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Government, Military and Veterans Affairs Committee
January 24, 2008

[LB739 LB744 LB747 LB776]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, January 24, 2008, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB739, LB776, LB744, and LB747. Senators present: Ray Aguilar, Chairperson; Kent Rogert, Vice Chairperson; Greg Adams; Bill Avery; Russ Karpisek; Scott Lautenbaugh; and Rich Pahls. Senators absent: Mike Friend. []

SENATOR AGUILAR: Good afternoon everyone. Welcome to the Government, Military and Veterans Affairs Committee hearing. I'll introduce the committee members that are here and others as they come in. On my far right Senator Scott Lautenbaugh from Omaha; next to him Senator Kent Rogert, the Vice Chair of the committee from Tekamah, Nebraska, on my immediate right is Christy Abraham our legal counsel. My name is Ray Aguilar. I'm from Grand Island. Sherry Shaffer is our committee clerk; next to Sherry Senator Greg Adams of York; and Bill Avery of Lincoln. Bills will be taken up in the order as they were posted: LB739, LB776, LB744, and LB747. Sign-in sheets are at both the entrances. Sign in only if you are going to testify and then put the paper in the box in front of Senator Fulton. If you're not going to testify and would like to be on the record either as a proponent or an opponent on a bill, there's another sheet you can fill out and those are also on the tables by the entrances. Print your name to indicate who you are representing. Before testifying, please spell your name for the record, even if it's a simple name. Introducers will make initial statements, followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing Senator only. Listen carefully and try not to be repetitive. If you have a prepared statement or exhibit, give it to the page and they will distribute it or make copies, if necessary. Please turn off your cell phones and pagers, and our pages for today are Ashley McDonald of Rockville, Nebraska, and Courtney Ruwe of Herman, Nebraska. First bill up, Senator Fulton is present to introduce to us, LB739. Welcome, Senator Fulton. []

SENATOR FULTON: (Exhibit 1) Good afternoon, Chairman Aguilar. Thank you to the committee for having me today and for allowing me to introduce this bill. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I represent Legislative District 29. I do have--per the request of Vice Chairperson Senator Rogert--12 copies. I wonder if I could get those disseminated? Thank you. The Lincoln Chamber of Commerce wanted to weigh in and I understand that their lobbyist is not able to be here today and so that is what this exhibit is in support of this bill. [LB739]

SENATOR AGUILAR: Very good. It will be entered into the record. [LB739]

SENATOR FULTON: Okay. Thank you. LB739 gives assistance to small businesses in the private sector. The bill is modeled after existing federal legislation HR456 presently

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in the House of Representatives. It proposes a six-month suspension of regulatory fees imposed on businesses employing 100 or fewer employees, and that's taken from Nebraska Revised Statute 58-307, the definition of what a small business is. It proposes a six-month suspension of regulatory fees provided that a criminal investigation or the collection of any tax debt revenue or receipt is not impeded. This bill is meant to effectuate an essential objective of government, that being the facilitation of the private citizens undertaking of risk. This private undertaking is necessary for economic opportunity and job creation in our society. To the degree that the state is deriving economic benefit from the imposition of fees, so does the state create an incentive for additional regulation which in turn further inhibits entrepreneurial activity. The provisions within this bill are broadly drafted to encompass small businesses in all sectors. I am appreciative of the necessary imprecision that accompanies a bill that seeks to reach to a broad expanse of industries and services, and I am most willing to work with interested parties in developing whatever further precision is appropriate. We put forward this bill with the idea that it would be general. If there's a level of specificity that the committee or any others could suggest, then certainly I'm willing to work to that end. Concluding, this is a fairly straightforward principle and I am mindful that this bill will raise some questions from a regulatory perspective in government. The primary question that I bring forward with LB739 addresses how the success of small business depends not so much on government restraints as much as it depends on the restraint of governments. So that's the conclusion of my testimony. I'm open to questions if there are any. [LB739]

SENATOR AGUILAR: Thank you, Senator. Any questions for Senator Fulton? Senator Avery. [LB739]

SENATOR AVERY: Thank you, Mr. Chair. Senator Fulton, would you inform me a bit here, what is the problem you're trying to fix? [LB739]

SENATOR FULTON: Um-hum. Thank you, Senator Avery. I'm a small business owner myself, and when I went to start the business there were a lot of things that are required of me in order to operate my business within the state of Nebraska. And so to the best of my ability I filled out all the forms that were necessary and I guess I recognize this from an experiential standpoint as...oh, a burden might be too strong a word, but it was burdensome in starting a new company. So what I'm proposing here is to give one freebie, a get out of jail free card--once. When there's a mistake or when there's a deadline that's missed in providing any agency or political subdivision of governments information collection, you get one miss. At this point there's nothing which exists to that extent. If you miss, you get to pay the fine and you have to...whatever penalties are associated with missing a deadline to bring information to a political subdivision or agency. So this bill is really...it's a means of communicating something on the part of the state that we understand that what you're undergoing, Mr. Small Business Owner, is challenging and we appreciate that and to that extent we will afford you one miss.

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[LB739]

SENATOR AVERY: And there is no provision now? If you make a mistake and it's not willful, there's no provision to waive that currently? [LB739]

SENATOR FULTON: Not that I'm aware of statutorily. There could be. It's possible that it could exist at the volition or judgment of whoever is in charge of said agency or political subdivision, but there's nothing statutory. [LB739]

SENATOR AVERY: I haven't had a chance to read this yet, but do you have something in here that would specify willful disregard or willful failure to file? [LB739]

SENATOR FULTON: Well, I don't know if I can answer your question specifically with regard to the volition of the actor, but I'd want to point out that this doesn't concern the assessment or collection of taxes or debt or revenue, that's something separate. What this addresses is any penalties associated with disseminating or turning in information to a political subdivision. So whether willful or not, that's not addressed so much in the bill. It will have to be rectified. We have a six month...where is it...the violation needs to be corrected within six months. So if there is an action on the part of the business owner which is willful and in bad regard with respect to what he's suppose to do, he's still going to have to act within six months. [LB739]

