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General Affairs Committee
February 28, 2011

[LB56 LB470 LB554 LB567 CONFIRMATION]

The Committee on General Affairs met at 1:30 p.m. on Monday, February 28, 2011, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on gubernatorial appointments, LB56, LB554, LB567, and LB470. 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 COASH: Okay, welcome to the General Affairs Committee. We're going to go ahead and get started. Senator Karpisek should be on his way. But we're going to start. I want to welcome everybody to the General Affairs Committee. My name is Senator Coash. I'm from Lincoln, Nebraska. I'll introduce my colleagues here. To my far left is Senator Larson from O'Neill; Senator Schumacher from Columbus; Senator McGill from Lincoln. On my far right is Senator Brasch from Bancroft and Senator Bloomfield from Hoskins and we have Josh Eickmeier, our legal counsel. We have a handful of appointments that we're going to start with. And then after that, we're going to get into the bills. So the appointments are going to work just like bills. If anybody wants to testify in support or in opposition of the appointed person, they'll have the opportunity to do that. We'll just move on from there. And then we'll get into the bills on the agenda for today. If you're going to...please turn off your cell phones, remember to do that. And if you are going to testify, we'll ask that you fill out a sheet and hand it to our committee clerk over there. So we're going to go ahead and start with...we have two appointments for the State Racing Commission. So we're going to start with those two and we're going to start with Kristopher Covi. Welcome.

KRISTOPHER COVI: Good afternoon, thank you. [CONFIRMATION]

SENATOR COASH: So we have Kristopher Covi here being...going to open up our appointments to the State Racing Commission. Kristopher, you want to state and spell your name and tell us a little bit about yourself. [CONFIRMATION]

KRISTOPHER COVI: (Exhibit 1) Sure. Kristopher Covi, K-r-i-s-t-o-p-h-e-r, the last name is Covi C-o-v-i. I'm a resident of Omaha, Nebraska, I'm an attorney there and I was appointed by the Governor in the fall to serve on the State Racing Commission. And now I'm before you for confirmation. I'd entertain any questions that the committee has. [CONFIRMATION]

SENATOR COASH: Do we have any questions for Mr. Covi? [CONFIRMATION]

SENATOR MCGILL: Do you just want to tell us a little bit about your background so we can become more familiar with you? (Inaudible). [CONFIRMATION]

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KRISTOPHER COVI: Sure, sure. I grew up in Bellevue, Nebraska, for the most part. My dad is military and we transferred there when I was in elementary school. Went to law school down at the University of Nebraska-Lincoln. I'm currently practicing in Omaha at a private practice firm named McGrath North, where I do primarily real estate, environmental and litigation. I am and have been a lifelong horse racing fan. I think the history of horse racing in Nebraska is important and we're in kind of a critical situation right now with receipts, with the handle down and tracks struggling to survive. And when the opportunity presented itself for two additional members, I gladly threw my name in the ring. And so far, we've had three meetings and so far I've enjoyed it. And I think it's a wonderful commission, it's doing a great job. [CONFIRMATION]

SENATOR COASH: Thank you, Mr. Covi. Any other questions? Senator Bloomfield. [CONFIRMATION]

SENATOR BLOOMFIELD: Thank you. Can you just give us rookies some idea of what it is you do on the commission? [CONFIRMATION]

KRISTOPHER COVI: Sure. The State Racing Commission is charged with oversight over licensing and regulatory control of the horse racing in the state of Nebraska. We are in charge of licensing jockeys, trainers, breeders, in addition to running the races on race day for the live racing, in addition to also having regulatory oversight over the pari-mutuel betting that a lot of...all the tracks are involved with. We establish rules. We have a rule-making procedure and those get revised almost annually. In addition, we do conduct disciplinary proceedings. If the stewards issue a ruling on a violation, that could be anything from track violations by jockeys, breeders, trainers, if the blood test comes back and there's too much of a particular chemical, the stewards will issue their ruling. If the aggrieved party wishes to appeal from the steward's ruling, we will then conduct a full committee hearing and issue a decision at that point. [CONFIRMATION]

SENATOR BLOOMFIELD: Okay, thank you. [CONFIRMATION]

SENATOR COASH: Mr. Covi, do you have any interest in...do you own a horse, own a stable? [CONFIRMATION]

KRISTOPHER COVI: I do not. I have no interest in either a horse, stable or I don't even represent any interests in the horse racing industry. [CONFIRMATION]

SENATOR COASH: Okay, thank you. Senator McGill. [CONFIRMATION]

SENATOR MCGILL: I see on your application that you listed Scott Lautenbaugh as your first reference. I'm not sure I can support you if Scott Lautenbaugh is your top reference. (Laughter) I'm just saying... (Laughter) [CONFIRMATION]

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KRISTOPHER COVI: It was a calculated risk. [CONFIRMATION]

SENATOR MCGILL: Thank you. [CONFIRMATION]

SENATOR LARSON: I can. (Laughter) [CONFIRMATION]

SENATOR COASH: Any other questions for Mr. Covi? Thanks, Kris. [CONFIRMATION]

KRISTOPHER COVI: Thank you. [CONFIRMATION]

SENATOR COASH: We'll bring up Mr. Galyen. Hello, Mr. Galyen. [CONFIRMATION]

JEFFREY GALYEN: Good afternoon. [CONFIRMATION]

SENATOR COASH: Would you state and spell your name for the record, please.
[CONFIRMATION]

JEFFREY GALYEN: (Exhibit 2) Jeffrey Galyen, J-e-f-r-e-y G-a-l-y-e-n.
[CONFIRMATION]

SENATOR COASH: Okay. And this is a new appointment or a reappointment?
[CONFIRMATION]

JEFFREY GALYEN: It is a new appointment. [CONFIRMATION]

SENATOR COASH: New appointment. Okay. We'll open it up to you, kind of just as you saw Mr. Covi, can you tell us a little bit about who you are and how you got interested in serving on the Racing Commission. [CONFIRMATION]

JEFFREY GALYEN: Sure. I was born in Atkinson, Nebraska. My father is in the farming/ranching and used car businesses. I went to school here at Nebraska Wesleyan University and law school at the University of Nebraska-Lincoln. Been going to horse races since I was a very young kid, probably 10 years old or so. My father has owned horses, I have owned horses. And it's...probably my number one hobby has been horses. As Mr. Covi indicated, I think it's a...Nebraska's horse racing industry is at a critical juncture. Things are going to change, no one probably knows exactly how, but the opportunity arose for me to seek an appointment and I did. I was appointed in the fall and have enjoyed serving so far and look forward to serving. [CONFIRMATION]

SENATOR COASH: Mr. Galyen, you do have ownership in, you list it on your disclosure here, you do have...it looks like you're involved in the horse racing industry. Could you expand on that a little bit how you're involved, at what level? [CONFIRMATION]

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JEFFREY GALYEN: Sure, sure. Over the course of the last about five years, I've owned thoroughbred racehorses from time to time. I currently don't own any. I owned a couple at the time I was appointed to the commission. I have since sold those racehorses to my father. And at this...so at this time I have no pecuniary interest in horse racing. Under the old rules, at the time that the laws were passed that allowed for the appointment of two new commissioners, the old rules restricted commissioners from having any pecuniary interest in racehorses. It's my belief that that's...it's my choice that I'm probably not going to own racehorses. However, that law has been changed. If it hadn't, I wouldn't have sought the appointment because I have in the past. The law also provides that if there...ever a conflict would arise with either me or my immediate family, I have a duty to recuse myself from any decisions that would be affected. And I'm fully aware of that and ready to do that if it becomes necessary. [CONFIRMATION]

SENATOR COASH: Okay, thank you, Mr. Galyen. Any questions? Senator Schumacher. [CONFIRMATION]

SENATOR SCHUMACHER: Thank you, Senator Coash. You indicated you thought there would be some type of a rebound in the racing industry. I'm curious as to what vision you have for the racing industry. How could there be a rebound unless we, Nebraska, would authorize casino gaming and the racetracks get a piece of the action? [CONFIRMATION]

JEFFREY GALYEN: Thank you. I don't believe I said rebound. I think we're in for a change. I don't think anybody can predict what's going to happen. I think you are 100 percent right, without expanded gaming I don't believe that...I think it would be difficult for horse racing in Nebraska to improve. I think there will be changes. I think it's possible and probably likely that there will be fewer race dates. One big thing that's going to play into this is whether a racetrack will be built in Lincoln or the surrounding area to replace State Fair Park. State Fair Park runs this year and then one more year and then its lease is up. At that point, I, personally, believe it will be difficult to build a new large scale horse racing facility in Lincoln. And if there isn't, there will be fewer dates. Columbus is struggling, as I'm sure you know, dates very light. Columbus is another track that if it doesn't run fewer dates might not run at all. So I see changes regardless, and the changes are probably going to be towards fewer race dates across the state. [CONFIRMATION]

SENATOR SCHUMACHER: Thank you. [CONFIRMATION]

JEFFREY GALYEN: You're welcome. [CONFIRMATION]

SENATOR COASH: Any other questions for Mr. Galyen? Seeing none, thanks for coming down today. [CONFIRMATION]

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JEFFREY GALYEN: Thank you. [CONFIRMATION]

SENATOR COASH: And I should have done this with Mr. Covi. Is there anyone here to testify on the two Racing Commission appointments, on either one? Either in support or opposition? Neutral? Seeing none, we'll move on to the appointments for the Nebraska Arts Council then. We're going to start out with Mark Laughlin for the Nebraska Arts Council. Is Mark here today? There he is. Welcome. You can have a seat. Spell your name for us and then tell us a little bit about yourself. [CONFIRMATION]

MARK LAUGHLIN: (Exhibit 3) Mark Laughlin, M-a-r-k L-a-u-g-h-l-i-n. Born, raised in Omaha and I've been practicing law in Omaha for about 20 years. And my interest in the arts comes from primarily the Omaha Community Playhouse, I acted there when I was younger and have been on the board for about 15 years. All my kids have acted there. And wanted to be on the Arts Council to find out what was going on in places other than Omaha. [CONFIRMATION]

SENATOR COASH: All right. Thank you very much. This is a new appointment, correct? [CONFIRMATION]

MARK LAUGHLIN: It is. [CONFIRMATION]

SENATOR COASH: It is okay. How would you characterize the local arts scene in Nebraska? Are we pretty vibrant, in your opinion? Are we behind the curve? Could we do better? Where do you see the arts as it relates to...it's a priority here in our state and where you'd like to see it? [CONFIRMATION]

MARK LAUGHLIN: It's hard for me to answer that question throughout the state. That's actually one of the main reasons that I wanted to be on the committee but I can speak to Omaha. [CONFIRMATION]

SENATOR COASH: That would be fine. [CONFIRMATION]

MARK LAUGHLIN: I think the Omaha arts community is growing quite a bit in terms of art, in terms of theater. I think the size that Omaha is getting, you know, there is kind of an Indie music scene that's developed over the last ten years, Saddle Creek Records, a couple things on, you know, more edgy type theater. For example, there's more theaters in Omaha now, not so much that compete with the playhouse, but that are putting on again what I'd call edgier theater that really provides a need that I think is good for the community. [CONFIRMATION]

SENATOR COASH: Very good. Thank you. Any questions for Mr. Laughlin? Senator Schumacher. [CONFIRMATION]

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SENATOR SCHUMACHER: Thank you, Senator Coash. Is this a paid position at all?
[CONFIRMATION]

MARK LAUGHLIN: Not that I'm aware of. (Laughter) [CONFIRMATION]

SENATOR SCHUMACHER: Okay. How much money...state money does this particular commission handle? [CONFIRMATION]

MARK LAUGHLIN: We, and I would defer to Suzanne Wise, who is the executive director. But my big picture belief is that there is some federal funding and then there is some state funding that comes through three budget line items. And my belief is that we pass out approximately \$1.8 million or \$1.9 million in grants throughout the state of Nebraska on an annual basis, that varies. Am I way off on that, Suzanne? Okay, so that would be about the size of it. And of that, again, I'm kind of the newbie, but I think that in general that about two-thirds of that is state money or money in funds related to the state and then the rest would be federal or private. We do fund-raise and raise private money as well. [CONFIRMATION]

SENATOR SCHUMACHER: Thank you. [CONFIRMATION]

