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Judiciary Committee
January 21, 2015

[LB22 LB43 LB66 LB72 LB88]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, January 21, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB66, LB72, LB88, LB22, and LB43. Senators present: Les Seiler, Chairperson; Colby Coash, Vice Chairperson; Ernie Chambers; Laura Ebke; Bob Krist; Adam Morfeld; Patty Pansing Brooks; and Matt Williams. Senators absent: None.

SENATOR SEILER: Good afternoon. The bewitching hour has arrived. And for any of you who are going to testify, the testifying sheets are outside where you come in. Make sure you fill those out in full. And when you come up to testify, hand that sheet to one of the clerk...the pages and then we'll have your names and get you properly documented to your particular testimony. I'd like to introduce the senators who are here on this committee. At my far right is Matt Williams from Gothenburg. Next to him is Adam Morfeld from Lincoln. Senator Krist is testifying in another two bills right now, so he'll be a little late but will join us later. Senator Chambers is in the building, and he told me he thought he could get here quickly. On the right is counsel Josh Henningsen. And once in a while you get a better looking one: Diane Amdor. So it depends on subject matter which counsel is joining us. On my left is Senator Ebke from Crete; Senator Patty Pansing Brooks from Lincoln; Senator Colby Coash from Lincoln; and our clerk, Oliver VanDervoort. Our pages are Drew and Rachel. My name is Les Seiler, and I'm Chairman of this committee. We will use the light system. Light system basically is: when it's green, you're on the go; when it turns yellow, you've got about two minutes left; when it turns red, we appreciate that you stop. And that will be for both the opponents, the proponents. And the neutral will have the same time sequence: three minutes. The senators who introduce and close are not bound by the clock, so if you hear them going longer that's their prerogative. So silence your cell phones and other gadgets. I have ruled that...it looks like I'm the only one that brought it today, but we can use computers in this...these hearings. I've been a believer of that for a long time, so you'll...the reason is, when I was first in government and education, we had these notebooks that were about this thick and they said, well, it'd be distracting to have the computers. We're taking those things and flopping them back and forth and I can't think of anything more distracting to a testifier than that. So that's why I decided to use the electronics--as Ernie calls it, the "gadget." So I believe that covers the preliminaries. Senator Schumacher, I believe you're up on LB66. [LB66]

SENATOR SCHUMACHER: Thank you, Senator Seiler. Members of the committee, I'm Senator Paul Schumacher, representing District 22 which is Platte and parts of Colfax and Stanton Counties. You'd think I'd learn better. We're supposed to learn this lesson right away and that is: Whenever somebody approaches you and says, this bill is going to be a snap, (laughter) there's no reason why anybody would oppose it, and we're supposed to know better. And last year, we had a bill that was supposed to be a snap. It was, I think, LB788, about as common sense, straightforward as you could get,

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supposedly had the support of...the League of Municipalities supposedly said, look, if one of our cities ever gets into trouble, or our political subdivisions, then the bondholders in a bankruptcy proceeding are going to be first in line for the revenue. Everybody pretty much figured bondholders are first in line for the revenue; certainly, when you borrow money and you post bonds or put it out as bonds, you should get paid first. And the other city obligations should come in second or third or whatever the bankruptcy court says. Bankruptcy court in Detroit in some of those bankruptcy proceedings that were going on basically was hinting very heavily that if the state defined the rights and obligations and priorities of the people who were owed something by a defaulting subdivision, that the bankruptcy court would probably follow that rule and the decision of the state. In looking through Nebraska law and case law, there was pretty heavy suggestions, but certainly nothing definitive, that the bondholders would be first in a...in the bankruptcy proceeding. And the bill, LB77 (sic), said so clearly so the bankruptcy judge would not have to think too hard to come to that conclusion. Well, as one might expect, cities and subdivisions have lots of obligations out there, not the least of which are very significant pension promises made to the employees of particularly large cities as part of a way to get the employees to take lower wages now and have a brighter future later with a very, very nice pension. And needless to say, the folks that had an interest in those pension obligations didn't think too much of the idea of putting bondholders first. Okay? And because they had some influence with the League of Municipalities, suddenly the League of Municipalities was not there either. The bill ended up being converted to a vehicle for some other principally banking legislation, and the idea did not go anywhere last year. So today we have a situation where, quite honestly, no one can definitively say who would be first if one of our subdivisions, perhaps our major subdivisions, ran into financial difficulty. It may be a very remote thing but, on the other hand, we are in very uncertain financial times and who knows what the future holds. Regardless of which, it's better to address these issues when there is no crisis and we can look at them with cold logic than it is to address them in the midst of a crisis where we might have a major subdivision in here claiming that they were too big to fail and needing a bailout from the Legislature and the taxpayers of Nebraska. Well, this year, wanting to not kick the can down the road and wanting to make a statement one way or the other as to what the Legislature's feelings on this was, two bills were introduced. This one ended up before Judiciary Committee; I think the other one is going to be back before the Banking Committee. The one that's back before the Banking Committee is virtually a restatement of last year's bill saying, hey, if there's a bankruptcy issue, bondholders are first. And that probably would be the subject of some discussion, some debate, some maybe bartering, saying, well, first in 75 percent of the cases and pensioners in 25 percent of the cases. Who knows? But just in case that goes nowhere, this particular proposition is a disclosure proposition. Now under the Nebraska Securities Act, an issuer of a bond--and this includes municipalities and the board members of municipalities and officers--who does not disclose a material fact can have personal liability. That's existing law in Chapter 8. You don't make a material disclosure in the issuance of a security, which is a bond, you may have personal liability

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if you're on that board. And this tries to address that situation, actually provide some protection for board members by saying, look, let's be up-front with the people buying the bonds; let's not try to hide it in small print of the last page of the bond prospective; let's not try to omit it; let's be up-front, right up-front, and in big letters say, your rights have not been determined in the event this thing goes to bankruptcy. Tell them up-front. And if you don't tell them up-front, we remind you of your obligations with virtually identical language to that that's in Chapter 8 in the securities law to which you're already subjected--fairly straightforward. If we think that we want the bondholders' money and we're not willing to promise them a number-one position, they deserve, because they're investing their pension monies, too, to know that up-front. And there should be a clearer way for board members of subdivisions to get protection from the Securities Act by making that disclosure on this particular issue--very simple. If we are not unwilling...if we are not willing to do what it takes to give the bondholders priority or to set some ratio of priority between bondholders and pension holders--and the door is open, I think, to that--if we're not willing to go down that road and define that, then bondholders, people putting their savings into the city tills deserve to know up-front that they, in the event of a bankruptcy, may have to fight for their position. And they probably would consider adjusting the interest rates they require accordingly. Cities, subdivisions don't necessarily like the idea of having to address this issue. Keep it low-key, keep this problem out of the public eye, maybe you'll slip it past the bondholders, maybe they're...it's their burden to check and to think it through rather than a burden of disclosure, and we can keep our interest rates just a little bit lower and borrow some more money and make some more union promises, all of which we might not be able to keep. Simple proposition, simple disclosure: Let the bondholders know that we're unwilling to take a position with regard to whether they are first or not. And that's what this bill is. And I would think that the Legislature owes it to people who are loaning our cities and our school districts and others money to either give them clear standing where they are vis-a-vis the public unions and where they are in the pecking order at the bankruptcy proceedings or to up-front tell them, we're unwilling to do that, you're on your own. I'll be happy to take any questions. [LB66]

SENATOR SEILER: Any questions? Yes, Senator Chambers. [LB66]

SENATOR CHAMBERS: Having come in late, I just have one question. Since this relates to disclosure and the failure to disclose can lead to personal liability, would the one who could be held liable have this information within his or her knowledge or possession? [LB66]

SENATOR SCHUMACHER: Part of the reason for the bill is to make sure or...I shouldn't say "make sure," because we can never make sure of anything because things may be and not be, but to increase the probability that boards know that they may have this obligation already. And even if they didn't have this obligation already in law, they have a moral obligation to not hide the problem and not make the disclosure if they're going

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after somebody and asking them to buy the bonds. [LB66]

SENATOR CHAMBERS: And now here is the second question that goes away from maybe actual knowledge. It is the kind of information they should have or readily could obtain; and since it's their issuance, they ought to know this information. [LB66]

SENATOR SCHUMACHER: They ought to know and they ought to be up-front with the person that they're selling the bond to that, quite frankly, we don't know if you're number one or not. [LB66]

SENATOR CHAMBERS: And the one making the purchase is entitled to information that can be relied on and that is not misleading in any way. [LB66]

SENATOR SCHUMACHER: And to have all and not have information omitted that might be important to them. [LB66]

SENATOR CHAMBERS: And offenses can be committed both by commission and omission. [LB66]

SENATOR SCHUMACHER: That's correct, Senator. [LB66]

SENATOR CHAMBERS: Okay. That's all I have. Thank you. [LB66]

SENATOR SEILER: Anybody else? I have just one, Paul. [LB66]

SENATOR SCHUMACHER: Sure. [LB66]

SENATOR SEILER: What about a successor member of the board? [LB66]

SENATOR SCHUMACHER: I don't think successor members are acting. It's the ones that are acting. [LB66]

SENATOR SEILER: So I didn't see that in the document... [LB66]

SENATOR SCHUMACHER: Right. [LB66]

SENATOR SEILER: ...that said this will be to the people that are currently making the valuation at the time the business is...the political subdivision is giving the bond. [LB66]

SENATOR SCHUMACHER: And I think probably it'd be poor public policy to...you might have real difficult time getting people to run for office if they suddenly were liable for the sins of their predecessors, personally liable. [LB66]

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SENATOR SEILER: Okay. I also noticed the state of Nebraska wasn't...so the Legislature isn't under this. [LB66]

SENATOR SCHUMACHER: Hey, we can't run up much debt. We...in Nebraska, we create the subdivision, let them run up the debt. [LB66]

SENATOR SEILER: Department of Roads was in asking for bonds last year. [LB66]

SENATOR SCHUMACHER: Yeah, but that's small potatoes compared to what the cities and school districts... [LB66]

SENATOR SEILER: And it still makes you liable. (Laugh) [LB66]

SENATOR SCHUMACHER: Well, you know, maybe it does. (Laugh) I...okay. [LB66]

SENATOR SEILER: Thanks, Paul. Anybody else? Yes, Matt. [LB66]

SENATOR WILLIAMS: Senator Schumacher, just a question for me so I understand this more. And let's use it in the example of a school district. And you've got in your points here the fact of valuation of real estate that would be subject to tax increment financing and then that valuation of real estate that would not be. I am not certain that that information would be readily available to a school board member without doing fairly significant research outside of their job as a school board member. The portion that is not on the tax rolls currently is...would...do you think that's an issue? [LB66]

SENATOR SCHUMACHER: You know, the reason that the TIF language is in there is because a commonsense bond purchaser might not realize that just looking at the valuation of a school district or something is part of making its judgement whether it's going to invest in it. Or a city may not realize that huge amounts of that valuation have been pulled off the tax roll because of TIF. And TIF, as we all know, is an increasing problem, and it's creating some distortion in some areas. So I think that those...when bonds are significant and are issued, it's an obligation for the issuing authority to make that statement, because they're best in a position to know those answers, even if it takes some digging to get to them, rather than an individual investor or underwriter or bank who may be purchasing it. That's language that just should be known up-front, that the TIF language was put in there in addition to the language that we don't know the situation in bankruptcy. [LB66]

SENATOR WILLIAMS: Just like the unfunded liability on the pension. [LB66]

SENATOR SCHUMACHER: Right. We just don't know. [LB66]

SENATOR WILLIAMS: Okay. Thank you. [LB66]

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SENATOR SCHUMACHER: But the bond owner should be aware that those are issues that may affect his purchase. [LB66]

SENATOR WILLIAMS: Okay. [LB66]

SENATOR SEILER: Anyone else? Thank you, Senator. [LB66]

SENATOR SCHUMACHER: Thank you. [LB66]

SENATOR SEILER: We'll take the first proponent who wishes to testify. You have any? [LB66]

SENATOR COASH: Don't all come up at once. (Laughter) [LB66]

SENATOR SEILER: Do you have anybody, Senator? [LB66]

SENATOR SCHUMACHER: No, I don't have anybody lined up. [LB66]

SENATOR SEILER: Okay. [LB66]

SENATOR SCHUMACHER: I would guess... [LB66]

SENATOR SEILER: Any opponent that would like to testify? Please state your full name and spell it for the record. [LB66]

JOSHUA MEYER: (Exhibit 1) My name is Joshua Meyer, M-e-y-e-r. I work at Kutak Rock LLP, a law firm in Omaha, Nebraska. I'm here as a representative for the city of Omaha. We were asked by the city to consider the legal concerns with LB66. We think there are primarily four concerns that I'd like to detail quickly for you. The first legal concern is the disclosure space is a space that's currently occupied by the Securities and Exchange Commission. The SEC has over an 80-year history of regulating the issuance of municipal securities and the disclosure required to issue those securities. Just in the last year, the SEC has conducted what they call the MCDC Initiative which was an initiative to pursue all failures to accurately disclose your compliance with your continuing disclosure obligations. And the SEC has also recently pursued personal liability against municipal officials. We believe that the SEC has the staff and the might to regulate this space and the state should not necessarily want to regulate municipal disclosure. Secondly, there is no distinction in the bill between the type of bond issued. So, for example, if a revenue bond were being issued, rather than a general obligation bond, the types of disclosures that are required by Section 1 of LB66 would not be pertinent, potentially misleading, and in violation of federal securities law. So if the Douglas County was issuing a conduit revenue bond for the Henry Doorly Zoo, for

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example, and that bond was secured by revenues of the zoo, the kinds of data that this bill requires would be misleading to an investor purchasing that kind of bond. There's no distinction based on the type of bond issued in this bill. Thirdly, I would say that the personal liability issue, again, is being covered by the SEC and, as was mentioned, there is no sunset to that liability. So if I'm a board member and I approve a bond issue and there is a technical violation of Section 1, if 15 years from now, if that bond is still outstanding, we don't believe that there is a clear sunset to personal liability to any board member authorizing a bond issue. And lastly, there is a potential for class-action lawsuits that arises here. So if one, single bondholder has a problem, it's very easy to form a class and bring a class-action lawsuit under this bill against any municipality. And those are very expensive to defend, can be time consuming, and would likely be...the cost of such a class-action suit would be borne by taxpayers defending that kind of suit. [LB66]

SENATOR SEILER: Any questions of Mr. Meyer? Yes, Senator. [LB66]

SENATOR CHAMBERS: Mr. Meyer, I only had the amount of time between now and when you handed out this document to kind of scan it. But you were talking about a possible conflict between what this bill would require and the way the SEC operates, Securities and Exchange Commission. Is there anything in federal law that would prohibit the state from doing what LB66 would do? [LB66]

JOSHUA MEYER: Nothing to prohibit it, but it, by its terms--the bold type and the things it would require on the first page--seems to create a different level of materiality. So in other words, if those are the four points that an investor looks at, federal securities law defines materiality much different than that. And so there's a potential that a municipal issue in the state of Nebraska would be following two sets of rules: the federal rules and then trying to comply with a statute. And we believe that the SEC's 80-year, again, history and case law wouldn't necessarily always comply with the provisions of this bill. [LB66]

SENATOR CHAMBERS: There is an expression: Familiarity breeds contempt. But doesn't familiarity or habit also tend sometimes to make a person a little lackadaisical and slipshod? Now is it that these entities that are going to issue bonds familiar with the way the SEC operates and, therefore, they're comfortable and have built up a system of handling whatever they handle with the SEC in mind and that's really the main opposition that they would have to anything different being done? So let me phrase it a different way now that I've said that. If the SEC made a change that would be the equivalent of LB66, and it won't be exactly the same, would there be the opposition expressed to the SEC about making such a change? Or is there so much confidence in the way the SEC operates that you and the ones who handle this kind of work have such confidence in them that, after appropriate study, they felt this is the way it should go, would you, therefore, acquiesce? Or would there be objections expressed to get the

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SEC not to do that? [LB66]

JOSHUA MEYER: So I think, to answer, I think the SEC would be best situated from both a staff and an experience perspective even if these same requirements were added from an SEC level. But I will tell you that the SEC has been extremely active in the pursuit of regulating the municipal space. They have, just recently, in November, brought a case in Allen Park, Michigan, where for the first time, as was referenced, the controlling person section of the Securities and Exchange Act was used to bring a personal liability lawsuit against a municipal official. And so I would answer your question by saying we believe that the SEC is active and accurate and that it's probably not the state's best resources or best use of their resources to be delving into the disclosure practice space. [LB66]

SENATOR CHAMBERS: And that's all I'll ask you. Thank you. [LB66]

SENATOR SEILER: Anyone further? Thank you very much, Mr. Meyer. Next witness. [LB66]

PAUL GRIEGER: Good afternoon. My name is Paul Grieger, G-r-i-e-g-e-r. I work for D.A. Davidson in Omaha. D.A. Davidson is an underwriter of municipal bonds both throughout Nebraska and nationally. We also sell bonds to thousands of investors across the country and throughout Nebraska. I'm here as an opponent of LB66 and would like to make the following points. Municipal issuers rely on reasonable and efficient access to the debt markets to finance essential capital projects. Current disclosure practices have evolved and continued to evolve at the direction of municipal market participants, including individuals, banks, and other financial institutions, as well as federal securities laws. Disclosure items, such as taxable valuation and pension liabilities, are currently disclosed in official statements as part of the entity's audited financial statements. Institutional investors regularly review several municipal offerings at any one time. Highlighting only certain pieces of the credit on the cover page that may or may not be material to the credit quality may cause the investors to pass on a Nebraska issue for one that is presented similarly to comparable credits issued in other states. With fewer investors willing to buy certain types of debt issues, the cost of capital would increase to Nebraska issuers and result in higher debt-service requirements which would also potentially increase taxes required to service the debt. Thank you. [LB66]

