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Judiciary Committee
February 15, 2017

[LB168 LB204 LB359 LB492 LB544]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 15, 2017, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB544, LB492, LB168, LB204, and LB359. Senators present: Laura Ebke, Chairperson; Patty Pansing Brooks, Vice Chairperson; Roy Baker; Ernie Chambers; Steve Halloran; Matt Hansen; Bob Krist; and Adam Morfeld. Senators absent: None.

SENATOR EBKE: Welcome to the Judiciary Committee. My name is Laura Ebke. I'm from Crete. I represent Legislative District 32 and I'm the Chair of the Judiciary Committee. I'd like to start off by having our members who have made it so far introduce themselves, starting with Senator Baker.

SENATOR BAKER: Senator Roy Baker, District 30, Gage County, part of Lancaster County.

SENATOR KRIST: Bob Krist, District 10, Omaha and Bennington.

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

SENATOR HALLORAN: Steve Halloran, District 33, Adams County and southern Hall and western Hall County.

SENATOR EBKE: And Senator Adam Morfeld from Lincoln will be joining us. I believe Senator Chambers from Omaha and Senator Pansing Brooks from Lincoln will join us as well. Assisting the committee today are Laurie Vollertsen, who is our committee clerk; and Tim Hruza, who is one of our two legal counsels. Our committee pages are Kaylee and Sam. On the table over there by the door you'll find some yellow testifier sheets. If you are planning on testifying today, please fill out one and hand it to the page when you come up to testify. Could I see a show of hands of those who are planning on testifying on the first bill? Okay. We may move to three-minute times on this one, in the interest we've got five bills to hear today. So on the table, if you're going to testify, please fill out the yellow testifier sheets. That helps us keep an accurate record. Also, if you just want to record your position, please do so on the white sheet over there. We'll begin testimony with the introducer's opening statement. Following the opening, we'll hear from proponents of the bill, then opponents, followed by those speaking in a neutral capacity. We'll finish with a closing statement by the introducer, if he or she wishes to give one. We ask that you begin your testimony by giving your first and last name and spell it for the record. If you're going to testify, please keep the...stay towards the front, keep the on-deck chair, that Senator Watermeier is in, later keep that one filled. If you have any handouts, please

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bring up at least 12 copies and give them to the page. If you do not have enough copies, the page can help you make more. We'll be using the three-minute light system. When you begin your testimony the light will turn green. At one minute the light will turn yellow. And when the red light comes on we ask you to wrap up your final thought. If you, by chance, sent a letter as part of your testimony, please make sure that you note that as well so that we don't read it in as written testimony, because everybody who sent letters we've got down as written testimony already. As a matter of committee policy, I'd like to remind everyone that the use of cell phones and other electronic devices is not allowed during public hearings. Senators may use them to take notes or to stay in contact with their staff. Some have to come and go because of other hearings that they have to be a part of for bills that they're introducing. Again, as senators get up and leave, don't take it personally. It has nothing to do with the importance of the bills being heard but, rather, the fact that they have other places they've got to be. So that being said, we will begin our hearing with LB544. Senator Watermeier. [LB544]

SENATOR WATERMEIER: (Exhibit 52) Thanks, Kaylee. Chairwoman Ebke and members of the Judiciary Committee, I am Senator Dan Watermeier, spelled W-a-t-e-r-m-e-i-e-r. I represent District 1 in the southeast corner of the state and here to introduce LB544. LB544 provides a local option for consolidation of administrative duties when a vacancy occurs in the office of the clerk of the district court or when an incumbent clerk of the district court decides not to seek reelection. Instead of requiring a general election vote of the people to eliminate the office of the clerk of the district court, LB544 would allow the county board to make such a decision. If the county board decides to eliminate this elected office, the county board would enter into an agreement with the State Court Administrator to allow the clerk magistrate to fulfill the duties of the clerk of the district court. The employees of the clerk of the district court will become state employees at that point and would not incur a loss of income or benefits as a result of that. The county board may request the State Court Administrator review office space to determine if it could be reduced. However, the final decision of the office space is to be made by the county board. LB544 would also eliminate ex officio clerks of the district court and transfer their duties to the clerk magistrate by July 1, 2018, pursuant to an agreement between the State Court Administrator and the county board. Just for some background information, the clerk of the district court is an elected county official that provides administrative support to the district court. The clerk magistrate is a state employee that carries out the same duties of the county clerk. In many counties, the caseload of the district court is low and the clerk magistrate could perform the duties for both positions. In fact, under current law it states that if the district court clerk or staff are temporarily unavailable, the clerk magistrate shall assist the clerk of the district court in the provision of district court services. In counties with 7,000 inhabitants or more, a clerk of the district court is required by law to be elected by the voters. In counties with less than 7,000 inhabitants, the county board and the district judge determine whether there should be an elected clerk of the district court. If a decision is made to not have the elected position, the county clerk serves as the ex officio clerk of the district court, taking on these duties in addition

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to many other nonjudicial duties, unless an agreement is made between the State Court Administrator and the court or the county board or the clerk magistrate to perform such duties. I became interested in this issue as a result of the interim study that I had introduced in 2015 on government efficiency. As a result, I had some conversations with the representatives of the Court Administration Office regarding increasing effectiveness and the efficiencies within our court system. Nebraska was awarded a State Justice Institute Technical Assistance Grant allowing the National Center for State Courts to conduct an evaluation of county and district clerks' offices. I also served on the advisory committee to guide the review of the clerks' offices. The National Center for State Courts, the NCSC, released a report to the Nebraska Supreme Court Advisory Committee on the Nebraska Court Clerks' Office Study earlier this year, and it can be found on the Supreme Court's Web site under miscellaneous report, and the basis for LB544. The options in the report are such: transfer ex officio duties to the clerk magistrates; the second is transfer district court clerks and staff to the Nebraska Supreme Court for funding; the third is to consolidate all or some of the district and county clerk offices; the fourth, provide statutory authority for consolidation as a local option; and the fifth is to establish some further pilot projects. LB544 contains the first and the fourth of those five options. When discussing the report and working on the legislation, we wanted to make sure that this was not a mandate from the state but, rather, a local decision made based on circumstances of each local individual county. We also did not want to cause any elected official to lose their job. Consequently, the decision was made to allow the county board to decide whether to keep the elected position of the clerk of the district court when there is a vacancy or the incumbent decides not to run again for the office. The current provision requiring an election does not work very well logistically because when an incumbent decides not to run again, another person would be running at the same time that the voters would decide whether to retain the office or not. As with most issues, there are some pros and some cons on the elimination of this elected position. I realize that some feel this proposal is a loss of local control or is not as responsive to the needs of the public. Keep in mind that other than ex officios, the decision to combine the positions will be made locally. Regarding the ex officios, a pilot project was undertaken in Polk County to transfer the duties of the elected clerk of the district court to the clerk magistrate and has worked very well. The NCSC report found that there was general concern about the ex officio system for providing district court clerk support in the most rural counties. The survey and interviews reveal that the idea was looked upon more favorably in the smaller counties where providing court services to a widely dispersed population poses special challenges. The NCSC report noted that there are two important questions to consider. First, would the judiciary and the public be better served if an appointed rather an elected position was responsible for the maintenance of records and administration of local trial courts? Secondly, would moving the funding and the control of all district court clerk offices under the control of the Nebraska Supreme Court improve the overall administration of the trial courts in Nebraska? The report found that consolidation usually results in more consistent practices and procedures. Court offices could be reconfigured to better serve the public with one point of contact for all court services. Smaller courts provide a broader range

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of service with the same staff. The report noted that there was a fair amount of consensus that an ex officio situation is not ideal from the perspective of the judges, litigants, and other involved individuals. In response to the most contentious question as to whether the bench is better served by an appointed clerk under the supervision and control of the judges, the report found that the consolidation of the offices will result in more direct accountability to the judiciary and allow the Administrative Office of the Courts to more effectively manage the administration of the Nebraska courts. Although the site visits and interviews suggested problems with performance of the clerks of the district court as not necessarily the norm, it is not unusual. As to the second question, are opportunities created for more efficient use of the staff and resources, many individuals noted that it probably makes more sense in smaller counties as it would aid in the ability to cover absences and workload imbalances by having staff who are trained to handle multiple case types. I am offering a suggestion as I handed out an amendment that would transfer the collection of certain applicable fees and interest from the county to the state in counties that have transferred the duties of the clerk of the district court to the state. These fees help offset the clerk of the district court's operational expenses and, therefore, should be transferred to the state if the position has been eliminated and taken over by the state. I realize that there is a fiscal impact for LB544 and this amendment would help part of these costs. LB544 would result in a more efficient and effective system for the administration of our court system. I appreciate the opportunity to testify on this. This was a long, drawn out process that we went through this, quite an extensive tour of the state, and I'm just willing to have a conversation and be a part of this. It was really educational for me as well and I'm sure there will be lots of questions. But I appreciate the time of the committee. [LB544]

SENATOR EBKE: Thank you, Senator Watermeier. Senator Baker, question? [LB544]

SENATOR BAKER: Thank you, Chairwoman Ebke. Senator Watermeier, will you elaborate a little bit more on the fiscal note? If this is for efficiency, how is it costing all that amount of money? [LB544]

SENATOR WATERMEIER: Well, the efficiency would (inaudible) in property taxes that they should not have to...the efficiency should come when the property tax is less from the county. [LB544]

SENATOR BAKER: So it would be a shift from the county... [LB544]

SENATOR WATERMEIER: It would be shifted, yes, it would. [LB544]

SENATOR BAKER: ...to the state. [LB544]

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SENATOR WATERMEIER: Right. And I didn't get into the fiscal note real deeply. I see it's \$300,000 and \$600,000, one, two years. You know, I'm not going to argue with it or talk about it, but it's unknown territory when it comes right down to it. I mean it really is. So...and then I think the people behind me could probably address it more clearly than I could. [LB544]

SENATOR BAKER: Thank you. [LB544]

SENATOR WATERMEIER: Yeah. [LB544]

SENATOR EBKE: Any other questions for Senator Watermeier? Okay. [LB544]

SENATOR WATERMEIER: All right. I'll... [LB544]

SENATOR EBKE: First...what were you going to say? [LB544]

SENATOR WATERMEIER: Oh, I was going to say I'll stick around, but I'll probably save you the time of closing. [LB544]

SENATOR EBKE: Okay. [LB544]

SENATOR WATERMEIER: All right. Thank you. [LB544]

SENATOR EBKE: First proponent. [LB544]

COREY STEEL: (Exhibits 53, 54, and 55) Good afternoon, Senator Ebke, members of the Judiciary Committee. I am Corey Steel, C-o-r-e-y S-t-e-e-l, and I am the State Court Administrator for the Nebraska judicial branch. I would like to thank Senator Watermeier for introducing LB544 on behalf of Chief Justice Heavican and the Administrative Office of the Courts. This piece of legislation started with a conversation. It was between Senator Watermeier, Chief Justice, and I on a summer tour Chief Justice did two years ago in Nemaha County, Auburn's Courthouse. Senator Watermeier at the time, as he said, was doing an interim study on efficiencies between city, county, and state government. He had asked the Chief Justice and I if there were any efficiencies within the judicial branch, and after the Chief and I kind of got done laughing a little bit about inefficiencies, we said, yes, we have quite a few and one of those would be a two-tiered clerk system. So the discussion started after that. In Nebraska over time the majority of court operations have moved from county over to the state. The only piece of the judicial branch that is not within the state government, nor is under the administrative authority

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of the Office of the Court Administration, is the clerks of the district, which is an elected or an appointed position within county government and funded by local county tax dollars. The other clerk's office, which Senator Watermeier mentioned, the clerk of the county court, is a state-funded clerk's office and under the administrative authority of the judicial branch. We have some fundamental concerns with regards to the clerk's office structure. We shared those concerns with Senator Watermeier during that conversation. Currently, the Administrative Office of the Courts has oversight over statewide case management, our JUSTICE system; provides education for all clerks and judicial branch employees to include we provide some education to the clerks of the district court; and we provide a self-help desk to assure (sic--assist) any of those clerks' offices with issues they have on a day-to-day basis to help them through those systems. That is all through the Administrative Office of the Courts. There are currently two counties within the state that perform such functions. We have one long-term county, Franklin County, which has performed both duties with one individual; and we have entered into a pilot program with Polk County close to two years ago where we have one clerk that provides both duties. These two counties have functioned in that capacity and have shown a single-tiered clerk's office works. Based on the discussion with Senator Watermeier, we came to the consensus about doing a study, and I've handed out the conclusion of that study with the National Center for State Courts. I'll paraphrase here as I'm running out of time. The site...we did 19 different site visits. We talked with judges, clerk magistrates, clerks of the district court, county commissioners, attorneys, and other stakeholders regarding the potential of consolidation of the clerks' office. Senator Watermeier talked about the outcome of that study, which is in your report on the last few pages, and what the consensus was. There was consensus that the ex officio is not an ideal support for the clerk for the district court judges. These duties are usually not practiced often enough. And I had a second handout that I handed you that has the actual 37 counties that have ex officios and also has... [LB544]

SENATOR EBKE: Go ahead. [LB544]

COREY STEEL: ...the district caseload. [LB544]

SENATOR EBKE: Go ahead and finish up if (inaudible). [LB544]

COREY STEEL: So that the second handout has the 37 counties and then the actual filings that were filed in 2016 in the district court. These duties again are usually not practiced often and the ex officio unable to become proficient in court practices. They also have other nonjudicial county responsibilities. Having someone well-trained in court practices who regularly performs these duties could better serve the judges, court, and the public. The question of whether the bench is best served by the appointed clerk under the supervision and control of the judge rather than an elected clerk is the most contentious question. Accountability is difficult to achieve when the

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judicial branch or the local district court judge has no administrative authority over the elected position. The underlying premise is without the ability to exercise oversight over a portion of the court system. Chief Justice Heavican has a fundamental belief that if the court system is going to be held accountable, the judicial branch, for all of the court functions, all of those functions should be under the judicial branch. And currently the clerks of the district court are one of those functions that are not under the judicial branch. The judiciary, again, cannot function as a separate accountable and independent branch of government without that. I have provided a document that lists all the ex officios, as I talked about, and the court filings referenced therein. The second part of the bill would give broader authority to county boards. I have been contacted in the past two years by four counties across the state of Nebraska that have elected clerks of the district court and they have asked, is there any way that the Court Administrator's Office could take over the function of those courts--one of those, Chairman Ebke, is one of your counties--and came to the determination current state statute does not allow for the Court Administrator's Office to take over those functions as they're roles of the clerks of the district court. The second part of this bill would allow for those county boards to make it easier and more accessible to enter into those agreements by a vote of the county board instead of putting it up to a vote of the people, which is timely and has to take place prior to an election cycle. Again, Senator Watermeier talked about we would not take over any of those elected positions unless that was vacated and there was a discussion between the counties and the Court Administrator's Office and an agreement made. So again, the county board would have ultimate control and authority to enter into that agreement. It must be upon a vacancy, which is a retirement, somebody leaves a position, or chooses not to run for an election. Once again, this would allow for county officials to make that determination. We feel this would still give local control to county boards to determine what is best for their counties. Senator Watermeier handed out an amendment that would allow for the funds that are generated and collected through IV-D services, which is child support enforcement, and then also for some local county type assessments for the clerk's office originally, that those then would be brought in; that if the state does take over the clerk of the district court's office, those funds would no longer go to the county. They would come to the state General Fund, which is typical in the county court. I'm here to answer any questions that anybody may have during this process and I'm always here to answer any questions in the future. Thank you. [LB544]

SENATOR EBKE: Thank you, Mr. Steel. Does anybody on the committee have any questions?
Senator Halloran. [LB544]

SENATOR HALLORAN: Madam Chair, thank you. Hi, Corey. How are you? [LB544]

COREY STEEL: I'm good. [LB544]

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SENATOR HALLORAN: Nice testimony. Would...this is a silly question but I'm known for that. Would this be reversible? Say the county decides to do it and that, you know, it's fulfilled for a couple years and then they decide this isn't working out. Is it practical to reverse? [LB544]

COREY STEEL: We had a lot of discussion with Senator Watermeier as we were crafting the legislation. That's why we came up with the term "agreement." There's that agreement between the Court Administrator's Office and the county. I can tell you what we did in the pilot program and I don't know how you'd write that legislatively, but that could potentially be done. What we did in the pilot in Polk County is when we entered into that agreement with Polk County to take over that, we met at a six-month time frame and we answered those question...asked those same questions: Is it working? Is it more effective? Is it more efficient? And is it working for not only the judges but for the public? We did some fine tuning and we did have some things that we did change based on a six-month review. We then had a year review in Polk County to determine, have those changes been successful? And they have, and now that pilot has been about two years in the making and we have one individual that runs both those offices in that county. [LB544]

SENATOR HALLORAN: Thanks. [LB544]

SENATOR EBKE: Any other questions? Okay, thank you. [LB544]

COREY STEEL: Thank you. [LB544]

SENATOR EBKE: Okay, first...second proponent. [LB544]

TOM MAUL: Senator Ebke, good afternoon, members of the committee. My name is Tom Maul. I'm a lawyer in Columbus, Nebraska. I'm the immediate past-president of the Nebraska State Bar Association. I appear here this afternoon on behalf of the Nebraska lawyers to...in support of LB544. As Senator Watermeier indicated and as Mr. Steel indicated, I also was on that commission the Supreme Court put together to look at these, the clerk's position. As you can see from reading the legislation, this is not a one-size-fits-all, okay? This was not a situation where this is going to be something that's going to be adopted by each and every county, because it's not. In greater Nebraska, as many of you know, the caseload probably does not justify, if you will, a separate clerk doing those duties. From a lawyers' point of view, this gives the accountability that Mr. Steel talked about and, in addition, it gives the counties the ability if in fact they want to change it. They don't have to. If in fact they want to change it after a vacancy occurs, gives them the ability to do that with a vote of the board, okay, as opposed to a vote taken of the public at a general election. The ex officios, as all of you know, they have...generally it's been my experience they have a number of other duties in the counties, okay? And my experience of that, being the clerk of the district court is probably one of their least favorite

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things. Now again, we've become highly automated, thanks to the Legislature. We've been able to do electronic filings in all of our counties. All of that has been very helpful. But my experience has been that through the...the clerk magistrates through Mr. Steel's office they have the ability in certainly a great number of those counties to do the functions of both. The other thing from a lawyer's point of view it does, as Mr. Steel indicated, it puts that judicial function under the Supreme Court. The clerk of district court is the only judicial function in the state that is not answerable or accountable to the Nebraska Supreme Court. This bill would allow that to go in that direction. So you've all seen the report, you've seen the summaries. As Mr. Steel indicated, there was a lot of discussion. Drafting the legislation was not that easy. But I'm more than happy to answer any questions that you might have. [LB544]

