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Judiciary Committee
February 04, 2009

[LB40 LB304 LB305 LB343 LB433]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 4, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB40, LB304, LB305, LB433, and LB343. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Mark Christensen; Brenda Council; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: Colby Coash. []

SENATOR ASHFORD: Good afternoon, everyone, and welcome to the Ernie Chambers Judiciary Hearing Room. We have today, what, four bills, we have five bills on our agenda that deal with a variety of topics and we're starting with LB40. Many of you have been here before but we'd ask you...and especially Jack has been here before, we'd ask you to adhere to our little light system that keeps us going, gets us out of here at a reasonable time. And so when you see the orange light, we'd ask you to sum up and give us your conclusionary statements and then we'll move on to the next testifier. I'll wait to introduce everybody until others show up, but I will introduce Christina Case, our clerk of the committee, and Stacey Trout, our legal counsel. With that, Matt, LB40. []

MATT BOEVER: Good afternoon, Chairman Ashford and members of the Judiciary Committee. For the record, my name is Matt Boever, B-o-e-v-e-r, and I am the legal counsel in Speaker Mike Flood's office--Senator Flood represents Legislative District 19--here today to introduce LB40, which makes technical changes to two civil procedure statutes, Sections 25-1144 and 27-1201. In Section 25-1144, which statute describes the form of a motion for a new trial, LB40 would clarify language and change the word "must" to "shall" in two places. In Section 27-1201, which concerns the inadmissibility of certain conduct as evidence, LB40 would update a statutory reference to the Uniform Credentialing Act. LB463 in 2007 recodified the Uniform Licensing Law as the Uniform Credentialing Act; thus, the reference in Section 27-1201 should change from "Uniform Licensing Law" to "Uniform Credentialing Act." With that, I would like to thank the committee for its consideration of LB40, and I'd be happy to answer any questions. [LB40]

SENATOR ASHFORD: Any questions of Matt? Senator Lathrop. [LB40]

SENATOR LATHROP: I do have a question. I didn't realize this was coming and it's not a long bill so I just read it. And it looked like there are certain things that are not admissible. This is a bill relative...at least the second section relates to the admissibility of...is this their investigation that they do after a medical mishap? [LB40]

MATT BOEVER: Right. Yeah, and this would concern apologies and similar behaviors from healthcare providers. [LB40]

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SENATOR LATHROP: But are we just talking about...okay, the question is the same. The previous phrase that we used to determine the scope of people whose apologies would not be admissible are those who are found in the Uniform Licensing Law, and we're changing that terminology to the Uniform Credentialing Act. Is that what we're doing? [LB40]

MATT BOEVER: Uh-huh. [LB40]

SENATOR LATHROP: Do you know yourself whether that expands the professionals that are reached by the new language? In other words, do we go from 32 professional professions and now we're up to 50 professions, or are they the identical professions but we've just renamed their group? [LB40]

MATT BOEVER: Oh, I see your question. The amendment or LB40 isn't meant to expand or limit, I guess, the professionals under the licensing...under the previous licensing law. It was meant to be technical in nature. And I don't know... [LB40]

SENATOR LATHROP: Okay. [LB40]

MATT BOEVER: ...or I hadn't researched to know... [LB40]

SENATOR LATHROP: Okay. [LB40]

MATT BOEVER: ...whether or not that expands those professionals or not, but it's not meant to. [LB40]

SENATOR LATHROP: All right. Thanks. [LB40]

SENATOR ASHFORD: Yes, Senator Lautenbaugh. [LB40]

SENATOR LAUTENBAUGH: Thank you, Senator Ashford. Sir, I want to make sure I understand. Asked a different way, is the Uniform Licensing Law now known as the Uniform Credentialing Act? [LB40]

MATT BOEVER: It is. [LB40]

SENATOR LAUTENBAUGH: Okay. So we changed the name of the act and that's why we're making this change, as far as you know? [LB40]

MATT BOEVER: Changed the name of the act as well as other changes to that statute. It was a pretty significant rewrite, but... [LB40]

SENATOR LAUTENBAUGH: When did we do that? [LB40]

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MATT BOEVER: 2007. [LB40]

SENATOR LAUTENBAUGH: Oh, that was the year of that trapping bill. (Laughter)
[LB40]

SENATOR LATHROP: And my concern, and I'll look at it, too, but my concern is whether or not by going from one group of people did we...did we inadvertently expand or without considering the policy implications of expanding the group of people protected by the...is this the sorry bill? Is that what... [LB40]

MATT BOEVER: Right. [LB40]

SENATOR LATHROP: ...that's what this relates to? [LB40]

MATT BOEVER: Yes. [LB40]

SENATOR LATHROP: Okay. Thanks. [LB40]

SENATOR ASHFORD: Yeah, that was my bill. [LB40]

SENATOR LATHROP: Yes, it was. [LB40]

SENATOR ASHFORD: No one conferred with me about this. I have to reserve judgment because I may be conflicted. (Laughter) Thanks, Matt, for your comments.
[LB40]

MATT BOEVER: Sure. [LB40]

SENATOR ASHFORD: Do we have any proponents of this bill? Opponents? Neutral? Okay. LB304, Senator Council. [LB40]

SENATOR COUNCIL: Good afternoon, Chairman Ashford, fellow members of the Judiciary Committee. My name is Brenda Council, C-o-u-n-c-i-l. I'm the senator representing the 11th Legislative District and I appear before you this afternoon to introduce LB304. LB304 provides for a simple yet very significant change to the Political Subdivisions Tort Claims Act in this state. The bill amends the act by increasing the time period for filing claims against a political subdivision from one year to two years. The intent and effect of this amendment is to extend to persons having claims against a political subdivision to afford them the same rights that a citizen of the state currently has with a claim against the state of Nebraska under the State Tort Claims Act. Currently, an individual who has a claim against the state of Nebraska has two years within which to bring that claim or to be barred. However, if the person has a claim

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against a political subdivision, he or she only has one year within which to bring that claim or to be barred. Now I expect that there will be opposition to this bill from political subdivisions, including my home city, the city of Omaha, but I would submit to my fellow members of the Judiciary Committee that the same reasons that may be provided in opposition to granting citizens of a political subdivision two years to file a claim apply equally to a citizen who has a claim against the state. By passing LB304, in my opinion, we're just granting fundamental fairness to individuals who have legitimate claims against a political subdivision and for whatever reason cannot file that claim within one year. And for the lawyers who are a member...members of the Judiciary Committee, I'm sure you can attest to the fact that oftentimes clients walk into your office right at or after the filing...the statute of limitations has run and in many instances they end up in your office at that point in time because they have finally saved or accrued enough money to afford legal representation. To grant this additional time, again, I think it's just a matter of fundamental fairness and should not place political subdivisions at any greater disadvantage than the state of Nebraska. I'll entertain any questions you may have. Otherwise, I'll reserve further comment to closing. [LB304]

SENATOR ASHFORD: Any questions of Senator Council? Senator Lautenbaugh. [LB304]

SENATOR LAUTENBAUGH: Thank you, Senator Ashford. Senator Council, I just don't remember the answer to this. Did it used to be two years and was it shortened to one, or was it the opposite? [LB304]

SENATOR COUNCIL: You know, I thought it was. I thought it used to be two and was shortened to one, and I apologize, Senator Lautenbaugh, I had undertaken to research that issue myself. Maybe one of the other proponents or opponents can answer that question, but I neglected to complete my research of the legislative history to see whether it started at two and was reduced to one. But something tells me that it started at one, but I'll leave it to the... [LB304]

SENATOR LAUTENBAUGH: It looks like someone following you says he has an idea. [LB304]

SENATOR COUNCIL: Yeah. [LB304]

SENATOR LAUTENBAUGH: So okay. [LB304]

SENATOR ASHFORD: Yeah, I was going to ask that same question. My recollection is the same, that it was two, but I...I'm not sure. [LB304]

SENATOR LATHROP: I know it's a trap. [LB304]

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SENATOR ASHFORD: Yeah. [LB304]

JOHN LINDSAY: Senator Ashford... [LB304]

SENATOR ASHFORD: Senator Lindsay, would you be a proponent then, John? [LB304]

JOHN LINDSAY: I would be. I actually... [LB304]

SENATOR ASHFORD: Proponents are next. (Laughter) [LB304]

JOHN LINDSAY: Senator Ashford, I... [LB304]

SENATOR LATHROP: Come up according to your level of enthusiasm. [LB304]

JOHN LINDSAY: I didn't see a line of people getting up. (Laugh) Yeah. Senator Ashford, members of the committee, for the record, my name is John Lindsay, L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of the Nebraska Association of Trial Attorneys, kind of pinch-hitting for an attorney who was going to be here but got drawn away by litigation. First, we'd like to thank Senator Council for bringing this, bringing the legislation. We do appreciate that. It does point out what we think is an inconsistency between the State Tort Claims Act and the Political Subdivisions Tort Claims Act. To start with the question, Senator Lautenbaugh, trying to answer your question, I believe that the Tort Claims Act, Political Subdivisions Tort Claims Act was adopted in a special session in maybe 1983 and I think that this has not been changed since then. I think it...I believe it came in as one year. I did talk to one of the other...won't be testifying on my side but will be testifying. His recollection was the same, but there are others in the room I know were involved at that time and I'm sure somebody will be able to correct me if I'm off. [LB304]

SENATOR LAUTENBAUGH: Then did we change the state from two to one? [LB304]

JOHN LINDSAY: No, I think they were adopted at different times. [LB304]

SENATOR LAUTENBAUGH: Or one to two? [LB304]

JOHN LINDSAY: They were adopted at different times and I think that they... [LB304]

SENATOR LAUTENBAUGH: Okay. [LB304]

JOHN LINDSAY: ...are both in the shape that they originally came in. But under the Tort Claims Act, this Political Subdivisions Tort Claims Act, a claimant must file that claim within six months, excuse me, within a year of the injury or the accident that gave rise to

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the injury. That is not the statute of limitations, I'm going to make that clear. That is not the statute of limitations. That is a claims period that if you were over on the civil...or if you were on the side of a private sector, there would be no claims period. You would not have to do that initial filing anywhere except on a political subdivisions tort...or the Tort Claims Acts. So what this is, is an added protection for political subdivisions. And the change, as Senator Council noted, was simply to move that claims period, that initial filing, move that from one year to two years without moving the statute of limitations, which is now two years, to not move that. It's just changing that claims period itself. And after that time, for those of you who are new to the committee, the political subdivision has six months to act on that claim, either deny it, approve it, take no action on it, negotiate it. And if it's not done within six months, the claimant can withdraw that claim and then file suit. It does, as I think Senator Council mentioned, provide some consistency between the State Tort Claims Act and the Political Subdivisions Tort Claims Act. It kind of eliminates a gotcha for lawyers or for litigants who are involved in these types of claims where some confusion between the two and you don't know which one you're taking action on. I don't think there is any real substantive change to the political subdivisions. It is more...it is a procedural change that really, because the statute of limitations still remains at two years, it's not going to have a great extension of how long these claims go on. My time is up and I'd be happy to answer any questions. [LB304]

SENATOR LATHROP: Okay. Senator Council, you're recognized. [LB304]

