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General Affairs Committee
February 14, 2011

[LB60 LB193 LB194 LB286 LB641]

The Committee on General Affairs met at 1:30 p.m. on Monday, February 14, 2011, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB641, LB193, LB194, LB286, and LB60. Senators present: Russ Karpisek, Chairperson; Bob Krist, Vice Chairperson; Dave Bloomfield; Lydia Brasch; Colby Coash; Tyson Larson; Amanda McGill; and Paul Schumacher. Senators absent: None.

SENATOR KARPISEK: Okay, we're going to get started. Welcome to General Affairs Committee. My name is Russ Karpisek from Wilber, and I chair the General Affairs Committee. Committee members that are present: to my far right we have Senator Brasch of Bancroft; next to her, Senator Bloomfield of Hoskins; Senator Coash of Lincoln. Next to Senator Coash is our Vice Chair, Senator Krist of Omaha. He will be out most of the time. I think he's talking something about motorcycle helmets in another committee today. To my immediate right is Josh Eickmeier, committee legal counsel, from Seward. To my far left is Christina Case of Lincoln now, our committee clerk. Senator Larson is joining us right at the moment from O'Neill. Then we have Senator Schumacher of Columbus and Senator McGill of Lincoln. The page helping us out today, is it you Lacey? It is--Lacey Schuler of Tekamah. After each bill introduction, we would like to hear testimony in support of the bill, then testimony in opposition, and finally neutral testimony. If you're planning on testifying in any capacity, please pick up a sign-in sheet that is on the table at the back of the room at both entrances. Please fill out the sign-in sheet before you testify. When it is your turn to testify, give your sign-in sheet to the page or to the clerk--I thought I was going to read it today and I didn't--and then this will help us make a more accurate public record. If you have any handouts, please make sure that you have ten copies for the page to hand out to the committee. When you come up to testify, please speak clearly into the microphone, tell us your name and spell it for us, even your first and last name, even if you think it's very easy to spell like Karpisek. Also please tell us whom you're representing, if anyone. Please turn off your cell phones, pagers or anything else that beeps or makes noise. Please keep your conversations to a minimum or take them out in the hallway. This is not a football game. We won't have cheering or booing on either side especially if I'd be introducing a bill, but I'm not today for a change so you can be nice. Finally, while we do allow handouts, we do not allow visual aids or other display items. Appreciate your cooperation. Which way do we have this. Are we going with Cornett first? Oh, we do have Senator Cornett here. Now we will begin with the first bill up today, LB641. Senator Cornett, welcome to the General Affairs Committee.

SENATOR CORNETT: I don't think I've been here since I was actually on the committee.

SENATOR KARPISEK: Oh, well, what can we do to get you back? (Laughter)

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SENATOR CORNETT: Nothing. I'm term limited. (Laughter)

SENATOR KARPISEK: I knew that was a bad idea.

SENATOR CORNETT: Good afternoon, Chairman Karpisek and members of the General Affairs Committee. My name is Abbie Cornett, C-o-r-n-e-t-t. I represent the 45th Legislative District. LB641 would require any law enforcement officer who determines that any portion of the Liquor Control Act has been violated to forward a report to the executive director of the commission. This report will need to be forwarded within 30 days after the violation. LB641 also states if any law relating to sale of alcoholic liquor is violated a report shall be forwarded to the executive director of the commission within 30 days. Someone from the Liquor Commission will be here today to testify on the bill and to give you some more specifics on why they feel the bill is needed. There is also a representative from the Omaha Police Department who I know will be opposing the bill, but we are more than willing to sit down and work with the Omaha Police Department to negotiate what might be easier for them or what they feel the difficulties are. And I am going to waive closing because I have a bill across the hall. [LB641]

SENATOR KARPISEK: Thank you, Senator Cornett. Does anyone have any questions before Senator Cornett cuts out? Seeing none, thank you. [LB641]

SENATOR CORNETT: Thank you. [LB641]

SENATOR KARPISEK: Do we have proponent...first proponent for LB641. Welcome, Mr. Rupe. [LB641]

HOBERT RUPE: (Exhibit 1) Thank you, Chairman. I bring presents, unfortunate, they're not valentines. [LB641]

SENATOR MCGILL: You could have at least printed them on pink paper. (Laugh) [LB641]

HOBERT RUPE: I could have, but it costs more. [LB641]

_____: Pink ink then. [LB641]

SENATOR KARPISEK: Whenever you're ready, Hobie. [LB641]

HOBERT RUPE: Thank you, Senator. Senator, my name is Hobert Rupe, H-o-b-e-r-t, last name is Rupe, R-u-p-e. I'm the executive director of the Nebraska Liquor Control Commission. This bill came out of some conversations that a member of the commission was having with Senator Cornett regarding some other sort of changes that

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we've been seeing lately. What you are being handed out actually is our penalty guidelines. I think that's an important thing to look at is that what the commission does, as much as it can, is practices what's called a progressive discipline. As you'll see, you know, later on claims, or more serious ones have a higher suspension and this is only after they're found guilty in front of the commission after a hearing or plead guilty. And so the purpose of what the commission tries to do through this method of progressive discipline is to bring a licensee back into compliance. You know, we're trying not to go right to cancellation or revocation on a license. They will, in extenuating circumstances, if there's a health or safety issue at risk, but these are for more people who are violating the law and we want them to...you know, they practice progressive discipline. Well, the key part of doing progressive discipline is to get the reports in a timely fashion. Some jurisdictions do a great job of it; some others not so good. And oftentimes what happens in those other jurisdictions is they'll get a whole bunch...they'll have a bar that's having a lot of problems not forwarding anything to us until they finally have had it up to here with the bar and then they go to the support of the city council and say, let's get a resolution revoking or cancelling the liquor license. They can then appeal that to the commission and then we're sort of sitting there going, wait a minute, why did you go from our perspective from 0 to 100 without any of the steps in-between? Now there is a...the statutes which are being modified already have a duty to notify the county attorney of these current crimes for the criminal side. And so we're trying to get the same aspect for the administrative enforcements because it really makes our job easier to do as a commission if we're getting timely reports so that we can deal with those. Now just so you know what happens when a report gets filed with the commission, they're commonly called tavern violations. It gets filed with the commission, it gets logged in, and then Sergeant Martin Costello, who is the Nebraska State Patrol liaison, he'll go through and look to make sure it meets the law enforcement minimums, is at least alleging something. Oftentimes he'll be in correspondence with the officer if they need more information. Once that file, that case file is somewhat complete, then it goes over to the Attorney General's Office and they make the charging decision. Milissa Johnson-Wiles is currently the attorney assigned to the commission. She sort of has four choices when it lands on her desk. She can either decline, in other words, she says, "This isn't alleging a violation of the act. I'm not going to charge it administratively." If she thinks it's a clear and good case, she'll cite it for hearing in front of the commission, in which case an order will go out setting it for a hearing. They'll come before the commission. There will be a hearing, an evidentiary hearing, and if they're shown by a preponderance of the evidence, a sanction will be imposed. The other two options are if it's...and generally this will happen if there's probably some proof problems with the case, she'll either do a warning letter or a mandatory meeting. A mandatory meeting is an informal adjudication. They'll come in front of the commission. We'll say, hey, you've got a problem, say, with after hour...with open containers leaving your premises. What can you do to stop this? Okay. The purpose of those two is also sort of to put the licensee on notice and also the commission on notice that there's problems with this operation's going forward so we can sort of keep track of them,

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what's going on. Unfortunately, as I said, certain jurisdictions send them better. I mean, this is going to sound bad, we get a lot more violations out of LPD than we do OPD currently. I'm not saying that's anything bad at OPD's problem. I'm not sure what their problem is. That's Omaha Police Department as opposed to Lincoln Police Department. But, you know, when we're hearing about problems and violations through the press or from complaining witnesses and then we're not getting law enforcement complaints coming backing those up, it starts raising some questions, what's going on. There's been some places, I know of at least one place where there were...20 cop cars were called to the place because apparently the security guard decided that mace was an effective crowd control deterrent, which normally we sort of have problems with people utilizing that kind of force, you know, as a security issue. To the best of my knowledge, we've never received a report about that location and so I'm not going to say what it is because, you know. But when I'm hearing about that from press reports or from constituent complaints, you know, and we start looking into this and we're saying, okay...and oftentimes the law enforcement will say, well, where's our duty to report? Well, that's what this bill will address. If they believe there's a violation that's going to be there, they should come forward. I had a brief conversation with somebody who is going to be representing the Omaha Police Department. They're going to have a concern about maybe the time frame of it or if there's not an exception for an ongoing criminal investigation. They don't want to screw up an ongoing drug or prostitution case which is going to take multiple times at a bar just by doing that. I'm more than happy to work with them. You know, our purpose here is to try to get reports that violations are happening in a timely manner. And I certainly don't want somebody sending in, well, while I was in there doing a drug buy, I noticed a minor purchasing alcohol. You know, I don't want to screw up that kind of investigation, so I'm more than happy to work with them. But that's what the purpose of the bill is, is to say, you know, let us...to do our job effectively, we need these reports from law enforcement. And so this puts a duty upon law enforcement to supply those reports. I'd be happy to answer any questions you might have. [LB641]

SENATOR KARPISEK: Thank you, Mr. Rupe. Any questions? Senator Coash. [LB641]

SENATOR COASH: Thank you, Senator Karpisek. So, Hobie, sometimes you get...from some jurisdictions you get reports and from others you don't? [LB641]

HOBERT RUPE: Yes. [LB641]

SENATOR COASH: For the ones that you don't, is it that you never get them or you don't get them consistently? [LB641]

HOBERT RUPE: We don't get them consistently. I wouldn't say we never get them. For instance, a requirement if you're going to get a grant to do compliance checks, part of that grant requirement is you have to submit reports. And so they'll do it in that way.

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Some of the jurisdictions really we don't get a lot of reports out of. And, you know, that's either saying there's absolutely nothing happening at those bars, which maybe I'm getting old and paranoid, I'm not going to...inclined to say nothing is happening that might be a violation or that we're not getting those reports. We're just trying to figure out a way...and just to show that we're not just trying to be one-sided on this, the commission is working on planning and doing some training for law enforcement officers. We're reaching out to the sheriffs association and to the police chiefs association maybe to do some training as to how to properly do a report, what kind of reports we're looking for, and that kind of stuff. So we're trying to do on our side to make sure they know what we're bringing in as well. So I think that's part of maybe why we're not getting reports a lot. So this is one of the steps, I think, of a multistage issue.
[LB641]

SENATOR COASH: So how are you able...if you don't get reports from law enforcement, what are the other mechanisms that you do get reports regarding potential liquor violations? How else would you know if it didn't come from law enforcement?
[LB641]

HOBERT RUPE: We're not. I mean the only thing that will happen, you have to remember there is a division of the Nebraska State Patrol which this is assigned. Sergeant Costello is present here. I didn't think, he's not going to testify. If you have any questions, I think you can call him and ask him these specific questions how they do it. And so there's basically one assigned to each troop area. There's two in headquarters, two in A because of the license density issues. They have...our principal enforcement agency. However, if you also look at the statute, local law enforcement is empowered to enter into a licensed establishment to make sure there's compliance with the act. Some of those places, you know, give us good reports back; some of those don't. We're trying not to micromanage police. I mean, they're on the sharp end. We certainly wouldn't want to, you know, jeopardize that. But I'm just trying to say that, you know, that there's a duty that if they believe there's a violation and it's not going to, in this case, maybe impact on their case, just send the report. You know, it's sort of a fairness too. I mean you try to...we're a statewide agency. We're trying to impose the laws fairly across the entirety of the state. If we don't get the reports, it's sort of hard to do that or if we're getting, you know, hot spots as opposed to full reporting as opposed to no reports.
[LB641]

SENATOR COASH: Okay. [LB641]

SENATOR KARPSEK: Thank you, Senator Coash. Any other questions? Senator Schumacher. [LB641]

SENATOR SCHUMACHER: Thank you, Senator Karpisek. When you would get a report from, say, the police chief of XYZ town and it says, well, I think there is...they may

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be serving some minors there, at least some underage people appeared to be buying booze or they got an illegal slot machine rolling in the back room, what do you then do? [LB641]

HOBERT RUPE: Well, if they send a report where they think there's more of an information rather than as they're alleging a violation, we'll make sure that Sergeant Costello with the Nebraska State Patrol gets it. And he and the trooper assigned to that area will generally reach out to the law enforcement agency if they need to do a selective. Let's say XYZ...the chief of XYZ thinks there's some slot machines in a bar but he's unsure of how to go forward with the case. You know, we try to have the Patrol be the experts of how to go forward and do those because if it results in a crime as well...a criminal action they can come. If it's, say, minors, perhaps they'll do a, you know, do a selective for minor compliance. Another thing I know the Patrol will do a lot of times if they believe...if they get reports, you know, more information reports, say that XYZ or say ABC convenience store, a clerk on Friday nights isn't IDing anybody, they'll probably do a surveillance. They'll set up an outside surveillance and do some shoulder taps and some stuff to see if crime is going on and see what's going on. So a lot of it depends on the nature of it is. Some of them...if they're actually alleging a violation, they'll go through the process I described. If they're more informational, they'll flow through Sergeant Costello and the Nebraska State Patrol. [LB641]

SENATOR SCHUMACHER: So then, I mean if the local town marshal in XYZ sends a report in saying I think we've got a problem with this bar selling to minors... [LB641]

HOBERT RUPE: Um-hum. [LB641]

SENATOR SCHUMACHER: ...you won't use that to file a complaint before the commission. That triggers then another investigation. [LB641]

HOBERT RUPE: Exactly. If he's sending a report saying on February 14 I observed Annie B., a person I know to be 17 years of age, enter into this store and exit with beer, you know, hopefully at that point in time he's stopping her and then be able to backtrack it and then file a, you know...not only would he file then perhaps a sale to a minor criminal charge against the clerk, but then we would expect him also to forward...that same things he sent to the county attorney he would forward to us so that we could look administratively against the license. [LB641]

SENATOR SCHUMACHER: So if the county attorney procures a conviction in that case, then it becomes something that you would take formal action on? Or would you actually bring the town marshal in and file your own complaint based upon his report? [LB641]

HOBERT RUPE: We file our own complaint based on his report. We're a separate

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entity. Ours is administrative instead of criminal. There's a different standard of proof. The mere fact that you're either...that, you know, if you're convicted in criminal court, it's pretty hard not to meet the burden of proof in the administration in the commission. But sometimes because of the beyond a reasonable doubt, you might be acquitted, the individual clerk might be acquitted in county court, but there might still be an administrative function against the licensee because of the lower burden of proof. [LB641]

SENATOR SCHUMACHER: So not all cases go through the Patrol and Costello. Some are short-circuited direct from the town marshal to you guys. [LB641]

HOBERT RUPE: Yeah. The town marshal says on this date, that then would go...then what would happen is Sergeant Costello would look at it to make sure it meets law enforcement, but he would forward it to the AG's office for a charging decision, much like for being submitted to a county attorney. [LB641]

SENATOR SCHUMACHER: I have no further questions. Thank you. [LB641]

SENATOR KARPISEK: Thank you, Senator Schumacher. Any further questions? I'm going to ask, Hobie, I'm sorry, I wasn't maybe paying as close attention as I should have. So this just...the local policeman walks in the bar, maybe sees somebody sitting on the bar stool that's been overserved. He grabs their keys and tells the bartender not...to shut them off. Would he have to report that to you? [LB641]

HOBERT RUPE: Well, we hope he would. You know, the issue that we're looking at, as you know, we're sort of following along the same statutes when he feels he needs to file a criminal case with the county attorney. If you'll look there is specifically on page 5, you know, if you'll look at that one under 53-197, you know, has committed any violation of law, you know, to the court. We're sort of adding on there. I mean, if he's going to be filing a report, you know, to the county attorney, we almost think they should make sure they file one with us, too, for the administrative side of it. Now... [LB641]

SENATOR KARPISEK: Now, but, so would he... [LB641]

HOBERT RUPE: ...honestly, could he file this, yes. Do I think we're going to be looking at him because he did it this way, gave a verbal warning? Probably not. [LB641]

SENATOR KARPISEK: Okay. So it would just be anything that they write a ticket on. [LB641]

HOBERT RUPE: Yes. [LB641]

SENATOR KARPISEK: So not...if there's no ticket, there's no... [LB641]

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HOBERT RUPE: No. [LB641]

SENATOR KARPISEK: Okay. [LB641]

HOBERT RUPE: Now some things under the act there's not an equivalent criminal citation so we hope that they would send it to us, like leaving open containers after hours is not criminal, but we hope that we can file what's commonly called a tavern report showing, you know, alleging that violation. So they're not 100 percent married, but there are some similarities between the criminal and the civil. [LB641]

SENATOR KARPISEK: Okay. Any further questions? Seeing none, thank you, Mr. Rupe. [LB641]

HOBERT RUPE: Thank you. [LB641]

SENATOR KARPISEK: Any further proponents of LB641? Seeing none, do we have any opponents? How many opponents do we have? Just the one it looks like. Okay, and are there going to be any neutral? No, okay. Thanks. Welcome. [LB641]

DAVID BAKER: Thank you. [LB641]

SENATOR KARPISEK: Do you have your sheet filled out for us? [LB641]

DAVID BAKER: Yes, I do. [LB641]

SENATOR KARPISEK: Okay. Lacey will grab it. [LB641]

DAVID BAKER: Thank you for the opportunity to speak with you today. My name is David Baker. I'm a deputy chief for the Omaha Police Department. [LB641]

SENATOR KARPISEK: And can you spell that, please, for us, sir. [LB641]

DAVID BAKER: B-a-k-e-r. [LB641]

SENATOR KARPISEK: Thank you. [LB641]

DAVID BAKER: The reason the Omaha Police Department opposes this bill has been partially covered already with you in that we conduct a lot of investigations, criminal investigations obviously, in all locales, all places. Typically we have at any one time several ongoing investigations, many of which occur inside of drinking establishments, liquor stores, things of this nature. And this particular bill does not allow for the integrity of the investigation, absent the reporting process. In other words, if we were to go

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ahead and see a mere violation of rules, much less a misdemeanor, occur in the presence of one of our undercover officers while investigating, say, a theft ring working out of a bar or selling drugs out of a bar or something like that, under this particular bill we'd be required within 60 days to go ahead and report that regardless of the status of our investigation. So what we'd be doing is subordinating long-term, in some cases federal investigations, in some cases state, but almost always felony investigations that take a long time to a misdemeanor or rules infraction. And we don't feel that that's necessarily good law. Secondly, I know that...and I spoke with Mr. Schumacher from the Liquor Commission, I understand that there's been a problem in the past with all the reports--I may have gotten the name wrong--I understand there's been some problems in the past with some of the reports coming in. Speaking with our vice unit commander today, that is, they are turning in all the reports that they can now, absent the ones that would adversely affect felony investigations and things of that nature. Now I can't comment to the particulars that he had cited today because it's the first time I've heard it. Now in my part of the administration in the department, this has not thoroughly been discussed between commission members and the administration of the Omaha Police Department, at least as far as my knowledge goes. So what I think what we'd like to do, obviously, we would like to work out our differences in regard to the bill. But more importantly, I don't know that a bill is warranted at this time if the problem hasn't been thoroughly vetted yet. Now I don't know where some of the reports that I've been informed. They're still not getting the number of reports that they would expect. So we need to go back. We need to find out where they're going, whether they're being held up in city legal, through the mail system, something simple, something complex, an administrative decision or what's going on. What I can tell you is the problem hasn't been thoroughly investigated yet and yet we're asking to pass a bill to solve a problem that we don't know for sure where the parameters of the problem lie. I would submit to you that's probably not good policy. So if you'd give us a little while to work on this as well, but in the interim I don't think the bill should go forward because what it will, at least in its current form, will actually cause more damage than good. And I'll be happy to take any questions that you have. [LB641]

SENATOR COASH: Thank you, Mr. Baker. Senator Schumacher. [LB641]

SENATOR SCHUMACHER: Thank you, Senator Coash. In the situation where it has gone to the county attorney and the county attorney has made the determination that a charge regarding a liquor violation or a slot machine in the bar or something like that should be filed, would that be the appropriate point to require the report rather than at the investigative officer's level? [LB641]

DAVID BAKER: Not always. We could find something that we had seen, for example, we could see somebody who is obviously a minor, somebody who is obviously intoxicated, for example, go ahead and be served in a bar, we may not make any investigation further on that if we are there in another capacity or undercover capacity.

