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Transcriber's Office

Health and Human Services Committee  
February 04, 2010

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[LB733 LB734 LB812 LB849 LB857]

The Committee on Health and Human Services met at 1:30 p.m. on Thursday, February 4, 2010, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB812, LB733, LB857, LB734, and LB849. Senators present: Tim Gay, Chairperson; Dave Pankonin, Vice Chairperson; Kathy Campbell; Mike Gloor; Gwen Howard; Arnie Stuthman; and Norman Wallman. Senators absent: None. []

SENATOR GAY: We're going to get started. Welcome to the Health and Human Services Committee. We've got actually five bills to hear today, so I'm going to get started real quick, go over some details. If you have a cell phone, if you could quiet that, we'd appreciate it. We have a committee policy of we have a timer running. We have five minutes for each testifier. The opening by the senator is not timed, obviously, nor the closing, but what we do from...there's a green light on from one to four minutes. At four minutes a yellow light will come on, and at five minutes your time is up. I'm not going to cut you off too abruptly, but that means kind of wrap it up. Otherwise, we're here till very late at night a lot of nights and just the courtesy to the people at the end of the day as the people at the beginning of the day, we want to pay attention. We have testifier sheets if you're going to be testifying, they're in the corners. There's some at the desk, but I'd advise you, if you could fill those out prior to coming up to testify, it's helpful. When you come up to testify, if you can state your name and spell it out for the clerk, it's very beneficial because they transcribe these usually later, and when they're doing that it's much more helpful to know where we're at. If a senator has questions for you, like I say, during that exchange the time is not running so just feel free to...I mean, don't talk for 20 minutes on a question and answer, but we won't be timing you on that. So with that, this is on a web, it's being broadcast via the web and also on the cable, NETV, throughout the Capitol, so you are on TV. We'll start out introductions: Senator Tim Gay from Papillion-LaVista, starting to my right. []

MICHELLE CHAFFEE: I'm Michelle Chaffee, legal counsel for committee. []

SENATOR GLOOR: I'm Senator Mike Gloor from District 35, Grand Island. []

SENATOR CAMPBELL: I'm Senator Kathy Campbell from District 35, east Lincoln and Lancaster County. []

SENATOR PANKONIN: Senator Dave Pankonin, District 2. I live in Louisville. []

SENATOR STUTHMAN: Senator Arnie Stuthman from Platte Center, District 22. []

ERIN MACK: I'm Erin Mack, committee clerk. []

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SENATOR GAY: Thank you. And we have...Senator Gwen Howard is a member of the committee and Senator Norm Wallman. Senator Wallman will be running a little late. Senator Howard is just coming in, joining us. Welcome, Senator Howard. As people...people may have to get up and leave during the hearing to introduce other bills, so if they are coming and going...we're still in the bill introduction stage, and they may have to go introduce a bill or testify on a bill in another committee, so with that, I think that sums it up. Senator Karpisek is here to introduce LB812. []

SENATOR KARPISEK: Thank you, Senator Gay, members of the Health Committee. My name, for the record, is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. LB812 is a bill that I brought because I feel right now that we may have some health professionals that are not getting their day in court. It doesn't change too many things other than to say that the health professional will be notified if this case has been going on for 30 days. If the complaint was filed today, in between 30 days, as I understand it, there would be no...no notification needed. If it's after 30 days, it would have to be notified by first-class mail to let them know that they have allegations against them. Some of the things that I've heard is that the investigators will show up and while someone maybe has somebody in a chair, come in and take them out and start to interrogate them. I'm not saying that that's true or false; I'm saying that's what I've heard, and that's why I've brought the bill. Another part of the bill is that they would be able to have an attorney and go in front of the board to represent their case. Right now, as I understand it, that is not the case. They are not allowed to make a case. Things can be brought up against them at a later time. Again, I'm not an expert in this field. This is what I've heard, why I've brought the bill. We do have people behind me that can tell you more about it and why they've asked me to bring it. I just feel that there are reputations and money on the line, and I want to see a bad healthcare professional disciplined probably more than anyone. However, I don't want to see them go through something that maybe is retaliatory or just evil-spirited by a competitor or an ex-employee. So it's why I brought the bill, and I'd be glad to try to answer any questions. [LB812]

SENATOR GAY: All right, thank you, Senator Karpisek. Are there any questions from committee members? I don't see any right now. Thank you. [LB812]

SENATOR KARPISEK: Thank you. [LB812]

SENATOR GAY: How many proponents will be testifying on this? Is it...yeah, proponents. About three or four? All right, how many opponents are going to testify? One back there. All right, and then we'll get (inaudible). All right, we'll hear from proponents. [LB812]

DR. TIMOTHY ADAMS: (Exhibit 1) My name is Dr. Timothy Adams. I'm an orthodontist in Omaha, Nebraska. Timothy, T-i-m-o-t-h-y Adams, A-d-a-m-s. I got together with

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Senator Karpisek earlier this year to try to solve a problem that all healthcare providers are potentially...could potentially face if a complaint is filed against them, either by a legitimate source or an illegitimate source. And that is the ability to (1) know that an investigation is ongoing and basically have the right to defend yourself before your peers. I've also met with Senator Gloor on this to kind of get his ideas as far as what he would or would not support in regard to this. And one thing I do want to add to Senator Karpisek's--one of the concerns with Senator Gloor was that he doesn't want to burden the complaint process with undue piles of testimony being shipped over to the department if people are really innocent. So the specifics of the first major revision of this bill is that after 30 days and only if the investigator has the intention of interviewing an accused should that person then be notified. And, therefore, it kind of takes care of your concern, Senator Gloor, that we're just not sending out all these notices for people that might actually be innocent, and the investigative process will prove that before it even goes to a board. So, therefore, only those that will actually be interviewed, and the intent is to take them before the board, should be notified instead of showing up at somebody's practice. Okay? And also, Senator Gloor, you know, I mentioned to you that there are practices out there or individuals that have had people just show up unannounced while you're seeing patients. And I'd like to read real quick something from Tom Lewis that was sent to your office. You were in a kind of disbelief to that allegation, and I can understand, given your position in the hospital...hospital administrator in the past. Are physicians in the hospital targeted for this? No. Who's the prime target for this are independent sole proprietors who have maybe an office in a strip mall or a stand-alone business. They don't have attorneys at their disposal. Oh, it's just them and their staff and they're prime targets for this type of behavior, and the problem is, is the current statutes allow this behavior with absolute immunity and without any unchecked powers. Okay? So I want to read that real quick for you. It says "Senator Gloor, I'm writing to confirm that what is happening in dental offices by HHS investigators. Two years ago a complaint was filed against me to the Board of Dentistry. Although I was eventually cleared of any wrongdoing whatsoever, the process was extremely stressful and unfair. An investigator, Mr. Larry Wiehn, walked into my office unannounced at approximately 1 p.m. in the afternoon during business hours. He proceeded to ask several questions of my receptionist, with a full waiting room. He then presented a subpoena and asked for a number of records, some of which were only accessible by me. I had to stop treatment on patients for one hour while we gathered information. He proceeded to ask questions of me while documents were being prepared for him. I asked if I could do this after hours and if I could wait for an attorney to be present. I was told that I would be in some type of contempt and that I may become subject to some type of prosecution. He explained that the inconvenience was my fault because the allegations were made against me. Also I was made aware that any statements made by myself or my staff could be used against me. Senator, I assure you this is the way investigations are conducted. I have talked to many other dentists that have experienced this. Many choose to remain silent out of fear of retribution by the Board of Dentistry and by HHS investigators. I urge you to support a bill putting an end

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to this abuse." I had the exact same thing happen to me. The only difference is, Mr. Jeff Newman was the investigator. This isn't a case of a rogue investigator. This is a policy; this is how they do things. And another thing, too, so the first part of the bill will stop this injustice from happening. Okay? And just present some consideration to an individual, and this can also help the complaint process if somebody is going to be interviewed. That individual can get the necessary information, send it to the department and vindicate themselves. Therefore, the processes don't have to keep going down that very bureaucratic road we talked about, Senator Gloor, taking up the board's time and the Attorney General's time. Okay? It can spare tax money and also spare careers. Okay? I also sent to all of you facts regarding LB812 a cover letter; LB812 in itself, and I also sent to you guys...just to make sure you guys got this because this is much more on your own, another cover letter dated 1-21 with a board transcript excerpt and a...basically a review of board transcript excerpts that basically show how addendums can be attached to complaints without the accused's knowledge. And, therefore, kind of stacking the deck against the accused, and we have no right to know, according to the statutes right now prior to this bill that these addendums were being attached, no right to defend ourselves before this becomes public record. Okay, and again damaging careers. One more thing I'd like to add. I hope that this committee will finally put an end to these injustices. Senator Gay, you and I conversed back in 2007 and back then I was very emotionally charged; I was angry. Okay? And rightfully so. There were other individuals, many individuals hurt by this process, and all we're asking for is a sense of fairness. In fact, I even talked with the Governor about this. He wants a fair professional complaint processor. Right now we don't have it. What I'm asking here for and what others are asking for is fair and reasonable and, again, Senator Gloor will address some of the issues you're concerned about; will not burden, okay, the current complaint process. And it's actually more conservative than the rights that our surrounding states offer right now--Missouri, Kansas, Colorado, South Dakota, Wyoming, Iowa. They all offer these rights. [LB812]

SENATOR GAY: We got...we received your information too. [LB812]

DR. TIMOTHY ADAMS: Okay. [LB812]

SENATOR GAY: Let me see if there's any questions for you. Senator Stuthman. [LB812]

SENATOR STUTHMAN: Thank you, Senator Gay. Thank you, Dr. Adams. Your testimony was like a recording to my ear from a constituent of mine. [LB812]

DR. TIMOTHY ADAMS: Um-hum. Okay. [LB812]

SENATOR STUTHMAN: It was identical... [LB812]

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DR. TIMOTHY ADAMS: Right. [LB812]

SENATOR STUTHMAN: Everything...everything was just to the tee as far as the procedure of the investigators, the rudeness of them, and how it happened in the office. [LB812]

DR. TIMOTHY ADAMS: Um-hum. Right. [LB812]

SENATOR STUTHMAN: It was almost identical. [LB812]

DR. TIMOTHY ADAMS: Um-hum. [LB812]

SENATOR STUTHMAN: And we did have a bill at one time that did try to address something like that, but I don't think anything has ever happened. [LB812]

DR. TIMOTHY ADAMS: Right. [LB812]

SENATOR STUTHMAN: You know, and I truly support you. You know, I'm sure there's going to be complaints out there... [LB812]

