

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 21, 2023

CLEMENTS: Welcome to the Appropriations Committee hearing. My name is Rob Clements. I'm from Elmwood and represent Legislative District 2, which is Cass County and eastern Lancaster County. I serve as Chair of this committee. We will start off by having members do self-introductions, starting with my far right.

ARMENDARIZ: Christy Armendariz, District 18, northwest Omaha and Bennington.

DORN: Myron Dorn, District 30, which is Gage County and part of Lancaster.

McDONNELL: Mike McDonnell, LD 5, south Omaha.

WISHART: Anna Wishart, District 27, Lincoln and Lancaster County.

LIPPINCOTT: Loren Lippincott, District 34.

ERDMAN: Steve Erdman, District 47.

CLEMENTS: Assisting the committee today is Tamara Hunt, our committee clerk; to my left is our fiscal analyst, Kenny Boggs; and our pages today are Malcolm from Omaha, UNL student, and Kate [PHONETIC] from Kansas, a UNL student. At each entrance, you'll find green testifier sheets. If you're planning on testifying today, please fill out a green testifier sheet and hand it to the committee clerk when you come up to testify. If you will not be testifying but want to go on record as having a position on a bill being heard today, there are white sign-in sheets at each entrance where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record after today's hearing. To better facilitate today's proceeding, I ask that you abide by the following procedures. Please silence your cell phones, move to the front chairs when you're ready to testify. The order of testimony will be introducer, proponents, opponents, neutral, and closing on bills. When we hear testimony regarding agencies we will first hear from a representative of the agency, then we will hear testimony from anyone who wishes to speak on the agency's budget request. When you come to testify, spell your first and last name for the record before you testify. Be concise. We request that you limit your testimony to five minutes or less. Written materials may be distributed to the committee members as exhibits only while testimony is being offered, hand them to the page for distribution when you come up to testify. If you have written testimony but do not have 12 copies, please raise your hand now so the

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page can make copies for you. And now we'll begin today's hearing with Agency 46 Department of Correctional Services. Welcome.

[AGENCY HEARINGS]

CLEMENTS: We'll open a hearing for LB439. Senator Raybould, welcome.

RAYBOULD: Good afternoon, everyone. Good afternoon, Chairman Clements and members of the Appropriations Committee.

CLEMENTS: If you just give us a second here, we need to get our-- out of the budget bills-- budget items and back into the bills. All right. Thank you, Senator.

RAYBOULD: Yes. Well, good afternoon, everyone, again. My name is Jane Raybould, J-a-n-e R-a-y-b-o-u-l-d, and I represent Legislative District 28 and appear before you today to introduce LB439. LB439 would appropriate funds to the Department of Correctional Services to conduct a pilot project for providing a domestic violence related treatment program within our state prison system. Currently, offenders who are deemed at risk for committing acts of domestic violence are not receiving the recommended treatment through the Department of Corrections. Instead, the program is offered remotely through an outside service and is only available to people in Community Corrections Centers, also known as Work Release Centers. This results in many individuals not completing this program during their incarceration, which raises public safety concerns. One example of this problem was documented last year in the Flatwater Free Press. The young woman who is the subject of this article was murdered by a man who was released from our prison system without this programming even though his sentencing judge and the prison system felt he needed it. I have distributed copies of the Flatwater article to the committee for your consideration. This issue has also been raised on numerous occasions by our Inspector General of Corrections. I believe the Inspector General will be speaking today as well and can explain some of the impacts the current arrangement has had on our correctional system. I think we would all agree it is important that people coming out of our prison system are safer for the community than they were going in. This is especially true if, this is especially true if this Legislature is being asked to invest taxpayer dollars in not one but possibly two new prisons or the equivalent of two new prisons in the coming years. It is my hope that today you would be able to hear from individuals who have extensive knowledge of intervention treatment programs, but due to their schedules they are unable to appear. They did, however, submit written testimony and I'm not sure whether it was

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before the deadline for the hearing but I really encourage you to take time to read the written testimony from Dr. Tara Richards, she's a distinguished associate professor in the School of Criminology and Criminal Justice at the University of Nebraska at Omaha, Dr. Ryan Spohn, director of the Nebraska Center for Justice Research at UNO, and Dr. Amie Zarling, professor and clinical psychologist at Iowa State University. It is our understanding the Department of Corrections is open to expanding this kind of programming in its facility-- in facilities. The goal of LB439 is to ensure that they have funding available to do so. And with that, I ask for your support of LB439, this very important pilot project. And I thank you for your time and I would be happy to answer any questions you might have. I do want to point out that we did finally get the fiscal note, and I just wanted to reference that it would be \$175,000 for the first year, 2023-2024, and then \$175,000 for '24-25. I can tell you having been Lancaster County Commissioner how important it is to start this type of domestic violence treatment programs while they're in Corrections, while you have a captivated audience so that they are learning right from the time that they get sentenced or awaiting sentencing to help them. And, and certainly it's so very important once they're sentenced that they actually get the, the programming treatment they need. I know certainly when they're released through probation and parole, that is important that it continues so that they can be productive and well-adjusted citizens upon release and so they are less likely to recidivate and come right back to the Corrections system.

CLEMENTS: Are there questions from the committee? Senator Armendariz.

ARMENDARIZ: Thanks for being here, Senator. So we've been, we've been talking to the Department of Corrections about programs. Are you saying that they're-- say somebody is in prison because of domestic violence, there is no programming for them?

RAYBOULD: So right now some of them are ordered to have that programming, but we know that there is a workforce issue going on and oftentimes the programming is not completed or it's not even started. I know our Inspector General can tell you more in details what's happening in the correctional systems. I, I know I've had conversations with under-- with other individuals and the justice system saying that unfortunately this programming is not occurring as it should, as it has been court ordered to. And this pilot project will make sure that this programming takes place.

ARMENDARIZ: So there is programming for domestic violence currently, it's just not being delivered in a timely manner.

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RAYBOULD: It's not being offered at this time and I think the Inspector General can answer your question--

ARMENDARIZ: OK.

RAYBOULD: --better than I can.

ARMENDARIZ: OK, yeah, because we've been talking to them and I know it's an ongoing problem that delivery of these programs is, is the issue not so much that the program is available.

RAYBOULD: And I'm pretty sure it's the, the-- I don't know if the programs are currently offered at this time because of the lack of staffing to make sure that if any programming is made available that it is executed.

ARMENDARIZ: OK. So what you're saying is it could be there, they've just kind of not been doing it because of staffing issues?

RAYBOULD: It could be that primarily, yes.

ARMENDARIZ: OK. I know that's an ongoing issue that we're trying to get to the bottom of and get it in a more timely-- get it delivered in a timely manner so that these, these folks will have it completed by the time they are released and by their release date.

RAYBOULD: Well, at least they have started it. That, that is essential. And then if they are released through probation and/or parole, then that treatment should be continuing because if they get it started it needs to be continued--

ARMENDARIZ: Right.

RAYBOULD: --to make sure that they are less likely to recidivate.

ARMENDARIZ: Yeah. And then we'd have to-- that's an ongoing issue that we have to address on what is the best delivery method to get that done--

RAYBOULD: And I know--

ARMENDARIZ: --and make sure that it's done.

RAYBOULD: Thank you, Senator. I know some of the, the experts have a greater familiarity with this, know that it's essential that the programming get started, that it be maintained, and then certainly upon release that it continues. And if absent those essential elements

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then it becomes a concern. And the cost, if you just look at the cost for someone who, you know, the, the article talked clearly about the loss of life which is significant, but in addition to that we're, we're looking at going back in our correctional system and just the additional cost to our taxpayers for being right back in Corrections again.

ARMENDARIZ: Yeah, I can appreciate that. There was a young woman in my district that was just murdered this summer in this, in this way, too, domestic violence.

CLEMENTS: Senator Erdman, did you have a question?

ERDMAN: Yes, I did. Thank you, Senator Clements. So, Senator Raybould, I noticed in the, in the bill it says it's a pilot project.

RAYBOULD: Pilot project.

ERDMAN: So what happens after those two years then?

RAYBOULD: Then they will collect the data, they will track the individuals, and they will be able to give you more concrete validation of this programming. I know that Iowa State and in the state of Iowa they have implemented this similar pilot project and the results have been very promising. And that was, I don't know if it was Dr. Richards or I think it was Amie Zarling, PhD, in Iowa State University so--

ERDMAN: OK.

RAYBOULD: --the initial results, results that they have done as well as in other countries, I think they mentioned Australia as well, that the, the data is very positive. And again, going back to the individual who has received this programming, starting in the, the prison correctional systems and continues it is less likely to recidivate and have a lot more positive impacts in the community. So it's called a pilot project because we're trying to start it in the Nebraska correctional system and then they're going to be able to track the data on it for the first two years and as that individual is released back into the community.

ERDMAN: OK. So I've, I've been here nearly seven years, six and a half. When I first arrived here, we had several projects that were pilot projects. I've never seen one of them they didn't continue. They always continued. They started with a pilot project and then they'd go on it. It would just be better just to start the project and just move

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on. We'll need to understand that when we vote for this, it's not going to be just a two-year program, it's going to be ongoing. And that's the issue that we need to make sure we have in our minds before we vote for this. The second question I have is it says the department shall contract with an academic institution located in the state of Nebraska. Who do you think that'll be?