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Not everything obviously is a uniform type of a visit to a bar. So we may have nothing to follow up on. Even though we see something that's going on, we're not going to necessarily get the name of the person that was there or get enough information to charge that misdemeanor if we're investigating a felony and it's ongoing at the time that requires the undercover officer to maintain his current status and not identify himself as an officer. So, for example, if a minor is served, we're not going to get that minor's name. The minor is probably going to be able to leave the bar because we're in the middle of a drug investigation or we're in the middle of following up. One example comes to mind. It was in a south Omaha bar that took six months. We have six people now, about one a month, in prison for theft and for motor vehicles and burglaries, and that investigation took six months. If we'd seen somebody that was violating misdemeanor law at the beginning of that investigation, the likelihood of us having that information would be relatively small. [LB641]

SENATOR SCHUMACHER: But my question was let's say that you did take the liquor-related complaint to the county attorney. At that point should, instead of this law kicking in and basically saying if you're credibly aware of something then you've got to tell the Liquor Commission about it, if instead we said if a law enforcement or if the county attorney or city prosecutor files a liquor-related offense, that's the point that the Liquor Commission should be reported. [LB641]

DAVID BAKER: Yes. Once it's filed, it's a matter of public record and then anything in that filing would no longer be needful of having any level of, if you will, secrecy or confidentiality because the investigation would be over. I would caution you that...I would say when both investigations were over because they may not end at the same time, both the larger investigation as well as the liquor control violation. [LB641]

SENATOR SCHUMACHER: So the problem you have with this kind of goes away if we say this whole thing only applies if the county attorney or city prosecutor files a liquor-related charge or...and then they're reported to... [LB641]

DAVID BAKER: That is our primary issue with this in that it doesn't allow us much leeway. It's pretty much a zero tolerance type of a bill and doesn't allow for much discretion on the part of the law enforcement agency. I'd also say there are times when we will file a liquor report and find out later on that perhaps it was the wrong bar that we've gotten or the officer simply made mistakes, things of that nature. There's some discretion on command officer's part as to whether or not to forward that. We haven't been exercising that discretion in quite some time because we did understand that we had some liquor reports that were not making it through. But we are...I think our main objection to the law is that it affects adversely more important investigations. [LB641]

SENATOR SCHUMACHER: And do you have relationships with some of the bar owners so that they maybe feed you information about what's going on and this would

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disrupt that relationship somewhat if you... [LB641]

DAVID BAKER: That's absolutely part of it. We can also leverage any kind of report against their license to gain cooperation for them on other matters. And we do this in a wide variety of ways every day, whether it involves liquor or not, to trade away something that may be of much less degree of criminality, if you will, for something that's much higher. And so a liquor control rule may be overlooked or a report to a license may be overlooked if, in fact, that person puts us in contact with, say, somebody who has been selling drugs out of the bar. [LB641]

SENATOR SCHUMACHER: Thank you. I don't have any further questions. [LB641]

SENATOR COASH: Thank you, Senator Schumacher. Any other questions for Mr. Baker? Seeing none, thanks for coming down today. [LB641]

DAVID BAKER: Thank you. [LB641]

SENATOR COASH: Any other testimony in opposition? Any neutral testimony? Okay. We're going to close the hearing on LB641 and go ahead and open on LB193. Senator Howard, welcome. [LB641]

SENATOR HOWARD: (Exhibit 2) Yes, sir. Gosh, I'll have to change this, I say Chairman Karpisek, (laugh) which he is not here. Senator Coash and members of the General Affairs Committee, I am Senator Gwen Howard and I represent District 9. I am here today to introduce LB193 which would require all liquor license applicants to pay for all hearing costs before the Liquor Control Commission. I introduced this legislation to correct an unfairness I see in the current way citizens are being treated when they protest a liquor license before the Liquor Control Commission. I believe very strongly that state government must be open and accessible to all. Unfortunately, this is not the case when citizens and local governments want their concerns to be heard by the Liquor Control Commission. The overwhelming majority of licenses are approved by the commission without any formal hearing or opposition from the citizens. The actual number of applicants that have had hearings before the commission is very small, but these applications are often controversial or involve applicants with dubious histories. Applications go before the Liquor Control Commission when either a local governing board recommends denial or three residents of that city file a formal citizens' protest. At this point on the controversial licenses, the applicant will request the formal Rules of Evidence at the hearing, which is their right to do. In this request, the applicant states that he is liable for the costs incurred, including the costs of court reporting services. I have a copy of such a request for the committee's review. And if a page would like to take these. Thank you. If the commission decides to approve the license application despite the objection of a local governing body or the citizens, each opponent is sent a bill from the Liquor Control Commission for the hearing costs. Even if a person simply

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sent a letter expressing their concerns, they are sent a bill. I've been told that this is because of a conflict between 53-1115(3) of the Liquor Control Act and 84-914(1) of the Administrative Procedures Act. By passing this legislation this conflict would be removed and applicants would be compelled to pay costs they have already agreed to pay. I have two problems with the current process. First and foremost, I believe in an open and accessible state government. I do not believe that the citizens of this state who pay the taxes to run our state government, including the Liquor Control Commission, should have to pay to be heard by that government. The Legislature is a shining example of this openness. We refer all bills before this body to have a public hearing where citizens can come and express their support, opposition or neutrality without having to pay for the cost. Secondly, I do not think that it is fair that citizens or local governments have to pay for costs that result from the request of the applicant for the formal Rules of Evidence. If an applicant wants the advantages of having the formal Rules of Evidence, then they should pay for it regardless of the outcome of the hearing. In fact, they already agreed to pay these costs when a formal request for the Rules of Evidence is made by the applicant. I'm providing the committee with several copies from recent hearings for your review which show the applicant agreeing to be liable for all costs, including the court reporters. However, the Liquor Control Commission did not hold any of these three applicants accountable for these costs when the commission ruled in favor of the applicants. In each case, the citizen protest and the city of Omaha were sent bills for the court reporting costs citing 84-914 of the Administrative Procedures Act. As I mentioned, this issue not only impacts citizens but also local governments. When a local government recommends denial of an application and the commission decides to grant it, the local government is then required to pay the hearing costs. Last year, the city of Omaha had to pay \$500 in hearing costs when it opposed the request for several Walgreens locations to have liquor licenses. On the north side of this building is inscribed: "The salvation of the state is in the watchfulness of the citizens." I'm sure you've all heard that. This legislation will allow our citizens to be the watchful eye and fully participate in the processes of the Liquor Control Commission without worry of having to pay to be heard. I ask for your favorable consideration of this open government bill and to correct the current contradiction in state laws. Thank you. [LB193]

SENATOR COASH: Thank you, Senator Howard. Any questions for Senator Howard? Seeing none, we'll see who is behind you. [LB193]

SENATOR HOWARD: Oh, very beautiful. Thank you. [LB193]

SENATOR COASH: We're going to go ahead and start with testimony in support of LB193. Come on up. Welcome. [LB193]

MARGIE MAGNUSON: (Exhibit 3) Thank you. My name is Margie Magnuson, it's M-a-r-g-i-e, Magnuson is M-a-g-n-u-s-o-n. Mr. Chairman and members of the General

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Affairs Committee, I am a spokesperson for a grass-roots coalition in Omaha called the Alcohol Impact Coalition. We represent 13 neighborhood associations who are concerned about the saturation of alcohol outlets in our neighborhoods and how those outlets negatively impact our community. In the past three years, our coalition has opposed several liquor outlets in our community in front of the city council and at the Liquor Control Commission. On four occasions, after the Liquor Control Commission ruled in favor of the applicant, we were sent a letter informing us of the decision and requesting a payment of fees. The first time we were asked to pay these fees, we were shocked as we were unaware that citizens would be billed for engaging in a democratic process and we had to send out requests to our fellow neighbors for donations to help pay these costs. We feel that citizens should be free to come forward to speak on behalf of their neighborhood without worrying about being assessed fees. Getting a liquor license in this state is a privilege, not a right. But as a citizen of this state we do have rights. We have the right to speak up when the health and safety of our neighborhood is at stake. Let me give you a snapshot of what citizens already have to do to be part of this democratic process. Last spring, you may remember that the Walgreens decided that they wanted to start selling liquor in their stores so they could compete with the new CVS stores coming in to Nebraska. Our coalition, as well as many individual residents, took off time from work to appear before the city council to voice their opposition to these licenses. The Omaha City Council meets in the middle of the afternoon and many folks had to take vacation time or sick time away from work to come to the hearing. We were not alone in voicing our opposition. And in the end, the city council recommended denying 13 of these stores. Even though the city was sending their own attorney to oppose these licenses at the Liquor Control Commission, many residents and other organizations also appeared to oppose these licenses. The Liquor Control Commission director decided to hold a special hearing for these stores because of the number of applications and the applicants' attorney called for the Rules of Evidence, which means the hearings had to be conducted with stricter legal restrictions. In the letter requesting for the Rules of Evidence it states, as Senator Howard said, that "the applicant agrees to be liable for the payment of the costs incurred by that request, including the cost of court reporting services." Requesting for the Rules of Evidence to be put into place is difficult and it places additional costs and time for us untrained citizens. The Liquor Control Commission director had also called for a pretrial conference that required almost two hours away from my workday to take part in. For the Liquor Control Commission hearing citizens again had to take off time from work to travel to Lincoln for the hearings and they lasted all day. I will mention that it was the citizens who were the only ones there at that hearing not getting paid to do so. And in fact, we were losing money by not working and paying for gas to drive to Lincoln. In the end, the Liquor Control Commission approved the licenses and a month later each person and each organization who opposed these licenses was sent a letter notifying them of the decision and was asked to pay \$529 in fees. So just for this case, residents wanting to speak up to oppose a business coming in their neighborhood spent their personal time away from work and their own money to be involved in the hearing, in the end were

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slapped with a \$529 bill. We support Senator Howard's bill because we believe that residents and neighborhood associations need to have a voice when it comes to deciding if a liquor license should be granted to operate in our neighborhoods. There are already many obstacles in place to deter residents from being involved. And just taking off time from work to take part in that process sometimes is a big enough burden already. We as a state should not place additional burdens on its citizens to be involved in that process, because if we do we are just encouraging "disinvolvement" of our citizens who may not have the money to voice their opinion. If there are additional costs involved with citizens opposing a liquor license, then let the applicant bear that burden as part of their privilege to obtain a license. If an applicant calls for the Rules of Evidence to be put in place then, as already stated in our state statute, let the applicant pay for those additional costs associated with that hearing. Please do not burden the residents of this state with additional fees to be involved in our democratic process. Thank you. [LB193]

SENATOR COASH: Thank you, Ms. Magnuson. Thanks for coming all the way down. [LB193]

MARGIE MAGNUSON: Thank you. [LB193]

SENATOR COASH: We'll see if we have any questions. Seeing none, thank you. [LB193]

MARGIE MAGNUSON: Thank you. [LB193]

SENATOR COASH: Welcome. [LB193]

DARRYL HUTTON: Hi, my name is Darryl Hutton, D-a-r-r-y-l Hutton, H-u-t-t-o-n. My comments are brief. It simply comes down to the...I don't want to make this too grandiose, but freedom of speech at what cost. It seems to me I should be able to make an opinion. I certainly don't go and oppose every license that comes across the state or even the city. The only issue or time where I'll come and oppose a license is because we believe it to be a problematic license. So it seems to me that if you want to speak your mind, that's great, but you better...you're going to have to pay for it and it just seems inherently unfair. I think that the voices of the people should matter and it should not be at the cost of, I guess, let me just back this up just a little bit. I think it really gets people to disengage when you say: if you want to speak your mind, that's fine, but we're going to bill you. I think you really eliminate a lot of voices because I don't want to get a bill or I may not make enough money to be able to pay these bills for speaking my mind. And it just dumbfounds me, I mean, it truly does. Again, I agree that if there is some deemed cost to have somebody speak their mind then that cost should go to the applicant, because again it's a privilege. They're asking for something that's of a higher merit. You're not asking to sell potato chips, you're...it's a very serious thing when you

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get into serving and selling alcohol and I believe people should be able to voice their opinion as to that. If you want to take a look at funding instead of using our testimony as a way of funding the Liquor Control Commission, or wherever the fees may go to this, this is the letter simply from the Walgreens case. It's 15 envelopes which the state paid \$5.71 apiece to mail. And literally, I believe they could have simply submitted...basically sent one letter, one envelope, that would have stated, this is the hearing date for these cases, instead of sending 15 of them at \$5.71, which is, what, \$70, somewhere in that ballpark. Now I wasn't the only one that received this. Every person that went and testified pro or against received this bundle that the state paid 75 bucks for. In addition, it not only has the letter notifying of the hearing, this also occurred when you had the results of the hearing, another 75 bucks. And there's copies of everybody's letter of protest in each one of these. I don't need multiple copies of all these things. If the state wants to save money, let's ditch the costs that are getting involved in this and let's certainly not tax or have citizens pay because they want to voice their opinion. And that's all. [LB193]

SENATOR COASH: Thank you, Mr. Hutton. Any questions for Mr. Hutton? Senator Schumacher. [LB193]

SENATOR SCHUMACHER: Thank you, Senator Coash. When you folks were billed for the \$500, was that \$500 apiece? [LB193]

DARRYL HUTTON: That's a good question. The interesting thing is regardless of...it makes it very unfair. The way that the letter states it, it makes it appear as if, for example, the letter that I would have received, it says, it simply says, it is further ordered that the protestants, plural, and the local governing body of such action shall pay costs of this action assessed in the amount of \$529. Now do I have to pay \$529 and the other protestant has to pay \$529? Do we have to collectively get our minds together with people I don't know who they are and decide what is my portion of the \$529? It's pretty vague. [LB193]

SENATOR SCHUMACHER: Did anybody pay the \$529? [LB193]

DARRYL HUTTON: In this case, the city of Omaha did pay this. But again, it would appear to me that let's say an individual, one store case or one hearing that typically, I believe, it was \$28 plus \$5 for the...well, for the envelope or letter, here it is. Looks like it's in the ballpark of \$28. I guess, what it comes to is again I get one for \$28, John Doe that also testified against gets one for \$28. But is the total fee \$28 that's to be divided among the seven people that may have spoken against it or is each individual person paying \$28? I don't think this makes it clearer in either case whether it's divided up or not. I see it as being entirely unfair. And pretty much if you want to, like, prohibit people from speaking their mind, bill them, bill them for their time to testify. That's...I don't know if that answers your question. [LB193]

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SENATOR SCHUMACHER: It does. I have no further questions. [LB193]

SENATOR COASH: Thank you, Senator Schumacher. Any other questions? Seeing none, thanks for coming down today. [LB193]

DARRYL HUTTON: Thank you. [LB193]

SENATOR COASH: We'll take our next testifier in support of LB193. Good afternoon. [LB193]

SHARON OLSON: (Exhibit 4) Hello. My name is Sharon Olson, S-h-a-r-o-n O-l-s-o-n. I'm going to make this really brief. September, I came down for a hearing on a liquor license. I drove down to testify. I had intended to bring another older man with me, he's 77. But something happened, his family had an emergency so he couldn't come, but he felt very, very, very strongly about the issuance of this license so he wrote a letter. Another lady, whose house is right in the line of fire of this place that wanted the liquor license, was absolutely adamant that people understand, the commission understand why she did not want that license generated. So two of those people had to write letters. Now the 77-year-old person is on Medicare, he doesn't have a lot of money. And a month later, he gets a \$35 bill for writing a letter saying, you know, this is really dangerous. The lady who works two jobs to keep herself above water also receives a \$35 bill because she is so concerned about her neighborhood that she chooses to write to the Liquor Commission. It's not fair, folks, it's just not fair. I live in what we call the "Hood." These people are lower, middle class or poor people. When they are assessed \$35 like that, you think that doesn't spread all over the "Hood"--well, don't testify, don't say anything because they'll bill you for \$35. It's almost like a scare tactic to make us stay away from protesting. That's all I have to say. I fully support Ms. Howard's bill. Thank you. [LB193]

SENATOR COASH: Thank you, Ms. Olson. Hold on one second, we're going to...we have a question for you. Senator Schumacher. [LB193]

SENATOR SCHUMACHER: Thank you, Senator Coash. Did the bill for the \$35 say what additional...did that letter cost the commission additional charges or, I mean, did they have to bring somebody in or pay mileage or did it say what it was for? [LB193]

SHARON OLSON: No, no. [LB193]

SENATOR SCHUMACHER: Okay. I have no further questions. [LB193]

SENATOR COASH: Thank you, Senator Schumacher. No further questions? Thanks, Ms. Olson. [LB193]

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SHARON OLSON: Thank you. [LB193]

SENATOR COASH: Come on up. Are there any other...anyone else to testify in support of LB193? Seeing none, we will go to opposition testimony on LB193, excuse me. [LB193]