DR. TIMOTHY ADAMS: Um-hum. [LB812]

SENATOR STUTHMAN: ...but, you know, I think the individual has a right, you know, to give the other side of the story... [LB812]

DR. TIMOTHY ADAMS: Right. [LB812]

SENATOR STUTHMAN: ...in my opinion, so... [LB812]

DR. TIMOTHY ADAMS: Very true, Senator. [LB812]

SENATOR STUTHMAN: ...so I thank you for your comments and I think we'll try to...try to work with this. Thank you. [LB812]

DR. TIMOTHY ADAMS: Great. Thank you, Senator. [LB812]

SENATOR GAY: Are there any other questions? Senator Pankonin. [LB812]

SENATOR PANKONIN: Thank you, Senator Gay. Mr. Adams, I was also here in 2007; seems like awhile ago when you were here, and appreciate you coming today. [LB812]

DR. TIMOTHY ADAMS: Um-hum, I remember, yeah. [LB812]

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SENATOR PANKONIN: If you could just tell me a little bit from that situation, back then, as you mentioned, it was very, very difficult and emotional. I understand that, but what...you've been in practice since then and... [LB812]

DR. TIMOTHY ADAMS: Correct, correct. [LB812]

SENATOR PANKONIN: ...Okay. And so things have been going...going fine that way? [LB812]

DR. TIMOTHY ADAMS: Well, the thing is...what the comment I want to make is somebody on the committee actually said this. Well, they said, Dr. Adams, well, you were ultimately found innocent, weren't you? And I said, yes. Well, then the process worked. Well, the process really didn't work because, again, just to paraphrase what happened there guys, I had a terminated employee file a bogus complaint against me. Eighteen months later an investigator, Jeff Newman, shows up at my door just like I described here exactly. I wasn't allowed to know what the complaint was about. It went in front of my board; I learned that I wasn't able to defend myself before my board, and 38-1,106 allows that presently. And even after the board met, I received a letter from the board saying they sent a recommendation to the Attorney General's Office. What recommendation? I was still kept in the dark. Only until the matter became one of public record, and I was thrown into the realm, the adversarial and extremely stressful world of the Attorney General's Office did I truly find what they were trying to get me for. Okay. I fought the case by myself without an attorney. The attorneys even said, you can't beat the state (laugh). I said, well, I'm innocent. I fought it, and I won. Okay. And so, how did that hurt me? The problem is, is that when the word gets out there that a petition...even a petition for disciplinary action is listed on the Web site whether you're alleged or not. It doesn't even say alleged, it just...a petition for disciplinary action. There's a sense that you are guilty of something, that the board or the state had something on you. You must be guilty of something; you're presumed guilty, and that hurts you. It hurts your referrals from your colleagues. It hurt so badly that I had to declare bankruptcy, and that's the only reason why I'm still in business today. Okay? And that's still a bitter pill to swallow. Why am I here today? It's not vindication. I know how to handle these guys now. You got to get tough with them. You got to hit back and hit back hard. In fact, I had another complaint filed against me. They tried the same stuff against me, but I hit back hard this time, and they tried to put an amendment onto the complaint. I found out about it. I hit back hard. They dismissed it. But people don't know that. Okay? They're going to be too trusting, you know, and the problem is, if you're too trusting, they're going to try to dig and try to find more dirt on you without your knowledge. I'm here today, ladies and gentlemen, to make sure that this doesn't happen to anyone else again. And, Senator Gloor, absolutely I understand your concerns, and that's why we wrote the bill to address them, and I appreciate your comments on that. But I'm here to make something more fair and professional, and be proud that you serve as a healthcare professional in the state of Nebraska. [LB812]

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SENATOR PANKONIN: Thank you. [LB812]

DR. TIMOTHY ADAMS: Okay? [LB812]

SENATOR GAY: Very good. Any other questions? I don't see any. Thank you, Dr. Adams. [LB812]

DR. TIMOTHY ADAMS: Thank you. Do I just fill out this right here then? I... [LB812]

SENATOR GAY: Yeah, if you haven't filled it out, fill it out and give it to the clerk. Thank you. [LB812]

SENATOR TIMOTHY ADAMS: Um-hum. [LB812]

JERRY STILMOCK: Good afternoon, Senators. My name is Jerry Stilmock, J-e-r-r-y Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my client, the Nebraska State Volunteer Firefighters Association, representing men and ladies, serving not only as firefighters but credentialed emergency medical technicians. Here in support of the measure, we believe that it was an item that would be helpful when somebody does have to go through the process, particularly in terms of the three different parts of the bill, please. At page 2, basically lines 13 through 18, it speaks in terms of a notice going out to the credential holder if the interview is going to be more than 30 days out. One of my concerns is, is well, what happens if the interview is 20 days out? The way the green copy is written, it would indicate to me that notice would not have to be made. And I think notice would be helpful whether the interview is going to be 10 days out, 20 days out, 30 days out, I'd want to know that if I'm the credentialed person. On page 4, line 1, it's a process within context, my request to you is, if there's going to be a defense presented that the credential holder give notice to the board prior to the conducted hearing. I think it would clarify by just putting written notice. The third area is on that same page, page 4, line 3. The context is that if I'm the credential holder and I'm being subject to investigative hearing in front of the board, that this allows me to be present to witness the material that's being presented to the board. I think a helpful change would be that so that I would be able to personally appear with counsel should I so decide to. If I want to hire an attorney to be there with me, I would want the statute to allow...to require that I'd be allowed to participate with counsel should I want to appear. I've been involved in some hearings on the representative side, and it is somewhat operating like a black hole, and I think the information that is set forth in LB812 would be helpful to those people that are being brought up on investigations, and for those reasons, I'd ask you to consider my comments, and then take action to advance LB812. Thank you. [LB812]

SENATOR GAY: Thank you. Any questions? I've got a question for you. [LB812]

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JERRY STILMOCK: Sure. [LB812]

SENATOR GAY: If...I'm in the financial services industry. We're subject to audit, inspections, and the whole thing, and I understand what the doctors are saying. It's like one thing gets out and all of a sudden you're a crook or a bad doctor or got your professional reputation to uphold. But on some of this if...on the notification part, there's no excuse for rudeness and some of these things, but as far as protections go, if you tell somebody, by the way, we're going to come in and we'll check you out, you could get rid of records; you could get rid of a lot of things. The element that they could pop into you any time is kind of self-policing. Now, they shouldn't be rude and all that, and what the doctor says is unacceptable, and that probably does happen, unfortunately. But where is the point where you're not getting a proper inspection if you just don't have the ability to... [LB812]

JERRY STILMOCK: Sure. It... [LB812]

SENATOR GAY: ...you know what I'm saying? If you were doing something wrong and I'm telling you, by the way, I'm going to come and check you out in about 10 days, 20 days, whatever. I'm not going to catch you doing anything. [LB812]

JERRY STILMOCK: You know, Senator, what you say reminds me of other circumstances in life where how ridiculous is that? We're notifying you that your...I mean, it's like a perpetrator of a crime in a different setting. Well, we're going to come see, are you really committing that crime? And, by the way, we're going to be here in two weeks at 1:00, so hey, here we come. Here's our notice. And certainly, in the healthcare profession, there has to be an element of what you've just described, and it caught my attention where the bill actually deletes that portion where specifically, that notification to the discretion of the department does not have to be given if it may prejudice the investigation. So there has to be some weighing, and who gets to weigh? I mean, it's really not addressed; it's just obliterated in the bill, so in line with your thought or question, Senator, who gets to decide? And I don't really know that I have an answer. I recognize the point you're making, but if the department gets to decide, and there's no notification; there's no appeal process in terms of going out for that investigatory interview, that's item one. And maybe there's no reconciliation of that item that you've broached, but at least on item two where I'm going to a hearing, I ought to be able to be notified there's going to be a hearing; I want to be present and present with counsel. If I would split it and bifurcate the two, I recognize that public health and the burden that that would place on any investigation if...to the tip of the hat, we're going to be here in two weeks at 1:00. It doesn't serve its purpose to protect the public when that's happening, granted, and, frankly, I'm not going to be able to listen to the department come in and say because I assume that's going to be one of their critical concerns, Senator. [LB812]

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SENATOR GAY: Any other questions? I don't see any. Thank you. [LB812]

JERRY STILMOCK: Okay, thank you. [LB812]

SENATOR GAY: Other proponents. [LB812]

KIM ROBAK: Senator Gay and members of the committee, my name is Kim Robak, R-o-b-a-k. I'm here today on behalf of the Nebraska Dental Association and the Nebraska Veterinary Medical Association in support of the bill, but we are here today in support of the concept of the bill, and not necessarily the language of the bill. We think it's important that there be strong due process procedures in place for healthcare credential holders because it's important that when this is someone's livelihood that we have procedures that allow people to defend themselves and to be able to know the charges that are brought against them. We do have a concern and, Senator, it's exactly the concern that you raise. We have a concern with page 2, lines 11 and 12 of the bill where the language, except when the department determines that such notice may prejudice an investigation. So that language is stricken that says that all notice has to be given in every instance. We think that language should remain in the bill or something similar because we do think the department has to have the discretion to be able to determine when an investigation should take place that doesn't trigger somebody destroying documents or hiding evidence, so that language should remain in the bill. We think it's a balancing act to determine whether or not an investigation and a strong regulatory system that protects the public outweighs the need for a credential holder to have access to due process. So we would like to work with Senator Karpisek or this committee if this bill does...if you decide that this bill should go forward, we'd like to improve the bill, but we want to let you know that we're on record of supporting strong due process for credential holders. [LB812]

SENATOR GAY: Thank you. Any questions? Don't see any. Thank you. Other proponents. [LB812]

KIM ROBAK: Thank you. [LB812]

LINDA STONES: (Exhibit 2) Good afternoon, Senator Gay and members of the Health and Human Services Committee. My name is Linda Stones, L-i-n-d-a S-t-o-n-e-s. I am a registered nurse, and I reside in District 30. I am here today to testify in support of LB812 on behalf of the Nebraska Nurses Association. The Nebraska Nurses Association is the largest nursing organization in Nebraska and the only one representing over the 20,000 registered nurses in the state. The Nebraska Nurses Association vision is to be an advocate for Nebraska nurses and also for consumers on issues related to health. It is also our responsibility to be an effective voice for nurses, and our legislative platform mandates that we promote legislation protecting the