SENATOR COASH: Any other questions for Mr. Laughlin? Seeing none, thanks for coming down today. [CONFIRMATION]

MARK LAUGHLIN: Thank you. [CONFIRMATION]

SENATOR COASH: Anyone here to testify on Mr. Laughlin's appointment? Seeing none, we will move forward to Mr. Culver. Is Mr. Culver here today? Welcome.
[CONFIRMATION]

BOB CULVER: Thank you. [CONFIRMATION]

SENATOR COASH: Why don't you state and spell your name and this is a reappointment,... [CONFIRMATION]

BOB CULVER: It is. [CONFIRMATION]

SENATOR COASH: ...so you've been here before. You can just tell us a little bit about what's going on with the Arts Council from your perspective. [CONFIRMATION]

BOB CULVER: (Exhibit 4) You bet, I'd be happy to. My name is Bob Culver, it's B-o-b C-u-l-v-e-r. And I just, yeah, this will be my second term. I've really enjoyed the council. The council is an integral part of the arts in the state of Nebraska. And I would add onto what Mark was talking about in terms of Omaha, but I would say that all over this state

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that we are doing a lot of great things in terms of the arts. I guess, the only thing I would say other than the growth of the arts is that I am a little bit concerned about the educational side because arts sometimes gets kind of a second look when it comes to education. And I think that's where we play a very, very important role in terms of our funding of individual artists and groups and other kinds of events that support the educational side of the arts throughout the state of Nebraska. [CONFIRMATION]

SENATOR COASH: Thank you, Mr. Culver. Any questions? Seeing none, hey, thanks for all the work you're doing on the board. [CONFIRMATION]

BOB CULVER: My pleasure. [CONFIRMATION]

SENATOR COASH: We'll see if we can keep you on there. [CONFIRMATION]

BOB CULVER: Thanks for all your support. [CONFIRMATION]

SENATOR COASH: Thank you. Okay, any testimony on Mr. Culver's appointment? Seeing none, we'll go on to Donna Hastings. Come on up, Donna. And, Donna, you're a reappointment as well. [CONFIRMATION]

DONNA HASTINGS: (Exhibit 5) I am. I'm not an attorney either. No questions. (Laughter) [CONFIRMATION]

SENATOR BLOOMFIELD: There's a plus. [CONFIRMATION]

DONNA HASTINGS: It's Donna, D-o-n-n-a, Hastings, H-a-s-t-i-n-g-s. And I live in Hastings. [CONFIRMATION]

SENATOR COASH: Convenient. (Laughter) [CONFIRMATION]

DONNA HASTINGS: It is convenient. Do you want background? [CONFIRMATION]

SENATOR COASH: How long have you served on the Arts Council? [CONFIRMATION]

DONNA HASTINGS: I've been on three years. This is a reappointment. And it is one of the best things that's ever happened to me. The arts are alive and well in outstate Nebraska. We like to think of Hastings as the Aspen of the Plains. We have a lot of things going on, lots of good things in North Platte, in Kearney and Grand Island, in Hastings. So I can speak that the Nebraska Arts Council is very, very important to outstate Nebraska because, you know, our population is small. We don't have a lot of sponsorships, we don't have a lot of money to draw from in a lot of instances. So the grants that small communities are able to obtain from the Nebraska Arts Council are vital. But I will say that we're doing very well. [CONFIRMATION]

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SENATOR COASH: Very good. Thank you, Ms. Hastings. Thanks for all your work. Any questions? Seeing none, thanks for coming down. Did you come down just for this today? [CONFIRMATION]

DONNA HASTINGS: I did. [CONFIRMATION]

SENATOR COASH: Well, good. I hope you... [CONFIRMATION]

DONNA HASTINGS: It is a pleasure, thank you. [CONFIRMATION]

SENATOR COASH: ...do some more fun things while you're here in Lincoln, spend some money. (Laughter) [CONFIRMATION]

DONNA HASTINGS: I have to do that in Hastings. My husband is the chamber director. [CONFIRMATION]

SENATOR COASH: Okay. We won't tell him if you spend some of his money here. We're going to move on to Ms. Smith, please. [CONFIRMATION]

NANA SMITH: (Exhibit 6) Hi. I'm a reappointment. I'm Nana Smith, it's N-a-n-a S-m-i-t-h. And I'm a former lawyer, a stay-at-home mom. I have three teenagers. I live in Lincoln. I'm from North Carolina and have been in Nebraska a combined total of 17 years. You guys know, I think, that my husband is J.B. Milliken. I hope you're all coming to dinner tomorrow night. And I really enjoyed my first term on the Arts Council. My favorite activity or involvement with the Arts Council has been serving on the grants committees. They are a real time commitment. There's a lot of material to review and you're in the committee meetings all day. But it really shows you the difference that the Arts Council makes, especially in smaller communities. I would second what Donna was saying. You know, a grant of a few thousand dollars goes a long way in the really small towns. And most often, especially outside of Lincoln and Omaha, that money seems to be going towards projects that reach children, maybe school children where you've cut an art teacher or that sort of thing in a public school. And so I feel really good about the grant committee work. [CONFIRMATION]

SENATOR COASH: Thank you, Ms. Smith. Any questions? Senator Schumacher. [CONFIRMATION]

SENATOR SCHUMACHER: Thank you, Senator Coash. Mrs. Hastings made a point of not being a lawyer. You made a point of being a former lawyer. (Laughter) [CONFIRMATION]

NANA SMITH: That's true. [CONFIRMATION]

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SENATOR SCUMACHER: What have the lawyers ever done to you guys? (Laughter)
[CONFIRMATION]

NANA SMITH: Senator, are you also a lawyer? [CONFIRMATION]

SENATOR MCGILL: Yes, he is. [CONFIRMATION]

NANA SMITH: Well, it's great training for whatever you do in life. [CONFIRMATION]

SENATOR SCHUMACHER: No further questions. [CONFIRMATION]

SENATOR COASH: Senator Brasch. [CONFIRMATION]

SENATOR BRASCH: I'm curious. How often does your council meet?
[CONFIRMATION]

NANA SMITH: We meet four times a year. Right, Suzanne? And then if you serve on a grants committee, that could be once or twice a year in addition. And then I'm on the Finance Committee, so we also have meetings of the Finance Committee before every... [CONFIRMATION]

SENATOR BRASCH: And where are the meetings held? [CONFIRMATION]

NANA SMITH: They vary. Right, they are not always in Omaha? Don't we go around the state? [CONFIRMATION]

SUZANNE WISE: Through budget cuts, we now just do Lincoln and Omaha but we actually, Senator, have been in Bancroft for a meeting... [CONFIRMATION]

NANA SMITH: Yeah, and I've been to one in Valentine. And the Finance Committee meetings are done over the phone. It just facilitates getting everybody in the same place at the same time. [CONFIRMATION]

SENATOR BRASCH: That answers my question. Thank you. [CONFIRMATION]

SENATOR COASH: Thank you, Senator Brasch. Any other questions? Thank you for being here today. [CONFIRMATION]

NANA SMITH: All right. Thanks. [CONFIRMATION]

SENATOR COASH: Is anyone here to testify on any of the Arts Council appointments? Seeing none, we're going to...we have two more appointments, for the State Electrical

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Board. And they're both reappointments. We're going to start with Mr. Bergstraesser, if I said that correctly. [CONFIRMATION]

EDWIN BERGSTRAESSER: (Exhibit 7) Yes, you did. [CONFIRMATION]

SENATOR COASH: Okay. Good to see you again. [CONFIRMATION]

EDWIN BERGSTRAESSER: Good afternoon. I'm Edwin Bergstraesser, E-d-w-i-n B-e-r-g-s-t-r-a-e-s-s-e-r. I'm from Lincoln, Nebraska. This would be my...start of my third term for the State Electrical Division. I've been in electrical my whole life. I became an electrical inspector in 1993 for the city of Lincoln. In 2003 I became the chief electrical inspector for Lincoln and Lancaster County. Been on the State Electrical Board since sometime in 2003. [CONFIRMATION]

SENATOR COASH: Very good. [CONFIRMATION]

EDWIN BERGSTRAESSER: Any questions? [CONFIRMATION]

SENATOR COASH: Seeing none, thanks for coming down and... [CONFIRMATION]

SENATOR MCGILL: Thanks for your service. [CONFIRMATION]

EDWIN BERGSTRAESSER: Thank you. [CONFIRMATION]

SENATOR COASH: All right. Last appointment is for Mr. Mueller. [CONFIRMATION]

CORY MUELLER: Good afternoon. [CONFIRMATION]

SENATOR COASH: Good afternoon. [CONFIRMATION]

CORY MUELLER: (Exhibit 8) My name is Cory Mueller, C-o-r-y M-u-e-l-l-e-r. I was raised in Mr. Mayor's, Eickmeier there, his jurisdiction in Seward, Nebraska. And this will be my second term on the State Electrical Board. Graduated from Seward High, went to college for several years. I've got a BA in philosophy, a BS in business, an MBA degree, and an associate's degree in electrical science. So I'm educated beyond my intelligence. (Laughter) And was honored to be asked to serve on the Electrical Board in 2005 and have enjoyed it ever since, so. [CONFIRMATION]

SENATOR COASH: These are three-year appointments? [CONFIRMATION]

CORY MUELLER: Five-year appointments. [CONFIRMATION]

SENATOR COASH: Five-year appointments. [CONFIRMATION]

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CORY MUELLER: Yes, sir. Currently, I'm serving as the board's president, which, again, is another honor, so. [CONFIRMATION]

SENATOR COASH: Great. Thank you for being here today. Any questions for Mr. Mueller? Seeing none, thanks again. [CONFIRMATION]

CORY MUELLER: Thank you. [CONFIRMATION]

SENATOR COASH: Are there...is there anyone here to testify either in opposition or support for either of the State Electrical Board nominees? Seeing none, we'll close the appointment hearings for today. We'll move onto our legislative bill hearings. We're going to start out with LB56, Senator Mello. Welcome. [CONFIRMATION]

SENATOR MELLO: (Exhibit 9) Good afternoon, Senator Coash and members of the General Affairs Committee. My name is Heath Mello, M-e-l-l-o, and I represent the 5th Legislative District, which includes south Omaha and Bellevue. LB56 would update the Nebraska Electrical Act to reflect changes in the National Electrical Code, NEC, and is brought on behalf of the State Electrical Board. This legislation would update the current minimum standards for electrical wiring in the state to the most recent national guidelines, from the 2008 NEC to the 2011 NEC. The current State Electrical Act was passed in 1975. And, historically, every three years a bill is introduced to update the references to the NEC in statute. With one small exception, these regular code updates have passed the Legislature with little to no fanfare. As you will see by the chart I've handed out to the committee, electrical code update bills have commonly faced no opposition and are frequently considered as part of the consent calendar. Fortunately, it appears that the type of concerns that delayed the adoption of the 2008 NEC are not present in the 2011 NEC. And the result of the delays in the past few years has been better communication between the State Electrical Board and interested parties like the homebuilders. Randy Anderson, from the State Electrical Board, is here to describe some of the provision included in the 2011 NEC and to explain the code adoption process. But I'd be happy to answer any nonelectrical questions the committee may have. (Laughter) [LB56]

SENATOR COASH: Thank you, Senator Mello. Any questions for Senator Mello? Seeing none, you going to stick around? [LB56]

SENATOR MELLO: No, I'm going to waive. [LB56]

SENATOR COASH: Okay. We will start with testimony in support of LB56. Welcome. [LB56]

