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Banking, Commerce and Insurance Committee  
February 04, 2014

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[LB734 LB750 LB753 LB774]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, February 4, 2014, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB750, LB753, LB774, and LB734. Senators present: Mike Gloor, Chairperson; Mark Christensen, Vice Chairperson; Kathy Campbell; Tom Carlson; Tommy Garrett; Sara Howard; Pete Pirsch; and Paul Schumacher. Senators absent: None.

SENATOR GLOOR: Good afternoon. Welcome to the Banking, Commerce and Insurance Committee. I am Mike Gloor, I'm the Chairman of the Banking, Commerce and Insurance Committee. Looking around the room, I think everyone here has heard most of this speech innumerable times in the past. But having said that, I'll refer you to the board up there that has some of the rules of the road and give an abbreviated version of it. Please turn off your cell phones. We'll stick with the traditional order of testimony. Please sign in, give your sheet. We'd appreciate any handouts have ten copies. Pass those ten copies off. We won't run the timer. Today, of all days, there seems to be time to cover our issues. Here's a new one for you though. Please speak into the microphone. And this is not just for testifiers, but also for members of our august committee, so the transcribers can pick it up. Be sure and spell your name. And to my immediate right is counsel, Bill Marienau. To my left, Jan Foster who is committee clerk. And I'll have the senators in attendance introduce themselves. Senator Garrett.

SENATOR GARRETT: Senator Tommy Garrett from District 3.

SENATOR SCHUMACHER: Senator Paul Schumacher, District 22.

SENATOR CHRISTENSEN: Senator Mark Christensen, Imperial.

SENATOR GLOOR: And I know we have a couple of senators who will come in late because they're presenting bills. The others don't have excuses, but we'll forgive them, I'm sure. Our pages are Emily Schiltz from Sioux Falls, South Dakota, and Steven Schubert who is from here in Lincoln. And we're glad to have them helping you and helping us. And with that, we welcome back Senator Harr. Take it away, Senator Harr.  
[LB750]

SENATOR HARR: Thank you, Chairman Gloor. Members of the Banking, Commerce and Insurance Committee, I'm Senator Burke Harr and I represent midtown Omaha which is comprised of Dundee, Benson, and the Keystone neighborhoods. LB750 before you today, addresses how the Secretary of State's Office files financing statements related to statutory agricultural liens. This bill was brought to me, and I'm introducing it on behalf of, the Secretary of State, Mr. John Gale. And I want to thank him for giving me this bill. There were approximately 3,900 of these types of agricultural

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liens or financing statements filed from 1979 to 2003. In 2001, the Legislature changed the way we do UCC financing statements. We used to differentiate between agricultural liens and other types of financing statements. In 2001, we eliminated that and it went into effect in 2003. The only way to remove...and from 2003 on, they have a termination date of five years from date of filing unless a continuation is filed. The only way to remove these statements from the record is to file a termination statement. Under current law, once an initiated document is filed, it remains active in the index and available for up to five years from date of filing. The financing statements related to statutory agricultural liens are not included in the current statute so they do not lapse off the record after five years. Many of the lienholders for these liens have gone out of business or cannot be located. Therefore, the liens cannot be terminated. This has created a problem for the debtors listed because these liens appear on the buyers' registration list or master lien list that is used by purchasers of ag products. LB750 addresses this issue by requiring the filing of a continuation statement for the older liens in order for them to remain active. These liens would be treated similarly to the UCC Article 9 rules which would allow them to lapse off after five years unless continued. I would ask you to please advance LB750 out of committee. And I'll be happy to answer any questions you may have. [LB750]

SENATOR GLOOR: Thank you, Senator Harr. And so hypothetically, those liens would, without this change, continue in perpetuity? [LB750]

SENATOR HARR: That is correct. In actuality, that is what happens. [LB750]

SENATOR GLOOR: In actuality, yeah. And the statement in the statement of intent says...let me read the sentence. "...these liens appear on the buyers' registration list (or master lien list) that is used by purchasers of agricultural products." But not specifically by purchasers of agricultural products. I mean it...or is it just...is there a specific issue here with purchasers of agricultural products? [LB750]

SENATOR HARR: Yeah. So we used to treat ag liens...ag liens used to...are treated differently in that the proceeds from the sale of that crop are what the lien is against. So it's not against all of your property. [LB750]

SENATOR GLOOR: Gotcha. [LB750]

SENATOR HARR: And so that's why it would be treated differently. And we used to treat those...and now we say, hey, they all fall under UCC 9, whether it's the proceeds...I mean the rules and regulations fall under UCC 9, whether the proceeds are that product that you are growing or the proceeds are your car if you're...have a lien against your car. Problem is, there may have been a lien you filed in 1999. You had an ag lien and you took care of it in 2008 or maybe that year, but there was a continuing lien on there. Well, you haven't used them in a long time. Well, now you want to do a

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new UCC or you want to do a new ag financing and there's a lien that takes priority over yours which means, that person would get money before your new borrower of money would, even though that debt has been paid off. [LB750]

SENATOR GLOOR: Or the person who filed that lien did so 20 years ago, 25 years ago and nobody can relocate them to make good on it. [LB750]

SENATOR HARR: And that's why you can't...yeah, you can't terminate it so you can't find them so they still have a priority lien on paper but they don't exist. [LB750]

SENATOR GLOOR: Would there still be efforts towards notification before the end of that five years? In other words, if this bill goes forward, there's a notification process, I'm sure. [LB750]

SENATOR HARR: Of every lien, current lienholder? [LB750]

SENATOR GLOOR: Yeah, that if...or there's close to a point of expiration. Is that spoken to? [LB750]

SENATOR HARR: Well, and there are those coming up after me, hopefully. I think Bob Andersen was going to come. But, hopefully, they'll inform their members. And if you have a lien against someone, you're going to pay attention to it to make sure that remains current. And so you'll be probably aware of what the law is. [LB750]

SENATOR GLOOR: Okay. Other questions from committee members? Senator Carlson. [LB750]

SENATOR CARLSON: Thank you, Senator Gloor. Senator Harr, I want to commend you. LB750 is 317 pages shorter than LB749. We're headed in the right direction. [LB750]

SENATOR HARR: I'm trying. Thank you. [LB750]

SENATOR CARLSON: Okay. Thank you. [LB750]

SENATOR GLOOR: Senator Schumacher. [LB750]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Senator Harr, prior to 2003 or somewhere in there, you didn't have to file with the Secretary of State in order to perfect some of these liens. Is that correct? [LB750]

SENATOR HARR: You could file on the county level. That's correct. [LB750]

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SENATOR SCHUMACHER: Right. And so the Secretary of State's Office may not even know that some of these liens exist at the county level. [LB750]

SENATOR HARR: Well, you know, I'm a fan of the belt/suspender. So I would...most could probably file at the county and state level. But there may be some out there, yeah. [LB750]

SENATOR SCHUMACHER: And they would be perfectly valid liens up to...without this piece of legislation. [LB750]