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economic and workplace safety for nurses in the state of Nebraska. With LB812, we are interested in protecting the nurses professional economic safety. A basic foundation of our justice system is the premise is that an individual is innocent until proven guilty, and that the accused has a right to face their accuser. LB812 will allow the credentialed individual to be informed of the aspects of the complaint and the right to prepare for a defense on his or her behalf. In preparing testimony for today, our association sent out this bill to our membership and asked for their feedback and their experiences. I would like to share part of one woman's experience. She would like to have testified today, but she said that the emotional aspects of what had happened to her are still too strong, and so she asked that we relay her story. "I was charged and investigated by the Board of Nursing several years ago. I was contacted by phone at my workplace with the vague comment an investigator had some papers they needed to review with me and that I was being investigated. I was beside myself, desperately curious about what I could have possibly done wrong. I made an appointment to see her yet that day. In retrospect, how wonderful it would have been to have been given a two-week notice to plan my course of action first and to know what the accusation was. Also, I dearly wished I had an attorney attend with me on that first meeting. I got to the office; I was led to a back room, only a table and a chair and a tape recorder in it. She slid the paper across the table to me which contained some notes I had made on some work I had done for my husband's business, not anything to do with my workplace. She began asking me questions, and I was told to answer them right then, no time to process or hardly even remember the event in question. I felt like I was being interviewed by the Gestapo except no bare light bulb or torture. I was told they could take my license, and they seemed to think they could easily be able to do so. I got a lawyer and went to a hearing. I did receive a civil penalty and censure, mostly because I did not react well under pressure and didn't follow my lawyer's instructions." Had the provisions of LB812 been in place, the outcome for this nurse may have been different. With the passage of LB812, we feel the very basic rights of credentialed individuals will be protected. The intent of LB812 is not to impede complaint investigations; it is only to enhance the investigation of the complaints as the accused can provide information as well to ensure that all information related to the complaint is brought into the open. I understand that there is a fiscal note attached to this bill, and I just want to ask the senators to consider that I know very much that there are fiscal issues confronting Nebraska. However, this bill upholds the rights of due process. Please do not base your decision on this bill solely on the basis of the fiscal note. Due process is our basic right, so I ask for your support of LB812. [LB812]

SENATOR GAY: Thank you. Are there any questions? I don't see any. Thank you. [LB812]

LINDA STONES: Thank you. [LB812]

SENATOR GAY: Any other proponents who would like to speak? That will close that

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and then ask for any opponents who would like to testify. Dr. Schaefer, while you're coming up, we've received two (three) letters in opposition--one from the Board of Podiatry, Board of Nursing, and Nebraska Medical Association. (See also Exhibits 4, 5, 6.) [LB812]

JOANN SCHAEFER: (Exhibit 3) Good afternoon, Senator Gay and members of the Health and Human Services Committee. I'm Joann Schaefer, J-o-a-n-n S-c-h-a-e-f-e-r, M.D. I'm the chief medical officer and the Director of the Division of Public Health in the Department of Health and Human Services, for the record. I'm here to testify in opposition to LB812, and I have several handouts to go through with you that will help clarify some of the testimony that has been given prior to me. First of all, I want to touch base on the Uniform Credentialing Act in general which was passed into law as LB463 in 2007 and the 1,083-page law, if you remember; it was quite large. And that was after years of study and deliberation by a broad base of stakeholders that included licensees, the Attorney General, board members, lawyers who represent licensees in disciplinary cases, legislative staff, and the department legal and program staff. To make a dramatic change without that broad-base input should not be done without good reason. It seeks to modify the complaint process and investigate procedures in a manner that is inconsistent with standard complaint processing and investigation procedures. While the department could implement LB812, we believe in doing so, it would not be in the best interests of good public policy since it requires the credential holder to be notified prior to the time he or she is to be interviewed during the course of the complaint investigation. And as you noted, Senator Gay, many times our investigations could be on sensitive issues and it could allow for the destruction of evidence and records, and it's contrary to proper investigative procedures. I think at this point I want to go ahead and talk to you just briefly about our complaint process and the balance of power that currently exists. If you just go to handout 2 which we referred to this as the Easter egg chart because it's Easter egg colors. If you look at this, it just...I know it's kind of...it's a busy chart, but it kind of talks about everybody's role in how a complaint goes through the system. And if you just look at, just in general, it talks about how a complaint comes into the department, how it goes to the board, how it goes then to the Attorney General's Office, and then how it comes back to me or to the chief medical officer for final decision. And long ago, it used to be that the boards had more authority over the complaint process, and it was decided at the...by the Legislature at that time to move it out of the board's hands because it didn't feel like the boards were taking some of the complaint processes seriously enough and holding their peers accountable which led to getting the Attorney General's Office involved of the complaint process. And at that point, the boards were moved to be a more an advisory council, more like a grand jury where they could look at the complaint as it came into the department to advise to see if a statute was broken; if there was enough there on the initial complaint to warrant (a) either further investigation or (b) is this a serious violation? They would make the recommendation then to the Attorney General's Office and the Attorney General then would file the petition. There's been a lot of talk about whether or not due process is

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there or not. We believe strongly in the department that due process does exist, and we believe very much that we follow it. When the Attorney General files the petition, it's because a serious statute or statutory violation has occurred. They file the petition, and the complainant is notified. At that point, you know, the petition...when they see the petition they have the ability to go to a hearing or, you know, at that time, you know, many times an agreed settlement is reached. Handout 3, I just want you to see the number of complaints that we receive and how they've continued to increase each year, and on the second page of that, I do want you to see the customer satisfaction survey. Yes, we do, do one because the expectation is that even though we have a difficult job and nobody appreciates being investigated, everyone should be treated with courtesy and respect, and that is the exact questionnaire that goes out to the people that we investigate, and we do have a healthy response rate of 31 percent. Those customer satisfaction surveys are not sent out until a complete...or the case is completed and closed, and there's a final disposition. But we do take that very seriously, and I did ask Dr. Timothy Adams to help me build that customer satisfaction survey several years ago. The final handout that you have is just the composition of our boards, and the reason for that is because if we have everybody meeting in front of the boards it would increase the length of time that our boards would have to meet to allow them to have these many hearings in front of the boards. So with that, I'd be happy to answer any questions. [LB812]

SENATOR GAY: Thank you, Dr. Schaefer. Any questions from the committee members? Senator Gloor. [LB812]

SENATOR GLOOR: Thank you, Chairman Gay, and thank you for being here, Dr. Schaefer. [LB812]

JOANN SCHAEFER: You're welcome. [LB812]

SENATOR GLOOR: If I'm looking at this chart correctly, that would be handout 3, am I correct in that for each complaint received, that you only open a file on half of them approximately? Is that...? [LB812]

JOANN SCHAEFER: Approximately. [LB812]

SENATOR GLOOR: And opening a file doesn't necessarily mean a site investigation or something like... [LB812]

JOANN SCHAEFER: Correct. [LB812]

SENATOR GLOOR: ...so could you explain to me what opening a file means in real terms? [LB812]

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JOANN SCHAEFER: It means that they're looking into it either by...via paper, phone calls--they're doing some sort of investigation and taking it to the board. There's some sort of a check into it. [LB812]

SENATOR GLOOR: Do you have any idea on roughly what percentage of cases opened would result in, you know, the full-fledged sort of investigation like we've been hearing about today where someone would actually show up on-site unannounced? [LB812]

JOANN SCHAEFER: I could get that information for you. I don't have that today. [LB812]

SENATOR GLOOR: Would you guess it's a large amount like 10 or 20 percent, or would you guess it's a small percentage? [LB812]

JOANN SCHAEFER: It's a smaller percentage, but I wouldn't want to guess at a percentage, but I could find that for you. [LB812]

SENATOR GLOOR: Yeah, I'd appreciate knowing. [LB812]

JOANN SCHAEFER: You bet. [LB812]

SENATOR GAY: Senator Stuthman. [LB812]

SENATOR STUTHMAN: Thank you, Senator Gay. Dr. Schaefer, thank you for your testimony. I want to just discuss a little bit about one of the sentences in your testimony. It states there, "While the department could implement LB812, we believe doing so would not be in the best interest of good policy." I feel that the policy that the investigators are following upon entering the office of the individual, what I have heard about the complaints and the one that we've had testify here, and then I had a constituent a couple of years ago had the same situation, it seems like the presentation of the investigator...the first appearance and the attitude that they have is what starts the process in a bad situation. Would you say...have you got any influence over these investigators to not walk in there with the ball-peen hammer,... [LB812]

JOANN SCHAEFER: Yes. Well,... [LB812]

SENATOR STUTHMAN: ...they could walk in there with a rose? [LB812]

JOANN SCHAEFER: ...(Laugh) I don't know if they walk in with a rose, Senator, but (laughter) but no, you know, well, that's why we started checking out with the customer satisfaction survey to begin with because I wanted to know if that kind of behavior was continuing, but that is not supported by that. And, you know, we have checked into

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those situations, and, unfortunately, there is a statute out there that I cannot talk about...the investigations at the...but that behavior is not tolerated. It is not our policy to behave like that. That is not tolerated by, you know, by me, by my deputy, and we do follow up on complaints that we get. [LB812]

SENATOR STUTHMAN: Okay, because that was the issue that I have because it just seemed like when the door was open and the investigator came in, things did not start off very well. [LB812]

JOANN SCHAEFER: They try to make an appointment; they try to get out to the office...if there is not concern about destruction of evidence. [LB812]

SENATOR STUTHMAN: Okay, thank you. [LB812]

SENATOR GAY: Senator Pankonin. [LB812]

SENATOR PANKONIN: Thank you, Senator Gay. Dr. Schaefer, thanks for being with us today, and I think everyone on this committee realizes the...I shouldn't say dilemma but the issue you have in being responsible for people's healthcare and that responsibility is a huge responsibility. But also, you know, we're concerned about the due process. Now, we got a letter by hand delivery. Chairman Gay mentioned it that the Nebraska Medical Association opposed LB812 in its current form. I'm reading from it. But the last paragraph I think is interesting. "Rather than move forward with LB812, the NMA encourages your committee to hold the bill and to conduct an interim study of the current disciplinary law to determine if it provides adequate due process protection to providers." Would you be interested in working with this committee on an interim study on this process? [LB812]

JOANN SCHAEFER: Oh, absolutely, absolutely. You know, that's the best part of looking at public policy. We had ten years of study for LB463, and had...at the beginning of my testimony, multiple stakeholders that looked and reviewed that whole process. And it was contentious at times; there was a lot of bargaining between interest groups and trying to get the right mix and keeping the balance of power there between the different groups that have a hand in professional discipline. So to make any rash judgment as to how you should change that cannot, in my view, possibly be done without bringing those groups back together again and studying the issue. So I'm perfectly willing to sit down at the table and discuss these issues again with anyone who wants to see them. I, you know, I will tell you I believe that they get due process. I think the department takes every extraordinary move to keep this professional and, you know, fair, and where they get to...they get their full day in court when they...and they have that opportunity for a hearing, and they get a complete evidentiary...they don't have to have a representation. We have a very good hearing officer that walks them through their ability to completely present their entire case, and all that information

