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Government, Military and Veterans Affairs Committee
February 07, 2008

[LB838 LB858 LB878 LB1030 LB1067 CONFIRMATION]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 7, 2008, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1030, LB878, LB858, LB838, LB1067, and gubernatorial appointments. Senators present: Ray Aguilar, Chairperson; Kent Rogert, Vice Chairperson; Greg Adams; Bill Avery; Mike Friend; Russ Karpisek; Scott Lautenbaugh, and Rich Pahls. Senators absent: None. []

SENATOR AGUILAR: Welcome everyone to the Government, Military and Veterans Affairs Committee hearing. I'll introduce the senators that are here right now. On the far right pretty soon is: Senator Scott Lautenbaugh of Omaha--you don't have to sit down; on his left is Senator Kent Rogert of Tekamah, our Vice Chair; right next to me is Christy Abraham, our legal counsel; my name is Senator Ray Aguilar, Chair from Grand Island. On my left is: Sherry Shaffer, the committee clerk; followed by Senator Rich Pahls of Omaha; and Senator Greg Adams of York. As the other senators return, who are probably testifying in other committees right now, I'll introduce them as well. Bills will be taken up in the following order: LB1030, LB878, LB858, LB838, and LB1067. There are sign-in sheets at both entrances. Sign in only if you're going to testify on the bill and put it in that box right here in front of me. If you're not going to testify, but would like to be on the record either as a proponent or an opponent on the bill, there's another sheet you can fill out and those are also at the entrances. Print your name and indicate who you are representing. Before testifying, spell your name for the record. Introducers will make initial statements, followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing senator only. Listen carefully and try not to be repetitive. If you have a prepared statement or exhibit, give it to the page and they will distribute it or make copies, and I would ask everyone to please turn off your cell phones and pagers. Speaking of which, pages for today are Ashley McDonald of Rockville, Nebraska, and Courtney Ruwe of Herman, Nebraska. We're going to start off with the gubernatorial appointments, Mr. Greg Osborn. Please, come forward. Greg is an appointment to the State Personnel Board and he is a new appointment. Greg, to begin with, will you just tell us a little bit about yourself and what you think you can bring to this position. [CONFIRMATION]

GREGORY OSBORN: (Exhibit 1) Okay. I grew up in Norfolk and 21 years ago, my wife and I moved down here to Lincoln, went back to school at age 37. I got a computer degree from Lincoln School of Commerce here, went to work for St. Elizabeth Hospital in their DP department, and 11 months later I started my own company, and I've been running my company for a little over 16 years now. Educationwise, my background has probably a little bit of accounting and economics and a little business law and computers. What I think that I can bring to this job or one of the reasons why I got involved in asking for some type of appointment is that Lincoln has been extremely good to my wife and I. And we've been getting more and more and more involved in the

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community probably in the last seven or eight years, and I thought it was my time to help up and be able to step back and volunteer a little bit. What I can bring to this job is that I think I have a pretty solid head about everything that takes place in employment because I've managed employees and I managed technicians, service people. And I've worked with them quite closely because I am a small business, and I think that I have a good sound judgment as to rules and regulations and how procedures should be done. [CONFIRMATION]

SENATOR AGUILAR: Very good. Thank you. Before we entertain questions, I would introduce Senator Russ Karpisek on the right who just joined us, Senator Mike Friend on the left, and Senator Bill Avery of Lincoln on the far left. Welcome, Senators. Questions for Mr. Osborn? [CONFIRMATION]

GREGORY OSBORN: Boy, this is too easy. [CONFIRMATION]

SENATOR AGUILAR: We're not going to let you off. What do you view as probably your biggest challenge in this new position? [CONFIRMATION]

GREGORY OSBORN: I would say probably being as I've never been in any other type of appointment, probably learning some of the procedures. I wouldn't necessarily say it would be a big challenge, but it might be a little bit of time involved in that. But making sure that I'm aware of the state regulations of the case that we're working on and preparing properly for the correct rules and regulations and be able to contribute to the committee. [CONFIRMATION]

SENATOR AGUILAR: Good. Thank you. Senator Avery. [CONFIRMATION]

SENATOR AVERY: Thank you, Mr. Chair. Welcome, Mr. Osborn. [CONFIRMATION]

GREGORY OSBORN: How are you today? [CONFIRMATION]

SENATOR AVERY: You look familiar. [CONFIRMATION]

GREGORY OSBORN: Very. [CONFIRMATION]

SENATOR AVERY: It must be I've seen you in the hallways? [CONFIRMATION]

GREGORY OSBORN: No, you've just seen me in lots of places. (Laugh). [CONFIRMATION]

SENATOR AVERY: Okay. [CONFIRMATION]

GREGORY OSBORN: We've run into each other occasionally, probably quite regularly.

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[CONFIRMATION]

SENATOR AVERY: Okay. I want to know as a member of the State Personnel Board, if something came to the board that involved a procedure or a rule or even a law that you disagreed with, how would you deal with that? [CONFIRMATION]

GREGORY OSBORN: Well, I think you have to deal with the way the law is written and you have to set aside maybe your differences about the law. The law is the important, the law of the land. So I think that's a lot more important than maybe personal feelings about some things. We all deal with a lot of personal differences, and I think that my capabilities of putting that in its place has worked well throughout my life.
[CONFIRMATION]

SENATOR AVERY: Thank you. [CONFIRMATION]

SENATOR AGUILAR: Senator Rogert. [CONFIRMATION]

SENATOR ROBERT: Can you elaborate a little more on your volunteer work that you have listed in the book here? [CONFIRMATION]

GREGORY OSBORN: Well, I volunteer for our Capitol Beach Lake Association. I'm the treasurer there, and I do some volunteer work at some of the nonprofit organizations. I've been involved recently with some volunteer work at a nonprofit organization that I probably put in about 30 or 40 hours. It's probably not a great deal and maybe should do more. But I try to do as much as I can, but it's usually for nonprofit organizations. We do fund-raisers for those at our home, and I'm involved in quite a few organizations that I work in and try to contribute to too. [CONFIRMATION]

SENATOR ROBERT: Thank you. [CONFIRMATION]

SENATOR AGUILAR: Seeing no further questions, thank you. [CONFIRMATION]

GREGORY OSBORN: Okay. [CONFIRMATION]

SENATOR AGUILAR: Appreciate your being here today. Is there anyone in the audience who would like to testify as a proponent of this appointment? Anyone as an opponent? Anyone in the neutral capacity? Seeing none, that will close the hearing on that appointment. Next, I'd like to bring up the Secretary of State's appointment, Mr. Richard Nelson, to the Nebraska Accountability and Disclosure Commission. Welcome.
[CONFIRMATION]

RICHARD NELSON: Thank you very much. [CONFIRMATION]

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SENATOR AGUILAR: Tell us a little bit about yourself, Richard. [CONFIRMATION]

RICHARD NELSON: Mr. Chairman, members of the committee, for the record, my name is Richard Nelson, N-e-l-s-o-n. I have been appointed by Secretary Gale to serve on the Accountability and Disclosure Commission. At the present time, I am affiliated with the law firm of Erickson and Sederstrom in their Lincoln office. They have offices in both Lincoln and Omaha. My position is that of counsel, which I define as meaning that if there are days when I don't show up at the office, nobody should be surprised. I sort of work at my own schedule, you know. Going into the office most days but on days like yesterday, choosing to stay home. I had many years as a practicing attorney, and as far as service on this particular commission is concerned, one of my areas of focus was that of administrative law. Most recently, I became acquainted with several of you on the committee when I served with what is now the Department of Health and Human Services, previously the Health and Human Services System. I served first as the director of the Department of Regulation and Licensure, secondly, as the director of the Department of Finance and Support. So putting those two together, a background in administrative law and eight years of experience in government, I'm bringing those kinds of experiences and background into service on the Accountability and Disclosure Commission, should you see fit to confirm me in that position. I have long been a student of government, interested in how government functions and how government should function, how it functions well, and how it can function better. And so I appreciated the opportunity that Secretary Gale gave me by appointing me to this particular position. Right now, obviously, we're in the height of an election cycle, a lot of focus is put on those elections to high national office. But as far as the Accountability and Disclosure Commission is concerned, in addition to dealing with significant statewide races, the commission has to deal with issues involving candidates for much smaller offices around the state of Nebraska, who I think for the most part are very interested in meeting the requirements of the law and serving appropriately and who will, you know, occasionally find difficulties in understanding and complying with the accountability and disclosure laws. So the interest in good government is an interest in seeing that the law as passed by this Legislature is appropriately interpreted and applied in a fair and reasonable manner. And I would pledge to you to do my very best to do precisely that. [CONFIRMATION]

SENATOR AGUILAR: Thank you very much. Are there questions for Mr. Nelson? I have one. How would you view the responsibilities of your office to which you've been appointed? [CONFIRMATION]

RICHARD NELSON: I suppose in a sense, Mr. Chairman, I would respond as an attorney trained in administrative law. The responsibilities of my office are to take the law as it has been passed by the Legislature, interpret it where necessary, and apply it appropriately and those can sometimes be very challenging tasks. But to bring a spirit of fair-mindedness into those proceedings and to, in deliberation and consultation with the

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other members of the commission, try to appropriately apply that law.
[CONFIRMATION]

SENATOR AGUILAR: Very good. Further questions? Senator Lautenbaugh.
[CONFIRMATION]

SENATOR LAUTENBAUGH: Thank you, sir. Thank you for being interested in doing this. Along with the fair-mindedness, you also hopefully would bring mercy, compassion, and understanding, is that correct? [CONFIRMATION]

RICHARD NELSON: We always bring mercy, compassion, and understanding. It is a fact, Senator, that the law as written, you know, must be applied. The attempt is always to apply it fairly, to apply it as we understand the Legislature intended it to be applied. There are some clear lines of demarcation of what public employees at all levels of government, candidates for office must do and must not do, and you know, it sometimes requires applying that law and if somebody has done something inappropriate or incorrect, applying the penalties. Hopefully, that is done with understanding and compassion. [CONFIRMATION]

SENATOR AGUILAR: Senator Avery. [CONFIRMATION]

SENATOR AVERY: Thank you, Mr. Chair. Welcome, Mr. Nelson. [CONFIRMATION]

RICHARD NELSON: Thank you. [CONFIRMATION]

SENATOR AVERY: I see you have a background in administrative law. How do you see that experience, some 40 years or more I presume, helping you in discharging your duties on this board? [CONFIRMATION]

RICHARD NELSON: The Accountability and Disclosure Commission is an administrative agency established by the Legislature as an independent board or commission charged by law to apply the laws to adopt regulations, and to proceed to act, if you will, as a judge in what the administrative lawyers would call a quasi-judicial capacity. So in all of those things, I think my training and experiences as an attorney is helpful to me in understanding and fulfilling my role. [CONFIRMATION]

SENATOR AVERY: Thank you. [CONFIRMATION]

SENATOR AGUILAR: Further questions? Seeing none, thank you for coming down today, Mr. Nelson. [CONFIRMATION]

RICHARD NELSON: Thank you, Senators. [CONFIRMATION]

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SENATOR AGUILAR: Is there anyone who would testify as a proponent for Mr. Nelson? Are there any opponents? Neutral testimony? Seeing none, that will close the hearing on that appointment. Thank you both for service and for coming down. We're now ready to open on LB1030. Senator Nantkes, what legislative gem do you bring before us today? [CONFIRMATION]

SENATOR NANTKES: Good afternoon, Chairman Aguilar, members of the committee. My name is Danielle Nantkes, that's D-a-n-i-e-l-l-e N-a-n-t-k-e-s, and I represent the "Fighting 46th" Legislative District. I'm here today to introduce LB1030. I've introduced LB1030 on behalf of the Lancaster County Election Commissioner, Dave Shively, to clarify filing deadlines for candidates for members of Lincoln's Board of Education to coincide with Lincoln's City Council candidates. It's a bill that would help to simplify the process for the Lancaster County Election Commissioner. Mr. Shively is here with us today and with that, I would like to turn the committee's attention to his testimony and I will snap or waive out my closing. Thanks. [LB1030]