SENATOR SEILER: Any questions? Senator Chambers. [LB66]

SENATOR CHAMBERS: Using an analogy from evolution, so it's not going to be perfect, I'm a creature who gains oxygen by water passing through my gills and I extract the oxygen, and you are a creature who gets oxygen by breathing air on land. If they took me out of the water long enough, I would die from suffocation or something parallel

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to that. If they kept you submerged long enough, you would drown. So now I'm acknowledging that your knowledge is much greater than mine in this area. And we collect facts, so I want to try to frame...phrase questions in such a way that it'll be understood what I'm asking. This bill, LB66, talks about disclosing certain information. Is that correct? [LB66]

PAUL GRIEGER: That's correct. [LB66]

SENATOR CHAMBERS: And are you opposed to that kind of information being disclosed? [LB66]

PAUL GRIEGER: No. [LB66]

SENATOR CHAMBERS: And it also talks about liability and where the liability would be placed. Are you opposed to liability being placed and, if so, where in the loop should it be placed if there is...let me ask it this way: Should there be any liability for failure to disclose that which is within the knowledge or purview of the issuer but for some reason that entity doesn't want to disclose it? [LB66]

PAUL GRIEGER: Well, let me do my best to answer your question as directly as possible. I don't have any problems with people being held accountable. I would say that the items that we're talking about are already being disclosed in the official statements. They're being disclosed either as part of the audits that are customarily attached to these official statements used to market the bonds, and there are also pieces of this information that are disclosed within certain sections of the official statement. Anyone that buys bonds regularly knows that the cover page of the official statement is not a summary of the offering and it should never be treated as such. As far as liability goes, I'm not here to testify on liability, but I'm happy to do my best to answer that. I think that the federal securities laws have already addressed that; and if there are certain misstatements or material omissions in these offering documents, individuals representing issuers are liable and may be held accountable both criminally or with monetary fines. [LB66]

SENATOR CHAMBERS: When I was driving down here the other day, I listened to public radio and also other commercial channel...stations. And one of the commercial stations had a person who advises people on making investments and said, if you have up to \$10,000 available for investment, buy...invest in municipal bonds, we can help you, contact us, and so forth. Maybe I don't know what is and is not contained on this cover sheet. Maybe I don't know to look at an audit. So where would I find, if I'm going to be an investor, where would I find the kind of information that LB66 says ought to be disclosed? [LB66]

PAUL GRIEGER: The...have you ever purchased a mutual fund? [LB66]

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SENATOR CHAMBERS: Say it again. [LB66]

PAUL GRIEGER: Have you ever purchased a mutual fund? [LB66]

SENATOR CHAMBERS: (Laugh) Purchased one? Will they let you buy one for \$1.22? [LB66]

PAUL GRIEGER: They're sold in various small denominations. [LB66]

SENATOR CHAMBERS: Okay, no, I never have. [LB66]

PAUL GRIEGER: Okay. Any time an individual or any other investor purchases a security, they receive a prospectus. And in the case of municipal bond offerings, that prospectus is called an official statement. So this official statement is provided to any potential investor for their review prior to making that investment decision. And that information is currently disclosed in that official statement or, in other words, a disclosure statement. And that cover page, which is a part of that official statement, as I mentioned, could be misleading to any investor, rightly or wrongly. [LB66]

SENATOR CHAMBERS: Okay. Now would this prospectus contain the information that LB66 is saying must be disclosed? [LB66]

PAUL GRIEGER: Yes. [LB66]

SENATOR CHAMBERS: It would have it? [LB66]

PAUL GRIEGER: Yeah. [LB66]

SENATOR CHAMBERS: Now I'm going to get this from you if I can. It has to do with these words, these forms that precede a word, like "pro" and "con." If the prefix "pro" is on something, what does that mean, for or against, if you had the "pro"? [LB66]

PAUL GRIEGER: Yes, it would be for. [LB66]

SENATOR CHAMBERS: Like, I'm "pro" whatever. [LB66]

PAUL GRIEGER: Pro, yes. [LB66]

SENATOR CHAMBERS: It means you're for? And if you say "con," that means against. [LB66]

PAUL GRIEGER: Yes. [LB66]

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SENATOR CHAMBERS: Okay. If the rest of the word is r-e-s-s, "progress" means you're in favor of moving forward, correct? [LB66]

PAUL GRIEGER: That's correct. [LB66]

SENATOR CHAMBERS: And if it's "congress," you're against that and you move backwards, so now you know why Congress is not giving false advertisement. (Laughter) People just haven't parsed the word properly. That's all I would have. Thank you very much. [LB66]

PAUL GRIEGER: Okay. Thanks very much. [LB66]

SENATOR CHAMBERS: Okay. [LB66]

SENATOR SEILER: Just a second. Anybody else have any questions? Thank you very much, Mr. Grieger. [LB66]

PAUL GRIEGER: All right. Thanks. [LB66]

PAUL KRATZ: Hello. My name is Paul Kratz, K-r-a-t-z. I'm the city attorney for Omaha. I briefly want to go through the piece of legislation and indicate what is and what isn't on it. The first item required is indicating the unfunded pension obligations. We do put that in our prospectus, our offering statements. That's three or four pages long and it's very detailed. The second requirement of this bill was to list the real estate violations...valuations. I'm sorry. We do, do that. We have a whole chapter on the city of Omaha, the valuations, and a number of other items with respect to that. The third item required is the real estate valuations reduced by TIF. I guess I suggest that that's probably not relevant to a buyer of bonds. They're looking more at the income of the city and what's there to pay for the bonds. The fourth requirement in that first section is stating that pensions versus bonds are...may or may not be dealt with in a bankruptcy court or how they're dealt with in a bankruptcy court. And again, I think, any knowledge of a bankruptcy court, you don't know what's going to happen when you go into bankruptcy court. So I'm not sure that statement will add anything to a buyer of bonds. The second section deals with liability. And, Senator Chambers, you talked about that on the liability of the officeholders, the directors who sign off on the offering statement. And I can guarantee you all are very much aware of our responsibility and the liability that will come upon us if we make misstatements. And we spend a lot of time going over those, the prospectus, which is usually a very thick document, and to make sure everything is corrected there. It is important to us. But I also wanted to mention the language in this particular bill. I'm not sure, but it seems to shift the liability from a plaintiff to a defendant, which would be the officeholders, if there's any type of lawsuit. To me, it's a little vague. Maybe that is the way it was intended, but I'm not sure. It

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seems a little vague, in my opinion. In any event, that's the city's opposition to this bill. Thank you. [LB66]

SENATOR SEILER: Anyone have any questions? Thank you very much. [LB66]

PAUL KRATZ: Thank you. [LB66]

MIKE ROGERS: (Exhibit 2) Good afternoon. My name is Mike Rogers, R-o-g-e-r-s. I'm a bond attorney at Gilmore and Bell in Omaha. I'm here today testifying in opposition to LB66 on behalf of the League of Nebraska Municipalities, the city of Lincoln, and Lancaster County. What's being passed around to you is a letter submitted by Steve Hubka, the interim finance director of the city of Lincoln, in opposition to LB66. And you'll note at the end of the letter it indicates that Lancaster County Board voted to oppose LB66, as well, and authorized Mr. Hubka to convey their opposition. I'm going to go...I'd like to cover three points relatively briefly here this afternoon in opposition to LB66. The first is that this bill, subsection (1) of Section 1 of LB66 would require by statute certain disclosures which could be misleading and possibly incorrect under certain circumstances. As you know, it requires...well, let me start by saying that, as it stands, existing state securities laws provide that no securities can be offered by any means of an untrue statement of a material fact or an omission of a material fact. And under federal securities laws, which are similarly phrased, they're normally called the antifraud provisions. Federal courts have rejected a bright-line materiality rule. The SEC has tried in the past to come up with bright-line rules on what information is material for a particular offering of securities. And federal courts have rejected those efforts by the SEC and determined that an analysis of materiality requires review of all of the facts and circumstances surrounding the disclosure. This bill's statutory definition of what is material would throw off the balance that is struck with each individual securities offering by a municipality and the offering...and throw off the balance in the offering document by raising the profile of certain specific information to the exclusion of other possibly more important information. And again, it's difficult to know what information might be more important without knowing all of the facts and circumstances surrounding the issuer and the disclosure document. The particular disclosures required were talked through. The taxable valuation that is included in offering documents does not include tax increment valuations. The incremental increase on value is not a commonly reported value. And so the valuation that's reported in a securities offering document for a municipal bond issue doesn't have the TIF valuation, so it's not misleading. I see my time has expired. [LB66]

SENATOR SEILER: Any other questions? Senator Chambers. [LB66]

SENATOR CHAMBERS: Maybe in the process of answering a question, you...if there's something you need to say, but you can't go on all afternoon. If I buy a municipal bond, am I guaranteed a certain return when I decide to dump the bond? [LB66]

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MIKE ROGERS: No. You are promised by the municipality to be paid your principal back at maturity; and, also, you're promised by the municipality to be paid interest over the course of the term of the bond. So that's the promise. There is no promise of there being a market in case you wanted to sell it to another prospective investor. [LB66]

SENATOR CHAMBERS: No, no. I meant if I'm dealing with the city and I pay--make it simple for me--\$10 and they're going to give me a penny for buying that. I'm guaranteed to get 11 cents when those bond...that bond matures. Is that correct? [LB66]

MIKE ROGERS: That is the promise that is made by the city, yes. [LB66]

SENATOR CHAMBERS: Okay. [LB66]

MIKE ROGERS: And there are different security provisions that could be attached to that depending on the type of bond issue. [LB66]

SENATOR CHAMBERS Okay. [LB66]

MIKE ROGERS: It could be a general obligation bond, which is backed by taxes, or a revenue bond issue, which might be backed by... [LB66]

SENATOR CHAMBERS: But there is no risk that I'm undertaking by buying municipal bonds. [LB66]

MIKE ROGERS: Of course there is. There's always risk in buying any security. [LB66]

SENATOR CHAMBERS: Well, what's the risk if they guarantee me this, my principal and a certain rate of interest? Where is the risk? [LB66]

MIKE ROGERS: There is risk in the municipality filing for bankruptcy, and then there is uncertainty that goes along with any bankruptcy. And that's commonly... [LB66]

SENATOR CHAMBERS: Now certainly, no city in America would declare bankruptcy, would it? [LB66]

MIKE ROGERS: It has happened. [LB66]

SENATOR CHAMBERS: They've done it literally from coast to coast, huh, on the East and on the West? So there is a gamble whenever you invest. [LB66]

MIKE ROGERS: That's right. There are risks to investing. That is correct. [LB66]

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SENATOR CHAMBERS: Now if I gamble at the casino, I'm just a gambler. But if I gamble on municipal bonds, I'm an investor, correct? (Laughter) [LB66]

MIKE ROGERS: One is a game of chance. [LB66]

SENATOR CHAMBERS: And one does carry...one does hold higher status than the other in this society's thinking. Correct? An investor, in the minds of most people, would be placed on a higher...given a higher status than a common gambler at a casino. [LB66]

MIKE ROGERS: The odds of repayment on the investment of a...in a municipal bond is near 100 percent while the odds... [LB66]

SENATOR CHAMBERS: I'm not even talking about that. I'm talking about the nature of what is involved. [LB66]

MIKE ROGERS: Yes. [LB66]

SENATOR CHAMBERS: Both of us are in a game of chance. We both are hoping. Now maybe, if I'm a gambler, I think I've got the system figured and I invest my money there. The other investor, the traditional investor, might have a better chance of it turning out the way the promise has indicated. But there is no guarantee of that, is there? [LB66]

MIKE ROGERS: That's correct. [LB66]

SENATOR CHAMBERS: There is a gamble involved. When you put money on something and you don't know, you cannot guarantee or know in advance the outcome, that's gambling, isn't it? [LB66]

MIKE ROGERS: If it's a game of chance, it's a...it is gambling, yes. [LB66]

SENATOR CHAMBERS: Is gambling a game of chance? [LB66]

MIKE ROGERS: I think that's the statutory...I think under Nebraska law a game of chance is gambling. I'm not an expert in gambling, so I should...I'm not sure. [LB66]

SENATOR CHAMBERS: Do you deal with bonds, deal in bonds? [LB66]

MIKE ROGERS: I'm a bond attorney. That's my... [LB66]

SENATOR CHAMBERS: Then you're an expert in gambling. (Laughter) Now what is a bearer bond? [LB66]

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MIKE ROGERS: Bearer bonds are something that went away before the mid-1980s. They were... [LB66]

SENATOR CHAMBERS: Right, but, "What was it?" I should have said. [LB66]

MIKE ROGERS: It was a bond that an investor would hold and present to the issuer of the bond for repayment. And under federal law, that's...those are not...you're not permitted to issue bearer bonds and have tax-exempt interest. [LB66]

SENATOR CHAMBERS: But anybody could cash in a bearer bond. Couldn't anybody do that? And if not, what is the meaning of the term "bearer"? Doesn't it mean paid to the bearer, paid to the one who is carrying it? [LB66]

MIKE ROGERS: Yes. In my career, I have never issued bearer bonds. They have always been registered bonds. [LB66]

SENATOR CHAMBERS: And you haven't studied that. [LB66]

MIKE ROGERS: I'm sorry? [LB66]

SENATOR CHAMBERS: You haven't studied that. [LB66]

MIKE ROGERS: You're correct. You're correct. If a bearer bond is issued, it is paid to the individual holding it. [LB66]

SENATOR CHAMBERS: Right. So my colleague could have purchased it and I could have stolen it. And when I present it, I can cash it in--let me use that term--can't I? [LB66]

MIKE ROGERS: If it's a bearer bond. [LB66]

SENATOR CHAMBERS: Yes. [LB66]

MIKE ROGERS: Under current practice, all bonds issued by governmental issuers are registered bonds. [LB66]

SENATOR CHAMBERS: We're talking about when bearer bonds were allowed. [LB66]

MIKE ROGERS: Okay, yes, when they were allowed. [LB66]

SENATOR CHAMBERS: Now is there any bond you can think of that is so secure that it holds the status of legal tender? [LB66]

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MIKE ROGERS: United States Treasury bonds are considered the most secure bonds and the most conservative investment typically. [LB66]

SENATOR CHAMBERS: Now are they just...if I take a piece of money out of my pocket, it says, "legal tender for all debts paid, private and public." Do these bonds that you're talking about that the federal government issued, do they carry that language? [LB66]

MIKE ROGERS: Not the same language, no. [LB66]

SENATOR CHAMBERS: So they're not legal tender, are they? [LB66]

MIKE ROGERS: They are not. U.S. Treasuries are not legal tender. [LB66]

SENATOR CHAMBERS: So what is...what makes legal tender legal tender? Does that mean that if you present it to somebody, they must accept it as payment? And if they refuse, then you don't owe them anything; you don't have to pay them in any way, other than with that money. Is that correct? [LB66]

MIKE ROGERS: That's typically the way debts are phrased, is that payment in U.S. dollars, in the legal tender of the United States, is valid repayment of that obligation, yes. [LB66]

SENATOR CHAMBERS: Okay, now in the course of this back-and-forth, were you able to get out into the record whatever you wanted to get into the record? [LB66]

MIKE ROGERS: Not quite everything, no. [LB66]

SENATOR CHAMBERS: Oh, then you're not a good student. I'm not going to ask you any more questions because I said (laughter)...I said (laughter) that in the process or the course of my asking you questions you may get into the record what you'd like, and you chose not to. So I don't have any more questions. You get a C-plus because you did try. (Laughter) [LB66]

SENATOR SEILER: Anyone further? Thank you very much for testifying. [LB66]

JOHN BONAIUTO: Senator Seiler, members of the committee, John Bonaiuto, J-o-h-n B-o-n-a-i-u-t-o, representing the Nebraska Association of School Boards, here this afternoon to put the School Boards Association on the record in opposition to LB66. I did spend some time with Senator Schumacher visiting about this bill. And my experience is, if I talk less and listen more when I visit with him, I can learn something, and I always do. And so what school boards are concerned about in this is, as this bill would change the prospectus and how this legal document looks, we believe it...when we work with people like D.A. Davidson or Ameritas and the bond industry, these

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documents look similar and they don't just sell bonds in Nebraska. And so when you sell these bonds outside of Nebraska, this change in prospectus may be signaling that we may have problems that we actually don't have right now. And I know Senator Schumacher is trying to get ahead of the curve here with this bill, but it may make it more difficult to sell the bonds. The prospectus for the...I believe has the information, other than TIF, and really the statement about who might receive money first, whether it's the bondholder, the purchaser, or the pension. When school districts...and school boards take this very seriously when they're asking their taxpayers to raise their taxes to do a bond issue. They explain everything that they need to explain. The voters vote, and money then is obligated to the school district bond fund to pay bonds. I don't think the school board can use that money for any other reason other than to pay bonds because that's what they promised the voters that they were going to do with that money. Now, on the other hand, the pension fund is the pension fund that is run by the state. And anything that happens in the school/public employees' pension fund is decided by the Legislature. So the rates that teachers pay in, the rates that the employer pays in, the school board, all that is set by the Legislature, how much the Legislature contributes. There is a GASB rule that's just coming into play where the state pension fund has to issue an unfunded number to school districts, but that's it. It's a number for a county. And I'm out of time. [LB66]

SENATOR SEILER: Anybody have any questions of this witness? [LB66]