SENATOR COUNCIL: Yes. And thank you, John. And just for, you know, purposes of clarification, I refer to it as a statute of limitation because it essentially has the effect of a statute of limitations, while technically it's an administrative prerequisite. It's similar to legal requirements to exhaust administrative remedies before you can file an action. But in this case, the exhaustion has the effect of barring you. If you don't undertake to file the claim within one year, you are barred from pursuing that claim in any form. So to the extent that it bars individuals from pursuing civil litigation, it has the technical effect of serving as a statute of limitations. [LB304]

JOHN LINDSAY: Senator Council, you're absolutely correct, it does. It acts as a statute of limitations from the litigant's perspective. Whether you're barred by the statute of limitations or by this claims period limitation, the net effect is you're done and you're out. [LB304]

SENATOR COUNCIL: You're barred, correct. [LB304]

JOHN LINDSAY: So you're absolutely correct that it does. It is an additional protection for political subdivisions and the request that this bill makes is simply let's not do it on gotchas, let's do it on the merits of the case. [LB304]

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SENATOR COUNCIL: Right. [LB304]

SENATOR LATHROP: Senator Lautenbaugh has a question for you as well. [LB304]

SENATOR LAUTENBAUGH: So how does the state one work then? How does it differ from the six-month/two-year thing we just described for the political subdivision? [LB304]

JOHN LINDSAY: It is a...you have two years within which to file your claim with the state. They again have the opportunity to review the claim, decide what to do with it. If they're...the same procedure, you can withdraw the claim and file suit if they do not take action. [LB304]

SENATOR LAUTENBAUGH: So we're harmonizing. This bill proposes to harmonize the cities' Political Subdivision Tort Claims Act notice period with what the state already has? [LB304]

JOHN LINDSAY: Yes. [LB304]

SENATOR LAUTENBAUGH: And that would be for the sake of consistency. [LB304]

JOHN LINDSAY: Yes. [LB304]

SENATOR LAUTENBAUGH: But if we harmonize the state's to be like the cities', we'd still have consistency, would we not? [LB304]

JOHN LINDSAY: Sure would, and it's a...if the intent is to cut off claims earlier, yes, it would have that consistency. The...and as you know, the state doesn't have to allow any claims against the state or political subdivision because the king cannot be sued without the king's permission, going back to our legal history that we had. So, sure, we could do that. It's a question of how much you want to...how much the, from a state policy perspective, we want to limit litigants' or injured persons' ability to claim against those who are responsible for the claim. So, yeah, it's a policy decision. [LB304]

SENATOR LAUTENBAUGH: Thank you. [LB304]

SENATOR LATHROP: That's it for the questions. Thanks, Mr. Lindsay. [LB304]

KATIE ZULKOSKI: Senator Lathrop, members of the committee, my name is Katie Zulkoski, Z-u-l-k-o-s-k-i. I'm appearing today on behalf of the Nebraska State Bar Association. The bar association agrees with the previous testimony that these two acts should be set with the same time limits. [LB304]

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SENATOR LATHROP: Any questions of this witness? And they...and I have one for you. And they agree it should be two and two? [LB304]

KATIE ZULKOSKI: Yes. [LB304]

SENATOR LATHROP: Okay. Two years for notice, two years for filing suit,... [LB304]

KATIE ZULKOSKI: Exactly. [LB304]

SENATOR LATHROP: ...with the exceptions that are in the State Tort Claims Act for filing at the end of the two years and allowing it to be extended while a state considers the claim. [LB304]

KATIE ZULKOSKI: Yes. [LB304]

SENATOR LATHROP: Got it. All right. Thank you. Any other proponents? Anybody here in opposition? Any...oh, come on up. (Laugh) [LB304]

JACK CHELOHA: I'll go first. Good afternoon, Senator Lathrop, members of the Judiciary Committee. My name is Jack Cheloha. I'm the registered lobbyist for the city of Omaha. Last name is spelled C-h-e-l-o-h-a. I just wanted to testify in opposition to LB304 for a number of different reasons, and I'm relying on what our city law department has expressed to me regarding their opposition to this. Sometimes, you know, political subdivisions like to be treated the same as our big brother the state, and sometimes we like to be treated differently. On this particular matter we like to be treated differently. We think the one-year time frame is legitimate and rational for these reasons. Typically, we have a shorter time frame for political subdivisions in order to give us an opportunity to investigate a claim while it's relatively fresh and, at the same time, protect the taxpayers' money in terms of a claim made against the city. A car accident or other incident that generates either a police report or an internal report comes to the city's attention quickly and adding the extra one year doesn't mean much. But all claims we get regarding tripping on sidewalks or defective streets, meaning potholes, etcetera, or other property claims are a different matter. If we don't know about them and then we wait, you know, 1.75 years or up to 2 years before a claim is filed, then the condition could have changed dramatically by then and the taxpayer is at the mercy of the claimant, as they're the only witness or person who had knowledge of it. A lot of times we like to get early information on these so that way we can remedy them and, as you know, under the rules of evidence, that wouldn't hurt us to remedy them, and it's also in the best interest of our citizens to remedy them so no one else gets hurt or has property damage. Political subdivisions also are the largest property owners in the state and we face extreme difficulty in terms of responding to property claims. A lot of times private landowners can inspect and know what's going on with their land, you know, on a day-to-day basis, whereas we face more of a limit because

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we just don't have enough employees to physically inspect every city park, civic auditorium or wherever this might happen. And for those reasons that's why we would be opposed to the bill. Finally, as the bill is drafted, they did want to point out one last thing, and I don't have the bill in front of me, I apologize, but they...Tom Mumgaard from our city law department states that if we do go to two years we'd have to tweak the language a little bit because this would allow someone to wait up until the very end and then they could automatically file their lawsuit and that way, you know, we wouldn't have the six-month waiting period. So I'll have to double-check that and see, but that was a point they wanted to make as well. So I'll try to answer any questions. That's why we oppose LB304. [LB304]

SENATOR LATHROP: That last piece is the difference between the State Tort Claim and the Political Subdivision, is because it's two and two with the state. They have a provision that allows for the filing of the claim at the end of the two years. You still get six months, if you're the state, to consider it. [LB304]

JACK CHELOHA: Right. [LB304]

SENATOR LATHROP: And they extend the statute of limitations if the consideration period goes into the two years. [LB304]

JACK CHELOHA: Oh, I see. Okay. [LB304]

SENATOR LATHROP: And that's a good point. It should be...we should make that accommodation with a change in the statute. Are there any other questions? Senator Council. [LB304]

SENATOR COUNCIL: Yes. And, Senator Lathrop, following up on that I guess I'd respectfully disagree with the necessity for that, because the bill, as proposed, makes one minor change. It changes one year to two years. It makes no other changes in the provisions of the Political Subdivision Tort Act. So if there's a concern that the city has with regard to that issue, they should have that same concern if the time period is one year or two years, because there's no other change in the statute. So if they're having that problem, then people can file at the end of the one year and do the same thing. So that's why I had a question about that. [LB304]

SENATOR LATHROP: Yeah, except that under the current law they get one year to file so they can do their six-month consideration before the statute of limitations comes along, which is the accommodation they make in the State Tort Claims Act because they're both two. [LB304]

SENATOR COUNCIL: Okay. [LB304]

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SENATOR LATHROP: And you could literally file it...if we don't make an accommodation then they wouldn't have six months or even a day to consider it. You could file the claim and you could file the lawsuit on the same day. [LB304]

SENATOR COUNCIL: Okay. Well, as I read it, that if a claim is made or filed, the political subdivision has a period of six months. So we'll certainly look at that... [LB304]

SENATOR LATHROP: Yeah. [LB304]

SENATOR COUNCIL: ...because we don't want to put the political... [LB304]

SENATOR LATHROP: I've had a couple of cases with this and I'd be happy to... [LB304]

SENATOR COUNCIL: ...political subdivision in any greater...and I guess, Mr. Cheloha, is the city suggesting or are you suggesting that in the event of someone slipping and falling out here on the Capitol steps that the state is in some better position to maintain the condition of state property better than a political subdivision to preserve evidence? [LB304]

JACK CHELOHA: Well, I'm not certain. On that example, probably not, but whereas you know the state is roughly 500 miles long, I mean, you know, maybe that's why there's a two-year limit against the state. I'm not certain on that. But our argument is local, within the city limit. I mean, we'd like to know and we think people, you know, are aware of it and most of the bar knows what the statute of limitation is too. That's all. [LB304]

SENATOR COUNCIL: I think the Attorney General would like to know of a slip and fall on state-owned property in Walthill with a year, so I mean there's no difference in terms of the practical effect. [LB304]

JACK CHELOHA: Well, sure look at... [LB304]

SENATOR COUNCIL: And thank you, Mr. Cheloha. [LB304]

JACK CHELOHA: Thank you. [LB304]

SENATOR COUNCIL: Just for purposes of the committee, I was aware at the time I introduced this piece of legislation that political subdivisions, particularly the city of Omaha, would be opposed to it, but I introduced it nevertheless because I believe in fundamental fairness and affording citizens across the state of Nebraska the same rights and opportunities to recover if they are injured by government. So with that, thank you, Mr. Cheloha. [LB304]

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JACK CHELOHA: Right. Thank you. [LB304]

SENATOR LATHROP: Any other questions? Seeing none, thanks for coming down, Mr. Cheloha. [LB304]

JACK CHELOHA: Thank you. [LB304]

CHRIS DIBBERN: Good afternoon, members of the committee. My name is Chris Dibbern, and that's C-h-r-i-s D-i-b-b-e-r-n. I'm the general counsel for the Nebraska Municipal Power Pool and I am a registered lobbyist, appearing today on behalf of the Nebraska Power Association. The Political Subdivision Tort Claims Act is an important tool that modifies the concept of sovereign immunity. And as Mr. Lindsay talked about, sovereign immunity is the concept that the king can do no wrong, and we know that the king can do wrong. Government can do wrong. But this is a balancing test between a tort that may have occurred and bringing a claim. So the past...in the past, and we believe that the history will say that the Political Subdivision Tort Claims Act has always been one year, subject to check, but for one year you can bring that claim against that governmental unit and it's a balancing between sovereign immunity and an opportunity to be heard. LB304, in my opinion, would double at least the Tort Claims Act that are brought against political subdivisions. Power districts are political subdivisions, municipalities are. MEAN, the organization I represent, the Municipal Energy Agency of Nebraska is a small political subdivision. The state has the two years and I think we could distinguish between political subdivisions. We are smaller. We have less deep pockets than the state. We have fewer resources to track down the tort. We have higher...we could have higher insurance costs if you have insurance. Power districts have miles of property, poles and equipment that is not...that we may not know whether a tort occurred. You've heard a little bit about slip and falls, you know about car accidents and those are the general torts. But there also are some very sophisticated torts about fiduciary obligations and duties and wrongs that could be brought. Those, too, would be expanded to two years. In summary, I do think LB304 will increase claims. That's one of the reasons why you must be bringing the bill, because you think that there may be some claims out there being denied. That will increase costs to small governmental units. And I agree with what was said earlier that facts and causes grow stale and it's difficult to find the evidence and the witness and the discovery. The Nebraska Power Association appreciates your attention in not supporting LB304. [LB304]

SENATOR ASHFORD: Senator Council. [LB304]

SENATOR COUNCIL: Yes, Ms. Dibbern, thank you for testifying on this bill this afternoon, but I have a question. In your testimony you opined that claims against political subdivisions would double if LB304 was enacted. What kind of data do you base that opinion on? [LB304]