SENATOR AGUILAR: Are there any questions for Senator Nantkes? You're off the hook. [LB1030]

SENATOR NANTKES: Nothing? All right. Thanks. [LB1030]

SENATOR AGUILAR: First proponent. [LB1030]

DAVE SHIVELY: (Exhibit 1&2) I do have some handouts. [LB1030]

SENATOR AGUILAR: Welcome, Mr. Shively. [LB1030]

DAVE SHIVELY: Thank you. Thank you very much. Chairman Aguilar, members of the Government Committee, my name is Dave Shively and that's spelled S-h-i-v-e-l-y, and I am the Lancaster County Election Commissioner. I am here today in support of LB1030, which would clarify the filing deadlines for candidates for the Board of Education of Class IV school districts. I'd like to thank Senator Nantkes for introducing this legislation for us. For your information, Lincoln Public Schools is the only Class IV school district in the state. According to Nebraska state statute 32-544, candidates for the Board of Education of a Class IV school district shall be nominated and elected by district as provided in Section 32-552 for four-year terms at the same time as members of the city council of the city in which the district is located. Nebraska statute 15-301 states that the date of the general city elections in cities of the primary class, and that's the city of Lincoln, shall be held on the first Tuesday in May of every odd-numbered year. While the date of the city primary and general elections has never been an issue, the question of what is the proper filing deadline for candidates for the Lincoln School Board arises every city election year. At first thought, you would think that the filing deadline for all candidates to be nominated and elected during the city's primary and general elections

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would be the same. According to Lincoln's city charter, the filing deadlines for candidates for mayor and city council is 32 days prior to the primary election. State law does not specifically provide for a filing deadline for school board candidates for Class IV school districts. Following the 2007 Lincoln city elections, I asked Gary Lacey, our Lancaster County Attorney, for clarification on this matter. In his opinion, which I have included in my packet of information given to you earlier, I have been advised to discontinue my office's practice of using the city charter as a basis for determining the filing deadline for candidates for the Lincoln Public Schools' Board of Education. Instead, Mr. Lacey advised that I follow the filing deadlines outlined in 32-601(1) using February 15 for incumbents and March 1 for nonincumbents. My assumption and that of my predecessors in my office have always been that those deadlines outlined in 32-601 were for statewide elections conducted in even-numbered years. A handout included in my packet provides you with the candidate filing deadlines for city of Lincoln elections from 2001 to 2011 using the deadlines that I have now been advised to use by the Lancaster County Attorney. As you can see, this may be confusing for any potential candidate in Lincoln's city elections and not just for those candidates for the Lincoln Board of Education. It's my understanding that members of the Lincoln Board of Education may have some concerns with this legislation, specifically that it would remove the incumbent filing deadline. I would suggest that an amendment be added to the bill that would put an incumbent filing deadline in for candidates for Class IV school districts in statute, and I do have a couple potential amendments here that I'd like to hand out. I hope that this change would prevent any confusion of the actual filing deadlines for potential candidates for any race to be elected in a Lincoln city primary and general election. I appreciate your time and would be happy to answer your questions. [LB1030]

SENATOR AGUILAR: Questions for Mr. Shively? Senator Lautenbaugh. [LB1030]

SENATOR LAUTENBAUGH: Thank you, Mr. Chair. Thank you for coming, Mr. Shively. Maybe I missed this, why don't you want to just use the February 15, March 1 deadlines? [LB1030]

DAVE SHIVELY: Well, as you can see in the handout, we end up with several different filing deadlines. The city charter states that it's 32 days prior. Then if we use that that's outlined in state law, we're using the March 1, and it's anywhere...if you look at this, it's anywhere from one to three or four days difference in the filing deadlines and that just becomes a little bit confusing, I think, for potential candidates. [LB1030]

SENATOR LAUTENBAUGH: So the problem is that these elections are always not the same, not the even-numbered years, but they're the odd-numbered years. [LB1030]

DAVE SHIVELY: Right. They're... [LB1030]

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SENATOR LAUTENBAUGH: So the city deadlines being similar but different would cause confusion. [LB1030]

DAVE SHIVELY: Right. Class IV school district elections are to be held in the same year as the city of Lincoln of elections. [LB1030]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Mr. Shively. [LB1030]

DAVE SHIVELY: Appreciate your time. Thank you. [LB1030]

SENATOR AGUILAR: Any other proponents for LB1030? Welcome. [LB1030]

BECKY RICHTER: Good afternoon, Chairman Aguilar and members of the committee. My name is Becky Richter, R-i-c-h-t-e-r. I'm the assistant elections director for the Secretary of State's Office. The change proposed in LB1030 occurs in 32-606 of the election statutes and affects only Class IV schools, as Dave said. And there's only one Class IV school in the state, LPS, and we're seeking uniformity in the filing deadlines for the school and city in which it's situated, that being the city of Lincoln. The one thing Dave didn't explain to you...and I looked at the calendar for 2009. Their charter says that the general election will be May 5, 2009. The primary then would be April 7, 2009, which puts their filing deadline at March 6, 2009. But state law would have the filing deadlines March 1 for nonincumbents and February 15 for incumbents. So that's where the confusion has been. And based on the filing deadlines for even-numbered years primary elections, an opinion was issued by the Lancaster County Attorney that primary filing deadlines should apply to the Class IV schools. Our office has also been asked for an opinion. However, it hasn't been issued yet because our hope is that you, the policymakers, will provide the definitive answer for this in statute. And the question to us appears to be, why would two different filing deadlines for the same election in the same town be a good thing for citizens wishing to file? So with that, I would ask the committee to advance LB1030. [LB1030]

SENATOR AGUILAR: Thank you. Are there any questions? Seeing none, thank you for coming today. Any other proponents of LB1030? Welcome. [LB1030]

VIRGIL HORNE: Chairman Aguilar, members of the committee, my name is Virgil Horne, V-i-r-g-i-l H-o-r-n-e, representing Class IV school districts, Lincoln Public Schools. We are very much opposed to the bill as drafted but thoroughly support any amendment that would allow two things to happen, that there would be agreement so there's no conflict in state statute with city charter of Lincoln so that that's clear. And the second thing would be to make sure that there is a difference between the incumbents' filing position and a new person coming onto a board. The concern here by our board is that if there's not two weeks' time, in some cases it's difficult to find people to run for the

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school board. And so they would like to have two weeks in order to have the incumbents announce, if they are going to run or not, so that they have the opportunity to find someone else to run. [LB1030]

SENATOR AGUILAR: Thank you. Before I ask for questions just to make sure, do you want to be listed as an opponent or a proponent? [LB1030]

VIRGIL HORNE: Pardon? [LB1030]

SENATOR AGUILAR: Do you want to be listed as... [LB1030]

VIRGIL HORNE: We are a proponent of the legislation if the amendment is adopted. [LB1030]

SENATOR AGUILAR: I gotcha. Questions for Mr. Horne? Senator Lautenbaugh. [LB1030]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. So then there's currently no incumbent separate deadline for city councilman in Lincoln? [LB1030]

VIRGIL HORNE: To my understanding there is not currently and that is not in statute. That is in the city charter. [LB1030]

SENATOR LAUTENBAUGH: So if we do this are we going to create the confusion that you're trying to avoid by creating a special incumbent deadline for LPS? [LB1030]

VIRGIL HORNE: Senator, we need to get the previous two testifiers back up. I work for the school district, and I know where the school district law is. I cannot respond to your questions with any authority. [LB1030]

SENATOR LAUTENBAUGH: Okay. Thank you. [LB1030]

SENATOR AGUILAR: Further questions? Thank you, Virgil. [LB1030]

VIRGIL HORNE: Thank you. [LB1030]

SENATOR AGUILAR: Any other proponents of LB1030? Are there any opponents? Neutral testimony? Seeing none, that closes the hearing on LB1030. I assume Senator Nantkes is waiving closing or snapping. We're now ready to open on LB878. Senator Engel, bring yourself forward, please. [LB1030]

SENATOR ENGEL: (Exhibit 1) Thank you, Senator Aguilar. I have some handouts here if I can find them. I'll be with you in a few minutes, if you've got a little time. Here they

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are. [LB878]

SENATOR AGUILAR: Welcome. [LB878]

SENATOR ENGEL: Thank you for welcoming me. Senator Aguilar, members of the Government, Military and Veterans Affairs Committee, my name is Senator Pat Engel, that's spelled E-n-g-e-l, and I represent the 17th District and I'm here today to introduce LB878. LB878 would change provisions related to recall of elected officials, and currently elected officials can be recalled for any reason. The law simply requires that the principal circulator submit an affidavit that includes a reason for which the recall is sought in 60 words or less. Under LB878 the registered voter seeking the recall would be required to submit a statement of 60 words or less alleging facts, which if true would establish one of three grounds for which recall of the official is sought: Malfeasance in office, misfeasance in office, or nonfeasance in office. And the definition of these terms are on page 2 of the bill. LB878 would create a process for the official to respond to such statement and he would have the option of submitting a defense statement that would be printed on the petition papers, which is currently allowed, or the official could file action in a district court to challenge the sufficiency of the allegations in the statement. There would not be a hearing nor would there be a cost to either party. The court would presume the allegations in the statement to be true and would determine whether the allegations of the statement establish the existence of malfeasance in office, misfeasance in office, or nonfeasance in office. And if the allegations were found to be sufficient to establish the existence of one of these three grounds, the individual whose removal is sought could then submit the aforementioned's defense statement to be printed on the petition papers. However, if the allegations were found not to be sufficient, the filing clerk would not issue petition papers and recall effort would be concluded. LB878 also establishes a reporting requirement for a filing clerk to notify the Secretary of State when initial petition papers are issued when the recall petition is found to be sufficient and election will be held and with results of that election. The Secretary of State will compile such records and furthermore, the petition papers shall include a statement of the estimated cost of the recall election, which is to be filled out by the filing clerk. Now, I am submitting an amendment today that would add a fourth ground for recall, that being the conviction of a crime involving the act of dishonesty or false statement. Now, this language was taken from the rules of evidence when discussing impeachment by evidence of conviction of a crime, so there's plenty of case law available on that, in case Senator Adams here, I think you were going to ask me that question. [LB878]

SENATOR ADAMS: I was. [LB878]

SENATOR ENGEL: Yeah. Therefore... [LB878]

SENATOR AVERY: Or I was. [LB878]

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SENATOR ENGEL: Professor. Therefore under LB878 and with this amendment, elected officials could be recalled only for malfeasance in office, misfeasance in office, nonfeasance in office, or a conviction of crime involving an act of dishonesty or false statement. Now AM1578 also strikes the requirement that filing clerks would fill in the estimated cost of the recall election, replacing it with a statement on the petition informing petition signers that the recall election would be held at the taxpayers' expense. County officials have some concern with the estimated cost because they thought it might be overblown and so forth, so they thought that might be scaring people from the cost of it. But we do feel that they should realize that these recalls are not free, they are at taxpayer expense and the county officials were okay with that. And as you recall, LB18 was introduced by Senator Mick Mines last year and it remains in your committee. And LB878 is similar to LB18, but it adds reporting requirements and the statement on the cost of the election. The previous year, LB786 was introduced and designated as a priority by Senator Mines. So this isn't the first go-around on this. It received first round approval and was debated on Select File. But due to an amendment which altered the intent of the bill, Senator Mines asked that LB786 be taken off the agenda and said he would reintroduce the bill the following year as he did with LB18. And as I was doing some research prior to introducing LB878, I found out that no one keeps statistics on the number of recall efforts initiated or carried out in the state of Nebraska. And I think it's wise to have some statistics and that is why I added language pertaining to the reporting requirement. It would not be an undue burden on local officials to carry out this requirement. It could be done as simply as e-mail. I mean, it's just a matter of notifying the Secretary of State. I've heard of people agree to sign a petition so that a vote could be taken on an issue, even if somewhat frivolous. I think the general public forgets that elections cost money and that is why language to the bill requires a statement notifying petition signers that the cost of election is at the taxpayers' expense. And according to a memo completed by the Legislative Research in 2006, 29 states have provisions governing recall of local officials, and of those states, it appears that 10 states spell out grounds for recall such as those stated in LB878. Seventeen states, including Nebraska, have laws requiring no specific grounds for recall and the remaining two differ from jurisdiction to jurisdiction. I personally believe that the recall process should only be used for legitimate reasons. The intended recall was to rid the public of offices of corruption and misconduct. Therefore, we must really tie the recall process to unsatisfactory service in office, not for some frivolous reason. And the current recall process personally I think is abused, being abused terribly. There have been recall efforts for personality conflicts and by those who don't get their way. Some recalls are becoming grudge matches. For example, if a county attorney does his job and a youth is charged with MIP, this should not be a sufficient reason for the upset parent to initiate a recall effort, and this has occurred. No elected official will please everyone all the time, and they shouldn't have to worry about being ousted from office for merely doing their job. Recall petitions divide communities, disrupt governmental services, and are very hard on the officials and their family. Even if an official had done