SENATOR WILLIAMS: Senator Seiler. [LB66]

SENATOR SEILER: Yes, Mr...Senator Williams. [LB66]

SENATOR WILLIAMS: Yes. I do have one question representing the school boards. And with the potential change in liability under LB66, do you see that as a stumbling block to obtaining board members in the long run for especially smaller school districts? [LB66]

JOHN BONAIUTO: Senator, thank you for asking the question. That was something I wanted to get on record and ran out of time, so. [LB66]

SENATOR WILLIAMS: Well, I followed Senator Chambers, so. [LB66]

JOHN BONAIUTO: (Laugh) You...and I do appreciate that. I do. I think that what is in LB66 may be...it...I think that Senator Schumacher said it's substantially the same as in the Securities Act. Substantially, it's not exactly the same. I think it's broader. And I think when school board members look at this, it would be difficult either to have a person look at this and want to run for a volunteer position or if they're making decisions about a bond issue. So I think that your question is right on target. It would be problematic. [LB66]

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SENATOR SEILER: Any further? Thanks, John. [LB66]

JOHN BONAIUTO: Thank you. [LB66]

JASON HAYES: (Exhibit 3) Good afternoon, Senator Seiler and members of the committee. For the record, I am Jason Hayes, J-a-s-o-n H-a-y-e-s, and I'm here today representing the Nebraska State Education Association. NSEA is testifying in opposition. I've handed you a copy of a joint letter in opposition signed by the executive heads of the Nebraska State Education Association, Nebraska Council of School Administrators, and the Nebraska Association of School Boards. We believe that in the case of school districts issuing bonds, the disclosure language required in the bill will unnecessarily increase the financing and expense associated with issuing such bonds. The additional disclosures will likely impose higher borrowing costs upon the issuing local subdivisions but will not necessarily result in improved information to bondholders. Based on recent changes made by the Governmental Accounting Standards Board in Statement 68, information regarding the unfunded pension obligation of a political subdivision is required to be included in the subdivision's financial statements. These financial statements are readily available to the public. In addition, the disclosure language proposed would be misleading in that it could lead bond investors into the false belief that the unfunded pension obligation is a current liability owed by the local school district. Under state law, a Nebraska school district, other than Omaha Public Schools, has its employees covered as members in the School Employees Retirement System. The employer school district's only liability to the state is a required 101-percent matching contribution of the employee's own contribution, which is currently set at 9.78 percent of pay in statute. State law is very clear that any additional money necessary to fund the plan is to be paid by the state of Nebraska. I've attached copies of Section 79-958 and 79-966.01 which govern these matters. Fortunately, additional funding by the state is unlikely because, since changes were made by the Legislature to the school plan in 2013, the plan is now on a sound financial path. This past year, the school plan had an investment return of 18 percent on market value, and the plan is expected to be 100-percent funded by the year 2020. Current actuarial projections show the plan is forecast to be 169-percent funded by the year 2043. This surplus in the plan is primarily due to a reduction in pension benefits and a higher contribution rate that were both passed in LB553 three years ago. We believe that the heightened disclosures mandated in LB66 would impose a greater cost upon political subdivisions than the benefits sought to be gained and, for this reason, we urge you to oppose this legislation. I'd be happy to answer any questions. [LB66]

SENATOR SEILER: Any questions? Senator Chambers. [LB66]

SENATOR CHAMBERS: Since there are none on the bill, and this is not asked in jest, are you familiar with the gentleman whose last name is spelled P-r-o-u-l-x? I think he

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might be head of the Omaha... [LB66]

JASON HAYES: Chris Proulx? [LB66]

SENATOR CHAMBERS: How do you pronounce it? [LB66]

JASON HAYES: Proo (phonetically), Chris Proo (phonetically). [LB66]

SENATOR CHAMBERS: How would you spell it phonetically? No, is it P-r-o-o? [LB66]

JASON HAYES: It's...I believe it's P-r-i-o-u-x (sic). [LB66]

SENATOR CHAMBERS: How would you...and you pronounce it how? [LB66]

JASON HAYES: Proo (phonetically). [LB66]

SENATOR CHAMBERS: I won't pronounce it. (Laughter) I've seen it written but I...and I still won't after what you've told me. [LB66]

JASON HAYES: It took me a few months to get it. [LB66]

SENATOR CHAMBERS: Could I call him "Pry-us" (phonetically), if I said "Pry-us" (phonetically)? Or maybe I can muffle it and people who know will think that I'm saying it correctly and people who don't know, it won't make any difference. So I'll just say Mr. Proo (phonetically). [LB66]

JASON HAYES: Okay. [LB66]

SENATOR CHAMBERS: Something like that? [LB66]

JASON HAYES: I think that... [LB66]

SENATOR CHAMBERS: Okay. [LB66]

JASON HAYES: I think he'll respond to anything close. [LB66]

SENATOR CHAMBERS: It's been helpful, really. Okay, thank you. [LB66]

SENATOR SEILER: Any further questions? Thank you, Jason. [LB66]

JASON HAYES: Thank you. [LB66]

SENATOR SEILER: Any further witnesses? Seeing none, anybody testifying in the

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neutral? Seeing none, I would once again remind people that if you want to line up on one side or the other, you can do so by signing the documents out there. And they will be made part of the record so that, if you need to show somebody that you actually attended this, it will be part of the record. If not, this hearing is closed. [LB66]

SENATOR COASH: Senator Schumacher want to close? [LB66]

SENATOR SEILER: Pardon? Oh, excuse me. Yes. (Laughter) I'm kind of new at this. Senator Paul. [LB66]

SENATOR SCHUMACHER: I won't take up too much more of the committee's time. One good point that was raised by the opposition is perhaps a distinction does need to be made between revenue bonds and general obligation bonds because the rules aren't exactly the same. However, that's about the only part of the opposition that actually dealt with the issue. The fact that the SEC is out there regulating, that's fine. State regulation under the Nebraska Securities Act is supplemental. The federal government has not preempted the field, nor really could the SEC issue rules here, because some states have directed what the priorities of payments are in bankruptcy. So basically, the SEC issues and how the SEC treats it are independent of our Securities Act which, quite honestly, is slightly tougher than the SEC rule because we go with innocent omission as a cause of liability, as the city of Omaha, I believe, recognized that they do have this obligation. So this is adding nothing new. Have legal counsel compare the language of liability in this bill with the language of liability already on the books and, with all exceptions except specifying some of the Tort Claims Act, it is virtually identical in what liability. You tell the truth and you tell the whole truth when issuing a security, including a bond. That's clear. Towns do rely on this, and people who purchase bonds rely upon the full faith and credit of the town being there. And it is there, except when the city declares bankruptcy, and that was highlighted in the opposition. This bill, very simple things: tell us what assets you have to purchase; tell us what assets you've exempted through TIF; and make it clear. And I'll bet you--in fact, if I were Mitt Romney, I'd bet you \$10,000--that it is not spelled out clear that you do not have priority in a case of bankruptcy in those prospectuses. There seems to be some thought that, look, if we tell people that, they don't want to buy these bonds; it would highlight the risk. But don't the investors need to know that Nebraska has not taken a position on priority? When the other side of this issue comes before the Banking Committee, good probability we will hear the other side of the argument from the same people. We need to bite the bullet here, set some priorities between unions and bondholders in the other bill, or let people know straight-up and up-front what they're dealing with and that we have not set priorities and they are rolling the dice in the bankruptcy court should that happen. And that's what this bill is about. Be happy to work with the committee if there's any interest in advancing it. It could be the TIF provisions, if that gives anybody heartburn, could be pulled out. But the essence is, we need to let in clear and unambiguous language so in-state and out-of-state investors, no matter who, know that this body, the Legislature,

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has not taken a position and it is anybody's guess what happens in the bankruptcy court. So don't buy that bond figuring that the full faith and credit of the community is behind it because it isn't. You may end up sharing what you thought was a first position--and most bond owners/holders do believe they have a first position, and they do outside of bankruptcy--with a lot of other people. And cities and subdivisions need to recognize that making promises by borrowing money and making promises to your help that we'll pay you less with a brighter future later even though we haven't funded it, is a practice that is probably going to get them into trouble. I'd take any more questions and I thank the committee for its time. [LB66]

SENATOR SEILER: Seeing none. [LB66]

SENATOR SCHUMACHER: Thank you. [LB66]

SENATOR SEILER: You can stay right there and introduce your next bill. [LB66]

SENATOR SCHUMACHER: Okay. [LB66]

SENATOR SEILER: Thank you, folks, for coming that have testified. This is the legislative hearing on LB72 and has been brought by Senator Schumacher. [LB72]

SENATOR SCHUMACHER: Thank you, Senator Seiler and members of the committee. Paul Schumacher, District 22, bringing this particular bill, which is LB72, before the committee. And I'd almost bet that we don't have a long list of proponents on this one either. But that doesn't mean it isn't an issue that needs to be addressed. We all know what's cooking out there, and that is that we have a bunch of people getting older who have not saved sufficient money for their retirement--maybe their fault, maybe not their fault--and who are going to be looking to the state to be a safety net in their nursing home days and their old age. And that bill is going to be big. And what we don't need in establishing that safety net is people deliberately putting themselves on that safety net by placing their assets outside of exposure to pay for the safety net. And right now there are several mechanisms by which people basically make sure that, quote, the nursing home doesn't get my estate. Some of it is by use of trust vehicles, trust vehicles which may not conform in all cases to some of the legal rules. Some of it may be by transferring property during life. Typically, the easy way to do that is to take your farm or take your house and you put it in the kid's name, keeping back what's called a life estate so that you can live in it and get the rent from it for the rest of your life but magically upon your death it is theirs. And if you do that five years ahead of time under...before you go into a nursing home, under the present scheme there's nothing the state can do to get money out of that land anymore when you die and, thus, people are in nursing homes and people are on the state rolls having made themselves poor. Now some of the trust mechanisms require...the Department of Health and Human Services does not have an opportunity to get involved with because they don't know that they've

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happened. In an estate, when you actually do not have a trust, a person dies owning property and you open that estate, you have got to let the Department of Health and Human Services know that you've opened the estate. And they can stick their nose into it and look to see if there's anything in that estate that they can grab to repay what the state has advanced on your cause. But in an inheritance tax proceeding, you do not have to let the State Department of Health and Human Services know about that. Consequently, you can get inheritance tax determined on a trust without them ever knowing that you were in court. This bill addresses that, even though I think there is going to be a correction in the language needed in order to make sure that that isn't forgiven when the county attorney agrees to waive notice, so. But basically, it puts the department on notice. This, the material aspect of this says that if you give your property to an heir--somebody, a niece, a nephew, a child, somebody who would be in line to pay inheritance tax as a Class 1 or a Class 2 descendant, and that's defined in the inheritance tax law--if you give it--your money, your property, your real estate--away, when you do, a lien attaches to it from the point of this bill forward. Now there may be language needed inserted to say it is prospective rather than not prospective. And the way that you know that there is such a lien on the property is if it...the deeds of the future would require them to simply say that the grantees, the person getting the property, are not relatives. And if it said that in the deed, then there would be no lien and no reason for title companies to be worried about it, no reason for bankers to be worried about their lien priority. If the bill...if the deed recited that the recipients were not relatives, that would be the end of it. Now if that was fraudulent, then the recipient themselves might become personally liable under the language of the bill for your Medicaid bill. But there should be no complexities. I know there's some concern by title people, by bankers, that maybe there should be another piece of paper filed, a red flag put on it. But the red flag is the absence of the language denying that the recipient is a relative, and that should be sufficient to put everybody on notice. I would think that most deed forms would have that, as a matter of form, in them in the future should this pass. If that language is absent, it certainly puts you on notice that there is further investigation needed and you might have a problem in the event the party goes onto Medicaid. It's an attempt to say and to block the practice of giving your property away or hiding your property in your heirs in order to qualify for state benefits. And I think those of us that have done some work with the states realize that that practice is not uncommon, and particularly using a life estate with...hold it for five years that way and then you're home free. Your kids are going to get the property no matter how much the state spends on you. And this, I think, would effectively block that particular behavior and put the Department of Health and Human Services in a position to collect assets from trusts and other situations that they may not be able to do now. And I know this is a problem and I know there's a lot of money involved. I'd take any questions. [LB72]

SENATOR SEILER: Senator Chambers. Oh, excuse me. [LB72]

SENATOR WILLIAMS: Senator Schumacher, you mentioned that transfers of property

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within a five-year period of time were looked at differently. [LB72]

SENATOR SCHUMACHER: There is...if I...if you were my child and I had a farm and I said I'd give it to Senator Williams subject to my right to the rent and use of the property, if I went and applied for Medicaid or benefits within five years, that value of that property could be used against me to deny me benefits. [LB72]

SENATOR WILLIAMS: Is that in rule by HHS? [LB72]

SENATOR SCHUMACHER: I know it's in rule and it might be in statute. But it's definitely...it used to be like three years. In fact, I think it used to be 18 months, then it was three years, and then... [LB72]

SENATOR WILLIAMS: Right. [LB72]

SENATOR SCHUMACHER: ...five years. But it's...but once we get past the five-year mark, I qualify, I pass away, and the state put a lot of money into my care and you're out with the land that's worth a lot of money. [LB72]

SENATOR WILLIAMS: I guess my question is, has there been any thought given to...rather than create this lien that, as a banker, I'm slightly concerned about because of how it does not show and is filed the same way, would there be any solution here to extending that five-year period to some longer period of time? [LB72]

SENATOR SCHUMACHER: What the five-year thing does is not create a lien on it; it just disqualifies me from benefits. I do this ten years ahead of time, you know, I can use...do it one year longer than whatever magic number is put into regulation. That's a possible approach, but I...this thing basically says...and there's no real reason, other than avoiding the exposure of your home, for you to put it in a life estate. It's a little simpler, but running it through probate or a trust isn't too bad either. But the real reason is because it's a quick-and-dirty way to make sure that the state pays for your bill, if you live a few years more and before you go in the nursing home, and your heirs get the property. Works like magic. And I...and one way or the other, whether it's with this particular language, some tweaks to this language, or another mechanism, it's something we've got to address. [LB72]

SENATOR WILLIAMS: No further questions. [LB72]

SENATOR SEILER: Senator Chambers. Nothing? I have just a little bit of comment to add to your...you also have to spend down to \$4,000... [LB72]

SENATOR SCHUMACHER: Right. [LB72]

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SENATOR SEILER: ...at the time you apply for Medicaid. And further, you don't get a stepped-up basis in that property. And last night, I heard that that's now going to go to 30-some percent, plus the 7 percent for the state. You're not gaining very much in capital gains tax. [LB72]

SENATOR SCHUMACHER: I think in a life estate you get a stepped-up basis. [LB72]

SENATOR SEILER: Not...no, you wouldn't in a gift. You gift your basis the same as you had. [LB72]

SENATOR SCHUMACHER: Not a life estate, I think. We'll have to look at that, but I... [LB72]

SENATOR SEILER: I think it's...I think you're... [LB72]

SENATOR SCHUMACHER: If I...if you deeded the property outright, yes, you don't get a stepped-up basis. [LB72]

SENATOR SEILER: Right. [LB72]

SENATOR SCHUMACHER: But it's...if it's a property that passes as a result of the death, which what happens, I think, in a life...I think you get a stepped-up basis. [LB72]

SENATOR SEILER: I have a different memory, but... [LB72]

SENATOR SCHUMACHER: Let's...we'll I'll check that up. [LB72]

SENATOR SEILER: Okay. Yes. [LB72]

SENATOR KRIST: Are you aware at the federal level of any program that attempts to limit asset transfer such as you're suggesting? [LB72]

SENATOR SCHUMACHER: Oddly enough, what research I did on this is it...it's...the federal government really seems to discourage looking at people's assets. And I think you'd have to be fraudulent rather than just a lawful way to...means to an end under the federal thing. But in short answer, no. [LB72]

SENATOR KRIST: When a person receives a payment from the mesothelioma fund, the family, after the individual is deceased, in terms of receiving any of that money after the person has passed, all of Medicaid required federally...Medicaid required services that were performed have to be paid back to the federal government before that settlement is paid to the family. This sounds wearily like this process. And I think that the court, the Supreme Court, ruled that it could indeed take money from a settlement but it could not

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touch the asset base of the individual because of the way the money was awarded. I would be interested to hear from legal counsel if there is any federal mandate that we're living under or that we are required to comply with. It's not the same; but it's the same church, a different pew, I guess, is what I'm saying. So I would be...I would like to see the answer to that question before we move on this. Thank you. [LB72]

SENATOR SEILER: Thank you, Paul. Any other questions? Seeing none, thank you. Do you have any witnesses that support you? [LB72]

SENATOR SCHUMACHER: I don't know if there's anyone from DHHS here. There was talk there might be a letter coming over. [LB72]

SENATOR SEILER: Okay. Any proponents of this bill? Seeing none, opponents of this bill? [LB72]

SENATOR PANSING BROOKS: (Exhibit 1) We do have a letter from DHHS. [LB72]

SENATOR SEILER: Okay. [LB72]

