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Judiciary Committee
February 01, 2017

[LB268 LB353 LB371 LB381 LB542]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 1, 2017, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB381, LB542, LB268, LB371, and LB353. Senators present: Patty Pansing Brooks, Vice Chairperson; Roy Baker; Ernie Chambers; Steve Halloran; Matt Hansen; Bob Krist; and Adam Morfeld. Senators absent: Laura Ebke, Chairperson.

SENATOR PANSING BROOKS: Good afternoon and welcome to the Judiciary Committee. My name is Senator Patty Pansing Brooks and I'm from Lincoln representing Legislative District 28, right where we're sitting and I'm the Vice Chair of the Judiciary Committee. I'd like to start off by introducing the members of the committee and we'll let you introduce yourselves starting with Senator Halloran.

SENATOR HALLORAN: Thank you, Senator. My name is Steve Halloran, senator from District 33 which is Adams County, southern and western Hall County.

SENATOR HANSEN: Matt Hansen, District 26 in northeast Lincoln.

SENATOR KRIST: Bob Krist, District 10, Omaha.

SENATOR MORFELD: Adam Morfeld, District 46, north-northeast Lincoln.

SENATOR BAKER: Senator Roy Baker. I have a little bit of Lincoln, southern Lancaster County, and all of Gage County.

SENATOR PANSING BROOKS: Thank you. Assisting the committee today are Laurie Vollertsen, our committee clerk, Tim Hruza, one of our two legal counsels, and the committee pages are Kaylee Hartman and Toni Caudillo. On the table in front of you, you will find some yellow testifier sheets. If you're planning on testifying today, please fill out one of the sheets and hand it to the page when you come up to testify. This helps us to keep an accurate record of the hearing. There's also a white sheet on the table if you did not wish to testify but would like to record your position on a bill. We will begin bill testimony with the introducer's opening statement. Following the opening we will ask the proponents to come forward on the bill and then the opponents, followed by those who are speaking in a neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first name and your last name and spell them for the record. If you are going to testify, I ask that we keep...well, there's an on-deck chair that we're now using. So if

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you're ready to testify please go up and fill up the chair so that you'll be next up. If you have any handouts we ask that you bring up at least 12 copies and give them to the page. If you don't have enough copies then the page can help you make some. We will be using the five minute light system. When you begin your testimony the light on the table will turn green. Then the yellow light is a one-minute warning. And when the red light comes on we ask you to wrap up your final thoughts and stop. As a matter of committee policy, I would like to remind everyone that the use of cell phones and other electronic devices are not allowed during public hearings and...though the senators may use them to take notes or stay in contact with staff. At this time I'd like you to look at your cell phones and make sure they're in silent mode. Thank you very much. Also, outbursts or applause are not tolerated and such behavior may be cause for you to be asked to leave the hearing room. One more thing you will notice is that committee members are going to be coming and going. Senator Ebke is gone right now introducing a bill of hers. I have to leave in a little bit. So people go in and out. That's not anything to do with the importance of the bill or whether or not we want to hear what you have to say, but we have bills in other committees. So with that, we will begin with today's hearing which is on LB381. Senator Harr, would you come forward. Thank you.

SENATOR HARR: Thank you, Madam Vice Chair, members of the Judiciary Committee. My name is Burke Harr, H-a-r-r, and I represent Legislative District 8 located in Omaha. This is a simple bill. It has to do with jury sequestration. Sequestered means that a jury is isolated from...jurors are isolated from the public. Section 29-2022 mandates sequestration, unless waived, after the case is submitted to a jury for deliberation. In other words, a court has no ability to deny a request for sequestration after the case is submitted to the jury for deliberation. If a party requests sequestration for the entire trial, the court will sequester the jury if good cause is shown. Therefore, this bill gives the court the decision on whether a jury should be sequestered during a trial and also after a case is submitted to the jury. Although very unpopular with jurors, sequestration has served two broad purposes. The first is to avoid the accidental tainting of the jury, mostly through we'll call them mainstream media. And the second is to prevent others from intentionally tampering with jurors or by bribe or threat. Trial publicity, public sentiment, interested parties, and the maneuverings of the machination of lawyers outside of the courtroom can all taint the jurors' objectivity. However, if the jury had not been sequestered for the entire trial, it is unlikely the jury will be protected by the sequestration after it has been submitted for their decision. Almost all jurisdictions do not have mandatory sequestration. Today, juror sequestration is rare and ordered only in high profile cases. In these cases the jury is sequestered for the entire trial. When a jury is sequestered, they are moved into a hotel, kept under close supervision 24 hours a day, denied access to outside media such as television and newspapers, and allowed limited contact with their family. All meals and lodging for sequestered jurors are paid for by the county, mostly through property tax dollars. Sequestration of a jury can run around \$3,000 a day. So I guess in summation what I'd really like to say is the reason we need to do this is almost all attorneys and defendants waive this right and

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almost all state and federal courts do not mandate sequestration. I think it's important that we leave it up to the judge to decide. I know that there will be those coming in and who will possibly be testifying in the negative, hopefully in the neutral, to give guidelines as far as what is reasonable cause for sequestration that a judge should look for. With that, I would end my close and entertain any questions you may or may not have. [LB381]

SENATOR PANSING BROOKS: Thank you, Senator Harr. Any questions for Senator Harr? Not right now. Are you going to be here though for follow up? [LB381]

SENATOR HARR: I will stay for close, yes. [LB381]

SENATOR PANSING BROOKS: Okay, thank you, Senator. [LB381]

SENATOR HARR: I hope you will too. [LB381]

SENATOR PANSING BROOKS: I hope so too. Thank you. [LB381]

SENATOR HARR: Thank you. [LB381]

SENATOR PANSING BROOKS: Okay, first proponents. Is there a proponent? Okay, seeing no proponents right now then, first opponent. [LB381]

TIM NOERRLINGER: Good afternoon. My name is Tim Noerrlinger. I'm an attorney with Naylor and Rapp Law in Lincoln, Nebraska. I'm here on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to this bill. The main source of opposition by our group, the Defense Attorneys Association, is twofold. First of all, currently sequestration, just like the right to a jury, is solely the right of a criminal defendant or a citizen accused of a crime by the state. We believe that it is appropriate, just like with the jury right, to retain the sequestration right to a citizen accused of a crime and not to make it available to either the state or the court on its own motion. Additionally, with regard to that, there are some concerns with our organization as the senator noted with the language about good cause shown. That seems rather nebulous and if the law were to be changed that way and there were requests by a citizen accused of a crime, obviously that would be something that we would have to delve into through the appellate process to have the court give us a definition of what good cause shown would be for when sequestration should be ordered. So those are the two main concerns with regard to the organization the Defense Attorneys Association with this. One being that this is a citizen accused of a crime. It is currently their right and they're facing the full weight of the government in the prosecution of that crime and, two, the nebulous standard used I think invites further litigation,

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especially when you think of the fact that these would be individuals that would be appealing after they have been convicted at a jury trial of a crime. So obviously that's certainly an issue for both. I would not disagree with what the senator said that's introducing the bill. Senator Harr is correct. I tried eight jury trials last year. I did not sequester a single jury. So it is not something that happens frequently in my experience. There are certain situations where I think it may be appropriate to sequester a jury. Anecdotally I do have one case that I handled on appeal and not...with regard to the trial that I'd like to share with the committee with regard to that. It was a case where we had a gentleman that was ultimately convicted of a sexual assault, first degree sexual assault and it was very serious. While the jury was deliberating, one of the jurors contacted a bailiff, said that another one of the jurors, a female juror, came back after they'd broken for lunch when they weren't sequestered, when they could leave, said the following to the group: I saw something in the paper about this and spoke with my husband and he gave me some insight into what happened. That's why you sequester juries. That's why you sequester juries. Now ultimately in this case--not to lead you down the primrose path; the opinion was just handed out--the court brought that juror in. And several other jurors agreed that that was what was said. The juror that was at issue denied that. The court issued a curative instruction and then the jury was allowed to continue to deliberate. I just bring it up because I thought of it and this is the reason that we want to sequester juries. Certainly when you talk about more serious offenses, especially ones that carry mandatory minimums, drugs, sexual assaults, really violent crime, drive-by shootings, murders, the type of cases, those are the ones that you routinely think about sequestering juries. I tried two of those cases within the last calendar year. My clients decided, because it was their right, to waive the sequestration for a myriad of reasons. But again, with certain types of cases that are more likely to gain media attention and also living in the age that we live in where it's the twenty-first century, you have access to digital media, you're conferring with people about things, it's kind of...well, it's anathema to the way that we live that we don't talk to people about what's going on in our lives and that applies even when we're jurors and we're instructed with regard to not communicating with other people about this stuff. So that's our concern with regard to jury sequestration. And I'm certainly willing to take any questions if the committee would have them with regard to our opposition to the bill. [LB381]

SENATOR PANSING BROOKS: Okay. Go ahead. Does anybody have any questions? Okay, yes, Senator Halloran. [LB381]

SENATOR HALLORAN: Madam Cochair, you may not be the person to ask, do you have any idea of statistically how many sequestrations there are? [LB381]

TIM NOERRLINGER: I couldn't give you a real strong indication... [LB381]

SENATOR HALLORAN: Percentagewise? [LB381]

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TIM NOERRLINGER: I would say it's very small. I would guess that it's less than 5 percent, at least where I practice. Now my practice has been...prosecutionwise I was in Jefferson County which is in the First Judicial District and then I was in Otoe County as a prosecutor in the Second Judicial District. So it's kind of more rural Nebraska. In any of the cases I prosecuted, I'd never had a defendant ask for sequestration. I've been defense counsel since getting out of prosecution about four years ago now, I have never requested sequestration. I can think, over that period of time, of a couple cases that I know were individuals that are colleagues have requested it. They tend to be in those more serious cases that, you know, the paper has reported something about the initial arrest and then they're following up by going through the jury trial. [LB381]

SENATOR HALLORAN: Would it be higher in higher population counties? I assume... [LB381]

TIM NOERRLINGER: I would say so. Obviously I think that's a factor too. And you have to understand that, you know, the media is in the business of putting eyeballs on the paper or getting eyeballs on the TV screen. So it's more likely to happen here certainly. [LB381]

SENATOR HALLORAN: Okay. Thank you. [LB381]

TIM NOERRLINGER: No problem. [LB381]

SENATOR PANSING BROOKS: Any further questions? Thank you, Senator Halloran. Okay, I'm still...I want to know exactly...I do have a question. [LB381]

TIM NOERRLINGER: Sure. [LB381]

SENATOR PANSING BROOKS: So is part of the concern the lack of specificity about what has been taken out on sequestration? Is that part of the issue? I understand that this an attempt to sort of modernize, except you don't think it's really extending rights to the extent you would prefer. So could you speak to that, please. [LB381]

TIM NOERRLINGER: Sure. I think the language that's being removed, really the thing that I take exception with and the organization as well is on line 5, that first sentence that's put it into the bill. It says: The court on its own motion or on a motion by a party for a good cause shown. Attorneys will fight about every phrase. And I will tell you that without better specificity as to what good cause is, you're inviting a lot of litigation into this. You'll have an individual that's accused of a crime demand sequestration. The court denies it for whatever reason. Certainly I will concede that there are certainly financial costs for the counties with regard to this. You've got to pay for those jurors. You've got to pay for the hotel rooms. You've got to pay for the

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bailiffs and the deputies to do that. Do the financial concerns therefore override and is that...not...do you have to have...what do you need for a good cause shown, my concern as an attorney and I think that, again, I haven't ever done it. But if I had a sexual assault, a murder case, something pretty high profile, every time I've tried one of those cases and I tried two of them last year and two the year before that, it's pretty long, substantive discussions you have with your client about whether or not they're going to waive sequestration. Now perfunctorily I will tell you with more of the low-level felony and misdemeanors, it's kind of like don't inconvenience these people. But it's certainly something that you have to consider on more serious crimes that have more media attention on them. And again, my concern is the language itself. I think it needs to be better defined so that the courts and we as the litigants have better guidance as to what there...should be there, what we're looking for when we argue that issue as opposed to leaving it that way and then having the Court of Appeals and the Supreme Court tell us after the fact. [LB381]

SENATOR PANSING BROOKS: Okay, and I guess I'm interested...and I could also ask Senator Harr when he comes back up. But it does speak...gives some rules regarding the officer that is in charge of them. So...and it talks about...there is some sort of antiquated language: "shall not suffer any communication to be made to them, or make any himself". So he obviously can't pass notes to the jurors. He can't talk himself to the jurors unless by order of the court and he can't talk to anyone before the verdict in relation to their deliberations. So that's all coming out... [LB381]

TIM NOERRLINGER: Right. [LB381]

SENATOR PANSING BROOKS: ...which also then creates a different standard for the officer. So I'm interested in that. [LB381]

TIM NOERRLINGER: Well, normally I think for purposes of a practicing attorney, the officer that's referred to is often the bailiff, bailiff of the judge that is handling the case. I think there's an attempt if you look down at lines 17-18, to take out some of the more antiquated language and replace it with something more easily read, that they not read, listen to any reports of the media. Obviously I defer to the committee and the Legislature as to what they think is sufficient to instruct us as litigants and a jurist as to how the instructions should be read. Point of fact, Senator, what I would tell you is that any time that a jury currently is dismissed for a break either for lunch or any...at the end of the day when you're litigating a case, the court has a pretty standard instruction that they read that's part of the jury instructions about what they are not to do. And I think that the language in the statute mirrors...is still an attempt to deal with that, although changing the verbiage (inaudible)... [LB381]

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SENATOR PANSING BROOKS: So have you reached out to Senator Harr on another way to phrase it that would be more amenable? [LB381]

TIM NOERRLINGER: I have not. I've spoken with Mr. Eickholt, our lobbyist. I think he has spoken with the Senator about our concerns. I know that Spike told me that. Now what they've talked about, I'll leave that to Senator Harr when he comes back up to discuss with the committee on things. [LB381]

SENATOR PANSING BROOKS: Okay. Any further questions? Thank you. Thank you for coming. [LB381]

TIM NOERRLINGER: All right. Thank you. [LB381]

SENATOR PANSING BROOKS: Further opponents. Any further opponents? Anybody in the neutral? (Exhibit 1) Okay, and we do have a letter from district court administrator--isn't he a judge?--Douglas Johnson. It was from administrator from Judge (sic) Johnson's court. Okay. Okay, sorry. This is Douglas Johnson, the district court administrator from the Fourth Judicial District in Omaha. So he has written a letter of support. Now closing, Senator Harr. [LB381]

SENATOR HARR: Thank you, Madam Vice Chair. And I brought this bill at the request of the district court judges in Douglas County because it's been a concern that there will be more as jurors...once this becomes a de jure and it's been used against juries and prosecutors that, hey, we're...this is part of the cost, is we're going to have a trial and we're going to order sequestration. Sequestration is not a right, I constantly heard that. And nowhere in our constitution does it say that you are guaranteed the right to a sequestration. It is something that is afforded under our current statutes, but it is not a right. I think that difference is important. And I don't want to take away from the right of a defendant for sequestration if there is good cause. I just don't want it arbitrarily and capriciously applied to say, hey, you know what, I think I'm going to ask this because I know my life is going to be miserable for the rest of my life. I'm going to make these jurors miserable for the next day or two. And as far as the concerns of tainting the jury pool, a juror, every time there is a break, a judge admonishes the jury not to talk to others about what has occurred today, not to use your cell phone--they have to turn over their cell phones actually--not to read any newspapers, not to talk to anyone about the case even if they are approached. There are admonishments. Jurors know what they should and should not say and to whom they should and should not speak. And it's not as though it's just read to them once at the beginning of the trial and maybe at the end. It is after every single...excuse me, before every single break whether that's a mid-morning break, a break for lunch, a mid-afternoon break, or a break at the end of the day. They're going to hear it four times and they're also going to know about it because they don't have their cell phones. And in this day, you take away my cell

