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Banking, Commerce and Insurance Committee
January 26, 2015

[LB157 LB159 LB247 LB279]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, January 26, 2015, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB159, LB157, LB279, and LB247. Senators present: Jim Scheer, Chairperson; Matt Williams, Vice Chairperson; Kathy Campbell; Joni Craighead; Mike Gloor; Sara Howard; Brett Lindstrom; and Paul Schumacher. Senators absent: None.

SENATOR SCHEER: Good afternoon, everyone. It is a little past the appointed time and I see Senator Howard is here, so we are more than willing to start the proceedings now that we have the champion here. Welcome to the Banking, Commerce and Insurance Committee. My name is Jim Scheer. I represent District 19 in northeast Nebraska. I'll serve as the Chair of this committee this year. The committee will take up bills in the order posted on the wall. Our hearings today is your public part of the legislative process and your opportunity to express your position on the proposed legislation before us today. To better facilitate today's proceeding, I would ask a couple things that you abide to as far as the following procedures. Information is posted on the chart to your left. Please make sure that your cell phones are either on silent or shut off. Either one is fine. I just prefer that they not ring during the proceedings. If you're going to be testifying, if you could move up in the front row so that we don't have long periods between testifiers and it sort of keeps as a staging area. The order of testimony today will be the introducer, the proponents, then opponents, those in a neutral capacity, and then the introducing senator will have the opportunity to close. Testifiers need to sign in. They will use this pink sheet. Make sure you fill it in and before you testify, please provide it to the clerk so that she has the correct spelling of everything. When you do testify, the first thing I would like you to do before you start your testimony is, please introduce yourself, spelling your first and last name so that those up in the transcription area have the correct spelling for their purposes. I would ask you to be concise. We will be using the lights today. We will be using the five minute timer as we will at every hearing, so today will be no different than any others. The green means that you have a minimum of at least one minute left, yellow will signify that you have one minute left, the red means that your time is up and that you should be finishing. If you are not going to be testifying, you do have the opportunity to sign in on the white sheet in the back. You can sign your name and put that you are either in favor or opposed to the legislation and make sure that you know the bill that you're signing in for and it will become a part of the record as well. Written material that will be distributed to the committee, we will need ten copies. If you do not have ten copies, the page will be more than happy to make those for you. I would prefer that you contact them before you're ready to testify so they can have those available to us as you testify. Introducing the folks as far as committee staff: To my right is Bill Marienau, who is the committee counsel for...going on a few years, I believe 28 now.

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BILL MARIENAU: Twenty-ninth session.

SENATOR SCHEER: Twenty-ninth session, so you know, he's not the neophyte anymore; however our clerk has not been here substantially as long. I believe she's only in her 26th year. (Laughter) So, although they have some stature, they're still learning as the rest of us are. I would like to let the rest of the senators introduce themselves and I'll start to my far left, Senator Gloor.

SENATOR GLOOR: Senator Mike Gloor, District 35, Grand Island.

SENATOR CAMPBELL: Kathy Campbell, District 25, Lincoln. Sorry, started to cough.

SENATOR CRAIGHEAD: Senator Joni Craighead, District 6, Omaha.

SENATOR WILLIAMS: Senator Matt Williams, District 36, Gothenburg.

SENATOR LINDSTROM: Senator Brett Lindstrom, District 18, Omaha.

SENATOR HOWARD: Senator Sara Howard, District 9, midtown Omaha.

SENATOR SCHUMACHER: Senator Paul Schumacher, Platte and parts of Stanton and Colfax Counties.

SENATOR SCHEER: And that does it for the committee introductions. We do have a page today. It is Jake Kawamoto, who is from Omaha, and will be providing whatever services that you need. And again, the committee will take up the order as in order that was posted. And with that, the first order today is Senator Hadley.

SENATOR HADLEY: Chairman Scheer and members of the Banking, Commerce and Insurance Committee, my name is Galen Hadley, G-a-l-e-n H-a-d-l-e-y. I represent the 37th District which is basically Kearney and part of Buffalo County. I'm here today to talk and introduce LB159 which is a CPA peer review process. As you all probably have heard of peer review processes, it's the idea that your peers, the people that basically are in the same business you're in, basically look at what your doing and give you helpful hints on how you can do the process better. And whether it be hospitals, doctors, universities, and literally our legislative system is a little bit like a peer review process because the committee work is passed out to the floor and our peers look at our committee work and decide and see whether it meets the criteria they feel to pass it into law. CPA firms in Nebraska that perform audits and issue compilations, and these are called attest functions, and there are three of them, have to be licensed every three years by the Nebraska State Board of Public Accountancy, the state board. To qualify for a license or license renewal a firm must successfully have completed the board's Quality Enhancement Program, QEP, or a peer review through the American Institute of

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CPAs every three years. LB159 simply enables the state board to amend its rules and regulations to phaseout the Quality Enhancement Program over the next few years, but still mandate the Nebraska CPA firms complete a board-approved peer review process. And I think that's important. What we're saying is that the state board has had their own peer review process and they feel at this time this allows them to phase that out and basically go to more of a national peer review process with those people who are experts in the peer review process. The State Board of Public Accountancy formed a task force in 2010 to review the QEP program and make recommendations to the board. Longtime members and reviewers of the QEP recommended the program be phased out over the next five years and replaced with a peer review requirement for Nebraska licensed firms performing attest work and the board agreed. The QEP task force concluded that the current program does not sufficiently review the attest work for the Nebraska licensure firms who perform attest work. Based largely on changing requirements in the complex nature of the attest environment, they concluded a more complete review of firm's attest work is needed. LB159 would give the board the authority to phaseout the QEP program over two to three years and require all Nebraska licensed CPA firms performing the attest functions to participate in a peer review every three years. The proposed legislation would not immediately change requirements as the board needs to promulgate new rules and regulations to complement the proposed law. I would be happy to answer any questions you have about LB159. [LB159]

SENATOR SCHEER: Thank you, Senator Hadley. Are there any questions from the committee? Senator Williams. [LB159]

SENATOR WILLIAMS: Senator Hadley, a couple of quick questions. What is the cost of this review for a CPA firm? [LB159]

SENATOR HADLEY: It varies, Senator Williams. The cost has been...the Nebraska review has been reasonable. It will be more expensive for CPA firms to use a national service for their review. The offset to that is they will probably get a better review...peer review with a national firm. [LB159]

SENATOR WILLIAMS: One of my concerns that I would like to hear your reaction to is for small firms in more rural areas that may be one person firms that do some audits maybe for their communities, or those kind of things. Do you think this will work for them and be able to allow them to continue doing that or...what do you expect the cost change to be for them? [LB159]

SENATOR HADLEY: You know, I think that if they're doing one audit, there might be a cost benefit that they have to look at, Senator Williams. I...what you are finding is in rural Nebraska that a lot of the firms have gotten out of "the audit work." The three areas that CPA firms, and people behind me will know more about it, but they see, have

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an audit which is the highest level of attest function. You have a review which is the next level and then a compilation, which is the lowest. And I think you will...people will say that a lot of smaller firms have gotten out of the audit work because of the problems involved with the complexity, the liability, and such as that. So they basically are not doing the audit work at this point in time. [LB159]

SENATOR WILLIAMS: And this particular bill hits the audit...of the attempt...it's all three? [LB159]

SENATOR HADLEY: All three. They will have to...all three are now considered part of the attest function, so they all three will...but there will be...the reviewers look at the work papers of the three areas differently. They look at the work papers to make sure they're performing the right steps for a compilation or if it's a review or if it's an audit. [LB159]

SENATOR WILLIAMS: Thank you. [LB159]

SENATOR SCHEER: Thank you. Senator Gloor. [LB159]

SENATOR GLOOR: Thank you, Chairman Scheer. Senator Hadley, could you explain to me the difference between the certifications that an individual CPA has versus the certification we're talking about now for the entire firm? [LB159]

SENATOR HADLEY: The firm is...I really don't know whether the firm is licensed. You have individual CPAs that work for a firm and I would guess the firm then has to apply for a license from the state of Nebraska, but you might...we're going to have the director of the Board of Accountancy for Nebraska and that would be, you know, a good question to ask them. But there is the individual CPA license or...to practice that an individual has and then another one that the firm has. And what we're talking about here is that the firm has to do this. [LB159]