ROBERT HALLSTROM: (Exhibit 2) Chairman Seiler, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today on behalf of the Nebraska Bankers Association in opposition to LB72. I want to make it clear that the NBA opposition to this bill is not based on the substance of the bill or the design and intent underlying Senator Schumacher's motives in introducing this bill. We take no issue with the Medicaid recovery issue. However, we are concerned with the way that the bill is drafted in that it does create what we would refer to as a hidden lien. There is no filing requirement for the lien that is created statutorily. That presents significant concerns and potential problems with regard to financial institutions that might be making loans on property that has been, quote unquote, inherited pursuant to a life estate that's transferred or a deed that's transferred with a reserved life estate. While title insurance companies will check the record, and we get title insurance commitments and policies on these types of situations, there may be exclusions under this type of approach. Senator Schumacher has referenced the fact that there would be potential or specific recitals in a deed in order to take it out from under the coverage of the law. In most cases, that's not going to be the case. Most of these reserved life estates will involve children or heirs at law so that we will probably have a system that is created that every life estate interest that is reserved or deed that is transferred with a reserved life estate is going to end up being subject to this law. And if title insurers would choose to exclude coverage for those types of situations, it's going to significantly impact the ability of individuals to get financing. With that, we have suggested and proposed some amendments for the committee's consideration. I would compare the reserved life estate situation to that which exists for transfer-on-death deeds under existing law. Senator Schumacher's bill clearly provides that if you have a trust, similar to what Senator Krist

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has noted, that if you have a trust that the trustee is not to distribute the property until the Medicaid recovery issues are addressed, that same type of protection of having that independent trustee or third party holding the title to the property clearly doesn't exist with a reserved life estate. But the treatment that we've proposed in our amendment and the treatment that's under the transfer-on-deed provisions of state law basically say that the individual who has been transferred the life estate or the interest pursuant to transfer-on-death deed shall be held accountable for repaying those amounts. That is a situation or a system that's been put in place with regard to transfer-on-death deeds, and we think it can work just as well in this particular situation and would encourage the committee to take a look at that as a possible change to the bill. Be happy to address any questions that the committee may have. [LB72]

SENATOR SEILER: Seeing none, thank you. [LB72]

ROBERT HALLSTROM: Thank you, Senator. [LB72]

SENATOR SEILER: Any further witnesses? Anyone? Yes. [LB72]

JAMES BUSSE: Good afternoon, Chairman, Senators. My name is James Busse. I'm here on behalf of Nebraska Land Title Association. I'm appearing in a neutral capacity. We certainly applaud and laud the effects and the inspiration behind this bill, but we do have, certainly, concerns about, as has been stated earlier, a potentially secret lien, something that would not be a matter of record. As title companies, we are charged with searching the public record to determine if there are liens against the property. As this bill is presently drafted, we do not believe there is enough protection or wording in it that would allow us searching the record to determine if there was a lien. There's no way to determine when this lien would become effective; there's no way to determine what property it would have an effect on. And we also have questions with regard to what potential statute of limitations might be. Would we be limited by the five-year period? Are we limited by the one-year period in the event that they choose to do a foreclosure of the lien? That, I think, in a nutshell, is really our concern. We have no way of knowing if the property has a lien against it or when that lien is established. We also have some questions with regard to who would make a determination as to whether the transfer was done for full and adequate consideration. If you have any questions, I would certainly be willing to address them. [LB72]

SENATOR SEILER: I see nothing. Thank you for your testimony. [LB72]

JAMES BUSSE: Thank you very much. [LB72]

SENATOR SEILER: Any further witnesses? Anybody here to speak in the neutral? Seeing none, this time I won't waive, Paul. You can...to close. [LB72]

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SENATOR SCHUMACHER: Thank you, Senator Seiler and members of the committee. On the point that we discussed, of course, the iPhone is the ultimate authority on everything, and this would seem to indicate that the stepped-up basis does occur in the case of a life estate. But we can check that out further, but I've got iPhone as authority. (Laughter) I think that we've identified a problem here that needs to be addressed, and it's a big problem and a lot of money involved. The concerns are not with respect to we should not be creating a mechanism to make sure that the sin that we were talking about being committed is not committed. It basically boils down to how do you have notice of this lien. I thought the bill was fairly straightforward. If there is language in the deed that says these people are not heirs, in that classification the lien doesn't attach. That's your notice. The title company examining the record looks at the deed, looks for a notary stamp, looks for a signature, looks for a proper description, looks for this magic, two-sentence piece of language. If it's not there, there's a problem. And I think that I've...if I have an opportunity to work with Mr. Hallstrom, work with the land title people, we should be able to come up with some language that raises a red flag and says, oops, there's a lien on this property. And if that would dissuade the use of life estates for the purpose of preserving an estate at the expense of the state, that maybe is part of the purpose of the bill that you should not be able to do this with ease. So I'll be happy to work with those two parties that testified about some concerns in the mechanics of a notice of a lien or if there's alternatives to the lien. But the idea that it is embedded and, I think, 98-percent uncontested today is the idea that the state should be reimbursed for Medicaid cost incurred on behalf of people who are passing large sums of property, of real estate onto their children for little or no consideration and that we need to address the issue. And I think we have a vehicle here that, if there's any feeling that this issue needs to be pursued, that can be molded. And I'd be very surprised if anybody comes forward with much more than mechanical opposition to how this lien or how this recapture process actually works. I'll be happy to take any other questions. [LB72]

SENATOR SEILER: Yes, Senator Morfeld. [LB72]

SENATOR MORFELD: Senator, maybe I missed this when I was...stepped out for a minute. But is there any estimate on how much money the state is currently losing in this? Because I looked at the fiscal note and I looked at the recovery cost, but it didn't really talk about... [LB72]

SENATOR SCHUMACHER: You know, I don't know if they know. [LB72]

SENATOR MORFELD: Okay. [LB72]

SENATOR SCHUMACHER: I don't know how you would know. [LB72]

SENATOR MORFELD: Yeah. No, I figure it would be tough to. [LB72]

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SENATOR SCHUMACHER: And...but it is a common tool and it is something that I think lawyers hear quite often: I don't want my estate to go to the nursing home, and whatever it's going to take in order to get it to the kids, and that's what I want to have happen. Admirable thought, except that we're at a point where it's unfair to pay that bill if these Medicaid programs are designed to help poor people instead of people who have got a lot of money. And it'd sure be nice if you could pass things onto your kids and also pay for your nursing home. But unless we're willing to do that for everybody, we probably need to address this issue. [LB72]

SENATOR MORFELD: Thank you. [LB72]

SENATOR WILLIAMS: Senator Schumacher. [LB72]

SENATOR SEILER: Senator Williams. [LB72]

SENATOR WILLIAMS: And I certainly applaud you also in bringing this to the attention of the Legislature and this committee. And I think my question will go into what you've seen throughout your lifetime of working on these kinds of situations. We certainly have the situation where it is clear the intent is there to create a situation so that they don't have to sell their land and put mom in the home. What about the situation, or are there situations, that the intent was not there? They were doing normal, common estate planning, transfer of assets to the next generation, and then bad stuff happened eight years later, ten years later, and they would be caught. [LB72]

SENATOR SCHUMACHER: Well, who knows what people's intents is? Clearly, if it's a case where they do not go into some facility at state expense, this doesn't apply. I mean, the lien goes away. There is...the kids get the property. It's some paperwork that a lawyer does in connection with closing an estate. If, however, they give their property to the kids, they retain the full life rights, they rent it out, they get the rent, they live in the house, they basically have filed a piece of paper that has no practical effect until they're dead in a life estate document or a trust of some description, should they be allowed to then disclaim that resource for purpose of...and go on the state rolls? So that's a value judgment we're going to have to make. Clearly, if as a practical matter it makes no difference because they weren't going to sell the property anyway, the mechanism they used to get it to the heirs should be treated just as though they continue to own it. I don't know if there's any justification for allowing... [LB72]

SENATOR WILLIAMS: Looking at intent. [LB72]

SENATOR SCHUMACHER: Right. [LB72]

SENATOR SEILER: Thank you. [LB72]

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SENATOR SCHUMACHER: Okay. Thank you very much. [LB72]

SENATOR SEILER: That closes the hearing on LB72. We'll open the hearing on LB88. Senator Campbell. [LB88]

SENATOR CAMPBELL: Good afternoon, Senator Seiler and members of the Judiciary Committee. I am Kathy Campbell, K-a-t-h-y C-a-m-p-b-e-l-l, representing the 25th Legislative District of the Nebraska Legislature, here to introduce LB88. I introduced LB88 at the request of the Nebraska Association of County Officials. The bill is a follow-up to last year's LB994 which increased the state's fee for a certified copy of a marriage license from \$11 to \$16. At the time of LB994's hearing, it was pointed out that counties may issue a certified copy for only \$5 and that the county's fees should be the same as the state's. This suggestion was made not only to align the fees but to recognize the county's expenses for issuing certified copies have increased. To cover those costs and to align the county with the state, LB88 would change the county's fee to \$16. LB88 would also increase the fee that counties receive for marriage licenses. Currently, that fee is \$15 and it is supposed to cover the cost of all procedures required for a marriage license, which includes administering oaths or affirmations, issuing a license, and recording the license. The county's costs for these procedures have increased. To allow counties to cover those costs, LB88 would increase the fee to \$50. The fee has not been adjusted since 1995, and Lancaster County, my home county, estimates the actual cost is closer to \$55. I encourage you to support LB88, and I would be happy to answer any questions. There are county representatives here who can give you a much more detailed picture of costs and answer any technical questions. But I'd like to add that when I served on the Lancaster County Board, it used to really bother me that if fees were inadequate to cover the full cost, that meant that the property taxpayer covered the rest of it. And so if we're really concerned about property tax reduction, we ought to look at what that property taxpayer has to pick up when fees are not adequate to cover the costs for counties, and that would affect all 93. So with that, Mr. Chair, I will close my opening remarks and take questions. [LB88]

SENATOR SEILER: Any questions of the senator? Yes, Senator. [LB88]

SENATOR MORFELD: Senator Campbell, you know, as somebody who is not married yet, I'm particularly interested in this bill. (Laughter) No, I...I do believe it's reasonable to increase the fee. And I guess my question for you is, what is...so it's \$55 for Lancaster County as an estimate of how much it costs to process one of these. Is that pretty stable across the state, do you know, or...? [LB88]

SENATOR CAMPBELL: I've asked the county officials in NACO to testify today to give you an accurate view of what it may look like in all 93. [LB88]

SENATOR MORFELD: My fear is that, you know, if across the state it costs more than

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\$50 to process this right now and it's been since the mid-'90s that we've increased this, that perhaps maybe we should look at increasing it to an amount that represents the actual cost to the counties. [LB88]

SENATOR CAMPBELL: And, Senator Morfeld, I think that's a very valid question that I hope that you would address to the county officials' association. [LB88]

SENATOR MORFELD: I look forward to seeing those other numbers. Thank you. [LB88]

SENATOR SEILER: Any further questions? Yes, Senator Chambers. [LB88]

SENATOR CHAMBERS: Senator Campbell, I married a lady, or she married me. But she was twice wise. First time she showed wisdom was when she married me; the second time was when she divorced me. And I learned from that. I've never married again. I would not pay a fee to marry when you could not pay me to get married. That's in the interest of full disclosure. Suppose some people can't afford to pay the fee that the state is going to charge to get married. [LB88]

SENATOR CAMPBELL: You know, Senator, to my knowledge...and Dan Nolte is here who deals with marriage licenses in Lancaster County. I think that's probably a question you'll have to ask him. I don't think there's any way that that is waived, but that would be a good question to ask Mr. Nolte. To my knowledge, it's not waived. [LB88]

SENATOR CHAMBERS: Okay, but not based on knowledge, our status as policymakers, at law a person can file a paper indicating he or she is indigent and cannot afford maybe a filing fee or other things. I'll ask that question of these moneygrubbers who are going to come up here and try to make it hard for people to get married. Obviously, they're against family and all those values of Nebraskans, so I want to have the chance to question them on whether or not they've talked to these family groups that are interested in families and just see what the lay of the land is. [LB88]

SENATOR CAMPBELL: You know, Senator Chambers, when I was first approached about this bill, I thought, what if I had paid \$50 when I got married? I've been married for 46 years and I figured, at a dollar a year, I'd be almost even, so. (Laughter) Thank you for your question though. [LB88]

SENATOR SEILER: Any further questions? Thank you, Senator. [LB88]

SENATOR CAMPBELL: I will waive closing because I'm going back to the Health and Human Services Committee, so thank you. [LB88]

SENATOR SEILER: Thank you. [LB88]

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SENATOR CAMPBELL: If there's any questions or additional information that the committee might need, we'll be glad to get it for them. [LB88]

SENATOR SEILER: Thank you. [LB88]

SENATOR CAMPBELL: Thank you. [LB88]

SENATOR SEILER: Proponents of this bill. [LB88]

DAN NOLTE: (Exhibit 1) Mr. Chairman and members of the committee, my name is Dan Nolte, N-o-l-t-e. I'm currently serving as the Lancaster County Clerk. I'm here today in support of LB88. In Lancaster County, we issue over 2,000 marriage licenses per year. In reviewing our expenses associated with the marriage license process, we estimated it costs nearly \$55. This reflects the cost of one full-time position, partial wages of other staff members who issue marriage licenses, and other proportionate costs, such as rent, postage, office supplies, computers, etcetera. With regard to marriage licenses, the front end of the process, which you would observe when obtaining a license, is usually fairly simple. It is on the back end, when the license is returned to our office, that we spend the greatest amount of time. In excess of one-third of the marriage licenses returned to our office require follow-up by the staff. Most times, this involves obtaining missing or incomplete information, such as the date of marriage, officiant and/or witness signatures, or officiant titles, all of which are required by the state to be included on the form. What one perceives as fairly simple information is, for whatever reason, oftentimes overlooked by the officiant or witnesses despite the fact that we include detailed written instructions on how to complete a marriage license at the time of issuance. Follow-up to obtain missing information often requires multiple phone calls or letters. Additionally, the state in some instances may choose to not process a license until the missing information is obtained. In cases whereby licenses are returned to the county and filed with the state, the lack of accurate information can cause problems for folks down the road with such things as insurance, passports, and even divorce. On occasion, a license may get lost in the mail or it is never returned to the county. Several years ago, we assisted a woman whose husband had died suddenly. They had been married in Lancaster County a number of years earlier, but the license was never returned to the clerk's office. The woman and her family were in a state of panic because proof of marriage was needed in order for Social Security benefits for a minor child. To resolve the issue, we worked with our county attorney, the state Vital Records division, and the citizen to find a solution. Fortunately, the witnesses and the officiant were still living and the groom's signature was on file on the application form, so the license could be recreated. We strive to do a good job and provide good service to citizens. We take our responsibilities very seriously, but much of the cost of marriage licenses is being covered by property tax dollars. The current fee for a marriage license has not been increased since the mid-1990s. At \$15, we cannot begin to recover our

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cost. We continue to observe an increase in the number of licenses that are returned with omissions and continue to spend a great deal of time following up on those issues. Therefore, I'm supporting this legislation as I believe that those costs...that those who are seeking this service should be covering those costs. Thank you. [LB88]

SENATOR SEILER: Yes, Senator Chambers. [LB88]

SENATOR CHAMBERS: And if we say no, will you stop issuing marriage licenses? [LB88]

DAN NOLTE: No. [LB88]

SENATOR CHAMBERS: So what difference does it make to us? Let me just make it me because I don't know how my colleagues are feeling. But do you think the state has an interest in people being married other than you mentioning maybe you have to prove your marriage to get Social Security or something? But that's not a state interest. What is the state's interest in people being married? [LB88]

DAN NOLTE: I'm not sure that I can answer that other than I suppose for building strong families, strong communities, and etcetera. But I think that's... [LB88]

SENATOR CHAMBERS: Why is that an interest of the state? That's not the state's interest, is it? Do we have people come in and fill out papers and document that during the last year they strengthened family ties and did everything they were supposed to do, they didn't wander, they didn't philander, they didn't do the things that we know all of them are doing? [LB88]

DAN NOLTE: No, no, not that I'm aware of, anyway, not at the county level, so. [LB88]

SENATOR CHAMBERS: Now if you are...if you have a license to have a car, to drive a car, are there other state requirements that that car be functioning properly and operated safely? [LB88]

DAN NOLTE: I don't know about the safety part, but obviously the insurance and several of those aspects, so. [LB88]

SENATOR CHAMBERS: So then you think that if a patrolman or a patrolwoman saw me on the highway with a vehicle that's supposed to have four wheels and I have three wheels, they would let me drive on the highway? [LB88]

DAN NOLTE: I would guess in that case they would probably check out and see what the problem was or if it was being harmful to other drivers. [LB88]

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SENATOR CHAMBERS: As far as the state is concerned, what can people do when they have a license saying that they can be married that they cannot do...in other words, what does the license entitle them to do in a marriage relationship that people without that license cannot do? [LB88]

DAN NOLTE: Well, you establish...obviously, there is financial aspects. There may be support for children and so forth that come into play. [LB88]

SENATOR CHAMBERS: You don't have to be married to have to support your children. [LB88]

DAN NOLTE: But I mean child support and so forth may come into play on that. I'm not sure. But it certainly would on dissolution of assets and so forth in a case of a divorce. [LB88]

SENATOR CHAMBERS: Couldn't they draw up a contract and do that? [LB88]

DAN NOLTE: I would expect so, yes. [LB88]

SENATOR CHAMBERS: And they wouldn't have to have a lawyer to draw up a contract, would they? [LB88]

DAN NOLTE: I don't believe so. [LB88]

SENATOR CHAMBERS: So they don't have to pay that cost for the contract, and that's how they would decide how the property is disposed. In other words, this is a way for the state to gouge people, isn't it? [LB88]

DAN NOLTE: I don't think that's the intent. [LB88]

SENATOR CHAMBERS: Are there any services you think the state ought to provide to the citizenry for which the citizens do not have to pay? [LB88]

DAN NOLTE: I think everything...any services that government provides is paid for in some manner, whether or not it's through taxes or fees. [LB88]

SENATOR CHAMBERS: Should I have to pay a fee to walk across the street? [LB88]