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nothing wrong, their reputation is blemished and oftentimes the abuse is also targeted on family members and their place of business. We cannot let recalls run rampant or we may find ourselves faced with a lack of qualified candidates willing to commit to public service, because it is a service. A lot of them are unpaid, basically like ours. Now we can't be recalled at this present time. But it's getting harder and harder to get people to run for something when they have to take all that abuse to try to provide a service for the community. So public service is a sacrifice and we must take efforts to make it no more difficult than it is. Therefore, I am not suggesting that we eliminate the provisions, I am merely trying to limit such efforts to legitimate reasons: Improper performance of his/her job, or conviction of a crime involving dishonesty or a false statement. So with that, I urge you to advance LB878 to General File, and I'd be glad to answer any questions that I can. If there are any questions that I can't answer, I do have other testifiers following me that perhaps can do. So with that, thank you and I am ready for questions. [LB878]

SENATOR AGUILAR: Thank you, Senator Engel. [LB878]

SENATOR ENGEL: Professor. Oh, I'm sorry. You call them, I don't (laugh). [LB878]

SENATOR AGUILAR: Senator Lautenbaugh has a question for you. [LB878]

SENATOR ENGEL: Yes. [LB878]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you, Senator. And I guess I'll direct this first to our legal counsel, put you on the spot. Sorry. Is there already a spot or place in the statute where county attorneys can't be recalled for failing to bring charges or for bringing charges? Isn't that exception already in our law? I see a nod out there. So let's presuppose that's the case. [LB878]

SENATOR ENGEL: We have a county attorney following me. [LB878]

SENATOR LAUTENBAUGH: Okay, good. So that said, there is a tradition at least or at least some experience in limiting the recall process, is that correct? [LB878]

SENATOR ENGEL: That makes sense, yeah. [LB878]

SENATOR LAUTENBAUGH: And I understand your concerns that you voiced there, limiting it to those specific areas. Do you have any concerns--because I kind of do, I don't know if it's First Amendment or what, I don't know how to really formulate it--regarding putting the defense on the petition or putting the cost of the election on the petition? That seems to go beyond the limitations on recall that you want. [LB878]

SENATOR ENGEL: Well, I think all we want to do that is, you know, people will...there's

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all kinds of petitions out there, and they just sign, sign, sign, sign, you know, and they really don't ask questions. You know, so at least they know as...and they have to be a taxpayer, I mean, they have to live in that community. Well, I'm sorry. They have to live in that community, and so if they live in that community, they're probably a taxpayer, and I think the public should know that there is an expense to this. Now, you can maybe coin another phrase for it, but I think they should know there is an expense when you have all these petitions. That's the reason that's in there. [LB878]

SENATOR LAUTENBAUGH: And I only ask that I don't believe we do that with initiative petitions and whatnot. You know, ballot space costs money. That's a knowable cost we could force onto that process and we don't. [LB878]

SENATOR ENGEL: I think it would be a good idea, but this isn't that. [LB878]

SENATOR LAUTENBAUGH: Understood, understood. That's just my concern. I appreciate you're addressing it. [LB878]

SENATOR ENGEL: Okay. Yeah and thank you for your concern. [LB878]

SENATOR AGUILAR: Senator Avery. [LB878]

SENATOR AVERY: Yes, thank you for appearing, Senator Engel. It's always a pleasure. I just have one question. Can you elaborate a little bit on the role of the court here? I mean, under current law a person who is being notified of a recall has 30 days to submit a defensive statement or a statement of defense. Under what you're proposing, instead of filing that statement of defense, there would be a suit filed, correct? [LB878]

SENATOR ENGEL: Well, he could do either. He could just file that if he wanted to or he could go to the District Court, and the judge himself would make the decision, from what I understand. That will be explained a little thoroughly from someone in the legal profession behind me. [LB878]

SENATOR AVERY: Okay. [LB878]

SENATOR ENGEL: But that's that way I understand it. [LB878]

SENATOR AVERY: So then there could be lawyers present, there could be...rules of discovery, for example, would apply, I presume. Maybe I'll just save these questions. [LB878]

SENATOR ENGEL: Well, I think you probably should save that for a legal person. I really can't answer that correctly and I don't like to play... [LB878]

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SENATOR AVERY: I'm not a legal person either, so I'm not even sure I'm asking decent questions. [LB878]

SENATOR ENGEL: Well, then we're on even ground here. But anyhow, appreciate the question. But I'm sure that can be answered from the people following me. [LB878]

SENATOR AVERY: Okay. [LB878]

SENATOR AGUILAR: Further questions? Senator Adams. [LB878]

SENATOR ADAMS: Senator Engel, just before we move onto the next testifier, just so that I'm clear, presently under statute a recall petition can be initiated by someone literally for any reason, is that correct? [LB878]

SENATOR ENGEL: Any reason at all. Yeah. [LB878]

SENATOR ADAMS: And so the intent of this legislation would be to narrow the cause to either malfeasance in office, misfeasance in office, or nonfeasance, not doing a job. [LB878]

SENATOR ENGEL: Right, right, correct. [LB878]

SENATOR ADAMS: And then you suggested an amendment that there would be a fourth category of some kind of a category...what a misdemeanor of you falsified statements or dishonesty. In other words, I'm assuming that language...conviction of a crime involving an act of dishonesty or false statement--you've chosen that language because it relates back to the job? [LB878]

SENATOR ENGEL: Well, see what that did, I had an attorney look that up for me. In fact, he suggested, he said it's in the rules of evidence so that there's a lot of case law on that particular phrase there. So it's defined in there. And again, it's another legal-type situation, but that's where it came from. So it is in case law and I think Senator Lautenbaugh would probably understand that and a testifier coming behind me will too. [LB878]

SENATOR ADAMS: So then I guess the other part of my question then, as you have developed this, are you comfortable at this point that the parameters of the dishonesty in office, the malfeasance, nonfeasance, misfeasance, is that sufficient enough? I mean, have we...are you comfortable that it's broad enough that that relates to office but hasn't eliminated to the best of your knowledge something else that would be relevant to bring recall? [LB878]

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SENATOR ENGEL: Well, I believe so because right now if you've committed a felony, you cannot serve. You know, so that's already out there because I asked those questions too. [LB878]

SENATOR ADAMS: Oh, good point. [LB878]

SENATOR ENGEL: And if they've committed a felony, they cannot serve. And then our county attorney is here today to testify and he come up with some other documents here that he can tell you, as far as what they can use otherwise too. [LB878]

SENATOR ADAMS: Okay. [LB878]

SENATOR ENGEL: So I think when you put it all together, it's probably not perfect but it's certainly gives...I think it might get rid of a lot of these frivolous petitions to recall people because they've done their job. And it really is getting difficult to get people to run. [LB878]

SENATOR ADAMS: And yet at the same time...and I guess I'll ask again, do you feel this is broad enough that if someone is not doing a job, the citizen does have an avenue to remove them from office or attempt to? [LB878]

SENATOR ENGEL: I think this will take care of most situations. Other than that there is one recall tactic that we all have is the election box. You know, if you don't like the way they're doing their job overall, but they haven't really done anything, you know, wrong as far as committing crime or these other charges here. So I think the election box is the ultimate one for those who are unhappy with their decision. Even though they're making right decision, but in their mind it isn't, well, then let's find somebody that will agree with me. [LB878]

SENATOR AGUILAR: Did you have a follow up, Senator? [LB878]

SENATOR ADAMS: May I ask one more? And I expect that...you said there's a testifier coming up that may be able to better answer the question. But just as one more follow-up question to finish. So I want to initiate a petition to recall someone and if the law were to pass, I would have to define in the petition the cause for the recall and the legislation would require that that cause be malfeasance, misfeasance, nonfeasance. The petition is filed and if I choose to contest the cause, then the district judge would be involved in that determination, correct? [LB878]

SENATOR ENGEL: That's a choice you have. [LB878]

SENATOR ADAMS: Right. [LB878]

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SENATOR ENGEL: You could request a hearing, yeah. [LB878]

SENATOR ADAMS: I could just say I'm not going to take it to the judge, I'm just going to take my argument to the people and see what happens. [LB878]

SENATOR ENGEL: To the people and you can... [LB878]

SENATOR ADAMS: I have that avenue or I could go to a judge...is it my understanding that the judge is not going to be determining you guilt or innocence? [LB878]

SENATOR ENGEL: No, no, no. All the judge is going to be determining is if you violate misfeasance, malfeasance, or nonfeasance. I mean if that's in this petition, if that's one of the allegations, and he said one of these allegations is true that you have committed one of these three, then the petition can go forward. But if he says there's nothing in this petition that shows that anything that you've got in your petition does not really signify that he's actually done, then it's out, done, over. Yeah. [LB878]

SENATOR ADAMS: Okay. Thank you. [LB878]

SENATOR ENGEL: Yeah. That's the way I understand it anyhow. [LB878]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Senator Engel. [LB878]

SENATOR ENGEL: Thank you very much. And like I say, there are other testifiers behind me and they will be coming forward. So thank you. [LB878]

SENATOR AGUILAR: Right. First proponent of LB878. [LB878]

JO DEE ADELUNG: (Exhibit 2) Good afternoon, Chairman Aguilar and committee members. My name is Jo Dee Adelung, spelled J-o D-e-e A-d-e-l-u-n-g. I served four years as the parks commissioner in Nebraska City, and I'm currently completing my second term as mayor, that is 11 years total thus far of public service and leadership to my community. I'm here today to put a face on the devastating effects of a recall attempt, and I didn't bring all of my scrapbooks with me, but I did pick out a few of some of my favorite--using the term loosely--clippings from the news press. I will tell you that the agony begins when you receive a certified letter from the county clerk informing you that you are going to be the subject of a recall. And the subject of my recall, the state meant the recall affidavit reads that Mayor Jo Dee Adelung hired a city administrator against public opinion and need, and then goes on to talk about that. It's interesting to note that we hired a city administrator, created the position of city administrator, three years prior to this recall. The position was created with the unanimous vote of the entire city council, and I actually ran my reelection campaign based on the fact that I continued