JIM MOYLAN: Jim Moylan, M-o-y-l-a-n, 8424 West Center Road, I think from Omaha, after the testimony I'm not sure. This upsets the whole judicial system, you know. In the law business and I think the senator over here knows, the loser pays the bill. And right now, last year you raised the fee for an application to \$400 nonrefundable. So if an applicant pays the \$400, files his application, if he wins it and somebody objected to it, they ought to pay the fee because they lost. If he loses it, you know, then he's lost his application fee. And then if the commission turned him down then the commission generally accepts those. Now I might...maybe Hobie would want to, you know, take that apart. But this is really contrary to the judicial system as it is now. The loser pays. So if you want to come up and you want to contest a license, come on up. But make sure that if you do come up you know what the liability is if you do come in and testify against a license. So if there's any questions, I'd be happy to answer them. But I really think you ought to indefinitely postpone this bill. [LB193]

SENATOR COASH: All right. Thank you, Mr. Moylan. Any questions for Mr. Moylan? Senator Schumacher. [LB193]

SENATOR SCHUMACHER: Thank you, Senator Coash. In your experience before the Liquor Commission, Mr. Moylan, we heard testimony that somebody got sent a bill for \$35 because they sent a letter in. In those kind of cases, does the commission really have any additional cost to read that letter? [LB193]

JIM MOYLAN: I don't think so. But... [LB193]

SENATOR SCHUMACHER: So is that what we maybe should be looking at as to whether or not some of these costs of people who protest, whether or not anybody should be assessed those? [LB193]

JIM MOYLAN: Well, I think, they probably should not be, you know. But I'm not running the commission and...but that would be my idea. If it's just a letter, you know or somebody comes down and testifies against it, you know, and they grant the license anyhow, you know, I don't see that they even cause a hearing. But if they are the three people that signed the petition, you know, to object to the license under that one statute then I think they ought to pay. They're the ones that caused the hearing. So, you know, if they lose, if the license is granted, they lose, they ought to pay. [LB193]

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SENATOR SCHUMACHER: Well, almost certainly the winner shouldn't have to pay. [LB193]

JIM MOYLAN: No, the winner shouldn't have to pay, no. [LB193]

SENATOR SCHUMACHER: I don't have any further questions. [LB193]

SENATOR COASH: Thank you, Senator Schumacher. Any other questions for Mr. Moylan? Seeing none, we'll let you off. We'll take the next testifier in opposition to LB193. Welcome. [LB193]

SEAN KELLEY: Thank you. Good afternoon, Senator Coash, members of the committee. My name is Sean Kelley, S-e-a-n K-e-l-l-e-y, appearing today on behalf of the Responsible Beverage Operators of Nebraska in opposition to LB193. Our opposition lies with the simple basis of fairness in judicial and quasi-judicial hearings. The citizens want to be afforded the right to be an official party to the hearing, then they should be treated as such. All parties should take part in the process under the same rules and regulations and we see no reason why the applicant or licensee shall bear all of the costs all the time regardless of outcome. With that, I'd be happy to answer any questions you may have. [LB193]

SENATOR COASH: Thank you, Mr. Kelley. Senator Schumacher has a question. [LB193]

SENATOR SCHUMACHER: Thank you again, Senator Coash. But why should somebody who is there or just articulated a neighborhood concern and then basically oppose something, even if they turn out to be wrong, have to pay much or anything, particularly if it didn't cost the commission any money? [LB193]

SEAN KELLEY: Well, if you are outside the scope of a citizen protestor who is triggering the Liquor Control Commission hearing, then I don't know if you should be able to. But if you are a citizen that's triggering a full-blown quasi-judicial hearing in front of the Liquor Commission that takes hours, then I think you should have a little bit of skin in the game and not just file a protest just out of the thin blue air to harass an applicant or a licensee. [LB193]

SENATOR SCHUMACHER: I've never practiced before the Liquor Commission. Could you explain that procedure, what you mean by a full-blown protest. [LB193]

SEAN KELLEY: Sure. [LB193]

SENATOR SCHUMACHER: What is the difference between a citizen coming in and complaining and saying I don't think something should happen, I don't want it ruining my

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neighborhood, whatever opinion they have, and this full-blown hearing? [LB193]

SEAN KELLEY: Sure. And I believe the executive director will follow me and he may be able to explain it a little better. But three citizens in the municipality where the location is located, it takes three letters or contacts to trigger the full-blown hearing. So if you just wrote a letter in opposition, I don't know if you would fall under the guise of the citizen protest and become an official party of that. That's a distinction that I've argued back and forth with the commission and they generally rule against me on my theories. But so... [LB193]

SENATOR SCHUMACHER: (Laugh) I don't have any further questions. [LB193]

SENATOR COASH: Thank you, Senator Schumacher. Any other questions for Mr. Kelley? Thank you, Sean. [LB193]

SEAN KELLEY: Thank you. [LB193]

SENATOR COASH: Any other testifiers in opposition? Hi, Hobie. You're opposition, correct? [LB193]

HOBERT RUPE: Yeah. [LB193]

SENATOR COASH: Okay. [LB193]

HOBERT RUPE: (Exhibit 5) Well, I've been accused of doing the opposition in the neutral. So I figure if I'm going to be...how I'm going to be litigant to make it more fair. Once again, my name is Hobert Rupe, executive director of the Nebraska Liquor Control Commission. This bill, you know, the way...I'm in opposition to the way it's drafted right now. I believe there are ways you can fix it to address the concerns. But I sort of felt like the pinata back there, the commission is being made to be this bad man because we're enforcing the law. And I'll read the law that applies in this case. "Upon the final disposition of any proceeding, costs shall be paid by the party or parties against whom a final decision is rendered. Costs may be taxed or retaxed to local governing bodies as well as individuals." Only one rehearing, referred to in subsection (2) of this (inaudible). But then, "for the purpose of this section, a party of record shall mean the applicant, each individual protesting the issuance of such license pursuant to subdivision (1)(b) of Section 133, the local governing body, if it is entering an appearance to protest the issuance of the license or is requesting the hearing pursuant to subdivision (1)(c) of Section 133 and the commission." So what happens when three or more people send written protests to the commission, it's a jurisdictional issue and it triggers a hearing. Those people, anybody who sends a letter protesting it become a party to the proceedings. They're entitled to all of the rights and liabilities of a party at that point in time. In this case, I actually think the commission does a pretty good job on

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the deals. As Senator Schumacher might have realized, we're only charging now about \$28 for a hearing, that's including the hearing of a court reporter, she charges \$23 and then there's \$5 of administrative costs on top of that. The case you've got today, I handed out the order, was a case where, I believe, 23 Walgreens were protested. Some of those were also a...there was a sheet of...a request of opposition from the city of Omaha. And each of those is an individual hearing. I mean, we get charged \$23 for each individual case filed. Now we consolidated a lot of those for the hearing, but most lawyers may find out that I'm getting my hearing costs are only \$23 per hearing, they think it's a pretty good deal, out of the digital court reporting service. Now we send it to all of the...and they each don't have to pay that. How they divvy it up amongst themselves is how we do it. Perhaps we could be more clear in our orders. The other issue is, when there is a request for formal rules it says, "for any additional costs incurred by this request." Well, because we get appealed so often, we have a court reporter there for all of our hearings. There is no additional cost being incurred, the mere fact that formal rules are being implied or being asked for, I mean, even if the formal rules aren't and the losing party would still have to pay the...at that time \$23, now \$28. The easy way I think you could fix this is to look at who was actually a party. If you wish citizens to be able to come forward and state their opposition to a license and have it automatically set a hearing, I think you make it purely a jurisdictional issue. You say, if they receive it, a hearing shall be had and those protestors may appear in front of the commission at the time for the hearing and state their opposition. At that point in time, their involvement in the hearing would end. They would not be subject to cross-examination, they would not be subject to hearing costs, they would not have...but they would also lose appeal rights because then they are no longer a party. So I think what you've got to look at is you've got to either go in for penny, in for pound. If you want them to be a party and have the whole party rights, you need to have the costs associated with being a party. If you want them to be able to have protest rights and have a hearing and have their say, and yet, you know, make it just purely a jurisdictional issue at that point. That's how I would look at it. There's ways to fix the statute. But right now, like I said, I felt like the pinata back there, the commission is just following the statute. We are an entity of statutes, we follow the laws that are in front of us. In this case here we believe we've been applying this statute appropriately. As of now, the citizen protestants, if they don't get their...if the commission doesn't agree with them and they lose, because they're parties, they can appeal this to the district court, you know. So I guess, I would probably keep cities as a party for those issues. But if you're looking at allowing the citizens to have a protest right without having to pay for it, I think then what you need to do is look at what is their status when they file that report, that letter. I'd be happy to answer any questions. [LB193]

SENATOR COASH: Thank you, Hobie. Senator Schumacher. [LB193]

SENATOR SCHUMACHER: Thank you, Senator Coash. So if...I take it when a liquor license application comes up, it comes up on some agenda of the commission, then the

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commission either grants it or has some proceeding. If at that proceeding, which I assume is on an agenda of some kind, I show up and say, you know, this is just too close to my house and I don't want my kids to have to put up with drunks at night, am I...can I...is there a mechanism for me to do that? [LB193]

HOBERT RUPE: Well, if you filed the formal protest letter, right now you would be a party to it. [LB193]

SENATOR SCHUMACHER: But I don't want to do that because I don't want to get a charge here. [LB193]

HOBERT RUPE: Well, then you're really not a party because generally at a hearing in front of us there's going to be a reason why. Sometimes the city, and the city agrees because most times before they protest with us, they're also going to the city council and protesting before they're making a recommendation. And so oftentimes the city will call those people as a witness during their opposition to show why these citizens protested against it. So say you went to the city council and said, I don't want this bar because it's too close to my house. And the city of Columbus said, okay, we agree with you, we're going to recommend denial. Then the city attorney could call you as a witness and you would be able to testify in front of the commission through that way. At that point in time, the party would be the city because of their denial. [LB193]

SENATOR SCHUMACHER: What happens if I see it on the agenda, I don't do anything but show up in the room and wave my hand like this? Will I even get a chance to talk? [LB193]

HOBERT RUPE: Generally not. [LB193]

SENATOR SCHUMACHER: Okay. So you're suggesting basically that maybe at that point or some point I get my three minutes of talking time to say why I don't want the bar there. [LB193]

HOBERT RUPE: What I would recommend is look at the existing citizens' protest rights, where they have a time frame to file a written protest. Follow that, allow you to file it but then change your status. Keep the...make the filing of that report a jurisdictional issue that still mandates a hearing. If we get three or more of those, we must have a hearing. That's what the statute says now. Make sure we send notice to you so you're able to come and address that. But make it more of a jurisdictional issue instead of a party issue. I think that would probably address most of the concerns which came in front of you today because if they're not a party, yes, they lose some rights, but they're also losing the responsibility of having to pay for it if they lose. [LB193]

SENATOR SCHUMACHER: And so, basically, what I'm getting, if I get a bill, is the right

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to say, well, commission, you screwed up, I'm going to go to district court and have a district judge look at it. [LB193]

HOBERT RUPE: As a party, yes, they have the ability then. They are the nonprevailing party, and any nonprevailing party, under the Administrative Procedures Act, has the right to appeal the commission to the district court. [LB193]

SENATOR SCHUMACHER: And then I have standing to go to the Court of Appeals and I'm in the game... [LB193]

HOBERT RUPE: You're in the game. [LB193]

SENATOR SCHUMACHER: ...with attorneys and everything. [LB193]

HOBERT RUPE: Exactly. [LB193]

SENATOR SCHUMACHER: Okay. I have no further questions. [LB193]

SENATOR COASH: Thank you, Senator Schumacher. Any other questions for Hobie? Seeing none, thank you. We'll take our next testifier in opposition. [LB193]

KATHY SIEFKEN: Senator Coash, members of the committee, my name is Kathy Siefken, Kathy with a K, Siefken, S-i-e-f-k-e-n. I'm the executive director of the Nebraska Grocery Industry Association in opposition to LB193. I have problems with citizens having to pay to come in and voice their concerns. I think Hobie has probably come up with a solution to that. But this bill in its current form basically says the applicant would be held accountable for all costs regardless if they are in the right or if they're in the wrong. And as prior testifiers said, that sort of goes against current statute or current law or the law of the land. We would oppose it for that reason. But again, it just doesn't seem right that citizens should have to pay to have their voice heard. And so Hobie has always been willing to work with people to try to find solutions and to try to work things out. And I would encourage things to go down that road rather than passing legislation that will require all the applicants to bear...to be the sole...bear the sole burden of the costs of protest. If you have any questions, I'd be happy to try to answer them. [LB193]

SENATOR COASH: Thank you, Ms. Siefken. Any questions for Kathy? Seeing none, thank you. [LB193]

KATHY SIEFKEN: Thank you. [LB193]

SENATOR COASH: We'll take our next testifier in opposition. Seeing none, anyone here in a neutral capacity? Senator Howard. [LB193]

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SENATOR HOWARD: Thank you, Senator Coash and members of the General Affairs Committee. I want to thank you for hearing this bill today at no cost to me or my constituents. (Laughter) This is simply a matter of fairness. The Legislature has always had a strong tradition of allowing citizens to be heard, no matter what the issue. All of us have spent many hours each session listening to testimony at public hearings that often go into the evening. Citizens know they can be heard without any concern for having to cover costs of testifying at a hearing. As I stated earlier, there are two conflicting statutes. We should be very proud of our tradition. I believe that every citizen of this state should be granted the same ability to be heard by other government agencies without being charged for that right. Unfortunately, citizens of this state face the reality of having to pay hearing costs just to express their views on liquor licenses before the Liquor Control Commission. I believe very strongly that this practice goes against the open and transparent government that we in the Legislature expect. I want to comment on just a couple of things that were said. There was a statement made regarding they are officially a part of the hearing. That may or may not be true. They are not allowed, the citizens are not allowed to cross-examine without having an attorney. That would mean an additional cost. Not only do they give up their time at work, taking vacation, drive down here at their own expense, spend their day or however long they're there with the Liquor Control Commission, but they would have to hire an attorney, which you can all imagine what that's going to cost. I also want to let you know that the Liquor Control Commission has also sent me bills for going in with my constituents to support them on these liquor issues regarding additional liquor licenses in their neighborhoods. I've gotten bills anywhere from \$35 to \$500. Now you have to put some hard thinking into that and decide if that is the way that we want to conduct business down here. By passing LB193 we are sending a clear message that Nebraska state government is open to all our citizens. As I mentioned in my opening, this bill would not require liquor license applicants to pay anything that they've not already agreed to do when they request the Rules of Evidence. Thank you so much for this hearing today. [LB193]

SENATOR COASH: Thank you, Senator Howard. Well, we're just going to let you sit there. Oh, I'm sorry. We're going to have a question on LB193 before we move to LB194. Senator Bloomfield. [LB193]

SENATOR BLOOMFIELD: Thank you. Senator Howard, I may not be quite understanding everything I know about this. [LB193]

SENATOR HOWARD: No, I may not either, so don't feel too bad. [LB193]

SENATOR BLOOMFIELD: When we were watching an old western movie, we had the Women's Temperance League come march in beating on their drums saying we can't have any alcohol in town anywhere. [LB193]

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SENATOR HOWARD: (Laugh) I think we let that go in the thirties. [LB193]

SENATOR BLOOMFIELD: Yeah, I think we lost that one. But I see, if I'm understanding what I hear here, that the applicant has to pay any hearing fees whether he wins or loses. [LB193]

SENATOR HOWARD: That's the way I understand as well. [LB193]

SENATOR BLOOMFIELD: Are we not encouraging a new Women's Temperance League from anybody up and down the street come in and say, I don't want a liquor store here, it's not going to cost me anything if I go down there and spend three days of the court's time. [LB193]

SENATOR HOWARD: Well, you know, the Liquor Control Commission has been having hearings for a long, long time. And I'm sure Hobie could better address this than I could. But I don't...I've never heard of that happening. I think what we have here is a situation where people that live, especially in inner cities, such as inner city Omaha, don't want to have an additional liquor license butting up against their house. In one section of Omaha, in Gifford Park, you could stand on a corner, you could stand on 30th and California and you could look in every direction and see a liquor outlet. [LB193]

SENATOR BLOOMFIELD: I came down and fought one of these when I was like 23 or 24 and I happened to win it. I didn't get any additional fees. But I can see where people would be down all the time if they didn't have any skin in the game. [LB193]

SENATOR HOWARD: Well, they do, they live there. [LB193]

SENATOR COASH: Any further questions? [LB193]

SENATOR BLOOMFIELD: That will do for now, thank you. [LB193]

SENATOR COASH: Thank you, Senator Bloomfield. Senator Schumacher. [LB193]

SENATOR SCHUMACHER: Thank you, Senator Coash. You heard the suggestion maybe there should be a two-tier kind of appeal thing. You can come before the commission, you can tell your position but not take on any legal status as far as appeals and things like that. But that part of it possibly should be a free proceeding with nobody having to pay anything so that you can complain about that. Is that maybe somewhere that we should look at? [LB193]

SENATOR HOWARD: Well, often there is kind of a prehearing meeting of people to discuss the merits of the case, I suppose we'd call them that. But I would say to you someone that gives their time to come down to express their concerns, even if they are

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planning to get organized in the Temperance League, should have that opportunity, should have that opportunity. And we shouldn't be assessing a fee on them to do that. They can't cross-examine, they can't...they don't have standing...legal standing, they come down because they care. [LB193]

SENATOR SCHUMACHER: Right. But so as I understand it, right now these people who do engage the system fully, they are parties, they do have standing, they can...I'm kind of surprised that they can't cross-examine on their own, that there has to be an attorney in the middle. But, I mean, they made themselves parties. But if they just want to protest, is that where we can draw the line between a full-fledged litigant and somebody who wants to make the commission aware of their sentiments? [LB193]

SENATOR HOWARD: I would agree with you on that, except I think we have to be kind of careful not to take away any rights that they may have in terms of appeals. We'd have to look at that...you'd have to look at that very closely. [LB193]

SENATOR SCHUMACHER: I don't have any further questions. [LB193]

SENATOR COASH: Senator Larson. [LB193]

SENATOR LARSON: Yes, I kind of fall on Senator Schumacher's lines. You mentioned rights of appeals. Would we be setting a dangerous legal precedent to continue to give...to let them continue on the right...the appeal process without having...following the standards of a judicial or quasi-judicial, as many of the opposition testifiers said, without, you know, in our courts right now you have to have skin in the game to continue on the appeal process. I mean, would we be setting a dangerous legal precedent for the rest of the state? [LB193]

SENATOR HOWARD: I'm not sure I understand your question. [LB193]

SENATOR LARSON: In terms of if we're not charging them, if these people want to have the appeal process, in every other court case outside the Liquor Commission the loser pays, correct? [LB193]

SENATOR HOWARD: These are not people that...these are not the applicants. These are not the people coming in requesting the liquor license. These are people, for example, neighborhood people. [LB193]

SENATOR LARSON: I understand. But if they want to continue on the appeals process, in every other court case outside of the Liquor Commission, I'm saying, the loser always pays, but the loser has the rights to appeal. You're suggesting that the loser shouldn't have to pay, but they should still have the right to appeal. Is that setting a dangerous judicial precedent? [LB193]

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SENATOR HOWARD: I would say if we look at it in terms of they do not have the right to appeal, then we're removing some basic rights as citizens and I wouldn't subscribe to that. (See also Exhibit 15) [LB193]

SENATOR COASH: Okay. Thanks, Senator Larson. Well, Senator Howard, you get to stay right where you are. We're going to just move on to LB194. [LB193]

SENATOR HOWARD: All right, thank you. Let me trade paperwork and we'll be rolling again.