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CHRIS DIBBERN: Purely on the data that you've gone from one year to two years; that you've given double the opportunity to bring a claim. We know that claims have been denied in the past because they missed that, what we call, statute of limitation or the one-year filing period. We know that claims have been denied on that. Now you've given an opportunity for...just from going from the one year to the two year, but only based on that, not a study. [LB304]

SENATOR COUNCIL: Okay. I was just wondering if you had data that showed how many claims were denied because they were filed after the one-year period. [LB304]

CHRIS DIBBERN: No, I don't. I do know that it has happened in our organization. [LB304]

SENATOR COUNCIL: Thank you. [LB304]

SENATOR ASHFORD: Senator Christensen, did you have your hand up? [LB304]

SENATOR CHRISTENSEN: No. She took my question, so... [LB304]

SENATOR ASHFORD: Oh, okay. [LB304]

SENATOR ROBERT: Brad. [LB304]

SENATOR ASHFORD: Yes, Senator Robert. [LB304]

SENATOR ROBERT: Yeah, following up on Senator Council's question, I'm not following your thought process on the reasons you think it would necessarily double. I guess are you saying that the process now is too hindering to get a claim filed within a year and we're just extending the time in which somebody would have the availability to make a claim? Or are you saying that people are sitting around longer and they're just going to go, oh, hey, I should make that claim, and it would have been too late otherwise and now it is? [LB304]

CHRIS DIBBERN: I think it's maybe a little bit more of the latter, that people do not make the claim timely and we need to see that claim made. If a ladder is used and they fell off that ladder, the ladder is destroyed and the employee didn't tell us that somebody else fell off the ladder, to have that, a claim, brought 15 months later is very difficult. So it's just my opinion that by extending this from one year to two year, you're doubling the claims. You're going to see more of those claims that did not get brought in that first year. [LB304]

SENATOR ROBERT: Are more of these claims property issues or are they medical

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issues that you think would be falling into that category? [LB304]

CHRIS DIBBERN: I think more of them would be medical. [LB304]

SENATOR ROBERT: Okay. [LB304]

SENATOR ASHFORD: I guess just, in my...certainly, over the years I've seen many of these bills on both sides but I mean, to me, the issue is who should bear the risk of paying for the damage. If the subdivision that caused the damage does not pay any portion of the damage, then society, the taxpayers, pay for the damage eventually through Medicaid and other forms of relief. That doesn't mean I support two years, but I do think it's important that we revisit it and...from time to time. And I guess I've never seen a case, maybe there are some, in my experience where a case becomes stale in two years. I mean I can see a case...we went through that discussion with the statute of repose where there's a ten-year, you know, ten-year statute of repose. There I can see the argument that a case has...there's just nobody around and you can never get a fair hearing. With two years, I mean other than...other than the claims, you'd rather not have to deal with them and I understand that and that's a legitimate argument, I guess, or it's a legitimate point because it's part of your experience. But I worry about having the state pay the costs of injury. That's an issue. But that's...those are just my reflections. I don't know what they're worth. But thank you very much for your comments. [LB304]

CHRIS DIBBERN: Thank you. [LB304]

SENATOR ASHFORD: Next opponent. I guess we're on the opponents. [LB304]

CLINT SCHUKEI: Senator Ashford, members of the committee, I'm Clint Schukei, last named spelled S-c-h-u-k-e-i. I'm the city attorney in Norfolk and I am speaking here on behalf of the city of Norfolk and the League of Nebraska Municipalities, and I'm speaking in opposition of LB304. I'd echo many of the things that I've heard here today. As I hear the testimony, a couple of things that I think of: You know, the last time that I saw a claim in Norfolk that was outside the year, that we dealt with and got rid of it based upon that claim, on that basis, you know what it was? It was a guy who had gotten...not gotten his way in front of the city council on some other matter and he came out and it was more than a year after it and he claimed that he had...the police had chalked his tires and he had to clean his tires and he claimed \$30 to wash his tires. So that was the last one that I'm aware of. [LB304]

SENATOR ASHFORD: Democracy can be messy from time to time. [LB304]

CLINT SCHUKEI: It's wonderful, isn't it? [LB304]

SENATOR ASHFORD: Yeah. [LB304]

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CLINT SCHUKEI: It's wonderful. In a more meaningful manner, you know, one of the things that I think of when we talk about the delay and the staleness, Senator, is related to mold claims, terrible things which are coming about. And if you talk to the mold specialists, they'll talk about if you have a sewer backup, you can't get insurance coverage for sewer backups. And virtually everything has got some degree of mold in it, so where did it come from? And you're much better able to take care of those things if you're on them right away and you're not dealing with them a couple of years later. We've certainly had some experience with those things and those are tough ones. From the same standpoint, one of the things we had looked at with...in the defense of those lawsuits, as you weigh those things, is that it's not always the citizen that is hurt in regard to that. We looked back at the last ten times the city of Norfolk had been sued last year. This is information I got last year on a different matter. We had not paid a single claim, and the claims that we had paid, we had paid without litigation. When it involved litigation, we had spent no money out in claims on the last ten times we'd been sued, but we had spent approximately \$20,000 apiece getting to a summary judgment or whatever before those claims went away. So there's also claims on the public if you extend the statute of limitations in the way that's contemplated by LB304. And for those reasons and others, we would encourage you not to advance LB304. [LB304]

SENATOR ASHFORD: Is there a difference, should there be a difference between...qualitatively between personal injury cases and property damage cases? Should those have different statutes of limitation, do you think? [LB304]

CLINT SCHUKEI: I'm hard put to articulate a rationale for there to be a difference. [LB304]

SENATOR ASHFORD: I mean the mold, the mold issue is a property damage issue mostly. I mean there can be personal injury involved in that. [LB304]

CLINT SCHUKEI: Our claim was one of a personal injury from the mold, allergy related and so on and so forth. So, I mean, I'm hard put to articulate a rationale for having a different one. [LB304]

SENATOR ASHFORD: Okay. Thanks for coming down. [LB304]

CLINT SCHUKEI: Thank you. [LB304]

ELAINE MENZEL: Good afternoon, Chairman Ashford and committee members. My name is Elaine Menzel, M-e-n-z-e-l, and I'm here on behalf of the Nebraska Association of County Officials and we oppose LB304 for essentially a lot of the same reasons that have been articulated prior, from prior testifiers. The question had come up about the legislative history and when this was adopted initially. From my past research, it was

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adopted in 1969 and the State Tort Claims Act and the Political Tort Claims Act were the result of an interim study committee created by the Legislature. They were patterned after Iowa statutes and the Federal Tort Claims Act. As originally introduced, both LB154 and LB155 during that session included a two-year notice provision. However, LB155 was amended on General File to reduce the notice provisions and there is nothing in the history to indicate what the rationale was. Arguably, such a change was made based on the assumption that individuals with tort claims against a political subdivision, such as schools, counties, municipalities, public power districts, are more likely to know who to file a claim with than those who have a tort claim against the state and, thus, a shorter period to bring suit is justified. The requirements of various statutes with respect to presenting claims to political subdivisions vary from state to state. While I did not have an opportunity to review all of the states, I did have an opportunity to review some of those and I do know that at least ten states have a notice time frame of one year or less, including New Hampshire, that has a notice time frame of 60 days for political subdivisions and 180 days for the state, and a number of those have provisions that are just six months. With that, I'll conclude my testimony and thank you for your consideration of these issues in opposition to LB304. NACO respectfully requests that the committee not advance the bill. The current one year of statute of limitations is reasonable and does not need to be expanded. Thank you. [LB304]

SENATOR ASHFORD: Senator Lathrop. [LB304]

SENATOR LATHROP: I do have a couple of questions. [LB304]

ELAINE MENZEL: Okay. [LB304]

SENATOR LATHROP: You said that this was patterned after the Iowa notice requirements. [LB304]

ELAINE MENZEL: That's my understanding, yes. [LB304]

SENATOR LATHROP: And they've determined, over in Iowa, they've determined those were unconstitutional, didn't they? [LB304]

ELAINE MENZEL: That I'm not sure of. [LB304]

SENATOR LATHROP: I believe they have, that it's... [LB304]

ELAINE MENZEL: I'd do know that they expanded it to two years. [LB304]

SENATOR LATHROP: ...that you no longer have to comply with the notice requirements in Iowa because they, the court, concluded it was unconstitutional. [LB304]

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ELAINE MENZEL: Okay. [LB304]

SENATOR LATHROP: I can appreciate that if you are...if you are Platte County, everybody knows who you are... [LB304]

ELAINE MENZEL: Okay. [LB304]

SENATOR LATHROP: ...and they can find you in a year. One of the difficulties with political subdivisions is some of them aren't as easy to identify as others. And you'd agree with that? Political subdivisions could include a community clinic or a community hospital, in which case a person who's injured at a hospital that's called, like, and I'll make one up, the Broken Bow Community Hospital, an individual may not know if they...after they're well enough to sort out their legal affairs, it may take them a good time just to figure out whether that's a political subdivision or a private corporation. [LB304]

ELAINE MENZEL: I would concur with you. [LB304]

SENATOR LATHROP: And so what we do is, even for those of us that feel that they ought...everybody who's had an injury ought to have a fair crack at it, some of the political subdivisions themselves are hard to identify so that they can be properly served with the requisite notice, true? [LB304]

ELAINE MENZEL: I agree. [LB304]

SENATOR LATHROP: And when you deal with a county board, the statute is pretty clear, we'd serve the county board, but... [LB304]

ELAINE MENZEL: County clerk. I'm sorry. [LB304]

SENATOR LATHROP: Pardon? [LB304]

ELAINE MENZEL: County clerk, I believe. [LB304]

SENATOR LATHROP: County clerk, okay. (Laugh) But when you're dealing with somebody like the, again using my example that the Broken Bow Community Hospital is actually a political subdivision, which it could very well be, we wouldn't know who to serve. It may take additional time to identify them as a political subdivision and to find out who is the clerk, as that term is used in the Political Subdivisions Tort Claims Act. Would you agree with that too? [LB304]

ELAINE MENZEL: Probably, yes. [LB304]

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SENATOR LATHROP: So when we are the county, when we...when you testify on behalf of the county, you may be the easiest person to identify or the most obvious clerk to serve, but that isn't going to be true for all political subdivisions. [LB304]

ELAINE MENZEL: And I'm not a practitioner in the area. I'm speaking generally from the... [LB304]

SENATOR LATHROP: Sure, you're speaking about the county's position. [LB304]

ELAINE MENZEL: Primarily, yes. [LB304]

SENATOR LATHROP: Okay. I think that's all the questions I have. [LB304]

SENATOR ASHFORD: Senator Lathrop, what did we do on that...did you...was it you that brought the issue of the identification with the Secretary of State or fine with the Secretary of State? [LB304]

SENATOR LATHROP: We might have that bill. Karpisek, I think, might have that bill this year. [LB304]

SENATOR ASHFORD: Again. I know we heard it last year. [LB304]

SENATOR LATHROP: It is a problem if you're trying to identify... [LB304]

SENATOR ASHFORD: Right. [LB304]

SENATOR LATHROP: ...whether the community hospital is a political subdivision or a corporation. [LB304]