RAYBOULD: I think it's out of the University of Nebraska Omaha in their criminal justice program that is familiar with some of the trial work that Dr. Zarling has done with Iowa State University.

ERDMAN: Wouldn't it be appropriate just to put in the department shall contract with the University of Nebraska?

RAYBOULD: University of Nebraska in Omaha?

ERDMAN: Yeah, instead of saying an institution-- academic institution in the state of Nebraska. We all know where it's going to go, right?

RAYBOULD: We-- yeah, that's a, that's a good idea for greater specificity in detail. Yes.

ERDMAN: Thank you.

CLEMENTS: Thank you, Senator.

RAYBOULD: You bet.

CLEMENTS: Were you planning to stay to close?

RAYBOULD: If need be, I will stay here.

CLEMENTS: All right. Well, OK, do we have proponents for LB439? Welcome.

DOUG KOEBERNICK: Good afternoon again, Senator Clements and members of the Appropriations Committee. My name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k, and I work for the Legislature as the Inspector General of Corrections. First, I want to thank Senator Raybould for introducing this important piece of public safety legislation and for the point she raised in her opening testimony. She covered a lot of ground, and I'll try not to be repetitive. Since 2019, our office has recommended the reinstatement of the domestic violence program within the Department of Correctional Services. It was actually ended in 2015 upon the decision of Director Frakes at that time. So they do not provide it at this time because that was a choice made by the

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department, and I can explain that in a little bit. I passed out an excerpt from our 2022 annual report that provides more detail on this, but I think there are a few, few key reasons why I think this legislation is needed. First, there are at least 500 men in the Corrections system that have been recommended to receive this program. That's about 10 percent of the male population. Second, right now, as Senator Raybould shared, they are only able to receive that program should they actually reach the Community Corrections' level of custody. Not everyone can get to that level of custody and get to those two facilities in Lincoln and Omaha. And even if they do get there, they're not guaranteed to receive that program or be offered that program. Plus, when they reach that stage they actually have opportunities to go into the community so there might-- they might have access to a past victim before they even get the program or if they get it at all. Third, we are hearing from more individuals that the Board of Parole is choosing not to parole individuals because they have not received this program, which is not assisting with the overcrowding situation. In the past, they-- it seemed like they would go ahead and, and parole more of these people and with the expectation that they would either hopefully get the program somewhere out in the community upon release, or that they just weren't getting the program because it wasn't available so they weren't holding them back. Because I think of that news article that Senator Raybould raised and shared with you in, in the fall, I think that has impacted the decision-making of the Board of Parole. Fourth, while that past domestic violence program had some issues regarding its effectiveness, it was based on a model that had-- they weren't quite sure how well it actually worked. And, and so there was some justification in ending the program at that time. But as Senator Raybould pointed out in Iowa now they're doing a different program that's having very positive results. It's being studied as, as it's being provided. And that's the same intent of this bill, is to do that here in Nebraska. And that way we can get this program that's proving to be more effective in Iowa, try it out here. Senator Erdman, you said the pilot programs usually continue to be ongoing programs, and if it is effective I would guess that it should continue to be a program going forward. If it's not, I think then they could make that decision like they did in 2015 to end the program and not offer it any longer. I think having it with UNO Center for Justice Research makes a lot of sense because the Legislature has funded the program evaluations by the Center for the Department of Corrections starting, as I said earlier, in January. And they have the expertise to be able to figure out whether this program is actually working, what are the challenges with this program, anything that we need to do to make sure it is working or that it's

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not working as well, too. So I think they're the right place to have that, and I would hope that that will increase the effectiveness of this program and maybe give the Board of Parole more confidence when it comes to making decisions on paroling individuals who have had this program recommendation. There is that price tag that comes along with this. I think it's like \$175,000 a year, but I think it is a vital public safety issue. And I'd like to thank you for considering this legislation. And before I end it, I would just say, too, that earlier I talked about the staffing challenges with providing programming within the department. So I'm kind of-- I'm saying, OK, we have these problems providing programs in the department, so go ahead and fund a new program, which doesn't seem to make a lot of sense. But I know that after the last hearing, the Department of Corrections' leadership were meeting with NABHO representatives out in the hallway and talking about ways they could work together so maybe this is one of those ways that they could work together and provide this program and so I'm encouraged by the conversation and hope that keeps going. Thank you.

CLEMENTS: Senator Dorn.

DORN: Thank you, Senator Clements. Thank you for being here. In your opening or your opening thing you handed out, it said department of clinicians have recommended domestic violence programming for more than 500 people currently in the state prison system. So why did Director Frakes end this eight years ago or seven years ago and then we still have-- that's almost 10 percent, 8 or 9, 10 percent people?

DOUG KOEBERNICK: The model that they were providing was called the Duluth Model and where Director Frakes came from in the state of Washington, they had done a study about the effectiveness of the pro-- of the delivery of that program in Washington state. And the study found that it was not as effective as they wanted it to be. But the study also said that there's other programs out there that could take its place or could work together and maybe combine efforts to come up with a better program. It's my understanding he kind of-- to me, he took that program study and really took it as gospel and decided just to end the program here in Nebraska. I think another reason, too, was it freed up some of his clinicians to do some other programming and he wanted to provide, you know, more violence programs, things like that. So it was a tough decision for him, but that-- I believe that's why it ended up being ended in 2015.

DORN: Thank you.

CLEMENTS: Senator Vargas.

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VARGAS: Thank you very much, Chairman. So is there any programming that's provided now for domestic violence?

DOUG KOEBERNICK: The only programming that is provided for this would be when somebody hits the Community Corrections Centers in Lincoln or Omaha. And it's pretty mental-- it's the same, it's the same program that they've provided in the past as, as, as how I see it. It's like a 36-week program. And they would have to take it while they are in the Community Corrections Center setting. And it's not available to a lot of people. I think it's like 12 people in a class at a time. And so a lot of people also, because of their behavior in prison or other things that have gone on, they don't even get to that Community Corrections Center to actually receive the program. And they're usually not at Community Corrections very long so they might not even be there the whole time to get that entire program delivered to them.

VARGAS: It just dawns on me, when you were-- you shared the report of all the vacancies that we currently have, and just one staff is-- like a psychiatrist is \$250,000. One of those levels would fund this pilot project. It's--

DOUG KOEBERNICK: Good point.

VARGAS: --it's just-- well, so I don't know if you have any more information, I can wait to ask this of Senator Raybould, but this pilot that's been done in Iowa, you know, what does it entail in terms of staff? I think to your point, programming staff is still an issue. So even if we do a pilot, you know, if we don't have the staff to do it, what's the point? But yeah, I don't know if you could speak to that.

DOUG KOEBERNICK: No, but I know that we could get you information from, from Dr. Richards at UNO and, and the other folks there who have a great deal of knowledge about how it's playing out in Iowa and what the-- what their needs are and the resources that are available to them and everything. We can get that, get that for you.

VARGAS: Do you have any plans that we're going to have-- we have an interim director, we will have a permanent director as part of this being a list of recommendations that we reinstate or sorry, a list of recommendations that we bring back up for consideration? I don't know what that process looks like for you and wanted to give you the opportunity to respond to that.

DOUG KOEBERNICK: As far as kind of a priority list?

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VARGAS: Kind of, yeah. I mean, this seems-- it just seems crazy to me that we have people that are not getting any treatment programs for years and are-- it's a standard that we're creating for them to be on parole and eventually they will come back into society and they have gotten very little to no programming and, and they will re-offend.

DOUG KOEBERNICK: I think that this is a pretty high priority for our office because we've been looking at it for a number of years and we've talked to a lot of people involved in it, the people who delivered the program in the past at the department, people on the outside with expertise. And it-- and then we have these instances within our communities where people have gotten out without that programming and then they get involved in a domestic violence situation and end up murdering somebody. So to me it's a very high priority and when the new director, whether it's Director Sabatka-Rine or a new director gets appointed, my plan is to meet with them and, and lay out some of the things that we've identified as high needs or priorities in the past and I think this would be right there at the top.

VARGAS: Well, I appreciate that and maybe something that I'm realizing, we typically-- well, like Transportation and Telecommunications comes together when we're talking about Department of Roads. We mix our funding with our policy. We do it with Revenue, too, but we don't sit together formally with Judiciary to talk about Corrections. We do it very reactively, but it's clear we have to do something. If none of this programming is happening, we're never going to be cutting our costs and, and doing right by public safety. So I appreciate you being here.

DOUG KOEBERNICK: You're welcome.

CLEMENTS: Thank you, Mr. Koebernick. Any other proponents for LB439? Seeing none, are there opponents on LB439? Seeing none, is there anyone in the neutral capacity? Seeing none, Senator Raybould, you're welcome to close.