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phone, I'm going to start paying attention. So in Douglas County there are I think...and this is off of memory, in the last 19 years there's only been two jury sequestration trials from beginning to end. And I think it is right that a judge...we're not, again, taking away the right of a defendant to ask to be sequestered....excuse me, not the right, the request to have sequestration. All we're saying is that if you're going to ask for it, you better have good cause. Now I think defense counsel made a good point that we should probably put in the language what is good cause and I will work with them. I talked to their lobbyist this morning. He brought that up and I'll work with them to try to find out in determination of what is good cause. But I do think this is a good bill. It saves the taxpayers money. And also, jury duty is hard enough without having to have needless sequestration. So with that, I would ask for your request to support LB381 with any amendment I may have with the defense counsel. And I would entertain any questions you may have. [LB381]

SENATOR PANSING BROOKS: I just have one question. Do you have a question? Okay, I just want to, again, speaking to the language that was stricken, the discussion about the officer that's in charge of the jurors, it's pretty explicit about not passing...basically passing notes to them, communicating back and forth, or even discussing the verdict prior to their announcement in court. [LB381]

SENATOR HARR: Yeah. And that might have been overly ambitious, cutting that sentence out. And maybe...because I still think that should remain in there about what an officer can and cannot do. So maybe we need to return that language. [LB381]

SENATOR PANSING BROOKS: Okay, well, I just didn't know if there was an intentional reason necessarily for that. [LB381]

SENATOR HARR: I think once you get that red pen out, sometimes it's hard to stop. [LB381]

SENATOR PANSING BROOKS: It is hard, isn't it? Yeah. [LB381]

SENATOR HARR: Right. And so I think maybe we should add that back in. And I appreciate you...when you said that earlier I looked at that. I'm not sure why. I'll go back and see if there's a reason for that as well. Good question. [LB381]

SENATOR PANSING BROOKS: See if there's some discussion. Okay. Thank you, Senator Harr. [LB381]

SENATOR HARR: Thank you. [LB381]

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SENATOR PANSING BROOKS: With that, that's the end of LB381. And now LB542, that's Senator Kuehn. Welcome, Senator Kuehn. Go ahead. Yeah, we're ready for you. [LB381]

SENATOR KUEHN: Good afternoon, Senator Pansing Brooks, Vice Chairwoman and members of the Judiciary Committee. For the record, my name is John Kuehn, J-o-h-n K-u-e-h-n, and I represent the 38th Legislative District in south-central Nebraska. I am here today to introduce LB542 to the committee for your consideration. Before I get into all of the content of LB542, I just want to provide a little context for my involvement and why I'm here. You may recall in our last legislative session there was a bill before the body on the floor that involved many of these same topics associated with Medicaid recovery. There are some elements in the bill which specifically targeted issues between the transition of farming operations and others between related family members. And as we addressed that bill which did not advance forward within the body, I wanted to make sure that I understood the fundamental principles of Medicaid recovery and the policy objectives that Senator Schumacher who had originally introduced that legislation and has a similar bill which you'll be hearing following, I wanted to understand exactly what his objectives were and see if there was a component, so certainly the idea of avoiding Medicaid fraud and making the state whole for individuals who should receive Medicaid to which they were not entitled and therefore potentially jeopardize the overall integrity of the system could be addressed. So that led to me seeking to have a greater understanding of the Medicaid recovery process and allowed me the opportunity to work with Medicaid, HHS and come up with a bill which is a very equitable and fair approach to addressing some of the concerns about ensuring that people are not inappropriately obtaining Medicaid benefits, and should they obtain Medicaid benefits to which they not are not entitled, how to recover those assets to protect the state. So the primary purpose of LB542 is me addressing, to be clear that I'm simply not going to dislike a piece of legislation but seek to actually address the policy concerns, and increase the ability of Nebraska Medicaid to seek reimbursement of taxpayer money after the death of a person who has received Medicaid benefits. There exists in LB542 the presence of a number of exemptions to immediate enforcement of the interest such as a surviving spouse, children under 21, that spouse living in the marital home which are all protected to the fullest extent under federal law. Reimbursement for Medicaid is only sought after any exceptions to enforcement no longer exist and then only if there are assets of the now-deceased person that can be recovered. The bill also authorizes the Department of Health and Human Services to place a lien on real estate to recover any taxpayer-provided benefits that were improperly or properly received with safeguards in place to protect those individual persons entitled under federal law to protection of those benefits. It also provides a mechanism for a person who improperly received benefits to repay them immediately. The bill will also make it easier for medical providers to apply for medical assistance on behalf of persons who are medically unable to apply for themselves, such as in the case of lack of consciousness or a comatose patient with no next of kin, but also permits that those providers will be paid from a combination of federal and state funds for services through the Medicaid program. Again, I do want to recognize and be clear with the committee that

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following this hearing you will be hearing LB268 which is going to have some fundamental differences that the committee can take a look at, including issues associated with potential (inaudible) for lawsuits, filing fees, getting involved in property rents, making the state government aware of recorded land transactions, and what I feel could potentially be some disputes with county attorneys. So you'll get to tease out those differences, but just so you know, many of the same fundamental elements are included in both bills. I simply have chosen not to address many of those additional issues. I don't want to be too tedious and I want to respect the time of the committee members, but I do want to walk through because there's a lot of different sections. So if you will indulge me, I will walk through by section the fundamental aims of what this bill is doing. And then there will be representatives following who will be able to answer some of the technical questions should you have any additional questions for them. So if you will indulge the nonattorney walking through these. Sections 1, 2, 3, 4, and 13 of the bill modernize how waivers on the restriction of transfers are sought. And these are commonly referred to as LB72 waivers after LB72 which was passed in 2015. These are waivers that must be sought under existing law by successor trustees before the assets of any trust that is now irrevocable due to the death of the grantor can be distributed. The department would actually modernize the process for establishing that communication by requiring that those waivers be sought via e-mail, thereby speeding the process for obtaining those waivers both inside of the department as well as individual citizens. The department would have to clearly post on its Web site how those waivers are to be requested. In addition, the bill would indicate how those waivers provided in any other nonapproved manner would be void, so providing clarity to the law. If you move forward into Section 5 it will indicate that filing fees shall not be charged for filings regarding imposition of liens by the department to provide a security interest for the recovery of taxpayer dollars in all cases that are currently permissible under current federal law. Section 6 of the bill is going to make insurance and annuity proceeds generally subject to taxpayer reimbursement with certain delineated exceptions which are outlined in specificity in Section 6. Section 7 indicates that provisions of the bill are to be incorporated into the Medicaid Act, our existing law, while Section 8 is going to provide an important definition of our related transferee, which is substantively addressed throughout the sections of the bill. Section 9 is important as it clarifies existing law and it also makes it clear that the recovery efforts are not targeted against any specific interests such as agriculture or other, but that taxpayer reimbursement is sought from all assets equitably regardless of their nature--so whether this is a cash asset, whether this is a liquid asset, whether this is a real estate asset. In addition to some technical language, Section 9 also automatically allows a successor trustee to seek and obtain the requisite waiver of the LB72 waiver without needing to expend the time and resources necessary to obtain a court order to allow for that change. The section also clarifies that taxpayers' recovery interest can be obtained within the later of five years after a person's death, his or her spouse's death, or any other exemptions currently permitted under federal law. Section 9 does also allow the opportunity for private attorneys to bring third party liability lawsuits, making it clear that their fees and costs would be covered out of the department's share of any recovery, the hope being that this would

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provide an incentive for Medicaid recipients to hire private attorneys as well as for private attorneys to assist the state in recovery efforts of appropriately delineated Medicaid funds by allowing them to keep a quarter of any net recovery subject to the Medicaid rules. This would hopefully then reduce the cost and expenditures of the government needed to obtain the taxpayer recovery of those dollars through Medicaid. Section 10 changes the Medicaid application and reporting requirements basically by strengthening the recovery of improperly paid benefits as it would require the recovery of Medicaid recipients and allow recovery from their estate if they have already died and it was after their death that those improperly paid benefits were discovered. Again, it puts out a time limit. So there is a five-year time period currently allowed under federal law in which the discovery of those improperly benefits would have to be found and those benefits recovered. Section 11 is the part regarding the pre- and post-death liens on property of Medicaid beneficiaries and would allow taxpayer money to be reimbursed from those assets after any exceptions to that recovery, for example, a surviving spouse still living in the home, a child under 21, a child or a dependent who meets qualifications for legally blind or other disability is no longer applicable. Again, this is permitted to the fullest extent under federal law. Section 12 of the bill would permit the medical provider--and this is an important component of this bill--to apply for Medicaid on behalf of a patient who is unresponsive or unable to apply for Medicaid on their own. This is an important component of the bill so that a medical provider can apply for Medicaid benefits on the behalf of an unconscious individual or an incapacitated person who should, for example, present to an emergency room without anyone able to make those decisions or apply for Medicaid so that the cost of those expenses to treat that unconscious or incapacitated person is not borne fully by the hospital as uncompensated care but rather would utilize the mix of federal and state Medicaid funds to cover those costs. It's my understanding that the Division of Medicaid Director Calder Lynch will be testifying afterwards to provide additional clarification of how this may operate for the committee within the Medicaid program. So with that, I am happy to entertain any questions from the committee to the best of my ability. [LB542]

SENATOR HANSEN: Great. Thank you, Senator Kuehn. Questions? Senator Chambers. [LB542]

SENATOR CHAMBERS: Why should HHS not pay filing fees? What is the rationale for it? That would be on page 12, line 25. [LB542]

SENATOR KUEHN: On page 12, line 25. Just to decrease the overall cost of the program. So we're recording a lien and an interest and therefore to facilitate the recovery effort and the lien effort, just removing that cost impediment. [LB542]

SENATOR CHAMBERS: To reduce the cost to whom? [LB542]

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SENATOR KUEHN: In this case it would be a cost to HHS, but ultimately the cost to the taxpayer. [LB542]

SENATOR CHAMBERS: But the people who live in the county where this is filed and anybody else who uses that court system has to pay filing fees. Why should the state not pay them, because this would be HHS or the state paying... [LB542]

SENATOR KUEHN: Correct. [LB542]

SENATOR CHAMBERS: ...and the state is trying to get something. [LB542]

SENATOR KUEHN: That's a fair comment and one I will duly take into consideration. That's a fair argument. [LB542]

SENATOR CHAMBERS: Okay. And the fact that I'm not asking questions doesn't mean that I understand everything and have none as I read and grasp more. But right now, that's all that I have. [LB542]

SENATOR KUEHN: That's fully acceptable. Thank you. [LB542]

SENATOR HANSEN: Thank you. Any further questions? All right. Thank you, Senator Kuehn. [LB542]

SENATOR KUEHN: Thank you. [LB542]

SENATOR HANSEN: All right. We will take our first proponent for LB542. And while he's getting ready, can I see a show of hands of people who are planning to testify in any capacity today. All right, just a couple. Thank you. That helps with us for scheduling. [LB542]

CALDER LYNCH: (Exhibit 2) Good afternoon, Senator Hansen and members of the Judiciary Committee. My name is Calder Lynch, C-a-l-d-e-r L-y-n-c-h, and I am the Director of the Division of Medicaid and Long Term Care in the Department of Health and Human Services. I'm here to testify in support of LB542. I want to thank Senator Kuehn for introducing this bill and working with the Department to look at the scope of Medicaid estate recovery in Nebraska. Federal law requires state Medicaid programs to recover certain Medicaid benefits paid on behalf of a member. While states are required to seek recovery of payments from the individual's estate for nursing facility services, home and community-based services, and related hospital and

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prescription drug services, they have authority to determine what assets they seek payment from and whether they wish to recover payments for other Medicaid services. Our current state law limits the recovery efforts as well as what assets are recoverable in Nebraska. LB542 strengthens Medicaid estate recovery to include additional assets and modernizes the methods of recovery efforts which would improve the accuracy, efficiency, and stability of the estate recovery efforts while increasing the amount of recovered Medicaid funds for the state. As Senator Kuehn summarized nicely, some changes to state law that this bill includes is expanding the assets from which the state can recover, including payable-on-death accounts and life insurance policies held at the time of death; stipulating that when a Medicaid recipient is deceased and owns assets, the reimbursement to Medicaid would be enforced through liens; and preventing fraudulent reporting by stating that intentional failure to disclose assets when applying for assistance would result in immediate repayment of any assistance received. This bill also seeks to modernize communication in estate recovery by specifying that notices of death can be submitted to the department electronically. This improves efficiency and ease of use for providers and the state. However, to ensure accuracy, the bill clarifies that the notices will only be valid if they are submitted in accordance with directives issued by the department. I want to thank you for the opportunity to testify before you today. LB542 will increase the amount of Medicaid funds returned to the state as demonstrated in the fiscal note that was prepared and improve the methods of pursuing the recovery. We believe it will help our department in continue in our mission and I'm happy to answer any questions you may have. I'll also note that I, too, am not an attorney but I do have with me a department attorney, Nate Watson, who will be able to answer any of the more technical questions that you may have about the bill or the program. Thank you. [LB542]

SENATOR HANSEN: Thank you. Are there questions? Senator Baker. [LB542]

SENATOR BAKER: Thank you, Senator Hansen. Mr. Lynch, may I assume that this came from you, the impetus for the this bill? [LB542]

CALDER LYNCH: That's correct. We worked with Senator Kuehn. [LB542]

SENATOR BAKER: Okay. Very good. [LB542]

CALDER LYNCH: He was interested in it. Yes, sir. [LB542]

SENATOR BAKER: Thank you. [LB542]

SENATOR HANSEN: All right. Are there further questions? Senator Chambers. [LB542]

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SENATOR CHAMBERS: Who drafted the bill? [LB542]

CALDER LYNCH: Our department attorney worked closely with Senator Kuehn's office on drafting the bill, Nate Watson who's with us today. [LB542]

SENATOR CHAMBERS: Then some of the questions I will save for that person. But since you're the Director, you should have some...not notice, you should have some idea of why this legislation is necessary. Is it a federal requirement that a bill such as this be enacted. [LB542]

CALDER LYNCH: Thank you, Senator Chambers. That's a very good question. Under current state law and in accordance with federal law, the state is required to seek the recovery of assets for individuals in Medicaid. And right now the state law, while it expresses an intent to do so and authorizes the department to do so, it doesn't allow us to do so within the fullest extent to federal law. We brought this bill forward for consideration to expand our ability to do that and allow us to do that to the fullest extent of federal law. I think it is a worthy discussion by the body to determine whether we want the state to be able to recover to the fullest extent under federal law. We do anticipate that this would increase our recoveries by about 20 percent. [LB542]

SENATOR CHAMBERS: And there is no floor...well, let me ask it a different way. The size of the estate makes no difference. If it's \$20 or \$20,000, you would go after the \$20 estate just like you would the \$20,000 estate? [LB542]

CALDER LYNCH: Senator, we do have an resource limit for the categories of eligibility that apply to this of about...of \$4,000. And traditionally we recover funds from about one in five estates, or about 20 percent of eligible estates. We typically look at these on a case-by-case basis and determine whether or not the cost of the time invested would be worth going after that. So we wouldn't, you know, invest that cost in terms of filing for that if there weren't a tangible amount of assets to recover from. [LB542]

SENATOR CHAMBERS: Then any other questions I have that might be of a technical nature I'll save for the lawyer. But thank you. [LB542]

CALDER LYNCH: Thank you, Senator. [LB542]