RANDY ANDERSON: (Exhibit 10) Senator Coash, members of the committee, my

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name is Randy Anderson, A-n-d-e-r-s-o-n. I'm the executive director of the State Electrical Division and we're the state agency that enforces inspection and permitting laws and licensing laws in Nebraska. I'm here to testify in favor of LB56. As Senator Mello stated, since 1975 we've worked hand in hand with the Legislature. And the code is updated every three years and this is done through a...it's the minimum standard set by the NFPA and it's done through a proposal process. The 2011 code is out now. This fall there will actually already be proposals for the 2014, which gives plenty of time to research and do things before a code is ever adopted. The NEC has used as the minimum standard for new electrical installations across the country. Colleges, tech schools, municipalities, electrical contractors, engineers, architects, and so on use it on a daily basis. As of December 31, 2010, there were 10,553 licensed electricians in the state, 15 state electrical inspectors, 44 municipal and 5 county electrical inspection programs. There are currently 5,931 open permits on file and an unknown number with the municipalities and the county inspections across the state. The State Electrical Division performs approximately 20,000 electrical inspections annually, all of which use the 2008 NEC, which is 81-2104 of state statute, recognized as the minimum standard for that wiring. The NEC is used in every installation from a receptacle in a single family dwelling up to the largest equipment being installed in industrial plants across the country. Colleges and trade schools use the National Electrical Code to train our upcoming engineers and electricians on the latest electronic equipment. The State Electrical Board monitors the National Electrical Code and researches why electrical codes are put in place to better understand the intent of the code and how it will apply to the state of Nebraska. The board investigates recorded problems associated with new equipment to determine if any changes need to be proposed to the code or, if by rule of process, we need to update how we inspect something in Nebraska. I ask that the committee follow the recommendations of the Nebraska State Electrical Board and look favorably upon LB56. Thank you. [LB56]

SENATOR COASH: Thank you, Mr. Anderson. We're going to let you off. Are there any questions? Appreciate you coming forward. Thank you for coming up. [LB56]

RANDY ANDERSON: Thank you. [LB56]

SENATOR COASH: Any further testimony in support of LB56? Welcome. [LB56]

CLINTON BURGE: Thank you, Senator Coash and committee members. My name is Clinton Burge, that's C-l-i-n-t-o-n B-u-r-g-e, and I represent the International Brotherhood of Electrical Workers. It is my pleasure today to testify in support of LB56 which would provide adoption of the 2011 National Electrical Code or better known to those in the industry by the NEC. The NEC provides for minimum requirements for safe electrical installations. Compliance with the NEC's rules provides that electrical systems are essentially free from hazards to persons and property. The new rules for the 2011 code will require more GFCI protection, expanded AFCI protection and enhanced

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protection for unsuspecting children from shock or electrocution hazards at receptacles. Consumers deserve responsible leadership when it comes to matters of safety, and implementing the code in Nebraska on a consistent cycle would certainly be a step in the right direction. A lot of hard work and oversight goes into amending and updating the code every three years by the code making panel. Each article and every section deals with safety. It is this safety that consumers expect and deserve. Again, I support LB56 in its entirety to provide adoption of the 2011 National Electrical Code which includes the most up to date and advanced changes in technology, to provide the best safety to Nebraska workers and their families. Thank you. And I'd be happy to answer any questions that you may have. [LB56]

SENATOR COASH: Thank you. Any questions? Senator Schumacher. [LB56]

SENATOR SCHUMACHER: Thank you, Senator Coash. Any big difference between what we have now and this one? [LB56]

CLINTON BURGE: Probably more protection in residential homes, like shock hazard at receptacles, bedrooms as well as other rooms in the house. And those are all designed to save lives. [LB56]

SENATOR SCHUMACHER: Those big ticket items or are they minor cost? [LB56]

CLINTON BURGE: Really, they're minor costs to the home. And there's no way to put a cost on a life that you might save. So I think it's the best thing that could happen. [LB56]

SENATOR SCHUMACHER: So in building a new house, how many extra hundred dollars because of this? [LB56]

CLINTON BURGE: I'm not sure of the exact dollar figure that that would be to a home. [LB56]

SENATOR SCHUMACHER: There's basically the shock, the different kind of outlets, is that... [LB56]

CLINTON BURGE: It's the breaker that detects and protects the individual. [LB56]

SENATOR SCHUMACHER: I have no further questions. [LB56]

SENATOR COASH: Thank you, Senator Schumacher. Any other questions? Seeing none, thank you. [LB56]

CLINTON BURGE: Thanks again. [LB56]

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SENATOR COASH: (See also Exhibit 16) Any further testimony in support of LB56? Seeing none, is there anyone here to testify in opposition? Seeing none, anyone here in a neutral capacity on LB56? Seeing none here as well, Senator Mello waived his opportunity to close, so we will close the hearing on LB56 and open the hearing on LB554. Senator Harms is here. Welcome to the General Affairs Committee. [LB56]

SENATOR HARMS: (Exhibit 11) Thank you very much, Senator. Good afternoon, Senator Coash, colleagues. My name is John N. Harms, H-a-r-m-s. I represent the 48th Legislative District. Today I'm here to introduce LB554. And I thank you, first of all, for giving me the opportunity to come to visit with you in regard to this legislation. LB554 would prohibit people from having open containers of alcohol on boats or personal watercraft. This would be similar to our open container laws for motor vehicles. Senator Coash, I've received probably right down the middle, some pretty good correspondence for and against this particular legislation. I think that it's an important step for Nebraska to take. We already have a boating under the influence law and this would go one step further because in boats, just like cars, people who drink can actually distract the driver. And in boats an intoxicated passenger can be in danger of drowning. Alcohol affects a person's sense of balance and, unlike a passenger in a car, a moment of dizziness or a misstep can be deadly on the water. Alcohol affects the judgment, balance and vision of...all those faculties are an integral component to boat operations; if any of the senses are affected, like...the likelihood of a boating accident does increase. Safe boating requires good vision and too much alcohol can affect vision, restricting peripheral vision and impairing ability to focus, reducing depth perception, decreasing night vision and making it difficult to distinguish between colors. Operating a boat is at least as complicated as operating a car and an accident can be just as dangerous. Alcohol reduces the brain's ability to integrate information from the five senses following a message to and from the brain. Balance is one of the first things impaired by alcohol consumption and even a small amount of alcohol causes a lack of stability. An intoxicated person in dark, murky water might swim downward to be able to try to find the surface. Even the strongest swimmer, research has shown us, that when impaired by alcohol might be unable to react properly when pitched from a boat unexpectedly into the water, often not even being able to distinguish up or down. The effects of intoxication are intensified by marine environment: sun glare, motion, spray, boat vibrations, wind, waves, current, noise levels, heat accelerates impairment. They can also cause fatigue which causes an even larger decline in judgment and reaction time. One of the reasons we have open container laws in cars is that a drunken passenger can be a distraction to the driver and the same is true for boats. Intoxicated passengers can be a danger to both themselves and to the operator. The U.S. Coast Guard data shows that deaths involving alcohol use, over half the victims capsized their boats while the others simply fell overboard and drowned. I've always had a high interest, when you deal with issues like this, to look at the statistics to see what the data tells us, what are the trends. And, Senator Coash, I'd like to share with you two sets of statistics. One deals with boat fatalities, and then a composite over the last ten years of the number of

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accidents we've had. I'm going to identify some people that lost their lives and talk a little bit about the alcohol content. On August 29, 2010, 40-year-old Michael Mannlein drowned when he fell out of his boat while fishing at Johnson Lake. His BAC, which is blood alcohol content, was .24 and he was not wearing a life jacket. August 6, 2010, 18-year-old Grant Hoefener drowned while tubing on the Elkhorn River. Alcohol was a contributing factor. Again, he was not wearing a life jacket. On May 17, 2010, 34-year-old Bennie Wright died from trauma when he drove his boat into the dam at Sherman County Reservoir, also injured in the crash were a 20-year-old female, an 18-year-old female, and a 24-year-old male. His BAC was .21. September 5, 2009, 54-year-old Edward Mahoney was the passenger in a boat which crashed into a seawall in Douglas County, four were injured. The uninjured operator was arrested on BUI (sic) and was charged with manslaughter. June 21, 2009, 30-year-old Todd Spangler was operating a boat in Douglas County pulling two women on a tube. The tube crashed into the dock and both women, 30-year-old Jennifer Dwyer and Spangler's 30-year-old wife, Kimberly, were killed. He was arrested for BUI (sic) and charged with manslaughter. Well, that list goes on and on, that's my point. It's not that it's just the crashes that kill boat operators or passengers when someone has been drinking, but drowning becomes a reality. And what they usually find is that someone has been knocked out of the boat or they crash and before people can get to them they will have already drowned, this includes even fishing boats, small fishing boats. From January 1, 2000, to December 31, 2010, Nebraska had 43 boating accidents which resulted in 48 fatalities. Twenty-two of these accidents were shown by investigators to be alcohol-related and 27 died in these incidents. Now I want you to keep in mind that during this time we did not allow alcohol in our state parks and recreational areas. And that's why I'm bringing this forward. We now have suspended those rules and regulations. We no longer have the ban, except for Lake McConaughy. My question, I guess, and what I'm posing to you is how much higher will this go and how much higher can we allow it to go? And how many families are going to be in unsafe environments? How many children and other people could be lost by such accidents? And, Senator Coash, in closing, I'd like to just give you a summary of what the U.S. Coast Guard published yearly in their recreational boat statistics. And the best I can give you is 2009, because that's the last date that they've reported the primary contributing factors in boating accidents. And what they said that the contributing factor in boating accidents is in operator inattention, people not paying attention, but alcohol use rated fifth. However, the primary contributing factor in the boating deaths by far is alcohol use. This statistic highlights what I've already said, that the use of alcohol limits the person's ability to react before or after an accident. And that closes my testimony. I did give you an amendment that clarifies the definitions and things. The definitions are in the State Boater Act. And I just wanted to make sure that you understood that, so if you want to refer back to some of the definitions, you have any questions about definitions, that's where you'll find it. I'd be happy to answer any questions. [LB554]

SENATOR COASH: Thank you, Senator Harms. I'm going to ask a question. [LB554]

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SENATOR HARMS: Sure. [LB554]

SENATOR COASH: This bill reminds me a little bit of the bill we moved forward today or this morning regarding open containers in limousines. And I'm not a boater so I'm not aware if this occurs here in Nebraska. But are you aware of any type of boating activity where a group of people could hire, you know, some of these pontoon boats or these boats that you can go out, party barges, where you hire somebody who is the driver and they navigate the boat and allow you to have alcohol? [LB554]

SENATOR HARMS: Not that I know of, that doesn't mean though that it can't happen. The way this legislation is written, if you're anchored or tied to the shore you can do that. But when the boat is in motion is where you have your problems and this is what it does. When it's anchored it's not an issue. But when you're in motion you need to put it away. [LB554]

SENATOR COASH: Okay. Thank you. Senator Larson. [LB554]

SENATOR LARSON: A few questions. Senator Harms, in the bill, reading, what is defined as a personal watercraft? Like the tube, tubing down the Niobrara River? [LB554]

SENATOR HARMS: Well, let me give you the definition of it, okay? Under the law, 37-1204.01, a "personal watercraft shall mean a class of motorboat less than sixteen feet in length which uses an internal combustion engine powering a jet pump as its primary source of motive propulsion and is designed to be operated by a person sitting, standing or kneeling on the watercraft rather than in the conventional manner of boat operation." Probably a Jet Ski. [LB554]

SENATOR LARSON: So the tubers, tubing down the Niobrara River, for example, would still be able to drink on their way... [LB554]

SENATOR HARMS: No, you wouldn't. That's classified as a vessel. I think if you look at...I think, yeah, that's a problem, you're right. (Laughter) But I think when you look at the fiscal note that comes from, and I don't want to mislead you but that's how I see it. [LB554]

SENATOR LARSON: You see it, basically, we'd be banning those people tubing down the Niobrara River from... [LB554]

SENATOR HARMS: Yeah. Well, if you look at the fiscal note on the fiscal analyst...not the fiscal analyst side, but if you look at the fiscal analyst, excuse me, not fiscal analyst. If you look at the Department of...Game and Parks Commission, I'll get it right pretty

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soon, they kind of spell this out. It's the second paragraph: possession of an open container could prohibit...could be prohibited on tubes, kayaks, canoes and horse tanks since all of these would be considered a vessel. A vessel in this definition is described as a watercraft with, except for seaplane or capable of being used as means of transportation on water. So they've got that covered. They would be. I think...I understand where you're coming from but... [LB554]

SENATOR LARSON: All right, that is my large concern especially with a district that sits on the Niobrara. (Laughter) [LB554]

SENATOR HARMS: Yep, might take away some fun, I understand that. So anyway, but that's the way the definition would work. [LB554]

SENATOR LARSON: And my second question, you might not know this question (sic) because I don't. I know the Missouri is considered international waters, the Missouri River. What about, like, Lewis and Clark Lake? I know, I have a... [LB554]

SENATOR HARMS: You know, here's what I understand... [LB554]

