[LB168 LB442 LB621]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, March 4, 2013, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB168, LB442, and LB621. Senators present: Mike Gloor, Chairperson; Kathy Campbell; Tom Carlson; Sue Crawford; Sara Howard; Pete Pirsch; and Paul Schumacher. Senators absent: Mark Christensen, Vice Chairperson.

SENATOR GLOOR: Afternoon. Welcome to the Banking, Commerce and Insurance Committee. My name is Mike Gloor. I'm the senator from District 35, Grand Island. We'll take up the bills today in the order listed on the agenda outside the front doors. And I'll run through a few rules. We have those listed up there on the easel, but for purposes of making me comfortable, I'll run through them real quick. First of all, please do me a favor and check your cell phone to make sure that you have it either turned off or on silent. The order of testimony will be introducer, we'll go to proponents, opponents, those who are testifying in a neutral capacity, and then closing by the introducer. We'd ask all testifiers, please sign in. Fill out your pink sheets or your coral sheets or your maroon sheets, whichever color-blindness level tells you they are. And hand that in to the committee clerk when you testify. Spell your name for the record before you testify, please. We'd ask you to be concise. We're not using the lights today, but we'd still like you, as best you're able, to keep your comments to about five minutes. If you're not testifying at the microphone, but want to go on record as having a position on the bill, you can sign in one of the sheets that's on either side. If you have handout material, and I think that's part of what we're working on right now, make sure you've got ten copies so that all the members of the committee, counsel, and whatnot have copies of those. And if you need help with that, talk to the pages. They can get that taken care of for you. Committee counsel is Bill Marienau. Bill is running around taking care of a few last-minute things and will be here shortly, I know. And Jan Foster serves as the committee clerk. And I'll ask the senators to introduce themselves. Senator Crawford.

SENATOR CRAWFORD: Thank you. Good afternoon. My name is Sue Crawford. And I'm from Legislative District 45, which is Bellevue, Offutt, and eastern Sarpy County.

SENATOR SCHUMACHER: Paul Schumacher from District 22. That would be Platte and parts of Colfax and Stanton Counties.

SENATOR PIRSCH: Pete Pirsch, District 4, Boys Town, parts of Douglas County, and west Omaha.

SENATOR CAMPBELL: And I'm Kathy Campbell, District 25, east Lincoln and eastern Lancaster County.

SENATOR CARLSON: Tom Carlson, District 38, and I live in Holdrege.

SENATOR HOWARD: Sara Howard, District 9, midtown Omaha.

SENATOR GLOOR: Our pages today are Will and Nate who are over here. And again, they're here to help you if you need certain things. Senator Christensen is unable to join us today. And as is usually the case for those of you know how this works, we'll have senators who have to come and go to introduce bills in other committees. So bear with us if you would. Senator Larson, welcome, and you're up first with LB168. Welcome to Banking, Commerce and Insurance, Senator Larson.

SENATOR LARSON: Thank you, Senator Gloor and members of the Banking, Insurance and Commerce Committee. I am Senator Tyson Larson, T-y-s-o-n L-a-r-s-o-n, representing District 40, from O'Neill. And I would like to introduce LB168. LB168 would allow limited liability companies to create series limited liability companies under Nebraska's Uniform Limited Liability Company Act. Under LB168, an LLC would be able to subdivide itself into separate LLCs known as a series. If properly established, a series LLC would be treated as a separate entity with its own debts, liabilities, and obligations separate from those of the parent LLC or other series LLCs. Those debts, liabilities, and obligations of the series would only be enforceable against that series. For example, a creditor of series A could seek judgment against the assets of series A, and series A only, not against any of the other series or against the parent LLC. Additionally, each series would have its own members, managers, interests, assets, and business purposes separate from other series and the parent LLC. While the LLC model has been a popular option for business owners since its creation in the 1970s, the series LLC is a relatively novel concept in the business world. Delaware was the first state to adopt the series LLC statute in 1996. And since then, eight other states and Puerto Rico have added series LLC provisions to their LLC laws. LB168 was modeled after Iowa's series LLC statute because Iowa, like Nebraska, has adopted the Revised Uniform Limited Liability Company Act. The language used in Iowa's series LLC statute and in LB168 tracks the language used throughout the revised uniform LLC act. The language in LB168 will allow the series LLC statute to maintain the same intent and operational effects as the Nebraska uniform LLC statutes. The primary benefit of series LLCs is the ability for a business owner to effectively separate and protect assets. It allows business owners with both high-risk and low-risk assets to spread out those risks among series and align creditors with those assets while at the same time affording protections to those assets in other series and prevent the LLC...the parent LLC as a whole. This kind of business structure not only provides additional managerial flexibilities, it also encourages creative business investment practices. The series LLC model is particularly beneficial to those individuals with extensive real estate investments, franchise businesses, and even those in the agricultural industry. A farmer, for example, could put his land, equipment, and livestock interests into separate series under one parent LLC and protect each of those assets separately from the others in a single, organized, and efficient entity. Without series LLCs, business owners would

have to create a separate LLC for each set of assets or investments which is both costly and impractical. Series LLCs reduce the overall start-up costs by allowing individuals to file one certificate of organization and supplemental start-up documents for the parent LLC. Depending on how many separate series an individual wanted to create, this could save hundreds and potentially thousands of dollars to start-up costs for businesses in Nebraska alone. The series LLC model also makes a business easier to manage. Business owners don't have to create and manage each LLC separately, but they can...but can take advantage of a streamlined and organized series LLC structure. It saves time, it saves money, and it provides creative options to our business owners throughout the state. Additionally, LB168 was drafted in a way that considers the newness of the concept being proposed by this bill. As the series LLC popularity increases among states, there have been a push among scholars and business professionals to get definitive answers to how series LLCs will be treated on the federal level. In 2010, the IRS responded to those demands and indicated as to how it would treat series LLCs for federal taxation purpose. The rule the IRS has proposed is to treat each series as a separate entity for tax purposes. LB168 reinforces the IRS's proposed rule by specifically stating that each series will be considered a separate entity if formed properly. LB168 also takes into consideration the concern LLCs raise with potential creditors of a series. LB168 puts several safeguards in place to prevent any potential defrauding of creditors. First, the name of each series must contain the name of the parent LLC and must be distinguishable from the name of any other series. This puts creditors on notice for both the parent LLC behind the series and the series itself and clarifies the relationship between a series and the parent LLC. A creditor would also be able to check the parent LLC's certificate of organization on file with the Secretary of State to see if the parent LLC has series LLCs and how many series LLCs it has created. The series LLC business model would give business owners more options and more creativity when it comes to structuring their operations. More importantly, it would encourage businesses who benefit from a series LLC model to organize in Nebraska and generate additional businesses and economic benefits within our state. There has been a lot of talk this session about how we can get businesses to move to Nebraska, and I believe adopting a series LLC statute is one way to move towards just that. Thank you, and I'd attempt to answer any questions the committee may have. [LB168]

SENATOR GLOOR: Senator Larson, my first two years are '09 and '10. We had a lot of study on LLCs as well as legislation in '10, but didn't move toward series LLCs at that point in time. Do you know any of the history behind that and why that was the case or to what extent it was evaluated? [LB168]

SENATOR LARSON: We've studied a little bit of the history. I think as...from what I understand, as the state moved toward the uniform LLC act and implemented it, that series are obviously a very new concept, with Delaware being the first state in 1996 and only eight states moving towards them thus far. And in 2010, it's my understanding the IRS hadn't come down with their ruling that they were going to treat each series as a

separate taxable entity. Now that the IRS has done that, it adds a little bit of clarification to exactly how they are going to treat LLCs. And I think, from what I understand, that was part of it back in 2009 and 2010. And there may have been other factors that I'm not aware of, but that is one. And I think as they become more popular this is something, as I said, that is going to distinguish states when it comes to people that want to organize with their business. And it does help businesses in terms of how they organize and becoming more efficient. And I think we put...we've worked with the bankers across the...Nebraska bankers to make sure there's proper notice for creditors that they know this is a series, and that...you know, with doing business. And like I said, it saves a lot of start-up costs. So one person doesn't have to start 15 LLCs at $1,000 a pop. They start one LLC and then have a $10 amendment filed at the Secretary of State. But as long as they have, you know, the same name and, you know, the notification provisions, I think it will protect the creditors as well. [LB168]

SENATOR GLOOR: Okay. Other questions? Senator Pirsch. [LB168]

SENATOR PIRSCH: So did you get a...you said Iowa is probably the most relatable, right? [LB168]

SENATOR LARSON: Uh-huh. [LB168]

SENATOR PIRSCH: So...can...and you said with respect specifically to the issue of fraud and both in terms of possibly the creditors or the public, that there is...anytime you relate or refer to it, that you have to identify the parent LLC... [LB168]

SENATOR LARSON: Yes, so... [LB168]

SENATOR PIRSCH: ...and then the name must be... [LB168]

SENATOR LARSON: Yeah. [LB168]

SENATOR PIRSCH: Can you give examples or how it would be distinguishable? [LB168]

SENATOR LARSON: The example would be the parent LLC would be Tyson Larson, LLC. And each series would then be...it has to keep the same name as the parent, but you would just distinguish it separately. So it would be Tyson Larson Series A, LLC. And the next one would be Tyson Larson Series B, LLC, Tyson Larson Series C, LLC. So each one would be distinguishable through the series A, series B, series C, but it would also have the parent as the name as well. That way...it was something that, again, we worked with, you know, the people that have those concerns to make sure that it has the parent name in it so they know who they're doing business with, but at the same time it's distinguishing itself as a separate asset. And I mean, currently under our law is

you'd just have to create, you know, a different LLC for each one that has no relation. I mean, you don't necessarily know who the relation is to the parent. I mean, we're just trying to streamline the business process. [LB168]

SENATOR GLOOR: Senator Schumacher. [LB168]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you, Senator Larson. With the baby LLCs, would they have...would the mother LLC have the...100 percent of the ownership in there? [LB168]

SENATOR LARSON: Not necessarily. They each...as I said in the opening, each LLC could have its own members and own boards and run its own way. They each have their own operating agreement. So the parent LLC will have an operating agreement that essentially allows it to create that LLC and does create that LLC, but they have completely different assets. They have to separate their assets out for tax purposes, and we laid that out throughout the bill. So you could have...the baby LLC, if you want to call it that, could have different owners in the baby, but the parent is still owned by me. But me and you could own, you know, the baby LLC. You get what I'm saying? [LB168]

SENATOR SCHUMACHER: Yeah, I think I do. But if they have to do separate tax forms because of what the IRS says, if they have separate ownership, separate management, separate everything... [LB168]

SENATOR LARSON: They can have separate. [LB168]

SENATOR SCHUMACHER: They can have. [LB168]

SENATOR LARSON: They can have. [LB168]

SENATOR SCHUMACHER: Can have. [LB168]

SENATOR LARSON: They don't have to, but they can have. [LB168]

SENATOR SCHUMACHER: It seems to me what we're doing is simply farming out the authority of the Secretary of State's office and allowing instead of going to him to create another thing, you just go to yourself and create another thing. And you beat the state out of a bunch of fees. [LB168]

SENATOR LARSON: I don't think you beat the state out of a bunch of fees because...I mean, you can say that instead of the $125 creation fee it's only going to be a $10 amendment. I think not only are you...I wouldn't call that a bunch of fees, first of all. But you're also going to encourage people to incorporate in Nebraska; this does make Nebraska a more friendly state. And then second of all, if you say you're just

circumventing the state, I think you have to look at this will make it--in terms of the ease of doing business--this will encourage people, you know, to maybe, you know, separate and protect assets or do certain things. I think it's very beneficial to the business aspects of the state. [LB168]

SENATOR SCHUMACHER: But by creating...you know, taking a business and subdividing it into little categories possibly, and then creating different LLCs, the...it's very hard for a consumer and other business person doing business to know exactly what is backing that baby LLC. [LB168]

SENATOR LARSON: That's why we have the notice in terms of the baby LLC has to have the name of the parent. So it will be...if I have an LLC and I have a series, it'll say Tyson Larson Series A, so you know who the backing is. And at the same time, they still have to file with the Secretary of State. When you form a series, you have to file with the Secretary of State that a new series has been filed and then that series, I mean, also has, you know, its own operating agreement. So it really, when you...I mean, the concept is streamlining to make it easier. Right now, they could have...instead of having a baby LLC--as you call it--underneath, somebody could still just go create a whole new LLC that could be, you know, even more shady because it has a completely different name. And it shows no relation to that, you know, no relation to that business whatsoever. So I'd almost say we're putting more safeguards to make it, you know, less shady if you want to say. And we're cheapening up the cost of doing business. [LB168]

SENATOR SCHUMACHER: How big of a litter of LLCs could there be? [LB168]

SENATOR LARSON: The bill doesn't stipulate that it can...there is any size of how many that you could create underneath. [LB168]

SENATOR SCHUMACHER: Thank you. [LB168]

SENATOR GLOOR: Senator Pirsch. [LB168]

SENATOR PIRSCH: Is that in...where these have been passed, you said started in Delaware which is typical for these kind of things. But... [LB168]

SENATOR LARSON: Uh-huh. There's a reason that Delaware is ahead of the curve on everything. [LB168]

SENATOR PIRSCH: Sure. In the areas where it's been implemented, what has been the primary concern of opponents of that? Has it been within the area of fraud or... [LB168]

SENATOR LARSON: I think the concern in...as these have matured and I think we've a

good...good in this one, is to making sure that we...that the LLCs serve notice to creditors that they are their own organization and at the same time making sure that they, you know, that they are, you know, series. So that is why we write in the bill that the series has to have, you know, contain the name of the parent and also has to say that they are a series. So, I mean, we're...in my opinion, we're offering more transparency to LLC law in the sense that they have to have the name of the parent and they have to be classified as a series. And so I think we're...those were some of the concerns. And that's kind of what we worked out when we were drafting the bill to make sure there were proper notification that everybody knew who they were dealing with when it came to the series. [LB168]

SENATOR PIRSCH: And so typically, since this LLC is not available now and...are they--the average individual who would like this type of a product--are they utilizing similar-sounding names? [LB168]

SENATOR LARSON: I mean, I have...obviously now, since this product isn't available in Nebraska, they'll either have to house all their assets together under one, because the cost of doing business to start another one is too great or they do have...they do go through the cost of doing business and they start up a whole new LLC. And they can call that LLC whatever they want... [LB168]

SENATOR PIRSCH: Right. [LB168]

SENATOR LARSON: ...and regardless of what they're dealing with, and they don't have to...that other LLC doesn't have to say it's related to...you know, they could have all their business aspects divided up, but you'd never know that all those LLCs are related by...and, I mean, you could go pull all the Secretary of State and find out who filed them and who has ownership and whatnot, I mean. But you wouldn't know that they're together. [LB168]

SENATOR PIRSCH: Yeah. But you'd almost rather have them be different names, right? I mean, isn't the bigger threat is that they are similar-sounding names and so the individual assumes they must be dealing with the larger? You'd rather have them be very different...start different names, wouldn't you? [LB168]

SENATOR LARSON: No, no. We want them to be...we want the parent name to be in each series. And each series is then distinguishable by series A or series B, because when...that offers the most transparency because they know that that's the parent, you know, that they're a parent and they're a series. Where, you know, if I was as an individual and I have--we'll take an ag operation... [LB168]

SENATOR PIRSCH: Uh-huh. [LB168]

SENATOR LARSON: ...and I have my cattle in one LLC. [LB168]

SENATOR PIRSCH: Uh-huh. [LB168]

SENATOR LARSON: I could call that, you know, TRL, LLC. And then I have my farming in another...my farming equipment in another LLC. You know, I could just call that "Joe Schmo," LLC. [LB168]

SENATOR PIRSCH: Right. [LB168]

SENATOR LARSON: And they have...I mean, to creditors...they...I mean, the creditors, it's still their responsibility to know who the owners are and whatnot. [LB168]

SENATOR PIRSCH: Uh-huh. [LB168]

SENATOR LARSON: But they...you would not be able to know that those have any relation just by their names. [LB168]

SENATOR PIRSCH: Right. [LB168]

SENATOR LARSON: But this bill, you would have...you would know that each series is related to the other. So they actually...we offer more notification. [LB168]

SENATOR PIRSCH: But since the LLCs really are ancillary, in other words you could only go against one... [LB168]

SENATOR LARSON: Uh-huh. [LB168]

SENATOR PIRSCH: ...to the extent that they sound like the same entity, isn't that where the threat occurs? [LB168]

SENATOR LARSON: You can say that since they sound like the same entity, but I mean, at the same point I think you can...have to look at...it's not like creditors aren't dealing with, you know, your large creditors that are guarantying your bank loan. I mean... [LB168]

SENATOR PIRSCH: Right. But they're savvy, I mean, I'm not worried about the savvy people... [LB168]

SENATOR LARSON: Yeah. [LB168]

SENATOR PIRSCH: ...because, you're right, once they...I mean, they'll be able to...you know, lawyers and whatnot to...they can get... [LB168]

SENATOR LARSON: And any regular investor... [LB168]

SENATOR PIRSCH: When you see the word series, but... [LB168]

SENATOR LARSON: And any regular investor...yeah, and if you want to say a regular investor, I mean, very few guys are going to be walking down the street and say, here's a loan, without going through their lawyers or, you know, investors. [LB168]

SENATOR PIRSCH: Well, not necessarily just investor, but say like creditors. [LB168]

SENATOR LARSON: Even creditors. I mean, we put...obviously, other states are doing it. And creditors will know that there is a parent, that this is a series, they'll know which series they're dealing with because we say that that, you know, each series has to have...be distinguishable. [LB168]

SENATOR PIRSCH: Uh-huh. [LB168]

SENATOR LARSON: So, you know, we're putting as much notification out as possible, but that this is its own different entity. [LB168]

