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General Affairs Committee
February 01, 2016

[LB748 LB834 LB969 LB1046 LB1105]

The Committee on General Affairs met at 1:30 p.m. on Monday, February 1, 2016, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB748, LB1046, LB1105, LB834, and LB969. Senators present: Tyson Larson, Chairperson; Colby Coash, Vice Chairperson; Dan Hughes; Mark Kolterman; John McCollister; and Merv Riepe. Senators absent: Matt Hansen, and Ken Schilz.

SENATOR LARSON: Welcome to the General Affairs Committee. I am Senator Tyson Larson of O'Neill, the Chairman of the committee. Committee members to my...or to my left I have Jeff Fryman, my committee clerk. Committee members are Senator Riepe of Omaha, Senator McCollister of Omaha, Senator Hughes of Venango, and Senator Schilz from Ogallala. To my far right: Senator Kolterman of Seward, Senator Hansen of Lincoln, Senator Coash of Lincoln, and Josh Eickmeier, my legal counsel. And my pages are Ashlee and Brianne. Welcome. There are three different sign-in sheets located on the tables in the back of the room. One sign-in sheet is for those not publicly testifying but want their presence and position noted as an exhibit in the official records of the committee. A second sign-in sheet is for those who are present at the committee hearing and who offered written testimony in lieu of testifying, which will be noted on the committee statement. And a third sign-in sheet is for anyone planning on testifying before the committee. When it is your turn to testify, give your sign-in sheet to one of the pages so that they can give it to the committee clerk. This will help us keep a more accurate public record. After each introduction, the Chair will ask for testimony from the public. When you come up to testify, please speak clearly into the microphone. Please tell us your name and please spell your first and last name. Also, please tell us whom you are representing, if anyone. We are using the light system for our hearings. Testifiers will have three minutes which will be represented by a green light when you begin, an amber light when you have one minute remaining, and a red light when your time is up. Please turn your cell phones or any other electronic devices that might make noise on silent and please keep your conversations to a minimum or take them into the hallway. The General Affairs Committee is participating in a project to go paperless. Therefore, we will accept handouts and give them to the committee later on electronically, and we will take written testimony electronically as well. Due to this new policy, if you would like to submit something but only have paper copies, we will try to accommodate you, as I said. We do not allow visual aids or other display items. Because the committee is going paperless, the senators are allowed and even encouraged to use electronic devices in the hearings. Thank you for your cooperation. And we will begin today's hearing with LB1046 from Senator Ebke. And welcome to the General Affairs Committee.

SENATOR EBKE: Thank you, Chairman Larson and members of the General Affairs Committee. I'm happy to be here for my first bill before this committee. For the record, my name is Senator Laura Ebke, L-a-u-r-a E-b-k-e, and I represent the 32nd Legislative District. I'm here

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today to introduce LB1046. LB1046 would change the citizenship requirement of the Nebraska Liquor Control Act. Currently, a resident living in Nebraska legally but who is not yet a citizen of the United States cannot obtain a liquor license. In some cases, this has prevented business owners from expanding their operations. LB1046 would remove the citizenship requirement and allow residents who are, again, legally able to work in Nebraska to obtain a liquor license. I introduced this bill because I'm sympathetic to the business owners who thought...who would really like to do more but are being held back by this requirement. I really thought they had a cause that deserved a chance to be addressed by the Legislature. And while I will admit that I am not well-versed in the Liquor Control Act, I felt that these business owners needed an advocate in the Legislature. Perry Pirsch, who is a local attorney, has more knowledge of this law and of some of the cases involved, and he's here to testify following me today. Mr. Pirsch will be able to tell you more about the current regulations under the Liquor Control Act and give you some details about situations where this burdensome regulation is affecting businesses. I believe we also may have a few business owners, if they weren't scared away by the weather, who will testify as well. These folks will be able to address your specific questions better than I can. From what I know of the current regulation and of these situations, I think this is a common-sense reform needed in regulatory authority. And I hope you'll come to the same conclusion after hearing the testimony today. And I would be happy to take any questions you might have. [LB1046]

SENATOR LARSON: Thank you, Senator Ebke. Questions from the committee? One question: As I looked through the bill...and I think it's something that we can fix and I kind of addressed it with you a little bit. As you change the citizenship requirements you...my one concern, if I'm remembering right, what if someone were to live in Iowa but have their bar in Nebraska? It seems a little unclear whether or not they would be able to get that liquor license within the state of Nebraska. So... [LB1046]

SENATOR EBKE: Sure. [LB1046]

SENATOR LARSON: ...would you be open to looking at possible amendments to ensure that, keeping your original intent of the bill, but... [LB1046]

SENATOR EBKE: Sure. Sure. [LB1046]

SENATOR LARSON: ...to just clean it up a little bit? [LB1046]

SENATOR EBKE: I'd be happy to address that with you. [LB1046]

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SENATOR LARSON: Sounds good. Thank you, Senator Ebke. [LB1046]

SENATOR EBKE: Uh-huh. [LB1046]

SENATOR LARSON: Any further questions? Seeing none, thank you. Proponents. [LB1046]

PERRY PIRSCH: Good afternoon. I'm Perry Pirsch with the Berry Law Firm. I do a lot of work with small businesses in Nebraska. [LB1046]

SENATOR LARSON: Will you spell your name real quick? [LB1046]

PERRY PIRSCH: Sure, Pirsch, P-i-r-s-c-h. [LB1046]

SENATOR LARSON: Thank you. [LB1046]

PERRY PIRSCH: And I have a client, Perfect Diner, which is actually doing its soft grand opening tonight a block south of 27th and Cornhusker. Perfect Diner has invested over \$1 million in this north Lincoln neighborhood between the buildout, they actually built their building, had the land purchased for them, and just did an amazing job creating just a gorgeous restaurant to dine. In the process of setting up the business, we found, in working with the state Liquor Commission, that none of the members of the LLC would be eligible to hold a liquor license in Nebraska individually, although collectively their Nebraska LLC could hold a license. And this was despite the fact that they were permanent resident aliens of the United States working here legally. They had been here for years and they are just a few years away from gaining their U.S. citizenship. So I think for people such as these investors, who are putting in their personal fortunes and developing property, who are committed to being in the United States and here legally, they ought to have the right to be a liquor manager of their own LLC. [LB1046]

SENATOR LARSON: Senator Coash. [LB1046]

SENATOR COASH: Thank you, Senator Larson. Mr. Pirsch, when your clients went and worked with the commission, is it your conclusion that this legislative change is the only way that your clients can obtain a liquor license? [LB1046]

PERRY PIRSCH: Well, in fact, Perfect Diner has obtained a liquor license and they did it because I was willing to serve as their liquor manager. But I think that the state is looking at a potential 1983 action against it, a lawsuit against it, because I think requiring citizenship should

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be considered unlawful discrimination against national origin and that anybody who can work in the United States legally, invest in the United States legally, who resides in Nebraska should be able to hold a liquor license. [LB1046]

SENATOR COASH: But when you and your clients were working with the commission, you didn't come across a waiver provision? The only solution you came to was you, as their attorney, would serve as their liquor manager. [LB1046]

PERRY PIRSCH: The only solution we could find was either me or an American citizen partnering with them, or the alternative would be to file a lawsuit. There was...because the statute sets forward clearly that it had to be a United States citizen, the state Liquor Commission had no discretion. They had to uphold that provision. [LB1046]

SENATOR COASH: Okay. Thank you, Mr. Pirsch. [LB1046]

SENATOR LARSON: Thank you, Senator Coash. Senator McCollister. [LB1046]

SENATOR McCOLLISTER: Yeah, thank you, Mr. Chairman. I generally support, Perry, this effort that you're undergoing. But if litigation were to occur, does the fact that you're not a citizen impede that process in any way? [LB1046]

PERRY PIRSCH: The constitution does provide rights for noncitizens as well as citizens. I don't think that there's anything that would preclude my clients from filing a lawsuit under 1983. I can't guarantee the success of the lawsuit. In consultation with Mr. Rupe, who I believe will be testifying today, the executive director of the Liquor Commission, he believes that any lawsuit would be reviewed under the rational basis test as opposed to strict scrutiny, and that there's a chance that the law would be upheld. But my clients elected not to go that route. In consultation with me and with gracious Senator Ebke, who agreed to introduce the bill, the point was to avoid the need for litigation by coming in, getting it changed in the Legislature. [LB1046]

SENATOR McCOLLISTER: So they have full legal standing. [LB1046]

PERRY PIRSCH: Oh yeah. Yeah. These are permanent resident aliens, lawfully here working on citizenship. And I believe a couple of them will be eligible for citizenship within two years. [LB1046]

SENATOR McCOLLISTER: Yeah, thank you, Mr. Pirsch. [LB1046]

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SENATOR LARSON: Thank you, Senator McCollister. Just one...seeing no other questions, thank you. I just wanted to double-check that. Any more proponents? Opponents? Neutral testifiers? Senator Ebke, would you like to close? [LB1046]

SENATOR COASH: Hobie is coming down. [LB1046]

SENATOR LARSON: Oh, Hobie. Welcome to the General Affairs Committee, Mr. Rupe. [LB1046]

HOBERT RUPE: Thank you, Chairman Larson. Hobert Rupe, H-o-b-e-r-t R-u-p-e, executive director of Nebraska Liquor Control Commission. I guess I'd like to just say we're neutral on this one. The requirements of a citizen...of a license are up to the Legislature to decide. I guess I was here to give you a little history and maybe a little legal analysis based on Mr. Pirsch's comments. Historically, you remember, go turn back the way-way-back machine a little bit, corporations couldn't get liquor licenses. It was purely a personal privilege. Only a person could get a liquor license. That changed and evolved. But what happened when LLCs or corporations were allowed to get liquor licenses so that, say, Hilton Hotels could get a liquor license, because either they're not residents or citizens, then the manager had to meet the requirements as an individual would meet those requirements, in which case that required there be residency and citizenship. So that's sort of the historical backdrop of why you have residency and citizenship requirements. I guess I would dispute a little bit Perry's legal analysis and his thought that a 1983 case would be successful. I think the Southern Wine and Spirits case versus Missouri ABC, Eighth Circuit, clearly (inaudible) went forth that in that case Missouri had a requirement that dealt with wholesalers, that most of the majority of the citizen wholesalers had to be residents of the state of Missouri. Southern Wine and Spirits challenged that. They lost. Went to the Eighth Circuit and the Eighth Circuit affirmed the loss that, you know, that when you're looking at Granholm, you got to remember anytime you're looking at liquor laws, vis-a-vis a 1983 or issue, you're dealing with two competing constitutional rights: the state's rights in the Twenty-First Amendment versus individual's rights. So you're down to a much lower standard than a traditional 1983 case would be, i.e., strict scrutiny. You're now looking at a rational basis. There's a rational basis for the state-based regulation. And so, you know, legally I'm not sure that I would agree with Perry, but, you know, he's appeared in front of me enough as a hearing officer. He would agree that he and I disagree on the law occasionally. But I just want to give you a background on it as to the history of why the citizenship and residency are required. One of the main reasons for...that I think where the commission would be different, if we're looking at citizenship versus residency, the residency I think is required because that's where our subpoena power is. If you're not a resident, you're outside the state, we might lack enforcement authority against you outside the state, outside the boundaries. So with that, I'd be happy to answer any questions. [LB1046]

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SENATOR LARSON: Thank you, Mr. Rupe. Questions from the committee? Senator Coash. [LB1046]

SENATOR COASH: Thank you, Senator Larson. Mr. Rupe, if in the example that you ended with where you would not be able to subpoena them should this become law, would you be able to cancel their liquor license? [LB1046]

HOBERT RUPE: Probably you could. You know the area where it gets messed up a little bit is you have to remember that there are both the civil...there's both the civil actions underneath the Liquor Control Act. There's also criminal actions for criminal violations of the act. And so I think that might be where the disconnect would happen, is the liquor license might be able to be sanctioned but you might not be able to go forth on the criminal act outside of it. Because generally, if it's a corporation, they've got to be licensed here in Nebraska and we can't handle the license. So that's sort of the disconnect where the subpoena power goes over and also maybe discovery. You know, if the offices are in Iowa, we might not be able to get the documents (inaudible) without a fight. [LB1046]

SENATOR COASH: But you would be able to take action on a licensee... [LB1046]

HOBERT RUPE: Yes. [LB1046]

SENATOR COASH: ...absent that and say, well, if you're not going to come and deliver, the Liquor Commission is going to suspend your license, right? [LB1046]

HOBERT RUPE: Yeah. The bigger part of it of course is if you're a manager of a licensee and we're subpoenaing you to testify and you don't want to testify, and you're staying in your home and your records are always kept at home. You know, I mean right now if you refuse to obey a subpoena of the Liquor Control Commission, we can seek redress to the district court. They can order you to show up. If you're outside of the jurisdiction, that can be more problematic. [LB1046]

SENATOR COASH: Okay. Thanks for the insight, Hobie. [LB1046]

SENATOR LARSON: Thank you, Senator Coash. Seeing none, thank you. Senator Ebke, would you like to close now? Senator Ebke waives closing and that will close the hearing on LB1046. Moving forward to LB834...LB748, excuse me, LB748. Welcome to General Affairs Committee, Senator Lindstrom. [LB1046]

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SENATOR LINDSTROM: (Exhibit 1) Thank you, Chairman Larson. Thank you, members of the General Affairs Committee. My name is Brett Lindstrom, L-i-n-d-s-t-r-o-m, and I'm bringing LB748 for your consideration. LB748 gives an avenue for someone who wants to ship alcohol from another state to their home for personal consumption. Currently, consumers are limited to nine liters of alcohol, or the equivalent of one case of wine per month. And this bill would keep the limit of 108 liters, or 12 cases, of wine per year without a monthly limit. After discussions with the Nebraska Liquor Control Commission, I'm bringing an amendment which will ensure that we are not legalizing bootlegging in the state of Nebraska. The amendment allows 108 liters, or the equivalent of 12 cases of wine, to be shipped to a consumer for personal use in a one-year time period as long as the consumer ships it from a business holding a Nebraska direct-sale shipping license. This provides a way for those who want to ship in alcohol from a source outside of our state for a big event, such as a wedding, or to ship home a few cases of wine from a vacation, to be able to do so without the possibility of facing charges for violating our Liquor Control Act. At the same time, the shipment is only legal if the consumer is using the alcohol for themselves or for any family or guests, and only if the alcohol is shipped from a provider with the appropriate license, which is a Class S1 license. This does not allow someone to buy 12 cases of wine from Missouri and drive it across state lines. Thank you for your consideration of LB748. I hope you'll accept the amendment and vote for LB748 out of committee. With that, I'll take any questions. [LB748]

SENATOR LARSON: Thank you, Senator Lindstrom. Questions from the committee? Senator McCollister. [LB748]

SENATOR MCCOLLISTER: Yeah. Thank you, Senator Larson. Is it difficult to obtain one of those licenses in order to ship product into Nebraska? [LB748]

SENATOR LINDSTROM: No, I wouldn't say it's difficult. You just have to pay the fee, which is \$500. There's quite a few wineries outside of the state that do participate in that. Not everybody does because it's a little bit inconvenient right now. When you do sign up to, say, be a member of a winery, for example, like California, typically they want to ship a little bit more. If you go out there, you can only ship one case. Again, if you go out there, say you're planning for a wedding or some type of an event, to be able to ship that back. [LB748]

SENATOR MCCOLLISTER: Is that fee, that fee of \$500, pretty typical for states around the country? [LB748]

SENATOR LINDSTROM: I believe it is. You know, we try not to price ourselves out of I guess the reciprocity of it. You know, a lot of...and actually I think there's a lot of Nebraska

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winemakers here today that would like to ship their product outside of the state. So there's just an understanding that we want to be prudent how we do that. [LB748]

SENATOR McCOLLISTER: When a shipment occurs or is shipped into Nebraska, what's the mechanism by which you get your tax money? [LB748]

SENATOR LINDSTROM: Can you...I'm sorry, can you repeat that question? [LB748]

SENATOR McCOLLISTER: Yeah. There's taxes on that product that comes into Nebraska. What's the mechanism by which the tax is remitted to the state? [LB748]

SENATOR LINDSTROM: Well, you pay the fee. You have to make sure you put down what type of wine, but I would probably ask the following individuals behind me about that for specifics on the taxation of that. [LB748]

SENATOR McCOLLISTER: Thank you, Senator. Thanks. [LB748]

SENATOR LARSON: Thank you, Senator McCollister. Any further questions? Senator Hughes. [LB748]

SENATOR HUGHES: Thank you, Mr. Chairman. Senator Lindstrom, who is the government agency that's in charge of tracking this to make sure we don't get more than we're allotted in a given year? [LB748]

SENATOR LINDSTROM: The alcohol commission. [LB748]

SENATOR LARSON: Liquor Control Commission. [LB748]

SENATOR LINDSTROM: The Control Commission, yeah. [LB748]

SENATOR HUGHES: The commission? [LB748]

SENATOR LINDSTROM: Yeah. [LB748]

SENATOR HUGHES: The whole commission? Okay. [LB748]

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SENATOR LARSON: I'm guessing, Hobie, you'll follow. [LB748]

SENATOR LINDSTROM: Right. [LB748]

SENATOR LARSON: Yes. [LB748]

SENATOR HUGHES: Okay. [LB748]

SENATOR LARSON: Thank you, Mr. Rupe. [LB748]

SENATOR HUGHES: I'll ask any further...thank you. [LB748]

SENATOR LINDSTROM: Sure. [LB748]

SENATOR LARSON: Thank you, Senator Lindstrom. [LB748]

SENATOR LINDSTROM: Thank you. [LB748]

SENATOR LARSON: I will now take proponents. Opponents. Neutral testimony. Neutral, Mr. Brady? Welcome to General Affairs Committee. [LB748]

JUSTIN BRADY: Senator Larson and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska Liquor Wholesalers in a neutral capacity. They were opposed to the green copy of the bill, but with discussions with the Liquor Commission and with Senator Lindstrom we are neutral with the amendment that he spoke about today. So with that, I can try to answer any questions if you have any. [LB748]

SENATOR LARSON: Seeing none, thank you for coming. Oh, oh, Senator McCollister. [LB748]

SENATOR MCCOLLISTER: Yeah. Thank you, Senator Larson. Can you answer any of the questions that Senator Hughes or I raised? [LB748]

JUSTIN BRADY: Well, as Senator Lindstrom said, yes, the Liquor Control Commission is the government agency that tracks it. As I understand it, Senator, the out-of-state companies will

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have to pay a \$500 fee to get a shipping license. They then report to the Liquor Commission what was shipped in and, with that, remit the taxes that were paid to the state. That's how the state collects it. The Liquor Commission collects that and then turns it over to the General Fund. As far as the tracking, that all happens in their offices on the quantity and who all is shipping in. [LB748]

SENATOR McCOLLISTER: I know you probably don't know, but is there any effort to audit those numbers or verify that the shipments into Nebraska are in fact correct? [LB748]

JUSTIN BRADY: That would be something I think you could ask Mr. Rupe on. I don't know. [LB748]

SENATOR LARSON: I think Mr. Rupe is following Mr. Brady. [LB748]

SENATOR McCOLLISTER: Oh, thank you, Senator. [LB748]

SENATOR LARSON: For all those questions. [LB748]

SENATOR McCOLLISTER: Thank you. [LB748]

JUSTIN BRADY: Uh-huh. [LB748]

SENATOR LARSON: Seeing no other questions, thank you, Mr. Brady. [LB748]

JUSTIN BRADY: Thank you. [LB748]

SENATOR LARSON: Mr. Rupe, welcome back to the General Affairs Committee. [LB748]