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comes. But if people really want to have that change and want to talk about it, I'm always willing to listen. [LB812]

SENATOR PANKONIN: Thank you. [LB812]

SENATOR GAY: Senator Gloor. [LB812]

SENATOR GLOOR: Thank you, Chairman Gay. Dr. Schaefer, to what extent does the investigatory process for institutions' licensure mirror the investigatory process for credentialing? Is there any similarity or do we try and take the same basic approach? [LB812]

JOANN SCHAEFER: In institutions? [LB812]

SENATOR GLOOR: Um-hum. [LB812]

JOANN SCHAEFER: Well, institutions as...it's different because that's much more federally regulated through CMS and so, you know, you have surveyors and so when things happen in an institution then that's a completely different set in my division, different people completely. [LB812]

SENATOR GLOOR: But when it comes to long-term care, as an example,... [LB812]

JOANN SCHAEFER: Um-hum. [LB812]

SENATOR GLOOR: ...isn't that a responsibility of the state...family complaints as an example... [LB812]

JOANN SCHAEFER: Absolutely, absolutely. [LB812]

SENATOR GLOOR: ...and in that specific example, does the process...I mean, as best I can recall, there was no notification. They were surprise visits, and that... [LB812]

JOANN SCHAEFER: Right. [LB812]

SENATOR GLOOR: ...and that every single patient complaint had to be...the family complaint, had to be followed up on, or maybe it's patient complaint. I forget. [LB812]

JOANN SCHAEFER: Correct. But it is...it is different staff. It's a different unit altogether in my division and different rules. And it's not individual licensees that we're talking about so... [LB812]

SENATOR GLOOR: Sure, sure. [LB812]

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JOANN SCHAEFER: ...so it's similar but...but different and... [LB812]

SENATOR GLOOR: Do you think the process has any similarity...institution to individual? [LB812]

JOANN SCHAEFER: Well, in the way information is collected, but, you know, federal regulations set out the way we...you know, the way we tag...I mean, you're familiar with how those citations are written. It is different. This, you know, the way professional occupation licensure is that rings much more true of, you know, findings of facts, conclusions of law, much more like an order. Well, it is an order. [LB812]

SENATOR GLOOR: Okay. Thank you. [LB812]

SENATOR GAY: Senator Campbell. [LB812]

SENATOR CAMPBELL: Thank you, Senator Gay. Dr. Schaefer, over the course of the time that you've been following this, are there very many repeat complaints? [LB812]

JOANN SCHAEFER: Do you mean on the same individual? [LB812]

SENATOR CAMPBELL: Yes. [LB812]

JOANN SCHAEFER: Well, when it comes to alcohol and drug abuse, we do see...well, when we've looked at the data, we have found that when you were on probation, if you have the diagnosis of a dependence as opposed to abuse, you were likely to reoffend or, you know, fall off the wagon or whatever your terminology is that we are likely to catch you again via drug urine testing and screening within that first year and almost always within the first six months. So by that nature, yes, we get you...and some people make it further out, but, you know, we like to think that, you know, we were very good about successfully getting those that are drug and alcohol addicted back into practice successfully and back into their profession with all the safeguards around them, but it takes a lot of safeguarding. [LB812]

SENATOR GAY: Dr. Schaefer, I've got a question for you. I know...I mean, these issues that are obviously contentious when you go in to a situation and I'm not going to get into all that. But I guess the point is, how do you go about...I mean, you'd understand this. You're a medical doctor, but how do you go about the understanding or what's the training? Because what happens is if something...it does get out, as Dr. Adams said and front page at that point, but the retraction may be on page 36. Once it's out there, it's out there. You could ruin somebody's reputation, their livelihood, their life, quite honestly. And I know you take this very seriously, but how do you go about...if some of these situations you don't tolerate the rudeness, I would hope, but how do you go about

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keeping your end of the bargain and paying attention that you don't go unjustifiably ruin someone's reputation? What do you do to prevent that, and how do you...when you decide to initiate an investigation, what factors does it take to say, well, I'm going to barge into this person's office and do some of the things we've heard? Because they're happening. Senator Stuthman heard these, and no one's perfect, but those are pretty severe cases. [LB812]

JOANN SCHAEFER: Well, first of all, it has to be...it's not something trivial, so the complaint has to come in and, first of all, the complaint has to be, you know, screened in as something that is even in our jurisdiction meaning it's something that is a statutory violation of the statutes that we watch. And it's taken to the board of that person's profession, and the board has to weigh in on it. Yes, this is something that's significant or no, it's not. And if it's not, it's just closed and it goes away completely. If it's opened, and they need more information, then that's when an investigation...it's further at that point. I would like to think, and my data shows that our investigators are doing a very good and professional job, and you have that information in front of you from the feedback that we've gotten from the people that we've investigated saying that they are timely and professional, and they return phone calls, and they are on time for their appointments, and those are very high numbers. And the comments that are on the back side say that as well. So, I mean, that...you know, that's what I have to offer you as far as their behavior on the scene, so, you know, they go in. That information is all highly confidential and is brought back to the board. The boards discuss that in their closed sessions. Then, at that point, is that even still enough to...at that point, it may still not be enough to say anything about. There may not be any statutory violation once they've gathered further information, and the case may be closed at that point. So if it's closed, it's done. And the complainant is notified. You had a complaint filed against you; it's been investigated. It's...nothing was found, the case is closed. [LB812]

SENATOR GAY: So, well, I'm trying to follow your chart, though. It says you get a complaint in, investigation opened. It could go...I don't see review by board consultant. Then you go over to professional board. Where does the professional board get in before...does an investigator show up to your office before it goes to the board? Do they gather facts before they go to the board? [LB812]

JOANN SCHAEFER: It could be either one. It depends on the nature of the complaint. It could be serious enough that the consultant says...the person from the board says, you know, you need to get out and get this information going, so that we have the information for the next board meeting. It could be that the board meets and they all register an opinion and say, we really don't have enough here. We need a full investigation. [LB812]

SENATOR GAY: But there could be an investigator in my office before it gets to my peers or the board of...you know, my peers. Before it goes to that review board, they

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could come to my office right away based on the seriousness is what you're saying, on the seriousness of the offense perceived by...because it looks like the complaint comes in; it's reviewed by the department. There's different things could happen...evidence collection and analysis right away. Is that where the troubles...? [LB812]

JOANN SCHAEFER: Only with the consultant saying, yes, this is a...only with the board. [LB812]

SENATOR GAY: Your... [LB812]

JOANN SCHAEFER: The board consultant saying, yes, this is, you know, this is big. This is something that you need to get out for. Narcotics come to mind, falsifying scripts, those things. And those usually involve law enforcement and something bigger than us coming to... [LB812]

SENATOR GAY: Coming to...yeah, that's how you find out? [LB812]

JOANN SCHAEFER: Coming to...yes. Yeah. [LB812]

SENATOR GAY: Okay. So it's not a whistle blower always or something like that? [LB812]

JOANN SCHAEFER: Right. [LB812]

SENATOR GAY: Any other questions? I don't see any. Thank you, Dr. Schaefer. Any other opposition that would like to speak? I don't see any. Anyone neutral who would like to testify? Senator Karpisek, do you want to close? [LB812]

SENATOR KARPISEK: Do you think I'd miss an opportunity, Senator, to get in...? (Laughter) [LB812]

SENATOR GAY: I didn't think so, no. (Laughter) [LB812]

SENATOR KARPISEK: Thank you, Senator Gay, and thank you Senator...sorry to demote her, Dr. Schaefer, for coming in too. I appreciate that. Again, the reason that I brought the bill is that I have heard there are problems, and I think to say that there aren't problems is having blinders on. There are problems...I think you hit it right on the nose, Senator Gay, when you said it's, you know, it's right at the beginning of the investigation. How else can you get that? I don't know. I have a little problem too. Ms. Robak talked about the exception when they think that it would impede the process, but the problem is that it leaves the door wide open. I would like to know how many times do they send a notice? How many times do they try to get an appointment? I don't know, maybe they do it a lot. I don't know that. And who determines that that notice may

prejudice an investigation? I don't know who determines that. Does the investigator? Does Dr. Schaefer? Does someone else along the lines, and really are there any situations where that wouldn't exist? If I tell you I'm going to come dig in your desk drawer tomorrow, Senator Gay, and see if you have anything in (laugh)...any alcohol in there. Well, (laughter) you don't know (laughter). I've already went to try to find some, and you don't (laughter). But, you know, is there any situations, I mean, that you would want to tip your hat? I don't know. I've been trying to think about it, especially if these are all that serious which I believe they are. When would you not give notice? The thousand-page bill that we had, Senator Gay, and many of you, that was our first year here. I'm sure that you remember a bill that big obviously could use a little tweaking. I know they went through a lot of research on it, a lot of expertise. That's fine. I think we know we have some problems here. We wouldn't have had so many people come as proponents to this bill, and even the letter in opposition asked for some sort of an interim study, and I did respond. I got an e-mail with that, and I said, you know, that...I could live with that. But I have a little problem with interim studies, and I think we all know that sometimes they're not as good as we wish that they were. But there is a problem. I don't know the exact solution because, again, I would love to be the investigator if we knew that we had one of these (laugh) healthcare professionals, and we had them good. I would love to be the one to nail them. However, you just can't quite go, I don't think as far as we're going. We've been...we all do it every day here in the Legislature, when we get smeared in the paper about something we did, didn't do. It's tough. And, of course, we're kind of on that bad side too. We can try to fight back. I would say the survey, Dr. Schaefer said, made a lot of reference to that. I think she said 31 percent return. I don't think that's a very good rate of return, and why don't we have a better rate of return? Hey, if I was already in trouble with them, I don't think I'd send anything in to try to tick them off again. I wouldn't do that. I would be scared of retaliation. I don't know...that's just my personal opinion. But I'm glad they are trying to do that, and, hey, it's a big organization. We know HHS is big. I know they're trying; I know they do a good job a lot of the time, and I appreciate that. However, I think when we see we have a problem, we need to try to address it, and I appreciate your time. If there's any other... [LB812]

SENATOR GAY: Thank you, Senator Karpisek. Are there any questions? I don't see any. Thank you. [LB812]

SENATOR KARPISEK: Thank you, Senator Gay. [LB812]

