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Government, Military and Veterans Affairs Committee
October 24, 2008

[LR285 LR296 LR298 LR368]

The Committee on Government, Military and Veterans Affairs met at 9:00 a.m. on Friday, October 24, 2008, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR296, LR285, LR368 and LR298. Senators present: Ray Aguilar, Chairperson; Kent Rogert, Vice Chairperson; Greg Adams; Bill Avery; Russ Karpisek; and Rich Pahls. Senators absent: Mike Friend and Scott Lautenbaugh. [LR296]

SENATOR AGUILAR: Good morning, everyone. I think we're ready to get started. I'd like to welcome everybody to the Government, Military and Veterans Affairs Committee hearing. First let me introduce the committee members that are here. On my far right, Senator Bill Avery of Lincoln; next to him is Senator Kent Rogert from Tekamah; and then Christy Abraham, our legal counsel; my name is Ray Aguilar, Senator from District 35, Grand Island; on my left is Sherry Shaffer, our committee clerk; next is Senator Rich Pahls from Omaha; followed by Senator Greg Adams of York. The bills will be taken up in the following order as they are posted outside the door, LR296, LR285, LR368, and LR298. There are sign-in sheets on the table. Put the sheets in the box on the testifiers table in front of me. Print your name and indicate who you are representing. Before testifying, please spell your name for the record, even if it's a simple name. Introducers will make opening statement. There is no proponent, opponent, or neutral positions, so anyone can come up as they wish. Closing remarks are reserved for introducing senator only. If you have a prepared statement or exhibit, give it to the page. He will distribute it to us or can make copies for you. You will need ten copies. Please turn off your cell phones and pagers. Speaking of pages, our pages for the day are Jacob Colling and Ryan McIntosh. Okay, we're ready to open on LR296. Senator Avery, please, enlighten us. We're also being joined by Senator Russ Karpisek of Wilber. [LR296]

SENATOR AVERY: Good morning, Mr. Chair, and members of the committee. My name is Bill Avery from District 28, that is spelled B-i-l-l A-v-e-r-y. I am here to report

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back to this committee on the progress of the BRAC interim study task force. This interim study focused on the impact of future Base Realignment and Closure Commission actions on Nebraska's current military installations and missions. The Base Realignment and Closure Commission has a fairly long history in this country. It's a way of which the Pentagon is able to realign and close bases with the least political fallout and it is referred to as BRAC, BRAC. The Department of Defense routinely examines existing military installations and missions, both overseas and in the United States in order to seek ways to increase military efficiency and to achieve best use of military resources. The BRAC process may be beneficial to a community by receiving either newly created missions or existing missions from another base or it could be devastating to a communities economy by closing a base and/or moving its missions elsewhere. Many of you may remember during the '60s, I believe it was early '60s, the Lincoln Air Base was closed and had a devastating impact on the economy of Lincoln and that impact was felt elsewhere in the state as well. The Department of Defense determines whether a community gains or loses installations or missions by evaluating a base's current and potential value. If a military facility is placed on the BRAC list for closure, it is extremely difficult to get it removed, making it much more important that efforts be made to avoid getting on the list in the first place. Nebraska's military economy contributes approximately \$2.5 billion a year to the state's gross product. By any count, that is a significant number. Several thousand military personnel wear the uniform in a variety of military operations in the state. That includes active duty personnel, National Guard, and reserve. All together the state has more than 50 facilities engaged in some form of primary military activity. I found that number quite surprising. We all are aware of Offutt and many people are aware of the National Guard facility in Lincoln, but we have more than 50 facilities scattered throughout the state. So you can easily see that the military assets are vital to the state and I think you can all agree with me and the task force that something should be done or we should do everything possible to protect these assets. Presently, some of the assets are a bit shaky. That is, they are vulnerable to the BRAC process and potentially in danger of getting BRAC'd. I can give you an example here in Lincoln at the airport where the Air