SENATOR EBKE: Thank you, Mr. Maul. Any other questions? Any questions from the committee? Okay. Thank you. [LB544]

TOM MAUL: Thank you. [LB544]

SENATOR EBKE: Do we have any other proponents? Proponents? Guess not. Okay, any opponents? [LB544]

LARRY DIX: (Exhibit 56) Good afternoon, Senator Ebke, members of the committee. My name is Larry Dix. I'm executive director of the Nebraska Association of County Officials, appearing today in opposition to LB555 (sic). I'm also handing out an additional set of letters that just came into our office this morning. First... [LB544]

SENATOR EBKE: Hold it. Hold it. LB544. [LB544]

LARRY DIX: LB544. I'm sorry. What did I say, LB545? [LB544]

SENATOR EBKE: I think so. [LB544]

LARRY DIX: Okay. Got too many bills on my mind. [LB544]

SENATOR EBKE: Yeah. [LB544]

LARRY DIX: LB544. First of all, we do want to thank Senator Watermeier for working with us in introducing this and also Chief Justice Heavican as we've had conversations, and especially Corey Steel for working with our clerks of district court. And we're glad we undertook this study

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to examine the Nebraska court system. Many times we'll see bills that come in front of the Legislature and they're here to solve problems that exist in the state. And while there may be some perceived benefits in LB544, NACO believes that further examination is still needed to understand the full impact of this bill. During the course of the study and from remarks that we have heard, I think it's safe to say that there's not a crisis in the state of Nebraska. The court systems are functioning, they're functioning very well, and taxpayers are being served. One of the things that was noted in the study is that there's nothing fundamentally wrong with the current system that would warrant change, although there was a general concern about the ex officio system. Senator Watermeier addressed some of the options that came out of the study and so I won't go into those, but to...one of the things I do want to make sure we have on record is that Nebraska is not an anomaly or an outlier as far as having elected officials serve in many of the state court system. In 27 states all the county...all the court clerks are elected, so we're not an outlier in there. One of the things, this topic has been discussed many, many times in the past, as far back as the '90s, I think even there was a discussion back when Judge Krivosha was here. So this isn't anything new. Suggestions were made about changing the court to an appointed as opposed to elected, merging the courts, all these things have been made. We still come back to that same topic. The studies over the years, many studies, we still come back to the same concern. Senator Halloran had the question about is it reversible, which I'll talk about if that question comes up, in regards to what happened when the state took over the assessor's office. That is something that you may want to learn about, especially some of the new senators that weren't around. In ex officio counties the one concern is if the state assumes and provides...will they provide adequate staff in these counties. There will be some that follow me that talk about providing adequate staff to serving our citizens. The fiscal note I agree is hard to determine. I think it's at the minimum end. It is only if we do the ex officios. So with that, I'll hopefully get a couple of questions and I'll finish with my one paragraph closing. [LB544]

SENATOR EBKE: Any questions? I'll let you finish your paragraph. [LB544]

LARRY DIX: Okay. During discussion with the NACO board, it was decided to oppose this based on past experience of similar proposals and past experience with the assessment function being taken over by the state. There was also a concern that is it--and this is certainly the decision of the Legislature--is do you want to remove the right of the people to petition to have their court system in their counties. In the end, we feel we may have to have additional study on this and that the system that we have today is certainly not broken and we want to make sure that Nebraska citizens are adequately served. [LB544]

SENATOR EBKE: Okay. Thank you, Mr. Dix. Any questions from the committee? Okay. Thank you. [LB544]

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LARRY DIX: Thank you. [LB544]

SENATOR EBKE: Next opponent. And since we have I think a lot of opponents on this bill, the only thing that I would ask is try not to be too repetitive if we have 20 people say the same thing. Thanks. [LB544]

JANET WIECHELMAN: (Exhibits 60 and 61) Good afternoon, Senator Ebke and committee members. My name is Janet Wiechelman, J-a-n-e-t W-i-e-c-h-e-l-m-a-n. I am the elected Clerk of District Court of Cedar County and the legislative liaison for the Clerk of District Court Association. Our association is in, very overwhelmingly, opposition to LB544. Our association includes the full-time clerks of district court and also the county clerks who act as ex officio clerks of district court. As one clerk of district court said, government works best when it is closest to the people. As Mr. Dix indicated, there has been past legislation. In my statement I have included with that some of the past legislation that has been before this committee that either dealt with elimination of the clerk of district court office or the transfer. So I'll let you refer to that information. But it's been ten years since this issue has been brought before your committee. The amendment does deal with the issue of the fees and the revenue as it was brought by Senator Watermeier; however, we are concerned that it doesn't quite bring to attention all the fees and revenues that are generated by the clerks of district court office. So this does need to be discussed more. This legislation does bring a new theory, as indicated. However, we have concern that an agreement may not be in the best interest of the county or the employees of the former elected clerk of district court office. The county board, who often has no ongoing interaction with the clerk of district court office, and the Court Administration Office in Lincoln does not know how a particular county court or district court may be handled. The judges are the ones who are actively involved in the operation of these offices and are best qualified to be included in this decision if the offices should be merged. We appreciate the support that has been given by most of the county boards on this legislation as they are concerned about the loss of local control. As there are no particulars to this agreement, how it will be reached, how do we know as clerks of district court whether our staff will be included in the future within the Supreme Court? This legislation indicates there will be no loss of income or benefits. In the county court, a study has been completed to determine the amount of employees to the amount of caseload. This same study cannot be applied to the district court staff. The issues that are in the district court are of larger amounts of money, the most serious charges, and domestic relation cases that require more documents. These types of cases require more hearings and papers to be filed to come to the disposition of a case. Therefore, the staff of the district court, if a new study is not completed, may not have the option of remaining in that county performing district court duties but may be reassigned or relocated to another county. The amount of employees to complete district court duties cannot be determined on the case stats only but on the types of cases handled at the district court. There may be more questions of the agreement than answers in this legislation. There was past legislation, LB669 in 2014, that provided the cooperative

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agreement. The counties did enter into those agreements and there has been assistance between offices. An idea that has been brought by one county is that the part-time district court clerk office has extended to full time and she now works two days a week in county court, and this is at county expense, not state expense. There are two functions in the district court that are not handled. I guess I'll stop at this point if anybody wants... [LB544]

SENATOR EBKE: And we do have your written statement here, right? You were reading from that. [LB544]

JANET WIECHELMAN: Right. I just would just like to just bring one point at issue. [LB544]

SENATOR EBKE: Sure. [LB544]

JANET WIECHELMAN: There are two functions of the clerk of district court that is not addressed in this legislation. The legislation is...does not include the fact that we are, as clerk of district court, the jury commissioner and also the clerk for the mental health board. So this legislation would have to be, in some form, fixed by next year if this legislation would move through the committee. [LB544]

SENATOR EBKE: Okay. Thank you. [LB544]

JANET WIECHELMAN: Does anybody have any questions? [LB544]

SENATOR EBKE: Any questions? Okay. Thank you. [LB544]

JANET WIECHELMAN: Thank you. [LB544]

SENATOR EBKE: Next opponent. [LB544]

VICKIE PRINCE: (Exhibit 62) Good afternoon, Senator Ebke and committee members. I am Vickie Prince, V-i-c-k-i-e P-r-i-n-c-e, and I am the elected clerk of the district court of Pierce County, Nebraska, and have been appointed to also serve as the clerk of district court affiliate representative for NACO. I currently serve as a representative for the Clerk of District Court Association on the judicial branch education committee of the Supreme Court and also on the education committee for the clerk of district courts. According to Supreme Court Article V, the clerks of district court and their staff are required to complete eight hours of continuing education through the judicial branch education. On page 4 of my statement, I have provided

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statistical information showing that the clerks of district court and their staff have obtained more than eight hours of education per year. Chart shows, in the dark, the total amount of JBE hours obtained by the clerks of the district court, and each chart designates the hours of the full-time clerks of district court, the clerk of district court ex officios, and the staff. This information was garnered from all 93 clerks of district court offices. Our association strives to maintain a high level of education for our members through training provided twice a year. Our association has an annual conference in June of each year and our association, in cooperation with NACO, has an annual conference in December of each year. I've attached the agendas of our meetings from 2013 through 2016. You'll see that our association makes great efforts to provide an educational and informative workshop so that we are informed and can process cases, as needed, according to statutes and rules of the court. Also, further webinar training is available on the judicial branch education Web site. For elected county officials, there is additional training through the NACO Institute of Training through the University of Nebraska and Extension Office Services. This yearlong program has been attended by 27 past and present clerks of district court and county clerk ex officios since 2010. Even though this office is an elected county office, we are very proud that there is longevity of the clerk of district court and its staff. A four-year turnover rarely occurs in our counties. The charts on page 16 shows the years of service by district court clerks and staff. Another thing: Our records are audited and are available on the State Auditor's Web site. If there are any inaccuracies in these records, the State Auditor has authority to pursue a special investigation. The clerks of district court, although county employees, have a very close working relationship with our judges to ensure smooth consistency in processing our court cases. Communication is required between staff and judges to ensure that the public is receiving the benefits and service of the court system. With increasing demand by self-represented litigants, the court system has provided forms for domestic relations, protection orders, and name changes, and the forms are more responsibilities for the clerks that have been placed... [LB544]

SENATOR EBKE: Go ahead. [LB544]

VICKIE PRINCE: ...responsible for these, to educate the litigants of the processes, the paperwork, and the direction of where to find other services to assist them. We would like you to please vote no on LB544 and allow the clerks of district court to continue the service as an elected county official. Thank you. [LB544]

SENATOR EBKE: Thank you, Ms. Prince. [LB544]

VICKIE PRINCE: Questions? [LB544]

SENATOR EBKE: Any questions? [LB544]

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VICKIE PRINCE: Okay. Thank you. [LB544]

SENATOR EBKE: Okay. Thank you. Next opponent. [LB544]

TROY HAWK: Good afternoon, Senator Ebke,... [LB544]

SENATOR EBKE: Good afternoon. [LB544]

TROY HAWK: ...members of the committee. My name is Troy Hawk, T-r-o-y H-a-w-k, and I'm the Clerk of the Lancaster County District Court right here in Lincoln. Many of my colleagues will be speaking today about their reasons for opposing LB544, but I'd like to provide a perspective from a budgetary and fiscal standpoint. I have the second largest district court clerk's office in the state. As the Clerk of the Lancaster County District Court, I am also the Clerk of the Lancaster County Separate Juvenile Court, I'm the jury commissioner, and I'm the Clerk of the Lancaster County Mental Health Board. To do this I have 25 employees plus myself. My personnel costs alone are currently just over \$1.8 million. That's only personnel costs. It doesn't include costs for overhead, rent, supplies, or any other items in my budget. Therefore, if my office were to fall under the Administrative Office of the Courts, that's a cost the AOC would be responsible for. There's been some discussion about the monies that would flow that are currently going to the county that would flow to the state, the IV-D money and the fines and the fees. I haven't seen the amendment so I won't talk about the fees, but I believe that number from my county is \$127,000 a year. I do know that I get approximately \$330,000 in IV-D money. Of that, approximately \$27,000 is indirect costs so would stay with the county. That leaves a little over \$300,000 that the Administrative Office could sweep up, as it were, if my office went under the AOC. That still leaves a \$1.5 million price tag to the state for my office alone if we were to fall under the Administrative Office of the Courts. As I'm sure you're all aware, this year the Governor proposed an \$8 million cut to the judiciary. And even in a best-case scenario it appears the judiciary is still looking at about a \$4 million budget cut. I just don't see how in today's fiscal environment it makes sense to bring an office such as mine underneath the AOC. In the offices of the clerk of the district court, we deal with issues on a daily basis that are incredibly important to those whose lives are affected: felony criminal prosecutions, marriage dissolutions, juvenile abuse and neglect cases, mental health hearings that determine whether a mentally ill patient is a danger to themselves or others, paternity establishments, personal injury or "med mal." cases that run into hundreds of thousands or million dollars of damages. I need the right kind of people to be able to handle these cases and I need the right kind of people to attract those people. I need to be able to pay them and I just believe if my office were swept up underneath the Administrative Office of the Courts, we'd become simply one more cog and would be subject to the arbitrary and, quite honestly, maybe sometimes uneducated budget cuts that they need to have in order to

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help the AOC meet their own budget commitments and shortfalls. And with that, I'm happy to take any questions. [LB544]

SENATOR EBKE: Any questions for Mr. Hawk? Guess not. Thank you. [LB544]

TROY HAWK: Thank you. [LB544]

SENATOR EBKE: Next opponent. [LB544]

HEATHER SIKYTA: (Exhibit 67) Good afternoon, Senator Ebke, members of the Judiciary Committee. My name is Heather Sikyta, H-e-a-t-h-e-r S-i-k-y-t-a. I am the Sherman County Attorney and I'm here today to testify both on behalf of Sherman County and myself personally. In the packets that are being handed out you will find a resolution from the board of commissioners in opposition to LB544 and authorizing me to speak on behalf of the county, a letter from the county board that includes a letter from our county clerk from 2005 when this bill was proposed last, a letter from our current county clerk who is an ex officio county clerk, and a letter from me personally. Currently, we have an ex officio clerk. I think it's not been clear today that this is not a local option for the ex officio clerks. The bill says they "shall" be turned over to the state. I think it's very important to keep this on a county level basis. In the area where I practice there are five counties that share county clerks. In Sherman County, our clerk, although she does a wonderful job, is there about three days a week because she's traveling to other counties, assisting in those courts. If she's not there, there's a sign on her door that says either the district court can help her or my office can help her. Sometimes we can answer the questions and take the money and take the filings, and sometimes we can't, and the only advice we have for them is to please call before they come to the courthouse. If this is somebody who has one day they can get away from an abusive spouse to file a protection order and that door is closed, will they come back? If it's somebody who needs help, they're a pro se client, needs help filling out their divorce complaint, will there be anybody to help? I think that's the main concern we have and why we would like this to be a county-by-county option. I also think when you look at the study and look at the caseload, you're looking at how many cases were filed that year. In many of these courts, the cases are being held over. It's a modification, it's a revocation of probation, something that's been filed a previous year. And also the costs, while the county may be able to reduce costs, it's probably not very likely because not very many counties have offices that they are going to take somebody out of in order to eliminate this position. They will be still employing the same number of people as previously. Therefore, we would ask, at minimum, for the bill to be changed for the ex officios from "shall" to "may" and we would prefer the bill to be killed and further study to be taken. I'd be happy to answer any questions. [LB544]

SENATOR EBKE: Thank you, Ms. Sikyta. Any questions? Okay. Thank you. [LB544]

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HEATHER SIKYTA: Thank you. [LB544]

SENATOR EBKE: Next opponent. [LB544]

DEBRA HUME: (Exhibit 68) Good afternoon. My name is Debra Hume, D-e-b-r-a H-u-m-e. I'm clerk of the district court in Cheyenne County. A few of the points that were previously stated by my fellow clerks of the district court I will not repeat or try not to. As record keepers for the Cheyenne County District Court, my office is very, very diligent about follow-up with the attorneys, the law enforcement, self-represented litigants, and working closely with our district court judge to help ensure the efficiency of our court. My office is generally the first and the last person to have contact with the self-represented litigant, treating each person who calls or comes to our window with dignity and respect in an attempt to make that contact a pleasant one. We take pride in serving our public and go the extra mile with smiles on our faces because we love what we do and know that it does make a difference. My office is open from 8:00 a.m. to 5:00 p.m., Monday through Friday, including the lunch hour. We utilize all the resources available to our office each and every day to help us serve our public from assisting the self-represented litigants with the public access kiosk, hosting the divorce clinics via Jabber and Legal Aid managing attorney Muirne Heaney, providing assistance to the public in searching for information on old naturalization papers, dissolution cases, professors researching criminal records from the 1800s, accepting passport applications, contacting interpreters as needed, to making sure our petit jurors have a positive experience when they are summoned to serve on a jury in Cheyenne County. My office has 30 years' experience collectively. We are passport agents, notaries, mental health board members, safety committee members, jury commissioners, and I might add very, very patient and compassionate listeners. Each year we participate in Cheyenne County government day with our local high schools, American Legion Posts, as well as our local veterans. And this past summer we were host to the Clerks of the District Court summer workshop in Sidney, which was well-received by our clerks as well as our merchants, our visitor's center, our chamber of commerce, and the city of Sidney. I am respectfully requesting you to not advance LB544 to the floor. I do...I have attached some statistical information and a few letters that were given to me as well. We take a lot of pride in our district court. And that's all I have for you. [LB544]

SENATOR EBKE: Okay. [LB544]

DEBRA HUME: Thank you for your time. [LB544]

SENATOR EBKE: Thank you, Ms. Hume. Any questions? Okay. Thank you. Next opponent. [LB544]

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DEBRA DIEMOZ: (Exhibit 69) Thank you for letting me speak. Debra Diemoz, D-e-b-r-a D-i-e-m-o-z. I'm currently clerk of district court in Kimball County. Along with me we have close to 26 clerks of district court from across the state that are representing the concern that we have for LB544. We stand here for many reasons, but our main reason is because we do represent the public as an elected person. Because we put these individuals first, they count on us. As a clerk of district court, we hold ourselves to a higher standard in meeting the needs of our judges, our attorneys, and our public. The clerk of district court is trained in child support cases, felony criminal cases, mental health, jury commissioner, and protection orders, and they're very comprehensive and they're not learned just by overnight. How does the state propose the training and who will be doing the training once this consolidation does come to effect? Should you change this current agreement related to these duties, it could create a multitude of concerns that I feel have not been considered. As leaders...as you are our leaders, we are aware of the socioeconomic issues of...that plague our current generation. This leads me to my public concern. If a person has to travel 40 miles to go see a clerk magistrate and he doesn't have the financial ability, transportation, or the time, how will he get these sources to him? To me, in the long run, this would cost the state more to provide these amenities to the individuals that we serve now and that they've grown accustomed to. I appreciate that you have the confidence in your current clerk magistrates to handle the jobs they currently hold. But with this new bill, you will be adding a lot more of a workload and new duties that they are not accustomed to. By combining the services that I provide with the other counties to the clerk magistrate, I do not see that the benefit would be for the voters of the state of Nebraska and it would not make it more efficient. Right now there are 93 counties, and if you absorb 39 ex officios, the possibility could be overcrowding of jails; overcrowding of the court system, the mental health boards due to the backlog of getting things processed in a timely manner. Under the current bill, our position as clerks allow the magistrates the time and the resources to do these cases efficiently now. In closing, I have worked for almost three decades for the Nebraska judicial system. I'm proud to be a clerk of district court and I'm proud to be a Nebraskan. I ask that you reconsider the bill to further research to consider the ramifications this change could propose. [LB544]