SENATOR GAY: With that, I'm going to turn the committee over to Vice Chairman Senator Pankonin and introduce LB733. [LB812]

SENATOR PANKONIN: Senator Gay, whenever you're ready. []

SENATOR GAY: Thank you, Senator Pankonin, members of the Health and Human

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Services Committee. For the record, my name is Tim Gay. I represent the 14th Legislative District, here today to introduce LB733. LB733 is basically in my mind a cleanup bill. It clarifies that local public health departments or political subdivisions,...local public health departments were officially created in 2001. However, they were not included in some parts of our statutes that deal with political subdivisions. In 2004, the Legislature attempted to remedy this oversight with the passage of LB1005. Unfortunately, it has since been discovered that there are still some areas in the statute in which local public health departments should be included. Section 1 of the bill includes local public health departments in the definition of a public subdivision under the political subdivision's tort claims act. Section 2 of this bill clarifies that local public health departments are exempt from sales tax just as counties, cities, fire districts, natural resources districts, and other political subdivisions are exempt. Currently, local health departments receive this exemption based on the fact they were formed through interlocal agreements. However, it is my understanding that there are a couple of departments in our state that make purchases outside this normal government purchasing channel, and that is why there is a minimal fiscal impact on this bill. Local public health departments were clearly intended to be political subdivisions when they were formed. They received public funds; they're governed by boards, and are charged with providing core public health functions throughout the state. LB733 simply clarifies this intent. There are a couple of testifiers following me that will provide additional information on the bill. And if you have any questions of them, I'm sure they can answer, but Senator Stuthman and Campbell...well, every...pretty much everyone on the board understands the local health departments. I think this was an oversight in my mind. It was brought to my attention, and that's why the bill is here. On the impact, there is fiscal impact. I can't get into that too much because just...there were some privacy issues on that. But the 26,000 to me is revenue lost, but it's just from one public entity to another, so if I were to say, well, we're losing 26,000. Well, another public entity is going to be gaining that, so...and I know those things are, you know, can be discussed, but I think it's minimal. I know fiscal notes, we're all watching those, but I think that's minimal. So I just wanted to address that up front. Thank you, Senator Pankonin. [LB733]

SENATOR PANKONIN: Thank you. Just a quick question, Senator Gay, and then we'll see if there's any others. On that 26,000...when you say one to the other. Help me understand that for a second. You got loss of sales tax, but it...why would we pick it up? [LB733]

SENATOR GAY: Well, it's going to...basically, what I'm saying, the benefit to the public is you're still getting it if it's the local public health department in Senator Stuthman's district, it's revenue. Just yesterday they were here testifying how crucial their assets were. Well, it's minimal to our budget. It's still public services that are going one way or another. We fund many of those public agencies as well, so I don't know if it's general revenue coming in that's not...it's an exchange of revenue in my mind. And that's why I kind of look at some of these... [LB733]

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SENATOR PANKONIN: Yeah, but it may be the difference between the state and local, though. [LB733]

SENATOR GAY: Yeah, you know, and being...you know how that goes sometimes. If it's our budget it's important, but when it's their budget, it's not so important. So I think it's just an exchange of those funds so. [LB733]

SENATOR PANKONIN: Okay. Any other questions? Seeing none, thank you. Any proponents for LB733? Welcome. [LB733]

KAY OESTMANN: (Exhibit 1) Good afternoon, Senator Pankonin and members of the committee. My name is Kay Oestmann, and I'm a health director in southeast Nebraska, southeast district health department, but I'm testifying today on behalf of Friends of Public Health which is our advocacy arm for Public Health Association of Nebraska and the local health directors. LB733 is a bill which relates to the definition of local public health departments as defined in Section 71-1626. Local health departments include county, district, city-county health departments and are defined in this section as political subdivisions. The purpose of the bill is to add the language in 71-1626 to the Department of Revenue Code. Currently, the Department of Revenue does not recognize the language in the public health definition. Up until last year, local public health departments in most areas have claimed this status when doing business. And a year ago, it was challenged by the Department of Revenue. Districts that were formed under resolutions were required to develop interlocal agreements with all the counties and their districts in order to be defined as subdivisions under the Department of Revenue's regulations. This bill provides the vehicle to connect the language in the public health law with the revenue codes as intended in the original public health law when the statewide infrastructure was created. I urge you to support LB733. [LB733]

SENATOR PANKONIN: Okay. Thanks for testifying today. Are there any questions? (inaudible), but go ahead, Senator Campbell. [LB733]

SENATOR CAMPBELL: Okay, thank you, Senator Pankonin. Kay, one of the questions...this has to deal with the Departments of Public Health. Yesterday we dealt with the public health clinics, people's health clinics. Do you know whether they are exempt from sales tax? [LB733]

KAY OESTMANN: I don't know that. I think...I'm not too sure that they aren't 501(c)(3)s but I don't know that. I can't answer that. [LB733]

SENATOR CAMPBELL: Oh, they would come under a different designation. I see a lot of nodding heads (inaudible)... [LB733]

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KAY OESTMANN: Some of them are associated with the district health departments, but they're separate entities... [LB733]

SENATOR CAMPBELL: Right. [LB733]

KAY OESTMANN: ...doing business as health clinics. [LB733]

SENATOR CAMPBELL: So they're kind of under a whole different definition. [LB733]

KAY OESTMANN: Yeah, whole definite...whole different definition. [LB733]

SENATOR CAMPBELL: Thank you. [LB733]

SENATOR PANKONIN: Senator Gloor. [LB733]

SENATOR GLOOR: Thank you, Chairman Pankonin. Ms. Oestmann, how did this manifest itself? Were you denied a tax-exempt number, or I mean...did the Department of Revenue say, sorry, you don't qualify. You don't get your... [LB733]

KAY OESTMANN: We were. [LB733]

SENATOR GLOOR: Okay. [LB733]

KAY OESTMANN: The event that came to all of our attention was, we were at the Public Health Association's annual convention in Kearney, and we went to pay our bills, and they wouldn't give us tax-exempt status because the Department of Revenue had listed us as not eligible, and had sent it out to the motels. So you know... [LB733]

SENATOR GLOOR: Had you been notified? [LB733]

KAY OESTMANN: That was the first we knew about it so. [LB733]

SENATOR GLOOR: You had not been notified? [LB733]

KAY OESTMANN: I hadn't. [LB733]

SENATOR GLOOR: Surprise. [LB733]

KAY OESTMANN: Yeah, surprise, surprise. And then this year, why after we'd done some of our other footwork, we were told that we had to direct bill it so, you know, it's still...there...the language needs to be cleaned up. [LB733]

SENATOR PANKONIN: Any other questions? Seeing none, thank you for coming

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today. [LB733]

KAY OESTMANN: I also have that I'd like to put into record a letter of support from the State Board of Health and a letter of support from the Public Health Association of Nebraska. (See also Exhibits 2, 3.) [LB733]

SENATOR PANKONIN: Thank you. Give those to our committee clerk. [LB733]

KAY OESTMANN: Thank you for your time. [LB733]

SENATOR PANKONIN: Any other proponents? Okay, any opponents for LB733? Anyone in the neutral position that wants to testify? Seeing none, Senator Gay, would you want to close? [LB733]

SENATOR GAY: Yeah. Just very briefly, Senator Pankonin, sometimes I think bad things happen in Kearney because (laughter) they brought this bill to me, but it was interesting they found out when they were in Kearney because the rural health association and other people when they meet out there, they come across some problems sometimes (laugh), and they want a bill to clarify situations, but I've had about three or four things happen on the conventions out in Kearney, then they need to clarify. But I think really just it's a...I consider it a cleanup bill. I know not all of them are, but that's what this is, and I'm here to answer any questions. [LB733]

SENATOR PANKONIN: Don't see any. Thank you. I assume you're going to stay right there and open... [LB733]

SENATOR GAY: Thank you. Yup, you bet. [LB733]

SENATOR PANKONIN: ...on LB...our next bill is LB857. [LB733]

SENATOR GAY: Thank you, Senator Pankonin. For the record, my name is Tim Gay, here to introduce LB857. LB857 was brought to me by the Public Service Commission and deals primarily with its manufactured housing unit. First, the bill combines the manufactured homes and recreational vehicle fund into modular housing units fund into one fund. This will give the Public Service Commission more flexibility in administering these funds and carrying out their statutory duties. Second, the bill removes the monetary cap on the annual inspection seals required for manufactured homes. Current statute limits this amount the Public Service Commission can recover for inspections to not less than \$10 and not any more than \$75. This will allow flexibility to the Public Service Commission to cover their cost basically, associated with the current inspection program. The manufactured housing program is regulated by HUD, and Nebraska's Public Service Commission acts as an agent for HUD and conducts the annual inspections required by the federal government. The recent downturn in the national

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housing industry has resulted in the loss of funds and staff reductions for the Public Service Commission's manufactured and modular housing department. If our state inspection program is completely eliminated which it could be, these homes would still need to be inspected. However, those inspections would then have to be done by private contractors. This will lead to higher costs for the state's manufactured housing industry and will have a negative impact on this multimillion dollar business. The Public Service Commission's manufactured and modular housing department is completely cash funded, and LB857 has no fiscal impact. There are individuals here from the Public Service Commission and manufactured housing industry to speak on support of this bill. [LB857]

SENATOR PANKONIN: Thank you, Senator Gay. Any questions initially? Seeing none, we'll have proponent testimony next. Welcome, Commissioner Schram. [LB857]

TIM SCHRAM: (Exhibit 1) Good afternoon. First, I'd like to thank Chairman Gay for introducing LB857 and good afternoon again to the members of the Health Committee. I'm Commissioner Tim Schram spelled T-i-m S-c-h-r-a-m, a member of the Nebraska Public Service Commission, representing the 3rd District. I'm here today in support of LB857. With the collapse of the national housing industry in 2007, the housing industry in Nebraska suffered significant downturns in sales and production which in turn caused significant revenue shortfalls in the commission's modular and manufactured housing department, which is entirely cash funded. The manufactured housing program has been especially hit hard. In response to the revenue shortfalls, department expenses have been reduced to minimum requirements to keep the program operating. The department reduced staff by two full-time inspectors, instituted part-time furloughs for all remaining staff including the department's engineer, the director, and one remaining inspector, and reduced the administrative position to just two days per week. The provisions of LB857 will merge the two cash funds administered by the department, the Modular Housing Units Act, Uniform Standard Code for Manufactured Homes and Recreational Vehicles. The bill will also remove the cap on seal fees for manufactured homes and RVs. Merging the cash funds of the two programs and removing the cap on manufactured housing seal fees are needed steps toward saving the housing program in Nebraska. The manufactured housing program is regulated by HUD, and Nebraska is the exclusive inspection agency for HUD for plan review, home inspections, and customer complaints regarding manufactured housing in Nebraska. Minimal funding is received from HUD and the meager funding Nebraska does receive falls far short of covering the cost of administering the program. The program is far from self-sustaining at the current maximum statutory seal fee and is failing. The industry wants to continue the partnership with the state regulatory program for...and supports LB857. You will hear from some representatives of the industry here today. The manufactured modular housing industry in Nebraska is a multimillion dollar industry that exports approximately 80 percent of its production out of state. It employs significant numbers of Nebraskans in the rural areas of the state where the loss of such industry would be potentially