SENATOR HARR: They are. [LB750]

SENATOR SCHUMACHER: Okay. An artisan lien, that isn't restricted to agricultural products. If I'm a watchmaker that fixes your watch, they're entitled to an artisan lien. [LB750]

SENATOR HARR: And I don't have...there's artisan. I think that falls...yeah, there's the artisan lien and then there's one right after, jewelers. I think, watchmaker, I don't know if they're artisans or jewelers but, yeah. [LB750]

SENATOR SCHUMACHER: Okay. Now suppose you were a person who somebody owed money to and you filed a lien on them, properly done back before we change the law. [LB750]

SENATOR HARR: Yep. [LB750]

SENATOR SCHUMACHER: And you paid a lawyer good money to inform you of the law. And the lawyer said, you know, once you file this, it's good forever. And if that so-and-so ever comes into any money, he's going to have to...or liquidate some of his property, he's going to have to pay you. Okay? That's it. And that would have been a correct statement of the law. Is that correct? [LB750]

SENATOR HARR: Yes. [LB750]

SENATOR SCHUMACHER: Okay. So now you're at home, you're happy, and you know that if that so-and-so ever comes into any money, he's going to have to deal with you. And now we pass this law and that so-and-so... [LB750]

SENATOR HARR: Uh-huh. [LB750]

SENATOR SCHUMACHER: ...can put a banker or put some other liens, a newer lien where he failed to pay his bill ahead of you without any notice to you. And you're relying on perfectly good legal advice. The lawyer may even be dead now so you can't even

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hound him. [LB750]

SENATOR HARR: It was right, but it wasn't complete. [LB750]

SENATOR SCHUMACHER: In what respect? [LB750]

SENATOR HARR: Well, the respect of a good lawyer would say, however, a future Legislature or a current Legislature cannot bind a future Legislature. So you might want to check back occasionally with me and I will also check back with you if there's a change in the law. [LB750]

SENATOR SCHUMACHER: Well, should that lawyer then have also informed them that, you know, this becomes a vested lien right and a future Legislature cannot take it from you because it would be a taking without some compensation? It can't interfere with your contracts. [LB750]

SENATOR HARR: It's not taking because all it is, is a notice that you have a priority lien. [LB750]

SENATOR SCHUMACHER: Wouldn't it be a lot fairer in this if a debtor feels that he's been unduly burdened by one of these old, old liens that he have to file some affidavit, some attempt to make contact with the creditor before it just magically disappears? [LB750]

SENATOR HARR: Well, the problem you have here is it's been 11 years...it's been 13 years since the law has been passed. It's been 11 years since it's been implemented. And they're sitting there and they're just growing stale. And the problem is, you know, put yourself in the position of the debtor. They're trying to chase down...they have this lien on their property that for some entity, they paid off the lien and the entity doesn't exist anymore. There's a reason why we put the five-year statute of limitation, well, not a statute of limitation, but a five-year term on there is because we want to make the flow of money easy. This is prohibiting the flow of money. [LB750]

SENATOR SCHUMACHER: This is a lien that this person has got. And we're taking it away without any notice to him? Or we're taking it away without...I mean, granted, if the guy no longer exists, the company is bankrupt, whatever, there's a... [LB750]

SENATOR HARR: Remember, these are agricultural liens though. [LB750]

SENATOR SCHUMACHER: Well, an artisan's lien is not an agricultural lien. And even if these are agricultural liens, why should somebody who feels that they've got a lien against a farmer for an unpaid bill and who has a legal opinion dating back to 2000... [LB750]

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SENATOR HARR: We're not taking it away. [LB750]

SENATOR SCHUMACHER: We're just taking it away. [LB750]

SENATOR HARR: We're not taking it away. You have five years. [LB750]

SENATOR SCHUMACHER: But they're not notified of the changes in the situation of they had what they thought were a vested right. [LB750]

SENATOR HARR: So what would you...I guess...so if...to make it better, you would like to see a notification requirement within the statute? [LB750]

SENATOR SCHUMACHER: Before these things go away, there has to be some reasonable effort to contact the person who is owed the money and plotting out a valid lien. [LB750]

SENATOR HARR: Okay. We could...I could definitely work with you on that in regard to asking the Secretary of State to send a notice to each secured party. [LB750]

SENATOR SCHUMACHER: Why burden the Secretary of State? Why not just have the debtor send the notice? [LB750]

SENATOR HARR: Oh, I think...well, I mean... [LB750]

SENATOR SCHUMACHER: Maybe we can work on it then. [LB750]

SENATOR HARR: Yeah. [LB750]

SENATOR SCHUMACHER: Thank you, Senator Harr. [LB750]

SENATOR GLOOR: Other questions? Are you going to stay around to close, Senator Harr? [LB750]

SENATOR HARR: I will. [LB750]

SENATOR GLOOR: Okay. [LB750]

SENATOR HARR: (Exhibit 1) And I do...I forgot. Bob Andersen from the Nebraska Cooperative Council was planning to be here today. Due to inclement weather, he was unable to attend. However, he did, graciously, send a letter... [LB750]

SENATOR GLOOR: Okay. [LB750]

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SENATOR HARR: ...in support of this. So thank you. [LB750]

SENATOR GLOOR: We'll get those distributed to the committee members. [LB750]

SENATOR HARR: Thank you. [LB750]

SENATOR GLOOR: We'll move to proponents. Good afternoon. [LB750]

COLLEEN BYELICK: (Exhibit 2) Good afternoon, committee members, Chairperson Gloor. For the record, my name is Colleen Byelick, it's C-o-l-l-e-e-n B-y-e-l-i-c-k, and I am the general counsel for the Secretary of State's Office here on behalf of Secretary of State, John Gale. As we have discussed, the Secretary of State's Office files financing statements related to statutory agricultural liens. And these statements are available for inspection at our office, they're available on-line, and they're also included as what's kind of commonly referred to as the quarterly buyers' list or the master lien list which is a list that's distributed to buyers of agricultural products. And it's part of the clear title system through the USDA. As we have discussed, some of these records date back several decades to 1979 and most likely have been satisfied or are no longer valid. However, the suppliers or providers associated with these filings have not filed a termination statement to indicate that the lien has been satisfied. In many cases, these lienholders have gone out of business or have moved and there is no one left to terminate the lien at this time. And the purpose of this bill is to clean up these records and to remove these older statutory liens, which are no longer in effect, from the record. And then to further clarify that all of these types of liens, regardless of when a financing statement was filed, should be treated as agricultural liens pursuant to Revised Article 9 of the Uniform Commercial Code. And basically, the bill accomplishes this by requiring a continuation statement to be filed between June 30 of this year and January 1, 2015. The continuation statement must provide that the original financing statement is still effective. The bill provides that the filing of that continuation statement preserves the priority of these filings and also can be subsequently continued pursuant to the Uniform Commercial Code. If the financing statement is not continued as provided in this bill, it would lapse off the Secretary of State's public searchable records and would no longer appear on this quarterly buyers' list or master lien list. The purpose of this bill is to assist sellers of agricultural products, to assist them to transact business without the impediment of a lien that's no longer valid hindering their ability to obtain financing or negotiate payment for their goods, and will also assist the Secretary of State's Office in maintaining accurate and reliable records. I just want to address a couple of questions that we've had so far. And we do plan to notify the lienholders on record at their last known address via first-class mail regarding this change in legislation if it is to go through. Also, in terms of...although these types of liens were filed at the county prior to 1998, the county was required to data enter the information regarding the lien into the Secretary of State's record. So we do have records of all of these, although we don't