SENATOR GLOOR: Correct. And I mean I can equate to making a decision. Let's just go with the national criteria which is as good or better than what we've been doing on our own. It's trying to get my mind around. If you're a sole CPA, do you also have your firm have to be certified or licensed, so... [LB159]

SENATOR HADLEY: I believe they have to, but... [LB159]

SENATOR GLOOR: Okay. Thank you. [LB159]

SENATOR SCHEER: Any other questions from the committee? [LB159]

SENATOR HADLEY: I will stick around to close. Thank you, sir. [LB159]

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SENATOR SCHEER: Okay. Thank you, Senator. Now open it to proponents. [LB159]

ANNE FUHRMAN: My name is Anne Fuhrman, A-n-n-e F-u-h-r-m-a-n. I'm a licensed CPA in the state of Nebraska, have been since 1985. It was my privilege and pleasure to serve on the State Board of Accountancy for eight years from 2003 to 2011 when I term-limited off. During my time on the board, I was very involved with the quality enhancement, QEP Program which was our state's version of a miniature peer review, if you will. Each CPA...licensed CPA in the state must function under some type of a firm licensure. And to answer your previous question, Senator, if a CPA is a sole practitioner, if he's not affiliated with others, his sole practice would have a sole practitioner firm license as well. And as part of the requirement for renewing the firm license, the state board has a requirement that you must either submit a satisfactory peer review report that you have had done through the AICPA, or equivalent program, or you could submit through the state's Quality Enhancement Program. The Quality Enhancement Program was an excellent program back in its day. It has kind of evolved to the point where the board and the members of that Quality Enhancement Program committee feel like it has served its purpose and it's time to now require everyone do the more national AICPA type peer review. With our Quality Enhancement Program, we were simply looking at the final products as an educational process. The AICPA peer review program requires that trained CPAs come in, look at the documentation, look at your work papers, look at your processes and procedures to make sure that you have adhered to the requirements to perform these attest functions. While I was on the state board we traveled to national state board conferences where I spent a considerable amount of time speaking with members of other state boards, and Nebraska is one of about four or five--at the time I was on the board--states that had their own program. Most every other state requires the AICPA peer review program for licensure. So as such, not only is it a public protection factor we believe by having someone look at the procedures also, it's also a factor for the CPAs who may have clients in other states because the state...the other states, particularly all of the states surrounding Nebraska do require the national type peer review. So if I, as a CPA, would have an audit client in the state of Kansas and want to get a reciprocal license in Kansas to come in and do that audit, they would not perceive me as being substantially equivalent to their CPAs because Nebraska did not require the national peer review and their state does. So it's an issue for CPAs wanting mobility to other states, but most importantly it's a public protection issue we feel. The audit standards have changed dramatically over the last five to ten years now requiring us to do more risk assessment, internal control type work, more procedures in the production of our audit reports. And with the QEP program that the state currently has, which is completely made up of volunteer reviewers, we do not look at the backup documentation. We simply look at the final report. So we feel it's very important that we switch to requiring the national type peer review program. The cost varies, in answer to your question, depending on the size of your firm, the type of engagements you do and how many you do. I have a firm of 13

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people do a dozen or so audits. My cost is \$3,500 every three years. There is a lesser type program for smaller firms that perhaps only do compilations and it would depend on the firm doing the review or the AICPA's guidelines at that time, but I would estimate that it would be possible to get a review done for as little as \$700 once every three years. So it's not a major expense, I don't believe. [LB159]

SENATOR SCHEER: Thank you. Are there questions from the committee? Senator Schumacher. [LB159]

SENATOR SCHUMACHER: Thank you, Senator Scheer. In looking through the bill, there's very little language in the bill. I mean, one says peer review means a review of a firm's work if it performs attest or compilations. And then section 3 says the board may require somebody to enroll in a program of peer review and compile restrictions on it imposed by the board. What does this give you that you already don't have? [LB159]

ANNE FUHRMAN: This bill...all we're asking you to do is to allow us to phaseout the option of our voluntary QEP program and require instead that all firms do the national peer review program. [LB159]

SENATOR SCHUMACHER: I don't see anything in here that talks about phaseout or national peer review program or any of this in the language that...unless I don't have the most recent copy of things. This just says...defines peer review and says that the board can require somebody to enroll in it and that if you're involved in it, you've got to comply with restrictions. How do you get all that out of that language? [LB159]

ANNE FUHRMAN: I'm going to defer to Dan Vodvarka who is going to speak behind me. He's the president of the Nebraska Society of CPAs and handles our legislation. I'm not keen on legal issues. My understanding is, it was suggested by the Attorney General's Office that we go through a legislative process to require the national peer review instead of our current rules that to give the option of either, but I'll let Mr. Vodvarka speak to the legislative language. [LB159]

SENATOR SCHUMACHER: Okay. I'll save my question for him, then. Thank you. [LB159]

SENATOR SCHEER: Thank you, Senator. Any other questions? Seeing none, thank you, Ms. Fuhrman. Next proponent. Welcome. [LB159]

DAN VODVARKA: Good afternoon. My name is Dan Vodvarka, D-a-n V-o-d-v-a-r-k-a, pronounced Vodvarka generally, but in Colfax and Dodge Counties, it's "Vodvarshka" (phonetic). I'm here today to represent the Nebraska Society of Certified Public Accountants. I am their executive director and president. It's a membership of 2,700 CPAs throughout the state. I'm really here to point out the fact that both the State Board

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of Public Accountancy and the association, the Nebraska Society of CPAs, both boards have endorsed this bill overwhelmingly seeing the need to phase out the Equality Enhancement Program after a number of years. This bill came about because we had asked the previous Attorney General's Office to review the status of the rules and regulations and the Attorney General's review said there really should be something in the law giving you permission about having the peer reviews and mandating peer reviews for all licensed firms in the state of Nebraska. They've...they were created through the rules and regulations of the state board, but there had never been mentioned specifically in the accountancy law of 1957. So the Attorney General says you should go to the Legislature which has the powers to grant this type of permission to a appointed body in state government to have a program like this and to also mandate it for the licensing. And so, the wording of this was worked out with the task force with members of the Society and the State Board and with the help of the bill drafter's office here. And Senator Schumacher, I hope that somewhat clears up the question. It is the wording that we had all come together on and felt that it said what it said. I am not a practicing attorney. I just simply work for CPAs, but that's all it is. It's simply enabling legislation to allow the rule-making process to go forward and that rule-making process is going to take some time. And then after that within the process there will be a phasing out, so persons, small firms, and sole practitioners in this state will have two to three years to make the decision what they want to do. We're dropping nobody off at the end of the table at the end of the day. Other questions or comments or...? [LB159]

SENATOR SCHEER: Okay. Senator Williams. [LB159]

SENATOR WILLIAMS: Thank you, Senator Scheer. Your association represents CPAs of all size firms... [LB159]

DAN VODVARKA: Correct. [LB159]

SENATOR WILLIAMS: ...and all geographies across our state? [LB159]

DAN VODVARKA: Correct. And some CPAs outside the state. [LB159]

SENATOR WILLIAMS: Right. [LB159]

DAN VODVARKA: About 45 percent of our membership is in public practice, the other 55 percent are in industry, as we call it. They just hold certificates. They work for the Conagras, Mutual of Omaha, many, many businesses across the state. [LB159]

SENATOR WILLIAMS: Right. My question relates again to my question to Senator Hadley about whether this results in hurting those CPA firms that are small and are located in rural areas. I'd just like to hear your comments on that. [LB159]

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DAN VODVARKA: Well, we had that discussion more than once during the board meetings that the Society/Board had, and because we have on our board of directors a variety, most of them in public practice actually on the board, and there were some smaller firms. And it somewhat boiled down to...it's once every three years, and if you're just doing compilations, there is the option of getting out of that part of the business if you want to, or there is a smaller review which would run from \$700 to \$800 every three years. And in the discussion on the board, the Society/Board members felt that that wasn't egregious amount of money to be paying for a good professional review of the practices that you're doing for the public. [LB159]

SENATOR WILLIAMS: Thank you. [LB159]

SENATOR SCHEER: Senator Schumacher. [LB159]

SENATOR SCHUMACHER: Thank you, Senator. If I'm a small CPA, 55 years old or so, practice in a town of 700, somewhere in western...out there, west, resume speed Nebraska, and how will this affect my life? What will...how will my life be different after this? [LB159]