SENATOR LARSON: ...because I think it goes back to Colby's question of...I know there's...they rents boats, like party boats where, you know, I've heard the radio stations take boats onto the Missouri or Lewis and Clark Lake. I mean, there's a captain, there's a driver but it's a party on the boat. [LB554]

SENATOR HARMS: Senator Larson, this particular legislation deals with what it says, waters of the state,... [LB554]

SENATOR LARSON: Okay. [LB554]

SENATOR HARMS: ...if you look at it. And that definition is 37-1206. And what it says, "Waters of this state shall mean any waters within the territorial limits of Nebraska." [LB554]

SENATOR LARSON: And I know the Missouri isn't, but, like, I'm worried about something like Lewis and Clark or McConaughy where that could happen. [LB554]

SENATOR HARMS: Well, McConaughy, they have suspended the use, no, excuse me, they have not suspended the use of alcohol there. Is that right? Yeah. You cannot use alcohol there,... [LB554]

SENATOR LARSON: Okay. [LB554]

SENATOR HARMS: ...within McConaughy, that's the only lake in Nebraska that they've

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said, when they made their rules, the Game and Parks Commission, they're not allowed, they're not going to allow alcohol on that lake. That's the biggest lake in Nebraska so. [LB554]

SENATOR COASH: Thank you, Senator Larson. Senator Bloomfield. [LB554]

SENATOR BLOOMFIELD: Yeah. Senator Larson may have answered my question with the...on the Missouri River. I was wondering about the casinos,... [LB554]

SENATOR KRIST: It wouldn't apply. [LB554]

SENATOR BLOOMFIELD: ...if it would apply to them at all? [LB554]

SENATOR HARMS: It would apply to what? [LB554]

SENATOR BLOOMFIELD: The gambling casinos, the riverboats? [LB554]

SENATOR HARMS: I don't know. I guess that's something we'd have to ask and look. I don't know for sure. [LB554]

SENATOR LARSON: It's my understanding that the Missouri River is international waters because it flows into the Mississippi and then into the Gulf. That's my understanding. I could be wrong. [LB554]

SENATOR COASH: Thank you, Senator Bloomfield. Senator Schumacher. [LB554]

SENATOR SCHUMACHER: Thank you, Senator Coash. So would this outlaw the guy who wants to go out in his rowboat or with his little electric motor and drown a few worms and drink a beer? [LB554]

SENATOR HARMS: No, as long as he's along the side and his boat is not in motion, he doesn't have a problem with that. [LB554]

SENATOR SCHUMACHER: No, but what if he's out on the lake and anchored? [LB554]

SENATOR HARMS: Yeah, if he has an anchor and he's out on a lake, it's not a problem. But if he's actually moving, in motion, if you read the law, read the legislation it talks about in motion. [LB554]

SENATOR SCHUMACHER: So you got to be in motion for this to kick in. [LB554]

SENATOR HARMS: Correct. [LB554]

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SENATOR SCHUMACHER: So you're...it's just a matter of getting out there and getting back? [LB554]

SENATOR HARMS: That's right. [LB554]

SENATOR SCHUMACHER: You can't move between anchor and...? [LB554]

SENATOR HARMS: That's right. [LB554]

SENATOR SCHUMACHER: Okay, okay. [LB554]

SENATOR HARMS: Just chuck it, man, hide it. (Laugh) [LB554]

SENATOR BLOOMFIELD: Throw the can overboard. [LB554]

SENATOR HARMS: Yeah. [LB554]

SENATOR COASH: Thank you, Senator. Any other questions for Senator Harms? [LB554]

SENATOR HARMS: You're very kind. I appreciate it. Thank you very much. [LB554]

SENATOR COASH: Thank you, Senator Harms. I'm going to start the testimony. [LB554]

SENATOR HARMS: Senator Coash, I will not be able to close because of Appropriations, where we're at in there. Okay. [LB554]

SENATOR COASH: Okay. Well, you better get there. They're doing some important stuff over in Appropriations. [LB554]

SENATOR HARMS: All right. Thank you, appreciate it. [LB554]

SENATOR COASH: Thank you, Senator Harms. Okay. We're going to open up the testimony in support of LB554. First testifier. If you're going to testify, we ask you to come on up and kind of take an on-deck spot and we'll keep this moving. Welcome. [LB554]

HERB ANGELL: Good afternoon, Senator Coash and members of the committee. My name Herb Angell. I'm the state boating law administrator and I work for the Nebraska Game and Parks Commission. Please excuse my voice, I am a bit of an overzealous fan of Nebraska basketball. And in spite of my armchair coaching and verbal encouragement, they still seem to be struggling. Excuse me. I'm here to testify today in

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support of the bill that Senator Harms has introduced on behalf of the Game and Parks Commission. One of our concerns is exactly what was brought up during Senator Harms's testimony, and that is the language concerning nonpowered boats. We think that there might be an unintended consequence for the tube, canoe, kayak and tank outfitters that might not have been intended. Where we see the problem is with motorboats, that's probably 99 percent of the problems that we have with alcohol and boating accidents. There are so few injuries and deaths associated with nonpowered boats that we just feel that it would be overwhelming for our level of law enforcement to even be able to address that. So in short, the Game and Parks Commission does support the bill, but we do have some concerns over the language concerning vessels. Vessels are, as Senator Harms had testified, defined as any kind of craft that moves people across or through water, so that would include tubes and tanks and canoes and kayaks. And I stand ready to answer any kind of questions you might have. [LB554]

SENATOR COASH: Thank you, Mr. Angell. Could you tell us, repeat just one more time, you work for the Game and Parks. And what is your position there? [LB554]

HERB ANGELL: I am the state boating law administrator. [LB554]

SENATOR COASH: State boating law administrator. Okay, thank you. Senator Brasch. [LB554]

SENATOR BRASCH: Thank you, Senator Coash. Thank you, is it Mr. Angell? [LB554]

HERB ANGELL: Yes. [LB554]

SENATOR BRASCH: The question I had, listening to Senator Harms and the discussion is, one of the factors is that a person intoxicated or drinking and driving a boat, that they had lost judgment on where the bottom of the lake is, where the, you know. Wouldn't that be true for somebody on a tube though and other, you know. Drowning doesn't matter how fast you're going, you know, if you don't know the bottom from the shore. Your thoughts. [LB554]

HERB ANGELL: Yes, Senator Brasch, that's entirely correct. However, history shows that while we don't condone drinking on water, I just think that that's a bad mix and we don't condone it. However, we don't see a problem, as history has shown, that nonpowered boats have, as opposed to power boats, with the speed and the fact that you have a machine going as fast as a car with no brakes. We see more deaths and more injuries and damage associated with those boats rather than nonpowered. [LB554]

SENATOR BRASCH: With the speed and the impact and then... [LB554]

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HERB ANGELL: Yes. [LB554]

SENATOR BRASCH: Thank you, Mr. Angell. Thank you, Chairman. [LB554]

SENATOR COASH: Any other questions for Mr. Angell? Seeing none, thank you for coming down... [LB554]

HERB ANGELL: Thank you very much. [LB554]

SENATOR COASH: ...and giving us your testimony today. We'll take the next testifier in support of LB554. Welcome. [LB554]

DIANE RIIBE: Good afternoon, Senator Coash, members of the committee. My name is Diane Riibe, R-i-i-b-e. I'm the director of Project Extra Mile and we are a network of 11 coalitions, actually 10 coalitions in 11 counties across the state, from here to Senator Harms's district. And we would just be here in support of his proposal. He really covered it very well, so no need to do that, but very common sense. And we also have concerns with the lifting of the ban in the parks. I think we'll see a different day, and this would be one opportunity to provide some appropriate limitations to hopefully save some lives. So thank you. [LB554]

SENATOR COASH: Thanks, Ms. Riibe. Any questions for Ms. Riibe? No. Thanks for coming down. Anyone else here to testify in support of this bill? All right, seeing none, we'll move to the opposition testimony. Come on up. [LB554]

BRUCE BEINS: Good afternoon, senators. Thank you very much for this opportunity to talk to you a little bit. My name is Bruce Beins, it's B-r-u-c-e B-e-i-n-s. I'm here representing myself, my business and the Harlan County Lake Association in opposition to this bill. It's just a bad idea all the way around. I was really surprised that we had...Senator Harms, with all due respect, gave you a lot of information based on the Coast Guard. We don't have Coast Guard in Nebraska, so I don't know how that relates to it. And we also had testimony from the Game and Parks Commission, you know, which I understand their testimony. But what they're not telling us is, you know, how many of these accidents are in Nebraska. We said...we heard that there wasn't very many in the nonpowered vessels. But we have tens of thousands of registered boats in Nebraska. I haven't seen anybody identify that we got a problem here to start with. I've been operating a marina on Harlan County Lake for over 30 years. I'm a rescue diver. I'm a boating safety instructor. I'm a paramedic. I'm very sensitive to alcohol injuries and the problems that are out there but I'm also conservative and I see, number one, is there a problem? Well, the problem is you can't legislate common sense. We've had driving while intoxicated laws for a lot of years and that didn't keep people from driving while they were intoxicated. It was the awareness and the education that has brought about those changes. I think if somebody would actually try to find the statistics through

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Game and Parks or whatever, the number of accidents and drownings, drowning deaths in Nebraska have been on the decrease, even though the number of motorboats has been on the increase. So I think, you know, this is another attempt to legislate some good feelings from some groups of people where no problem exists. If you truly think a problem exists, then let's enforce the law we have, which is boating while intoxicated. Very rarely is that law ever invoked, generally only when somebody is killed or seriously injured does anybody do that, probably because we're not funding the law enforcement on our lakes and parks and stuff maybe as well as we should. Harlan County is the second largest lake in the state. We have close to half a million visitors a year at that lake. Our game warden very rarely is on the water, he's in a pickup driving around. So he's one guy and he covers multiple counties in an area that includes Harlan County Lake. So I don't think the problem is that we need another law. I think the problem is if you think there is a problem, a concern and a problem, then we need to enforce the law we have and that's the boating while intoxicated law. And we also need to educate the public, which we work on doing all of the time. We're on a Corps of Engineer, a federal lake, so alcohol is and always has been allowed on Harlan County Lake. Do we see that we had worse problems on Harlan County Lake because of that than on any other lake in the state? No, you don't if you look at the numbers and the statistics, there's no worse problems, in fact less problems probably there because Corps of Engineers awareness programs and working with the local businesses and so forth have helped to keep people educated and so forth. But the answer is not to add another law. The answer, if you think there's a problem, is to enforce the law you've got. And I would be glad to answer any questions. [LB554]

SENATOR COASH: Thank you, Mr. Beins. Any questions? Seeing none, thanks for coming down. [LB554]

HERB BEINS: Thank you. [LB554]

SENATOR COASH: Any further testimony in opposition of LB554? Welcome. [LB554]

CATHY BRINK: Good afternoon, Senator Coash, members of the committee. My name is Cathy, C-a-t-h-y, Brink, B-r-i-n-k. My husband and I own and operate Beaver Lake Marina in Cass County. And I'm opposed to this for several different reasons. And I see several flaws in the way that the law is written. One of the things that jumped out at me is it's written, it says if you drop anchor you can have your drinks. But once you drop anchor and you drink that can of beer, that's an open container. So once they go underway, what are they doing with that can of beer, that can that's open? They can't throw it in a trash bag in their boat to take it back to throw it away. People are going to fill that can, drop it to the bottom of that lake to get that open container out of their boat because it's an open container, it's had alcohol in it and it falls under that open container definition. So I'm really afraid that this is going to cause people to make landfills out of the bottom of our waterways. Even if they go to shore, have their drink, once they leave