SENATOR ASHFORD: And I believe last year what we heard was if they file with the Secretary of State and denominate, it was my recollection, and I don't think we did pass...it didn't pass, obviously, if it's back. [LB304]

SENATOR LATHROP: No, but I think it's up again this year. [LB304]

SENATOR ASHFORD: Okay. [LB304]

ELAINE MENZEL: And, to my knowledge, our association did not take a position on that bill. [LB304]

SENATOR ASHFORD: Okay. Thanks for your comments. [LB304]

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ELAINE MENZEL: Thank you. [LB304]

SENATOR LATHROP: Thanks. [LB304]

SENATOR COUNCIL: Thank you. [LB304]

SENATOR ASHFORD: Any other opponents? Neutral? Neutral? [LB304]

JACK MILLS: Yeah. Don't you just hate that? [LB304]

SENATOR COUNCIL: (Laugh) Fancy that. [LB304]

SENATOR ASHFORD: You know the rules of neutrality, Jack, don't you? [LB304]

JACK MILLS: I do. Senator Ashford and members of the committee, my name is Jack Mills. I rarely appear before committees. In this case, I am representing the Nebraska Intergovernmental Risk Management Association, which is a county organization insuring about 82 entities. I am here in a neutral position and I don't like to be at a committee hearing in neutral because some might think it's negative instead. I can tell you only from the perspective of this organization, which I did represent and helped start, we really have never had, that I know, a claim that was denied because of the one year. Again maybe it's because, Senator Lathrop has mentioned, we know they know where the clerk is, Senator, but I see...this has been working for this group. My opinion is and our opinion is it's been working. Why don't we move the state back? Again, this was all initiated while the Tort Claims Act was being created, as Elaine Menzel mentioned to you. It's been in existence and I...our organization that I'm representing right now has never had problems with denying claims. In fact, conversely, we have always believed that we'd like to move them quickly and treat everybody fairly that way. I don't have anymore testimony. [LB304]

SENATOR ASHFORD: So you're sort of opposed in a neutral way, kind of. (Laughter) [LB304]

JACK MILLS: I'm...I'd like to see you amend the bill and include the state at one year, put it that way. [LB304]

SENATOR ASHFORD: Okay. Well, that's a way around it. Yes, Senator Lathrop. [LB304]

SENATOR LATHROP: Mr. Mills, it sounds like you guys are doing the work of a...I can't even say it, a philanthropist. [LB304]

JACK MILLS: I believe we do have...I do believe we have a philosophical idea of

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treating people fairly. [LB304]

SENATOR LATHROP: I know and I read...I'm a practicing lawyer, I read the advance sheets. Every year there's three cases where a political subdivision goes up on appeal to the Supreme Court trying to establish law that the person who gave notice, even when there's actual notice, that that wasn't good enough and that they didn't comply with that condition precedent. And... [LB304]

JACK MILLS: I... [LB304]

SENATOR LATHROP: ...and I have seen lawyers, I've met people whose lawyers have thought it was a two and a two and the lawyer sends a notice of political subdivision at, you know, a year and a half, thinking they got plenty of time, and only to be told that their notice is six months too late and, sorry, call your malpractice carrier. So maybe it's just a difference in perspective that after one year you're not going to see them and after one year, you know, lawyers that might handle malpractice claims do. [LB304]

JACK MILLS: It's possibly my views are narrow and we do not insure Lancaster or Douglas County, we do not, but we have almost all the rest of the state, Sarpy County included. [LB304]

SENATOR LATHROP: The counties, is that who you have, Mr. Mills? [LB304]

JACK MILLS: That's correct. Eighty... [LB304]

SENATOR LATHROP: It's your group does all the counties. [LB304]

JACK MILLS: That's correct. [LB304]

SENATOR LATHROP: It's not doing the little hospitals and the clinics and that... [LB304]

JACK MILLS: The hospitals are generally insured in a different manner, but, by the way, I think there are 50 county hospitals. There used to be 50 county hospitals. So if that litigation would come forward, it would still come through probably to the county hospital board and then to the county clerk. [LB304]

SENATOR LATHROP: Okay. And maybe just for the obvious and for the people that aren't practicing in this area or who are nonlawyers in the room, if you hurt me in a car accident on your way out of here in your capacity as a private citizen, not in the scope and course of your employment, I would have four years to make a claim against you under the Nebraska statutes of limitations. Is that right? [LB304]

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JACK MILLS: That's one of my understanding. [LB304]

SENATOR LATHROP: Okay. And so what we've done for the...what we've done for the political subdivisions is said there's going to be a two-year statute of limitations, which is half of the statute of limitations that governs every other individual or business, and you have to have notice within a year, which is significantly more narrow than is the statute of limitations for any one of us operating...at risk for causing an accident while operating a car. [LB304]

JACK MILLS: Again, your example is good. I believe you would expect the opinion that I've given. I tell people that if I respect what you...you as a person, I respect your opinion. We may have a difference of opinion but, again, I'm only testifying for this county group. [LB304]

SENATOR LATHROP: Sure. And I'm not... [LB304]

JACK MILLS: They have never had... [LB304]

SENATOR LATHROP: ...and I'm not attacking you personally. [LB304]

JACK MILLS: They've never had...yeah. [LB304]

SENATOR LATHROP: I appreciate your perspective, and it is. [LB304]

JACK MILLS: They've never had one case that I know of that has been denied and, again, you might say, well, they didn't get there in time, but we have...I think there's 80,000-some miles of county roads out there. Where are the accidents? It was testified earlier about medical. In this particular group it's a low amount of medical. But when I look at a county such as Chase that's involved in it, it would be those county roads, other issues. Jails, we have 50-some jails. I can't tell you how much money they spend defending lawsuits in jails. It's a lot, but that's part of the system. Again, I just...our group said come in a neutral position. We're not trying to be really negative to this, but thinking that the one year is...has been working. I used it as another example. There are boards, no doubt, who when the claim is filed close to the one year may sit on that for six months. They might sit on it. Then that claimant...or if they don't, if they don't deny it, then that claimant has another six months to file the claim, the suit. That has happened. In some ways, it is a two-year statute of limitations, in some...not a statute of...a two-year span. When we looked at this, said, well, it could be...I don't know why boards do that but I, you know, I know there are a lot of subdivision boards across this state and some may sit on it for awhile. So that's my testimony. [LB304]

SENATOR LATHROP: Okay. [LB304]

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SENATOR ASHFORD: Thanks, Jack, for your comments. [LB304]

JACK MILLS: Thank you. [LB304]

SENATOR ASHFORD: Any other neutral people? Okay. Thank you. That concludes the hearing on LB304. Senator Council, LB305. [LB304]

SENATOR COUNCIL: Chairman Ashford, members of the Judiciary Committee, again, I'm Brenda Council, senator from the 11th Legislative District, and I appear before you now for the purpose of introducing LB305. I think everyone would agree that it is a part of our established tradition of justice that the jury be a body of truly representative members of the community. However, according to the Minority and Justice Task Force report prepared in 2003, the majority of Nebraskans also believe that it's important that juries reflect the racial and ethnic makeup of the community. However, the perception in many of our communities has been that there are racial disparities in the initial and eligible pools for juror selection and, in fact, the Minority and Justice Task Force evaluated the issue of initial and eligible jury selection and determined that the perception in the communities relative to racial disparities were, in fact, reality, and that the reality resulted greatly due to the source list used for identifying initial jury pools. Under the current law, there are two sources for identifying initial jury pools and those are the voter registration lists and the registered driver's license list for the state of Nebraska. However, due to the unfortunate reality that significant numbers of minority group members don't register to vote, additionally, significant numbers of racial and ethnic minorities don't own or operate motor vehicles, that their names will not be found on those lists, resulting in disparities in terms of racial and ethnic representation in initial jury pools. The Minority and Justice Task Force then sought to identify policy changes that could be implemented to ensure a more representative initial jury pool and one of the options and alternatives identified is what is reflected in LB305, and that is to expand the source from which initial jury pools are selected to include state-issued identification cards, that a significant number of racial and ethnic minorities in the state of Nebraska do possess state-issued identification cards and that those lists of those individuals, if added to the master list, would produce a more representative initial jury pool from which to identify eligible members of juries. We have several individuals who are prepared to testify. Those include representatives from the Nebraska State Bar Association, and I'll take this opportunity to publicly applaud the Nebraska State Bar Association for creating the Minority and Justice Task Force that has, quite frankly, initiated a number of measures to improve justice throughout the state of Nebraska in terms of eliminating racial and ethnic disparities. With that, I'll answer any questions that the committee may have. Otherwise, I will reserve any further comment for closing, if not waived. [LB305]

SENATOR ASHFORD: Brenda, what is, exactly, is a state identification card again? I get all these cards mixed up. [LB305]

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SENATOR COUNCIL: Okay. Yes, if you don't operate a motor vehicle or have some disability, for example, that prevents you from securing a driver's license, you can go and make application for an identification card that certifies that you're a resident of the state of Nebraska. It has a photo and it's accepted on the same basis as a driver's license. In fact, you can use a state-issued identification card to obtain a passport. You can submit it along with your passport application as opposed to a driver's license. But ordinarily, it's issued and available to those individuals who can't secure a driver's license. [LB305]

SENATOR ASHFORD: What do you present...well, what do you present to get the state ID card? Do you have to show a... [LB305]

SENATOR COUNCIL: A certificate of birth. [LB305]

SENATOR ASHFORD: Birth certificate, that's (inaudible). [LB305]

SENATOR COUNCIL: And other...any... [LB305]

SENATOR ASHFORD: Well, you would know this, I guess, Scott, wouldn't you? [LB305]

SENATOR LAUTENBAUGH: No. [LB305]

SENATOR ASHFORD: No. Well, I mean in your job. (Laughter) Well, you had that kind of job. I mean you sort of were involved in... [LB305]

SENATOR LAUTENBAUGH: I had the other thing. [LB305]

SENATOR ASHFORD: Well, I know, but I mean.. [LB305]

SENATOR LAUTENBAUGH: I was going to ask her about that. [LB305]

SENATOR ASHFORD: Oh, but... [LB305]

SENATOR COUNCIL: Yes, it's basically the same type of identification you would have to present to obtain your initial driver's license. You know, the first time you go in to get your driver's license, you have to provide some evidence of citizenship and residency. [LB305]

SENATOR ASHFORD: Okay. Senator Lautenbaugh. [LB305]

SENATOR LAUTENBAUGH: Thank you, Senator, Mr. Chairman. So to register to vote, you don't have to show a birth certificate. [LB305]

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SENATOR COUNCIL: No. [LB305]

SENATOR LAUTENBAUGH: So it's harder to get these state IDs than it is to register to vote. [LB305]

SENATOR COUNCIL: Yes. [LB305]

SENATOR LAUTENBAUGH: And registered voters are already part of the jury pool, correct? [LB305]

SENATOR COUNCIL: Yes. Yes. [LB305]

SENATOR LAUTENBAUGH: This might be an impossible question to answer. Do you know how many state ID holders there are versus license holders? [LB305]

SENATOR COUNCIL: I don't know, but I don't know if any member of the... [LB305]

SENATOR LAUTENBAUGH: Yeah, someone might. Okay. [LB305]

SENATOR ASHFORD: I think somebody does. I can tell. (Laugh) [LB305]

SENATOR COUNCIL: I think somebody will have that information for you. [LB305]