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actually have the image that was associated with that particular lien, but we do have a record of that filing. And that's included in the 3,900 that we're talking about today. And then with regard to the master lien list, basically when a purchaser of agricultural products, you know, whether it's a grain warehouse or sale barn, when they purchase the product, they look on this master lien list. And if a lien is notated, they can only take that product with free and clear title if they include in the check that they're issuing to the farmer, the seller of the product, that specific lienholder's name. And so then that farmer/seller has to, then, take that and negotiate it with that specific lienholder so they can get their money for selling their product. And so, obviously, this creates an issue when you've got liens showing up on this list that are no longer valid, these companies have gone out of business. How do you negotiate this check and how do you cash this check? And so several of these situations have been brought to the attention of our office. And so that's why we're bringing this bill forward today. Are there other questions that I might be able to answer? [LB750]

SENATOR GLOOR: Thank you, Ms. Byelick. Any questions? I see none. [LB750]

COLLEEN BYELICK: Thank you. [LB750]

SENATOR GLOOR: Thank you. [LB750]

ROBERT HALLSTROM: Chairman Gloor and members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB750. We believe that it is a good consumer protection effort to rid the records of these liens that are no longer effective or valid, but for which there's no mechanism by which the Secretary of State can remove them from the record. Senator Schumacher, with regard to some of your questions or issues, perhaps not all, but many of these liens only apply to a certain limited crop year, for example. So I don't think that the effectiveness of them, in terms of lienholder rights being cut off that have any validity, is probably fairly limited if at all even existent. Some of these liens that are noted in the statute or in the proposed legislation, specifically relate to only a particular crop year and that they are only effective if enforced within a certain period of time. I don't believe that's true for all of them, but many of them have that type of provision in them. I'd also note that the language in this bill is very similar to the transition rules that applied to regular financing statements when we made the transition over in July of 2001 when UCC Article 9 was revised at that time. We had farm products filings at that time that were required to be filed at the county level. They were obligated as security-interest holders to transition those up to the Secretary of State. And we set a similar six-month window within which to get that done or you would lose your perfected status. That seemed to work well in terms of having a similar concept set up for those particular transitions from the local to the state level. I think all of those ag liens that were previously done without the UCC financing statement requirement before July 1, 2001, were similarly transferred or transmitted, at least in the



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database, up to the Secretary of State's level. So I would assume that the Secretary of State has knowledge or should have knowledge of all of those 3,900 filings that they indicated are out there. So with that, we would encourage the committee to advance the bill for further consideration. [LB750]

SENATOR GLOOR: Any questions? Senator Carlson. [LB750]

SENATOR CARLSON: Thank you, Senator Gloor. Bob, if you were hired to oppose this bill, what...is there any downside that you could focus on that you're aware of? [LB750]

ROBERT HALLSTROM: Senator, I don't think...I think this is the classic...we've had similar situations, Senator, where the Secretary of State has pulled their hair out trying to figure out what do we do with financing statements that are filed of record when the secured party is no longer in existence. So we don't have anybody to contact that can physically remove or terminate the financing statement. And we changed the law in some respects there, to essentially say that there could be a termination filed after a certain period of time by the Secretary of State. So I can't think of any downside. I don't think these liens are intended to be enforced or probably have any validity or effectiveness in terms of applying to specific collateral after the period of time that we're talking about that the bill covers. I would probably want to make sure that we've got all of our dates and our terminology correct in the bill. And I'll visit with the Secretary of State with respect to that. I noticed that there's a November 1, 2003, date that's in there when we transferred over to July 1, 2001, was the actual UCC transition date. So I'm not exactly sure where November 1 came from. But, at any rate, I'll straighten that out and clear that up in my mind. But otherwise, I'd have no reason to have any heartburn over any of the provisions or the effect of the legislation. [LB750]

SENATOR CARLSON: Okay. Thank you. [LB750]

SENATOR GLOOR: Other questions? Seeing none, thank you, Mr. Hallstrom. [LB750]

ROBERT HALLSTROM: Thank you. [LB750]

SENATOR GLOOR: Other proponents? [LB750]

KATIE ZULKOSKI: Good afternoon, Chairman Gloor and members of the Banking, Commerce and Insurance Committee. Katie Zulkoski, Z-u-l-k-o-s-k-i, testifying in support of LB750 on behalf of the Nebraska State Bar Association. I have nothing to add that the prior proponents have stated other than that the attorneys that practice in this area that sit on our legislation committee and on the House of Delegates thought that it made sense to bring these liens filed prior to 2003 in and make them subject to the same provisions that liens filed after 2003 are subject to. And I'd be happy to answer any questions. [LB750]

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SENATOR GLOOR: Are there any questions for Ms. Zulkoski? Senator Schumacher. [LB750]

SENATOR SCHUMACHER: Thank you, Senator Gloor. So if lawyers prior to, whatever it is, 2000, drafted some of these liens, maybe did it for quite a few people, would it be incumbent--if this is passed--on them, to look through those old files to find out where those lienholders are at, the status of those liens, and to notify their clients that these things were about to expire, particularly in the cases where they might have indicated to the client that, you know, you perfected it, this is good, if that thing is ever sold, it's...you're going to be in line? [LB750]

KATIE ZULKOSKI: I think that's an excellent question. And your question to the Secretary of State's Office, Ms. Byelick, was a good one. And I'm happy to hear that they are going to notify these lienholders. But I think, and certainly as the Bar Association, our case specific, we've been letting...we let attorneys know right away. We've sent an e-mail out to every single attorney that gets our e-mails that this bill was introduced. We are, as we are able, letting attorneys know this is out there so that if you do...if you have filed these liens prior to 2003, you are aware of this bill that this would be a change. [LB750]

SENATOR SCHUMACHER: What obligation then does the attorney have to go chase this down? Are we shifting burden to the attorneys here? [LB750]

KATIE ZULKOSKI: That's a question I don't know the answer to. [LB750]

SENATOR SCHUMACHER: And as I understand it, you know, the Secretary of State's Office has volunteered to send these letters out. I don't think that's part of the statute. [LB750]

KATIE ZULKOSKI: No, you're right. It's not part of the statute. [LB750]

SENATOR SCHUMACHER: Thank you. [LB750]

SENATOR GLOOR: Other questions? Seeing none, thank you. Any other proponents? Are there any opponents of this bill? Anyone who would like to speak in a neutral capacity? Senator Harr, you're recognized to close. [LB750]