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to support the mayor and council's decision to have a city administrator and I was reelected at that time. So the community was certainly aware that that was my platform for continuing to serve as mayor of Nebraska City. One of the things that I don't want you to be fooled into thinking that the circulators play by the rules and do it legally. Some of the issues that came up during my particular recall attempt, I know on one case...it is in state statute, by the way, that the petitions are supposed to be in the hands of the circulator and that circulator is supposed to by law read both of the statements on that petition. There were several instances in Nebraska City, one of them being that on bowling league night, they would announce over the intercom that there were petitions lying about on tables and that people needed to take the time out during their bowling event to go and sign that petition. There were instances where the petitions were dropped off in bars and were left on tables or just circulated around the bars. I don't even think that most of the circulators even understood that it needed to be a citizen of Nebraska City and a registered voter. They were just signing up anyone and everyone that they possibly could. One of my favorites, and I did include it in your packet, is we did have a gentleman that was walking up and down Main Street with a sandwich board, and I did ask someone who happened to be my daughter who was a college student at the time, to approach the gentleman to kind of hear his story. And he said, you know, I don't have a beef at all with the mayor. As a matter of fact, I think she's doing a great job. I have my own agenda and that's to change the form of government because Nebraska City is the only municipality in the state of Nebraska to have the commissioner form of government. And this gentleman believes that that is an inappropriate form of government, it's a dictatorship, and he is advocating signing the petition to get rid of the dictator and that particular form of government. My favorite piece is also sign the petition against the mayor and have a merry Christmas, spelled m-a-r-r-y. He just absolutely admitted that he had his own agenda, and it had nothing to do with the actual petition. The letters to the editor...I mean, and this is probably half of them, entire pages out of the newspaper full of letters, allegations, I will say, out and out lies. I called an attorney early on and found out that technically people can say anything against an elected official. I think except maybe that I have stolen money. So the sky was the limit. For three months, an opinion poll ran on the newspaper's Web site asking people to vote whether or not they should get rid of the mayor. They also have a blog in this particular Web site called "rant and rave," and people were allowed to say anything they wanted and not even sign their names. So the time and effort that it took for me to respond to all of these allegations because people, professionals told me that in this case if I didn't respond, people would think that this was factual. I was doing my mayoral duties, I owned a business in Nebraska City, I was a very busy person, and to take the time to write letters to the editor, almost on a daily basis, to go back and be factual about the allegations against me. The thing that really was devastating to me is that at the end of the process the petitioner did claim in the newspaper that she received all 1,031 signatures, I believe it was, but didn't get enough additional ones to take care of maybe some that weren't there correctly. And so therefore in order to protect the privacy of the people who signed, she destroyed the petitions. And so she had the last word on

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this that 1,031 or so people signed the petitions and really at the end of the day, that was here statement. In my opinion, when you go to the county courthouse and you pick up petition papers to oust, in the words of the paper here, an elected official, those should be a legal document. And the fact that she was able to destroy those on her own and not have to actually turn them back in to the county clerk was just a really kind of final blow to me. What you need to realize, too, is that this happened...I received my certified letter in October. This drug out until December 28. I can tell you that Thanksgiving and Christmas at the Adelung home was not a very pleasant experience to be going through all of this. As mayor I make difficult decisions every single day and on any occasion, those decisions are going to probably make somebody mad. If we insist that somebody cleans up junk cars in their front yard, if we insist that somebody cuts down the four-foot tall weeds that are growing around their property, or fixes the caved-in porch that is a life and safety issue, those people are unhappy with me. And I understand that, but that is part of my job and that's what people elected me to do. I understand if I do something illegal, immoral, and unethical those are reasons that an elected official should be gone. But for me to do my job the way that I believe you all intend for us to do and the state of Nebraska and all the citizens in the state of Nebraska expect us to do our jobs and this is a very dark cloud that hangs over our head. Lastly, I will tell you that there are three open seats on Nebraska City City Council coming up this election, including mine. I have been out trying to recruit good candidates, and for the most part, they say to me you were the best mayor Nebraska City has had in many years, and when we see what you have gone through doing the great job that you did, you would have to be insane to run for an elected official's position at the local level. And you know, for the most part, I actually agree with that. So I will just finish with saying the law as it stands today allows for the misuse of the power of the recall as is evidenced in the alarming number of recall attempts that I have seen over the past few years. Please support LB878. We need great people representing our local governments, and I hope that we're able to keep it at that level. I hope it never reaches the level of government that you are at because I know you as well make very difficult decisions on a daily basis. Thank you and I would be glad to answer any questions that you might have, except maybe some of the legal stuff. I'm not an attorney. [LB878]

SENATOR AGUILAR: Questions for the Mayor? Senator Adams. [LB878]

SENATOR ADAMS: Jo Dee, thank you for being here today. Obviously your testimony is heartfelt and I can only imagine. But let me ask you this, in light of what you went through, obviously you wouldn't be a proponent of this bill unless you thought it was worthy of that, would this bill have changed your situation? Had this bill been in place, would it have changed your...I mean, the burning of petitions, this doesn't do anything about that. [LB878]

JO DEE ADELUNG: And I think that issue can probably be handled with the Secretary

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of State or, you know, with the people who actually handle that procedure. I don't think that that is so critical to maybe this legislation and maybe there's another testifier today who might also want to share with that. The process just really needs to be looked at. And absolutely, to answer your question, yes, it would have made a difference in this situation because I would have been able to pass it on to a judge who I would have explained exactly what I said to you today. I made it very clear when I ran for mayor that I supported our decision to have a city administrator, and somebody just was upset because a couple of people were fired from positions that were completely separate from this situation. But it became a personality conflict. It became a personal vendetta, and I think a judge would have easily been able to decide that without any doubt.
[LB878]

SENATOR ADAMS: Thank you. [LB878]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB878]

JO DEE ADELUNG: You're welcome. [LB878]

SENATOR AGUILAR: Next proponent of LB878. Welcome. [LB878]

EDWARD MATNEY: (Exhibit 3) Thank you, Mr. Chairman and senators. I would like to pass out if I could a copy of this form. First of all, my name is Edward Matney, E-d-w-a-r-d, last name is M-a-t-n-e-y, and I'm the county attorney in Dakota County, Nebraska. I'd like to thank you, first of all, for allowing me to be here to testify. I am in support of this bill. I, like the Mayor who preceded me, have had the recent experience of going through a recall election in my county. What is being handed out to you right now is a copy of the document that was filed to trigger my recall election. And I do believe, as Senator Adams I think had mentioned, I think that given a judicial review option during the time of my recall election, I think I could have established...or the judge would have seen that these things did not establish malfeasance, misfeasance, or nonfeasance, or a criminal behavior obviously without more facts. These are just kind of a laundry list of what ails the world. And so I think that it would have made a difference in my situation as well. I also share the mayor's feelings that she related to you all about my experience in talking with her and other people who have gone through a recall election. It really is remarkable the kind of commonality you see in these sorts of things, and I certainly do agree with the comment that these individuals do not follow their own rules. They do not explain what the recall process is. I believe in some instances they actually give false information about what the issue is they're soliciting signatures for. You can imagine being the county prosecutor with petitions that are left in bars how that will draw people like flies to honey, I guess. It's just a really frightening process. I had always tried to do my job to the best of my ability. I would like to tell you a little bit about the person who started my recall process. This individual, her daughters and husband were all three prosecuted by my office for a variety of things, and were convicted, of

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course. There was an additional connection with this particular person who circulated the petitions, her husband had been...was another attorney, ironically had been hired by...had been appointed by our county board during a vacancy to assume a public defender's spot in the county. It was quickly discovered that the county board didn't have the resources available to do a full background check on him. A number of problems immediately came to light when he came into the county, and not the least of which was this motor vehicle accident that occurred. The public defender was not carrying insurance on his vehicle that his young daughters were driving, which led to the prosecutions by the County Attorney's Office. But then the final matter that came up was when this public defender then terminated the employment of the longtime legal secretary office manager in the public defender's office and installed his wife in that position, which of course violates state law on nepotism as the board had not approved that activity. The public defender eventually did resign from office. I then, of course, was in the process of running for election to the county attorney to be county attorney in November of 2006, was reelected without any opponent in the primary and the general election, and then as soon as the six-month window passed after my swearing in, that's when this fun started with the recall process. So it was a very difficult process. I will tell you that I believe it is very much a vehicle for defamation of public officials. For me it was magnified beyond my small town situation because we are right across from the state of Iowa, which is a more major media market, not by any means like Lincoln or Omaha or some of the bigger cities, Grand Island. But there are three television stations there, radio station, a daily newspaper, all in addition to my county's weekly newspaper, and this was big news, on all the time, no substantiation required. This laundry list of all these problems was aired repeatedly over and over again, and of course I was just having to try to continue to do my job with this sort of a distraction. I also think that getting the Secretary of State involved in the process as is referred to in the bill is a good thing. These documents I think should have to be either turned back in so that they can be reviewed, or they should have to be numbered in a way that will prevent them from being used in future recall elections. Another similarity between the mayor's experience and mine, this individual claimed that she had all of the signatures that she needed as well. In fact, two weeks into it she said she had three-fourths of the signatures, which I think would have been pretty remarkable but she claimed that. Then when she didn't turn them in on her filing deadline, she promptly held a press conference to say, well, I'm not turning them in now, but I'll be starting up again here in the next few weeks. I'm just getting some things taken care of here at home and I want to start another process again. And that is a difficult thing because the law, of course, allows people to file these matters in perpetuity in situations where they are not successful in getting a recall election. If she had achieved a recall election and if I had prevailed, then she would have been blocked from doing it for six months. But if she doesn't turn the signatures in, she can keep it going on and on all the time. So you'll have someone essentially running for election constantly because you do have to treat this as an actual election battle. I had...of course, like I said, I ran unopposed in the primary and general, didn't have to do the typical campaign that you would normally

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have to do, but just had let my campaign Web site expire and then some other things go and then this got filed. And so I had to basically run a campaign that I wasn't anticipating. I think that having a judicial review as a filter is a very good idea, and I also think that we should notify the taxpayers that it's going to be at taxpayer expense. There's no real way to make sure that the person that files these things is a taxpayer. In my case, this person had just kind of drifted into the county with their family, didn't own any real property, was not a taxpayer. I understand that people who are living in the county, we can't take away their right to file this sort of thing. But at least through a judicial process that this bill advocates we could say, you know, you have to at least put forth something that would constitute malfeasance, misfeasance, nonfeasance, or a crime. And there was some questions about other criminal activity, if it were broad enough. I think this bill combined with the existing state statutes would cover any sort of criminal misconduct by people who are in office. For example, the current statute 28-924 provides for a crime of official misconduct. That would be a Class II misdemeanor. And so if there's other sort of criminal activity in conjunction with your job, that would bolster what is in LB878 to cover those scenarios. And then the companion statute of 23-2001 allows when someone is convicted of official misconduct, that to be used as a judicial process for removal from office. With that, I would I guess just submit those comments to you all and thank the Chairman and thank the members of the committee for giving me a chance to speak. And if there are any questions, I would be happy to do my best to try to answer them. [LB878]

SENATOR AGUILAR: Thank you. Questions for Mr. Matney? Senator Avery. [LB878]

SENATOR AVERY: Thank you, Mr. Chair. I want to come back to some questions that I started asking Senator Engel and he passed them off to you. [LB878]

EDWARD MATNEY: Yes, sir. [LB878]

SENATOR AVERY: So it's your turn. I'm really not quite sure how this review, the judicial review, would work. Would you mind explaining to me the role of the court in this particular process? [LB878]

EDWARD MATNEY: Well, I think this is my interpretation of how it would work out and, again, another testifier might have a more expansive view on it, but on the printout that I have it's on page 6. It's under...where it says Section 5 of Section 32-1303, and then there's a (4) that starts out with "The filing clerk shall notify the individual sought to be removed." If you go a little further down this is what it says in underlining toward the bottom of that page 6 on my copy, "The court shall presume the allegations in the statement are true and construe them in the light most favorable to the principle circulator or circulators and shall determine, without hearing and without cost to any party, whether the allegations in the statement establish the existence of malfeasance in office, misfeasance in office, or nonfeasance in office." And so I think what that means