SENATOR LAUTENBAUGH: I'm guessing it's a very small number compared to license holders. [LB305]

RIKO BISHOP: Seventy-seven thousand (inaudible). [LB305]

SENATOR ASHFORD: Oh, okay, but...don't talk. [LB305]

SENATOR ASHFORD: Okay. (Laugh) [LB305]

SENATOR COUNCIL: Yeah, and, Senator Lautenbaugh, in response to that, many of the people who hold state identification cards, they have to have them because many of them are either receiving Medicaid, Supplemental Social Security Income, have some disability to prevent them from operating a motor vehicle, and in order to cash their disability checks, have to have some form of state ID. And so that is basically the reason why there's such a significant number of individuals in the state who hold state identification cards. [LB305]

SENATOR LAUTENBAUGH: So if I told you the number was 77,000, would you have reason to dispute that, give or take? [LB305]

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SENATOR COUNCIL: No. No. [LB305]

SENATOR LAUTENBAUGH: Still, in the universe of driver's license holders, that's a pretty small number, isn't it? [LB305]

SENATOR COUNCIL: I think comparatively speaking, yes. [LB305]

SENATOR LAUTENBAUGH: So this is a really modest change you're asking for. [LB305]

SENATOR COUNCIL: Yes, it is. [LB305]

SENATOR LAUTENBAUGH: Just adds some people, who have been left out, to the process. [LB305]

SENATOR COUNCIL: Yes, it is. And I think that there's some data that was collected as a part of this that shows, on a county-by-county basis, what the impact would be. [LB305]

SENATOR LAUTENBAUGH: Okay. [LB305]

SENATOR COUNCIL: I leave that to the experts of... [LB305]

SENATOR ROBERT: Mr. Chairman, I... [LB305]

SENATOR ASHFORD: Yes, Senator Robert. [LB305]

SENATOR ROBERT: ...I'd just make a comment just directly in answer to the questions that have come. Another example I think that's fairly frequent for folks who would have a state ID would be folks who have had their driver's license revoked for some sort of reason and they still need to have an ID. So that would be another large pool of people in that area. [LB305]

SENATOR ASHFORD: Very good. Thanks, Brenda. [LB305]

SENATOR COUNCIL: Thank you. [LB305]

SENATOR ASHFORD: Proponents? [LB305]

RIKO BISHOP: Senator Ashford and members of the Judiciary Committee, I am Riko Bishop, R-i-k-o B-i-s-h-o-p. I'm an attorney for the Perry Guthery Law Firm here in Lincoln and I'm a member of the Nebraska Minority Justice Committee and am here on

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their behalf. That committee was a joint initiative of the Nebraska Supreme Court and the Nebraska State Bar Association that started back in 1999, so...and I've been on that committee since its inception and I can tell you that we've tried to take careful steps in addressing these issues. Our first steps as the task force, which Senator Council mentioned, was to evaluate, do we have problems in the processes that we use in Nebraska to obtain a representative jury. The name has changed a couple of times as our role has changed. We went from an evaluative process to a take action process. And we've been here before you a couple of times, once to get permission to create a uniform juror questionnaire so that we could collect data, and another time to require a more regular refreshing of our jury sources. The driver's licenses and the voter registration source lists were found to be somewhat outdated. So we've had a lot of support from the Legislature and we appreciate that, and thank you, Senator Council, for your role in bringing this particular legislation to the Legislature now. My role in the committee has been focused on access to justice and we have spent a lot of time looking at juries. We want to make sure that we do have a true representation of the cross-section of the various communities across the state. Dr. Liz Neeley, who will speak to you next, will give you some of the data of...that we've learned through that process. They've evaluated over 115,000 juror questionnaires, in coordination with the University of Nebraska Public Policy Center, and it's been very enlightening. Because we believe that the jury system is a fundamental element of our justice system and it's a civic responsibility, we want to be sure that we're doing whatever we can to create better access and better representation. This is a very small step, adding another 77,000 names, as we understand it, but we believe it may be an effective step because, as Dr. Neeley will talk about, we believe that will add a larger population of racial and ethnic groups in our state. There will still need to be qualifications met to serve on juries. However, if we can't increase our initial pool, the data is already showing us that our end juries, that are the impaneled juries, are already underrepresented. So we want to increase that initial pool in hopes that by the time we get to the impaneled jury we do have a better representation on that jury. So we're asking for your support in adding very minor change to the current statute to include this state identification card. Thank you. [LB305]

SENATOR ASHFORD: Okay. Any questions? Senator Lautenbaugh. [LB305]

SENATOR LAUTENBAUGH: So...thank you for coming today, by the way, but this isn't going to address the whole problem you've identified. Is that correct? [LB305]

RIKO BISHOP: That's correct. [LB305]

SENATOR LAUTENBAUGH: But this is something that you can do with an identifiable population,... [LB305]

RIKO BISHOP: Yes. [LB305]

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SENATOR LAUTENBAUGH: ...state ID holders,... [LB305]

RIKO BISHOP: Yes. [LB305]

SENATOR LAUTENBAUGH: ...and there's a level of security in what they have. It's harder to get those than the voter registration. [LB305]

RIKO BISHOP: That's correct, Senator, and we've tried to be mindful of costs as we burden counties in adding more to the process. And we believe that this would be a small cost to add 77,000 more names across the state. We're evaluating a number of different ways other states use other sources, utility sources, Internal Revenue sources in some states, and we believe those would incur much higher costs to effectuate. So we're trying to start with something we believe is reasonable and we'll continue to evaluate to see if we've had an impact. [LB305]

SENATOR LAUTENBAUGH: Okay. [LB305]

SENATOR ASHFORD: Thank you. [LB305]

RIKO BISHOP: Yes, thank you. [LB305]

ELIZABETH NEELEY: (Exhibits 1 and 2) Good afternoon, members of the Judiciary Committee. My name is Dr. Liz Neeley and I'm a senior research manager with the University of Nebraska's Public Policy Center, and I am the director of Nebraska's Minority Justice Committee. I have a copy of our research report that's been referenced and I'd like to make a copy of it available to each of you for you to review at your convenience. As Senator Council and Ms. Bishop explained, state law currently provides that our master jury pool list is comprised with state identification cardholders and registered drivers and that there has been anecdotal concerns that because minorities are less likely to be registered to drive and less likely to be registered to vote, that the current service list may not be effectively achieving a representative master list. Based on an examination of more than 70,000 juror qualification forms from eight of Nebraska's most diverse counties, and census data provided to us by the University of Nebraska-Omaha, our study does indicate that there is truth to this perception. Racial and ethnic minorities are significantly underrepresented in the initial and eligible pools of jurors. Disparity in the early stages of the compilation process is of concern because it impacts the composition of each subsequent stage. For example, African Americans in Nebraska actually have slightly higher eligibility rates than whites, meaning that they are less likely to be removed for eligibility criteria. Native Americans also have comparable eligibility rates to whites, yet their underrepresentation in the initial pool of jurors increases their likelihood of being underrepresented in each subsequent stage and in the final jury panel. As detailed in our report, our committees explored several policy

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options intended to ensure a more representative initial pool and concluded that the most viable option at this time is to expand source lists used to comprise juries. As was previously mentioned, we have explored several lists: people receiving state aid through the Department of Health and Human Services, tax rolls, unemployment lists, etcetera. The list of state identification cardholders is maintained by the Department of Motor Vehicles, which is the entity that already provides the list of registered drivers. They have a lot of experience in compiling this list on an annual basis and it would be easy for them to remove duplicates and make for a very streamlined process. On page 29 (sic) of the report, Table 9 compares those who hold driver's licenses in Nebraska to those who have state identification cards. As you can see from the table, Asian, Blacks, Hispanics, and American Indians comprise a much greater percentage of state identification cardholders than of registered drivers, actually nearly 50 percent of that pool. Thus, the addition of state identification cardholders as a source list would likely increase the diversity of the master list, as well as the number of individuals in Nebraska that could be called upon to serve as jurors. Many states rely on additional source lists. On page 20, Table 8, there is a listing of the source lists used by all other states. State identification cards are utilized by eight others, including Colorado, Georgia, Illinois, Kansas, Maine, Maryland, Michigan, and Minnesota. As was previously mentioned, there is a small impact, fiscal impact, for counties to the extent that this bill would increase the number of citizens that can be considered for jury service. This would increase cost...county's cost of summoning a larger pool, mostly related to postage, sending out a summons for jury service. However, we believe that the benefits to be gained through a fair process outweigh these nominal costs. In closing, I'd just like to reiterate that our committee will continue to monitor the jury compilation process and, if this bill is passed, we will be able to measure the extent of its impact. I would be happy to answer any questions that you have at this time. I also would like to submit a letter in support from Mark Young, the Hall County Attorney, who provides a perspective of a prosecutor in a very diverse community in Nebraska. [LB305]

SENATOR ASHFORD: Senator Lautenbaugh. [LB305]

SENATOR LAUTENBAUGH: Thank you, Mr. Chair. It's my understanding there might be 77,000 state ID holders in Nebraska. Do you know how many driver's license holders there are? [LB305]

ELIZABETH NEELEY: Yes, I do. Actually, it's the addition of state identification cardholders would only represent, at most, about a 6 percent increase in the total pool. There's over a million registered drivers in the state of Nebraska. [LB305]

SENATOR LAUTENBAUGH: Now do you know if those 77,000 state ID cardholders are also not registered voters? [LB305]

ELIZABETH NEELEY: We do not. In fact, the...we expected that there might be some

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level of duplication as people, when they come...it's in the state statute that when you go to ask for a state identification card that at that time you are also asked if you want to register to vote. So there may be some duplication across those lists, as there is with the driver's registration lists. [LB305]

SENATOR LAUTENBAUGH: Okay. Thank you. [LB305]

SENATOR ROBERT: Brad. [LB305]

SENATOR ASHFORD: Yes, Senator Robert. [LB305]

SENATOR ROBERT: I know it's a long ways down here but it's hard to see. [LB305]

SENATOR ASHFORD: No, I think you have to really wave. [LB305]

SENATOR ROBERT: Doctor, in follow-up, I assume that there's probably some of the ID cardholders that also hold driver's license cards...IDs, right? [LB305]

ELIZABETH NEELEY: There are, but the table presented on page 21, Table 9, is only people that don't hold both. [LB305]

SENATOR ROBERT: Okay. [LB305]

ELIZABETH NEELEY: Okay. So we're not assuming that they...the estimate of 77,000 is not duplicative of people that hold driver's registrations. [LB305]

SENATOR ROBERT: Okay. When you're putting the pool together of these folks and you look at the two items that we currently have, the registered voters and the driver's license holders, I assume we have some...those are all duplicates in a major percentage. How do we sort those out so you don't end up with people in the pool going in once and, if you add this, will that be a further sort that you need to make so you don't have people in the pool three times versus one? [LB305]

ELIZABETH NEELEY: The process differs from county to county. There's 55 counties in Nebraska, I believe, that use a service called MIPS, county solutions that combines the lists, remove the duplicates, and prepares them for each county to administer the jury pool. Other counties--Douglas County, Lancaster County--have their own software which removes duplicates for them, and so it's just a matter of obtaining the list. The software removes the duplicates. [LB305]

SENATOR ROBERT: Okay. Thank you. [LB305]

SENATOR ASHFORD: I mean, these...may I? These are just astounding numbers.