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devastating, especially in these current economic times. If Nebraska did not do manufactured housing inspections, the factories in Nebraska would still be required to get inspections. However, they would be forced to use out-of-state third-party private inspectors which cost upwards of three times more per inspection and potentially hold up production while the factory flies those inspectors in from out of state. The department has continued to meet with industry representatives on a regular basis and received clear support to continue both the manufactured and modular state programs in every meeting. It was made clear to the commission that the industry would like the commission's housing department to continue to be the exclusive inspection agency in Nebraska for HUD. However, to continue to work with the industry and enable both industry and the department to weather the economic crisis in the housing industry, the commission needs the flexibility to allocate funds and set fee schedules, allowing us to cover the cost of administering the housing programs and the program to be self-sustaining. The provisions of LB857 will do just that. I thank you for your attention this afternoon and urge your support of LB857. If you have any questions, I'd be happy to answer them. [LB857]

SENATOR PANKONIN: Thank you, Tim, appreciate you coming today. [LB857]

TIM SCHRAM: Um-hum. [LB857]

SENATOR PANKONIN: Any questions? Seeing none, think you're fine. [LB857]

TIM SCHRAM: Thank you again. [LB857]

SENATOR PANKONIN: Next proponent. Any other proponents, LB857? [LB857]

TRACY DAY: Good afternoon. [LB857]

SENATOR PANKONIN: Hello, welcome. [LB857]

TRACY DAY: My name is Tracy Day. I'm a sales manager at Champion Homes. That's Tracy, T-r-a-c-y D-a-y. I'm here in support of this bill. The system that they have works with us; it's vitally important to us. It would be a sad situation if it wasn't running. It would just add a huge inconvenience to us if we had to go outside of the state. As we've already experienced, there are some states that maybe require a little bit different inspecting process. We have experienced it in the past, and sometimes it's a matter of, if you had to go to that situation where you might have to send a hundred people home. You know, we're in a small community in Champion, and we've got about 125 people, and we need to keep those guys working and not be inconvenienced. It is vitally important to us to maintain our business there in York. Any questions? [LB857]

SENATOR PANKONIN: Mr. Day, thank you. Senator Campbell. [LB857]

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SENATOR CAMPBELL: Thank you, Senator Pankonin. Sir, where would you have to find the inspectors from? [LB857]

TRACY DAY: One example, out of...what we've experienced in the past is a PFS system out of Wisconsin, and we have to pay them from the time they leave to get on the plane and get here, and you know, that's all attainable. What's sometimes not attainable is, the home would have to be in a certain part of the facility in order to get that done, so there's a lot of planning that has to go ahead in time to get that inspector there that day. If that home is not in that certain area, he happens to show up; he may be inconvenienced; he may not be able to inspect it. I may have to send the whole crew home. [LB857]

SENATOR PANKONIN: Senator Stuthman. [LB857]

SENATOR STUTHMAN: Thank you, Senator Pankonin. Tracy, you appreciate what this bill is trying to do. Are you concerned about the fees, the increase in fees or anything? Is that...? [LB857]

TRACY DAY: Always concerned about fees, but we see this as... [LB857]

SENATOR STUTHMAN: It's doable? [LB857]

TRACY DAY: ...absolutely. And very vital. [LB857]

SENATOR STUTHMAN: Okay, thank you. [LB857]

SENATOR PANKONIN: Senator Wallman. [LB857]

SENATOR WALLMAN: Thank you, Senator Pankonin. Thanks for being here too. Has the Department of Roads been friendly to you as far as permits and that? Has that went up a lot or? [LB857]

TRACY DAY: Not so much. [LB857]

SENATOR WALLMAN: Okay. And, yeah, if we can help out anything in here with anything, I think it'd be nice. [LB857]

TRACY DAY: Okay. [LB857]

SENATOR PANKONIN: Sir, I just have one quick question. [LB857]

TRACY DAY: Sure. [LB857]

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SENATOR PANKONIN: As we enter soon, hopefully, sometime the spring season, is your business starting to pick up? [LB857]

TRACY DAY: Just in the last 12 days, just...you know, outside of Nebraska is pretty much what supports us as far as the traffic and so forth. It's picked up in 12 days, and you know, we furloughed so much in the last two months. It has picked up some. We're going to put a hundred people to work Tuesday morning at 6:30 so. [LB857]

SENATOR PANKONIN: Well, that's good news. [LB857]

TRACY DAY: It's very, very good. Yeah. [LB857]

SENATOR PANKONIN: And that's why you'd still like to obviously have this relationship with the state. [LB857]

TRACY DAY: Absolutely. You bet. [LB857]

SENATOR PANKONIN: Makes sense for you. [LB857]

TRACY DAY: Yep. [LB857]

SENATOR PANKONIN: Okay. Thanks for your testimony. Thanks for coming today. [LB857]

TRACY DAY: All right. Thank you. [LB857]

SENATOR PANKONIN: Any other proponents for LB857? Seeing none. Anybody in opposition that would like to testify on LB857? Anybody in the neutral capacity that would like to testify? Seeing none, we'll close the hearing on LB857, and have Senator Gay come back for LB734. [LB857]

SENATOR GAY: Thank you, Senator Pankonin. Tim Gay introducing LB734. LB734 would eliminate the requirement that utility companies give notification of service termination to welfare recipients via certified mail. The bill does not, and I'll repeat that...does not absolve the utilities from giving notification, but rather provides that written notice must be sent by first-class mail at least seven days prior to service termination. Under LB734, all customers regardless of their financial status would be treated the same. The law, which was over 20 years old, is not an efficient use of ratepayers' money nor does it serve the purposes originally intended. I was first approached about this issue by the Omaha Public Power District. In 2008, the utility spent \$55,000 sending disconnection notices by certified mail, and many of those were returned as undeliverable. Though OPPD is probably the state's largest retail electric

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utility, other companies also spend significantly amounts of money on these notices, and I found that there are some utilities that don't even consistently follow this law, didn't even know it existed. So generally, the certified letter is not the first attempt a utility makes to contact a customer who is delinquent in payments. There is testimony following my opening remarks regarding the internal policies of utilities in which numerous attempts were made to contact the customer prior to disconnection. In addition, most utilities have policies that prohibit the disconnection of service during extremely cold weather and policies that establish payment plans or provide payment assistance. Not only is the requirement of sending certified mail to a select group of individuals costly, if the mail is returned which many times it is, it means these individuals have not received this final notice or the actual intent, so...of the disconnection. And therefore, the law is not serving its purpose. I urge you to support LB734. Thank you, Senator Pankonin. [LB734]

SENATOR PANKONIN: Thank you, Senator Gay. Any questions initially? Senator Gloor. [LB734]

SENATOR GLOOR: Thank you, Chairman Pankonin. Senator Gay, how long has this been in effect, do we know? I mean, is it one of those ancient regulations that's been out there for a long time? [LB734]

SENATOR GAY: Just our research from my legislative aide, about 20 years. [LB734]

SENATOR GLOOR: Okay. Thank you. [LB734]

SENATOR PANKONIN: Okay, seeing no other initial questions, we'll have proponents come forward. Welcome, Mr. Richards. [LB734]

TOM RICHARDS: Thank you, Senator Pankonin. [LB734]

SENATOR PANKONIN: One of the things you...if you don't have one with you, do you have a testifier sheet? [LB734]

TOM RICHARDS: I will make sure that it's done before I leave here today. [LB734]

SENATOR PANKONIN: Before you leave. Thank you. [LB734]

TOM RICHARDS: I've been doing this job for 17 years, and it's the first time I've got to testify before the Health and Human Services Committee, so here I go. I actually have some written testimony. I think I have it for everybody. Thank you. [LB734]

SENATOR PANKONIN: Why don't you go ahead and start? [LB734]

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TOM RICHARDS: I'll go ahead and get going. [LB734]

SENATOR PANKONIN: She'll pass them out. [LB734]

TOM RICHARDS: (Exhibit 1) Good afternoon, Senator Pankonin and senators of the Health and Human Services Committee. My name is Tom Richards, T-o-m R-i-c-h-a-r-d-s, and I'm the manager of Governmental and Community Relations for the Omaha Public Power District. I appear here today on behalf of OPPD, but I'm also appearing here today on behalf of the Nebraska Power Association that represents all of the electric utilities in the state of Nebraska. My thanks to Senator Gay for introducing this bill for the industry. I'm here to talk about statute 70-1605. The statute requires public utilities to provide notice of disconnection to welfare recipients in the form of certified mail. The proposed amendment would remove the requirement for certified mail delivery of disconnection notices. OPPD supports this change in order to better serve welfare recipients. Currently, OPPD annually sends an average of 13,000 to 20,000 certified disconnect mail notices out. Of these notices, approximately 39 percent of them are returned to OPPD as unclaimed or undelivered. This high return rate is due to several factors. Many customers aren't home during the day and, therefore, they can't sign the certified mail receipt. A notice is left at the home for the customer to come to the post office to retrieve the letter. Customers who don't make the trip to the post office don't receive the disconnect notice. Had the notice been standard first-class mail, the level of service all other OPPD customers receive, the customer would receive the disconnect notice in a timely manner and without the inconvenience of going to the post office. Additionally, the cost of certified mail has dramatically increased over the past three years. This increases OPPD's customer service costs, and as already explained, with little or no benefit to the customer. Today the cost of one certified letter is \$3.24; \$2.80 for the certified fees and 44 cents for the postage. OPPD's mailings cost for sending a disconnect notice to a non-welfare recipient is 35 cents, a difference of \$2.88 per disconnection notice. Additionally, customers will also request that OPPD resend the disconnect notice, and it has been returned as it has been undeliverable. In this case, OPPD is incurring postage cost for both the certified mail and the postage to resend. Welfare customers who are also eligible for energy assistance programs through local human service agencies such as the American Red Cross, the United Way of the Midlands, Salvation Army may be required to have a copy of the disconnect notice in order to apply for those services. When the disconnect notice is undeliverable due to the certified mail signature requirements, this places an inconvenience on the customer and contributes to the customer's difficult situation. OPPD has several communication channels in use to alert customers of pending disconnects. A customer is notified via their bill statement and a message. There's a pending notification that goes out, and an automated call is made to customers...customers' homes alerting them of the pending disconnect and activity. And the final disconnect notice is sent to the premise no less than seven days before field service employees deploy to disconnect the service. An unintended consequence of certified mail requirement is the customer