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National Guard facility is located. FEMA recently changed its rules on how high the levee needs to be around the airport, and we have come to find out it's three feet too low now. That is a vulnerability that if BRAC is looking for a base to close, they would see that as, perhaps, a reason to put the Air National Guard facility on the list. These are things that require attention. So in order to prepare for the next BRAC round and to insulate our facilities from closure, something we might call BRAC proofing, I think that's how we use it on the task force, this interim study was created. The study, LR296 created a BRAC Task Force. We began meeting on August 27 and we have met every two weeks since then. During those meetings we have done...we completed five tasks and we're on the sixth one now. The first one was to review the BRAC process trying to get a handle on how it works, what are some of the things that go into determining who gets on the list and why. We reviewed a comprehensive inventory of military installations and missions in Nebraska. That's where we discovered, where I discovered that we had over 50 installations, which surprised me and many others, I think. We identified those facilities most vulnerable to harm in the BRAC process. We identified those most likely to benefit from the BRAC process. For example, we spent a fair amount of time talking about the Air Force's plan for a new cybercommand and whether Offutt might be able to get some of that action. The prospects, we think, are fairly good that we might. The command itself will be located in Colorado Springs, but there will be a lot of other activities related to the cybercommand that may wind up at Offutt. We reviewed actions taken by other states. We did an exhaustive study of what other states have done to protect their military installations and missions, looking for ideas. We are currently discussing all possible steps that Nebraska can take to protect our military assets, which includes doing everything we can to become as friendly and supportive towards military personnel and families in the state as is feasible. During our next meeting we will be determining which recommendations the task force will make to the Legislature in the content of our final report that will be ready for distribution by the end of December in preparation for the upcoming legislative session. Just a brief word about the task force itself. We've been very fortunate to have brought together a talented and impressive group of dedicated public servants, people with expertise in the field of

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military affairs. Our task force represents military interests, Chambers of Commerce and the Legislature. From the Legislature we have serving on the task force with me is Abbie Cornett, Senator Pahls, and Senator Karpisek from this committee. Representing the military: Adjutant General Tim Kadavy; Deputy Adjutant General Robert Bailey; former Adjutant General Roger Lemke; the commanding officer of the 155th Wing of the Nebraska Air National Guard, Colonel Richard Evans; former 55th Vice Wing commander, John "Mack" McClain. From the private sector: the executive vice president and chief counsel of the Lincoln Chamber of Commerce, Bruce Bohrer; president and CEO of the Bellevue Chamber of Commerce, Megan Lucas; vice president for public affairs and policy of the Nebraska Chamber of Commerce and Industry, Jamie Karl; the executive director of the Lincoln Airport Authority, John Wood, who is a military retiree; and Military Affairs manager for the Greater Omaha Chamber of Commerce, Ned Holmes, who also is retired military. I will stop there and tell you that we have worked hard. The work has been interesting and we've learned a lot, but we will have the report ready for you in December. I'll take any questions you might have. [LR296]

SENATOR AGUILAR: Thank you, Senator Avery. Sounds like you've been extremely busy. I'll have one quick question here. You talked about the vulnerability of the installation here in Lincoln. Are there any plans under way to diminish that vulnerability? Is there anything that can be done as far as that end of it? [LR296]

SENATOR AVERY: We are looking at ways to do that. It's not going to be cheap and we'll have a recommendation in our final report. It's not going...probably the cost will not fall entirely on the state. We may be able to get some help from outside. [LR296]

SENATOR AGUILAR: Thank you. Further questions for Senator. Senator Karpisek. [LR296]

SENATOR KARPISEK: Thank you, Senator Aguilar. Senator Avery, I just want to

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maybe hit on the time table that we don't know when the BRAC is coming but why we need to move now. [LR296]

SENATOR AVERY: Good question. Thank you for the opportunity to answer it. [LR296]

SENATOR ROBERT: Was that staged? [LR296]

SENATOR AVERY: Pardon? [LR296]

SENATOR ROBERT: Was that staged as part of the act? [LR296]