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There are only 3,000 Hispanic driver's license holders in Nebraska? [LB305]

ELIZABETH NEELEY: Well, if you notice the footnote, the Department of Motor Vehicles just began collecting information about Hispanics. [LB305]

SENATOR ASHFORD: In '08. In '08. But...so it didn't...it hasn't collected the data. [LB305]

ELIZABETH NEELEY: Right, so the... [LB305]

SENATOR ASHFORD: So it's only people that obtained driver's licenses after '08? [LB305]

ELIZABETH NEELEY: Right. [LB305]

SENATOR ASHFORD: Oh. [LB305]

ELIZABETH NEELEY: It's included in that 3,000. So... [LB305]

SENATOR ASHFORD: So there was no designation of Hispanic or... [LB305]

ELIZABETH NEELEY: Before 2008. [LB305]

SENATOR ASHFORD: Okay. Okay. [LB305]

ELIZABETH NEELEY: That's why the other category has 50,000 and the footnote tries to explain that we didn't want to, you know, jump to any...we just wanted to be transparent about that policy rather than assume that they were Hispanic. [LB305]

SENATOR ASHFORD: Okay, and I should have read...I should have read the footnote. [LB305]

ELIZABETH NEELEY: That's okay. [LB305]

SENATOR ASHFORD: I mean that would be breathtaking I guess. [LB305]

ELIZABETH NEELEY: Right. [LB305]

SENATOR ASHFORD: The...do you plan to follow up if this passes? And I think it's a good bill, I really do, and I commend the work of the committee. Ten years is a long time to study something and you probably deserve a vote on it at some point so you don't have to do this for the rest of your career. But do you plan to follow up, does Alan and your group plan to follow up and make certain that this is having an impact on juries

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going forward or how do you plan to do that? [LB305]

ELIZABETH NEELEY: Right. We have legislative access to jury qualification forms for the purpose of research, and so we have a working relationship with the clerks of the district court and the jury commissioners to continually send in those forms for analysis. We will continue, if this bill is passed, we will try and monitor the impact of it and we hope to extend our research to look at later stages of the compilation process for dire peremptory challenges and look at final jury panels. [LB305]

SENATOR ASHFORD: I mean, would it be...would it be if we asked you to, you know, every 22 years or so to provide us with updated information? I think it's important for the Legislature to know. I can't imagine anything more fundamental than for the Legislature to know that in a criminal case, for example, that the jury pool is reflective of the population of the state. Is that something you could do if we...? [LB305]

ELIZABETH NEELEY: I'm going to look back at Janice Walker really quick. We would be happy to. It is... [LB305]

SENATOR ASHFORD: It's resource driven, I assume. [LB305]

ELIZABETH NEELEY: Well, we have been very fortunate to have worked well with the district court clerks and we are asking a lot of them to do this extra information, send it in, and so as long as that working relationship remains in place, I'd be happy to say, yes, that we could do that. [LB305]

SENATOR ASHFORD: Okay. Thank you. Senator Council. [LB305]

SENATOR COUNCIL: Yeah, and I was just going to add that based upon the work of the Minority Justice Task Force, since its inception, it regularly prepares and disseminates reports of the results of their activities, and this is a staged process. The task force was created in, what, 1999; gathered the data through surveys and others of what the concerns were relative to racial and ethnic disparities in the justice system and then broke off into groups to address those independently. When the jury issue came up, in order to gather the data to confirm or refute the perceptions, had to have uniform jury qualification forms because we couldn't collect the data, and this body passed the legislation to permit that to happen, I think in 2005. So it seems like, Senator Ashford, of what I'm making, is like every two to three years, in any event, we're going to get some data, either in the form of the release of an updated report from the Minority Justice Task Force and hopefully not the need to enact additional legislation to address any of the issues that they might subsequently identify with regard to the whole voir dire and actual seating on jury issue that is also a part of the data. I just wanted to thank you, Dr. Neeley. And, Ms. Bishop, I didn't get a chance to specifically thank you for your tireless work you've put in on the Minority and Justice Task Force. I mean that's ten years, so

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that's a lot of time to be committed. And then to note for the record the letter submitted by ACLU of Nebraska that's in support of LB305. (See Exhibit 4) [LB305]

SENATOR ASHFORD: Senator Lautenbaugh. [LB305]

SENATOR LAUTENBAUGH: I was going to say it sounds like job security. I think he was very clear... [LB305]

SENATOR ASHFORD: I was trying to offer you... [LB305]

SENATOR LAUTENBAUGH: ...you have to come back in two years. [LB305]

ELIZABETH NEELEY: If you want to write that into statute, I would appreciate it, yes. [LB305]

SENATOR ASHFORD: I was trying to...I was trying to offer you a career here. [LB305]

SENATOR LAUTENBAUGH: Yeah. He didn't say just anyone. He said you have to come back. [LB305]

ELIZABETH NEELEY: You can do that, and an amendment would be very helpful. [LB305]

SENATOR ASHFORD: Yeah, what is the black population of the state of Nebraska percentagewise. Do you know? [LB305]

ELIZABETH NEELEY: It differs I guess from county to county in... [LB305]

SENATOR ASHFORD: Or statewide, I guess. [LB305]

ELIZABETH NEELEY: Probably 6 percent. [LB305]

SENATOR COUNCIL: I was going to say it's 5 or 6 percent. [LB305]

ELIZABETH NEELEY: In Omaha it's closer to 12 percent. [LB305]

SENATOR ASHFORD: Right, I know it's larger in Omaha, but if we have 3.71 percent statewide driver's license and the percentage is twice that, then something is not right. [LB305]

ELIZABETH NEELEY: Right. [LB305]

SENATOR ASHFORD: Okay. Thank you very much. [LB305]

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ELIZABETH NEELEY: Yep. Thank you. [LB305]

SENATOR LATHROP: I did have a... [LB305]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB305]

SENATOR LATHROP: ...one brief question. Did I hear you say, in addition to the work that you've just presented here, that you're also looking at peremptory challenges? [LB305]

ELIZABETH NEELEY: Yes. We actually have not collected enough data to analyze that point in the process, but we do...we are collecting information about that. [LB305]

SENATOR LATHROP: Because that's the next huge issue. We can bring more African American, more Hispanic people, more Asians in, but if they just get kicked off juries through a peremptory challenge then it doesn't...we can...there's ways to eliminate them that are completely discretionary. [LB305]

ELIZABETH NEELEY: Right. [LB305]

SENATOR LATHROP: Great. I'll look forward to that too. Thank you. [LB305]

SENATOR ASHFORD: This is very important work. Thank you very much. [LB305]

ELIZABETH NEELEY: Thank you. [LB305]

COLEEN NIELSEN: Chairman Ashford, members of the Judiciary Committee, my name is Coleen Nielsen, C-o-l-e-e-n N-i-e-l-s-e-n, and I am the registered lobbyist for the Nebraska Criminal Defense Attorneys Association. I'm here simply to register our support for this particular bill and want to applaud Senator Council for her efforts in bringing this bill, and ask that you advance this bill to General File. And I'd be happy to answer any questions. [LB305]

SENATOR ASHFORD: Thank you, Coleen. Any questions of Coleen? Thank you. [LB305]

COLEEN NIELSEN: Thank you. [LB305]

SENATOR ASHFORD: Any other proponents? I guess it's not going to cost too much, huh? [LB305]

ELAINE MENZEL: How did you guess? (Laugh) My name is Elaine Menzel, it's

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M-e-n-z-e-l, and I'm here on behalf of the Nebraska Association of County Officials, and we support LB305 that would include state identification cardholders in jury lists. The bill will expand the pool of potential jurors to Nebraska juries. We support the efforts of Senator Council, of the Nebraska Supreme Court, the Nebraska Bar Association, and the Nebraska Minority Justice Committee's Minority and Justice Task Force for purposes of addressing the disparities that have been found in some of the Nebraska juries. Our association concurs with the fiscal note in that it will be a minimal fiscal impact to counties. We also have determined that it will be a slight modification to computer software and programming that our association works with, the computer division that administers the 55 counties that were previously referred to. Thank you for your consideration of these issues and support of LB305. NACO respectfully requests the committee advance this bill. Thank you. [LB305]

SENATOR ASHFORD: Thank you. Seeing no questions, next proponent. Opponent? Neutral? [LB305]

ELIZABETH NEELEY: Yes. [LB305]

SENATOR ASHFORD: Oh. I don't know if this is a curious... [LB305]

ELIZABETH NEELEY: It's not really me. Yeah. [LB305]

SENATOR ASHFORD: This is a procedural quandary that I'm in. (Laugh) [LB305]

ELIZABETH NEELEY: (Exhibit 5) I'm just a nice person and can't say no. This is a letter from the Clerks of the District Court Association... [LB305]

SENATOR ASHFORD: Oh. Oh. [LB305]

ELIZABETH NEELEY: ...and in a neutral capacity. [LB305]

SENATOR ASHFORD: Oh, okay. [LB305]

ELIZABETH NEELEY: So I'm just entering it into the record. [LB305]

SENATOR ASHFORD: Give us your name again for the record but...sorry. [LB305]

ELIZABETH NEELEY: That's okay. Do you want me to give the name of the person that wrote the letter? [LB305]

SENATOR ASHFORD: Oh, you're giving us a letter that's not... [LB305]

ELIZABETH NEELEY: On behalf, yeah. [LB305]

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SENATOR ASHFORD: ...on behalf of somebody else. [LB305]

ELIZABETH NEELEY: Yes. [LB305]

SENATOR ASHFORD: Okay. [LB305]

ELIZABETH NEELEY: It's the Clerk of the District Court Association. [LB305]

SENATOR ASHFORD: Okay. [LB305]

ELIZABETH NEELEY: Thank you. [LB305]

SENATOR ASHFORD: That's not...okay, we'll accept it this time. Okay. Senator Council, do you wish to conclude this matter? [LB305]

SENATOR COUNCIL: I'll waive closing. [LB305]

SENATOR ASHFORD: Okay. Who's next? Me. Members of the committee, my name...Senator Lathrop, members of the committee, my name is Brad Ashford. I represent Legislative District 20 and I am introducing LB343. This bill, as you can see from looking at the green copy, is fairly straightforward. It creates a specific date to mark the end of a judge's term of office if the judge is not retained or the judge does not wish to continue for another term. The date would be the first Thursday after the first Tuesday in January following the retention election. Obviously, this bill, and it was brought to me by the Supreme Court, is an effort on the part of the courts to establish some clarity on the issue of...that has been brought to the public's attention with the case in western Nebraska regarding the judge I believe in Sidney. Where is that judge that's still sitting? Anyway. [LB343]

SENATOR LAUTENBAUGH: It's west of here. [LB343]

SENATOR ASHFORD: West of here. So with that, near Imperial somewhere. (Laugh) Anyway, that concludes my comments. [LB343]

SENATOR LATHROP: Out by Imperial. Very good. Any questions for Senator Ashford? [LB343]

SENATOR ASHFORD: I'll waive closing. [LB343]

SENATOR LATHROP: You want to waive closing? Okay. Any proponents of this measure? [LB343]