SENATOR HANSEN: Thank you. Any final questions? Seeing none, thank you, Mr. Lynch. [LB542]

CALDER LYNCH: Thank you. [LB542]

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SENATOR HANSEN: All right, we'll take our next proponent. [LB542]

NATE WATSON: Good afternoon, Senators. My name is Nate Watson and I'm an attorney for the Department of Health and Human Services and I primarily work for the Division of Medicaid and Long Term Care. And I had a hand in and helping draft this legislation. And I'd be happy to answer the questions you might have, Senator. [LB542]

SENATOR HANSEN: First and foremost, can we get you to spell your name for the record. [LB542]

NATE WATSON: I apologize. My name is Nate, N-a-t-e, Watson, W-a-t-s-o-n. [LB542]

SENATOR HANSEN: Great. Are there questions for Mr. Watson? Senator Chambers. [LB542]

SENATOR CHAMBERS: Mr. Watson, is this bill mandated by the federal government? [LB542]

NATE WATSON: It's not required that we go above and beyond the traditional probate estate, though existing state law, the LB72 that passed in 2015 already did make the choice to expand in part, though it had certain things that still needed to be done to make it more feasible to actually implement procedurally. [LB542]

SENATOR CHAMBERS: If this law were not passed, what harm would be done? I know there would be money maybe you can't get. Well, let me ask it a different way. What will you be able to do under this law that you can't currently do without it. And I'm asking this for the sake of the record. Anybody who may not be at the hearing, they'll have the story. [LB542]

NATE WATSON: Certainly, sure. Well, there are several things that this law would change and I'd be glad to mention them to you specifically. Right now, state law says that when you are seeking a waiver...so LB72 in 2015 says that when a trust that becomes irrevocable due to the death of the grantor when that person dies before the successor trustee can distribute the assets, they have to seek a waiver from the department. Current state law says they have to mail it. This law... [LB542]

SENATOR CHAMBERS: They have to what? [LB542]

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NATE WATSON: Excuse me, current state law says that waiver request has to be mailed to the department. [LB542]

SENATOR CHAMBERS: Oh, mailed. [LB542]

NATE WATSON: Yes. And this law, this change, one of the changes and that accounts for quite a bit of the length of the law because it affects four or five different sections in current law, would allow the department to put on its Web site a different means to give that notice--so e-mail. Frankly that would shorten up the amount of time that individuals would have to wait to get the response. And so that would probably make people's lives easier to get the answer quicker than having to wait... [LB542]

SENATOR CHAMBERS: Yeah, but e-mail wouldn't be the only way. That would be in addition to mailing? [LB542]

NATE WATSON: It would be whatever the department would put on its Web site would have to be followed. [LB542]

SENATOR CHAMBERS: Okay, okay. [LB542]

NATE WATSON: So it could include mailing. The law would be changed from mail to provided. And it says it may include e-mail. So it would, as currently written, it would give the department the discretion to say how it could be done. And could be done more than one way. But the department would have to make it very clear on its Web site so people would know. [LB542]

SENATOR CHAMBERS: Okay. [LB542]

NATE WATSON: Okay. Other changes, it would make it clear that insurance other than certain exceptions like for example I believe the \$100,000 and certain insurance policies would come within the scope of the state recovery, that is if somebody receives Medicaid through the Medicaid program that not only if they were to die with real property that may be probated or may pass through joint tenancy or what have you, it would also affect any insurance. So the recovery could come out of that, that type of asset as well. And current law doesn't say that. [LB542]

SENATOR CHAMBERS: It would be to the extent of how much assistance was procured and not the entire face value of the policy. [LB542]

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NATE WATSON: That's very good point, Senator. There's...under federal law we're only allowed to recover the amount of Medicaid someone received, and even then not all that Medicaid a person could get. There are only two types of Medicaid that are reimbursable to begin with, and that is any Medicaid an individual receives 55 years of age or older, as well as any so-called institutionalized care, usually a nursing home type care at any age. If you receive any other type of Medicaid like for example in-home services or services as a child, those under federal law we cannot seek recovery on those. And this law doesn't attempt to... [LB542]

SENATOR CHAMBERS: This law follows the federal, or it makes that available? [LB542]

NATE WATSON: It follows federal law that it would not expand recovery beyond. So basically you have to be over 55 or get nursing home care at any point in your life for it to be reimbursable. And if you do get that and you have these certain assets, you would have to pay the taxpayers back at the end of your...after you die and any of the other exceptions federal law gives you. And the main exceptions would be a surviving spouse who's still living in the home. We can't take that person's...we can't collect on our interest, can't take that person's home away from them. If they have a child under the age of 21...well, as long as they have a child under 21, they have a child of any age who is blind or meets the Social Security test for disability, and then there is another exception for a sibling of the person who may have lived in the home for a couple of years before the person did go into the nursing home, as well...and I believe there's one other exception that doesn't come to mind. But the most common exceptions are a spouse. That's... [LB542]

SENATOR CHAMBERS: Okay. If a person...who must be the one who purchased the insurance and who must be the beneficiary in order for the law to put the grabs on the insurance proceeds? [LB542]

NATE WATSON: Sure, and I'll refer specifically to the law so I answer your question correctly, if I may. It would be in Section 6. Section 6 expands to include insurance by putting into insurance law the requirement that the Medicaid Act would apply, and then specifically indicates on page 13 starting at line 9 that this would not apply to an individual's interest greater than \$100,000 in loan values or cash proceeds. So it would in essence apply to any insurance with regard taken out for the benefit of the now deceased individual above that amount, Senator. [LB542]

SENATOR CHAMBERS: It matters not who the person is that pays for the policy? If I take out a policy... [LB542]

NATE WATSON: Yes, sir. [LB542]

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SENATOR CHAMBERS: ...on somebody who winds up receiving the type of care that would be reimbursable... [LB542]

NATE WATSON: Yes, sir. [LB542]

SENATOR CHAMBERS: ...I'm the one who took out the policy. The person dies. [LB542]

NATE WATSON: Yes, sir. [LB542]

SENATOR CHAMBERS: I'm going to be the beneficiary. Then part of what would come to me as one who took out the policy and paid for it, maybe for a number of years, you would have first claim to get what you want returned after a certain amount above...okay, let me put it this way. Let's say, and I'm going to use the figures that will make it easy for me. The policy is for \$100,000. [LB542]

NATE WATSON: All right. [LB542]

SENATOR CHAMBERS: They got \$60,000 worth of care that the state or the federal government would say should be reimbursed. And the only thing available for that estate, if you want to call it that, would be this policy. I am the one who took out the policy on this person. I paid the premiums for all these years. And the policy is for \$100,000. [LB542]

NATE WATSON: Yes, sir. [LB542]

SENATOR CHAMBERS: You would take out your \$60,000 before I'd get the \$40,000 from the company? [LB542]

NATE WATSON: If I may, I need to take a quick look at this section to be able to make certain I answer you correctly. Senator, I do not know the answer to that question. I'll have to supplement my testimony and I'll be glad to do so. [LB542]

SENATOR CHAMBERS: Well, as the bill moves along, if it goes anywhere, we'll have a chance to cover that. I'm just trying to get a general idea. But would there be a point where the state could take some of that policy so you'll know what the question is that I'm asking. Okay. [LB542]

NATE WATSON: Thank you, sir. [LB542]

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SENATOR CHAMBERS: That's all that I have. [LB542]

SENATOR HANSEN: Thank you, Senator. Any other questions? Seeing none, thank you for coming down and testifying. [LB542]

NATE WATSON: Thank you. [LB542]

SENATOR HANSEN: We will take our next proponent testifier. [LB542]

MARK RICHARDSON: (Exhibit 3) Good afternoon. My name is Mark Richardson. I am an attorney with the Rembolt Ludtke Law Firm here in Lincoln. I'm testifying today on behalf of the Nebraska Association of Trial Attorneys. My name is spelled M-a-r-k R-i-c-h... [LB542]

SENATOR CHAMBERS: Excuse me, what association of what kind of attorneys? [LB542]

MARK RICHARDSON: The Nebraska Association of Trial Attorneys. [LB542]

SENATOR CHAMBERS: Oh, trial attorneys. Okay. I thought you said power. (Laughter) [LB542]

MARK RICHARDSON: Nope, trial attorney. My last name is R-i-c-h-a-r-d-s-o-n and I am here testifying in support of this bill specifically with just...just with regard to Section 9 of the bill which discusses Medicaid recovery in third party claims. As the senator proposing this had stated, the goal is to give a nudge, I guess, to potential claimants who have the ability to recover from a liability insurance policy related to an injury that had been sustained and then subsequent Medicaid treatment that they received by recognizing a reduction at least for the attorneys fees that would be involved in them pursuing a claim like that. I have circulated or had circulated a proposed amendment to that section. As it reads right now it says that there shall be a 25 percent reduction on any Medicaid subrogation related to a liability policy or liability proceeds that come from that. That's what we would call...we look at that as a good start. But if you mandate that it's always 25 percent, I think that's going to have an unintended consequence and then...and that I believe is it will have an unintended consequence of actually dissuading people from going after potential liability policies which would have the benefit of recouping Medicaid, some of the costs that it's expended for care. A specific example of that, and I've had this happen in lawsuits that I've been involved in on a fairly regular basis once or twice a year where we determine that there is a clear liability in a case. We know that this is a claim that can be recovered upon. Our client had received Medicaid benefits, but let's say it's a situation where they received \$100,000 worth of Medicaid benefits but the insurance policy for the liable party is only \$50,000. In that

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situation, even if you follow the black letter the way this bill is drafted, Medicaid can only provide a 25 percent discount. They're still going to sit there and say they need to be paid a total of \$75,000 before the first dime would go to our client. There's no incentive there for our client to pursue that claim in any way. As it stands right now, there's enough wiggle room in the law to allow us to basically work an equitable deal with Medicaid so in a situation like the one that I just described, we may try to do something like what we would call a third, a third, a third. A third of the proceeds of the recovery are going to go to our client, a third are going to go to Medicaid, a third are going to go to pay for the attorneys' fees to collect those, or some variation thereof. But we think it's important that we add in that provision because if you lock it in 25 percent, you're going to be telling...you're going to basically be...the consequence is going to be there's a lot of claims...an injured party is not going to be interested in bringing a claim simply to recover money that's going to go...the entire amount or even a substantial amount of it's going to go to Medicaid. So that's the only change that we have. Otherwise we think that particular section makes a little bit of sense. The only other thing I would address in that particular section is it does require...as it's written right now, it requires consent of Medicaid. It says with the consent of Medicaid. I would encourage us to revisit that just because, you know, again, we don't want to hang or delay claims simply because...or put the onus on Medicaid to all of a sudden start receiving requests after request after request from personal injury attorneys to say, hey, you guys have to get permission from us before you actually proceed with initiating your claim. So that's the only other item there I would testify to. Happy to answer any questions. [LB542]

SENATOR HANSEN: Great. Are there questions for Mr. Richardson? Seeing none, thank you for testifying. [LB542]

MARK RICHARDSON: Thank you. [LB542]

SENATOR HANSEN: All right, we'll take any further proponent testimony. Seeing no more proponents, move on to the opponent testimony. [LB542]

CHRISTIN LOVEGROVE: Thank you, Senator. My name is Christin Lovegrove, C-h-r-i-s-t-i-n L-o-v-e-g-r-o-v-e. I am an attorney in Geneva. You may remember I was here last year talking about last year's bill that Senator Kuehn referred to that was...did not pass the floor debate. I would like to start off by first saying that I think everyone here can agree with Medicaid recovery. It needs to happen. However, when we look at a lot of these bills, there is an extreme inconvenience and cost to states for individuals that will never be on Medicaid and will never be applying for assistance and there is a lot of red tape and, right or wrong, government bureaucracy that we now must go through in order to proceed effectively with administering estates once individuals have passed away. Often, I look at some of these bills and I say it's going to be a lot like LB72 that was referred to. In essence it created a big bureaucracy. It created a lot of

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paperwork. And to my knowledge, there has yet to be a dime recovered from recoverable trusts. It has created a...essentially what this bill does is it streamlines the process that doesn't create any revenue for the state anyway. I'm not quite understanding why we need to streamline a process that doesn't do anything. Overall, I am...when you look at the next bill that will be testified and brought up by Senator Schumacher, LB268, I'm much more in favor of LB542 in the sense that it does not simply penalize those people that are landowners. It comes after anybody that has essentially frauded Medicaid. Again, I would like to remind you that in order to qualify for Medicaid you are supposed to have under \$4,000 worth of assets. So if somebody qualifies for Medicaid and they own a property with somebody that's worth \$500,000 or \$600,000, they should not be able to qualify for Medicaid. This is not an issue that should be taken up in that person's estate. This is an issue that should be taken upon their application and subsequent denial to be covered by Medicaid. What we're seeing is we're trying to see this back push into coming after estates. There's demand for notices. We're going to, you know, pay-on-death insurance policies, all these types of issues. Most of these people on Medicaid, to be very frank, in our practice we have yet to see anybody who is a...qualified for Medicaid that has an estate proceeding. There's less than \$4,000 of assets there. Nebraska law says that you don't have to have an estate proceeding until you have \$50,000 of assets. So a lot of these demand for notices and different things that will be filed are essentially going to be clogging up our court systems because there will never be a probate case. One thing that it has been extremely bothersome in our practice in dealing with our clients is the fact of the lien and the potential lien and we always talk about to the fullest extent allowed under federal law. Well, let's keep in mind federal law has a five-year look-back period. So in federal law if I give away \$1 million of assets and I wait six years and I qualify and have under \$4,000, technically I can be on Medicaid. So what we're seeing in these situations is this potential lien. You're identifying a related transferee and what that does is while there may not be a notice of lien, anybody that's dealt with a banker in your lifetime can guarantee they're not going to loan you money. If there is a potential lien that they don't have any idea as to what that amount is or what is happening, you're not going to get money. And when you're talking about a young farmer that purchased two quarters of land from his grandpa that needs those quarters to essentially collateralize his operating loan, you're not going to get it anymore. So with that, I think I would just say I'm very opposed to the streamlining of this process. While I appreciate the effort, I still don't understand the reason behind it. I feel like that language needs to be completely stricken. Furthermore, liens just are completely potential, possible ever filed and notice of lien, those are things that just cannot happen with small businesses in Nebraska. It creates a situation where they are actually unable to get financing and expand and grow their business. So at this time, Senators, I would welcome any questions that you may have. [LB542]

SENATOR HANSEN: Thank you. Are there questions? Seeing none, thank you for testifying. [LB542]

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CHRISTIN LOVEGROVE: Thank you. [LB542]

SENATOR HANSEN: We are still on opponent testimony. Are there any further opponents to the bill? Seeing none, we will move on to neutral testifiers. Is there anyone wishing to testify neutral? Seeing none, we will welcome Senator Kuehn up to close. [LB542]

SENATOR KUEHN: Thank you, members of Judiciary Committee. I appreciate the discussion and contribution. I agree with a lot of what has been said today and look forward to your eyes on it. Senator Chambers, just with regard your questions about insurance, page 19, lines 5, 6, and 7, does that address the question of, "Insurance policies in proportion to the premiums and other payments to the insurance carrier that were paid by someone other than the recipient of medical assistance or the recipient's spouse". So that would not be included in the estate of the recipient for Medicaid recovery. Does that address your question? [LB542]

SENATOR CHAMBERS: Okay. Yep. [LB542]

SENATOR KUEHN: All right. Thank you. I appreciate that. Any other questions from the committee that I may be able to address? [LB542]

SENATOR HANSEN: Great. Other questions? Seeing none, we look set. [LB542]