RAYBOULD: Thank you all very much for listening to this testimony. I want to give you a news flash. The state of Nebraska and our Legislature issues a lot of things. But guess what, the Department of Corrections does not implement. And I'll give you one very close example, Justice Heavican mentioned-- Chief Justice mentioned this in his remarks this morning when it talks about folks that have been sentenced to go to the Regional Center to either have their competency restored so they can come back to the Penitentiary to serve out their

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sentence or they get the additional help-- mental help they need. We're woefully underserved in that capacity. In the meantime, these individuals stay in our county jails. Justice-- Chief Justice mentioned that as well. And they're staying in our county jails and they are not getting the treatment that they have been court ordered to receive. So they stay in the county jails anywhere from 90 to 120 to 180 days without getting the treatment that they are court ordered to receive. And so we have this tremendous amount of conflicts. Senator Vargas, you mentioned it very well. It is incredibly frustrating to see that we are not diverting funding and attention to programming, to implementing the resources we need, not only with mental health services. So we talk about building a new jail facility that's \$300 million, what we really should be doing is adding on to the Regional Center another expansion. Yes, a psychiatrist starting salary, if we want to get another psychiatrist here, it's \$250,000. We have to come to a point where we realize and recognize and fund the appropriate channels of making sure that these people do not stay in our Penitentiary without getting the programming they need. We know that they're going to be released. We have probation and parole and then we're not funding the programming and providing the staffing. I understand that we have a workforce shortage, but we're not funding and providing the programming they need so that they actually can see-- can succeed as they reenter our communities. So to me it's a failure of where we talk about it, the policy is not matching the funding and the funding is not being executed appropriately so we allow, allow these individuals to succeed. They're going to be back in our community, why aren't we funding the programs that we know are successful? And we certainly know that Dr. Zarling is certified and qualified to administer these programs. I don't know if actually how they're going to execute it. I know they're working out the details, but all I can say is, as I look at this stuff as a business person, this is money well spent. I know you probably hear that day in and day out. You're on Appropriations, so you're getting a tremendous amount of ask. But in the whole scope of things, \$175,000 is a lot cheaper than paying for a psychiatrist, which I certainly would support doing to help facilitate. But the important thing is there's conflict, it's court ordered and we're not delivering. And so, you know, I think we can do a lot better. Thank you.

CLEMENTS: Senator Wishart.

WISHART: Thank you, Senator Raybould. If, if the Appropriations Committee were to ask the department to find within their budget the space for this without additional General Funds and, and stretch to,

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to meet this important requirement, but do it with the funds they already have, is that something you'd be amenable to?

RAYBOULD: I certainly would be amenable to it, but I don't know if they would actually do it.

WISHART: OK.

RAYBOULD: Do you believe they would do it?

WISHART: Well--

RAYBOULD: I guess you can't-- I'm not supposed to ask, ask you questions. I apologize. I, I would certainly be so hopeful that they would actually execute on that. But so far when we dictate these things that should get done, I see a lack of execution.

DORN: And when we ask something it has to be in a form of a question, too, it can't be a statement.

CLEMENTS: Senator Vargas.

VARGAS: I think I heard what Senator Dorn said.

RAYBOULD: So it's OK for me to respond with a question? I don't think it is, but.

VARGAS: It's a little bit on the same lines on just technical side. I guess to Senator Erdman's point, we do create a lot-- I mean, people create a lot of pilot programs. I mean, if it really intends to be a pilot, you know, you'd be willing to put in a sunset on this. I don't know if two years is even enough. I mean, maybe it's three years, I don't know. But putting a sunset will end it and then putting some language that requires them to report to us because--

RAYBOULD: That's good.

VARGAS: --usually we'll ask them but we don't always get those reports or, or maybe if you're contracting with an academic institution, whoever they may be, they have to submit a report to, to the committee and to the Legislature so we can follow up.

RAYBOULD: I think that is a very reasonable request to have the, the data submitted to Appropriations and to share that data with the Department of Corrections, because I know that they would be eager to

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see a, a program succeed and a sunset too. I, I am big on sunsets as well. So I think that's a very reasonable request.

CLEMENTS: Thank you, Senator Raybould.

RAYBOULD: Thank you all for your time. Appreciate it.

CLEMENTS: We have position comments. We have one proponent comment for the record. That will conclude the hearing on LB439.

CLEMENTS: We'll open the hearing for LB554. Welcome, Senator John Cavanaugh.

J. CAVANAUGH: Good afternoon, Chairman Clements and members of the Appropriations Committee. My name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha and I'm here to introduce LB554, which appropriates \$2.1 million to the Commission on Public Advocacy from General Funds. And actually I had a handout I wanted to make sure everybody got. But the handout is a newspaper article from the Lincoln Journal Star about basically the decreasing number of lawyers available in the rural counties in Nebraska. I brought this bill as a companion bill-- I brought this bill and its companion bill, LB555, as a result of an interim study in this committee, LR396, to examine the possible solutions to the funding on the Commission on Public Advocacy. You heard from the commission earlier so I won't rehash much of what they said there. The Commission on Public Advocacy serves a vital role in our criminal justice system, but it's funded through court fees, which have slowed in recent years and have not been able to adequately meet the commission's budgetary needs. LB554 presents a potential solution to these funding challenges. Shifting the funding to the Commission on Public Advocacy to General Fund because commission-- because the commission is essentially-- is essential to providing a vital function of government providing for the constitutionally guaranteed right to effective counsel, it is reasonable that they should be funded through General Funds and not from court fees. Ultimately, I brought LB554 because I believe strongly in the Commission on Public Advocacy and I believe we need to find a funding-- a sustainable funding solution, but also because I'm opposed to further increases in court fees, which decrease access to justice. I want to thank the committee for your time and consideration. I'd ask for your consider-- your-- the Appropriations Committee to positively favor this bill and be happy to take any questions. And I guess I should say I did have another handout, but I have-- this is the list of all the court fees, right? All of the different court fees for all the different things. And this

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is a-- let's see-- 22-page document that's all the different fees you pay in different courts. And the Commission on Public Advocacy is funded from the Indigent Defense Fund, which is currently \$3. So you can just pick one of these ones. So we'll say guardian and conservatorship costs a total of \$44 in court fees; \$3 of that comes from the Commission on Public Advocacy. You might have a conversation about whether we should increase court fees to fund the-- adequately fund the Commission on Public Advocacy. What it would take to get them to the level they need to be would be to take that from \$3 to \$9. So just in guardianships and conservatorships, you would end up taking that from a \$44 court fee to a \$50 fee. And we're facing this problem in all of our court fee-funded programs. There are a whole bunch of other things that are funded through court fees as well and they're all seeing a similar decrease in the amount of money that they're having come in as a result of these court fees. So court fees are not a sustainable way to fund things. They're not a reasonable way. They're going to continue to decrease. So it's going to-- one, if you increase court fees, you decrease access to the courts and to justice for a whole bunch of people who are barely able to get access currently. And two, you're going to have to continue to increase the court fees year over year. So I'm here to suggest that we take the Commission on Public Advocacy and we fund it entirely out of General Funds and shift the court fee that they're currently getting to another source, which is what five-- the other bill, LB555 does. I mean, obviously I'm open to other suggestions and ideas-- thank you-- about what's the right thing to do here. But ultimately, I just feel strongly that we need to be funding this. And you can see from that map one of the reasons-- and again, I don't want to belabor all the points. You guys, I'm sure-- I'm sure you heard about the commission and all the great work they've done and you'll hear from a few probably behind me. But there aren't a lot of lawyers in rural Nebraska. And when somebody commits a serious crime in rural Nebraska, we need to bring in an expert to defend those people for a number of reasons. One is the Constitution demands it, but two, it's going to cost a lot of money in the long run if we don't do it right the first time. And so this is a statewide concern, which is why the senator from Douglas County, who the commission generally does not represent cases in Douglas County, is bringing this bill. That's how important it is to all of Nebraska. So I'd take any questions.

CLEMENTS: Senator Dover.

DOVER: Yeah. You stated that court fees are continually decreasing. Could you explain why that's happening?

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J. CAVANAUGH: So the, the set dollar amounts or the \$3 amount-- \$3 used to bring in, say, \$1.9 million. But because of the number of filings is down, \$3 on every filing now brings in about \$700,000. So the total number of filings is going down, which means that court fees we're collecting is going down. And that's a result of some of the positive work that we've done. You heard the Chief Justice talk about today about all the problem-solving courts and alternative courts. Those are things we want. We want to have people not going through the system and not using it if they don't need to. But what happens, the byproduct of that is we decrease the number of court filings and therefore the amount of dollars we bring in through that.

DOVER: Can't we simply add the fee to the other filings in the other alternative courts?

J. CAVANAUGH: Well, that would be-- a lot of those folks don't actually go through court so that's why they don't get charged a fee. So you'd have to basically-- we'd have to create a whole new structure where we're charging people outside of the court system and then it wouldn't actually necessarily be court fees, I guess.

DOVER: I don't know if the word would be diversion, but if someone's going to not have to go to court, isn't there a-- couldn't you add a \$3 or \$4 or \$5-- a \$5 fee to that then? I mean, if you're circumventing this system and it needs to be funded and they're benefiting the fund, why can't we have-- whatever direction they're taking, there be a \$5 fee, call it whatever you'd like?