HOBERT RUPE: Thank you, Chairman Larson. Once again, Hobert Rupe, H-o-b-e-r-t R-u-p-e, executive director of Nebraska Liquor Control Commission. The commission was in opposition to the bill as originally drafted. I want to thank Senator Lindstrom for working with us. It's one of those interesting things where he knew what he wanted to do but was unaware of the secondary effects, primarily the fact that you could have a problem, you know, the trunkload of beer coming across, as long as you're under 10-12 cases. They can say, hey, this is just mine for the year, and do it every weekend, which we've had problems with in the state. I will be the first to admit that we do have a bootlegging problem in the state. So I want to thank him for working for it. To answer the questions, the S1 license, we were one of the first of the states to have an S1

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license or type of license. I would say our fee is probably a little higher than average, but you know, that's one of the things you get when you go...when you're one of the early adopters. It's roughly now half of a regular S license. A shipping license for a wholesaler is \$1,000. An S1 to ship to a final consumer is \$500. A lot of your big wineries will have both so they can do both. Oftentimes smaller wineries will obtain an agent who will have a liquor license and be required for it. So five or six smaller wineries would be going through one clearinghouse, usually in San Francisco. That's where they're usually located at. The commission is...there are just under 400 of those S1 liquor licenses, so we're pretty well served. The commission does...the S1 license has to file an annual report. We oftentimes will also do audits. We'll cross-reference those. Primarily we will...we do...we'll do subpoenas to Fed-Ex and UPS if something flags up out of the ordinary to see what kind...because generally those shippings are going through either one or two of those servers. The Postal Service won't deal with alcohol but UPS and Fed-Ex will, so we have subpoenaed them in the past. Next year in fact you might be seeing us for requests to tighten up some of those laws so we can get some of that information, just give you a little hint on that one. But we do actively look at that and we do cross-reference those reports and so we try to make sure. And for the most part most of the S1s have learned. We've had to rap a couple knuckles where we've seen they've shipped in too much or it's on the edge. And we've sort of looked at...under the theory that you can ship in nine liters per month. If you've been shipping in more than two cases per month, because we assume that most people might be married and that, therefore, they should be able to each...each of those applicants should be able to, you know, a husband and wife each should be able to bring in a case. We've had a couple cases where it's flagged up above that and we've taken enforcement actions. [LB748]

SENATOR LARSON: Thank you, Mr. Rupe. Senator Hughes. [LB748]

SENATOR HUGHES: So you're telling me the S1 license really has to be a distributor that buys that, not necessarily the individual winery? [LB748]

HOBERT RUPE: No. Generally, the S1s will be held either by an importer, which can...importing out of the country, you know, so I'm thinking Italian wines would come through an import. Oftentimes you know we actually a couple years ago changed it to allow some of the on-line retailers to acquire that license as well so long as they're licensed by the state where they're at. You know the theory behind it is you've got to be generally a first-tier entity. And so what will happen is you'll have some of these small wineries will form a co-op effectively and that co-op entity will then get the license just so they're spreading the costs out a little bit more. And they'll do most of the...they'll serve as a service provider because most of the ways...actually I visited one of these warehouses in San Francisco when I was there a couple years ago. You know they'll have a small...you know, they'll have one area which is set up for one winery, another, another, another, and then they'll do a pick and pull out of it. But they would be licensed in the state. [LB748]

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SENATOR HUGHES: Okay. So then I think you said that occasionally you'll see a couple cases come in to the same address but different names where you kind of give some latitude. [LB748]

HOBERT RUPE: We give some latitude because the theory...the statute says you can't cause to be imported more than nine liters per month. [LB748]

SENATOR HUGHES: Right. [LB748]

HOBERT RUPE: And that would be an individual, right? And so generally if you're...you know, it's going to flag on our radar if it was over two cases, because we're assuming a spouse will be importing as well. [LB748]

SENATOR HUGHES: Okay. So when you talked about rapping the knuckles, are you coming after the individuals that are importing or the shipper? [LB748]

HOBERT RUPE: We go after the shipper... [LB748]

SENATOR HUGHES: Okay. [LB748]

HOBERT RUPE: ...for a couple reasons. One, we have a slightly bigger hammer; two, the standard of proof is lower than a criminal case. Because if you look at the bill which is being addressed, it actually has a criminal law provision. So you're looking at beyond a reasonable doubt. So from our perspective, our authority goes over the licensee, the holder of the license. [LB748]

SENATOR HUGHES: So what prevents me from getting the maximum amount from one shipper or distributor and the maximum amount from another shipper or distributor... [LB748]

HOBERT RUPE: Well, if that's... [LB748]

SENATOR HUGHES: ...without a penalty for the individual? [LB748]

HOBERT RUPE: Well, if that were the case, we would probably have the Nebraska Liquor Control come and give you a little discussion. [LB748]

SENATOR HUGHES: And then that's the individual. [LB748]

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HOBERT RUPE: Yeah, the individual. [LB748]

SENATOR HUGHES: Okay. Thank you. [LB748]

HOBERT RUPE: They could do that and then they would refer that to the local county attorney for criminal prosecution. (Inaudible.) [LB748]

SENATOR HUGHES: Okay. Thank you, Mr. Rupe. [LB748]

SENATOR LARSON: Thank you, Senator Hughes. Senator McCollister. [LB748]

SENATOR McCOLLISTER: Yeah, one more question, Mr. Chairman. I thank you for your testimony. Now is the volume limitation based on the co-op or would it be the individual vineyard that may be in that co-op? [LB748]

HOBERT RUPE: There's no limit upon the person shipping it in, okay? Let's say you're Chateau Ste. Michelle in Washington and you have an S1 license. You can ship in, you know, 500 cases. So long as those 500 cases are being spread amongst, you know, at least 250 addresses, you're probably not going to be in problems with us. [LB748]

SENATOR McCOLLISTER: I see. [LB748]

HOBERT RUPE: And so that's how we would look. You know, the limitation is designed on a person. The theory is that nine liters, which is amazing because it's the only place "liter" shows up in the act; everything else is "gallons," because it translates over to a case of 750s, the common wine liter size. The theory behind it is that that is sort of where the personal use level is, or below, and that beyond that there's a chance you're going to be doing it for retail purposes or for other issues. So Senator Lindstrom's bill basically allows those 108 liters over a year to be front or back-loaded in a month for special events. And so that's one reason with the amendment we think it probably still maintains it because the tax is being paid and it's still being used primarily for, you know, that's still the total amount for personal use. [LB748]

SENATOR McCOLLISTER: Thank you. Thank you, Mr. Chairman. [LB748]

SENATOR LARSON: Thank you, Senator McCollister. Seeing no further questions, thank you, Mr. Rupe. [LB748]

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HOBERT RUPE: Thank you. [LB748]

SENATOR LARSON: Any further in the neutral capacity? Seeing none, Senator Lindstrom. Senator Lindstrom waives. And that will close the hearing. We will move on to LB1105, General Affairs, liquor omnibus. [LB748 LB1105]

JOSHUA EICKMEIER: Committee members, my name is Joshua Eickmeier, J-o-s-h-u-a E-i-c-k-m-e-i-e-r, and I'm the legal counsel for the General Affairs Committee. I'm here to introduce LB1105 on behalf of Chairman Larson. If you want to follow along in the green copy, I'm going to give page references if it's helpful. Start with the first point is the creation of the Nebraska Craft Brewery Board. This is on pages 3 through 6 and 10. The Governor, on a nonpartisan basis, appoints the board's seven members. At least two shall be selected from a list of at least ten candidates provided by the Nebraska Craft Brewers Guild, and at least two shall be selected from a list of at least ten candidates provided by the Associated Beverage Distributors of Nebraska. The board members shall be Nebraska citizens, at least 21 years old, and have been or are involved in the beer industry. Each member serves a three-year term and is eligible for reappointment. The executive director of the Nebraska Tourism Commission shall be a nonvoting ex officio member of the board. The board serves as an advisory panel to the Nebraska Liquor Control Commission in all matters pertaining to the beer industry. The Nebraska Beer Industrial Promotional Fund is also created and consists of money credited from the beer manufacturers' shipping licenses under subsection (2) of Section 53-123.15. The fund also includes a \$250 annual fee for craft brewery licensees to pay, but they may opt out. The Nebraska Tourism Commission, at the direction of and in cooperation with the Nebraska Craft Brewery Board, shall use the fund to develop and maintain programs for the research and advancement of the beer brewing process, the marketing and promotion of the beer industry in Nebraska, and the marketing and promotion of agricultural products and their by-products grown and produced in Nebraska for use in the beer industry. The next item in the bill is on page 6 and this, LB1105, amends the definition of the term "club" by striking the requirement that a club has a suitable and adequate kitchen and dining room space and equipment and a sufficient number of servants and employees for cooking, preparing, and serving food and meals for its members and their guests. This is at the request of the Liquor Control Commission. The next item is on page 7 and 30. This is the Liquor Control Commission's legislative letter, Item 12(3), and this is a technical change asked by the commission. This provision pertains...contains an exception to requiring a retailer to purchase from a wholesaler. The Liquor Control Commission's letter stated that this exception has never been used and only served to confuse licensees, which is why the commission asked to have it stricken. The next item is also on page 7 to 8. This is the definition for hard cider, which is currently limited to apples and pears and no other fruit products or flavors. LB1105 strikes the prohibition of other fruit product or other...or any artificial product which imparts a fruit flavor other than apple. This is in response to the emergence of ciders made with fruits and other than apples and pears being utilized in hard cider. The next item on pages 8

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through 9, this changes the craft brewery license to address the issues and concerns for when craft brewers exceed the 20,000-barrel limit. And it clarifies that a manufacturer may sell at retail its beer for consumption on the licensed premises, commonly referred to as a tasting room. A craft brewery licensee, who has held the license for a minimum of three years and operates a brewpub during that time or a microbrewery, will have to get a manufacturer's license once the licensee exceeds 20,000 barrels. At that time, the licensee may continue operating up to five retail locations that the licensee was operating at the time such manufacturer's license was issued. In other words, they would be grandfathered in. The licensee must divest from any additional locations. The licensee shall not begin operation at any new retail location, even if the licensee's production is reduced below 20,000 barrels per year. In other words, once the licensee reaches the 20,000-barrel limit, even if they only have three retail locations, they can't later drop below 20,000 for a year and add additional locations to get back up to five. Once you make the transition, then you are locked in and you grandfather in your existing locations. If you have more than five locations, then you will have to divest from those additional locations. The manufacturer's license holder under these circumstances may also obtain a catering license, special designated license, or entertainment district license. Page 19: This establishes a Class T alcoholic liquor license intended for small boutiques to sell a limited amount of alcohol, such as in gift baskets. The licensee's gross revenue from the sale of alcohol cannot exceed 20 percent of the licensee's total annual gross revenue from all retail sales. The Class T license is \$50, an annual \$50, and would be exempt from a local occupation tax. In reviewing the bill, I believe that exemption was the intent in the drafting process but it did not get into the green copy. So that would likely be an amendment, a committee amendment. The intent of this provision would be small boutiques, places that might have like made in Nebraska products or other small businesses that are not primarily selling alcohol but in a gift basket they might want to include a bottle of Nebraska wine or any kind of Nebraska alcohol as part of this, you know, gift package. This would allow them to do this at a much lower cost since they're not...it is limited in how much sales, gross sales, can come from the sale of alcohol. Page 27: Liquor Control Commission's legislative letter, Item 10, this eliminates the requirement that a licensee shall reapply for its license because the licensee's location was annexed by an adjacent municipality. I don't believe this occurs very often but instances where an area is annexed in, if that licensee already is a current licensee, then they would just renew at the normal time for renewal and would not have to reapply simply because they were annexed in. Item 20...or page 28, Item 11 of the Liquor Control Commission's legislative letter, this allows employees that are at least 16 years of age to ring up tickets, such as at a restaurant where the ticket includes alcohol purchases, as long as the employee doesn't handle the alcohol. In addition to what was in the letter, this bill also allows an employee between the ages of 16 and 19 to handle alcohol but only if they have already completed an approved server training course that is approved by the Liquor Control Commission. The next item is number 12 in the legislative letter, on page 31. This is another technical change. This harmonizes the section so that it not only prohibits retail activities but also manufacturing and wholesale activities in a building or a structure that allows access

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from such premises to any other portion of the same building or structure used for dwelling or lodging purposes by the public. I believe some of these issues have come up before the commission, and the commission, I believe the executive director, will be able to follow and explain the need for these changes. Also on page 31, this is Item 12(2) in the letter. This is also a technical change that this is a section that covers violations by nonbeverage licensees, and then they're currently required to pay \$2.10 per gallon, but that should be \$3.75 per gallon in order to be consistent throughout the act. And this was an adjustment that was overlooked, and the commission has asked to have it corrected. On page 32, legislative letter Item 9 increases the penalty for the illegal manufacturing of spirits. Any person who manufactures spirits at any place within the state without having first obtained a valid license to do so under the act shall be guilty of a Class I misdemeanor for the first offense instead of a Class IV misdemeanor. Second and subsequent offenses would now be a Class IV felony. On page 33, this would repeal the prohibition on pull tabs, pull tops on soda and beer cans. You haven't seen a lot of products anymore but at one time you would be able to pull the tab off of your can. I think a lot of them were beer cans, and those tabs, those just pull completely off of the can. And there are some products now emerging where the entire lid or the entire top of the can pulls off, basically turning into a glass, or a tin glass, for lack of a better term. And so that's...so removing this prohibition would allow those products to be sold in Nebraska. Last two things: on page 32 there's a severability clause, and on page 33 there's an emergency clause. And that's all this little bill does, so. (Laughter) [LB1105]

SENATOR LARSON: Thank you, Mr. Eickmeier. Questions on the technicalities of LB1105? [LB1105]

JOSHUA EICKMEIER: There will be plenty of people to testify behind me, too, to give the policy arguments. [LB1105]

SENATOR LARSON: Senator Kolterman. [LB1105]

SENATOR KOLTERMAN: Yeah, this is a...there's a lot here. [LB1105]

JOSHUA EICKMEIER: Uh-huh. [LB1105]

SENATOR KOLTERMAN: I want to focus on 8, allows employees that are at least 16 years of age,... [LB1105]

JOSHUA EICKMEIER: Uh-huh. [LB1105]

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SENATOR KOLTERMAN: ...16 to 19 to sell alcohol or distribute alcohol. [LB1105]

JOSHUA EICKMEIER: Yeah, other...yes. [LB1105]

SENATOR KOLTERMAN: Well, just out of curiosity, where did that come from? Did some consumer group bring that or is that something... [LB1105]

JOSHUA EICKMEIER: Sure. [LB1105]

SENATOR KOLTERMAN: ...that we just decided it's time for? [LB1105]

JOSHUA EICKMEIER: Well, the first part of that, that deals with being able to ring up the tickets, that was brought to us from the Liquor Control Commission. The second portion of that was just from internal discussions in our office about...and oftentimes you do hear about whether they're gas stations, grocery stores, especially in rural parts of the state, where finding employees can sometimes be a challenge. Allowing them to ring up the tickets would definitely help. In the case of being able to serve, that would be a policy decision as to whether that makes sense. Again, just by allowing it doesn't mean...if a business doesn't feel comfortable doing it, they wouldn't have to. It would just be...it would just give that business the option if they have a 16- to 19-year-old that they would, whether it's ringing it up at a grocery store, for example, that they would be able to if they completed the approved server training course. [LB1105]

SENATOR KOLTERMAN: So the course is in place already? [LB1105]

JOSHUA EICKMEIER: There are, and Hobie Rupe will be able to answer that more specifically, I believe. There are a number of courses that are available and I believe some of them are approved by the Liquor Control Commission. In some instances, when they discipline a licensee, they will require a server training course from their approved list. So, yes, those are already in place. But I would let the Liquor Control Commission add to that. [LB1105]

SENATOR KOLTERMAN: Then one last question. Is that fair? [LB1105]

JOSHUA EICKMEIER: Sure. [LB1105]

SENATOR KOLTERMAN: Thank you, Senator. At the present time, it's age 19, if I'm not mistaken. Is that correct? [LB1105]

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JOSHUA EICKMEIER: Yes. [LB1105]

SENATOR KOLTERMAN: So... [LB1105]

JOSHUA EICKMEIER: It's age 19 to...like at a gas...or at a supermarket to ring it up, it's 19, as well as serving, yes. [LB1105]

SENATOR KOLTERMAN: Gas station the same way? [LB1105]

JOSHUA EICKMEIER: I believe they're all,... [LB1105]

SENATOR LARSON: All of them. [LB1105]

JOSHUA EICKMEIER: Yeah, across the board, it's all 19. [LB1105]

SENATOR KOLTERMAN: So you're just lowering it to 16. [LB1105]

JOSHUA EICKMEIER: Lowering it to 16 with the caveat that if they're going to be handling the alcohol they would need to take a server training course. [LB1105]

SENATOR KOLTERMAN: Okay. Thank you. [LB1105]

JOSHUA EICKMEIER: Yeah. [LB1105]

SENATOR LARSON: Any further questions? Seeing none, thank you, Mr. Eickmeier. [LB1105]

JOSHUA EICKMEIER: Thank you. [LB1105]

SENATOR LARSON: We'll take the first proponent for LB1105. Welcome to General Affairs Committee. [LB1105]

TOM WILMOTH: (Exhibit 1) Good afternoon, Mr. Chairman, members of the committee. My name is Tom Wilmoth, spelled T-o-m W-i-l-m-o-t-h, and I'm testifying today as the president of the Nebraska Craft Brewers Guild in favor of provisions of LB1105. As Counsel noted, there are a number of provisions. The two that concern us primarily are the brewery board and the licensing revision. Our membership is quite diverse. We have members that are major producers.