SENATOR KUEHN: Thank you. [LB542]

SENATOR HANSEN: Thank you, Senator Kuehn. (Exhibit 1) I will read into the record we did have one letter submitted in neutral capacity from Sam Cooper of the Nebraska Land Title Association. With that, we'll close the hearing for LB542 and move on to the hearing for LB268. Senator. [LB542]

SENATOR SCHUMACHER: (Exhibits 1 and 2) Thank you, Senator Hansen, members of the Judiciary Committee. My name is Paul Schumacher, S-c-h-u-m-a-c-h-e-r. I represent District 22 in the Legislature and I'm here today to introduce LB268. I've got some handouts if we can have a page. Sometimes it's helpful to put everything in context. So let's roll back the clock until before LB72 from two years ago and look at our status of things. At that time if the state tried to go back and collect money that had been advanced for basically nursing home care, just for simple language--it's a little broader than that but not much--and just for simple understanding for nursing home care, it could do so only against the probate estate. A probate estate is something basically that is held in your name alone at the time of death. And the way it is transferred from you to your heirs is either by what your will says or by what the law says as to

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who gets your property. And for all practical purposes in most cases that's your kids. So the probate estate often was disposed of in other ways. But the state was limited at only getting at the probate estate. People passed money using various vehicles. Some are called trusts where they give it to a middleman and that person distributes it according to a set of instructions. Sometimes they put it in joint tenancy with survivorship and says I own it with you, you, and you and the survivors take when the people that pass away, pass away; that's not a probate estate. Some use, in the case of land, a thing called life estates where they say I give the property to my kids but I get to hold back the use of the property for the rest of my life and the income to the property. And those...some do it by buying an insurance policy. Some do it through a pension fund that they don't completely cash in--lots of vehicles that never pass through a will or the probate court to transfer title from the person who is deceased to the heirs. Now the federal government became aware of a problem with this back in the early 2000s and said to the states, you know, we're having people get on the Medicaid system getting their nursing home care paid for. And they don't have any probate estate. Their money is passed to their heirs using one of these other vehicles. So, states, if you want and we encourage you to do so, you can expand the definition of estate to go chase down such things as property put in joint tenancy, property in life estates, property in payable-on-death accounts. You can chase that if you like. And we'd really like you to do it because we're kind of partners with you in this business and we advance some of the cost of these Medicaid programs and you advance some of the cost and we really don't think it's right for somebody to pass their property on to their heirs before they pay their nursing homes bills. Of course, there was some minor exemptions as to what should be...can be allowed to keep before you go on Medicaid, but basically that's the principle. And that's a philosophical issue. Should you be allowed to pass your property to your heirs and then jump on the nursing home bandwagon? And that is a question and just let me give you an example real world and how we have to try to deal with it in the legal profession reminding you that the legal profession is lawyers and not priests. Tell you what the law is and what you can use to utilize it, but you...really isn't your job to tell people what is moral or right. So you have a situation where Grandma...this is a real situation. Grandma puts the five kids' names on the farm. Deed is in Grandma, A, B, C, D, E as joint tenants with rights of survivorship, okay? Grandma checks into the nursing home. Somehow--and this part of the problem with our system; it's been alluded to I think a little bit here--Grandma manages to make it through the screening process for Medicaid, maybe innocently so because Grandma is 80-some years old and she doesn't understand what she owns anyway. And she probably signed up with a family member who maybe didn't understand what Grandma had done. And so Grandma makes it in and the state pays I think it was \$180,000 toward Grandma's Medicaid bill, okay? Grandma dies. Grandma's name, under our laws, automatically falls off the deed. It goes to the survivors. The five kids have the property lock, stock, and barrel. Property is probably worth at that time \$7,000, \$8,000 an acre and I think there was maybe 320 acres--a little bit of change. Kids come into the lawyer's office with a letter sent out by the Department of Health and Human Services. The letter says, by gosh, by golly, we understand you just got a farm that Grandma owned. Would you please pay us \$180,000 and

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respond to this letter at least? They go in to the lawyer. Is the lawyer going to tell them to respond to that letter? Is there any obligation to respond to that letter? No. Letter goes in the circular file. End of it. Similar things happened with the life estates. Somebody gets a...rents a could be an office building, could be a farm, rents a piece of real...takes a piece of real estate, puts it in the kids' name. I give it to my kids, but I keep back the right to the rents and use for the rest of my life, okay. And sometimes, sneak through the system--more than sometimes--and they also at the same time rent the building or the farm to the children or one of the children for nominal rent, maybe enough to pay the property taxes. And so there's really even no income from the property, no net income. And they are enjoying Medicaid while the kids are enjoying the property. And when they die, automatically it goes into the kid's name because the life estate evaporates on death. The lawyer that is contacted, maybe he worked with the or she worked with the family for a long time, don't want to see that estate go down the street. And so therefore there's competitive pressure to say, you know, yeah, this is how you can do it. And it works. So I brought, with some encouragement from the legal profession who was really uncomfortable with this but you got to do what your clients got...wants you to do, at least you got to give the advice straight, to try to deal with it and we began a two-step process. The first step was to expand the definition of estate to say here in Nebraska, anything, the maximum umbrella that we can put out to include to go back after legally when this happens to recover, we're going to use. And we passed LB72. The maximum definition is out there. Now some of the complaints about LB72 is people really didn't realize how broad it was, the practicing accountant and legal world. And when they didn't realize how broad it was, they were maybe going to trip themselves up because it wasn't spelled out, hey, this means everything, blah, blah, blah, blah, blah. So that was an issue. Another thing that LB72 didn't attempt to do but it really needs to be done is right now while the department has great authority to go chase assets in these expanded estates to try to get back from the heirs what the state may advance, there's really not a clear, set procedure for them to do it and it has to be a hassled through the courts and the bureaucracy because we didn't complete the job. Last year, I introduced LB1103 which was worked on with the title people, with the bankers, with various representatives of various factions including the Bar Association to lay out a good, workable format that was fair--fair to the people who had maybe done a family gift prior to the act being passed and put it before the Legislature. It basically said that once you apply for Medicaid, if you have anything out there in the real estate world, it attached a lien to it that became effective at the point...it attached when you applied, became effective when the department filed a notice of that lien on the property. There was a great deal of confusing debate and it died as a result of a filibuster even though it had majority support in the Legislature. That language, very comprehensively worked, right down to looking at let's say one heir got a piece of property, the other heir didn't get a piece of...that piece of property but got a different one but DHHS just chased one. It had provisions, for example, that those two heirs, if they couldn't divvy it up, the burden, between the two of them, could fight in the county court. We gave the county court jurisdiction in order to divide that burden so that among the heirs they could figure out what was fair. And the court could use equitable principles in deciding what was fair. But

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took...when that one went down last year, took the bill to Bill Drafting and had it redrafted as LB268--virtually the same bill with a couple of minor changes. One was I think they shifted around two of the sections because they thought it made more sense, but the same words. Another one, the Department of Health and Human Services, the bill last year required that the death certificate have a note on it saying, hey, we got a bill against us or at least come see us, there's a problem so the heirs and everyone knew that there was an issue that would need to be resolved. The department took some objection to that because they claimed that when they were issuing the death certificate they couldn't necessarily operate that quick and one computer couldn't talk to another and there were just all kinds of reasons which to me didn't make a lot of sense. But at any rate, it took...this bill takes that out and just says check the county court filing. These are all filings that are digital. And the department needs to, under the existing law, if it's making a claim, file that claim in the county court. All digital, not boxes of paper, nothing else, just file that in a database that is accessible by the public by the very nature of the demand for notice proceedings--not a lot of paperwork. The other thing that the bill tries to address in a different way besides the death certificate notice is...let's see, there was a minor thing in there and I'm now having a hard time remembering what that change was. I'll think about it in a second here. So essentially it is the same bill. The language in all material respects is the same bill. I did notice last night when comparing it to the other bill that there is probably a better way to phrase estate because one would, even though the general definition of expanded estate includes nonplanned items, when we itemized them out saying including but not limited to, we didn't put in regular property such as a security bank account, intellectual property right, contractual lease or right in the spelling out. So you have an amendment before you that adds that is there to make that clear, that that is...all those kind of things are also included in the estate. And then there is a minor technical thing that makes it clear that the time to bring these actions on the part of the department does not accrue until it is permissible under federal law for it to occur. And that is a language change on page 31, lines 24. So I have that amendment prepared and I gave that to the committee with regard to the changes that might be needed to be made there. I felt a bit like Michelle Obama when I was comparing the two bills last night because...and when Michelle Obama was at the Republican Convention listening to Melania Trump. Those in the other bill were basically the same words only shuffled around and shuffled around in such a way that it had substantially different meaning in a way. The big difference is LB268, once it does very little to you, really nothing to you, until you file as an application to Medicaid. Oh, now I remember the other difference in the bill. There was a lot of complaining that LB1103 required a separate piece of paper to be mailed by the person writing the deed to DHHS. And that was suddenly a big, big thing even though it required basic information which is identifying the people who it was transferred to and the property. There's another piece of paper and it also required their Social Security number. There's another piece of paper that's already required to be filed at the time of filing a deed called a Form 521. And so instead of making all that additional work of filling out that additional piece of paper when you transferred a piece of land which indeed was very little work, the register of deeds is instructed to send a

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copy of the 521 Form that's already filed to DHHS so that they have an indication that a person has transferred property to their heirs. And in the event that that person shows up as an applicant for medical assistance knows that they...that there are assets that they need to do. The lien attaches. When the lien attaches, and only then after it's...after it attaches at the beginning and then it becomes effective when it's filed, does it affect anything with title and does it affect anything that would be of concern to banks or creditors or impeding that. Only once you come to the state with your hand out does the thing really have anything to do. Now what it also does, and both bills try to do this but it hopes to step up the process in the beginning because if you have property in an extended estate, you shouldn't get the first dollar to begin with. So you shouldn't have to be chased to get it back. And there is a great deal of ambiguity in how we handle it in our system as to when the department will say no when somebody comes in and says I'd like to get the Medicaid assistance. It's really hard to get clear answers is, if you have a bucket of gold but no income from the bucket of gold are you disqualified? If you have an apartment building that you aren't collecting any rent on, you're just letting it sit there and waiting for the guy next door to buy you, is that counted against you? Other states are very aggressive in sorting that through. And that's something that this tries to say, look, you better make full disclosure of these things--and I think LB268 says it a little stronger--when you show up because if we catch you while you're still alive we can go chase you and we can recollect that money from the expense of the state. LB268 also has one additional provision. Since we ask the register of deeds to do some additional work, it extends the existing fee structure for the filing of a deed, which a few years ago we raised from \$5 to \$10, I think, but is scheduled to expire. And that money has now been used and will need to be used when (inaudible) run register of deeds office to comply with the duties that are in this bill and keeping the land records safe in general. You'll notice in that handout that I sent that really Iowa leads in the amount of collections from estate recoveries and these numbers are shared with the department of...the federal department when they're recovered. But Iowa recovers \$24 million a year or about .5298 percent. Kansas, our neighbor to the south, recovers \$13 million dollars a year, or about .43 percent. Nebraska recovers only \$3.8 million at a rate of about .2 percent. So we are lagging in the area. I think the fiscal note is showing a couple hundred thousand dollars is simply wrong. I know of a case in Columbus alone just recently where over \$40,000 was recovered basically because the attorney told them when they got the letter, you better turn in the money because they got you under even LB72. So it's a system that we need to deal with when we're faced with these increasing Medicaid costs for nursing homes. And it is a policy decision that has already been made by the Legislature that we will chase after the expanded estate. What we have not done is providing a safe framework and the outlines needed by the banking and title community and the legal community and also an effective way that when they apply for assistance, at that point, not afterwards, those liens begin to attach so they can't squirrel away that particular property. You can't have a thing like provided in the other one: The lien attaches but if Grandma returns home for a minute before she dies, they must release the lien; or the lien attaches only after death because by that time it may well be gone or mortgaged to the hilt. So this is an effective way in LB268 to really crack down on

this. And it is not a burden on commerce at all because if you don't apply for medical assistance, the changes in LB268 don't apply to you. There were some provisions with LB72 that apply to asking...confirmation from the Department of Health and Human Services before you dispersed from a trust. And they've been reasonably prompt at responding to those requests provided that there's authority. And there have been some controversy when a trustee asked for the information, do we owe you anything because LB72 did not say that a trustee had the right to make that request. This does say that the trustee has the right to make that request and thus the department feels comfortable with letting them know whether or not there's a bill. So this is tough, but clear rules to enforce a tough decision that the Legislature made that our preference is and our public policy is you spend down your estate and your own resources before you go on Medicaid. And if you do happen to get on Medicaid before you die, the bill comes out of your heirs rather than out of the taxpayers. I'll be happy to take any questions. [LB268]

SENATOR HANSEN: Thank you, Senator Schumacher. I see Senator Baker has a question. [LB268]

SENATOR BAKER: Thank you, Senator Hansen. Senator Schumacher, I really appreciate your efforts in this. I'm going to lay out two scenarios to you. First scenario, the person transfers assets before the health conditions get to the point where they require being, say, in rest home and they've divested their assets down to \$4,000 or lower. And so then they go on Medicare. Scenario B, the person, same person, does not transfer assets, pays their own rest home bill, then heirs inherited the land or whatever it is--say it's land--at the stepped-up value. I've heard you speak to that too. Is a possible there's anybody doing both these things at the same time? [LB268]

SENATOR SCHUMACHER: First, with regard to the first question, if they spend down their assets to the \$4,000 and they really...and that's below the standard in order to get Medicaid, this doesn't apply because they've got no estate to chase. [LB268]

SENATOR BAKER: Okay. [LB268]

SENATOR SCHUMACHER: The second one, can they get a stepped-up basis in addition to maybe playing one of these life estate or joint tenancy or one of those kind of maneuvers? The answer is anything coming through a life estate enjoys a stepped-up basis under current law. So it's possible that if you're able to qualify because you've suppressed your income or done some other things with what they call embedded trusts and other things, suppress your income, you might slip through and qualify for Medicaid. Your heirs may end up with the property at a stepped-up basis and no income tax. [LB268]

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SENATOR BAKER: Thank you. [LB268]

SENATOR HANSEN: Great. Thank you, Senator Baker. Senator Krist. [LB268]

SENATOR KRIST: Senator Schumacher, I think in my eight years here that's the second longest opening I've ever heard. (Laughter) And it would probably...only second to Senator Ashford, I might add, who took about an hour and 15 minutes to introduce a bill. But if we could transfer that opening and what you've written in terms of what this bill is supposed to do to the minds of the senators, all 49 of us on the...all 48, the rest of us--you already have it--this this is exactly what we did not have a couple of years ago as we came forward at the beginning of the conversation and the questions and the divergence during that floor debate were ridiculous. And I applaud you on the effort to bring it back again. The other comment...I want to let you comment on that, both of my sarcastic comments. [LB268]

SENATOR SCHUMACHER: I'm biting my tongue, you know. [LB268]

SENATOR KRIST: But the other comment I will make is that this is a perfect example of a fiscal note that tells us how much things are going to cost, not how much we are going to make or the possible benefits. I don't think it addresses that very well which is why we need a dynamic fiscal process to actually analyze our gains in terms of our investments. So I turn it over to you for, oh, a couple of minutes. [LB268]

SENATOR SCHUMACHER: Just quick, I'm not being terribly critical of the Fiscal Office on that fiscal note because how do you know what you don't know... [LB268]

SENATOR KRIST: Agree. [LB268]