SENATOR AVERY: And if not then the waiver would expire? [LB739]

SENATOR FULTON: Yeah, the way that it's written right now yeah, he's just out of luck after six months. So the types of things that I have in mind--and this is where I'll be amenable to any type of language of specificity--turning in information with regard to...so in my instance there's an example that came to mind. This was brought to me actually by a constituent as an idea. The idea that I had experienced or the experience that I had was the filing of workers' compensation reports. I didn't realize that I had to turn in a report for every single one of my employees by a certain date, and it was brought to my attention by my accountant at a very late time. You know, this is due tomorrow basically is what happened to me, and so I had to struggle and I ended up getting it done. But if I didn't have an accountant, if I didn't have someone watching my back, then I could have been hit with a fine for not turning it in on time. [LB739]

SENATOR AVERY: What are those fines? Are they heavy fines? [LB739]

SENATOR FULTON: For my case I don't recall that it was a heavy fine. But there will other agencies. I imagine there will be agencies to come in to testify to this. I don't know the entirety of all the fines that exist, but I do know that there are penalties and fines associated with not turning in certain information on time. [LB739]

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SENATOR AVERY: That's all I have, Mr. Chair. [LB739]

SENATOR AGUILAR: Further questions? And we've been joined by Senator Karpisek, you're up. [LB739]

SENATOR KARPISEK: Thank you, Senator Aguilar. Senator Fulton, I've been in your shoes. Is there any...do the agencies get a hold of you when you're trying to start a business to tell you hey, you need to file this? [LB739]

SENATOR FULTON: Senator, that wasn't my experience. [LB739]

SENATOR KARPISEK: Nor mine. [LB739]

SENATOR FULTON: Yeah, yeah. Well, when I first started I had a good idea and I was pretty excited to go out with my idea. I thought it something that would be good for society. It's exciting from a business standpoint, and what I came to find out that it's kind of like coming in to serving the Legislature. You have ideas of how things are going to work and then you realize there are a lot of regulations that are legitimate. I want to be clear about that. I'm not saying that regulation is not a legitimate purview of government because it is. But the overwhelming nature of getting into business, there are so many things that one has to do. Sometimes you miss something, especially if you're on your own and if you don't have the financial means to hire a professional like a tax advisor or what have you or an attorney or what you have. It's not the responsibility of government to point out to the business owner that you have such and such a deadline coming. That falls on...well, at least that's the way it is now, and that falls on the business owner. And so this seems to me this is...it's an olive branch. You know, it's a one-time get out of jail free card. That's a good way to explain this, and I think it would be a...it's a proper response on the part of government and the state to recognize that we appreciate the risk that you take on behalf of society. [LB739]

SENATOR KARPISEK: Well, I agree. I went to the bank and they helped me immensely to file the forms and to do them right. But like you said, otherwise short of hiring someone there would have not have been. So I really appreciate the bill and thank you, Senator Fulton. Thank you, Senator Aguilar. [LB739]

SENATOR AGUILAR: Senator Rogert, do you have a question? [LB739]

SENATOR ROGERT: Sure. Senator Fulton, is it your intention or understanding with this bill an individual or a business could actually get several reprievals, one from many of different agencies they may be required to file with? [LB739]

SENATOR FULTON: That's not my intention and... [LB739]

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SENATOR ROBERT: I don't see that there's a problem with that. I just want to get a little clarity on that. [LB739]

SENATOR FULTON: Yeah, that's not my intention. I think that the way that we have drafted the language, that's not possible in the bill. [LB739]

SENATOR ROBERT: Because I just wonder if the agencies don't share information about...unless we create a list of these people that have been spanked and now they get...you know, that's it, they've been...I don't have a problem either way. I just wondered if it needs to be clarified a little bit on that level. [LB739]

SENATOR FULTON: That potential exists. If there needs to be clarifying language, then certainly I'm open to that. The way that I can explain this is we tried to draft this around a business because I recognize that after six months' time you know, maybe a business comes and tries to get another freebie, and we've drafted it such...we think we've drafted it such that that's not the case... [LB739]

SENATOR ROBERT: Yeah. [LB739]

SENATOR FULTON: ...that this business, this particular business X gets one freebie. I've been using the word, I might as well continue. [LB739]

SENATOR ROBERT: Thank you. [LB739]

SENATOR AGUILAR: Senator Adams. [LB739]

SENATOR ADAMS: Senator, I think your bill has merit. I just thought that I had...as you were putting this together did you ever have a question in your mind about businesses that the character of which may be questionable? Reputation-wise the owner who is filling out these forms is of questionable repute that...I realize that we do it for one, we do it for everybody. Fair is fair, and I'm okay with that. But I'm just wondering as you process through this, did you ask yourself might there be a type of business that for whatever reason, the product, the service that they're providing, we don't want to make it easy? [LB739]

SENATOR FULTON: Um-hum. I've thought through that, but not in any depth. I mean, I want to say that Senator Karpisek is not a disreputable individual. [LB739]

SENATOR ADAMS: He was the guy I was thinking of. [LB739]

SENATOR AVERY: Oh no, that's a matter of opinion. [LB739]

SENATOR FULTON: That's legitimate. But I think that in my opinion anyway, it would

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be my intention that this would apply evenly to everybody, and the type of infraction here that we're talking about...let's see. In the green copy, page 2 line 4, information collection requirements, and technically that's the term that we assign to this. So we're...and then we specifically go down even further in...go a little further with that in line 9 and say that this disallows any tax, debt, revenue, or receipt. So any disreputable actors, it would have to be within the purview of providing information, information collection. I mean that's the terms that if this were to go forward, that would be the statutory term. [LB739]

SENATOR ADAMS: Okay. [LB739]

SENATOR FULTON: And I should come back to, Senator Rogert, your question is actually in subsection 2 on page 2. That's where your question is addressed. Subsection 1 of this section shall not apply to a violation of the information collection requirements of a state agencies or political subdivision if the small business has previously violated any information. So that's where it says that you... [LB739]