SENATOR COASH: We'll open the hearing on LB194, Senator Howard.

SENATOR HOWARD: (Exhibit 6) Thank you, Senator, not Karpisek, Senator Coash and members of the General Affairs Committee. I am Senator Gwen Howard and again, I represent District 9. I am here today to introduce LB194 which would eliminate the \$12,500 annual salary for the three appointed members of the Liquor Control Commission. The bill would also prohibit members of the commission from being eligible to receive health insurance and retirement benefits through the state. Over the past year, we have watched the budget shortfall balloon to well over \$900 million. The taxpayers of this state expect us to find efficiencies in government and the elimination of unnecessary costs. As stated in LR542, we have been handed the task, during this interim, of finding practical approaches to changing statutes as a way of reducing appropriations. I believe this bill offers a sensible way through statute to cut \$81,000 in salary and benefits that is spent each year on the three commission members. This amount would cover a considerable percentage of the 10 percent General Fund reduction recommended by this committee in the LR542 options. And as you may recall, a week or so ago there was a challenge made on the floor. If we didn't like the cut to municipalities, what are we going to do, what are our suggestions? So keep that in mind. This legislation is very simple in that it strikes the current language in the statutes that permits the salary of the Liquor Control Commission members to be set by the Governor at no more than \$12,500 per year, which some of you might recognize is higher than the salaries we receive as state senators. The bill also addresses a concern raised by State Auditor Foley in his "Attestation Review of the Nebraska Liquor Control Commission," dated June 23, 2009. The State Auditor raised concerns about members of the Liquor Control Commission being permitted to receive health and other insurance benefits through the state insurance program. This bill would specifically prohibit commission members from receiving this benefit. I am providing to members of the committee a copy of the State Auditor's "Attestation" report and a listing of over 100 state boards and commissions with their compensation and benefits. You will note, that no one serving on these boards receive state health insurance benefits. This is the only part-time board or commission that gets a salary, benefits, mileage, food and hotel expenses paid. I know this is a difficult issue for this committee to consider. But I believe

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the taxpayers of the state are demanding that we spend their tax dollars efficiently. And I do not believe that the members of the Liquor Control Commission are doing the work to justify the \$12,500 salary when compared to other boards and commissions that do similar work for no pay. A board that has a comparable workload is the State Board of Education. They receive no compensation and they are only reimbursed for actual expenses. The Liquor Control Commission only meets regularly scheduled meetings two days a month, ten months out of the year. According to the State Auditor, the commission members only work approximately five days per month on commission business. Even when there are contentious issues before the commission, it is common practice for the commission to hold a committee hearing before a hearing officer without the commissioners even being present. Last year, Walgreens had over 20 proposed licenses that were opposed by the city of Omaha before the commission. The hearings took place before a hearing officer for an entire day. None of the commissioners were present for any part of the hearing. The hearing officer made a recommendation to the commission to vote on at the next regularly scheduled meeting. I have been informed this is not the first time that this process has been used by the commission. I know the argument is going to be made: but if the salary is eliminated we won't be able to get qualified people to serve in these positions. Frankly, I don't buy that. We have no shortage of citizens willing to serve their state on other boards and commissions that pay no salary. I know there are many Nebraska citizens out there willing to give back to their state. As most of you know, LR542 report listing possible budget cuts included recommendations to cut or eliminate per diems and other expenses from any state boards and commissions. The Education Committee, which I am Vice Chair of, just advanced LB332, which will eliminate the per diem for the Educational Lands and Funds Board. I'm sure there will be additional boards that will have their per diems cut as we move forward. Although my bill does not specifically address the reimbursement costs incurred by the Liquor Control Commission members, I do believe it would be prudent for this committee to also look at these as possible...as a possible area to cut costs. I bring to your attention regular \$250 hotel bills for commission members and travel expenses in the thousands of dollars to attend conferences. I do not think it is unreasonable to expect a commissioner to pay for the expense of a hotel room out of their own pocket if they choose not to commute home. When we are cutting all areas of state government to the bone, it's impossible to justify this kind of expenditures to the taxpayer. We are living through unprecedented times. The budget cuts facing this Legislature are monumental and will undoubtedly affect the lives of many people. The Governor's budget proposal eliminates one full-time employee from the Liquor Control Commission, cutting out \$39,000. I believe my bill is a sensible way to reduce state expenditures while preserving this much needed full-time employee. Why should we put people out of work when we can look at another method to eliminate cost? I cannot justify to the teachers in my district who have been laid off because of budget cuts that we somehow have to continue paying Liquor Control Commission members a salary for a couple of days of work a month. We all know that the staff at...the Liquor Control Commission is understaffed. This bill offers the Legislature an alternative that cuts

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unnecessary spending while preserving the full-time employee that would most certainly lose their job. I ask for your favorable consideration of this proposal. Thank you. [LB194]

SENATOR COASH: Thank you, Senator Howard. Any questions for Senator Howard? Senator Schumacher. [LB194]

SENATOR SCHUMACHER: Thank you, Senator Coash. Senator Howard, one thing you mentioned about convention bills and motel bills and things of that nature in addition to the salary. Who are, and I'm not familiar with how the approval system works. Who says, okay, Commissioner X, there's a nice convention in Las Vegas you should go attend and we'll pay for it? [LB194]

SENATOR HOWARD: That's a good question. But I would save that for the Liquor Control representative, Hobie. [LB194]

SENATOR SCHUMACHER: Okay. I have no further questions. [LB194]

SENATOR COASH: Thank you, Senator Schumacher. Any other questions? [LB194]

SENATOR HOWARD: Do you think I could get a glass of water? [LB194]

SENATOR COASH: Yeah, we'll get you one, right there. [LB194]

SENATOR HOWARD: Thanks. [LB194]

SENATOR COASH: Thank you, Senator Howard. Okay. We're going to start with the proponents of LB194. Welcome. [LB194]

MARGIE MAGNUSON: (Exhibit 7) Hi. Margie Magnuson, M-a-r-g-i-e M-a-g-n-u-s-o-n. Mr. Chairman and members of the General Affairs Committee, I'm here in support of LB194 that is proposing eliminating the salary of the Liquor Control commissioners. For several years I have had personal experience appearing at the hearings before the Liquor Control Commission and have participated in several pretrial conferences associated with those hearings. In every experience it has been the hearing officer, Mr. Rupe, who has presided over the hearings and ruled on the legal questions. At the pretrial conferences I've been involved in, none of the commissioners were ever present and Mr. Rupe had acted as the judge in deciding what evidence would be admitted and how the hearing would proceed. It has always been my impression that the commissioners served as the jury in these hearings and that Mr. Rupe is the judge because it is Mr. Rupe who is ruling on all the legal issues, and the commissioners rarely ask questions or make comments during the hearing. When I looked at the state statute for the qualifications of this commission there does not seem to be any requirements for the commissioners to have any legal background or to even have any

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knowledge of the liquor business. In fact, the only qualifications seem to refer to a commissioner's political affiliation and that no two commissioners can be from the same Congressional district. These are not highly specialized positions. And in fact, given the stated qualifications, I'm sure the Governor could find several individuals who would serve on this commission without a salary. Given these tough economic times when the state is looking to cut funding to our schools and to our cities, I think this proposed cut of salaries and insurance benefits seems like a better choice to trim down our state budget. I ask that you please carefully consider this bill as another way that our state can trim some of the excess fat off of our budget. Thank you. [LB194]

SENATOR COASH: Thank you, Ms. Magnuson. Any questions? Seeing none, thanks for coming. [LB194]

MARGIE MAGNUSON: Thank you. [LB194]

SENATOR COASH: Any other testifiers in support of LB194? Okay. Seeing none, we're going to go to opposition testimony of LB194. Anyone here in opposition? Come on up, Mr. Rupe. [LB194]

HOBERT RUPE: (Exhibit 8) Thank you, Senator Coash, members of the General Affairs Committee. Once again, my name is Hobert Rupe. I'm the executive director of the Nebraska Liquor Control Commission. H-o-b-e-r-t R-u-p-e. The commission has asked me to come forward and oppose this issue. And to begin with, I think, I'm going to sort of try to clear a couple of issues up. One of the issues, the issue regarding whether the commissioners are eligible to hold...to get insurance benefits was, as Senator Howard correctly stated, raised in the Auditor's report. The Auditor requested...recommendation was that the commission address a legal...have an Attorney General's Opinion regarding the matter. In the past, the commission has always...you know, they are gubernatorial appointees and they've been compensated as such as directed by the Governor who appoints them to the position. We did ask for that Attorney General's Opinion. A copy of that Attorney General's Opinion is now in front of you. The main issue in that wasn't the fact whether they would be considered employees. It's clear, based upon that analysis, they are considered employees of the state. Rather, the issue is whether they meet the requirement of working at least 20 hours, at least halftime to be qualified for benefits, as also can be seen in both the "Attestation" report from Auditor Foley and the report from the Attorney General, an open, factual question was: how many hours per week do the commissioners spend on Liquor Commission-related duties? Once I received that Attorney General's report in December, our next regularly scheduled meeting was this past January, I discussed it with the three commissioners. I said, well, you need to now start documenting your time and we're going to bring a time, you know, look at it in a couple three-month periods to see if they were actually meeting the requirements. And if not, their status as to whether they receive benefits will probably change if they can't bring forward justification as to the time. The key thing is,

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as you're well aware, senators, they're getting...calls from constituents a lot of times that I'm totally oblivious to and unaware of. The statute says that one commissioner from each Congressional district shall be appointed; no more than two shall be from the same political party. So they're receiving petition calls that I'm unaware of. I'm not sure how much time they're spending on their actions. I informed the auditor, who was asking me, I said, well, here's how much I deal with them, but you might need to talk to the individual commissioners. The auditor declined that and decided not to do that, which led up to the open fact question, which we're now trying to address in accordance with the Attorney General's Opinion. Looking back at the \$12,500 salary, I'll be the first to say that I believe that you are woefully underpaid as well, given the amount of work that you do and I believe that you should be being paid more than you are. But, I guess, in that area, I guess, I'll try to look historically as to why are the commissioners paid? All right. First, you have to look at...we'll do the way-way back machine again and go back to about 1932. At that point in time, it's obvious to most people that the great experiment of Prohibition has failed. But the question is, if we repeal the Eighteenth Amendment, what are we going to replace it with? So at that time you had an ardent prohibitionist named John Rockefeller, III who was of the opinion that although it was a grand idea, it, in actuality, we weren't far enough advanced to accomplish prohibition and that we should look to a mechanism to replace it if it were repealed. In doing so, he commissioned a report, which is called Toward Liquor Control, it's by...the authors are Fosdick and Scott, in that he applied a lawyer and an engineer, there was the lawyer for the legal side and the engineer for the systems analysis, and they went worldwide, he paid for it, remember, his last name was Rockefeller, to have them go worldwide and come up with an idea. And they offered a book called Toward Liquor Control. It came out in 1933. It sort of served as the blueprint that most every state utilized in constructing its own liquor control act once the Twenty-First Amendment was passed and where the power was given to the states to regulate the individual alcohol within their state. I'm going to give you a couple of quotes, and this is under...I would have tried to bring more. It's a little hard to read, only because I'm the immediate past-president of the National Conference of Liquor Administrators do I even still have their copy, which I need to return. My library card is about to expire. It is a very highly sought-after tome. Some of it is available on-line, if you're looking for it. In their setting now for doing regulation by license, which Nebraska is a licensing state, the outstanding prerequisite of a licensing system is the creation of a single state licensing board with statewide authority and responsibility, appointed by the Governor and working through a well-paid full-time managing director. That would be me. I'm not sure about the well-paid, but that's who they're speaking about there. The administrative personnel of the board should be appointed on a merit basis, free from politics and with a permanent tenure the board should have the appropriate commensurate...appropriation commensurate with the responsibilities. So remember that part when you're looking at our budget later on, if you wouldn't mind. (Laugh) The second is, the intelligence, character and integrity of the members of this board are considerations of first importance. Unless these qualities are conspicuously present, the licensing system will

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be defeated before it starts. The members should be given long terms of office and should be eligible for reappointment. Currently, our commissioners are appointed to six-year terms. They can only be removed for malfeasance in office and they are eligible to be reappointed. Their security of tenure will help to make them independent of political pressure. Salaries should be substantial to attract the best brains obtainable. Well, at \$12,500, although it might not look like a large salary now, the last time it was raised it was still considered a relatively large salary. The purpose of that was, if you remember, one of the reasons why Prohibition had failed was the unchecked graft and corruption which had risen during the Prohibition time. Remember, the mob became powerful during Prohibition. They also had bought many judges, lawyers, other people. And they were worried that if you did not have good character and intelligent people independent of those type of pressures, you might see a reversion back to those problems. And as part of that, if you look at the commissioner's and employee's qualifications, the interesting part is, of course, you know the commissioners, executive director or employee can't be a felon, they can't pay a penalty in settlement of prosecution, can't forfeit a bond. And no commissioner or employee of the commission may directly or indirectly, individually as a member of a partnership, as a member of a limited liability company or as a shareholder of a corporation have any interest whatsoever in the manufacture, sale or distribution of alcoholic liquor, receive any compensation or profit from such manufacture, sale or distribution or have any interest whatsoever in the purchases or sale made by the persons authorized by the act to sell alcoholic liquor. Because it's so broad, they specifically didn't say, this section shall not permit any commissioner, the executive director or employee there from...from actually owning alcohol for their own personal use. (Laugh) That's the next stage of that. So there are restrictions upon there. There's also restrictions on gifts or gratuities for violations. A commissioner, the executive director of the commission or any person appointed or employed by the commission shall not solicit or accept any gift, gratuity, emolument or employment for any person subject to the Nebraska Liquor Control Act or from any officer, agent or employee thereof, or solicit, request or recommend directly or indirectly to any such person or any officer, aide or employee thereof the appointment of any person in any place or position, and it goes on. So there are large restrictions placed upon the commissioners. Are they full-time employees? No. Are they employees? Yes. Currently, they're being paid \$12,500 a year. They're being asked to make a lot of hard decisions. Do I do a lot of the heavy lifting on the administrative part for them? Sure. I'm a lawyer. I serve as the hearing officer, as the administrative law judge at the hearings. But the final determination whether someone gets a license, whether someone's license is suspended, cancelled or revoked or cancelled is by the three commissioners. Occasionally, they will utilize my services as a hearing officer. Mostly, for the most part those are the relatively more boring ones, like someone failed to timely renew. There was the case recently, which Senator Howard alluded to, the case of the Walgreens appeals. The problem was we'd never had that situation happen where 23 license applications at one time were receiving a public protest. And the question was, how was the most efficient way to take care of that without taking up all

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the time for the normal hearings? The commissioners decided that, based upon another part of the act, they appointed me as the hearing officer to make a recommendation and I did so. That is actually not the standard. That is actually a rare occurrence. Most of the hearings are in front of the commissioners, the three commissioners hear all the evidence and they make the final decision as to whether a license shall be approved, denied or cancelled. So given that sort of history lesson, and I'm sorry I bored you, I am so much of a policy wonk. I'd be happy to answer any specific questions. [LB194]

SENATOR COASH: Thank you, Mr. Rupe. Senator Schumacher. [LB194]

SENATOR SCHUMACHER: Thank you, Senator Coash. I'll ask you, I think, the question that I asked Senator Howard. Apparently, we've got three components to the money flowing to the commissioners--the wages, mileage and hotel bills to and from these meetings... [LB194]

HOBERT RUPE: Yes. [LB194]

SENATOR SCHUMACHER: ...and also some type of convention expense. As to the...whether or not mileage or hotel bills are appropriate by somebody who maybe lives 30 miles from here, the state will pick up that bill or whether or not they can go to a Liquor Control convention in Las Vegas or someplace, who makes that determination? [LB194]

HOBERT RUPE: Well, I make the final determination, but that's within the guidance of statutes. The statutes are there, but then we also utilize the rules for...the same rules that apply to employees under the contract, we apply those to the commissioners as well. As I stated, we have commissioners from all three Congressional districts. The one who is based here in Lincoln gets no mileage, he gets no meals, no anything. He lives here, he takes care of it. The other two are from the 2nd Congressional District in Omaha and now the other one is from Kearney. Actually, we've been saving a little bit of money in that respect. The third district, the predecessor to the 3rd district commissioner was in Scottsbluff and the mileage was getting even more so from that. We do that in accordance with the policies and procedures of the...I figure if it's good for the employees, it should be good for the commissioners and so we look at that. In the interest of whether they are going to a convention out of state, generally, we'll send...one commissioner will go if they wish to. I generally go. As I said, I was...luckily enough, over the last couple of years we've been able to defray most of our costs because of my position on the board. The commission...the committee was picking up the National Conference of State Liquor Administrators. I thought it was important to have the commissioners there. This is a meeting, generally you have close to 40 different jurisdictions there who are liquor, both licensing and control states, it's issues which are germane to the, you know, how liquor laws are looked at, the best procedures to look at those and the new case laws. I think they are very, very valuable and so we've

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been trying to utilize our budget as smart as we can to have a commissioner go there, if we can. Like I said, we've been able to utilize those funds because we're able to defray mine through my original position as president of the conference. [LB194]

SENATOR SCHUMACHER: Where was that convention at? [LB194]

HOBERT RUPE: New Orleans. [LB194]

SENATOR SCHUMACHER: New Orleans. I don't have any further questions. [LB194]

SENATOR COASH: Thank you, Senator Schumacher. Senator Larson. [LB194]

SENATOR LARSON: Thank you, Hobie. I was looking through the budget that was passed out to us of expenditures over \$100 through October of 2010, I think, is how far it goes. Just a few questions. How many days do the hearings in Lincoln usually go? [LB194]