DAN NOLTE: I don't believe so. [LB88]

SENATOR CHAMBERS: So I get the benefit of the street without having to pay a fee, huh? [LB88]

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DAN NOLTE: Yeah. [LB88]

SENATOR CHAMBERS: And I can walk on the sidewalks that the city might maintain without paying a fee. Can I enter your building down the street without paying an entrance fee? [LB88]

DAN NOLTE: Sure, but you have helped pay for that building in some manner. [LB88]

SENATOR CHAMBERS: Well, suppose I've never worked in my life and I've never paid any tax, even sales tax, because I'm like a politician: a thief. I steal. I don't pay for anything. How have I helped pay the cost of the building? [LB88]

DAN NOLTE: Well, you're paying...I mean I assume you're living somewhere, paying rent, so rent... [LB88]

SENATOR CHAMBERS: No, no. I'm homeless. I'm a vagabond. [LB88]

DAN NOLTE: Then probably not in that case, so. [LB88]

SENATOR CHAMBERS: So if this were a society of vagabonds, nobody would pay anything, right? [LB88]

DAN NOLTE: I don't know that you'd have much of a society but, yeah, that would be accurate. [LB88]

SENATOR CHAMBERS: Isn't this more complicated than it's worth? [LB88]

DAN NOLTE: I can just tell you our experience in Lancaster County and that I think... [LB88]

SENATOR CHAMBERS: Then let's make it easy. [LB88]

DAN NOLTE: Okay. [LB88]

SENATOR CHAMBERS: Tell me what you do when you issue a marriage license that costs \$50, that adds up to \$50. [LB88]

DAN NOLTE: It's the staff time involved, all the peripherals, rent, etcetera. [LB88]

SENATOR CHAMBERS: Well, they're doing other things. How much time does a staff member...what does a staff member do in issuing a marriage license? I'm coming to get a license. [LB88]

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DAN NOLTE: Generally, the couple comes in. They may have a worksheet filled out and they may fill it out in the office. That information is then entered in the computer. A copy is printed out. We proofread it. The couple proofreads it. And then the license is issued. [LB88]

SENATOR CHAMBERS: How long does that take? [LB88]

DAN NOLTE: If they don't have to fill out...if they got the worksheet filled out ahead of time, generally, 15 minutes or so. Again, the time...the predominance of time spent on this is when the license comes back and we have to follow up with the couples, with the officiants, with the witnesses to get the information that is lacking or that is inaccurate. [LB88]

SENATOR CHAMBERS: Is there any way to get a waiver of that fee? [LB88]

DAN NOLTE: Not currently. [LB88]

SENATOR CHAMBERS: Would you accept an increase to \$300 for a marriage license? [LB88]

DAN NOLTE: I think that would be excessive. [LB88]

SENATOR CHAMBERS: Why? [LB88]

DAN NOLTE: Because I think it wouldn't...because then it would be a...it's more than recovering our costs. It would actually be a net revenue generator for the county. [LB88]

SENATOR CHAMBERS: So if we raised the fee to \$300, you wouldn't accept it. [LB88]

DAN NOLTE: No. I mean I wouldn't support that. [LB88]

SENATOR CHAMBERS: So when a person came to get a marriage license, you'd say, well, you don't have to pay \$300. Is that what you would say? [LB88]

DAN NOLTE: No. We have to...I would follow the statute. [LB88]

SENATOR CHAMBERS: You'd what? [LB88]

DAN NOLTE: Would follow the statute. [LB88]

SENATOR CHAMBERS: You'd pay \$300...you'd charge \$300? [LB88]

DAN NOLTE: If that's what the statute...if that's what the Legislature determined, yes.

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[LB88]

SENATOR CHAMBERS: How many marriage licenses do you think you'd sell? [LB88]

DAN NOLTE: It would be interesting to know; probably not too many. [LB88]

SENATOR CHAMBERS: So if I don't like marriage, then I should raise that fee, huh? [LB88]

DAN NOLTE: It might save some people some pain, I suppose. [LB88]

SENATOR CHAMBERS: Say it again. [LB88]

DAN NOLTE: It might save some people some pain, I suppose. [LB88]

SENATOR CHAMBERS: They wouldn't get a marriage license though, right? [LB88]

DAN NOLTE: Right. So my...you know, maybe that wouldn't... [LB88]

SENATOR CHAMBERS: Then we'd have this experiment. We could see whether or not a marriage license is necessary to have a family and do the things that families do, wouldn't we? [LB88]

DAN NOLTE: Right. [LB88]

SENATOR CHAMBERS: Do you think there's really any connection between having a marriage license and having a wholesome, healthful relationship? [LB88]

DAN NOLTE: Personally, no. [LB88]

SENATOR CHAMBERS: Okay. [LB88]

DAN NOLTE: But I think just in general, because of tradition and so forth, maybe that that probably comes into play. [LB88]

SENATOR CHAMBERS: And I just wanted to ask you these questions because you came here, you're on the clock, and I wanted you to earn the money that the taxpayers are paying you. [LB88]

DAN NOLTE: Okay. [LB88]

SENATOR CHAMBERS: I don't want you to just come here and have an easy time of it and not earn that money... [LB88]

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DAN NOLTE: Okay. [LB88]

SENATOR CHAMBERS: ...because I get \$5.73 an hour for being a state senator. Do you get more than... [LB88]

DAN NOLTE: Yeah. [LB88]

SENATOR CHAMBERS: Nevermind. (Laughter) That's all that I have. [LB88]

DAN NOLTE: Okay. [LB88]

SENATOR SEILER: Any further? [LB88]

DAN NOLTE: I hope I've answered your questions, so. [LB88]

SENATOR CHAMBERS: (Laugh) Okay. [LB88]

SENATOR SEILER: Thank you. [LB88]

DAN NOLTE: Thanks. [LB88]

SENATOR SEILER: Any further testifiers in favor of the bill? [LB88]

BETH BAZYN FERRELL: Good afternoon, Chairman Seiler, 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'm appearing in support of the bill. We'd like to thank Senator Campbell for introducing this bill at our request. We...as she said, we were very interested last year when the state rate for certified copies went up to \$16. We wanted to have the county fee align with that since it's the same document. We also support the increase in marriage license fees. The question was asked earlier if we had data about how much it costs in other counties since we have the Lancaster County data. We have mostly anecdotal evidence about what the costs are, but there's similar references to how long it takes to issue a license and the work that needs to be done to follow up on those licenses. I would be happy to try to answer questions. [LB88]

SENATOR SEILER: Further questions? Senator Chambers. [LB88]

SENATOR CHAMBERS: Just one: If we lowered the state's fee to \$5, we would be performing a service for the people who need that certified copy, wouldn't we? [LB88]

BETH BAZYN FERRELL: Yes. [LB88]

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SENATOR CHAMBERS: And we should be in the business of performing services for the public, shouldn't we? [LB88]

BETH BAZYN FERRELL: That's... [LB88]

SENATOR CHAMBERS: So we can equalize this by reducing the amount the state charges. Do you...because I think when people come for any of these documents, they have no idea what the money goes for. They know that this is what they're charged, so they'll pay it if they want the document. So if the counties can make these copies at \$5 a copy...if I understand you, that's what the counties can charge. Correct? [LB88]

BETH BAZYN FERRELL: Right now, it's \$5 for a certified copy. [LB88]

SENATOR CHAMBERS: I'm glad you brought it to my attention. I'm going to see if we can reduce the state's charge so that the service that's being performed is not going to cost anybody more when they come to the state than it would if they went to the county. That's all that I have of you. Thank you. [LB88]

SENATOR SEILER: Thank you. Any further testimony? Testimony for the opponents? Anybody here to testify in neutral? Senator Campbell has waived. (See also Exhibits 2 and 3.) We will go on to the next bill. Senator Krist, LB22. [LB88]

SENATOR KRIST: (Exhibit 1) Good afternoon, Senator Seiler and fellow members of the Judiciary Committee. For the record, my name is Bob Krist, B-o-b K-r-i-s-t, and I represent the 10th Legislative District in northwest Omaha, along with north-central portions of Douglas County which includes the city of Bennington. I appear before you today in introduction and support of LB22. During emergency situations caused by natural disasters, terrorist attacks, and other catastrophic events, licensed architects and professional engineers are often called upon to readily volunteer their services to assist with relief and recovery efforts. These services include ensuring the safety and structures of buildings, infrastructure piping, or other systems. Nebraska, however, fails to extend immunity to licensed architects and professional engineers who provide critical services in an emergency. Nebraska ranked fifth in losses for catastrophic events and natural catastrophes in 2013. As proven by the relief efforts during hurricane Katrina and Rita and the 9/11 terrorist attacks, these professionals' expertise in assessing structural, mechanical, and electrical or infrastructure is invaluable to assisting federal, state, and local governments that may have a limited resource during the time of the emergency. Therefore, it is crucial that the state government establish liability protections that provide immunity for licensed architects and professional engineers during a declared emergency so that architects and engineers can quickly volunteer their services without being deterred by liability concerns. In return, the government would be able to quickly mobilize architects and engineers to adequately evaluate the threats to public safety and health. This legislation stipulates that a

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licensed professional engineer or architect that voluntarily and without compensation--emphasis on "without compensation"--provides engineering or architectural services in response to a natural disaster, terrorist attack, or other...yeah, event, shall not be liable for any personal injury, wrongful death, property damage, or other lost cause by the engineer's acts, errors, or omissions. Immunity would not be applied in cases of wanton, willful, or intentional misconduct. The immunity only applies during the emergency and for 90 days after the emergency event. Twenty-five states have extended good Samaritan laws to registered professional engineers and architects for their voluntary services. Architects and engineers in Tornado Alley, with the exception of Nebraska, have this protection. This includes Texas, Oklahoma, and Kansas. Additional neighboring states that also have a comprehensive good Samaritan protection law include Colorado, Missouri, and North Dakota. To underscore the value of LB22, I am providing a list of some examples of the natural disasters in Nebraska. And I'd like to thank you for your support and I stand for any questions. And here's the handout for the events that we have seen in Nebraska. [LB22]

SENATOR SEILER: Any questions? [LB22]

SENATOR CHAMBERS: Are you going to have supporters for this bill? [LB22]

SENATOR KRIST: Yes, sir. [LB22]

SENATOR CHAMBERS: Oh, then my questions I'll hold. [LB22]

SENATOR KRIST: Thank you. [LB22]

SENATOR SEILER: Okay. Thank you. [LB22]

SENATOR KRIST: And I'll be here (laugh). [LB22]

SENATOR SEILER: Proponents of this bill. [LB22]

MARK LUTJEHARMS: Good afternoon, Chairman Seiler and members of the committee. My name is Mark Lutjeharms, L-u-t-j-e-h-a-r-m-s, and I appear before you today as the legislative committee chair for the American Council of Engineering Companies of Nebraska, or ACEC Nebraska. Our organization represents the business interests of private engineering firms across the state, and we would like to thank Senator Krist for sponsoring this important legislation. During natural disasters, terrorist attacks, or other catastrophic events, the demand for emergency services often exceeds the capacity of government agencies. State and local governments rely on the private sector to assist in responding to the relief and recovery needs of these communities. The expertise and skills of architects and professional engineers are particularly needed in times of these crises. Architects and engineers are required under

their respective licensure board rules of professional conduct to protect the health, safety, and welfare of the public. In the aftermath of a natural disaster or catastrophic event, architectural and engineering expertise and skills are needed to provide structural, mechanical, electrical, or other architectural or engineering services to determine the integrity of buildings, structures, utilities, roads, or other infrastructure that may have been damaged by such events. Oftentimes, these professionals render these services at risk to their well-being. They put themselves into uncertain situations that are not within their control where they are vulnerable to secondary collapses and/or additional attacks. Efforts by architectural and engineering industries make it safer for police, firefighters, and other rescue workers to work on search-and-rescue efforts. Professional engineers are willing to voluntarily assist in emergency situations. However, they face substantial liability exposure when doing so. Without sufficient protection from liability, professional engineers may be hesitant to volunteer. Nearly half the states in the country have recognized this liability risk and have enacted laws to provide liability protection to design professionals for their good Samaritan services. LB22 would enact good Samaritan legislation to provide liability protection for professional engineers and architects who render voluntary services at the scene of a disaster or a catastrophe. It is crucial that state and local government establish liability protections for design professionals during urgent circumstances and declared emergencies so they can quickly volunteer their services without being deterred by liability concerns. Now is the time to pass this legislation, before another disaster occurs. We thank you for your consideration of LB22. ACEC strongly encourages Nebraska to enact laws that provide liability protection for professional engineers and architects acting on a voluntary basis during emergency situations. Thank you. [LB22]

SENATOR SEILER: Any questions of this witness? Senator Chambers. [LB22]

SENATOR CHAMBERS: Have you seen this bill itself? [LB22]

MARK LUTJEHARMS: I have, yes. [LB22]

SENATOR CHAMBERS: Were you...did you assist in drafting it? Or anybody with your organization, did they assist in drafting this language? Or is it taken from some other state? [LB22]

MARK LUTJEHARMS: I personally was not involved in the drafting of it, Senator. I'll be honest, I am not exactly sure of the drafting. I'm certain that our organization was involved in that and I'm gathering that some pieces were taken from other states, as well. [LB22]

SENATOR CHAMBERS: But you've read it. [LB22]

MARK LUTJEHARMS: I have read it, yes, sir. [LB22]

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SENATOR CHAMBERS: Okay, here is something that is in the bill, "An architect or professional engineer licensed under the Engineers and Architects Regulation Act who voluntarily and without compensation, other than expense reimbursement..." What is expense reimbursement? [LB22]

MARK LUTJEHARMS: My interpretation of that, Senator, would be mileage and perhaps lodging expenses that would be incurred by that individual. [LB22]

SENATOR CHAMBERS: It doesn't say that in here though, does it? [LB22]

MARK LUTJEHARMS: It's not that specific, no. [LB22]

SENATOR CHAMBERS: So whatever that person claims as an expense would have to be...who would reimburse this person? [LB22]

MARK LUTJEHARMS: My understanding would be that the local agency or the jurisdiction that is suffering from the catastrophe. Whether or not there was then any monies that would be able to reimburse those agencies or jurisdictions is certainly a possibility. [LB22]

SENATOR CHAMBERS: Well, if they're these noble people, why do they want to be reimbursed for their expenses? Why don't they just donate that? I'm just asking questions. [LB22]

MARK LUTJEHARMS: I appreciate that and respect that. That's certainly a possibility. [LB22]

SENATOR CHAMBERS: Why do you include cops in this bill? And they're not responsible for any personal injury, wrongful death, property damage. See, I don't trust cops. When I saw all those cops in New York marching, I don't how many abreast but there were thousands of them, you know what it brought to mind, to me? The biggest donut convention in the world. See, when they kill people in the way that they do, I have no regard for them. So why are they in this bill? They don't volunteer when they are out there doing what they do, so why are they covered? Or are they covered in this? Or why are they mentioned in this bill? [LB22]

MARK LUTJEHARMS: I could be mistaken, but my understanding is that they're mentioned to act on behalf of the local jurisdiction that may be requesting the professional services. [LB22]

SENATOR CHAMBERS: Isn't that their job, to protect and serve? You know what the Nebraska Supreme Court has said? You don't...that's a rhetorical question...that when it

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comes to law enforcement people, they are on duty 24 hours a day, in or out of uniform. That's language from a Nebraska Supreme Court case. So when are they going to say they're volunteering when they're doing what it's their job to do and they're paid to do? [LB22]

MARK LUTJEHARMS: Yeah, it's not my understanding that it's the law enforcement that were asking for liability protection. Again, my understanding is the reference to law enforcement, again, is acting on behalf of the local jurisdiction requesting the emergency services from the professional engineers or architects. [LB22]

SENATOR CHAMBERS: They're not licensed as engineers or architects, are they? [LB22]

MARK LUTJEHARMS: They are not. [LB22]

SENATOR CHAMBERS: And they're not acting in the function or carrying out the functions of an engineer or architect, are they? [LB22]

MARK LUTJEHARMS: No, they are not. [LB22]

SENATOR CHAMBERS: So why don't we limit it...why don't we eliminate everybody except engineers and architects? [LB22]

SENATOR PANSING BROOKS: I think it's definitional. [LB22]

SENATOR CHAMBERS: I don't care who answers. [LB22]

SENATOR PANSING BROOKS: Well, I just think it's definitional, Senator, and I think that what they have here is that they're saying that these...the architects and engineers can act "at the request of or with the approval of national, state, or local public official, law enforcement official," and then they define below what the...who those people are. That's why I think they're included in this. [LB22]

SENATOR CHAMBERS: "Any appointed or elected," so somebody could be appointed a special deputy and tell these people to do this work and they do it and you had an incompetent special deputy, and that gives a blanket immunity to people who act on the instructions or request of this idiot. I just want you to know that I have problems with the bill. And when people talk about volunteering and they want to be able to cause very serious injury, even death, then I don't think that's necessarily something that gives me confidence in exempting them from liability. So I'm going to ask you this question. The others were general. Are you an architect? [LB22]

MARK LUTJEHARMS: I am an engineer. [LB22]

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SENATOR CHAMBERS: Okay. If you came upon one of these situations, if you did not have this liability in the law and you could render assistance, you would not render it, is that correct? [LB22]

MARK LUTJEHARMS: Could you repeat that question, please, Senator? [LB22]

SENATOR CHAMBERS: Okay. If you...based on this, there is a declared emergency; and it lists terrorist attacks and whatever, but whatever kind of emergency it is, and the service of an engineer would be of value. If you were not exempt from liability, you would not render that aid in that situation. Is that what I'm to understand? [LB22]