J. CAVANAUGH: Well, in terms of things like diversion, I would probably be opposed to adding a fee on top of that. There are already costs associated with participating in diversion. And the idea of diversion is we want to encourage people and lower the barrier to participation because what happens in diversion is you go through kind of like probation before disposition and we want people to do that. We don't want to not do that because they don't have the fee, right? And so I would, I would probably be opposed to raising that fee because it would have an adverse effect on a positive thing that we want to have happen.

DOVER: I guess specifically then you're saying that the file-- I should say why are the filings down? And you said they're going to alternative courts. Is that correct?

J. CAVANAUGH: Basically, there's just fewer filing-- fewer number of cases being filed in court-- in the court system.

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DOVER: Because?

J. CAVANAUGH: Well, part of it is alternative courts. Part of it is people are not necessarily availing themselves of the court system as much for a number of other reasons. I guess I can't tell you all of the reasons because there are so many. Like, I can point to this. These court fees come from divorces, from small claims, from civil, from guardianships, from criminal cases, from traffic cases. So there's just all kinds of number of things that these fees are coming from. And so all of those filings are down. And so they may be-- civil ones are going to be down for a different reason than criminal ones are going to be down.

DOVER: Thank you.

CLEMENTS: Senator Dorn.

DORN: Thank you, Senator Clements. Thank you for being here. And I had some of the same questions Senator Dover had here. But we keep hearing about how-- I call it how busy the courts are. So that should tell you that we almost have more filings because we're down-- if we went from \$1.9 million to down to \$700,000, that was a 60 percent decrease, roughly. That was over a 50 percent decrease, maybe a 70 percent decrease. And yet we're hearing how busy the courts are and I guess I'm trying to understand too, like Senator Dover here, why, why that tremendous decrease?

J. CAVANAUGH: So the courts are still involved in some of these. I guess I'm not here to defend the courts themselves, but the courts are still involved in problem-solving courts and diversion. So they still-- it still takes up time. Diversion in Douglas County, which is where I practice, takes a whole Thursday afternoon. I spend, you know--

DORN: But they're not paying this \$3 fee.

J. CAVANAUGH: Not necessarily, no. As long as the case gets resolved, gets dismissed, you're not going to charge that fee.

DORN: OK.

J. CAVANAUGH: And that's one of the reasons you encourage somebody to go through diversion. And part of the reason they go through diversion is to obtain that dismissal and so we charge fees on-- we don't-- we only charge fees on cases that have a disposition and so if you come to court and get it dismissed. But those people are still paying \$120

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to the National-- the Safety Council to go through that diversion program. And so if we start tacking more fees on top of that to pay for these other things, I would be afraid we would have folks just not doing that.

DORN: Do you know-- do you happen to know why they originally came up with the \$3 fee, what they did to end up funding this?

J. CAVANAUGH: So the Commission on Public Advocacy-- and again, I'd probably have-- Mr. Pickens behind me maybe it would give a better picture. But what happened was we had-- smaller counties had-- well, Rulo, I think is the example and they had a bunch of homicides down there and it basically almost bankrupted or did bankrupt the county. And so they said, well, we need to create a system to have this sort of professional class of attorneys to come and represent these cases. And I know your county has benefited from this a number of times, right? And so then-- and the state paid for it and that came out of General Funds until, I think, the late '90s, early 2000s when we had a budgetary crunch. And we said, well, let's start giving it-- you know, let's put it onto court fees to help pay for it. And then I think they've increased the court fees at some point in the past to get it up to the \$3 that it is and-- you know, because they-- the court fees are always basically eroding from the moment you start. And so in a previous time of budgetary crunch, we decided that that was the way we wanted to fund it. And so I don't think that was right at that time. I think that, that the commission is something that should be fully funded through the General Fund.

DORN: Probably should ask that question when the director was up here earlier, so thank you. Thank you for your answer.

CLEMENTS: Senator Erdman.

ERDMAN: Thank you, Senator Clements. Thank you, Senator Cavanaugh. So your proposal kind of fits into my motto, reserve the third, the Third District.

J. CAVANAUGH: The commission does do a lot of its work--

ERDMAN: Yeah, they do.

J. CAVANAUGH: --in the Third District.

ERDMAN: I heard that earlier. So the question is then if we do that, then the \$3 filing fee, the filing fee will reduce by \$3?

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J. CAVANAUGH: No. Well, it could. I-- so my companion bill that we would move with this bill would move the \$3 fee to-- it would go to the legal services fee. So that's currently a \$6.25 fee and that's a fee that funds things like some of these alternative courts and it funds, like, Legal Aid to get some money out of that. And they are seeing the same problem. That \$6.25 is not bringing in the same dollars it used to and so they are looking for more money. And so that's, that's the proposal with this. Of course, if this committee thought to fund the Commission on Public Advocacy and didn't want to think that was appropriate, there are other things you could do with it. And actually, Senator Armendariz and I talked about this earlier. You know, you could return the \$3 to the counties. You could move the \$3 to just be into the General Fund. And honestly, where I came up with this idea originally was I heard the chair of the Kansas Appropriations Commission-- or Committee at a conference and he talked about how they had this exact problem with their courts in Kansas. And what they did was took all court fees and just put them in a general fund and then just said, well, how much is it going to cost us to do this? And then they appropriated it. So the amount came back-- came into the general fund, but the appropriation was the amount it took to run the sys-- the courts or whatever the system was. And the benefit to that was they kept having the same situation we have here, which was they were court fee funded and they'd come back every other year, every budgetary cycle and say, how much more do you need on top of what the court fee is that you've got? Because court fees are unreliable. So to alleviate that unreliability, they did it that way where they put the court fees into the general fund and they general fund obligated whatever the sys-- the service was they needed.

ERDMAN: OK. So in jeopardy of getting a long answer again, I'll ask this next question. So my assumption when you made the presentation was to lower court fees because you say the filing fees were too much.

J. CAVANAUGH: Yeah.

ERDMAN: So I assumed that they were going to lower them if you did this. So currently, there's about 700-and-some thousand collected with a \$3 fee and you want to give them \$2.1 million. That's three times as much as they currently collect. So it makes sense to me to think that even if you did that, you could eliminate that \$3 and take two point-- some of that 2.1 and give it to the others who are short as well and keep-- and then lower the filing fee. Because if your goal is to lower the filing fee, you haven't done that.

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J. CAVANAUGH: Well, we don't-- in answer to your question, I guess baby steps, Senator Erdman.

ERDMAN: Go ahead.

J. CAVANAUGH: I would-- if it were just up to me, I would probably eliminate the filing fee, but I understand that there are other people who don't want to do that. And so I'm here trying to make sure that we meet our obligations, which is to fund this organization and then address the other issue of what we do with a filing fee at maybe a later date.

ERDMAN: But isn't it true you're coming to us and asking us for more money, we may make the decision for you?

J. CAVANAUGH: I'm just here to present my side of the argument and you are entitled to make your decision--

ERDMAN: OK.

J. CAVANAUGH: --based in that context.

ERDMAN: All right, thank you.

CLEMENTS: All right. Thank you, Senator.

J. CAVANAUGH: Thank you.

CLEMENTS: And with that, are there, are there proponents for LB554?

JEFF PICKENS: Good afternoon again.

CLEMENTS: Welcome.

JEFF PICKENS: I can't talk without my outline. My name is Jeff Pickens, J-e-f-f P-i-c-k-e-n-s. Again, I am chief counsel for the Nebraska Commission on Public Advocacy. As you heard, there was a legislative resolution, LR396, and there was a hearing last October. The handouts I gave you for our budget apply equally well for this, for this hearing, if you can consider those. The Legislature created the commission in 1995 to provide property tax relief to counties that are required to provide legal counsel to indigent defendants charged with capital murder and other serious violent felonies. Since 1996, the commission's lawyers have tried murder cases and other serious violent felonies throughout the state. We've also handled appeals and post-conviction proceedings. We've handled over 1,500 cases in 72

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counties. We've represented 185 defendants who were charged with murder in 53 counties. We've handled 13 cases in which defendants were sentenced to death. We provide our services at no cost to the counties. That is how we provide property tax relief. I cannot estimate the amount of property tax relief the commission has provided since 1996, but it surely is an enormous sum. We are funded by a \$3 indigent defense fee, as you've heard. It's charged in most cases that are filed in Nebraska state courts. That fee has not seen an increase since 2005. As you heard previously, case-- and from Senator Cavanaugh-- case filings have been declining every year since 2008. So has our revenue. As you heard, in 2008-2009, our revenue-- annual revenue was almost \$1.3 million. In '21-- 2021-2022, it was less than \$750,000. Again, we predict a 6 percent decline each year for the next fiscal years, the next few fiscal years. You've heard that we had to draw-- have had to draw on our cash fund to pay expenses. It was \$1.2 million in 2014-2015 and only \$15,000 in fiscal year 2020-2021. For the last several years, I've testified before this committee and warned that it was only a matter of time before the commission faces an existential crisis if we do not receive additional revenue. We've been in that crisis for the last few years. Again, thanks to members from this committee and the Judiciary Committee, we got supplemental funds in 2021 and 2022. Without those funds, we would have been forced to significantly reduce our staff. As you've already heard, since last May, we've been down one lawyer; from six lawyers to five lawyers. We're unable to replace that lawyer because of inadequate funds. LB554 appropriates \$2.1 million from the General Fund to the commission for the next two fiscal years. \$2.1 million annually for the next two years would allow the commission to rebuild, to return to the number of full time employees we had initially and add one lawyer to meet the demand for our services. I want to thank Senator Cavanaugh for bringing LB554 and for his support for the commission. As I said previously, Governor Pillen's office has advised us that the Governor prefers the Legislature adequately fund the commission through the indigent defense fee. So we asked Senator DeKay to introduce a bill to increase the indigent defense fee. He agreed and his bill is LB767. It increases the fee from \$3 to \$8. The Commission on Public Advocacy desperately needs additional funding and we really don't care whether it comes from an increase in the indigent defense fee or from the General Funds. If the commission does not receive additional funding, we will not be able to replace lawyers as they retire or otherwise leave the commission and we will not be able to provide the same services we've provided for the last 27 years. With fewer lawyers, we will be forced to handle fewer cases. The financial burden will then fall back on to county property taxpayers and Nebraska's smaller

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counties will suffer financially when they have to pay for court-appointed lawyers and other defense services in murder cases. I'd ask you to advance LB554. I think I can answer most of the questions you asked Senator Cavanaugh and I welcome any questions.