SENATOR HARR: Thank you, Mr. Chairman. Just quickly, you've heard the people who practice in this area say there's nothing wrong with this legislation. Senator Schumacher, your concerns are valid. If you feel it rises to the level that we need to put it in statute, I'm more than willing to work with you to do that. And I'm working with Bob or Mr. Hallstrom to deal with this 2003 date, November 1, to see why it is there. But...so

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there may be an amendment coming forth. But right now, you know, these liens have been out there for...well, by the time they terminate will have been out there for over 15 years, probably closer to 20 than 15. And they probably have gone stale. I mean, there's a reason why we put a five-year term limit on it right now, to require you to put a continuation statement on there. So with that, I would close. Thank you. [LB750]

SENATOR GLOOR: Any final questions for Senator Harr? Thank you, Senator Harr. [LB750]

SENATOR HARR: Thank you, sir. [LB750]

SENATOR GLOOR: We will not see you tomorrow because we don't meet tomorrow. And we'll now close the hearing on LB750 and move to LB753. And I'll turn the gavel over to Senator Christensen. [LB753]

SENATOR CHRISTENSEN: Thank you, Chairman Gloor. And feel free to open. [LB753]

SENATOR GLOOR: Thank you, Senator Christensen. Fellow committee members, I am Senator Mike Gloor, G-l-o-o-r. LB753 also comes to us from the Secretary of State. I'm glad to introduce it on the Secretary's behalf. The bill would amend the Nebraska Uniform Limited Liability Company Act with regard to agents for service of process, which I'm told service of process is a little like--although the terminology is different in this particular statute--a registered agent. LLCs are required to designate and continuously maintain in this state, an agent for service of process. This information is to be included in a domestic LLC certificate of organization or, for that matter, in a foreign LLC, certificate of authority. This information, then, is to be included in an LLC's biennial report. Our LLC Act provides that a domestic or foreign LLC may change the address of its agent for service of process by delivering to the Secretary of State for filing, a statement of change. Pretty straightforward, but here's the issue. If an agent for service of process changes its address, often the most efficient thing to do is to go directly to the Secretary of State, on behalf of your client, to notify them. The problem is, it's not allowed for under our LLC Act. Our corporation act does not have any provisions that permit that to happen. Other corporation acts do allow that to happen. So all the bill does, in a very straightforward way, is provide that an agent for service of process may change its address for an LLC by notifying the LLC and then delivering to the Secretary of State for filing, a record to be called a statement of change of address for an agent for service of process. The LLC Act provides that a general \$10 fee for filings with the Secretary of State, and in keeping with that fee structure, this bill would provide that same \$10 filing fee for filing the statement of change of address for an agent of service for each LLC for which the agent is designated. That's the bill in a straightforward way. And I'd be glad to answer any questions. Clearly, there will be a testifier, Ms. Byelick, afterwards. [LB753]

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SENATOR CHRISTENSEN: Thank you, Senator Gloor. Are there any questions for the senator? Seeing none, thank you. [LB753]

SENATOR GLOOR: Thank you. [LB753]

SENATOR CHRISTENSEN: And we'll take the first proponent. [LB753]

COLLEEN BYELICK: (Exhibit 1) For the record, my name is Colleen Byelick, it's C-o-l-l-e-e-n B-y-e-l-i-c-k. I'm general counsel for the Secretary of State's Office here on behalf of Secretary of State, John Gale. The bill is very straightforward. It's allowing an agent to change its address on our records when the agent is an agent for service of process for a limited liability company. As it's been mentioned, the Business Corporation Act and the Nonprofit Corporation Act both allow for an agent to change its address. And so we're bringing in the Nebraska Uniform Limited Liability Company Act also into that same language and allowing the agent to change their address. And the bill does require the agent to notify the limited liability company if it chooses to change its address. So the company is also notified. And then the agent files a statement with our office regarding the change. I'd be happy to answer any questions you may have about the bill. [LB753]

SENATOR CHRISTENSEN: Are there any questions from the committee? Senator Carlson. [LB753]

SENATOR CARLSON: Thank you, Senator Christensen. Now the wording is "may." So why wouldn't it be "shall"? If there's a change of address appropriate, it would seem like it needs to be done. [LB753]

COLLEEN BYELICK: Well, I think the only reason it's probably "may" is because the limited liability company, itself, could also file a document to change the address. And really, the limited liability company is the one responsible for maintaining an agent and can actually be dissolved administratively if it doesn't maintain an agent. So this gives the opportunity for the agent to change its address. And typically, this is most likely going to be used for a law firm or other service company that acts as an agent for multiple entities, however. So it gives the agent this opportunity to change its address with our...in our records. But the limited liability company could also change...file a statement to change the agent's address with our office as well. [LB753]

SENATOR CARLSON: And this is about the agent. Now a limited liability company must have an address. [LB753]

COLLEEN BYELICK: It must maintain a registered agent. Uh-huh. [LB753]

SENATOR CARLSON: And that...what's registered with the Secretary of State? You

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have the name of the agent and the address of the agent. What about the limited liability company, itself? [LB753]

COLLEEN BYELICK: Right. They have what's called a designated office, which is similar...a similar concept to a principal office or a principal place of business. So the limited liability company denotes that office on their certificate of organization and on their biennial report as well. [LB753]

SENATOR CARLSON: Okay. And that's required. So then, if that limited liability company moves, are they required to notify the Secretary of State of the change of address? [LB753]

COLLEEN BYELICK: If they move, no. It would probably get picked up on their biennial report. But they can also change it. There's basically one form that they can change both the designated office and the agent for service of process. [LB753]

SENATOR CARLSON: Okay. So either way, it's going to be picked up on the biennial report. [LB753]

COLLEEN BYELICK: Uh-huh. [LB753]

SENATOR CARLSON: Okay. Which is required? [LB753]

COLLEEN BYELICK: Right. [LB753]

SENATOR CARLSON: Okay, thank you. [LB753]

SENATOR CHRISTENSEN: Are there any other questions from the committee? Seeing none, thank you, Ms. Byelick. Are there any other proponents? Are there any opponents? Anybody wish to speak in a neutral capacity? Senator Gloor, would you like to close? [LB753]

SENATOR GLOOR: Yes, I'd like credit for the briefest hearing so far that's come before this committee. That...actually, what's interesting in my life before coming to the Legislature, that some years ago, we did have an agent of process who had changed address. And we ended up being notified. I got a letter in the mail saying...from the Secretary of State's Office saying, it's come to our attention--and it was probably through the biennial report--that your agent of process has changed address. You need to let us know formally that that's occurred. And I'm going...well, I contacted our agent of process who said, oh, yes, we'll write the letter for you, but you'll need to sign it on your letterhead and send it in. And I remember thinking, why can't they just notify them directly that they've changed their address? Well, here we are, years later, and I'm carrying a bill that would allow that to happen. Pretty simple and pretty straightforward,