MARK LUTJEHARMS: That's certainly a possibility. [LB22]

SENATOR CHAMBERS: So then these are not really good Samaritans. These are people who want to be blanketed so that they don't have to...well, that's all I'll ask you. But it's not the kind of bill that I ordinarily support, and this is one of those in that category that I don't see any reason for. But now I'm going to ask this question, then I'll let you go. What situation are you aware of--and I don't care how many other states do this--what situation are you aware of where an engineer lent assistance and was found liable as a result of that assistance that was rendered? [LB22]

MARK LUTJEHARMS: I do not have that history and have any specific examples to provide you. [LB22]

SENATOR CHAMBERS: Why were you selected to speak? Did you draw the short straw? [LB22]

MARK LUTJEHARMS: Perhaps that's the case. I am the legislative chair for our organization and I was asked to testify. [LB22]

SENATOR CHAMBERS: So you were not exempted from that liability, huh? (Laughter) You're just a good guy. That's all that I have though. And by the way, my comments are not aimed at you personally. [LB22]

MARK LUTJEHARMS: I understand that. [LB22]

SENATOR CHAMBERS: But you're the one who came to present it. [LB22]

MARK LUTJEHARMS: I understand that. [LB22]

SENATOR CHAMBERS: Okay. That's all I have. [LB22]

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SENATOR SEILER: Any further questions? Thank you. [LB22]

MARK LUTJEHARMS: Thank you. [LB22]

SENATOR SEILER: Any further witnesses? [LB22]

ROBERT SOUKUP: (Exhibits 2 and 3) Good afternoon, Chairman and the members of the committee. My name is Robert Soukup, S-o-u-k-u-p, and I am here today representing the American Institute of Architects, Nebraska Chapter. And I am testifying in support of LB22. I'd like to personally thank Senator Krist for introducing this legislation. In addition to my testimony, I would also like to submit for the record a letter from David Levy with Baird Holm Attorneys at Law which provides a comparison of LB22 to existing state law. The American Institute of Architects supports legislation that protects licensed architects from being held liable for voluntary services provided during a government-declared disaster. During such situations, a licensed architect may be exposed to questions of liability even though he or she is acting in good faith to preserve the safety of the community. While Nebraska has statutes that protect volunteers employed by the state from liability during an emergency situation, it's questionable if these statutes would shield an architect from liability if he or she is called upon to render professional services in a time of crisis. This ambiguity needs to be removed by passing LB22. Architects are trained experts in the built environment. We are licensed by the government to help protect the health, safety, and welfare of the public. Our skill sets can be useful tools after a declared disaster. As one example, on June 11, 2008, the Little Sioux Scout Ranch near Little Sioux, Iowa, suffered a direct hit from an EF3 tornado. Four young Boy Scouts lost their lives in that disaster. In addition, many of the campground facilities suffered damage or complete destruction. Numerous architects and engineers from both Nebraska and Iowa volunteered their time and talents to create a recovery plan for the campground. At the same time though, many of our colleagues were reluctant to offer their professional services because of the potential liability involved. In the days and weeks immediately following the tornado, volunteer professionals worked with the Boy Scouts to help coordinate the cleanup effort. Effective means of communication were reestablished, roads were cleared, and debris was removed. Old stick-frame cabins were eventually replaced with new concrete-reinforced storm shelters. And my own personal volunteer efforts in that situation included the design and construction of a memorial chapel in honor of Aaron Eilerts, Josh Fennen, Ben Petrzilka, and Sam Thomsen, the four boys killed in that tornado. The simple fact is that we live in Tornado Alley. Natural disasters can occur at any time, as evidenced last year by the destruction in Pilger, Nebraska. The middle school was damaged beyond repair and was eventually demolished. St. John Lutheran Church was leveled. Public and civic buildings are often the first place people in a community will seek out for assistance after a disaster. And when these structures are compromised, it's important that they be evaluated to ensure the health, safety, and welfare of the public. Architects have the educational and professional background to

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help make those evaluations, but the lack of protection from liability claims is a strong deterrent. And I see I'm out of time, so I'll pause there. [LB22]

SENATOR SEILER: Any questions? Yes, Senator. [LB22]

SENATOR CHAMBERS: Mr. Soukup,... [LB22]

ROBERT SOUKUP: Yes. [LB22]

SENATOR CHAMBERS: ...maybe as I ask you questions you can get other things in if you didn't. Give me an example of an architect service that is rendered during one of these disasters. [LB22]

ROBERT SOUKUP: As mentioned, before, so in the case of a tornado, if a structure is maybe only partially damaged. I know, like, in Pilger the public library had the roof blown off. But in the most cases, the structure was sound. [LB22]

SENATOR CHAMBERS: But you don't go in there with a shovel and a pick and do any physical work, do you? [LB22]

ROBERT SOUKUP: It depends on what capacity you're there. In the situation of the Boy Scout camp, once you're through evaluating buildings, absolutely, pick up a chain saw, move some debris, move some branches. I would say there are instances. [LB22]

SENATOR CHAMBERS: Is the thing that gets you immunity if this bill passes the fact that you're an architect? So anything you do, since you're an architect, qualifies as an architect service? Is that true or false? [LB22]

ROBERT SOUKUP: I'm not sure if I'm qualified to answer if that's true or false. I guess one thought or scenario that I could foresee: if I'm an architect and I'm volunteering in a capacity to help evaluate a building. Let's say a home has been partially destroyed. I go into the home. I review it and say that it is safe for inhabitants again. But unbeknownst to me--I wasn't able to see behind the walls--there's mold, and somebody becomes sick because of that mold. And due to my license where I am required to protect the health, safety, and welfare of the public, could they bring a suit against me for not detecting the mold and bringing that to their attention? Maybe. It's liability. And again, I'm an architect. I'm not a lawyer, but... [LB22]

SENATOR CHAMBERS: So you mean somebody...for you to be held liable, there would have to be legal action. [LB22]

ROBERT SOUKUP: Somebody would have to sue you, yes. [LB22]

SENATOR CHAMBERS: What would you have done in this emergency that would have led you to detect mold on the other side of a wall? [LB22]

ROBERT SOUKUP: I think there is potential. Architects and engineers are held to an expectation of care with the educational backgrounds that we have that that education should enable us to make educated decisions that could have an impact on... [LB22]

SENATOR CHAMBERS: Now if you are sued by somebody who is going to say you didn't detect this mold--I don't know what theory they would use, but let's say they get in court somehow--are you aware of the fact that you are entitled to a jury trial? [LB22]

ROBERT SOUKUP: Um-hum. [LB22]

SENATOR CHAMBERS: And you think a jury would convict you in those circumstances? This is why people need to be careful the kind of examples they give to me, because that's so preposterous and out of the park that if that's what you're talking about, no, I don't have any sympathy for this at all. But let's assume that there is something an architect does that nobody else would do who is participating. If you came upon this situation, would the first thing in your mind be, "If I help in this situation I may be liable, so I'm not going to help"? [LB22]

ROBERT SOUKUP: No. [LB22]

SENATOR CHAMBERS: If there's a risk, you don't even think about that, do you? You just do it. [LB22]

ROBERT SOUKUP: Um-hum. [LB22]

SENATOR CHAMBERS: Remember, you can answer in the words you need. I'm trying to help you. Okay. Now what happens within 90 days after this disaster that would lead you to do something and you should not be faced with any liability based on how you do it 90 days after, 89 days after? [LB22]

ROBERT SOUKUP: That, I don't know that I would have a specific example to give you just other than the fact that, as a comparison, when, say, a volunteer firefighter provides volunteer services, that's an immediate need. Architecture and engineering is not in the same vein as that where you're volunteering your time, but the process of architecture and engineering is not immediate. There's design-planning services that go into effect that do take, you know, a series of days, weeks, months to get from a start product of "this building's been destroyed" to "let's get it reconstructed and replace what might need to be done in that community." You know, a school may be the new shelter for the community when the tornados come through, and cots are set up within the school. People are inhabiting that building for, you know, a matter of weeks potentially... [LB22]

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SENATOR CHAMBERS: So then... [LB22]

ROBERT SOUKUP: ...while they're waiting for their structure to be rebuilt. [LB22]

SENATOR CHAMBERS: ...to involve you, somebody would come to you and say, are you an architect? And you would say, yes. They say, inspect this building for us. Is that how that happens? [LB22]

ROBERT SOUKUP: I think that's one situation that could happen. I don't think that's how it always happens. [LB22]

SENATOR CHAMBERS: How would it happen? What would happen? What would you do 90...89 days after the event that should entitle you to be free from liability if you don't do the job the way it should be done? [LB22]

ROBERT SOUKUP: Well, potentially, I think that comes into the fact that this bill doesn't cover negligence or the wanton acts of unknowingly doing things that...I'd go back to the standard of care that... [LB22]

SENATOR CHAMBERS: So if you're negligent, then you're not exempt from liability. [LB22]

ROBERT SOUKUP: I would agree, yes. [LB22]

SENATOR CHAMBERS: Well, they mention wrongful death in this catalog of things that you would not be liable for. The term "wrongful" indicates it's a death that should not have occurred: you cause somebody to die wrongfully. That's in your bill. I'm looking at what you're asking me to vote for. So suppose you do something that is an offense under the criminal law and you're charged with it and it had resulted in the death of a person and you were found guilty under the criminal law. Then that family could not...and you have assets. That family could not sue you for wrongful death in the case of a death that you were prosecuted for. What sense does that make? [LB22]

ROBERT SOUKUP: I'm not familiar with a case of wrongful death. Again, my area of expertise falls in architecture. [LB22]

SENATOR CHAMBERS: Can you understand that I, as a policymaker, have a different interest in all this than you as somebody who is going to be shielded under the umbrella? [LB22]

ROBERT SOUKUP: Absolutely, I can understand that, that difference. [LB22]

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SENATOR CHAMBERS: And you're a grown man. [LB22]

ROBERT SOUKUP: I am a grown man. [LB22]

SENATOR CHAMBERS: And merely being asked questions about something you brought up should not be offensive to you. Right? [LB22]

ROBERT SOUKUP: No, and I am not offended. [LB22]

SENATOR CHAMBERS: I didn't say you were. But there are people who for some reason feel sympathy for people when they come before a committee on which I serve and I ask questions about what they want me to do. Let's say in the example that I gave earlier that a law enforcement official means "any appointed or elected federal," and so forth, "with executive responsibility to coordinate law enforcement in the jurisdiction in which the emergency or event has occurred." When they say "jurisdiction," does that mean in the area where this incident is occurring or throughout the county? Or the city? Or the state? [LB22]

ROBERT SOUKUP: That's a good question. I don't know that that's clarified, and I don't know that I could answer it. But that's... [LB22]

SENATOR CHAMBERS: I don't have the answer. I thought maybe you could give me what I haven't been able to detect. But let's say it is one of these cases where they appoint somebody a deputy sheriff. And this guy is supposed to be here directing traffic and telling people what to do, and this person has no more capability of doing that than Barney Fife on Andy Griffith. But he is appointed. Well, in that case, he'd actually be...yeah, he's not elected but he's hired, but he's been appointed to execute this rescue effort or whatever it is. And that's the person in charge, and that person told you to do something. Would you still feel free to exercise your judgment to decide whether you're going to do it or not? [LB22]

ROBERT SOUKUP: I think in the case of if I felt personally unsafe in the acts that he was asking me to do, yeah, I could just refuse to do it. [LB22]

SENATOR CHAMBERS: And that's all that I'm going to ask you. And I'm not going to ask anybody else questions who comes up here because I want people to feel free to speak. But these kind of bills I don't like. I don't like bills that take away liability because it also takes away the feeling of responsibility that somebody has. And all rivers and most people are crooked because they follow the path of least resistance. We wouldn't even have to talk about liability if people were going to do the right thing. If this were a society of angels, we wouldn't even need any laws. But none of those situations obtain where you can just count on the goodness of people, the good sense of people to make sure that they don't behave in a way that's hurtful to others. But right now I'm...and my

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colleague is on the committee. Maybe he can bludgeon me into submission, but so far just reading the language hasn't done that. [LB22]

ROBERT SOUKUP: Well, and that's why I think I'm passionate about this bill in the fact that I am one of those individuals that volunteers when a situation like this would come up, and I would hope that more of my colleagues are not hindered from volunteering because of the recommendations of their liability carriers. [LB22]

SENATOR CHAMBERS: Well, if they're afraid they're going to be liable for it, don't do it. Some things you do because you're a human being, because...look, there are two profound questions asked in the Bible--I call it the "Bibble"--neither of which is answered. Pilate asked Jesus, what is truth? And he walked out before he got an answer. God asked Cain, where is your brother? Cain asked God, am I my brother's keeper? and got no answer. So those are things left for us to puzzle our way through and arrive at an answer, so I guess it depends on what our core of values are as to how we answer the question. So if I think I may be liable for doing this, I'm not going to do it. Or I may be one of those people who will say, forget the consequences that may obtain, here's somebody who needs help and I'm going to render it and, if that leads to consequences, those consequences I bear. In other words, this is a society now where you measure and weigh what might happen against how much somebody needs assistance to determine whether you're going to give it. But that's all that I have. Thank you. [LB22]

SENATOR SEILER: Yes. [LB22]

SENATOR PANSING BROOKS: I just...I have a question about whether or not...do you know whether there are other laws similar for, like, contractors and builders who come to assist and whether...also, about the expense reimbursement, I'm interested in whether or not...I mean builders and contractors can come and volunteer, bring their huge machines, have the costs of transporting those machines. I'm just interested, if you know, if there's other, similar laws either in Nebraska that we have, or did you contemplate expanding it to other kinds of professionals that would...an environmentalist that would help or a...I'm interested in that. [LB22]

ROBERT SOUKUP: I don't know that we've contemplated expanding it to other people. I do believe, and this is in I think the letter that I introduced from the attorney, that current statutes protect, you know, government officials, but I don't know of a contractor who is relieved of liability for, you know, bringing his dump truck and hauling debris. I don't know that anything exists for them. I would take exception personally to the "reimbursables." I don't think that's necessary as part of this bill. As far as architectural "reimbursables," yeah, you're talking the mileage to get there, maybe some lodging expenses. But I think this goes back to Senator Chambers' point that you're the volunteer. Why should you be expecting reimbursement? You're going there because

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you are that good Samaritan who wants to help, not to go there and then get paid back for having to stay in a hotel. [LB22]

SENATOR PANSING BROOKS: Thank you, Mr. Soukup. [LB22]

SENATOR SEILER: Yes, sir. [LB22]

SENATOR MORFELD: As I read this, it doesn't exempt liability if the actions were wanton, reckless, or intentional misconduct. I mean, is...what would be an example of reckless in your profession? I mean, what would that look like? How does that...if you don't have a specific example, that's fine. You can follow up with me some other time. [LB22]

ROBERT SOUKUP: Personally, if...let's say this. You put two architects in front of a building that doesn't have a roof anymore and one says, sure, go ahead, inhabit it, and the other says, there's no roof, obviously, if you had two individuals analyzing that situation, which architect seems to be acting in the mode of protecting the health, safety, and welfare? I think it would be clear there, you know, one is more reckless than the other. [LB22]

SENATOR MORFELD: Okay. Thank you. [LB22]

SENATOR SEILER: Yes, Senator. [LB22]

SENATOR WILLIAMS: I have a question of something that you mentioned that I want to just quickly follow up on. But in the bill, as Senator Morfeld was just suggesting, you have immunity except for willful acts, wanton, reckless. But you also mentioned the term "negligence," and I don't see negligence exempted in the bill. [LB22]

ROBERT SOUKUP: And that might have been my own slip of using a word that I see in other contracts that we create when we do architectural services. [LB22]

SENATOR WILLIAMS: But it's something we better look at. [LB22]

SENATOR CHAMBERS: Maybe that's why they want to exempt them from wrongful death. But the point that is being made here: negligence is the failure to use due care. If you don't use due care in doing something, you are negligent and under this bill you would be held liable anyway. But these kind of bills, whether they exist in other states, whether they give exemptions to certain categories in this state, I oppose them. I've tried to keep bills from being passed that gave what's called special coverage to first responders, to firefighters, to people who work in the Department of Corrections even if they're cutting grass. Those are what I call niche laws, where you carve out little places for special people based on the job that they have or what they do instead of having one

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law that addresses conduct. And if this conduct is directed toward anybody, whether it's a doctor or a homeless person, then the law obtains. But to say that because I could go to medical school I'm worthy of more as a human being than this homeless person, I don't believe that. But my colleagues do. So I fight against those kind of distinctions to be made in the law. There is no equality before the law. All people are not created equal. All people are not extended the same level of human dignity. We don't all possess the same degree of humanity because if we were all human, we would say there is certain...there is a certain standard of conduct that will not be tolerated if it's committed against any member of the human family. So when you start though making differences and compartmentalizing and some people have more humanity than others, that's the definition of discrimination. And the laws are passed like that. So you happen to be speaking in behalf of a law that you see no problems with, and I'm not faulting you for that. But as a policymaker, I have to look beyond an architect, an engineer, a lawyer, a doctor, or any of these people. See, I'm like God, if there is a God, when it comes to that. When you come before me to be judged, you're going to be naked as a jaybird because, first of all, I'm not going to be stimulated sexually because I'm aged. You're not going to have any badges of authority that set you apart and make you better than somebody else. I just see you. Now what do you have to say for yourself? But when you can come with badges, titles, ribbons, ornaments, plaques, and all these things that make you better than everybody else, then you're in a society that is wrong on the basis of the premise that it is established according to. And this is one of those kind of bills to me. I heard just the other day where this football player came out of a football game and a woman was in a car that had tipped over or something, and he reached in and pulled her out. And he just said he'd won a football game. That was important but helping this person we even more important. Maybe he would have grabbed her too hard and broken a bone. He didn't even think about that. He just got her out. And when people can be so calculating that before the event and when nothing has happened to them they can say, but this might happen so I have to prepare the way so that I'm not going to be responsible for what I do--I just want it clear for this record because everything we say is recorded, not only for today but when other bills like this come--I'm not going to support anything that is going to elevate one person above another. But I will support something that protects those who are especially vulnerable, like children, weak people who might be considered that because they have mental disabilities, physical disabilities, they cannot fend for themselves, they cannot protect themselves. So they are given a special type of protection because their circumstance merits that. But to say because somebody is practicing a profession and earns money doing it is going to be set aside and given protections that other people are not, if anything, I'd say they should be held to a higher standard and made more culpable than anybody else instead of saying they're going to be let off the hook. And I'm saying that to you because I said I won't ask anybody else any questions who comes up here. If Jack the Ripper or Jacqueline the Ripper comes up here, Jack is home-free as far as I'm concerned, so is Jacqueline. But if I find out they committed murder, I will do all I can to make sure that this state does not execute them, because I don't think the state should kill any of its