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We have members that are smaller brewpubs. These members range from the metropolitan areas of Lincoln and Omaha all the way out to smaller communities of Broken Bow and Ord. We have enjoyed great success as an industry thus far, particularly in the last few years. As craft brewing has taken off nationally, it has also taken off here in Nebraska. In fact, we have doubled our in-state production and sales in the last five years as a whole brew. I think there are two provisions that are really necessary, to make sure that that growth continues, contained in LB1105 and those are, first, the brewery board provision. The brewery board is designed to help us grow smartly and to grow in a way that helps us recognize connections throughout the community in other industries that will help us grow together, for example, the agricultural community that produces products that we utilize in our brewing processes. So for example, the Hop Growers Association and folks like that have been instrumental in working with us to identify productive partnerships and we believe that the brewery board, for example, can help us continue to do that and grow not only our industry but those that support us. The second provision that is very critical to the continued success of the industry is the revision of the licensing requirements. As you have heard, under the current licensing provisions, once our members reach the 20,000 barrel production threshold, they are required to divest themselves of their retail licenses. Those retail licenses are the very foundation of our businesses and they have been built on those retail establishments: the taprooms, the brewpubs, etcetera. So this provision, although somewhat technical in nature, is very important to us because it will allow us to continue to grow and maintain a limited number of those licenses so that we don't have the fuel to our fire washed out. And again, I do want to emphasize you will hear, I think, from some other folks today that this is an interdisciplinary concept. The success of the craft brewing industry really spills over into a number of other industries, such as agriculture, manufacturing, marketing, design. All of these things are generally products and services that are sourced locally by our members. Thank you. [LB1105]

SENATOR LARSON: Thank you, Mr. Wilmoth. Questions for the committee? Senator Kolterman. [LB1105]

SENATOR KOLTERMAN: Thank you, Senator Larson. My question is more for just information. So when you talk about hops, as an example, I know there's organizations in the state that are growing hops to be marketed primarily to, I suppose, your craft brewers. Can you tell me if there's any kind of an organization that's growing wheat or barley specifically for your use? [LB1105]

TOM WILMOTH: Well, there are some folks that are looking into malting, I know, and brewers grains are something that are of interest to a number of entities. I think that the university is looking at some of those opportunities and I think those folks are working closely with the university to try and identify where those might lie. I think, just as a practical matter, the hop industry has progressed a bit more quickly and I think is something that, although it also requires

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a lot of capital intensive outlays, it's something that might be easier to kind of get started than developing a "maltery." [LB1105]

SENATOR KOLTERMAN: Okay. Can I ask one more question? [LB1105]

SENATOR LARSON: Of course, Senator Kolterman. [LB1105]

SENATOR KOLTERMAN: Thank you. The other question deals with several years ago, maybe it was just last year. Time flies when we're having fun, right? There was an article in the paper about distillers grain or getting rid of the after product and giving it to farmers to feed to their livestock. Is that still able to happen or was there a problem with that? [LB1105]

TOM WILMOTH: That's an issue that was very critical to us originally in the brewing community, and I can't speak to distilleries and distillers grains necessarily, but brewers grains were lumped in the same way. And the FDA revisited that rules application to us as brewers that would have required us to essentially dry and package our spent grains, our brewers grains. And then the only alternative to that would have been to put them in landfills. That, obviously, is not terribly useful. Almost all of our members effectively recycle those grains by providing them to local farmers to utilize as feed supplements. [LB1105]

SENATOR KOLTERMAN: Okay. [LB1105]

TOM WILMOTH: And that can continue under the current regulatory environment. [LB1105]

SENATOR KOLTERMAN: Okay. Thank you. [LB1105]

SENATOR LARSON: Thank you, Senator Kolterman. Senator Coash. [LB1105]

SENATOR COASH: Thank you, Senator Larson. Thanks for your testimony today. With regard to the provision of the bill creating a Craft Brewers Board, where did the, if you know, the idea of the structure of that board come from? [LB1105]

TOM WILMOTH: That was borrowed directly from the Wine and Grape Growers Board. And the structure, if you're familiar with that, probably looks awfully close to the Wine and Grape Growers. It is nearly identical. We do have a modification of that, which is that we would be working with the Tourism Commission to implement the program. And the fact of the matter is that a number of our members have become tourist destinations to date. And we've had a number

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of successful programs, such as the Passport Program and things like that, implemented that I think really leverage the connection between the industry and tourism. [LB1105]

SENATOR COASH: So this isn't new ground, so to speak, with promoting an industry that's tried to grow in Nebraska and... [LB1105]

TOM WILMOTH: No,... [LB1105]

SENATOR COASH: ...partnering with an entity and working to solidify funding and things of that nature? [LB1105]

TOM WILMOTH: Certainly not new in the sense that it hasn't been done. I think that the folks that I've spoken to who are active in the wine and grape growing industry are very complimentary of the efforts of their board and I think they would tell you that it has made a big difference in the success of their industry. So we're looking to achieve a similar result, of course. [LB1105]

SENATOR COASH: Thank you. [LB1105]

SENATOR LARSON: Thank you, Senator Coash. Seeing no other questions, thanks for attending the General Affairs Committee. [LB1105]

TOM WILMOTH: Thank you, Mr. Chairman. [LB1105]

SENATOR LARSON: Next proponent. Welcome to the General Affairs Committee. [LB1105]

KIM KAVULAK: Senator Larson, committee members, my name is Kim Kavulak, K-a-v-u-l-a-k. I'm here today in a dual role as an executive committee member for the Nebraska Craft Brewers Guild as well as co-owner of Nebraska Brewing Company. LB1105 is important to us. It allows for two key items for us as a business. One is the creation of the Nebraska Craft Brewery Board. We see that being key to the growth of some of the industry across the state, the craft brewing industry across the state. It will include members that represent key parts of the industry, including wholesalers, retailers, manufacturers, in addition to having the Nebraska Tourism Commission as a partner to help in the administration of the board to help us promote the craft beer industry as it grows across the entire state. More importantly, as a business LB1105 provides for us the ability...my husband and I opened our brewpub nine years ago. We opened that first year I think with less than 500 barrels a year in growth. Now, nine years later, we have two locations. With those two locations, last year we finished 2015 with over 8,000 barrels in

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production. Our projected growth over the next two years could easily see us exceeding that 20,000-barrel cap. Without the provisions that are contained in LB1105, if we exceed that 20,000 barrels, we will be forced to divest ourselves of any of our retail operations, effectively forcing us to close our brewpub, which was our dream when we opened it nine years ago. So that would be devastating. The industry has seen sustained growth for the beer industry and the state for the last six years so we don't see that slowing down. The continued growth helps not only us as an individual business in the craft beer industry but, again, those peripheral industries, including equipment manufacturers, wholesalers, retailers, local bars and restaurants that sell local products from the breweries across the state. We're creating jobs, increased tax base, and promoting tourism. We're really proud to have support of all of those organizations that I've referenced that we've dealt with and we hope that you...we urge that you'll advance LB1105. Thank you. [LB1105]

SENATOR LARSON: Thank you very much. Questions from the committee? Senator Kolterman. [LB1105]

SENATOR KOLTERMAN: Thank you, Senator. The only question I have, I understand you're supportive of several items in the bill. Are you equally supportive of the balance of the issues? [LB1105]

KIM KAVULAK: I don't know that we have a position. These particular items are what are important to the growth of our business. We've operated as is without those so I don't really have a position on those. [LB1105]

SENATOR KOLTERMAN: Okay. Thank you. [LB1105]

SENATOR LARSON: Thank you, Senator Kolterman. Senator Hughes. [LB1105]

SENATOR HUGHES: As a retailer,... [LB1105]

KIM KAVULAK: Uh-huh. [LB1105]

SENATOR HUGHES: ...the provision that we talked about earlier about the 16-year-olds and the 19-year-olds, do you have an opinion on that section? [LB1105]

KIM KAVULAK: I don't really have a position or an opinion on that. Right now, with...as exists with 19-year-olds, I mean we're nine years old so it's worked well for us. I don't really have a position or an opinion on that. [LB1105]

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SENATOR HUGHES: So your employees are all 19 or older? [LB1105]

KIM KAVULAK: Anybody who handles alcohol, yes. [LB1105]

SENATOR HUGHES: Okay. [LB1105]

KIM KAVULAK: So I have hosts that may be younger than that, but they don't handle or deal with alcohol in any way. [LB1105]

SENATOR HUGHES: Or ring it up on the cash register. [LB1105]

KIM KAVULAK: Correct. That's absolutely correct. [LB1105]

SENATOR HUGHES: Okay. Thank you for your testimony today. [LB1105]

KIM KAVULAK: Uh-huh. [LB1105]

SENATOR HUGHES: Thank you, Mr. Chairman. [LB1105]

SENATOR LARSON: Thank you for coming to the General Affairs Committee. Ms. Silke, welcome to the General Affairs Committee. [LB1105]

VANESSA SILKE: (Exhibits 2 and 3) Hello. My name is Vanessa Silke. It's spelled V-a-n-e-s-s-a and my last name is spelled S-i-l-k-e. I'm an attorney and the registered lobbyist for the Nebraska Craft Brewers Guild. I want to thank the members of the committee and particularly you, Senator Larson, for your assistance with the portions of the bill that were drafted and proposed by the Craft Brewers Guild. As Ms. Kavulak and Mr. Wilmoth indicated, we're here today on behalf of two portions of LB1105. To help you with your review of this bill, in light of our testimony, I provided everybody a highlighted copy of LB1105. Only those provisions with the highlights deal with what the guild has asked for. They also track much of what we discussed in light of the hearing on LR287 back in October. And since that time, we've worked directly not only with Senator Larson and members of the committee but also members of the beer industry, in particular, the wholesalers in Nebraska, to work on the language to address these two big issues. So you'll see three main objectives that are accomplished with the highlights in that bill. One, we went line by line through the existing manufacturers and craft brewers' licenses with Mr. Rupe at the Liquor Control Commission to figure out the best way to tweak that language to provide a better form for him to regulate the craft brewers who have licenses in this state. We

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also included specific requests from wholesalers and other stakeholders in the beer industry to improve the language. They specifically requested limits on the number of locations and the scope of benefits that a license holder has under the craft brewer's license and the manufacturer's license, and we've incorporated the language that they proposed. We've also clarified the path for growth into the manufacturer's license and incorporated that language, and also incorporated guaranteed representation from the stakeholders on the Craft Brewery Board. That all accomplishes the most important goal for the Craft Brewers Guild, which is to provide for the growth of the craft beer industry and also provide benefits for other members of the industry that just aren't accounted for at this point. So with that, I'll take any questions that you might have on the technical parts of those portions of the bill. [LB1105]

SENATOR LARSON: Thank you, Ms. Silke. Questions from the committee? Seeing none, thank you for visiting us today. [LB1105]

VANESSA SILKE: Thank you. [LB1105]

SENATOR LARSON: Welcome to General Affairs Committee. [LB1105]

SILAS CLARKE: (Exhibit 4) Thank you. My name is Silas Clarke, S-i-l-a-s, Clarke is C-l-a-r-k-e. I'm here today on behalf of the Nebraska Hop Growers Association. I've submitted written testimony with the Brewers Guild and I just want to reiterate a couple points here and add some additional context. The Nebraska Hop Growers Association started in 2012 with just four of us. It's now grown over 16 members in the state and those farms are progressively getting much larger. As you may be aware, hops are mostly grown in the Pacific Northwest. However, with the brewery growth in the United States, we are in need. I was at a conference in California just last week, the Hop Growers Convention, and they are saying that they need an additional 20,000 acres of hops in the United States, which is a 44 percent increase. Now in row crop language, that seems like a very small amount, but, again, that is a 44 percent production increase. With our water, labor, and fertile soil, we can really make a dent in the hop growing for our region. My point of me being here today is, first, in support of the Nebraska Craft Brewery Board. And again, we are like the Brewers Guild, and the two points in the bill was our most interest. We believe that this can really help our industry on the ag side and could go into the grain side also, which is not...I'm not here on behalf of but on the ag side. It's really an urban and rural issue for the agriculture and the brewing side on this. We're also here in support of the 20,000-barrel cap of being increased. And the reason that we care about that is most of our hops that are produced in the state, the larger breweries want to use them in a smaller batch of beer or test batches. And the allowance of those tasting rooms are allowing them to do those smaller batches and then get them out to the public so that they can do formulation and figure out what is really working with those hops in their products. We are also in support of that. I just want to thank all of you for

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having us here today and I would take any questions on the association. But again, I wrote the letter and just wanted to be brief today. So appreciate your time. [LB1105]

SENATOR LARSON: Thank you, Mr. Clarke. I appreciate you coming in the General Affairs Committee. Any questions from the committee? Seeing none, thank you. [LB1105]

SILAS CLARKE: Thank you. [LB1105]

SENATOR LARSON: Appears Mr. Hughes has a new industry to get into. You can be number 17. Next proponent. Welcome to General Affairs Committee, Mr. Pollock. [LB1105]

ANDY POLLOCK: Thank you, Chairman Larson and members of the General Affairs Committee. My name is Andy Pollock, that's A-n-d-y, Pollock is P-o-l-l-o-c-k. I will be appearing before you briefly today on behalf of the Nebraska Travel Association. It's a group of nonprofit and for-profit businesses from across the state that support the travel and tourism industry. And we support strongly Senator Larson, Senator Coash's LB1105. I've been asked to testify for the group in that regard. Mr. Wilmoth, who I've had some good conversations with about the bill and I'll talk a little bit more about that later, mentioned that this industry, the craft brewing industry, spills over into other industries. One industry that should definitely be mentioned and emphasized is the travel and tourism industry. It brings a lot of people out of their homes to travel across Nebraska. It brings a lot of people to our state. So that's why this issue is important for the Nebraska Travel Association and why we support really promoting and emphasizing this growing industry. It's pretty amazing to see what it's done. We had a couple concerns. They're both in Section 4 of the bill. I've spoken with Mr. Wilmoth about both of those concerns and we would simply like to work with Mr. Wilmoth and the committee to address those concerns. And I'll just address them briefly. We understand this kind of was modeled after the Wine and Grape Growers Promotion Fund, which is the fund there is administered by the Department of Ag. This fund would be administered by the Nebraska Tourism Commission, which our group supports and wants to make sure that we watch out for the integrity for, especially the financial integrity of that group. And the first question we would have and it's simply a question and there may be an answer. And, no, I'm not asking you this, but I think it's one that probably should be explored before this reaches its final stage, and that is how does the commission cover the administrative cost of managing this fund. I've checked in with Department of Ag and they said that approximately 20 percent of one of their staff person's time goes to managing the Wine and Grape Fund. I think the same question needs to be asked with respect to this fund as it's housed with the Nebraska Tourism Commission. Should the beer brewers be contributing to the administration of that fund so that lodging taxes, which make up a bulk of the Tourism Commission's budget, aren't being used to pay for one particular industry. The second question is, this is language in Section 4 and it's simply a question. It talks about

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employment of experts. I've talked with Kathy McKillip of the Nebraska Tourism Commission and she said her impression is that that's a reference to the board, the brewers board, hiring experts. I think some clarification language in the bill would be helpful in that regard. With that, I would conclude and I'd try to answer any questions you might have. [LB1105]

SENATOR LARSON: Thank you, Mr. Pollock. Questions from the committee? Senator Kolterman. [LB1105]

SENATOR KOLTERMAN: I have a question, Mr. Pollock, as it pertains to the 16- and 19-year-olds. Do you have a position on that as tourism? [LB1105]

ANDY POLLOCK: Our association has not taken a position on that issue nor have we even discussed it, Senator. [LB1105]

SENATOR KOLTERMAN: Okay. Thank you. [LB1105]

ANDY POLLOCK: Thank you. [LB1105]

SENATOR LARSON: Thank you, Mr. Pollock. [LB1105]

ANDY POLLOCK: Thank you. [LB1105]

SENATOR LARSON: Next proponent. Mr. Rupe, welcome back to the General Affairs Committee. [LB1105]

HOBERT RUPE: (Exhibit 5) Thank you, Chairman Larson, members. My name is Hobert Rupe, executive director of the Nebraska Liquor Control Commission, H-o-b-e-r-t R-u-p-e. I find I'm sort of in a weird position here. We support the bulk of LB1105. There are some issues where we're neutral on. There's one which we actually oppose. So which is the Chair's preference? Shall I just say it all at once now or as each come up? [LB1105]

SENATOR LARSON: Why don't...obviously, why don't we have you testify, since you came up in support, as support. And then if something comes up at the end, throughout the process, a committee member has a question or something of that nature, I'll use my discretion to pull you back up in the neutral testimony to answer any specific question if it needs to be answered. Are you comfortable with that? [LB1105]

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HOBERT RUPE: I think so. Yeah. And also we sent a letter over which sort of set forth the issues so the senators know which ones we work on. That's sort of the problem when you have a big bill. Sometimes there's a lot of stuff in there that we don't take a position on and then some we support. You've heard a lot of support about the mechanism that transitions a craft brewery into a manufacturer. That was brought up in the interim study last fall. You know, as the growth has continued, you know, I was getting leery that if we get something close to 20,000 barrels we need to have a mechanism for that transition, orderly transition without having to throw the baby out with the bathwater. And so that's primarily why we support that. So as we've heard a lot about some of the other issues, the cider definition we support. I think we all thought we knew what cider was last year and didn't realize that cherry and strawberry and other flavors were also added into it, which caused a whole host of problems. So we appreciate Senator Larson for bringing that forward. One of the biggest ones actually is the elimination of existing licensee must submit a new application when it's annexed. That happens far more often than you would imagine, primarily in the Omaha area. And we feel it's somewhat a little bit...you know, because they're almost always pro forma but they've got to go through the hoops of a whole brand new \$400 application fee. The Patrol has got to go back out. They've got to fingerprint the people who have been licensed with no problems for ten years. We're basically under the theory that if a city is going to annex somebody, they know who they're annexing when they annex them without having to go through that. And if there's problems, they can always go through on the renewal process. The cities have rights where they can object and go through that process. We thought the idea of having everybody, just because they're annexed, have to go through the process again seemed to be somewhat of a waste of their time and of the state's time. One of the biggest ones, believe it or not, that we've seen and why we've asked for the increase in criminal penalty for the illegal production of spirits are one of my least favorite shows on the planet is "Moonshiners" on the Discovery channel. People have learned that, oh my gosh, you mean I can make moonshine? And they very much show you about how to do it and then the rest you can Google. It has become a problem in Nebraska. We...last year we canceled a liquor license which had over 30 gallons of moonshine in its retail establishment. We gave her a chance to roll over on the manufacturer to keep her license; she wouldn't do it. I have a still that was captured in Scottsbluff in my office. I would have brought it over but there's the prohibition against demonstrative evidence. See, I think you would like to see that small, little, personal-use copper still that was captured. The problem we've got about getting enforcement on it is it's a lot of effort, because you've got to catch them making it pretty much, and doing that background effort. And it's a Class IV misdemeanor. I mean it's a very small crime. Getting law enforcement, getting county attorneys involved with it at that level has been problematic. We think, as we're seeing the growth of it and the problems of it, and remember, there's a whole host of reasons why creating your own moonshine is bad before you (inaudible) tax problems. You also get the health problems. Unlike making home beer where the most dangerous thing to explode might be the bottle if you over carbonate it; stills, when they blow up, can be much more dangerous. And I see I've ran out of time, so. [LB1105]

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SENATOR LARSON: I'll ask you what else are you in support of. [LB1105]

HOBERT RUPE: Okay. There were the obsolete provisions in there, clarifying what a club is. Since we got rid of the bottle club licenses, people have tried to say, well, maybe I don't need a liquor license by being in a private club. Hey, I don't fault any of the clubs that don't have a kitchen. That's why we're wanting to get rid of that. The residential quarters, we actually had somebody wanting to be a wine wholesaler out of his garage. We didn't really think that was a secure way to store alcohol. And we do support the...what I call the pizza parlor problem which was what happens if we all go and have pizza, we have a couple pitchers of beer, and instead of paying the server, who's 19 and IDed us, well, hopefully IDed us, but we're paying a common server on the way out or a cash register. And technically, that person could have been found guilty of selling alcohol because they're completing the transaction. We thought they had to...if they weren't touching it then it shouldn't be. And primarily, you'll see it in sort of that kind of a pizza restaurant association where the 19-year-old servers are doing it but they might have a hostess or somebody else handling it there. So we're in support of that position as well. So and...and then as, with the Chairman's... [LB1105]

SENATOR LARSON: I'll let you go on with the issue that you're opposed to. On the neutral stuff, I'll (inaudible). [LB1105]

HOBERT RUPE: Yeah. Okay. [LB1105]

SENATOR LARSON: So what are you opposed to? [LB1105]

HOBERT RUPE: We are opposed to lowering it to 16. You know, we've had for years the drinking age and the service age were linked, up until the 1970s where Nebraska like many other states went down. At that point when it went from 19 to 20, and then later 21, went from 19 to 20, that's where the disconnect happened because the industry said we've got a lot of people who are 19 employed so we don't want to have that. But at 19 you're still an adult. You're still out. I mean we believe you're able to make that cognitive decision. The commissioners expressed serious reservations about taking that down to somebody as young as 16. [LB1105]

SENATOR LARSON: Thank you, Mr. Rupe. Questions from the committee? Senator Hughes. [LB1105]

SENATOR HUGHES: Thank you, Mr. Chairman. Mr. Rupe, would you just give me a little background on the still portion of it as far as making your own beer or making your own wine versus moonshine or (inaudible). [LB1105]

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HOBERT RUPE: Making your own beer and wine for the use of you and your guests is allowed under the act. It's also allowed under the federal TTB regulations. Spirits has also always been different. Remember, the first tax the federal government ever levied was on stills to pay for the Revolutionary War. It sparked the whiskey rebellion. They have always been considered differently because there's a tax...there's a federal and a state tax that comes out of those and that spirits were always seen as being more tightly regulated than beer or wine historically. There's also a couple other problems. You have an increase, I believe, in health and safety concerns with a still versus a home venting or a home brewing process. If you're not using the correct material or you're not using the correct way, instead of just making beer which tastes bad, you can actually create a poisonous product through the distillation process through the...by having the introduction of other chemicals or by not cooking it the right way and having other chemicals arise through the normal distillation process. So it's always been more problematic in that regard. It's always been more regulated. And we have been seeing an increase. Traditionally, moonshine was in Appalachia down in the southeast part of the country. But you're seeing more and more of it as people are exposed to it. And like I say, part of it I blame on that darn Discovery show. [LB1105]