HOBERT RUPE: Two full days. [LB194]

SENATOR LARSON: Two full days? [LB194]

HOBERT RUPE: Yeah. We jam it, usually we're going from 9:00 until 5:00 or possibly later sometimes. [LB194]

SENATOR LARSON: Okay. As Senator Schumacher alluded to, obviously I understand where...the 3rd District person has to drive a little farther. And you say that the Lincoln one takes care of his own expenses. But I'd almost...in my own opinion, in my own humble opinion, I'd say Omaha is pretty close to...close enough to commute, and yet Commissioner Batt spent \$1,827 in hotel expenses through the first two months of the year. I was a little disappointed in that. To bring that together, the three commissioners together make \$37,500, correct? [LB194]

HOBERT RUPE: Correct, they make \$12,500 each. [LB194]

SENATOR LARSON: And looking at your guys' upcoming budget, the next year, it's been recommended that you're going to have to cut one salaried position? [LB194]

HOBERT RUPE: That is correct, that's what is recommended. [LB194]

SENATOR LARSON: And the average salary in the commission is roughly? [LB194]

HOBERT RUPE: It depends on what you're looking at. The position that is being recommended to be cut right now would represent a Staff II position, which would be, in

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this case, one of our licensing specialists, one of our people who would process a license. [LB194]

SENATOR LARSON: And their average salary, rough? [LB194]

HOBERT RUPE: Oh, they vary, depending on, I think they're probably lower thirties probably. [LB194]

SENATOR LARSON: Lower thirties. And, I guess, my question is, is it worth cutting a staff member to make sure the commissioners get paid? [LB194]

HOBERT RUPE: You're asking me a question I'm (laugh) not really sure I'm able to answer at this point in time. [LB194]

SENATOR LARSON: Because, I mean, you say it's lower thirties, the commissioners get \$37,500. You're the director of the commission. I mean, that's my question, are you willing to lose a staff member to... [LB194]

HOBERT RUPE: Well, you know, now you're putting me between (inaudible) on that one. For the first thing, I will let you know, I will be...the benefit of being what's called a noncode agency, next week, in front of the Appropriations Committee, when I'm asked the question, do you agree with the proposed cuts? I'm actually able to say no and here's why. [LB194]

SENATOR LARSON: I understand. [LB194]

HOBERT RUPE: So, hopefully, we're not going to be cut on that one. You know, I believe the Legislature has the right to do what they want to do in this instance. I tried to give you the historical perspective of why they've been paid and why they're paid at this point. [LB194]

SENATOR LARSON: And I appreciate it. I'm just drawing the conclusion that you spend \$37,000, you're losing...and obviously a lot of other commissions don't pay their members. And obviously I had concerns going through the budget. I mean, Omaha isn't that far. I know a lot of senators commute back and forth to Omaha... [LB194]

HOBERT RUPE: Yes. [LB194]

SENATOR LARSON: ...every day, not two days a month. [LB194]

HOBERT RUPE: But don't you get per diem, too, for the mileage. [LB194]

SENATOR LARSON: If you live farther than, what is it, 50 miles. [LB194]

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HOBERT RUPE: Fifty miles, yeah. [LB194]

SENATOR LARSON: So and a lot of senators don't live within that,... [LB194]

HOBERT RUPE: Yeah, some don't, I know. [LB194]

SENATOR LARSON: ...don't live within that 50 miles. And so, I mean, that can be debated. [LB194]

HOBERT RUPE: Yeah. Remember, I said earlier on, I said I thought you guys were woefully underpaid anyway. [LB194]

SENATOR LARSON: I understand, I understand. I'm just trying to make the argument. [LB194]

HOBERT RUPE: You're putting me in a no-win position at that point. You know, I mean, would I, personally, rather have one or the other? Perhaps, but I'm asked to... [LB194]

SENATOR LARSON: I appreciate that, I appreciate that. And I was just looking at the budget. You know, \$1,800 over ten months for somebody that lives in Omaha to spend the night in Lincoln is a lot of money for this. I mean, when you're looking at a \$1 billion shortfall, I guess, it's a drop in the bucket, but every little bit helps. [LB194]

SENATOR COASH: Thank you, Senator Larson. Senator Bloomfield. [LB194]

SENATOR BLOOMFIELD: Mr. Rupe, are you still beating your wife? (Laughter) [LB194]

HOBERT RUPE: The other question you never can answer. Some of you know my wife and would realize I wouldn't be sitting here, I wouldn't even contemplate that. (Laugh) [LB194]

SENATOR COASH: Senator Schumacher. [LB194]

SENATOR SCHUMACHER: One follow-up question. Thank you, Senator Coash. Did the commissioners know about this hearing today? [LB194]

HOBERT RUPE: Yes, they did. [LB194]

SENATOR SCHUMACHER: Did they elect not to appear? [LB194]

HOBERT RUPE: I know that the one, Senator, that wished to appear is out of state on his other job, traveling currently. For the most part, I believe, that one of the other duties

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as assigned to the executive director is to represent the commission in front of the Legislature. I'm sure that if you wished to or had any question, they'd be happy to answer any of your questions regardless of that. But, you know, I try. They thought that I was the policy wonk and could put forth the historical perspective of why they were paid at all, which I did. [LB194]

SENATOR SCHUMACHER: Thank you. I don't have any further questions. [LB194]

SENATOR COASH: Thank you, Senator Schumacher. Seeing no further questions, we'll let you off. Stick around. Any other testimony in opposition of LB194? Seeing none, Senator Howard, you're welcome to close. [LB194]

SENATOR HOWARD: Interesting, very interesting. Thank you, Senator Coash and members of the General Affairs Committee. I appreciate your being so diligent and listening in this hearing. As we all know, we're going to have to make some pretty significant and painful budget cuts this session. I want to make sure that the cuts we make are the wisest. Senator Larson, you pointed out, and I appreciate your comments, and I just want to add to that, but not to name names, but one individual on the commission lives 40 miles and frequently stays overnight. You might want to check the dates, frequently stays overnight, especially on nights before the Nebraska game. The Liquor Control Commission simply cannot afford to continue doing business as usual, which is why I brought this bill before you. Frankly, this bill is one of the easier cuts that we can make to address the budget shortfall. It will cause no one to be laid off, be furloughed or have their services cut or reduced. I do not accept the argument that we will not be able to get qualified people to serve on the commission without this salary. I know there are many Nebraskans who are willing and able to give back to their state out of a desire to serve, not financial gain. I believe the Liquor Control Commission will continue to perform its duties without this salary, which is higher than many individuals, including what Nebraska state senators earn, woeful that our salary may be. I want to continue to make it clear that I'm not singling out the Liquor Control Commission as a source of budget savings. I believe that the Legislature needs to look at all the expenses of the many boards and commissions that we have in state government. I have cosponsored other legislation to address per diem expenses for boards like Educational Lands and Funds. What makes the Liquor Control Commission stand out is the \$12,500 salary plus health benefits that the other boards and commissions simply do not get. Again, thank you so much for your time and consideration. [LB194]

SENATOR COASH: Thank you, Senator Howard. Any final questions? Seeing none, you're excused for the day. [LB194]

SENATOR HOWARD: All right. Thank you. And I appreciated the reflection on Boardwalk Empire here, too. Thank you. [LB194]

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SENATOR COASH: All right. We're going to go to LB286 at this point. So, Rod from Senator Krist's office is here to introduce LB286. Welcome, Rod. And we will do LB60 following LB286. [LB194]

RODNEY KROGH: Thank you, Senator Coash, members of the General Affairs Committee. For the record, my name is Rodney Krogh, R-o-d-n-e-y, last name Krogh K-r-o-g-h. I serve as the legislative aide for State Senator Bob Krist, who represents the 10th Legislative District in northwest Omaha. Senator Krist regrets that he's unable to appear here today as he is introducing LB52 in the Transportation Committee at this time. [LB286]

SENATOR COASH: Look at that. (Laughter) [LB286]

SENATOR KRIST: As he walks in. [LB286]

RODNEY KROGH: And he is here. [LB286]

SENATOR COASH: He was just about ready to close. (Laughter) [LB286]

SENATOR KRIST: Was he? Well, then maybe I should leave you. [LB286]

SENATOR COASH: We're on LB286, Senator Krist. [LB286]

SENATOR KRIST: Okay. Sorry for the confusion, but you can imagine how the Transportation Committee is going. I think they're halfway through. So I will be leaving again. Appear before you today in introduction and support of LB286. I introduced LB286 on behalf of the Nebraska Winery and Grape Growers Association in an effort to continue one of the most effective economic development investments the state of Nebraska has made. Presently, funds from the sale of our state direct shipping licenses, issued by the state Liquor Control Commission, go to the Winery and Grape Producers Promotional Fund. Under present statute, this is set to sunset April 30 of 2012. I will say at this point that I was adamant, as a brand new member of this legislative body a few years ago, to identify those bills and laws that are sunseting. And the Clerk now has a notification process that's in place. And I think it's important for us to watch those things that are sunseting. In this particular case, they let us know because it's important to them. The modest annual investment has returned great dividends to our state. UNL Bureau of Business Research has stated some very impressive statistics about the Nebraska grape and wine industry, including the following: estimated 2008 economic impact of the industry on Nebraska was \$12.8 million. This breaks down in to \$7.3 million in winemaking and grape growing sales, \$2.3 million in winery and vineyard investments, and \$2.3 million in tourism. Sales of Nebraska wines grew sixfold from 2000 to 2008. It is estimated that over 155,000 people visited Nebraska wineries and tasting rooms in 2008. Much of this success is based on the investment our state has

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made by funneling shipping fees paid by out-of-state wineries to the Nebraska wine and grape industry. This has provided a much needed boost in the industry's growth efforts. In 2010, this amounted to approximately \$133,000. The use of these funds is closely supervised by the Nebraska Department of Agriculture. As introduced, the sunset date is totally eliminated. I recognize that the committee may prefer to extend the sunset date rather than eliminate it, and I'm open to discussion to determine an appropriate time in the future. Testifiers following me will share more information about this dynamic industry and may be more able to answer detailed questions. But I'll certainly attempt to answer any questions you may have at this point. Thank you for entertaining my two-part introduction. [LB286]

SENATOR COASH: Thank you, Senator Krist. Any questions? Okay, we're going to take the proponents of LB286. I'll turn it back over to the Chair. [LB286]

SENATOR KARPISEK: All right. Thank you, Senator Coash. I'm sure you did a magnificent job. Mr. Ballard, how are you? [LB286]

JIM BALLARD: I'm doing well, thank you. [LB286]

SENATOR KARPISEK: Good, welcome to the committee. Anytime you're ready. [LB286]

JIM BALLARD: You bet. Chairman Karpisek, senators, my name is Jim Ballard, B-a-l-l-a-r-d, and I'm with James Arthur Vineyards in Raymond, Nebraska, also representing the Nebraska grape and wine industry today. I am here in support of LB286. I would encourage you all to look at this bill as a continuing investment. At James Arthur Vineyards we just celebrated our 13th year this past fall. We're actually the second winery to open in the state. So suffice it to say, we've really had the privilege of watching this industry grow and take off and add new wineries and new growers over those years, which now stands at 25 wineries as well as a number of tasting rooms and over 400 acres of vineyards across Nebraska. And throughout all of this I can honestly say the funds generated from these S1 licenses have had an incredible impact on our industry, an impact that has not only paid dividends within our industry but also for the state as a whole. That is why I refer to this bill as an investment, a continuing investment. The Nebraska wine and grape industry creates employment entering opportunities and also contributes to the economy of Nebraska by promoting tourism and also to the quality of life for the existing residents. And again, as Senator Krist said, based on an economic impact study, actually a two-part study that was conducted over the last few years, the Nebraska grape and wine industry has had a significant effect on the economy of the state with over \$12.8 million in economic impact from this industry. The report also states these substantial impacts will only grow in future years. The Nebraska wine and grape industry is on a long-term path of rapid growth. Again, 155,000 visitors to our wineries, and that was actually from an '08 study. Over the last

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couple of years, I'm sure that has grown significantly as well. I know that through research projects and marketing efforts created by the dollars generated through these funds, through those taxes paid by out-of-state or those licensing fees paid by out-of-state wineries to the Nebraska wine and grape industry has provided a much needed boost to the industry's efforts, which in turn has provided dividends to the state. By taking away those monies or not increasing the sunset clause, I believe it would seriously hamper and even eliminate the industry's ability to continue programs that have returned many times over to the state's economy. I would also like to point out that we haven't solicited these fees without taking some of that responsibility of generating revenue within our own industry. We have actually a self-imposed tax on wineries, \$20 for every 160 gallons that the wineries produce, finished product. We also have a penny per pound of grapes harvested that's paid by the Nebraska grape growers in this state. We also have, of course, membership fees that we pay to our state association. Together, all those generate roughly about \$35,000 a year. And we have also parlayed some of those funds into some grant opportunities that have benefited the industry as well. As was stated earlier, 2010, the total budget for the Nebraska Wine and Grape Board was about \$162,000, with \$133,000 of that coming from these licensing fees. You take away those fees and basically the industry loses about three-quarters of the budget, again, most likely resulting in the loss of research and programs that have contributed directly to the economic impact that grapes and wine have had on the state of Nebraska. So I guess, in closing, you know, I understand the seriousness that the state has, that it faces with the budget situation. But taking away these fees from the grape and wine industry or not, again, extending that sunset clause will seriously inhibit our industry from generating basically millions in economic growth, which is why I say once more, please don't view this as being monies lost to the General Fund, rather as an investment returning back many times over to the state's economy and well-being. Having said that, thank you very much. And I'd be more than happy to answer any questions. [LB286]

SENATOR KARPISEK: Thank you, Mr. Ballard. Any questions? Senator Coash. [LB286]

SENATOR COASH: Thank you. Thank you, Mr. Ballard. Can you, just for the record and the committee's benefit, can you give us an example that sticks out in your mind of a promotional initiative that these funds have helped. [LB286]

JIM BALLARD: Sure. And there's going to be others following me with even more details. But one that really sticks out in my mind is we have what's called a passport program that basically it's a passport that folks can get and then they try to visit as many wineries across the state throughout a given time period. And every time they hit one of those wineries they get a stamp, and if you hit so many wineries you get...you're eligible for gifts and, you know, other gift certificates that actually...you're eligible for gift certificates called Wine Bucks that you can actually take back to those wineries and

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spend. So all the marketing efforts, the printing of the brochures, a lot of those things were funded by some of these monies that came in. Now if we lose these is that going to be a program that we eliminate? I don't know, it's just a matter of then we have to reshuffle and find out what our priorities are in terms of that. So you know, there's research dollars that have been given to the university that have been a direct result of these monies. You know, some of the organization of our industry has really benefited from these monies. So it's a matter of us then realigning how we do that if we lose these monies or for wineries or many of us to step up and say, okay, now we're going to. But if we do that, that cost just goes down to the consumer. Some of the wineries probably won't be able to afford doing that as well. You know, not all of us generate thousands of gallons of wine. So a lot of that marketing effort is really beneficial to some of those in rural areas that can take advantage of some of these marketing initiatives. [LB286]

SENATOR COASH: Thanks, Jim. [LB286]

SENATOR KARPISEK: Thank you, Senator Coash. Senator Schumacher. [LB286]

SENATOR SCHUMACHER: Thank you, Senator Karpisek. This indicates about \$132,000 is what is produced in a year by this fund? [LB286]

JIM BALLARD: Last year, and that can vary from year to year, depending upon the licenses that are purchased from out-of-state shippers. [LB286]

SENATOR SCHUMACHER: So basically, we're talking about 260 out-of-state shippers are the ones throwing into this fund. [LB286]

JIM BALLARD: You know, Hobie could probably answer that better. I'm not sure exactly how many. And I know that a lot of wineries from out state Nebraska have shipping agents, so a number of wineries could come together and hire a shipping agent to do that. But I'm not sure of exact numbers. [LB286]

SENATOR SCHUMACHER: Because of this assessment on shipping into the state, have you guys experienced any retaliatory moves by other states in making you pay a fee to sell over the Internet to them? [LB286]

JIM BALLARD: No. And to give you a little history, when this first came down, it was the \$500 shipping fee. And we actually, as an industry, fought that. And you would think that's kind of strange because they're trying to, you know, charge out-of-state wineries from shipping in. But in this industry we're really looking at some reciprocal options out there. When that \$500, which is one of the largest in the country, came about there were a lot of other states that were, like, well, if we have to pay to get in and you guys don't have to pay that much, and a lot of things have changed since then of course, it's been kind of interesting. So we really haven't had any negative fallout within our

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industry. You know, wineries across the country work together as much as we can because we're trying to promote product across the board. We just love it when people drink wine, whether it's from California, New York, Nebraska, eventually we'll all get a piece of that pie. [LB286]

SENATOR SCHUMACHER: Any idea of how much of the wine that is made in Nebraska is consumed here and how much is shipped to other states? [LB286]

JIM BALLARD: Oh my goodness, I can just give you, for example, at our winery, consumed in Nebraska is probably about 98 percent, 99 percent, very small percentage that we actually ship. Part of that is due to we don't ship to every state. Some of it is prohibited, some, there are licensing fees that we can't justify paying to send to certain states. So I would say about 98 percent, maybe even a little higher, of everything that we sell is consumed...I shouldn't say...is purchased in Nebraska. Now there may be, you know, as it was said here, there are a lot of tourists and a lot of people from out of state that go through our wineries that are purchasing wine. So they're actually purchasing it in Nebraska, taking it with them as they go out, outside of the state. [LB286]

SENATOR SCHUMACHER: Thank you. I don't have any further questions. [LB286]

SENATOR KARPISEK: Thank you, Senator Schumacher. Mr. Ballard, so the \$20 per 160 gallons... [LB286]

JIM BALLARD: Finished gallons, yes. [LB286]

SENATOR KARPISEK: ...and all of that, does that go into this same fund then? [LB286]

JIM BALLARD: Correct, it goes into the Grape and Wine Board Fund. [LB286]

SENATOR KARPISEK: Okay. So it's the same money... [LB286]

JIM BALLARD: Correct. [LB286]

SENATOR KARPISEK: ...going in the same place. And so you're putting some of your own money into this, too, to help out. [LB286]

JIM BALLARD: Correct. [LB286]

SENATOR KARPISEK: Any further questions? Seeing none, thank you. [LB286]

JIM BALLARD: Thank you. [LB286]

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SENATOR KARPISEK: Next proponent. Welcome. [LB286]