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citizens. I just thought I'd throw that in because that's what's invited by these kind of bills. So when my colleagues bring these bills, they get ready to hear what I'm going to say. And if it makes it to the floor, I'm going to have a field day with it. And I think the architects and engineers, by the time I get through with them, are going to say the bill wasn't worth it. But that's all that I have of you even. [LB22]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB22]

ROBERT SOUKUP: Thank you. [LB22]

SENATOR SEILER: Any further testimony? [LB22]

JEFF STEVENS: (Exhibit 4) Good afternoon, Chairman Seiler and members of the committee. My name is Jeff Stevens, S-t-e-v-e-n-s, and I appear before you today representing the Professional Engineers Coalition and the Structural Engineers Association of Nebraska, SEAON, and as a professional engineer licensed in Nebraska. I am here in support of LB22. If enacted, this bill will provide design professionals protection from liability when assisting local and state government agencies during emergency responses involving constructed facilities immediately following natural or man-made disasters. Engineers have valuable expertise in these circumstances by virtue of our education and experience. This type of legislation is prominent in the structural engineers' emergency response plan for the Federal Emergency Management Agency--FEMA--Urban Search and Rescue response system. The first 2 of 15 items noted in their plan are identifying the organizations that are willing to immediately assist emergency personnel and addressing the issues of responsibilities and liabilities for those providing such assistance. The National Council of Structural Engineers Association, the NCSEA, also recognizes the importance of protecting engineers from liability while volunteering during difficult and unusual emergency situations. The NCSEA emergency response plan addresses this issue generally and with respect to working conditions during search-and-rescue operations and structural assessments. In the opinion of NCSEA, as evidenced by the immediate response of structural engineers to the terrorist attacks of September 11, the first instinct of many professionals was to assist those in need without particular regard to their own liability. Fortunately, those who volunteered their services in New York City and Washington, D.C., performed their duties heroically and with no further loss of life occurring (during) rescue operations. Had there been additional fatalities, legal proceedings naming volunteers would have likely ensued. And I see I'm getting the yellow light, so I will...you can read the rest of my comments. And I would just like to say in the end that it is important to define the short-term assessments as just that, and nonemergency professionals should provide long-term assessment as soon as it is safe and practical to do so. I'd like to thank you for your time and attention to my comments and hope the committee will vote to advance LB22 to the full Legislature for their consideration. I'd be happy to try to answer any questions. [LB22]

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SENATOR SEILER: Thank you. [LB22]

SENATOR CHAMBERS: I don't... [LB22]

JEFF STEVENS: Pardon me? All right. Thank you. [LB22]

SENATOR SEILER: Any further testimony? Okay, any...are you for the bill? [LB22]

DAVE JESSE: Yes. [LB22]

SENATOR SEILER: Okay. Come on up. [LB22]

DAVE JESSE: Good afternoon. My name is Dave Jesse, J-e-s-s-e. I am an independent insurance agent with the Harry Koch Company, and I'm just here to comment on some of the insurability issues. There are a number of insurance companies that offer and provide professional liability or "e and o" insurance to architects and engineers. Problem is that all of those insurance companies have different policies, different terms and conditions, and some of those terms and conditions could disallow coverage for architects and engineers if they provide services where they're not getting paid a fee. Another issue that I've had discussions with my clients on is that a firm buys professional liability insurance. If an individual within that firm chooses to go out and perform services, emergency services, on their own behalf, they do not have the benefit of the insurance that the firm carries. So they're performing those services without any insurance. And unfortunately, today there is not an insurance product out there that an individual architect or engineer could purchase on their behalf to just cover their own interests. [LB22]

SENATOR CHAMBERS: I...you know what, he's not an architect or an engineer, so he's outside of (inaudible) (laughter)...because this is not contemplated in the bill. [LB22]

SENATOR KRIST: Yes, sir. [LB22]

SENATOR CHAMBERS: There is nothing...is it in here? [LB22]

SENATOR KRIST: No. [LB22]

SENATOR CHAMBERS: This...he's bringing up something not in the bill, so he does not escape liability (laughter). If...let's say that conduct were covered under a policy that leads to somebody being hurt. That's why you have insurance: so if you do something that you'd have to pay for, you're going to have insurance so the insurance company would. If we pass a bill like this and somebody had a policy before this bill was passed where the insurance company would have to pay for the damage to that person, the

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injured person, if a bill like this were passed, the insurance company would...because that person was made exempt from liability under this statute, would that prevent the person who was injured from claiming anything from the insurance company also? If it's something that otherwise the insurance company would pay the victim for, a bill like this could cut that person off from receiving that compensation. I'm calling...I'm using the words advisedly so it's clear what I'm asking... [LB22]

DAVE JESSE: Yeah. [LB22]

SENATOR CHAMBERS: The payout from the insurance company, would the insurance company not have to make it if a bill like this were passed? [LB22]

DAVE JESSE: As I understand it, with this bill the insurance company would not have to pay. [LB22]

SENATOR CHAMBERS: So they would gain from this also... [LB22]

DAVE JESSE: From this... [LB22]

SENATOR CHAMBERS: ...if it were passed. [LB22]

DAVE JESSE: They would. [LB22]

SENATOR CHAMBERS: Okay, and then one other thing since you have...you're in insurance. We could pass a law that would create all kinds of exemptions, but not one of those laws could prevent anybody from filing a lawsuit, could it? [LB22]

DAVE JESSE: That's correct. [LB22]

SENATOR CHAMBERS: So there could still be lawsuits. There could still be a finding by a jury that the person is not covered by the law. Is that true or false? [LB22]

DAVE JESSE: Finding by the jury that... [LB22]

SENATOR CHAMBERS: If a jury...okay, this person is sued for having caused an accident and raises this law as a defense. And when you go to trial, since these things are what they call fact questions, they could be presented to a jury. And if the jury decides that the person's conduct is not covered by this law, that person would still be liable. Is that true or false? [LB22]

DAVE JESSE: I don't know if I could answer that... [LB22]

SENATOR CHAMBERS: Okay. [LB22]

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DAVE JESSE: ...not being an attorney. [LB22]

SENATOR CHAMBERS: You don't even have to speculate then. [LB22]

DAVE JESSE: Okay. [LB22]

SENATOR CHAMBERS: Okay. That's all that I have though. [LB22]

SENATOR SEILER: Any further questions? Thank you for testifying. [LB22]

DAVE JESSE: Thank you. [LB22]

SENATOR SEILER: Any further proponents? Any opponents of the bill, testifying against this bill? [LB22]

SENATOR CHAMBERS: You mean I'm in league with the lawyers? (Laugh) [LB22]

SENATOR KRIST: All of them. [LB22]

ROBERT MOODIE: Chairman Seiler, members of the committee, Robert R. Moodie, M-o-o-d-i-e, testifying on behalf of the Nebraska Association of Trial Attorneys. I'm pleased to be the first of my organization to appear in this committee in opposition to an immunity provision. It's going to happen again at some point, probably several times. Our system of civil justice champions personal responsibility. Each of us have responsibilities under the law to act within...with reasonable care and to avoid being careless. When we fail to act within the reasonable care or when we are careless, then the law says that we should be responsible for the damaged property, damaged person, injuries that we cause. What LB22 does is it's going to say that in these circumstances the engineers and the architects who are volunteering their time are free to be careless; and if they are careless and if damages occur because of their carelessness, then they're going to be immune from liability. Members of my organization will appear before you any time there is an immunity provision in one of your statutes because we feel that the law should not give a blanket opportunity for individuals to be careless. Now I don't think these gentlemen sitting behind me who have testified intend to be careless; I don't think that they're actually asking for protection to be careless. And this points out the fact that whenever these immunity provisions show up, lawyers, we feel like we're shadowboxing; we're boxing against something that somebody else doesn't quite understand or isn't quite there. The architect, Mr. Soukup, suggested in response to a question, well, if you're negligent, are you going to be exempt from liability? And his initial reaction was, no, no. And I admire that because he says, if I'm careless, if I'm negligent, I ought to be held responsible. But that's what this bill does. It says if they're careless, it says if they're negligent, they're not going to be responsible, only going to be

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responsible if they're willful, reckless, or intentional, which is an extremely high standard to be held to. I don't think that there are probably any cases that anyone can point to where an architect or an engineer has been held liable for negligence under these circumstances. I think it's probably a solution in search of a problem. And as Senator Chambers pointed out, you can sue God. You can sue anybody. Anybody can file a lawsuit. It's not going to necessarily stop the lawsuits. You may not be able to ultimately recover, but immunity is just...blanket immunities like this are just generally a bad social policy and we're opposed to them, encourage you to find another way perhaps to protect these individuals. If the state feels that these individuals need protection in order to secure their cooperation, perhaps the state should stand behind them in case of negligence, but not the innocent people who have been...suffered damages because of carelessness. Thank you. [LB22]

SENATOR SEILER: Any further questions? I have an interesting question... [LB22]

ROBERT MOODIE: Yes, sir. [LB22]

SENATOR SEILER: ...that the last witness just brought up. He stated, unless I heard it wrong, that if he...if the architect or engineer didn't charge a fee, their insurance wasn't any good. How would that be to your malpractice program for yourself if you volunteered and didn't charge a fee, your malpractice wasn't any good? Now that's a different twist than what we're talking about here. But it's the first time I've heard that. [LB22]

ROBERT MOODIE: Well,... [LB22]

SENATOR SEILER: And it's kind of an interesting twist that...what's your thoughts on that? [LB22]

ROBERT MOODIE: Well, it's...the question over...you know, and...the question over what the insurance coverage and what it doesn't cover is something I would assume that the market is going to bear. If the industry wants insurance coverages that are going to cover their actions if they don't charge you a fee, then that is something that needs to be underwritten and they have to ask for it. And quite frankly, I don't know what my personal liability coverage says about not charging a fee. There certainly are circumstances where lawyers don't charge fees... [LB22]

SENATOR SEILER: That's right. [LB22]

ROBERT MOODIE: ...and go into the cases not charging fees. [LB22]

SENATOR SEILER: I was hoping you knew, because I don't know on my own. [LB22]

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ROBERT MOODIE: Well, and I don't know. I don't know what that is. [LB22]

SENATOR SEILER: Thank you. [LB22]

ROBERT MOODIE: But the contrary is also in existence, which I think he suggested there are some policies that are going to cover it. And in those cases it's not...it is going to be the insurance company that makes out in that case if the engineer or architect is negligent and that negligence results in damage. [LB22]

SENATOR SEILER: Any further questions? Senator Chambers. [LB22]

SENATOR CHAMBERS: Just because of the last discussion, it was asked by Senator Seiler, the Chairman, in the context of insurance coverage, malpractice insurance, but liability can also be personal. And whether a lawyer charges a fee or not, we both know that lawyer must meet that standard or is responsible and liable. And maybe your insurance doesn't cover it, but I can get you so that the liability is on you. It's just who is going to pay. [LB22]

ROBERT MOODIE: Yes, sir. [LB22]

SENATOR CHAMBERS: But this bill would just take away liability, period. [LB22]

ROBERT MOODIE: Right, it's... [LB22]

SENATOR CHAMBERS: Okay. [LB22]

ROBERT MOODIE: The personal...the law still applies responsibility to each of us, whether we're covered by insurance or not, absolutely. [LB22]

SENATOR CHAMBERS: That's all I have. [LB22]

SENATOR SEILER: Okay. Thank you very much. [LB22]

ROBERT MOODIE: Thank you. [LB22]

SENATOR SEILER: Any further opponents? Seeing none, anybody in the neutral? Yes, come forward. [LB22]

JAMES OVERCASH: Good afternoon, members of the committee, Mr. Chairman. My name is James Overcash. Last name is spelled O-v-e-r-c-a-s-h. I'm an attorney that's been involved in the construction industry for a period of time and I'm here today on behalf of the Association of General Contractors of America, the Nebraska building chapter. And we want to testify in a neutral position as LB22. First, I want to say that I

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think the members of the building chapter are the best in the industry, have historically worked with the Unicameral to implement laws of...that impact the construction industry and thank you for that work with the chapter. The building chapter supports a concept of limiting liability that would be provided for people working on construction issues during or directly after a local, state, or national emergency, especially in emergencies...during emergencies, companies donate their time and resources to their communities. The building chapter believes the intent behind LB22 supports this general goal. The building chapter would like to have the committee amend LB22 by adding an additional section to cover contractors as defined in the Contractor Registration Act. For the record, that is Section 48-2101. We believe this addition would be...to be included in LB22 would protect both design professionals and contractors and support their voluntary efforts during emergencies. We believe these provisions would work in harmony. The Nebraska chapter would be happy to work with the commission, staff, and stakeholders to draft this type of amendment. Finally, the building chapter does believe that LB22 is not extended...if it doesn't extend to contractors, there would be an additional risk to contractors providing voluntary services in emergency situations where a section of the construction industry already had an exemption. It would be seen that...a potential plaintiff might look at different volunteer parties differently. Thank you for consideration of our comments regarding LB22. And we look forward to working with the committee not only on this bill but on any bill that deserves our attention, so we appreciate your time. Thank you, (inaudible). [LB22]

SENATOR SEILER: Any questions? Senator Chambers. [LB22]

SENATOR CHAMBERS: This is also outside the bill. Would...are trash haulers a part of the organization you're talking about? [LB22]

JAMES OVERCASH: Trash haulers? [LB22]

SENATOR CHAMBERS: Yeah. When you were talking about this contractor, what...you mentioned some kind of bill or law or organization. What do they...what's the name of the organization you're speaking for? [LB22]

JAMES OVERCASH: I'm...it's contractors, Senator. So it'd be people that...in fact, building contractors that would do building work. Trash haulers, I'm not sure if there's any trash haulers that are members of the organization. But there are demolition contractors that would haul trash that would be demolished on a job site. I'm not sure if that fits within the definition. [LB22]

SENATOR CHAMBERS: So demolition people would be covered if you had your way. [LB22]

JAMES OVERCASH: They would be at the emergency situation; at the time when

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they're volunteering their services in their community, they would, yes. [LB22]

SENATOR CHAMBERS: So trash haulers should be also if they're hauling away trash, shouldn't they? [LB22]

JAMES OVERCASH: I would think so. [LB22]

SENATOR CHAMBERS: Anybody should be, in fact. Nobody should have any liability in an emergency situation, should they? [LB22]

JAMES OVERCASH: If we're talking about the...for people that are volunteering their time and their resources, I'd agree with that statement, Senator. [LB22]

SENATOR CHAMBERS: Mine was a question. It was meant to be, because I don't want anybody to be exempt. First of all, the people you're talking about understand buildings' erection and demolition. They understand when circumstances exist that create danger and hazard. They don't need to be exempt from liability. And if they are that worried about it, let them not participate and let the state hire people to do that work so the liability is there. And the liability is for the purpose of compensating people who are harmed as a result of what these people do. So if something happens and three members of my family die, I don't care whether they are with contractors or architects or engineers, I'm just out in the cold. That's all I look at if it's my family. And as a policymaker, I'm not interested in exempting these people whose business it is to do what they're doing but in this particular situation they don't want to be held responsible. So in order that you'll be aware that I don't play favorites, I'm not going to support what you're talking about either. So with that being the case, you're not for or against this bill otherwise. Right? [LB22]

JAMES OVERCASH: (Inaudible.) [LB22]

SENATOR CHAMBERS: If the group that you want are not included in this bill, you have no interest in it one way or the other then. Correct? [LB22]

JAMES OVERCASH: I think... [LB22]

SENATOR CHAMBERS: That's what neutral means: you're not for or against. If you're against it, then you're not neutral. If you're for it, you're not neutral. So you're really not neutral, are you? Well, I'll let you...are you neutral? You're not sure, are you? [LB22]

JAMES OVERCASH: No. I can't tell when you're asking me a question or not. [LB22]

SENATOR CHAMBERS: Okay. I think my questions are very difficult to understand, so I just will stop this and try not to be so technical and difficult in the questions that I ask

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from now on. I withdraw any questions that I asked you. [LB22]

SENATOR SEILER: Any further questions? Thank you. [LB22]

JAMES OVERCASH: Thank you. [LB22]