SENATOR HUGHES: Okay. Thank you, Mr. Rupe. [LB1105]

SENATOR LARSON: Thank you, Senator Hughes. Senator Coash. Oh, we're good? [LB1105]

SENATOR COASH: I'm good. [LB1105]

SENATOR LARSON: Thank you, Senator Coash. Seeing no more... [LB1105]

HOBERT RUPE: Thank you. [LB1105]

SENATOR LARSON: ...I'll pull you up if I feel it's necessary. [LB1105]

HOBERT RUPE: Thank you, Senator. [LB1105]

SENATOR LARSON: Fair enough? [LB1105]

HOBERT RUPE: Yeah. [LB1105]

SENATOR LARSON: Thank you, Mr. Rupe. Any further proponents? Opponents? Welcome to the General Affairs Committee, Ms. Siefken. [LB1105]

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KATHY SIEFKEN: Good afternoon, Chairman Larson and members of the committee. My name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, here in opposition to LB1105. This is not a little bill. It's a big bill, and there are some parts of it that we like and there are a couple of parts of sections of the bill that cause concern or that we really dislike. We specifically like the annexation section on page 26. We specifically don't care for the fact that an advisory board is being established that says in the bill that it will deal with retail sale of beer. However, we're not part of that advisory committee. And so it causes us a lot of concern that an advisory committee to the Liquor Control Commission is being established. We are the people that sell that product, yet we are not in this bill included in that advisory board. So our ask is that if you do move forward with this bill that we are included and that we do have a seat at the table. We believe our industry, the retail industry, should have a voice in a product that we sell. And then another section of the bill that causes us a lot of concern is on page 28 and that deals with 16-year-olds selling alcohol if they have obtained certified training. However, that is a policy issue and it is not our job to set policy. That is the Legislature's job, so we do leave that decision to you. But we did want to make sure that you understood that we do have a concern about that section of the bill. If you have any questions, I would be more than happy to try to answer. [LB1105]

SENATOR LARSON: Senator Coash. [LB1105]

SENATOR COASH: Thank you, Senator Larson. Ms. Siefken, with regard to the advisory board, do the grocers have a seat at the table for the Wine and Grape Growers Board? [LB1105]

KATHY SIEFKEN: No, we don't. [LB1105]

SENATOR COASH: Are you on that? [LB1105]

KATHY SIEFKEN: No, we do not. [LB1105]

SENATOR COASH: Did you...I don't know if you were around but... [LB1105]

KATHY SIEFKEN: I wasn't around. [LB1105]

SENATOR COASH: Okay. As I read the bill, it says in a broad qualification of the board members, some interest in the beer process, whether it's manufacturing, distribution, or retail. [LB1105]

KATHY SIEFKEN: Um-hum. [LB1105]

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SENATOR COASH: So as I read it, your members would qualify for membership on that board if they applied and if the Governor chose them. [LB1105]

KATHY SIEFKEN: Yet there are other segments of the industry that are specifically named. [LB1105]

SENATOR COASH: I understand that. You would prefer to be hard-wired in there? [LB1105]

KATHY SIEFKEN: I would prefer that our members are represented and hard-wired in there, yes. [LB1105]

SENATOR COASH: Would you like us to change the Wine and Grape Growers Board, hard-wire a membership spot in that one as well? [LB1105]

KATHY SIEFKEN: If you so choose, we would accept that position. [LB1105]

SENATOR COASH: Okay. Okay. All right. Thank you. [LB1105]

SENATOR LARSON: Thank you, Senator Coash. Any further questions? Seeing none, thank you, Ms. Siefken. [LB1105]

KATHY SIEFKEN: Thank you. [LB1105]

SENATOR LARSON: Next opponent. Welcome to the General Affairs Committee. State and spell your name. [LB1105]

TRACY GRABER: My name is Tracy Graber, T-r-a-c-y G-r-a-b-e-r. And I want to primarily focus on the part of the bill that is on page 28 with the underage servers of 16, 17, and 18. I am somewhat in awe that LB1105 is even being proposed. From my understanding, we are wanting our 16-year-old children to be able to sell and serve alcohol because 19 is not yet young enough. Have we forgotten that just three years ago a 20-year-old waitress failed greatly at the responsibility of selling and serving alcohol? The minor that she served that night had even went home, being turned away by Amanda Heiman due to the better influence of adults in the bar that night. She even shared with them the fact that she wanted to serve them and she's at 20 years old. But when those adults were no longer there and she was to close the bar that night, she invited my son and his friends back to sell and serve them. Have we forgotten that 18-year-old Jacob Dickmeyer died that night due to the foundational fact that Amanda Heiman, 20 years old, gave

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into peer pressure and having the power to sell and serve alcohol did so? We are standing in the center of a city that ranks at the top of the charts for underage drinking, in the middle of a state that ranks equally as high for excessive alcohol consumption; and we want our children to be able to sell and serve alcohol. I'm not sure about you all, but I was under the impression that our laws and regulations were established to protect and serve a greater well-being. From what I gather, the argument is for the inconveniences of establishments to employ and staff adults to sell and serve alcohol. I want to remind such establishments that selling and serving alcohol is a privilege and a responsibility, not some simple right, hence the laws and regulations. We all seen who was on trial three years ago. The Fire Barn Bar and Grill had hid behind Amanda Heiman, pointing the finger at a 20-year-old girl. Is that what we want for our children? I propose that this section of the bill is killed and better yet that the age to sell and serve alcohol be lifted to 21. [LB1105]

SENATOR LARSON: Thank you, Ms. Garber. [LB1105]

TRACY GRABER: Graber. [LB1105]

SENATOR LARSON: Graber, I'm sorry. Just one second, see if any questions from the committee. Seeing none, I'm sorry for mispronouncing your name. [LB1105]

TRACY GRABER: That's fine. [LB1105]

SENATOR LARSON: Thank you. Next opponent. Seeing none, any neutral testifiers? Welcome to the General Affairs Committee. [LB1105]

KATHY MCKILLIP: Thank you. Kathy McKillip, K-a-t-h-y M-c-K-i-l-l-i-p, and I'm the director with the Nebraska Tourism Commission. And I'm just here to be before the committee--thank you for that opportunity--and see if there's any questions that possibly I can maybe attempt to answer for you all. [LB1105]

SENATOR LARSON: Senator Coash. [LB1105]

SENATOR COASH: Thank you, Chairman Larson. Ms. McKillip, is the provision in the bill which adds some duties to the Tourism Commission something that your commission is used to doing? I mean are we...is this bill asking you to do something that's so far to the left or the right of the mission of the commission that it doesn't fall within that? Or is it an industry you're used to working with? Can you just comment on your commission's ability to do what this bill is purporting you do? [LB1105]

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KATHY McKILLIP: Certainly, Senator Coash, and thank you for the question. What we have been doing in working with the Nebraska Craft Brewers Association or the organizations are actually those that are just start-ups several years ago, five years ago, in working with them they have been very, very supportive of what we have annually--actually coming up this month, February 22 to the 24th in Grand Island--our annual agri-ecotourism conference. And they have been wonderful to work with in promoting a new type of product and a new type of alternative crop for industry. Now why us? Well, we have a field rep in Karen Kollars who has built a lot of great relationships and also serves on the national association. She's actually in Vancouver, British Columbia, right now at the national association of farm and ag relationships when it comes to tourism markets. So we're very interested not only in this field as well as the Nebraska Wine and Grape Growers who we partnered with last November for the first ever VitiNord conference held in Nebraska City where there were more than 270 attendees internationally. Nebraska City, international attendees, that doesn't often happen in the same sentence. So we are very, very proud to be a partner with that. And that was the first time that conference had ever been held on U.S. soil. So as far as our role here, Senator Coash, we look at this as that Karen has been doing a lot of this work already at the same time. And as far as my team goes, we always look that there's more above and beyond that we can do, and this is an opportunity to be a partner. In many ways, sure, we could easily come to the table and say we want money to do this. But quite honestly, we're already helping them. So I'm just saying I'm just being a responsible steward saying that we can process this because we're already partnering with the organization. As a matter of fact, coming up in March we are partnering with the organization to sponsor local Nebraska bands at South by Southwest in Austin where they will be having Nebraska products down there. So I think that's really what our goal is, is to leverage resources and partnerships to the point to where we are putting Nebraska on a more national map and being proud of what we're producing here as well as really seeing what's going to happen with this as an agricultural component. I hope that answered your question, Senator. [LB1105]

SENATOR COASH: Thank you. [LB1105]

KATHY McKILLIP: Thank you. [LB1105]

SENATOR LARSON: Senator Coash. Any further questions from the committee? Seeing none, welcome to the job. [LB1105]

KATHY McKILLIP: Thank you so much. Thank you. [LB1105]

SENATOR LARSON: Appreciate your coming to General Affairs. [LB1105]

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KATHY MCKILLIP: Yes. And if you have any other questions, we're happy to help address them. Thanks. [LB1105]

SENATOR LARSON: We will. Thank you. Mr. Brady, welcome back to General Affairs Committee. [LB1105]

JUSTIN BRADY: Senator Larson and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I'm appearing before you today as the registered lobbyist for the Nebraska Liquor Wholesalers Association in a neutral capacity. Sitting back there, I kind of feel like Switzerland today. I could come up here in a neutral capacity. But in all honesty, we wanted to...the members I represent wanted me to come forward and say, one, they appreciate the work that Senator Larson, Senator Coash, and the craft brewers did on coming up with a bill that was workable. But, two, as you all know, any bills that deal with alcohol always take a twist and turn. And if nothing else, I'm here registering our seat at the table or request that we be at the table as this bill moves forward and takes its twist and turns and don't want to be asked down the road, where were you when the public hearing was here? So that's truly why I'm here. So with that, I'll try to answer any questions. [LB1105]

SENATOR LARSON: Thank you for your presence. Any questions from the committee? Seeing none. [LB1105]

JUSTIN BRADY: Thank you. [LB1105]

SENATOR LARSON: (Exhibits 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17) Any further neutral testifiers? I have some letters to read into the record. As stated, Vanessa Silke with Nebraska Craft Brewers Guild; Tom Wilmoth, president of the Nebraska Craft Brewers Guild; Adam Kosmicki with American Beer Equipment; Silas Clarke, president of Nebraska Hop Growers Association; and Eric Schafer, president of Empyrean Brewing Company, all submitted letters of support. In opposition, Amanda Heiman, David Corbin with the Public Health Association of Nebraska; Lanette Richards with the Monument Prevention Coalition; Maritza Andrade; Rev. Lauren Ekdahl; Sandee Kroon and Greg Vandenberg with the Substance Abuse Prevention Coalition; Maureen Leathers; Kathy Becker with the Substance Abuse Prevention Coalition; Nicole Carritt, executive director of Project Extra Mile; and Michelle Schultz, all had letters of opposition to LB1105. With that, I'll close the hearing and welcome to the General Affairs Committee, Senator Schumacher for LB834. [LB1105]

SENATOR SCHUMACHER: Thank you, Senator Larson. It's good to be back before the committee. This was one of my first committees. It was. [LB834]

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SENATOR LARSON: It's a good home. [LB834]

SENATOR SCHUMACHER: I really thought I was going to be in for something good when I was appointed to it. The caucus leader on the Committee on Committees called me and said, say, how would you like General Affairs and Urban Affairs? And I thought, you know, this is a really racy place. (Laughter) My name is Paul Schumacher, S-c-h-u-m-a-c-h-e-r, representing District 22 in the Legislature, here today to introduce LB834. LB834 is actually fair trade legislation and in another era, perhaps long ago and far away, there was a concern in this country and in this state about big operations taking advantage of little operations unfairly. We had the Sherman Antitrust Act, the Clayton Antitrust Act, the Fair Trade Act, all those things at the federal level that have basically fallen out of vogue. And even if they weren't out of vogue, would be way too litigious and way too complicated for our small folks to deal with. So this is to address a problem that has been brought to me over the years and it at least deserves some thought and some sympathy. You have small bars, liquor stores. Their only source of living is off of the booze that they sell. And they are genuinely, in particularly most of our rural communities, they are the small business people. And they get extremely frustrated when the big box stores or even the mart stores can roll out cases of beer and alcoholic beverage at below what they can buy them for from the wholesaler, below. I mean there's no way they can compete and make money. Now the box stores and the larger stores are doing it as loss leaders. If they sell a case of Budweiser below cost, they figure they'll drag people in and they'll more than make it up on the other products they sell. And as such, you not only have a situation where you're putting alcoholic products on the market below cost, encouraging their use, but you are also putting these smaller establishments in the smaller towns, maybe a few miles away, in jeopardy. And those smaller establishments are part of the core of small rural Nebraska. You take the grain elevator out, you take the local school, you take the bar, and you take the church out of most small towns, you've just about eliminated them. Most of them don't have a grocery store anymore. And so to the extent you put a constriction on the livelihoods of those people, it probably accelerates the demise of the small town. This is a very simple bill with no fiscal cost and it simply says if you're a small business person and you've been hurt by your product being sold below what you can buy it for, you have a cause of action against the folks who are using your product in your segment of the market to simply be an advertising tool for their large wherewithal and their large resource base. It's a simple idea. I think it's...originates with the common man trying to beat out a living. And while I'm sure it's opposed by the bigger operations, at least in a former day it would been thought to be a just cause. That's all I have. [LB834]

SENATOR LARSON: Senator McCollister. [LB834]

SENATOR MCCOLLISTER: Thank you, Chairman Larson. Welcome, Senator Schumacher. Do the prices in fact vary for retailers throughout the state? Is there tiered pricing or do all retailers have the same kind of cost? [LB834]

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SENATOR SCHUMACHER: I think there is some variation. I'm not familiar with exactly what it might be, whether that's quantity based or not. But the folks that suggested this bill and, in fact, cried for it say, look it, we're...they're selling it below what we can buy it for. And how that tier is set up, I don't know. [LB834]

SENATOR McCOLLISTER: What group asked you to sponsor this legislation? [LB834]

SENATOR SCHUMACHER: It wasn't any group. It was...I have some business interests and I have a lot of contact with ordinary bar owners across the state, and it has been a thing that they complain about and have complained about for years, and why doesn't somebody make a law? So what the heck, I introduced it. [LB834]

SENATOR McCOLLISTER: Will it be difficult, Senator, to establish what cost is? Will we be exposing any kind of secret relationships or proprietary relationships that may exist in the industry? [LB834]

SENATOR SCHUMACHER: I don't think so. We wouldn't be doing it because we, as a state, isn't involved in this game. We simple...that's a matter for litigation that will be brought by the person who believed themselves to be harmed, and their burden of proof to establish that the other party was selling, in fact, below cost. [LB834]

SENATOR McCOLLISTER: Did the trial lawyers have anything to do with this legislation? [LB834]

SENATOR SCHUMACHER: Nothing. [LB834]

SENATOR McCOLLISTER: Okay. [LB834]

SENATOR SCHUMACHER: No, not at all,...(laughter) [LB834]

SENATOR McCOLLISTER: Thank you. [LB834]

SENATOR SCHUMACHER: ...even though I hope maybe. Maybe I'll get somebody to support this. (Laughter) [LB834]

SENATOR McCOLLISTER: Thank you, Senator. Thanks, Chairman Larson. [LB834]

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SENATOR LARSON: Thank you, Senator McCollister. Senator Riepe. [LB834]

SENATOR RIEPE: Senator Larson, thank you. Senator Schumacher, thank you for being here. The question I have is, what's the extent of this? I mean how prevalent? Is it a major problem, minor problem? [LB834]

SENATOR SCHUMACHER: I don't know how you evaluate major/minor. If you're...in the big scheme of things, it's probably fairly minor. But if you're a little convenience store or bar owner in a town of 700 that's 15 miles away from a store selling below cost and you can't sell beer in the summer when you want to sell beer to be able to make up your overhead for the rest of the year, because they're buying it in quantity at the supermarket, it's a pretty big deal. And it's enough that it rose to my attention enough to bring it before this committee and say, listen, is this fair? And it is, if the only product you had and your business was centered around it, somebody else with greater resources and came in to simply sell your product below cost in order so they could attract people to buy their other products, I supposed you'd bellyache too. [LB834]

SENATOR RIEPE: Okay. Thank you. [LB834]

SENATOR LARSON: Thank you, Senator Riepe. Senator Coash. [LB834]

SENATOR COASH: Thank you, Senator Larson. Senator Schumacher, I just want to clarify. Your bill addresses the retail sale, not the on-site consumption? [LB834]

SENATOR SCHUMACHER: That's a...thank you for bringing that up. I meant to mention that. Apparently there are some of the stores that sell package liquor that also have Class C licenses and can sell on premises. And if this bill should progress, that probably should be covered, too, because not many stores that I go to sell for consumption on premises. But I understand that more and more of them in the metro area they maybe do. [LB834]

SENATOR COASH: In the smaller areas of the state--you would be able to speak to this better than I can--wouldn't it...don't you typically find a bar who sells primarily for on-site consumption that also has some off-sale rights through that license as well? [LB834]

SENATOR SCHUMACHER: In many rural communities, you're thankful to get it wherever you can. (Laughter) So, yes, that is natural to have a little package store off to the side of your bar. [LB834]

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SENATOR COASH: But...okay. And then I don't want to tread ground that's already been tread, but...and I don't know how you would know this or anybody would, but I'm just trying to get my hands around the scope of the problem you're trying to address through your bill. If this is one big box store in one community that's doing this or if this is so widespread that we... [LB834]

SENATOR SCHUMACHER: As I understand it, Senator, it's a fairly widespread package issue. And if it is no issue, no one will ever bring a case under this. If it is an issue, the fact that this exists will serve as at least some deterrence for abusing market power to the demise of a small operator. [LB834]

SENATOR COASH: Yeah. I'm just wondering if it's not a function, as Senator McCollister said, of somebody's buying power and ability to buy in scale and set their prices accordingly, that is at a different level than a smaller operator who doesn't...whose orders are very small and doesn't get as good of a deal. And I'm wondering if this bill became law if we might drive the top two tiers, you know, the manufacturer and the distributor, to drive down their prices based on economies of scale to be able to continue to sell at a lower price. I mean everybody is trying to get the lowest price to drive more traffic to their retail operation. So I just...I don't know if that will happen or not. Thanks for bringing it. [LB834]

SENATOR LARSON: Senator Kolterman. [LB834]

SENATOR KOLTERMAN: Thank you, Senator Larson. Senator Schumacher, I understand what you're trying to do here. The concern that I would have, I grew up in a retail business, Ben Franklin Store, and every small store in the state has loss leaders of some sort, whether it's milk or whether it's bread or whether it's beer. How do we get around all those issues because that's kind of...we're trying to do it here with beer or alcohol? You know, how do we get around...like ketchup is an example. Where to we start and where do we stop? [LB834]

SENATOR SCHUMACHER: There has been developed quite a bit of law, 30-40 years ago and before at the federal level, that when using loss leaders crosses over a line. And, you know, there's nobody that sells just ketchup. You don't have the ketchup store in the town or you don't have the pickle store in town. But you do have just the beer, you know, the beer and liquor store in town. [LB834]

SENATOR KOLTERMAN: Okay. [LB834]

SENATOR SCHUMACHER: That's the core of their business. And so this is just a little bit different. And what it does, it's social decision to a certain extent that whether or not these core

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facilities in a town, sometimes the only place you can get a hamburger, the only place that has a big-screen TV that pays for the boxing match to come in over it is that local bar. And that guy leaves, invariably, and it's kind of an odd phenomena,... [LB834]

SENATOR KOLTERMAN: Town leaves. [LB834]