DAN VODVARKA: I can't see it because...well, we have a couple of people on our board who match that description actually. We discussed that with them. They, as far as what their firm does, most of them are mostly doing taxes. A lot of them are maybe just doing a couple compilations or audits. That will be their decision how they want to go forward with that, or they can do the peer review once every three years. I don't think it's going to change their practice. The list of everyone in Nebraska who has been doing the Quality Enhancement Program over the years is confidential, but the State Board of Public Accountancy in November sent a letter, an individual letter to each one of them explaining what's probably going to be coming forward, and there was very little response to that letter. I personally did not get any phone calls at the Society office from members about this, but in November the executive director of the State Board of Public Accountancy, Dan Sweetwood and myself traveled through the state in Kearney, North Platte, and Gering and at continuing professional education programs and in other meetings we met with...sole practitioners came up to us and said, we heard what's going on and we had some good discussions with them and most of them said, at least if you give me two or three years, let me decide which way I want to go with this. But they don't deny that the peer review program is a better review program and it's probably where we should have been for a number of years. But we have not had, at least from talking with Dan Sweetwood, the executive director of the state board, any...there were a few, I suppose, maybe...less than a half a dozen remarks of this. And we have about 250 to 300 people in the QEP program. So there's not been...we've tried to shake it out. It's been in our newsletter and we've gotten very little response. [LB159]

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SENATOR SCHUMACHER: Well, then, let's say that this gives me two, three years to think about it and I think, you know, I really don't want to pursue this anymore, I'm going to close up shop on...maybe I'll do a few income taxes, but I'll basically get out of the business. And I've been the guy servicing some of the local business with their compilations, maybe the town board or whatever. Who fills that need then? Does somebody have to drive out from Omaha or...? [LB159]

DAN VODVARKA: I don't think they would be driving out from Omaha. There are larger regional firms throughout central and western Nebraska. We did have one gentleman who had moved back to the western part of the state where he had grown up, was starting his own firm, and his reaction to me was, you know, my plan will be to hire somebody on that will just do this, we'll just pick up these small government entity audits and we'll pick up some of these people and that will be a growth portion for my firm. But this is an evolutionary process, it's always going on. [LB159]

SENATOR SCHUMACHER: But the local guy, may have been doing these compilations for years for these local businesses and town boards, whatever, forced out of business. All of a sudden somebody is driving 75, 100 miles in order to service them, and the rates go up. I mean, what is the public good that comes from imposing this additional level or standard of care, or whatever you call it, on these small proprietorships? [LB159]

DAN VODVARKA: Hopefully better audits, better compilations, better continuing education for these smaller practitioners. But they have the option, they have the option of going into the national peer review program and continuing to do exactly what they've been doing for the last twenty years and having the same clients. It will just take them going to a little higher level of review and could be a cost as small as \$700 spread over three years. So I don't think really that would be increasing the cost of it that much. [LB159]

SENATOR SCHUMACHER: Have they been screwing up? I mean, is there a need? [LB159]

DAN VODVARKA: The reviews that...in the Quality Enhancement Program there is a rating process and that is published every year and just using numbers, not using, you know, specifics. And there have been some that were not rated at the top level. There were four different levels. Not to the point of screwing up they have enforcement actions coming against them by the State Board of Accountancy, but there is improvement possible. There's always improvement possible in this situation. Even with the peer review programs too nationally, there's always some. It's an attempt to buy the profession itself to keep the quality of its service to the public as high as possible. [LB159]

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SENATOR SCHUMACHER: Thank you. [LB159]

SENATOR SCHEER: Other questions? Just one little quick one. I might...following up on Senator Schumacher's, as far as trying to find what you folks are doing, is the biggest thing that we're changing simply...I'm looking at the bill on page three, the new section three that provides that the board may adopt and promulgate the new rules and regulations. I'm assuming that's the intent, that the whole bill is to allow them to change then. [LB159]

DAN VODVARKA: Yes. Yeah, you're very correct. And the rules and regulations by the State Board of Public Accountancy, like a number of agencies like this, has to be a thirty-day announcement period, there has to be a public hearing. After the public hearing if the rules are approved by the State Board they go to the Attorney General's Office for approval and then to the Governor's Office for approval, and then finally signed off by Secretary of State. So persons who would have problems with the proposed rules have a lot of ways to speak out about them, yeah. [LB159]

SENATOR SCHEER: Any final questions? Not? Thank you very much. [LB159]

DAN VODVARKA: Thank you. Thank you for your time. [LB159]

SENATOR SCHEER: Any additional proponents? [LB159]

DAN SWEETWOOD: Good afternoon, Senators, my name is Dan Sweetwood, S-w-e-e-t-w-o-o-d, and I've been fortunate enough to be the executive director of the state board for the last twelve years. Great discussion. You brought up some points that have been well vetted out before your state board and I know the Nebraska Society leadership, many of the same concerns. I would say this, that this has been a four-year project. This is not something that was thrown together. It started again with a task force involving leadership, many longtime volunteer reviewers of the Quality Enhancement Program. I'm the administrator. I always walked into the room and I said, this is really neat that you're performing this peer review function to your profession, this is wonderful. And then over time, starting with the leadership of the state board on that, that led that committee, came back and just started with the concerns that you've heard today. Many of those concerns regarding work paper review, regarding our volunteer program allowing the CPA firm to submit the work they wanted to. So those were some of the main differences between the local...our program and the national program. So I just emphasize that a little bit. This has been a four-year, again, project. We have minutes of our task force. You're welcome. Further questions, do not hesitate to call the office. Regarding the small firm issue, we did receive some feedback. I want to say three or four, maybe, letters with some concern. Dan and I went out to the western part of the state and talked to some...firms approached us and there's some concern out there. But again as you've heard today through the testimony that I don't know if you

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want to call it cost benefit or whatever, but protection of the public, that that's pretty much where it lies right there. I'll take any questions. [LB159]

SENATOR SCHEER: Thank you. Any questions? Senator Schumacher. [LB159]

SENATOR SCHUMACHER: Thank you, Senator Scheer. The cost benefit, protection of the public. I mean, where has the present system fallen short and where has the public not been protected that we need to? I mean, life in Omaha and Lincoln is a lot different than life in west, resume speed, Nebraska. And where is...where is the harm out there right now from letting these guys, particularly I would guess a good number of them knowing the demographic are 50 years and older, letting them practice out the rest of their 15-20 years, grandfathering them in some way, rather than putting them through this? [LB159]

DAN SWEETWOOD: I defer again to the professionals on the state board in their opinion when they've decided that this should go forward...or recommended this go forth. But I would say this, out of our local program, Dan touched on it a little bit, Mr. Vodvarka, you know, we normally have about 80 or 90 firms that will come through our program. About 50 percent are probably the smaller or sole proprietor firms, and the rate of, we call it, on the four-scale, one being the best, four being the worst, three and fours require some kind of follow up with the firm. And normally, we're seeing about anywhere from a 30 to a 40 percent rate in those type threes or fours that require a follow up within the program. [LB159]

SENATOR SCHUMACHER: Just don't give the bar association any ideas. (Laughter) Thank you. [LB159]

SENATOR SCHEER: Any other questions? If not, thank you very much. [LB159]

DAN SWEETWOOD: Thank you. [LB159]

SENATOR SCHEER: Any other proponents? Seeing none, are there any opponents? Seeing none, are there any that would wish to speak in a neutral capacity? Seeing none, Senator Hadley to close. [LB159]

SENATOR HADLEY: Chairman Scheer and members of the committee, I appreciate your comments. I think they were good comments. Part of what...the reason we have audits, reviews, and compilations is that we come up with some kind of financial statements. And they should be depended on, in varying degrees, depending on how much work the CPA did in coming up with an audit, a review, or a compilation. An audit, basically they try to verify through outside sources many of the numbers on the financial statements. They will view the inventory taking. They will do confirmation of accounts receivable. They'll do confirmation of loans. Those kinds of things. A review is similar to