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is...my interpretation is you basically present those things to a judge and the judge makes a determination hey, if what this person is saying here is true, we can presume that it's true, does it constitute malfeasance, does it constitute misfeasance, does it constitute nonfeasance? And if it does not constitute one of those things in the view of court, then it presumably would not go forward. If it does, then it would move forward. And so I think it wouldn't necessarily get bogged down...I think a lot of people might fear that it would get bogged down in a court process that might not move forward efficiently, as sometimes courts do. I don't think it would in this case because it specifically says in here that it's to be basically a determination made by a judge without any hearing, without any cost, and so that would have to be done I think in a very efficient and expedient fashion. There wouldn't be this discovery process which can cause timely delays. There wouldn't be multiple hearings and attorneys involved making challenges and arguments. The way I interpret it is you would just present the actual filings to the judge. In my case, what I just handed out to you all would be presented to the judge and you would just ask the judge in your request, does this satisfy the requirement that it be nonfeasance, misfeasance, or malfeasance. [LB878]

SENATOR AVERY: So does it bother you that this is putting an awful lot of authority in the hands of a judge to determine whether a recall process goes forward or is stopped? [LB878]

EDWARD MATNEY: I think that it's simply a reasonable way to possibly filter some of these problems that are happening. Like I said, there's a lot...we're limited in what we can do. We can't say, hey, you have to be a taxpayer or a real property owner in the county because that restricts, you know, people who are in rental relationships. But we can say hey, not just anybody can drift into town and do this for a personality conflict or some other reason. It has to actually relate to whether the person is doing...whether the elected official is doing his/her job or not doing it. So it doesn't really bother me. I mean, obviously there can be problems with judges too. But at least it gives some added protection that now doesn't exist in the law. [LB878]

SENATOR AVERY: So it would work this way: A circulator would come to the court and say I allege the following, and the judge then is required to assume that this is true. Then assuming this is true, the judge says I hereby conclude that this constitutes malfeasance, misfeasance, or nonfeasance. Is that how it would work? [LB878]

EDWARD MATNEY: Well, pretty much, except I think it would have to be the elected official who would bring it to the court. The circulator, the person who wants to be the circulator, just files this affidavit with the county clerk, and then if the elected official wants to challenge it, he/she would bring it to the judge and say, judge, I don't think this established malfeasance, misfeasance, or nonfeasance. Do you agree that it should not move forward or disagree? [LB878]

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SENATOR AVERY: So the protection for the petitioner then or the protection for the circulator is in the presumption that the facts alleged are true? [LB878]

EDWARD MATNEY: Yes, yes. It says right in the proposed statute in the bill, the court shall--mandatory language--shall presume the allegations of the statement are true, and in addition it says that, the court shall construe the allegations in the light most favorable to the principal circulator. So every benefit of the doubt is given to protect this potential circulator. [LB878]

SENATOR AVERY: I don't want to be misunderstood. I think that Senator Engel has identified a problem that needs to be fixed. I'm just trying to get a handle on whether or not this is the right fix. [LB878]

EDWARD MATNEY: Yes, sir. I understand. [LB878]

SENATOR AGUILAR: Senator Friend. [LB878]

SENATOR FRIEND: Thank you, Mr. Chairman. Thanks for coming down, Mr. Matney. [LB878]

EDWARD MATNEY: You're welcome. Thank you. [LB878]

SENATOR FRIEND: Let's say that a mayor of a town, doesn't matter, Class I...or first-class city, second-class city, whatever, gets in a situation where he/she has a extramarital affair with someone in town, not an employee of the Mayor's Office or anything of that nature. But the extramarital affair more or less affected the whole town because in some of those communities you're talking about a situation where it would affect the whole town. One of the brothers of one of the people associated, I guess, with that affair in an extended way says, you know what, that's malfeasance or that's misfeasance or that's nonfeasance. Now, where does that fall? Does that particular person have a case if this law passes, if this bill passes to actually have that mayor recalled? And I'm not trying to put you on the spot. The definitions...the way I read the definitions, Mr. Matney, for malfeasance, misfeasance, and nonfeasance, I find it difficult to believe...and I'm not saying that that mayor should be recalled under those circumstances, I'm giving you a hypothetical. A mayor, a state legislator, a governor, an Attorney General, we're held to certain types of standards and a community like Nebraska City...and I know Nebraska City because I lived there for two years. I also lived in Grand Island. I know that community. I know some of these communities and I know that Jo Dee Adelung is right. I mean, this was a vindictive event. What I'm saying is the hypothetical that I gave you isn't necessarily really a vindictive event. This mayor did something really bizarre in anybody's eyes. Where does that fall? Is it malfeasance, is it misfeasance, nonfeasance, or none of the above? [LB878]

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EDWARD MATNEY: Well, I think that this particular bill, which of course would become part of a statutory scheme, also needs to be read in conjunction with those other two statutes that I mentioned earlier about criminal activities. [LB878]

SENATOR FRIEND: Yeah, but that's not a criminal activity in any of those towns. [LB878]

EDWARD MATNEY: No. Right. I understand. But the other statute that I mentioned, the 23-2001, which is called county officers removal by judicial proceedings grounds, that's a separate laundry list that includes official misconduct. If I could, I'll just read it to you. [LB878]

SENATOR FRIEND: Sure, please. [LB878]

EDWARD MATNEY: And that's already on the books and I don't think it's been amended since 1985 but it says, "All county officers may be charged, tried, and removed from office, in the manner hereinafter provided, for one habitual or willful neglect of duty, extortion, corruption, willful maladministration in office, conviction of a felony, habitual drunkenness, or official misconduct as defined in Section 28-924." So I don't know if it would fall into corruption or not. It potentially could. Habitual or willful neglect of duty, potentially could. You know it's certainly possibly bringing the town into a bad light, affecting the functioning of the city government... [LB878]

SENATOR FRIEND: Thank you, that helps. I guess I just wanted to bring that up because I remember debating this out on the floor and this became just a mess, and I think Senator Engel remembers it and some of us that were here do. It became a mess because when you get 49 people out there talking about this subject, a hypothetical like I threw out is not farfetched. [LB878]

EDWARD MATNEY: Right. [LB878]

SENATOR FRIEND: I mean, somebody's going to...hey, they're going to start recalling mayors all over the state. [LB878]

EDWARD MATNEY: Sure. [LB878]

SENATOR FRIEND: Let's figure out exactly what we can do. So thank you for that information, and I think you answered my concern appropriately. So thanks. [LB878]

SENATOR AGUILAR: Further questions? Seeing none, thank you for being here. [LB878]

EDWARD MATNEY: Thank you all very much. [LB878]

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SENATOR AGUILAR: Next proponent on LB878. [LB878]

RODNEY STORM: Good afternoon, Senator Aguilar and committee members. My name is Rodney Storm, R-o-d-n-e-y S-t-o-r-m. I'm the city administrator for the city of Blair. Again, I'm here to support LB878 and as a community we support that right of the recall process, but we believe as what you've had outlined in front of you this afternoon that that recall process should be based upon something that somebody actually did or didn't, rather than somebody just didn't like the color of somebody's hair, color of somebody's what they wore today or whatever. So with that, like I said we support that. We support the legislation. The fact that it calls for a standard, that standard being malfeasance, misfeasance, or nonfeasance in office, we think goes a long way and helps securing the validity of the recall process. As you've heard this afternoon, recalls and the recall process can be very damaging to individuals, both their personal and business lives. When a recall petition is taken out against an elected official, the public naturally assumes that they did something wrong, when actually in almost all cases, the only thing they're guilty of is exercising their legal obligation as an elected official to one, voice their opinion on an issue, or two, to vote their belief of what is right for their political entity. I think a year ago before this committee on a similar bill, Dr. Johnson, a veterinarian in Blair, testified that he was approached at church by members of the congregation wanting to know, well, what was it that you're guilty of because he had to be guilty of something to have a recall process started against him. In January of 2005, the Blair Airport Authority had two new members elected to the Airport Board and that's a five-member board. One member felt that their election was a mandate from the public to change the direction of the Airport Authority Board. When it became obvious sometime later that he didn't have the majority, the three to two, to change directions of the authority, he decided to take out a recall petition against the three other elected board members who had done nothing wrong except vote to continue to making improvements at the Blair Airport. He also took out the recall petitions on two of the members, the third member was not recallable because he was inside the being elected the primary time frame that he was up (inaudible). So only two of them could be recalled. About a week, ten days later, this individual realized that if only two members were recalled on the Airport Authority Board that he would...that the mayor would probably appoint two members to that board to replace those that recalled that would be favorable to the airport continued growth and expansion. So with that, this individual then, with the assistance of another individual, took out a recall on himself after only being in office for about a year so that if the recall process would be successful, then the authority would be forced to have an election to replace those three positions. In the end, no petitions were turned back in. We're only left to assume that they did not get enough signatures because a short while later, that individual resigned from the authority with the statement that he assumed that being they couldn't get enough signatures, that the public was not all opposed to the project. In the meantime, you had two individuals, upstanding individuals in the community, being falsely scrutinized and

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their families and businesses suffering because of an unwarranted process that they were being potentially recalled for doing nothing more than voting their conscience of what was good for the community. Elected officials and their families sacrifice enough for the time and commitment that they give in serving their communities. They should not be further required to face unnecessary embarrassment and financial loss because they have voted to do what they felt was the right thing to do for their community. I think also last year, Dr. Johnson testified in this committee that in all the years that he has been a practiced veterinarian that the year that he was subjected to the potential recall was the only year that he had faced a decline in revenue in his business practice, and that in a year when the economy in Blair and Washington County was booming. And with that, I would answer any questions for the committee and thank you for the opportunity to be here. [LB878]

SENATOR AGUILAR: Thank you. Questions for Mr. Storm? Seeing none, thank you. Welcome. [LB878]

LYNN REX: (Exhibit 4) Yes. Senator Aguilar, members of the committee, my name is Lynn Rex, representing the League of Nebraska Municipalities. We strongly support this measure and, again, hope that you will advance this bill. This is a really important measure. In risk management terms, many of you may be familiar with these, they talk about high frequency, low frequency, severity, high severity, low severity. I've heard from some folks that have said, well, there are not that many recalls, and if there are, well, not too many are successful. Indeed it is true that not too many are successful. But when it is you and when it is your family, it has a catastrophic impact on your family, on your children, on your business, on everything else. And I regret that Dr. Johnson wasn't able to be here but I appreciate Rod outlining what happened. I've handed out to you an article written by Jo Dee Adelung. This was her acceptance speech when she was selected as elected official of the year, which was a year after this recall effort essentially and that was a unanimous decision. When you get time, I really encourage you to read it because this has been published nationally and it's a great article, and you see a picture of her receiving this award. I would like to underscore for you a few things. I normally don't get this emotional but this is really important. She's decided not to run again. This is the primary reason why she's not running again. She's not going to put her family through it. She has two daughters. She's not going to put them through it. We are losing good people in the state of Nebraska because they're not going to subject themselves to this. This young county attorney, and he's a lot younger than I am, he has a great future in public office if he chooses to go through this abuse again. Not too many people want to do that. And as he noted, many times what happens here is that when you make an allegation, people assume you actually did something wrong. That's the problem. There's a cloud that hangs over you that is forever there. And so I think that this judicial review process is important because what it says is, okay, assuming that everything you say is true, is there really anything there, is there any substance to it? Just while I was sitting here, I thought...you know, let me outline for you some of the