SENATOR AVERY: No, actually it wasn't, but it could have been. (Laughter) The truth is that the way the BRAC process works is that the Department of Defense routinely, routinely, I'll say every couple of years, they request Congress to authorize the establishment of a new BRAC Commission, and authorize a new process. Congress does not always approve their request. But it happens about every five years or so and the reason why it's important that we move now, and that we take action now, is that the process begins with fact finding. And once the BRAC process begins to gather information, if you have a vulnerability, you have a problem at one of your facilities that we call a weakness. It counts against you once the process of fact finding begins. Now it doesn't matter what you promise you're going to do, now correct me if I'm wrong here, Russ, because you were in on these discussions, it doesn't matter what you may have already started to do, only what matters is what you have done. So if the levy is not repaired, if it's not brought up to standards by the time the fact finding process begins, that will count against us even though we may be in the process of repairing it. So we found out in the process of our early discussions on the BRAC process that we were acting just in time. Because the kind of time you need to get these things corrected may take a year or two, sometimes more. And we believe that we are well positioned now to take action in order to protect the assets that we have. [LR296]

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SENATOR AGUILAR: Thank you. Further questions for Senator Avery? Seeing none, thank you. [LR296]

SENATOR AVERY: Thank you. [LR296]

SENATOR AGUILAR: Anyone else who'd like to speak to this issue? Seeing none, that closes the hearing on LR296. We're ready to open on LR285. [LR285]

SENATOR ROBERT: Senator Aguilar. [LR285]

SENATOR AGUILAR: Thank you, Senator Rogert. LR285, green construction, buildings fundamentally impact people's lives and the health of the planet. In the United States, buildings use one-third of our total energy, two-thirds of our electricity, one-eighth of our water. The construction of green and high performance buildings can help reduce the consumption of these resources and produce a more livable, healthy, and productive place for its inhabitants. As you can see from the handout you received in your packet, many states have requirements for the use of green building standards for new state-funded building projects and renovations. Also, some counties and cities have adopted such requirements. Some states have encouraged the construction of green buildings through tax credit to offset some of the additional first costs associated with green building. One of the questions often asked regarding the use of green construction is the added cost involved. While there may be added cost up front, most studies put the figure at less than 2 percent. The cost of green design has dropped in the last few years as the number of green buildings has risen. Also, green buildings provide financial benefits that conventional buildings do not. These benefits include energy and water savings, reduced waste, improved indoor environmental quality, greater employee comfort and productivity, reduce employee health costs and lower operations and maintenance cost. US Green Building Council's rating system called LEED is the most commonly used rating system for the design and construction of sustainable buildings. LEED addresses all building types and emphasizes five areas:

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sustainable site development, water savings, energy efficiency, materials and resource selection, and indoor environmental quality. In Nebraska, many public entities are already implementing green construction. For example, Lincoln Public Schools has fitted many of its schools with geothermal heating and cooling systems. The University of Nebraska will seek LEED certification for all new construction projects. The International Quilt Studies Center and Museum, as well as the Jackie Gaughan Multicultural Center, will be UNL's first buildings constructed using LEED standards. Other state agencies are also using green construction principles in new building projects and renovations. Tim Wentz of the University of Nebraska will follow me with an educational presentation regarding green construction. After Mr. Wentz, several other people with expertise in this area will testify. I encourage you to ask them any of the technical questions you may have. Thank you. That means, I don't know the answers. (Laughter). [LR285]

SENATOR ROBERT: Thank you, Senator Aguilar. Any questions for the Senator? Senator Pahls. [LR285]

SENATOR PAHLS: You know, I received this letter they're asking us that we defer any decisions until after a study is... [LR285]

SENATOR AGUILAR: Would you put the mike in front of you, I'm having trouble... [LR285]

SENATOR PAHLS: Senator, this letter from Neil Moseman says that they hope that we would defer any decisions until after a certain study is done in April 1, 2009. Did you receive this letter or am I on the wrong... [LR285]

