator, based upon the very specific evidence that all parties bring before the commission. And then that's why the commissioners get paid the big bucks, I guess. They have to decide those tough calls. [LR533]

SENATOR KRIST: Well, I would hope that your look-see is going to get us to a point where the right data is presented and you can very quickly or more efficiently in terms of being quick. Because my concern, and it follows with Senator Landis' comments, it doesn't make any difference whether it's your fees or whether it's their fees; it's you're either a taxpayer or a ratepayer. It's going to get passed on to the citizens of Nebraska one way or the other. So the combined fund sure makes a whole bunch of sense in some ways, I guess. [LR533]

ROGER COX: If I can offer one other comment to that, Senator, just kind of the other shoe that's hanging out here about that. But the question is, are the rates right or not right? We could cut the rate case costs down to zero by just having a dartboard and throwing the dart and saying that's where they are, and we could all say, boy, look at all this money we saved. But if those rates were too, too high, it's the ratepayers that have to pay that rate that is too, too high. And so I think that's why it's a reasonable trade-off to say, overall is it cost-effective? I think the document I gave you demonstrates that it is. [LR533]

SENATOR KRIST: Thank you. [LR533]

ROGER COX: Yes, sir. [LR533]

SENATOR MCGILL: Are there any other? Senator Cook. [LR533]

SENATOR COOK: Thank you. I have a morbidly curious question about your practice. [LR533]

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SENATOR MCGILL: It's the second one of the day. [LR533]

SENATOR COOK: It might be a little bit...yes, too personal. What other lines of business do you have? Is this your sole... [LR533]

ROGER COX: For me? No. This is not my full-time practice. I am a civil litigation attorney for 30-plus years. [LR533]

SENATOR COOK: Um-hum. [LR533]

ROGER COX: I handle...I still handle some level of divorce work. I defend and prosecute lawsuits in civil courts around the state. This is a significant portion of my practice, and even before the Public Service Commission got this regulation, under the old municipal act when there were rate cases, the cities would band together in a certain rate area and hire me, so I represented more than 90 cities. But, you know, it would be the rate case and then there wouldn't be anything to do, and then you wait for the next rate case, and that's one of the concerns. But no, I'm not suffering from any lack of things to do, and I can assure the committee and everyone else, there is nothing that I do as public advocate that is what can we do to cause more work. We have more than enough to do, and we're trying to process these cases just as quickly and efficiently as we can. [LR533]

SENATOR COOK: Okay. And I have another somewhat related question about, you talked about having this unique area of expertise. And I guess my question to you or perhaps to someone else is, where is your competition? If there are many energy and natural gas firms in the area or in the region, my guess would be that at this point, since it's not a brand-new thing, that someone might have emerged. To get your best guess as to where she or he might be? [LR533]

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ROGER COX: Potentially that is the case. At least within Nebraska, to have an attorney here in Nebraska, I think back at the time when the commission was looking initially, the lawyers that were experienced in natural gas regulation matters either worked for utilities--and obviously that wouldn't work--or they were people like me who had represented ratepayers under the municipal act. [LR533]

SENATOR COOK: Okay. [LR533]

ROGER COX: I'm not aware of someone that has a shingle out there that says they are an energy and natural gas regulation expert, and I'm not aware of anybody that's beating a path to the door of the commission saying: Could we please, please, please have Mr. Cox's and Harding and Shultz's job? But maybe there are some. [LR533]

SENATOR MCGILL: Any other questions? [LR533]

ROGER COX: Thank you very much for your time. [LR533]

SENATOR MCGILL: Well, thank you, Roger. Next testifier. Is there anyone else who plans on testifying here today? Okay, we've got one more after this. Go ahead. [LR533]

DAVID BOECKNER: Senator McGill, members of the Urban Affairs Committee, my name is David Boeckner. That's spelled B-o-e-c-k-n-e-r. Thank you for the opportunity to testify this afternoon on LR533 on behalf of the League of Nebraska Municipalities. I've served on the Scottsbluff City Council for almost 14 years, five of which I served as mayor. On September 24, I was elected president of the League of Nebraska Municipalities. This morning the League executive board met and reaffirmed our strong support for the position of the public advocate, who must continue to be separate and independent from the Public Service Commission. Municipal officials believe this is critically important in order for the public advocate to continue to effectively represent and protect the interests of Nebraska's natural gas ratepayers. In fact, during the LB790