SENATOR SCHUMACHER: ...when it's kind of been...the whole process is kind of under the...not very transparent and that's because it's permitted to not be very transparent under at least of the old law. And so nobody is going to volunteer the information so I don't blame Fiscal for not having an idea. I do think that these figures that were provided to me that I passed on to the committee are a more accurate indication of what we're looking at. We're looking at several million dollars a year. The thing...when the feds passed this in...suggested we do this back in 2004, they were talking in terms of millions of dollars a year and just really, really decent sized numbers. And just knowing from practicing law for 30 years how this thing works, this is not an uncommon maneuver. [LB268]

SENATOR KRIST: Thanks for bringing the bill. [LB268]

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SENATOR HANSEN: Great. Thank you. I'll turn it back over to Vice Chair Pansing Brooks. [LB268]

SENATOR PANSING BROOKS: Thank you. Thank you, Senator Hansen. Did you have a question, Senator Halloran? [LB268]

SENATOR HALLORAN: I do. Thank you, Cochair Pansing Brooks. Just a quick question...well first a comment. I think this is a very competent bill. And along with what Senator Krist said, it reminds me of the joke of the Bible salesman who came back after a week's worth of selling Bibles and won a commission for selling the most Bibles. And his sales pitch was, do you want to buy a bible or do you want me to read it to you? (Laughter) But that being said, just a quick question, what do you think the...I'm going to guess that this will pass the committee. What would your expectations be that we'll make it to the floor with this? [LB268]

SENATOR SCHUMACHER: This year, I'm not sure I have any expectations that anything will get through...we might not have the rules make it through the floor. [LB268]

SENATOR HALLORAN: Okay. I just thought I'd ask. Thank you. [LB268]

SENATOR PANSING BROOKS: Any further questions? [LB268]

SENATOR SCHUMACHER: Now is your chance to get even with me for the question I asked you a couple minutes ago. [LB268]

SENATOR PANSING BROOKS: I know. I'll get even later. That'll be good. Okay, now we'll take the proponent testimony. And do we...did we ask for...could we have a raise of...show of hands how many people are here to testify either in favor of or against the bill. Thank you. Okay, proponents. [LB268]

MARK RICHARDSON: (Exhibit 3) Senators, my name again is Mark Richardson, M-a-r-k R-i-c-h-a-r-d-s-o-n. Again, I'm an attorney with the Rembolt Ludtke Law Firm here in Lincoln. I'm testifying on behalf of Nebraska Association of Trial Attorneys. I had just previously been up here to testify on LB542. This bill contains the identical, or nearly identical, provision to LB542. And I would just ask that my earlier testimony from LB542 be incorporated for this bill. And I have nothing further to add unless you have questions. [LB268]

SENATOR PANSING BROOKS: Any questions? Thank you for coming, Mr. Richardson. [LB268]

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MARK RICHARDSON: Thank you. [LB268]

SENATOR PANSING BROOKS: Next proponent. Do we have another proponent? Okay, opponents. [LB268]

CHRISTIN LOVEGROVE: Thank you, Senator Pansing Brooks. My name is Christin Lovegrove, C-h-r-i-s-t-i-n L-o-v-e-g-r-o-v-e. I, too, was speaking as an opponent against LB542. I am here today and I will just briefly address some of the issues that we see. Again, LB268 streamlines the process for a DHHS waiver that I truly don't believe has any purpose. It will not generate recovery of medical assistance. And it just in fact has a lot of paper shuffling. Senator Schumacher has been in, I think it's fair to say, numerous contact with my partner, Frank Heinisch. He's also an attorney. He, for some reason, likes hiking in 25 degree weather in Arizona so that's where he is now. But we've had a lot of conversations about this and we do appreciate the streamlining process. Again, it's in our opinion not difficult to comply with. I just question the purpose of it. We really haven't seen a general recovery from trusts that become irrevocable upon the death of the seller. People with less than \$4,000 worth of assets typically do not have revocable trusts. Senator Schumacher's example, in fact both of them indicate to me that there was simply fraud in the application. They failed to disclose an asset. They had more than \$4,000 worth of assets and they failed to disclose that asset on application. So essentially what we're doing is we're penalizing the 99 percent of people that are completely honest in their applications, who are completely honest in their family gifting, completely honest in their estate planning, or those that have absolutely no future ability to qualify for medical assistance and we're forcing them to comply with a lot of rules and regulations that create a lot of bureaucracy when really what it comes down to is people are not fully disclosing their assets when they apply for Medicaid. Furthermore, when we talk about life estates, in Senator Schumacher's examples when we talk about income generated from that property, I think that commercially reasonable lease terms is 100 percent appropriate. We aren't doubting that at all. However, we need to get in a provision for appeal. There's no way that the transferor, the transferee, the tenant, the person on medical assistance can appeal. Essentially what happens is it appears as though DHHS just says that rent is not reasonable. There are so many different types of business assets, so many different conditions of property that simply saying that it's not reasonable without a provision for appeal needs to be addressed. Additionally we get more to the lien issue and that's where we continue to have a problem. When there is a statement that the lien has no impact, I fully believe that's completely false. I see too much in today's rural farming economy with where farmers are at now, their ability to get operating notes and to farm is being really closely looked at. And by saying that there is a potential that there's a lien out there that lasts for five years is really difficult to swallow for these rural farming families. If DHHS, if they know who has received medical assistance or who applies and they're getting the Form 521 from the from the register of deeds then they can go after those people. They know right away who that is. So essentially if they're applying for Medicaid and they aren't disclosing these assets and DHHS has notice of

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these assets, automatically DHHS should be able figure out they've committed fraud. It shouldn't take more than that. There is...we just have a distinct problem with the fact that there is no good reason under this bill why only family gifts of real estate should be subject to medical assistance recovery. There's no reason that only gifts of real estate. Essentially you're penalizing farming families that have three or four quarters of ground but we're ignoring the people that have \$8 million or \$9 million in an investment account. And there's absolutely no reason that that should be happening whatsoever. So with that, I would open it up for any questions. [LB268]

SENATOR PANSING BROOKS: Okay, thank you very much, Ms. Lovegrove. Senator Baker. [LB268]

SENATOR BAKER: Thank you, Senator Brooks. You may not have seen this data that Senator Schumacher put it out but it showed that in Iowa over \$24 million was recovered in 2015; in Nebraska, about \$3.8 million. Iowa has a population, say, 50 percent higher than Nebraska. So there's a huge discrepancy there on the amount of state recoveries in Iowa compared to Nebraska. Wouldn't it seem that there's something more involved there than just fraudulent applications? I mean are Nebraska people that much more dishonest than Iowa people? [LB268]

CHRISTIN LOVEGROVE: Well, Senator, I would say we're much more honest than Iowa people in my opinion. (Laughter) [LB268]

SENATOR BAKER: I thought so. [LB268]

CHRISTIN LOVEGROVE: I think what we see there is we probably see that Iowa has a very similar approach in the fact that they can also go after liquid assets, non-real estate assets, pay-on-death accounts, much as what LB542 is trying to do. That's in large part where we see...I am one...if you have a pay-on-death account to a child and you are on Medicaid, I 100 percent agree that that entire amount should be refunded back to DHHS. I think that where we get in dealing with the liens and the real estate is something that we see a huge issue with. [LB268]

SENATOR BAKER: Thank you. [LB268]

SENATOR PANSING BROOKS: Thank you, Senator Baker. Yes, Senator Krist. [LB268]

SENATOR KRIST: Thank you, Senator Pansing Brooks. I think you're in error. I don't think this is limited to just real estate and/or the lessor of the property. I think under...I believe under Section 68-919 that this applies to the same rules that apply to the federal government, which would mean all assets, liquid and otherwise. And I think there's a provision that...I'm sure

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Senator Schumacher will correct me if I'm wrong and that's on page 21, lines 9-13. And I also think there are...have you ever been around a nursing home facility and applied, sat down and walked through the application with an elderly person? [LB268]

CHRISTIN LOVEGROVE: Yes. [LB268]

SENATOR KRIST: Okay. So you know that the scrupulousness or scruples of the institution along with the way the questions are asked and the application is filled out can result in intentional and unintentional consequences that would relate to reimbursement under Medicaid, Medicare for those facilities. I don't think Iowa people are less honest than Nebraska people or vice versa. I just think that I want to get Aunt Sally the best treatment I can. And if that means I've got to sign and check this block because that's where I want her to go, I think that happens more frequently than we would admit. I've gone through this four times--my parents and my wife's parents. And I know that sitting down at that table because neither of them divested themselves of their money two years prior to getting in the situation so their private insurance and other things had to kick in before they ever would have been involved with Medicare, Medicaid. And as a public figure I would never choose to put myself in that position as a trustee for my mom or my dad or my wife's mother and father. But I think that to say that they have all the tools that they need right now is kind of disingenuous. I think that this aligns with the process that if there are those inconsistencies or those things that are overlooked, we'll find them more readily than we do with the current system. Now I know department is going to come up in the neutral testimony and I would suspect that he's going to have some suggestions one way or another. But I don't think this goes to fraud or nonfraud. I've looked at this in the last two years and walked through this legislation with Senator Schumacher and voted for it. But he's right. We can write all the laws we want to but the enabling part of this I think is the handbook, if you will, that is set up through this process. So you can respond to anything you want to, but those are just comments based upon what I think I know about things and that's not always everything I should know, granted. [LB268]

CHRISTIN LOVEGROVE: In my opinion, I think that what this law attempts to do is essentially create a whole new body of legislation. And while I personally am fully in favor of getting back the money and assets that Medicaid has expended for people that actually have assets to pay for that, I truly believe there's an easier way to do it. We have an entire body of law devoted to inheritance tax statutes. We have an entire body of law that's been created with LB72. I think when you look at it this, do I think people accidentally fill out the form? I think it happens all the time. I'm not disagreeing with that. I also think that in the last two years DHHS has done a phenomenal job of trying...sending out the notices to people that have been on Medicaid. They're getting notices in the mail much sooner than they used to get to essentially refund or repay any money left in those accounts back to DHHS. I think that when you look at this, the sheer fact that there is a, lien potential or not, it's out there. And banks know it's out there. And if you've ever

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worked with a bank and you've ever worked with a young farmer or if you've ever worked for anybody that's trying to refinance their family business, walking up and down the street to three or four different banks when they know that there's been family gifts of real estate and now we have a potential lien out there is going to create the unintended consequences that LB72 created that we're fixing now. [LB268]

SENATOR KRIST: Okay, I would respect your opinion and politely and respectfully disagree just on one term and that is I do agree with you 100 percent. The department is doing a much better job of sending out the letter. What happens to the letter once it arrives is the subject of which this bill is written. So thank you. [LB268]

SENATOR PANSING BROOKS: Thank you, Senator Krist. Anybody else? All right, thank you very much, Ms. Lovegrove. [LB268]

CHRISTIN LOVEGROVE: Thank you. [LB268]

SENATOR PANSING BROOKS: Any further opponents? Opponents? Anybody in the neutral? [LB268]

CALDER LYNCH: (Exhibit 4) Well good afternoon again, Senator Pansing Brooks, members of the Judiciary Committee. Again, my name is Calder Lynch, C-a-l-d-e-r L-y-n-c-h, and I am the Director of the Division of Medicaid and Long Term Care within the Department of Health and Human Services. I am here to testify in a neutral capacity with regard to LB268. Again, this bill, like the previous bill, would, among other things, broaden the scope of Medicaid estate recovery. I want to start by thanking Senator Schumacher for all of the work he's done working with us over the last couple of years. And even though we've brought forth a similar bill with Senator Kuehn, I think we've come closer and closer with regard to a lot of these provisions. And while DHHS has no position on this bill at this time, I would like to take a moment to provide for the record some of the policy and technical concerns and differences between LB268 and the prior bill. I won't read the entire testimony I prepared. I know it's been a long afternoon I will just highlight four things and then submit that rest of that to you for written testimony. But the four kind of key areas the differences between the two bills are around requirements for determining commercial reasonableness which I think we heard the prior testifier mention and some of the concerns the department has with regard to that responsibility; the requirement that we receive a copy of every recorded deed, you know, in terms of the usefulness of that volume of paperwork coming in; the expanded role of the county attorneys in terms of bringing forth some of these actions when it might not be in the state's best interests and some of the technical concerns, although partially addressed there in the language there; as well as the requirement for filing demand for notices in every case without discretion by the Department of whether or not there

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are sufficient sort of recoverable assets in those cases. So I anticipate we'll continue those dialogues moving forward with the two senators with regard to the two bills, but I did want to provide that written testimony with regard to this one. So with that, I'll be happy to answer any questions from the committee. [LB268]

SENATOR PANSING BROOKS: Thank you, Mr. Lynch, for coming. Any questions? I was just wondering, have you talked with Senator Schumacher about some of these issues? [LB268]

CALDER LYNCH: We did. We met with him earlier, prior to the session leading up and we've shared some of those with him and he did make some...some of those have been addressed. And we'll continue to work with him on those as well. [LB268]

SENATOR PANSING BROOKS: Okay. Thank you very much for coming today, Mr. Lynch, and for your work. [LB268]

CALDER LYNCH: Thank you. [LB268]

SENATOR PANSING BROOKS: Any further neutral testimony? [LB268]

ROBERT HALLSTROM: Vice Chairman Pansing Brooks, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Bankers Association in a neutral position on LB268. I'd first note for the record that the NBA does not have a position on the policy underlying the Medicaid estate recovery program in the state of Nebraska. But when we started looking at LB1103 last session it was originally introduced, we had a number of concerns. Most of those concerns are related to the fact that bankers when they're loaning money like to know where they are in terms of the priority of their liens when they file them. They like to be able to check the record to determine if there are any liens noted of record that might take priority if they are to get involved in a lending transaction. And we felt initially that the bill contained hidden liens. It raised issues with regard to lien priorities. And it also had an effect that might have reached back retroactively to have an impact on prior perfected lien interest. All of those issues we believe are addressed in LB268. As Senator Schumacher has indicated, a great deal of work with the Nebraska Bankers Association, the Bar Association, the Land Title Association have taken place to try and get this bill into effect where it can address the policy interests of the Legislature, whatever they may be, and also address the issues in an appropriate fashion. I think with regard to the prior comments by one of the opponent witnesses with regard to the effect on lending, I certainly would not disagree that there may be some issues where loans that might otherwise be made perhaps will not be made if there is a lien of record. But the more important thing from the lending perspective is that we do have that lien notice by the department filed of record so the bank knows exactly what they're

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getting into if they wish to take a second lien position, for example, in that type of situation. So with that, I'd be happy to address any questions with the committee may have. [LB268]

SENATOR PANSING BROOKS: Thank you, Mr. Hallstrom. Any questions? I have a question. Number one, have you talked with Senator Schumacher about this and these concerns? [LB268]

ROBERT HALLSTROM: I hope they weren't expressed as concerns, Senator. We've worked out all the issues. [LB268]

SENATOR PANSING BROOKS: Okay. Oh, you did. So have you worked out the...you mentioned the prior perfected lien interests. [LB268]

ROBERT HALLSTROM: Yes, those are...the way that the bill is drafted now, as Senator Schumacher had alluded to in his opening, are that there's a certain time when the lien of the department takes effect so that any prior perfected security interest or liens on the real state are going to have priority. Anybody that's checking the record after that fact will know that the lien exists and will know whether or not they want to enter into that lending relationship. So we've taken care of those issues. We've taken care of the issues with regard to optional future advances. And we are satisfied with respect to those issues, that the bill addresses them in a correct and appropriate fashion. [LB268]

SENATOR PANSING BROOKS: So let me clarify then. Your neutral stance is just because you don't usually take a stand on Medicaid and different kinds of...I'm confused about your neutral stance. [LB268]