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but we need a bill to make it occur. Thank you. [LB753]

SENATOR CHRISTENSEN: Thank you, Senator Gloor. Any questions? Thank you. That closes the hearing on LB753. And we're ready to open up on LB774, Senator Pirsch. [LB753]

SENATOR PIRSCH: Great. Thank you, Chairman Gloor, members of the committee. For the record, I'm State Senator Pete Pirsch, P-i-r-s-c-h. I'm the introducer of LB774 that is brought on behalf of the Secretary of State's Office. And Chairman, I'm going to take up your challenge and see if I can't make this the briefest hearing. But this LB774 is intended to provide a mechanism for filing a corrected or amended biennial or annual report with the Secretary of State's Office. Currently, corporations are allowed to file amended or corrected biennial reports. This bill would allow joint public agencies, limited liability companies, nonprofit corporations, limited cooperative associations, and limited liability partnerships to amend or correct their reports. The information included in each report varies depending on the type of entity submitting the report. However, this bill would allow the entities mentioned above to update basic entity information such as principal place of business or correct errors discovered after the biennial reporting period by delivering an amended or corrected report to the Secretary of State for filing. You know, I'd be happy to answer your questions. I do understand that Colleen Byelick will, once again, be available to testify with respect to the bill, so. [LB774]

SENATOR GLOOR: Thank you, Senator Pirsch. Are there any questions? Seeing none, thank you, Senator Pirsch. [LB774]

SENATOR PIRSCH: Thank you. [LB774]

SENATOR GLOOR: Proponents for the bill? Good afternoon, again. [LB774]

COLLEEN BYELICK: (Exhibit 1) It's great to be here. For the record, 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 of State, John Gale. I'd like to thank Senator Pirsch for introducing this bill. Again, it's a very simple purpose to allow joint public agencies, limited liability companies, nonprofit corporations, limited cooperative associations, and limited liability partnerships the ability to amend or correct their biennial or annual report. Currently, the law provides this mechanism for corporations, but it doesn't provide it for these other types of entities and this is something that we've heard from filers in our office that they would like to be able to do. Specifically, for nonprofit corporations, we've heard that they would like to be able to update officer and director information if that piece of information is required in their biennial report. But there's also other pieces of information, like a principal place of business, that a business might want to update on their report. And then this also provides an easy mechanism for them to correct a report if they discover an error after the reporting

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period has ended. I'd be happy to answer any questions you may have about the bill.  
[LB774]

SENATOR GLOOR: Are there any questions of Ms. Byelick? Seeing none, thank you.  
[LB774]

COLLEEN BYELICK: Thank you. [LB774]

KATIE ZULKOSKI: Good afternoon, Chairman Gloor and members of the committee. My apologies to Senator Pirsch. I am totally losing this battle for him with the shortest hearing. But I'm Katie Zulkoski, Z-u-l-k-o-s-k-i, testifying in support of LB774 on behalf of the Nebraska State Bar Association. This...I was thinking, sitting through the last hearing, that this is quite similar to the bill Senator Gloor just introduced that I did not step up here and testify in support of. However, interestingly, members of the legislation committee of the Bar Association have actually run into this problem and wanted to file an updated or amended biennial report, but were unable to and so we're happy that this change was submitted on behalf of the Secretary of State. So thank you, Senator Pirsch and Secretary of State's Office, for cleaning this up. [LB774]

SENATOR GLOOR: Any questions for Ms. Zulkoski? Thank you for your testimony. Any other proponents? Any opponents of this bill? Anyone in a neutral capacity? Senator Pirsch. [LB774]

SENATOR PIRSCH: I'm going to waive. [LB774]

SENATOR GLOOR: I think it was a tie there. [LB774]

SENATOR PIRSCH: Yep. Yep. [LB774]

SENATOR GLOOR: Clearly, a tie. Thank you. And that closes the hearing on LB774. We'll now move to LB734. Senator Schumacher. [LB774]

SENATOR SCHUMACHER: (Exhibits 1 and 2) Chairman Gloor and members of the committee, I'm Paul Schumacher, S-c-h-u-m-a-c-h-e-r, here today to introduce LB734. LB734 has been before this committee on a number of occasions over the past number of years. And it probably wouldn't be here today except for a bit of a story which I think earned the credit unions a right to be heard at least one last time here. I became aware of a situation in Columbus where a couple in their late 50s, early 60s had fallen behind on their mortgage payments. And they owed about \$3,000. Their mortgage payment was about \$400 a month. And they had one...the husband was kind of disabled and the wife was on oxygen and really disabled. And the bank that they originally dealt with was a bank located here in the state, a state bank or a state institution, at least. And they had merged, bought up, sold out, whatever to a large out-of-state bank. And the large

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out-of-state bank could have given a hoot about their situation. They were just going to foreclose on the mortgage. And even though it was 9 percent interest, there was no talk about renegotiating it, no talk about changing the terms, they just were going to foreclose come hell or high water. And these poor folks went around to institution to institution in the Columbus area seeing if they could refinance. They had equity in the house of about \$50,000. They needed \$20,000 to pay off the out-of-state bank and resume making payments. With today's interest rates, a \$20,000 loan put out over a 15-year or so amortization schedule, they can make the \$200, \$300 a month interest payments, mortgage payments. None of the local banks would deal with them, but the Columbus Federal Credit Union did. And those people, instead of being thrown out of their home and literally on welfare now, are in their home. Or at least one of them is because the wife passed away. So I figured one good turn deserves another and this bill is back before the committee. It's a very simple bill. It's a bill that would allow public entities to deposit their money into a credit union, an institution guaranteed by the National Credit Union Administration just as if it were by the FDIC and a bank. And it extends that authority to the local governments to put their money there, arguably, negotiate back and forth--with the credit union included in the mix just as though it were a bank--for interest rates and give them another option for where they can put their money. Some of the towns, as you will find, don't have a local bank even. It's the local credit union or nothing. And presently, there's inconvenience even in those situations of having to go out of town to make a deposit of the town's funds or their sewer money or whatnot. So with that, I'll be happy to answer any questions. People following me will elaborate more on the issues here involved. [LB734]

SENATOR GLOOR: Senator Schumacher--and thank you for your opening--we have a letter here from Alan Peterson that speaks to the issue of constitutionality. Are you aware of that question that's come up and are you aware of his response? [LB734]

SENATOR SCHUMACHER: I just picked up his letter just prior to the hearing. I understand that he has come to a determination in that letter, even though I haven't studied the particulars, that this bill is okay, it doesn't violate the constitution. There is a constitutional provision, apparently, that deals with public entities having an interest in a private entity, and I think he addresses it in that. And that he comes to the conclusion that this doesn't violate that constitutional provision by just allowing a deposit into these institutions. [LB734]

SENATOR GLOOR: Okay. Other questions for Senator Schumacher? Senator Carlson. [LB734]

SENATOR CARLSON: Yeah, thank you, Senator Gloor. Just out of curiosity, in the situation you were talking about in Columbus, they had a 9 percent interest loan. What would the current interest rates have been? [LB734]