SENATOR PIRSCH: Okay. So right now, I think, right now it's $120 for the filing fee for an LLC give or take or... [LB168]

SENATOR LARSON: Plus lawyer costs. [LB168]

SENATOR PIRSCH: Hence the lawyer stuff. Doggone those costs. [LB168]

SENATOR LARSON: The lawyer cost is what... [LB168]

SENATOR PIRSCH: But that's where the real savings are in here. [LB168]

SENATOR LARSON: Between those two, between the $120 and then the lawyer costs. And, I mean, this is literally just an amendment to your articles of organization. [LB168]

SENATOR PIRSCH: Uh-huh. [LB168]

SENATOR LARSON: It's a $10 fee instead of $120, and obviously you will have...you'll save in terms of the entire paperwork of starting a whole new LLC. So it's really trying to streamline business. [LB168]

SENATOR PIRSCH: And on the whole, they seem to be operating well? And when was Iowa put into effect? Well, that's okay. I'll ask somebody that knows more. [LB168]

SENATOR LARSON: It's been in the next... [LB168]

SENATOR PIRSCH: If somebody's going to testify after you, then I'll... [LB168]

SENATOR LARSON: ...the last...yeah, it's been in the last few years. It's been relatively recently. And they...Iowa operates under the Uniform Limited Liability Company Act just like the state of Nebraska does. So that's why we're most modeled after them because Delaware obviously doesn't...they have their own limited liability. [LB168]

SENATOR PIRSCH: Yeah. Thank you. [LB168]

SENATOR GLOOR: Senator Campbell. [LB168]

SENATOR CAMPBELL: Thank you, Senator Gloor. Senator Larson, at...when you looked at the eight states that have them, is there a common thread of businesses that use them? [LB168]

SENATOR LARSON: Yes. A lot of real estate, a lot of franchisees, and agricultural operations. The states that have them are Delaware, Iowa, Illinois, Utah, Oklahoma, Kansas, Nevada, Tennessee, Texas, and Puerto Rico. And obviously, Delaware and Nevada are two of your most popular LLC states because of their laws. And that's why, you know, so many businesses are moving to file their LLCs in there because it's the most competitive to file there. So I mean, a franchisee in the state of Nebraska or, you know, a franchisee could file their Nebraska franchises in Delaware under the series LLC and, you know, make that work. So I mean, this is kind of a bill to try and make Nebraska more competitive to, you know, make sure that we are getting those companies. [LB168]

SENATOR CAMPBELL: So your interest, I mean, obviously from the ag sector. [LB168]

SENATOR LARSON: The ag sector is very important to me, obviously, but it isn't just about ag. I mean, to split up your ag interests are very important as well. You know, somebody from ag does want to separate their livestock from their farm because they're two very separate entities that have their own cycles. But this...I brought this as a, you know, cost-savings as a whole because I do believe this is good for the state. [LB168]

SENATOR CAMPBELL: And I can understand that from the real estate development area. [LB168]

SENATOR LARSON: And it'd be...and it's great. And it would make it much easier to split up real estate assets into, you know, each piece into something else. [LB168]

SENATOR CAMPBELL: Thank you. [LB168]

SENATOR LARSON: Yeah. [LB168]

SENATOR GLOOR: Senator Crawford. I'm going to move to this end of the table for a while. Senator Howard. [LB168]

SENATOR HOWARD: Thank you, Senator Gloor. I...this seems to me...it looks a lot like an S corp. rather than an LLC with the series. I mean, on paper it looks like an S corp. And so I'm wondering, are you segregating the portfolio in order to protect the parent company from liability so that if you had an asset that became liable in a series, they would only be able to reach what was in that series, not be able to reach what was in the parent? [LB168]

SENATOR LARSON: Exactly. And I think the concept is that if there's...if the parent has an asset, but they've created a series and that creditor has entered into an agreement with that series, the creditor can only get what was in that series. And I think the reason that, like I say, the cost of doing business and we've added a lot of notification so creditors know what, you know, that they are dealing with a series, that they are dealing with, you know, its own entity, but at the same time trying to make sure that it's easy for people to file and become businesses in Nebraska are very important at the same time. [LB168]

SENATOR HOWARD: Sure. So in essence, it's a liability shield, but do you speak to...I know you mentioned that the IRS treats each series as its own taxable entity. [LB168]

SENATOR LARSON: Uh-huh. [LB168]

SENATOR HOWARD: Do you address taxation in the bill at all in regards to state taxation of the series? Do we treat them as individual entities in regard to the state law, state taxation? [LB168]

SENATOR LARSON: I would...we don't address it inside the...in terms of the state. I would...and if we need to do something in that, that would be fine. But it would be my guess that this state would just follow along the federal guidelines in terms of what the IRS has set out in terms of how they are treating them as taxable entities. [LB168]

SENATOR HOWARD: Okay. Thank you. [LB168]

SENATOR GLOOR: Senator Carlson. [LB168]

SENATOR CARLSON: Thank you, Senator Gloor. Senator Larson, we've got Tyson Larson Series, LLC and we've got A, B, C, and D, Tyson Larson Series D, whatever that

might be in D. And series D wants to take out a $1 million loan. And so I assume there's nothing in this bill that in a situation like that, that would prevent the lender from saying, well, not only do I want series D to sign on, but I want Tyson Larson Series, LLC to sign that note. [LB168]

SENATOR LARSON: The parent, you mean. [LB168]

SENATOR CARLSON: The parent. [LB168]

SENATOR LARSON: Yeah. That's up the bank and the...obviously, the members. [LB168]

SENATOR CARLSON: Okay. And series C has to do with livestock so the bank could also require series C to... [LB168]

SENATOR LARSON: If that bank wants to require that. I mean, other banks...I mean, it just...they can...obviously, a bank can require whoever they want. But at the same time, if it's just D, you know, and the bank will hopefully judge that $1 million loan whether or not what they're investing in is a, you know, creditworthy asset. I mean, it doesn't stop anybody from saying, all right, well, I'll just create a whole new LLC. I mean, because that's what people are doing now. They're just creating a whole new LLC and then trying to funnel it through that. And it's just the cost of doing business is so much more that way. Yeah. [LB168]

SENATOR CARLSON: No, that...yeah, I understand that. That's not my argument. [LB168]

SENATOR LARSON: Yeah. [LB168]

SENATOR CARLSON: I think I'm just trying to... [LB168]

SENATOR LARSON: Yeah. [LB168]

SENATOR CARLSON: ...see that bank can ask whatever it wants. And it's up to you, Tyson Larson Series, LLC, whether you're willing to sign away all the bank wants. [LB168]

SENATOR LARSON: Yeah. [LB168]

SENATOR CARLSON: Okay. All right, thank you. [LB168]

SENATOR GLOOR: Senator Schumacher. [LB168]

SENATOR SCHUMACHER: Couple of questions yet. Does the mother LLC have to have any interest at all in the baby LLC? Do they have to have shares or membership in it? [LB168]

SENATOR LARSON: I...no. [LB168]

SENATOR SCHUMACHER: So mama LLC could be set up and said, okay, I'm just going to go in competition with the Secretary of State and we're going to issue mama LLC, sub Tyson Larson for $10 instead of charging $125 and I could just set myself up kind of as a Secretary of State. Is that what you're saying? [LB168]

SENATOR LARSON: You know, I guess in practice you could set yourself up into that method. I would venture to guess that hasn't happened in any of the nine states that have introduced this. And even it if were to happen in something of that nature, we have to remember that each LLC is still, you know, subject to its creditors and still has, you know, has to have proper notice of who the parent is, still has to have proper notice of, you know, their articles of organization filed with the Secretary of State, who the members are. So I wouldn't say that you're creating your own Secretary of State because each series still has to file with, you know, file with the Secretary of State. So the Secretary of State is still the Secretary of State. Could you have as many under there as you want? Yes. [LB168]

SENATOR SCHUMACHER: All right. Okay, then the next...Senator Carlson was able to explain how a banker could protect himself. Let's suppose I was a trucking company and I had 200 trucks and I was getting sick of paying insurance on those trucks because those insurance companies just always want a lot of money for liability insurance. So I set myself up as "Mama Trucking, LLC" and I then put each of my trucks in a separate LLC, baby LLC. And that way I don't have to carry any insurance on them because if one of them has an accident, I walk away from that one. The most I have to lose is the physical truck. Can I do that? [LB168]

SENATOR LARSON: I think there's probably...well, there are laws in terms of liability insurance with... [LB168]

SENATOR SCHUMACHER: I'd just take out the minimum. [LB168]

SENATOR LARSON: So...but you still would have liability insurance then, because we have laws in the state of Nebraska that require that trucking company... [LB168]

SENATOR SCHUMACHER: Twenty-five thousand dollars.. [LB168]

SENATOR LARSON: ...each trucking company...so if you have Mama Trucking, essentially, they each would have to have...carry their own insurance to follow DOT and

everything else. So I'm not sure that that goes with that argument, because they have to carry insurance to do business. [LB168]

SENATOR SCHUMACHER: But it may not be enough. I mean, this trucking company has 200 trucks. That's a multimillion dollar trucking company where the insurance they might be required to carry on one...a trucking company on one truck might not be nearly that. And I'm thinking I'm doing business with Mama Trucking, LLC, and I'm really just doing it with kind of a series blue truck. [LB168]

SENATOR LARSON: We won't...they...each person...each trucking company, if you're doing it with that truck, it will have to say Mama Trucking Series A, LLC, Mama Trucking Series B, LLC. I mean, each individual...you, as a business owner, at the same time...you know, if that's who you're doing business with, you have to know who you're doing business with. And the trucking company has to have...give you that information. It doesn't stop Mama Trucking from splitting up into...or creating 200 different LLCs now and having...just calling themselves "Mama Trucking A," "Mama Trucking B," "Mama Trucking C." I mean, you get...it doesn't...they can do this already, it just costs them more to do it. [LB168]

SENATOR SCHUMACHER: Is this just about a little bit of fees and attorney...filing fees and attorney fees? That's all this is about? [LB168]

SENATOR LARSON: And...I think it's also about streamlining and the ease of doing business in the state of Nebraska. I think that we are always saying...you know, you can say whether it's low competitiveness due to taxes. But there's a reason that certain states, companies want to move there, whether it's to file because of their articles of organization. I know, a lot of my constituents, they don't file or incorporate in the state of Nebraska because of the incorporation laws or they file in Delaware because of the case law or they file in Wyoming because it's cheaper or they file in Nevada because it's more beneficial to businesses. I mean, I think we, as a state, have to continue to be competitive and make it easier to do business in this state. And this is one of those bills. [LB168]

SENATOR SCHUMACHER: But even if they file in Delaware, they've still got to domesticate here and pay fees to the Secretary of State for the domestication process. [LB168]

SENATOR LARSON: Yes, they do have to pay fees for the domestication process, but at the same time, they have the case law that will protect them in Delaware if they do get sued; same in Wyoming, same in... [LB168]

SENATOR SCHUMACHER: Usually the suit is where the tort is committed. If they run off the road in Nebraska, it's Nebraska law that... [LB168]

SENATOR LARSON: The LLC, themselves, if they're housed in Delaware though, that will be what...when a company gets sued that's sued in Delaware, if it's business law...I mean, the tort itself, if they run into somebody, then yes, the case will be...but if it's business law itself, it'll be at the organization of the entity. I mean, if you're just using the trucking example and they run into somebody, yes. It's not...the case is not going to be in Delaware. I mean, you're still on that, I mean, the trucking entity. But the... [LB168]

SENATOR SCHUMACHER: But the Delaware protection is only kind of vis-a-vis the entity and its membership. [LB168]

SENATOR LARSON: And the ease of doing business. [LB168]

SENATOR SCHUMACHER: Thank you. [LB168]

SENATOR GLOOR: Other questions? Senator Crawford. [LB168]

SENATOR CRAWFORD: Thank you, Senator Gloor. And thank you, Senator Tyson. So we're talking about the cost of starting business, the cost of doing business as a series versus starting these other LLCs. Is it really the $110 difference between the $10 Secretary of State fee and the $120 Secretary of State fee... [LB168]

SENATOR LARSON: A part of it. I mean... [LB168]

SENATOR CRAWFORD: ...or is it that it's really a lot more lawyer fees to start a...to start something as opposed to creating series? [LB168]

SENATOR LARSON: It all goes into it, whether it's the fee to the Secretary of State, it goes back to the lawyer fees, it goes back to being able to streamline your operations and house them all under one series. In terms of doing business as an agricultural entity, I mean, it would be much easier to have a parent LLC and then multiple series underneath that in terms of streamlining it. I would imagine it would be the same for a real estate developer. It would be much easier to streamline it that way instead of doing that. [LB168]

SENATOR CRAWFORD: Okay. [LB168]

SENATOR LARSON: And also it offers...did you have another question before... [LB168]

SENATOR CRAWFORD: I was just going to follow up and ask how you would streamline if you have to keep all of your records and assets and separate? [LB168]

SENATOR LARSON: Good question. Your records and assets stay separate, but you're streamlining in the sense that the...in the ease of starting that. And you're streamlining in terms of housing them all under...to one entity. So a parent...it's easier...it's still easier, even though they might not have the same owners, it's still easier to transfer power or money in between the, you know, between the parent and the series than it is if they're separate entities. [LB168]

SENATOR CRAWFORD: Okay. Thank you. [LB168]

SENATOR GLOOR: Seeing no further questions, thank you, Senator Larson. [LB168]

SENATOR LARSON: Thank you. [LB168]

SENATOR GLOOR: Are you going to stay and close? [LB168]

SENATOR LARSON: I'll stay for the hearing. [LB168]

SENATOR GLOOR: Okay, good. Thank you. Can I see a show of hands of those who would like to speak today either as proponents, opponents, or in a neutral capacity? Looks like we only have about four or five hands. Okay. That allows those who are monitoring us for the next bill to have a sense of how long it's going to take. We'll move to proponents. Those who would like to speak in favor of this bill, step forward. Those in opposition step forward, please. Good afternoon. [LB168]

COLLEEN BYELICK: (Exhibit 1) Good afternoon, thank you for having me. My name is Colleen Byelick, it's C-o-l-l-e-e-n B-y-e-l-i-c-k. I'm the general counsel for the Secretary of State's Office here on behalf of Secretary Gale in opposition of LB168. Just by way of background, and the committee already discussed this a little bit, but Nebraska did recently adopt the Uniform Limited Liability Company Act in 2010. The act really went into effect for new LLCs in 2011 and just fully went into effect for all LLCs this January. The act was based on the Uniform Limited Liability Company Act which was a law drafted by the Uniform Law Commissioners. And although some adjustments were made to the act, by and large the act really was true to the uniform law. The Uniform Law Commissioners specifically looked at the concept of series LLCs and decided not to include that concept in the uniform law. And I do have a handout that kind of explains their justification for that. Basically, they indicated that what was good for Delaware in highly sophisticated deals is not necessarily good for the LLC law of other states. And I did see Steve Willborn here and so we may be hearing more about their position at this point. Further, when Nebraska considered the Uniform Limited Liability Act, they did form a group of practicing attorneys. These were sophisticated business attorneys that practice in Nebraska. And they also discussed the concept of series LLCs, at that time, and decided that it wasn't a concept that would be a good fit for Nebraska. LB168 runs counter to the established policy of this state by granting limited liability to any entities

that are not required to file their organizational documents, they are not required to maintain or disclose a separate registered agent, they're not required to maintain good standing, they're not required to pay the state a fee to organize or a fee to remain in good standing. They're totally encapsulated in secrecy and anonymity from anyone wishing to deal with them except to the extent that they wish to divulge information in their own discretion. There will be no public information about the entity other than what is divulged on the certificate of organization. Public access to this information will be cut off, which runs counter to the efforts of our office to make useful information regarding business entities available to the public to protect them from fraud and unscrupulous actors and reckless acts by negligent management. Also, for five years now, the National Association of Secretaries of State, the National Conference of State Legislators, and other national groups have been resisting progress of some federal laws dealing with transparency of incorporation, which has gone before the Homeland Security and Government Affairs Committee in the U.S. Senate, which would require considerable disclosure of identity and legal status of beneficial owners of all business entities. And the purpose of this is because many believe that money launderers and terrorists hide behind shell entities to do nefarious acts. And, you know, our concern is that this bill opens that door even further to greater abuse and also puts more attention on state formation practices. And, you know, which we're trying to combat these federal bills that would be even more burdensome on local business owners. Our final concern with the bill is the potential fiscal impact, which has been touched upon. Right now, you can set up an LLC for $115. Right now, if you're trying to set up separate subsidiaries, you can do that by filing and paying for those separately. So, should this bill pass and companies decide to form series internally rather than setting them up separately, there would be a decrease in filing fees. And that would have a negative fiscal impact. Just so you're aware, two-thirds of all the business filing fees received by the Secretary of State's office do go to the state General Fund. So this would be a negative fiscal impact to the state General Fund. And in an effort to try and determine what type of fiscal impact this would be, I did contact the Iowa Secretary of State's office. Unfortunately, since these LLCs aren't required to register separately, there is no records in the Secretary of State's office keeping track of these entities separately. And so we really just can't tell how many there are, how many are being created, and what type of fiscal impact that may have. That kind of concludes my official testimony. And if you have any questions, I'd be more than willing to try and answer them. [LB168]

SENATOR GLOOR: Questions for Ms. Byelick? Senator Pirsch. [LB168]

SENATOR PIRSCH: In terms of what is required for the filing for you, you would have no information as to what...once you have an LLC which could be the mother LLC, you'd have...they have to pay some amount, right? A filing fee, too, is that right? [LB168]

COLLEEN BYELICK: Well, I think what's anticipated is that they would amend their certificate of organization and name the name of the series and the certificate of

organization or the amended certificate of organization. [LB168]

SENATOR PIRSCH: Uh-huh. [LB168]