ROBERT HALLSTROM: Yeah, we don't have a position with regard to the underlying policy with reference to the Medicaid estate recovery program. It's simply that the bill opened up issues that we normally get engaged in. We've addressed those to our satisfaction. And principally I guess I wanted to get up here and express our appreciation to Senator Schumacher for his willingness to work with us on an admittedly complicated area of the law. [LB268]

SENATOR PANSING BROOKS: Okay. Thank you very much, Mr. Hallstrom. [LB268]

ROBERT HALLSTROM: Thank you. [LB268]

SENATOR PANSING BROOKS: Next neutral testifier. Any more neutral testifiers? Okay, Senator Schumacher. [LB268]

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SENATOR SCHUMACHER: Thank you, Senator Pansing Brooks. I'll certainly try to not make this the longest closing in history. Some brief responses, for all practical purposes, this doesn't affect anything unless there's an application for medical assistance made. So if the kids are doing their normal responsibility taking care of grandma or grandpa and are going to stand to inherit a few sections of land or a few buckets of gold, this isn't going to affect them. I think that there might have been some confusion as to whether or not the expanded estate only included real estate because it wasn't in the itemization in the bill. In the amendment I have before you, it makes it clear that it does. There is some argument, well, there should be appeals in the event of that the department makes an adverse determination against you. An adverse determination that's final is appealable under Administrative Procedures Act if the department is out of line. I do want to make one thing...point out for the record that right now if you give everything away, lock, stock, and barrel, don't hold any interest in a piece of property, you give the bucket of gold away or you give the land away and then you sit out, and the current federal rule is 60 months, you make yourself a complete pauper, give it away, this doesn't catch it, because that's the federal rule. And so if you absolutely make yourself 100 percent a pauper and laid low for five years, you may beat the system yet, okay? And I've been assured by a number of attorneys who are in the estate planning law that they're already thinking of ways to beat this thing. But they'll have to go a little ways in order to do it and when they do...when it becomes obvious that they're doing it then there will probably have to be subsequent loophole fillers. As far as the copy of the deed that the department was objecting to, I think that was in LB1103 and I don't think that's in this one. All that's required is the underlying transfer statement rather than the copy of the deed. And those things can be electronically communicated and it shouldn't take a very big hard drive in order to hold those. But as far as the requirement of the copy of the deed, I think that is one of the changes trying to accommodate the objections from last year. As far as the county attorney messing up the department, some big policy, the department, the law in this version says the department needs...the county attorney asks, the department needs to consent but shall not unreasonably withhold consent for them, for the county attorney to chase the money down. And I missed the fourth thing. I'd be happy to answer any questions. Thank you for the committee's patience and thank you to the title people, the Bar Association, the bankers, and people who really killed a lot of time on this bill and the department because the department...we disagree on some things, but they're not substantial disagreements. I do think that as these procedures develop, in order to get recovery they're going to have to be brought up to what staff they need in order to do it. [LB268]

SENATOR PANSING BROOKS: Thank you, Senator Schumacher. Senator Baker. [LB268]

SENATOR BAKER: Senator Schumacher, you know, looking at the information you handed out, Nebraska is doing better than a lot of states but yet we're being outperformed in that category, you might say, by Iowa and Idaho and some other states. Did you look at what they're doing? [LB268]

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SENATOR SCHUMACHER: You know, it's really hard to get information but my office has had some luck in finding somebody who is knowledgeable and talking as to...willing to talk in Kansas and in Minnesota was another one. And they basically...they get pretty aggressive at the front door and sorting out people who have something squirreled away or heirs that may bring grandma in with some memory problems and questioning them. And that is an issue that hopefully the department is beginning to address with screening up front because if they screen them up front then this other stuff isn't as necessary. But undoubtedly, the system being what it is and folks coming in and maybe nursing homes encouraging them to, hey, you do this and that you will get some assistance, there's going to be people that the slip through. Estate planners make a lot of money on this. And so it's going to be a continuing battle but this should be a pretty good tool in enabling the department to do its job and to also...if you can tell a client, look, now you're at risk of...you aren't going to come out ahead. There's risk to play this game. Most Nebraskans are conservative enough to say, you know, I really don't know if I want to take the risk of playing the game. And so I think even by itself it will deter the behavior that we seek to deter. [LB268]

SENATOR BAKER: Thank you. [LB268]

SENATOR PANSING BROOKS: Thank you, Senator Baker. Anybody else? Okay, thank you, Schumacher. [LB268]

SENATOR SCHUMACHER: Thank you, Senator Pansing Brooks. [LB268]

SENATOR PANSING BROOKS: (Exhibit 1) Okay, and we have one...we have one letter in the neutral from Sam Cooper from the Nebraska Land Title Association. Mr Cooper has written a neutral letter. So let's go to the next bill, LB371. Senator Crawford, welcome to Judiciary. [LB268]

SENATOR CRAWFORD: Thank you. Good afternoon, Senator Pansing Brooks and members of the Judiciary Committee. My name is Sue Crawford, S-u-e C-r-a-w-f-o-r-d, and I represent the 45th Legislative District of Bellevue, Offutt, and eastern Sarpy County. I'm honored to be here today to introduce LB371 for your consideration. I'm introducing LB371 on behalf of the State Fire Marshal Agency. This bill would repeal statutory sections that lay out the requirements and procedures for the State Fire Marshal Agency to condemn properties. Many of the listed reasons for condemnations are already addressed in fire codes adopted by the agencies and can be dealt with during the normal course of business with other mechanisms rather than a condemnation proceeding. It is also important to note that the State Fire Marshal has not utilized these statutes for many years yet they're still on the books as people contact them to ask them about the condemnation. It's also important to know that there are...we have in our statute powers that

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allow cities and villages to write their own local ordinances to address issues that are listed in the condemnation statutes as well as a variety of other concerns that we may have in terms of health code issues. Repealing these statutes eliminates a duplication of processes to address fire safety concerns and duplication in terms of addressing larger building concerns. There is no new mandate created in the bill. I'm just clarifying it clarifies the roles of the State Fire Marshal Agency by removing those condemnation authority in their statute. The State Fire Marshal is here to testify and can provide further explanation. The League of Municipalities is also here to testify and answer your questions about the authority municipalities have to condemn. And I thank you for your time attention to this issue. I have another bill up in HHS any moment now so my legislative aide will be here writing notes on the testimony and I'll be happy to follow up with questions that you have after hearing the other testifiers to address any question you have with the bill. [LB371]

SENATOR PANSING BROOKS: Great. So you're waiving your closing. [LB371]

SENATOR CRAWFORD: Yes. [LB371]

SENATOR PANSING BROOKS: Thank you, Senator Crawford. Appreciate it. Thanks for coming. Okay, could we have a show of hands about who's going to testify, either positively or negatively on this. Thank you very much. Okay, our first proponent if you please. Welcome. [LB371]

JIM HEINE: (Exhibit 1) Good afternoon, members of the Judiciary Committee. I am State Fire Marshal Jim Heine, J-i-m H-e-i-n-e. I am here today to testify in favor of LB371 and want to thank Senator Crawford for introducing this bill. LB371 would repeal Nebraska State Statutes 81-513 through 81-519 and eliminate the reference to those statutes in 81-526. These statutes list the reasons and procedures that must be followed by the agency to condemn a property. Two of the reasons listed for condemnation are age and dilapidated condition. These conditions are so subjective that outside experts, often structural engineers, are required to determine these conditions to a legal certainty. These determinations are outside the agency's expertise as there are no engineers employed by our agency. The other reasons listed for condemnation are "defective chimneys, defective electric wiring, gas connections, heating apparatus, or other defect is especially liable to fire and which, in his or her judgment, is so situated as to endanger life or limb or other buildings or property in the vicinity." All of these reasons are already covered by portions of the adopted Life Safety Code, which the agency uses for all its inspections. Additionally, Nebraska Revised Statute 81-520, a fire hazard abatement statute, will remain ensuring that any situations not covered by adopted fire codes could be addressed to ensure public safety. The agency is often called with condemnation requests for areas that are completely outside the scope of the statute such as unsanitary conditions--food waste, animals,

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vermin infestation, lack of running water, and hoarding--or just general disuse of the building. The callers are very upset when we try to explain that we have no jurisdiction in those areas and will not be able to do anything in that situation. In these situations we often refer the callers to local resources within the city or county, such as a local health department. The agency feels that this issue can best be handled at the local level. In the situation of health code issues there are established local entities capable with the jurisdiction to address the issues. In other situations local authorities are best situated to understand all the dynamics associated with the properties, where an outside state entity is not. Further, some cities have already developed customized programs to deal with the properties within their cities. State Statute 18-1720, a nuisance statute, allows cities and villages to write ordinances where they can define, regulate, suppress, and prevent nuisances. This allows the cities and villages much greater flexibility in dealing with the properties. Further, this allows the cities and villages to work on the issue on their own time tables versus being issued an order from an outside party. In the past there were situations where the state was called in, issued condemnation orders, and the end result was a very large bill to the city. This created a lot of tension and ill-will between the agency and some cities. In conclusion, repealing these statutes will allow for a greater level of local control, while still allowing the Fire Marshal Agency to work on ensuring public safety in regard to fire prevention and protection. The statutes in question were originally passed in 1925. Today, the agency has adopted Fire Code Regulations and is able to issue code correction orders to deal with fire safety concerns and does not need the condemnation authority. Nothing in this bill will require cities and villages to start issuing condemnation orders. Instead, the cities and villages will be able to tailor programs to their specific needs and establish their own time lines for projects. Thank you for your time and attention. And I will be happy to answer any questions you may have. [LB371]

SENATOR PANSING BROOKS: Thank you, State Fire Marshal. I appreciate your being here. Yes, Senator Krist. [LB371]

SENATOR KRIST: Thanks for coming. My question is not addressed to you but as a point of legislative record. Does anyone have any idea why this was referenced to Judiciary? This has nothing to do with any of our jurisdictions. In fact, I think you should either be in Government or you should be in Urban Affairs. But we'll kick it out and do what you want us to do. [LB371]

SENATOR CHAMBERS: The condemnation aspect of it. [LB371]

SENATOR KRIST: Oh, is it... [LB371]

SENATOR CHAMBERS: Just like...it's something like eminent domain and those kinds of matters. They come to Judiciary Committee. [LB371]

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SENATOR KRIST: Member of the Referencing Committee setting me straight. Thank you very much. [LB371]

SENATOR PANSING BROOKS: Any other questions? Thank you very much for your testimony today. [LB371]

JIM HEINE: Thank you. [LB371]

SENATOR PANSING BROOKS: Appreciate it. Any other proponents? Proponents? Okay, what about opponents? Do we have any opponents? And what about any testimony in the neutral? [LB371]

CHRISTY ABRAHAM: Good afternoon, Senator Pansing Brooks and members of the Judiciary Committee. My name is Christy Abraham; that's spelled C-h-r-i-s-t-y A-b-r-a-h-a-m. And the League just wants to come in and let you know that we're here in a neutral capacity. These statutes really don't... [LB371]

SENATOR PANSING BROOKS: Which league, Ms. Abraham? Sorry. [LB371]

CHRISTY ABRAHAM: League of Nebraska Municipalities. [LB371]

SENATOR PANSING BROOKS: Thank you. Just wanted to make sure. [LB371]

CHRISTY ABRAHAM: Thank you. The provisions of the bill don't directly affect us. It's the elimination of the State Fire Marshal's condemnation statutes. But as the State Fire Marshal mentioned, the city retains all of their condemnation statutes and they're located in Chapter 76, Article 7. And so all of those remain untouched so cities will continue to be able to do condemnation. As the State Fire Marshal also mentioned, cities are more likely to use their nuisance statutes than they are their condemnation statutes to deal with problematic properties. And I'd be happy to answer any questions you might have. [LB371]

SENATOR PANSING BROOKS: I don't have a question. Thank you for coming today. [LB371]

CHRISTY ABRAHAM: Thanks so much. [LB371]

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SENATOR PANSING BROOKS: Anybody else in the neutral? Okay, and there are no letters that came today. So with that, that's the...we'll now close hearing LB371. Thank you for coming. And next we'll have LB353, Senator Baker's bill. [LB371]

SENATOR BAKER: (Exhibit 1) Vice Chairman Pansing Brooks, members of the committee, my name is Senator Roy Baker, R-o-y B-a-k-e-r. The reasons for this bill, LB353 amends Section 13-918. The statute creates a mechanism for a political subdivision to pay judgments against such political subdivision when there are insufficient funds available and inability to raise sufficient funds. The section allows a political subdivision to borrow from the state at a low interest rate to satisfy the judgment. This bill adds language which would apply this mechanism for payment of claims against a political subdivision to a judgment entered by the federal court as well. This was brought to me by trial attorneys. And probably the reason...well, I know the reason they came to me was that I represent Gage County. And you're familiar with the Beatrice Six case and the judgment that's pending against Gage County right now, \$28 million plus attorney fees. I would say that I did not live in Gage County when Helen Wilson was murdered. I did not live in Gage County during the investigation or the trial. And as a fact, I've never lived in Gage County. But Gage County is in District 30 and I do feel a duty to help them. So what's a county to do? There are Gage County people here today but they are not going to be testifying today. They have appeals going on. They're having lookbacks on the insurance companies that covered them, and so various reasons, you know, they're not going to be testifying today. I would also say that the introduction of this bill probably has a lukewarm reception in Gage County. I'd say there's 100 percent of people who don't want to pay the judgment and a fairly high percent who thinks they shouldn't have to even if the judgment is withheld. But, again, what is the county to do? If the appeals are exhausted and all steps are taken to look at the insurance company, whatever measures can be done, I know that the Gage County Board is exploring those. At the end of the day, if none of those things are successful, then somebody is going to have to pay something. Whether it's a reduced amount, full amount, somebody is going to have to pay something. There's a bill coming later to this committee that would...I'll say the state will pay rather than Gage County. Gage County has a budget of \$9 million. You know, their levy is something like 44 cents out of the 50 that's permissible to them. The money they spend, they've been very frugal. The money that they do raise is needed for essential county functions. They simply do not have a way to pay a judgment of \$28 million plus attorney fees, \$30 million. So that is what this is about. I've been, with regards to the other bills coming, reference that, too, I've been promised by a guy who would come in and punch me in the nose if I'd introduce any bill that would try to get Gage County out of paying this. So I guess I'm now entitled to my punch in the nose. But the idea is those rednecks down in Gage County brought this on themselves. I would point out there's, you know, maybe 23,000 people in Gage County or thereabouts and only a handful of people had anything to do with the investigation and the alleged civil rights violation of the Beatrice Six. The rest of the people in Gage County didn't have any more to do with it than any of us did. So the people...I've lived in five communities my

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adult life and I've spent some time in Gage County and Beatrice. I've found the people there to be no different than anywhere else. The characterization of them as a bunch of rednecks who did this horrible thing, just because of the nature, is totally unjustified. With that, I would stop to take any questions. [LB353]

SENATOR PANSING BROOKS: Thank you, Senator Baker. And I'm sure people think that you're a positive advocate. Thank you. Senator Chambers. [LB353]

SENATOR CHAMBERS: Senator Baker, are you aware of some of the problems that were taking place at that Beatrice home for people who needed to be taken care of and they were abused physically? [LB353]

SENATOR BAKER: I'm very familiar with that. I was on that investigative committee. [LB353]

SENATOR CHAMBERS: Is that the same Beatrice...that's the same Beatrice where this incident occurred, isn't it? [LB353]

SENATOR BAKER: No, it's a different one. [LB353]

SENATOR CHAMBERS: Say it again? [LB353]

SENATOR BAKER: No, of course it's the same one, yes. [LB353]

SENATOR CHAMBERS: It's not in the same county? [LB353]