SENATOR ROBERT: Okay. [LB739]

SENATOR FULTON: Yeah, if they've violated an information request at one time in the past, then going forward they would be disallowed from applying this law. [LB739]

SENATOR AGUILAR: Further questions? Seeing none... [LB739]

SENATOR FULTON: Thank you, Senator. [LB739]

SENATOR AGUILAR: Will you be around to close, Senator? [LB739]

SENATOR FULTON: I will not be closing. I have another bill, so... [LB739]

SENATOR AGUILAR: Very well. First proponent? [LB739]

JERRY STILMOCK: (Exhibit 2) Good afternoon, Senators. My name is Jerry Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of National Federation of Independent Business in support of LB739. Compliance with regulatory mandates by small businesses at times creates a tremendous burden on small businesses. Even though the problems that give rise to government action and passing laws and adopting regulations may not have been caused by the smaller entities, the laws and regulations that are designed to address the problem are certainly applied uniformly to small businesses. Small businesses which have a hard time complying with uniform regulatory and reporting requirements due to perhaps burdensome legal, accounting, or consulting services that have to be acquired. Whereas a large entity may have the benefit of referring reporting requirements to its legal or compliance departments, small businesses typically have

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only an owner or perhaps a small staff to address regulatory and reporting requirements. We hear so often the term in the last couple of years from the administration of the objective of Nebraska is to grow Nebraska. And if we're going to continue to promote a climate for entrepreneurial success in Nebraska so that small businesses will continue to create jobs, to continue to produce innovative new products, and continue to provide valuable services in order for more Nebraskans to enter into the economic mainstream and also to broaden the tax base. NFIB believes that this can be done by adopting LB739 which will provide regulatory relief for small businesses without sacrificing agency regulatory goals. We believe that a one-time absolution of a fine or penalty granted to small businesses for a small business' failure to collect and provide information makes good sense. The three exceptions listed in the bill provide a safety net so that a fine or penalty would still be imposed in appropriate circumstances, and we'd ask the Government Committee to advance LB739 to General File, and I have copies of my testimony for distribution. [LB739]

SENATOR AGUILAR: Thank you, Mr. Stilmock. Any questions for Jerry? Senator Avery. [LB739]

SENATOR AVERY: Thank you, Mr. Chair. I know that in our files here the fiscal note indicates that the income from fines and penalties right now is deposited with the Permanent School Fund. [LB739]

JERRY STILMOCK: Yes. [LB739]

SENATOR AVERY: That would be money lost to schools. We don't know how much. It's impossible to calculate that. Also included in the fiscal note is the estimated cost of adding another staff person to the NEOC... [LB739]

JERRY STILMOCK: Yes, sir. [LB739]

SENATOR AVERY: ...the Nebraska Equal Opportunity Commission. So on the one hand, we're talking about reducing government regulation. On the other hand we're a growing government and possibly reducing money to schools. If you had to pick among those consequences, what do you think is most important? [LB739]

JERRY STILMOCK: Given that question, I'd say the one-time free pass to the small business would be the best and I read the fiscal note in terms of why the NEOC would...I read it where they said they would have to add a staff member, but I'm not sure I understood why because the reporting...maybe it's the breadth in which the language was used in LB739 that they feel that well, this is a collection of information that that particular agency has to receive and if we don't receive it we cannot wait for a six month period of time in which to get. They have a time-sensitive response that they have to be...you know, they have to be advised. I'm just speculating, Senator, as to why they

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feel that they would have to...that that agency would have to add another employee, as compared to...instead of sending a fine or penalty notice and collection of that notice to the small business, it would be a reminder that said hey, this was suppose to be in on X day, you missed it, you have this one-time pass to get this information in. It seems to me that the latter, the notice that it hasn't been turned in, you have the six months to get it in would be appropriate rather than saying you know, we didn't get the information, now we have to go hire somebody to do what I'm not certain of, Senator. [LB739]

SENATOR AVERY: They're talking about on-site inspections, on-site investigations which would require another investigator. [LB739]

JERRY STILMOCK: The thing that I understood from Senator Fulton's bill is that information that is to be collected and provided would not be deleted or omitted or forgone, it's just that one-time fine, and so the information is still forthcoming. It's just later than what that small business operator was aware of. [LB739]

SENATOR AVERY: I don't have any more questions. [LB739]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Jerry. [LB739]

JERRY STILMOCK: Thank you, Senators. [LB739]

SENATOR AGUILAR: (Exhibit 3) Any other proponents? None, are there any opponents? How about neutral testimony? Seeing none, I would also like to read into the record a letter of opposition from the Nebraska Equal Opportunity Commission. Senator Fulton waives closing. That closes the hearing on LB739. We're ready to open on LB776, Senator Wightman join us, please. [LB739]

SENATOR WIGHTMAN: (Exhibit 1) Chairman Aguilar, members of the Government Affairs Committee, I'm here today to introduce LB776. I'm John Wightman representing the 36th Legislative District. LB776 seeks to increase recording fees charged by the County Register of Deeds for recording documents such as deeds, mortgages, and deeds of trust from \$5 to \$10 for the first page of a document and \$5 to \$6 for subsequent pages. Part of the reason the differentiation in pages is that the first page of a document requires all of the indexing and so there is just more to the first page, and my register of deeds tells me out in Dawson County that there always...there has been an indexing fee in the past and we're leaving that indexing fee under LB776, but trying to cut down the work by saying that they get the first five indexings and indexings occur when you have more than one section or more than one lot included in your description. But we're trying to avoid some of that work because people will send these mortgages and deeds of trust in from out of state with a lot of these lenders and they don't know the amount, they calculate it incorrectly and as a result there's a lot of exchange back and forth in the way of phone calls, correspondence, and communication to correct these.