CLEMENTS: Senator Armendariz.

ARMENDARIZ: Hi. Thanks again for being here for this one. I want to go to the-- you keep saying this lowers property taxes. So you're saying that the counties would have to pay through property taxes for these defenses. Should we not fund it and you not have the court fees funding it?

JEFF PICKENS: I'm sorry?

ARMENDARIZ: So the court fees are currently funding it.

JEFF PICKENS: The-- yes, that's right.

ARMENDARIZ: And if we do not fund it through the General Fund--

JEFF PICKENS: That's right. Except for the last two years.

ARMENDARIZ: --then it would fall on property taxes--

JEFF PICKENS: OK, so--

ARMENDARIZ: --of those counties to fund it.

JEFF PICKENS: Right, right. So we were created in 1995 to provide property taxes. Senator Cavanaugh spoke about the problems in Richardson County. They had the Rulo cult murders in the '80s and then the Boys Don't Cry Murders in the '90s. And we're required to hire lawyers from Omaha and Lincoln and that nearly bankrupt the country. That's why the Legislature created our office to have a stable of lawyers who could go out and do these cases and save the counties' property tax money.

ARMENDARIZ: OK, so, so were those defenses funded with property taxes in Richardson County--

JEFF PICKENS: Yes.

ARMENDARIZ: --the Rulo murders?

JEFF PICKENS: Yeah. The county actually had to take out a loan.

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ARMENDARIZ: So the property taxes currently funded it at that time, in the '80s and '90s.

JEFF PICKENS: That's right.

ARMENDARIZ: And then if we would fund this through General Funds, would that provide property tax relief for Douglas County?

JEFF PICKENS: Yes. And actually, we take cases in Douglas County. Initially, we weren't getting many appointments there and I don't know the reason, but there was a Senator-- a lawyer who served on our commission as a commission member-- sort of a board of directors-- who became a district judge and started appointing us there. And, and we've done some very expensive cases in Douglas County, saved Douglas County a lot of money. Most recently, we took over the Anthony Garcia case. He had court-appointed lawyers-- I'm sorry, not court appointed. His family actually retained lawyers from Chicago. They had no idea what they were doing. They created a big mess and then they ran out of money and they, and they asked to get out. The Douglas County Attorney asked the judge to appoint my office to take over the case. We came in. The judge was in a hurry to get this case going and didn't want long delays. I put three lawyers and a paralegal on the case to let the judge know we, we'll do this as quickly as we can. We-- at that time, Mr. Garcia had not been talking to his lawyers for a significant period of time. He's significantly mentally ill and at that time was not being properly medicated and stopped talking to everybody. He refused to talk with us when we came in. We had to hire a psychologist to do a forensic psychological evaluation. And typically the psychologist will talk with the person and get the history and Mr. Garcia had a lengthy history that he couldn't tell us about because he wasn't talking. That evaluation cost us \$50,000. You know, it would have been a--

ARMENDARIZ: And that was funded by the state?

JEFF PICKENS: That was funded by my office.

ARMENDARIZ: Which is funded by the fees.

JEFF PICKENS: Which is funded by the fees, that's right.

ARMENDARIZ: So then the \$2.1 million from the General Fund would be coming from not property taxes, but just another tax.

JEFF PICKENS: From the general tax, right. But we would still provide our services at no cost to the counties, including Douglas County.

ARMENDARIZ: Right--

JEFF PICKENS: You know, we--

ARMENDARIZ: --but it's not property taxes. It's just another tax that we receive from our taxpayers that would fund it then.

JEFF PICKENS: Yeah, however that works.

ARMENDARIZ: Not by the fees then.

JEFF PICKENS: Right. And now you could fund us with a combination of the fee and General Funds. Again, we're not particular on how we get the money. We just need the money so we can continue to provide the services that we were created to provide.

ARMENDARIZ: OK. I understand. Thanks.

CLEMENTS: Seeing no questions, thank you for your testimony.

JEFF PICKENS: Thank you.

CLEMENTS: Next proponent for LB554.

ELAINE MENZEL: Good afternoon, Chairman Clements and members of the Appropriations Committee. For the record, my name is Elaine Menzel. That's E-l-a-i-n-e M-e-n-z-e-l here today on behalf of the Nebraska Association of County Officials here in support of LB554. We would like to express our appreciation to Senator Cavanaugh for introducing this measure and also to Senator DeKay for introducing LB767 that has also been introduced. We will also be appearing in support of that. We find it important to support the commission and its work. And has been described to you, the underlying purpose is essentially shown in the legislative intent of-- well, I could cite the statute, but I won't. I'll just go ahead and read that subsection of the section. Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also lessen the impact on county property taxpayers of the cost of a high-profile death penalty case, which can significantly affect the finances of the counties. Information that's going to be passed out to you includes a chart that shows each of the 93 counties and it shows that each of your districts has at least one, if not more, counties that have utilized the services of the Public Advocacy Commission. Senator Armendariz, you were asking about Rulo and about whether that was property tax funds. At that time, they were unable to use the services of the Public Advocacy Commission because they were, in part, the

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basis for the creation of the commission itself. So that kind of prompted the acknowledgment that hopefully something could be done on behalf of counties. Mr. Pickens is unable to provide you a number for purposes of the property tax relief that we have received through the years as a result of the creation of this commission. I don't know that I can do any better. And this is just an assumption on my part, but just if you were conservatively taking the estimate that each of the cases of 1,500 would equate to about \$100,000 in defense work. That would be about \$150 million through the course of the years so that would be significant. And Senator Cavanaugh mentioned that if we had a savings to some extent, that the money would come back to the counties. And of course, I will never say no to that. But on the other hand, we would just be glad if you would continue to fund this so that it's to the degree that is appropriate for indigent defense to the individuals that use it. So with that, if there's any questions, I'll attempt to answer them.

CLEMENTS: Senator Erdman.

ERDMAN: Thank you, Senator Clements. Thank you, Ms. Menzel, for being here. So if one of these two-- we don't in both of these. If one of these passed, the other one would not be needed. Is that correct?

ELAINE MENZEL: I would-- probably not from-- based upon earlier testimony. It's going to be perhaps the idea of how you would prefer it to be funded, meaning court fees versus General Fund. But there also could be a combination of the two efforts with respect to complementing, you know, with the-- rather than enhancing the amount of the court fees, you could use a portion of General Funds.

ERDMAN: So Senator DeKay's bill takes it from \$3 to \$8.

ELAINE MENZEL: That is correct, \$3 to \$8.

ERDMAN: And so if, if we did Senator Cavanaugh's bill, \$2.1 million, we wouldn't necessarily need to raise the fee at all. In fact, we may be able to eliminate the fee, the \$3.

ELAINE MENZEL: Possibly. I, I don't have the figures in front of me, but--

ERDMAN: OK. Thank you.

CLEMENTS: Senator Dorn.

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DORN: Thank you, Senator Clements. Thank you for being here. I guess mine is a question on the handout that you gave out with all the cases. And it says number of cases handled by NCPA. So that's the total one since they've started?

ELAINE MENZEL: It is, it's since 1995. We got that information from the Public Advocacy Commission.

DORN: Public Advocacy--

ELAINE MENZEL: And so we presented that information that-- with-- that information was also provided to the committee at the October interim study. So as you all see, Gage County has roughly 91, as I recall, so.

DORN: But you had 1,500-- they've had 1,556 cases.

ELAINE MENZEL: Just over that, yes.

DORN: Over 50 a year--

ELAINE MENZEL: Yes.

DORN: --they're doing. OK.

CLEMENTS: Seeing no questions, thank you for your testimony.

ELAINE MENZEL: Thank you. I appreciate your time.

CLEMENTS: Other proponents for LB554. Welcome again.