SENATOR AGUILAR: We just got it this morning. I may not have seen it. [LR285]

SENATOR PAHLS: Okay. Well, maybe somebody else can answer. I just...I just was

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perusing this letter and it says that they would hope we would defer any decisions to increase energy requirements on state-owned buildings until we receive the results of a study that is to be completed by April 1, 2009. I was just asking for your reaction but everyone just received this this morning, is that what you're telling me? Okay. If somebody else speaks to it, I'll ask them. [LR285]

SENATOR ROBERT: Any other questions? Thanks, Senator. Welcome. Please spell your name and (inaudible) [LR285]

TIM WENTZ: (Exhibit 1) Thank you, Senators. My name is Tim Wentz, T-i-m W-e-n-t-z. I'm from Lincoln, Nebraska, and it's a privilege to speak with you today. I've been asked to talk a little bit today about green sustainable buildings, which is one of my passions. This is one of my favorite slides when we talk about green and sustainable buildings. It's a quote that illustrates the fact that we're talking about a fairly new development in the United States. And because it's a fairly new development, there is not yet a lot of consensus on what these terms mean, like sustainability, like green building. When I talk about sustainability, this is the term that I use. Oh, I apologize, I did have some handouts and I forgot to hand them to the page. This is the term I use for sustainability. I got it from ASHRAE, the American Society of Heating, Refrigeration and Air-Conditioning Engineers, which is one of the leading engineering societies working on the issue of sustainable and green construction. Basically, it's a very holistic view of sustainability. It's talking about a behavior that protects our environment, protects our planet, and allows our children and our grandchildren to enjoy the same benefits that we enjoy. And so, I think that is a generally accepted view of sustainability, although there are other definitions out there. This is how I define a green building or a high performance building. I use the term green building and high performance building more or less interchangeably. I believe it is substantially different than a sustainable building. I think those are two different things. This particular definition that I have in front of you I acquired from the U.S. Green Building Council, which is one of the leading organizations working on this concept of high performance buildings. And as you can

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see, they define a high performance building as a building that performs at a very high level in these five basic areas: minimal energy consumption, certainly; atmospheric commissions minimized; discharge of harmful waste; the one that usually gets overlooked in this process is high indoor air quality. A high performance green building is also a healthy building and that has been a particular challenge to our industry. So then the question becomes, well, golly, if that's what a green building is and that's what sustainability is, is, in fact, the two terms interchangeable and my response is, no they're not. And to quote that I use our good old friend, Al Gore. And you know, Al's been in the news quite a bit lately with his newly renovated home. He now has, in my opinion, probably the highest performing home in the United States of America. If there is a green strategy or a high performance strategy, the man has it. He's got photovoltaics. He's got wind turbines. He's got earth-coupled heat pumps. He's got solar assisted heating on his pool, so forth, so on. It is, without question, a very, very green building. It is also over 10,000 square feet in size. The man also owns four homes. So the question then becomes, is that really sustainable? And in my opinion, and this is just my opinion, it is not. That is not a sustainable home because that is not an appropriate use of our nation's resources to protect our children and our grandchildren. So I'm one of those engineers that believes that there is indeed a difference between high performance building and sustainability and that's the reason I hold that position. I thought I'd give you a quick overview of what the landscape looks like in the United States right now. This is from the U.S. Green Building Council, in my mind one of the leading organizations in identifying and quantifying high performance green buildings. I should note that they are not the only ones in the United States doing it. There's a handful of them. Green Building Initiative has a green globes program that is well thought of. Department of Energy has an energy start program for existing buildings that's well thought of. There are other rating systems out there. I believe the U.S. Green Building Council will end up being the dominant rating program in the United States principally because they were the first ones there. There's a lot to be said about being first. The information on the slide I point you to is their founding date, 1993. They're a very young organization. They have a lot of growing pains. The whole concept of green