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reasons over the last 30 years that I know that people have been subjected to recalls. Promoting an airport, not promoting an airport. In fact, a previous mayor from Nebraska City was successfully recalled, Dr. Gigstad, who's a veterinarian in--maybe it's a veterinarian thing--a veterinarian in Nebraska City. He was recalled because he wanted to improve the air strip. Very controversial, he was recalled. The next election he was overwhelming reelected because he supported the airport. Siting a landfill. When the Subtitle D regulations came down approximately 1989 from the federal government, that was a mandate, an unfunded mandate, on states all across the United States, every state without money, of course, from the federal government. The state of Nebraska then mandated the siting of Subtitle D landfills on cities and counties, municipalities and counties, with, of course, no funding either. And so here's great incentives put in play for regionalization. There were efforts made to recall people because they were trying to implement what was a federal requirement before DEQ came out and shut down what was formerly known as, affectionately by some of us, their dump sites. There were people that carried signs saying we have ravines. Senator Lamb, who's a...I always respect Howard Lamb, he made comments on the floor saying we have ravines big enough in western Nebraska, we've been dumping garbage there forever. We're going to continue dumping garbage there. There were people that ended up with dead cats in their mailboxes. Now maybe you don't like cats but the child who lost the cat probably did. These are things that happen, and one of the other issues here, cleaning up property, we had a mayor in Cozad, Nebraska, recalled because she did just what Mayor Adelung said. She was basically to follow and follow through with the ordinances, they cleaned up property, junk cars. This guy did a recall against her successfully. Water metering. Department of Economic Development for certain CDBG grants requires water metering. An entire village board was recalled because to get a grant, which essentially replaced their entire water system, they had to impose water metering. That was viewed as communistic, socialistic, they were recalled. Implementing a sidewalk plan because someone had the audacity to think about implementing a sidewalk plan. In Lincoln, Nebraska, several years ago--some of you from Lincoln may remember--that there were discussions about recalling the mayor and council because of the audacity of the council to say we're going to have a sidewalk plan. Failure to basically put a bond issue before the voters, not because there was a bond issue to be put before the voters but because somebody thought there should be a bond issue to be put before the voters for streets. Trying to implement a previous decision of the voters to take over a utility, regardless of whether of not you think municipalities ought to own and operate gas systems. There's a second-class city in northeast Nebraska where they overwhelmingly voted to take over their gas system because of gas rates and things that were happening at that time. The new mayor who is still a minister up there, he started the process that is required by statute for what you have to do to take over a gas system. Then Kansas-Nebraska, now Kinder Morgan, now morphed into some other names I guess along the way, they brought in boatloads of money and staff from Colorado, took out full-page ads, they recalled him. He lost, he said, a significant number of his congregation, but his friends, people that don't even talk to each other

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anymore, and they still don't up there if you want to take a spin through that little city. Hiring a city administrator, not hiring a city administrator. We've had recalls both ways. Not being aggressive enough in economic development, being too aggressive and bringing in the wrong kind of people. Those are just some of the reasons why people have been subjected to recalls. And again, lots of petitions taken out, lots of threats. I mean I really felt sorry for Mayor Coleen Seng of Lincoln when there were comments made that she should be recalled because the bond issue failed in Lincoln, Nebraska, on the roads plan. Well, she did everything she could to help pass it but should she really be recalled for that? So these are the kinds of things that are there. Senator Engel wanted me to convey to you, and I strongly agree with this, we do think that--I do support the amendments, by the way, that he has submitted--but there should be another amendment, and we'd be happy to work with your committee counsel to do this, to make sure that you cannot use these petition papers over and over again or more than once. I do think that having the Secretary of State keep records is very important. I cannot tell you how many times I've been asked by reporters, well, how many recall petitions were there? I don't know, you have to call 93 counties. And I know counties are busy, they have other things to do. But I do think it is important that this be done. I do want to close by giving you one other story which is true, and she would have been here today but for an illness and by the way, this law was based on Minnesota law. This is not just pulled out of the blue. It's based on a Minnesota law. It's worked in other states. It has precedent for working in other states. Sheryl Lindau is the former mayor of Wayne, Nebraska, and she was being subjected...actually she was the first target of an electronic recall. This is when things started happening where basically they took out a Web site, you could come on and say...much like they were talking about with Mayor Adelung, you could put anything you wanted to say. They took pictures of her, and I suppose any one of us and certainly most of my pictures would be this way, horrific pictures if your face is maybe looking at a little bit different way and so those are the pictures. One particular day they had something to the effect of if you don't like the fact that she wears pantsuits to the city council meeting. Do you think she should be recalled on that? Let's all vote on that. That would be a fun thing to do. This is someone who is committing time...I don't know what she got paid, it was just almost nothing. As those of you know, we have three mayors, former mayors that are serving on this very committee and a former city council member from Grand Island. So what happened with her was that there had been a parking issue in Wayne, Nebraska. Voters voted on it. I don't even remember now if the vote was up or down, doesn't matter. The fact is there was still a lot of controversy over the parking issue. So there's a professor at Wayne State College that thought this would be a great experiment for our folks to learn about the process of government. So a lot of these students were recruited and of course, a lot...they were from Wayne, but they were recruited to go out and start circulating recall petitions on her as well as the council members who were implementing the prior decision of the electorate on the parking issue. And as they went around, they weren't saying this is to recall Mayor Sheryl Lindau, council member Jones and council member Sally Sue (phonetic). No. What they said was, sign this, this puts the parking issue back

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on the ballot. And of course, they got enough signatures. Because they got enough signatures, one of the council members, who was being recalled, subjected to the recall, was able to look at the names. And of course, I believe it was his brother that signed it, some friends, people he golfed with. So he called them and said, why would you want to recall me? Well, they said, we didn't do that, we were told this puts the parking issue back on the ballot. So they had 38--and I believe this number is correct, but it's of prior record and I can dig that out for you--38 signed affidavits that he went around to people that he knew that had no idea what they'd signed. Thirty-eight affidavits that they submitted to a judge in that county saying these people signed an affidavit saying they were told it was to put the parking issue back on the ballot. They were never told it was to recall an elected official. The judge said, you know, people can make dumb mistakes, they made a dumb mistake, we're still having the recall election. So in essence what I'm saying to you is, I really think that if you read this article that she wrote as her acceptance speech, you will find that--and many of you already know this from your prior experience--being a small town mayor is not an easy thing on any good day. Being a state senator isn't either and what I'm going to leave you with is this. About two months ago there was a meeting in northeast Nebraska with some folks thinking about the fact that if they're going to float petitions anyway to do certain things with our constitution, they ought to be recalling state senators, allowing that in the constitution. That is a really terrible idea. But I'm going to ask you to think about...I hope they don't get that done and thank you, by the way, for voting--I hope you did, I know it passed--for LB39 and all the work this committee did on that. Think about what rules you want to be governed under. What standard do you want to be judged under? If you are mayor...and God forbid if they do something to apply to state senators, because you're for the death penalty, because you're against the death penalty, because you're pro life, because you're pro choice. Pick one. I'm just saying there has to be something to bring this whole thing into perspective that you do not have someone that simply runs recall efforts as a social function, leaving them in bars, dropping them off at bridge clubs saying we'll pick it up next week. There's no one there monitoring this. So in closing, this is really serious as an issue. We strongly support making this bill law and we hope that you do too because there's a lot at stake. We are going not have a number...Jo Dee is not the only. There are others that have decided not to run because of this and I'm really sorry. Maybe I didn't get enough chocolate at lunch today, (laugh) so I apologize. But in any event, it's important and I'd be happy to respond to any questions you might have. [LB878]

SENATOR AGUILAR: Questions for Ms. Rex? Senator Lautenbaugh. [LB878]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you, Ms. Rex. Would this bill still address your concerns if it didn't include the provision mandating that the defense be published on the petition and inserting the cost of the recall election on the petition? [LB878]

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LYNN REX: We really strongly support those and let me share with you why that is, because with the recall law years ago...and I'm going to make this very concise, Senator Aguilar, I know you want me to be concise, I'm going to be concise. This all started with the Secretary of State, Allen Beermann basically saying you cannot remove someone from elected office, the electors have to do that. So when there are folks that as a joke ran people's names to become village board members when they knew they were going to be in Florida or Arizona, had no intention, didn't want to be, the notion was cities had ordinances at that time, some still do, saying if you missed so many consecutive meetings you're no longer elected. So this is how this began. It then ended up with, okay, now you have to have a general statement for recall because people were saying, okay, there's a recall petition out on me, but they won't tell me why. And so then their issue was, okay, now you put a general statement. Now let's face it. Everybody knows they're not going to say what the real reason is. But at least there's something to which you can say, okay, you want to recall me because of sidewalks, let me tell you why we need sidewalks, let me tell you what the law is, whatever it may be. Okay? And then I think one of the biggest advancements this committee made toward assisting in this whole effort was to allow those people subject to recall to exercise their First Amendment right, if you will, in writing by saying, okay, they said I took money? I didn't take money. Please, come in and look at the city audit. You have basically I think 60 words. Please, come in and look at this. And of course, the rules are supposed to be that they read the statement for which they're recalling you, as well as what your defense statement is. Frankly, a lot of them don't do that. Most of them probably don't. But notwithstanding, at least you have something there. And so we strongly support that. I also think it's important to have a statement saying that this is going to cost money in other words, the election costs more because a lot of these folks have said--and in fact this happened up in the Wayne area--you know, it's no big deal, we're going to have an election anyway, so let's just do it. You know that's not true. I mean, it is a big deal, but my point being the notion that it doesn't cost us anything. We have elections all the time. What's the big deal? It costs money to do this. This is a process...I guess what is really hurtful more than anything is that these people...and we've had several mayors that have been recalled and then elected right back into office again, which tells you that when you have a broader base of people voting, basically they get reelected because that represents what the public wants, as opposed to the folks that, when you have special elections or however they target it and frame it so that just the "againers" vote, if you will. [LB878]

SENATOR AGUILAR: Further questions? [LB878]

LYNN REX: I know that's not proper English. So in any event, we really support that. We would not want those provisions removed, Senator, and I appreciate your concern. [LB878]

SENATOR LAUTENBAUGH: Thank you. [LB878]

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SENATOR AGUILAR: Senator Karpisek. [LB878]

SENATOR KARPISEK: Thank you, Chairman Aguilar. Thank you, Lynn. Just real quick, right now, I don't know that people always realize what is the alternative. Like you said, they were just wrong in what they were saying, but what sort of a...where can you go to say, no, this didn't happen? Can you go to the Secretary of State's Office? [LB878]

LYNN REX: Now? [LB878]

SENATOR KARPISEK: Yes. [LB878]

LYNN REX: No. I mean, what you say is...for example, with let's take the example of the junk car issue that resulted in the recall of a mayor in Cozad. You know, she can say well, the law requires me to do this. Neighbors complained, we have our process, we followed our process, that's what I'm doing. I'm not targeting this individual for any other reason. She can say that on the defense statement. Right now this is an issue and it is great reading. It consumes page after page. Whenever you're dealing with a recall in a city--and I'm sure it would have been had it occurred in Lincoln--that it is front page news over and over again. And as Mayor Ken Gnadt said from Grand Island, he's a former mayor of Grand Island--and he was subjected to two, I think, possible three recalls, but Senator Aguilar would know, I think he was a council member then--and they had people calling him derogatory names which were just off the charts. His only reaction was he had to go The Grand Island Independent and his concern was--and maybe some of you can relate to this when you have people that are your distractors as well--they would ask him, well, Mayor Gnadt, the city of Grand Island is doing programs A, B, and C. Tell us why you're doing that? And then they turn to this woman...and this is one of the people that ran the recall elections against him, she had just been released from the Hastings Regional Center, had been prosecuted for hitting the city administrator on the back with a cane, and The Grand Island Independent, and I believe in free press, I think that's wonderful, that's an underpinning of our entire country and I support them, but Ken Gnadt's position today if he were here would say, why is it that I get a paragraph, she gets a paragraph, I get a paragraph, she gets a paragraph? It was great fun for everybody in Grand Island. But you see, he had been elected by a majority of the people that voted. She had never been elected to anything and still hasn't been. [LB878]

SENATOR KARPISEK: Right, and I guess my point is so then... [LB878]

LYNN REX: The answer is there's no recourse for them. [LB878]

SENATOR KARPISEK: ...there is none, except if something won't happen, then a judge can order it, just like you said the funny one that they just said, oh...or no, I'm sorry,

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where they said the parking ban. Well, no, too bad, it still goes and then... [LB878]

LYNN REX: Well, the judge...well, in fact in that case, the judge said, I don't care, people are entitled, people should have read, they're entitled to make mistakes, and so this recall goes forward. And I guess what's important here to note is that--and your legal counsel can explain this, but let me give you just a Reader's Digest version of it--if I file a court case against you and I'm going to sue you for....pardon me? [LB878]

SENATOR KARPISEK: On another one? [LB878]