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JANICE WALKER: Senator Lathrop and members of the committee, my name is Janice Walker. I'm the State Court Administrator and I'm grateful to Senator Ashford for bringing this piece of legislation at the request of the court. As the senator explained, there are currently two statutory sections relating to judicial retention for which there is no definition for the end of office. LB343 would establish an end date for a judge's term in office for two specific situations. One is when a judge loses a retention election, and the other is when a judge fails to file for retention, either by choice or they would forget. There is...the Legislature has never defined when the end of that term is. I do want to clarify, though, that this statute, although it will provide clarity for people in those situations, it does not supplant Article V, Section 20 of the Nebraska Constitution which provides that a judicial officer shall hold over in office until their successor is qualified. To change that would, of course, require a constitutional amendment. That seemed like a lot for us to ask Senator Ashford to do, even in a long session, but... [LB343]

SENATOR ASHFORD: It's a bit of a lift but... [LB343]

JANICE WALKER: Pardon me? [LB343]

SENATOR ASHFORD: No, go ahead. [LB343]

JANICE WALKER: But this would provide an answer to the question of when does my term end. And that is the simple reason that we're requesting this today. [LB343]

SENATOR LATHROP: Thank you. Are there any questions? [LB343]

SENATOR ASHFORD: Oh, Janice, just to make...yeah, just to make clear of it... [LB343]

SENATOR LATHROP: Senator Ashford, you're recognized. [LB343]

SENATOR ASHFORD: Thank you. (Laughter) I hope I don't have to go to Business and Labor. But the...so in the case that has been much publicized lately, that individual judge constitutionally serves until... [LB343]

JANICE WALKER: Until the successor is qualified. [LB343]

SENATOR ASHFORD: ...there's a successor is qualified. [LB343]

JANICE WALKER: Yes. [LB343]

SENATOR ASHFORD: This simply puts a date certain on when the end of the term is. [LB343]

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JANICE WALKER: Yes. [LB343]

SENATOR ASHFORD: It does not abrogate the constitutional requirement that there be a judge in place until there's a new judge. [LB343]

JANICE WALKER: That is correct. [LB343]

SENATOR ASHFORD: Unless there's a disciplinary... [LB343]

JANICE WALKER: Well, yes, in the event that a judge retires, resigns, is removed by the Qualifications Commission,... [LB343]

SENATOR ASHFORD: That's a different issue. [LB343]

JANICE WALKER: ...or impeached, those ending dates are all clear. And you know, not even to use this recent example, when a judge says, I've decided I'm not going to stand for reelection, I'm just going to leave at the end of my term and, by the way, when does my term end, we don't know. [LB343]

SENATOR ASHFORD: Right. [LB343]

JANICE WALKER: So this would provide the answer. [LB343]

SENATOR ASHFORD: Their term would end but they would be required to serve, not required, but their term, they would still... [LB343]

JANICE WALKER: They could. [LB343]

SENATOR ASHFORD: ...could serve beyond the date that we're setting here. Okay. [LB343]

JANICE WALKER: But oftentimes the judge will say I will just plan to resign at the end of my term,... [LB343]

SENATOR ASHFORD: Term. [LB343]

JANICE WALKER: ...whenever that is. [LB343]

SENATOR ASHFORD: And that was unclear. [LB343]

JANICE WALKER: Yes. [LB343]

SENATOR ASHFORD: Okay. [LB343]

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SENATOR LATHROP: Any other questions? [LB343]

SENATOR ASHFORD: That's it. [LB343]

SENATOR LATHROP: All right. Thank you, Janice. Good to see you. [LB343]

JANICE WALKER: Okay. You're very welcome. [LB343]

SENATOR LATHROP: Any other proponents? Anybody here in opposition? Neutral capacity? [LB343]

SENATOR ASHFORD: Senator Lathrop. No, I waived. [LB343]

SENATOR LATHROP: Do you wish to waive? Okay. [LB343]

SENATOR ASHFORD: Yes. LB433, Senator Lathrop. [LB433]

SENATOR LATHROP: Thank you, Mr. Chairman. My name is Steve Lathrop. I'm the state senator for District 12 and I'm here today to introduce LB433. I thought this would be a simple process because I thought this bill was introduced with some consensus, and I'll explain in a moment that it is not. LB433 makes some changes to LB1014, and LB1014 was our big bill last year from Judiciary Committee where we made a number of changes in judicial kinds of things that included a proposition advanced by the state bar as a substitute to a unified court, and to try to address the concerns, primarily outstate, of judges that are traveling, county and district court judges, and whether they could share certain cases and avoid certain unnecessary travel. As a consequence of that thought and the idea, the compromise was reached and incorporated into LB1014 that basically provided that the county court, the presiding county court judge and the presiding district court judge of each of the judicial districts is required to meet once a year to talk about which cases they might share, what responsibilities they might share, and to decide how to best handle their respective caseloads. They were then to send a report, I believe to the Chief Justice. If they couldn't reach any agreement then the matter would be submitted to the court, the Supreme Court or the Chief Justice, and it would be resolved by the Chief Justice. That was incorporated into LB1014, passed and signed, and the folks in Douglas County, there seemed to be some disagreement about whether that was a good idea or a bad idea. The folks in county court thought that it was a measure intended to help avoid windshield time by the rural judges, and the district court thought it was a good idea (laugh), I guess is the best way to put it. And so they have met and conferred and they, as a consequence of LB1014, have worked out some kind of an agreement for the handling of certain of the protection orders. So there has been some movement up in Douglas County and some agreement. I thought I was offering this bill with the agreement of the district and the county court, and I was

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disabused of that notion earlier this week. But county court, I think, still thinks it's a good idea and the district court doesn't, and the district court has got the support of the bar association and the Chief Justice, I'm told, and you may hear from them or representatives. That's essentially the measure or the one component of it and I would say I'd offer it to the committee. We'll probably have to sit on it and see if they can come to some consensus in Douglas County. The other is a change which we also did in LB1014 that had to do with giving the district courts exclusive jurisdiction of cases that involve certain misdemeanors when they arise out of the same circumstance as a felony, and that's causing untold problems. And all the judges and all the courts I think agree that that needs to be changed from "exclusive" to "concurrent" jurisdiction. That's identified in the bill and in the introducer's statement. [LB433]

SENATOR ASHFORD: Thank you, Senator Lathrop. [LB433]

SENATOR LATHROP: With that, I'll answer any questions and... [LB433]

SENATOR ASHFORD: I agree with you that that's exactly what happened. And there was language agreed upon last year that was not the original...or original introduced language, but there was some accommodations made, but then some concern. I agree with you on that. And now there seems to be additional concerns. I would also agree, I think, that the other change from "exclusive" to "concurrent" is pretty important probably and needs to get done sooner rather than later. [LB433]

SENATOR LATHROP: No question. Whether we move the other... [LB433]

SENATOR ASHFORD: Part. [LB433]

SENATOR LATHROP: ...the other part that has to do with the conferring and agreeing and allocating the caseloads between the county and the district court, the "concurrent" language needs to be in there instead of... [LB433]

SENATOR ASHFORD: Right. [LB433]

SENATOR LATHROP: ..."exclusive." [LB433]

SENATOR ASHFORD: Yeah, I understand. Yes, Senator Lautenbaugh. [LB433]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. And I guess I agree with what you're saying. Is there...how long of a time frame do you anticipate between now and when we know if there's agreement on the first part? [LB433]

SENATOR LATHROP: I think we'd wait a long time for consensus, but I think we'll give them an opportunity. I heard from Judge Lamberty and Judge Bataillon, district court

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judges in Douglas County, and they said, no, no, no, you misunderstood or somebody misspoke or I misunderstood them; there is no consensus. So I then spoke to Judge McQuade today and said, well, why don't we sit on it for a little bit, long enough for you to walk over to the district court and see if you can work something out. And if they can, great; if they can't then I suppose we move the piece that has to do with the concurrent jurisdiction. [LB433]

SENATOR LAUTENBAUGH: Are you planning on moving that with some kind of an emergency basis? Is it that level of urgency? [LB433]

SENATOR LATHROP: If we don't have an...yeah, there's an emergency clause on there so we would. And I don't...I'm not talking about waiting until next year to move it. I say give them a couple weeks to see if the county court bench can work something out with the district court to the satisfaction of apparently the State Bar Association has a dog in this fight, and that surprises me, but we'll see if they can develop some consensus on that. [LB433]

SENATOR ASHFORD: Well, they certainly had a role in this, put it that way. (Laugh) I don't know if they have a dog but they have a role. [LB433]

SENATOR LATHROP: That's...yeah, that's a good point. All right. Thank you. [LB433]

SENATOR ASHFORD: Very good. Thank you, Senator Lathrop. Any proponent testimony? Opponent? Hmm. [LB433]

BILL MUELLER: The dog has arrived. (Laughter) [LB433]

SENATOR LATHROP: The role is here. [LB433]

SENATOR ASHFORD: It gets more confusing. [LB433]

BILL MUELLER: (Exhibit 3) Mr. Chairman, members of the committee, my name is Bill Mueller. I appear here today on behalf of the Nebraska State Bar Association and the Nebraska District Court Judges Association opposing LB...opposing one of the provisions of LB433, supporting the second. And I have handed the page an amendment. The amendment would strike the changes that the bill makes to Section 1 of the bill and that would be the part that Senator Lathrop has been describing to you and that is the part of last year's LB1014 that would require the presiding county judge and the presiding district judge to annually review the caseload. And if any of you have the bill in front of you, the provision that we're talking about is on page 3, lines 8 through 22. And last year, as many of you know, the bar association, along with interested judges, formed a Judicial Structure and Administration Task Force and that task force looked at how do we more efficiently administer the judicial system. LB1014 came out of

that and was passed last year. One of the recommendations of that task force was that we should have a formal process for the district court and the county court to, at the very least, communicate about each of their caseloads. There was anecdotal information floating around, and has been for years, that...and this wouldn't be the case in Douglas County but in those multicounty districts it would not be uncommon, the anecdote goes, for a county judge and district judge to pass each other on the highway, each going to the residence of the other. So because of that concern...(Recorder malfunction--some testimony lost)...district court and the judges of the county court at least talk about the caseload. Maybe there are situations where a county judge could handle a Class IV felony for a district judge because they were in that county, or maybe there are situations where the county judge should handle a divorce case because that's the county where they sit. Now Senator Lathrop mentioned earlier that even though you don't have this situation in Douglas County where you're passing on the highway, there has been a situation where the judges of the county court and the judges of the district court actually sat down and apparently divided up protection orders, which has become a very time-consuming responsibility for courts. So we, the bar association, believe that retaining this requirement is important. We think that it should apply in all judicial districts, not 11 out of 12. And I have been authorized by the District Court Judges Association, which is all district judges in the state, and I specifically have talked with the Douglas County District Court judges and they do oppose striking this requirement. The second part of this with the felonies and misdemeanors is a good change that we support being made so that it can work from a filing standpoint in Douglas County, and the question there is how do you make sure that the cases get filed in such a way that they do end up before a same judge, and I think with this amendment we would accomplish that. I'd be happy to answer any questions that the committee may have. [LB433]

SENATOR ASHFORD: Senator Lathrop. [LB433]

SENATOR LATHROP: I may have one just...and it's almost an observation but...and this is something that I don't know that we thought through. But if we have a vacancy in...and it could be Lancaster, Douglas, which...where we have multiple district court judges and multiple county court judges, and we go through the requisite or the required examination of the judicial districts and the various benches to determine where that judge should be placed, doesn't this--you...now I'm talking to you in the context of your representation of the district court judges--isn't it easier for the Governor then to say, well, you know what, why don't I appoint a county judge, they're cheaper? And the district court judges, who may be in dire need of another district court judge, Lancaster County for example, essentially the Governor is saying, well, I'll appoint a cheaper judge and you guys can just delegate a little bit more of your stuff to that new county court judge. [LB433]