COLLEEN BYELICK: That's a $10 filing fee versus $115 filing fee to start a new entity. [LB168]

SENATOR PIRSCH: The money would definitely would be less that would fall in, but would you have...you'd have a knowledge though, from that filing fee of when a LLC decided to institute a baby LLC, right? [LB168]

COLLEEN BYELICK: Right. In theory, if someone then were to go and look at...they would have to look at all of the amended documents for any particular company that they were interested in. And in reading through that amended certificate of organization, in theory they would be able to then see that this, you know, baby LLC has been created. There wouldn't be any separate tracking of it, they wouldn't be identified in our records separately. There's no separate requirement for that. [LB168]

SENATOR PIRSCH: Yeah, you'd have to look specifically at the documents filed with your office... [LB168]

COLLEEN BYELOCK: Yes. Yeah. [LB168]

SENATOR PIRSCH: ...then to discern...and if there's...but to the extent that there is, you know...and I think it's allowed a lot of differences in terms of who are members, right? That would be reflected, though, though you would have to look at the parent. [LB168]

COLLEEN BYELICK: The uniform law that was passed in 2010 no longer requires member or management information to be given to the Secretary of State's office. So we do not currently maintain member or manager information. We would have registered agent information, we would have several different office addresses for the LLC, including the name of the LLC. [LB168]

SENATOR PIRSCH: Okay, so that would just be...so...Spartan information with respect to the baby, and everything else would be with...contained in membership agreements that wouldn't be filed. [LB168]

COLLEEN BYELICK: Right. Right. The operating agreement of the LLC that's not filed with our office, yes. [LB168]

SENATOR PIRSCH: Sure. Right. [LB168]

SENATOR GLOOR: Senator Schumacher. [LB168]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you for your testimony. Now if we follow...if I was understanding right, according to the IRS, the federal level, these are separate taxing entities, probably going to file their own separate tax forms. Do you know offhand whether or not they'd be separate taxing entities that have to file their own tax form for Nebraska? [LB168]

COLLEEN BYELICK: Yeah. I remember contemplating that as I was reading the bill, and there's nothing in the bill now about how they would be treated for tax purposes in Nebraska. So I wouldn't know what the Nebraska Department of Revenue or how they would handle or treat them. [LB168]

SENATOR SCHUMACHER: If we were to do something like this, we would almost have to set those rules someplace so Revenue would know because they're a novel idea. [LB168]

COLLEEN BYELICK: Right. [LB168]

SENATOR SCHUMACHER: Thank you. [LB168]

SENATOR GLOOR: Senator Carlson. [LB168]

SENATOR CARLSON: Thank you, Senator Gloor. It's really the biggest objection being shortchanged on the revenue? [LB168]

COLLEEN BYELICK: Well, I think that is one big piece of it. But I think it's also sort of the policy of why are we giving these entities the benefit of the limited liability status, but not requiring anything of them? We're not requiring them to maintain a separate registered agent. We're not requiring them to do any annual or biannual filings with the state. We're kind of shrouding them in secrecy. And it just doesn't necessarily make sense when this all can be set up, you know, above board, on book, you know, on the book. And I think the only justification I think so far that kind of I've understood is, well, those, you know, those filing fees are really expensive and this kind of eliminates that. Well, then why do we have...why do we make any entity register? I mean, you know, we...I think the state has established a policy that it has been beneficial for entities to register and provide public information to the state. And so this just seems to go against that concept. [LB168]

SENATOR CARLSON: Okay, thank you. [LB168]

SENATOR GLOOR: Senator Crawford. [LB168]

SENATOR CRAWFORD: Thank you, Senator Gloor. So I'd like to come back to hear a little bit more about the reporting that's required. [LB168]

COLLEEN BYELICK: Sure. [LB168]

SENATOR CRAWFORD: If the LLC has to do reporting... [LB168]

COLLEEN BYELICK: Uh-huh. [LB168]

SENATOR CRAWFORD: ...maybe you could tell us a little bit about a couple of things that are important for people to be able to look up on those reports. And my second question is, if they had a series--you know, A, B, C--wouldn't they be reporting? When they did the report for you, wouldn't they be doing a report for also series A, B, and C, and that would get filed with it as well? So would the reporting still exist? [LB168]

COLLEEN BYELICK: The reporting would exist for sort of the parent LLC. But there's no requirement in the bill now that the series have to report separately. And the types of information we're getting, we're verifying that the registered agent is updated, we're verifying...we basically get three different addresses for the business so they also have to designate an office, which is kind of an alternate service of process... [LB168]

SENATOR CRAWFORD: Uh-huh. [LB168]

COLLEEN BYELICK: ...address. They give us our principal address. Depending on the entity type, some do nature of business. Corporations have to give officers and directors. So it depends on the entity type. LLCs give less information than some of the other entity types, but they still do report biennially. And then for our purposes, too, and others in the public, we know who is still operating, who is still in business... [LB168]

SENATOR CRAWFORD: Uh-huh. [LB168]

COLLEEN BYELICK: ...you know, and generally how to locate them, how to find them. You know, say you need to sue them. Okay, now you know where to go and how to do that, so those are the purpose of the reports. But the bill as it's drafted now doesn't contain any separate requirement for the series to file any separate reports or for the series to designate any separate offices or agents for service of process. [LB168]

SENATOR CRAWFORD: So as you see it right now, the only safeguard is that any...in any communication, they have to indicate their parent company. And then somebody would need to go look up their filings and reports for that parent company. [LB168]

COLLEEN BYELICK: Yeah, and I don't know that anything requires them to indicate their parent company, but as Senator Larson mentioned, they're all going to have the

same name. So I guess if you know enough that you know that the parent company is going to have the same name as the series, then you could look up the parent company's name. [LB168]

SENATOR CRAWFORD: Uh-huh. Uh-huh. So if the fees were not so different and if reporting...and if there are reporting protections, would that alleviate many of your concerns about the bill? [LB168]

COLLEEN BYELICK: I think some of them. But then I still think we've still got to that overarching policy of why should we be giving limited liability status to entities that are not required to register separately or not required to have any responsibility for that limited liability protection. So that's kind of the underlying sort of policy aside from a lot of these very practical... [LB168]

SENATOR CRAWFORD: Uh-huh. [LB168]

COLLEEN BYELICK: ...concerns, but there's still some kind of overarching policy concerns about it. [LB168]

SENATOR CRAWFORD: So do you see any advantage when somebody is coming to your office or looking things up and with right now, a single entity might create three different limited liability corporations with very different names. And so someone would not have any idea that they're related. [LB168]

COLLEEN BYELICK: Uh-huh. [LB168]

SENATOR CRAWFORD: Is that of a concern? [LB168]

COLLEEN BYELICK: You know, I don't think so, because they're all still having to provide public information and contact information. The other thing is, a lot of times companies and subsidiaries will, you know, using Senator Larson, Tyson Larson 1, Tyson Larson 2, Tyson Larson 3. And in order to use those similar names, they have to get consent from each other. [LB168]

SENATOR CRAWFORD: Oh, uh-huh. [LB168]

COLLEEN BYELICK: So that same scenario is done now, it's just all done with those companies registering separately. [LB168]

SENATOR CRAWFORD: Thank you. [LB168]

SENATOR GLOOR: Question for you. So we have Iowa that allows series LLCs. How does the Secretary of State's Office handle it when someone from Iowa comes in with

an LLC that's a series? [LB168]

COLLEEN BYELICK: Yeah, I mean, they don't handle it any differently than someone coming in with an LLC. They don't track it separately, they don't provide any separate information about it. When I called there, the person that kind of runs their business office said, yeah, I don't really know much about that. I can't really give you much information about it because we just...we don't track it, we don't...it's not something they're looking for when they file those documents. You know, when you file documents, you're looking for the five things the statute says they have to have. And since that's something that it can have, they're not really paying attention to that. And so, therefore, we just really had a hard time figuring out okay, well, is this something that is going to be widespread, is this something that only a very few are going to use? You know, where does this fall? [LB168]

SENATOR GLOOR: And if those series LLCs are doing business in Nebraska? [LB168]

COLLEEN BYELICK: Well, we have had a couple of instances where, say, as, you know, either Kansas or Iowa tries to come in and register as a foreign business in Nebraska. And we will register the parent series. And then what we've told, if they want the names of the separate series registered, we've told them to file trade names. It's kind of the only way we can sort of deal with it at this point. [LB168]

SENATOR GLOOR: Okay. Senator Pirsch. [LB168]

SENATOR PIRSCH: Thanks. So...and I haven't had a chance to read through the bill in depth. But I thought I heard Senator Larson say that there was a requirement in the bill whereby you must list the name of the parent company so that it's such that, I think you used the example Tyson Larson Series A, and then Tyson Larson Series B, Tyson--the repetitive nature. But...and currently you can use those kind of similar names if you have...you can set up the two separate LLCs as long as you have consent of the one, and then you can waive what would otherwise be deceptively similar names. [LB168]

COLLEEN BYELICK: Correct. Right. [LB168]

SENATOR PIRSCH: So that it's now plowing new ground there but... [LB168]

COLLEEN BYELICK: No. [LB168]

SENATOR PIRSCH: ...as a policy standpoint, if there is such a provision in the bill, we probably wouldn't want that. Right? I mean, don't you think the threat is that to the extent that you have deceptively similar names for entities that are insular in terms of liability and in terms of what they may do and who may be members that you prefer, as policymakers, to require them to have vastly different names. Right? [LB168]

COLLEEN BYELICK: Right. Well, I think, you know, with any of the business filings, you're dealing with a very wide range of people that deal with them. So you're going to have very sophisticated individuals that would understand those differences. But then you're also going to have the general public that really doesn't. And part of our concern, especially with this bill at this point, is that we've just really implemented the Uniform Limited Liability Company at this point; January 2013 was when that fully went into play. I mean, we're still seeing many of the old forms being used, many of the old language being used. I mean, it takes a long time for a big transition like that. And so then to sort of throw another new piece of legislation in the fire kind of was a concern that while people are still getting used to the uniform law and the various differences there. But, I mean, we have people that, you know, come to our office and just say, you know, I want to start a business. I have no idea how to do that. What do I need to file? I mean, so you're dealing with that level all the way up to attorneys or CPAs that, you know, are advising their clients and have a better understanding of the law. So there is a wide range of people that are looking at these records. [LB168]

SENATOR PIRSCH: Yeah. Well, I appreciate your testimony here today. [LB168]

COLLEEN BYELICK: Okay, thank you. [LB168]

SENATOR GLOOR: Seeing no other questions, thank you Ms. Byelick. Other opponents? Anyone else in opposition? Anyone in a neutral capacity? Mr. Commissioner. [LB168]

STEVEN WILLBORN: (Exhibits 2 and 3) Thank you. [LB168]

SENATOR GLOOR: Good afternoon. [LB168]

STEVEN WILLBORN: Good afternoon, Chairman Gloor and members of the committee. My name is Steve Willborn, I'm a faculty member at the law school. I'm here again to...in my role as commissioner, Nebraska Commissioner on the National Conference of Commissioners on Uniform State Laws. Again, Nebraska's other... [LB168]

SENATOR GLOOR: Mr. Willborn, could I ask you to go ahead and spell your name, please. [LB168]

STEVEN WILLBORN: Oh, I'm sorry. W-i-l-l-b-o-r-n. Nebraska's other current commissioners are the Honorable C. Arlen Beam, Jill Robb Ackerman, Joanne Pepperl, Harvey Perlman, and Larry Ruth. And I speak for them today. We're neutral on the bill, but have some information we're hoping you'll find useful. I think you heard me talk before about what the Uniform Law Commission does. We've been around 120 years, we draft lots of uniform laws for states. You've...this Unicameral and Bicameral before

that has put many of them into Nebraska law. You already had heard that LB168 is an amendment to the Nebraska Limited Liability Company Act which would authorize series LLCs and you've heard a description of what they are, so I won't say that again. Series LLCs are not a part of the Uniform Law Commission's Uniform Revised Limited Liability Company Act, which was the basis for our current act; it's a recent amendment. A comment by the drafting committee of that act said that the drafting committee decided not to pursue the concept of series LLCs because "given the availability of well-established alternate structures, for example multiple single-member LLCs--an LLC holding company with LLC subsidiaries--it made no sense for the act to endorse the complexities and risks of a series approach. Nevertheless, as was already mentioned, about ten states including the most important state--Delaware--do authorize series LLCs. Despite that conclusion last time, the Uniform Law Commission has established a working committee to consider the series LLC concept and, if it thinks the idea is a good one, to draft proposed statutory language for forwarding to the states. This committee is just beginning its work and the process will take two or three years before anything would reach you for consideration. And there is the possibility that the committee will decide not to pursue the concept at all, so draft language may never come to you from the Uniform Law Commission. I've given all of you the introductory memo from the drafting committee dated January 11, 2013, and it surveys many of the issues that this committee is thinking of addressing. Again, we're neutral on LB168. This is an important topic and it would be perfectly understandable if you thought it necessary to act promptly. On the other hand, we wanted you to know that we're working on this important set of issues as well. So thank you. [LB168]

SENATOR GLOOR: Thank you. Questions for Mr. Willborn? Senator Pirsch. [LB168]

SENATOR PIRSCH: Is--the alternate structure you speak of in paragraph 4--the available alternative just essentially setting up a spate of affiliated LLCs? Right? [LB168]

STEVEN WILLBORN: Either individual, single ones or nested ones, right. But they would all be separate LLCs. [LB168]

SENATOR PIRSCH: Yeah. I...well, I appreciate that. [LB168]

SENATOR GLOOR: Senator Schumacher. [LB168]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you for your testimony. We've heard examples of, I mean, a farmer wants to set up his livestock operation separate from his grain operations. And it seemed to me that $100 or $500 for attorney fees would not be a compelling reason to try to use this kind of structure. Who uses these? How are they being used? What is their functionality? Why would we bring business to Nebraska if we had them? [LB168]

STEVEN WILLBORN: I don't know the answers to all those questions. And I'm also a labor lawyer, so forgive me. But the main use of them, as I understand it, is in the financial-services industry. And you may be, and I think I am on reflection having heard this, I deal with these all the time. So Fidelity might set up a number of independent series for their money-market fund and their large-cap and their small-cap funds and so on. So that's the major use of them, as I understand it. The other... [LB168]

SENATOR SCHUMACHER: The Fidelity wouldn't care about $500 in attorney fees and $100 at the Secretary of State's office. So somebody's got to be (inaudible) this. [LB168]

STEVEN WILLBORN: You're probably right on that. I did hear from David Walker, who you've contacted. And Bill, I think, knows David Walker who is a law professor at Drake. He reported that he didn't see much movement in Iowa in this direction, but it's very anecdotal. As was...you heard earlier, it's very hard to parse the numbers themselves. [LB168]

SENATOR SCHUMACHER: So there's not a burning crisis that we're losing out on a bunch of things because these are just the hottest? [LB168]

STEVEN WILLBORN: Again, I'd defer to you on that, Senator. I'm sorry. Yeah. [LB168]

SENATOR SCHUMACHER: If the Uniform Commission does come up with some type of draft language in two or three years, what are the practical implications of us jumping the gun on it if there's no real crisis at hand? Do we have to back out of things? Do we have people have to revise their articles or things like that? [LB168]

STEVEN WILLBORN: It would be. I mean, we did have a phase-in period for LLCs that required certain changes to the existing ones. So it could be, depending on the kind of correlation between what you might enact and what might eventually come down the pike. [LB168]

SENATOR SCHUMACHER: Thank you. [LB168]

SENATOR GLOOR: Senator Crawford. [LB168]

SENATOR CRAWFORD: Thank you, Senator Gloor. Are there separate filing requirements for a holding company? I'm just trying to probe a little bit further on Senator Pirsch's question in terms of understanding the difference between what we would be setting up if we allowed series versus this combination of a holding company and subsidiaries. So I understand the subsidiaries have to file separately, so that's one difference. But is there any other important difference for us to understand in terms of a parent with series versus a holding with subsidiaries? [LB168]

STEVEN WILLBORN: I think the difference, Senator, is that the holding company would be an LLC and you'd pay your filing fees for that and endure your lawyers' fees--which I'm a lawyer, I like increase in demand for our services. [LB168]

SENATOR CRAWFORD: Right. [LB168]

STEVEN WILLBORN: And then you'd pay the filing fees for each individual LLC, but they would be related in ways that are clear from their documents. [LB168]

SENATOR CRAWFORD: From their documents... [LB168]

STEVEN WILLBORN: Yes. Yes. [LB168]

SENATOR CRAWFORD: ...that indicate they're under this holding company? [LB168]

STEVEN WILLBORN: Yes. [LB168]

SENATOR CRAWFORD: All right. And is it the case that the holding company has...does that structure separate liability and assets in the same way that the holding company is doing and would not necessarily be responsible for the business and debts of the subsidiaries? [LB168]

STEVEN WILLBORN: That is correct, it would do that. [LB168]

SENATOR CRAWFORD: Thank you. [LB168]

SENATOR GLOOR: Senator Pirsch. [LB168]

SENATOR PIRSCH: So is there anything inherent in this that would be, I guess, more from an issue of fraud or whatnot on investors, creditors, the public or whatnot? Anything more potentially harmful than that which exists today with the ability to set up, as you suggest, kind of affiliated or nested LLCs? Right? [LB168]

STEVEN WILLBORN: Well, a number of issues would arise that haven't been fully addressed. And that's why there is the working committee and the memo that, you know, has five or six pages of issues. So some of those would involve what are the permissible dealings between series, right? And what are the permissible dealings between a parent company and series...the mother company and series? What implications might there be in bankruptcy? What kind of labor implications might there be about unionizing across Senator Schumacher's trucking companies, right, which are now separate entities, but they're all employees of the series mother. So there are issues like that. And that's why the working committee was set up to see if there's a purpose, a need for such a thing as opposed to having them just set up separate LLCs.