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negotiations in 2003, the League executive board directed its staff and lobbyists that any negotiated agreement had to expressly include provisions for a public advocate who would operate separately and independently from the Public Service Commission to represent the interests of natural gas ratepayers. The League would not have supported LB790 without the provisions relating to the public advocate. Of course, there were several other extremely important provisions in LB790 that had to be included in order for the League to support the bill. While some of these provisions were important as the language relating to the public advocate, no provision was more important than the inclusion of the public advocate operating separately and independently from the Public Service Commission. In addition to our strong support for the position of public advocate, the League executive board also passed a motion this morning reaffirming the strong support and confidence that municipal officials across the state have in Roger Cox. In his role as public advocate, Roger has done an outstanding job in representing the interests of our natural gas ratepayers of investor-owned utilities. He has kept the League staff and municipal officials informed about important developments, the status of cases, and other information that we need to know to respond to natural gas ratepayers when we are asked questions. Even though municipalities no longer regulate natural gas on the local level, we are still asked questions by our ratepayers. While the public advocate represents the interests of ratepayers, the natural gas companies rightfully represent the interests of their stockholders. As you know, the role of the Public Service Commission is to balance the interests of the ratepayers and stockholders, and determine a reasonable rate of return to stockholders of the natural gas company. Public Service Commission members, the PSC executive director, and staff should be commended for their excellent work on behalf of all Nebraskans. Prior to passage of LB790 in 2003, municipalities tried their best to set natural gas rates for investor-owned utilities through a rate area committee process then outlined in the Municipal Natural Gas Regulation Act. At best, it was a grueling, expensive, and sometimes very frustrating process. Municipal officials serving on rate area committees would try to, first, find and then work with attorneys and consultants experienced in natural gas settings. This was no easy task. Since natural

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gas rate increases are not typically requested on a consistent basis, municipal officials would have to become reacquainted with the rate area process when the rate increase was filed. As miserable and frustrating as the experience was operating under the Municipal Natural Regulation Act, the rate area committee process was much better than the prior system when municipalities joined together on an ad hoc basis whenever the investor-owned natural gas company requested a rate increase. Despite the many difficulties and lack of institutional memory, for decades the League supported local control and opposed state regulation of investor utilities. However, in 2003, Senator Landis deserves great credit for getting interested parties together to reach a negotiated agreement which resulted in passage of LB790, the State Natural Gas Regulation Act. It's important to note that ratepayers ultimately pay the costs incurred by the natural gas companies for their staff, attorneys, and consultants to prepare and file for a rate increase. This includes their staff time and in-house attorneys, as well as the attorneys and outside consultants they hire to file for the rate increase. Even a small rate increase results in huge dollar amounts paid by ratepayers collectively. Typically, this amounts to millions of ratepayer dollars. While stockholders are entitled to a reasonable rate of return on their investment, ratepayers deserve to have their interests aggressively protected. The ratepayers appropriately pay the costs for the public advocate to represent their interests. The expenses of the public advocate pale in comparison to the money saved for ratepayers. The costs of the public advocate also pale in comparison to the expenses incurred by natural gas companies and filing and of taking rate increases. Mr. Cox addressed that issue. As I noted earlier, the League support for LB790 was conditioned on several key provisions. It was the right policy choice in 2003 to expressly provide for a public advocate operating separately and independently from the Public Service Commission, to represent the interests of the taxpayers. Clearly it is still the right policy choice to do so today. Thank you for your time. [LR533]

SENATOR MCGILL: Thank you, David. Any questions? Well, thank you very much.
[LR533]

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DAVID BOECKNER: Thank you. [LR533]

SENATOR MCGILL: And I think we had one more person interested in testifying. Or do...no? Going once, going twice. All right. We're done for the day then. Thank you all for coming. [LR533]