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can get disconnected without actually ever receiving mailed notice. Disconnect can occur when a certified letter is undeliverable due to no one being home, and then is not picked up at the post office and not returned to OPPD before the disconnect due date. In a recent case, a customer commented that if we had just known in time, they would have paid their bill in a more timely fashion. While this law is intended to provide protection for welfare recipients, it instead causes unintended hardship and inconvenience for them. A first-class mail notice would be more effective and would ensure delivery of all notices to the intended recipients. Given the multiple communications attempts and the high return rate of certified mail notices, OPPD is in favor of eliminating this requirement. Thank you for your time, and I'll try to attempt to answer any of the questions that you have. [LB734]

SENATOR PANKONIN: Thank you, Mr. Richards. We have...I've got one (inaudible); We'll get Senator Wallman here. [LB734]

SENATOR WALLMAN: Okay. Thank you, Chairman Pankonin. Yes, I'm not concerned about the disconnect costs. What's the reconnect cost? [LB734]

TOM RICHARDS: The reconnect costs are significant. They can be, for a field collection call for somebody to go out and do it, we charge 25 bucks, and if it's after business hours, it's significantly more than that. And if it's after hours, after those hours, it can be more than that, so there's a cost involved in reconnecting people once they've been disconnected. [LB734]

SENATOR WALLMAN: In regards to rental properties, how do you handle rental properties? You know, if I have a rental property, and they don't pay the electric bill, do you bring that back to the owner or to the person living there? [LB734]

TOM RICHARDS: What we do in those cases is that we have a record of who the responsible bill payer is, and we go after the person who is the bill payer on the customer service. We have it in our records as to who is the one responsible for that bill. Sometimes it's the rental property owner, and sometimes it's the actual person who's living in the apartment. [LB734]

SENATOR WALLMAN: Okay. Thank you. [LB734]

TOM RICHARDS: Um-hum. [LB734]

SENATOR PANKONIN: Mr. Richards, I have a question about the energy assistance funds, and I know that...in your service area, as you know, on OPPD's bills there's a place where you can check off or some people have regular...where they make regular contributions to that program. [LB734]

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TOM RICHARDS: Right. [LB734]

SENATOR PANKONIN: Under this paragraph, do you take those funds and then it goes to American Red Cross, United Way, or Salvation Army, or do you do something with them internally of the funds you collect from the ratepayers? [LB734]

TOM RICHARDS: Actually, we run all of our requests for those kinds of services through the American Red Cross, and what happens is what you're talking about is customers can sign off and donate money to the Energy Assistance Program. We've had a real push inside the company in the last three years, and I was part of a group that kind of looked at how we use our time, and we've really made an emphasis on energy assistance. And our employees contribute, customers contribute. We've set up actually a caseworker inside of OPPD who works with these difficult cases to help them, and it's not just the Red Cross and OPPD that are raising money. The state has money through their assistance; LIHEAP has money through their assistance. And there are other social service agencies, at least in the Omaha area, and I'm sure in Lincoln and other areas, the Community Action committees who help customers find those dollars. So our point is, is that we would rather an emphasis go on energy assistance than on dollars that aren't getting to where they need to be getting. [LB734]

SENATOR PANKONIN: I think that's a valid point of the money you're spending on the postage could, hopefully, help with those programs to help folks. [LB734]

TOM RICHARDS: We've had a very concerted effort to do that. [LB734]

SENATOR PANKONIN: Any other questions? [LB734]

TOM RICHARDS: I will take all of my testimony with me and make sure I fill out my little sheet. [LB734]

SENATOR PANKONIN: Appreciate it. (Laughter) [LB734]

TOM RICHARDS: Thank you. [LB734]

SENATOR PANKONIN: Next proponent. Welcome. [LB734]

DOUGLAS CLARK: Good afternoon, Senator. It's good to be here in front of the Health Committee. Like Tom, this is my first adventure into the Health Committee so please be gentle. My name is Doug Clark. I'm vice president of government affairs and marketing for the Metropolitan Utilities District. My last name is spelled C-l-a-r-k. I'm here today and testify in support of the bill very much for the same reasons Tom is. Duplication costs money. Effectiveness is critical. One of the questions was asked, if you own a rental property, if the individual who is responsible for the bill signs a paper, we can

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identify to the landowner that that property is about ready to be shut off, and that way we can avoid a lot of unnecessary shutoffs and reconnects. We also have the United Way inside our building, working with individuals who are behind on payments to try to help utilize the same resources that OPPD was discussing--heat aid funds that are available. And like OPPD, we put together a concerted effort and actually have a Walk for Warmth that's going to take place on Friday that would...that helps generate large amounts of revenue so we can help offset the costs of those utility bills. But, in essence, what Senator Gay is attempting to do is reduce duplication and costs and focus more on how do we get these services out, how do we get to people on a more reasonable basis, and make sure that that's accomplished? So I'm here today in support of the bill, and I'm happy to answer any questions you might have. [LB734]

SENATOR PANKONIN: Senator Gloor. [LB734]

SENATOR GLOOR: Thank you, Chairman Pankonin. Mr. Clark,... [LB734]

DOUGLAS CLARK: Yes. [LB734]

SENATOR GLOOR: Everything about this is very efficient, and I understand, but part of my question probably goes beyond the scope of what the bill intends to do. But we have a notice that gets printed out on the bill... [LB734]

DOUGLAS CLARK: Yes. [LB734]

SENATOR GLOOR: ...that warns the customer. That's automated. There is a automated phone message that goes out, and then there is a...I'm assuming, computer-generated letter that also goes out to the customer. [LB734]

DOUGLAS CLARK: Yes. [LB734]

SENATOR GLOOR: Again, all these are efficiencies, and that helps keep the costs down. I understand that also. But if I'm a 95-year-old elderly individual, and it's a hundred degrees outside, it's 7:00 in the evening, and I'm going to lose my air conditioning, can I pick up the phone and talk to anybody and plead my case? How do people get interceded for...for (inaudible)... [LB734]

DOUGLAS CLARK: That's a very good point. We at the district are very concerned...it benefits no one if bills go unpaid because those bills get rolled back into utility bills of everybody else who's paying, and so... [LB734]

SENATOR GLOOR: Like shoplifting. [LB734]

DOUGLAS CLARK: Pardon? [LB734]

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SENATOR GLOOR: It's like shoplifting in some ways. [LB734]

DOUGLAS CLARK: Absolutely. [LB734]

SENATOR GLOOR: Everybody has to pay for (inaudible)... [LB734]

DOUGLAS CLARK: It goes back into all the other products being sold in that store. We have the United Way individual that is stationed at our facility to assist with LIHEAP funds and state funds and those types of things. We also have people on-call, and our goal is to work out a payment plan, and we go to great lengths to work out a payment plan. And in many cases, we're very successful, and that's good for all individuals. We...one specific individual that I worked with, and I won't use any names, but they were behind by several thousand dollars. We attempted to contact them and contact them, and they wouldn't return our phone calls; they wouldn't return the letters. And finally, I was contacted by a senator that said, can...you're threatening to shut off this person's services. Would you meet with them? And I said, we'd be glad to meet with them. We met with that individual. Within six months they had cleared up their bill through a payment program after not paying for almost a year. So once we were able to sit down with that individual and talk to them and look at their budget and see how much money they could dedicate toward their utility bill, our customer-owners were whole at the end of the day, and that person never lost service. So finding that middle ground is critical, having a focus that's on the customer helps a lot, and sending letters is very impersonal and doesn't accomplish a whole lot. So our goal is to try to get to that person before it becomes so critical, they can't dig out of that hole. [LB734]

SENATOR GLOOR: Well, the hypothetical customer that I referenced, I also think would be disadvantaged by having to try and get a certified letter, assuming they weren't able to pick it up or answer the door, or whatever the case may be. [LB734]

DOUGLAS CLARK: Yeah. [LB734]

SENATOR GLOOR: Getting to get that letter would be problematic, so I think the concept has merits. [LB734]

DOUGLAS CLARK: Yep. We actually send our people out to meet with them at their home if they can't get in, and that's time consuming and costly, but we also look at the write-offs and on an annual basis we as an organization look at about a million dollars as a write-off due to bad bills. So any time we can drop that number and work with people to get payment, it's good for everybody. [LB734]

SENATOR GLOOR: Thank you. [LB734]

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DOUGLAS CLARK: Thank you. [LB734]

SENATOR PANKONIN: Senator Wallman. [LB734]

SENATOR WALLMAN: Thank you, Senator Pankonin. You know, I appreciate what you're doing for your customers. Do you have a late payment fee then or interest payment then? Do you charge interest on that late fee? [LB734]

DOUGLAS CLARK: Yes. Yes, we do. And that's part of the... [LB734]

SENATOR WALLMAN: Is it 1.5 percent or 1 percent or? [LB734]

DOUGLAS CLARK: I wish I could tell you. I don't know off the top of my head. But I...that comes down to pay your bills because it makes good sense (laugh). [LB734]

SENATOR WALLMAN: Sure, yes. I agree with you. Thank you. [LB734]

SENATOR PANKONIN: Mr. Clark, just one question on my part would be, have you seen...somewhat similar to the question on the manufactured housing. MUD serves primarily the Omaha metro area, but have you seen more problems this winter with the economy and, obviously, we've had a tougher winter with degree days being down? Have you seen more problems this winter? [LB734]

DOUGLAS CLARK: You know, actually, no, and the reason being is, you aren't paying \$12 a dekatherm for natural gas like you were a year or two ago. So we may have colder weather, but natural gas is also priced at about 40 percent of what it was, you know, a year and a half ago. So the mixed blessing is that we had a colder year, and so your utility costs probably didn't go down all that much because of the colder year, but at least the price of natural gas was at an affordable rate. Home heating becomes a real critical time at this time of year and having those obnoxiously high gas prices don't help, so we were the benefactor of an economy that's cooled down. [LB734]

SENATOR PANKONIN: So, consequently, you haven't had worse past-due problems this winter than... [LB734]

DOUGLAS CLARK: No. No, sir. [LB734]

SENATOR PANKONIN: Well, that's good. I'm glad to hear that. [LB734]