TOM ZUMPF: Thank you. My name is Tom Zumpf, Z-u-m-p-f-e, and I'm the president of the Nebraska Winery and Grape Growers Association. And thank you, Senator Karpisek and senators, for hearing us today. I'm president of the Nebraska Winery and Grape Growers Association for the years 2010 to 2011 and I'm here to speak in support of LB286. Specifically, what I'd like to talk about is what some of the money has been used for that we've received as an organization and some of the programs that we've managed to conduct. First of all, looking at a little bit of the time line versus the revenue that we received, in 2006-2007 we were awarded \$6,200 for our projects. In 2007-2008 it went up to \$14,500, about \$82,000 in 2008-2009, and \$87,000 in 2009 to 2010. And you can see that there's quite a curve. At the same time the university followed a similar track, receiving \$3,000 and \$20,000, \$73,000 and \$80,000. So they're on a little bit of an equal track with us. And in addition, and you'll hear this from the Grape and Wine Board, there are also private citizens that can apply for the Grape and Wine Board money, which we try to encourage among our members. The NWGGA is a volunteer organization. And we have, as Jim Ballard just told you, nearly 25-plus wineries and about 150 grape growers across the state. For every one of the programs that we conduct, each participant shares in the cost. For instance, on field days there is a fee. For participating in a lot of the programs that the wineries conduct there is also a fee for them. So it's not like this is...we're not investing as we go. There are two main groups in the Nebraska Winery and Grape Growers Association. First, we have the wineries, and naturally those are the people that have wineries. And we also have growers. Wineries are also growers. They are required to grow a certain percentage of their own grapes as part of the Nebraska Winery Act. Some of the projects we've taken on in the past couple of years, on the winery side first, we've had advertising campaigns, we've had educational topics for the wineries themselves, including wine flaw education, marketing techniques. We've put on marketing projects. This is the third year of the passport program that Jim Ballard explained to you, and it's been successful. For the 2011 passport each participating winery or tasting room is contributing \$200 towards the printing and initial costs of the project. We've also, with the funding this year, and is this a thing that I can't show? [LB286]

SENATOR KARPISEK: Well, we can pass it around, if that's okay. [LB286]

TOM ZUMPF: Okay, okay. This is a promotional piece that was funded directed by the Grape and Wine Board to promote awareness of the Nebraska wineries. One of the biggest things that we have coming up that's just been approved by the Grape and Wine Board is a Wine Quality Assurance Program. And the Wine Quality Assurance Program will make sure that every winery has access to a resource to vet the quality of their product and a system to where their wine could be analyzed for whether it's at the high end of the range, low end of the range, and what they could do to improve their product and make the Nebraska product universally high quality across the state. Some of the

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grower projects we've had are grower educational field days. And one of the things that we instituted last year was adopting the Vine Balance Program, which was developed at Cornell for New York growers, as our self-evaluation program for the Nebraska growers. And a lot of our educational topics are built around vine balances, more or less our outline for improving the quality of our vineyard and therefore the quality of our grape products. This year, some of the topics that will be funded by funds from the grape board are worker safety, personnel protection for some of the hazards that we have, including chemical hazards. Another topic is food safety and fruit handling and crop safety; 2,4-D damage is a real problem in our industry, and educating neighbors on its use. So between the food safety and wine quality, those are two very important issues, I think, to the citizens, not only to our members. Combined, the growers and wineries, we've used a lot of the funds for our part-time executive director. We've developed our association Web site which is nebraskawines.com. I invite you to take a look at that. We've also developed an educational scholarship program through the Des Moines Area Community College for both viticulture and oenology. We did this a couple years ago with Grape and Wine Board funds and we had over 20 participants. And it was a shared scholarship so the participant paid half of the scholarship...half of the class expense and the scholarship paid for the other. And that's basically a summary of some of the projects that we've conducted and where the money has gone. I'll take any questions. [LB286]

SENATOR KARPISEK: Very good. Thank you, Mr. Zumpfe. Any questions? Tom, you said that the wineries have to grow grapes. [LB286]

TOM ZUMPF: Yes. [LB286]

SENATOR KARPISEK: So every winery has to have some of their own... [LB286]

TOM ZUMPF: They have to be a grower themselves, correct. [LB286]

SENATOR KARPISEK: Is that a percentage or... [LB286]

TOM ZUMPF: Percentage of their total production. [LB286]

SENATOR KARPISEK: And, of course, you have to use a percentage of Nebraska grapes to be a Nebraska winery. [LB286]

TOM ZUMPF: Right. Nebraska wineries are required to use 75 percent Nebraska-grown fruit. And most of them stay well above that 75 percent. [LB286]

SENATOR KARPISEK: Yeah, 150 growers you said, that's... [LB286]

TOM ZUMPF: Um-hum, quite a few of those are small growers, but they're real

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important nonetheless, because even though they don't have very many acres, they're very important to the overall production. [LB286]

SENATOR KARPISEK: That's very interesting. I see them around more often all the time. Wow, I didn't know that was there. It looks funny on the landscape, I guess. [LB286]

TOM ZUMPF: It is and it's a specialty crop that's very labor intensive. [LB286]

SENATOR KARPISEK: That it is. It looks fine when you go to the vineyard and you see them. But you drive by and go, what the heck is going on there? Very good. Any other questions? Senator Schumacher. [LB286]

SENATOR SCHUMACHER: Thank you, Senator Karpisek. When are you going to get the price down to my price category, about \$3.98 a bottle? (Laughter) [LB286]

TOM ZUMPF: I don't beat anybody. (Laugh) Actually, I'm a vineyard owner. I don't have a winery yet. But when I do, I'll see what I can do about getting it down there. (Laugh) [LB286]

SENATOR KARPISEK: Okay. Thank you, Mr. Zumpfe. [LB286]

TOM ZUMPF: Thank you. [LB286]

SENATOR KARPISEK: Any other proponents? Welcome. [LB286]

ERIC NELSON: Hello. Good afternoon. My name is Eric Nelson, E-r-i-c N-e-l-s-o-n. I own a farm out by Raymond. I'm just to the west of James Arthur Vineyards. On that farm, I have six acres of grapes that...I am a contract grape grower for James Arthur Vineyards. I just wanted to speak in relation to two different perspectives today. One is from the standpoint of the industry and the other is from the standpoint of being a vineyard owner as it relates to LB286. I was on the original Grape and Wine Board for the first six years of its existence. And when the Legislature first established the promotional fund that we're talking about and the Grape and Wine Board, the only money coming into that board was money that came from the wineries. At that particular time the wineries would have to write a check for \$20 per ton of crushed grapes. That's since been changed a little bit. We had \$5,000 to work with across the state of Nebraska. Now you tell me what a board for this whole state is supposed to do with \$5,000. So needless to say, when the direct shipping license fees, when that money became available to us through the promotional fund, it opened up a whole different arena. All of a sudden the Grape and Wine Board was able to actually do something to make a very positive impact with the industry. Quite honestly, the Grape and Wine Board has always taken this allocation stuff very seriously. There have been a lot of

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really great programs that the Grape and Wine Board has helped to fund. Jim talked about some of those, Tom talked about some. One in relation to marketing that's not been mentioned are the wine trails. There were some wine trails that have been established across the state of Nebraska and those marketing dollars that helped implement that specific project came as a direct result of the money that came out of this promotional fund. And then also, as far as research and education, a vineyard owner, I tell you what, there are a huge amount of articles on the Internet and books you can buy and everything else. But you know what? What works in California doesn't work in Nebraska necessarily, a few things do, a lot of things don't. We have to be able to do research within the state of Nebraska. We have to have the education here within the state of Nebraska in order for this industry to keep thriving and keep growing. As far as a vineyard owner's aspect, I'll just give you one example of how funds from this promotional fund have actually positively affected my operation and will positively affect the operations across the state. We have a real problem here in the state of Nebraska in the fact that our grapevines, the middle of April, decide it's time to start growing. Well, the problem is that our frost-free date is usually the first of May to the middle of May. So we have two to four weeks in there that quite honestly when the temperature is getting low, us vineyard owners don't sleep very well at night because we're looking at anywhere from a 10 percent to a 100 percent loss of our products. Well, through direct research that's been done the last couple of years, I was involved in that research some, along with a few other vineyards here in the state of Nebraska, we've determined a proven way that we can keep these vines dormant for at least two more weeks. So that's going to get me a whole lot closer to not having to worry about losing my crop at the front end of the season. If we wouldn't have had the additional funds available coming through this promotional fund, I don't know if this research would have been done. But that's one thing that's directly affected me and it's a very positive thing. Just overall, I'm really concerned about the negative impact to our industry of not having the ability to use these funds. And you guys have heard the dollar amounts or whatever. I mean, my gosh, almighty, we're almost going to be going right back to what in the world can this Grape and Wine Board do with \$30,000? I mean, you know, maybe one thing, that's it. Really, if you look at how much bang you get for your buck here, I mean, from where I'm sitting, you know, you continue to invest this money in an industry that's generating a \$13 million-plus economic impact to the state of Nebraska, I'd say that's a pretty good deal. That's all I had. [LB286]

SENATOR KARPISEK: Okay, thank you. Questions? Senator Schumacher. [LB286]

SENATOR SCHUMACHER: Thank you, Senator Karpisek. You know, some of the grain producers have things like a checkoff, like the soybean checkoff. Do the wine producers have a similar thing? [LB286]

ERIC NELSON: Oh yeah, sure do. You know, as I mentioned, the wineries right now, they contribute \$20 per 160 gallons of juice. Quite honestly, that was changed because

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it allowed more money to funnel into that fund. So the wineries contribute that. And then the grape growers, and this is part of legislation passed here a couple of years ago or so, the vineyards now have to contribute a penny per pound. So, you know, basically \$20 per ton is what we have to contribute into that fund. Now, so if you combine what the wineries are contributing and what the grape growers are contributing into this promotional fund it's about \$30,000-some every year. [LB286]

SENATOR SCHUMACHER: And the rest of that fund comes basically from this licensing. [LB286]

ERIC NELSON: It all comes from that licensing. [LB286]

SENATOR SCHUMACHER: I don't have any further questions. [LB286]

SENATOR KARPISEK: Thank you, Senator Schumacher. Senator Bloomfield. [LB286]

SENATOR BLOOMFIELD: Just a point of curiosity, you said you had issues with your grapes wanting to grow a little early. We're sitting in this 50-degree weather now in February. (Laugh) Is that an issue? [LB286]

ERIC NELSON: No. It would be if it kept on. Now all the weather reports say that come Friday and Saturday it's going to be back down to 30 and that will be fine. There's actually a combination of variables that have to all be in place in order for these vines to say, hey, it's springtime and it's time to wake up: part of it is daylight, part of it is soil temperature, part of it is air temperature. So, no, it's not that concerning right now. [LB286]

SENATOR BLOOMFIELD: Okay, thank you. [LB286]

SENATOR KARPISEK: Any other questions? Don't see any. Thank you. [LB286]

ERIC NELSON: All right, thanks. [LB286]

SENATOR KARPISEK: Any other proponents? Welcome. [LB286]

PAUL READ: Thank you. My name is Paul Read, R-e-a-d. I am a professor of horticulture and viticulture at the University of Nebraska and as such I...my role, a large part of my role is to assist with the educational programming and the research programs in support of the grape and wine industry in Nebraska. Initially, as was already pointed out, funds were very limited. The university provides very limited funds for me and my research programs. I would point out that we...when Eric was speaking about bang for the buck, most of our research facility is on private property so it's staying on the tax rolls. And we are able to work on that private property at zero dollars rent which has

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been very, very helpful to us. The costs of doing research continue to go up. But it's my contention that the research and educational programming that we have been able to conduct has been a factor in contributing to the sustainable growth of this emerging grape and wine industry in Nebraska. I'm pretty proud of it, of the quality that has been developing in the industry. In fact, I've been accused of being an unabashed ambassador for the industry because whenever I travel, whether it's out of state or out of country, I take Nebraska wines with me so that I can brag about them because they have become so successful in terms of their quality. A lot of this development has been the result of funding from the Grape and Wine Board which is why I'm here to support LB286 because that funding, although only a portion of it went into my program, it made the difference between being able to do research in several parts of the state as opposed to doing research perhaps only on the university's east campus property. We were very fortunate, last year, a small grant or bequest from the Grape and Wine Board enabled me and my colleague, my assistant, to travel throughout a large part of the state to visit over 40 vineyards and wineries in order to advise them and assist them with problems that they might have in their enterprise. That was a one-shot deal. I wish we could do this every year because it was almost embarrassing to be showered with praise for driving out to visit somebody in Friend, Nebraska or wherever it was. We went many places and it's something I wanted to do every year but couldn't, except this past year we were able to do it. There are many things that we've been able to do as a result of funding from the Grape and Wine Board. I feel that...well, one of my colleagues likes to talk about, a colleague from another state likes to talk about value-added. And he says, you know, where else can you get value-added where you take 50 cents worth of grape juice and make a \$20 bottle of wine out of it? That's value-added. I concur. The funding has also enabled me to do a better job in my teaching. I feel blessed to be able to work at the University of Nebraska and to work with such fine students that I've had a chance to work with. Interestingly enough, several of those students that have taken my classes have gone on to work in the industry. And even though in a couple of cases they went outside of Nebraska to get further support educationally, they came back to Nebraska to work in vineyards and wineries here in Nebraska. So that's something I'm pretty proud of and very happy about, of course. I think this growth is sustainable. The economic impact has been mentioned several times so I won't dwell on it. I'm sure you don't want to have a 50-minute lecture just because I'm working at a university. I'll spare you that. But I will point out that when we think about economic impact, when a small winery gets started in a city like Brownville, where Whiskey Run Creek Vineyards is located or Paxton, where 5 Trails Winery is located, it becomes a destination, a tourist destination. People come there not just to sample the wines and perhaps buy some, of course we hope they will, but largely there they're going to stay at the bed and breakfast, eat at the restaurant, buy gas at the gas station, visit the antique shop down the road and, in general, infuse additional funding into that location. And that's more value-added. As I said, I could talk for lots longer but I would be...I think I'll stop there. I think I've made a couple of key points. The Grape and Wine Board's funding has been pyramided into economic benefits to this emerging industry and I'm convinced that its

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growth is sustainable if the funding continues. I'd be glad to answer any questions you might have. [LB286]

SENATOR KARPISEK: Thank you, Professor. Any questions? Senator Schumacher. [LB286]

SENATOR SCHUMACHER: Thank you, Senator Karpisek. So far today we've heard testimony that the wine industry would like to keep the money. We know the state would like the money. And we've also heard that the out-of-state grape producers don't mind paying \$500. Why don't we make everybody happy and charge them \$1,000? (Laughter) [LB286]

PAUL READ: I have no control over that. [LB286]

SENATOR SCHUMACHER: Would it have an adverse...I mean, would they not buy a license? [LB286]

PAUL READ: Well, certainly if there was more money infused into the Grape and Wine Board's fund that they dispense or disburse, it would help a lot of programs we've just been talking about. [LB286]

SENATOR SCHUMACHER: Well, I'm talking the state keep half of it. [LB286]

PAUL READ: Yeah. Well, what...I would argue, though, that there's probably some argument that should be raised for not restraining free trade by kicking the license fee up, up, up. We'd like to be...ideally, reciprocation would be wonderful because, after all, the California wine consumer is happy to consume all the wine they have out there. But they're adventurous and they're interested in expanding their horizons. And California is actually one of the better destinations for Nebraska wine. Maybe it's displaced Nebraskans partly, but it's really exciting to see that happen actually. [LB286]

SENATOR SCHUMACHER: I don't have any further questions. [LB286]

SENATOR KARPISEK: Thank you, Senator Schumacher. Any other questions? Do you...have we hit our peak in wineries, Nebraska vineyards? [LB286]

PAUL READ: I don't think so. I know that there's certainly plenty of land that would be appropriate. We've done a lot of, I didn't mention this, as part of our research we've done quite a bit of evaluation of land suitability for vineyards in the state. There's lots of land available and it just requires entrepreneurs to take it forward. How many wineries can we sustain? That's hard to say. I think we will be...the quality of our wines is getting so good, I think we will be exporting more than we currently do. The demand will, I think, rise for Nebraska wines. But in terms of overall, you know, peaking, no, I don't think so.