SENATOR BAKER: Yes, it is. [LB353]

SENATOR CHAMBERS: It is or isn't? [LB353]

SENATOR BAKER: It is the same. I'm... [LB353]

SENATOR CHAMBERS: It is the same county? [LB353]

SENATOR BAKER: I was being flippant, Senator. It's the same place. [LB353]

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SENATOR CHAMBERS: And so there are problems that have gone there and those have been on for years and people in that area knew it but they were deriving money from that Beatrice home, from the state, and... [LB353]

SENATOR BAKER: Well, that's a whole other matter unless you're... [LB353]

SENATOR CHAMBERS: Here's what I'm saying, not that... [LB353]

SENATOR BAKER: ...implying there's something about the nature of people in Gage County. [LB353]

SENATOR CHAMBERS: Right. That's why you need to be careful in talking about how good those people are, because there are family members who have talked to me, even before we had an investigation of it, about not only how the people are mistreated in that facility, but the attitude of the townspeople toward them. So let's not make this a matter of good people. It's a matter of some very bad things being done by those who represented that county and they brought the liability with them. How much is the total value of the property owned by the county, would you say, not the individual but the county? How about the courthouse? [LB353]

SENATOR BAKER: You know, that's been explored. I know the Gage County Board has looked at that. You know, if worse comes to worse, what of bankruptcy? But it's hard to...what are you going to do, sell the courthouse, you know, their sheriff's cars and those things? [LB353]

SENATOR CHAMBERS: Maybe somebody...yeah, maybe somebody would buy it from Hollywood and make a story about it or make a museum out of it. And it might sound like I'm being flippant but I'm very bitter because of the way they used and misused the death penalty to make innocent people plead guilty and then lose all those years of their life. The people in Beatrice didn't care about them. So now here they come. But here's the question that I want to put to you. You say there are people from the county here but they're not going to testify and you said something about because there are still proceedings going on. Is that what you said why they won't testify? [LB353]

SENATOR BAKER: I'm reading my own interpretation of why they chose not to testify. [LB353]

SENATOR CHAMBERS: Well, why... [LB353]

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SENATOR BAKER: I asked them. I've seen them here. I asked them. They said that, no, they've decided they're not going to testify here today. [LB353]

SENATOR CHAMBERS: Well, if they're not going to speak for themselves, why should I accept what you say? [LB353]

SENATOR BAKER: Well, I happen to be the senator that represents Gage County. [LB353]

SENATOR CHAMBERS: They're in this room right now, are they? [LB353]

SENATOR BAKER: There are some here, without looking over my shoulder. They were earlier so I think they still are. [LB353]

SENATOR CHAMBERS: And they're not going to testify? [LB353]

SENATOR BAKER: That is their... [LB353]

SENATOR CHAMBERS: I don't have anything to ask of you. [LB353]

SENATOR BAKER: Sure. [LB353]

SENATOR CHAMBERS: And I'm not mad at you, by the way. [LB353]

SENATOR BAKER: Well, I... [LB353]

SENATOR CHAMBERS: If there was an edge on my voice, it's not at you at all. [LB353]

SENATOR BAKER: Fair enough. [LB353]

SENATOR CHAMBERS: Okay. [LB353]

SENATOR PANSING BROOKS: Thank you, Senator Chambers. Any other questions for Senator Baker? Nope. Thank you. Are you...you'll be here, I presume? [LB353]

SENATOR BAKER: Oh, I will. [LB353]

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SENATOR PANSING BROOKS: Okay, thank you, Senator Baker. Could we have a show of hands of the people planning to testify? Okay, thank you. We'll start with the proponents, so would our first proponent come up, please. Thank you. Welcome. [LB353]

JEFF PATTERSON: Thank you. My name is Jeff Patterson, J-e-f-f P-a-t-t-e-r-s-o-n. I was one of the attorneys who represented my four clients, who are Joseph White, Tom Winslow, Kathy Gonzalez, and Ada JoAnn Taylor. I, along with Maren Chaloupka, we were lead counsel in the lawsuit that was tried in June and resulted in a large verdict that Gage County is having difficulties with. I'm here today not only on behalf of myself and my clients, but also for the Nebraska Trial Attorneys Association. Maren and I approached the Trial Attorneys Association when it appeared to us as though there was an avenue to assist Gage County in obtaining a loan from the state in order to maybe pay this judgment. So what the modifications to Section 13-918 are in LB353, they're intended to address a perceived deficiency in allowing the State Treasurer to make a low-interest loan to any political subdivision, not just Gage County but any political subdivision, in the event that they're faced with a judgment that exceeds their ability to levy and tax. Chapter 77 of our statutes, it describes the process or the procedure by which a county is to pay a judgment and it's Chapter 77, Sections 1619 to 1624. And these...this statutory provision has existed in our law virtually unchanged since territorial times. These are 1860-vintage statutes. And what the scheme provides is that a political subdivision is to levy and collect tax to immediately pay a judgment. And a political subdivision is supposed to, once faced with a judgment, to make provisions to make prompt payment of a judgment. What isn't in Section...in Chapter 77 though is a situation that would...is a procedure for addressing the situation that Gage County faces right now where their ability to levy and collect tax is...doesn't meet the requirements of the judgment. So in 1969 when this body passed an omnibus bill regarding political subdivisions, within that was the political sub...what's known as the Political Subdivisions Tort Claims Act. And in that, there was a provision about awards and judgments and payments to be made and what the original statute provided was that any award or judgment pursuant to the Political Subdivisions Tort Claims Act shall be paid in the same manner as other claims against the political subdivision. It appeared to me as though it was expressing the idea that judgments into the Political Subdivisions Tort Claims Act are to be paid the same way as other claims. And I would think that a federal judgement would be one of those other claims. Right now our Attorney General disagrees with that interpretation and we're trying to address those concerns now by making modifications to 13-918. I will tell you that John Lindsay has been working with Senator Baker and to address concerns. And I think there are concerns now about a...the procedure to allow a...to provide a loan to a county in this circumstance. There's concerns about it being within the Political Subdivisions Tort Claims Act. Maybe it should be located in Chapter 77, maybe it should be located someplace else. But not only Gage County, but every county, every school district, every political subdivision in this state seriously runs a risk of a federal judgment, civil rights judgment, whatever it might be, exceeding their ability to levy and tax or exceeding insurance proceeds. The one thing that always struck me as odd about this

procedure for paying claims that are greater than the subdivision, than the political subdivision's authority to pay being in the Political Subdivisions Tort Claims Act is that damages are capped in the Political Subdivisions Tort Claims Act and I would find it hard to believe that most, if not all, political subdivisions don't have insurance coverage that covers up to those caps. So if anything, the scheme for paying excess judgments lying within the Political Subdivisions Tort Claims Act is a scheme that will never be used. That scheme should reside somewhere else, like in Chapter 77, where it can be of a benefit to pay a judgment that exceeds the political subdivision's ability to pay. So with that... [LB353]

SENATOR PANSING BROOKS: Thank you very much, Mr. Patterson. Senator Chambers. [LB353]

SENATOR CHAMBERS: If this bill were passed and then with the amendment that was presented to us about that would include the federal, would there be a cap? [LB353]

JEFF PATTERSON: No. [LB353]

SENATOR CHAMBERS: Or would that entire amount be still due and owing even if the change was made in the Political Subdivisions Tort Claims Act? [LB353]

JEFF PATTERSON: The judgment in federal court is the judgment in federal court and we will pursue that judgment to the full extent. There's not a cap on that. [LB353]

SENATOR CHAMBERS: But as far as the state, there would be a cap? [LB353]

JEFF PATTERSON: No. If it is a tort claim within the Political Subdivisions Tort Claims Act, then there is a cap. But the state cannot make a cap, a damage cap. The state is not the sovereign of the federal civil rights. [LB353]

SENATOR CHAMBERS: And we're talking this large judgment is a federal judgment? [LB353]

JEFF PATTERSON: Yes, it's a Section 1983 judgment, civil rights judgment. [LB353]

SENATOR CHAMBERS: So now the county which does not want to pay the cost of autopsies that are required when a person...there is a law that requires the convening of a grand jury in Nebraska whenever a person is killed while in custody or being taken into custody. And there is a county, it might be this one, that doesn't want to pay the cost of an autopsy and they say that's

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an unfunded mandate and, therefore, the state should pay for it, even though they have an institution, a prison which really pours a lot of money into their economy. I'm saying all that to say this. These counties come here and if there is some cream they can skim off, they want that. But when there are duties and responsibilities, they don't want to assume those and they say the state should do it. You are coming here because you're trying to find a way for your clients to be I'll use the term "reimbursed" for the harm that was done to them at the hands of this county. Is that correct? [LB353]

JEFF PATTERSON: Yes. [LB353]

SENATOR CHAMBERS: And if this bill is passed you think that that would be...that recovery for the clients would be possible? [LB353]

JEFF PATTERSON: I think the recovery for my clients will be possible should we prevail in the Eighth Circuit because this is currently under appeal in the Eighth Circuit. And should we prevail in the Eight Circuit, recovery for my clients will occur. The question is, will it occur sooner rather than later? [LB353]

SENATOR CHAMBERS: Is the county going to cease trying to find stratagems to overturn that judgment as far as you know? [LB353]

JEFF PATTERSON: I'm not in communication with them, Senator Chambers. All I know is my business. [LB353]

SENATOR CHAMBERS: How long ago did you go to law school, sonny? See, I'm old enough to call anybody that, or "junior." Which do you prefer? [LB353]

JEFF PATTERSON: Well, Senator Chambers, I went to law school when I was 40 years old and that was in 1992, so. [LB353]

SENATOR CHAMBERS: Then you're probably familiar with the maxim "hard cases make bad law." [LB353]

JEFF PATTERSON: I am. [LB353]

SENATOR CHAMBERS: You've heard that. [LB353]

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JEFF PATTERSON: I am. [LB353]

SENATOR CHAMBERS: Now this is a very bad situation by any reckoning. [LB353]

JEFF PATTERSON: Agreed. [LB353]

SENATOR CHAMBERS: Do you see any...well, if you see it, then it's not unforeseen. But is it possible there could be some unforeseen consequences of a negative variety, or from all the analyzing you have done? I'm not asking you what other people might think or see. This would not be something that would skew the law itself and create harm because all it does, at most, is allow the county to obtain a loan from the state and the Treasurer would be required to do due diligence and determine whether it's valid, whether it ought to be done. The passage of this law does not automatically bind the Treasurer to give a loan to any county. They would have to justify obtaining that loan. [LB353]

JEFF PATTERSON: Correct. [LB353]

SENATOR CHAMBERS: Now I'm going to ask you to speculate. Why would there be people from the county--I mean officials--apparently who don't want to testify here after they've heard the mean things that I've said? [LB353]

JEFF PATTERSON: I don't know. [LB353]

SENATOR CHAMBERS: You reckon that could be why they don't want to testify? (Laugh)
[LB353]

JEFF PATTERSON: That could have a bearing on it, Senator. [LB353]

SENATOR CHAMBERS: That's all I have to ask of you though. Thank you. [LB353]

JEFF PATTERSON: Thank you. [LB353]

SENATOR PANSING BROOKS: Thank you, Senator Chambers. Any other questions for Mr. Patterson? Thank you for coming to testify (inaudible). [LB353]

JEFF PATTERSON: Thank you. [LB353]

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SENATOR PANSING BROOKS: Further proponents. Welcome. [LB353]

ELAINE MENZEL: Thank you. Vice Chair Pansing Brooks and members of the Judiciary Committee, for the record, my name is Elaine Menzel. I'm--and it's E-l-a-i-n-e M-e-n-z-e-l--appearing today on behalf of the Nebraska Association of County Officials. I was going to get into...did I say in support? I meant to say in support of LB353. And I was going to get into some of the legislative history as I know it, but Mr. Patterson, I believe I'm remembering his name correctly, did an apt job of that. The way we see this legislation is that it would provide an option to the counties in the event that a final judgment is ruled against them. And I concur with some potential analysis with Mr. Patterson that potentially Chapter 13 is maybe not the correct location for this but maybe a new section of law would be appropriate. When you're talking about counties, for example, this is one of those areas where you're talking about different sections of topical areas, meaning the levy limitations and constitutional provisions that pertain to levy limitations. Counties are only eligible for doing a levy of up to 50 percent...or, I'm sorry, 50 cents per valuation and that is constitutional provision. And that's Article VIII-5 in the event it's of interest to you. The amendment that Mr. Patterson referred to that would further clarify that this would pertain to federal claims only is something that we've supported. We've not seen final language, so we would certainly reserve our right to reevaluate and discuss but would be glad to further discuss. And at this point I would be glad to answer any questions if I can. [LB353]

SENATOR PANSING BROOKS: Thank you, Ms. Menzel. Any questions? Senator Chambers. [LB353]

SENATOR CHAMBERS: Did I hear you say you'd be glad to? [LB353]

ELAINE MENZEL: Reservedly, yes. [LB353]

SENATOR CHAMBERS: Have you ever heard of the term "human shield"? [LB353]

ELAINE MENZEL: Have I sufficiently put one up today? [LB353]

SENATOR CHAMBERS: Have you heard of that term before? [LB353]

ELAINE MENZEL: Yes, I have. [LB353]

SENATOR CHAMBERS: Our paths cross relatively frequently at hearings, don't they? [LB353]

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ELAINE MENZEL: That's a fair characterization, yes. [LB353]

SENATOR CHAMBERS: And you know that if I were compared to a panther, my claws would be sheathed when you come, right? [LB353]

ELAINE MENZEL: So far, yes. (Laughter) And I appreciate that. [LB353]

SENATOR CHAMBERS: Okay. And I'm not going to put a greater burden on you than you should carry. There is a song that Donna Summer sang and I don't...I'm not saying that you're in the same line of work, but the words fit your situation and those people ought to give you a raise: "She works hard for her (sic--the) money." [LB353]

ELAINE MENZEL: Please have a discussion with my boss. [LB353]

SENATOR CHAMBERS: They have other lobbyists. Don't they have other lobbyists, the counties? [LB353]

ELAINE MENZEL: We do, yes. [LB353]

SENATOR CHAMBERS: That's all that I'll ask of you. But carry this little message back to them that I subtly delivered. [LB353]

ELAINE MENZEL: Can I just in...for... [LB353]

SENATOR CHAMBERS: Sure. [LB353]

ELAINE MENZEL: We each have our topical areas. I won't say I'm an expert on Judiciary by any means, but I a lot of times end up in this committee. [LB353]

SENATOR CHAMBERS: And your topical area is Ernie Chambers, huh? (Laughter) I'm just kidding. [LB353]

ELAINE MENZEL: Thank you. [LB353]

SENATOR CHAMBERS: But it's good to see you always when you come. [LB353]

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ELAINE MENZEL: Thank you very much, appreciate it. [LB353]

SENATOR CHAMBERS: Okay. [LB353]

SENATOR PANSING BROOKS: Any other questions? Okay, thank you for... [LB353]

ELAINE MENZEL: Thank you. [LB353]

SENATOR PANSING BROOKS: Thank you, Ms. Menzel. Any other proponents today? Proponents. Okay, what about opponents? Welcome. [LB353]

DON SCHULLER: Good afternoon, Senators. My name is Don Schuller. That's D-o-n S-c-h-u-l-l-e-r. And I am a farmer, a landowner from Gage County and I'm not an attorney or am I someone that's familiar with understanding the language of a legislative bill. But LB353, as I read it, forces a county to follow a path of payment of a judgment rather than allowing them to pursue other options. This could handicap a county in their decision-making process. I feel other alternatives should be considered to assisting a county in dire need of assistance. In the situation of the Beatrice Six case in Gage County, the county prosecuted the individuals on behalf of the state. Their time served was a state...it was in a state facility. County law enforcement officials followed state guidance with interrogation and the state death penalty law was used to intimidate these individuals. The situation is not the fault of the Gage County taxpayers. The county is a subdivision of the state and the state has a responsibility to the county taxpayers in assisting the financial obligation of a judgment. [LB353]