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high performance building has growing pains. And this is a good illustration of it. They were the first ones to come up with a rating system to identify high performance green buildings. Again, the dates, I think, are very telling. The first pilot program was 1998. The first green building was actually only certified in the year 2000, so you can see it's a very quickly evolving program. And, in fact, that program is going to undergo a significant change here in the next 90 days or so when the new LEED-NC, new construction guidelines come out in January of 2009. The way the LEED system works and, in fact, most of these ratings systems work, is your building is designed and constructed to certain standards and when you exceed those standards, you get points. The more points you get, the greener your building. And this is the structure that most organizations use, including Green Building. Here are the products that are available right now, the ones that you here most about. And the one Senator Aguilar mentioned in terms of our new quilt facility at University of Nebraska was the new construction product. And that's for new construction and existing buildings. There are other products out there and as this slide shows, those products are expanding greatly. We now have...LEED now produces rating systems for commercial interiors. They have a new product just out, LEED for Schools. They have just brought out a new product called LEED for Homes. LEED for Neighborhood Developments is under consideration. LEED for Retail is under review. So there's, again, a lot of change going on in this program. Here's the categories in which you earn points with LEED. You might notice that this parallels their definition of a high performance building. You have six basic categories. That sixth category is really just a bonus category, so you earn a majority of your points in either site selection, water efficiency, energy and atmosphere, materials and resources or environmental quality. And that's how it's broken down currently. Here's the current rating system. There are seven prerequisites that you have to get if you're going to have a LEED certified building. And a prerequisite, I should note, is something that you have to do. You don't get any points for it, so it doesn't contribute to your point total. But it is a bare bones basic requirement. If you fail, if you fail to get any one of those seven prerequisites, you lose all your points and you have no chance of certification. And currently, as you can see, we have 69 points and there's your rating

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system. So as Senator Aguilar mentioned, we had silver on the University of Nebraska campus for our quilt center and so you can conclude we got at least 33 environmental points on that building and that's how we acquired that particular rating. I'd like to talk just a little bit then about why this is so important and what I personally see coming down the pike in the next few years. Two main reasons, I think, this is important. Again, the rate of change, I think, is just phenomenal. I've been in our industry, construction industry, a long time and I've never seen change like I've seen here in the last few years in this area of high performance building. On top of that, it's, I think, very clear that our resources are very finite and we have to start doing something right away to conserve and use those resources wisely. This is a series of numbers I got from the Department of Energy and it parallels exactly what Senator Aguilar said previously. If you really look at this issue of global warming, if you look at the concept of pollutants in the environment, most of that comes from buildings. And yet, every time you pick up a paper and it talks about global warming, and this, that and the other thing, almost invariably they start talking about cars. And, you know, I have nothing against that. But if you look at the numbers, it's not the cars that are the number one contributor to global warming gases, it's buildings. And so, again, as an engineer, if you've got a problem and you can quantify the problem, I think it's always best to attack the problem in those areas where you have the most potential to turn the situation around. And that would be my case with buildings. I think if we are going to move this country away from a reliance on foreign oil and other carbon base fuels, I think we have to look to buildings for the answer. Water is also terribly important. I'm one of those engineers that believes that we, in the United States, will have a water crisis before we have an energy crisis. And in fact, you can go to several parts of the United States right now, Georgia stands out, California stands out, several of our states are having significant problems with water. And so this is another aspect of a high performance building that I think drives us to that conclusion. The energy crisis has been well documented and so I'm not going to spend a lot of time on it. This is a Hubbard chart and the scary thing about the Hubbard chart was, it was developed in the early 1950's and the data has proven it to be highly accurate. And it indicates that either this year or next year, we will have hit the peak of