MATT SCHAEFER: Good afternoon, Chairman Seiler and members of the committee. My name is Matt Schaefer, M-a-t-t S-c-h-a-e-f-e-r, appearing today on behalf of Chief Industries, which is a builder based out of Grand Island, Nebraska. In reviewing this bill, Chief had some of the same questions that we've talked about quite a bit today, namely from Senator Chambers: the breadth of services granted immunity under the language of the bill; and then also Senator Pansing Brooks's question, what liability would be on the contractor when they rely on plans granted immunity under the bill? I think that's all I had. [LB22]

SENATOR SEILER: Any questions? Seeing none, thanks, Matt. [LB22]

MATT SCHAEFER: Thanks. [LB22]

SENATOR SEILER: Any further witnesses in neutral? Seeing none, Senator Krist. [LB22]

SENATOR KRIST: As was a popular line in a popular show/movie many years ago: I think what we have here is a basic problem with communicating. I have been at the scene of disasters, declared and undeclared, and I have watched volunteers come in and do their thing. I was at 9/11 at Ground Zero the day after the event delivering engineers that were not held liable for their activity because they were government employees assessing the damage and making sure that the people who were trying to clean up were able to clean up safely. I also saw volunteers come in at no risk. If we didn't have so many trial lawyers, we might not have to talk about immunity. But we have to talk about immunity because every natural disaster that you see on that list that was given to you and every time this happens, NEMA or FEMA will declare an emergency. They'll have an on-scene commander, which is one of these people described here, who will take charge and say, we need to start moving in a direction and clean things up and provide for public safety. Immunity, or good Samaritan laws, aren't...there's nothing new. I mean we have them; they exist. They exist for people so that in times of emergency or an accident on the road or at any other time, that person is able to give care to an individual, particularly medical care, so a philosophical difference in terms of why this bill was brought forward. There are many things that Senator Chambers has pointed out that I think I want to go back and look at. But I think that some of it is services that are professional in scope of both engineers and architects at the scene of an emergency under the direction of a proper official--NEMA, FEMA, or a county official who is there in place. That was the aim. If that's not clear,

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then we'll look at some words that make it very, very clear before I ask you to vote it out of the committee. But philosophically, there is nothing wrong with granting people who are in service a particular immunity. And I take exception to that from the trial lawyers. But I'm not a trial lawyer and I didn't spend the night at Holiday Inn Express last night, so I'll just shut up. Thank you. [LB22]

SENATOR SEILER: Thank you, Senator. That closes the hearing on that particular bill, LB22. (See also Exhibit 5.) We'll go to LB43, Senator Coash. Go ahead. [LB22]

SENATOR COASH: Okay, thank you. Well, good afternoon, Senator Seiler, fellow members of the Judiciary Committee. For the record, I'm Colby Coash, C-o-l-b-y C-o-a-s-h, of Lincoln, representing District 27, here today to introduce LB43 which is a bill that provides for standby guardians and the recovery of assets under the Nebraska Probate Code. LB43 is a bill recommended from the Nebraska Supreme Court Commission subcommittee of vulnerable adults, of which I am a member, along with judges, attorneys, state officials, conservators, and guardians. LB43 contains two provisions recommended by the Supreme Court's Commission on Guardianships and Conservatorships. The legislation would allow for the appointment of a standby guardian who could step in should the existing guardian become incapacitated. Appointing a standby guardian allows for the standby guardian to step in at a later date without further court order and further delay upon the death, unwillingness, or inability to act, resignation, or removal by the court of the initially appointed guardian. Standby guardian shall have the same powers and duties as the initially appointed guardian. This is similar to Nebraska statutes that allow for standby guardians for minors and just extends this designation to all wards of the state. For instance, if for whatever reason I am a ward of my uncle, he's my guardian, but he's having serious health problems, I could ask the court to appoint my sister as a standby guardian in case my uncle unfortunately were to pass away. LB43 further provides statutory authority under Section 30-3002 for guardians and conservators to recover the assets and any money or personal property of the ward, including any power of attorney, advance healthcare directive, or power of attorney for health decisions executed by the ward. This addition is an extension of Nebraska statute that allows for the recovery of assets of deceased persons' estates. Following me to help answer some of the technical questions are Judge Bazis, attorney Bill Lindsay, and the newly appointed director of the Office of Public Guardian, Michelle Chaffee. They were instrumental in helping me craft this bill and I want to thank them for coming here. And I'll see if I can answer any questions for you as well. [LB43]

SENATOR SEILER: Any questions? Senator Chambers. [LB43]

SENATOR CHAMBERS: Just a comment: Senator Coash, since we're both on the committee and I see you and you see me, I have questions, not meaning challenging but just for the purpose of information. So if I don't ask questions here today, it just

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means that they're not the kind of questions that I would have to put to your witnesses, but I will come converse with you. [LB43]

SENATOR COASH: Thank you, Senator. [LB43]

SENATOR SEILER: Thank you. Bill. [LB43]

WILLIAM LINDSAY: Senator Seiler, members of the Judiciary Committee, I'm William Lindsay, Jr., L-i-n-d-s-a-y. I'm a practicing lawyer in Omaha. I'm here on behalf of the Nebraska State Bar Association. I'm also chair of the Protection of Vulnerable Adults subcommittee of the Nebraska Supreme Court Guardianship and Conservatorship Commission. The concern that is dealt with, with the standby guardian, has come up with regard to developmentally disabled adults. The problem can be that they can be left in the lurch, and then to appoint a new guardian would require a full guardianship. It also quite often is going to result in the need for an emergency appointment of a guardian for somebody who needs a guardian but doesn't have one because of the absence, death, disability, or whatever reason, of the actual guardian. So the purpose of having a standby guardian is to have a mechanism in place that could be activated fairly quickly, rather than going through the process of having to get an emergency appointment. We already have these provisions with regard to minors. Wisconsin has a provision with regard to a standby guardianship and a standby conservatorship for adults. We did not ask for a standby conservatorship. This is one thing that personally got brought to my attention because my cousin is developmentally disabled. I know how difficult it was for my other cousin, who is now his guardian, when that change occurred with...when his brother passed away. The second component is expanding Nebraska law that currently exists. Section 30-3002 and following are noncode provisions that have been in the state statutes since 1978. The...Illinois passed a bill that expanded their similar provision to allow this to be done by a guardian or conservator while the ward is still alive so that you get assets; you can get information. I've talked to lawyers who have been appointed as a successor guardian or conservator who are trying to collect assets from somebody with a power of attorney, and there is a lot of stalling that goes on, trying to prevent acquiring information, because they know they're liable. So this would allow a method of compelling them to come in and what Senator Seiler might...you might think of as equivalent of a debtor's exam so that you can get the information you need. If you have any questions, I'd be happy to try to answer them. [LB43]

SENATOR SEILER: Any questions? I have one. Just the term, Bill, is a standby rather than successor...or a successor trustee or a guardian. Excuse me. [LB43]

WILLIAM LINDSAY: Okay. [LB43]

SENATOR SEILER: What's the difference between the standby versus successor?

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[LB43]

WILLIAM LINDSAY: Well, a successor would be somebody who hadn't been appointed by the court. Standby is somebody who is appointed by the court but is just that: standing by, waiting their turn. The plan... [LB43]

SENATOR SEILER: So you're anticipating doing this ahead of time... [LB43]

WILLIAM LINDSAY: Yes. [LB43]

SENATOR SEILER: ...while their regular guardian is still in place. [LB43]

WILLIAM LINDSAY: Correct. [LB43]

SENATOR SEILER: Okay. [LB43]

WILLIAM LINDSAY: For example, I might have...the mother or father might have a brother or sister appointed to the standby guardian when they are appointed as the guardian in the first place. [LB43]

SENATOR SEILER: I understand. [LB43]

SENATOR PANSING BROOKS: I'm still confused about that then. So what's the difference between the successor? I mean one is standby and one was succeeding him. [LB43]

WILLIAM LINDSAY: Well, I'll give you an example. When I draft a will, I name a guardian. I may name a successor guardian, you know, for a developmentally disabled child. The guardian gets appointed. The successor is still named in my will but has never been appointed by the court. The standby guardianship actually would appoint the two at the same time, one whose powers are just delayed. [LB43]

SENATOR PANSING BROOKS: Okay, thank you. [LB43]

SENATOR SEILER: Senator Chambers. [LB43]

SENATOR CHAMBERS: Based on the exchange, if I'm a guardian and at my age I know I'm not going to be around that long, would I be the one to contact...I mean is there going to be an entity where you...through whom you could procure somebody to stand by in the case of your sudden and unexpected demise? Or how would that work, actually? [LB43]

WILLIAM LINDSAY: Well, actually, that's probably up to you to try to find somebody

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because you were appointed probably because you care for the individual. And so you as a guardian could ask the court to appoint a standby to take over for you in the event of your death. [LB43]

SENATOR CHAMBERS: But if a person didn't think to do that, how would a specific case come to the attention of those who appoint a standby? I guess that's the question I need answered. [LB43]

WILLIAM LINDSAY: Well, there is nobody appointed by a standby...as a standby unless the court is asked to do so. [LB43]

SENATOR CHAMBERS: Oh, okay. [LB43]

WILLIAM LINDSAY: At that...if there's nobody that's been appointed as a standby, we have to go back to the normal guardianship procedures and appoint a whole new guardian. [LB43]

SENATOR CHAMBERS: Okay. That's all that I have. [LB43]

SENATOR SEILER: Thank you. Any further? [LB43]

WILLIAM LINDSAY: Thank you, Senator. [LB43]

SENATOR SEILER: You bet. [LB43]

MICHELLE CHAFFEE: (Exhibit 1) Good afternoon, members of the Judiciary Committee. My name is Michelle Chaffee, M-i-c-h-e-l-l-e C-h-a-f-f-e-e. I serve as the director of the Office of Public Guardian with the Administrative Office of the Courts. And I'm here to testify in support of LB43, specifically the designation of standby guardians. As Senator Coash has indicated, the legislation would allow for the appointment of a standby guardian who can act should the guardian no longer be available to serve as guardian. Previously, when enacting the Public Guardianship Act, the Legislature indicated the intent that there be an immediate response when a guardian or conservator is needed in an emergency situation and that there should be no lapse in service to a ward or protected person. LB43 takes action to provide a manner in which this intent will be fulfilled more effectively in private guardianships by allowing standby guardians be designated by the court during the same hearing appointing a guardian. In addition to testifying in support of the bill, I would propose a couple of technical clarifications for the bill. And I have spoken to Senator Coash's staff about these suggestions. First, I would suggest a clarification of the duties of the standby guardian. On page 3, line 12 and 13, the bill states that, "The standby guardian shall have the same powers and duties as the initially appointed guardian." One of the duties of a guardian is to fulfill training. Under the Nebraska Revised Statute 30-2627, a

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guardian is required within three months of an appointment to complete a guardian training program. I would suggest the requirement for training be effective for standby guardians within three months after the designation as a standby, rather than three months after the effective date of the guardian substitution. This clarification will ensure that the standby guardian is prepared for the responsibilities and duties of the guardian immediately upon their substitution as the guardian, ensuring a prepared, effective service to the ward by the standby guardian. The second recommendation I would propose is the clarification that the Office of Public Guardian not be allowed to be designated as standby guardian. As the committee is aware, the Public Guardianship Act is meant to provide public guardians for individuals, quote, for whom no person is available for appointment as guardian. Additionally, in regards to the process, Nebraska Revised Statute 30-4112 states that, quote, a court may order appointment of the public guardian as a guardian or conservator only after notice to the public guardian and a determination that the appointment or order is necessary and will not result in the public guardian having more appointments than permitted. The statute says an average of 40 per public guardian associate. The determination of necessity may require the court to ascertain whether there is any other alternative to public guardianships or public conservatorships. Accordingly, under the act, the designation as a standby guardian would not be appropriate because the status of necessity for the ward of a public guardian, due to no other option for a guardian or the availability of the Office of Public Guardian for appointment, cannot be made for a future condition or a future circumstance. So again, let me reiterate that we're in support of the bill, but we would ask...I would ask that these two clarifications be made. [LB43]

SENATOR SEILER: Any questions? Thank you for your appearance. [LB43]

MICHELLE CHAFFEE: Thank you. [LB43]

SENATOR SEILER: Anyone further? Anyone opposed? Anyone in the neutral? [LB43]

SUSAN BAZIS: Chairman, members of the committee, my name is Susan Bazis, B-a-z-i-s, and I am a Douglas County Court judge. I am here in a neutral capacity on behalf of the Guardianship and Conservatorship Commission, which I cochair, and the county judges' association. I'm here to talk about how the bill would affect the courts. The standby guardian would allow for a guardian or conservator to have an alternate person appointed at the time of their appointment to take over if they were no longer able to serve, for example, due to illness or even death. As the system is now, an alternate person would either have to be appointed as a coguardian at the time of appointment, which there are numerous reasons why someone may not want to do that; or, when the guardian is no longer able to serve, the person who would be taking over would have to go back to court and start the process all over again, which LB43 solves that issue and there would not have to be that new court process. I do have one comment about LB43 on behalf of the commission and for the protection of the wards.

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As the law is written right now, the standby guardian notifies the court in writing that they are assuming their duties and the statute...the law as it states right now is that the court is required to issue letters at that point in time. There needs to be--or I would ask for you to think about--some additional language to the bill that at a minimum would require the standby guardian to file current background checks and an inventory so the...before letters are issued so the court could review that to know and make sure that the person that is taking over is appropriate and what the...their monetary amount or their assets are at the time, so the court can determine if a bond needs to be set. I would also ask you to consider that they be required to file the other reports, as a new guardian does, such as personal information sheets, so we know how to find the guardian, because the reality is a standby guardian, and I think we see this probably being used in most cases with developmentally disabled adults, is that the parent could have them appointed at the time they get appointed. It could be 10, 15, 20 years before they ever step into place, so we need to have current information. LB43 also provides a mechanism for guardian and conservators to ask the court for assistance in getting information they need to protect the ward or incapacitated person. In that, what we are seeing in court is there is power of attorney abuse or financial abuse, so APS or a family member is coming in saying a guardian is necessary. We appoint that guardian, and then the person who had control over those assets will not provide any information to the guardian or conservator. So they can't find the bank accounts; they can't find the assets; they don't know if there's a will or a medical directive so the guardian can carry out the wishes of the ward. And LB43 gives a mechanism similar to what is already in place for a personal representative in an estate to ask the court for assistance in getting that information from those who may not want to give it. Thank you. Any questions?
[LB43]

SENATOR SEILER: Yes, Bob. [LB43]

SENATOR KRIST: I may have missed it but, for the record, this in no way touches the guardian ad litem. This is a guardian for the individual who was assigned in the court system. [LB43]

SUSAN BAZIS: Correct, yes. [LB43]

SENATOR KRIST: All right, just to put it out there. Thank you. [LB43]

SUSAN BAZIS: Yes. [LB43]

SENATOR SEILER: The only question I have is I understand your concerns about reports and that. But as I understood it, a standby would step in the same shoes as a guardian, and that guardian has a duty to follow those same documents. So under the current law, he would...the standby would have to file as soon as he was given letters.
[LB43]

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SUSAN BAZIS: Right now, you don't get letters until we have the...all of the background checks that you file, an address information sheet, personal information,... [LB43]

SENATOR SEILER: Right. [LB43]

SUSAN BAZIS: ...all of that, and then you get letters. But the way that the statute is written right now is they file their notice that they are assuming their duties as standby guardians, and it says the court shall issue letters. So my concern is the... [LB43]

SENATOR SEILER: The gap between those? [LB43]

SUSAN BAZIS: Correct, and how that is. So it may be simple as adding that they have to comply with all the court rules and statutes as a newly appointed guardian, or something of that effect would probably take care of that, something like that. [LB43]

SENATOR SEILER: Okay. Any further questions? Thank you. [LB43]

SUSAN BAZIS: Thank you. [LB43]

SENATOR SEILER: Anyone else in the neutral? Just for the record, the letters that have been submitted to this board or this committee are hereby adopted as part of the record for all the bills we've heard today. And, Colby, you can close. [LB43]

SENATOR COASH: Thank you, Chairman Seiler. And not to be repetitive, but I wanted to reiterate, you know, we do...we write wills so that our assets are taken care of. This is much more important than that. What we have going on not only in Nebraska but across the state that is of concern to me is we have a growing...we have people with disabilities across our state whose parents are currently serving as their guardian. And they are people who will always need a guardian and the parents are aging. And the parents are wondering, who is going to provide that service for my son or daughter when I'm gone? And without a standby guardian, that parent has to die before the court can take action to appoint a new guardian. And this is just a mechanism so that that planning can happen before that happens so that there is continuity of care, continuity of will of the parents for their children. This, to me, made sense. Again, it came out of a lot of work that the Supreme Court's commission on vulnerable adults (sic) has put in. I was happy to carry that on their behalf. And we've taken notes of all the technical suggestions that have been brought by the...by Judge Bazis, Michelle from the Guardianship Office, which I'm very proud of coming out of this committee. And we'll bring those back for our consideration. Thank you. [LB43]

SENATOR SEILER: Thank you. Yes, Bob. [LB43]

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SENATOR KRIST: Again, establishing a record, thank you for bringing this forward. As a parent of a person with special needs, it is incredibly important to provide for that continuity. It could happen tomorrow and she needs to be taken care of. So this is a move in the right direction and I hope, after you finish the technical, that we're able to push it out as soon as possible. Thank you for bringing it. [LB43]

SENATOR COASH: Thank you. [LB43]

SENATOR SEILER: Bill, could I talk to you a second? [LB43]

WILLIAM LINDSAY: Yes. [LB43]

SENATOR KRIST: Motion to...? [LB43]

SENATOR SEILER: Motion to adjourn. [LB43]

SENATOR KRIST: You got it. [LB43]

SENATOR CHAMBERS: Granted. (Laughter) [LB43]