And then if there is, to work through those kinds of problems. [LB168]

SENATOR PIRSCH: But would that be plowing new ground insofar as, I mean, there may be those same issues that are involved with two separate...is there anything distinct and unique about the series thing that would not ordinarily occur with just two affiliated type of LLCs which are possible under the existing law or is it just a matter there may not be, but there may be, and so why don't we think about it for a while and, you know, with the commissioners and get back on it? [LB168]

STEVEN WILLBORN: Yes. I think the prior testifier did talk about the things that are truly distinguished. It has to do with the reporting requirements and the filing fee requirements. Other things I would say could be more unknown because there's lesser experience with series LLCs than there is with separate LLCs. [LB168]

SENATOR PIRSCH: Uh-huh. Certainly the filing fees are different. The type of information that a creditor, an investor, a member of the public wanted to find out, obviously you couldn't find for the specific...you couldn't find the specific filing for that company. But would that same type of information be available on the Secretary of State the way that this envisions if you drill down? I mean, if you looked through the mother company, so to speak? Or... [LB168]

STEVEN WILLBORN: I'm sorry, Senator. For that one, I'm going to have to defer to people who actually know things. Yeah. [LB168]

SENATOR PIRSCH: Yeah, that's fine. Sorry to put you on the hot seat there. [LB168]

STEVEN WILLBORN: I may have done the same for you some years ago, so I deserve it. Yeah. [LB168]

SENATOR PIRSCH: Yeah. Yeah, well, you did. So thanks a lot. [LB168]

SENATOR GLOOR: Seeing no other questions, thank you, Commissioner Willborn. [LB168]

STEVEN WILLBORN: Thank you, Senator. [LB168]

SENATOR GLOOR: Others who would like to speak in a neutral capacity? [LB168]

ROBERT HALLSTROM: (Exhibit 4) Chairman Gloor, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraska Bankers Association, testifying in a neutral capacity on LB168. Senator Larson approached the NBA shortly before the session with his proposed series LLC legislation. We had initially visited with him about the concerns that we had for the

potential for fraud in setting up series LLCs. Our concerns were that the establishment of a new series within an LLC would allow for the free flow of assets apart from liabilities unless safeguards were in place to prevent the defrauding of creditors. From looking at the other states that have established series LLC authority, those safeguards consisted of notice or disclosure and transparency. We feel that the provisions of the bill that we've worked with Senator Larson in under section 2, specifically the notice of the establishment of the LLC series and any limitation of liabilities of the series, as well as requiring each LLC series to contain the name of the limited liability company and be distinguishable from the name of any other series, would be those safeguards that would protect lenders. I think clearly from...with respect to some of the questions Senator Carlson had asked, lenders are going to look at these on their own merits. They are silos, so to speak, so you'll look at the assets and the liabilities that are contained within a particular series LLC. And they will determine, based upon credit worthiness of that series LLC, whether they are going to make loans and they certainly will consider whether or not there is a need to get guaranties or cross guaranties from parent LLCs and the like in determining whether to make loans to the series LLC. I'd be happy to address any questions. [LB168]

SENATOR GLOOR: Are there any questions for Mr. Hallstrom? Seeing none, thank you for your testimony. [LB168]

ROBERT HALLSTROM: Thank you. [LB168]

SENATOR GLOOR: Anyone else in a neutral capacity? Seeing none, Senator Larson, you're recognized to close. [LB168]

SENATOR LARSON: Thank you, Senator Gloor and members of the Banking Committee. To discuss a few things that the Secretary of State's Office brought up, you know, LB168 ensures that series LLCs are not shell entities with questionable purposes. The bill makes sure that notice is given to creditors and potential customers of the series LLC that they are, in fact, dealing with a series LLC. Furthermore, those who wish to engage in questionable business practices can already do so by using the entities already allowed in the state of Nebraska. The Secretary of State also is concerned with revenue loss because of the potential decrease in filing-fee revenue. Yet if you look at your fiscal note, it has no fiscal impact. So I'm not sure if the Secretary of State's Office saw that or not, but there is no fiscal impact to the state General Funds. And so I felt that their saying that there would be a fiscal impact was a little disingenuous. While Nebraska...so to start there to talk about a few things, the Secretary of State's Office already also said that they have a concern about the taxing, I think. And Mr. Hallstrom touched on it--would these be taxed as state entities or not? They would be because they are separate entities, if you look on page 3 starting on line 6. And also the Secretary of State brought up the concept of making sure that there was notice of the series being created. It says, "Notice of the establishment of the series and

of the limitation on liabilities of the series is set forth in the certificate of organization of a limited liability company." So obviously, the certificate of organization that is there would be served as notice. Also under our new LLC law that was just passed, LLCs don't even have to file an operating agreement--or their members--with the state of Nebraska. So the concept that, oh, you know, these series, we're not going to know who their members are or we're not going to know their operating agreement. They don't need to do that right now as a regular LLC. So, again, I just felt that was a little disingenuous from the Secretary of State's Office to sit up here and talk about that. Senator Schumacher brings up the concept of, oh, this isn't, you know, no crisis. And I'm not going to say that there is a crisis, Senator Schumacher, by any means. But I think we, as a state, we have to continue to look at are we going to be proactive or reactive? And I think as we continue to go through and try to be more competitive, I think we have to be proactive in our business practices instead of reactive, because if we're reactive, we're always going to be a step behind the Iowas or the South Dakotas or the Delawares or Nevadas or Wyomings. And I think this is something that does make us proactive and actually, obviously, still behind the Iowas and Kansases that are surrounding us and have this. So with that, I can attempt to answer any more questions the committee may have and definitely willing to work on the committee on what I feel is a very important issue. [LB168]

SENATOR GLOOR: Any final questions? Senator Pirsch. [LB168]

SENATOR PIRSCH: So in this law, are you the one who kind of came up with the fee structure? The $10 I think you... [LB168]

SENATOR LARSON: Yeah, we modeled off of what Iowa was at. The...like I said, we...Iowa and Nebraska both operate under the uniform LLC act and so we really worked hard to model it off of Iowa. And obviously, we...the gentleman with the Uniform Liability Commission said, you know, they could possibly be working on model language. And if you were to pass this there, you know, it might take a change to bring it into uniform. And that's fine. It's just, you know, the concept is again, do we want to be proactive or do we want to be reactive in terms of business practices in the state of Nebraska. [LB168]

SENATOR GLOOR: Senator Schumacher. [LB168]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you, Senator Larson. Who is the lead? Who is the groups that are wanting to see this happen? [LB168]

SENATOR LARSON: Me. [LB168]

SENATOR SCHUMANER: I've been there, done that. [LB168]

SENATOR LARSON: You know, we are up in our districts at home and I actually have time in the interim to read The Wall Street Journal, and it's a lot harder when I'm...when we're down here in session. But I read this in The Wall Street Journal. I saw what they were...I saw how it was being helpful, and I really liked the idea. No group approached me, no group was pushing it. I genuinely think this is a good idea and a good way to move forward. [LB168]

SENATOR SCHUMACHER: Now the bankers can protect themselves by analyzing the loan and the silo of assets and deciding whether they want to have cosigners or just rely upon the assets in the silo in making their loans. But if all these things are separated off onto separate silos, yet kind of give the aura of a common business operation, how does a day-to-day business vendor or contractor protect themselves from the, oops, you dealt with blue and, you know, no money in blue, it's all over there in red? [LB168]

SENATOR LARSON: I think, you know, the same question can be asked if, you know, the Secretary of State said, oh, you can do this already with just setting up however many single-member LLCs and doing that. They, if you named them, even each single member...if you want to use my name again, Tyson Larson A, Tyson Larson B, they give you the...you know, and they all agree to let that happen. I mean, that can happen now. And this offers the notification that they are dealing with a series. This offers, you know, I would say more transparency than what our current laws are at in terms of I could create Tyson Larson A, Tyson Larson B, Tyson Larson C now, and do exactly what you're saying, and have less transparency to work with those small, you know, the small day-to-day mom and pop shops or whatnot. So this...and that's what I guess I was getting at. This isn't about, you know as they say, trying to be shady business. Shady business is, if you're going to be like that, you can do it. This is just is, it's in my hope, to streamline business. [LB168]

SENATOR SCHUMACHER: Okay. And finally, to the extent the mother does not have an interest in the members of the babies, so to speak... [LB168]

SENATOR LARSON: Could possibly not have an interest. [LB168]

SENATOR SCHUMACHER: Could possibly not have. And to...what is the relationship between the babies colluding with each other, making agreements and restraint of trade and the Sherman and Clayton Antitrust Acts? Can they circumvent them by...could businesses circumvent them by creating a mother that has no interest in the babies and the babies conspiring in restraint of trade? [LB168]

SENATOR LARSON: I don't think so, because I think we say in the bill that each LLC is its own separate entity. So therefore, when you talk about antitrust--if we're going to treat them in terms of antitrust law--since they essentially are each one of them their own entity, they would fall under those antitrust laws that you were talking. They

wouldn't be able to collude and whatnot. [LB168]

SENATOR SCHUMACHER: So the mother...even though the mother...let's take the flip side. Even though the mother owned each of the babies or had a piece of the action of each of the babies, the mother couldn't coordinate activity between them, they'd have to be separate. Otherwise, they'd be restraint of trade? [LB168]

SENATOR LARSON: They could...I mean, we can always have hypotheticals. A mother can control, if they have the interest. But if a mother is willing to create a baby LLC and not retain any of the membership, which would be very--obviously--very rare. It offers nothing to the parent to create a baby in which it doesn't have any interest in. I mean, your hypothetical is getting deep into... [LB168]

SENATOR SCHUMACHER: Well, either they're separate or they're not separate. [LB168]

SENATOR LARSON: They are separate. But the purpose, I mean, the true purpose of an entity is the mother would have ownership. And you brought up the argument earlier that, oh, are they going to be just like the Secretary of State? Well, no. The Secretary of State is going to be the Secretary of State because you still have to file with the Secretary of State. And so you can be shady as is, you can do X as is. You can...I mean, we can create as many hypotheticals as you want that can already be done. It's just whether, like I said, we want to be proactive and move towards, you know, an ease of doing business or stay stuck and end up being reactive later on and possibly missing the boat. [LB168]

SENATOR SCHUMACHER: Thank you. [LB168]

SENATOR GLOOR: Any other questions? Seeing none, thank you, Senator Larson. [LB168]

SENATOR LARSON: Thank you. [LB168]

SENATOR GLOOR: And that closes the hearing on LB168. We'll now move to LB442 and welcome from the back row to the front row, Senator Schumacher. [LB442]

SENATOR SCHUMACHER: Thank you, Chairman Gloor and members of the committee. I am Paul Schumacher, P-a-u-l S-c-h-u-m-a-c-h-e-r. I represent District 22 in the Legislature, and I'm here today to introduce LB442. LB442 we've seen before, it was advanced out of committee last year. This bill only adds one particular wrinkle to it in response to a Supreme Court dicta or suggestion in a ruling that the Supreme Court made about how it might treat future rulings. In very simple terms, you have a piece of land on which the buffalo roam and you decide, gee, this is a nice place to have a

subdivision. And you get a surveyor out there and you stake out lots and you put down some roads, a sewer system, water system. And you think, well, we're going to sell off these lots. But before we begin to sell off any of the lots, we'd better have some agreement as to who's going to mow the byways and what rules have got to be abided by in maintaining the property and maybe the little park that we create in it, things like that to make our little homeowners association. And we put a piece of paper on file saying, say, everybody in this particular subdivision, we're going to be bound by the rules of the homeowners association. And here's how we're going to assess the cost that might be incurred in mowing the lawns or making the place look nice and pretty, fixing a pool, whatever. And we file all that at the courthouse and it's on record. Well, what happens is we sell a lot or a bunch of lots. And the banks come in and the banks say, okay, we'll make a loan on this particular lot so so-and-so can build a house on it. And we'll take back a mortgage or deed of trust saying that if you don't pay, we'll take it away and sell it and pay ourselves. And life will go on really well and really good unless the value of the property drops below what the payment on the mortgage is plus any of these miscellaneous bills that happen to crop up for keeping the pool clean and maintaining our homeowners association. And so this brings into focus what happens if that's the case and there isn't enough money to pay off everybody 100 percent of the...if the owner skedaddles. Now as we've learned, the banks always like to be first. And they need to be first because without their money the house isn't built, the development doesn't come about. And banks, unlike what they used to do also, they market their banks to other institutions and buyers and they don't necessarily sit on them themselves for the life of the loan. So when you say we've got a first mortgage or a first deed of trust, it needs to be known that that is numero uno as far as that property is concerned. And consequently, there should be no questions. No oops, there's a $2,000 homeowners' lien for repairs that had to be done on the swimming pool in the complex that's going to come across ahead of the bank loan. So the struggle here is, who is first? Well, the homeowner would argue or the homeowners association would argue, we're first because our piece of paper was on record before the bankers'. And it said we were going to have a homeowners association and we were going to be able to fix up the place and assess that against the property. And so, you know, we have this general piece of paper on file so we be first because it preceded the mortgage. The bankers say, look, at the time we made a loan on that property there was no bill for fixing up the swimming pool. There was nothing there ahead of us. So, therefore, we be first. And the general rule is that the first in time is the first in line, but there's that problem. So what this bill tries to do is resolve the problem by saying, look, the mortgage of the bank is first unless there's a specific notice of a specific lien that's filed for the homeowners so that if they had a swimming pool bill and it was put...notice on the property and then the house sold or whatever, then the banker would be behind the swimming pool bill. But only in those case, which would be very rare because most of the time the bank loan will be filed before the lien or before the swimming pool service took place. Trying to mitigate, in fairness, this bill allows the homeowners association to escrow some money, require some extra payments if it wants to, in order to build up a little fund so it

doesn't get stuck in the end if the homeowner leaves. And that's not the world's best solution to the problem, but it is a possible solution that mitigates any harsh impact of the bill. Now the Supreme Court suggested an anomaly and that is, what if that initial paper filed by the homeowners association said, and gave in big red letters, notice to the bankers, by gosh, this homeowners association is going to be first over your mortgage regardless of what you think. And the court asked that question of itself, but the case before it did not pose that question. So that lets out there in never, never land how the court might decide if it was ever asked of the court. This tries to resolve that and make it an easy answer for the court and said, well, the banks will be first unless there's a specific bill that is on file that needs to be paid that's filed before their mortgage is filed or their deed of trust. So that's a capsule of what's in the bill, what it's intended to do. I think there will be some testifiers that will probably be able to flesh that out a little bit. But I'm available for any questions on it. [LB442]

SENATOR GLOOR: Senator Campbell. [LB442]

SENATOR CAMPBELL: Thank you, Senator Gloor. Senator Schumacher, I'm assuming that this does not relate in any way to the SID portions of the statutes. [LB442]

SENATOR SCHUMACHER: No, this is just between the homeowners...it's my understanding, the homeowners' dues and obligations under that agreement that is set up to how they're going to maintain the premises and the banker. [LB442]

SENATOR CAMPBELL: Because, I mean... [LB442]

SENATOR SCHUMACHER: This would not be with tax liens or things like SID liens. [LB442]

SENATOR CAMPBELL: Okay. [LB442]

SENATOR GLOOR: Any other questions? Seeing none, thank you, Senator Schumacher. [LB442]

SENATOR SCHUMACHER: Thank you. [LB442]

SENATOR GLOOR: And we know you'll be staying around. [LB442]

SENATOR SCHUMACHER: I will. I will. [LB442]

SENATOR GLOOR: Could I see a show of hands of all those who would like to testify either in favor, opposed, or in a neutral capacity? I only see about four hands. Okay. Good afternoon. [LB442]