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our production of oil and natural gas. And that seems to be consistent with most of the research being done in that particular area. Here's another evidence that the change is really dramatic. This is the number of LEED buildings in the United States that have been registered and then certified. And you can see that this is an expediential development in the United States of America. I've talked to LEED recently and they tell me that the 2008 numbers which, of course, are not available yet, will show that that expediential curve is still on the way up. And this is, in my mind, clear evidence that we're not dealing with the fad anymore, this is a trend. This is something that's going to impact our future. Here's something else that's going to impact our future. This is an engineering standard. Usually, when I use the term engineering standard, that's when most people, you know, their eyes roll back up in the head and yawns start coming on. But this is a very important one. This is ASHRAE's standard 90.1. This is the standard that virtually every engineer and architect in the United States of America uses to design buildings with. It is considered the standard of care in our industry, and so it's a very important document. Right now that document, if you followed it exactly, would not produce a high performance building. That would produce a standard building. Well, what is ASHRAE going to do about that? Here's what they're going to do. They've already announced that they've formed the committees for the next edition of that and that will be published in the year 2010. That edition of that standard will be 30 percent more stringent than the 2004 standard. They've already set up the committees for the standard after that. That will be published in 2015. That will be 50 percent more stringent than the standard we have today. They've already set up the committees for the edition after that. That will be published in 2020. That standard will be 70 percent more stringent than the standards we have today. And that is the standard that engineers and architects nationwide will be using to design our buildings. And ASHRAE refuses to publish these things as green standards. This is just their everyday garden variety standard and they won't publish them as green, in my opinion, because they believe this is just the way we are going to do business in this country. And it's very impressive, very, I think, very telling. Here's something else that I think is very telling. This has not been publicized much yet. ASHRAE last summer in Salt Lake City at their

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annual meeting announced that they were going to begin a building labeling program. And they were going to move to label all buildings, new and existing in the United States of America, based upon their energy usage and their potential energy usage. That program, in my opinion, will parrot the one that is currently in Europe and has proven to be fairly successful and I think that's coming down the pike at us as well. This is where I think we're going to end up as a society and that's with NZEBs, net zero energy buildings. Buildings that use no more energy than they produce or preferably, produce more energy than they use so they can return some to the grid. That, I think, is the overall goal. I don't think we have the tools yet to get there, but it seems to me, all of our professional societies are moving in that direction. And, I think, ASHRAE is leading that charge. I notice that there are a number of other national efforts moving along this same way. There's a series of federal regulations and federal executive orders that, in my opinion, seem to mandate the use of NZEBs, net zero energy buildings, by the federal government by the year 2030. So you can kind of see the time frame that this whole situation is moving into. So that is my presentation on the fundamentals of green and sustainable buildings. I do believe we have a duty to create an environment in the state of Nebraska such that our engineers, our architects, our contractors, and our citizens are in a position that we are allowed to adapt to these tremendous changes that are coming along. I always like to use that particular phrase. That's the way the Chinese write the word crisis, because I think that's what we're in, is a crisis. Well, they take the symbol for danger and they take the symbol for opportunity and they link them together and to them that's a crisis. I think that's perfect. I think that's exactly what it is. But I think forward thinking people always focus on the opportunity and I think we have a tremendous opportunity in front of us. Thank you, again, very much for the opportunity to present in front of you and I'd certainly be happy to answer any questions I can.

[LR285]

SENATOR AGUILAR: Thank you, Mr. Wentz. Are there questions for Mr. Wentz?

Senator Adams. [LR285]

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SENATOR ADAMS: As you talk about accelerating and making all these changes, where do building codes and city ordinances and local city zoning, are they going to keep up the pace? [LR285]

TIM WENTZ: I think they're going to have to keep up with the pace. I think there's two things that are going to happen here. Let's first look at it in terms of a long-term view. As ASHRAE changes these standards, which the buildings must be designed to, those are considered by the design community as the standard of care. So you will, as a professional engineer myself, licensed in Nebraska, it would be at my peril to ignore those. So as ASHRAE issues those, that's what I'm going to use if for no other reason than legal liability. Now, the community...so that's how I'm going to design the building regardless of what the code says. Generally it has been my experience that most communities, most states, use those ASHRAE standards but they lag the application of them in industry. Right now I believe Nebraska is using ASHRAE 90.1 as its energy standard and I believe they're using 1999. Okay, 2004 is what most states are using. We just published a new one that's 2007. So in terms of a code question, I think there's always going to be a lag there. In terms of what we actually do in the field, I think that's going to be really quick. [LR285]