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So that's the reason that we're proposing a greater charge for the first page or a greater increase. Beyond that we're talking about going from \$5 to \$6 on subsequent pages. The current rates became effective in 1983 when they were raised from \$3 to \$5 for the first page, plus the indexing fee that I referred to earlier that are included in the legal description, and a flat \$5 then for each additional page replacing the previous charge of \$3. With increased salaries and overheads, even the increased fees will not cover the expenses. One needs to remember, however, that the purpose of the register of deeds office and recording these documents is not only for the benefit of the parties for the document in question, but to benefit all the residents throughout the state and the counties by maintaining this database so that people can call in and find out information with regard to properties, who the owner is and it's not just the parties involved. So there is some reason that the taxpayers generally may pick up some of this cost. The CPI index during that period of time has increased from about \$101 and some cents to \$207 from 1983 to the present time, so it's more than doubled. We're talking about an increase of 60 percent, increasing it, more than that 60 percent on the first page, really only 20 percent increasing subsequent pages from \$5 to \$6. The bill as introduced increase these charges...well, the bill also increases the charge to state and federal agencies for filing state and federal tax liens from \$6 to \$10. That amount currently is evenly divided between the Secretary of State and the county in which the lien is filed. The bill as introduced originally increases these charges...did increase these charges to two times the rate for recording real estate documents with the register of deeds. These would mostly be federal and state tax liens. But after some discussion with representatives of the state we determined that in some instances the increased fee would triple the amount of the current fees which we believe is excessive. And so the bill will say that it's two times the amount charged for recording the same document in the nature of a deed or a deed of trust or other documents that would be filed. We are proposing a change and have an amendment which I will...suggested amendment that would just make this a flat \$10 and I think would be more in keeping with our other charges, again, that will be divided between the state and the county. The county officials requested this bill, particularly the register of deeds. NACO will be here as far as I know, someone from them, to support the bill. The increased fees will help the counties balance their budgets by authorizing fees more commensurate with the services rendered rather than just passing off all of this inflation to the taxpayer. So it gets down to who's going to pay. Somebody is going to pay to the recording and the charges of operating a register of deeds office, and so the question is should it be charged to the person who's the primary beneficiary of the service which would be the parties of the instrument or should it be charged to the taxpayer generally. And I don't think we're passing on all of the charges by any means, the increased charges from 1983 to the present time, but we would increase them and try to put that particular office at the county courthouse on a more neutral basis as far as having to pass on all these charges to the parties involved or to the taxpayers of the county. I'd be happy to try to answer any questions you have. I will submit this page here. [LB776]

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SENATOR AGUILAR: Questions for Senator Wightman? Senator Rogert. [LB776]

SENATOR ROBERT: Senator Wightman, is there a uniform fee now for recording a deed across counties? [LB776]

SENATOR WIGHTMAN: The state has a uniform. It's set by the statute at the present time. [LB776]

SENATOR ROBERT: Do you know what that is? [LB776]

SENATOR WIGHTMAN: Yes. It's \$5 plus the indexing charge for the first page. That indexing is at 50 cents extra for each indexing that it requires for either a section number with regard to rural real estate or lot number with regard to urban real estate. [LB776]

SENATOR ROBERT: What does that average out on a typical real estate transaction? [LB776]

SENATOR WIGHTMAN: Well, it's hard to give an average because once in a while a document will be filed that will be a plat or something of that nature on a new subdivision and it might include 100 lots. But generally many of these documents, particularly as far as the deed itself, are one page and they have one or two indexing, so it would be \$5 or \$6. If any of you have ever seen deeds of trust, if you've signed one at a bank or whatever it may be, that may be seven or eight pages. Now they're not going to get increased all that much because the first page is going to go up by the 60 percent, I guess, from \$6 to \$10, 66 and 2/3 percent increase, but subsequent pages are getting only a 20 percent increase. But that is what the register of deeds felt would probably more commensurate with what time they spent on it. [LB776]

SENATOR ROBERT: Well, something in my head. I haven't seen a closing statement for a little while, but it seems like it's always like \$75 for recording of the deed... [LB776]

SENATOR WIGHTMAN: You're talking about documentary stamps I think, Senator. [LB776]

SENATOR ROBERT: Yeah, okay. [LB776]

SENATOR WIGHTMAN: That's a totally separate charge that this bill doesn't address at all. I can give you some experience on that because when I started practicing law in 1963 there was a federal documentary stamp tax that was 55 cents for each \$500 that eventually went to...well, eventually was transferred from the federal to the state and I can't give you the years, and then it went to \$1.10 per \$1,000 I think, instead of the \$500. Currently it's \$2.25 per \$1,000, but that's a totally separate fee than what we're

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talking about here. That would not be increased at all by what we're doing or suggesting in this bill. [LB776]

SENATOR ROBERT: Thanks, John. [LB776]

SENATOR AGUILAR: Further questions? Seeing none, thank you, John. [LB776]

SENATOR WIGHTMAN: Thank you. [LB776]

SENATOR AGUILAR: Will you be around to close? [LB776]

SENATOR WIGHTMAN: Yeah, I may be. I'll see. [LB776]

SENATOR AGUILAR: First proponent, please. [LB776]

SANDRA STELLING: Good afternoon, Senator Aguilar and committee. I'm Sandra Stelling, Jefferson County Clerk and Register of Deeds and Election Commissioner, and also cochair of our Clerks, Register of Deeds, and Election Commissioners Association for our legislative committee. I am here to ask for your support on LB776. As Senator Wightman has brought up, on the indexing fees we have numerous times that individuals who send in our instruments do not have the correct amount of money. They're 50 cents short, they're 50 cents long, and as it states right now we are to collect these or we're suppose to send that money back. I think it would help clear our documents up a lot if we could just charge a flat fee for this, and by getting rid of the indexings up to \$5, that would almost take all of our instruments. I went back through ours from July last year--and these were just deeds--July of last year until the end of December of this year, and I didn't really count each one of them when I was going through them, but there probably wasn't over five or six at the most that had more than five indexings. So that would really help us a lot so we could make sure that our indexing fees and stuff, you know, we'd just get rid of it. It would really help us. Also we are seeing a lot of companies out there that are filing these instruments for clients and they don't know what our fees are or they misfigure them or whatever, and I think that would help us in the long run to clear our records up a lot, and the other--the \$10 for the first page--would compensate for those indexing fees. And if you've got any other questions I'd sure try to answer them for you. [LB776]