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they've got to leave that trash behind. They can't throw it in a trash can and take it with them. It's going to litter the beaches, it's going to make landfills from the bottom of the lakes. And that negates what he was saying about that we don't want drunken people in the boat. All they have to do is drop anchor and they can drink all they want. They just have to get the cans out of the boat before they start moving again. So I really don't think the law is going to accomplish what he thinks that this law is going to accomplish. It's going to create a whole new set of problems for us. The other thing that I see where this is not good for the state of Nebraska is Nebraska is already at a distinct disadvantage from a boating market. We don't have access to the type of waters that encourages boating, especially in the eastern part of the state. It's very limited, a lot of private lakes, not a lot of public waterways for people to boat, which sends people into Iowa, Kansas, Missouri. And now we're even making it a less friendly environment for the boater. So we're telling those people again, go somewhere else and do your boating if you want to go out and have a good time. And I've been, ever since I saw that this was being introduced, I've been asking people, I've done a couple of boat shows and as people come through I'd ask people, what do you think? One hundred percent, I have never had one single person say, I think it's a great idea. And almost every single one of those people said, we'll probably be going over to Iowa, we'll be going into Kansas, we'll leave for the weekend and go do our boating if this were to become law. So from a person that sells boats and promotes the boating lifestyle, I see it as a huge hit to the people that make their living from boating and that want to promote a boating lifestyle in this state. And I really don't see where it's going to solve a problem. I think it's going to create its own new problems. And irresponsible people are going to be irresponsible. This law is not going to make them responsible. The passengers in the boat are not driving the boat and they are not the people that should be restricted for their activities in the boat, the driver is. The other thing we don't do in Nebraska that could be...rather than doing this would be a boater safety law. Currently, a person over 18 years of age can purchase a boat, they may have never seen a boat in their life. But they can walk into my store, they can buy that boat and two hours later they can be on the water driving that boat. They don't have to have anything that says they know anything about what they're doing. A lot of states have boater safety requirements that say you have to have basically a boat driver's license. That would be another way that you could educate people, at least make them know what they're doing before they get behind the wheel of that boat, rather than...I really feel like this is maybe a knee-jerk reaction to some tragic accidents. And, yes, they were tragic accidents and, yes, there was alcohol involved, but in several of those, those people were actually drinking in their home and then went out, got in the boat and had the accident. This law would never have prevented that situation. So thank you. Any questions for me? [LB554]

SENATOR COASH: Thank you, Ms. Brink. Any questions? Senator Bloomfield. [LB554]

SENATOR BLOOMFIELD: Thank you. Under current law, do we prohibit the driver of the boat from having an open container within his reach? [LB554]

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CATHY BRINK: No, they can have an open container, it's just they can't be intoxicated. [LB554]

SENATOR BLOOMFIELD: Would you have an issue with banning the driver from having it within his reach? [LB554]

CATHY BRINK: An open...no. I mean, I honestly, you know, I want boating to be safe. It's bad, you know, for those of us in the boating business. It's bad when these things happen because it makes people afraid, it makes them nervous, you know. We want people to think of boating as a fun and safe activity so. [LB554]

SENATOR BLOOMFIELD: Thank you. [LB554]

SENATOR COASH: Thanks, Ms. Brink. Any other questions? Seeing none, thanks for coming down today. [LB554]

CATHY BRINK: Yes, thank you. [LB554]

SENATOR COASH: (See also Exhibits 17 and 18) Any further testimony in opposition of LB554? Seeing none, any neutral testimony? Okay. Before we close the hearing, I'll read into the record two letters, two letters of opposition to this bill. One from Barry Franzen of the Branched Oak Yacht Club, and one from Dr. Timothy Loker as well. So with that, we will close the hearing then. And open the hearing on LB567, Senator Schumacher. Hi. [LB554]

SENATOR SCHUMACHER: Hi. My name is Paul Schumacher, I'm the senator representing District 22 in the Legislature. And in presenting LB567 today, it's a simple matter of enforcement versus fairness. No one denies that there should be enforcement, some type of penalty, a suspension, a fine arising out of a sting operation conducted at a bar. On the other hand, I've worked with bars for 20 years. And one of the things that gets an expression from them that it's just not fair are these sting operations. These guys are, in most small towns and most medium-sized towns, genuine, essential facility operators. It's a place where people can go get a hamburger, the place where they can go get a drink, maybe watch the football game on a big screen TV. They're hard workers. And in the general culture they expect the kind of fairness that they're familiar with in their communities. And they have employees on occasion who mind the shop while they're out. But most of the time a good bar owner is there from early in the morning until very late at night and minding the shop themselves and they can get very, very busy. And when they are stung it is not by somebody who looks like they're 13 years old, it is by somebody who looks like they're of age, many times in a very busy time of the day, not always, but many times or on a busy weekend. And to have enhanced penalties applied from one sting to the next, to the next can result in a

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bar owner literally being stung to death. I noticed the fiscal note, which I thought was kind of interesting because they said, well, you know, if we didn't have enhanced penalties we would lose money for the school system. And that fiscal note really shows that it is an ineffective policy. If we're going to say we're going to count on \$52,000 a year coming in from stings, it's telling me we're going to sting and sting and sting and sting. We're not going to fix the problem, we're just going to keep stinging because that's a revenue source that's worthy of mentioning in a fiscal note. And it amounts to about \$10 per bar in the state or per liquor license in the state per year. So basically, this says, fine, you want to do the stings and the guy screws up or the bar owner screws up and serves a person who looks like they're over 21 but who are under 21 who may be there lying about their age, may even be smelling of alcohol in a busy time of the day, fine. Fine them, suspend them, but don't enhance the penalty from sting to sting. Those are off limits for purposes of penalty enhancement. And it's a very simple proposition that I bring to you today. I'll take any questions. [LB567]

SENATOR KRIST: Any questions for Senator? Senator Coash. [LB567]

SENATOR COASH: Thank you, Senator Krist. Senator Schumacher, is there like, sort of equivalent to like a statute of limitations in the current law that you're aware of? [LB567]

SENATOR SCHUMACHER: Not that I'm aware of. [LB567]

SENATOR COASH: So you can't...so... [LB567]

SENATOR SCHUMACHER: Perhaps Mr. Moylan knows of one, but I'm not aware of a statute of limitations that goes back and says, well, we start the cycle over every three years or something like that. [LB567]

SENATOR COASH: Okay. Well, we're getting hands from the liquor commissioner. We'll...four years, there you go. Thank you. [LB567]

SENATOR SCHUMACHER: Four years? Okay. [LB567]

SENATOR COASH: So we're at four years. Okay, thank you. [LB567]

SENATOR KRIST: Senator Larson. [LB567]

SENATOR LARSON: Thank you, Senator Krist. And just to clarify the point, this only takes place when the violation is from a sting. Other violations could still be subject to penalties for subsequent violations, correct? [LB567]

SENATOR SCHUMACHER: That's correct, Senator Larson. [LB567]

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SENATOR LARSON: Only for the sting? [LB567]

SENATOR SCHUMACHER: Right. [LB567]

SENATOR LARSON: Thank you. [LB567]

SENATOR KRIST: Who was first? Okay, Senator Bloomfield. [LB567]

SENATOR BLOOMFIELD: We had an establishment in my district that, that I don't know if he was subject to a sting, but he habitually served underage people. He lost his license. He put his license in his brother's name and he continued to do the same thing. His brother eventually lost the license and they moved it on down through the family. At what point can you say, you're a bad operator, whether you're being caught through stings or any other purposes? You shouldn't be in that business. [LB567]

SENATOR SCHUMACHER: I have to agree with that. And if you have such a situation where somebody is habitually serving minors, it isn't going to take a sting to get him. They can, with normal really, true violations of the law, those are not exempted from this. They can enhance the penalty; if he's habitually doing it, he's an easy target for law enforcement. [LB567]

SENATOR BLOOMFIELD: Law enforcement is somewhat limited in that area of the state. (Laugh) [LB567]

SENATOR KRIST: Different problem. Senator Brasch. [LB567]

SENATOR BRASCH: Must be this side of the table here because I'm sitting here thinking this happens again and again repeatedly. Wouldn't that barkeep, that owner just treat every customer like it's a sting to be safe so you don't have a repeat, as busy as it is? I mean, I'm just...is it too tough to challenge the ID and, you know, just do your diligence and then that way you don't get stung again? I would think every customer would be challenged on identification and eligibility to purchase alcohol. But apparently you're saying some people will, if they smell booze and you look old enough, here you go and oops. [LB567]

SENATOR SCHUMACHER: Well, yeah, well, there are oops. And this doesn't prevent them from being fined or suspended, it just is an enhancement on a sting. And, you know, in the conduct of a sting the object is to put the guy completely through the hoops. And if you catch him in a weak situation or a busy situation, stings happen and this is simply saying, look, fine them, suspend them, but don't use it for penalty enhancement. If they get caught selling to a minor in a legitimate sale, then they deserve what they get. [LB567]

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SENATOR BRASCH: Because the ultimate goal would be to have this a sting-free establishment where minors not stinging would know I can't go in there because this person is really good at checking ID and sending kids away. I don't know, I would just think that when the owner or barkeep finally gets it, that, you know, I have to be tough on this, that the enhancements wouldn't be necessary or anything. It would just be a matter of habit and practice. [LB567]

SENATOR SCHUMACHER: Well, effectively, the thing hasn't been working that well because they... [LB567]

SENATOR BRASCH: Well, apparently it's not effective. I mean, it's not enough penalties to... [LB567]

SENATOR SCHUMACHER: Either that or it's just human nature in a small operation in a small town with a small bar not to be perfect. [LB567]

SENATOR BRASCH: Not. Thank you, Senator Schumacher. Thank you, Chairman. [LB567]

SENATOR SCHUMACHER: Okay. [LB567]

SENATOR KRIST: Senator Bloomfield. [LB567]

SENATOR BLOOMFIELD: Thank you. Maybe you can define a little more what constitutes a sting versus...again, in my district up there, the county sheriff is going to cover virtually every bar in the district, the county sheriff, with the exception of South Sioux City, probably. The bar owner knows every county sheriff and every deputy he's got. If he's in the bar, he's certainly not going to serve anybody young. How do you ever catch anybody? Just when he comes stumbling out of the bar drunk or... [LB567]

SENATOR SCHUMACHER: Well, they catch quite a few of them that are...if somebody is actually serving a minor. And it is pretty easy to detect which bars might be problems. Might be selling particularly the carry out stuff to a minor because those kids get caught and when those kids get caught almost all of them flip and say, you know, start out telling you they found it in the road ditch and end up telling you where they got it. And it's pretty easy for a county attorney or law enforcement, at that point, to focus in on a really bad bar. The bars generally don't want to get in trouble. They genuinely want to conduct their business. They genuinely are law-abiding people and they stumble, as we all do, whether we're driving a car at 68 miles an hour in a 65 zone or doing...rolling through a stop sign, people stumble. And when they stumble in real play, in a situation where they really sell to a minor, then it's one thing. But when they stumble on a stage that is set for them, then it shouldn't be used for penalty enhancement. Give them a fine,

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suspend them, but it shouldn't be used for penalty enhancement. [LB567]

SENATOR BLOOMFIELD: You just brought up a point that I didn't give consideration to. On those stings is it more likely going to be the 20-year-old sitting in a bar drinking a beer or is he getting the 12-pack to go? Where do most of them come down at? And maybe we'll ask the next gentleman. [LB567]

SENATOR SCHUMACHER: I've never been stung so I don't (laugh) know the answer to what the probabilities are. [LB567]

SENATOR BLOOMFIELD: Yeah. Unfortunately, you and I don't look that young. [LB567]

SENATOR SCHUMACHER: That's right. [LB567]

SENATOR BLOOMFIELD: Neither do you, Larson. [LB567]

SENATOR KRIST: Any other questions? Thank you, Senator Schumacher. You going to be here to close I would imagine? [LB567]

SENATOR SCHUMACHER: Yes. Thank you. [LB567]

SENATOR KRIST: Could I get those in support of LB567. Anybody, proponents? Welcome. [LB567]

JIM MOYLAN: (Exhibit 12) Mr. Chairman, members of the committee, I'm Jim Moylan, J-i-m M-o-y-l-a-n, 8424 West Center Road, Omaha, general counsel to the Nebraska Licensed Beverage Association, which, as you know, is a state association of liquor retailers and of which there's approximately 4,700 of them in the state, the backbone of every community in the state. I'll answer a couple of them right away. Coash, there is a four-year statute of limitations with respect to violations. They roll off, if they're four years old they roll off and the commission is not to consider them. Now I'm not so sure sometimes they don't consider them on cases that I've had over there, when there have been some in the past. In fact, I did have a case about ten years ago. They'd been in business for 30-some years and they had had four after hours beer on the bar in that 16 years but only one in that four-year period. So they just figured, well, I'll just sign my waiver and send it in and get my letter, you know, my suspension and then I'll pay my fine. Well, they closed him up. So he came to me and I had to appeal the case into the Lancaster County District Court. And we won it, in fact we made a little bit of law that the four-year statute is a four-year statute. And they should never have considered, you know, the three other ones going back 16 years. And they were all the same violation. So that's kind of why it's been there for a long time. But it's important to have that there. And, Senator Bloomfield, you mentioned your hamburger joint up there. Well, I'll tell you,