SENATOR EBKE: It's up. Go ahead. [LB544]

DEBRA DIEMOZ: Okay. Thank you. As clerks, we serve the public communities but we also serve you. I am motivated to help our Nebraska judicial system to become one that other states emulate. You have trusted us for all these years to keep the balance. Now let us help you figure out a better solution to this. Thank you for your time and consideration. And do you have any questions? [LB544]

SENATOR EBKE: Thank you for being here today. Any questions? I guess not. Thank you. [LB544]

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DEBRA DIEMOZ: Thank you. [LB544]

SENATOR EBKE: Next proponent. [LB544]

VICTORIA BARNETT: My name is Victoria Barnett, V-i-c-t-o-r-i-a B-a-r-n-e-t-t. I'm from Furnas County, Nebraska, south-central, tiny little place but the citizens there appreciate their votes and the right to vote is very dear to our country. The few people I have talked to, the citizens, were not impressed with losing the opportunity to vote for their elected officials. We are their public servants and we intend to do the very best we can for those people. The LB544 would remove the local control from the citizens. They would lose their voice. One of the things that remains to be said--there are so many of my same topics that have already been addressed--accountability is a big one, that the Chief Justice doesn't feel that we are accountable to anyone, and that would be, in my opinion, exactly the opposite. We are accountable to the attorneys, to the clients, to the judges, to the county attorneys, to the person on the street, in the grocery store. They ask us for information; we provide it. We don't answer legal questions, of course, because we're not attorneys and it would be a mistake to have someone with a legal background in that position because it would be very easy to go over the line and it would be worrisome that would be a possibility. But we do have accountability for the state. We use their state computer so we maintain our computer system for the state and we maintain the paper record. So we're, in essence, duplicating a little bit but our judges do not have the ease of using forms like the county court does. A lot of their stuff is formatted but you can't format too much when it comes to dissolution cases, a quiet title, tax foreclosures, writ of habeas corpus or mandamus cases. You just cannot rubber-stamp those types of things. Our cases run a long time. They are not like a traffic citation where you might do 50 of them in an hour, you know? We can't do those types of cases. They are requiring thought and consideration and that can take weeks or months. We also do mock trial for the Nebraska attorneys Bar Association and that's months of work that we do on a voluntary basis to help out the Bar Association because we're trying to give an opportunity to the young people to know what the legal field is like, what the courts are like. And it's really quite rewarding to watch these young people come through their high school years as mock trial attorneys. Let's see here. We do provide accessibility to all the forms and for our public access computer training so that if anybody does want to look up something, we can teach them how to use the computer and they have access to everything that's public. [LB544]

SENATOR EBKE: Okay. [LB544]

VICTORIA BARNETT: Thank you for your time. [LB544]

SENATOR EBKE: Okay. Thank you. [LB544]

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VICTORIA BARNETT: I hope you vote no. [LB544]

SENATOR EBKE: Any questions? Thank you, Ms. Barnett, for being here. [LB544]

VICTORIA BARNETT: Thank you. [LB544]

SENATOR EBKE: Next opponent. [LB544]

DEB ALLEMANN-DANNELLY: (Exhibit 30) Good afternoon. Chairman Ebke and members of the Judiciary Committee, my name is Deb Allemann-Dannelly, it's D-e-b A-l-l-e-m-a-n-n-hyphen-D-a-n-n-e-l-l-y. And my fellow clerks have made it really pretty easy for me because they have said almost everything that I wanted to say. I'm just going to note a few things. A couple of the reasons, it's my understanding that two of the reasons given for LB544 were property tax relief and efficiencies in the courts, and I believe that if there was any inefficiencies in the court system we've been taught to. We do extra training. So, personally, that I don't understand. I've never heard anybody say anything that our court is inefficient and so I really have a hard time with that one. Regarding property tax relief, my office in the 2015-2016 budget year, after receipts were received, make up less than one-half of 1 percent of our county's budget. Therefore, I don't believe that the small savings incurred are worth removing the local control and accountability in our local elected clerks. This is compounded by the fact that the Governor has requested widespread budget cuts, and before I left Wayne today the county clerk and I put some numbers together as how much it would save the taxpayers, and it would be \$4.42 on \$100,000 in valuation. Another concern of mine is, as maybe some of you know, maybe you don't, is that when the assessors were...the state wanted to take over the assessors' roles in 1998 to 2000, they took a total of nine. And within 15 years all the assessors' positions were given back to the counties. So, you know, I would sure hate to see that happen to the courts. We just don't have...we're too busy for something like that to happen. Let's see here. I think that the major benefit of an elected district court position is providing a locally accountable public servant. I would have to believe that most of us meet all of what the state requires. I don't think...I kind of got maybe the impression that we do what we want to do when we do it, and that is entirely not true. We're here to serve the public. We work closely with the AOC. We work with our judges. And most of all, we're there for the public. And I'd like to say that as far as in the district court offices, we have 93 district court offices, whether they're ex officios or were elected, and we're there 100 percent of the time, where there are 71 county courts that somebody is not having an open office, and I don't think that's serving the public very well. I just want to say that it's been an honor for me to serve the people of Wayne County and, in all reality, this bill doesn't really affect me because retirement is not that far off for me. But I am concerned about the judicial offices, the employees in the counties, the public, and basically county government in general. If the state takes this over, who's next? I'm proud to say that the Wayne people have the opportunity

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to say what they want in county government and I hope you don't take that privilege away from them. Thank you for allowing me to share my views and my comments, and I hope that you will vote in opposition of LB544. Thank you. [LB544]

SENATOR EBKE: Okay. Thank you. Any questions? Senator Pansing Brooks. [LB544]

SENATOR PANSING BROOKS: Thank you, Chair Ebke. Thank you for coming, Ms. Allemann-Donnelly (phonetically)? [LB544]

DEB ALLEMANN-DANNELLY: Dannelly. You can call me Deb. [LB544]

SENATOR PANSING BROOKS: Okay. (Laughter) Could you repeat what you said about in 2009 the assessors were...? [LB544]

DEB ALLEMANN-DANNELLY: Well, and I did some history checking on this. I got ahold of NACO and some of the assessors that were involved in that. And in...I believe she said 1998 to 2000, first there was like three or four assessors that went to the state, and they kept on. They took maybe two more and then maybe...they got up to nine. After nine they didn't take any more. And within 15 years all of those assessor positions...all those offices went to the state and then within 15 years they went back to the county because they could not...the state couldn't fund them. So...and one of the last ones was given back in 2013. I can't remember which. There's two of them, Saunders maybe and...but I think there's two of them in 2013 (inaudible) just got back. [LB544]

SENATOR PANSING BROOKS: Okay. Thank you. And then also what was it that you were saying about 93 district court offices and 71 courts? What was that statistic? [LB544]

DEB ALLEMANN-DANNELLY: With the... [LB544]

SENATOR PANSING BROOKS: Maybe it was in here. I'm sorry. [LB544]

DEB ALLEMANN-DANNELLY: No, that's all right. I'm just kind of picking and choosing through here, but with the ex officios and the elected clerks of the district court, there are, of course, 93 counties; we have 93 clerks, whether they're ex officio or elected. [LB544]

SENATOR PANSING BROOKS: Uh-huh. [LB544]

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DEB ALLEMANN-DANNELLY: And those positions are full-time positions. Now county court, from when I looked at the study, if you look through the study it says that there's 71 county court clerk magistrates. That leaves 22 that somewhere they are not open all the time. And granted, maybe they don't have the volume of business, you know, where they share. I believe that maybe there was one...I shouldn't...I think there was one county that shared maybe three other. This one clerk served three counties. So you might have a county clerk magistrate in an office a couple times a week, and maybe in another office a couple times a week and, you know, they share because of the load. But at the same time, if you're going to take over district court filings, when you do appeals you have to have that to the Court of Appeals within two days. So say the clerk magistrate didn't get there till Thursday. If that came in on Monday, you're late. And another thing is your protection orders. If you come in and somebody has been abused and is afraid, those protection orders are very important that you get them done and you get them done right away. And if they come in on a Monday and they aren't there till Wednesday, there you got two days. I'm just saying that with the ex officios, with the clerks, they do a fantastic job and they want to keep their jobs. Seventy percent of the ex officios--we voted on this bill--seventy percent of the ex officios want to keep their job and I think that says a lot, because they're not losing anything. They're going to get paid the same amount of money whether they're the clerk or they have the additional duties of the clerk magis...or the clerk of the district court. So really, if they gave it to the state, it would be less work for them, but they don't want to get rid of it. [LB544]

SENATOR PANSING BROOKS: Okay. Thank you. The other thing is it's pretty obvious in this room that there's a preponderance of women here. So is the...are generally across the state the clerks women or why is there a preponderance here? [LB544]

DEB ALLEMANN-DANNELLY: There are, but we're starting to get some of the men in there. (Laughter) They're starting to find their way there, I think. Yeah. (Laughter) They've been an awesome addition to our group, fantastic, so...and we all work so good together so. [LB544]

SENATOR PANSING BROOKS: Why has that happened? Do you have any idea? [LB544]

DEB ALLEMANN-DANNELLY: No, I...well, they don't run for election, because the clerk and the district court clerk, you know, they're both elected positions. And I think maybe money might have something to do, you know, the salary might have something to do with it. But now the county has really kicked up the salary some, too, and it's good money. [LB544]

SENATOR PANSING BROOKS: Thank you very much. [LB544]

DEB ALLEMANN-DANNELLY: You bet. [LB544]

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SENATOR PANSING BROOKS: Appreciate it. [LB544]

DEB ALLEMANN-DANNELLY: Thank you. [LB544]

SENATOR EBKE: Thank you for coming. [LB544]

DEB ALLEMANN-DANNELLY: Can I just ask a question quick? Senator Chambers, can you tell me where you get your short-sleeved sweatshirts, because we've been looking all over for them? (Laughter) [LB544]

SENATOR MORFELD: I'm curious too. [LB544]

DEB ALLEMANN-DANNELLY: Hey, that's old school and I think it's awesome. (Laughter) [LB544]

SENATOR EBKE: Next opponent. Can I see a show of hands how many more opponents so we can get a count? Just one? Okay. Thank you. Go ahead. [LB544]

DAUNITTA BUOY: (Exhibit 70) Good afternoon, Chairman Ebke, members of the Judiciary Committee. My name is Daunitta Buoy, D-a-u-n-i-t-t-a B-u-o-y. I am from an ex officio office. I'm the deputy clerk in Rock County. Most everything that I have on my sheet has been covered but one thing that I would really like you guys to take special note to, the state has cut the hours for our county court from full time to three days a week to two days a week and currently it is one day a week and often less than that. It is our office that fields the phone calls for county court, helps the public with county court issues, and we also do the mail run for county court. The fees that we will lose if the state takes over our offices will affect revenue. Any revenue lost in our counties affects our budgets and tax levy. Thank you. [LB544]

SENATOR EBKE: Thank you, Ms. Buoy. Any questions? Okay. Thank you. [LB544]

SUSAN PAULSEN: (Exhibit 71) Hi. My name is Susan Paulsen, S-u-s-a-n P-a-u-l-s-e-n, and I'm the clerk of the district court from Washington County and I have been there since 1999. Before that I served as deputy clerk of the district court for 15 years. During my tenure the subject of consolidation has surfaced on several occasions and each time the debate appears redundant. Why change what already works? LB544 will not affect my office until such time as I am no longer the clerk, but I am passionate about it remaining a county office. We work well with the judges, the county employees, and the county court employees. Everyone in my office is a Washington County resident and takes pride in serving their community. The state budget deficit

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is also a concern. I see...I would hate to see my employees have a reduction in salary or benefits because the state could not handle the increase. I feel that the county government should stay at the local level for this reason. Also, if the intent is inefficiencies in the court system, why are full-time bailiffs or judicial administrators in large counties not included in this legislation? All of these positions provide for the efficiency of cases moving through the court system. Also, if the clerk...the other thing that...and pretty much everything that I was going to say has already been said except for the point that if the clerk magistrate were to leave before the clerk of the district court, what would happen then? If she were to retire before I did, would then the clerk of the district court take over both courts or would a new person come in as clerk magistrate to do it? And there's just a few issues that haven't been addressed in this legislation. And I also handed out, with my letter is a letter from my county board and from my county attorney opposing LB544. Thank you. [LB544]

SENATOR EBKE: Thank you, Ms. Paulsen. Any questions? Senator Krist. [LB544]

SENATOR KRIST: Kind of a related subject but not really: What has the closing of the nuclear plant done to your population base? [LB544]

SUSAN PAULSEN: Nothing yet. Dana you know closing, too, had an effect on us. We're close enough to Omaha that we have a lot of people still moving out because we do have a really good school system that people want to be involved in. And I know my husband is on the chamber board and we have not seen people leaving Blair. [LB544]

SENATOR KRIST: Good for you. (Highway) 133 probably helped with (inaudible) a little bit. [LB544]

SUSAN PAULSEN: It is helping with it becoming four-lane. [LB544]

SENATOR KRIST: Thanks for coming down. [LB544]

SUSAN PAULSEN: Uh-huh. [LB544]

SENATOR EBKE: Thanks for being here. Any other questions? Oh, Senator Pansing Brooks. [LB544]

SENATOR PANSING BROOKS: Thank you. Thank you for coming, Ms. Paulsen. Since you've been there since 1999, do you have a feel for the types of inefficiencies that are being discussed? [LB544]

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SUSAN PAULSEN: I don't. And actually I've been there since '83... [LB544]

SENATOR PANSING BROOKS: Okay. [LB544]

SUSAN PAULSEN: ...but I've just been the clerk since '99. And I don't. I have not...I've never had a judge or an attorney ever...or have I ever been called from the Court Administrator's Office that something has been done wrong in my office. I really don't feel that there's been any inefficiencies that I know of that have been brought to my attention. [LB544]

SENATOR PANSING BROOKS: And do you hear about it in any other of the smaller districts in the state or do you hear...I mean...? [LB544]

SUSAN PAULSEN: No, I don't, and that's why I...you know, this, like I said, this is the fourth time that this issue has come up and I just don't see what's changed. It has always worked and I think it works very well. [LB544]

SENATOR PANSING BROOKS: Okay. Thank you very much. [LB544]

SENATOR EBKE: (Exhibits 1-20, 22-29, 31-51, 56-59, 63-66, and 72) Okay. Are there any other opponents? Okay, I have a whole bunch of letters to read. And so while I do that, if there are any...if there's any neutral testimony, please go ahead and step up. Letters in opposition: Mark English, Thurston County Board of Supervisors; Brown County Board of Commissioners; Travis Hobbs from Brown, the Brown County Clerk; Perkins County Commissioners; George Vinton, Hooker County Attorney; Lorissa Hartman, Thomas County Clerk; Heather Sikyta, Sherman County Attorney; Dakota County Board of Commissioners; Sherman County Board of Commissioners; Michelle Zimmerman, the Sioux County Clerk; Sioux County Board of Commissioners; Rock County Board of Commissioners; Cedar County Board of Commissioners; Pawnee County Board of Commissioners; M. Scott Vander Schaaf, Washington County Attorney; Wheeler County Board of Commissioners; Marcy Sekutera, Sherman County Clerk; Dave Sullivan, Hooker County Clerk; Kathy Thorberg, Boone County Clerk; Mark Eurek; Boone County Board of Commissioners; Otoe County Board of Commissioners; Carl Lorenzen, Washington County Board of Superintendents; Margaret Pollmann, Hitchcock County Clerk; Tracy Reiser, Boyd County Clerk; Royce Gonzales, Nuckolls County Clerk of the District Court; Michele Quick, Burt County Clerk of the District Court; Wanda Heermann, Stanton County Clerk; Rita Long, Perkins County Clerk; Laura Wagner, Cuming County Clerk of the District Court; Gina Roth, Thurston County Clerk of the District Court; Monica Rotherham, Madison County Clerk of the District Court; Linda Nelson, Dodge County Clerk of the District Court; Wendy Dethlefs, Hamilton County Clerk of the District Court; Kathryn Hirschman, Howard County Commissioners; Jacque Stewart, Seward County Clerk of the District Court; Pamela

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Scott, Richardson County Clerk of the District Court; Tina DeVoe, Keith County Clerk of the District Court; Theresa Good, Merrick County Clerk of the District Court; Debra McCarthy, Lincoln County Clerk of the District Court; Amy Hector, Nemaha County Clerk of the District Court; Carol Stouffer, Sheridan County Clerk of the District Court; Candi Nicholas, Pawnee County Clerk of the District Court, ex officio; Janet Dietz, Harlan County Clerk of the District Court, ex officio; Debra Klingenberg, Webster County Clerk; Christee Haney, Grant County Clerk; Steve Hogeland, Franklin County Board of Supervisors; Knox County Board of Supervisors; Darrell Johnson, Cheyenne County Board of Commissioners; Blaine County Board of Commissioners; the Burt County Board; the Jefferson County Clerk; David Wilson, Kimball County Attorney; Sharilyn Steube, York County Clerk; Lori O'Dea, Red Willow County Clerk...or, yeah, Red Willow County; Phyllis Obermeyer, Dakota County Clerk; Marlene Vetick, the Platte County Clerk. And we had one in support: Judy Mutzenberger, the Cuming County Board of Supervisors. [LB544]

SENATOR KRIST: Madam Chair. [LB544]

SENATOR EBKE: Yes. [LB544]

SENATOR KRIST: Is that all 93 counties? [LB544]

SENATOR EBKE: Almost, (laughter) 55 I think. [LB544]

SENATOR KRIST: Could you pass on thank you for not all coming? [LB544]

SENATOR PANSING BROOKS: Yeah. (Laughter) [LB544]

SENATOR EBKE: Neutral testimony. [LB544]

NATHAN LEACH: Madam Chairwoman, members of the committee, my name is Nathan Leach. That's spelled N-a-t-h-a-n L-e-a-c-h. I reside in District 27 but I grew up in Kearney and I graduated from Kearney High School in 2015. I'm here representing myself and am speaking on a neutral capacity. LB544 was an interesting bill, and, unlike the vast majority of the district courts, I didn't feel as if I either supported or opposed the bill. But I did feel that there were a number of statements that were pertinent to procedure that ought to be read into the record as this committee considers the bill and if the bill is to proceed to the floor. There is some statements I would like to make for the record. And one of those statements is a speech made by U.S. Senator George Norris on the opening day of the session in 1937, the first time the Unicameral met. Part of those statements were, and I quote, "You are members of the first