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SENATOR SCHUMACHER: I think the current interest rate, if I remember right, was between 4 percent and 5 percent. [LB734]

SENATOR CARLSON: About half. [LB734]

SENATOR SCHUMACHER: About half. And it enabled them to make the payments because most of their payments was interest, so. [LB734]

SENATOR CARLSON: Thank you. [LB734]

SENATOR GLOOR: Thank you, Senator Schumacher. [LB734]

SENATOR SCHUMACHER: Thank you. [LB734]

SENATOR GLOOR: We'll move to proponents. Brandon. [LB734]

BRANDON LUETKENHAUS: (Exhibit 3) Thank you. Mr. Chairman, members of the Banking, Commerce and Insurance Committee, my name is Brandon Luetkenhaus, spelled B-r-a-n-d-o-n L-u-e-t-k-e-n-h-a-u-s. I'm here today on behalf of the Nebraska Credit Union League. Our trade association represents 96 percent of our state's 69 credit unions and there are 455,000 members and consumers. Credit unions are not-for-profit cooperative financial institutions. I appear before you today to offer our association's support of LB734. I want to thank Senator Schumacher for introducing what we believe to be commonsense legislation. LB734 would simply include Nebraska credit unions on the list of permissible depositories for political subdivisions in Nebraska to consider when depositing public funds by including credit unions in the definition of qualified mutual financial institutions. LB734 does not provide Nebraska credit unions with any additional powers. The fact is, that the ability of credit unions to accept public deposits is such a common practice that the Federal Credit Union Act--which is found in where I provided you attachment A--explicitly authorizes credit unions to accept these deposits. So credit unions can currently accept these public deposits. However, Nebraska statutes does not allow political subdivisions to consider credit unions as an option because credit unions are not included on that list of permissible depositories. We believe there would be many benefits to passing this bill. It would increase local control by allowing local governments to decide for themselves which federally insured financial institution is best for their public deposits. It would increase competition for public deposits, thereby providing local governments a better environment to get the best interest rate on deposits possible and the best service available. According to data provided, in attachment B, to the National Credit Union Administration by SNL Datatrac, credit unions, on average, are paying 22 basis points more on a year share certificate of deposit and 55 or 58 basis points more on a 5-year CD compared to banks. LB734 would provide convenience by allowing communities to utilize their local financial institution whether it be a bank or a credit union. In fact, there are several communities

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that Senator Schumacher alluded to within the state where the local credit union is the only financial institution in that community. For these communities, they have no choice but to take their residents' money and deposit it into a financial institution outside their own community. I believe a letter was provided to you by Senator Schumacher from the village of Meadow Grove. And they provide a picture there showing, literally, the credit union is next door to the clerk's office. So the clerk...typically what happens is, they will take the money over to the credit union and stash it there for the moment...for the time being. And then she'll pick it up and have to go deliver it to an outside town, outside of Meadow Grove. So for that community, it's very important as well that this legislation pass. Credit unions are locally owned and operated and, therefore, deposits made into those credit unions are reinvested back into that community through loans and services to the local residents. The bill does not mandate that local governments deposit into a local credit union but, rather, provide credit unions as an additional choice. Having more choice is, obviously, superior to having fewer choices. We do not see any ill effect from passing LB734 to the taxpayers of this state nor to the governments that oversee their monies. Passing LB734 will bring more local control, more options for local governments, greater competition, more convenience, better rates, and better service. There is little doubt that the banking industry will oppose this common-sense legislation. In doing so, the banking industry is attempting to limit local control by dictating to our local government officials where they must deposit their communities' funds. We trust that this committee and this Legislature will consider the makeup of proponents for LB734. The fact that so many public entities and their associations support this bill, including the League of Municipalities, Douglas County Board, Lancaster County Board, Nebraska Rural Electric Association, Village of Meadow Grove, NACO should demonstrate the need for this committee to move LB734 to the floor of the Legislature for consideration. These public entities and their associations are asking for more options when conducting their business...banking business. This legislation has the strong support of public entities because it's good public policy. It increases choice in the marketplace and provides greater competition. I want to address several issues that the opponents may bring up. Since I don't have the option of testifying after them, I want to bring these up so that it can be said. Regarding taxes, it's often the opponents will most likely argue that credit unions should not be allowed to accept public funds because they do not pay taxes. First, credit unions already accept public deposits. LB734 would allow local governments to consider credit unions when depositing. Second, the simple truth is credit unions do pay taxes. They are subject to the same levels of payroll and property taxes, both real and personal, as banks. State-chartered credit unions also pay the Nebraska sales and use taxes, as well as the Nebraska financial institutions' depository tax. It should be noted that a large portion of local government receipts are derived from these taxes that are assessed on both banks and credit unions. I also want to clarify to this committee, because it has been said before, but there is no state income tax on financial institutions, whether it's banks or credit unions. It's a state depository tax so there is no state income tax on financial institutions in this state, corporate income tax. In 1937, Congress provided the nation's credit

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unions with a federal tax exemption because of their not-for-profit status cooperative structure. Credit unions return their earnings back to their depositors and not back to a few shareholders. Since that time, Congress has reaffirmed their support for the credit union federal tax exemption on multiple occasions and most recently in 1998. Credit unions are not the only financial institutions that have beneficial tax preference. In fact, 40 percent of Nebraska's banks are organized as Subchapter S corporations. As a result, those 85 Subchapter S banks forego paying an estimated \$33 million in federal tax revenue as seen on attachment C. They are not, however, prohibited from accepting public deposits. On the contrary, all of Nebraska's Subchapter S banks, I believe, hold public deposits. Regarding federal insurance, Nebraska credit unions are safe and sound. Nebraska law requires all financial institutions--both banks and credit unions--operating in the state, to obtain and maintain federal insurance. Every Nebraska credit union is federally insured by the National Credit Union Administration through the share insurance fund under the same terms and conditions and limits as the FDIC. And therefore, each account in Nebraska in a credit union is federally insured up to \$250,000. Both (National) Credit Union Share Insurance Fund and the FDIC have the full faith and backing of the United States government. Since the credit union insurance fund has been in existence, no depositor has ever lost a penny of federally insured funds. Any indication that the NCUSIF--which is the share insurance fund for credit unions--is inferior to FDIC, is factually inaccurate. The safeguarding of public funds, the people's money, is an essential and increasingly important function of public entities in order to address potential concerns that taxpayer funds are adequately protected. The public entities would have the ability to negotiate the form and amount of collateral to secure their funds in excess of federal insurance limits. This is the same process currently in place to collateralize such deposits in banks, as seen in attachment D. Twenty-five other states across the country have allowed their credit unions to accept public deposits or allowed their local governments to put public deposits into credit unions. Nonmember deposits, the opposition may argue that allowing local governments to deposit funds into credit unions is unconstitutional based on credit union membership and charter. This assertion is false. I refer the committee to a letter that Senator Schumacher provided--and it's also provided in my testimony--from constitutional attorney, Alan Peterson, regarding the constitutionality of public deposits in local credit unions. Federal regulation allows credit unions to accept nonmember deposits, including nonmember deposits made by local, state, or federal government entities. As a qualified mutual financial institution, state statutes do not require that a public entity become an owner or acquire voting rights as a condition of depositing public funds in a financial institution. As a result, credit unions would not have to change their charter or structure to participate in a public funds process. It's also important to note that LB734 does not require public entities to deposit in any particular type of federally insured financial institution. It simply provides greater local control by giving them greater choice. The Community Reinvestment Act, I've heard it be said that credit unions aren't...they don't have to go by the CRA requirements and, therefore, they shouldn't be allowed to accept public deposits. Well, the fact is, the Community