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And I think one of the points maybe was made earlier but I'll repeat it. The wineries must use, according to the Nebraska Farm Wineries Act, they must use at least 75 percent Nebraska-produced product in making their wines. That, I think, is a big factor in contributing to the sustainability that I was speaking about before. [LB286]

SENATOR KARPISEK: Very good. And I agree. Any other questions? Don't see any. Thank you, Professor. And we enjoy your tie. (Laughter) Any other proponents? Seeing none, any opponents? Anyone neutral? Have one neutral, two neutral. Come on up. Welcome. [LB286]

ELLEN BURDICK: (Exhibits 9 and 10) Thank you. Thank you, senators, for taking the time to listen to us today. Senator Karpisek, good afternoon. My name is Ellen Burdick, E-I-I-e-n B-u-r-d-i-c-k. I am from Lewellen, Nebraska, and I am the infamous chair of the Nebraska Grape and Winery Board. I am providing this testimony for the board in a neutral capacity. As you know, legislation approved on May 30, 2007, amended Section 53-123.15 of the Revised Statutes of Nebraska and repealed the original section. The act, relating to alcoholic liquor, changed the provisions relating to shippers' license fees. The shipping license fees collected by the Nebraska Liquor Control Commission and remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund has resulted in a substantial increase in the board's annual revenue. Board revenue is collected from three primary sources: shipper license fees, grape excise taxes, and crushed grape fees. The shipper's license fees account for approximately 80 percent of the board's revenue. This fee alone generated revenue in the amounts of \$96,000 in fiscal year 2007 and '08, \$125,000 in 2008-2009, and \$133,000 in 2009-2010. The revenue increases over the past three years has enabled the board to fund projects aimed at enhancing the competitiveness of Nebraska's burgeoning grape and wine industry. The board utilized a majority of the revenue to primarily fund marketing and research projects conducted by the Nebraska Winery and Grape Growers Association and the University of Nebraska-Lincoln's Viticulture Program. Each year the board publishes an annual report, and I think you're going to receive another copy of it today. And this is available to the public free of charge. The report primarily includes meeting minutes, news releases, RFP application instructions, annual fiscal report, contracts, bylaws, and statutes. Page 46 of the 2010 Annual Report provides a representation of projects the board fully or at least partially funded last fiscal year. Several popular and noteworthy projects conducted over the past three years have received financial assistance from the board. Some of these projects include but are not necessarily limited to: the passport program, wine trail maps, cold hardiness studies, root stock grafting projects, Web site development, wine quality assurance, program feasibility study, educational seminars, grower field days, and nutrient deficiency, cultivar and trellis studies. Last year, the board decided to increase its public profile by developing a Web site. All documents and information pertinent to the board's function and history can be accessed on this Web site at www.grapeandwineryboard.nebraska.gov. Over the course of the past three years, and

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it's been a wild three years for the board, the board has sent out news releases seeking grant proposals from individual growers, farm wineries, organizations, industry groups or academic institutions that aim to assist in the betterment of Nebraska's grape and wine industry. Interested parties wishing to receive funds have been required to submit detailed proposals to the board. The proposals were to clearly explain how the money would be used and how it would enhance the competitiveness of the state's grape and wine industry. The board developed this grant proposal process in order to provide all interested parties with an opportunity to access these funds. May I have some water, please? Priority funding was given to marketing and research projects targeted at increasing the sale and production of Nebraska grapes and/or wines. Evaluating the performance and results of the projects and the utilization of funds is of paramount importance to the board. Over 75 percent of the board's revenue was expended to fund projects during the 2009 to 2010 fiscal year. The responsibilities of the board increased largely due in part to the number of projects funded each year. The board's mission statement is to work collaboratively toward a profitable, sustainable future that advances the interests of Nebraska's grape and wine industry through advocacy and education. The board's strategic plan represents the vision and direction of the Nebraska Grape and Winery Board. It provides the foundation stones for achieving long-term profitable growth and works in conjunction with each year's operational budget and funded projects. This plan demonstrates the commitment which is needed to provide an excellent standard of programs and budget allocations designed to continuously meet the needs of the industry. The success of this plan hinges on industry partners embracing and sharing this vision and transforming the above strategies into key deliverables. I would be happy to answer any questions that you have at this time. [LB286]

SENATOR KARPISEK: Thank you, Ms. Burdick. Any questions? I guess, I'm going to ask a little bit about the neutral, being neutral. [LB286]

ELLEN BURDICK: (Laugh) We cannot lobby for money, we are an administrator. We are like the Beef Board, we are to oversee the fees that are collected on behalf of the grape and wine industry in the state. And our job is to appropriately manage these funds. We have worked very hard the last three years in developing enough paperwork, that horrible word, so that people can look and see what we have done with these funds, so that they can see how we've applied them to grow this industry and that's our function. [LB286]

SENATOR KARPISEK: You talked about it's been a wild three years. Is that just all the...everything that's going on? [LB286]

ELLEN BURDICK: Well, it was all fine and dandy. We knew we had funds coming in, but applying them appropriately and growing with this, this was a huge growing curve because, as has been said in the past, in 2007, when I was first new on the board, we

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allocated \$7,000 in March, in Kearney, at our spring meeting. That fall, in November, we had \$90,000-some to allocate. And we had to start putting together a plan. We had asked for these funds, the association had. But as a board we hadn't sat down and really determined how we were going to do this. So with the assistance of the Department of Ag, who oversees us, we have developed a good report every year that's available. All of the information that we have done is available on our Web site so that it's clearly...clear to the public what we've done with these funds. [LB286]

SENATOR KARPISEK: Okay, very good. Senator Brasch. [LB286]

SENATOR BRASCH: Thank you, Chairman. And thank you, Mrs. Burdick. I have one question. Are the funds from the board, to the board exclusively from this or does the association have a membership fee? [LB286]

ELLEN BURDICK: Yes, ma'am. [LB286]

SENATOR BRASCH: So you... [LB286]

ELLEN BURDICK: We do not receive the membership fee. We receive the grape checkoff fee and the juice checkoff fee that the association imposed upon themselves. [LB286]

SENATOR BRASCH: Okay. [LB286]

ELLEN BURDICK: That money comes in to the Ag Department and is in their account and we are the oversight committee. [LB286]

SENATOR BRASCH: So this is not the only funding that the grape growers of Nebraska... [LB286]

ELLEN BURDICK: Just about, just about. [LB286]

SENATOR BRASCH: Just about. [LB286]

ELLEN BURDICK: Yeah. I think a membership for an individual is \$45, a membership for a winery is, I'm going to say \$125. We have 25 wineries and we have maybe 100 grower members. So our membership fee is very small. The checkoff fees that come in to the board I do know this year were down because of crop loss and it was across the state. We have a budget that we adhere to. But we are separate from the association. [LB286]

SENATOR BRASCH: Okay. [LB286]

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ELLEN BURDICK: We never see their budget. The only thing we have to work with is what comes in to the Department of Ag. [LB286]

SENATOR BRASCH: Very good. I have no other questions, thank you. [LB286]

ELLEN BURDICK: Okay. [LB286]

SENATOR KARPISEK: Thank you, Senator Brasch. Any further questions? I don't see any. Thank you, Ms. Burdick. [LB286]

ELLEN BURDICK: Thank you very much for your time. [LB286]

SENATOR KARPISEK: We're not used to having positive neutral in this committee. [LB286]

ELLEN BURDICK: Oh well, you know, you see where they put me. (Laughter) [LB286]

SENATOR KARPISEK: Welcome back, Mr. Rupe. Speak of the devil. (Laugh) [LB286]

HOBERT RUPE: (Exhibit 11) Once again, my name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. I'm the executive director of the Nebraska Liquor Control Commission. And I'm neither positive neutral nor medium neutral, I'm neutral-neutral on this one. The basic position here is we collect the money, you make the determination of how you spend it. But it's been one of my policies since I've been director, if I'm going to sign off on a \$132,000 fiscal note, I'm going to be present to answer any questions that may come up as a result thereof. The reason why this shows a negative is because, as you're aware, if this sunset clause is not rescinded, then it would go back to the General Fund. Therefore, we had to show that as a negative against the General Fund. The first year, because of what happened in the middle of the year, would be \$1,022,000 then \$132,000 on the one after that. That is sort of our best looks at that, which are being now, just so you know, that's sort of the fiscal year 2010, how much we collected in fees and taxes. I mean, there are other fees that aren't shown there, that's about \$28 million in total taxes. It sort of shows you how they pay in and who pays it. I thought if you were wanting to know, ask questions about the collection of the funds, you at least have the most recent full year of information in front of you. With that, I'd be happy to answer any questions. [LB286]

SENATOR KARPISEK: Senator Schumacher. [LB286]

SENATOR SCHUMACHER: Thank you, Senator Karpisek. What about a \$1,000 license fee? [LB286]

HOBERT RUPE: I would not be in support of that. Last year, we raised the regular

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shippers license to \$1,000. You have to remember, there's two licenses that we're talking about here. The S license, the shippers license is what would allow, let's just use Mogen David as an example, Mogen David would pay that \$1,000 a year now. It used to be \$200, it was usually very low. We raised it last year to be somewhat competitive with other states and also because it was \$200 as opposed to \$500 for the direct shipping license. That \$1,000 fee now allows Mogen David to ship to a wholesaler in Nebraska for distribution. On top of that, if they want the direct shipping rights, the S1 rights, they currently pay \$500. And then with that then they can send directly to Senator McGill, if she were to order that through the idea. We have a lot of licensees in commonality that have both S and S1. A lot of the S1s don't have other shipping licenses. It doesn't make sense for them to go through the wholesale tier, but they will get the S1 license because there is a certain amount of people who will buy their product. Nebraska is also somewhat unique. You've heard earlier that our S1, our direct shipping license, is a little high compared to other ones. One of the reasons why it's higher is we allow agents to get that instead of making the actual wineries do it. So you could be an agent representing, say, five very small wineries under one license and you'd have the right to ship those licenses (sic) then. A lot of times those are usually compliance companies and that sort of stuff. So I don't think we would look at...I don't think raising it to \$1,000 would be worthwhile. In fact, I think it would probably negatively impact it. I think we would probably see less actual S1 licenses. I'm not sure that doubling the fee...you might see an amount of people just get out of the state. If you're a small winery out of state, you're making the determination, am I selling enough in Nebraska to justify this fee. And if the fee goes up then they might get out of the market, which then would negatively impact choice as well. [LB286]

SENATOR SCHUMACHER: What are the...I take it the Liquor Commission collects this money for these license fees and issues on a piece of paper or something that says you're licensed. What administrative cost do we have by not...in that process? And shouldn't we be getting at least a cut of the \$500 to cover those? [LB286]

HOBERT RUPE: Well, we do get a cut, because what we do is...we don't get a cut of the \$500. The General Fund used to get all of it. There still is the excise tax paid. They pay...they submit, if they have an S1 license they have to submit a yearly report and pay the excise tax, currently 91 cents a gallon, 90-91. So we are receiving...recouping the excise tax from them as well. So the license fee itself is going, but the excise tax is going to the General Fund. [LB286]

SENATOR SCHUMACHER: And that more than covers our administrative costs? [LB286]

HOBERT RUPE: I would say so, yes. [LB286]

SENATOR SCHUMACHER: I don't have any further questions. [LB286]

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SENATOR KARPISEK: Thank you, Senator Schumacher. Any further questions? Seeing none, thank you, Mr. Rupe. [LB286]

HOBERT RUPE: Thank you. [LB286]

SENATOR KARPISEK: Any other neutral? Seeing none, Senator Krist to close. [LB286]

SENATOR KRIST: Thank you, Senator Karpisek. In my opening I said specifically I would entertain potentially taking this to another two years for a sunset. And because I am condemned to this committee for at least another four years, (laugh) I'm sure of it, I'll be here to help us decide whether that's true and we want to do that. My point is, I don't think this industry is mature enough yet to yank this money away from them. I think they've been very prudent and judicious and thrifty in terms of how they've spent it. And I think both education and long-term investment has paid a dividend. With that, I will entertain any questions you might have. [LB286]

SENATOR KARPISEK: Thank you, Senator Krist. Any further questions? Seeing none, we're glad that you are condemned to this committee. (Laughter) That ends the hearing for LB286. Now we have Senator Krist to open on LB60. [LB286]

SENATOR KRIST: Good afternoon, Senator Karpisek and members of the General Affairs Committee. For the record, my name is Bob Krist, that's B-o-b K-r-i-s-t, and I represent the 10th Legislative District in northwest Omaha. I appear before you today in introduction and support of LB60, a bill I introduced on behalf of the Nebraska Licensed Beverage Association. LB60 prohibits law enforcement officers and minors who are conducting compliance checks from consuming alcoholic liquor during the course of their compliance checks. The bill also requires any person under 21 years of age who assists in those compliance checks to provide truthful answers to all questions posed by the retailer, on or off sale retailer, notably questions about their age. And let me stop there. I was, first of all, shocked to believe that a law enforcement officer was drinking during these operations. And although I know most of you have seen letters that came from reputable places around the state who say it's not a problem, it needs never to be a problem. Those folks, if they have to take action or are put in a position to take action, should not have been consuming alcohol while on duty. And I would think that doing a compliance check is a duty operation. The guidelines for using underage cooperating individuals during compliance checks provides, in part, as follows: enforcement officers shall remain in close proximity or actually enter the retail outlet to view as much of the transaction as possible and avoid consuming alcohol themselves. That's the part of it I think we need to rectify. The underage cooperating individual may say "yes" or "21" if asked, "Are you 21 or are you old enough?" However, the underage cooperating individual shall produce their valid identification if requested. This bill does not take away from the obligation for the retailer, whether it's on or off sale, to ask for an ID, an

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ID to be presented. Retailers are responsible individuals and if they ask a cooperating individual for their age or if they are, "old enough" or if they are working with law enforcement, the cooperating individual should tell the truth. That's what we're all about here in Nebraska, it's the Nebraska way. It is more important for law enforcement to secure a violation of a retailer for sale to a minor in a compliance check rather than teach these cooperating individuals to honor or tell the truth? Question? I don't think so. I think it's more important that we teach them to tell the truth. Regarding the issue of drinking on the job, it's patently illogical for a law enforcement officer to consume alcohol, to me, during a compliance check of the state's liquor retailers since the officer on duty is on duty and working with individuals under the age of 21. LB60 makes it unlawful to imbibe while on duty. There is also in the written guidelines an inference that minors should avoid drinking the alcohol. I have a problem with that part of the compliance check as well. Lastly and to be clear about it, absolutely nothing in LB60 relieves any on or off sale liquor retailer from their responsibility under the law to diligently inspect, scrutinize and verify the identification and age of every customer who attempts to purchase alcohol. I want to thank the committee for your indulgence and me popping in and out. And I will be here for this closing, I promise you. [LB60]

SENATOR KARPISEK: Thank you, Senator Krist. Any questions? Senator Schumacher. [LB60]

SENATOR SCHUMACHER: Thank you, Senator Karpisek. Has there been any evidence that these kids that are acting as confidential informants drink before they go in to make a buy? [LB60]

SENATOR KRIST: I would...and the folks who will follow me, I think you can ask for precise details. But I will tell you a story that I know very well and this is an incident that happened during a compliance check. The two officers involved were at the end of the bar. They had ordered a couple of beers, they had each had at least one. An individual came in behind them and appeared to be their friend. And what ensued was both officers and the underage consuming a drink of alcohol. That, to me, is inappropriate. [LB60]

SENATOR SCHUMACHER: I have no further questions. [LB60]

SENATOR KARPISEK: Thank you, Senator Schumacher. Senator Bloomfield. [LB60]

SENATOR BLOOMFIELD: Thank you. Senator Krist, is there anything in your bill here, I haven't had a chance to study it real good yet, to keep the officers from buying the beer and attempting to buy one for his younger-looking friend as long as neither one of them consumed? [LB60]

SENATOR KRIST: They have to purchase the...as they order the beverage they would

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have to purchase the beverage; if it were purchased by an individual, meaning the officer who was absolutely of age, and the other person was not carded, that's never been the intent of these kind of operations. They would have to be carded, an ID would have to be presented. It goes to the example of you and I are in the bar and we have both of our sons with us and they're underage. We're going to go up to the bar and buy the beer and come back. In most bars that doesn't happen. The waiter or bartender will card everyone who is partaking or imbibing at the time. I hope that answers your question. [LB60]

SENATOR KARPISEK: Thank you, Senator Bloomfield. Any other questions? Seeing none, thank you, Senator Krist. We'll have the first proponent of LB60. Welcome. [LB60]

JIM MOYLAN: (Exhibits 12 and 13) Thank you, Mr. Chairman, members of the committee. I'm Jim Moylan, J-i-m M-o-y-l-a-n, 8424 West Center Road, Omaha, Nebraska. I'm the attorney for the Nebraska Licensed Beverage Association. We thank Senator Krist for introducing this bill. It's been a problem for some time. Now I want to hand out the guidelines here that you're going to working off of. And I have marked exactly what the guidelines say at the bottom of the page. First, I want to tell you, as you know retailers there's three things they don't want in their establishments: one, intoxicated people, and we know why because they drive customers away; number two, are minors; and number three, are law enforcement officers coming into the establishment with a tender young boy or girl attempting to buy liquor and entrap them into selling it. And that's what they don't like, those three things and we've been adamant about that for years. You can see what the guidelines are here. If they are asked if they are 21, they can say yes; ask if you are old enough, they can say yes; and ask if you are working with law enforcement, they can say no. Now on the next page we have the area about the enforcement officials drinking alcoholic beverages during this time. I had a case about six, seven years ago, and it was out in midstate. And they'd been cruising through the area and I think it was a sheriff or deputy sheriff from one of the counties out there. And they came into this establishment and the person that owned it knew him. And he ordered two beers and gave the money to the little girl to buy, pay for them. Then he went to the back of the room. Well, my client told me he could tell when he came in he was intoxicated. And he drank those two beers right there in front of the little minor, in front of everybody and acted like nothing was wrong. That's the other type of thing that we don't think should happen. If you're going to run these law enforcement compliance checks, stings is what they're called in the business, you're not going to be able to drink on the job. Now I've got another thing to hand out here for you. As you know, they are financed primarily by Project Extra Mile. And...oh, the other thing I wanted to report before we got to this is, you know, less than 7 percent of the minors get their alcoholic beverages from licensed establishments and that even includes the false ID people. So these...you know, when you got that few people getting into establishments and buying beer, and the amount of money that's spent, and we don't know, you'll have to ask somebody else about how much of these grants they're

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spending, but it's like killing ants with a sledgehammer. It's just a waste of money. And I just don't think that they ought to continue even. Now what I've handed out to you there are the figures for what Project Extra Mile gets. The first page was from July 1, 2007 to June 30, 2008, one year, total of \$502,000. Now the next page is for an 18-month period, July of '08 to December '10, those totaled almost \$735,000. Now we know they have 11 offices across the state that they operate. My understanding is that this is supposed to be money that is used to go to high schools, communities and communicate with them about the pitfalls of liquor and minor people. But now how much they're spending on, you know, these, going around and trapping bars, I don't know. You can ask Mrs. Riibe sometime, whenever she's here or maybe somebody else is going to testify behind me that might have those figures. But I don't think those funds ought to be used in entrapping these retailers. They ought to be out there communicating to, you know, the various service clubs and the schools and making them, you know, aware that minors should not drink. They have not reduced...by doing all this entrapment they haven't reduced the number of people, I don't think, that are buying from the bars. They'd do a better job educating them I would think. So my thinking is quit trying to kill ants with sledgehammers and let's pass this legislative bill. And I ask you to advance it to General File. If there's any questions, I'd be happy to try to answer them. [LB60]

SENATOR KARPISEK: Thank you, Mr. Moylan. Senator Schumacher. [LB60]

SENATOR SCHUMACHER: Thank you, Senator Karpisek. Mr. Moylan, when these stings occur, do they occur...is there a pattern? Do they occur when the bar owner is more busy, on a Saturday night? Do they, you know, when they're trying to do a lot of business? [LB60]

JIM MOYLAN: Yeah, I meant to cover that. They never come in at 10:00 in the morning, it's always at night when you're real busy. Every one of them that I've represented and we have found out about, they come in when there's a crowd in there, it's busy, you know, and when it's just a bad time to come in and do it. If they want to do it, go in at 10:00 in the morning, you know, try it then. But, no, they go in when the place is busy, you know. I mean it's just...now, think back to all your approximately 4,500 retailers in the state, and they're in every community. And they are your leaders and they're your bars, and bars and restaurants, your grocery stores, your convenience stores, your bowling alleys, your pool halls, convenience stores. Now think back in your community how important they are to the area. Is it right to keep going out there and pounding on them because they're good citizens in your community? And most of them are leaders in your community. If there's a fund-raiser going on, they're the ones that do it, you know. But, no, somebody has got to be out there harassing them day in and day out, you know, so. [LB60]

SENATOR KARPISEK: Anything else, Senator Schumacher? [LB60]

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SENATOR SCHUMACHER: No further questions. [LB60]

SENATOR KARPISEK: Thank you. Any other questions? Seeing none, thank you, Mr. Moylan. [LB60]

JIM MOYLAN: Thank you. [LB60]

SENATOR KARPISEK: Further proponents? Welcome. [LB60]