ROBERT HALLSTROM: (Exhibit 1) Chairman Gloor, members of the Banking Committee, my name is Robert J. Hallstrom. I appear before you today as registered agent for the Nebraska Bankers Association in support of LB442. On page one of my testimony are the things that would be changed under LB442. Before I get into those specifically, it might help to give the committee a little bit of historical perspective regarding how we got here and why we're here and why the changes are being proposed. In 1983, Nebraska passed the Nebraska Condominium Act. And that particular statute at section 76-874 provided specific rules that govern the priority and the establishment of condominium association liens in relation to other types of liens such as mortgages, deeds of trust, real estate taxes, and the like. However, there was no statutory or there were no statutory provisions relating to other types of homeowners associations. In about 2009, there was a case pending before the Supreme Court which ultimately issued an unpublished opinion. And at that time, the concern was that the argument being proposed by a noncondominium association was that their assessment liens were not to be treated the same way as the condominium statute under section 76-874. So before that opinion was issued--in fact, under legislation introduced by Senator Pirsch, LB736--we came forward with a bill that essentially parroted the provisions of (section) 76-874 to ensure under state law that noncondominium associations, other types of homeowners associations' rules regarding the establishment and priority of liens would be the same as we had come to learn under the condominium association regime. We had other issues that we wanted and needed to be addressed which I'll go through here in my testimony. When LB736 was being debated on the floor of the Legislature, some of the members of the Legislature raised questions regarding fines. Rather than monthly assessments, the issue of fines and could fines be imposed in a manner in which the individuals would not have due process rights. And they would not have notice of what the fines were and so forth because they become a part of the ability to foreclose on assessment liens. So the first thing that LB442 would do is to eliminate fines as part of the regular, monthly assessments that are subject to foreclosure. What that essentially means is that for those fines, the homeowners association would have to bring a lawsuit. They would have to receive a judgment. And once they have a judgment, then they could use all of the recovery methods at their disposal whether it's to garnish wages, whether it's to foreclose on property that that judgment lien would attach to. But there would be a separate judicial proceeding in which the homeowner would have a right to challenge the imposition of the fines. The second issue and one of the more important ones here, obviously, is that the condominium association laws that were adopted, again, as I suggested in 1983, only provided that the rules applied to protect a first lien held by a financial institution, for example. At that time, home equity lines of credit and things of that nature that are used routinely today, were not in play or in vogue. And as a result, the uniform act under which our Condominium Act was patterned did not provide any protections beyond the first mortgage lien. So this bill would allow for any lien, not just first liens, to have priority, again, based on first in time, first in right for purposes of filing. The third thing that we do is clarify that now that we have a published opinion which I

relate to in my testimony, the Westin Hills West Three Townhome Owners Association v. Fannie Mae (Federal National Mortgage Association) case issued by the Supreme Court has now suggested that there is a three-prong test for determining when a homeowners or condominium association lien is perfected for purposes of determining its priority. The first issue is that the assessment must be levied, that the assessment must be delinquent, and the statutory notice of lien must be filed. So all three of those criteria must be met before the lien is perfected. Then you look at first in time, first in right. If a deed of trust is filed by a financial institution before those three prongs are satisfied, the deed of trust will prevail. If it is not, the homeowners' assessment lien will prevail. Now the fourth issue, as Senator Schumacher alluded to, the underlying argument that's always been used by the homeowners associations from the beginning has been that their priority should relate back to the time when the declaration of covenants was filed at the inception of the homeowners or condominium association. And as a result, in the most recent Supreme Court case the argument was made that in other states--which may have different laws--but in other states, there were provisions where a unilateral provision in a declaration of covenant could be used to relate back for purposes of priority of the assessment lien or to, in essence, try to subordinate a deed of trust that may have been filed before the notice of lien assessment was filed. So the next thing that the bill does is, it expressly, for both condominium and homeowner associations, would prohibit inclusion of those types of unilateral relation-back or subordination provisions. And finally the last thing is, during the testimony a couple of years ago on LB613 and LB614, the homeowners association representatives had suggested that perhaps the bankers should escrow for these types of homeowners assessment liens. We suggested we didn't think that was a particularly good idea, but we also suggested why doesn't the homeowners association consider doing that. They suggested that they would have to get approval and authority from the homeowners and have to go through some type of voting process. And so what we have come up with as a fifth component part of this bill is statutory authority for them. And it's prospective for purchases of condominiums or townhomes in the future, that they would prospectively have the authority to escrow up to six-months of assessments to have that cushion or that reserve in hand to protect themselves in the event that there was a delinquency in the homeowners association assessment dues. So with that, that's the backdrop from the bill's perspective and where we are, where we'd like to go. And I'd be happy to address any questions that the committee may have. [LB442]

SENATOR GLOOR: Any questions of the committee members? Seeing none, thank you, Mr. Hallstrom. [LB442]

ROBERT HALLSTROM: Thank you. [LB442]

SENATOR GLOOR: Other proponents. Good afternoon. [LB442]

DEBORAH SCOTT: Good afternoon, Chairman Gloor and committee. I am here

today...sorry, my name is Deborah Scott, S-c-o-t-t. I am here today representing the Nebraska Land Title Association and its more than 115 company members and their nearly 500 employees across our state. I am one of those employees. Our interest in this bill today is from the viewpoint of the practitioner that deals with the homeowners association liens on a daily basis. In recent years, as Mr. Hallstrom indicated, have tried to assert to priority over all liens with the exception of real estate taxes and under the current law of first deeds of trust or mortgages. In practice, what that means for myself and my colleagues is that we're unable to insure junior liens or second mortgages of the lenders without taking exception to the homeowners association assessments. And if we can't insure the loans, then the lenders aren't going to give them. And as this group is undoubtedly aware, the second mortgages are the ones that the people use to pay their real estate taxes if they're not otherwise escrowed. And they're the ones that people use to maintain and improve their real estate by replacing roofs or finishing basements. And they're the ones that people use to consolidate loans and eliminate unsecured debt, as well as help their children through school. I'm aware that courts in other states have ruled that association assessments have priority from the time of filing the declaration that created them. But I'm also aware that here in Nebraska we have always been somewhat insulated from the dramatic economic swings that the rest of the country faces. And I attribute that in no small part to the conservative nature of our citizens, our values, and our sense of fairness. That sense of fairness that says you can't have a lien on someone's property if they don't owe you anything. No one begrudges the homeowners or condominium associations their desire to maintain their property values and their neighborhoods and condos. They've been hit with unprecedented diminished values for a myriad of reasons, foreclosures primary among them, as we all have regardless of where we live. But as the economy turns, so will their disadvantaged state as it will again for all of us. LB442, though not perfect as it doesn't address the homeowners association lien priority with respect to judgments, it does provide for restoration of other lien priorities as it's been recognized since statehood, while at the same time provides the homeowners and condominium associations a means to ensure funds availability for maintenance of common areas of their respective subdivisions and condominiums. The Nebraska Land Title Association supports this bill. And questions? [LB442]

SENATOR GLOOR: Any questions for Ms. Scott? Seeing none, thank you very much for your testimony. [LB442]

DEBORAH SCOTT: Thank you. [LB442]

SENATOR GLOOR: Other proponents? Those in opposition? Good afternoon. [LB442]

STEVE ANDERSEN: (Exhibit 2) Thank you, Senators, for giving me time today. My name is Steve Andersen, A-n-d-e-r-s-e-n. I reside at 6244 Oak Hills Plaza in Millard. I have served on the Oak Hills Highlands Condominium Association board in Millard

since 2005, and I'm on the tail end of my seventh year serving as president. During the time of my presidency we, the condominium association, have had to file liens against two different unit owners in order to collect unpaid assessments, reasonable attorneys' fees, and costs associated with the collections. In both cases, the association filed foreclosures on the liens to collect. In the instance of the first case, the association won and collected all unpaid assessments, interest, attorneys' fees and costs. In the second case, it is still ongoing with the association trying to recoup its losses incurred by the association due to one particular condo owner. Our association was incorporated in 1973, according to Nebraska statutes 76-801 through 76-823, referred to as the Condominium Property Act. After the Nebraska Condominium Act was enacted in 1983, we adopted it into our master deed and bylaws to conform to the law. Our association is made up of three regimes with 64 units total. Sixty-seven percent of our condo owners are retired, living on fixed incomes. For the last four years we have been struggling to complete summer scheduled maintenance and unit repainting because we have blown our budgets on snow removal and attorneys' fees, protecting our bylaws and master deed, and collecting unpaid special assessments. All three regimes have had to charge special assessments to make up the monies needed for maintenance. Our association budgets very closely to keep monthly dues down while covering all of the maintenance costs to keep our neighborhood in beautiful condition. Our dues range from $245 to $396 per month, depending on the size of the unit. If we could not count on the laws to assist us in collecting duly-owed, unpaid assessments and reasonable attorneys' fees when the law's help is needed, it would cause a financial hardship on the entire association. Our home values would start declining, and I think you would see retired people living on fixed incomes having to go back to work just to survive. I am against LB442 because it would cause financial harm to our association and its residents. It would cause all of our 67 percent retired homeowners living on fixed incomes great financial stress and grief. By giving priority to any secured bank loan during foreclosure, you will be guaranteeing that our association will not get paid its monies owed us. Our bylaws, I believe, currently address first mortgages on properties, and first mortgages do have priority. It's not...that's not what we're looking for. I'm concerned that second mortgages, lines of credit, will take will take precedence over ours and we'll never get our monies collected. LB442 removes our ability to collect attorneys' fees and interest on an assessment when foreclosing a lien. This will keep us, our association, from ever foreclosing a lien because this bill takes away our power to do so. And we wouldn't even be able to collect anything if we did foreclose because the banks would get all of their money first. This bill removes our ability to take priority if we file to foreclose a lien for lack of paying assessments. If we began charging new neighbors a six-month escrow for their dues, it would turn people off knowing that they had to pay $1,800 up front just to move in. We would lose sales and our property values would go down. Ultimately the state and local governments and area schools would lose tax revenue due to the decrease in value of our properties. I think it is immoral for the banking industry and their lobbyists to be attempting to push this bill through the Nebraska Legislature for a third year in a row just to cover their irresponsible lending practices that brought down

the nation's economy in 2008. It is like they haven't learned their lesson and plan on doing it again in the future. They are harming individual homeowners, homeowners associations, and condo owner associations who choose to live under the rules of their bylaws that were drafted under the current Nebraska statutes. Please reject LB442. Thank you for your time and consideration. [LB442]

SENATOR GLOOR: Thank you, Mr. Andersen. Are there questions for Mr. Andersen? Seeing none, thank you for taking the time to come down here. [LB442]

STEVE ANDERSEN: Thank you. [LB442]

SENATOR GLOOR: Other opponents? Anyone in a neutral capacity? Good afternoon. [LB442]

BEN THOMPSON: (Exhibit 3) Good afternoon. My name is Ben Thompson, it's T-h-o-m-p-s-o-n. And to clarify, I am speaking in a opposing capacity, not a neutral capacity. I'm an attorney in private practice in Omaha. In my practice I have counseled and represented over 35 different homeowners associations of various types, whether they be traditional, townhome owners associations, or condominium owners associations. And I'm in a unique role here testifying today because I've been personally involved in a number of foreclosure cases involving homeowners associations and banks, including the two lawsuits that have been referred to before the Nebraska Supreme Court. And I've just handed out some materials that I think you'll find useful. I don't expect you to digest that all at this hearing. However, it includes a, what I would consider, a primer on liens. And judging by the fact that there's been no question so far...I know this is a very technical subject and that you want to do your homework, but there's an article that I wrote that was published in the Nebraska Lawyer last summer that gives an overview of liens. And I apologize, it's directed toward attorneys, but hopefully in reading it you can start to make some sense of the many different sources, types of liens, and the issues involved when you're trying to enforce a lien. There is that. There's also a chart that our office prepared that compares the provisions of LB442 that's before you today against the existing law, whether it's the condominium statutes, which is (section) 76-874, or the provision that came out of LB736 that was mentioned earlier. That's at (section) 52-2001. And, of course, those are statutory liens that we're comparing this bill to. But then there's a category on there that deals with liens under covenants. The topic of liens relating back to covenants refers to liens that would be the subject of declaration of covenants that's formed when the neighborhood is created. And those obviously can, through contractual rights, property rights, create all manners of rights to create assessments and have liens associated with them. That doesn't necessarily depend on any statute to give that authorization, so the chart also compares the provisions of LB442 to those. Although it's a generalization because, obviously, it's very fact dependent on what the language of that covenant might say. Also in there just for your reference, I think various people have mentioned this is not the first time this

has come up recently. This is the third year in a row that the Legislature has been asked to take action on this topic. Two years ago, there was a committee hearing on LB571, LB613, and LB614. And at that hearing...I think I've done you the favor of wasting some paper and printing out a copy of the transcript from that committee hearing. The folks testifying in favor of the homeowners associations was about three to four to one compared to the folks who would be testifying in favor of what you're hearing today. I don't want their voices to get lost simply by the fact that they're not testifying in person today. The issues are much the same. And I think that if you have somebody take the time to read through there, it will give you a better flavor for what you're being asked to consider today. Finally, and there is a newspaper article from 2009 and, granted, it's a few years old now. But it was a front-page story that the Omaha World-Herald ran on the foreclosure debacle that was going on at the time, of which we're still feeling the effects certainly on behalf of the homeowners associations, but I know the banks are as well. So that gives you kind of an overview of some of the issues that I think the common folks experience as they're dealing with these, including the members of the boards of homeowners associations. As an attorney, I don't want to dwell too much on the technical or legal parts of this, but I will say that I have some concerns about the bill and not just because it's contrary to the interests of my clients. I have concerns about whether it's even constitutional, to start. We are...you are being asked to basically rule in favor of the class of banks against the class of homeowners associations and decide that, as a matter of public policy, that homeowners associations should never get a chance at being paid through one of their liens. On the other hand, you're being asked to say that banks should always get paid, whether they're first in line, second, third, fourth, it doesn't matter. They should get paid first. Under the constitutional prohibition on special legislation, I wonder if that's going to survive a challenge on that basis because if you're familiar with the rules interpreting that, the question is do you have a sound public policy in favor of it? And I've heard here that the sound public policy is that banks need to be first. That sounds like sound bank policy, but it doesn't sound like sound public policy. I think that if you asked people to list out the public policies for and against this, you're going to find good arguments on both sides. So that's one of my concerns. The other one is particularly on the clause that addresses the relation back provisions where basically you're being asked to declare that any covenants that might be out there today, whether they were recorded yesterday or 20 years ago or 50 years ago, if it contains language trying to have a lien priority relate back, that that's somehow invalid; it's supposed to be nullified. Those concern contractual rights, but more importantly, they concern property rights. And I'm wondering, are you opening yourselves up to challenges based on takings if any number of homeowners associations are now losing out on a property right that they've been...well, that they negotiated, that they agreed to privately and have been relying upon up until this time? Those are my constitutional concerns for it, I guess. Upon the nonconstitutional side of things though, I have some concerns. And it relates back to the history, I guess, of how we got here today. And this goes all the way back...we could go back to the '70s, but certainly 1983 when the Nebraska Legislature did decide to adopt the Nebraska

Condominium Act in place of the Condominium Property Act. It was alluded to earlier that that was modeled after the...it's actually called now the Common Interest Ownership Act that was promulgated by the Uniform Law Commission. It was...the Nebraska Condominium Act was taken verbatim from the Common Interest Ownership Act with one glaring exception, which I think you need to be aware of. It carved out some language that said, first mortgages and deeds of trust shall take priority over condominium liens except the condominium association shall receive up to six-months' worth of their assessment liens first so that if a condominium association ever got behind, they would at least get six-months worth of their assessments before the first mortgage got paid. That sounded like good public policy, but for some reason, that was carved out. It's still part of the Common Interest Ownership Act, but it didn't make it into Nebraska law. So now we're trying to use that act as a basis to go a step further and say not only should the first mortgage get paid before the condo owners get anything, but the second, third, fourth should as well. To me, that doesn't make sense. I guess I'd like to real quick quote you...I mean, I understand that there are good public policy considerations on both sides of this. I understand the value the banks provide to neighborhoods when they are funding and providing the ability of people to fulfill the American dream and own a home in these neighborhoods, but at the same time, these homeowners associations are there for a reason. And it's not just for the socializing at a picnic or the nice sign out in front of the neighborhood. It's there to protect the property values which, in turn, protects the collateral that is securing the loan for the bank. Given these competing interests, the Uniform Law Commission took the stand that it did where it granted a six-month reprieve, basically, for the associations. And it felt that that limited exception, "strikes an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders." That language actually comes from some 2008 amendments to the Uniform Common Interest Ownership Act, but I think it's a good message and it's a good thing to consider for you today as well, I think. We need to find that equitable balance. It's certainly not represented in LB442. There's nothing equitable about it. In fact, I had to struggle to keep a straight face when the notion of fairness was introduced earlier. I think we're confusing predictability on behalf of the banks and the concept of fairness. Fairness would entail that these associations would receive something when they're owed money by a delinquent homeowner. Under the current proposal in LB442, they're ensured to get nothing. And I'm not overstating that. I mean, in every single case I've dealt with, you have a situation where someone borrowed money to buy a home so they have a deed of trust or a mortgage that's recorded. They're obviously obligated to pay some form of assessment in most neighborhoods. But for those people who get into trouble, they can't pay all their bills, they have to make a choice. What are they going to stop paying? They might stop paying the mortgage, but more often than not, they're going to stop paying their homeowners association first because it's less likely that they're going to get in trouble. When that happens, the homeowners association is generally going to file some kind of notice of delinquency with the register of deeds. And generally, they're on a trajectory where they're actually going to become delinquent on

their mortgage eventually, too. When that happens then, the bank is going to file a notice of default. That sets in motion the foreclosure process for the bank. But you've basically then got the standoff between the homeowners association and the bank and who's going to get paid first. Now not to sidetrack too much, but Nebraska obviously allows nonjudicial foreclosures. So when a bank decides it wants its money, it doesn't have to go through the judicial foreclosure process like a homeowners association does. It can just go, you know, file the necessary paperwork, go down to the courthouse, and declare this property for sale to the highest bidder, which is generally the bank. And it's sold, done. No matter that there might be a pending judicial foreclosure out there filed by the association or any other creditor that might have decided to pursue that route, but we're talking the notions of fairness. The homeowners associations are required to follow a particular process, and we're trying to...it's important to compare apples to apples, I guess. What's been declared to be some questionable tactics by the homeowners associations in terms of saying that these assessments relate back to the covenants is no different than what the banks are saying in that their priority relates back to the filing of the deed of trust. The banks want priority when the deed of trust is recorded, nevermind that nobody is delinquent on their mortgage or is not paying on time; that happens much later. So in the example I mentioned, you might have a homeowners association file a notice of delinquency first, and then the bank files a notice of default second. Well, who's going to win? The bank. But wait a second, they're second in time. But they're relying upon the deed of trust that was filed which, again, was only given priority because of a special rule that's already been given by the Legislature in terms of the Nebraska Trust Deeds Act. That decides to peg priority for those as of the date of filing the deed of trust. I'm sorry, I almost said declaration because those are virtually identical. They are both documents that are filed by either the banks or the homeowners associations initially saying, here's our rights, here's what we're declaring. We're on the scene now. Here's the role we're going to play, here's what we expect of the homeowner. They're not that different. The only difference is, is that when it comes down to a default or delinquency, there's not enough money to go around. So the question is, who's going to get paid? The current proposal today says any bank will get paid before the homeowners association. I don't think that's fair, and I think that's why it's hard for me to take seriously that suggestion that this is about fairness. It's not about fairness, certainly not for the homeowners associations or the many members who have to basically foot the bill when their neighbors are unable to pay their assessments. I guess the other point I'll make before wrapping up is you always ask this question when somebody brings a bill to you is, why are we here? Why are we considering this? What is the problem? And when I read the statement of intent today, it says that it seeks to codify a recent Supreme Court decision with not a whole lot more behind it. And I have to wonder, well, if it's already law, then why are we codifying it? Why are we making it law again? What I have to emphasize though is that when a court considers a dispute involving lien priority between, in this case, a homeowners association and a bank, what they're considering is very fact dependent. They're looking at the language of this declaration of covenants, they're looking at the

language that's claimed in terms of the rights, they're looking at the language in these notices of assessments or liens. It's very, very fact dependent, so it's very difficult to draw a broad generalization or conclusion about that and then apply it to every other homeowners association across the state. And that's what you're being asked to do here today, is you're being asked to take the result in a particular case involving specific facts and then generalize it to the advantage of one special group. It doesn't make good, sound public policy when you examine it from that perspective and it forecloses the possibility, again, that well-intentioned people who are seeking to contract or create some kind of property rights in the future, they're not going to be able to do that if this somehow closes the door on them. Finally, the escrow provision...I appreciate the kind of the token gesture that it represents. But let's not ignore the obvious here, which it is going to apply prospectively. The problem isn't the prospective purchasers; the lending standards have tightened up quite a bit. I'm not so concerned about the new people coming into the neighborhood and not paying their assessments. It's all the current people who are still struggling after the subprime mortgage debacle that I'm worried about. This does nothing to address that. That's a major problem. This is the olive branch that is meaningless, and I would hope that you would see it for what it is. In terms of escrowing, yes, it was brought up that banks could perhaps escrow this. Let's be mindful of the fact that banks escrow all the time. They're already escrowing for the taxes, perhaps for the insurance, if necessary. They've got the mechanism set up to do that. Why are we creating a separate additional escrow requirement and then placing that burden on homeowners associations, again, particularly for a small handful of new purchasers that come into the neighborhood while doing nothing about all those folks who are delinquent today causing the problem for the homeowner associations? Again, I would ask that this bill be rejected. But if the Legislature wants to take it upon itself to find some solution to the problem that I'm still looking for here, I would suggest that you go back to the root of this which is the Common Interest Ownership Act. Go back to the original language that's been provided by impartial, unbiased people who have studied the many, many different solutions out there and look at what they've suggested and we'll go from there. And I'd be happy to participate in that process. [LB442]

SENATOR GLOOR: Thank you, Mr. Thompson. Questions for Mr. Thompson? Seeing none, thank you very much. By the way, I don't know about others, but I didn't see the World-Herald article in here. [LB442]

BEN THOMPSON: I'll get you a copy. [LB442]

SENATOR GLOOR: All the other references were in here, but not the one related to the Omaha World-Herald. [LB442]

BEN THOMPSON: All right, very good. Thank you. [LB442]

SENATOR GLOOR: Yep. Anybody else in opposition? Anyone in a neutral capacity?