SENATOR AGUILAR: Senator Pahls. [LR285]

SENATOR PAHLS: Just have a couple questions. This summer, several of us were with the Chamber of Commerce of Lincoln and Omaha, we were touring Washington, D.C. And every once in a while the person who was giving some aspects of the city said, well, that is a green roof building. Is that a label? [LR285]

TIM WENTZ: Yes. Yep, a green roof is or a vegetated roof is a strategy that is sometimes used by designers to...in building a high performance building. But it's only one small strategy in a hopefully integrated core of strategies. [LR285]

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SENATOR PAHLS: Well, I was interested because I did not know that. But I looked around to a lot of men and women in the business world they had this puzzled look on their face also, because everyone keeps a green roof, now what does that mean, you know. And so, there apparently needs to be a lot of education. A couple of other things, now you have a display of Al Gore. Do you believe, not all of his ideas, but do you think he's on the right track? [LR285]

TIM WENTZ: Well, that's a really good question. I often joke that any time you give a presentation in the United States, there's a federal law that requires at least one photograph of Al Gore in the presentation. (Laughter) And so, I always put Al in there. I think Al says some really good things. You know, there's a scientific debate as to whether or not mankind is causing this change in the earth's temperature. From my standpoint, that's not a very interesting debate. I think all scientists can agree the planet is warming, okay. Whether it's because of intergalactic dust, whether it's because of planet wobble. I've heard all sorts of theories why this is just naturally occurring. I've also heard all sorts of theories that it's because of man's contribution. I think the important thing...there's two important points. Number one, the planet is warming up and it is causing stress on our environment. Number two, we have a duty as citizens of this planet to be good stewards of the planet and it's that duty to be a good steward that, I think, drives us or should drive us to use our resources as efficiently as we can. So to me, it's not really what caused the problem, it's we have a duty to handle the problem regardless of its cause. [LR285]

SENATOR PAHLS: Okay, then that...you peaked my interest there a little bit because I'm going to go off on good stewards. And also you said that probably water is going to be more of an issue to us than energy. [LR285]

TIM WENTZ: Yes. [LR285]

SENATOR PAHLS: Then that makes me think about in the past when I've listened to

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Senator Chambers on the floor when he was arguing against the amount of water that the state of Nebraska uses for ethanol. [LR285]

TIM WENTZ: Yes. [LR285]

SENATOR PAHLS: So if we're good stewards of the land we need to be reexamining that concept, because we have touted ethanol as a savior. But long range, it may not be, is what you're...I could take from some of your...if I'm going to be a good steward. [LR285]

TIM WENTZ: Yeah, you're 100 percent accurate. You've taken my testimony correctly. I think that when we look at issues like ethanol, we need to take a holistic view of that problem and look at the entire equation, which includes water use. Now, I'm not an expert on ethanol production. I'm not an expert really in underground water sources. All I know is you have to look at the whole equation if you're going to do that well. [LR285]

SENATOR PAHLS: Thank you. [LR285]

SENATOR AGUILAR: Further questions? Senator Avery. [LR285]

SENATOR AVERY: We can probably all agree that the U.S. environmental footprint on the globe is large. [LR285]

TIM WENTZ: Yes. [LR285]

SENATOR AVERY: Our population is maybe 6 percent of the world and our consumption of resources is probably 30, maybe higher. [LR285]

TIM WENTZ: Maybe higher, yes. [LR285]

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SENATOR AVERY: But we aren't solely responsible for cleaning up the environment and this raises an issue for me that I want to ask you about. [LR285]

TIM WENTZ: Sure. [LR285]

SENATOR AVERY: These standards you talk about, impressive. [LR285]

TIM WENTZ: Yes. [LR285]