SENATOR AGUILAR: Any questions? Seeing none, thank you. [LB776]

SANDRA STELLING: Thank you. [LB776]

SENATOR AGUILAR: Any other proponents? Welcome. [LB776]

BETH BAZYN FERRELL: Good afternoon Chairman Aguilar, members of the

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committee. For the record, my name is Beth Bazyn, B-a-z-y-n Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. Sandra set out the reasons why we are in support of this bill. We believe that the fee increase is appropriate. It's been a long time since that fee has been increased and it would help offset some of the cost to the county. I'd be happy to answer any questions. [LB776]

SENATOR AGUILAR: Thank you. Questions? Thank you. Any other proponents? Let's have an opponent. Welcome. [LB776]

WALTER RADCLIFFE: Senator Aguilar, members of the Government Committee, my name is Walter Radcliffe, R-a-d-c-l-i-f-f-e. I'm appearing before you today as a registered lobbyist on behalf the Nebraska Realtors Association and the Nebraska State Homebuilders Association in opposition to LB776. There's several points that I'd like to make beginning with the fact that well, simply because the fees haven't been increased for a number of years I don't think that is a stand-alone proposition that necessitates an increase. We don't see that as a standard practice. I mean if we did, come back every five years, raise all the fees. We certainly don't see a practice on the appropriations side where something hasn't been increased for a number of years that that's reason to increase it. So I'm just simply trying to address that one issue right now which is the fact that we haven't seen a fee increase. That's not a reason to increase it. The second point I would like to make, and I'm not as eloquent on this as Al Peterson is. Some of you have heard Al speak to the issue of public records, and the reason the public records are maintained is for the benefit of the public. And Senator Wightman touched on that in his testimony when he said that these records are maintained for the benefit of all, not just for the parties involved. And the question is then--as he said--who's going to pay, and because they are maintained for the benefit of all I think that that's a cost that should be shared by the taxpayers. Public records or quite honestly any function, any public function that a government body performs is not intended to be a profit center. It's not intended to be a break even center. That's why we pay taxes so government performs the duties that they are required to do. Being a depository for deeds certainly is one of those things. Furthermore, and I might have missed something on this, I mean I sincerely might have. If there's a question about people not knowing what fees they are suppose to pay, I don't see how these increases help. Maybe they do and I, in all seriousness, I didn't understand that, but I don't think it clarifies it any because right now in Chapter 25-2154 you can go right there and you can see that there's a \$3 fee, but this strikes that \$3 fee. Here in Chapter 25 and it says oh, go to Chapter 33, provisions 33-109 to 33-112 and that's going to tell you what the recording fee for a certificate is, not where it originally said in 25-2151. Then again that methodology repeats itself again over on page 3 of the bill where today you can see that it's a \$6 fee, and this is Chapter 52. Okay, you're in Chapter 52, today read it \$6. You read it after it's amended, it's two times the fee required for recording instruments with the register of deeds is provided in Chapter 33 Sections 109-112. That doesn't simplify it to me. Now in all honesty I may not have understood the point that the previous witness was making. Simply put I don't

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see where there is the public purpose is served by increasing the fees a) because they haven't been increased and b) because they should help defray the cost. That is a function that we pay taxes for. Now if I...and I obviously must have missed something on trying to make it so people would understand what the fees are. If that's a problem I would submit to you people could be made to understand what the fees are without increasing if that's what we're trying to do. So with that, I would be happy to answer any questions that the committee might have. [LB776]

SENATOR AGUILAR: Thank you, Mr. Radcliffe. Any questions? Senator Avery. [LB776]

SENATOR AVERY: Thank you, Mr. Chair. Walt, if we follow your logic to its conclusion... [LB776]

WALTER RADCLIFFE: Oh I so wish you would, Senator. [LB776]

SENATOR AVERY: You made the point and I think it's a reasonable point that government does have some responsibilities to pay forward some of its operations. Then would you then go the next step, take this to its logical conclusion, let's eliminate the fees? [LB776]

WALTER RADCLIFFE: To your logical conclusions, not necessarily its. [LB776]

SENATOR AVERY: Let's eliminate the fees. [LB776]

WALTER RADCLIFFE: Go ahead. [LB776]

SENATOR AVERY: Would you then support eliminating the fees altogether? [LB776]

WALTER RADCLIFFE: Sure. Absolutely. [LB776]

SENATOR AVERY: And that's what the realtors would tell us, right? [LB776]

WALTER RADCLIFFE: Yeah. [LB776]

SENATOR AVERY: You are representing the realtors? [LB776]

WALTER RADCLIFFE: I'd have to go back and ask them, but I think they'd probably be in favor of that. I think the homebuilders and the realtors would be in favor of that. Although they certainly have never said to me go up there and get the fees eliminated. No. That's not a policy that they have. Would they support a bill like that? I'm sure they probably would. [LB776]

SENATOR AVERY: What is the purpose of these fees in the first place? [LB776]

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WALTER RADCLIFFE: I have no idea. [LB776]

SENATOR AVERY: Could it be to cover costs? [LB776]

WALTER RADCLIFFE: I suppose at some point in time it could have been to defray part of the costs, and you're still defraying part of the cost. You're not defraying as much of the same part. I mean I understand your argument, sure. Yeah, but again you have some competing issues from a philosophical standpoint. It's hard to get real philosophical about registering deeds, but nonetheless public records exist for the sake of the public and are maintained for that and therefore the public should pay for them. [LB776]

SENATOR AVERY: I have no more questions. [LB776]

SENATOR AGUILAR: Further questions? [LB776]

SENATOR ROBERT: It's a head scratch not a question (laughter). [LB776]

SENATOR AGUILAR: Seeing none, thank you. [LB776]

WALTER RADCLIFFE: Thank you, Senator. [LB776]

SENATOR AGUILAR: Any other opponents? Neutral testimony? Welcome. [LB776]