LYNN REX: On anything, on a contract, whatever. But a judge can look at that and say, okay, is there a prima facie case? Have I outlined the elements of the case? That's really what we're talking about here. In other words, if I say that Mayor Jones is corrupt because she's hiring a city administrator, has violated state laws, and is a criminal--which is in one case what we had with another city council member, a criminal because they wouldn't support the DARE program, DARE funding because they had budget cuts. They had to cut somewhere. They cut the police officer for the DARE program. So they are now a criminal. What this would say is, okay, a judge can look at that and say, you know what, cutting the DARE officer does not constitute a crime, therefore this is not there. Now we understand that there is a downside to this, but it certainly is outweighed by the positive elements of this bill and that is that we fully understand. A judge can say, okay, I make an accusation that fits within this definition of misfeasance, malfeasance, or nonfeasance, and the judge is going to say, okay, I have to assume this to be true. This is what this is. I'm assuming that if it was true that this would be a legitimate reason for recall. We understand that. And then the city official or the school official, whoever, because this is not just city officials, then what happens is that they would then be in a position where they could say, well, now I'm going to present my facts. And what I will tell you is from those people that have been subjected to recall and we've assisted them as much as we can in some efforts, you literally run an election again because as Mayor Adelung said, if they're making the accusations and you don't respond, it is deemed to be true. So you're literally running an election and as the county attorney indicated, you can be running an election every six months of your entire career. [LB878]

SENATOR KARPISEK: Okay. Thank you. [LB878]

LYNN REX: You're welcome. [LB878]

SENATOR KARPISEK: Thank you, Chair. [LB878]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB878]

LYNN REX: Thank you very much. I appreciate your time and I apologize for getting

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emotional. [LB878]

SENATOR AGUILAR: (Exhibit 5) No need. Any other proponents? Are there any opponents to this bill? Neutral testimony? While they're coming up, I'll read into the record a letter of neutral testimony from Diane Olmer, Platte County Election Commissioner. Welcome. [LB878]

SANDRA STELLING: Thank you. Good afternoon, Senator and committee. I'm Sandra Stelling, Jefferson County Clerk and Register of Deeds and Election Commissioner, and I'm also the cochair of our association. With the amendment that has been proposed, our association would like to say we would be neutral on this. We don't feel that it should be there. [LB878]

SENATOR AGUILAR: Thank you. Are there any questions? Seeing none, thank you for being here today. Welcome. [LB878]

BETH BAZYN FERRELL: Good afternoon, Chairman Aguilar, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. As Sandra indicated and as Senator Engel indicated, our concern with the bill was that the county clerk would have to estimate the cost. The amendment that's been offered would take care of that and it would remove any objection we would have to that part of the bill. [LB878]

SENATOR AGUILAR: Thank you. Are there questions for Ms. Ferrell? Seeing none, thank you for being here today. Any other neutral testimony? Seeing none, Senator Engel, would you care to close? [LB878]

SENATOR ENGEL: Very quickly because we have another one coming up. [LB878]

SENATOR AGUILAR: You don't have to. [LB878]

SENATOR ENGEL: Oh, well, I just...all I'd hope that you would advance this bill because I think the petitioners have their rights, but I also think those people in office have their rights too, and I think this is one way of protecting both rights. So with that, I appreciate you getting it out so I can prioritize it. [LB878]

SENATOR AGUILAR: Follow-up questions? Seeing none, thank you and that closes the hearing on LB878. You can stay there and open up on LB858. [LB878]

SENATOR ENGEL: Okay. This is a much shorter bill. Senator Aguilar, members of the Government Committee, my name is Senator Pat Engel, that's spelled E-n-g-e-l. I represent the 17th District and I'm here today to introduce LB858. The purpose of

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LB858 is to amend current recall provisions to exclude political subdivisions elected officials at annual meetings from the recall process. The bill also removes irrigation districts from the list of political subdivisions mentioned in the statute that are subject to recall as their officials are elected at an annual meeting. Furthermore, irrigation district voting is based on property ownership, whereas recall procedures are based on registered voters. Oftentimes there aren't detailed records of accurate vote counts from elections taken at these annual meetings. These elections may be held by asking the public to stand or raise their hand with affirmative vote or voice vote may be used. Since signature thresholds are based on a percentage of votes cast at the previous election, it would be difficult or impossible to determine an accurate threshold for the number of signatures that would be required to initiate a recall election. And types of subdivisions that elect officials at an annual meeting are cemetery districts, rural suburban fire districts, county ag societies, in addition to the previously mentioned irrigation districts. The Deputy Secretary of State for Elections requested that I introduce this bill, and as I understand, both Secretary of State and Mr. Erickson are out of town today, but Becky Richter, the assistant...is that right, Betty? [LB858]

BECKY RICHTER: Becky, yes. [LB858]

SENATOR ENGEL: ...the assistant election manager is here with us today. So I urge you to advance LB858 from committee as I feel it makes sense, as the current requirements for the recall election petitions are unworkable in such a situation. So with that, are there any questions of me? [LB858]

SENATOR AGUILAR: Thank you, Senator Engel. Questions? Seeing none, you're off the hook, Senator. [LB858]

SENATOR ENGEL: Thank you and I will waive closing. [LB858]

SENATOR AGUILAR: Could we have the first proponent on LB858, please? [LB858]

BECKY RICHTER: Good afternoon again, Chairman Aguilar and members of the committee. Let me go over this quickly. My name is Becky Richter, R-i-c-h-t-e-r, assistant election director for the Secretary of State. We want to thank Senator Engel. I'm here today to support LB858. It seeks clarity on which public officials or officers are subject to recall. LB858 would include officers elected at annual meetings to the list of officials in 32-1302 that cannot be recalled. Again, it's those elected at annual meetings, your rural fire boards, your fire districts, cemetery districts, ag societies, irrigation districts. The Secretary of State's Office questions whether the current recall statutory scheme is well suited in regard to officers of these districts. I'd like to explain a couple of the problems encountered. I'll do it quickly. Recall statutes base the number of petition signatures required on a recall petition to be the numbers of votes cast at the last general election. The annual meeting subdivisions, again, fire districts, ag societies, are

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not required to keep an official record of the votes cast and generally they don't. Voting takes place by only those persons in attendance using a voice vote, a show of hands, or pieces of scratch paper. While irrigation districts determine eligible voters based on property ownership, don't have to be a registered voter, and none of these election methods result in official records or tallies being kept, especially of the number of registered voters. So when we look at the statutes and the amount of signatures required on recall petitions, which is 35 percent of the total votes cast in a race or 35 percent of the votes cast for the top vote-getter if you're voting for more than one, it appears these statutes were meant for officials other than those elected at annual meetings. So the dilemma has been, what should we tell these small entities that elect at an annual meeting when there's no numbers recorded? In the past 12 years, our office has seen only 3 of these come to fruition, and because no election totals were available, petitioners had to gather signatures that equal 35 percent of the total number of registered voters of the district just in case everyone eligible had shown up to vote. And this really creates an unequal threshold, and it sets the bar much higher for these smaller subdivisions. Another problem we've seen when applying the current statutory scheme to officers elected at these meeting concerns the period when the officer is subject to recall. Statutes read officials may not be recalled the first six months of their term or six months prior to the incumbent filing deadline for a new term, again, language that doesn't seem to fit with ag societies and cemetery districts as their term lengths could well be only one year until the next annual meeting. So in closing, I would urge the committee to advance LB858. [LB858]

SENATOR AGUILAR: Thank you, Becky. Are there questions for Becky? Senator Adams, please. [LB858]

SENATOR ADAMS: So just that I'm clear, probably the best argument you could make in support of this bill is these people come up for election once a year anyway, is that correct? [LB858]

BECKY RICHTER: I would not say that unanimously but I would say, yes, some of them do. [LB858]

SENATOR ADAMS: In most of those political subdivisions, it's an annual reelection of officers. [LB858]

BECKY RICHTER: In some of them, I know it is. I cannot say it is in all of them. [LB858]

SENATOR ADAMS: Okay. [LB858]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Becky. Next proponent. [LB858]

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LYNN REX: Senator Aguilar, members of the committee, my name is Lynn Rex representing the League of Nebraska Municipalities. I'd like to just go on record that we do strongly support this measure. We think it's identified an issue that does need to be addressed, and for the reasons already stated, we just want you to vote this bill out of committee. [LB858]

SENATOR AGUILAR: Nice work. Thank you. [LB858]

LYNN REX: Thank you. [LB858]

SENATOR AGUILAR: (Exhibit 1) I assume there's no questions? No questions. Next proponent. Are there any opponents? Is there any neutral testimony? There's neutral testimony to be read into the record from Diane Olmer, Platte County Election Commissioner. Senator Engel to close. [LB858]

SENATOR ENGEL: I waived closing. Thank you very much. [LB858]

SENATOR AGUILAR: Senator Engel waives closing and that closes the hearing on LB858. We're ready to open on LB838 from Senator Karpisek. [LB858]

SENATOR KARPISEK: (Exhibit 1) Thank you, Senator Aguilar, members of the Government, Military and Veterans Affairs Committee. I have an amendment to pass out that I found. [LB838]

SENATOR AGUILAR: Sure lost an audience. [LB838]

SENATOR KARPISEK: That doesn't usually happen when I testify in front of this committee. [LB838]

SENATOR AGUILAR: Oh, there's plenty here yet. [LB838]

SENATOR KARPISEK: My name is Russ Karpisek, K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. Today I am introducing LB838 which deals with the secrecy envelopes for special elections by mail. Currently when there is a special election by mail, the voter marks the envelope...start again, the voter marks the ballot, puts it in a secrecy envelope, puts that in a return identification envelope and then returns. Anyone voting absentee ballots do not use the secrecy envelope in a different election. Right now we are just talking about the special elections that are done by mail only. Since those all have a secrecy envelope and those that absentee ballot in a general or primary election do not have a secrecy envelope, it creates confusion when preparing for elections. LB838 would eliminate the secrecy envelope and change the wording of the voter's oath printed on the identification envelope. I have an amendment that would change how the envelope would read. I understand the bill drafting changed the

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residence and said "live," said where I live, rather than where I reside. And that mainly dealt with the issue that someone's residency may be different than where they live, such as the case of a Nebraska Supreme Court justice or an Appeals Court justice. Residency is often thought of as where you consider your home and where you intend to return. So for us, we are in the district where we have been elected from, but someone such as a Supreme Court judge that is outstate actually would reside there but live here in Lincoln. So that is the amendment and other than that, that is the bill, if you have any questions. [LB838]

SENATOR AGUILAR: Thank you. Are there any questions for Senator Karpisek?
Senator Adams. [LB838]

SENATOR ADAMS: Just as a matter of clarification to me, Senator Karpisek. So bottom line, the purpose of this is what? [LB838]

SENATOR KARPISEK: To do away with the secrecy envelope for the... [LB838]

SENATOR ADAMS: And for what reason? [LB838]

SENATOR KARPISEK: Because right now if it's an all mail-in ballot, all ballots come in by mail, you have to have the secrecy envelope. But in a general or primary election, and say an absentee ballot is done by mail, there is no secrecy envelope. So in one election we have secrecy envelopes, another we do not, and it just creates confusion on when and why and how. [LB838]

SENATOR ADAMS: Okay. Thank you. [LB838]

SENATOR AGUILAR: Further questions? Senator Avery. [LB838]

SENATOR AVERY: You would anticipate a cost savings, wouldn't you because you wouldn't have to provide the envelopes? [LB838]

SENATOR KARPISEK: I would think that it would provide some savings, but I didn't see that in the fiscal note. But yes, I would assume so. [LB838]

SENATOR AVERY: Well, you should argue with them on that, Russ. [LB838]

SENATOR KARPISEK: I argued a couple times last year, Senator, and I did not win so I've given that up. [LB838]

SENATOR AVERY: We almost never do. [LB838]

SENATOR AGUILAR: Savings aren't their strong suit (laugh). [LB838]