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an audit. It's an attest, but they basically do not use outside sources to confirm the numbers that are on their financial statements. The compilation is where...we used to kid, it's where the company gives you the shoe box and says, we need to...our banker needs a financial statement, come in and help us put together a financial statement that we can go. And I think the key is that we want statements. If a CPA is going to be involved with those statements, we want Senator Williams when they bring him to his bank, that his financial people understand the difference between an audit, a review, and a compilation, and if a CPA has signed off at the bottom of this, that there's been certain practices that the CPA has...had looked at through peer review to give you more assurance that they're hopefully doing the right things to do those three attest. Lastly, there was a question from the Attorney General about the regulations and the suggestion was, you do put it into statute, so there isn't a question that the state board could do this. That there isn't a legal question of whether they can require a CPA firm to do the peer review. They've been doing it through the QEP and they have found that the QEP is not, since it's a local product, it's not as intensive as you're going to find with the national product. Some firms may go out of business, but I think good CPAs will like this because by going through this, when I go into Senator William's bank and I'm a client of Galen Hadley's CPA firm, I can say, do you know that he's gone through a peer review, he's kept up. These statements are from a CPA who has gone through a peer review process. So, I think it gives the statutory ability for the state board to hopefully look into this and determine what is best. And they do not feel at this point in time that they have that statutory ability. Happy to answer any questions. I hope Senator Williams agrees with me so I can get a loan sometime out of his bank. (Laughter) [LB159]

SENATOR SCHEER: Any final questions? If not, that will close the hearing on LB159. Thank you, Senator. [LB159]

SENATOR HADLEY: Thank you. Now you can get to some real important business. (Laughter) [LB159]

SENATOR SCHEER: With that, I would just make a comment that as we move to (LB)157, one thing I did miss in my opening. From time to time you may see senators in and out from the committee. They, as well, have hearings that they have to introduce bills, so it's not that you've said something to irritate anyone, it's just simply that they have other bills in other committees that they have to introduce. So, having said that, we will now open (LB)157. Senator McCollister. [LB159]

SENATOR MCCOLLISTER: Good afternoon, Chairman Scheer and members of the committee. My name is John, J-o-h-n, S. McCollister, M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in Omaha. I'm here today to introduce LB157. The bill would simply delay the operative date for changes in the Nebraska Model Business Corporation Act as created with the passage of LB749 in 2014. LB749 provided an operative date of January 1, 2016. LB157 would delay the date by one year to January,

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2017. Senators will recall that a companion bill, LB35, offered by Senator Howard, had first-round passage this morning. For the members of the committee, a bit of background information it would be helpful. In 1995, Nebraska enacted its Business Corporation Act based on a model from the American Bar Association section of business law. Nebraska has adopted very few of the ABA updates in the last two decades. In 2014, LB749 was introduced by Senator Burke Harr to revise and update the Nebraska Model Business Corporation Act. And LB749 was a priority bill for this committee and advanced to the floor on a unanimous vote. It was signed into law on March 31 with an operative date of January 16, 2016. Subsequent realization by the Nebraska corporations regarding the amount of time needed to make the changes produced by the passage of LB749, resulted in an introduction of LB157 to delay the current operative date from January 1, 2016, to a proposed date of January 1, 2017. Examples of the type of business activities that may be affected by the changes to the act include contracts, banking, and debt obligations, notes and bonds, and agreements involving rights of directors, shareholders, in cases of mergers and business entity conversions. LB157 would simply provide a one year additional for businesses to prepare for enactment of the changes to the Nebraska Model Business Corporation Act. I'd be happy to answer questions if I can. However, individuals who brought this issue to me are here today and will be happy to explain more fully the need for the changes in LB157. [LB157]

SENATOR SCHEER: Thank you, Senator. Any questions? Seeing none, are you going to be waiting to close then as well, or...? [LB157]

SENATOR McCOLLISTER: Well, given...if there were very few questions to the next proponent, I may not. I may waive a closing. [LB157]

SENATOR SCHEER: Okay. Thank you, Senator. [LB157]

DENNIS FOGLAND: Senator Scheer, members of the committee, I'm Dennis Fogland, D-e-n-n-i-s F-o-g-l-a-n-d, and I am chair of the Nebraska Business Bar Association...or the Nebraska State Bar Association business law section. The section is comprised of over 300 attorneys in the state of Nebraska which practice business law. And I'm here today on behalf of the Nebraska State Bar Association to speak in support of LB157 to give you a quick brief background why we are recommending a one-year extension of the operative date of the model act, January 1 of 2017. While we...I'm sorry...here. While we fully support the adoption of the Model Business Corporation Act, we also believe more time is needed for the reasons as Senator McCollister stated, and additional reasons that I'll give you to more fully review the model act provisions to ensure appropriate transitional and cross-reference provisions as well as consistency with historical Nebraska corporation practice approaches. The Model Business Corporation Act that Senator McCollister referred to is a significant piece of legislation. This is a printout of that act which is 226 pages long. As you can imagine, there are

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significant...it takes a significant amount of time to review that. The business law section has been in the process of doing that. There's the executive committee in the business law section and then we've created a special committee of volunteers of the business law section, which we have 15 additional lawyers who are taking volunteer time to go through the model act. And what we have done is we have taken the model act with the new model act with the current corporation law and put them side by side, literally section by section, sentence by sentence, to compare them to deal with...to make sure that the transition from the old act to the new act fits together properly. While we have been hard at work at that, we have not completed our review and we believe it's in the best interest of the citizens of the state of Nebraska, and business owners of the state of Nebraska who are corporation owners, or who will be forming corporation owners, to have an additional year to review this and then we would bring any recommended changes to the Legislature this next year for the 2017...or the 2016 Legislature then to be effective January 1 of 2017. To give you just a couple of brief examples of the kind of thing we're talking about, for example, the Nebraska is unique among the 50 states in its treatment of cumulative voting. Nebraska has cumulative voting by Nebraska Constitution. The Model Business Corporation Act has provisions about cumulative voting, but it doesn't assume that you have any constitutional provisions, of course, because we're the only state that does that. So as a result, as we look at this we think there are some minor adjustments to the model act language that need to be put in to fit with our constitutional provisions. Another example of a transitional provision, as Senator McCollister indicated, the last time there was an update on this, on the act, was 1995. At that time when they...Legislature adopted the new act, they switched preemptive rights provisions in the act. The old act prior to 1995, preemptive rights are if you're an existing shareholder of a corporation and the corporation desires to issue new capital, the existing shareholders have a right to subscribe to their prorata share of new shares being issued. It's essentially a protection provision for existing shareholders. It's kind of technical, but the old act said if you were silent--that's prior to 1995--you had preemptive rights. The 1995 act switched that around and said if you want them you have to expressly put them in there. We need in this new model act to make sure that we appropriately treat or grandfather those 1996 corporation...pre-1996...1995 corporations so that it is clear to attorneys who are reviewing this and to the corporation owners as to what the treatment of preemptive rights are. There are numerous other examples as we looked through the act. We do not contemplate any substantive or material changes in the policies of the act. It's simply a matter of making sure the transition provisions, the cross-reference provisions, and various Nebraska historical corporate practice provisions are appropriately addressed before it becomes effective. Thank you. [LB157]

SENATOR SCHEER: Thank you. Any questions? Senator Schumacher. [LB157]

SENATOR SCHUMACHER: Thank you, Senator Scheer. If one-year extension is good, would three be better? (Laughter) [LB157]

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DENNIS FOGLAND: I think we will have sufficient time. The business law section that I'm a party to are in the process of reviewing this. We just haven't completed it. The...we are aiming for the annual state bar meeting is in October of each year and we're going to be presenting to all of the lawyers of the state a review of this and our goal, and I certainly think we can meet it, is to have our review complete. We're dividing up the act into various sections and so that we will be prepared by next...by that annual meeting, and then the next legislative session which would occur a year from now, to make any recommendations and changes. I don't see any reason we can't meet the one-year extension. [LB157]

SENATOR SCHUMACHER: As a practical matter, what did we gain by adopting the model act? We've got all these attorneys out there, again in smaller communities, who have been practicing for years, who have got their forms, who have not had any trouble and their corporations haven't had any trouble, now suddenly going through a revamp of the whole thing and even a level of the bar association's corporate review having a hard time...they're having a hard time digesting some of these things and need time to work on it. What have we gained and should we make it three years? [LB157]