RON MORAVEC: Good afternoon, Senator Aguilar, members of the Government Committee. My name is Ron Moravec, M-o-r-a-v-e-c, Chief Deputy Secretary of State, appear here on a limited position on this bill. Originally as introduced the bill would have raised the filing fee for state and federal tax liens from the current \$6 per document to a total of \$20 per document. That fee is split 50/50 between the state and the counties that are involved where these documents are filed, and let me assure you that we are not here to make any comments, taking any position in reference to fees for register of deeds or county clerks. That's not our purpose and it's outside of our area. Our concern was the filing of those two types of tax liens. I believe with the amendment that the Senator has proposed reducing that fee from a potential \$20 per document to \$10 per document is appropriate and we would lend our support to that and that it's a reasonable raise in the fee. Of course those two fees are paid by government agencies; one, the state of Nebraska Department of Revenue, and the other is the Internal Revenue Service when they file those documents. But with that, I conclude unless you have other questions. [LB776]

SENATOR AGUILAR: Senator Rogert. [LB776]

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SENATOR ROBERT: Mr. Moravec, these fees are paid to the counties? [LB776]

RON MORAVEC: Yes. They're split equally. Now I'm speaking of the tax liens, state and federal. They are--as I said--\$6 per filing at this point in time. Three dollars of that the office submits to the appropriate counties wherever these documents are to be filed, and the other \$3 belongs to the state. [LB776]

SENATOR ROBERT: Okay. [LB776]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB776]

RON MORAVEC: Thank you. [LB776]

SENATOR AGUILAR: Any more neutral testimony? Senator Wightman to close. [LB776]

SENATOR WIGHTMAN: Thank you. I needed to come back up anyway because I'd forgotten my introducer's sheet, but did want to address some of the issues that Mr. Radcliffe raised. It quite frankly gets down to the matter of who pays. We said that earlier. Mr. Radcliffe taking the position that this be either all for the public or is maintained for the public benefit that's the long way from the truth. When somebody buys a tract of real estate, if there was not a deed filed we would have total chaos with regard to who owns that property because we, many years ago, adopted a policy that whoever's first to the register of deeds, as long as he buys from what he believes to be a bona fide seller, is the owner of that property, and if there isn't any record made somebody could go out and sell the property two or three times. You may get into a lot of lawsuits but you're going to have a chaos as to who owns that tract of land. The same with regard to lenders. So it is primarily, I would suggest, for the benefit of the parties involved in that instrument. Now that isn't to say that it doesn't serve a great public use. When a lender wants to go and check and see if somebody else already has a deed of trust or mortgage on that land or if somebody is going to buy a tract of property and he wants to go see if that's really the proper owner. So it does serve that purpose, but the primary purpose is to make a chain of titles to that property. And so we're talking...he indicated that he didn't think we cleared up any confusion with regard to the indexing fee, and it's true that in some instances we will not have by this, but it just seemed that there was some point when you had a number of indexes that maybe you needed to cover that. But the register of deeds tell me that probably 95 percent or more of the documents will have a flat charge because they'll be under five indexings. It might be as high as 97 or 98 percent, but there are not all that many documents that have more than the five, so in many instances this will clear that up. I agree that there are some and maybe a substantial number of registered deeds that would feel more comfortable if we were to eliminate the indexing altogether and just leave the \$10 charge. I think that may vary a lot depending on the population of the county because large counties with large

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cities tend to have a lot of plats and new subdivision that may involve numerous indexings. So it's kind of a compromise to say that the 5 will be included in the \$10 first page of the document. Now Mr. Radcliffe also talked about that he suggested that perhaps the bill itself--and he's right--did not address a lot of the indexing fees, and then particularly I guess he mentioned the double the charge with regard to the tax liens that we contained in the original document. And that is the purpose of the proposed amendment that I had submitted to the clerk in that it set the \$10 flat charge. It takes out this reference to two times the amount of the document. The normal document would be filed that would involve deeds and deeds of trust. So we think we have cleared up some of the confusion, if the amendment is adopted as a committee amendment. So we would urge the advancement of LB776 and thank you. [LB776]

SENATOR AGUILAR: Any follow up questions? Thank you, Senator Wightman. That closes the hearing on LB776. Now ready to open on LB744. Senator Rogert will presume the chair. [LB776]

SENATOR ROGERT: Senator Aguilar. []

SENATOR AGUILAR: Good afternoon, Senator Rogert, and members of the Government, Military and Veterans Affairs Committee. My name is Ray Aguilar, A-g-u-i-l-a-r. I'm here before you today to open on LB744. Under the bill the Department of Administrative Services is authorized to lease state property to the federal government or political subdivisions of the state. The state will only lease to these other units of government if the space isn't needed for state purposes. Also the state will use the same system of charging local and federal agencies as it does for its current tenants. The charges include enough to cover operating costs including routine maintenance and repair cost and an amount to fund building renewal projects and other repair projects. When the state has vacant space in the state building it would like to be able to have that space filled with other government entities. State agencies frequently partner with local and federal agencies so it would be mutually beneficial to have both agencies within the same property. A representative of DAS is here today to discuss the bill in more detail and answer any technical questions you may have. Thank you for your consideration of this bill. [LB744]

SENATOR ROGERT: Any questions for Senator Aguilar? Seeing none, thank you. First proponent. [LB744]

LAURA PETERSON: Good afternoon, Senator Rogert, members of the Government, Military and Veterans Affairs Committee. My name is Laura Peterson, P-e-t-e-r-s-o-n. I'm general counsel for the Department of Administrative Services. I'm here in support of LB744 which was introduced at the request of the department. Administrative Services Building Division has statutory authority now to lease state property to state agencies. It also has authority to lease newly acquired state property to other governments until we

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convert that property to state use. In LB744, we're asking you to clarify that State Building Division also has authority to lease state property to other governmental entities, including the federal government and political subdivisions of the state. Leasing to other governments facilitates efficiencies such as colocating light government programs and entities in existing state facilities, as well as provide State Building Division an opportunity to look within government, within all government to ensure that state property is utilized to it's fullest potential. Senator Aguilar said I would testify in greater detail, but I'm not sure there's much more to it than that, so I'll entertain any questions if you have any (laughter). [LB744]