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Legislature of Nebraska to hold your positions without any partisan obligation to any machine, to any boss, or to any alleged political leader. Your constituents do not expect perfection. They know that it is human to err, but they do expect and have the right to expect absolute honesty, ultimate courage, and a reasonable degree of efficiency and wisdom. The people of Nebraska will not condemn you even if they do not agree with your official actions. We realize that honest disagreements on things which are not fundamental is an evidence of courage and independence. We expect an economical and efficient administration and, above all, an honest administration free from any partisan bias, political prejudice, or improper motives." Members of the committee, Madam Chairwoman, over the past two months I believe that this Legislature has demonstrated a degree of partisanship that the people of Nebraska are very...view as unacceptable and because of that I believe it is important to read the words of George Norris. It's important to talk about the traditions of this Legislature and it's important for the record to reflect on the importance of the nonpartisanship that this Legislature has long held as one of its founding principles, in its function, in the way it operates. And so I thank you very sincerely for your time and I hope that these statements for the record will assist the Legislature as it moves forward. Thank you, Madam Chairwoman. [LB544]

SENATOR EBKE: Thank you, Mr. Leach. Any questions? I just note for the record that this is the most diverse committee in the whole Legislature in terms of partisan alignment, so. [LB544]

SENATOR KRIST: And proud of it. [LB544]

SENATOR EBKE: And proud of it. So thank you, Mr. Leach. Any other neutral testimony? Okay, this closes our hearing...oh, Senator Watermeier is still here. He snuck out for a minute and then I looked back. [LB544]

SENATOR WATERMEIER: Well, I missed part. [LB544]

SENATOR EBKE: That's okay. [LB544]

SENATOR WATERMEIER: (Exhibit 72) Excuse me. Senator Watermeier closing here. I stepped out and apologize if I missed part of the opposition. I had to take a call there. But most of the testimony that I heard was from elected clerks and I just want to put on record that the bill was written specifically so that the idea of the ex officios are the only thing that would be mandatory as far as...and that still, that decision, still remains in the county's hands, and you know as far as we're trying as hard as we can to keep that inside the county's hands. The other thing is the training for the clerks, whether they're magistrates or district clerks, is still done by the Supreme Court. They do that today and that cost and that expense and that obligation is borne by the Supreme Court. And I apologize too. There was a county commissioner that showed up late here,

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couldn't quite get here in time to testify and I asked him not to testify. Because he was a proponent of the bill, I asked him not to come up and testify in the neutral capacity. I didn't think that was fair. But I do have his testimony that he brought in so I wanted to have that on the record at least. So I appreciate that and I'll leave you today. [LB544]

SENATOR EBKE: Thank you, Senator Watermeier. Any questions? [LB544]

SENATOR WATERMEIER: Thank you. [LB544]

SENATOR EBKE: Thank you. This closes the hearing on LB544. We will begin with LB492. And it looks like we've got a stand-in for Senator Harr so, Senators, keep that in mind. [LB544 LB492]

JAMISON WYATT: Thank you. [LB492]

SENATOR EBKE: Let's let people kind of... [LB492]

JAMISON WYATT: Sure. [LB492]

SENATOR KRIST: I have lots of questions for this guy. (Inaudible) the bill. [LB492]

JAMISON WYATT: And I'm sure the folks behind me have lots of answers. (Laughter) [LB492]

SENATOR EBKE: Can I get a show of hands on how many people think they might be testifying on this bill, on LB492? Okay. I think we'll go back to five-minute testimony, so it will be...you have an opportunity to testify for up to five minutes, okay? Okay, go ahead. [LB492]

JAMISON WYATT: Good afternoon. Thank you, Chair Ebke and members of the Judiciary Committee. Senator Harr unfortunately was unable to introduce LB492 so I'm standing in for Senator Harr. My name is Jamison Wyatt, J-a-m-i-s-o-n W-y-a-t-t. I'm Senator Harr's legislative aide and again today we're here on LB492, which creates the Self-Service Storage Facilities Act and modernizes lien statutes for the self-service storage industry. Senator Harr has actually carried legislation in the past dealing with the Landlord, Tenant Act. Self-storage facilities currently have to use the Landlord, Tenant Act to resolve disputes with people who are far past due in paying rent for their storage space. Renting an apartment, however, is very different from renting a self-storage unit. And this bill creates its own set of statutes under the Self-Service Storage Facilities Act. For returning Judiciary Committee members, you may remember similar

legislation was introduced last year by Senator Colby Coash. His legislation, LB854, concerns...raised concerns from the Nebraska Bankers Association about protecting and notifying prior lienholders. Supporters of LB492, so this bill, have worked with the Bankers Association over the interim and addressed any concerns with the language found in LB492. In the past few years, over 20 states have passed similar legislation to LB492. Alaska and Nebraska are the only states where there are no state laws establishing a process allowing self-storage facilities to apply liens or conduct auctions if their renters violate their lease agreements. Currently, self-storage facilities rely on contracts with renters and those contracts vary. There are no statutory lien protections for either facilities or their renters. Passing LB492 will provide clarity for self-storage operators as to the process they need to follow, which will benefit both the facilities and their renters. LB492 will help reduce self-storage facilities' costs when more uniform operating methods are employed. In delinquent rent cases, fewer expenses related to the lien notice procedures will result in less cost owed by these renters. LB492 modernizes methods of notice delivery to allow for e-mail, hand delivery, or any verified mail through the U.S. Postal Service. E-mail notifications are typically the method preferred by many people for being contacted and e-mails cut down on the costs while being more effective. The bill does not allow for a self-storage facility to be used for residential purposes and allows the operator, upon reasonable request or an emergency, to enter the leased space for inspection or repair. The operator of a self-storage facility shall have a lien upon an occupant's personal property located in the self-storage facility for delinquent rent, labor, or other charges incurred pursuant to the rental agreement, and for expenses incurred in the preservation, sale, or disposition of the property. If the occupant is in default over 45 days, the operator may enforce the lien by sending notice of default to the occupant and waiting at least another 45 days for the occupant to make payment. If payment is not made by the renter, the operator may proceed with a public sale and sell the occupants' personal property to pay the rent and other charges that are overdue. If a sale is held and the lien is more than satisfied with the proceeds of the sale, the balance must be held for a year for the occupant to claim. If the occupant does not claim the proceeds from the sale after one year, the remaining proceeds shall be considered abandoned property to be reported and paid to the State Treasurer in accordance with the Uniform Disposition of Unclaimed Property Act. For delinquent rent payments for vehicles, watercraft, or trailers in storage, LB492 provides an alternative solution for self-storage operators. If rent remains unpaid for 60 days, the operator has the option to tow the vehicle from the property. Vehicle liens are more complicated than typical self-storage lien circumstances, and providing an option to have the vehicles towed provides a simple solution because towing companies are better prepared to proceed with the vehicle liens. LB492 is designed to give the self-storage operator some clear control over their rented premises, while protecting the renters by requiring notice in an open process to resolve their unpaid bills. The Nebraska Self Storage Owners Association was formed a few years ago and now includes over 40 owners and vendor members, and they will be following me in support of LB492 and I'm sure, again, they'll be happy to answer detailed questions that I'm sure you will have. And with that, I will close. [LB492]

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SENATOR EBKE: Okay. We're going to let you off the hook. Do you have one more? [LB492]

SENATOR KRIST: I just have a question for legal counsel. [LB492]

SENATOR EBKE: Okay. [LB492]

SENATOR KRIST: Is the term "verified mail" a legal definition, "verified mail"? [LB492]

TIM HRUZA: Certified is. I'm getting nodded to, yes, so... [LB492]

SENATOR KRIST: So the answer is coming. [LB492]

TIM HRUZA: ...(inaudible). Yeah, (inaudible). (Laughter) [LB492]

JAMISON WYATT: Thank you. [LB492]

SENATOR EBKE: Okay. First proponent. [LB492]

DAVID CARLOS KASLOW: I'll answer that question. My name is Carlos Kaslow, K-a-s-l-o-w. I'm general counsel for the Self Storage Association and we're really happy to be here because this...there are only two remaining states that do not have a self-storage lien statute, and the Nebraska bill that we have presented, LB492, is in...consistent, pretty much similar to the bills that have been enacted in the 48 other states and the District of Columbia. What we're really trying to do is provide a clear remedy for the self-storage operator. I think there's a lot of tendency right now for people not knowing exactly what to do when they run into this situation. This provides a clear remedy which we believe is both fair and efficient and deals with the needs of both the tenant, the storage operator, and other parties who may have an interest in the property that is in storage. It follows a fairly simple pattern that has been utilized in all states and that is one of notice, both notice to the tenant, notice to the public, and, finally, it results in the orderly sale of the property. One of the things about notice that is...you expressed an interest in, Senator Krist, is that "verified mail." It is a defined term in the statute and what it covers is a method of mailing offered by the USPS that provides evidence of mailing. There are currently really effectively two methods that you can use now. One is certified mail and the other would be first-class mail with certificate of mailing. The certificate of mailing is a newer method that other states have adopted and it is good for two reasons. One, it's somewhat cheaper, but perhaps more importantly is that the number of return notices falls considerably when you're not sending out a notice by certified mail which, by its nature, sometimes tends to be intimidating. Most people know that they are not going to get good news by certified mail. And in states where I come

from, California and others which have added the first-class mail with certificate of mailing, that return number has fallen considerably and that's one of the reasons why we like...why owners like it. The notice gets through. Because if you can't open that dialogue about the debt, there's no way it can get resolved. Because most owners, what they really want to do is avoid sale. Sales are not the business they're in. They are disruptive of the facility. What they want to do is have a method to resolve the problem and the lien statute gives them that methodology to resolve the problem and it provides a very formal process of doing so. The tenant goes into delinquency, some time goes by, the first notice goes out. They have that notice, that's a statutory notice, gives them ten days to make payment. If they don't do so, the storage operator doesn't stop. They continue with their collection activity. Understand, this is a process. It take 45 days from the mailing of that statutory notice, which probably will occur around 10-15-20 days of delinquency, because they send out late letters and other things first. So we're probably into the third...late in the second month but usually into the third month before the sale will actually take place. And that is the pattern that has existed since, basically in this industry, early on in the 1980s. And there are bills that are actually in process in a number of other states and that is because we are updating those. Those updates already exist in the Nebraska legislation. And I thank you. Any questions? [LB492]

SENATOR EBKE: Any questions? Senator Krist. [LB492]

SENATOR KRIST: For the legislative record, we had a conversation off-line but I'd like you to highlight for us. If someone is deployed, extended duty, active duty, or even some of our reservists, my concern when Senator Coash's bill came before us what that they may be gone for six months at a time and sometimes it's a little difficult to effectually reach them. Can you tell us how that has changed? [LB492]

DAVID CARLOS KASLOW: Yeah. Actually, that's a concern of storage operators, too, because the military does make up a significant percentage of our tenants with it. And there is in place a Servicemembers Civil Relief Act, which is a federal statute. And under the provisions of that statute, there is a requirement that any lien to be enforced against somebody in the military within 90 days of discharge you must go to court. The statute specifically provides that such suit would be filed in state court and that is specifically in the Servicemembers Civil Relief Act and applies to all states now. And it recognizes, I think, if you're looking at a deployed service member under the way the statute is written, because it gives discretion to the judge in granting an order of foreclosure, what it tends to do is take into consideration deployment of the military person before granting such an order. So if they are out of country or out of area, say, there would be less likelihood they would grant the order. If they are in, you know, in the area on a local assignment, they might be more willing to grant such an order. [LB492]

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SENATOR KRIST: So just a follow-up then. It is a federal law. [LB492]

DAVID CARLOS KASLOW: Yes. [LB492]

SENATOR KRIST: How do you make your membership across the 50 states understand that it's a requirement? [LB492]

DAVID CARLOS KASLOW: Well, I personally do a lot of seminars and it's one of the topics. It is a topic. I will tell you that the operators in this business who tend to be...have facilities in around bases are very much aware of the statute. I, you know, I think it's actually a greater danger for probably for a storage operator who has no discernible military clientele. Because the ones that are near a base, their primary focus is to try to resolve things with the local command and they have been doing that for years. [LB492]

SENATOR KRIST: Right. And again, my concern last year--and I appreciate you just putting this on the record--was that we have many small locations across Nebraska that are armories or units that I'm sure that your local operators are aware that those units are there but not always if they're deployed for extended periods of time. So that communication (inaudible). [LB492]

DAVID CARLOS KASLOW: Yeah. Well, yeah, one recommendation that we have, at least in terms of rental agreements, is to ask the...basically have in the rental agreement a very simple question: Are you or your spouse--because it both applies to the person and the spouse--in, you know, on active duty in the military? And by having that question and having a yes or no answer, at least going into the transaction, the operator knows where they stand. [LB492]

SENATOR KRIST: Thank you. Thank you, Chair. [LB492]

SENATOR EBKE: Another question? Senator Morfeld. [LB492]

SENATOR MORFELD: Thank you for coming today and one follow-up question. You know, in terms of figuring out whether or not one of your customers is a service member, how do you? Is that something that's on the application or...? [LB492]

DAVID CARLOS KASLOW: Yeah, that's a good question and it's one that comes up. [LB492]

SENATOR MORFELD: Okay. [LB492]

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DAVID CARLOS KASLOW: And there is a methodology for doing that which we have recommended. There is a Defense Department Manpower database. There is a Web-based database where if you have a person's name, their date of birth, I think it's their date of birth or their Social Security number... [LB492]

SENATOR MORFELD: Okay. [LB492]

DAVID CARLOS KASLOW: ...you can definitively determine their military status. There are also ways that you can request through the service. But the one thing that they do need and that I would say most storage operators ask is they do ask the question at the time of rental: Are you in service? Many of the storage operators, again, especially around military basis, have in place military discounts which might be 50 or 20 percent off on the rate. [LB492]

SENATOR MORFELD: So they'll know right away. [LB492]

DAVID CARLOS KASLOW: So it's identified in that way also. [LB492]

SENATOR MORFELD: Okay. [LB492]

DAVID CARLOS KASLOW: But your concern of this is one that I think is very front and center for the industry and especially those near the bases because they are their customers. [LB492]

SENATOR MORFELD: Yeah. [LB492]

DAVID CARLOS KASLOW: The military people are their customers. [LB492]

SENATOR MORFELD: Well, I'd imagine there's some kind of relief if they mistakenly (inaudible). [LB492]

DAVID CARLOS KASLOW: Yeah, they can, yeah, bring a civil suit. [LB492]

SENATOR MORFELD: Yeah, (inaudible) there's a built-in (inaudible). [LB492]

DAVID CARLOS KASLOW: And the penalties are severe. [LB492]

SENATOR MORFELD: Okay. Thank you. [LB492]

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SENATOR EBKE: Any other questions? Okay. Thank you for being here. [LB492]

DAVID CARLOS KASLOW: Well, thank you. I really appreciate it. [LB492]

SENATOR EBKE: Next proponent. [LB492]

WILLIAM LANGE: Senator Ebke, members of the Judiciary Committee, my name is William Lange, W-i-l-l-i-a-m L-a-n-g-e. I am president of the NSSOA, also known as Nebraska Self Storage Owners Association. I'm going to repeat a little bit what has been said. Nebraska again is one of two states that doesn't have a self-storage lien law. We really are in need of it. What is happening without a lien law, there's a lot of...I wouldn't say rogue but a lot of contracts that are out there, lease agreements that are based on other states' laws. They're based on things that really shouldn't be. And the method of removing people that haven't paid is, although well-intended, not always come to the judicial process, but some of them might. I've heard of one. He was a good intention man but they give the stuff to the church. If we have some lien laws we can write our leases around that, not only protecting the owners but protecting the renters also. So we are asking you to provide some structure around the laws that are based in the other states. And we would really appreciate if you could do that for us. Any questions? [LB492]

SENATOR EBKE: Any questions for Mr. Lange? Guess not. Thank you for being here. Other proponents? [LB492]

DAVE PALADINO: My name is Dave Paladino, D-a-v-e P-a-l-a-d-i-n-o. I'm vice president of the Nebraska Commercial Property Owners Association as well as I own Dino's Storage. I have 11 facilities in Nebraska, hopefully many more, and I don't know if I can really say much more than Carlos said. Carlos is a little bit of a rock star in our industry, people don't really know that, but he travels all over the country. He's kind of the Brad Pitt in the self-storage world. The self-storage world is, you know, not very exciting so...but Carlos pretty much said everything I felt I should say, other than the fact that, you know, we want, as self-storage owners, we want to do everything we can to avoid a sale. That's the last thing we want to do. And this statute just follows in line with the other 48 states. Fortunately, Nebraska hasn't really even needed something, but this business is really growing and we need a statute that really protects the tenants and the owners as well. [LB492]

SENATOR EBKE: Questions? Senator Baker. [LB492]

SENATOR BAKER: Thank you. So without this, what do you do now? Do you have something in your rental agreement that says what happens if... [LB492]

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DAVE PALADINO: Well, you know, that's a little bit of the problem. It's a little bit of a rogue nation that all different owners follow different statutes. We follow the Disposition of Personal Property Act, which is full of holes, and that's why we really try really everything we can not to hold a sale. [LB492]

SENATOR BAKER: Have you had to go to sales? [LB492]

DAVE PALADINO: I have had to go to sales in the past. [LB492]

SENATOR BAKER: Okay. [LB492]

DAVID PALADINO: And we follow the Disposition of Personal Property Act to do that, but it's not very well written for what we do. [LB492]

SENATOR EBKE: Any other questions? Thank you for being here. [LB492]

DAVID PALADINO: Thank you. [LB492]

SENATOR EBKE: (Exhibit 1) Any other proponents? Do we have any opponents? Anyone speaking in the neutral capacity? Are you going to close? He's going to waive. Do we have any letters? We do have one letter in the neutral capacity from Rhonda Lahm of the Department of Motor Vehicles. This closes the hearing on LB492 and I'm going to trade places. [LB492]

SENATOR PANSING BROOKS: Senator Ebke,... [LB168]

SENATOR EBKE: Thank you. [LB168]

SENATOR PANSING BROOKS: ...LB168. [LB168]