DENNIS FOGLAND: Well, that really goes to the...I'd say the legislative intent of adopting the model act in the first place, but as a person who has been practicing corporate law for 35 years, I started in 1980, I do recommend and approve of the adoption. The updating...the thing you gain from it is, once you...and there is very little judicial law in Nebraska interpreting the Nebraska Business Corporation Act. [LB157]

SENATOR SCHUMACHER: There hasn't been litigation, it has worked. [LB157]

DENNIS FOGLAND: That's true. We are a good state for corporation owners and Nebraskans tend not to be, you know, litigation oriented. However, if you do get into a dispute or litigation, it is very helpful to be able to go to the model act and interpretations of that act in the other jurisdictions, which is a vast majority of the jurisdictions. From a practicing lawyer's standpoint in term of giving advice, it's not just litigation but in terms of giving advice to your business owner clients on what's the proper way to do things, it is a significant advantage to have a model act that is very similar to what other jurisdictions have. [LB157]

SENATOR SCHUMACHER: But if you have a client that needs that kind of overhead, and you need the model act, just incorporate out of Delaware or some place. [LB157]

DENNIS FOGLAND: The Delaware Act takes a whole different approach than Nebraska. [LB157]

SENATOR SCHUMACHER: It does, and Delaware was a bad example there. [LB157]

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DENNIS FOGLAND: Again, I...you know, it's just my opinion on this issue, but I think it is advisable to adopt here. [LB157]

SENATOR SCHUMACHER: But Delaware makes a lot...and Nevada makes a lot of money by not following the national act in providing a good form for businesses to do things that the model act doesn't permit. I mean, you pay a lot of franchise fees to Delaware and to Nevada in order to get those benefits. [LB157]

DENNIS FOGLAND: Yeah, and I think part of the Delaware...I can't speak to Nevada so much, but I think part of Delaware is just particularly publicly held corporations. It has a reputation that if your...and if your going to go to the public markets to raise money, people want to see a corporation in Delaware because they're very familiar with it on a national level. And it's just hard for a state like Nebraska to achieve that sort of national reputation that it's had for decades. [LB157]

SENATOR SCHUMACHER: Thank you. [LB157]

SENATOR SCHEER: Any other questions? Seeing none, thank you. [LB157]

DENNIS FOGLAND: Okay. Thank you, members of the committee. [LB157]

SENATOR SCHEER: Are there any other proponents for LB157? Seeing none, are there any opponents to LB157? And is there anyone wishing to speak in a neutral capacity for LB157? Seeing none, does the Senator wish to close? [LB157]

SENATOR McCOLLISTER: Very briefly. Now, Senators, this is good legislation and Nebraska should be current just like the other states in the country. And in the event of lawsuits, this is the proper stance to have. So I would encourage your support of this bill. Thank you very much. [LB157]

SENATOR SCHEER: Any questions for the Senator? Seeing none, thank you, Senator McCollister. With that, we will close LB157. We will take a five-minute break. By the clock on the wall, that would mean right about 2:30 we will restart the proceedings. [LB157]

BREAK

SENATOR SCHEER: Okay. We've extended our break, so we will now reconvene and look towards LB279, and that would be Senator Schumacher, if you please. [LB279]

SENATOR SCHUMACHER: Thank you, Senator Scheer, members of the Banking, Commerce and Insurance Committee. I'm Paul Schumacher, District 22 in the

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Legislature, here today to open on LB279. Every once in a while you get a little watch or a little toy or something, a little tool that doesn't quite work right and maybe has a little noise in it or something and you get the bright idea that you can fix it. And by the time you take the top off and take a few of the screws out, there goes the spring that way, and a little tiny screw rolls that way, and you often wonder whether or not you fixed anything at all or you just fixed it good. Last year, for those of you who were on the committee, remembered that we had a bill before us that there was some concern on that perhaps it opened doors for possible fraud or abuse because we hadn't addressed this particular issue. And what it amounts to is when you incorporate a corporation, the corporation lives forever, and states being states like to get taxes out of things that live forever. And so there is a little...and with the big corporation, it's not so little, but with the average corporation a small tax that has got to be paid every two years. Usually it's about twenty-six bucks, \$13 a year, and you've got to declare who your directors and officers are and you mail that form into the Secretary of State after receiving a notice with big type across the top, "thou shall respond by April 16" or something like that. And what happens if you don't? Well, the state police don't come out and lock your doors or anything. Life just goes on. You continue to think, well, I think I did something with that notice from the Secretary of State, but, well, since nobody is saying anything about it, I must have. And you blow it off in a large number of cases, particularly people who really don't like the idea of paying an attorney or an accountant any money to review a mailing from the Secretary of State. So a fair amount in an honest world, and we have a pretty honest world in Nebraska, a fair amount of those taxes are missed. Now, the law tells the Secretary of State, hey, if they don't return that form, dissolve them. And, you know, just take them off the books, they're officially inactive, not in good standing, but they continue to do business anyway. And the issue is, well, if you catch yourself, and you discover, oh, my gosh, I am not in good standing because you tried to sell a piece of real estate or something, your books aren't up-to-date, or you try to get a loan at the bank and your papers aren't up-to-date, and you don't have your officers properly elected, how do you reinstate yourself? And how long a time should you have to reinstate yourself? And last year, I think it was last year or the year before when we passed this particular act, the initial proposal was, well, three years should be enough time to catch your...the fact that you missed a beat and didn't send your \$13 in to the Secretary of State. And then there was some discussion that, you know, that wasn't reasonable. What if it was five years, what consequence would it have for real estate loans and mortgages and all that? So we thought we solved the problem and put the screws back into the watch and the spring back in okay, by saying, five years. Well, since then, we've learned that the watch still isn't running right. It...the five years isn't the complete answer. So as I understand it, the bar association working with the Secretary of State's Office is...come up with the language which appears in (LB)279 which the bar association will explain better than I can how this puts the tiny little screw back into the watch and makes it run properly again. And it deals with what do you do after the five-year period, basically, and how do you reinstate yourself after you have been permanently vaporized by this process and you need to get back alive. So I'll be happy

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to answer any questions. I think people who have worked on this that will follow me today will probably be able to answer those questions better because I was not party to those discussions. [LB279]

SENATOR SCHEER: Thank you, Senator Schumacher. Questions? Senator Craighead. [LB279]

SENATOR CRAIGHEAD: Thank you, Mr. Chairman. Senator Schumacher, if you have an LLC or an LLP, or whatever, okay, and you allow this to lapse and someone else picks up the name of the LLC in the meantime, how is that handled based on this bill? Who gets the name? [LB279]

SENATOR SCHUMACHER: I think the Secretary of State's Office makes an effort at the time a new LLC or corporation is filed to check if there is any competing or similar names and raises a red flag at that time. Now you raise the interesting question, if they're inactive, is there a different flag raised or not. I honestly can't answer that question, but I understand there's someone from the Secretary of State's Office here who probably just knows really, really fast. I would guess that you still have some...even if you don't have corporation rights to that name, you may have, particularly if you've been using it, trade name rights to that. And other type of rights that if you were the second company, you would not want to spend the legal fees trying to establish, you know, make sure that that name was secured to you because you'd have to fight the old guy for it if you wanted it. So unless, you know, there's a legal fee involved, I won't go into it in more detail than that. [LB279]

SENATOR SCHEER: Thank you. Any other questions for Senator Schumacher? Seeing none, we will now open the mike to proponents of LB279. [LB279]

DONALD SCHNEIDER: Tell me when to start. [LB279]

SENATOR SCHEER: Whenever you like. [LB279]

DONALD SCHNEIDER: Hi. Committee, pleased to be here before the committee today. My name is Don Schneider. I'm an attorney in Fremont and I'm not here representing anybody else, any institution. [LB279]

SENATOR SCHEER: Could you please spell your name for us? [LB279]

DONALD SCHNEIDER: Oh, Schneider, S-c-h-n-e-i-d-e-r, Donald Schneider, Fremont. Anyway, I'm just a private attorney. I'm actually who ran into a case where this became a huge problem and so I'm actually the one who made the post to the Real Estate, Probate and Trust Committee (inaudible), guys, are you aware that we have a major problem out here. So thank me for this bill in winding its way through to getting here. I'm