SENATOR ROBERT: I have a couple. [LB744]

LAURA PETERSON: Okay. [LB744]

SENATOR ROBERT: Ms. Peterson, we currently lease agency housing from other tenants, for example, in the city of Lincoln, correct? [LB744]

LAURA PETERSON: We are leasing property from them. [LB744]

SENATOR ROBERT: Yeah. [LB744]

LAURA PETERSON: Yes. [LB744]

SENATOR ROBERT: Why then would we want to lease property in the state office to some other entity when we're borrowing spots from other building owners across the city or state? [LB744]

LAURA PETERSON: We've had state agencies come to us. Maybe not necessarily in Lincoln but in other more remote parts of the state where, for example, the Department of Labor might be working with a city on a workforce development effort and talk to us about leasing, you know, having that colocated operation within the state property, and we actually have some authority to do it but it's a little complicated. We have to declare maybe a room of the state office building or state property in that location. They can't in access and go through the vacant building and excess land process and then we can lease it. But it seems a little unusual to clear a small space within a state property vacant or excess and then lease it out. So we just want to clarify that we would be able to do that. In many of those instances what they end up doing is we would lease space from the city or the city and a state entity that are doing a joint operation would go out and lease commercial space. So I think it just depends, you know, there are places where we have vacancies and there are places where we don't, so it's kind of a give and take with the political subdivisions. [LB744]

SENATOR ROBERT: Sure. You also mentioned we can lease newly acquired property

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to somebody else until we convert over to state use. Are we required to convert?
[LB744]

LAURA PETERSON: I don't know that we're required to. But generally, you know, if we're going to go out and buy a new property we're generally doing that because we have a state purpose in mind for it. [LB744]

SENATOR ROBERT: Right. [LB744]

LAURA PETERSON: But at some times it's going to take you a little while to move agencies or get things ready. And so if we would take over property that, for example, already had tenants in it we would be able to lease to them under that authority until we moved the state operations in there. I can't imagine we'd buy a property we didn't intend to use for state purpose, but I... [LB744]

SENATOR ROBERT: Unless it was to lease it that way. Okay, thanks. Any other questions for Ms. Peterson? Senator Lautenbaugh. [LB744]

SENATOR LAUTENBAUGH: Now I think you would agree that all properties aren't created equally, so to speak. [LB744]

LAURA PETERSON: Okay. [LB744]

SENATOR LAUTENBAUGH: So what might be a good use for one property might not be a good use for another entity in that same property. So are you saying that sometimes you may colocate with a federal agency or another city agency when those two have a similar mission, and it wouldn't make sense to use any amount of excess state property elsewhere if you could colocate with those related entities? [LB744]

LAURA PETERSON: I think that's right. I mean I think, you know, the State Building Division has a statutory responsibility to look at all state property on an annual basis and sort of determine what is the best use of this. Is it to declare it vacant because we just don't need it anymore? Is it to colocate because we have similar missions and it will be easier for citizens and everybody if we colocate it? Or is it to use it solely for a state purpose? I think it's just an analysis on a case-by-case basis of what the property is, what it's really best suited for and what the state needs are. And presumably if we had a whole state need, we would use state property for a state need first. But if there's this colocation that makes it easier both for our operations and for citizens, we certainly would want to have as much flexibility as we can to do those things. [LB744]

SENATOR LAUTENBAUGH: Okay. [LB744]

SENATOR ROBERT: Any other questions? Thank you. Any other proponents to the

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bill? Any opponents? Any neutral testimony? Senator Aguilar, would you like to close? He waives and that closes the hearing on LB744. We will now open the hearing on LB747. Once again, the illustrious Senator Ray Aguilar. [LB744]

SENATOR AGUILAR: Good afternoon again, and I'm still Ray Aguilar, A-g-u-i-l-a-r. In 1998, the Legislature passed a bill allowing certain governmental units to enter into energy financing contracts. An energy financing contract is an agreement between an energy service company and governmental unit to implement energy conservation measures in an existing facility in exchange for a portion of the energy cost savings produced. The governmental units which are authorized to use these contracts include: Schools, community colleges, municipalities, counties, or a department of or agency of the state of Nebraska. Current law requires that the payments on the contract be limited to 15 years. LB747 would allow a longer period of time to recover the cost savings, produce, and extend the period to 30 years. A longer period of time is now appropriate because modern conservation measures such as renewable energy technology have a longer life expectancy and payback time. Thank you for consideration of the bill and I'll be happy to try to answer any questions but the real experts are going to follow me. [LB747]

SENATOR ROBERT: Are there any questions for Senator Aguilar? Senator Adams. [LB747]

SENATOR ADAMS: Senator, are these payments exempt from the lid? [LB747]

SENATOR AGUILAR: Say that again. [LB747]

SENATOR ADAMS: Are the payments exempt from the lid? [LB747]

SENATOR AGUILAR: I don't know the answer to that. [LB747]

SENATOR ADAMS: Okay. Maybe somebody else will. [LB747]

SENATOR AGUILAR: Somebody else will I'm sure. [LB747]

SENATOR ADAMS: Okay. [LB747]

SENATOR PAHLS: I was just going to say by interlocal agreements. [LB747]

SENATOR ROBERT: Any others? Seeing none, thank you. First proponent to LB747. [LB747]

MATTHEW LEAPER: Senator Robert, members of the committee, for the record, my name is Matthew Leaper, L-e-a-p-e-r and I'm here on behalf of Johnson Controls and

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Energy Service Company. As alluded to in the introduction, an energy financing contract as we describe it is a way that schools and governments and other government units can implement energy savings technology and use those savings to help pay for the technology. Our goal is to develop a budget neutral solution where the savings are offset against the cost of implementing the technology. Current legislation, up to 15 years covers quite a bit of options, but the extending it to 30, key benefit is that it makes it easier for us to incorporate some of the new technologies like solar energy or geothermal or other technologies where the useful life goes longer than 15 years in terms of generating savings. It creates more flexibility in terms of how they pay for it and goes from there. So again, key benefit, that it increases the flexibility that government entities can use when implementing new technologies using the savings to pay for it and go from there. I'd like to open up to questions. [LB747]