Senator Schumacher, you are recognized to close. [LB442]

SENATOR SCHUMACHER: Thank you, Senator Gloor, members of the committee. One thing that can be safely said that because of the prudence and because of the lending practices of the Nebraska banks, we are in a position to endure much less pain on these kinds of issues than folks in most every other part of the country. The underwater where a house will not sell for what's loaned against it or what might be due on account of assessments is a far smaller problem in this part of the country than it is in the those areas of the country which had a less prudent banking system. That being said, we're talking about commerce. We're talking about what things look like when things are not simple and easy to understand. You have banks that have loans that they do not really know how to state the value of principal on because they don't know if there's a lien building or debt building because of the swimming pool is...bill is not being paid by...to the homeowners association. When you have title insurance companies that have to scratch their heads and can't give a real straight answer as to whether or not the order of priorities on a particular loan are clear, those all have an impact upon interest rates, they have an impact upon the ability to get loans, about the ability for somebody who wants to build or buy a home to get proper financing. This simply sets forth a very simple rule that can be used in those very, very few cases where this is an issue. And the simple rule is that unless the homeowners association has certified the debt prior to the time that the bank files its lien, the bank's lien and the bank's numbers are what you go by. And it makes life a lot simpler for everyone involved and minimizes the amount of lawsuits and arguments about, well, in this particular case, under this particular set of circumstance, this guy should be ahead or that guy should be ahead. And fortunately, this doesn't cover a great deal of situations. But it is important when you're marketing a portfolio of loans to other banks or investors that you're able to say to them, this is the status of the loans, this is the status of the principal and interest that is going to be payable under these loans, and that there is nothing that is going to sneak ahead of you that you might not know or might not be reflected in these documents. And that's to everybody's benefit. And it contributes to a tad bit lower interest rates, tad bit easier mechanisms for getting a loan and understanding what you're getting, and minimizes lawsuits. Yeah, there will be some cases--very few, but some--in which the homeowners association if it does not escrow for the future swimming pool expenses or maintenance expenses, will probably have to share among the membership in the homeowners association. But only in those cases where the person who is owing the bill does not have equity in the house and is literally bankrupt and unable to pay, because they're liable for their debts and membership in the homeowners association even if their house is not that valuable or does not have enough to clear the liens against it. So fortunately, we're not dealing in a lot of situations, but we are dealing with something that has to be explained away unless there is a clear delineation in the law as to who's first when it comes time to trading those loans in the marketplace, selling those, and that's part of the banking world today. [LB442]

SENATOR GLOOR: Thank you, Senator Schumacher. Any questions...final questions for Senator Schumacher? Seeing none, thank you very much. [LB442]

SENATOR SCHUMACHER: Thank you. [LB442]

SENATOR GLOOR: And that will end of the hearing on LB442. We will take a short break before we begin. Senator Karpisek, we promise it'll be very short, before we get on LB621. [LB621]

BREAK

SENATOR GLOOR: We will reconvene. I think we have most all ashore that's going ashore on this fine day. LB621, Senator Karpisek, welcome. [LB621]

SENATOR KARPISEK: Thank you, Senator Gloor, members of the committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. LB621 amends the Nebraska Intergovernmental Risk Management Act to clarify how confidential, proprietary information is handled by public risk management pools. The bill codifies Nebraska Attorney General's opinions regarding public records requests affecting trade secrets, academic and scientific research, and other proprietary or commercial information. Public risk management pools are created under the law by political subdivisions to provide insurance coverage to participating members. They are public entities and are under the public records law. There is a question about their ability to protect proprietary information when they receive a public records request. LB621 addresses the situation by codifying two Attorney General opinions on the subject of proprietary information. The bill does not change the law, but clarifies it by including provisions that reflect the Attorney General's interpretation of the public records law into the Intergovernmental Risk Management Act. There will be someone behind me to go into more detail about the management pools and the Attorney General's opinions. But I would try to answer questions if you would like. [LB621]

SENATOR GLOOR: Thank you, Senator Karpisek. Are there any questions, Senator? Yes, Senator Schumacher. [LB621]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you for introducing this bill, Senator Karpisek. The Attorney General's opinion is not law, it's just an opinion and he has a lot of opinions. So what we're doing is codifying an opinion rather than the law here, right? [LB621]

SENATOR KARPISEK: Correct. [LB621]

SENATOR SCHUMACHER: Okay. Thank you. [LB621]

SENATOR GLOOR: Any other questions? [LB621]

SENATOR KARPISEK: And I...again, someone behind me will talk more about how they use it now. [LB621]

SENATOR GLOOR: Are you going to stay around, Senator, for closing? [LB621]

SENATOR KARPISEK: I'd hate to miss the fun. [LB621]

SENATOR GLOOR: Fine. We're glad to have you here. Can I see a show of hands of those who would like to testify in any capacity today? I see about four hands, I think. We'll start with the proponents, please. Good afternoon. [LB621]

WILLIAM HARDING: (Exhibit 1) Good afternoon, Senator. I'm someone. It was forecast that I'd be here. My name is Bill Harding. I am...H-a-r-d-i-n-g, I'm an attorney in Lincoln. I'm here representing the League of Nebraska Municipalities and the League Association of Risk Management, testifying in favor of LB621. Mr. Chairman, members of the committee, I urge your support for LB621 and draw your attention to, as Senator Schumacher has correctly pointed out, is not an opinion of a court because we don't have opinions of the court interpreting the section of the public records act dealing with proprietary information. What we have instead is two opinions by the Nebraska Attorney General's Office. I have handed them out to you. The 1992 opinion on pages 3 and 4 identifies the reasoning of why the Nebraska Attorney General's Office said we believe we should follow the rule of law in other states saying that if you're going to say that something is proprietary, you must identify who the competitors are that you believe would get an advantage and what that advantage would be. And then you must also identify, in general terms, what it is you're withholding. And the second Attorney General's opinion from 1997 also references the operative statute on page 4, (section) 84-712.05(3), that's where the language is currently in the public records act saying that proprietary information may be withheld, and then the summary of what I just mentioned to you is the middle paragraph on page 5. So this is what the Attorney General's Office has said. They have based their interpretation on case law in other states and they said, we think this makes sense. The proposal to you today is not to amend the public records act. The proposal to you is only to amend the Intergovernmental Risk Management Act and to provide some definition. It's nothing new. This is not new language that's been developed in terms of the standards or the criteria. In fact, it's taken from these two Attorney General opinions which I mentioned to you. And that is the reason the League of Nebraska Municipalities and the League Association of Risk Management urge your favorable consideration to LB621. I'll be happy to answer any questions. [LB621]

SENATOR GLOOR: Are there any questions? Let me ask for a couple of real-world

scenarios of what we're trying to prevent here. I...glancing at this, I recognize the HMO case. It just so happened that it tickled my interest back in those days, Mr. Harding. So I was...I...it was a reminder to me. But, if you would, would you...could you give me one or two examples of what we may be trying to deal with here? [LB621]

WILLIAM HARDING: I can...yes, I can do that, Senator, from the standpoint of the League Association of Risk Management. In providing insurance coverage to Nebraska municipalities, municipalities may select their coverage on liability, on worker compensation matters, from either the League Association of Risk Management or a variety of private insurance carriers. It's their choice. The League Association of Risk Management contracts with a third-party administrator to do their underwriting--the back-room work. And insurance companies will tell you that their methodology in doing risk assessment and underwriting, which allows them to either be favorably considered or not favorably considered, is key to their business, and it is proprietary. And so while figures might be requested by the public, some of the analysis in how those figures were arrived at is what would be proprietary. The Nebraska Department of Administrative Services has a vendor procurement manual and in that DAS tells those who would bid on contracts for the state that some of the information which they use to prepare their bid or even some of the information they provide to DAS might be proprietary. And they say, you should let us know what you think that is, which is the concept in this bill that if a third-party administrator or a consultant has made some analysis and they believe that it is unique enough to be propriety, then they should be prepared to identify what that is as well as what the Attorney General said. Who might be the competitors who would gain an advantage if they got it, and what would that advantage be? [LB621]

SENATOR GLOOR: Okay. Other questions? Seeing none, thank you for your testimony. [LB621]

WILLIAM HARDING: Thank you. [LB621]

SENATOR GLOOR: Next proponent, please. Good afternoon. [LB621]

MEGAN NEILES-BRASCH: Good afternoon. Thank you, Chairman Gloor and senators of the Banking, Commerce and Insurance Committee. My name is Megan Neiles-Brasch. That's spelled M-e-g-a-n N-e-i-l-e-s-B-r-a-s-c-h. And I am a registered lobbyist for the Nebraska Association of School Boards. Our organization is here today to testify in favor of LB621. One of the roles of our organization is to sponsor and operate a public insurance pool for school districts and ESUs across Nebraska. The name of this pool is ALICAP. The acronym stands for All Lines Interlocal Cooperative Aggregate Pool. ALICAP's coverage includes property, casualty, general liability, automobile liability, and other types of insurance. Basically, ALICAP is a public risk-management pool for 159 of the ESUs and school districts across Nebraska. We

believe this bill does a good job of codifying the language contained in the two Attorney General opinions that you have before you today. And we would see it as another option for ALICAP. We appreciate Senator Karpisek sponsoring this bill, and the association urges the committee to advance this bill. And I'm happy to entertain any questions you might have. [LB621]

SENATOR GLOOR: Are there any questions? Senator Schumacher. [LB621]

SENATOR SCHUMACHER: Thank you, Senator Gloor. And thank you for your testimony today. This talks in terms of removing from disclosure various, basically what looks like research type things, and that in order to remove it from disclosure under the Open Meetings Act you'd have to identify the competitor. What...as a practical matter, when does this come into play? I mean, what things do you not...or would somebody not want disclosed as a practical matter? What are we doing here? [LB621]

MEGAN NEILES-BRASCH: There would be, you know, just different things in the coverages or the way they assess the coverage. For example, let's say the coverage includes earthquake insurance. Ours does, even though there are not a lot of earthquakes in Nebraska. And so the person is able to...say the private individual is able to say to the board, they're saying, well, you're paying for earthquake coverage. You shouldn't have to pay for earthquake coverage, even though we don't know what we're paying...they're paying for on their other-side of the policy because that's private information. So as a public entity, they are able to tell what's in our policy where as we're not necessarily able to tell what's in the policy being provided to the other school district or other school board. So... [LB621]

SENATOR SCHUMACHER: Why would that be proprietary, I mean, whether or not you're carrying earthquake coverage? [LB621]

MEGAN NEILES-BRASCH: Well, you know, it would add a level of, you know, extra information that would prevent school districts from being subject, say, to earthquakes and things like that. [LB621]

SENATOR SCHUMACHER: How does that have anything to do with trade secrets, academic or scientific research that's in progress or unpublished. I mean, I just... [LB621]

MEGAN NEILES-BRASCH: That's just... [LB621]

SENATOR SCHUMACHER: ...on the earthquake example, I'm missing it. [LB621]

MEGAN NEILES-BRASCH: Sure. Sure. That's just one example. Another example would be how they calculate providing reduced rates. We send all of our dollars back to

our districts in dividends each year. So ALICAP sends that money back. Having access to that proprietary information, the calculation of doing those risks would be another example of proprietary information that this bill would protect. [LB621]

SENATOR SCHUMACHER: Well, it's almost...suppose an insurance agent were wanting to compete with the risk management pool and wanted to know information, I would guess, regarding how you evaluate risks of the people buying policies from you in order to determine whether or not he or she was treated fairly and how their bid was assessed. I mean, is that what we're talking about, competing insurance agents here? [LB621]

MEGAN NEILES-BRASCH: Oh, I think that's one example. But also just how they would, say, put together a package that would enable them to, say, compare risks between, say, a private entity and this public entity. [LB621]

SENATOR SCHUMACHER: So we have a public entity that, in fact, is competing in the private insurance market here; that's step one. And we're saying that they don't have to disclose to the private entities involved some of how they would do their risk-management calculations because that might enable the private entities to more effectively compete with them? [LB621]

MEGAN NEILES-BRASCH: I think effectively compete is not a true assessment because the private entity doesn't have the public interest at heart like the public pool does. But the public pool can't see the same thing for the private entity because the private entity says, hey, you know, that's proprietary information. We're just asking for a level playing field. [LB621]

SENATOR SCHUMACHER: Well, would it be better in order to get the best bang for the buck with insurance, whether it's from the private or the public competitor, to have reciprocity if the private could better... [LB621]

MEGAN NEILES-BRASCH: I mean, I think that that would be okay, too, if it was fair for both ways. If both sides got to see the same information and can present it beforehand, see it beforehand, and then present it to the board in their offer, I think that that would be fair. But I don't think that that's what happens currently. [LB621]

SENATOR SCHUMACHER: But could we make that happen... [LB621]

MEGAN NEILES-BRASCH: Sure. [LB621]

SENATOR SCHUMACHER: ...saying, if you want to see this you can see it, but you have to show your hand, too... [LB621]

MEGAN NEILES-BRASCH: Sure. Certainly. [LB621]

SENATOR SCHUMACHER: ...so we can figure out who can make the really best deal for the public entity. [LB621]

MEGAN NEILES-BRASCH: Sure. And that would be ideal for a public entity if that would happen. [LB621]

SENATOR SCHUMACHER: Thank you. [LB621]

SENATOR GLOOR: Other questions? Seeing none, thank you. Hang on a second. Senator Crawford. [LB621]

SENATOR CRAWFORD: Sorry. That's all right. Thank you, Senator Gloor. So I was just trying to also understand the extent to which this applies just to the offering of insurance versus the protection of scientific research of the entities you are covering. I don't know if that's the case for your entities that you're covering where there are proprietary secrets or research that need to be protected or if, for you, it really...this mostly applies in terms of the rates and the kinds of coverage you're offering. [LB621]

MEGAN NEILES-BRASCH: The rates, the dividends that we can give back... [LB621]

SENATOR CRAWFORD: Uh-huh. [LB621]

MEGAN NEILES-BRASCH: ...to our members at the end of the year, and just general competition. [LB621]

SENATOR CRAWFORD: Okay. So this would require you to...in order to...this would require for you to indicate who some of your competition might be... [LB621]

MEGAN NEILES-BRASCH: Currently. [LB621]

SENATOR CRAWFORD: ...and sort of defend yourself of why it is that you need to keep this information private. [LB621]

MEGAN NEILES-BRASCH: Correct. [LB621]

SENATOR CRAWFORD: Thank you. [LB621]

SENATOR GLOOR: Any other questions for Ms. Neiles-Brasch? Seeing none, thank you very much. [LB621]

MEGAN NEILES-BRASCH: Thank you, Senator. [LB621]

SENATOR GLOOR: Other proponents? Seeing no other proponents, we move to opponents. Those in opposition. [LB621]

ROBERT HANSEN, JR.: (Exhibit 2) In case I have a Marco Rubio moment. [LB621]

SENATOR GLOOR: We all do. That's what's in here. Good afternoon. [LB621]