DOUGLAS CLARK: Yes, that is good. [LB734]

SENATOR PANKONIN: Thank you for coming and testifying today. [LB734]

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DOUGLAS CLARK: Thank you. [LB734]

SENATOR PANKONIN: Any other proponents? Anybody that would like to testify in opposition to LB734? Anybody that would like to testify in a neutral position? Welcome. [LB734]

JAMES GODDARD: (Exhibit 2) Thank you. Mr. Chairman, committee members, my name is James Goddard. I'm a staff attorney at Nebraska Appleseed. I'm sorry, my names is James, J-a-m-e-s Goddard, G-o-d-d-a-r-d. Nebraska Appleseed is a nonprofit, nonpartisan, public interest law firm here in Lincoln, Nebraska. I had originally planned to testify in opposition to this bill, and after listening to a bit of what was said here, I thought...I heard some comments and concerns and things, and so I'm testifying neutrally. However, there are some virtues, I believe, to the way this bill is...the way this law is currently written, and I just want to point a couple of those things out. One thing that I haven't heard in any of the testimony is that this would also eliminate notice to Health and Human Services. As I understand it anyway, the bill...the law as it's written, it requires certified mail by the utility companies, but it also requires notice to Health and Human Services. That has some merit because it's possible then that a caseworker could then say there's a problem here; I need to intervene. So part of that is, this could help consumers avoid disconnection, and if 39 percent of the letters are not getting there, that means something like 60 percent of the letters are getting there. That means it's more likely that people are going to have actual notice that they're about to get disconnected. Notice of being delinquent and notice of disconnect are not exactly the same thing. So this certified mail may also help prevent certain emergencies such as if you're on a breathing machine or some other machine that requires electricity, and, in general, I think that the purpose of this rule or this law is to protect some of the most vulnerable in society. Many welfare recipients have disabilities; they have behavioral health problems. And the requirements that exist, not only give them notice, but it gives Health and Human Services a chance to intervene. I'm certainly sensitive to the costs associated with this that have been outlined. I just would like to urge this committee to also consider the savings to society that may be occurring that we're not hearing about as a result of having this rule in place. So I would urge the committee to consider possibly retaining a notice to Health and Human Services at the very least. I'm happy to answer any questions if there are any. [LB734]

SENATOR PANKONIN: Mr. Goddard, appreciate you coming to testify. Any questions? Yes, Senator Howard. [LB734]

SENATOR HOWARD: Thank you, Chairman Pankonin. You're assuming that the department receives a certified notice? [LB734]

JAMES GODDARD: No, as I understand it, if...unless I'm misreading the alteration in this bill, as the law currently stands the utility, I believe, has to give Health and Human

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Services regular old first-class mail notice, and this bill would eliminate that, as I understand it. [LB734]

SENATOR HOWARD: Okay. I'm glad you weren't under the assumption that they... [LB734]

JAMES GODDARD: No. [LB734]

SENATOR HOWARD: Okay. Thank you. [LB734]

SENATOR PANKONIN: Any other questions? I don't think so. Thanks for coming today and testifying. [LB734]

JAMES GODDARD: Thank you for your time. [LB734]

SENATOR PANKONIN: Anyone else in the neutral? Welcome, Lynn. [LB734]

LYNN REX: Yes, thank you. Senator Pankonin, members of the committee, my name is Lynn Rex, R-e-x, representing the League of Nebraska Municipalities, and we're here in a neutral capacity today. We want to thank Senator Gay for working with us and others on this important measure. We do think the proponents have outlined some serious concerns and some cost savings that could be advanced with passage of this bill. We're neutral because we just wanted to make sure the provisions are the same in 70-1603 relating to villages which is the first section of the bill as it is in 70-1605. So you'll note that Section 1 only relates to villages. The second section relates to basically all other types of utilities. And even if you wanted to extend the same provisions and clarifications on the type of first-class mail and so forth and insert that up into the first section, we're open to that too. We just hope that whatever you do for one group, you would do for the other group, but I think there are some very legitimate reasons for introduction of this bill, and I'd be happy to respond to any questions that you might have. [LB734]

SENATOR PANKONIN: Any questions? Seeing none, thank you. [LB734]

LYNN REX: Thank you. [LB734]

SENATOR PANKONIN: Anyone else in the neutral? Seeing none, we'll close the hearing on LB734 and move to LB849. [LB734]

SENATOR GAY: Thank you, Senator Pankonin, members of the committee. For the record...and it's Tim Gay, here to introduce LB849. This bill was brought to me by the Department of Health and Human Services as their cleanup bill. LB849 provides the following technical changes in the area of health and human services, and I'm sure

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there will be others behind me to testify more on the specific provisions. This bill updates to January 1, 2010, that state law regarding references to the federal Social Security Act and the state Medicaid statutes. This allows any federal changes to be incorporated by reference. It deletes obsolete language to the Supplemental Nutrition Assistance Program or the SNAP statutes, specifically food stamp coupons have expired as of June 17, 2009. The bill deletes the references to these coupons and statutes relating to trafficking and legal penalties in Sections 2, 3, and 4. It deletes obsolete language relating to the continuous process used in the reporting of past due child support for the state tax refund offset process, specifically, the obsolete date of December 1 is removed in Section 5. It changes the developmentally disabled specialized services by deleting the requirement to have elected officials on the governing boards, allowing for easier recruitment of individuals to the board. The governing board will include persons with developmental disabilities, family members, or legal guardians of people with developmental disabilities or persons who are interested community members. There is an amendment to the language in the bill to strike the strict one-third percentage member requirements to this board, Section 6. Senator Coash brought that amendment to us. This bill changes state law relating to Director of the Division of Developmental Disabilities, specifically, the decision-making authority for appeal hearings is changed to be the director instead of the hearing officer. The director has more background and experience needed in order to make these appropriate hearing changes, and that's in Sections 7 and 8. Thank you. [LB849]

SENATOR PANKONIN: Thank you, Senator Gay. Any questions? Okay, we'll next have proponent testimony for LB849, anybody who wants to come forward for proponent testimony. Welcome. [LB849]

SHEILA KROLIKOWSKI: Welcome (laugh). Thank you. Health and Human Services Committee, my name is Sheila Krolikowski, S-h-e-i-l-a K-r-o-l-i-k-o-w-s-k-i. I am the Executive Director at Mosaic Tri-Cities which includes Grand Island, Hastings, and York communities. I'm here today to support eliminating the requirement of the home- and community-based developmental disability provider to have county commissioners or local elected officials serve on agency advisory committees. We appreciate having elected officials serve on our advisory committees, but find it difficult, at times, to have an elected official with the interest and the time available to serve. Many times an elected official isn't able to attend the scheduled meetings due to so many commitments. Since the requirement is part of the Title 205 regulations, the agencies receive a deficiency towards their certification if they cannot find a county commissioner or elected official to serve. The current state statute and regulations require the advisory committee members make up one-third persons with developmental disabilities or family members of persons with developmental disabilities; one-third is county commissioners or other local elected officials; and one-third persons who neither have a developmental disability nor a family member with developmental disabilities. Thank you for your time and consideration. Are there any questions? [LB849]

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SENATOR PANKONIN: I don't think we have any questions. Thanks for testifying and coming today. [LB849]

SHEILA KROLIKOWSKI: Thank you. [LB849]

SENATOR PANKONIN: Mr. Winterer. [LB849]

KERRY WINTERER: (Exhibit 1) Afternoon, Senator... [LB849]

SENATOR PANKONIN: That's...good to see you. [LB849]

KERRY WINTERER: ...Senator Pankonin and the committee. I'm handing out testimony...I'm sorry, Kerry Winterer. That's K-e-r-r-y, last name is W-i-n-t-e-r-e-r. I'm handing out testimony which I, in the interest of time, will not read. I think Senator Gay in his opening pretty much summarized what we're talking about in this bill. Much of this is technical cleaning-up language and so on. I'd be happy to respond to any particular questions. Probably the most substantive provision in this is the one that the representative from Mosaic just testified on, and it affects the boards of certain agencies that we contract with to provide services for developmental disabilities. It changes some of those provisions, and one, specifically, that has required previously for an elected official to be on that board. Many of these providers came to us and said, it's just difficult to do that. And so, essentially, it sought to eliminate that as their requirement. There have been some further discussions with providers since this bill was drafted, and there is now an amendment to that which essentially would eliminate the one-third, one-third, one-third requirement that's in the bill as it is now. And so that's no longer...those groups are still part of the representatives on the board, but no longer is it a requirement that there be a third, a third, and a third. At that, I'd be happy to respond to any questions or if you like, if there's anything you have concerns about. [LB849]

SENATOR PANKONIN: Mr. Wallman. [LB849]

SENATOR WALLMAN: Thank you, Chairman Pankonin. Yeah, Kerry, thanks for being here. [LB849]

KERRY WINTERER: Sure. [LB849]

SENATOR WALLMAN: In regards to food stamps, assistance, things like that, are most people with developmental disabilities qualified for food assistance that way or does that go directly to the state? [LB849]

KERRY WINTERER: They might, although many cases those needs would be provided in other ways. [LB849]

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SENATOR WALLMAN: Okay, thank you. [LB849]

KERRY WINTERER: Um-hum. [LB849]

SENATOR PANKONIN: I think we are reading your testimony (laugh) or trying to. See if we have some questions. You tripped us up because usually we're doing that while you're talking, and so we can think about things a little bit. Anything? Anybody have anything else? Senator Wallman, you have another question. [LB849]

SENATOR WALLMAN: Yeah, I have another question, and this would really help out the institutions, you feel, this bill? [LB849]

KERRY WINTERER: If the contractors were working with...? [LB849]

SENATOR WALLMAN: Yeah. [LB849]

KERRY WINTERER: Yes. [LB849]

SENATOR WALLMAN: Okay. [LB849]

KERRY WINTERER: They have been...they're very much in favor of this. This, frankly, was their idea, and if you read the testimony, it's really left over from a previous time in which there were not the private providers that are in the business now. And right now, it's become a difficult thing for them to provide those...find those elected officials to serve on the boards. [LB849]

SENATOR WALLMAN: Sounds good to me. [LB849]

SENATOR PANKONIN: I don't see any other questions. Thank you. [LB849]

KERRY WINTERER: All right. Thank you. [LB849]

SENATOR PANKONIN: Okay. Further proponents for LB849. Anyone that would like to testify in opposition to LB849? Is there anyone that would like to testify in the neutral position to LB849? Seeing none, we'll close the hearing on LB849 unless Senator Gay would like to make a closing statement. He's waiving. [LB849]