SPIKE EICKHOLT: Thank you. Good afternoon again, Chair Clements and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing on behalf of the Nebraska Criminal Defense Attorneys Association so I'm a little bit different capacity this time. I guess next time I appear here, I'm going to three-hole punch my stuff. So I didn't realize it was an extra step for this committee. I'll try to remember to do that. The Criminal-- Nebraska Criminal Defense Attorney Association, we're a private membership organization. We have about 370 members statewide and they include public defenders and they also include private lawyers who do some or all criminal defense work and we're really across the state. And actually some of our members are people who work in the Commission on Public Advocacy. But we are here today to support this bill because it does provide for a meaningful financial commitment from the state's General Funds to the Commission on Public Advocacy. You've heard about the history of the commission. I just wanted to speak to it in a

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slightly different angle to talk about why this agency is of value to this state and why the committee should invest in it and we would respectfully suggest with General, General Funds. In addition to providing meaningful and free public defender services-- and that's really what the commission is. They are a statewide public defender entity, really for the smaller counties that either don't have a full-time public defender or simply don't need it because they don't have the volume of cases to have it. And you heard about the history of why they were created. But another consequence of the Commission of Public Advocacy is it does make to elevate and professionalize the practice of criminal law at the trial level and the appellate level across the state. What I mean by that is-- and I've used this firsthand. I do, not as much now, but I practiced criminal defense for a while. And I've been appointed on post-conviction cases. I've been appointed on serious homicide cases. And if I'd never done it before, one of the first people I'd reach out to would be Jeff Pickens. I would just ask him, I know you're not involved in it, but I've never done one of these before. What can you tell me? They provide that service free and as a consequence of them, that elevates the standard of defense in the standard of professionalism in the courts throughout the state. That's important because one thing that the courts will look are these-- they deal with the death penalty cases, the more serious cases. When you're looking at the trial practice, when you're looking at the appellate record, when you look at those and of courts analyze those things for errors and appeals, these are not the kind of cases that you want to try to do it on the cheap, to have a lawyer do these cases for the first time, have a lawyer make mistakes. Because what that will simply do is it will produce reversals, it will produce acquittals, it will perverse-- produce retrials. And those things are going to cost counties and the state so much more, not only in dollars and cents, but in the public's confidence in the court system. What you want to have is you want to have it done right so there's finality for victims, where there's integrity in the process. And that's what the Commission on Public Advocacy does, in addition to tremendous cost savings for the counties that you've already heard when they do have these serious cases. So we would encourage this committee to support this bill and I'll answer any questions if you have any.

CLEMENTS: Senator Wishart.

WISHART: Thanks, Spike, for being here today. You've been around this issue for, for quite some time. Regardless of whether we decide General Funds or, or a fee increase, what's the likelihood of legislation that increases fees passing through this Legislature. In the past, it's been a challenge.

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SPIKE EICKHOLT: In the past, it's been a challenge. And I can't speak to the likelihood of Senator DeKay's bill passing. I mean, at first glance, it's kind of a tempting solution. Oh, let's just charge a fee. And I think some people are kind of in their head kind of consider, well, if you do want to pay a court fee, then don't break the law. But it's more basic in that; it's a user fee to use the court system. In other words, that \$3 applies to traffic cases, criminal cases, but it also applies to divorce cases, guardianship cases. Anytime you use the court system, you pay it. As I think somebody alluded before, we've done some reforms since you've been here that have actually sort of made the court system less congested and provided for alternatives, not just on the criminal side, but on things like mediation, alternative dispute resolution, things that don't use the court system. And I would submit that that-- that's kind of right. That's one of the perhaps better things we've got going for our court system right now, right, that we're not sort of overly litigious. If you increase the fees because the filings are down and the filing, filings continue to go down, then you got to increase the fees even more, right? So it's just kind of a circular-- I don't know what the metaphor would be-- like, a circular spiral down. I don't know what the likelihood of that would be. I would respectfully suggest the \$2 million is not that much for even some of the things you've heard today from agency requests. It's a meaningful investment. The reason the fees, I would submit, were set in 2005-- I was working here as a staff person-- because that was a time of budget shortfall and that was really the only way. Because at that time, there was a fee that-- I think it was, like, \$1.50 or something that the commission got per case, along with some General Funds mixed and also some contribution from the counties as well. So the counties didn't necessarily get a free service. They had to pay a portion of the defense. But the solution, if you will, and 25-- 2005, if I remember right, was to increase the fee and have it free for the counties.

WISHART: OK. For me-- just let me ask you one, one other way. You, you've followed this issue before.

SPIKE EICKHOLT: Right.

WISHART: Has there been an attempt to increase fees, from your experience in the Legislature, that has failed?

SPIKE EICKHOLT: Yes, multiple times.

WISHART: Thank you.

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SPIKE EICKHOLT: That was probably the one answer you wanted, sorry.

CLEMENTS: Thank you, Mr. Eickholt. Thank you for your testimony.

SPIKE EICKHOLT: Thank you.

CLEMENTS: And are there other proponents for LB554? Welcome.

ELIZABETH NEELEY: Good afternoon. Senator Clements and members of the committee, my name is Elizabeth Neeley. I'm the executive director of the Nebraska State Bar Association and I'm here today in support of LB554. Just outcomes in the criminal justice system require capable counsel both for the prosecution and the defense. The commission was created in '95 to provide legal representation to indigents-- indigent defendants charged with first-degree murder and serious, violent or drug-related felonies. As you've heard, the commission was created in part as a way to provide property tax relief. Prior to establishment of the commission, a small county could go broke covering legal fees associated on just one capital case. The commission is currently understaffed and without an increase, the commission will have to further reduce the services available, thereby increasing costs to counties. Yes.

CLEMENTS: Excuse me, did you spell your name?

ELIZABETH NEELEY: I'm sorry. My last name is Neeley, N-e-e-l-e-y. First name, Elizabeth, E-l-i-z-a-b-e-t-h. Thanks.

CLEMENTS: Thank you.

ELIZABETH NEELEY: Sorry about that. These are complicated cases. The stakes are high. Having a commission on public advocacy also helps to ensure that the lawyers providing representation in these cases are well trained and experienced. Because if quality representation is not provided on the front end, counties can expect a claim of ineffective assistance of counsel and incur additional legal fees. I have disseminated some maps produced by the Nebraska State Bar Association. The one on the top is the current-- or 2022 data showing that those red counties are 12 counties in Nebraska with-- without access to a lawyer and there are 18 others with three or fewer. We have recently projected that in the next five years, if the numbers of lawyers reaching retirement age are not replaced, those numbers will increase to 18 counties with no lawyers and 32 with three or fewer. Simply put, there are some areas of the state where there are simply no lawyers available to competently handle these cases and we need the commission to fill that role. The commission is currently funded from court

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filings. As you've heard, the-- over the years, they've been asked to take on additional functions, but without any additional funding. And court filings have been decreasing for a variety of reasons and this trend is expected to continue. To stabilize funding for this important state agency, funding must be increased. Whether you do that through a General Fund appropriation, a filing fee or a combination, we support whatever approach you think is best and we thank you for your support of LB554. Happy to answer any questions.

CLEMENTS: Seeing none, thank you for your testimony.

ELIZABETH NEELEY: Thank you.

CLEMENTS: Are there any other proponents for LB554? Are there opponents for LB554? Anyone in the neutral capacity? Seeing none, Senator Cavanaugh, you're welcome to close.

J. CAVANAUGH: Thank you, Chairman. And well, first off, the-- I think the phrase Mr. Eickholt was looking for was a vicious cycle, which is where things continue to spiral down. And the-- yeah, the nature of that vicious cycle is the 6 percent decrease. That's a 6 percent decrease in filings. So even if you increase the fee, it's going to start going down 6 percent a year is what Mr. Pickens said there and that's why court fee-based funding for this is not a sustainable model. And we could go through all of the different types of court fees that are on here and the things, as Mr. Eickholt pointed out, that it's not just criminal cases, it's civil, it's divorces, it's small claims. But I wanted to address Senator Armendariz's question about how this is kind of the-- you were kind of hitting on the idea of does it matter who pays for it, right? So this is an economy of scale sort of situation where you can look at the maps and see there aren't a lot of lawyers in these rural counties. It becomes expensive. And then if you look at the handout to Ms. Menzel, I think-- did I pronounce it right?-- Menzel handed out from the-- lists off the number of cases, but it also tells you how much they're paying-- each of these counties are paying hourly for court-appointed counsel. And so you can look and see, obviously Douglas County pays \$80 a hour for a felony case, but these rural counties are paying \$100 an hour. And that's because of the proximity to lawyers and the availability of lawyers and things like that. But what happens when you have a case like-- you heard about the Richardson County case where they cost millions of dollars to the county, Those were all court-appointed hourly lawyers. You hear about cases in, in Gage County where the commission has been appointed to represent one person and the other person had to get an individual court appointment and that costs

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hundreds of thousands of dollars. And the commission does it for less because they have a professional office that's doing this full time and they're not charging on an hourly basis. So there is-- in that regard, the county is paying that-- the amount the county paid out is actually-- in that case in Beatrice, I think the county paid out more money than it cost the commission to do the same job. And so there is an efficiency there that we're saving that money and there-- and that is the amount, however much the county saved, is a savings for property taxpayers. And what the commission really does, as Mr. Eickholt pointed out, is the professionalization of this and allows for counties to not have to save money or to borrow money for these unexpected expenses. It allows the state to have this professional class of lawyers who can come in and do this when it becomes necessary and the county then doesn't have to worry about that fact that they're going to have to find a way to pay for this after the fact for something that was unplanned. So I would certainly suggest taking a look at the, the list here of all, all of the counties that have represented. But I would definitely take a look at their court appointment costs because when you have to appoint somebody rather than hire the commission, that private appointed attorney is going to cost a lot more per hour than the commission is going to cost the county or the -- well, because the commission is not going to cost the county anything. So then the commission is going to cost the state. But I can't stress enough that the reason I got involved in this-- and Senator Wishart's question, have fee increases failed before? Yes. And I have opposed them historically and that's why I ended up bringing this because I believe in the commission, but I'm opposed to court fees. And so I will continue to oppose increases in court fees. I would love to decrease court fees, Senator Erdman, but I'm just trying to do one thing at a time here. And so I believe in their mission, but I'm against court fees and I would probably oppose any proposed increases in court fees going forward. So I'll take any questions.