ROBERT HANSEN, JR.: Yeah. Good afternoon, Chairman Gloor, members, senators of the Banking, Commerce and Insurance Committee, some of whom I see some familiar faces. My name is Robert Hansen, H-a-n-s-e-n, Jr. And I'm here today to speak on behalf of the Professional Insurance Agents of Nebraska/Iowa as respects LB621. I'm a licensed independent insurance agent with NP Dodge Insurance in Omaha, and I also serve as the national director and legislative chair for our Professional Insurance Agents Association. First, I'd just like to kind of go through some history on the Intergovernmental Risk Management Act as it relates to group self-insurance rules. Public, government bodies' obligations and liabilities, incorporated or not, are ultimately borne and paid for by the voting, taxpaying residents of each governmental jurisdiction. As such, the open hearing and public information process are required for citizens to know, understand, and decide how to provide for rational protection and risk transfer so as to properly meet those obligations and shield their taxpayers. Over the decades, municipal laws deliberately and expressly outline specific requirements for the risk assessment, management, bidding and placement insurance process. This was and is to assure that public officials were making sound and rational decisions and insurance placements. As public bodies, this process, it's participants, bids, and the financial soundness rating, record of insurance regulatory compliance, and licensure in that state of the insurer backing the offer were and still are subject to government open information, records, meeting, and disclosure requirements. When the concept of self insurance developed, very large municipalities, cities, capable of employing this concept moved to add this to their risk management approach. However, because this materially increased the direct exposure of added financial obligations not otherwise already provided for by the approved budgets, i.e. creating a potential and undefined and unlimited tax liability, such cities had to seek permission from their voting public to do so. This process, too, was subject to all the same open government and hearing process rules, as well as demonstration that the proposed self-insured program would meet the safety and soundness rules and open disclosure/hearing requirements applied to all private sector insurance placements. Then when the concept of group self-insured pooling mechanisms arose, some municipalities wanted to spread their risk by sharing it with other municipalities. This required further law changes at the state and municipal levels that would: (a) first permit it; (b) set out the rules and requirements to follow for it; (c) provide the process by which the constituencies of each government jurisdiction would be informed accurately and completely so that they could vote to decide whether or not to engage in such arrangements; (d) by their vote, agree to take on the potential

financial obligations of other jurisdictions; (e) prove to be as sound a risk-management result as can be secured by the jurisdiction in the private insurance marketplace; and (f) as a government program, it requires continuing permission from its citizens and thus subject to open government rules and process. Thus, and to do so, Nebraska adopted the Intergovernmental Risk Management Act in Title 210, Nebraska Department of Insurance, Chapter 47, the group self-insurance rule implementing above to provide for this process in Nebraska. The provisions of LB621 as currently written, create a material and serious legal conflict with the current requirements of Nebraska governing laws in this area and the very reasons for why the current process and laws and regulations were prescribed as outlined above. As applied to municipal self-insured pooling arrangements and their data-reporting requirements to their governing bodies, citizen constituents, we thoroughly appreciate and agree with the drafters of LB621 that specifically identifiable information per a specific claim in progress to include the specific amount reserved in anticipation of that claim's resolution should not constitute information subject to the government open/disclosed records requirements. However, as currently drafted, the language goes well beyond this. Unwittingly, we believe, it completely conflicts with the fundamental government open-records and full-disclosure laws. It would prohibit the level of complete information needed by the voting, taxpaying citizens of each municipality to assess the soundness of the pooling arrangement and the risk protection for the community. We've included references to the various statutes that currently apply to this. Taxpayers have the right to accurately and completely know, understand, assess, and decide whether the risk management mechanisms employed by their municipality are sound and adequately provide the necessary insulation from financial exposure and obligations that could otherwise be anticipated, provided for, and properly risk managed, no matter the means elected to do so by the government manager. Unfortunately, the current language of LB621, in our opinion, at best encumbers and undermines this process. It seeks an unacceptable scale of protections and exemptions from government open and disclosure record rules for municipalities that participate in the municipal-pool arrangements. When Nebraska adopted permissive laws allowing municipalities to participate in such self-insured pooling arrangements, it did so with balance. It recognizes that such arrangements were neither insurance companies nor private. They are government contracted arrangements and, as such, subject to government laws and regulations. Further, the result of this proposed language restricts more information from public review for municipal pools than is the scale, scope, and detail of information to be provided in and through the open bidding and public disclosure records process to which private sector insurance proposals are currently subjected. In addition to the detail provided in the open bidding process, government bodies legally may demand an additional and very broad and detailed data breakdown of submitted insurance proposals that can include all of the same depth and detail of information which LB621 wishes to shield for municipal pools. The members of this body must remember that in the competitive marketplace, to insure and protect municipal risk, the current and prospective customers for both the private insurance sector and municipal pool arrangements are the same. Given that, they

should be subject to the same level of review and detail. Otherwise, the state unintentionally would materially interfere with free and open insurance marketplace for Nebraska and the balance needed with municipal pool vehicles for fair competition. Therefore, we strongly advise that LB621 as currently written be withdrawn. In closing, I'd like to reference part of the statute at (section) 44-101 which kind of starts with the department of "Insurance; business public in character; deceptive practices prohibited. Within the intent of this chapter, the business of apportioning and distributing losses arising from specified causes among all those who apply and are accepted to receive the benefits of such service, is public in character, and requires that all those having to do with it shall at all times be actuated by good faith in everything pertaining thereto, shall abstain from deceptive or misleading practices, and shall keep, observe, and practice the principles of law and equity in all matters pertaining to such business. Upon the insured, the insured, and their representatives, shall rest the burden of maintaining proper practices in said business." I'd like to thank you for your time today. And I'd be happy to attempt to answer any questions keeping in mind I'm not a lobbyist nor an attorney, just a business person. So... [LB621]

SENATOR GLOOR: Thank you, Mr. Hansen. Are there questions? Senator Crawford. [LB621]

SENATOR CRAWFORD: Thank you, Senator Gloor. And thank you for your testimony. [LB621]

ROBERT HANSEN, JR.: Uh-huh. [LB621]

SENATOR CRAWFORD: Could you give us some examples? If I understand your testimony correctly, you're saying that there are some things that you would have to reveal that this act would protect the public entities from having to reveal. So just to make that concrete, could you give us an example of something that you feel you would be asked to...that you would have to reveal or show that would be considered not required under this act because it's a trade secret or proprietary information? [LB621]

ROBERT HANSEN, JR.: Well, I may, Senator Crawford, defer a little of that question to my...another one of our colleagues from the company side that may have a little better grasp of what specifically those might be. [LB621]

SENATOR CRAWFORD: Okay. [LB621]

ROBERT HANSEN, JR.: But, in general, to address some of the comments of the proponents of this bill, if an insurance agent is bidding in the process against a pool risk, in our opinion we're independent agents so we bring independent markets to the table. And part of our due diligence in that process is going to be analyzing current coverages and then bringing options and opinions on recommended coverages to that municipality

or school entity. So we feel that as the statute currently stands, it addresses those concerns of open disclosure as it's currently written and doesn't need any modification. [LB621]

SENATOR CRAWFORD: Thank you. [LB621]

SENATOR GLOOR: Other questions? Seeing none, thank you for your testimony. [LB621]

ROBERT HANSEN, JR.: Thank you. [LB621]

SENATOR GLOOR: Other opponents, please. Good afternoon. [LB621]

JAY SILLAU: Good afternoon. My name is Jay Sillau. I'm with...S-i-l-l-a-u. I'm with EMC Insurance Companies. And we have insured public business for over 50 years in the state of Nebraska. And during that time, we have seen many situations as far as bid lettings go. A lot of times when you see a bid specification, that could be very simple. And other times, they're very complex. I've seen some with as many as 50 pages in how they want the bid specified. When you are looking at a bid and you're going into a situation, you want to make sure you know what your competition is, and the competition should know what you have. For example, if you had a deductible, somebody may have a different deductible than what you have. Also, the coverages don't always match. Many times, some companies may want to file a form that sets them off from the competition. You may give it additional coverage that is very important to that entity...that public entity, and you want to know that your voice is heard, that that's there. And if the other competitor says they have that, too, if they have that form in front of them you could point out, say, okay, this coverage is granted under our form. Here is...we're excluded on that. That does happen, and I've seen it many times over the years where you have a bid situation that you may end up being higher, but because of the coverages you're able to grant, that makes a big difference. Other items that you need to know, you need to know how financially secure...companies are always indicating...we put our corporate review out. They know what our surplus is, they know what our A.M. Best rating is. So they have to understand that, so everybody should know what that's on the table. I'd be happy to answer any additional questions you have on that. Oh, I do want to also say that a lot of times we want to know what kind of dividends are given out back. We do have a form on...that entities have that shows specifically what they will have returned based under losses on that policy. For work comp, we also have what's called...some companies have safety dividend programs. That's also on file so they know exactly how the group performs, how much money they're going to get back. So that is also noted in the file and anyone can look at it and that the school, city or any other public entity can look at it also. And I'll entertain any questions now. [LB621]

SENATOR GLOOR: Questions? Senator Schumacher. [LB621]

SENATOR SCHUMACHER: Thank you, Senator Gloor. And thank you for your testimony. This particular bill exempts from disclosure only that information which would serve no public purpose. And the word is "no" public purpose, not minimal public service, but no public purpose. What you're describing would be a situation where it would serve public purpose so it wouldn't be covered by this bill. Is...am I reading that right? [LB621]

JAY SILLAU: Well, the example they gave earlier was earthquake. I would think that you'd always want to know how you differentiate between somebody else in earthquake coverage. That's the example they gave. I would think that any public entity would want to know financially how secure somebody is. That seems to be part of the things that it doesn't want to be disclosed. You want to know if coverages match up. It appears to me that this would be almost anything they want to say is not in what they want to grant. I just feel that that's...when the example for a earthquake comes through, that should be out there for people to know whether you have earthquake coverage, what the deductible is. And then not just earthquake, but any type of coverage that will compromise anything. [LB621]

SENATOR SCHUMACHER: What if the trade secret was that in order to get the contract with a new prospective government body, we'll just knock off 30 percent of the commission for the first three years and then we'll work it back into the system later? Would you see that as being a trade secret that would be nondisclosable under this? [LB621]

JAY SILLAU: Okay. Repeat the question again, I'm... [LB621]

SENATOR SCHUMACHER: Let's say that the pool in this...risk management pool would say, okay, our trade secret is when we're in competition for a contract with a new prospective entity, we're just going to knock off 30 percent, throw our actuarial tables aside, we'll just knock off 30 percent. And we'll get the contract that way. And we don't want to disclose that that's what we're doing. Would that be the kind of thing that would be included in the...or excluded from disclosure under this? [LB621]

JAY SILLAU: When we...I can't say how they would operate, but when we operate, we have a schedule of showing how we proceed with the quote. And that's on the quote that the city can look at. It's very difficult...everybody has filed with the...how many credits they can apply and whether it goes based on experience or based on schedule credits. So they can see that on the quote. [LB621]

SENATOR SCHUMACHER: Thank you for your answers today. [LB621]

SENATOR GLOOR: I would...I mean, I would say from some of your concerns--we're talking about public risk pools here--and so the issue of dividends, the issue of proprietary information or returns or all that. Municipalities are basically backed by the strength of the municipality itself and as a bonding entity, as a taxing entity. There aren't many of us in business who are much stronger than a municipality would be, at least in this state from what we know. So your concerns along those lines I'm not sure are apples to apples' comparison. [LB621]

JAY SILLAU: The strength of a municipality? [LB621]

SENATOR GLOOR: Well, you were talking about, you know, available to look at information that would talk about dividends that had been paid off or the financial strength of the organization that is being...that is bidding here. But there are municipal pools and because of that I wouldn't think that there would be any question that they're as strong as the municipality itself as that participates in that risk pool. I mean, I think we're talking to a large extent about self-insured risk pools here that are a different business model than what you're describing. [LB621]

JAY SILLAU: There's a group of self-insured risk pools. [LB621]

SENATOR GLOOR: Municipalities. [LB621]

JAY SILLAU: ...that are insured by the entity. I don't know how strong their strength is because you'd have to look at what they...as far as insurance, how much they paid out... [LB621]

SENATOR GLOOR: Sure. [LB621]

JAY SILLAU: ...over time because if they had a significant loss... [LB621]

SENATOR GLOOR: Sure. [LB621]

JAY SILLAU: ...they may have not collected enough money in their pool possibly. [LB621]

SENATOR GLOOR: Yeah, you're interested in the loss ratios. And that I understand, sure. Okay, thank you. Other questions? Thank you for your testimony. [LB621]

JAY SILLAU: Thank you. [LB621]

SENATOR GLOOR: Other opponents? [LB621]

JIM DOBLER: Senator Gloor, members of the committee, my name is Jim Dobler.

That's D-o-b-l-e-r. I'm executive vice president with Farmers Mutual Insurance Company of Nebraska. I'm also a registered lobbyist and I appear today on behalf of Nebraska Insurance Information Service. This is a straight...a state trade organization of property and casualty insurance companies that are licensed to do business here in the state of Nebraska. And I appear in opposition to LB621. I have only one comment. The individuals that testified prior to me covered most of what I had to say. And my comment concerns section (4) of the bill. And in that section, if a risk management pool decides that it wants to designate records as confidential, it shall identify to the director the specific competitor involved and what the advantage might be for that competitor. It appears to me that that process is a unilateral process; it's the pool going to the director and telling the director what the pool thinks. From our perspective, if you're going to use a process like that it ought to involve a hearing. And it seems to me that the competitor ought to be able to appear also and explain to the director why the competitor does not think that there is some type of unfair advantage. That process ought to be bilateral, not unilateral, and it ought to involve a hearing so that the director can listen to what everybody has to say. That concludes my remarks, and I'd be happy to try to answer any questions. [LB621]

SENATOR GLOOR: Senator Schumacher. [LB621]

SENATOR SCHUMACHER: Thank you, Senator Gloor. And thank you for your testimony. Does...do these risk management pools, are they subject to the normal regulation of, you know, their theory and their reserves and all that that a private insurance company is? [LB621]

JIM DOBLER: They have to obtain a certificate of authority from the state insurance department. And the department does have the authority to look at their financial information and see how they're managing risk. However, they are not defined as insurance companies, and they do not participate in the state Property and Casualty Insurance Guaranty Fund. So there is oversight, but technically they're not an insurance company. [LB621]

SENATOR SCHUMACHER: Is there any way that we know or that the director knows whether or not they're on thin ice on anything? [LB621]

JIM DOBLER: Senator, I don't know for sure about that. My guess is, the director would. [LB621]

SENATOR SCHUMACHER: Thank you. [LB621]

SENATOR GLOOR: Other questions? Senator Crawford. [LB621]

SENATOR CRAWFORD: Thank you, Senator Gloor. I'm just going to go back to the

question I asked a couple of testifiers earlier. What...can you give me...give us examples of the kind of information that you feel you would be required to provide that this bill may prevent or shield a public, self-insured pool or shared risk pool from providing? [LB621]

JIM DOBLER: The issue of what proprietary information you're required to provide and whether that information is available to the public is, in the insurance industry, it's a big issue. Now, of course, we have to file our rates, we file loss data, we file underwriting rules, all of that. That's pretty straightforward and you would think that that should be public and everyone should look at it. I would assume the same would hold true with a risk management pool. But as you move to a more technical level and you get into some of the specific details of how you analyze risk and how you have developed your models to segment risk and figure premium, you're moving into an area that gets a lot more difficult. And it simply...all I can say is, it is not easy. Everyone...and it's obvious, you want to compete and everyone has their own ways of wanting to compete. So it's hard to know. You'd have to look at individual situations and the specific record or program that either a pool is using or an insurance company is using to try to make a determination as to whether that would be an unfair competitive advantage for other...for the other competitors or not. I can't...offhand, I wouldn't know what the risk management pools would have. I know in our industry, algorithms are a very big issue and, of course, some of the actuarial work is very big. You...we... [LB621]

SENATOR CRAWFORD: Those would be the trade secrets? Is that what you're saying? [LB621]

JIM DOBLER: Yes, uh-huh. [LB621]

SENATOR CRAWFORD: Thank you. [LB621]

SENATOR GLOOR: Senator Pirsch. [LB621]

SENATOR PIRSCH: And you've had a chance to look at the language in LB621, the green copy, the proposed original? Is that right? [LB621]

JIM DOBLER: Yes. [LB621]

SENATOR PIRSCH: So I just wanted to touch base with you regarding Senator Schumacher's question. There's a phrase in, for instance, page 2, line 18. So they're talking about the information which would not need to be disclosed. And they start off by saying it's trade secrets, academic and scientific research work, and then it gives a catchall, and other proprietary commercial information belonging to a risk management pool. So that's a little bit more vague in nature as to what may...that may constitute. But then it gives also two qualifying factors. It says that that information, if released, would

give advantage to business competitors. That's number one. And then secondly, serve no public purpose. So I guess that's...I'm trying to see if this is an actual...it would actually apply to anything if...serve no public purpose if the argument is made that, you know, that to compete...and you have to be aware of necessary factors, that that might drive down the costs of insurance and, therefore, result in lower rates. Would that...would the inclusion of that language serve no public purpose? I mean, is that such a filter as currently written that it would serve as actually no filter? [LB621]

JIM DOBLER: I think you're right. I mean, to me, anything I could get my hands on from the risk management pool or another insurer theoretically could serve a public purpose in the sense that I might use that to my advantage and there might be a lower rate. I thought both of those phrases were hard for me to figure out how someone could make decisions about what might really be proprietary and confidential and what might not. I assume this would all be done by the insurance director, and it seemed like a difficult standard. I mean, in a sense, too, anything that I could see that the competitor was doing might give me an advantage. So is that wrong? Should it not be given out on that basis? But I think I agree with your point that to say it served no public purpose, well, almost anything that somebody got might provide competition. It might be useful to an insurance consumer. It's a hard standard there, I think. Those are good questions. [LB621]

SENATOR PIRSCH: Yeah. How do you...are you aware...I mean, this issue, has this been...has this taken place in any other state, any other jurisdiction? And if you're aware of it, how are statutes crafted in other states if they exist? [LB621]