SENATOR SCHUMACHER: ...the church leaves. And the school is already gone in many of these towns. And so what this basically does is...there will be very few lawsuits brought under it because what are the damages in a small...and you wouldn't pay for the attorney fees. But there would be some deterrent effect to the larger operators taking advantage of the situation too much. I think kind of the old rule, pigs get fat, hogs get slaughtered, would come into play. [LB834]

SENATOR KOLTERMAN: All right. Thank you. [LB834]

SENATOR LARSON: Thank you, Senator Kolterman. Senator Schumacher, I have the last question here today. I guess you talk early in the concept of free trade was your argument for this. And being a strong advocate of free trade, I think that this is skewing that concept. The concept of free trade is no tariffs, no taxes. It is freely traded at what they see the value or any individual sees the value as. So if someone were to use this as a loss leader, isn't that the true concept of free trade instead of saying that everything has to be equal? Because, I mean, that's the concept of a tariff, which is no longer free trade. Do you know what I'm saying, kind of? [LB834]

SENATOR SCHUMACHER: Not really. [LB834]

SENATOR LARSON: Okay. Maybe fair trade might be the better one that you were looking for instead of free trade. Fair trade is everything has a value and should be stuck at that value. So I guess I would disagree with, you know, free versus fair trade. I do have a couple questions on just the processes in it. What happens if, you know, let's say for O'Neill St. Patrick's Day we had a bar that severely overpurchases or buys too much of the green beer, and Budweiser or whatnot put it in cans, and it rains. You don't have the turnout. And all of a sudden, you know, beer does have a "please refresh by" date usually, a "best by" date that they can't...they, this small retailer has all these thousands of cans. How can...and they want to get rid of them but they would like to use them as a loss leader. Do we address that or are they just going to have to sit on that and lose the money because they can't, you know, get something for it? Do you get what I'm saying there? [LB834]

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SENATOR SCHUMACHER: So you're saying a liquor store in O'Neill or a bar in O'Neill... [LB834]

SENATOR LARSON: Right. [LB834]

SENATOR SCHUMACHER: ...buys too much beer and he wants to dump it. [LB834]

SENATOR LARSON: And wants to dump it at a lower price. You're essentially banning that, correct, because he needs to dump it by a certain time? [LB834]

SENATOR SCHUMACHER: Well, think about that, Senator. So you've got this one time surge in the market following St. Peter...St. Peter...St. Patrick's Day (laugh) and... [LB834]

SENATOR LARSON: We view it as a patriot day in O'Neill. It's a big deal. (Laughter) [LB834]

SENATOR SCHUMACHER: And so you've got one surge in the market and maybe there's a thousand bucks of beer involved, okay? In what you're describing, you're not talking huge amounts. You aren't going to get a lawsuit off the ground for that because you couldn't pay the filing fees off of what you're going to make off it and the damages that you could prove. But when you have a consistent pattern that goes on as a matter of course of business, you do have enough of a possibility of recovery and of attorney fees to at least have a deterrent value on that kind of predatory behavior. [LB834]

SENATOR LARSON: The problem...I guess I can understand the, you know, the conceptual...you saying that there won't be that lawsuit, but we are essentially making that small town grocery store that may have overpurchased or that bar overpurchased, saying that they cannot use this as a loss leader by making that illegal for them to even do that. Which, yeah, there might not be a lawsuit but we are creating a you do this and it is illegal with this bill. Do you understand what I'm saying? [LB834]

SENATOR SCHUMACHER: We're creating a cause of action on the part of somebody who is harmed by that practice and harmed to a big enough extent that it's worthwhile to file a lawsuit. [LB834]

SENATOR LARSON: But the concept comes back that small town, that same small-town retailer that might be hung by a Walmart still won't have the option to do this themselves if they needed to, correct? In your bill, in your bill they like...the small-town retailer that... [LB834]

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SENATOR SCHUMACHER: Theoretically, somebody would have a cause of action against them for 300 bucks. [LB834]

SENATOR LARSON: I'm not saying theoretical...that like they won't even be able to do this in their own business... [LB834]

SENATOR SCHUMACHER: They can do it... [LB834]

SENATOR LARSON: ...and they would have to...they want to be able to use it as a loss leader (inaudible). [LB834]

SENATOR SCHUMACHER: The language is that it creates a cause of action, not a liquor department violation, nothing, just a civil cause of action. There's no jail time, no fines, no liquor violation. But if you can show that somebody is, to an extent worthwhile to bring a lawsuit, harming your business by this particular practice you could bring the action. [LB834]

SENATOR LARSON: Right. Would we, with this, in terms of keeping track of it, are we going to require the distributors--because that would be the most logical people to do this--are we going to require the distributors to turn over every sale to the Liquor Control Commission to ensure that those individuals aren't using these as loss leaders essentially? Because they, the Liquor Control Commission, has to make sure that, you know, if you want to use the Walmarts or whatnot, aren't using these as loss leaders, how do we ensure that that isn't happening? [LB834]

SENATOR SCHUMACHER: The Liquor Control Commission has nothing to do with this. This is a civil course of action brought by one party against another in court. Doesn't...you know, they have nothing to do with it. They're not in the middle of it. [LB834]

SENATOR LARSON: So, essentially, you're saying if a small retailer thinks that they're using it as a loss leader, you're giving them the ability to sue them, whether or not they have any evidence or not if they are using it as a loss leader. [LB834]

SENATOR SCHUMACHER: If I think you allowed ice to form in front of your business and I slipped and fell and that I think you did it negligently, I can sue you. And if I can prove it, I can win. Otherwise, I'm just out of pocket some attorney fees and a lot of my time. And so this is a civil remedy for a civil issue. [LB834]

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SENATOR LARSON: It's not just a civil issue when you're asking them to...you're banning a certain practice and that practice is using alcohol as a loss leader, correct? [LB834]

SENATOR SCHUMACHER: The ban is creating a civil right of action between two private parties to squabble out whether or not it's below cost and whether or not there was any damage of any meaningful nature. That's what it is. It doesn't create a crime. [LB834]

SENATOR LARSON: It's my understanding this would still be a Class IV misdemeanor and a violation of the Liquor Control Act, correct? There's a catchall within the Liquor Control Act. [LB834]

SENATOR SCHUMACHER: Well, then that would have to be denoted here. The intent of this is simply a civil cause of action, not a crime, not a fine. And if there's some catchall umbrella provision somewhere else, then apparently Bill Drafters didn't catch it. [LB834]

SENATOR LARSON: Thank you, Senator Schumacher. Any further questions? Seeing none, thank you. [LB834]

SENATOR SCHUMACHER: Thank you. [LB834]

SENATOR LARSON: We'll take our first proponent to LB834. Seeing none, in opposition. Welcome back to the General Affairs Committee, Ms. Siefken. [LB834]

KATHY SIEFKEN: Chairman Larson and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association here today in opposition to LB834. You have pretty much discussed the reasons for our opposition. We use loss leaders as inventory control and, frankly, every once in a while you get something that you've ordered in and it's a dog and it doesn't move. And the only way you can get rid of that is to mark it down, get it off your shelf, and put something there that sells so that you can continue to make money. So we use loss leaders in the grocery industry as a way to get those products off our shelves. In addition to that, we have a lot of damaged product, where you have a 12-pack of beer and you go...one of your customers goes to pick it up and they rip the handle off and nobody wants to buy that because it's too hard to carry it to the car. So they'll go...that 12-pack will just sit there and your customers will go pick up a 12-pack that they can carry that the handle isn't ripped on. And so a lot of times, we have to mark those down to get those things out of our store because we can't return them to the distributor. So our option is to make at least break-even or a loss leader or put it in the dumpster. And frankly, I don't think anybody wants us to put alcohol in the dumpster because then suddenly you're going to have dumpster divers going

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after what potentially could be in your dumpster--alcohol. It's a huge problem. And as was pointed out a little bit earlier that this is only...the bill is written for B and D licenses, and most of our grocery stores, no matter what size, have Class C because they do tastings. So what happens is this doesn't fix the problem as it is because it doesn't...those larger...well, any of the retailers that have Class Cs would be able to continue to sell below cost and those that do only...well, B is a beer off-sale only, and D is a beer, wine, spirits off-sale. So those licensees that hold only a B or a D would be at a disadvantage. So with that, if you have any questions, I'd be happy to answer. [LB834]

SENATOR LARSON: Thank you, Ms. Siefken. Any questions from the committee? Seeing none, thank you. [LB834]

KATHY SIEFKEN: Thank you. [LB834]

SENATOR LARSON: Next opposition. Neutral testimony. If you feel it's necessary, Mr. Rupe. [LB834]

HOBERT RUPE: Well, just a trifle, but I'll clarify the markup bit. Thank you, Chairman Larson. Hobert Rupe, executive director of Nebraska Liquor Control Commission, H-o-b-e-r-t R-u-p-e. We're neutral on this bill. A couple years ago we were in support of a bill which was introduced by then-Chairman Karpisek. It was introduced, it was vetted, didn't go anywhere. Once that happens, they usually fall off our legislative letter. So philosophically, in the past we supported it but this particular one we've...the commissioners haven't really had a chance to weigh in on. Ms. Siefken did notice there are a couple drafting problems. Most of your larger off-sale people do hold Class C liquor licenses because of the ability to do catering and also tastings. The B is the direct sale...the off-sale beer; D is your traditional liquor store; C is sort of everything, just so people know, because I think they were getting confused. And we'll just talk about beer because I think that was supposed to be brought up earlier. The way it currently works is if I'm a beer wholesaler, I have to offer the same price per case to all similarly situated licensees in my area. So if I'm offering it to the Bs at one point or the Ds or the Cs, I have to offer that same price point. That's based upon an Attorney General's Opinion from years ago written by then-deputy Attorney General Laurie Smith Camp, now federal Judge Laurie Smith Camp. So I'm going to stay on that until I'm told otherwise. What happens, the only way you can get a discount on the price product is there is a quantity discount which is factored into the act, but it has to be made available. So in other words, if, you know, so that's sort of where a larger person who's able to carry more inventory can get a price benefit that perhaps a small mom-and-pop can't. I can tell you, you don't see as much of that as you used to because if you go to your normal new big mega retailers, their backrooms are a fraction what they used to be. Almost all that's based on delivery during the week. Especially, you know, let's be honest, if you're Budweiser and you're delivering

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to a Walmart or to Super Saver, to a Hy-Vee during...in July, going up to July 4th, you're probably making daily stops if not, you know, sometimes multiple stops a day, you know, replenishing their stock. So I (inaudible) sort of the business of how it works is that...and that also goes to the liquor guys. They have to offer the same case point, the quantity discounts, but they have to send that...make everybody aware of that price point, of that quantity discount, and make sure it's available to everybody. So there are certain controls are in place on the prices and that's primarily because alcohol is not the same as milk or eggs where...because it's a regulated product as opposed to a totally free market. So there are certain provisions that are in there now. I just want to make sure everybody understood sort of the way the marketplace is currently situated. I'd be happy to answer any questions. [LB834]

SENATOR LARSON: Thank you, Mr. Rupe. Senator Coash. [LB834]

SENATOR COASH: Thank you, Chairman Larson. So, Senator (sic) Rupe, is... [LB834]

HOBERT RUPE: Thank you for the promotion. [LB834]

SENATOR COASH: Jeez! (Laughter) [LB834]

HOBERT RUPE: It's only day, Senator. [LB834]

SENATOR COASH: Oh my gosh. Hobie, so if I'm a distributor and I'm going to sell Budweiser cases, I have to sell it the same price to Walmart who's going to buy several pallets of that, as I would to the main street liquor store... [LB834]

HOBERT RUPE: Yep. [LB834]

SENATOR COASH: ...that's only going to buy ten cases? [LB834]

HOBERT RUPE: Unless there is a quantity discount plan in play, they would be the same price point. [LB834]

SENATOR COASH: Okay. But does the commission regulate that quantity discount? [LB834]

HOBERT RUPE: No, but the quantity discount has got to be available to everybody in that same area. So they might not be able to have the resource but they have the opportunity to buy at that level too. [LB834]

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SENATOR COASH: Okay. So it's not unlawful then to sell at a different price point as long as that small main street retailer in this example can get the same discount if he or she buys the three pallets that the big box store can buy. [LB834]

HOBERT RUPE: That's correct. Remember, that's only at the wholesale to retailer exchange. There is nothing which regulates the retail price of that. And I think that's why we brought it up a couple years ago. We were seeing people were using it as loss leaders. And honestly, we were getting a lot of complaints about it. People were saying how can this be happening? And we reached out to beer wholesalers and we got their records. You know, they're...you know, some places were just...there was...I know at least one place we looked at was losing 4 bucks a case and it was on new product. He just wanted to turn it over. That was his July 4th loss leader. He was...you know, and the beer guy, I think that's one of the reasons why Senator Karpisek back in the day introduced the bill was, you know, they were hearing the angry retailers as well, even more than I was. But we investigated and that was the rules of the marketplace were being...taking place. And they were using it purely as a way to generate traffic by offering it at a lower price. [LB834]

SENATOR COASH: Thanks, Director Rupe. [LB834]

SENATOR LARSON: Senator McCollister. [LB834]

SENATOR McCOLLISTER: Yeah. Director, thank you for your testimony. Nothing in this bill will outlaw or prohibit the use of loss leaders. Isn't that correct? [LB834]

HOBERT RUPE: The way I read this bill, I mean there is a catchall which would probably have to be addressed through an amendment process because it's sort of a catchall that anything otherwise defined falls into. The way I read this bill is primarily a legal cause of action for somebody who believes they're damaged by this practice, to sue the person who's damaging them. [LB834]

SENATOR McCOLLISTER: In your intimate knowledge of the industry, what is the gap or the spread between the lowest discount level and the highest discount level? [LB834]

HOBERT RUPE: I would have to look into it. Believe it or not, they don't use the quantity discount nearly as much as they used to and it's primarily because the idea of the quantity discount would be is that one-time purchase. And without the backroom space, these newly designed stores, they don't have like they used to. They can't buy 30 or 40 pallets. They're buying three pallets. Now they're buying three pallets four times a week so there might be that point. It

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usually doesn't move a lot. You see probably more of a discrepancy in the prices between on-sale and off-sale. Your on-sale places, which traditionally buy fewer and are sold and priced differently than your off-sale, I think you probably see more of a difference in the prices in that way rather than you do amongst pure off-sale. [LB834]

SENATOR McCOLLISTER: Let me just follow up. So is it a matter of a few percent or could it be as much as 10 percent difference between the highest category and the lowest? [LB834]

HOBERT RUPE: It's been a while since I looked at what it is. I would have to look into it and get back to you. I think you're probably in the ballpark. Probably it's somewhere around 5 percent maybe, but I would have to double-check with some of the wholesalers and get back to you on that one, Senator. [LB834]

SENATOR McCOLLISTER: Thank you, Director. Thank you, Mr. Chairman. [LB834]

SENATOR LARSON: Thank you, Senator McCollister. Any further questions? Seeing none, thank you, Mr. Rupe. [LB834]

HOBERT RUPE: Thank you. [LB834]

SENATOR LARSON: Anyone else in a neutral capacity? Senator Schumacher to close. [LB834]

SENATOR SCHUMACHER: Thank you, Chairman Larson. Members of the committee, I've heard beer called a lot of things but never a dog before. And so when the stores buy a lot of dogs, it must be around July, middle of summer, and they stack them up high and they sell them really cheap. What this bill is about is not what...the price that the retailer pays to the distributor. Yes, they have markdowns and maybe some quantity discounts that aren't used as much as before. That's not what they're crying about. They're crying about when that store goes in and its cost for a six-pack is whatever, 2 bucks, and they're selling it for a dollar. That's what they're crying about. What they are basically doing is completely undercutting that little operation. And if they do that to the extent that it causes economic harm to that little operation, that guy should have some room to say, look it, you are selling me short and you are doing this harming my business, as we always used to think of in terms of fair trade practices, in order to promote people coming to your store instead of the store down the street who's, in return, going to lowball it too. So you're shifting the focus of competition between two larger stores to how cheap can we sell beer instead of how we can sell something else. And in the process of that cat fight, you're putting a little guy out of business. And this is just to put a little bit of deterrent to that behavior. Take any questions. Thank you for your listening to me. [LB834]

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SENATOR LARSON: Thank you, Senator Schumacher. Any further questions? Seeing none,... [LB834]

SENATOR SCHUMACHER: Thank you very much. [LB834]

SENATOR LARSON: ...thank you for coming and visiting us. (Exhibit 1) I have one letter of opposition from Jim Otto, president of the Nebraska Retail Federation. And with that, I'll close the hearing on LB834 and we'll move on to our last hearing of the day, LB969. [LB834]

JOSHUA EICKMEIER: Good afternoon, committee members. My name is Joshua Eickmeier, J-o-s-h-u-a E-i-c-k-m-e-i-e-r, and I am the legal counsel for the General Affairs Committee here representing Chairman Larson and introducing LB969. LB969 clarifies and harmonizes the various statutory provisions regarding the governance authority cities and villages have over its libraries. A city of the metropolitan class and a city of the primary class currently have a more limited authority over its libraries than a city of the first class, which may decide whether its libraries are to be separate from the city or advisory boards to the city. A city of the second class or village does not have either provision afforded to the other classes of cities. LB969 harmonizes the provisions to apply the same to all classes of cities and villages. The cities and villages would be required to establish a library advisory board and all the necessary policies. However, while the governing body may purchase books and other materials, the determination of which materials should be included in the library would be the sole responsibility of the library advisory board. The bill, as you can tell from its length, is so because it basically created this new language that incorporates some of the issues raised by the League of Nebraska Municipalities. And then that section was placed in each of the various sections including metropolitan class which is Omaha, primary class which is Lincoln, cities of the first class which is more than 5,000; and then you've got cities of the second class and villages. And I believe in your committee summary there is that breakdown for your reference. And so I'd be happy to answer any questions. I would say that I know we have received a lot of correspondence on this bill. And the part...the tricky part of this particular bill is that each classification of city handles it differently. And so trying to find language that would address the concerns that our office has heard from constituents, primarily cities that...in dealing with their local library. And while this does make it mandatory for the cities to operate them in this manner, there is a model that the current cities of the first class use which has that choice. And maybe that is something to be considered as well so that the cities could decide. If they have a great relationship, maybe they could continue that relationship. If they would rather be an advisory board, then they would have that option. But at least they would have some of that control. I believe the League of Nebraska Municipalities has representation here this afternoon that can help answer some of the questions and perhaps mention anecdotally what some of these concerns are that they've been hearing from their members. [LB969]

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SENATOR LARSON: Thank you, Mr. Eickmeier. Real quick, you stated cities of the first class already have an option to make it city controlled or library board controlled. [LB969]

JOSHUA EICKMEIER: Yes, yes. [LB969]

SENATOR LARSON: But second-class cities and villages do not and there's a bit of unclarity in the statutes on primary and metropolitan class, whether or not they have the authority. [LB969]

JOSHUA EICKMEIER: Yes, and I have no idea why each classification is treated so differently. But there isn't any language with regard to the cities of the second class and villages. And that's where some of the consternation comes from in working those relationships out because, yes, they are a part of the city in the sense that when a library gets sued, the city is probably going to get sued, yet the city council and mayor or board does not have control. [LB969]

SENATOR LARSON: So it's second-class cities and villages and then first-class cities have the option to either have it city controlled or library board controlled. Primary class, which is only Lincoln right now, and metropolitan, there's just a little ambiguity on whether or not they... [LB969]

JOSHUA EICKMEIER: They are...yes, they are authorized to establish and operate. But as far as the ability to pass any ordinances or resolutions or bylaws, while cities of the first class language allows for that, it's absent in the other... [LB969]

SENATOR LARSON: It's more explicit in the first-class cities. [LB969]

JOSHUA EICKMEIER: Yes. And so there is some...and that's what the point of clarification that was asked by some of the cities is to...making it clear what it is they can and can't do so they can move forward on sound legal ground. [LB969]