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SENATOR KARPISEK: No, they don't know how to calculate that maybe, but yes, I would assume some. I'm not all that aware of a lot of mail-in elections. I suppose maybe the SUDs, those sort of things, SIDs, but not so much... [LB838]

SENATOR AVERY: SUVs or whatever. [LB838]

SENATOR KARPISEK: Yes or whatever they are because I've never even heard of those things until I was in this committee last year. [LB838]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Senator. [LB838]

SENATOR KARPISEK: Thank you. [LB838]

SENATOR AGUILAR: (Exhibit 2) First proponent of LB838. While she's coming up, I'll read into the record a letter of proponent from Diane Olmer, Platte County Election Commissioner. Welcome. [LB838]

SANDRA STELLING: Thank you. I'm Sandra Stelling, Jefferson County Clerk...it's S-t-e-l-l-i-n-g, Jefferson County Clerk and Register of Deeds and Election Commissioner, and also cochair of our legislative committee for our association. I'm here to ask you to support LB838 to do away with the secrecy envelope on all mail special elections. By getting rid of the extra envelope, it would be the same as our early voting is now. And with more and more mail-in elections that we are seeing happen across the state, it would be more cost-effective and less confusion for our voters. [LB838]

SENATOR AGUILAR: Thank you. Are there questions for Ms. Stelling? Seeing none, thank you. Next proponent. Welcome. [LB838]

BETH BAZYN FERRELL: Good afternoon, Chairman Aguilar and members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. We'd like to thank Senator Karpisek for introducing this bill on our behalf. As you've heard, the bill is really intended to eliminate any confusion that there might be from individuals who typically vote on absentee ballot, and then they get a ballot for an election that is conducted completely by mail and they're not sure what to do with that extra secrecy envelope. So I'd be happy to try and answer questions. [LB838]

SENATOR AGUILAR: Thank you. Are there any questions? Seeing none, thank you. Next proponent LB838. Seeing none, are there any opponents? Neutral testimony? Senator Karpisek waives closing. Now ready to open on LB1067. Senator Avery, would you assume the chair? [LB838]

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SENATOR AVERY: Welcome. [LB1067]

SENATOR AGUILAR: Thank you, Senator Avery. My name is Ray Aguilar, A-g-u-i-l-a-r. I represent District 35, Grand Island, and I'm here to introduce LB1067 at the request of the Secretary of State's Office. Since the creation of federal and state requirements for certain election processes, cost of conducting the elections have increased substantially. The current proration system based on ballot space used can result in very small reimbursement amounts from the smallest subdivisions. For small subdivisions such as villages, they are sometimes billed less than \$10, which is not reflective of the county's actual cost. LB1067 establishes a minimum fee of \$50 to be charged to political subdivisions. The \$50 fee is to some degree an arbitrary amount, but achieves a more appropriate level of reimbursement for the county. A representative from the Secretary of State's Office is here to testify and answer the really hard questions you may have. Thank you. [LB1067]

SENATOR AVERY: Are there any questions for Senator Aguilar from the committee? Thank you. Proponents. [LB1067]

BECKY RICHTER: (Exhibit 1) Members of the committee, my name is Becky Richter, R-i-c-h-t-e-r, assistant elections director for the Secretary of State's Office and I want to thank Senator Aguilar for introducing this bill. LB1067 seeks to help lessen the growing cost to counties to administer elections. In '95, legislation was passed to help counties recoup the cost of administering elections for other subdivisions, mainly public powers, community colleges, NRDs, ESUs, schools, cities, and villages by initiating charges to these entities on a prorated basis. Since the advent of HAVA, the Help America Vote Act, and the technology of opt scan ballots and tabulation equipment that's required to comply with the federal legislation, many counties have seen their election costs increase drastically. Smaller counties have even seen their election budgets double. And the prorated basis, while good in theory, becomes skewed when we look at entity races that do not reimburse the counties, federal races, president, state races, Governor, constitutional officers, State Board of Ed, Board of Regents, Public Service Commissioner, and the Legislature, and of course constitutional amendments. To explain the prorated basis, I've prepared a handout. The dollar amount billed to community colleges, NRDs, public powers, ESUs, cities, schools, and villages is based on the number of ballots required for the voters, and then the total inches printed on the ballot that a subdivision needs for their candidates and issues. Example here, a small village, look at the lower right-hand corner you'll see there. So in a small village we need only 100 ballots and there's only two candidates, so that's about two inches of the ballot. That would take up about 200 inches total if we're going to figure total printed ballot inches. Then look up above in the third column for the school district. We need 2,000 of those ballots for a race containing 7 candidates and a bond issue. That could easily take ten inches. So we take the 10 inches times the 2,000 and that gives us 20,000 total

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inches, and if the total election ballot inches for all the races were 200,000 inches, the school would be billed 10 percent of the cost, \$4,000. The village would be billed .1 percent of the cost, \$4. Now the requirements for administering the election village require all the same detail organization and procedures from candidate filings, accurate registered voter counts, ballot programming, tabulation equipment testing, publications, printing, poll workers, the list goes on. And the \$4 fee a county can bill the village is far below any actual cost involved. LB1067 would set a minimum fee of \$50 in order that counties could at least recoup some of their expense in the administration of elections. In addition, to coincide with the proposed \$50 minimum, a charge...to coincide with that, there would also be a change that would occur in Chapter 70, where the base fee for administering a public power district election in a county with less than 3,000 inhabitants would be changed from \$75 to \$100. And the reason there is because if the public power district is only in 2 of 11 precincts, then the county can only bill 50 percent of the minimum. So what we would do is then have the same minimum cost of \$50 rather than having \$50 for villages and \$37.50 if it's a small public power district. Again, I would encourage you to advance LB1067. [LB1067]

SENATOR AVERY: Thank you. Are there any questions from the committee? Senator Pahls. [LB1067]

SENATOR PAHLS: Senator Avery, I just have one. Schools, I know they have a big budget in most cases, not unbelievable, but they could probably afford that. But the village, do they have a big budget to play with? [LB1067]

BECKY RICHTER: A village should have \$50 to pay for an election, shouldn't they? And villages, I agree with you, do not have tremendous budgets. But what we're trying to do is just make this fair. Is \$4 fair to administer an election? [LB1067]

SENATOR PAHLS: Right. Yes, I understand that part. [LB1067]

BECKY RICHTER: You know, we bill back NRDs, we bill back community colleges. [LB1067]

SENATOR PAHLS: But don't they have more of an ability to have a larger budget is the point I'm getting at. [LB1067]

BECKY RICHTER: Yes, they would. Yes. The school would obviously have a bigger budget than... [LB1067]

SENATOR PAHLS: The NRD, I mean, almost all of those can have...raise taxes considerably, can they not? [LB1067]

BECKY RICHTER: Yes, but a village also has a levy. [LB1067]

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SENATOR PAHLS: Thank you. [LB1067]

SENATOR AVERY: Any more questions? Thank you for your testimony. Any other proponents? [LB1067]

SANDRA STELLING: Senator Avery and committee, I'm Sandra Stelling, Jefferson County Clerk and Register of Deeds and Election Commissioner, and also cochair of our Clerks, Register of Deeds, and the Election Commissioners Association. I ask your support on LB1067 to set a minimum fee of \$50 for a miscellaneous subdivisions within our counties that we do the elections for. Out of eight villages I personally have in my county, three of them only paid over \$50, and one of those has three school districts in, which makes their costs a lot higher because they have to have those also on there. The one was as low as \$25.19. I have had suggestions from other clerks, register of deeds and election officials that the minimum should be at least \$75 to \$100 for villages, and cities \$250. I did notice since Becky brought this up, the billings to the public power district, I could only charge \$150 and when I figure their bill, their bill should have been \$314.25. So there in essence, I lost money on that one. We never know what our supplier is going bill us for our elections from one time to another. When I was paper ballot years ago, not too many years ago, my villages paid for their own ballots and their own printing in the newspaper. So they paid more than \$50 by the time they paid for their ballots and they paid for their publication in the newspaper because they were bigger ballots and stuff, they did pay more than that. If you've got any questions, I'll be happy to answer them. [LB1067]

SENATOR AVERY: Thank you for you testimony. Any questions from the committee? Seeing none, thank you. Any other proponents? [LB1067]

DAVE SHIVELY: (Exhibit 2) Good afternoon, Senators. My name is David Shively, S-h-i-v-e-l-y, and I'm the Lancaster County Election Commissioner. I'm here today in support of LB1067 which would change provisions relating to allocating election costs to political subdivisions. While I'm here in support of this legislation because I believe it is an improvement in what is currently outlined in the law, I personally don't think the legislation goes far enough. Counties currently subsidize most the cost of conducting elections for the various political subdivisions in statewide elections. State law currently requires election officials to allocate the cost by prorating the cost by precinct by the inked ballot inch in each precinct for each political subdivision. This system would probably work fine except for the fact that we've had a number of state constitutional amendments and initiatives on the general election ballot during the last two statewide general elections which have required an entire second ballot page. Because of the inked ballot inch requirement, the various political subdivisions had only a small percentage of space on the 2000 general election ballot. And I brought a ballot from the 2006 election just to show you, front and back of two pages. The second page was the

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initiatives and the only area on the ballot that we actually could charge anything for on the second page--and this was one of our precincts I highlighted in blue on here. So that was the only area that we could actually recoup any costs on. The way the current statute reads, we are not permitted to get reimbursed for actual costs of putting a political subdivision's race on the ballot. For example, in 2006, programming and coding costs from our vendor, Election Systems and Software, cost Lancaster County \$22 for each race on our ballot and \$12 for each candidate or response that was on the ballot. Those are just the costs to place that political subdivision's race on the ballot. There are additional coding and programming costs that should also be allocated equally among all the races and contests. In your packet, I have shown you a list of the ten villages here in Lancaster County from the 2000 general election. I have also shown you what was actually billed to the ten villages based on the ballot ink inch requirement. In addition, state law requires us to publish a sample ballot in the newspaper. I have also allocated the costs in that handout for each village for the sample ballot. Again, according to state law, I cannot directly bill those actual costs of the sample ballot to the political subdivisions because I must allocate the cost based on the inked ballot inch by precinct. In 2006, Lancaster County taxpayers paid a total of 91.22 percent of the \$327,000 in total costs of conducting the statewide general election here in Lancaster County. Also included in my packet of information to you is a breakdown of the amounts that we actually billed to each political subdivision for the 2006 election. In addition, I have also broken down the total amount spent on the election by budget category here in Lancaster County so you can kind of have an idea of what we actually bill, our billable costs are. As I indicated earlier, LB1067 is a step in the right direction. However, I'd like to see a change that would allow the county to recoup a bigger portion of the actual costs of placing a political subdivision race or issue on the ballot. Appreciate your time and be happy to answer any questions. [LB1067]

SENATOR AVERY: Are there any questions from the committee? Seeing none, thank you, Mr. Shively. [LB1067]

DAVE SHIVELY: Thank you. [LB1067]

SENATOR AVERY: Any other proponents? [LB1067]

BETH BAZYN FERRELL: Good afternoon. For the record, my name is Beth Bazyn, B-a-z-y-n Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. I won't repeat the testimony that you've already heard, but we support this bill. We think it would be a more equitable cost allocation for the inches on the ballot. Be happy to take questions. [LB1067]

SENATOR AVERY: (Exhibit 3) Thank you. Any questions for the witness? Seeing none, thank you. Any other proponents? Any opponents? Anybody wishing to testify in the neutral capacity? Seeing none, Senator Aguilar, do you wish to close? He waives

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closing. That ends the hearing...oh, I have one thing to read into the record a statement of support from Diane Olmer, Platte County Election Commissioner in support of LB1067. That ends the hearing on LB1067. [LB1067]

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Disposition of Bills:

LB838 - Advanced to General File, as amended.

LB858 - Advanced to General File.

LB878 - Advanced to General File, as amended.

LB1030 - Indefinitely postponed.

LB1067 - Advance to General File.

Chairperson

Committee Clerk