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just going to give you some practical examples that I and some other attorneys have already run into. However, could I answer Senator Craighead's question. It's buried there within the bill, but if you don't pay your occupation tax, I think it's one year that they reserve that name, after that another new corporation, LLC, can take it. So then if you want to reinstate even within the five years, so it really applies even if three years later you want to reinstate. The way the law works is you have to amend your...either your articles or your certificate of organization with a new name. So they already have that handle. It's kind of a...for not paying your taxes like you should have. So here's the one I'd like to tell you about is the one that created this, but I'll tell you right now the fact pattern is so complicated I would waste too much time on it, but I had a situation where I just couldn't help an LLC...well, I ended up helping them, but it cost them about \$12,000 in legal fees. I had suggested it was one that had voluntarily liquidated...well, six years, six, seven years ago, and then a lawsuit came up later on and then they thought it had been dismissed, but then it arose from the dead. And I thought why pay me \$10,000, \$12,000 when for less than a \$1,000 you could just have that old LLC that was liquidated out six, seven years ago, file a bankruptcy, send it over to the bankruptcy attorney. He writes me back, Don, sorry, but the bankruptcy court won't allow an LLC to file a bankruptcy unless it's in good standing. And again, this is an LLC that went through the liquidation, sold off the assets, paid off the operating loan, and he had to pay a few thousand out of his own pocket to finish paying off the operating loan. There's nothing I could do for him. I ended up...I think my total bill on that was something like \$11,000 to file and to gather records from that many years ago so I could file a motion for summary judgment. It was a subrogation claim by a big national insurance company, but it cost him that much in legal fees because I couldn't...letting us do the other thing. Another example, an Omaha attorney called me after I made that list (inaudible) post. He had a client with two LLCs, the one originally bought this real estate, then over the years the other one became more successful and was using the same property. They were now ready to sell it, oh, my gosh, the first LLC owns the real estate and it has been dissolved more than five years by the Secretary of State. He said, Don, is there anything I can do to help this person? And I called him back and said, I cannot think of anything other than getting this bill that we're working with the Secretary of State's Office through the Legislature this session. That's the only advice I could give him. Another example, a person wanting to get a loan over at a local bank, unfortunately...I mean, renewing...getting a new loan they wanted to do a little expansion. They were out more than five years. So that's another practical example. And I would like to give an example of my own practice from the mid-1990s. Some people walked in, grandpa had sold off all of the land in his corporation, 14 years before those people came into our office. And lo and behold, it turned out one little strip of ground had not been included in the legal. We were able to reinstate that corporation under the old statutes in existence before LB854 and they had to pay a hefty amount of interest and fees, but there was no problem, got it reinstated, and did a quitclaim deed for that strip of land. The way it reads right now with LB854, we couldn't have solved that family's problem. There would have been no way to solve that family's problem. Another example, a tax certificate

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foreclosure came into my office, looking ahead to file a foreclosure on that tax certificate, I do that. That's how our counties collect taxes when people don't pay. People buy the taxes and get a tax certificate and then three years later they can foreclose if it's not paid. I looked at it and said, oh, you have a problem. You're expired, but there...it's not going to be a problem, I don't think, because then the people came in and paid which is what usually happens. Now, I see I'm out of time. Okay. I could give you three more examples, but I used my time and I...unless you have any questions. [LB279]

SENATOR SCHEER: Thank you. Any questions? Senator Howard. [LB279]

SENATOR HOWARD: Thank you, Senator Scheer. Thank you for your testimony today. And you may not be able to answer this question, but I was curious about the reasoning behind the \$500 fee. [LB279]

DONALD SCHNEIDER: That was strictly the Secretary of State's Office put that in...for this bill to be successful, I felt we needed to have the Secretary of State's Office, if not for it, at least not neutral, and as we explained in a series of e-mails and conversations about the growing list of practical problems, they then said, okay, well, they should pay something if they're dilatory for five years. And that was the number they suggested and I certainly would prefer their neutral or support to their opposition, so it's...that's where that came from. [LB279]

SENATOR HOWARD: Certainly. Thank you. [LB279]

DONALD SCHNEIDER: Okay. And there's a logic, I think, to saying, hey, look, if you ignore this for five years, you know, pay something. And I don't know whether \$500 is the right number, but that was their suggestion. Any other questions? All right, thank you very much. [LB279]

SENATOR WILLIAMS: I do have a question. [LB279]

SENATOR SCHEER: Just a moment. Senator Williams. [LB279]

SENATOR WILLIAMS: Thank you, Senator Scheer. If a person does not pay their occupation tax and it is sitting there and then we allow them six, seven years down the road to pay this fine, is there anybody damaged in that process? [LB279]

DONALD SCHNEIDER: As long...I don't think so if this LB is approved because right now there is somebody being damaged, those who through inadvertence or whatever, are all of a sudden in a legal limbo. If we pass this, no, I don't see how anybody is damaged by it. That's only \$100 a year, if you think about it. [LB279]

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SENATOR WILLIAMS: Thank you. [LB279]

SENATOR SCHEER: Thank you. Any other questions? Seeing none, thank you very much. [LB279]

DONALD SCHNEIDER: Thank you. [LB279]

SENATOR SCHEER: Any other proponents? [LB279]

ROBERT BERGER: Chairman Scheer, members of the committee, I'm honored and excited to talk to you today, excited to share with you a little bit about me. I'm Bob Berger with Berger and O'Toole, CPAs. And that's Bob, B-o-b, B-e-r-g-er, just spelling of the last name. I'm excited to talk to you about this bill as it creates a...or solves a large problem that I think that was an unintended consequence of this bill. I brought something with me today trying to give myself a little bit of credibility as why would you listen to a small Omaha CPA. And I've shown this to some of the members, but you guys will be one of the few people who actually get to see the original certificate. This is a certificate from my great-grandfather, the very first CPA certificate issued in the state of Nebraska. There are 5,700 of us now and I'm fortunate enough to hang this on my wall. My great-grandfather was a CPA, my grandfather was a CPA, my uncle was a CPA, so I'm only the only fourth CPA in the state of Nebraska...fourth generation CPA in the state of Nebraska. They say I have an eye for figures so it must be true. (Laughter) Excited to be here to tell you and represent the CPAs on this bill. And you wouldn't think that this would have an accounting effect, but it does and a drastic one. What has come to our attention is that this bill is, basically LB279, is basically set up to amend and correct the LB854 which was introduced January of 2012, but went into effect January 1, 2013. Prior to that, we could make applications to the Secretary of State's Office to reinstate those corporations that have unintentionally let their certificate lapse. The reasons why these would lapse, the registered agent is a...many times an attorney or a friend. The registered agent moves, he dies, and that certificate no longer gets forwarded to the person who has to pay it. Now we see that a lot. One of the things we've seen most often is nonprofit corporations where board members change. That certificate for that registered agent goes to a board member who is no longer a board member and cannot pay the fee or forget to pay the fee. So what happens to those corporations when they forget to do that? In a five-year period of time the way the bill is in effect now with the LB854 passing, after that five-year period of time, those corporations are liquidated. Let's use an example, a small farmer out in middle Nebraska. He's a young man who has inherited from his father for many generations. This beautiful S corporation they've set up to run their business and the father's attorney passes away and the father passes away and the son has no idea that this filing is required. He's not receiving any notices. He has no indication because he's not borrowing any money from a bank, he doesn't need it. He's running his operation, he's doing very well. And all of a sudden, somebody comes across this and says, hey, you

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were not registered as a corporation in Nebraska, so we have to liquidate you. And as an S corporation, when you liquidate a corporation, an S corporation is liquidated at fair market value for tax purposes. So that little guy that when his grandfather bought the land for \$5,000, \$10,000, it's worth two or three million dollars now. He has to pay capital gains tax on two or three million dollars. He's effectively out of business. He can't operate anymore. We can't let that happen. The other situation we run into all the time are...as I talked about, is nonprofit corporations or nonprofit trusts. I currently know of one where the trustees moved out of the state, but the trust is still here in Nebraska. And they donate to the University of Nebraska, they donate to the zoo, they provide these funds that we, you know, so love to have them do, and they have been basically unincorporated and have to liquidate and there's a termination tax that would wipe out all of their assets if we're not able to reinstate them. And this reinstatement occurs five years back. So that's the second question is, how do we solve this? It's five years ago and I've got to file an amended return five years ago and fix an issue five years ago, pay penalties, interest on that...on those amounts. It's untenable. You can't do it. You can't do it and survive. So we've got to pass this bill, this (LB)279 that will allow us to appeal to the Secretary of State's Office saying, look, there's been no fraud committed, there is nobody else using our name, reinstate us. Go back and let's do that five years ago and continue like we already have. We've already been filing income tax returns. We've already been filing both federal and state. We're in compliance. We just have not succeeded in our registration. And, hopefully, we're able to do that going forward. And usually in these situations, we get ahold of the correct registered agent and we get that situation taken care of. But that's the situation exists. I'm looking for your help in stopping the unintended consequences of this bill and get it fixed. Any questions?
[LB279]