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it seems like the exception makes the rule in this business. You got one guy, he's the exception, he causes the problems, and then it just splashes all over everybody else in the state of Nebraska. Did you hear about so-and-so, they'll say. Yeah, yeah, he's a bad operator. Well, they're all bad...you know, it just rolls off on the rest of the retailers who, like Senator Schumacher said, are good, honest, solid citizens of every community in this state. Now you had mentioned something about knowing every officer up there in the area. See, that's not true in Omaha and Lincoln. [LB567]

SENATOR BLOOMFIELD: No, I'm sure not. [LB567]

JIM MOYLAN: You don't know who they are, you know. But anyhow, as I mentioned, these young girls come in with...alone, \$5, driver's license, and they generally order package and maybe sometimes just an ordinary drink. And they look old and they act just like they're 30 years old when they walk in. They've been doing it, they've been trained on this and they get to be professionals. They could be actors is what they get to be. So, you know, they're not true violations. They're law enforcement induced violations. And then the patrolman comes in or whoever the law officer is, they come in and they write them the ticket, you know, and then it goes through the process. The bartender has to go to county court, probably pay a fine. About three months later the liquor establishment gets a notice from the Liquor Commission to appear before them, you know, with an opportunity to sign a waiver. I recommend they all go down there, you know. But this is just plain entrapment, these stings are. And we're tired of them, everybody in the industry is tired of them. And I don't know how much, but I told you last time, here, I'll pass this out for you, be very short reading, it's one page, but it's the same thing I had the last time with respect to the amount of dollars that Project Extra Mile gets and has gotten since July 1 of '07. Since that date, in four different grants, up through July 10...December of 2010, they have gotten \$1,238,972. Now granted, they do go around to communities and schools and the like. But that's where they ought to be spending their time and their money, not around bars, stringing them when only less than 7 percent of the kids in the surveys get their liquor from establishments, less than 7 percent. So they really ought to be spending all their time out in the communities in, you know, educational, informational, go to the campuses, you know, and preaching to the young kids the pitfalls and the problems of using alcohol. But...and then here...now on how much they spend on enforcement out of this I don't know, but I know they pay the officers and they pay the little girls, you know. But Ms. Riibe is here today and she can answer those questions for you I'm sure. And I suggest that you ask her and see if she can maybe get that information. If there's any other questions, I'd be happy to try to answer. [LB567]

SENATOR KRIST: Any other questions? Seeing none, thank you, sir. [LB567]

JIM MOYLAN: Thank you. [LB567]

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SENATOR KRIST: Any other proponents? How about opponents for LB567? Good afternoon. [LB567]

DIANE RIIBE: (Exhibit 13) Good afternoon. Diane Riibe with Project Extra Mile, R-i-i-b-e. And we do support ten coalitions in 11 counties across the state. So that was a great introduction. I'm happy to answer your questions. We are in opposition to the proposal. I'd like to particularly take some time to talk to you about how those operations are conducted so at least you have kind of full and complete information. First, for the record, I would like to say that we don't receive dollars to pay the law enforcement officers. Those are dollars that come usually, not always, but usually through the Highway Safety Office which are federal highway monies and that's "standardly" where those dollars come from, although they also come through what's called the SPF SIG program, and that's the Strategic Prevention Framework State Incentive Grant program which is totally apart and separate from us as well. I'd like to say first that when we look at the kinds of operations that are happening, and I would encourage you, as I think Hobie will, when he comes up as well, that's providing he's coming up, that they're really not referred to as stings; if you're in the industry, yes, they are. They're referred to as compliance checks. And I will tell you that there's a great deal of effort that goes into the community discussions so that the attitude of any of us is not about catching someone doing something wrong, so much so that it's a detailed part of the briefing instructions for the officers as well as the young people. What we know is that alcohol is not an ordinary commodity, senators. We're not talking about selling shoes, I wish we were. Didn't mean to punch out. But we're not talking about an ordinary commodity. We're not talking about something that doesn't have the potential to cause enormous great harm. We have to do enforcement, both on the retail and the social end. And so when the officers are doing enforcements on the retail end and doing compliance checks, they're also doing companion enforcements, looking at the social availability so they're not focused on just the retail environment. I will also tell you that you have the information and data in front of you for the Omaha metro area, but that's specific just to our area, because the numbers are so large it gives you a better picture. We can provide those numbers on the other communities as we have them. I'd like you to look at, if you would please, the first data, the data sheet that you see which is the summary to date sheet. And it really shows you the entire kind of progression through the years in terms of what we saw initially when we did the compliance checks. And I say we, it's law enforcement. I mean we as a community. We knew that 41 percent of our businesses were unfortunately, at that time, selling to minors. We saw and see in Nebraska precisely what we know from the national research, and that is when you do consistent enforcement you have the ability to reduce the availability of alcohol to kids. When you're doing a retail enforcement, that community discussion helps on the social end as well, so you get a deterrent that goes across the community and it becomes extremely important; if anything, in Nebraska, in terms of what we know from the literature, we don't do them frequently enough. And I'll tell you why I say that. We know that those checks have to be done about every three months to be able to maintain that deterrent

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effect. And that comes from the University of Minnesota, which has a pretty strong epidemiology department out of the university. If you look at the fourth column on that data sheet, you'll see that we've consistently moved down to the point that we have...the most recent is a 13 percent noncompliant rate. That was just the Patrol doing a smaller number this last fall. The previous one in the Omaha metro area hasn't been done since May and June of last year and we saw a 6 percent noncompliance rate. That's fantastic, I mean that's incredible, incredible progress. And there's really no way to have that happen other than a consistent enforcement operation done with, what I can tell you, was the highest level of professionalism. I can tell you we would not be involved if it weren't done with great integrity and professionalism. And happy to answer the questions that we can as well as for our law enforcement partners. I would also ask you to look at the last column in that sheet and it's the businesses that were compliant. And I want you to notice what's important here; if you look at the businesses that were compliant throughout the years and those that checked ID, which is what we communicate to the retail community all of the time, that's the key component that helps them to not be in any fashion worrying ever about a compliance check. It is checking the ID and you can see with your own eyes once there was an 89 percent, otherwise it's virtually 100 percent of the time. Businesses that are not selling alcohol to minors during any operation, they're simply asking for and verifying the age of the young person. I would also say that as someone who sometimes is a little heavy-footed, I know that the only way that we work to make sure that people aren't speeding is we have consistent enforcement. And those are special operations. We don't have officers just happen to be on the corner eating their lunch and just notice someone going by. We have to do it in a coordinated, well-planned, well-organized, with criteria and guideline that are set in place. And by the way, our...the guidelines in Nebraska are in place because of LB114 a number of years ago, which requires the State Patrol to promulgate those rules and regulations. So they're not done by happenstance, they're done consistently with consistency across the state in every jurisdiction, using those same guidelines. There's no ability to deviate from them. I can tell you that agencies that would do that, and again Hobie Rupe, from the commission, could confirm that, those cases are simply not heard or don't go to the commission, they don't make the case. You have to have a very well done operation. On the next sheet you can see the kind of visual graph and just see the kind of decline that we've seen and again, extremely important for the overall...and then the last piece is just a copy of a news release that we've done because we try to help the agencies out in doing that. I would like to address the issue of enforcement versus parents and just the idea of education and awareness. I really, frankly, hope we don't get to that because what we know, and we could spend a long time talking about it, in the world of public health, in the world of trying to change larger communities and those community environments, we know that it takes more than education and it takes more than awareness and we do a lot of that, we do an awful lot of that. But it can't be done alone, it simply doesn't change behaviors, whether it's of kids, of parents or a retail environment. These are true violations I will tell you. I can also tell you that our law enforcement capacity is severely hampered in this state, particularly when it comes to

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liquor enforcement. I don't have the exact number, but I can tell you I feel confident saying that if we have eight full-time positions and those were not...would not be people, those would be parts of people combined into perhaps eight, I feel confident with that, I would be surprised that we would have more than that doing liquor enforcement in the state. When we consider we have about 5,400 licenses, somewhere around there, in Nebraska, we have to, senators, have the ability to make certain that we're enforcing the laws in a way that's appropriate, professional and done well so that we, quite frankly, protect not only kids but the rest of our communities. I would urge you to not move this bill forward. We are happy to answer any questions that you have and thank you for your attention. [LB567]

SENATOR KRIST: Thanks for coming and thanks for your testimony. I have a couple questions and you're next. Mr. Rupe has, on several occasions, said I'll tell you how to do a compliance check, the ID is vertical. [LB567]

DIANE RIIBE: Um-hum. [LB567]

SENATOR KRIST: So if I ask you for your ID, how are you going to present an ID in a sting operation? And I'm going to say that I'm part of the industry. How are you going to check if I ask for ID and you present a piece of ID that's vertical? [LB567]

DIANE RIIBE: Are you suggesting this perhaps would be a fake ID? Is that what you're... [LB567]

SENATOR KRIST: No, I'm suggesting that by your own rules you cannot have fake IDs in a sting operation. Is that correct? [LB567]

DIANE RIIBE: No, in compliance checks they do not use fake IDs. [LB567]

SENATOR KRIST: Okay. So I ask you for your ID and you give me a vertical ID, the job is done. [LB567]

DIANE RIIBE: Should be. [LB567]

SENATOR KRIST: Okay. What's next? If you give me a vertical ID and you still want to be served, how would you find a person to be illegal if he's presented a vertical ID? Would you ask him a question? [LB567]

DIANE RIIBE: Well, first of all that would be an immediate stop. If you're the clerk or you're the seller that's just an absolute clue, even if you weren't going to verify the information on the ID, that would be just an absolute clue. So at that point if that clerk or that server has any suspicion whatsoever that this might be someone who is under 21, they have the opportunity to use what's called the minor ID book. And even if there's

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just a gut feeling of something doesn't feel right here, then that clerk or that server says, do you know what, would you mind signing this. And it is used, not commonly but it is used. And that young person is to sign his or her name, address, etcetera, and date as well as age. In compliance checks when those are used... [LB567]

SENATOR KRIST: His real name? [LB567]

DIANE RIIBE: Yes. [LB567]

SENATOR KRIST: His real address? [LB567]

DIANE RIIBE: Not his real address, no, not in compliance checks. Right? [LB567]

SENATOR KRIST: Oh, I see. So he can lie. [LB567]

DIANE RIIBE: In the compliance checks for the...there's an attempt to protect. There are some interesting scenarios that... [LB567]

SENATOR KRIST: How do I look him up in the book if I don't have his real name and his real address? [LB567]

DIANE RIIBE: The purpose of that document is not to look them up in the book. There's an attempt and a need to protect the identity often of those young people for their safety. And so they are allowed to use a different address in that moment. [LB567]

SENATOR KRIST: So what's the most common sting? If someone has...do they just not check the ID or do they just say, you look like you're 21 and go forward? [LB567]

DIANE RIIBE: Well, let me move back to the ID book real quickly before I go to that. When that ID book is used, if that young person in any fashion, if that clerk, if they're going to lie throughout and say, gee, I'm so-and-so and I'm 25 and that's not true, that clerk or that server has the defense at that point, an affirmative defense and that's not a case, essentially. All right? If it's in a compliance check they're required to sign their actual age. So they are required to put I'm 17. So and... [LB567]

SENATOR KRIST: So they have to tell the truth. [LB567]

DIANE RIIBE: At that point, yes. Um-hum. [LB567]

SENATOR KRIST: Okay, go ahead. [LB567]

DIANE RIIBE: Yeah, and so what was your question following? [LB567]

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SENATOR KRIST: Following question was, so how do you take an underage person into a bar and if the ID, and Mr. Rupe again, going back to his initial I'll tell you how to do a compliance check, do we have a vertical ID, then you're underage. Do you have a horizontal ID, then I have to assume that it's not a false ID. If it's a compliance check, you can't use the horizontal ID. [LB567]

DIANE RIIBE: Well, you can. What the guideline says, Senator, is that you...a 20-year-old who's going to turn 21 in that calendar year cannot be used. So there are few 20-year-olds who would be used. And I would also say that they rarely look like they're really old, I mean, we're trying to be very careful about that. [LB567]