SENATOR EBKE: (Exhibit 4) Thank you, Senator Pansing Brooks and fellow members of the Judiciary Committee. For the record, my name is Laura Ebke, L-a-u-r-a E-b-k-e. I represent Legislative District 32. LB168 is an effort to assist in the resolution of claims attached to third-party liability. Up-front I want to clarify that this bill does not mandate the use of this process but, rather, provides for the option. We're talking about an economy of judicial proceedings, allowing for subrogation in certain cases. There is a statute for resolution of some similar conflicts, Section 48-118.04, which is limited to workers' compensation lien disputes. This statute allows for judicial determination in equitable distribution of the contested funds. LB168

adopts the same language and applies it to physician liens and subrogation interest in third-party injury cases. Before I go on, let me just make it clear there will be people coming after me that can explain this all much, much better. But determining who pays, who needs to pay for what, and to what degree is a complicated process. From the perspective of judicial economy, it makes sense to have all the interested parties sit down and try to hash this out before we go to the expense and trouble of picking 12 people off the street who don't know anything about these issues or the case and ask them to try and sort it all out. This bill provides a process that says if the plaintiff and defendant can come to some resolution on issues of liability and damages, either on their own or through the assistance of mediation, but need the lienholder's or subrogation interest to negotiate their claims, this process, in essence, forces them to sit at the table and engage. If the matter cannot be amicably resolved then it can be submitted to the appropriate court for resolution of the claims. This judicial process would provide a more economical and efficient manner for the interested parties to make their case to a judge. This could take place once an underlying lawsuit has been filed or prior to that type of action being commenced. I believe this would provide a better use of the court's time, judicial resources, and tax dollars. This form of resolution is particularly appropriate for Medicaid interests. The Department of Health and Human Services is tasked with the responsibility of recouping Medicaid dollars for medical expenses caused by third-party liability. The department has an amendment to LB168 which I accept and ask the committee to adopt as well which essentially includes them in the process. I believe LB168 will assist in recoupment of Medicaid funds in a fair and equitable manner to all interested parties. Without this legislation, HHS will continue to have difficulty in fulfilling their obligation to Medicaid. Conflict with workers' compensation liens rarely are litigated because they are covered by Section 48-118.04. LB168 provides the same mechanism to resolve these disputes. I believe LB168 could go a long way towards removing these issues from the purview of our judicial system as a means to require all interested parties to sit down and resolve these disputes between themselves or through court-ordered mediation if not otherwise resolved through judicial determination. It's a short bill and I don't claim to be a subrogation expert, so there's a few others that will follow me who can explain what the intent of this is much better. I carry this on behalf of DHHS and Abboud Law Firm, as well as others who have worked with me on the amendment. They'll be able to speak in more detail and answer any questions that you might have on the amendment or the bill itself. And I will try to answer any questions, if there are any. [LB168]

SENATOR PANSING BROOKS: Any questions of Senator Ebke? None. Okay, wonderful. Thank you. [LB168]

SENATOR EBKE: Thanks. [LB168]

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SENATOR PANSING BROOKS: First proponent. Do we have a proponent? And if people are ready, if you could come forward maybe so we can move through this, that would be great. Thank you. Welcome. [LB168]

MICHAEL KINNEY: Thank you very much. Good afternoon. My name is Mike Kinney, K-i-n-n-e-y. I'm an attorney in Omaha and I practice at this time exclusively mediation. I try to limit myself to three mediations a week. There is another mediator in Omaha who does twice to three times as many as that a week, and I recognize that three times three is nine but that's what he does. My point is that there are a lot of mediations going on. There are several mediators in Omaha. There are several mediators in Lincoln that do just civil litigation mediation. And my point to that is very simply I'm very comfortable telling you I believe that there is a mediation going on every day during the week in Nebraska. It is happening all the time. The purpose of my testimony is to express from the perspective of a mediator the concept that is presented to you in LB168 is a good one. It is good for the citizenry, whether the citizen is a plaintiff or a defendant in the lawsuit or is a taxpayer in the state of Nebraska. It is good for the courts because every case that is settled is, therefore, not tried. And when a case is not tried, that frees up the time of the judge, the bailiff, the court, the clerk, the court reporter, and the jurors. We no longer have to pay whatever it is, \$20 a person a day for a trial. It comes without cost. It's an approach that allows mediations, in my opinion, to be even more successful than they are. And mediations generally are very successful. Once they leave my hands or at the point they leave my hands, 92 percent of them--in my last, whether it's 200 or 300, the number is the same--are successful. What can hold them up after they leave the mediation, however, is if there is a subrogation interest. And that's what this bill is designed to address. I'd like to explain real quickly just the process that we follow with a mediation. Some may confuse it with arbitration, which is totally different. Arbitration is a presentation of evidence to a third party, not a judge, and that person makes a decision and there's a winner and there's a loser. Mediation is not that process. Mediation is where the parties to a lawsuit or an about-to-become lawsuit agree to submit their positions, their evidence to a mediator who then tries to work with both sides and get them to come together on a number. And if I start a mediation, I will turn to the plaintiffs and I will say: If this mediation is going to be successful, it will be successful because you will, at the end of the day, very likely agree to take less money than you think you're going to take right now. And I turn to the defendant and I say the same thing: You're going to pay more money than you think you're going to pay right now if this mediation is going to be successful. And then it's a process. We go back and forth between the two rooms. I try to let each party hear what the other side is telling me, what the jury is going to hear, and when I leave that room they'll talk to their lawyer and they'll say things like: Is that really true, can they tell that to the jury? What do you think the jury will do? And throughout all of this process people start coming together and by the end of the morning or the end of the day they both agree on a number. What's missing from that process is the subrogation interest, is the subrogator, is the lienholder: the chiropractor, the doctor, the hospital, the insurance company who has med pay coming, the healthcare provider, the insurer

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who has money coming. They're not part of that process. And they get involved in one of two ways, either at the end the plaintiff will go to them and say: You've got a claim for \$80,000; I had to settle for \$100,000; can you reduce your claim to \$20,000? And the person who has not been part of this process, has not experienced the give and the take, the compromise, will oftentimes say, no, I want my 80 (thousand dollars) or I'll give you 10 (thousand dollars) but I want my 70 (thousand dollars). This procedure that's presented to you allows the parties to go to a judge and let the judge decide what's fair. We have that procedure already, and Judge Brown is going to tell you about how it works in the workers' compensation arena. It's not available, in my opinion, to the litigants unless they just want to file a lawsuit and hope that the judge doesn't say, what's the basis of this lawsuit? Tell me how you can...what you have to allow you to file this. I'll give you just three quick examples of where I think it would be helpful. One was an instance where we had kind of a trainee who had no clue what was going on and wouldn't compromise a dime. The judge would have educated this person real quickly on what needed to be done and make the decision. Got a second situation where a hospital refused to submit the bill to Medicare because they could smell a lawsuit. They knew a lawsuit was coming. Why would they accept Medicare, which was going to reduce the bills from \$80,000 down to maybe \$30,000? Let the lawsuit be filed. And they did. And then when it was all over, they said, we want our \$80,000. They would have only been entitled to \$30,000 if Medicare had been involved, and the patient didn't even know Medicare wasn't involved. Lastly, I've got another mediation that's been out for six weeks now. It was all agreed to but they can't get the lienholder to now agree to reduce enough to make it worth the plaintiff's while to go through with the settlement. And there was a clause in there that if they can't get it worked out with the lienholder they can scrap the deal. So I think it's a great concept. It has worked in the workers' compensation arena and I would urge your consideration to allow it to work in the civil litigation area. Thank you very much. If you have any questions, I certainly will try. [LB168]

SENATOR PANSING BROOKS: Thank you, Mr. Kinney. [LB168]

MICHAEL KINNEY: You're welcome. [LB168]

SENATOR PANSING BROOKS: Any questions? I have one. Oh, go ahead, Senator Baker. [LB168]

SENATOR BAKER: Go ahead. [LB168]

SENATOR PANSING BROOKS: Please, go ahead. [LB168]

SENATOR BAKER: After you. [LB168]

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SENATOR PANSING BROOKS: (Exhibit 1) I just have a question. This is part of the problem with the way testimony comes up is we hear proponents and then we hear opponents and then we might have a question that we might have asked the opponent. One of the letters that we received talks about that, and this is from the Nebraska Defense Counsel Association. I was just reading through so I could understand a little bit about both sides. They said that...they say, "the second sentence of LB168 would allow a judge to decide whether or not a settlement offer to a lienholder or to anyone claiming a subrogation interest is 'fair and equitable.'" And it goes on to say that the judge would be deciding this and allowed to enter a judgment regarding a controversy, even when no underlying lawsuit has been filed. And so we have a situation where liability for an accident could be decided by a judge who is not presiding over the underlying lawsuit or even deciding liability when the underlying lawsuit may not yet be on file. So I just thought, while you're here, that you could speak to that. [LB168]

MICHAEL KINNEY: The letter, the author is correct that it would include situations where a lawsuit has not yet been filed. There's nothing to prevent...you and I in an automobile accident. You know that I'm going to sue you. We can go mediate it before I file the lawsuit and see if we can get it settled. It doesn't...I'm confused by the comment that it allows the judge to make a decision in a case that hasn't been filed because that is technically true but there never will be a case that's filed because the parties have worked out their agreement. They've worked out their settlement and you don't have a lawsuit on file if it's been settled prior to the filing of the lawsuit, which would be prompted by the running of the statute of limitations. So... [LB168]

SENATOR PANSING BROOKS: I understand how mediation works. I'm just trying to decide if this is...anyway, maybe somebody is going to speak about that. I thought maybe I'd give you a shot to respond to that. So maybe somebody else will speak (inaudible). [LB168]

MICHAEL KINNEY: I'm sorry if I'm missing the question. I think the point of the letter is it allows a judge to make a decision in a case where a lawsuit hasn't yet been filed. [LB168]

SENATOR PANSING BROOKS: Yes, and where evidence probably hasn't been reviewed. [LB168]

MICHAEL KINNEY: And that is all true. But it's totally unnecessary. It's irrelevant because there will never be a lawsuit filed in that instance because the parties have worked out their dispute. So it's the same as if the jury came in and reached a verdict. The two parties have said, we think the case is worth \$10,000 and all that the judge is deciding at that point is how much should the subrogation holder receive back out of the \$10,000 proceeds. [LB168]

SENATOR PANSING BROOKS: Okay. I guess I'm interested whether or not in all mediation cases does the judge decide whether it's fair and equitable without seeing the evidence? I'm just interested. [LB168]

MICHAEL KINNEY: Yeah. A judge never decides anything in a mediation unless the... [LB168]

SENATOR PANSING BROOKS: I know, but if there's some problem or somebody questions the decision, what happens? We're allowing the judge here to decide whether or not it's fair and equitable without presentation of evidence. [LB168]

MICHAEL KINNEY: Well, there will be presentation of evidence... [LB168]

SENATOR PANSING BROOKS: Right. [LB168]

MICHAEL KINNEY: ...at the hearing that the judge makes the decision from. The presentation of evidence, there's...there will be presentation of evidence at the hearing that the judge attends to decide the limited question of: What are we going to do with the subrogor's interest? What are we going to do with the lienholder's interest? The judge will take whatever evidence they want to offer on how much the lien is, how serious the injuries were. One thing that could happen is if a person is hit by someone who has a \$100,000 coverage, that's all that's available to settle this lawsuit. That person also has \$100,000 in medical bills and there's a lien claim of \$100,000. The question for the judge is how much goes to the injured party and how much goes to the lienholder. There is case law that supports that if an individual is not made whole, the lienholder is not entitled to receive any of its interest, that the injured individual would keep it all. The judge would make that decision: Was the party made whole? And if so, then how much goes to the lienholder and how much goes to the individual who was injured? But there would be evidence on that. And so to say that there's...the decision would be made without any evidence would be incorrect, if that's what was intended. [LB168]

SENATOR PANSING BROOKS: I guess I thought that usually in these circumstances they determine if the process was fair but don't rule on, necessarily, the equity of the underlying legal issues. Is that incorrect, because we're putting into statute that the judge can rule on the underlying fair and equitable determination of what happened to the parties? [LB168]

MICHAEL KINNEY: The judge is not going to...let's go back to our example. You ran a red light and hit me. The judge isn't going to make a decision on who's liable, who's responsible, whether it was your fault,... [LB168]

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SENATOR PANSING BROOKS: Yes. [LB168]

MICHAEL KINNEY: ...whether I should have seen you coming. The judge doesn't make a decision on that. What the judge determines is whether what's being offered to the subrogator, to the lienholder, is fair and is equitable. Only the amount of the lien being paid back is what is decided by the judge under LB168, not how much my injury is worth, how much you owe me from our example. [LB168]

SENATOR PANSING BROOKS: Okay. Thank you so much. [LB168]

MICHAEL KINNEY: You're welcome. Thank you. [LB168]

SENATOR PANSING BROOKS: Any other questions? Senator Baker, you had a question. [LB168]

SENATOR BAKER: Yeah, maybe you can help clear this up better for me. So I take it we're talking about, something happens with an automobile, so we're talking about automobile liability policies, right? [LB168]

MICHAEL KINNEY: Can be. (Inaudible) [LB168]

SENATOR BAKER: Is it? Can it be something else? [LB168]

MICHAEL KINNEY: Sure. It can be a medical malpractice. It can be a slip and fall. [LB168]

SENATOR BAKER: Okay. So I'm just reading this description here: "change provisions relating to rights of subrogation of medical payments with respect to automobile liability policies." So you're telling me that this bill includes more than that. [LB168]

MICHAEL KINNEY: My understanding is what you're reading from is subparagraph (1) and that subparagraph (2) would apply to any situation where there is a healthcare provider or healthcare services or from an injured person. And I don't think the intention is to limit it simply (inaudible)... [LB168]

SENATOR BAKER: Okay. I'm just reading this brief description. [LB168]

MICHAEL KINNEY: ...but I didn't write it. [LB168]

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SENATOR BAKER: And, well, supposing we're going to talk about an automobile liability situation. Are you talking about punitive damages above and beyond actual medical costs? [LB168]

MICHAEL KINNEY: Punitive damages as a general are not allowed in Nebraska and we... [LB168]

SENATOR BAKER: Okay. So there's an accident and I'm not at fault so I'm due some damages to cover my medical bills. All right. So is the insurance company going to be a player in this too? I mean have...say I've got Medicare and so are they going to get involved and say, all right, we want you to pay so we don't have to pay? Is the insurance company a frequent player at the table on these things? [LB168]

MICHAEL KINNEY: It depends on which insurance company you're talking about. In the situation if you and I are in an automobile accident and you're not at fault, I hit you, you're a pedestrian crossing in the crosswalk and I hit you, I have an insurance company to cover my liability. You have an insurance company on your car that will also provide you medical pay to help pay your medical bills. Your insurance company will not participate in the mediation. I've done 375 of them. I've never had that insurance company come to the table. My insurance company will come because they're going to pay for the damages I caused to you and they are the ones who are part of that process. What LB168 is designed to cover is your insurance company, who paid some medical bills for you and now they're saying: We're entitled, now that you've recovered, Senator Baker, you got to pay us back what we paid you under that policy that you paid premiums for. And what this is designed to do is to allow you and your insurance company to try to work out an understanding as to how much you have to pay back and... [LB168]

SENATOR BAKER: So although I'm covered with insurance, that if the insurance company knows I'm entitled to get something from you, they want part of that. They're not just going to come to me and say, you can't pocket that other money. Is that what it's about? [LB168]

MICHAEL KINNEY: That's what it's about. [LB168]

SENATOR BAKER: Okay. [LB168]

MICHAEL KINNEY: It's your med pay insurer who's saying now that you've recovered, we want our money back. [LB168]

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SENATOR BAKER: So this is kind of an insurance company bill. [LB168]

MICHAEL KINNEY: Well, actually I would view it as more of the...for the protection of both the insurance company and the litigant and the injured person--you, and probably primarily for you. Because if you're hit and you've got \$50,000 in medical bills and I've only got \$50,000 in coverage and you were laid up for two months and you have a limp now, you're walking around and it hurts every time you walk, you're entitled to pain and suffering for that. All you're going to get from me, unless I'm independently wealthy, all you're going to get from me is \$50,000. That's my insurance coverage. [LB168]

SENATOR BAKER: I can find out where you live. [LB168]

MICHAEL KINNEY: (Laugh) You could. You could. But there's going to be a lot of other people who found out where I live first probably. And so you've got \$50,000 in your pocket. Now your insurance company says to you: And that's ours; give it to us. [LB168]

SENATOR BAKER: Yeah. Yeah. [LB168]

MICHAEL KINNEY: And what this bill will allow is that you two work that out. You say to them: No, come on, I get 90 percent of it, you get 10. And if you cannot agree to that then a judge will decide how much they're going to take out of your settlement. [LB168]

SENATOR BAKER: Okay. [LB168]

MICHAEL KINNEY: That's the gist of LB168 as I understand. [LB168]

SENATOR BAKER: Well, thank you for that explanation. [LB168]

MICHAEL KINNEY: Certainly. [LB168]

SENATOR PANSING BROOKS: Any further questions? Thank you, Mr. Kinney. [LB168]

MICHAEL KINNEY: You're welcome. Thank you very much. [LB168]

SENATOR PANSING BROOKS: Further proponents. Welcome. [LB168]

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RONALD BROWN: Members of the committee, my name is Ronald Brown, R-o-n-a-l-d B-r-o-w-n. I'm a lawyer from Omaha. I've been an attorney for about 40 years and 18.5 of those years I was a judge on the Workers' Compensation Court. This bill is modeled after a procedure that exists in the Workers' Compensation Act for the resolution of subrogation of claims. From my perspective, when I was on...a judge of the court, and I think all judges of the courts generally would agree, that to the extent you can do something here to enhance the mediation process and resolve claims without litigation, the system is benefited by that. If, from my perspective as a lawyer who represents primarily injured parties, Mike Kinney, who testified here ahead of me, the law firm that he was associated with for all of his career did primarily defense work, but I think both of us agree that this legislative bill is beneficial for both plaintiffs and defendants and gives parties a mechanism to go to court and get a final resolution of a claim for a lien if the parties are not able to agree. As Mike explained in the mediation process, if the parties are able to come to an agreement and thereafter you're trying to get a medical lienholder or a...the example that you asked about, Senator Baker. You've got medical payment coverage on your automobile liability policy and a claim has been settled for a policy limit, for example, of \$50,000. But you've got \$50,000 that was paid by the med pay provision of your automobile policy and your insurance company wants it all back. And you can't agree with them on what they should be entitled to. This allows you to go into...it's going to be in district court most of the time and have the judge decide what should be a fair and equitable division of the pie. So as I said, we've done this in Workers' Compensation Court for years. I have litigated these subrogation lien claims in district court myself. I think that this is, in the context of a work comp insurance company wanting reimbursement from the proceeds of a claim for negligence, but this is something that I think that is...should be available to litigants in all civil claims. I'd be happy to answer any questions that... [LB168]

SENATOR PANSING BROOKS: Does anybody have questions? Senator Chambers. [LB168]

SENATOR CHAMBERS: We had gotten a letter from an attorney who said that the workers' comp model doesn't move over smoothly into the tort claims area. Is that true or false? [LB168]

RONALD BROWN: I would not agree with that. [LB168]