SENATOR SCHEER: Thank you. Any questions from the committee? Seeing none, thank you very much. [LB279]

ROBERT BERGER: Thank you very much. [LB279]

SENATOR SCHEER: Are there any further proponents for LB279? Are there any opponents to LB279? Anyone wishing to speak in a neutral capacity for LB279? [LB279]

COLLEEN BYELICK: Chairperson, chair members of the committee, my name is Colleen Byelick, C-o-l-l-e-e-n B-y-e-l-i-c-k, the general counsel for the Secretary of State's Office, here on behalf of Secretary of State John Gale, testifying in a neutral capacity with regard to this bill. As we've heard, LB279 stems from LB854 which was passed in 2012. LB854 provided a five-year limit on reinstatement for various corporate entities administratively dissolved by the Secretary of State. Previous to LB854, no time limit existed for reinstatement and administratively dissolved entities could reinstate at any time. An entity is typically administratively dissolved by the Secretary of State for failing to file a biennial report and pay us the stated fees. Several notices are sent to the

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entity prior to the administrative dissolution so that the entity has an opportunity to take corrective action and file the appropriate report. The aim of LB854 was twofold to prevent bad actors from utilizing administratively dissolved entities for criminal purposes, and to incentivize compliance with the biennial reporting requirements. The Secretary of State's Office had learned of abuses with shelf companies in other states and didn't want Nebraska to become a target for this type of activity. In these cases, administratively dissolved entities were reinstated by unrelated third parties and used for criminal purposes such as money laundering or terrorism financing. These older administratively dissolved entities were attractive to criminals because they have the appearance of a longstanding entity. We didn't want Nebraska or Nebraska business entities to be associated with this type of activity. In addition, these entities had long been out of compliance with state reporting requirements and therefore had no current agent for service of process and their contact information with the state was likely outdated. Their status as a separate limited liability entity was in peril and their name could be used by another entity. LB854 included a delay of operative date to assist those who had accidentally fallen out of compliance with an opportunity to reinstate when appropriate. We also ran advertisements in several major newspapers encouraging businesses to check their status and reinstate when appropriate. Since the bill became operative in 2013, we've not had a significant number of entities indicating concerns to our office with the five-year limit. Most entities that have contacted our office upon learning that they're past the time frame for reinstatement, simply decide to organize as a new entity. We have had a few entities who have expressed serious concerns and you've heard about those today with the ramifications of not being able to reinstate. So based upon those concerns, we worked with the bar association to hopefully create a bill that is workable for our office and still contain elements such as the \$500 fee that will detract bad actors from using Nebraska administratively dissolved entities for improper purposes, and also incentivize this compliance with the biennial reporting requirements. I'll try and answer any questions you may have. [LB279]

SENATOR SCHEER: Thank you. Any questions? Senator Gloor. [LB279]

SENATOR GLOOR: Thank you, Chairman Scheer. Ms. Byelick, so you're here in a neutral capacity? [LB279]

COLLEEN BYELICK: Correct. [LB279]

SENATOR GLOOR: Is that sort of a continuation of how the departments usually present to us as, well, we're not opposed to it, we're not for it, but we're working through it, and think what we'll end up with eventually is a bill that the Secretary's Office finds acceptable? [LB279]

COLLEEN BYELICK: Right. I mean, I think the bill as drafted is something that we can live with, but I think we want to be cautious because we haven't received a number of

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complaints that...the sky is not falling, you know, from our perspective. So we want to be careful in that we think there were legitimate purposes that this bill was enacted in the first place. We want to be careful that we don't create something that completely erodes the original intent of the bill, but we also understand that there are people that believe that there are serious issues out there and we have to be respectful of that. We, you know, believe that there are legitimate concerns out there. So we're kind of trying to balance all of these different concerns and create something that's workable for our office, something that addresses the issue, and allows these entities to come into compliance. But I think this is something that's somewhat of a moving target and we're going to have to keep looking at it as things progress. [LB279]

SENATOR GLOOR: Has the Secretary's Office been involved in this prior to the bill being drafted and presented to us? [LB279]

COLLEEN BYELICK: Yes. Yes. [LB279]

SENATOR GLOOR: Okay. So this really does have the Secretary's involvement in it up to this point. [LB279]

COLLEEN BYELICK: Yes, it does. [LB279]

SENATOR GLOOR: Okay. Thank you. [LB279]

SENATOR SCHEER: Senator Howard. [LB279]

SENATOR HOWARD: Thank you, Senator Scheer. How do other states handle reinstatement for administratively dissolved corporations? [LB279]

COLLEEN BYELICK: Yeah. It's kind of split. Some states have reinstatement periods that go anywhere from one year to ten years and then some states have no reinstatement limit. So it varies. And I can tell you, because I brought with me, when we researched the issue...bear with me one moment. We found that 23 states appeared to have no time limit, 22 states did have a time limit, and those ranged from one to ten years. And then there were three states that we found that looked like had some sort of exception after the time period for various reasons. [LB279]

SENATOR HOWARD: Thank you. [LB279]

COLLEEN BYELICK: Yes. [LB279]

SENATOR SCHEER: Senator Williams. [LB279]

SENATOR WILLIAMS: Thank you, Senator Scheer. Ms. Byelick, you mentioned the

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concern of the Secretary of State's Office about the use of these dormant--I'll use that term--corporations. [LB279]

COLLEEN BYELICK: Yes. [LB279]

SENATOR WILLIAMS: Has that ever happened, to your knowledge, in Nebraska? [LB279]

COLLEEN BYELICK: I have heard of one case with a nonprofit entity actually through the Attorney General's Office because they monitor nonprofit entities, but I don't think that we had heard of any widespread issue with Nebraska entities. We had heard of the issue in other states and wanted to make sure that we weren't a target for that type of activity here. [LB279]

SENATOR WILLIAMS: Okay. You also mentioned, and I'd like to just understand the process a little bit. The Secretary of State's Office sends out the application for everyone to fill out biennially for the occupation tax. [LB279]

COLLEEN BYELICK: Right. [LB279]

SENATOR WILLIAMS: What is the follow-up on that? I think you said that you sent out several notices. Can you explain that to us? [LB279]

COLLEEN BYELICK: Right. Sure. So right now we have gone to a process where we send out a notice indicating to...and we send this to the registered agent of that entity. And so we send out a notice letting them know that it's time to file their biennial report. If we don't receive the biennial report back by a certain time period, we send them another notice again saying, we haven't received your report. If it doesn't come in then, sixty days after that second notice, then we send them a third document that says, okay, you have now been administratively dissolved. And we actually, typically, send them the paperwork to reinstate at that point in time trying to catch those that just simply missed the deadline, but are still wanting to carry on business. The other thing we do, if we get the notice back into our office, we do attempt to send it to another address on record. So if they have a president or something listed at a different address than their registered agent, we attempt to contact them that way. So we do attempt to seek out another address for them. If we don't get the notice back in our office, we don't know that they didn't receive it. So at that point, we don't have the ability to send that notice somewhere else. So we're sending multiple notices. And some entities just choose to be administratively dissolved. It's actually less expensive for them to be administratively dissolved by the Secretary of State's Office than it is to file voluntary dissolution paperwork. And the trouble for us is, we don't know which entities want to be administratively dissolved and those that just missed the filing deadline. [LB279]

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SENATOR WILLIAMS: Okay. Thank you. [LB279]

SENATOR SCHEER: Senator Craighead. [LB279]

SENATOR CRAIGHEAD: Thank you, Mr. Chairman. Hi. [LB279]

COLLEEN BYELICK: Hi. [LB279]

SENATOR CRAIGHEAD: The process you just described, what year was that implemented? [LB279]