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Reinvestment Act was put into place by Congress basically because banks were red-lining, taking deposits from low-income areas and not making loans to those areas. And so Congress, in 1977, passed CRA to ensure that banks would actually make loans in those communities as well. Credit unions were not in that legislation because it was not necessary. Credit unions were making loans in those communities. Credit unions make loans to their members, they have fields of membership. So because banks are subject to CRA, should not mean they have a monopoly on public funds and that political subdivisions should somehow be required to deposit into banks because banks have to be subjected to CRA. That, to me, doesn't make much sense. In conclusion, we do urge this committee to pass LB734. I've provided you written testimony along with several attachments. We urge you to pass this legislation on to the full Legislature to General File for their consideration. And we thank you for your time and I would be happy to answer any questions you might have. [LB734]

SENATOR GLOOR: Thank you, Mr. Luetkenhaus. Are there any questions? Senator Christensen. [LB734]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Brandon. You stated the difference between Subchapter S--I may have to wear my glasses here--Subchapter S banks and other state-chartered banks. There are state and federal chartered savings and loans, there are state and federal chartered banks. Is there any difference in how a federal bank pays taxes compared to the federal-sponsored savings and loans, do you know? [LB734]

BRANDON LUETKENHAUS: Well, I can't really speak for the banks or savings and loans. I can speak to credit unions. State chartered credit unions in Nebraska really don't have a preferential tax treatment in this state. When you consider, yes, federal law provides an exemption for all credit unions because of their structure, they're not for profit, they're cooperative, owned by their members. Because of that, they don't pay federal corporate income tax. But state chartered credit unions pay state sales tax in Nebraska, they pay the deposits tax, they pay payroll tax, they pay property tax. So they pay most of the taxes that any state bank would pay. Federal chartered credit unions are a little bit different in that they are federally chartered. Therefore, they don't pay federal income tax, they don't pay state sales tax, but they do pay property tax, payroll tax, personal tax. So they do pay taxes. And so the general statement that credit unions don't pay taxes is false. Every credit union pays property tax which, frankly, everybody knows that's a large bill for a lot of folks. I mean, to say that Nebraskans who are property owners don't pay taxes because, you know, maybe they only pay property taxes. I think most citizens of this state would take offense to that statement. [LB734]

SENATOR CHRISTENSEN: Thank you. [LB734]

SENATOR GLOOR: Senator Carlson. [LB734]

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SENATOR CARLSON: Thank you, Senator Gloor. My first two years in the Legislature I was on this committee. And then I was off for four years, then came back last year. When was the last time that this similar bill came before the committee? [LB734]

BRANDON LUETKENHAUS: I believe it was once, two years ago. Three years ago, maybe. Two thousand and eleven. [LB734]

SENATOR CARLSON: Okay, and you've been...you're young, but you've been here awhile. [LB734]

BRANDON LUETKENHAUS: Uh-huh. [LB734]

SENATOR CARLSON: And how long have you been here? [LB734]

BRANDON LUETKENHAUS: Well, I've been with the Nebraska Credit Union League for nine years. [LB734]

SENATOR CARLSON: Okay. How many times during the nine years has this...and I'm not blaming you for bringing a bill forth. [LB734]

BRANDON LUETKENHAUS: Sure. [LB734]

SENATOR CARLSON: How many times have you in nine years? [LB734]

BRANDON LUETKENHAUS: I've seen legislation introduced in this nine years three times. [LB734]

SENATOR CARLSON: Okay. Okay, thank you. [LB734]

BRANDON LUETKENHAUS: Thank you. [LB734]

SENATOR GLOOR: Other questions? Seeing none, thank you for your testimony. [LB734]

BRANDON LUETKENHAUS: Thank you. [LB734]

SENATOR GLOOR: Other testifiers in support? [LB734]

GARY KRUMLAND: Senator Gloor and members of the committee, my name is Gary Krumland, it's K-r-u-m-l-a-n-d, with the League of Nebraska Municipalities, appearing in support of LB734. We support the bill. We think it'll give cities and villages an additional option for deposit of public funds. And as has been mentioned several times already,

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there are some smaller communities--we've heard from clerk/treasurers of some villages where they have a credit union in the community, but do not have any other financial institution--and have asked why do we have to drive several miles down the road to another community to deposit our money when we could do it in...across the street with the credit union? So I won't repeat what other people have said, but we do support the bill. [LB734]

SENATOR GLOOR: Thank you, Gary. Questions? Seeing none, thank you for your testimony. Anyone else who wishes to speak in support? Good afternoon. [LB734]

BETH BAZYN FERRELL: Good afternoon. Chairman Gloor and members of the committee, for the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials. I would echo the comments of Mr. Krumland. I think our association has the same ideas about this would give counties more flexibility in where they put their deposits. There are certain times of the year when even the smallest counties may have more deposits than the \$250,000 that's insured under the FDIC. And if they could distribute some of that money to the local credit unions, if there is one, that would help the bank not to have to provide pledged collateral and they wouldn't have to go through that process. I would also add another example of a county that does not have a bank within the town where the county seat is located. They do have a credit union. The county now has to drive 36 miles each way to the closest bank. If they could use the credit union for at least some of their financial transactions, that would be helpful to them, so. I'd be happy to answer questions. [LB734]

SENATOR GLOOR: (Exhibits 4, 5) Okay. Thank you, Ms. Ferrell. Questions? Seeing none, thank you for your testimony. Others in support? We have a letter of support that we'll enter into the record from the National Rural Electric Association, Nebraska Rural Electric Association. And we have a letter of support from the Board of County Commissioners from Douglas County that we'll hand out. We'll now move to those who are opposed. [LB734]

ROBERT HALLSTROM: (Exhibit 6) Chairman Gloor, members of the Banking, Commerce and Insurance Commerce Committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, and I appear before you today as registered lobbyist for the Nebraska Bankers Association in opposition to LB734. Many of you have been through this routine on a number of occasions with your tenure on the committee. And we would ask, again, that the committee indefinitely postpone this legislation. In my written comments, I have provided the background that historically savings and loans and mutual-based savings and loans were not subject to federal taxation. And ultimately, when they became more banklike, Congress, in its wisdom, decided to subject them to tax. Savings and loans were not eligible for public funds for many, many years. And then we made an exception for mutually created or established savings and loans that