SENATOR CHAMBERS: Okay. That's all I have to ask you. [LB168]

SENATOR PANSING BROOKS: Any other questions? Thank you for coming. [LB168]

RONALD BROWN: Thank you. [LB168]

SENATOR PANSING BROOKS: Further proponents. Welcome. [LB168]

GREG ABBOUD: (Exhibit 5) Hi. Senator Pansing Brooks, members of the committee, my name is Greg Abboud, G-r-e-g A-b-b-o-u-d. I'm here I guess representing myself and our firm in regards to LB168 that I assisted in putting together with Senator Ebke's office. And I appreciate the opportunity to come before you today in support of LB168. I believe this is a much needed simple adjustment to our current statutory structure for liens and subrogation interests. The problem has become particularly acute for Medicaid reimbursement. I want to kind of focus on that a little bit. Generally, we've been guided by the holdings of the U.S. Supreme Court setting forth formulas for reimbursement along the lines and criteria that are set out in LB168, more equitable type distributions. Subsequent congressional action has derailed those formulas so states have enacted some specific formulas for division of the judgment or settlement in a percentage format. Again, the U.S. Supreme Court was called upon to review that format and my interpretation is that the court looked at it and said that format might be appropriate in some cases but things need to be evaluated more on an individual basis. Subsequent to that case, Congress in the past few years has stepped in and asserted that the government owns any third-party claim if you're using Medicaid to cover the bills from these cases, which has really left us without a formula for distribution. So as is often the case, we come to you to create some order from this uncertainty. I believe the criteria in LB168 and the structure it provides is a workable solution. It essentially puts in place an equitable resolution of these matters. It borrows from that similar statute that we've talked about that has been tested over time as a workable solution for these problems. I believe it eliminates a lot of the uncertainty and doubt because courts have for years availed themselves of statute Section 48-118.04 to equitably resolve these types of disputes. As I've said, LB168 simply extends these provisions to other lien and subrogation interests for equitable resolution of these third-party liability cases. I appreciate that Health and Human Services have provided the proposed amendment with the necessary language to make this workable for them. I believe that the language of LB168 provides the courts with the flexibility they need to assist in the resolution of these cases, but I believe more significantly it provides the interested parties with the tools they need to work these matters out between themselves, thereby reducing court time and judicial resources. The parties in these cases know their case better than anyone and they're in the best position to amicably resolve it, but they need everyone to be at the table. LB168 gives everyone a seat. So I appreciate your attention to this bill and would urge your support. If you have any questions, I'm happy to answer them. Senator Chambers. [LB168]

SENATOR CHAMBERS: If all of this that we're talking about is voluntary on the part of both sides, this provision that it must be equitable and fair is what you're objecting to? The court saying that...the court being able to say whether that, that you agreed to, is equitable and fair is what you want to get away from. Is that correct? [LB168]

GREG ABBOUD: I think it's the opposite, Senator. [LB168]

SENATOR CHAMBERS: Say it again. [LB168]

GREG ABBOUD: I think it's the opposite. [LB168]

SENATOR CHAMBERS: Okay, tell me then what's going on. [LB168]

GREG ABBOUD: What...the way this works is that, as a general rule, not always, a plaintiff's attorney and a defense attorney can pretty much figure out what a case is worth looking at the different interests involved and we can usually come to a number that we think a jury would probably arrive at and, therefore, save our clients the time, expense, and costs of litigation. But unfortunately, you can't always get the ancillary interests involved in this--the health insurance company, maybe a medical provider--to understand the dynamic of what happens in the court and what a jury would do with the case and, therefore, potentially ask them to compromise what they're entitled to out of the proceeds. So if the plaintiff and the defendant agree generally what is fair and equitable, if the case has already been filed and it's in litigation and we've done discovery and those types of things, they can go to the judge and say, look, we think this is a fair resolution of the case. We've reached a compromise on this but we also think that in order for this to resolve, we need compromise from the parties...the ancillary parties, the lienholders, the subrogation interests to compromise their interest. We want them brought in, have a hearing on this, let them explain to you why they think they should get their full interest in this or why they shouldn't have to compromise, and let you decide. So the judge would look at this fair and equitable criteria to decide how to divide up the pie. Does that makes sense? [LB168]

SENATOR CHAMBERS: So far. [LB168]

GREG ABBOUD: Okay. So if, for example, the parties go through a mediation and no lawsuit has been filed and they get to a hang-up, so to speak, where maybe they can agree what the jury verdict probably would be on the case but it's just not going to work numberwise so that the plaintiff would get an adequate compensation, maybe because there's a preexisting condition involved in the injury. Maybe it's a situation where that person has had back surgery before and they have a subsequent back surgery. Maybe it's in the same place. And the defense attorney is saying, look, we might lose, we might win, but we think we've got a pretty good claim that some of these injuries just aren't related to the car accident. But the health insurance company says, no, we think they are and we expect to get everything we paid out, out of this resolution, this settlement. In a situation like that, they could file a motion with the court and let the judge look at this in terms of, okay, we've agreed on a number what we think this case is worth when we weigh everything, but the health insurance company doesn't see eye to eye with us on this. And

so they would have an opportunity to explain to the judge why they think that there is no preexisting condition, so to speak, and why they should get the full amount of their medical bills that they pay. And the judge could decide that issue and resolve the case without having to go to court and the parties, the litigants, the plaintiff and the defendant, would generally be satisfied with this. [LB168]

SENATOR CHAMBERS: But suppose the judge decides something other than what the two parties and their representatives have decided? Isn't that what the problem is, that the court may say even though you two decided this way, this I'm going to say person over here, this interest over here is entitled to try to get back everything they paid. And you don't want that to be that way. You want them to be bound also by what these two over here agreed, if I understand what this bill is about. [LB168]

GREG ABBOUD: Well, and that's a good point. [LB168]

SENATOR CHAMBERS: Is that what the bill is about, to say that if these two warring parties agreed then the one over here who had paid out cannot get the full amount paid out because anything that they have paid out has been limited by what the two warring parties agreed to? So by these two coming to an agreement, they also bind this other third party that has paid out. Is that the way it would be working and you don't want it to work like that? If you don't mind the third party, the one that paid out, trying to get everything that it paid out, then I don't see what the purpose of the bill is. You two would be the ones who might be out because let's say that this one that I say is the other party has paid out \$100, total \$100. The two of you come to a total of \$80. [LB168]

GREG ABBOUD: Okay. [LB168]

SENATOR CHAMBERS: Each one...well, there's \$20 difference. You don't want this one that paid out \$100 to get back the full \$100 out of this pot. Is that the way it would be set up, that you don't want it to be set up? [LB168]

GREG ABBOUD: What it would do is it would provide a mechanism where the judge would be advised of here's what we think is a fair settlement number, here are the subrogation interests, here's what they are owed. We think they should take a reduction in this amount because of these factors. The judge could have an evidentiary hearing on that, but the setup is designed to say, here's what we are offering. Here's what we think is fair. If you think that's agreeable then you can order that, but if you don't, we're no further along on this. It's not absolute that way. [LB168]

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SENATOR CHAMBERS: Is that the way it is now? [LB168]

GREG ABBOUD: There is nothing now. [LB168]

SENATOR CHAMBERS: And you want it to be the way you just described it where the judge can... [LB168]

GREG ABBOUD: Right. [LB168]

SENATOR CHAMBERS: ...make that determination. [LB168]

GREG ABBOUD: Correct, like he does with workers' compensation, which is essentially paying the medical bills. So if we change the scenario and we say we have a car accident and instead of health insurance paying the injured parties' bills, workers' comp did because he was on the job, workers' comp insurance is entitled to get that money back, but... [LB168]

SENATOR CHAMBERS: So then there shouldn't be anybody disagreeing with this bill, should there? [LB168]

GREG ABBOUD: I don't...I think it's fair. I think it's a good piece of legislation. I think it works for everybody. I've talked to numerous attorneys and judges about it. I haven't heard a good argument against it. Maybe somebody will come up and give one, but I think it's a good piece of legislation that solves a lot of problems. [LB168]

SENATOR CHAMBERS: I can see why you would and that's not meant to be sarcastic. [LB168]

GREG ABBOUD: No, I appreciate it. [LB168]

SENATOR CHAMBERS: I'm going to see if there...I'm going to see if there are any opponents then and I'll listen to what they say... [LB168]

GREG ABBOUD: Thank you, Senator. [LB168]

SENATOR CHAMBERS: ...to explain what their position is. [LB168]

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GREG ABBOUD: Okay. [LB168]

SENATOR PANSING BROOKS: Okay. Any other questions? Senator Baker. [LB168]

SENATOR BAKER: Thank you. Just one last question: Your last statement says that the parties in these matters know their case better than anyone, in the best position to amicably resolve it; they need everyone at the table. Who is "everyone"? [LB168]

GREG ABBOUD: Well, that's what I'm talking about, the subrogation interest, the lienholders, people that share in the proceeds of the judgment or settlement. [LB168]

SENATOR BAKER: So you have a plaintiff and a defendant. [LB168]

GREG ABBOUD: Correct. [LB168]

SENATOR BAKER: And each one is going to bring a contingent of people with them? [LB168]

GREG ABBOUD: Well, theoretically, we're trying to minimize all that and so it's not so much a contingent as it is obviously the plaintiff's attorney and the defense attorney would be there. If, for example, Blue Cross Blue Shield wanted to have their attorney appear for that, he could appear for that. So my general understanding is, of the law in Nebraska, is a corporation has to have to an attorney present in court. An individual can represent themselves, so. [LB168]

SENATOR BAKER: So who needs to notify? [LB168]

GREG ABBOUD: Well, that would be part of the protocol when they would...all the interested parties would be notified because we want to get this all resolved and we don't want to leave anybody out. [LB168]

SENATOR BAKER: And who does...who does that, the mediator? [LB168]

GREG ABBOUD: Well, it's not always going to be a mediation. It would be incumbent on the plaintiff's attorney and the defense attorney to make sure all the parties are involved. [LB168]

SENATOR BAKER: All right. All right. [LB168]

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GREG ABBOUD: So just so you understand, when a medical lien is filed by a physician, that's filed with the defense insurer, the insurance company for the defendant. And it's incumbent on that insurance company to make sure that that medical lien is fulfilled out of the settlement, and if not, it's on them. So they're going to make sure they're brought in. Otherwise, they're going to have to pay that bill. [LB168]

SENATOR BAKER: Thank you. [LB168]

GREG ABBOUD: Okay. Any other questions? [LB168]

SENATOR PANSING BROOKS: Are there any other questions? I have a question. [LB168]

GREG ABBOUD: Sure. [LB168]

SENATOR PANSING BROOKS: So thank you for coming, Mr. Abboud. I'm confused because this is placed definitely under the automobile liability policy portion of our statutes. But then I heard, I think it was, Mr. Brown talk about that it extends to medical malpractice and other things. I don't understand why it's here in this part of the statutes. [LB168]

GREG ABBOUD: Well, and it's... [LB168]

SENATOR PANSING BROOKS: And does it extend farther then? Are you hoping to have it extend farther than just automobile liability? [LB168]

GREG ABBOUD: That's correct, Senator. And I think the confusion is, as I understand it, on the cover page that it does say auto liability, and I think that's from the Bill Drafters and it was... [LB168]

SENATOR PANSING BROOKS: Well, but that's...if you look at the statute, 44-3,128, it's automobile liability policy and it fits all under that. So it's under automobile liability. [LB168]

GREG ABBOUD: I appreciate what you're saying and I didn't write this by myself (laugh) and so other people that were involved in drafting this legislation wanted it in this section. [LB168]

SENATOR PANSING BROOKS: But if you said that... [LB168]

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GREG ABBOUD: But I agree with you. It probably should have been in a different section. I don't...but I don't think it makes that much difference. [LB168]

SENATOR PANSING BROOKS: So it's like similar to (inaudible) procedure? I mean it seems like if we're extending it to medical malpractice, that's something way different than trying to deal with that area under automobile liability. I don't understand that. [LB168]

GREG ABBOUD: Well, what we're talking about is any situation where, let's say for example, Medicaid has an involvement in medical malpractice cases. They may have paid the bills for a second procedure after the first one didn't go well, and so they're a stakeholder in the outcome of that medical malpractice case. So this provides them with a mechanism to recoup the Medicaid dollars in a venue for the litigants or the parties involved to maybe get it resolved amicably. So it's not limited to auto, although I would probably suggest that that's probably where 90 percent of the use would be. But it would apply to a premises case or a malpractice. [LB168]

SENATOR PANSING BROOKS: So wouldn't that be more broad and it would possibly need to go to the civil tort procedural area or...? I just don't understand why it's been placed there. [LB168]

GREG ABBOUD: Well, I understand that and I know that, you know, like I said, I...you got to find a place for it. It fits there. I know Bill Drafters is involved in deciding where they put these things. [LB168]

SENATOR PANSING BROOKS: Okay. [LB168]

GREG ABBOUD: But from a practical point of view, it really makes no difference to a lawyer where it is, I don't think, as you would know. But it might be more appropriate someplace else, but it wouldn't matter to me where it is. [LB168]

SENATOR PANSING BROOKS: Okay. [LB168]

GREG ABBOUD: Thank you. [LB168]

SENATOR PANSING BROOKS: Thank you, Mr. Abboud. Thank you for coming. [LB168]

GREG ABBOUD: Okay. [LB168]

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SENATOR PANSING BROOKS: Anybody else have another question? Oh, Senator Krist. [LB168]

SENATOR KRIST: In the green copy and in the amendment, which strikes the original section and inserts the white copy amendment, it refers to 44-3,128.01, provision in the automobile liability process as number (1)A (sic). And then in item (2): Except as provided in Section 48-118.04, when a lien has been filed, asserted under Section 52-401 for healthcare service provided to an injured person or filed with an appropriate court. So it appears that this document is opening up several statutes and is offering amendment to those different parts of law. I'm kind of referring this question not necessarily to you but to legal counsel. You don't have to answer it. I just think that the question is a good one but it looks like we're touching different statutes within the law within different sections. So it could very well be the bill drafter that has said this is the place it should go, but they're not always 100 percent accurate. So we need to probably take a look at what section of law is...prevails and then whatever else is touched upon. That fair? [LB168]

GREG ABBOUD: Yeah. Thank you, Senator. [LB168]

SENATOR KRIST: Okay. [LB168]

GREG ABBOUD: Appreciate that. [LB168]

SENATOR PANSING BROOKS: Thank you, Senator Krist. Any other questions for Mr. Abboud? [LB168]

GREG ABBOUD: Thank you. [LB168]

SENATOR PANSING BROOKS: Thank you for coming. Any further proponents? Proponents? Okay, any opponents? [LB168]

ERIC DUNNING: Good afternoon, Chairman Pansing Brooks and members of the Judiciary Committee. My name is Eric Dunning. For the record, that's spelled E-r-i-c D-u-n-n-i-n-g. I am a registered lobbyist appearing today on behalf of Blue Cross and Blue Shield of Nebraska in opposition to LB168, which we're concerned will increase the costs associated with resolving our liens in this process. We share some of the confusion that we've heard from the committee today about the intent and scope of this legislation and I think it's important to note that from our perspective we are resolving these claims without litigation fairly successfully. And we believe that the additional process will just add additional uncertainty to an already fairly functioning

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system and will, unfortunately, increase the amount of process involved with settling these claims. In our current process, we're resolving 75 to 80 percent of our claims without a formal written agreement. We're getting a check directly from the insurer involved. For the remaining 20 to 25 percent of our cases, we typically reach an agreement with...we typically ultimately reach an agreement with the attorney involved. Let's see. We're concerned that as a result of this legislation we can see increased costs associated with this new process and it's important to note that a majority of our liens are less than \$10,000. Only a small percentage of our cases involve situations in which the members received policy limits or has had insufficient funds to satisfy liens. LB168 we think will clog the court systems. At any given time, Blue Cross and Blue Shield of Nebraska is working approximately 2,000 claims total that's going to include both on the fully insured side of the house and (inaudible) cases where the employer is ultimately responsible for the cost. If a significant number of these cases are required to go to court for equitable disbursement, we're concerned that it will...that LB168 will increase administrative burden on the court system. In short, this bill disrupts a system that we believe works fairly well using settled law and settled processes. We think LB168 adds uncertainty, which can only add costs for our members. And thank you very much. [LB168]

SENATOR PANSING BROOKS: Any questions? I think I have a question. I'm just wondering about when you do sit down to talk with a person on the other side, you don't do it through...I mean why do you sit down and do that? Do you try...do you do that in every single case so that there is some sort of agreement to be made ahead of time that wouldn't have to go to court? Is that what the intention is? [LB168]

ERIC DUNNING: Yes. And I think it's important to note that we devote some resources to getting these resolved appropriately and equitably. We have some in-house legal teams or legal work that works on this, and we have an additional five people that try to work through these cases and get through them effectively. [LB168]

SENATOR PANSING BROOKS: And what percentage of the time are the claimants, I guess they're called claimants, what would you call them, the people on the other side, are they represented by counsel? [LB168]

ERIC DUNNING: Honestly, ma'am, I don't think I have an answer to that sitting here today, but I... [LB168]

SENATOR PANSING BROOKS: A fair or greater proportion of the time or...? [LB168]

ERIC DUNNING: The majority, certainly a clear majority, but I'd have to get back to you on that number. [LB168]

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SENATOR PANSING BROOKS: And I guess when I think of Blue Cross Blue Shield, you have a heavier hand than somebody coming in with another attorney and an ability to bargain more easily I think than somebody that...if they were coming under some sort of system where we were trying to sit down and mediate a determination of the end. I'm just interested in how many of the...how much of the time are there mediated claims that you would deal with? [LB168]

ERIC DUNNING: Well, in terms of formal mediation? [LB168]

SENATOR PANSING BROOKS: Yes. [LB168]

ERIC DUNNING: I'd have to get back to you on that. [LB168]

SENATOR PANSING BROOKS: Do you have any sense of it? [LB168]

ERIC DUNNING: No, ma'am, I don't. [LB168]

SENATOR PANSING BROOKS: Okay. Not even...you don't even know if it's more than half or less than half? [LB168]

ERIC DUNNING: No, ma'am, I don't. [LB168]

SENATOR PANSING BROOKS: Okay. Thank you very much. Any other questions? Thank you very much for coming, Mr. Dunning. [LB168]

ERIC DUNNING: Thank you. [LB168]

SENATOR PANSING BROOKS: Okay. Further opponents? Welcome. [LB168]

ANDY HALE: Good afternoon. Thank you, Senator Pansing Brooks and members of the Judiciary Committee. My name is Andy Hale, A-n-d-y H-a-l-e, and I am vice president of advocacy for the Nebraska Hospital Association. The Nebraska Hospital Association is the influential and unified voice for Nebraska hospitals and health systems. Our hospitals employ over 42,000 people and provide care to more than 1,000...or, excuse me, 11,000 patients each day in our state. I would like to thank basically the senator for bringing this bill, but as you'll see I'll be quickly opposed to it. On that note, Senator Pansing Brooks, when we reviewed our bills, we thought this was a little ambiguous and it wasn't on our radar. It was brought to our attention by the lobby and we, indeed, would be opposed to the bill. I want to apologize to Senator Ebke.