SENATOR KRIST: So a 16-year-old that's involved in a compliance check can use a horizontal ID and a false ID? [LB567]

DIANE RIIBE: Well, they can't because that would be a fake ID. [LB567]

SENATOR KRIST: Okay. [LB567]

DIANE RIIBE: Right, right. [LB567]

SENATOR KRIST: All right. So what is the number one noncompliance then? How do you sting somebody? How do you go in and make sure that they fail? [LB567]

DIANE RIIBE: I just have to be honest with you, that really is never the way it's approached. [LB567]

SENATOR KRIST: Okay. [LB567]

DIANE RIIBE: So it just really isn't. And I would encourage you to, if you have a desire, to go along on one of those. [LB567]

SENATOR KRIST: I have, yes. [LB567]

DIANE RIIBE: Yeah, okay. [LB567]

SENATOR KRIST: So essentially, we're saying if you get a kid with an...can he have an Iowa ID or an Ohio ID or a Missouri ID? [LB567]

DIANE RIIBE: He can, it has to be a valid...I can tell you, it would be extremely rare that an out-of-state ID would be used. I've been involved with them for a very long time, I would say fewer than 1 percent, it's extremely rare that we've ever used one. [LB567]

SENATOR KRIST: Okay. [LB567]

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DIANE RIIBE: It has to be a valid ID. [LB567]

SENATOR KRIST: So what this bill is intended to do is not allow for someone who is really trying to do their job and who has done a compliance check and seen the vertical or, potentially, has a table full of ten people and it's during a peak time, who's been stung once or twice, that person is not going to have additional fees put upon them. Do you agree? [LB567]

DIANE RIIBE: No. [LB567]

SENATOR KRIST: No, why not? [LB567]

DIANE RIIBE: No, because it's important, just as we would have health inspections of restaurants, that we have an increased accountability or even individuals who would be potentially drinking and driving. We have a 12-year look-back time, for instance, for them, potentially now unending. There has to be an accountability for those business owners to make certain that they are...I can...Hobie would probably also tell you I cannot think of a business that has been certainly revoked or had their license gone because of sales to a minor, particularly during compliance checks. It would be hard-pressed to find businesses cancelled. It does happen but that's also extremely rare. And a cancelled license is a license that can continue on and just a reapplication of the long form. So in terms of... [LB567]

SENATOR KRIST: When I was a kid, the Omaha Police Department used to walk into a bar or restaurant and take a walk around. Do law enforcement officers still do that as part of compliance checks? [LB567]

DIANE RIIBE: That's a different operation, that's a bar check. And those should be standard in most jurisdictions. However, the manpower, the personnel, I would suspect, limits that pretty severely. [LB567]

SENATOR KRIST: Okay, thank you. Senator Larson. [LB567]

SENATOR LARSON: Thank you, Ms. Riibe, for talking a lot about the compliance checks. And Senator Krist kind of touched on it at the end. I just have a simple question for you, yes or no. Does this bill stop the compliance checks or the enforcement of the previous bill that was passed? Does it stop the...from you or the police from conducting compliance checks? [LB567]

DIANE RIIBE: Again, we don't conduct them, but... [LB567]

SENATOR LARSON: It's just, yes or no, does it stop the compliance checks? [LB567]

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DIANE RIIBE: Oh, no, I would not think so. [LB567]

SENATOR LARSON: Okay, thank you. [LB567]

SENATOR KRIST: Anybody else? Any other questions? I guess, my questioning was only to get to a point where we all have a valid understanding. Obviously, your statistics speak to the success of compliance checks. We may differ on whether or not the compliance checks themselves are done, and we'll hear from Hobie I'm sure, but you know, it's obviously important to keep alcohol out of the hands of minors. And I understand that. So just trying to get to the bottom of how those compliance checks are actually run because I don't know that we've ever really done that with this group. So thank you very much for your testimony. [LB567]

DIANE RIIBE: You're welcome. Thank you. [LB567]

SENATOR KRIST: Any other opponents for LB567? [LB567]

HOBIE RUPE: I heard my name was taken enough, I better be up here to be able to testify. Once again, Hobie Rupe, H-o-b-i-e R-u-p-e. I'm the executive director of the Nebraska Liquor Control Commission. And one thing I was noticing back there, it is a lot of times those of us who deal with these a lot, either as a bartender, a bar owner, a lawyer representing them or commissioner or law enforcement, we start making it one of the principle cardinal sins, we start assuming knowledge. Okay. So let's look at what is a compliance check. Okay. A compliance check is when you have a cooperating individual who is under the age of 21, if they're being done in accordance with the Nebraska State Patrol guidelines they will be...they can be 20 but not in the same year that they're going to turn 21. They're not trying to play gotcha. Most of the compliance...most of the cooperating minors that we've had recently have been 16, 17, 18, and 19 years old. A cooperating individual, there will be a briefing with law enforcement officers. Usually those compliance checks take place when there's usually a selective...there will be a grant through the Office of Highway Safety. Most of those officers who are doing these are not generally involved with liquor enforcement all the time. They can be, oftentimes the Patrol will coordinate them. It will be the liquor investigator assigned to that trooper area. They'll go through what they need to do. And as of now, although there is the...I know Senator Krist and we have on his bill, you know, as of now they can only lie or misinform on two separate issues: basically, are they working for law enforcement and if they're asked for their home address. That's sort of a cooperating safety, individual safety, you know, they don't have to give their own address. The key thing is they do have their own ID, it's their actual identification. It's the state issued identification, it's their driver's license. And if their...a Nebraska driver's license for under 21 they're vertical. Okay. They can't look older than they are. They're supposed to look, you know, age appropriate. They're supposed to dress age

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appropriate. They're not supposed to wear more makeup. They're not supposed to...you know, I wouldn't be able to do one if I was that young because of the goatee, you know, I can't have facial hair. I couldn't wear a suit when normally, the person of that age wouldn't be wearing a suit. You'd have to dress and look appropriately. They would go into the establishment. Those establishments, I mean, are generally selected somewhat randomly. They'll look at...they'll pull up the zip code of the areas they want to check and they'll generally do a random selection off that population. The minor will go in, they'll ask for a product. If they're asked to see their identification they're supposed to hand the identification to the person. And if everything goes well, at that point in time, once that person has that vertical ID that says I'm not 21, they're supposed to have a refusal of the sale. Now unfortunately we have a certain percentage of people who ask for identification, get handed a 19-year-old's ID, hand it back to them and then ring up the sale. The commission, we have no idea how they do that. The only reason they do that is we think is because people hear the word, check the ID, where we try to say you need to confirm the age, read the darn thing. It's in bright red letters as to when they're 21 and when they're not and the other information. And plus, as I said before, you've heard me say, if it's a vertical ID in the format that should be clue number one. Okay. So it's sort of a three-part check. Are they asking for their identification? Are they confirming the age and are they refusing the sale? That's what a compliance check is designed to be. You've heard me say before, do I think they're a good tool? Yeah. Do I think they're a somewhat overused tool at times? They could be. I think there are other tools that you need to look at. I mean, studies say that alcohol is obtained by minors through a variety of ways. One of the most common, of course, is having a 21-year-old friend or relative purchase it for you. You know, those are selectives that get, a lot of times those will be where the officer will be sitting outside the location where they've gotten complaints. And you know, they sort of have clues that come up like when the car parks half a block away, then one person out of the five walks in, walks out and miraculously when they stop him, he's the only person who is 21 and the others have cracked open beers. But...so there's other tools other than compliance checks. Now the philosophy of it is they're not trying to, especially if they're being conducted by the Patrol, they're not trying to, you know, get somebody to do something that they wouldn't do. They're sending someone in who looks of age with the money. Now is it an artificiality? Yes, there's some artificiality to it because they're working with law enforcement and they're not going to get arrested. I'm not going to be obtuse and say there's not some artificiality. But it's as close to real as they can make it. The main reason for our objection on this one is, I'll answer a couple questions that came up. First off, Diane was right. No one has been cancelled because of failure of more than four or more in four years. And we think that means the system is working. Our concern is that if you start treating everything as a first offense, it's going to become a cost of doing business and not a progressive discipline trying to get somebody back into compliance. Last time we had a hearing, and I didn't bring an extra copy because I didn't want to kill more trees, but I gave you a copy of our penalty guidelines. Those are the guidelines that the commission has adopted, sort of to try to maintain that they're being consistent and fair

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throughout. Now please note those are guidelines. If there is a health or safety issue, the commission can go out above and go right to cancellation or revocation. And they have done so on certain cases if they believe there's an actual health, safety or welfare or there's indication that the person is just totally oblivious and doesn't want to comply with the law. I've always said I think 99 percent of the licensees want to comply with the law. You've got that 1 percent of outliers who are the people who we might end up cancelling because of safety or health concerns. Unfortunately, only about 85 percent actually do it. So you've got that percentage there who violate it, either they're not aware of the law, they're not being proactive about...they've slipped and become slackers on it. And generally progressive discipline as a philosophy will bring them back into compliance. The first time they have to come in and pay \$500 to \$1,000 sometimes, they're going to make sure that their staff is made aware of the statutes that apply, the training that's going to work and we never see them again. And so for the vast majority, that's where that sits at. Couple of cases I'll look to, you know, and maybe Senator Schumacher can illuminate me. Yes, there's the \$52,000 fiscal note. Our duty is we have to put that in. That would be what...school boards would probably receive less if we didn't have the enhancement program. And that's based upon the average numbers. That's money that's not going to us, it's not going to law enforcement, it's not going to the General Fund, it's going to...under the penalties, to the school fund where it took place. And that would be roughly what the reduction would be. I mean that's...so, I mean, it's...we didn't put a fiscal in there because we thought it was important. I'd like to think the commission doesn't try to play that game by, you know, death by fiscal note. If there's an impact that's going to happen, we'll reflect what we think the actual impact is to the positive or the negative. The four years, I remember that case that came out, Mr. Moylan spoke about, the law was somewhat unclear. Well, the judge clarified it and said four years, that's all the look-back. The commission will look back four years, after that those will fall off. Also within our own guidelines if someone has been licensed for over ten years and without a violation and they come in front of us, then the penalty is looking at half even then. So say you've been licensed for 12 years, you fail a compliance check for the first time, usually your range in our guidelines will be a 10- to 20-day suspension, but because you've been licensed for over ten years without a violation you're looking at 5 to 10 days, instead of the 10 to 20. So we try to factor that in, in our penalty guidelines. So if you think the penalties are too harsh, you might want to look at, because the commission by its penalty guidelines has adopted the statute which says, you know, for second, third or fourth offense, basically, our guidelines mirror the rule because we take our guidance from the Legislature on how to do that. If you think those are too hard, maybe you need to relook at that. But I'm just thinking that I'd be very leery about getting rid of the theory of progressive discipline because it sort of works, it really works. So with that, I'd be happy to answer any questions. [LB567]

SENATOR KRIST: Senator Larson. [LB567]

SENATOR LARSON: Just real quick, both you and Senator Schumacher mentioned the

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fiscal note. In our fiscal note, I mean, it says 520 days would be lost, that's \$52,000. But then it actually says, estimated net decrease to school fund is \$96,700. [LB567]

HOBIE RUPE: We transposed two numbers. Yeah, that's the number which would be left if you... [LB567]

SENATOR LARSON: That's what I thought. I just wanted to make sure that was... [LB567]

HOBIE RUPE: Yeah. I believe when we were doing that fiscal note we had five or six of them going through. And to say that I'm somewhat... [LB567]

SENATOR LARSON: So that's on you guys, not even fiscal. (Laugh) [LB567]

HOBIE RUPE: That's on me. I'm the final one who assigns and I'll take blame for that. And to say that I'm not mathematically challenged is getting...I rely...and that would be the remainder that would be coming from those...yeah. [LB567]

SENATOR LARSON: That's what I thought. I just wanted to make sure my math was right on that. [LB567]

HOBIE RUPE: No, you're absolutely right and I take full accountability. And I'm saying I sent that over and, oops. But that's roughly what it would be, about \$52,000 roughly. [LB567]

SENATOR LARSON: Okay. [LB567]

SENATOR KRIST: Problem with numbers? [LB567]

HOBIE RUPE: That's why I went to law school. You know, if I could do real numbers I'd be a computer person or a scientist. [LB567]

SENATOR KRIST: Oh, I see. I'm not going to have you check any IDs. Senator Bloomfield. (Laugh) [LB567]

HOBIE RUPE: Don't have to, they're vertical. [LB567]

SENATOR BLOOMFIELD: Therein lies my question. You said you sometimes make the mistake of assuming knowledge. You'll find that that is really dangerous when you're dealing with me. What's the difference between vertical and horizontal identification? [LB567]

HOBIE RUPE: Do you have your ID on you right now? Yours, I'll pull mine out.