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they could hold public funds. The Legislature eliminated the potential constitutional infirmities by providing for a waiver of the ownership interest that would otherwise be required, some of the issues that are addressed in Mr. Peterson's opinion letter that the committee has in their possession. But when savings and loans were allowed to have public funds, there was a significant distinction between savings and loans and the current treatment of credit unions, particularly federally chartered credit unions. And that is that savings and loans pay the full panoply of taxes that banks do, and many credit unions, particularly federally chartered credit unions, do not. To set the record straight, we have not in recent years and have not at this juncture today suggested that credit unions pay no taxes. The credit union representative has indicated to the committee the taxes that they do pay: property taxes, state chartered credit unions pay the deposit tax and sales taxes. But this is not a bill relating to state chartered credit unions only. We've heard about the handful of communities that don't have a financial institution within their boundaries that would like to see more flexibility. This bill is not only about those. This would open up to all credit unions, state and federally chartered credit unions, and we think that is inappropriate. I would suggest that if you want to change the focus, put some smoke and mirrors up. And that's what this constitutional opinion is, in my opinion. Since the Bankers Association are the only ones that have opposed this legislation, I'll suggest that we have not questioned the constitutionality of this approach. So don't be misled by the fact that an opinion tells you it's constitutional. The law has been on the books with regard to mutual savings and loans for many years and has not been challenged. That is not the issue. The issue is, that credit unions...and you heard Mr. Luetkenhaus suggest two or three times, at least, in his testimony, their dedication to their members and the fact that that justifies the tax-exempt treatment at the federal level. This bill strays from those core principles by saying we will do business with nonmembers, just allow the political subdivisions to disclaim any ownership interest that every other member has to have. And it gets them further away from their roots. To the extent that they don't pay the full array of taxes that banks do, we think that it's disingenuous to come forward and suggest that they, without paying their full share of taxes, ought to be able to feed from the public trough and accept public deposits. If no one paid taxes, we wouldn't have any public deposits to invest. And to the extent they don't pay their full share of taxes, they should not benefit from public deposits. We do think CRA is important. In fact, there's a provision in state law that says with respect to banks and savings and loans that can accept public deposits, that they have to have a satisfactory rating on their CRA examinations in order to remain eligible. So we believe the state Legislature, along with the federal government, has suggested that CRA is important and it should be an aspect taken into consideration in determining who is eligible for public funds. The last issue, just to clarify--and I clarify every time since S corporations have been allowed for banks to take advantage of, the distinction between S corporations and the fact that credit unions may argue that their depositors or their members pay taxes on the distributions that accompany the share ownership aspect that they have--is that an S corporation pays taxes on their earnings or the shareholders do, irrespective of whether they are distributed. So to the extent that they have

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earnings, taxes are paid by the shareholders of the S corporation. By contrast, the credit union, if they make salary payments, if they reinvest in brick and mortar, if they do not take out of retained earnings, my understanding is that the shareholders don't get a distribution. They, thus, don't pay any taxes. And so there is a significant difference between the two of them in terms of comparing them as apples to apples. With that, again, we would request that the committee indefinitely postpone LB734. And I'd be happy to address any questions of the committee. [LB734]

SENATOR GLOOR: Questions? Senator Christensen. [LB734]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Bob. In your testimony you talked about this not only opens up to state, but all federally chartered savings and loans. But if I remember the history correctly, you have opposed when it was only for the state. Is that correct? [LB734]

ROBERT HALLSTROM: Senator, I don't recall. I think the only exception that we've had has been Senator Flood, maybe one of his first years in the Legislature, either introduced a bill or perhaps an amendment that would have limited the application only to those communities that did not have another financial institution located within the boundaries. To my recollection--my memory may be lacking a little bit here--that's the only exception that I believe has ever been put forward formally before the Legislature. And I would add, and you introduced the legislation and I think you'll recall that when that was brought to our attention with regard to those communities, we reached out to our banks that were located near Meadow Grove and a couple of communities in your area that were subject to that issue. And in almost every case, we had banks reach out and, at that time and I presume since that time, have continued to accommodate the needs of those communities where they're not physically located. But since we changed our branching laws, they can now go and accommodate them by picking up deposits. And I know at least half or more of those communities were accommodated by another bank that we just needed to make sure the two of them got together and communicated. [LB734]

SENATOR CHRISTENSEN: I agree that you met the need of Palisade and a bank has reached out and took care of it that way. I'll rephrase the first question. If this was only state chartered, would you oppose it? [LB734]

ROBERT HALLSTROM: I'd have to take that back to my bankers. [LB734]

SENATOR CHRISTENSEN: Okay. I know I introduced the bill you referred to that if there were no other financial institutions there. Is that still your stance if...that you would stand opposed to them? [LB734]

ROBERT HALLSTROM: We have in the past. I'd have to take it back to my bankers



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again. But I'd certainly be more than happy to do so. But I think we've opposed that in the past. [LB734]

SENATOR CHRISTENSEN: Okay, thank you. [LB734]

SENATOR GLOOR: Other questions? Seeing none, thank you, Mr. Hallstrom. [LB734]

ROBERT HALLSTROM: Thank you. [LB734]

SENATOR GLOOR: (Exhibit 7) And a letter of opposition has been passed out to you from the Nebraska Independent Community Bankers. Are there others who would like to speak in opposition? Anyone in a neutral capacity? Senator Schumacher, you're recognized to close. [LB734]

SENATOR SCHUMACHER: (Exhibit 8) Thank you, Senator Gloor. I close only for the purpose of distributing a letter in support that I just was handed from the Lancaster County Board of Commissioners. I'd be happy to take any questions. [LB734]

SENATOR GLOOR: Are there any final questions? Senator Christensen. [LB734]

SENATOR CHRISTENSEN: I didn't think to ask Bob. I should have. Do you know...this is in Meadow Grove so do you know, did the banks reach out to Meadow Grove like they did my community of Palisade? [LB734]

SENATOR SCHUMACHER: I don't have any particulars on that. My personal knowledge, the fact that the town of Meadow Grove did send in that picture and that letter would suggest that, perhaps not. Or at least, if it was an attempt, it was inadequate. [LB734]

SENATOR CHRISTENSEN: Because I know Palisade has the same thing where the city office is right beside the credit union facility, too. Thank you. [LB734]

SENATOR SCHUMACHER: Was that close to the Last Resort in Palisade? [LB734]

SENATOR CHRISTENSEN: Yeah. [LB734]

SENATOR GLOOR: Any other questions? Thank you, Senator Schumacher. [LB734]

SENATOR SCHUMACHER: Thank you. [LB734]

SENATOR GLOOR: And that will end the hearing on LB734 and that will be the end of our public hearing. We are moving into an Executive Session so I'd ask those of you in the audience to, please, move toward the exit while we get ready to go into Executive

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Session. [LB734]