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It's my policy and the Hospital Association policy to come in beforehand and let them know that we'll be testifying against this bill, but as I said, it kind of fell on our radar a little late. I'd called her staff this morning and I do apologize for that. But I would echo Mr. Dunning's previous testimony. We believe things are working well now and shouldn't...this law is probably...shouldn't be in place due to a problem that's not there. [LB168]

SENATOR PANSING BROOKS: Any questions? I'm interested in how many...what percentage of the time you mediate any (inaudible) disputes. [LB168]

ANDY HALE: I'd have to get you those numbers as well. [LB168]

SENATOR PANSING BROOKS: Okay. I'd appreciate it. [LB168]

ANDY HALE: Yeah. [LB168]

SENATOR PANSING BROOKS: Thank you very much. Okay. Any other questions? Thank you very much for coming,... [LB168]

ANDY HALE: Thank you, Senator. [LB168]

SENATOR PANSING BROOKS: ...Mr. Hale. Any further opponents? Opponents? What about anybody in the neutral? Okay, Senator Ebke, closing. [LB168]

SENATOR EBKE: I'm not going to say a whole lot here. What I really want to talk about is, you know, what became clear from the testimony. There is a significant amount of confusion, on both sides perhaps, about exactly what the intention of the bill is. It looks like we need to work on some language. We need to look at where...whether it's placed properly in statute. You know, one of the things that in the last week we've gotten a lot of phone calls from people who say, well, what exactly is this doing? And a lot of the questions were coming from attorneys. And so to the extent that it's difficult for others to, you know, to say: well, does it do this? We think; we're concerned. No hard and fast opposition but just a sense that maybe we don't need to do this. I think it's important for us to kind of get that cleaned up and so we'll work on that in the next little while and see if we can clean it up, clear it up, and go from there. [LB168]

SENATOR PANSING BROOKS: (Exhibits 1, 2, and 3) Thank you, Senator Ebke. Just for the record, there are three letters: Renee Eveland from the Nebraska Defense Counsel Association is opposed; Theodore Fraizer from the American Insurance Association and they are opposed; and Ann Parr from the Nebraska Insurance Information Service and they are opposed. So that closes

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the hearing on LB168. And right now we're going to take a quick five-minute break for people, so stretch (inaudible) out. Thank you. [LB168]

BREAK

SENATOR EBKE: Okay. Thank you for all being here. We are going to begin with the hearing on LB204. Senator Hilgers. [LB204]

SENATOR HILGERS: (Exhibit 1) Thank you, Madam Chair, members of the Judiciary Committee. My name is Mike Hilgers, M-i-k-e H-i-l-g-e-r-s. I'm elected to represent District 21, which represents northwest Lincoln and Lancaster County. I'm here to open on LB204, which is a bill that does three things relating to our civil procedure statutes, Chapters 24 and 25 of Nebraska Revised Statutes. Those three things, I'll just sort of go through them in order. The first one relates to the current discretionary procedure by which the Nebraska Supreme Court can hear direct appeals. So currently the Nebraska Supreme Court or in...I'm sorry, in Chapter 24-1106, there is a procedure by which an appellant can appeal a decision and bypass the Nebraska Court of Appeals. Those are generally restricted to important issues and issues of statewide concern. Some of them are listed again already in statute, for instance, if there's a question of first impression, if the case raises a question of law regarding the validity of the statute. So this is a current procedure that is already in Nebraska statutes. It's one that's discretionary. The Nebraska Supreme Court does not have to accept the petition. If the Nebraska Supreme Court does not accept the petition, it goes through the normal appellate route. What LB204 would do, it would add as a sixth factor to consider appeals related to qualified immunity appeals. And so a qualified immunity is generally...it's an immunity of individuals acting in their official capacity and can...is considered at the initial stage of litigation. So typically an appeal of a denial of...so how this typically works procedurally is there's a lawsuit. There's a motion to dismiss, which is the first stage, the Rule 12 motion to dismiss the case under those grounds. Whether, the move, it wins or loses, that is immediately appealed. It's an interlocutory appeal. That appeal can then...can be considered. It would go through the normal process currently. And the reason why you can appeal it early is because it's so important. The whole idea behind qualified immunity is to not allow those who are otherwise immune from suit to have to go through the process of having a suit and then appealing it at the end of the case, which is how a normal appellate process works. So this would allow those appeals to go directly to the Supreme Court, avoid conflicts amongst the appellate courts, and allow for a consistency of law that would come from the ultimate court of jurisdiction--the Nebraska Supreme Court. Again, this is discretionary. It does not change that feature of Chapter 24-1106 but would add it as a factor. The second change in LB204 relates to service of employees who are sued in the individual capacity when that lawsuit relates to action, duties, or it's in connection to the duties they had under working or duties they perform on the state's behalf. So how this currently works is if someone, an individual, say an employee of the Department of Corrections is sued in their official capacity,

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that the Attorney General would represent them. It's in their official capacity. It's a suit against the state. They would be served. The Attorney General would be served. If the individual is sued purely in their individual capacity, so it's a breach of contract case or divorce case, the Attorney General does not get sued or served, naturally. If it's a suit, as often happens, where the individual is sued in both their individual and official capacity, then the individual is served as well as the Attorney General is served. What this change to LB204 is meant to address is where you have an individual who is sued in their individual capacity, not in their official capacity, individual capacity but that lawsuit relates to their official duties. Sometimes that happens. Maybe it's intentionally drafted as an individual suit, maybe it's ambiguous. But what would happen in those instances is that the...when the Attorney General's Office knows about them, oftentimes they'll have questions of indemnifying the defendant. They will help defend. They will help pay for the cost, the fees. They'll actually hire the attorney. So it's good for the defendant to know if they have that indemnity relationship. It's good for the AG's Office to have notice on the front end so they can be involved in the defense of the suit at the beginning, and it's good I think for the plaintiff to know who is defending the individual, what resources does that entity have to bring to bear to help defend the suit. And so it helps address that minority of circumstances, although it does occur, a minority of circumstances in which an individual is sued. It relates to their individual or their work but they weren't sued in their official capacity. This I will note that this change is modeled after Federal Rules of Civil Procedure 4(i)(3). It's slightly different in the wording because it has to correspond to our state statutes, but functionally it works the same. The third change as proposed by LB204 is on pages 3 and 4, and that relates to the summary judgment procedure. I mentioned the motion to dismiss, that's a motion filed at the beginning of a case to dismiss a case. Summary judgment happens somewhere in the middle typically. And the standard is generally...it's generally applied and usually pretty universally held, but it's in cases. So the standard for summary judgment is there's no material issue of fact. It's undisputed and we can decide this case on a question of law. The problem from...it's not a problem but I think this would be an improvement to have these rules in statute, is because practitioners and I think judges like to have rules they can cite to, and it gives guidance. So you can cite to, you know, section (2)(a) and it just allows for a more efficient procedure. Without this, it's sort of more of a tradition. I think in some instances tradition should be codified. I think this is an area, speaking for my practice in other cases, nothing currently but in previous cases, it's just...I think it's nice for the practitioners on both sides of the "v." as well as the judge to have rule, statutory guidance on how to proceed. This language also is taken from Federal Rule 56, I think it's (c)(1) and 56(e). Again, this really doesn't change the standard. It just allows for more efficient administration of these rules in court. There is a letter that I have that has been submitted to the committee from Professor Lenich from the University of Nebraska. I think Professor Lenich does an excellent job summarizing the second and third changes that I described. Professor Lenich also mentions two potential amendments to LB204. The first is to change, on page 3, lines 1...I'm sorry, line 11, the "may" to "must." I will say, after submitting LB204 and marinating on a little bit, this is a change that I wanted as well because I

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think, even though "may" sometimes is construed as "must" in the case law, I think that we should be precise and clear. And I think "must" is... "must" captures the whole point of this change. The second change proposed by Professor Lenich is actually in line 20 on page...also on page 3. This is not one that we had proposed but I certainly have no issue with. It's a change to change where it says "genuine issue" to "genuine dispute." That actually is just to reflect the change. So this statute would put in place under the old Federal Rule, Federal Rules of Civil Procedure where we use sort of that terminology of "genuine issue" now, as you can see in the proposed language currently in LB204, later down on page 3, we talk about the genuine issues of genuine dispute. So that would just update that to make it more consistent. Both of those are amendments that we would support and I think would work on drafting that language for the committee. With that, I would be happy to answer any questions. [LB204]

SENATOR EBKE: Senator Krist. [LB204]

SENATOR KRIST: Just a curiosity, from what you described in your Section 2 in terms of your...the changes that you'd like to make, seems to me that that's going to put some kind of a workload on the Attorney General, yet there's no fiscal impact on any of it. Can you (inaudible) is he telling us that he can accommodate that without any additional manpower or that he's set up to do that now? I don't...what's your reading? [LB204]

SENATOR HILGERS: Well, I appreciate the question, Senator Krist. And Mr. Ryan Post from the Attorney General's Office I think probably could answer that question in more detail. Typically, with these service items, it's kind of a routine paperwork that you receive. It's a processing item. I don't think, as I described that subset, it's not a large subset so I don't think the increased volume will be very high. So I don't...in talking to the Attorney General's Office and using my...some of my experience, I don't think that would require some additional individuals. I will say it's not reflected in the fiscal note but, Senator Krist, I'm glad you raised that point. I think this ultimately could be a cost savings for the state just because I think the state getting involved later...it's better I think for the state, where they're going to be involved, to be involved at the beginning of a case where they can help with strategy and defense from the beginning. You know, getting involved in the middle, you can have inconsistent results and poor quality of representation, so. [LB204]

SENATOR KRIST: And I think that's a valid read. It either costs money or it saves money, which could be projected. What brings my attention to it is it just says "no fiscal impact." Normally there's some explanation. We'll wait and get that explanation back and get your read on it. Thank you very much. [LB204]

SENATOR HILGERS: Thank you, Senator. [LB204]

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SENATOR KRIST: Thank you, Chair. [LB204]

SENATOR EBKE: Thank you. Let me ask from a practical standpoint, are you planning on bringing an amendment that...? [LB204]

SENATOR HILGERS: Yes. [LB204]

SENATOR EBKE: Okay. [LB204]

SENATOR HILGERS: Yes. [LB204]

SENATOR EBKE: So you'll be working on that. Okay. [LB204]

SENATOR HILGERS: Yes, Madam Chair. [LB204]

SENATOR EBKE: Any other questions at this time? Okay. [LB204]

SENATOR HILGERS: Thank you very much. [LB204]

SENATOR EBKE: First proponent. [LB204]

RYAN POST: Good afternoon, Chairman Ebke and members of the Judiciary Committee. My name is Ryan Post, P-o-s-t, and I am an assistant attorney general with the Nebraska Attorney General's Office. And the Attorney General thanks Senator Hilgers for introducing this legislation. As you just heard, LB204 makes three fairly straightforward civil procedure changes. I don't need to dwell on them. You just heard about them. But I'll try to answer any questions. The first case or the first change as it relates to qualified immunity, one of the reasons for making this change is that both the Eighth Circuit Court of Appeals and the United States Supreme Court have repeatedly said that it's important to resolve questions of qualified immunity as early as possible. Now, of course, you have the underlying law and this bill doesn't change any of that. This is just an attempt to get this resolved as early as possible. Second, the summary judgment procedure change, again, as Senator Hilgers said, it's a benefit to the practicing bar and it will improve the summary judgment process which can narrow issues, resolve disputes earlier, and save the parties and the court significant time and resources. Lastly, referencing the service change, what this is intended to ensure is that the state receives notices of these lawsuits in a timely manner. We've had instances where we may only have 21 days to respond to a lawsuit, but because it was served to an individual former employee, who's someone we're still going to

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represent because it was a scope of their employment, maybe it takes them a few days to get that lawsuit to the litigational contact for whatever agency they worked for. Maybe it takes them a couple days to get it to us. Now we've got five days to respond and make a decision on whether or not we're going to indemnify that employee. And so by requiring that our office be notified much earlier, we can begin that process and hopefully not unnecessarily delay anything. And I'm happy to answer any questions you may have. If I may, I'll start with the question that was just posed on no fiscal impact. I don't have an exact number of cases this is going to impact, but it's going to be a really small number. Oftentimes, we see cases where there is official capacity and individual capacity, so they already have to serve us. We're already logging that mail. It's not going to change anything there. On the few occasions where it's only individual, yes, it will require our front desk person to log a couple more pieces of mail, but that is about it for the fiscal impact. Otherwise, we would be doing the same job either way of determining whether or not we're going to indemnify and, you know, whatever appropriate steps might come after that. So if there are any other questions... [LB204]

SENATOR EBKE: Any other questions? Okay. Thank you. [LB204]

RYAN POST: Thank you. [LB204]

SENATOR EBKE: Next proponent. Any other proponents? Do we have any opponents? Do we have anyone testifying in the neutral capacity? [LB204]

NATHAN LEACH: Madam Chairwoman, members of the committee, thank you very much for your time and attention. My name is Nathan Leach, that's spelled N-a-t-h-a-n L-e-a-c-h. I reside in District 27 but grew up in Kearney and graduated from Kearney High School in 2015. I'm speaking on behalf of myself in a neutral capacity. I neither support nor oppose the bill, but I felt that there was some dialogue relevant to procedure and how this committee deliberates on the bill and how the Legislature handles this bill when it...if it leaves this committee and goes to the floor. I'd like to tell you a very personal story about why nonpartisanship matters so much to me. When I was a junior in high school, I was forced to leave my home because of my sexuality and LGBT issues is an issue that is very important to me. And at the time, then-Speaker Galen Hadley met with me and a number of my classmates and we talked to him about why we would like him to support workplace discrimination. And he said to us, he said, this is an issue that I will support. And there is no other state in the country where the leader of the body of a Republican-controlled Legislature would ever support an issue like that. And that is why nonpartisanship is so important, because it allows legislators to think about their constituents as if they were people and not live in a world that exists just about politics. They can actually use their ears and think and feel. And so I know that testifying on these bills in a neutral capacity is somewhat of an irritant, but I think it's extremely important for the record to show that someone

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came up and they testified and they said to this Legislature that this is a matter that will not die. And the other day I was running at drill for the National Guard and the question really hit home to me: What are we going to do to rectify the damage that has been done to this institution? And I think today was a start with the comments made by the Speaker, but you're still operating on temporary rules. You can't even adopt the permanent rules, something that this Legislature has been able to do time and time again for the past 80 years, and it's extremely concerning to me. I think it's concerning to many Nebraskans that this attack on the...basically an attack on the institution by money and by people who, like George Norris, encouraged this Legislature, the First Legislature, not to have an obligation to any boss or alleged political leader. And so again, I thank this committee for its time and its attention, and I hope that you will reflect on these matters and that they can be put into the record. Thank you, Madam Chairwoman. [LB204]

SENATOR EBKE: Thank you for being here, Mr. Leach. Any questions? Senator Krist. [LB204]

SENATOR KRIST: Never has a citizen come into that chair and been an irritant to any committee that I've been involved with, so feel free to do it any time. Now if you keep coming over and over again, we might ask you not to be so repetitive. But you've given us two dialogues that we take to heart, so thank you, Mr. Leach. [LB204]

NATHAN LEACH: Thank you, Madam Chair, Senator. [LB204]

SENATOR EBKE: Senator Pansing Brooks. [LB204]

SENATOR PANSING BROOKS: And I also want to thank you for coming. It is clearly the voice of the people and you are the second house and it's very important that you're here, and that I do feel that this week there was some aggravation at you. And I just want to say again, with Senator Krist, that you may come any time. We do not limit any kind of speech here. So thank you for coming. I appreciate it. [LB204]

NATHAN LEACH: Thank you. [LB204]

SENATOR EBKE: Anything else? Thank you for being here today. Is there anybody else in the neutral capacity? Okay, and we just had the one letter from Professor Lenich, right? Okay. Senator Hilgers. Senator Hilgers waives. That closes the testimony on...or the hearing on LB204. We will proceed to LB359, Senator Kolterman. [LB204 LB359]

SENATOR KOLTERMAN: Good afternoon, Chairwoman Ebke and members of the Judiciary Committee. I'm Senator Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n. I represent the 24th District

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of the Nebraska Legislature. I'm here today to introduce LB359. It's a bill that authorizes damages for property taxes and special assessments paid on property lost through adverse possession. Adverse possession is a method of acquiring title to a real property by possession for a statutory period under certain conditions. Currently case law requires that four elements must be proven in order to establish adverse possession in Nebraska: use of the property must be actual, requiring use of the property; exclusive, meaning only the trespasser is in possession; open and notorious, meaning occupancy is not hidden from the owner or general public; hostile, done without permission of the owner. And then a fifth element is required by statute. The property must be also continuous over a ten-year period of time. Under current law, the record owner is responsible for any taxes assessed on the relevant parcel during a ten-year statutory period. This is true in spite of the fact that the trespasser has successfully demonstrated hostile, open, actual, and exclusive use of that property for ten years. Here the "trespasee" is paying taxes on property that only the trespasser is using. Adverse possession is an important doctrine that encourages the productive use of property. Land that is neglected, ignored, or forgotten is of little social value. Further, an abandoned parcel can be financial strain for state and local governments and a source of frustration for neighboring landowners. However, this doctrine can also be manipulated to take advantage of landowners acting in good faith. Continued and active payment of property taxes on the relevant parcel is an indication that the owner of record is aware of ownership and actively maintaining this investment. In these cases, a trespassing party should not be financially rewarded for his or her misdeeds. LB359 does the following. It retains the intent and purpose of adverse possession by leaving in place each of the five key elements. It falls short of requiring that the trespassing party pay taxes during the statutory period, as other states have chosen to do, and doing so may dissuade others' otherwise beneficial claims. It encourages an equitable approach by instead requiring that a record owner who in good faith pays all taxes due on his or her property will be compensated for those payments when that parcel is lost to a claim of adverse possession. One of the reasons I am introducing this legislation is on behalf of several of my constituents: Joe and Carol Schmieding, who were on the losing end of an adverse possession case. They are here today to tell their story so I'll save their story for them to tell. I do want to be clear that they accepted the court's decision and this bill will no longer change their outcome or benefit. The Schmiedings just want to ensure more protections for owners on the wrong end of an adverse possession case. With that, I want to thank you and ask for your support. And I'm happy to try and answer any questions. [LB359]