BILL MUELLER: Yeah. I don't know that I've ever heard that concern expressed. I think

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that for that to happen, if the vacancy were a district court vacancy, in order for that to become something other than a district court vacancy, as you know, the Resources Commission would have to recommend that and the Legislature would have to pass a bill to do that. [LB433]

SENATOR LATHROP: Okay. Then let's do it in the context of what you've just pointed out, because I agree that that's the situation, instead of the Governor just making the decision. What if we have, instead of the Douglas County, County Court judges picking up half of the protection orders, they picked up all of them, and now we're weighing down their numbers? It just seems to me, and if it's on a year-to-year basis, what's the Judicial Resources Commission do when they examine the caseloads of the various benches and they say, well, it's sort of a moving target in some judicial districts because we don't know from year to year what they will agree upon for an allocation of their caseload or what the Chief might impose on them if they can't come to some agreement? [LB433]

BILL MUELLER: Well, and I think that that could become a moving number. Hopefully, under the language in LB433 that we want to retain these, the presiding district court judge and the presiding county court judge would get together and they would devise an annual plan for how they're going to handle those cases going forward. And... [LB433]

SENATOR LATHROP: But potentially, potentially, we could have the court...and Lancaster County, I understand, has an acute need for a district court judge. [LB433]

BILL MUELLER: Yes. [LB433]

SENATOR LATHROP: We can agree on that. [LB433]

BILL MUELLER: Yes. [LB433]

SENATOR LATHROP: So I'll just use that as an example, and I'm not suggesting that those who are on the district court bench or their presiding judge would do this. But potentially, they could say we're in a dire situation, we need a new district court judge, and get the new district court judge and then meet with the county court and say, guess what, I know we got a new district court judge but you're taking the protection orders and the Class IV felonies and, you know, 250 divorce cases. [LB433]

BILL MUELLER: I don't... [LB433]

SENATOR LATHROP: I mean, that could happen, couldn't it? [LB433]

BILL MUELLER: I don't think that the district court could make the county court take those. I think if the county court did not... [LB433]

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SENATOR ASHFORD: Well, the Supreme Court could. [LB433]

BILL MUELLER: ...agree to that, then I think it would go to the Supreme Court,... [LB433]

SENATOR ASHFORD: Well, the Supreme Court could do that. [LB433]

BILL MUELLER: ...and then I think the Supreme Court could do that. [LB433]

SENATOR LATHROP: Under the system that we've devised now with LB1014,... [LB433]

BILL MUELLER: Yes. [LB433]

SENATOR LATHROP: ...the Supreme Court could potentially do that the same... [LB433]

BILL MUELLER: Yes. [LB433]

SENATOR LATHROP: ...right after...right after the district court gets a new judge. [LB433]

BILL MUELLER: I think that the Supreme Court could do that. [LB433]

SENATOR LATHROP: Okay. [LB433]

BILL MUELLER: I don't know that the Supreme Court would do that,... [LB433]

SENATOR LATHROP: No, I'm not suggesting that any of these people would behave this way, but if we talk about... [LB433]

BILL MUELLER: ...but I think that they probably have that authority. [LB433]

SENATOR LATHROP: ...if we talk about what this could lead to potentially, that's certainly one consequence. [LB433]

SENATOR ASHFORD: Yeah. I mean this whole selection of judges thing is a real conundrum I think, and Senator Lathrop has really underlined a point when we do it halfway or not at all. I mean, you know, this bar association committee wanted more clear language, I think, in how these cases were allocated back and forth, and we came up with compromise language which left it somewhat open as to how that would be done, which makes it even more difficult to get real data to determine where the real

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needs are in the system. [LB433]

BILL MUELLER: Yes, we did. We did respond to a concern expressed by the county judges in Douglas County. And, Senator Ashford, you changed the language before you would introduce it and we are disappointed that they're back in just trying to repeal it. [LB433]

SENATOR ASHFORD: No, I'm not...I'm not criticizing the county court. In fact, in some ways they could be overly burdened in a way with these protection orders. But I just...it's tough. It's tough when you have to go through this judicial commission when we know that their burdens are not equally apportioned. [LB433]

BILL MUELLER: But again, I think as to caseload and division of that caseload, I don't think that's within the purview of the Resources Commission. [LB433]

SENATOR ASHFORD: No, but I meant these are all factors in determining where the judges need to be placed. [LB433]

BILL MUELLER: I agree. I agree. [LB433]

SENATOR ASHFORD: Okay. Yes, I'm sorry, Senator Lautenbaugh. [LB433]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. How did the state bar become involved in this issue? [LB433]

BILL MUELLER: We became involved when the Governor and the Resources Commission requested that a look be made into how we can more efficiently administer our judicial system. [LB433]

SENATOR ASHFORD: And we came up with this. I'm not sure we achieved. [LB433]

BILL MUELLER: Well, this is one piece of many. This is not the only recommendation from the commission. [LB433]

SENATOR LAUTENBAUGH: I understand. The only reason I ask... [LB433]

BILL MUELLER: Yes. [LB433]

SENATOR LAUTENBAUGH: ...is this seemed like sort of a nuts-and-bolts kind of procedural type thing. [LB433]

BILL MUELLER: Yeah. Well, but those are the things that we looked at, is how do you better handle the existing caseload with the existing resources. [LB433]

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SENATOR LAUTENBAUGH: And I only ask because the bar was in here earlier testifying on the Political Subdivisions Tort Claims Act. [LB433]

BILL MUELLER: Yes. [LB433]

SENATOR LAUTENBAUGH: So I was trying to determine how the bar decides when to become involved and when not to. [LB433]

BILL MUELLER: We have a legislation committee that reviews bills and they're then looked at by the executive council in the house of delegates to establish positions. [LB433]

SENATOR LAUTENBAUGH: Okay. [LB433]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB433]

SENATOR LATHROP: I will say, as long as you're here, we've had this conversation. It just seems to me that the county court...I did introduce this and when I did I thought it was to accommodate an agreement, but at the same time the county court in Douglas County, Lancaster County, Sarpy County, some of these jurisdictions where we have multiple county court judges, multiple district court judges, those guys have their hands full and they're turning, you know, little traffic tickets and they're processing short things. And to expect that a county court judge in Douglas, Sarpy, or Lancaster can take time out of their day to do a divorce trial that might go four...I should say out of their week, to do a divorce trial that might go five days, and now that's like I don't know how many traffic tickets or misdemeanors or small claims or other things that they can't hear while they're tied up with a divorce, I just don't...I can see it in...you go out west and some guy doesn't want to drive from Creighton to Hartington and they agree, I'll listen to the divorce, I'm a county court judge. But in Douglas County...and the other side of it is, if they're going to listen to a Class IV felony, they don't have the equipment. They don't have court reporters. They don't have the...they're not equipped to do that. So it just seems to me that while the bar may be invested in this and the Chief doesn't agree with it, I do think there's a certain logic to those jurisdictions where there's a lot of county court judges and a lot of district court judges. And if the district court judges are too busy, they ought to get a new one. But the solution shouldn't be to siphon off some of their work down to folks who are...and I don't want to say something that sounds disparaging to the county court, but they're processing. They're processing as compared to trying four and five two-week trials. [LB433]

BILL MUELLER: There's no question that we have a very diverse judicial system. It's very different in Omaha than it is in Kimball. But I still think the requirement that the presiding judges talk to each other is a good one. If they talk and decide that they're not

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going to assign the Class IV felonies and they're not going to assign domestic relations, that's fine. We're not saying that they should assign them. We're just saying that they should talk about the caseload. That's all we're asking. And I wouldn't expect that they... [LB433]

SENATOR ASHFORD: Well, we're actually giving the Supreme... [LB433]

BILL MUELLER: ...they would be assigned. [LB433]

SENATOR ASHFORD: ...we're giving the Supreme Court the authority to change the deal, though. Don't we give the Supreme Court the authority to make the final decision? [LB433]

BILL MUELLER: We do, although I think that maybe the court has that authority now. [LB433]

SENATOR ASHFORD: Well, I guess I think Senator Lathrop brings up a great point here and I, you know, I'm just really dissatisfied with the situation out there with the judges, and especially in my home area. It's not right. It's we're just making accommodations back and forth because of...because of a desire, a good desire, quite frankly, to try to resolve some of these issues. And I think everybody has got the right...they want to do the right thing and make it better, but I'm not sure we're making it better. We might have dipped our toe into something that maybe we shouldn't have done. So...and...I mean if the state wants to have...if we want to go to the...we have this whole discussion, should all the judges be paid the same and have concurrent jurisdiction in all matters, you know, that's really...that's really the...that's really the question, in my mind. I mean, you know, and that may take years to get us there or it may have a transition time but maybe that's where we're really at. I mean all these other things are kind of...they're a little bit feel good. I think in rural Nebraska there's a real issue that Senator Lathrop has brought up, but I don't know what to do about this. I mean I think we have to change this issue involving concurrent and exclusive jurisdiction. [LB433]

BILL MUELLER: Yes. [LB433]

SENATOR ASHFORD: But I don't know. I mean the protective order thing seems to have helped I guess a little bit, but do we also then want to talk about felony IVs in juvenile court cases? I think Senator Lathrop makes a great point and that is everything I can get is that the county court judges, at least in Douglas County, have a pretty efficient way of handling sort of mundane matters, and in the sense it's not mundane to the people that go in there but, relative to the district court bench, they're not prolonged matters. And I think Senator Lathrop may have a point. I think we're trying to...we may be trying to dip our toe into something that if we're not going to go all the way to having

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a different kind of court system where everybody has concurrent jurisdictions, paid the same, which I think is the right way to go, quite frankly. I know we're not going to get there this year or maybe ever, but there's such a small difference in pay from the county court to the district court and they're all...and I think they're competent or they wouldn't be there. I don't know. I think Senator Lathrop makes a good point. We have to discuss it, I think, further. [LB433]

BILL MUELLER: Well, and a unified court that you're describing is something that our task force looked at, whether you should... [LB433]

SENATOR ASHFORD: Well, I'm sure. I'm just telling you what I think. Well, no matter... [LB433]

BILL MUELLER: ...make everybody be a district court judge and... [LB433]

SENATOR ASHFORD: Well, I don't know what you call them. I just think we're...I think, from an efficiency standpoint, we might be...and maybe it's not the way to go. I've always believed that it's the right way to go. We tried, we did some of this earlier years ago when Senator Chizek chaired this committee, as you may remember, and got into this. But I...it's not...it doesn't seem like that's where the bar or the bench want to go. But this may be a problem to do it this way too. But anyway, thanks, Bill. [LB433]

BILL MUELLER: Thank you. [LB433]

SENATOR ASHFORD: Any other...where are we, opponents? Opponents. Neutral? Okay. Thanks. That concludes the hearing. [LB433]

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Disposition of Bills:

LB40 - Held in committee.
LB304 - Placed on General File.
LB305 - Placed on General File.
LB343 - Placed on General File.
LB433 - Held in committee.

Chairperson

Committee Clerk