KATHY SIEFKEN: Thank you, Senator Karpisek and members of the committee. My name is Kathy Siefken, Kathy with a K, S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association in support of this bill. And we thank you, Senator Krist, for introducing it. What the bill...the part of the bill that we're really interested in is the fact that when minors come in on compliance checks; the State Patrol adopted new regulations that will allow the minors to lie if they're asked how old they are. And the reasoning that was given at the Liquor Control Commission hearing is that some of those retailers just don't seem to care quite so much and they simply, instead of carding the appropriate way, they ask and the kids aren't allowed to lie, therefore, it's not really a good test. And they kind of looked at it as a way of cheating. And I can tell you that we take compliance checks very, very seriously. We offer training to our members. There is certified training through the Liquor Control Commission which needs help, but it's still there. We take a "We Card" program through the state, which is free of charge to all of our members. We have setup compliance check programs in Lincoln and Omaha and we're hoping to take those statewide. And we have students go in and conduct those compliance checks and the retailers pay for them. My point is we care about making sure that we're not selling to minors. That is not our intent, it's not what we're trying to do. We are making an honest and progressive effort to make sure that all of our clerks are trained to not do that. And, I guess, what is really disappointing to me is the fact that the State Patrol believes that their standards should be lowered just in case one of those retailers is going to sell to a minor. And my point is they're not trying to sell to a minor. We take this seriously. I don't know about the other parts of the bill. I'm not aware of anyone, they're not drinking in grocery stores. But the part of it that the State Patrol is actually encouraging the kids that are going out as a volunteer, they're working with law enforcement, and encouraging them to lie, just isn't right. We oppose the bill. If you have any questions, I'd be happy to answer them. [LB60]

SENATOR KARPISEK: Thank you, Ms. Siefken. Any questions? Seeing none, thank you. [LB60]

KATHY SIEFKEN: Thank you. [LB60]

SENATOR KARPISEK: Welcome to the General Affairs Committee. [LB60]

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TIM KEIGHER: Good afternoon, Senator Karpisek, members of the committee. My name is Tim Keigher, it is K-e-i-g-h-e-r, and I appear before you today in support of LB60 on behalf of the Nebraska Petroleum Marketers and Convenience Store Association. I know it's been a long day on that side of the table because it's been a very long day out here, so I will keep it very brief. Basically, I guess, we feel that it's a compliance check, it's not an entrapment, and that they should tell the truth when they're asked questions. We're not saying that they shouldn't ID them after they ask them if they do not indicate what their age is. But we thank Senator Krist for bringing this bill. And with that, I'll be quiet. [LB60]

SENATOR KARPISEK: Thank you, Mr. Keigher. Any questions? Seeing none, thank you. Next proponent. Welcome. [LB60]

SEAN KELLEY: Thank you. Good afternoon, Mr. Chairman, members of the committee. My name is Sean Kelley, S-e-a-n K-e-l-l-e-y, here on behalf of the Responsible Beverage Operators of Nebraska in support of LB60. I'm just going to touch on a couple of things that were not mentioned before. First, it's just poor policy to have compliance checks, to have them lie and deceive the retailers. Secondly, asking questions like this is a way and a method that retailers use to see the demeanor of the customer. You want to ask them questions to see how they are, because with the minors for compliance checks, they're the most confident people in the world, they got nothing going on. You know, there's no trouble they can get in because they're with law enforcement. So it's helpful for the retailers to be able to ask them, you know, are you 21? Additionally, retailers would like to get credit for compliance checks that are passed. Right now at the Liquor Commission if you fail the sting, they don't look back at your record and say, oh well, they passed, they're nine for nine on their compliance checks in the past three years. That's an item that doesn't get included in the file. So with that, I'd be happy to answer any questions. [LB60]

SENATOR KARPISEK: Thank you, Mr. Kelley. Any questions? Seeing none, thank you. [LB60]

SEAN KELLEY: Thank you. [LB60]

SENATOR KARPISEK: Welcome. [LB60]

JIM OTTO: Thank you, Senator Karpisek, members of the committee. My name is Jim Otto, that's J-i-m O-t-t-o. I'm a registered lobbyist for both the Nebraska Retail Federation and the Nebraska Restaurant Association. I'm here on behalf of both organizations in support of the bill. And we thank Senator Krist for introducing it. I don't want to bore you with repetitive testimony. I would simply repeat one thing that Mr. Keigher said, is that we understand that it is a compliance check and not an

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entrapment. And we are not out there to sell to minors. And with that, I would entertain any questions. [LB60]

SENATOR KARPISEK: Any questions for Mr. Otto? Seeing none, thank you. Any further proponents? Any opponents? Welcome back. [LB60]

HOBERT RUPE: (Exhibit 14) Welcome back. (Laugh) I've been on all sides this time. Hobert Rupe, H-o-b-e-r-t R-u-p-e. I'm the executive director of the Nebraska Liquor Control Commission. I'm handing out a copy, you might have had that copy already. That's the most recent guidelines from the Nebraska State Patrol. I'm not sure if Mr. Moylan had the most current one. A couple of issues why the Commission is in opposition to this bill. First off, I'll let you know we're not really in opposition; if Senator Krist wants to make it that they can't drink at all when they're doing compliance checks, we have no problem with that. Most law enforcement agencies have regulations regarding how much they can and cannot consume when officers are working in the UC, undercover capacity. Generally, if they are drinking at all it's so they have a beer in front of them so they're not standing out; if someone is apparently abusing that or with minors, you know, I believe that's something this committee might want to look at. I would say you might want to definitely limit that only to compliance checks because I know Patrol oftentimes, say they're looking at perhaps a solicitation or prostitution case or a drug case, they'll have to be in a bar for an extended period of time; if they're not able to drink one or two beers during the three hours they're in there, they're going to stick out like a sore thumb. So I would just hesitate you not to draw too broad a brush on that one. The issue I do have more issue is on we're teaching kids to lie. First off, let's look, what is a compliance check? What is the purpose of a compliance check? Well, it's a threefold test. The first thing is someone who is visibly under the age of 21 is sent in to attempt to buy alcohol. The regulations are they can't make themselves look older, they can't act older, you know, they can't dress older to look older, they are over...and I'm telling you right now, most of the cases we're seeing in front of the Commission, they're not 20, they're 17, they're 18 years old, they're going in there and doing these compliance checks. What happens when that person walks in? We want the responsible retailer to ask to see identification. Recently, it's been brought to my attention, somebody asked me, well, how long should an alcohol training course take? I said, about four hours. They said, will that teach me not to fail a compliance check? Oh, I can teach you that in two minutes. First one is ID everybody who looks under 30 and don't sell to a vertical ID. One thing that has not changed at all is the cooperating individual must have their own identification on them. These are minors, if they're Nebraska minors they have a vertical ID. This clearly states they are not old enough to purchase alcohol, in fact, it also says they're not old enough to purchase tobacco, depending upon how old they are. And furthermore, they are not...they expire before they turn 21, so if they're accepting an ID at that point they're accepting an expired ID which is no longer valid either. So the second stage is ask for identification. And the third thing is confirm the age, make sure the person in front of you is who it is, look at it;

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if it's a vertical ID refuse to sell at that point in time; if you have questions, you ask some questions about it at that point in time. Nothing in those guidelines say they can lie when they're being inquired, do you live on this street, what's your date of birth, this inference. The two instances where cooperating individuals can lie came about because of ways that the industry, I will give all credit to them, they have some very good lawyers, some of those lawyers are sitting behind me currently. Figure it out that, hmm, the first one was ask everybody...the first question is, are you working with law enforcement? Well, that's not really doing a compliance check. All it's doing is if you can't lie at all, you've now short-circuited a compliance check. You're not asking...a real minor is going to say no. So that has been in there for years. Recently, those same smart lawyers have informed their clients, if you want to short-circuit a compliance check what you do is you would say, "are you 21"? If they cannot lie they have to say no. So it's short-circuiting the rest of the compliance check. They're not asking for the identification, Senator, they're doing it as an attempt to short-circuit the compliance check. Now, so what? Well, the incident, what it is, is the purpose of a compliance check is to see if the bare minimums are being handled. I take great issue with Mr. Moylan's statement that they only go in when it's busy at night. I see every single one which goes to a hearing. A lot of those happen at 3:00 in the afternoon. They're not happening at night, all of them. Some are at night, some bars are only open at night. You go in when their hours are there. The second question is, are they doing the bare minimums we expect the licensee to do? When somebody who appears to be 21 years or younger, are they asking for the identification and are they confirming the age? And if they're a minor, are they refusing to sell? You have to remember that on a "real minor," you also have an affirmative defense; if someone gives you an identification which says they're 21, and you're not sure, it might be fake, it might be altered, might be their sister who looks a lot like her, there is what's called the "Minor ID Book." They can take down that information, who it was, what ID they respond to and have that person sign it. That's a 100 percent affirmative defense in front of the commission that you sold to a minor if it turns out later on it was a fake ID. So these are not trying to entrap individuals. These are trying to see are they doing the mere...the minimum we require. I don't see how being able to ask one or two questions at the beginning and short-circuit the whole thing, how that's going to keep the real minors from obtaining the alcohol. They're just going to get lazy. They'll say, you know, at that point in time if they know this person is not working for law enforcement, the only way that they're going to get caught selling to a minor is if there's a cop in the room or outside who just happens to be walking by. You know, that's...a real minor case is a hard case to prove because the officer has got to observe the transaction taking place that the minor is getting it from the licensee. Otherwise, I got it from my sister, I got it from my older brother, in which case, even if they did buy it from the licensee it's not going to happen. So I don't...I can understand the concern. I share Senator Krist's concern, especially about the consumption when they're working with the cooperating individuals. But I'm thinking if you want to get rid of compliance checks, just get rid of compliance checks because right now what you're going to do is if they can just ask one or two of those questions right off the bat, they can't lie at all, then the

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efficiency of them goes down. Now I'm not a big fan of...I think law enforcement somewhat over-relies on compliance checks. I think what you're doing there is you're shooting the slowest birds in the flock because they're not hard to pass. And so I would prefer to see a multifaceted approach to underage drinking, including compliance checks, including surveillance outside establishments which you have good information might be selling alcohol. And a lot of times those, it's the guy pulling up there where there's one 21-year-old in a car of five 19...the other four are all 19, and he's buying, then they're leaving. The licensee didn't do anything wrong about it, but you just sold...got the 21-year-old for procuring for a minor. That's a real minor case. And so I applaud a multifaceted approach by law enforcement. This is one tool that at least look...and I think it sure looks at the slowest members of it. So with that, I'd be happy to answer any questions. [LB60]

SENATOR KARPISEK: Thank you, Mr. Rupe. Any questions? I will ask then, Hobie, you're not supposed to serve to anyone visibly intoxicated. [LB60]

HOBERT RUPE: Correct. [LB60]

SENATOR KARPISEK: So to cover them, why don't they say, okay, Russ, how many beers have you had since you got here? [LB60]

HOBERT RUPE: Because it's not a question in that one. If you look at the ruling on serves intoxicated, it's two pages in our rule book which goes through a list of outward signs that a reasonable bartender should recognize. [LB60]

SENATOR KARPISEK: But why don't they just short-circuit it? How many beers have you had? Well, I've had 12. [LB60]

HOBERT RUPE: Well, if they say 12, you probably shouldn't serve them at all anyway, I'm assuming that. [LB60]

SENATOR KARPISEK: I know, but you just short-circuited the whole thing. [LB60]

HOBERT RUPE: But I'm saying, there's a difference. These cooperating individuals are working under...for the Nebraska State Patrol or for other law enforcement under these guidelines. They can't lie on most things. There's only two instances where they can even fudge the truth; if you're sitting there and someone comes up and asks, Mr. Karpisek, how much have you had to drink? You're under no burden to tell the truth. So I think it's not a really apples to apples comparison. [LB60]

SENATOR KARPISEK: Okay. I'll go with that. Any other questions? Seeing none, thank you. [LB60]

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HOBERT RUPE: I'll get out when nobody has any questions. (Laugh) It happens so rarely. [LB60]

SENATOR KARPISEK: Any further opponents? Welcome back. I had to run out last time you got up. [LB60]

DAVID BAKER: Thank you. David Baker, D-a-v-i-d B-a-k-e-r, representing the Omaha Police Department. The Police Department's official position, and I don't want to go into anything and steal anyone's thunder or anything. I think it was very well articulated before. The Police Department opposes this bill for basically the same reason. We believe that it will make compliance checks ineffective, it essentially lowers the bar at the time of a compliance check; if all you have to do is ask somebody what their age is and they have to tell the truth, there's no point in going after a license thereafter; if you've already asked them and they say, well, I'm 17, there's really no need to check the license, you know at that time that you're not going to sell to them. So what it winds up doing is it makes somebody not as inclined to check the license. There is really no need if there is a compliance check ongoing there. The standard for the compliance check itself, the test is lower than it is in everyday life because all you have to do is ask. Whereas if you're going to have an affirmative offense in court or in front of the Liquor Commission, as was stated before, you have to do a little bit more, you have to make an effort to check and see if the identification indicates their age. And in the cases where we do it, the identification is always the cooperating individual's true identification. In terms of consuming alcohol, I have no doubt that what you're saying is true. However, I know of no cases that a minor has ever consumed alcohol on a compliance check with our department. Now I haven't been in every single bar and every single liquor store that every minor that's ever worked for us has been there, but I know of no cases. Further, our officers don't drink during compliance checks, by and large there's really no need to. Undercover officers, by the nature of undercover work, are allowed to consume alcohol. They're not allowed to be inebriated (inaudible). It was already said, and I won't belabor the point, sometimes to blend in you buy a beer, you take a sip, that does not make you intoxicated. But there is no need by and large to do that type of thing during compliance checks, and normally it's not done. In terms of the time of day, I've done compliance checks at 3:00 on Sunday afternoons and I've done them on Saturday nights. So the implication that we only do these during busy times couldn't be farther from the truth. In fact, generally they're not so busy times. It makes it easier for the officers to keep track of the confidential informant that we're using. We do have a bit of an issue in protecting these juveniles as well when we say every question has to be answered honestly. We have clerks behind the counter, I mean, if you're talking about asking for age, that's one thing. We don't believe that that's helpful in this case. I think that makes the compliance check less effective. But it even goes further than that, every question, what's your name, where do you go to school, what's your phone number, it covers everything. Let's face it, this is very broadly written. The child can't lie to any of that. I don't think there's any need for that. And I think what this does is essentially gut the ability of law

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enforcement to check on compliance of the liquor laws of the state. And with that, I'll answer any questions. [LB60]

SENATOR KARPISEK: Thank you, Mr. Baker. Any questions? Senator Schumacher. [LB60]

SENATOR SCHUMACHER: Thank you, Senator Karpisek. Would your objection about answering all questions be alleviated if we said all age-related questions? [LB60]

DAVID BAKER: It would be somewhat alleviated, but no, not completely; if the child, if the juvenile comes in there with a proper ID, the goal is to have that identification checked. And if, as was stated before, if in normal everyday life a juvenile comes in to buy liquor at a liquor store they're not going to say by and large, when they're asked, oh, I'm 19 or 18 or 15, whatever it happens to be. They're going to say they're 21. This is a real life simulation of a real life event, it's not entrapment. They're going to have their license with them. The goal is to have them check their identification to determine whether or not they're over or under the legal age. [LB60]

SENATOR SCHUMACHER: I don't have any other questions. [LB60]

SENATOR KARPISEK: Thank you, Senator Schumacher. Mr. Baker, who did you say you're representing again? I'm sorry. [LB60]

DAVID BAKER: Omaha Police Department. [LB60]

SENATOR KARPISEK: And so this is their official stand? [LB60]

DAVID BAKER: Yes. [LB60]

SENATOR KARPISEK: Okay. Do you see where it really seems like a case of gotcha, or do you not? [LB60]

DAVID BAKER: No, I really don't see where it seems like...here's what we're trying to do. If we have somebody, for example, somebody who's committing a crime of any kind, you can pick your crime that you want to have, they're selling stolen merchandise, they're selling drugs, something like that, we're going to send a confidential informant, usually not going to be a minor if it's a case of selling drugs. We're going to send them inside. We're not going to insist that that person tell the truth on everything that they do, it would be unsuccessful. It renders the operation completely unsuccessful. We have, by nature of the undercover work that is being done, the minor and the police officer is going to have to come in, in some way pretend that this person is of legal age, otherwise there would be no reason to go in there. If we were to go in there with a 10-year-old, as has been suggested in previous testimony, if we were to go in there with

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a 10-year-old we wouldn't have much chance of picking up alcohol. It has to be something that they would reasonably face. Are they following the law? Are they doing what they said...there would be no reason to ask for age, there would be no reason to check for a driver's license, which they wouldn't have. We have to show a reasonable choice to these people and see if they make the choice. And it's not entrapment. We're not trying to tell some...or bring in a young man who's maybe 17 years of age and has facial hair, everything else. The guidelines are already perfectly well covered that they have to look age appropriate, they have to be dressed age appropriate. So we're not trying to come in and do anything like that. We're not coming in with false IDs, we're not coming in with IDs that are difficult to read or anything like that. We're trying to see if people are following the law. [LB60]

SENATOR KARPISEK: Very well. Any other questions? Seeing none, thank you, Mr. Baker. [LB60]

DAVID BAKER: Thank you. [LB60]

SENATOR KARPISEK: Any further opponents? Anyone testifying neutral? Seeing none, Senator Krist, you are clear to close. [LB60]

SENATOR KRIST: And I would love to. [LB60]

SENATOR KARPISEK: I figured you would. [LB60]

SENATOR KRIST: First of all, I want to make sure that everybody understands. What I disagree with here is an officer on duty during a compliance check. We're not talking about Serpico, okay? We're talking about compliance checks in bars, that that officer should not be consuming alcohol because what he or she would have to do in the event that the seventh or eighth or ninth compliance check that they're on for the evening might go astray and they have to do something. Secondly, the fact that we are condoning, at this point, someone lying about something, underage, particularly when they're being used in this capacity, to me is unconscionable. It may very well be that we need to limit or work with this legislation to omit those things that we would not want them to divulge, he or she to divulge about themselves honestly to a bartender. Maybe we're exposing that minor. However, this is the second time today and the second hearing that my own city has come in without, by the way, notifying me that they are not agreeing with a piece of legislation. And I would appreciate it if the Omaha Police Department would come talk to me if they have issues, as Mr. Rupe did. Hobie came in and said, I've got issues, here they are. And I really appreciate that. So with that being on the record, I'm done. [LB60]

SENATOR KARPISEK: (See also Exhibit 16) Thank you, Senator Krist. Any further questions? Seeing none, that ends the hearing on LB60 and ends the hearings for

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today. [LB60]