SENATOR EBKE: Any questions for Senator Kolterman? [LB359]

SENATOR KOLTERMAN: That was too easy. [LB359]

SENATOR EBKE: Senator Pansing Brooks looks like she's ready. [LB359]

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SENATOR PANSING BROOKS: Yeah. [LB359]

SENATOR KOLTERMAN: Think through that. [LB359]

SENATOR PANSING BROOKS: I do. I think I have a question. [LB359]

SENATOR KOLTERMAN: Okay. [LB359]

SENATOR PANSING BROOKS: So I know the requirements of adverse possession being exclusive, continuous, notorious, and for ten years. I guess I hadn't thought about the taxes in that case, so if somebody is paying that and the fact that you're paying it on that property. So was that litigated, that issue itself? [LB359]

SENATOR KOLTERMAN: Yes, it was. Went to the Supreme Court. [LB359]

SENATOR PANSING BROOKS: Okay. Sorry I missed (inaudible). I was reading through this while you were saying it. [LB359]

SENATOR KOLTERMAN: No, that's all right. You know, I learned about adverse possession when I got a realtor's license many years ago. I've forgotten all about it, but I remember the fact that the hostile and the ten years were there. And a person...my feeling is if a person has maintained that property for 10-15-20 years, they ought to have a right to it, and yet somebody could come in and take their land away just by saying it wasn't surveyed properly or something of that nature. In this particular case, it changed hands. So I'll let them tell their story. And I'd be glad to answer any questions at the end. Thank you. [LB359]

SENATOR EBKE: Okay. Thanks. First proponent. [LB359]

JOE SCHMIEDING: (Exhibit 1) Good afternoon. My name is Joe Schmieding, J-o-e S-c-h-m-i-e-d-i-n-g. I am here with my wife Carol. We have farmed for 44 years in Seward County, and we are today testifying on behalf of LB359. We believe that if you have the title and have been paying taxes on your parcel of ground that it should be no question of ownership. If property was abandoned or no one was paying taxes, this is a cause for adverse possession. But if someone is paying property taxes and has been...it has not been abandoned. This bill will reimburse the property taxes and is the first step in recognizing that payment of property taxes and a deed need to be considered in the sixth element of adverse possession. In 1986 we purchased 41.99 acres of land at public auction. At that time, no one came forward and said that the acres were wrong. We farmed and paid real estate taxes since. In 2001 the farm to the east of our farm was sold. I stood

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up at the auction and said that the property line was unclear. No one said that they were claiming more land than the deed reported. They sold that, what the deed reported, not the 80 acres, plus 17 feet of the Schmieding farm. In 2011 the neighbor sued for adverse possession. In discovery, they realized that they couldn't claim adverse possession in the time frame that we possessed it, so they went back to 1940s, when we weren't born even yet, and claimed that they had a fence in there until the late 1950s, when we would be about seven at that time. Everyone directly involved in the land in the '40s and '50s is dead. The only testimony came from a man who was about seven at the time the alleged fence went in. We had a deed and were paying property taxes, and still the other side won. We have paid property taxes, spent decades on upkeep of the lane and the ditch, and lost the property in the end. Yet, we were reimbursed nothing. And because of the adverse possession, we had to shorten our pivot, losing acres of irrigated ground, which this bill would not help the cost of the property taxes and guard fellow Nebraskans from similar circumstances. We feel that stronger protection from adverse possession could be put into place as well. We also spent thousands of dollars in lawyers' fees over four years. We spent hours in preparation for trial. We had to find a lawyer and prepare a reply in ten days during the peak of planting season, which is the most critical time of year for any farmer, and these costs and inconveniences can be multiplied by the cost incurred by the court system in a case that could have and should have been thrown out instead of making it to the Nebraska Supreme Court, because we had the deed and were paying property taxes. In conclusion, we believe that a deed is a legal document and shows ownership of land. We don't believe that adverse possession laws were meant to be used on boundary disputes. That's what the survey is for. We hope that you will advance and support LB359, and be prepared to discuss adding the deed and payment of property taxes to elements of adverse possessions in coming session. Thank you for your time. [LB359]

SENATOR EBKE: Thank you, Mr. Schmieding. Any questions for him? [LB359]

SENATOR CHAMBERS: Is Senator going to close? I'll save my questions for him. [LB359]

SENATOR EBKE: Thank you. Other proponents? [LB359]

HAL CUMMINS: (Exhibit 2) Chairwoman Ebke and members of the Judiciary Committee, my name is Hal Cummins, H-a-l C-u-m-m-i-n-s. I have farmed in York County for 30 years and wish to share testimony in support of LB359. My father has lost land to adverse possession. He purchased a piece of land. Fences were in place which were assumed to be correct. When a survey more than ten years later showed the boundary to be incorrect, he asked the neighboring landowner to move the fence approximately 20 feet onto their property, thus, aligning with the survey. They refused, citing adverse possession, and by law retained the land. My father had pastured his land every year he owned the property. Had the boundary line been correct, he

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would have pastured the disputed land also. After the survey showed the initial error, because of adverse possession he received no benefit from the land. He only had the burden of paying the property taxes on a piece of land the deed said he owned but couldn't use. A deed and paying property taxes should provide proof of ownership. Any dispute over property lines should be settled by a survey. In the very early days of settling this country, when the goal was to quickly develop the land, adverse possession possibly contributed to the development goal. This is no longer the case as virtually all land is used in a positive manner. Some land is commercially developed, some used for housing, some farmed or ranched, and some left in varying forms of its natural state to facilitate wildlife, erosion control, and provide a place for humans to enjoy the outdoors. All are considered to be in the best interest of society. Since development is no longer the only goal, it highlights the need for adverse possession reform. I do not believe adverse possession should be warranted when achieved through the present five key elements only. A sixth key element, the paying of property taxes on the land in question, should be added, as 18 states have done. The paying of taxes is an important factor the Internal Revenue Service considers when establishing ownership. I fail to see why paying property taxes would not be an important element in ownership of land. Paying property taxes also allows the deeded owner warning that a person was contemplating adverse possession of part of his or her deeded land. This would provide an opportunity to dispute the claim before the land is gone forever. LB359 is a step in the right direction towards adverse possession reform, and I urge you to pass it. Please consider adding the sixth element of adverse possession in the future as this bill only addresses the refund of property taxes paid during the period of adverse possession. The sixth element requires the potential adverse possessor to pay property taxes each year on the impacted land during the ten year requirement for adverse possession to take effect. Thank you for this opportunity. Are there any questions? [LB359]

SENATOR EBKE: Thank you, Mr. Cummins. Senator Baker. [LB359]

SENATOR BAKER: Thank you. Just out of curiosity, Mr. Cummins, did your father consider knocking that fence down? [LB359]

HAL CUMMINS: No. He consulted a lawyer and the lawyer said because of adverse possession it's their land. [LB359]

SENATOR BAKER: It's already too late then? [LB359]

HAL CUMMINS: Oh, yes. See, that's the problem. You don't find out about adverse possession until they do it. [LB359]

SENATOR BAKER: I understand. [LB359]

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HAL CUMMINS: And if ten years is gone, it's gone. If...I realize this bill only refers to property taxes. That's why I was referring to the sixth element, which would require them to pay property taxes on it each year. And I would assume then that the assessor, when a tax bill comes out, would say 2.5 or whatever it is acres of tax is being paid by so-and-so, and then he would be warned adverse possession was taking effect. [LB359]

SENATOR BAKER: Gotcha. Thank you. [LB359]

HAL CUMMINS: Thank you. [LB359]

SENATOR EBKE: Any other questions? Thank you for being here today. [LB359]

HAL CUMMINS: Thank you. [LB359]

SENATOR EBKE: Next proponent. [LB359]

JORDAN RASMUSSEN: (Exhibit 3) Good afternoon, Chairman Ebke and members of the Judiciary Committee. My name is Jordan Rasmussen, J-o-r-d-a-n R-a-s-m-u-s-s-e-n, and I'm testifying on behalf of the Center for Rural Affairs. We'd like to thank Senator Kolterman for his work on bringing forth this bill, and the Schmiedings and Cummins for sharing their landowner perspective of this matter. Adverse possession is an important and tested principle that encourages productive use of land. While adverse possession is intended to protect the societal value of land, it can also be used to the detriment of landowners acting in good faith, as we've heard today. When taxes are paid by the owner of record, a trespassing party should not be financially rewarded for his or her use of the property. Under current law, the record owner is responsible for any taxes assessed on the relevant parcel during the ten-year statutory period required for a cause of action. This is true despite the fact that a trespasser is successfully exhibiting the qualifiers of an adverse possession: hostile, open, actual, and exclusive use of that property for ten years. LB359 closes this loophole. It does so by requiring the trespasser to compensate the original owner for property taxes and special assessments paid by the owner during the period of the adverse possession. Doing so retains the intent of adverse possession as a doctrine, while removing an error in its application. Acknowledging this inconsistency in legally recognizing the exclusive use of the property by the trespasser while not making the trespasser accountable for taxes owed during the time, other states have taken further steps to prevent this imbalance. Each of these 18 states have enacted legislation requiring the trespasser pay property taxes on the relevant parcel during all or a portion of the continuous period of use. These varied additions of tax payment requirements by states modernizes the use of adverse possession while maintaining its principles and is worth consideration as we move forward. In an era when property tax payments can exceed farm profits, the compensation of property taxes and

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assessments paid by landowners on the losing end of an adverse possession case offers a recompense for the loss of land and future gains from the property. Action on LB359 affords Nebraskans an added protection of their property rights granted. Are there any questions? [LB359]

SENATOR EBKE: Questions for Ms. Rasmussen? Is this a case...I've got a question. Is this the case...I mean is the calling of one party a trespasser, I mean I suppose that's a legal term of art, but is that necessarily the case when you have boundary disputes? [LB359]

JORDAN RASMUSSEN: I am not able to answer that question. I'm sorry. [LB359]

SENATOR EBKE: Okay. Any other questions? Okay. Thank you. [LB359]

JORDAN RASMUSSEN: Thank you. [LB359]

SENATOR EBKE: Any other proponents? Do we have any opponents. Anyone in the neutral capacity? Senator Kolterman, would you like to close? Better be careful; Senator Chambers has questions. [LB359]

SENATOR KOLTERMAN: It's all right. [LB359]

SENATOR EBKE: Okay. [LB359]

SENATOR KOLTERMAN: Senator Chambers and I can discuss this in good form. [LB359]

SENATOR CHAMBERS: Senator Kolterman, I don't see anything in this bill which says who shall be responsible to pay damages. Could you point it out to me in this bill? [LB359]

SENATOR KOLTERMAN: As we've looked at it, I don't believe it is in there and it needs to be corrected. [LB359]

SENATOR CHAMBERS: I couldn't understand you. [LB359]

SENATOR KOLTERMAN: It is not in there. It needs to be corrected. [LB359]

SENATOR CHAMBERS: Who drafted this? [LB359]

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SENATOR KOLTERMAN: It came from the Center for Rural Affairs, and NACO helped us with the language. [LB359]

SENATOR CHAMBERS: NACO? [LB359]

SENATOR KOLTERMAN: And the Center for Rural Affairs. [LB359]

SENATOR CHAMBERS: But I mean you said NACO? [LB359]

SENATOR KOLTERMAN: Both of them. [LB359]

SENATOR CHAMBERS: But NACO...and NACO testified against a bill that I had and I didn't think they were very competent. But they should certainly, when they're talking about damages, specify who is to pay the damages. The way this is written it could mean that they just used an improper term when they said damages and it really means that any tax, property taxes is...taxes and special assessments shall be refunded by the taxing agency. [LB359]

SENATOR KOLTERMAN: And we would be happy to have your help on that. We just...it just wasn't drafted properly. [LB359]

SENATOR CHAMBERS: But I'm not through. [LB359]

SENATOR KRIST: I'm not...I'm not (inaudible). [LB359]

SENATOR CHAMBERS: Oh, okay. Well, he... [LB359]

SENATOR KOLTERMAN: Okay. [LB359]

SENATOR KRIST: I'm just playing with my pencil. [LB359]

SENATOR CHAMBERS: But he was moving up (inaudible). [LB359]

SENATOR KOLTERMAN: He waited and I thought he was waving at me, he's next. [LB359]

SENATOR KRIST: I'm waiting. [LB359]

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SENATOR CHAMBERS: Okay. Well, why shouldn't the taxing agency then...all right now, adverse possession is a legal concept created by the state so as the person testifying for...that organization indicated, land will be used and so forth, wouldn't be lying idle. The mention of those requirements are that the person who is going to say he or she adversely possessed the land has to do so openly, notoriously, exclusively, for a period of ten years. I've got a piece of property. Somebody builds a house on it. They start a family. They have pets. They build a garage. And after ten years, they claim it. Why shouldn't they be able to have it if I'm that careless and negligent? Should...they're saying by this bill that the adverse possessor should not be rewarded. Well, should negligence which is gross be rewarded? [LB359]

SENATOR KOLTERMAN: No, it should not. [LB359]

SENATOR CHAMBERS: That's all I have to ask. Thank you. [LB359]

SENATOR EBKE: Senator Krist. [LB359]

SENATOR KRIST: Even before my good friend and great uncle brought up his issues, my concern in listening to these people, and I don't see NACO in here. Is there a representative from NACO in here or... [LB359]

SENATOR KOLTERMAN: No. [LB359]

SENATOR KRIST: ...their lawyer? For the years that these have gone on, the county assessor, the county commissioner, the register of deeds, all of those folks have allowed a situation to exist. If I were NACO, first of all I'd be ashamed at the way that this is drafted. And secondly, I'd be running for the hills, too, because I believe that the taxing agency, if they had knowledge during that ten-year period, which they would have to, I'm assuming, should be liable for damages. I'm with Senator Chambers. I'm, again, I'm not a lawyer, but in drafting that I honestly believe that the person who is being put upon here needs...if they had been paying taxes and they'd been manicuring the property and the like or tending to the crop, doesn't need to be twice penalized. I mean it just...it seems ridiculous. [LB359]

SENATOR KOLTERMAN: Well, in this particular case, it was a situation where I believe the courts would not allow that. [LB359]

SENATOR KRIST: Well, the courts can do what the policymakers tell them to do. [LB359]

SENATOR KOLTERMAN: Yeah. [LB359]

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SENATOR KRIST: And I think that's something...I applaud you bringing it and I think it just needs...it needs some tweaks. [LB359]

SENATOR KOLTERMAN: We'll work on some language and get back. We'll talk to you before you exec on it. [LB359]

SENATOR EBKE: Okay. Senator Chambers. [LB359]

SENATOR CHAMBERS: Now that we've taken care of that first element that I had, why is the owner not making use of the land? The owner for ten years was aware that somebody else is using this land. See, I cannot just let weeds grow there and then come and say for ten years I was growing weeds and nobody bothered me. This person who's going to be the adverse possessor has to be making use of the land. For ten years these owners didn't know that somebody else was on that land? [LB359]

SENATOR KOLTERMAN: Well, what was going on is...it's right on the boundary line and it's...and I can tell you, I could drive you out there and show it to you. But what happens is you've got a farmer that has a lane here and you have a pair of...the line comes right down the center and there's an entryway right on the property line, so they both use that same entryway to get in and out of their fields. And this particular farmer that got the land taken away from him was being a good neighbor and allowed that to happen. Then the property changed hands and the new possessor came in and said, that's my property. And then they filed a lawsuit and he lost. Not only did he lose; he had to move his property...or the fence and he also had to cut his pivot off so it wouldn't sprinkler the other guy's. So it wasn't their intent. They were maintaining the land just like they would have, but the other people were using it as well just...and being good neighbors, as they were,... [LB359]

SENATOR CHAMBERS: But here... [LB359]

SENATOR KOLTERMAN: ...they lost their land. [LB359]

SENATOR CHAMBERS: Excuse me. Here's what you're asking for. And I'm looking at the policy, not the people who are involved on one side or the other. [LB359]

SENATOR KOLTERMAN: Correct. [LB359]

SENATOR CHAMBERS: That I can have some land that I don't want to do anything with and somebody is on it. And I know all I have to do is pay these taxes and then I'm going to get all

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that back after ten years. That's like a nest egg. And the property remains mine. But you're not saying that the adverse possessor should lose that property back to the original owners. You're not saying that. [LB359]

SENATOR KOLTERMAN: Correct. [LB359]

SENATOR CHAMBERS: You're saying the adverse possessor keeps it. But now it's going to be as though the state took it by eminent domain, in a sense, and that they should be compensated by the adverse possessor as they would be compensated if the state took the land or part of it. [LB359]

SENATOR KOLTERMAN: Correct. [LB359]

SENATOR CHAMBERS: That's not the way adverse possession works. It's a concept in property law that has always been there, so it's going to be difficult. It might be possible to get the Legislature to agree to do that, but I just don't know at this point whether that's a wise policy to put in place. [LB359]

SENATOR KOLTERMAN: Thank you. [LB359]

SENATOR CHAMBERS: So my mind is not completely closed. If we were in a room where it's completely dark and you turn on a flashlight you might see a little sliver of light, but that doesn't mean that it's like the door being wide open. I don't want to mislead you. I'll think about it. [LB359]

SENATOR KOLTERMAN: Thank you, Senator Chambers. [LB359]

SENATOR EBKE: Any other questions? [LB359]

SENATOR PANSING BROOKS: No, I'm... [LB359]

SENATOR EBKE: You're thinking about it. Go ahead. [LB359]

SENATOR PANSING BROOKS: No, I'm just looking at Law Review articles on this that are out there right now and it's very interesting. So thank you for bringing it. [LB359]

SENATOR KOLTERMAN: Yes. Thank you, Senator. [LB359]

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SENATOR EBKE: You know, it's interesting, Senator Kolterman. Back when I was on the Crete School Board and we got a donation of a whole bunch of land, several lots, a number of lots for purposes of building our middle school, and as we were...as the survey was being done, we found that there was a chunk of land that was basically down in a ditch in town, but we were...the school was on the edge of town, and that somebody else had been using and they'd actually built a shed there, because over the course of several owners of that property they just assumed that it was theirs. And so you raise some very good questions. We had to decide as a school board whether to, you know, whether to employ the terms of adverse possession or not. We just paid for the property and split it up. But, you know, everybody has to decide how to handle that, so. Thank you. Any other questions, comments? Do we have any letters? Okay, that concludes the hearing on LB359. [LB359]

SENATOR KOLTERMAN: Thank you. [LB359]

SENATOR EBKE: And that concludes our business for the day. [LB359]