SENATOR LARSON: Thank you, Mr. Eickmeier. Senator McCollister. [LB969]

SENATOR MCCOLLISTER: Thank you, Chairman Larson. You indicated that in some classes of cities it's permissive or there's an option. Who decides? What city body or governmental body decides whether it's...the organization is directly under the city or whether that library board has authority? [LB969]

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JOSHUA EICKMEIER: So for example, let's say you are a city of the first class. So you have more than 5,000 people but you're smaller than Lincoln. And so that city council and mayor would be the ones to decide whether the public library, which is taxpayer funded, whether that would fall under an advisory board role, in other words be treated like any other department within the city. Or would it be a separate autonomous board in which case the city council would likely...they would still have budgetary control in the sense that they would approve the budget. But they would not have necessarily specific line-item control, depending on how that relationship works. But that would be the choice of the city council on how they would want to move forward. And some have transitioned to advisory boards and some are still autonomous in that nature. [LB969]

SENATOR McCOLLISTER: So that decision is essentially made by the city council. [LB969]

JOSHUA EICKMEIER: In cities of the first class because they're the only ones with the option at this time. [LB969]

SENATOR McCOLLISTER: And will the bill provide for that same stipulation in all the other classifications? [LB969]

JOSHUA EICKMEIER: This bill would require the advisory board governance structure. What I was saying at the end is that one possible amendment could be to give them the same option that cities of the first class currently have if that creates more comfort within the cities and the relationship between cities and their libraries. So this bill would...in instances of...this would change all of the cities and villages in the sense that even first-class cities which have the option of advisory or autonomous library boards, they would then have to take control in the sense that they would then be an advisory board. It would make it an advisory board with the one caveat that in...in regards to which materials would be in the library, that would still be the decision of the library board even if it's an advisory board. And that goes back to concerns of, you know, if you have an elected official, comes in and says, you know, Harry Potter is a witch and we don't want Harry Potter books in our library. I'm going to go and pull them all. Well, this would prevent that because it would be a decision of the board. [LB969]

SENATOR McCOLLISTER: Yeah, one more question, sir, and that is would the city of Omaha then have the authority or at least the option to decide by the city council whether or not to go under the governance structure that you're advocating in this bill? [LB969]

JOSHUA EICKMEIER: Yes, they would under this bill as drafted they would have that control. And those library boards would be advisory boards. And the example of Omaha, they would then be...they would be responsible for passing the necessary ordinances and resolutions and policies

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to govern that, with of course that one caveat of who decides the materials that actually are in the library. [LB969]

SENATOR McCOLLISTER: Thank you. Thank you, Chairman Larson. [LB969]

SENATOR LARSON: Senator Kolterman. [LB969]

SENATOR KOLTERMAN: Thank you, Senator Larson. So, Mr. Eickmeier, if I understand this correctly, you're going to regulate everybody the same and it would be up to the municipality to decide whether or not they wanted to have advisory boards or what their rationale, even first-class cities. [LB969]

JOSHUA EICKMEIER: As drafted, everyone would...every city and village would have control over their library as an advisory board. This would take away even the option for cities of the first class and it would move them...for the other classes it would move them independent boards to be under the city as an advisory board, as drafted. But I did mention that the committee could consider an amendment to give them that option if that is something that the committee would be more comfortable with. [LB969]

SENATOR KOLTERMAN: Okay, I understand the premise then and my question is do we have a lot of conflicts out there in the state right now where this isn't...where the library boards and the cities or the municipalities or the...Omaha or Lincoln are not getting along? What prompted the bill? [LB969]

JOSHUA EICKMEIER: Sure, yeah. Absolutely. Well, in our office it was a constituent who had contacted our office with concerns in that city. And I believe that was O'Neill, and I believe there is a representative here from O'Neill who will follow me, if she's going to testify, could give anecdotal experience. And Omaha also had expressed some concerns with clarifying their library relationship. And this all came out of the interim study hearing that was held this summer...this fall as well. So that's...and I think the League of Nebraska Municipalities can also provide some anecdotal examples. But there have been instances that I have dealt with whether the library had policies that would run afoul of the law or issues where, basically, just not getting along for various reasons. But I'll let them give you more details on that. [LB969]

SENATOR KOLTERMAN: Okay. Thank you. [LB969]

JOSHUA EICKMEIER: I don't want to steal all their thunder. [LB969]

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SENATOR LARSON: Thank you, Senator Kolterman. One quick, Mr. Eickmeier. [LB969]

JOSHUA EICKMEIER: Yes. [LB969]

SENATOR LARSON: Just for the record, LB969 does not get rid of any library advisory board, correct? There will always be a...to advise on content and materials, correct? [LB969]

JOSHUA EICKMEIER: Yes, this... [LB969]

SENATOR LARSON: All right. [LB969]

JOSHUA EICKMEIER: ...would require it for all classes and villages and cities. [LB969]

SENATOR LARSON: Yep. But there will always be a library...there still will be a library board and they will be responsible for content, programming, things like that, that the city council provides in the budget, correct? [LB969]

JOSHUA EICKMEIER: Yes, yes. [LB969]

SENATOR LARSON: All right. Thank you. Senator Riepe. [LB969]

SENATOR RIEPE: Thank you, Senator Larson. My question is that if we allow the libraries to decide if they want to separate from the city and then tax on their own, why not? I mean if they want independence financially, go for an authorized levy. [LB969]

JOSHUA EICKMEIER: I think...I can't speak to that. I think that opens up a whole nother avenue of taxing authority. There are examples within the city with the airport authority has taxing authority and their lid gets included into the city's lid when it comes to their total property tax lid. I don't...that's a policy question that's above my pay grade. [LB969]

SENATOR RIEPE: But it's...it could be offsetting taxes only it's greater accountability because people then vote. Rather than having it be a hidden tax within the city, it's a very much upfront stand on your own. If people levy it, they'll vote for you. If they don't, obviously you're going to have to resize, if you will. [LB969]

JOSHUA EICKMEIER: Yeah, I can't speak to that. The only thing I would caveat is if you don't...if the concern is having elected officials on city councils or mayors getting involved in the

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content of library materials, having the library board elected doesn't necessarily solve that issue. [LB969]

SENATOR RIEPE: I'm talking more about taxing authority than I am elected authority. [LB969]

JOSHUA EICKMEIER: Oh, okay. Yeah, I would leave that up to the committee to decide before I get in trouble. [LB969]

SENATOR LARSON: Thank you, Senator Riepe. [LB969]

SENATOR RIEPE: Thank you. [LB969]

SENATOR LARSON: Any further questions? Thank you, Mr. Eickmeier. [LB969]

JOSHUA EICKMEIER: Thank you. [LB969]

SENATOR LARSON: We'll take the first proponent to LB969. Welcome to the General Affairs Committee. [LB969]

MARTY BILEK: Thank you. [LB969]

SENATOR LARSON: Welcome back I should say. [LB969]

MARTY BILEK: Thank you, Senators. My name is Marty Bilek. I'm the chief of staff for Omaha Mayor Jean Stothert and I'm speaking today as a proponent of this particular bill. The city of Omaha has an \$800 million annual budget from which it funds ten city departments. The voters elected a mayor and city council to make decisions on their behalf regarding how their taxpayer dollars are to be spent. For all practical purposes, the library is currently a city department. The library staff are city employees with city benefits. The library administration uses city support services including legal, financial, and human relations. The library director attends cabinet meetings and city council meetings. The libraries are city-owned facilities. However, current state law gives the library board control over library policymaking, budgeting, and hiring. For the sake of consistency and accountability to the taxpayers, the library board should instead assume an advisory role similar to the many other city boards who are in existence to advise the mayor and the city council. The library board would also make the ultimate decisions regarding library content. Previous legislation has adopted this arrangement as an option for first-class cities in Nebraska. I think it would work well for Omaha too. Otherwise,

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dual oversight of the libraries creates an unnecessary controversy when the library director becomes torn between two entities that both have authority over library operations. Omaha has a good library system and it is becoming better as we adopt modern computer technologies for our libraries. I believe taking the ambiguity out of the library management will improve our library system and facilitate future advancements. Thank you, Senators. And I do want to...there were a couple of things brought up that I do want to address while I'm sitting here, and then I'd be glad to take your questions. Initially, I imagine a hundred years ago, having an autonomous library was very important because it ensured impartiality and objectivity. It took the politics out of it. But a hundred years later in 2016 you have so much access to information otherwise that that integrity is...well, it's not like the libraries are the only show in town anymore. Now you have a newspaper, not on-line but also...not only on-line but also delivered to your home. You have television. You have bookstores. You have the Internet. So quality information is available all around us so the concern about the integrities of our library isn't the same as it would have been a hundred years ago. And, Senator Kolterman, I think you were looking for examples. I did have one while I was sitting there. Last summer, the city of Omaha had to hire a library director. The library board went through a selection process. They decided who they would like to hire. And then what they do is they not only simply inform us of their decision, but then they also decide upon a salary without any involvement from the Mayor's Office or the city council, or in other words, from the body that actually pays their salaries. And it creates a very awkward situation. It's frustrating for us because if there's going to be a department head that's hired you'd at least like to have some input in it and we didn't. And if there's going to be decision making about the salaries, we'd like to have some say in that as well because we look for parity amongst the department directors. So there is an example that we had to suffer through last summer. And I think, Senator Riepe, you mentioned having a separate taxing authority. You know, we did discuss that. That would give them...that would solve a lot of problems for us. But what it would do is it would make...it would be sort of a Pontius Pilate approach to this by what it would do is it would pass the responsibilities for the libraries off on to somebody else basically, or possibly an elected body or someone else. But the real problem is I don't know that the taxpayers would care to entertain the fact that a new taxing authority was going to be created in Omaha. So I don't know how popular that would be. Anyway... [LB969]

SENATOR LARSON: Thank you, Mr. Bilek. I'm going to let them ask questions. [LB969]

MARTY BILEK: Yes, please. [LB969]

SENATOR LARSON: I know that was your opening statement and so if they want to address some of those specific questions I'll let them do that. Senator Kolterman. [LB969]

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SENATOR KOLTERMAN: Thank you, Senator Larson. So on last year, let's use last year as an example, when you had to hire a new library director. Has the library got a budget that it has to follow? [LB969]

MARTY BILEK: It has a big number, but then after that it can make decisions on how it wants to spend that. In other words, the library budget I think is \$14.3 million. [LB969]

SENATOR KOLTERMAN: Okay. [LB969]

MARTY BILEK: We bless them with that amount of money each year, or at least this year. And then they make decisions themselves on who gets a raise, who doesn't, how much they want to spend on this, that, and the other thing. And that's not the case with other city departments where we have a little bit more control, influence maybe, or at least we have...we're part of the decision making, where in the case of the library we're not. [LB969]

SENATOR KOLTERMAN: But in the example that we used last year, did the director come in under budget that they hired? [LB969]

MARTY BILEK: I believe so. [LB969]

SENATOR KOLTERMAN: Okay. Second question, has the city council of Omaha taken a position on this bill? [LB969]

MARTY BILEK: To my knowledge there are two of the city councilmen that are opposed to this bill. A matter of fact, I have their letter. And one of their primary concerns was just the fact that the libraries need to be autonomous because they would like to ensure that its contents aren't tampered with. But in this bill, Senator Larson will tell you, and others, there are safeguards against that. [LB969]

SENATOR KOLTERMAN: But have they taken a position as a council and as a city? [LB969]

MARTY BILEK: No, not as a council wholly speaking. As a seven-member council, they have not taken a position, but individuals have. [LB969]

SENATOR KOLTERMAN: Okay. Thank you. [LB969]

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SENATOR LARSON: One quick question and then I'll move to you, Senator McCollister. You made the comment they had a \$14.3 million budget. So essentially you give them that \$14.3 million but you have no discretion in terms of how they spend that \$14.3 million, correct? [LB969]

MARTY BILEK: Exactly. [LB969]

SENATOR LARSON: And I guess I come at this from a more legislative point of view having served on Appropriations, I don't know how familiar you are with how we operate when we direct to a state agency--and you can answer yes or no if you don't know--it's your understanding that when we tell a state agency or one of our code agencies, we give them a budget, we direct specifically how they spent that money as a Legislature. And you want as a city that same ability. So you know, if we tell Department of Roads we want you to spend money at X, Y, and Z, we aren't just giving them \$14.3 million. You kind of want that same authority that the Legislature uses when we appropriate money. [LB969]

MARTY BILEK: You know, it makes sense. I think we owe it to the taxpayers because that's the elected officials are there to do. And in the case of the police department, for example, we'll give them \$125 million and then we'll tell them, or at least discuss with them, how many police cars do we want, how many uniformed patrol officers, do we want to continue with the canine unit, etcetera. [LB969]

SENATOR LARSON: Thank you. And I think that's just that clarity that they operate...the library board is operating differently than all the other code agencies, and using state government as an example, outside of what even we do. We direct our spending to our code agencies how we want them to spend money. And you just want that more explicit authority to... [LB969]

MARTY BILEK: That's exactly right, Senator. [LB969]

SENATOR LARSON: ...to work with the library board and not just be able to be told, no, we can spend it however we want. [LB969]

MARTY BILEK: Exactly. [LB969]

SENATOR LARSON: Senator McCollister. [LB969]

SENATOR MCCOLLISTER: Thank you, Chairman Larson, and welcome, Mr. Bilek. [LB969]

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MARTY BILEK: Senator. [LB969]

SENATOR McCOLLISTER: Of the budget at the library, does the city contribute the entire amount of the operating cost of the library? [LB969]

MARTY BILEK: The lion's share of it. There's some donations. [LB969]

SENATOR McCOLLISTER: Does the county contribute any money to the operation of the library? [LB969]

MARTY BILEK: They do as well, yes. But I don't have the numbers, I'm sorry. [LB969]

SENATOR McCOLLISTER: So would it be fair to say that the city contributes, what, 80 percent, 85 percent of the library's budget? [LB969]

MARTY BILEK: I'll use the approximate number of 85 percent. [LB969]

SENATOR McCOLLISTER: Eighty-five percent, with the county and private subscriptions providing the balance. [LB969]

MARTY BILEK: Exactly. [LB969]

SENATOR McCOLLISTER: Okay. And remind me who appoints the library commission members. [LB969]

MARTY BILEK: The mayor does. [LB969]

SENATOR McCOLLISTER: The mayor. So she has that authority to provide...to select that. Now, is there an approval process whereby the appointments go through the city council? [LB969]

MARTY BILEK: The library board members are appointed by the mayor and I think there's an approval process that goes through the city council. [LB969]

SENATOR McCOLLISTER: So they ratify the appointment. [LB969]

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MARTY BILEK: Right. [LB969]

SENATOR McCOLLISTER: I understand. So the mayor has full control over who's on that board? [LB969]

MARTY BILEK: Yes. [LB969]

SENATOR McCOLLISTER: Thank you very much. [LB969]

SENATOR LARSON: Thank you, Senator McCollister. Senator Riepe. [LB969]

SENATOR RIEPE: Thank you. Thank you for being here. My question would be kind of a follow up question, too, is on the salary, annual salary for the director of the library, does the mayor have approval authority, either yes or no on that, wherever that salary is set, or is that set independently by the library board? [LB969]

MARTY BILEK: The library board sets the salary. The mayor last time was rather insistent on the number she wanted so it would be in line with the other directors. I think the library foundation ended up making up the difference. [LB969]

SENATOR RIEPE: Okay. The other question that I have is I'm trying to figure out how close it parallels with other department directors, pretty much the same benefit package, same...so it's virtually everything that all of the other directors have except a direct reporting relationship? [LB969]

MARTY BILEK: Yes. [LB969]

SENATOR RIEPE: Okay. But they don't attend any directors meetings, or does the library director attend management meetings? [LB969]

MARTY BILEK: Yes. [LB969]

SENATOR RIEPE: Okay. So they're the only one at the table... [LB969]

MARTY BILEK: That wasn't always the case, but the library director does now. [LB969]

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SENATOR RIEPE: They're the only one at the table that is not direct reporting relationship. [LB969]

MARTY BILEK: That's correct, yes. [LB969]

SENATOR RIEPE: Okay. Thank you, Mr. Bilek. [LB969]

SENATOR LARSON: Thank you, Senator Riepe. Any further questions? Seeing none, thank you for joining us today, Mr. Bilek. [LB969]

MARTY BILEK: Okay. [LB969]

SENATOR LARSON: Give the mayor my kind regards. [LB969]

MARTY BILEK: I will. [LB969]

SENATOR LARSON: Next proponent. Welcome to General Affairs Committee. [LB969]

JEFF KOOISTRA: (Exhibit 1) Good afternoon, Chairperson Larson and members of the General Affairs Committee. My name is Jeff Kooistra, K-o-o-i-s-t-r-a, and serve as city administrator for the city of Gretna. I am here today to speak in support of LB969 primarily on behalf of Gretna. I also represent the United Cities of Sarpy County which includes the cities of Papillion, La Vista, and Springfield who also support this legislation. I first want to thank the senator for submitting this bill and working with our senator, Senator Murante, on this bill. The purpose of this bill is we feel would be proposing that it be given an option for different way to govern and operate and manage local library via more participation and control by the elected officials along with the new library advisory board. This option is needed in case the local citizens request it or in case the library board is not functioning smoothly. Not functioning smoothly could be from any reason such as not enough persons to serve on the board, lack of skill, misjudgment, mismanagement of operation, etcetera. If or when that happens, library function can become dysfunctional and even come to a stop and there's no option in state law for cities to correct things by opting another way for governance. Some cities will want to stay with the library board and some may want or need to change to what this LB969 would allow, and that's a local decision of selecting the proper option. But without an option, the local libraries can have poor operations and the city does not have the ability to repair the situation because the current law provides just a single way to govern and operate our local libraries. Having an option thus serves the local public interests and allows for local control. The city of Gretna is a city of the second class. We have two library facilities. One is the Main Adult Library and the is the Children's

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Library. The mayor and city council presently have only two areas of oversight for the library's operations. One is the approval of the budget and second is appointments to the library board. In the case of the budget, the only oversight available to the mayor is the bottom total expenditures. In the past couple years, these oversight options have not been adequate to manage the library's activities in the areas of efficiency and effectiveness. Staffing has become one of the major concerns. The Gretna library presently has four full-time staff, six permanent part-time staff. For the hours open and programming that they offer, they are overstaffed. Their employee schedules have many hours a week when multiple employees are working but the facilities are not open to the public. I'll jump down. Okay, I'm sorry. [LB969]

SENATOR LARSON: Yeah, I try to be fair to everyone... [LB969]

JEFF KOOISTRA: No, that's fine. [LB969]

SENATOR LARSON: ...when they're...let them finish their thought. [LB969]

JEFF KOOISTRA: You bet. [LB969]

SENATOR LARSON: I'm sorry to cut you off. Senator Riepe. [LB969]

JEFF KOOISTRA: That's fine. [LB969]

SENATOR RIEPE: Thank you, Senator Larson. I guess my question might be one of naivety, but it seems to me that Omaha and possibly Lincoln that have, you know, several millions of dollars in play is a different situation than Class A schools...or cities. So what happens if the committee had an amendment that said category a which is the larger urban center like Omaha and Lincoln can do it this way and all the rest of you folks can do it the other way? [LB969]

JEFF KOOISTRA: Well, all I can do is speak for our class of city. The United Cities and if you look at the list, there's two of those are first-class cities and two of us are in second class. We feel that for our purposes we need that somewhat control. Talking about budget, our budget is about \$450,000 and the library generates about \$13,000, a little over \$13,000 of that. So most of it is on the taxpayers to pay for, which is not a problem. I think that's what it's for. It's a public service. But the council sets that tax rate too. [LB969]

SENATOR RIEPE: I'm curious then, is the library board the only one in the state that has an association that people are feeding money into? I assume the other department directors that the

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city of Omaha has don't have associations. I mean is that...I don't mean to be unkind but is it an association that maybe has outlived its usefulness? [LB969]