CLEMENTS: Senator Erdman.

ERDMAN: Thank you, Senator Clements. So thank you, Senator Cavanaugh, for your explanation. So I'm going to ask you the same question I asked Ms. Menzel. So if you had your choice, which one of these bills you want to pass, you or-- yours, LB554, or LB767?

J. CAVANAUGH: I'm going to assume LB767 is Senator DeKay's bill?

ERDMAN: That raises the fee from \$3 to \$8.

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J. CAVANAUGH: Oh, well, no, I would-- I'm in favor of my bill and I probably will oppose that bill.

ERDMAN: OK. So if your bill-- if we would see to it that we could appropriate \$2.1 million, would you be in favor of reducing the fee?

J. CAVANAUGH: I would be in favor of reducing the fee. I'm not at this moment advocating for doing that.

ERDMAN: But you would be in favor of that. That would be your-- because you said in your testimony you're in favor of reducing fees.

J. CAVANAUGH: I am.

ERDMAN: So you can't have it both ways.

J. CAVANAUGH: Well, I'm not currently proposing reducing fees.

ERDMAN: I understand that.

J. CAVANAUGH: But I'm, I'm trying to get us in a position where we can reduce the fees.

ERDMAN: So I'm trying to figure out how to support your bill.

J. CAVANAUGH: I, I would love to have you on board with that philosophy.

ERDMAN: OK. Thank you.

CLEMENTS: Senator Vargas.

VARGAS: Would you be-- sorry.

ERDMAN: It's OK.

VARGAS: I mean, we-- I mean, we can have it both ways in some ways. Look, you can keep the fee the same way it is, right? We can keep the fee at \$3. Nothing changes. Nobody's increasing it. We don't have to fund the 2.1. I'm not saying that there's not a-- they, they wouldn't benefit from hiring more attorneys, but you'd be in support of if we did \$800,000 plus the existing \$3 fee, which gets them close to what, that-- \$1.5 million in terms of overall? And their request is 1.2, one point-- something like that, right? Like, then we won't have to eliminate the fee and we wouldn't be funding the full 2.1. You'd be, you'd be OK with that, right?

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J. CAVANAUGH: Well, yeah, my desire, I suppose-- one-- the reason I brought this bill is to get us off of this conversation where we're constantly-- because we have to come back and have this conversation again in two years if we don't, if we don't make this shift in how we do this. And so I think it's important that we shift to funding the entire operation of the commission to General Funds. And whether the Legislature as a whole, because ultimately the elimination of fee kind of rests in a different committee and on a different bill-- which I brought that other bill, but I would personally be in favor of eliminating all court fees and appropriating money for everything. But I'm not proposing that here because I know not everybody-- that, that there's not a groundswell for that philosophy. But yeah, I think that-- I think the work here is important enough that a compromise solution is at least in, in line.

VARGAS: Well, my, my-- I appreciate you bringing this. I think the current amount is a lot. But one thing for the record for everybody, they are saying yes to murder cases and saying no to other cases. So this is not-- it's all they need, it's what they're currently utilizing. And they have to say no to a lot of other types of cases so they could benefit from more. I'm not saying it, but it, it is what they requested in terms of their current budget so thank you.

J. CAVANAUGH: I agree with that.

CLEMENTS: Senator Armendariz.

ARMENDARIZ: Hi. Thanks, Senator, for outlining that efficiency picture for us. It's, it's less expensive to have a lawyer in Douglas County than it is for some of the counties to hire a private attorney then. That is helpful to understand that. I guess my, my point to make was we keep saying this is property tax relief, but it's really still a tax. It's still a tax on the, on the constituents in Nebraska. They're still paying a tax to support this service at \$2.1 million in your proposal. And to Senator Vargas-- and you and I discussed privately-- if we keep the \$3 fee, it at least somewhat offsets that \$2.1 million that we're asking taxpayers to support. So it might be a little bit better to swallow, I think, for the taxpayers to know that the people participating in the court system are still funding it somewhat. If the case-- cases are going down and they can't fully fund it and we have to make up the difference, maybe we understand that as a state, but still participating to help fund it as best we can might be a good balance, I think, for everybody.

J. CAVANAUGH: Can I respond? I agree with you. Yeah--

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ARMENDARIZ: Yeah, I'm sorry. I didn't ask--

J. CAVANAUGH: No, no.

ARMENDARIZ: --you a question, but you can certainly respond to it.

J. CAVANAUGH: So, yeah, I agree with that. And, and as I think Mr. Pickens and maybe even Mr. Eickholt said, the bill that originally created the commission, it was called the property tax whatever relief bill. And it's a property tax relief in the sense-- I mean, you're 100 percent right. We're just-- it's paying for it out of income tax and other state taxes rather than property taxes. But one of the real values it brings, aside from those economies, is that fact that, say, Cedar County doesn't-- isn't planning to have defensive-- you know, a homicide every year and so they don't budget for that. And so that's-- it's more of a-- it's almost like insurance. You know, the Commission on Public Advocacy is an insurance for criminal-- for homicide defense statewide for the smaller counties. And so it's of course-- yeah, we're just-- it's a shift from property tax to income tax, but we're kind of talking about doing that a lot of places in the state, I suppose.

ARMENDARIZ: Yeah. I just wanted to make that clear to everybody watching and listening that it's still taxpayer funded.

J. CAVANAUGH: Yes.

ARMENDARIZ: No matter--

J. CAVANAUGH: You're correct.

ARMENDARIZ: --what we-- it's, it's this.

J. CAVANAUGH: Yeah.

CLEMENTS: All right. That-- thank you for your testimony.

J. CAVANAUGH: Thank you.

CLEMENTS: And regarding LB554, we have seven proponent position comments from record. That concludes the hearing on LB554. We'll now open the hearing for LB660. Senator Ibach. Welcome, Senator.

IBACH: Thank you very much. Good afternoon, Chairman Clements and members of the Appropriations Committee. My name is Teresa Ibach, T-e-r-e-s-a I-b-a-c-h, and I represent Legislative District 44. Today

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I am here to offer for you-- for your consideration LB660. LB660 was introduced at the request of the Nebraska State Bar Association and the attorneys working on efforts to increase the number of lawyers choosing to practice their profession in rural Nebraska communities. LB660 is a simple bill that merely seeks to continue funding for the Rural Practice Loan Repayment Assistance Program at an amount of \$150,000 per year. This would continue the ongoing funds for the program that has been in place for at least the last two budget cycles. As you will hear, the Rural Practice Loan Repayment Assistance Program is a program aimed at ensuring students who graduate from law school with sometimes considerable debt are provided an opportunity and incentive to locate in rural Nebraska. As representative-- as a representative of the Bar Association who will follow me will explain the trend in the numbers and location of attorneys in Nebraska's rural communities in our con-- and-- excuse me, Nebraska's rural counties are concerning and, if left unchecked, may result in rural Nebraskans finding it difficult to access and utilize Nebraska courts. LB660 was introduced prior to the release of the Governor's budget when advocates for the Repayment Assistance Program were unsure whether the administration would recommend continuing the funding without the need for a separate piece of legislation. Upon Governor Pillen's release of his proposed budget, it became clear that the funding contemplated in LB660 has been included in the Governor's budget bill, LB814. As a result, I'm here with stakeholders to urge you to simply approve the Governor's proposal with respect to the program and continue its funding for the biennium at the amount of \$150,000. I'm happy to answer any questions about the history of the program or its success so far, but I do know that there are others planning to testify who have direct knowledge and experience of the history and the impact. Thank you. And I may lose my voice.

CLEMENTS: Seeing no questions, we will invite proponent testimony.

IBACH: Thank you.

CLEMENTS: Welcome.