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Nebraska is actually pretty lucky. We've gone from having some of the worst IDs and the most fraudulently... [LB567]

SENATOR KRIST: By the way, we'll allow you to use that as an example. (Laugh)
[LB567]

HOBIE RUPE: I apologize. This is a horizontal, this is a traditional driver's license format. If you're under 21, everything is inverted. The picture will be down here, it will have...what it is, is it will have under 21 until this date, under 18 until this date for tobacco sales and all the other relevant information. And so it's really...I mean it's...you know, years ago... [LB567]

SENATOR BLOOMFIELD: Are you familiar with that? [LB567]

SENATOR BRASCH: I did not know that. [LB567]

HOBIE RUPE: Years ago, the first attempt to try to change those was, remember, when they tried to change the background? Where until you're 21 you had a different colored background behind you. Well, they thought that wasn't fair and so they've tried to make it so that they're vertical or horizontal. [LB567]

SENATOR BLOOMFIELD: It's been a long time since I was 21. [LB567]

HOBIE RUPE: Yeah. So that's the year. That's one reason why I, you know, why it's so frustrating to the commission, if they are actually handed a vertical ID, how they're still making the sale. [LB567]

SENATOR KRIST: Anybody else questions? And that's why I asked the question because it's a point of interest for me as well, given the fact that you have always professed if they look like they're under 40 and then you ID them and it's vertical, you're done and you stop right there pretty much. [LB567]

HOBIE RUPE: You pass the compliance check. [LB567]

SENATOR KRIST: You pass the compliance check. Okay. Anybody else? Thank you, Hobie. [LB567]

HOBIE RUPE: Thank you. [LB567]

SENATOR KRIST: Any other opposition to the bill? Any neutral testimony? Okay, with that, we will end...I'm sorry. Senator Schumacher, you want to close? [LB567]

SENATOR SCHUMACHER: Just briefly. [LB567]

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SENATOR KRIST: Sure. [LB567]

SENATOR SCHUMACHER: Thank you, Senator Krist and members of the committee. A couple points that was raised during the testimony. One, I think, that addressed a point raised by Senator Bloomfield about what happens if you have a really bad egg? When somebody provides alcohol to a minor, it is a crime. When a bar owner provides alcohol to a minor, it is not only a crime but it's also a liquor license violation. So report of a really bad egg can be made to the county attorney and the county attorney can file charges in court against him. So these bar owners have to ride two horses. I mean they're subject to two sets of rules. And that's an important thing to keep in mind here. It's...we're not just talking about the Liquor Commission kind of thing; we're talking about a habitual violator or somebody that would be bad enough to come to the county attorney's attention. The second thing is, this is, as I said in the beginning, a balancing act between fairness and enforcement, simple as that. Imagine yourself driving a car and up comes behind you three vehicles, two cars and a Mac truck. You're going dutifully down the road at 60 miles an hour and the two vehicles buzz past you doing about 68 miles an hour and the truck is riding your bumper. And so you take it up to 65, 66 miles an hour. And once you do that, the lights come on. Well, that was a compliance check to see whether or not you'd get up to 66, 68 miles an hour, they were all three law enforcement vehicles. Now yeah, you probably should get a fine. And yeah, you probably should get points. But gee whiz, is it fair that that's used the next time they do the same thing to you and you get twice the fine and twice the points? There's a difference when you are put in a position that you probably would be doing something that you wouldn't normally do because of the actions of law enforcement. And so this is attempting to strike that balance and that's all it is. And an attempt to be fair to those folks who I know, and I don't know much about Lincoln and Omaha bars, but I know in small town bars they're pretty critical to the community and they're just trying to run a business. That's all I have. [LB567]

SENATOR KRIST: Any questions? Senator Brasch. [LB567]

SENATOR BRASCH: Was that a hypothetical situation? They don't really do that with cars, do they? [LB567]

SENATOR SCHUMACHER: How do you know? [LB567]

SENATOR BRASCH: Do they? [LB567]

SENATOR SCHUMACHER: It's a compliance check. [LB567]

SENATOR BRASCH: Serious? You're kidding. [LB567]

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SENATOR SCHUMACHER: It's secret. (Laughter) [LB567]

SENATOR BLOOMFIELD: I'd assume you've been involved in defensive driving courses. What you're supposed to do when that Mac is right on your bumper is slow down until he passes you. (Laughter) [LB567]

SENATOR KRIST: Spoken like a true truck driver. (Laughter) Thank you, Senator. [LB567]

SENATOR SCHUMACHER: Thank you. [LB567]

SENATOR KRIST: With that, we will close the hearing on LB567 and move on to LB470. Senator Karpisek, if you would please. [LB567]

SENATOR KARPISEK: Thank you, Senator Krist, members of the General Affairs Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, here today to introduce LB470. The purpose of LB470 is to give local elected officials authority to approve the personnel policies of a public library, art gallery or museums. LB470 also amends Section 16-251 to give authority to city councils in cities of the first class to approve the personnel, administrative or compensation policy or procedure by applying to a director or employee of a public library, reading room, art gallery or museum before such policy or procedure is implemented. It also amends Section 50-211 to give authority to counties and villages to approve the personnel, administrative or compensation policy or procedure applying to a director or an employee of a public library before such policy or procedure is implemented. The long and short of this is it gives the authority of the mayor and city council or the counties, the board of supervisors or the commissioners the ability to make the hiring decisions for the libraries. Right now it's the library board that does these things. I feel that if it's a library that is under the watch of the city or a county that it should go up to that higher board to make that decision and not just the library board. I'm sure that I have some people behind me that can give you a little more information on that. [LB470]

SENATOR KRIST: Thank you, Senator. Any questions for Senator Karpisek? You'll be here for closing, I assume. [LB470]

SENATOR KARPISEK: I will. [LB470]

SENATOR KRIST: Thank you. Any proponents for LB470? Welcome. [LB470]

MICHAEL NOLAN: (Exhibit 14) Senator Krist, members of the committee, my name is Michael Nolan. I am the executive director of the League Association of Risk Management, which is an adjunct of the League of Nebraska Municipalities. I'm here testifying for my adjunct, however, instead of the League. This is a loss control

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discussion and without getting too hifalutin, loss control is basically what people who provide insurance coverage do to try to prevent claims. And these kind of claims, although their frequency isn't great, can occasionally be somewhat complicated, if not nasty. Now I can't point to any in recent experiences with these, but this series of 30-year-old exchanges of correspondence between me and labor attorney, Bill Harding, who then represented the city of Norfolk and who now is my general counsel, that law is still around, it hasn't changed. I actually tried to avoid the \$225 route by not having him transpose it to the 2011 stationary, but it's the same law. I had him go back and his associates go back and look at it and it's all the same. A couple of years ago, I started having some conversations with Rod Wagner and some members of the Library Association about this, very low-keyed. And this year we actually had a meeting with some of their representatives and ours to talk about this. And I don't know whether they're going to speak in a neutral capacity or as proponents of the bill. But I think we've worked out most of the issues that they had. This is not...my intent here is not to point the finger at libraries. My intent is not to tell you that cities do a better job than libraries. My intent is to say there needs to be one standard of how personnel administration is done. And the ultimate authority for how it is done in cities of the first class and cities of the second class should be decided by elected officials. And that's the only point I'm trying to make here. And I'd be happy to answer any of your questions. [LB470]

SENATOR KRIST: Any questions? Senator Schumacher. [LB470]

SENATOR SCHUMACHER: Thank you, Senator Krist. Mr. Nolan, traditionally libraries have been treated a little different than cities under the idea that the library board, the library personnel, the library purchasing powers represented a freedom of thought, freedom of publications that they could be influenced or controlled if they were under too much direct command of the city council and the government. [LB470]

MICHAEL NOLAN: I think that's what the rationale was, Senator, yes. [LB470]

SENATOR SCHUMACHER: Okay. That being the case, do you see this as crossing the line into...across that line of the independence of libraries? [LB470]

MICHAEL NOLAN: No, I don't. And I've tried to explain that to my colleagues who are managing and providing associations for libraries. I've had a long-term to comment to them on several other occasions on legislative issues where we've been totally on the same side. And I feel that they provide an invaluable service. So the League Association of Risk Management doesn't have a dog in that particular fight. That has occurred historically in cities of the second class and in villages that are under a Chapter 51 library model. Under Chapter 16, you can...under cities of the first class, you could be under Chapter 16 or under Chapter 51. There are, in fact, quite a few larger cities that are under Chapter 51 still, where the library board is kind of the policy setting entity for the library. I tried to deliberately not frame this discussion as part of that as

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much as simply a discussion about personnel administration. And I want to say this without me having to tell you too explicitly who I'm talking about. Part of the service that LARM provides its members, which we have a shared interest with them in keeping their claims down, is to do a risk assessment of them, where we come out with a detailed, pretty elaborate questionnaire and evaluate a whole series of possible exposures that we may have to defend them for at some stage. And then we make some recommendations on how they can improve their management operation. And I would say that despite the fact that I've been listening to Lynn Rex talk about personnel administration for 30 years that...and I've been given a lot of those talks myself about how you do job descriptions and how you improve the personnel rules and how you do the correct procedures for recruiting and hiring and writing the job descriptions, doing job analysis questionnaires, there are still quite a few cities that don't pay an awful lot of attention to that. And I've run into some of them who are my clients and corrected them. But there are others out there who are not my clients, I hope to have as clients at some stage. And this is framed for purposes of this discussion as simply good personnel administration because good personnel administration aligns with good loss control. [LB470]

SENATOR SCHUMACHER: Thank you. [LB470]

SENATOR KRIST: Any other questions? Thank you, sir. [LB470]

MICHAEL NOLAN: Thank you. [LB470]

SENATOR KRIST: Any other proponents? Any opponents? Any neutral testimony? Welcome. [LB470]

ROD WAGNER: (Exhibit 15) Thank you. Good afternoon, senators. I am Rod Wagner. I'm director of the Nebraska Library Commission. The Library Commission is the state library administrative agency. We work with all of the libraries in Nebraska: public, school, college and university, special libraries. And in reference to LB470, we're talking about the 272 public libraries across the state of Nebraska, nearly all are municipal libraries, a few are county libraries, but all are affected by this particular legislation. I would add to that, every library has from five to seven members who are interested in the, of course, over 1,000 people who serve as our public library trustees. And they have an important job in operating our libraries and setting policies and making program decisions. The Library Commission establishes guidelines for public library service. And part of that is connected with an accreditation program that libraries attempt to achieve, and most do. And one of those involves having program and administrative policies and reviewing those policies periodically. However, we make no specific provisions concerning standards for personnel. So that's certainly an issue here that is addressed in this legislation. We do provide education, we do provide publications, everything from manuals to newsletters to tool kits to training that we intend to make available to library

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directors and library trustees related to personnel management. We have talked with the League representatives and we did come to, I think, a pretty...come to a place of common ground in recognizing that we do need to do a good job across the state in working with our public libraries in that they practice good personnel administrative policies and execution of those policies to not only operate our libraries better but to be sure we're in compliance with federal and state labor laws and that we intend to redouble our effort. And I would say that even both...if this legislation advances and is ultimately enacted and if it doesn't carry through in the Legislature this session, that it is our intention to renew our efforts to provide training to library trustees and administrators on library employment issues, including labor laws. And we would certainly welcome the opportunity to work with the League of Municipalities in this activity. With that, I'd be happy to try to respond to any questions you might have. [LB470]

SENATOR KRIST: Any questions? Thank you, sir. Thanks for coming. [LB470]

ROD WAGNER: Thank you very much. [LB470]

SENATOR KRIST: (See also Exhibits 19 and 20) Any other neutral testimony? Okay, with that, we will end the...no...we'll end the hearing on LB470 and end today's hearing. And we are going into Exec. [LB470]