JEFF KOOISTRA: I'm not aware of the other associations. I know there's groups that meet for public works purposes and utilities, water, sewer, and things like that. But I don't know how active, if any, that they are lobbying. [LB969]

SENATOR RIEPE: And you are the executive director of the foundation, is that right? [LB969]

JEFF KOOISTRA: No, I am the city administrator of Gretna. [LB969]

SENATOR RIEPE: Oh, okay. I was just curious how much in this school (sic) boards across the state, how much money...what's their budget look like? [LB969]

JEFF KOOISTRA: I couldn't tell you. I'm not privy to that information. Sorry. [LB969]

SENATOR RIEPE: Oh, okay. Okay, thank you. [LB969]

SENATOR LARSON: Thank you, Senator Riepe. Senator Kolterman. [LB969]

SENATOR KOLTERMAN: Yeah, thank you, Senator. You indicated that there's four organizations inside of your...Sarpy County. What are the towns? We're talking about Gretna and who else? [LB969]

JEFF KOOISTRA: It's Gretna, La Vista, Papillion, and Springfield. And there's only one other community (inaudible). [LB969]

SENATOR KOLTERMAN: So the two first class would be Papillion and... [LB969]

JEFF KOOISTRA: La Vista. [LB969]

SENATOR KOLTERMAN: La Vista. [LB969]

JEFF KOOISTRA: Yeah. [LB969]

SENATOR KOLTERMAN: Okay. [LB969]

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JEFF KOOISTRA: But we work together as a lobbying group and we only propose bills through United Cities that all four communities agree upon. [LB969]

SENATOR KOLTERMAN: So you're called United Cities? [LB969]

JEFF KOOISTRA: Of Sarpy County. [LB969]

SENATOR KOLTERMAN: And is that an interlocal agreement that you have? [LB969]

JEFF KOOISTRA: Yes, it is. [LB969]

SENATOR KOLTERMAN: Okay. Thank you. [LB969]

SENATOR LARSON: Senator McCollister. [LB969]

SENATOR McCOLLISTER: Thank you, Chairman. Now, you are the administer or the city director at Gretna. [LB969]

JEFF KOOISTRA: Yes. [LB969]

SENATOR McCOLLISTER: The city administrator is the proper term? [LB969]

JEFF KOOISTRA: Correct, correct. [LB969]

SENATOR McCOLLISTER: Okay. And do you ever receive e-mails from constituents, from the people you serve in Gretna? [LB969]

JEFF KOOISTRA: All the time. [LB969]

SENATOR McCOLLISTER: You do? [LB969]

JEFF KOOISTRA: Oh, yeah, I'd say that. [LB969]

SENATOR McCOLLISTER: So you kind of understand the political process. [LB969]

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JEFF KOOISTRA: Yes, I do. [LB969]

SENATOR McCOLLISTER: If you receive 150 e-mails as I have done on this particular issue with nary a one in support, what would be your conclusion? [LB969]

JEFF KOOISTRA: I at least look at all sides, I try to. I think in many cases there's always two sides to every story. And I'm always fairly empathetic to at least look at all sides of any situation because sometimes it...there's always a chance you can fill the ballot box, if you could say that, but not necessarily see the whole picture. [LB969]

SENATOR McCOLLISTER: I understand and I'm grateful. Thank you for your testimony. [LB969]

JEFF KOOISTRA: Thank you. [LB969]

SENATOR LARSON: Thank you, Senator McCollister. Any further questions? Seeing none, thanks for joining us today. [LB969]

JEFF KOOISTRA: Thank you very much. [LB969]

SENATOR LARSON: Welcome to General Affairs Committee. [LB969]

NIKKI SCHWANZ: Thank you. Good afternoon, Chairman Larson and committee. My name is Nikki Schwanz and that's N-i-k-k-i S-c-h-w-a-n-z, and I'm the city clerk treasurer for the city of O'Neill. The city of O'Neill's main concern at this point with current legislation is that when faced with disciplinary issues, the statute is holding the library board, which is comprised of volunteers, responsible for disciplinary action that could lead up to termination of employment. In a city of our size, I think that you can understand it is almost impossible on an annual basis to get volunteers to cover all of our boards. For the past few years, the city council, the mayor, and the library board had all been receiving various complaints and concerns about the library director. The mayor, when our office would receive those complaints, would take those back and say you need to address those with the library board as the current statute states. Several offenses that came to the mayor's attention and the city council's attention that in all other departments would have...could have led to immediate termination needed to be carried out through the library board. When the library board understood their full duties, we had library board members resign. We had library board members that were being pressured by the citizens at their homes, at their place of employment, at church. And this is what we're concerned about. The elected officials are choosing to put themselves in the decision to make hard decisions like this. The

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volunteers are not. And when it came to this process, the library board members were not even aware that it was their vote that was needed to carry out the disciplinary action that was required. So that was a concern to us as well. Moving to an advisory board capacity would afford the city the opportunity to address employment and disciplinary issues and deal with them as we would with all of other municipal departments. We're just asking for continuity throughout our municipal departments that we fund. Thank you and I would entertain any questions. [LB969]

SENATOR LARSON: Thank you for making the drive. [LB969]

NIKKI SCHWANZ: Yes. [LB969]

SENATOR LARSON: I do it often. Any questions from the committee? Senator Riepe. [LB969]

SENATOR RIEPE: Senator Larson, I don't know that I have as much a question. I was going through my opposition. I know Senator McCollister talked about the 150 that he had. I'm going through mine and I'm probably at least 50 or 100. I don't have one from Omaha. I have Grant. I have towns that I've never heard of. But I don't have one that's affected by the largest library. And so, you know, Beaver City, Nebraska City, on down and on down and on down. I don't have one from Omaha. I just wanted to make that point because 150 sounds like a big protest but if they're all from...to me it's a significant difference between what I would call small towns and villages versus an urban area like Omaha. [LB969]

SENATOR LARSON: Thank you, Senator Riepe. [LB969]

SENATOR RIEPE: Thank you. Thank you for the opportunity. [LB969]

NIKKI SCHWANZ: Thank you. [LB969]

SENATOR LARSON: Thank you for joining us. Safe travels. [LB969]

NIKKI SCHWANZ: Thank you. [LB969]

SENATOR LARSON: Next proponent. Welcome to the General Affairs Committee. [LB969]

MELISSA HARRELL: (Exhibit 2) Good afternoon, Senator Larson, Committee members. My name is Melissa Harrell, M-e-l-i-s-s-a H-a-r-r-e-l-l, and I am the city administrator for the city of Wahoo. I've been in that capacity for about the last ten years. I'm here to speak about Wahoo and

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the success that we've had with the setup that we have presently. We're a community of 4,500 people so we're just at 500 population away from being a first-class city. We have a brand new library constructed in 2006, a collection of over 32,000 items. And in 2014-15 fiscal year, there were 50,000 visitors in and out the door. So what we're doing is working. We're serving our population well. The problem that we have, and it's not really a problem, is that we're not...we are created under the Chapter 51 which is a true library board. But that's not essentially how we operate. We operate more under the advisory form even though that's not an option that's available to us. Our librarian does attend all of the council meetings and is treated very much like a department head, which essentially goes against the things that Chapter 51 states. I know that I've been part of a testimony in the past trying to get this effort, I guess the option available to cities of the second class and villages before us. And I know that the libraries have a very good grass-roots network and respond very well to any changes. I guess I would just ask that you consider offering this change to specifically second-class cities and villages--I can't speak to Omaha--because I think that there are communities out there that would fair better under this option rather than the library board that's created under Chapter 51. So with that, if you have any questions I'd entertain them. [LB969]

SENATOR LARSON: Thank you, Ms. Harrell. Any questions from the committee? [LB969]

MELISSA HARRELL: Thank you. [LB969]

SENATOR LARSON: Seeing none, thanks for joining us today. [LB969]

MELISSA HARRELL: Thank you. [LB969]

SENATOR LARSON: Welcome to the General Affairs Committee, Mr. Krumland. [LB969]

GARY KRUMLAND: Senator Larson, members of the committee, my name is Gary Krumland; it's spelled G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities appearing in support of LB969. Libraries are a very important function of local governments and we're supportive. So we're not here opposing libraries. We do think, however, though that the ultimate responsibility, the ultimate authority is with the elected officials, the mayor and city council, the village board. And they are the ones who should have the ultimate decision on how the departments within the city are governed, including the library. As you've heard, libraries can be organized under Chapter 51 which designates a library board and gives the library board authority. Cities of the first class, however, have specific authority to determine how libraries are governed. And so they basically have a choice of creating their own governance, usually with an advisory board or creating a library under Chapter 51. And most of them do use the Chapter 51. So I don't know that a bill like this would really change things a lot, but it would give the

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ultimate authority to the elected officials who have the responsibility and ultimately the liability for decisions that are made within the city. And we do think that they are the ones who should have that authority. The bill does put in protections so that a city council isn't choosing materials, censorship, those sorts of things, and we support that. But we think the ultimate determination of how the library is governed should be with the elected officials who are elected to make those decisions by the citizens. [LB969]

SENATOR LARSON: Thank you, Mr. Krumland. Questions from the committee? Seeing none, thanks for joining us. [LB969]

GARY KRUMLAND: And I, just as an aside, if you would like to get 150 e-mails on the other side, we probably could arrange that. But we haven't. (Laughter) [LB969]

SENATOR McCOLLISTER: Bring them up. [LB969]

SENATOR LARSON: Senator McCollister would like that, so direct them towards him. Any more proponents? Seeing none, I'll take my first opponent to LB969. Welcome to the General Affairs Committee. [LB969]

ROD WAGNER: (Exhibit 3) Thank you. Good afternoon, Senator Larson and members of the General Affairs Committee. I am Rod Wagner, Director of the Nebraska Library Commission. My name is spelled Rod, R-o-d, Wagner, W-a-g-n-e-r. I am here today on behalf of the Nebraska Library Commission, and we ask you as a committee not to advance LB969. The Library Commission opposes actions which would reduce the authority and responsibilities of public library boards. And I will give you a few reasons why we believe that is the position that remain as it has for many decades. And I have submitted written testimony which I will refer to in part. The Library Commission's statutory responsibility involves statewide promotion, development, and coordination of library services in Nebraska. We work with all types of libraries, public school, academic special libraries. In this instance, I want to emphasize that we do work extensively with the state's public libraries. Nebraska has 264 public libraries. And quite naturally those libraries reflect the nature of Nebraska, that is, the great majority of them are in towns of 2,500 and fewer. Those 264 public libraries have among them over 1,300 library board members. And those board members represent some of the best people in communities across our state. They come from all occupations. They do an outstanding job. We do recognize that there are some situations where there have been difficulties and issues and problems and conflicts between local elected officials and library boards. But we contend that those are a minority. There are not that many of those situations and we think that there are remedies to deal with those issues as they come up. And usually that is the case. And we'll also say that there are adequate, I believe, arrangements in place in statutes. And that is library board members are

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appointed by their city councils and their village boards. Those city councils and village boards do determine the library's budget. And they do...and this is significant and this is a more recent change in state law, there is a provision that library personnel policies including compensation must be approved by local governing boards. That is, city councils and library boards. [LB969]

SENATOR LARSON: Mr. Wagner,... [LB969]

ROD WAGNER: My time is up. Could I have just one more statement? [LB969]

SENATOR COASH: I'll give you... [LB969]

SENATOR LARSON: Senator Coash is going to give you... [LB969]

SENATOR COASH: I'd like to know what your next statement is. [LB969]

ROD WAGNER: Thank you very much, and my apologies for running on. I just wanted to say that the Library Commission would welcome an opportunity to work with the League of Nebraska Municipalities as we do on occasion to address issues that arise where there are problems, whether they be employment related, liability issues, and so forth, through education, through information, and so forth. We are aware of situations in local communities. We're there. We're ready, willing, and able to help find resolutions to those issues. Thank you. [LB969]

SENATOR LARSON: Senator Riepe. [LB969]

SENATOR RIEPE: Thank you, Senator Larson. I guess when did the commission, when did that originate? [LB969]

ROD WAGNER: 1901. [LB969]

SENATOR RIEPE: 1901. Are the university libraries under the commission? [LB969]

ROD WAGNER: They're not under the commission. The commission is more of a service agency. We provide a range of services from subscribing to databases that libraries can offer through their libraries. We do training, advising, consulting. We provide some grants through our federal program that we administer. So we do work with universities, special libraries, and so forth. [LB969]

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SENATOR RIEPE: What's the source of you for funding, please? [LB969]

ROD WAGNER: The Library Commission's funding is about 75 percent state and about 25 percent federal. [LB969]

SENATOR RIEPE: And the total aggregate budget is? [LB969]

ROD WAGNER: In the neighborhood of \$5 million annually. [LB969]

SENATOR RIEPE: Five million dollars. Okay. Thank you, Mr. Chairman. [LB969]

SENATOR LARSON: Senator Hughes. [LB969]

SENATOR HUGHES: Thank you, Chairman Larson. Thank you for coming in today, Mr. Wagner. [LB969]

ROD WAGNER: Thank you. [LB969]

SENATOR HUGHES: The reason we're all here today is there's been some friction apparently between city councils, city boards, and library boards. How long have you been in your position? Did you state that? [LB969]

ROD WAGNER: Twenty-eight years. [LB969]

SENATOR HUGHES: Okay. So you've been around the block a couple times. [LB969]

ROD WAGNER: Sure have, yeah. Thank you. [LB969]

SENATOR HUGHES: So in your tenure, is there any particular group or size or pattern that sticks out that normally the friction is predominant in between city councils and library boards? [LB969]

ROD WAGNER: Largely it would be budget related or employment related, perhaps; sometimes differences over maybe the facility itself, the library facility; perhaps need for repair, renovation, and maybe a lack of money or something of that nature. So budget and personnel would be largely the issues that I can think of that would be most common. [LB969]

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SENATOR HUGHES: Is there a predominance in the size of the, you know, urban, primary, first, second, and village? I mean, understand there's a lot more village than urban, but do you see more problems come across your desk in any of those categories? [LB969]

ROD WAGNER: Well, it probably does reflect the number of libraries that we have and the fact that so many of them are rural, small libraries. So commonly it's usually those smaller communities where we do have issues that come up that we help address. [LB969]

SENATOR HUGHES: Do you have many problems with the first-class cities? [LB969]

ROD WAGNER: Generally not, no. A great advantage of our first-class cities is that they have enough size and they have budgets such that they are able to employ full-time professional staff. Those people are experienced, knowledgeable, and skilled, do a great job of programming and directing services. [LB969]

SENATOR HUGHES: Okay. Thank you, Mr. Wagner. Thank you, Chairman Larson. [LB969]

SENATOR LARSON: Senator Riepe. [LB969]

SENATOR RIEPE: Thank you, Senator Larson. I had a follow-up question. How many full-time equivalents do you have in your... [LB969]

ROD WAGNER: At the commission? [LB969]

SENATOR RIEPE: Yes, sir. [LB969]

ROD WAGNER: 45. [LB969]

SENATOR RIEPE: 45. [LB969]

ROD WAGNER: About a fourth of those are in our talking book and Braille service which supplies services to our state's people who have visual impairments. [LB969]

SENATOR RIEPE: How dependent upon you...are you for contributions, I'll call it that, from the Omaha with its...is that a percentage? And what I'm trying to look... [LB969]

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ROD WAGNER: Contributions? [LB969]

SENATOR RIEPE: ...is there a redistribution of wealth going on here between the \$14.3 million and Omaha and some smaller community libraries? [LB969]

ROD WAGNER: Yeah, small community libraries have pretty small budgets. I'm not entirely sure what the question is. I would say that a portion of the Library Commission's budget is distributed in the form of state aid payments to public libraries and Omaha receives a portion of that in part based on their population. There's also a program that we administer to contribute to the purchase of e-books and audio books, the OverDrive service that 170 public libraries including Omaha and Lincoln participate in. So that's a form of state aid, too, that's part of our budget. [LB969]

SENATOR RIEPE: I'm just trying to look at it and say what's the impact if--let me just pick Omaha alone--if Omaha said we're going to manage together...this is going to report to the mayor. And quite frankly if they said, by the way, we have enough critical mass on our own then we're not going to be part of the commission. What's the financial impact to your organization, a million? [LB969]

ROD WAGNER: There's no financial impact. [LB969]

SENATOR RIEPE: They don't pay dues? [LB969]

ROD WAGNER: No, no, no. [LB969]

SENATOR RIEPE: Okay. [LB969]

ROD WAGNER: Our funding is through state appropriations and the federal program that we administer in Nebraska. [LB969]

SENATOR RIEPE: Okay. Thank you. Thank you, very much. [LB969]

SENATOR LARSON: Senator McCollister. [LB969]

SENATOR MCCOLLISTER: Thank you, Chairman Larson. We're grateful for your testimony. You indicated that the kinds of problems you typically see are related to the budget, personnel issues, is that correct? [LB969]

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ROD WAGNER: Um-hum, yes. [LB969]

SENATOR McCOLLISTER: Has book selection or those kinds of policies in the libraries, do they come up frequently? [LB969]

ROD WAGNER: Book selection? [LB969]

SENATOR McCOLLISTER: Book selection, what's in the library that people could object to? [LB969]

ROD WAGNER: Mostly we deal with that in relation to the training that we provide. We do a lot of training related to collection development, collection management. There are lots of sources of recommendations that go to libraries that help them make selections for items they acquire for their libraries. [LB969]

SENATOR McCOLLISTER: Well, that's good to know. Thank you very much. Thank you, Chairman Larson. [LB969]

ROD WAGNER: There are occasional issues that come up regarding challenges of books. And they are dealt with pretty well at the local level. [LB969]

SENATOR McCOLLISTER: Is there an established process to do that, to deal with that that you recommend? [LB969]

ROD WAGNER: Libraries will, and we strongly encourage this, they adopt a process for situations where a book is challenged or some item in the library where there may be some objection. And they go through a process to consider those challenges and make decisions about them. [LB969]

SENATOR McCOLLISTER: So who ultimately makes the decision? Is that the city council or the...? [LB969]

ROD WAGNER: No, it up through the library board and would be resolved at that level. [LB969]

SENATOR McCOLLISTER: But there's rare instance that that's been shifted to the city council or the city itself? [LB969]

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ROD WAGNER: That would not happen except perhaps...I don't know of any circumstances where that's happened. But there are a couple of other people behind me to testify that may have a better answer... [LB969]

SENATOR McCOLLISTER: Thank you very much. [LB969]

ROD WAGNER: ...and likely will have a better answer. [LB969]

SENATOR McCOLLISTER: Thank you, Chairman Larson. [LB969]

SENATOR LARSON: Thank you, Senator McCollister. A few things, Mr. Wagner. First, LB969 puts all content and programming within the library advisory board, correct? The city council wouldn't be involved at all in that process essentially under LB969, correct? [LB969]

ROD WAGNER: That's how I read it, yeah. [LB969]

SENATOR LARSON: Good. With your budget, and I think Senator Riepe might have been trying to work towards this to a certain extent, you're 75 percent state funded and 25 percent federally funded. Those federal funds I would guess come with specific strings attached in terms of what you have to do with that money, correct? [LB969]

ROD WAGNER: Yes, to an extent. [LB969]

SENATOR LARSON: To an extent. And then on the state side of the budget, having served on Appropriations, I understand that process. And you do have some flexibility with growth and whatnot to move. But the state could...the Appropriations Committee or this Legislature in essence could come in and direct you specifically on how to spend all of your funds, correct? [LB969]

ROD WAGNER: Well, our situation is that we have two programs. One is for operations, which would be our staff, facilities, all those kinds of expenses. And then we have a program for state aid. And those state aid monies can only be used for that, payments we make to libraries. [LB969]

SENATOR LARSON: And the Legislature can designate in those two programs specifically. [LB969]

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ROD WAGNER: Right. [LB969]