SENATOR ROBERT: Okay. Thank you. Are there any questions? Senator Adams. [LB747]

SENATOR ADAMS: Just to make sure I'm clear, I'm going to run through a hypothetical with you, you correct it as I go. So school district A wants to redo its heating and air conditioning. They put out an RFP and your company is awarded that project. So what I understand you saying under the present conditions, you would come in and install the equipment and in effect become the financier of the project for the school district. You're providing the equipment, they're going to pay you for it. [LB747]

MATTHEW LEAPER: In a way. The first clarification is that we would start with an RFQ, a request for qualifications and figure out which energy service company you would like to guide you through developing this process. We don't become the financier but work directly with the district to find out...or the government entity where the financing sources are going to come from, whether it's a local lender, municipal bond, or whatever avenue that we're going to take to go there. And our goal is to set up a project so that whatever technologies are implemented, the savings associated with those technologies are offset the amortized payment associated with the various debt vehicle that we would use. So we would help to provide both a technical solution in terms of what technologies to deploy and a financial solution in how to pay for it ongoing, and we're willing to guarantee that the savings will offset the amortized payment of it going from there. So does that answer your question so far? [LB747]

SENATOR ADAMS: Yeah, it does, and I can see where on a spreadsheet where you could...this would be advantageous to a political subdivision to spread this out over 30 years to make this work. Now my next question then would be 30 years time the technology changes and the political subdivision says that when we entered into this deal it was state of the art, but now we're 15 years into it and it's not state of the art. We still have 15 years to go on the payback and is that a fair phrasal of what could happen? [LB747]

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MATTHEW LEAPER: And I think that was some of the original thinking in limiting it to 15 to begin with, and some of the thought being that some of the technology, like geothermal is a great example, has design lives that go beyond 15, design lives that can go to 30 but has a high initial cost. So if you could amortize it out even 20 years versus 15 it could make the difference between the district or government unit having to come up with, you know, 50 percent of the money up front. It could be that they have to come up with 25 percent up front and the rest of it is offset over that period. And if it's a technology that has that 30 year useful life than there's some additional savings to be captured by extending it out is what the thinking is. [LB747]

SENATOR ADAMS: Okay. [LB747]

SENATOR ROBERT: Senator Avery. Are you done? [LB747]

SENATOR ADAMS: No, but I don't have the question yet, so go ahead, Senator. [LB747]

SENATOR ROBERT: Senator Avery. [LB747]

SENATOR AVERY: Given current technology such as say geothermal systems that LPS uses, what's the useful life of something like that? Is it 30 years now or beyond? [LB747]

MATTHEW LEAPER: From my understanding they're typically engineered to be 25 or a 30 year useful life is a fair number. [LB747]

SENATOR AVERY: But considerably beyond 15? [LB747]

MATTHEW LEAPER: Beyond 15, yes. Absolutely. [LB747]

SENATOR AVERY: Okay. Thank you. [LB747]

SENATOR ROBERT: Any other questions? Thank you, Mr. Leaper. [LB747]

MATTHEW LEAPER: Thank you. [LB747]

SENATOR ROBERT: Any other proponents? [LB747]

BRIAN HALE: Senator Robert, members of the committee, my name is Brian Hale. I represent the Nebraska Association of School Boards. We... [LB747]

SENATOR ROBERT: Mr. Hale, can you spell your name, please? [LB747]

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BRIAN HALE: B-r-i-a-n H-a-l-e. We see this as just an opportunity to add flexibility to financing options. The relative merits of whether you go to the full 30 or 20 or 18 or whatever are decisions that need to be made on site based on the decisions that they have to make and the information in front of them. And so we believe that the 15 years was sort of picked somewhat as an arbitrary number, and so we believe that extending that provides more options for school districts. I'd also like to say that the Nebraska Council of School Administrators also support this bill. They were unable to be here today, but would like to show in the record that they are also in support. My understanding, to address your question on the lid, unless it's part of a bond issue sort of situation I think that it is...the money paid is contained within that context of the lid and I'll do some more research and if that's not true I'll certainly let you know about that. With that, I'll submit to questions. [LB747]

SENATOR ROBERT: Thank you, Mr. Hale. Any questions? Senator Adams. [LB747]

SENATOR ADAMS: I think that answered my question too. As I was thinking about it, I wouldn't think it would be exempt unless you bonded it. And not a question for you but just a thought that I was having in how you would bond something like this, but that's a whole nother thing. Thank you. [LB747]

BRIAN HALE: Yes. [LB747]

SENATOR ROBERT: Any others? Thank you, Mr. Hale. Any other proponents? Are there any opponents to the bill? Anybody wishing to testify in a neutral capacity? [LB747]

BETH BAZYN FERRELL: Good afternoon. Senator Rogert, members of the committee, for the record, my name is Beth Bazyn, B-a-z-y-n Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. Although our board didn't take a formal position on this bill, this is an area that we get asked about a lot. As you know, a lot of counties are remodeling historic courthouses or doing other things to upgrade the current facilities and we always refer them to this particular section of statute as an option. We think this would be another tool that they could use with the extended time period to help them as they work through the process. Happy to answer questions. [LB747]

SENATOR ROBERT: Thank you. Any questions? Seeing none, thank you. Any other neutral testimony? Seeing none, Senator Aguilar has waived his right to close. [LB747]

SENATOR AGUILAR: I will waive closing and I think that's the last one for the day. [LB747]

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SENATOR ROBERT: That closes the hearing for LB747 and the hearings for the day.
[LB747]

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Disposition of Bills:

LB739 - Held in committee.
LB744 - Advanced to General File.
LB747 - Advanced to General File.
LB776 - Held in committee.

Chairperson

Committee Clerk