COLLEEN BYELICK: I don't know that that process has varied that much over time although since the Secretary of...current Secretary of State came into office, early 2000s he did implement a second notice being sent out, and I don't know particularly what year that occurred. Prior to last year actually, we actually sent out the biennial report and asked people to fill out the paper or they could go on-line and file it. Starting last year we just sent out a notice and told them that they could go on-line and file the report. So that part of the process has changed, but we have always either sent them the report or notified them that the report was due. [LB279]

SENATOR CRAIGHEAD: Okay. Thank you. [LB279]

SENATOR SCHEER: Any other questions? Seeing none, thank you very much. [LB279]

COLLEEN BYELICK: Thank you. [LB279]

SENATOR SCHEER: Anyone else wanting to speak in a neutral capacity? Seeing none, Senator Schumacher to close. [LB279]

SENATOR SCHUMACHER: Thank you, Senator Scheer. In response to Senator Craighead's issue, I think it's an interesting one. I've tried to scan through here and find the reference to, you got a year of grace. So far I haven't found it in there, but there is interesting language because it says, when the reinstatement is effective, it shall relate back to and take effect as if...as of the effective date of the automatic dissolution and the corporation shall resume carrying on its business as if the automatic dissolution had never occurred. So it almost looks like you get your name back. That's probably something we're going to have to question and clear up, should the committee advance this bill, to see exactly what the rule would be there. Because if the rule is, it's only stable for a year and then you have to go into courts with trying to defend your trade name or something, then this language isn't exactly accurate. So that's something to point out. Basically, this bill fixes what we fixed last year and it may need more fixing down the road, but it does address the issue of what happens if this is missed four or five years. And actually, I look for the problem probably to increase now that they're not

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sending out the form every two years. People got familiar, small business people got familiar with getting that form and filling it out and going back in their file looking what the old one looked like and, oh, yeah, we sent \$26 in and we filled it out this way. If you just get a little notice that you got to go on-line and sometimes on-line in Nebraska means you have to pay a fee and it just...just to be on-line. And I think they give you the option to print out the form if you can find it and then mail it in. So I...you know, this may not even be a smooth a process for small business people than it was before. So I think we need to fix the issue and, hopefully, this finds middle ground between the good old days when what we had was working, and the modern day when we're worried about a terrorist taking a Nebraska corporation's name, or something, so. [LB279]

SENATOR SCHEER: Okay. Senator Gloor and then Senator Williams. [LB279]

SENATOR GLOOR: Thank you, Senator Scheer. Senator Schumacher, I've got a little...I've talked myself into confusion which doesn't take a lot of time sometimes. [LB279]

SENATOR SCHUMACHER: I can help you. (Laughter) [LB279]

SENATOR GLOOR: It's true, you can. So is there no time limit? Would this bill, in fact, put us back to the days when there's no time limit for reinstatement? [LB279]

SENATOR SCHUMACHER: As I read it, no, there is no time limit. But the clock is ticking on those fees and there's a 14 percent interest factor in, and at some point unless you're between a rock and a hard place, and really got to resurrect the dead company, if you want to resume business, you might just cook up a new company and avoid all those fees. [LB279]

SENATOR GLOOR: So if it's important enough for you, makes sense from a dollars and cents standpoint, you don't mind paying the fees and penalties, that's the limitation the Governor on all this is, the dollars and cents of it. Okay. [LB279]

SENATOR SCHUMACHER: The dollars and cents because you do have to pay it back with the additional fee with the interest. And if you were just going to say, gee, that's a cute looking corporation name and I want to resume its activity, you set up a new one and hopefully the name would be free and you just grab the name and run with it. [LB279]

SENATOR SCHEER: Senator Williams. [LB279]

SENATOR WILLIAMS: Thank you, Senator Scheer. Senator Schumacher, you have included the emergency clause with this bill. Can you explain the need for that? [LB279]

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SENATOR SCHUMACHER: I think the need for it is probably there may be some of these businesses that may be teetering on a lawsuit that have been dissolved and need to enter an appearance. There may be some of them that have some tax issue that they've got to deal with the government, the IRS, or somebody that says, look, we're not going to deal with you unless you're in good standing. I would guess that if we're going to do it, let's do it with the emergency clause and be done with it rather than let these people hang in limbo for, you know, until after September, whenever the laws take effect. [LB279]

SENATOR WILLIAMS: Thank you. [LB279]

SENATOR SCHEER: Any other questions? Seeing none, thank you, Senator Schumacher. [LB279]

SENATOR SCHUMACHER: Thank you. [LB279]

SENATOR SCHEER: And that will close LB279 and will take us to LB247. Senator Sullivan. Welcome. [LB279]

SENATOR SULLIVAN: (Exhibit 1.) Thank you, Senator Scheer. Good afternoon, members of the committee. I'm Senator Kate Sullivan, who represents the 41st Legislative District. That's K-a-t-e S-u-l-l-i-v-a-n. I'm here today to introduce LB247. Under statute 67-405 if an obligation to pay interest arises under the Uniform Partnership Act of 1998 and the rate is not specified, the interest rate will be 14 percent as set by statute 45-104.01. Statute 45-104.01 specifies the interest rate on the payment of delinquent taxes or special assessments owing to a political subdivision. LB247 amends statute 67-405 to require the use of the judgment interest rate specified in (section) 45-103. The judgment interest rate is 2 percentage points above the bond investment yield of the 26-week U.S. Treasury Bill in effect at the time of the judgment. The State Court administrator is required to distribute notice of such rate and any changes to it to all Nebraska judges to be in effect two weeks after the date the auction price is published by the Secretary of the Treasury of the United States. It changes quarterly. And if the pages wouldn't mind passing this out, this shows you what that rate sheet looks like. This change allows the 14 percent interest rate necessary to encourage payment of delinquent taxes and special assessments to political subdivisions to remain in place. Should an obligation to pay interest arise under the Uniform Partnership Act of 1998, and the rate is not specified, it will be this judgment rate. Interest rate, 2 percentage points above the bond investment yield of the 26-week U.S. Treasury Bill in effect at the time of the judgment. The judgment interest rate effective January 16 of this year is 2.132 percent and you'll see that on the sheet that I'm passing out right now. So that, in essence, is what I am wanting to do with LB247. I thank you for your time and interest, and I encourage you to advance this bill to General File. [LB247]

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SENATOR SCHEER: Thank you, Senator Sullivan. Any questions? Senator Campbell. [LB247]

SENATOR CAMPBELL: Senator Sullivan, just a really quick question here. How did you come to this bill? [LB247]

SENATOR SULLIVAN: It actually came from a constituent who had been involved in a disagreement, if you will, with his family in dissolving a partnership. And this is when it was discovered that when a rate is not specified by the judge, they have no other process to go other than using the 14 percent. And in inquiring about why this wasn't changed, well, things just kind of slipped by until they're brought to us by constituents fortunately, so. [LB247]

SENATOR CAMPBELL: Thank you, Mr. Chairman. [LB247]

SENATOR SCHEER: Senator Gloor. [LB247]

SENATOR GLOOR: Thank you, Chairman Scheer. Senator Sullivan, do we have any idea of how we came up with a...in statute with a 14 percent to begin with? It sounds like something that was developed in the 1980s when interest rates were around... [LB247]

SENATOR SULLIVAN: Well, yes, although I'm guessing that, you know, we don't like delinquent taxes, and special assessments are usually because somebody kind of messed up. And so there needs to be a little pressure, I think, to make good on that payment, and sometimes a higher interest rate encourages that. [LB247]

SENATOR GLOOR: Okay. [LB247]

SENATOR SULLIVAN: That can be...although, I mean, that's my best guess. I don't have anything to substantiate that other than an opinion. [LB247]

SENATOR SCHEER: Any other questions of Senator Sullivan? Seeing none. [LB247]

SENATOR SULLIVAN: Okay. [LB247]

SENATOR SCHEER: Thank you. Are there any here to speak as proponents of (LB)247? Seeing no mad rush, are there any opponents for LB247? Seeing an equal number, are there any wishing to speak in a neutral capacity to (LB)247? Seeing none, Senator Sullivan to close. [LB247]

SENATOR SULLIVAN: Seeing the high degree of interest in that I simply urge you to

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advance this to General File. Thank you. [LB247]

SENATOR SCHEER: Thank you, and with that, we will close LB247. [LB247]