SENATOR PANSING BROOKS: Thank you, Mr. Schuller. Any questions? Thank you for coming and testifying today. [LB353]

DON SCHULLER: Thank you very much. [LB353]

SENATOR PANSING BROOKS: Any further opponents? Welcome, Senator. [LB353]

NORM WALLMAN: Good afternoon, Senator Pansing, rest of the esteemed committee. My name is Norm Wallman, W-a-l-l-m-a-n, and I am a lifelong resident of Gage County. And I really appreciate what the trial attorneys are trying to do here and but I think, you know, like the previous testifier Don said, the state promotes the death penalty to leverage these people. And I think my philosophy is, the first person lies gets off free. And so I think it's a state obligation, period. County shouldn't have to pay anything. And they've already paid a lot of money and that's my opinion, short and simple. But I am a lifelong resident of Gage County. And I do

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appreciate what the trial attorney is trying to do here. And so basically I'm almost neutral here but I think the state is obligated. Thank you. [LB353]

SENATOR PANSING BROOKS: Thank you, Senator. Senator Chambers. [LB353]

SENATOR CHAMBERS: Were these county officials who handled this case? Was there a Gage County Attorney who prosecuted this case? [LB353]

NORM WALLMAN: I don't know. [LB353]

SENATOR CHAMBERS: Is the county attorney elected by the citizens of the county? [LB353]

NORM WALLMAN: Yes, yes. [LB353]

SENATOR CHAMBERS: So they chose somebody and maybe they chose the wrong person but, nevertheless, they had a chance to vote. And are you saying that the county should never be responsible for any wrongdoing by county officials,... [LB353]

NORM WALLMAN: No. [LB353]

SENATOR CHAMBERS: ...that the state should? [LB353]

NORM WALLMAN: No. And I think this legislation also ought to have a cap on it, like I heard you discuss a cap, and maybe that's not legal. I don't know. But it's a panacea for somebody I think otherwise. [LB353]

SENATOR CHAMBERS: I'm not going to grill you, Senator Wallman,... [LB353]

NORM WALLMAN: You can. [LB353]

SENATOR CHAMBERS: ...because we got along very well in the Legislature. [LB353]

NORM WALLMAN: Yeah. [LB353]

SENATOR CHAMBERS: And I don't want it to seem like I'm being hard on you just because you used to be a senator. But I had to ask that question... [LB353]

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NORM WALLMAN: Sure. [LB353]

SENATOR CHAMBERS: ...because there are many benefits that counties get from the state and they don't reject those benefits. But then when the responsibilities come, they don't want to assume the responsibility. There is such a thing as justice and the constitution says that the courts of this state shall be open to all the citizens so that every person who is injured in his or her lands, reputation, person, and so forth, shall have a remedy at law and justice shall not be delayed or denied. So the constitution guarantees the public the right to go to court to get a remedy and that remedy is against whomever commits the wrong and in this case, county officials committed the wrong. Sheriffs are elected. County attorneys are elected. The people of Gage County put those people in office and said, whatever you do, we think you're going to do it right but we're willing to ride this horse and wherever it takes us, that's where we got to go. [LB353]

NORM WALLMAN: But, Senator, may I comment? [LB353]

SENATOR CHAMBERS: Sure. [LB353]

NORM WALLMAN: You know, these individuals, Beatrice Six, whatever you want to say, they've got reimbursed by the state, you know, false imprisonment. And so then they pick up and go another step further and go after the county and the county is paying...you know, lost jail reimbursement funds and all these things. So we've been taking things away here in this building as far as monetary. You know, we've done away with some of that stuff. [LB353]

SENATOR CHAMBERS: I'm old enough to refer to you as "sonny" also. Sonny,... [LB353]

NORM WALLMAN: I'm just as old as you are. [LB353]

SENATOR CHAMBERS: No, you're not. You might think you are. Sonny, life is hard; and when people make a hard bed for themselves, they have to lie in it. Nobody in that county suffered in the penitentiary like those people did and lost all those years. And as you know, Joseph White, the one who maintained his innocence throughout, died in an accident when he went back down south, so he didn't gain anything from this. [LB353]

NORM WALLMAN: No. [LB353]

SENATOR CHAMBERS: And the people in Gage County would have wanted those people executed. And when Joseph White came up, the prosecutor wanted him to get the death penalty

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and the judge indicated that all these others were allowed this deal so he's not going to be executed. The people in Gage County wanted White to be executed; they wanted him to get the death penalty. So circumstances have arrived now where the courts have spoken. The debt, having been made, must be paid. And it's on the county. And this bill does not mandate the county get a loan. What it does is open an avenue for the county if it chooses to go that way. Somebody might, and this happened in another state, they got a lien against the courthouse and other property that the county owned. And if a lien is granted, you can go to court and force it to be taken care of. So is that what you would rather have, that the courthouse be sold and, as somebody mentioned, all the property of the sheriff, the jail, and everything else? [LB353]

NORM WALLMAN: No. [LB353]

SENATOR CHAMBERS: Why not? They don't want to get a loan from the state. Or do you think they should get a loan if this law is passed and they can get a loan? [LB353]

NORM WALLMAN: I think it's an avenue they could pursue. But I think there should be a cap on it then if we pass this law. If you decide to pass this law or debate this law on the floor, I think it should... [LB353]

SENATOR CHAMBERS: Don't get greedy. Here's what I'm asking you. [LB353]

NORM WALLMAN: I'm getting... [LB353]

SENATOR CHAMBERS: You're given a choice. [LB353]

NORM WALLMAN: Okay. [LB353]

SENATOR CHAMBERS: It might be a Hobson's choice. That's where if you wanted to rent a horse from Hobson, he was an hostler. He ran a place where they had horses. And what you had to do if you wanted to get a horse from him was take the first horse that you saw because they came up in a line. And if the horse was a broken-down nag, that was the one you had to take or you got no horse at all. So that's the choice you're given; that's what you're given. Maybe you would create a different choice. But if you were presented with these two choices, let me know which way you'd go: a judgment and liens put on county property, the lien would be enforced, and that property would be sold; or an avenue whereby the county could get a loan from the state and pay that loan back to the state as they're able to do it. Which one would you rather have? [LB353]

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NORM WALLMAN: I'd take the second one. [LB353]

SENATOR CHAMBERS: You're a very wise man. That's all I have to ask you. [LB353]

NORM WALLMAN: Thank you. [LB353]

SENATOR PANSING BROOKS: Thank you. Any other questions? Thank you for coming, Senator Wallman. Okay, more...any other opponents? Any more opponents? Okay, anybody in the neutral? [LB353]

GREGORY LAUBY: Thank you, Senator. [LB353]

SENATOR PANSING BROOKS: Thank you for coming. [LB353]

GREGORY LAUBY: I appreciate the opportunity to speak to you today. My name is Greg Lauby, G-r-e-g-o-r-y, "C" is the middle initial, L-a-u-b-y. And I would like to make a couple of comments for the record and then I have a recommendation. Number one, I would like to note that on January 15, according to the information given to me by the State Budget Office, there was \$617.2 million in unobligated funds in the Cash Reserve of the state. And then it appears that Governor Ricketts has found another \$24 million of unobligated reserve funds in other budget items. That far exceeds any kind of reservation that either Gage County or any other political subdivision in the state might have access to or be able to collect through authorized revenue access and approved methods. This bill as proposed would apply not just to counties but political subdivisions of all sizes and all resources. And I think that the language of the bill appears to say that once the judgment is final and the State Treasurer has reviewed it and found that the county does not have sufficient resources to pay it and that the judgment is valid, he shall make a loan to the county. And the county, having the duty then to make prompt payment, is required perhaps to make that payment and then accept the repayment provisions that the State Treasurer sets. And before that happens, they are to raise their levy to the maximum amount allowed by law or constitutional prohibition. And I assume that then they will have to keep it at that level for the entire duration of the loan, however many years that might take. And for some small subdivisions, that could be an indefinite amount of time. So I see that as a special problem when you start including federal court judgments because they are quite frequently much larger than a state court judgment would be in some possibly because so many actions that would constitute a crime or give rise to a civil claim of action are barred and excluded from the State Tort Claims Act while the state and the political subdivision are given immunity and, thereby, force the injured party into a federal court. Now, as far as the sheriff, I would note that he was dismissed in this specific lawsuit and the county attorney and the judge both have immunity that is granted to them by the state, not the county but the state. Over and over again, this was an

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action that was done on behalf of the state, carried out under state procedure and law. Those individuals, completely innocent, I believe, were sentenced to the state penitentiary and the conditions that were not influenced or controlled in any way by the county. So my recommendation is that you hold this bill in committee until you have a chance to hear Senator Baker's other bill, which is LB656, which gives an alternative route to at least bring these claims if their final...there is a final judgment in the federal court on the lawsuit to the State Claims Board for consideration by that board, rather than automatically forcing it on the county and the property owners in the county. And one last thing I would note. Whatever the attitude might have been in the county, it was a Jefferson County jury that convicted Joseph White and that conviction then led to the pressure that was put on the other five codefendants to enter guilty pleas. Thank you very much for your attention. If you have any questions... [LB353]

SENATOR PANSING BROOKS: Thank you for coming, Mr. Lauby. [LB353]

GREGORY LAUBY: Thank you. [LB353]

SENATOR PANSING BROOKS: Yes, Senator Chambers. [LB353]

SENATOR CHAMBERS: I'm not being facetious. [LB353]

GREGORY LAUBY: I understand. [LB353]

SENATOR CHAMBERS: Have you ever heard of Leonard Cohen? [LB353]

GREGORY LAUBY: He is my favorite singer/songwriter. [LB353]

SENATOR CHAMBERS: Has anybody ever made a comparison to you about your voice and his voice? [LB353]

GREGORY LAUBY: They haven't but I would be so honored if I could even begin to approach it. [LB353]

SENATOR CHAMBERS: So then you know I'm not being facetious and making something up because others had detected it. [LB353]

GREGORY LAUBY: I take it as a high compliment. Thank you, Senator. [LB353]

SENATOR CHAMBERS: Do you remember a comic strip called Denny Dimwit (sic--Winnie Winkle)? It was a long, long time ago and I'm glad they don't use those terms anymore. [LB353]

GREGORY LAUBY: I'm afraid I can't answer that in the affirmative, no. [LB353]

SENATOR CHAMBERS: You're probably too young. [LB353]

GREGORY LAUBY: Yeah. [LB353]

SENATOR CHAMBERS: But his father would always say to Denny, because Denny was a very nice kid, he'd say, "Youse is a good boy." "Youse" is a good man. But in reality, I understand the argument that people give about the state this and the state that. But it happened in that county. People were unfairly treated. [LB353]

GREGORY LAUBY: They were. [LB353]

SENATOR CHAMBERS: And a methodology has to be found. Now there is an existing way that this can be handled without a bill like this, but it would put a heavier burden on the county and the taxpayers of that county. And the loan rate per year is only one-half of 1 percent so it's not like the state is making money... [LB353]

GREGORY LAUBY: That's true. [LB353]

SENATOR CHAMBERS: ...off the loans if they should be granted. And the Treasurer shall grant the loan if under all the circumstances the Treasurer thinks such a loan should be granted and the Treasurer is not compelled to make that finding. But once that finding is made, then it becomes mandatory to grant the loan. And I've just said that not to be argumentative, but it's not a bill where at first blush, if people listen to you, they might think that the Treasurer had to make the loan if a county came in and simply said, we cannot pay this award, judgment, or whatever other category, therefore, we want the loan and the loan had to be granted. It doesn't have to be granted unless the Treasurer, pursuing due diligence, decides that it's suitable to make the loan. [LB353]

GREGORY LAUBY: So the Treasurer could, for example, require the county to dispense and sell off property that it has to try and generate funds to pay a portion of the judgment before finding that they were out of resources? [LB353]

SENATOR CHAMBERS: I'm not going to speculate on that. [LB353]

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GREGORY LAUBY: Okay. [LB353]

SENATOR CHAMBERS: I'm just really not sure... [LB353]

GREGORY LAUBY: Okay. [LB353]

SENATOR CHAMBERS: ...under the law what the Treasurer could or could not do. [LB353]

GREGORY LAUBY: Okay. All right. Thank you, Senator. [LB353]

SENATOR CHAMBERS: But if you can sing at all, (laughter) make a demo and I'll be your agent. [LB353]

GREGORY LAUBY: If I could write like Leonard Cohen, I wouldn't have to sing. [LB353]

SENATOR CHAMBERS: I'll do the writing. (Laughter) [LB353]

GREGORY LAUBY: Thank you, Senator. [LB353]

SENATOR CHAMBERS: Okay. [LB353]

SENATOR PANSING BROOKS: Thank you. Anybody else? No. Thank you for coming, Mr. Lauby. Any further neutral testimony? [LB353]

CHRISTY ABRAHAM: Good afternoon, members of the Judiciary Committee. I am Christy Abraham, C-h-r-i-s-t-y A-b-r-a-h-a-m, and I'm here representing the League of Nebraska Municipalities. We really take no position on the merits of the bill. We understand that there's a situation that needs to be solved. Our concerns are opening up the Political Subdivisions Tort Claims Act itself. We feel like this act is working well and we would be concerned if it got into General File that perhaps amendments could be attached that would change the process that is working. I was encouraged to hear that there is a possibility for an amendment to move this language into another place, perhaps Chapter 77, perhaps the Nebraska Budget Act, or someplace outside the Political Subdivisions Tort Claims Act and we would certainly be supportive of that. So I'm happy to answer any questions. [LB353]

SENATOR PANSING BROOKS: Thanks. Thank you, Ms. Abraham. Any questions? [LB353]

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SENATOR CHAMBERS: I just want to make a correction. The comic strip, the name of the comic strip I was referring to was called Winnie Winkle and Sunday they had the part about the little boy, just so the record is clear. [LB353]

CHRISTY ABRAHAM: Thank you, Senator Chambers. [LB353]

SENATOR CHAMBERS: People would think I was having a...they'd think I was having a senior moment (laughter). Okay. [LB353]

CHRISTY ABRAHAM: Thank you. [LB353]

SENATOR PANSING BROOKS: We weren't but now we do. Okay, thank you, Ms. Abraham. Anybody else that...to testify in the neutral? Okay, Senator Baker, for closing. [LB353]

SENATOR BAKER: I just want to reiterate the point that was made that I also checked with legal counsel and that if this passes it does not mandate that a loan be made to Gage County, thrust upon it against their will, and I think that was some of the understanding of people who testified against it. So, you know, we'll see what happens. You know, there's nothing good about this for anybody, but just trying to find ways to go forward, if worst comes to worst. With that, I conclude. [LB353]

SENATOR PANSING BROOKS: Thank you, Senator Baker. Any questions? Senator Chambers. [LB353]

SENATOR CHAMBERS: Senator Baker, when you first opened, I put you through a little rough patch, didn't I, with my questioning? [LB353]

SENATOR BAKER: No. [LB353]

SENATOR CHAMBERS: Oh! I got to sharpen my sword. (Laughter) [LB353]

SENATOR BAKER: Yeah. [LB353]

SENATOR CHAMBERS: That's all I have. Thank you. [LB353]

SENATOR PANSING BROOKS: Any further comments or thoughts? Thank you, Senator Baker. And that closes the hearing on whatever...LB353. Thank you all for coming. [LB353]