SENATOR LARSON: And I think you've touched the point exactly what the cities would like. My understanding is they would like that concept of kind that same two programs that the Library Commission has. You have the program for personnel, facilities, operations that the city runs, and that's what LB969 does. And then the second program for content in which the library advisory board would run. And you probably have a little more flexibility in terms of the state's budget... [LB969]

ROD WAGNER: We do, we do. [LB969]

SENATOR LARSON: ...when it comes to the advisory. So I just wanted to make sure that we have a little bit of self-reflection on how the Library Commission operates in terms of...and the state coming down on how we dictate to you. And I actually would make the comment as well that we haven't seen the problems within the first-class cities because there is that give and take and we understand that a first-class city might be able to have more control. So I appreciate the Library Commission coming in opposed, but we also have to have that self-reflection how you're set up and how the state's set up. And you know, the cities just kind of want that same flexibility the state has. So I appreciate your time. Any further questions? Seeing none. [LB969]

ROD WAGNER: Thank you. [LB969]

SENATOR LARSON: Next opponent. Welcome to the General Affairs Committee. [LB969]

SCOTT CHILDERS: Senator Larson, committee members, my name is Scott Childers. [LB969]

SENATOR LARSON: Can you spell it, please. [LB969]

SCOTT CHILDERS: (Exhibit 4) S-c-o-t-t C-h-i-l-d-e-r-s. I'm the current executive director of the Southeast Library System, a nonprofit organization which supports libraries in a 20-county area in southeast Nebraska through training and consultation. I'm also a former president of the Nebraska Library Association and have been involved in library work in Nebraska in some way or another for almost 25 years. While I could easily repeat or reiterate the testimony that you've received already through e-mails or will receive later today, I will instead share something I learned with the opportunities I've had to talk with library staff, library board members, and various city administrators, clerks, attorneys, city council, and village board members across the state. What I've learned is that the problems between the city councils and administrations and library boards that have been in the press recently and mentioned during LR288, the hearing in

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September, are a very small set of exceptions and the vast majority of cities have good working relationships between these entities. There have been matters where I been brought in to advise where there was some question between the city and the library and after a couple hours with both sides talking with each other, a reasonable has been found. The example, in Pawnee City where the city wanted to set up a sinking fund for the library just like all the other city departments. In state statute there was that issue where the library board had to weigh in. Well, at a meeting with city council representation, talked it over, came up with wording that got the city what they needed and also fit in Chapter 51. The whole process took very little time and both sides worked towards the common good. LB969 was introduced to clarify and harmonize statutory provisions regarding library governance in Nebraska. Clarification and harmonization has its place but LB969 takes the approach that takes provisions that are in place for only around 30 communities and forces them to try to fit over 230 other communities that currently have public libraries and over 250 other cities and villages who may introduce public libraries to their communities in the future. I respectfully ask that this committee not take this big government approach to library governance, especially over what amounts to be local problems in management and communication in a small number of communities. I'm willing to answer questions that you have. [LB969]

SENATOR LARSON: Thank you, Mr. Childers. Any...Senator Riepe. [LB969]

SENATOR RIEPE: Senator Larson, thank you. Thank you very much. I'm trying to...now is there duplication between your organization and the commission here? It sounds to me like...this might be friendly, it just sounds to me like it's some overlap here. Is that true? [LB969]

SCOTT CHILDERS: We work together on things. We've been partners. And we are more of a regional areas. We are able to go to the communities and talk with both the library board, staff, and city representation. [LB969]

SENATOR RIEPE: What's your funding? [LB969]

SCOTT CHILDERS: A series of grants and donations, a good chunk of the grants are coming through state. [LB969]

SENATOR RIEPE: May I ask why...how long have you been in existence? [LB969]

SCOTT CHILDERS: The systems have been in place for over 30 years. [LB969]

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SENATOR RIEPE: So is there some sense of shortcoming on the commission part that made you say we're going to do it on our own? I mean I'm just trying... [LB969]

SCOTT CHILDERS: No, no. [LB969]

SENATOR RIEPE: It sounds to me like needless duplication is where I'm coming from. [LB969]

SCOTT CHILDERS: No, I think you could consider us where we're able to get out to communities faster because we serve a smaller area. And then we communicate with the commission what we have been hearing and then if they have initiatives that we can help bring that forward. It's a very cooperative type of agreement. [LB969]

SENATOR RIEPE: Okay. Thank you, Mr. Chairman. [LB969]

SENATOR LARSON: Thank you, Senator Riepe. Seeing no other questions, I appreciate you coming today. [LB969]

SCOTT CHILDERS: Thank you very much. [LB969]

SENATOR LARSON: Next opposition. Welcome to the General Affairs Committee. [LB969]

STUART CHITTENDEN: (Exhibit 5) Good afternoon, Senator Larson and members of the General Affairs Committee. My name is Stuart Chittenden, S-t-u-a-r-t C-h-i-t-t-e-n-d-e-n. I am here as a member of the public, but I served as a trustee on the Omaha Public Library Board of Trustees between 2008 and 2014, including two years as president. I also served on the committees responsible for appointing Gary Wasdin, the former executive director of the library, and also the most recent executive director, Laura Marlane. And I can add any clarity that you have on that. I'm also willing to clarify, let me say, some misunderstandings about the level of Omaha Public Library's budget. I oppose LB969 and ask that you do not support moving this bill out of committee. Amongst many reasons, I'd like to offer two specific perspectives on why this bill should be opposed. First, this bill promotes government overreach into the lives of Nebraskans. Rather than recognizing and supporting the existing structures that encourage public-private collaboration, this bill grows government and its intrusion. I led the Omaha Public Library's last strategic planning endeavor. During that time, one of the key findings was that our libraries are trusted, safe, independent spaces. That is true whether we are talking about a physical place to be or an intellectual place for our minds. Citizens have faith in the library as a place for economic development, social growth, independent thought, and civic engagement precisely because it is not an arm of government. Nebraskans prefer not to have their private and

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social affairs increasingly subjected to government oversight and management. This takes me to my second point regarding the damage done by this bill to public-private partnerships with libraries. It is because of the unique independent position the library holds in the community that it is able to partner with so many governmental, nonprofit, and business organizations. One example in Omaha is the new Do Space, the multimillion dollar twenty-first century technology hub, which would not have been possible without public-private collaboration and funding. There are many such powerful, positive illustrations. If this bill moves forward and libraries become city departments, I have been told by local business leaders and philanthropists that their interest in current public-private collaboration and support will wane. The inevitable result of that withdrawal of support is that simply to maintain existing library activities, cities will have to increase their current budgetary allocations. The only alternative is to cut library services. These two points regarding this bill's growth of government overreach and harm to currently thriving public-private partnerships along with several other observations you have no doubt heard in opposition to this bill will persuade you, I hope, not to move the bill forward. Thank you for your time and attention. And I'm happy to answer any questions. [LB969]

SENATOR LARSON: Thank you, Mr. Chittenden? [LB969]

STUART CHITTENDEN: Yes, thank you. [LB969]

SENATOR LARSON: Trying to make sure I get them all correct. Any questions from the committee? Seeing none, I appreciate you making the time. [LB969]

STUART CHITTENDEN: Thank you. [LB969]

SENATOR LARSON: Next opposition. Welcome to the General Affairs Committee. [LB969]

REBECCA McCORKINDALE: (Exhibit 6) Thank you. My name is Rebecca McCorkindale; that's R-e-b-e-c-c-a M-c-C-o-r-k-i-n-d-a-l-e, and I am the assistant library director and creative director at Gretna Public Library. I'm also the current chair of the school children's and young persons' section of the Nebraska Library Association. And today I'm speaking on behalf of Gretna Public Library and we are firmly opposed to LB969. On September 25, 2015, Gretna city administrator Jeff Kooistra clearly stated his opinion to this committee concerning our library and how it should be run. This is really a matter between him and the library's management team and not relevant to the topic at hand. So I prefer to report to you what our library has done on our own for the betterment of our community. For the past six months, our Friends group has grown to ten members as well as gained a following of over 100 supporters on Facebook. We also revitalized our disbanded foundation. Our library board and library director surveyed the community, looked at library traffic patterns, and compared peer libraries to adjust our library

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hours to both better serve our public while keeping our staff both safe and supported, as well as assuring our city that decisions regarding our hours were being handled in a thoughtful manner. We not only serve the 4,905 people in Gretna but also the 19,000-plus members in our school district. Currently, we have 4,713 patrons. In fiscal 2015, 50,876 patrons visited our library. Since our library split into two buildings almost four years ago, the number of events we held has increased by 70 percent while attendance increased by 77 percent. In fiscal 2015, we had 14,861 reference questions; 3,990 people used our computers or free Wi-Fi; 43,012 Web site visitors; and 115 early literacy programs. We saved our community over \$1.6 million in fiscal 2015. Our return on investment for the same time frame was conservatively estimated at 361.75 percent for our community. Furthermore, our library and its programs are recognized on the national level. Our library's Young Entrepreneurs Club caught the eye of the American Library Association's program coordinator. As a result, we wrote a program model that was published in the ALA's programming library and Web site. Our partnership with the Nebraska Humane Society was featured on the Association for Library Service to Children's blog. We have also become a national leader in transforming summer reading programs into community-centric events. Ultimately, I hope that the committee recognizes that LB969 puts stress on the city, library employees, and library volunteers. I believe that these relationships should be worked on together with considerate management and teamwork, not with legislation. After all, we strive to make our library a first class in a first-class community of Gretna. Thank you. [LB969]

SENATOR LARSON: Thank you joining us, Ms. McCorkindale. [LB969]

REBECCA McCORKINDALE: Sure. [LB969]

SENATOR LARSON: Do we have any questions? Senator Riepe. [LB969]

SENATOR RIEPE: Thank you, Senator Larson. I want to go back a little bit. I think that you said that you had saved the city of Ralston... [LB969]

REBECCA McCORKINDALE: Gretna. It's all good. [LB969]

SENATOR RIEPE: Everything is about Ralston. (Laughter) In Gretna, \$1.6 million savings. I'm curious, do you have a source of revenue, or how...what (inaudible)? [LB969]

REBECCA McCORKINDALE: We're basing that on the American Library Association's library value calculator. So they take basically what it would cost for a paperback or hardbound book on Amazon. And for every book that's checked out, you know, we can assign that a price. It also

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includes events; movies are a good example. They look at the cost of maybe renting it through Netflix or Redbox and equate that to a number. So, we're not a for-profit... [LB969]

SENATOR RIEPE: I thought maybe you had Starbucks in there or something like. [LB969]

REBECCA McCORKINDALE: Oh, man. (Laugh) [LB969]

SENATOR RIEPE: Okay. Thank you very much. [LB969]

REBECCA McCORKINDALE: You're welcome. [LB969]

SENATOR LARSON: Thank you, Senator Riepe. Seeing no other questions, I appreciate you joining us. [LB969]

REBECCA McCORKINDALE: Thank you very much. [LB969]

SENATOR LARSON: Have a nice day. [LB969]

REBECCA McCORKINDALE: You too. [LB969]

SENATOR LARSON: Welcome to the General Affairs Committee. [LB969]

STEVE FOSSELMAN: (Exhibits 7, 8) Thank you. Good afternoon, Chairman Larson and members of the committee. My name is Steve, S-t-e-v-e, Fosselman, F-o-s-s-e-l-m-a-n, and I'm speaking in opposition to LB969 on behalf of the Nebraska Library Association. And I have included our, in your packet, I've included our official position statement and I've included some other attachments. I also have the testimony in your packet, so I'll just highlight a couple parts of that. But first of all, yes, I am part of the advocacy committee. And our advocacy committee does have a brand new vehicle that we're still trying out so that we can help libraries and board members and citizens understand a little bit more about what's going on with the association. And so you've been receiving some letters. And I'm the one that helped set that up, so just to let you know. Also let you know that I'm the director of the public library in Grand Island and I'm speaking today for the association. The public library of the city of Grand Island doesn't have a position on this, so I will not talk about that. But I am talking a little bit about an opportunity ahead of us here. While tempting, cities eyeing the restructuring of a library board and sometimes taking a look at other libraries in cities of the first class that have already done that, and it is pretty tempting to them, they're taking precious time from the more important work to

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be done on mutual goals and exploring the ways in which libraries can expand their impact and reach. And I'm quoting from the International City/County Management Association which says that that structure, that's kind of an artificial barrier. We should really be working instead knowing that this library has a governing board. We should really not be working so hard on dismantling the board. We should be working on our mutual goals and strengthening the wonderful services that we have. And it brings a new appreciation, a different attitude, and a full measure of support toward a library board of trustees entrusted to make tough library decisions. And I know that we've talked about this selection of books, that that's in this bill. But there are so many other things that are not in this bill that are just the tip of the iceberg of what a library board is entrusted to do in community free of politicizing collections, confidentiality, equal access, public access Internet, hours, priorities of service, long-range planning, selecting the next director, yes, censorship, enforcement of our behavior policies, and much more. And what I believe is that if this authority that the library board has entrusted to it is kept in place, it really does clear the chalkboard for really good, honest discussions about how different libraries and different cities do budgeting, finances, and personnel and can come to some really good solutions. So today, I'm in opposition to LB969. But along with the commission, with the League of Municipalities which we have started having some really good earnest talks about, with many others in the state, I believe that we have some really good opportunities and I'm happy to answer any questions you have. [LB969]

SENATOR LARSON: Thank you, Mr. Fosselman. Senator Riepe. [LB969]

SENATOR RIEPE: Thank you, Senator Larson. I'm simply asking I guess for a little clarification, which had...there's been sort of unintended consequences I guess, that we have the Nebraska Library Association, we have the Nebraska Library Commission, and we have the third organization that is something in either southwest or southeast Nebraska. My fear is that if one group doesn't necessarily agree with another, they start their new...their organization and you end up with a lot of...in state with a population of 1.9 million, that's a lot of commissions and associations and bureaucracy, if I may use the term, over a small population. Can you help me clarify what the difference between even just the association and the commission? I'm not sure about this other group that's out there, the southeastern... [LB969]

STEVE FOSSELMAN: Sure. I can do that based on... [LB969]

SENATOR RIEPE: Thank you. [LB969]

STEVE FOSSELMAN: ...on 40 years of being in the business and seeing all the other side, I'm not over the hill yet but I sure see how far I've gone, that in almost all instances in every state I've ever seen, there is a library commission or a state library. It is state funded and it is a service

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commission and it is empowered to do services for libraries and have regulations for libraries. So our library is an accredited library. Our library board is a board that has to have 20 hours of continuing education in order to get reaccredited and so we have certain standards to meet through the commission. We also work with the central plains...is that what it's called? The Central Plains Library Service (sic--System). They recently reorganized. [LB969]

SENATOR RIEPE: Add that to my list. [LB969]

STEVE FOSSELMAN: Yes, um-hum. There are four of them. They are providing continuing education and supplemental services on a more field level. And they are a really valuable and well-respected group in the state that will help libraries in order for them to...large or small. But I think a lot of the work they do is with smaller libraries, making sure that they're well run, that their collections are up to date, that their policies are firm, that their open access is not compromised. It's very easy in a situation where we're talking about LB969, where even inadvertently a city could say that open access is not for all. And that's not dealt with in this bill. There are so many things that are not dealt with in this bill. But we have a system whereby we have aids through the state library and through the regional systems so that we can handle these things and make it so that we have impartial policies. Now, the Nebraska Library Association, that's who I represent today and I've been affiliated with the advocacy committee for a couple of years now. We're a member organization and we are not given any state funds. But I can tell you, number one, the library community, whether it's the commission or the systems or the Nebraska Library Association, we are...there's no split. We are completely united on this. The...I don't believe that there's really an urban-rural split either. What I do believe is that any library, anytime. And its city could have a little tension going on. That's what a natural tension is in terms of how laws are created and can stay on the books for 150 years and can have an impact today that they had back when we were forming our towns that far ago, that long ago, can have that impact because they are so consciously derived at so that you will have a tiny little tension every once in a while. I get paid good...well. I get paid really well, and so does my city administrator, in order for us to make decisions even though we may not always have the same idea about things. That's what every city should be doing. And I believe every city has that capacity to do that. But sometimes a little temptation can be too much and the temptation of a city being able to reform a library board so that it is advisory is not a...it's something that, in my 40 years, does not solve any problems. It can create even more problems. So thank you very much for your question. [LB969]

SENATOR RIEPE: Thank you. [LB969]

SENATOR LARSON: Senator McCollister. [LB969]

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SENATOR McCOLLISTER: Thank you, Chairman Larson. You indicated there's a process under which certain libraries can be accredited, is that correct? [LB969]

STEVE FOSSELMAN: Correct, yes. [LB969]

SENATOR McCOLLISTER: Grand Island is an accredited library? [LB969]

STEVE FOSSELMAN: Right. We're a gold library. That's a... [LB969]

SENATOR McCOLLISTER: Gold (inaudible). [LB969]

STEVE FOSSELMAN: ...pretty darned good measure. It really is something. [LB969]

SENATOR McCOLLISTER: Not platinum, but gold. [LB969]

STEVE FOSSELMAN: Bronze, silver, gold. We got it. We got the gold, yes. [LB969]

SENATOR McCOLLISTER: If I understood you correctly, your board members have accreditation process as well. [LB969]

STEVE FOSSELMAN: That's right. And even for us as a library to be accredited, our board has to take continuing education hours for their certification, and I have to be certified as well. And so even as much as I've learned over the past 40 years, I got more to learn. [LB969]

SENATOR McCOLLISTER: That's good to know. Wouldn't you say that if we envision any kind of change in this bill, that we should require mayors and city councilmen to have those same kind of accreditation standards? [LB969]

STEVE FOSSELMAN: Oftentimes I answer questions that I shouldn't, I suppose. (Laugh) But it is a very good point in that we did 150 years ago and we still do entrust library boards to have certain skills, to bring certain value and leadership to the table. And it's still happening so well. In a few cases, I encourage people to work a little harder. [LB969]

SENATOR McCOLLISTER: Thank you for your testimony, Mr. Fosselman. [LB969]

STEVE FOSSELMAN: You're welcome. [LB969]

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SENATOR McCOLLISTER: Thank you, Mr. Chairman. [LB969]

SENATOR LARSON: Thank you, Senator McCollister. Real quick, just I have a few comments. Are you insinuating those first-class cities then which the cities do control library board aren't serving their constituents or cities well right now? [LB969]

STEVE FOSSELMAN: Oh, I'm sorry. Could you...? [LB969]

SENATOR LARSON: Are you implying that the first-class cities that currently do have...are controlling their libraries under current statute aren't serving their communities well? [LB969]

STEVE FOSSELMAN: Oh, no. My testimony has nothing to do with that. [LB969]

SENATOR LARSON: Okay. You just kind of had that comment. [LB969]

STEVE FOSSELMAN: Oh, I'm sorry. [LB969]

SENATOR LARSON: Well, not specifically. [LB969]

STEVE FOSSELMAN: Oh, I'm so sorry. [LB969]

SENATOR LARSON: It was just...I just wanted to clarify that there are first-class cities right now that do have the provisions in which the city controls. And I just wanted to make sure, clarify for the record that that's not where you were standing... [LB969]

STEVE FOSSELMAN: Yes, definitely. [LB969]

SENATOR LARSON: ...in those cities that operate like that. [LB969]

STEVE FOSSELMAN: I would like to make sure that everybody understands that I'm not testifying for or against any city of the first class today. [LB969]

SENATOR LARSON: Thank you. Any further questions? Thank you for joining us, Mr. Fosselman. [LB969]

STEVE FOSSELMAN: Thank you very much. [LB969]

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SENATOR LARSON: Any further opponents? Seeing none, neutral testimony? (Exhibits 9, 10, 11, 12) Seeing none, we did receive letters of opposition from Steve Fosselman, Grand Island Public Library; Brian Smith; Kirsten Case; Scott Childers; Rebecca McCorkindale; and Rod Wagner. And with that, I will close the hearing on LB969. [LB969]