JIM DOBLER: This language related to risk management pools. I don't know. I don't know how other states deal with this. Again, my...overall, my general understanding of this just from an insurance company standpoint is the idea of what you ought to be able to keep as your proprietary, confidential information, it's a big issue. It's very big. [LB621]

SENATOR PIRSCH: Thank you. [LB621]

SENATOR GLOOR: Senator Carlson. [LB621]

SENATOR CARLSON: Thank you, Senator Gloor. Jim, talking about risk management pools, what are some of the risks that would be covered by a risk management pool? [LB621]

JIM DOBLER: Well, they could...the pool could provide liability coverage for a town, it could provide work comp coverage for a town. I assume there probably are various forms of property coverage that these pools might also be involved in. [LB621]

SENATOR CARLSON: Well, could it be health insurance benefits? [LB621]

JIM DOBLER: Perhaps. I don't know about that. I thought someone mentioned health insurance earlier in the hearing, but I don't know about that. [LB621]

SENATOR CARLSON: Repeat again. You said work comp. What else did you say? [LB621]

JIM DOBLER: Work comp and liability are the two that come to mind that I think you would primarily see. Now I know under the federal act it's limited to product liability and general liability. Under the federal law there isn't any property coverage that you can purchase. Under the state law, I'm not sure if it's broader than the federal law. I don't know. [LB621]

SENATOR CARLSON: Well, generally then, the risks that would covered are not the type of risk that there would be a sharing between employer and employee on how it's paid for. These would be paid for by employers, would you... [LB621]

JIM DOBLER: Yes. [LB621]

SENATOR CARLSON: Okay. What do you see in this bill? How would this bill not be good for the insurance business? And how would this bill not be good for the citizens of Nebraska? [LB621]

JIM DOBLER: Well, in general, the thrust of the bill is to provide a mechanism to limit the amount of information that a risk management pool has to make available to the public, to insurance agents, to other insurance companies. And to the extent you limit the amount of information, you make it harder for the other competitors to know what the risk management pool is doing. And you make it harder for them to compete and offer an alternative to what the risk management pool might be doing. [LB621]

SENATOR CARLSON: So in your view, whoever is in the saddle at the particular time and controlling what's being paid in this risk management pool has an advantage by how much information they can keep from being divulged. [LB621]

JIM DOBLER: Well, theoretically it could be that way. Again, when the idea here is to set up a system for a pool to withhold information, it creates the risk that others that might want to compete for that business aren't able to compete as effectively because they don't have all the information about what's going on in the risk management pool. [LB621]

SENATOR CARLSON: One other question in regard to withholding information. Is there any...is there disadvantage to the citizens when there are dividends involved, where

these management pools pay dividends back? [LB621]

JIM DOBLER: Well, I don't know that there's any disadvantage to that. I...that would be all part of the process of figuring out all of your loss costs, how well you're doing. If you're doing very well and you're very successful as a risk management pool and you want to return dividends to the citizens, I don't know in what form that might work, but I don't know that that's necessarily a disadvantage. [LB621]

SENATOR CARLSON: But you aren't in agreement that information about dividends should be withheld? [LB621]

JIM DOBLER: Oh, I don't know that I would necessarily agree with that. I don't know how that process works in terms of dividends in a risk management pool. I don't know. [LB621]

SENATOR CARLSON: Okay. Okay. All right. Thank you. [LB621]

SENATOR GLOOR: Senator Crawford. [LB621]

SENATOR CRAWFORD: Thank you, Senator Gloor. I wonder, as I understand it...I just have two questions, I'll start with one. As I understand it, the bill's purpose is to codify Attorney General's opinion. So if I understand it correctly right now, if you were to seek information from one of these risk pools for the sake of trying to offer a better deal to some public entity, the sort of rules of the game right now would probably be the Attorney General's opinion unless, I guess, you were to try to seek a new ruling from the Attorney General to get to say that those rules aren't fair; if that's a correct assessment or not. And related to that question which maybe you can answer them both is, have you been in a situation of trying to get some particular piece of information where you've been unable to get it that you could use as an example when you're talking about whether or not that's...so the situation as I see it is, is codifying sort of the rules of the game that the Attorney General's opinion lays out. And so the...by not passing this, I guess, it leaves it at the status of an Attorney General opinion as opposed to law. But it would probably be the same rules unless you could get those changed with a different law or a different opinion. [LB621]

JIM DOBLER: The Attorney General's opinion, it's not law. So it's...that...is an opinion, but it doesn't mean that's the way you have to operate. Certainly, it would...it's something you would probably pay close attention to, but that's about the extent of it there. And I can't...you know, my company isn't involved in this kind of insurance so, specifically, I couldn't give you any example of a situation where I did not...was not able to get information that I thought I should get. [LB621]

SENATOR CRAWFORD: Okay, thank you. [LB621]

SENATOR GLOOR: Senator Schumacher. [LB621]

SENATOR SCHUMACHER: Thank you, Senator Gloor. An Attorney General's opinion is basically just the Attorney General's guesstimate of what a court might do if the case was presented, is that correct? [LB621]

JIM DOBLER: Correct. [LB621]

SENATOR SCHUMACHER: Thank you. [LB621]

SENATOR GLOOR: Any other questions? Seeing none, thank you for your testimony, Mr. Dobler. [LB621]

JIM DOBLER: Okay, thank you. [LB621]

SENATOR GLOOR: Other opponents? Anyone who would like to testify in a neutral capacity? [LB621]

JOHN BONAIUTO: Senator Gloor and members of the committee, John, J-o-h-n, Bonaiuto, B-o-n-a-i-u-t-o, registered lobbyist representing Nebraska Association of School Boards. I was listening to the testimony, and one of the things that this bill deals with is the public risk management pools which can only be part of an interlocal, which would be a public entity. And the...I think what the gray area is...and you listen to the insurance industry talk about the importance of proprietary information and... [LB621]

SENATOR GLOOR: Mr. Bonaiuto, can I make sure? You're representing the school boards. Are you testifying in a neutral capacity? [LB621]

JOHN BONAIUTO: Yes. Yes, I did. [LB621]

SENATOR GLOOR: Okay. [LB621]

JOHN BONAIUTO: But I was to say that with the pools, that as part of the public risk management act and an interlocal the gray area is what is subject to being requested as public information. And so this is...this bill is trying to sort out what could be considered proprietary, because it becomes an unfair advantage to the pool if they have to give information that a private insurance company would not give. That's...I mean, I think that is the gray area that the bill is trying to wade into. [LB621]

SENATOR GLOOR: Okay. Senator Campbell. [LB621]

SENATOR CAMPBELL: So the school boards across the state, they can opt whether

they want to come into one of these pools, Mr. Bonaiuto? [LB621]

JOHN BONAIUTO: The School Board Association has operated a risk management pool for over 20 years. [LB621]

SENATOR CAMPBELL: Okay. [LB621]

JOHN BONAIUTO: ...and insures probably half the school districts in the state. [LB621]

SENATOR CAMPBELL: Okay. And we would know from Mr. Harding's testimony that the League does...has a pool. [LB621]

JOHN BONAIUTO: Yes, and counties. [LB621]

SENATOR CAMPBELL: And counties have a pool. [LB621]

JOHN BONAIUTO: Yes. [LB621]

SENATOR CAMPBELL: Who else? [LB621]

JOHN BONAIUTO: Those are the three primary ones. The counties' and the school boards' pool started about the same time a number of years ago. And that's when the state was having a difficult time dealing with workers' comp and that's how most of our pools started, is as workers' comp pools and then expanded from there. [LB621]

SENATOR CAMPBELL: So if a school board is using their...and they're going to look at their insurance, they...let's say for liability... [LB621]

JOHN BONAIUTO: Uh-huh. [LB621]

SENATOR CAMPBELL: ...so would they ask for a bid or a...from their risk pool that they belong to? [LB621]

JOHN BONAIUTO: They could, and we never would prevent a school district from going out for bid. And then specs would be written for that bid. And then everyone, private insurers and the pool, would need to bid on those same specs. And I think what the issue here is, can someone request more information from the pool because it is covered under the public information act, and how much information could be requested, and what would have to be given? [LB621]

SENATOR CAMPBELL: Senator Gloor, can I... [LB621]

SENATOR GLOOR: Go ahead, Senator Campbell. [LB621]

SENATOR CAMPBELL: And so now, we have this bid. [LB621]

JOHN BONAIUTO: Uh-huh. [LB621]

SENATOR CAMPBELL: And we're going to ask the private sector and the pool to give us a bid as the school board. [LB621]

JOHN BONAIUTO: Yes. [LB621]

SENATOR CAMPBELL: Do you have knowledge or can you remember over the course of these years, what would be an example because Senator Crawford keeps trying to get at what are the examples here. Can you remember examples that were asked of the pool, and because they had to provide public information that they had to give that the private sector did not? Senator Crawford, is that part of your question? [LB621]

JOHN BONAIUTO: And I, from my recollection, and I served on the board for the pool for many, many years, I don't know that we had any problem with this issue. And I think our interest today is that if another pool is having problems with requests and there is a gray area, then that makes all the pools nervous because then that...there's a potential for that to happen to the other pools. [LB621]

SENATOR CAMPBELL: Because to some extent, that then if they can...if information can be asked of them and not...and they have to disclose, which a private entity would say, no, we don't disclose that information, that's an uneven playing field? [LB621]

JOHN BONAIUTO: Uh-huh. Yes, Senator, that is. And so when it comes to bidding and using the same specs and playing by the same rules, I think that makes perfect sense. It's that gray area is if you get a request, what is and what isn't considered public information? [LB621]

SENATOR CAMPBELL: Okay. Thank you, Senator Gloor. [LB621]

SENATOR GLOOR: Senator Pirsch. [LB621]

SENATOR PIRSCH: And just to clarify, same question I was asking before then. So the two tests or the two filters then, one would give advantage to business competitors. Well, certainly in that case you're saying it would give advantage. So then the second filter test--and serves no public purpose--you're saying...would that...would there ever be...in which...I mean, is that a good filter or do you think that that would need to be rewritten? [LB621]

JOHN BONAIUTO: You know, and it...to me, my initial reaction is, if a pool is...if there's

a question being asked and it would be dealing with actuarial work or if it would be dealing with something that the pool would consider proprietary information in how they're dealing with their bids and setting rates, then it would not serve a public purpose to release that information because it would be a problem in having the pool maintain its competitiveness and be able to be financially sound. So I...and I don't...I found that reading that was difficult. So I am not saying that that's easy wording to understand. And if it were clearer, you know, what exactly we're trying to exempt or shield, I think it would make the industry more comfortable also because I think what the insurance industry is saying is, they don't want to have the pools have an unfair advantage. And the pools are saying, we don't want to give up information that would then give the insurance industry whatever advantage or an unfair advantage over the pool. So it is an area that just needs some sorting, I think. [LB621]

SENATOR GLOOR: Thank you, Mr. Bonaiuto. [LB621]

JOHN BONAIUTO: Yeah. [LB621]

SENATOR GLOOR: I have to tell you that we walked you into it, but even though your original testimony was neutral, the responses that you have given some of these questions side certainly on the proponent side of things. And so I want the transcript to show that I feel that you are a proponent of this that...as opposed to somebody in a neutral capacity. I'm sure it's hard to resist the urge, but I want the record to show that. [LB621]

JOHN BONAIUTO: Yeah. Well, and I...it...my intention was not to mislead in any way, Senator. [LB621]

SENATOR GLOOR: I understand. And our questions walked you down that path. So... [LB621]

JOHN BONAIUTO: Well, and I wanted to answer to the best of my ability the questions. [LB621]

SENATOR GLOOR: Thank you very much. [LB621]

JOHN BONAIUTO: You're... [LB621]

SENATOR CARLSON: Senator Gloor. [LB621]

SENATOR GLOOR: Yes, Mr. Carlson. [LB621]

SENATOR CARLSON: May I ask a question? [LB621]

SENATOR GLOOR: Yes, Senator Carlson. Be careful, please. [LB621]

JOHN BONAIUTO: And I'm going to be careful, too, Senator. [LB621]

SENATOR CARLSON: Thank you, Senator Gloor. I'll ask you, with school boards, what kind of risks are involved in the risk management pool? What kind of risks are covered? [LB621]

JOHN BONAIUTO: It started with workers' comp and then expanded to property/casualty. So it's an all-lines, aggregate pool. And so it's a type of pool that deals with--not health--but all other insurance needs for a school district. [LB621]

SENATOR CARLSON: Now I'm going ask you a questions that might make you uncomfortable, but I'm not really trying to make you uncomfortable. [LB621]

JOHN BONAIUTO: Uh-huh. [LB621]

SENATOR CARLSON: But I think there's a point here. In education, the dollars that pay for managing these risks, where do those dollars come from? [LB621]

JOHN BONAIUTO: And if I may ask a clarifying question, are we talking about the premiums the district pays for the insurance? [LB621]

SENATOR CARLSON: Whatever the district pays for anything. What's the source? [LB621]

JOHN BONAIUTO: Public funds. [LB621]

SENATOR CARLSON: They're public funds. They're tax dollars. [LB621]

JOHN BONAIUTO: Yes. [LB621]

SENATOR CARLSON: And unlike a business that covers some of these risks, those are dollars that the business owns and they can, I think, have a little more freedom in how they might spend those dollars. Now--and I'm not trying to corner you... [LB621]

JOHN BONAIUTO: Uh-huh. [LB621]

SENATOR CARLSON: ...but they are tax dollars. At the same time, you want to get the most mileage you possibly can out of those tax dollars. So whether those dollars are paid for coverage by a risk pool or whether they're paid for by a separate insurance company, you want the best deal possible on the dollars that are tax dollars, which are all of them. Is that...wouldn't that be fair? [LB621]

JOHN BONAIUTO: Absolutely. [LB621]

SENATOR CARLSON: So I would think your position would be neutral because you want the best possible deal out of the dollars that you spend that are tax dollars. [LB621]

JOHN BONAIUTO: Yes. So I... [LB621]

SENATOR CARLSON: Regardless of who they go to. [LB621]

JOHN BONAIUTO: I agree with that. [LB621]

SENATOR CARLSON: So how do you make that happen? [LB621]

JOHN BONAIUTO: Well, it's...and it is an environment where the pools operate and they compete with private industry or private...the insurance industry, and neither should have an unfair advantage if they're competing. And as I say, if a school district or if a city or a county, if they decide to go out for a bid on their coverage, everyone has to compete on that same bid with the same specifications. And the lower bidder should then get the business. [LB621]

SENATOR CARLSON: Okay. Thank you, John. [LB621]

JOHN BONAIUTO: Yes. [LB621]

SENATOR GLOOR: Thank you, Senator Carlson. [LB621]

JOHN BONAIUTO: And Senator, if I may, Senator Schumacher asked a question about the risk pools. And the Department of Insurance does a mandatory audit at least every five years. And if a pool is not financially sound, then the auditor would know that immediately. But it is an extensive audit and it's paid for by the pool. [LB621]

SENATOR GLOOR: By the pool. So...thank you. [LB621]

JOHN BONAIUTO: Thank you. [LB621]

SENATOR GLOOR: Anyone else in a neutral capacity? Seeing none, Senator Karpisek, would you like to close? [LB621]

SENATOR KARPISEK: I'll take a stab at it. Thank you, Senator Gloor and members of the committee. That got way further into the weeds than I saw coming, but that's all right. A couple of things--the pool budget is a public record. Quarterly and annual

financials are filed with the Department of Insurance, so that's public record. The underwriting process would be something that I would consider would be proprietary information. And as I've been trying to run this through my head as you have, if everything that the pool does and everything the way they do it is all public information, then the company would obviously be able to look at that and know how they did it and pretty well know what they came up with and be able to undercut it now. Is that...Senator Carlson asked, well, then you get the best deal. Possibly, but then what does that do to the pools? Can the pools survive or can they not survive? And then if they can't survive, then what happens? So that's the way I've worked through it in my head, and I know that there's been a lot of thought over on the whole place. So I think there are some things, though, that even though it's public record, some things, sometimes, not absolutely everything goes out. [LB621]

SENATOR GLOOR: Senator Schumacher. [LB621]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Senator Karpisek, I noticed the date on this Attorney General's opinion is 1992. If I subtract that from 2013, I get 21. Is this Agenda 21? [LB621]

SENATOR KARPISEK: I better not comment on that, but...well, and it's LB621. [LB621]

SENATOR GLOOR: I saw that. Senator Carlson. [LB621]

SENATOR CARLSON: Thank you, Senator Gloor. Senator Karpisek, the struggle I have, and I don't have the answer, is on page 2 in that...in section (2). There's two decisions that I think have to be made here. And I don't know how they're made because it starts out by talking about if the information is proprietary. So there's a decision there as to what information should be hidden and what should be released. That's one decision. The second decision would be that it serves no public purpose. And that is hard to define, so that's my struggle. [LB621]

SENATOR KARPISEK: And I agree. And when I looked at it and I thought of public purpose, I didn't think of it as it was brought up in testimony, but that is a struggle. But I think anything that...I'm trying to think of it as your private business. Of course, it's not, but anything that gives advantage to the other side to give out seems to be a purpose for you, but is it really public purpose for public...I agree with you, Senator. [LB621]

SENATOR CARLSON: Well, and then what makes further struggle with it is, we consider what the source of those dollars are. Most of the time, it's tax dollars. [LB621]

SENATOR KARPISEK: Correct. [LB621]

SENATOR GLOOR: Other questions? Seeing none, thank you, Senator Karpisek.

[LB621]

SENATOR KARPISEK: Thank you. [LB621]

SENATOR GLOOR: And that ends the hearing on LB621. The committee is going to continue to meet and would ask people to exit the room, if you would, so that we can go into Executive Session. [LB621]