ELIZABETH NEELEY: Thanks. Good afternoon. My name is Elizabeth Neeley, E-l-i-z-a-b-e-t-h N-e-e-l-e-y. I'm the executive director of the Nebraska State Bar Association and here today to support LB660. In the last 15 years, the amount of law school debt that students graduate with has nearly doubled. So the American Bar Association now predicts that the average law school graduate has between \$125,000 and \$150,000 in debt upon graduation. In effect, students graduate with a loan payment between \$1,417 a month, a monthly payment that is now being

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referred to as the house that they'll never live in. This major increase in student loan debt hinders civil legal nonprofits like Legal Aid of Nebraska and rural Nebraska's ability to attract lawyers to work in their communities. New lawyers are pressed to look instead for jobs in cities that have the possibility of higher pay. I distributed some maps earlier with the distribution of lawyers across the state and the lack of lawyers in certain areas, especially our rural areas. The bar association has established a rural practice initiative in 2013 to encourage new graduates to consider locating in rural communities. For example, last Friday, we hosted a rural practice interview event with 22 law firms in rural Nebraska that were currently hiring. The NSBA views this bill as an important tool in attracting new graduates to rural areas and ensuring access to legal services in these areas and in keeping courthouses and rural communities open and investing in the future for rural communities. In 2022, there were 34 lawyers that were provided financial assistance through this program. Six are working for civil legal nonprofit services, providing services to low-income Nebraskans exclusively, and 28 are serving in rural Nebraska, either as public defenders or in some type of private practice. These lawyers are serving in communities like Alma, Beatrice, Beemer, Broken Bow, Chadron, Creighton, Gothenburg, Hastings, Holdrege, Loup City, McCook, Ord, Palmer, Pawnee City, Scribner, Tecumseh and York. Several of them may have written to this Appropriations Committee to share a firsthand account for how this impacted not only them, but the communities that they serve. Many states are struggling with this issue. Nebraska's multipronged approach is often heralded as the most progressive and impactful in the nation. We're very proud of the investment in addressing the need for lawyers in rural Nebraska that's been made by our law schools, our bar associations and by our Legislature through this program. Continued funding for this program is currently included in the Governor's 2023 budget and we thank you for your continued support of this program. I'd be happy to answer any questions that you might have.

CLEMENTS: Senator Erdman.

ERDMAN: Thank you, Senator Clements. Thank you for coming. So the \$150,000 is the total amount in this fund?

ELIZABETH NEELEY: That's correct.

ERDMAN: And you had 38 participants.

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ELIZABETH NEELEY: Thirty-four in 2022. So the maximum amount that, that a applicant can receive in a given year is \$6,000. So depending on the number of applicants, it's divided among the group of applicants. So it could change from year to year based on the number of people who have applied.

ERDMAN: So if you get-- if you are selected, you get \$6,000 one time?

ELIZABETH NEELEY: So there is a-- the program rules really contemplate, like, an initial three-year commitment that can be renewed annually thereafter. There is a maximum. So the most that a single person could receive in student-- in this-- forgive-- kind of loan repayment is \$42,000. But for example, in 2022, the average amount that was provided in support was 40-- closer to \$4,800, not \$6,000. Because of the number of applicants, it was reduced.

ERDMAN: And that money is used for what?

ELIZABETH NEELEY: It is used to pay down the principal of the student loan. So it doesn't help reduce the monthly payment, but they're trying to kind of knock down the principal payment on these student loans.

ERDMAN: And are there students waiting to be enrolled in that program?

ELIZABETH NEELEY: I'm not sure what I under--

ERDMAN: Are there students-- if we would give this-- if we put this \$150,000 and there's a need for it.

ELIZABETH NEELEY: There is, there is absolutely a need for it. So I think that there are probably more student-- there, there are probably more lawyers out there that could benefit from this. And I think it could potentially grow, especially if our efforts, especially through the University of Nebraska College of Law, to attract more students from rural Nebraska to the law. Payoff, there might be an increased need moving forward.

ERDMAN: So is there a requirement for them to serve in a location of certain population?

ELIZABETH NEELEY: Through the, the grant program or the eligibility requirements, you have to live or serve a community with a population of less than 15,000 people.

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ERDMAN: Because I noticed in your comments, none of those were in my district. So I don't have enough population to get one of those people in my district?

ELIZABETH NEELEY: What's your district?

ERDMAN: 47.

ELIZABETH NEELEY: So-- well, I think they would be eligible if you're-- if you had counties--

ERDMAN: We don't have any now serving in our--

ELIZABETH NEELEY: What, what counties are in District 47?

ERDMAN: There's nine of them.

ELIZABETH NEELEY: OK. They would be eligible too, though. If the-- if you have a-- if they're serving a county with a population of less than 15,000, they would be eligible to apply for it, yep.

ERDMAN: Yeah, I don't have any counties of 15,000.

ELIZABETH NEELEY: Or less.

ERDMAN: They're all less.

ELIZABETH NEELEY: They're all-- that's what I'm saying. The population has to be less than 15,000, not more than 15,000.

ERDMAN: But they're not required to go to certain counties because this has been less than 15,000.

ELIZABETH NEELEY: Correct. Yep. And it-- and just to be clear, you could also be eligible if you lived in Lincoln or Omaha and you worked for a civil legal service provider like Legal Aid of Nebraska. So you could still live in an urban area and be eligible if you're providing free legal services to low-income residents.

CLEMENTS: Senator Armendariz.

ARMENDARIZ: Hi. Thanks for testifying again. Are there federal programs that offer loan repayment to attorneys?

ELIZABETH NEELEY: There are. There is a-- the public student loan forgiveness program offered through the federal government offers loan forgiveness for individuals who have provided ten years of consecutive

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service to the public service, meaning a non-- qualified nonprofit or a governmental entity. There is a lot of litigation nationally right now about the legality of some of these programs. And so there's not, in my estimate, a clear answer on whether that promise will be made. There is also some funding through some federal grants administered by the Nebraska Crime Commission specific to prosecutors in Nebraska that are providing that service to those-- to communities across the state.

ARMENDARIZ: And could they participate in all of the programs available as long as they do-- as long--

ELIZABETH NEELEY: Yes.

ARMENDARIZ: --as long as they live in qualifying areas?

ELIZABETH NEELEY: They could, yes.

ARMENDARIZ: OK. Thanks.

CLEMENTS: Other questions? Seeing none, thank you for your testimony.

ELIZABETH NEELEY: Thank you very much.

CLEMENTS: Are there other proponents for LB660?

JEFF PICKENS: The good news is I'm a short timer and you may never see me again. I know that's good news for you, arguably for me. My name is Jeff Pickens, J-e-f-f P-i-c-k-e-n-s. I'm chief counsel with the Nebraska Commission on Public Advocacy. The Legislature has tasked our office to administer several programs that seemingly have nothing to do with our mission. When the Legislature tells us to do something, we do it. So we administer the legal aid, the services fund, the Civil Legal Services Fund, and this loan repayment program. Mostly it's my administrative assistant who does this work and I do some work on it as well. Our board of commissioners determines eligibility of applicants and the amount to award recipients after consultation with the program's advisory board. Our board of commissioners meet on the first Saturday in December and among other things, award loan repayment assistance to qualified recipients. The program was created in 2008 to provide repayment assistance to lawyers who provide public legal services to low-income people, but that program was not funded. In 2014, the program was amended to also provide repayment assistance to lawyers who provide services in rural counties populated with less than 15,000 people. In 2014, \$500,000 was transferred to the fund and \$150,000 was appropriated for fiscal year 2014-2015 and then again in fiscal year 2015-2016. By statute, the annual awards cannot exceed

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\$6,000 per recipient and the total amount a recipient can receive as \$42,000. We have some folks who have been in this program for a while and the highest total amount of assistance to one recipient thus far is just under \$30,000. In 2014, we provided 29 recipients each \$4,685 in loan repayment assistance. And we have provided loan repayment assistance every year since then, except for in fiscal year 2017-2018. At that time, money was appropriated into the fund too late for us to go through the process to award money. That money stayed in the fund and then the following year, another I think \$150,000 was transferred into the fund. And in fiscal year 2018-2019, 40 recipients each got the maximum \$6,000. The program has provided \$1,121,365 in assistance to date. The commission does not use any money from this program to cover our expenses; same with the other programs we administer. None of that money goes to our operations. Thank you for your support for this program and I would welcome any questions.

CLEMENTS: Senator Erdman.

ERDMAN: Thank you, Senator Clements. Thank you again for being here. So I notice it's a three-year commitment. What happens if they leave before the three years is up?

JEFF PICKENS: They have to pay it back.

ERDMAN: Everything or just what--

JEFF PICKENS: Everything. And it happens. Yeah. With the rural programs, sometimes recipients will move to Omaha or Lincoln for a seemingly better-paying job. And we do require them to pay the money back and they do pay it back.

ERDMAN: With interest or just--

JEFF PICKENS: No interest, no. And we let them pay that in installments usually.

ERDMAN: OK. Thank you.

CLEMENTS: Thank you, Mr. Pickens.

JEFF PICKENS: Thank you.

CLEMENTS: Are there any other proponents for LB660? Seeing none, are there any opponents for LB660? Seeing none, anyone here in the neutral position? Seeing none, Senator Ibach, you're welcome to close.

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IBACH: I waive.

CLEMENTS: She waives closing and we have position comments. We have three proponent comments for the record and that will conclude LB660 and that will conclude our hearings for today.