SENATOR AVERY: What is the International Standards Association doing to develop standards for China, for example? [LR285]

TIM WENTZ; Yes. [LR285]

SENATOR AVERY: I mean, if we do it alone, fine. Would we make a contribution and a significant one, but if China doesn't and other third world countries like India, then maybe all our efforts are not going to make that much of a difference globally. [LR285]

TIM WENTZ: Yes, that's an excellent point. I can tell you that ASHRAE is...their single largest growth area is China and Asia as a whole. That's where most of their growth has been in membership and I know that they are doing everything they can to better involve the Asian community into our standard writing process. Europeans, of course, have been in an energy poor environment for a long time so most of their standards are, quite frankly, more stringent and better written than ours. And that's why like in the labeling program, I'm quite sure ASHRAE will copy a lot of what the Europeans have done. I think between European community and the North American community, I think collectively we could put enough pressure on the Asian community and the developing world to adopt these same kinds of standards that I think will be commonplace in our civilization. [LR285]

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SENATOR AVERY: But isn't there an International Standards Organization that tries to set standards for all countries? [LR285]

TIM WENTZ: Yes. Yes. [LR285]

SENATOR AVERY: Is ASHRAE working in all with that? [LR285]

TIM WENTZ: Yes, they are. And you know, obviously, there's been some reticence by the developed world and in general that reticence from what I've read of it is that, sure, you guys want us to do that because you're so far ahead and you're using so much of the energy why can't we get our fair share. And you can see that argument. You could see it coming up, but here again I think the answer gets back to stewardship. I think we all have the same duty. The world is shrinking and it is going to be global problem with a global solution, I think. I'm optimistic. I think the Asian countries, I think, will get on board. I think it's going to take a little more time and effort but I think they will get on board. [LR285]

SENATOR AVERY: I have some experience with the Turkish Standards Institution and they're very active in the international standards community. But yet they build some of the worst buildings I've ever seen in the world for energy efficiency and for greenness, if you will. [LR285]

TIM WENTZ: Yes. [LR285]

SENATOR AVERY: So it seems to me that we need to be working in this area not just here in this country but elsewhere as well. [LR285]

TIM WENTZ: Oh, I agree, 100 percent. [LR285]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LR285]

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TIM WENTZ: Thank you. [LR285]

SENATOR AGUILAR: Next testifier. Welcome. [LR285]

KEN WINSTON: Good morning, Chairman Aguilar, members of the Government Committee. My name is Ken Winston, last name is spelled W-i-n-s-t-o-n, and I'm appearing on behalf of the Nebraska Chapter of the Sierra Club. I wanted to start out first of all by saying how pleased I am to see so much interest in this issue. Two years ago there was a bill before the Natural Resources Committee dealing with energy audits in public buildings and there were only two testifiers that appeared in support of that bill. And so it's, as Mr. Wentz indicated, there's a great deal of change that's happening and it's happening rapidly. There's a lot more interest in energy efficiency and renewable energy than there ever has been. So that's an excellent thing, that's a great thing. It's also good to see that...I was pleased to hear the remarks that Senator Aguilar made about energy efficiency and the benefits that they provide, that energy efficient buildings provide. Also Mr. Wentz' comments and his description. I would echo those comments. But I'm going to talk a little bit about energy policy and the reason that the Sierra Club thinks that we need to develop an energy policy. And I know that the energy office is looking at developing a new energy policy. I believe their energy policy hasn't been updated since the early to mid-nineties. And so they're going to have some hearings this fall and they're going to be working on developing new energy policy. But one of the vital components of an energy policy is energy efficiency standards for buildings. And standards for public buildings would be a good way of providing a message to the rest of the society that government is going to set the standard and here's an area where you can follow. And one of the main reasons why I think that's important is because of the fact that there's substantial...not only the environmental issues. It's always nice when somebody else talks about the environmental issues because then I don't need to. So I'm going to talk about money and how we can save money. Now frankly, I don't know how much the state of Nebraska spends on energy for buildings. I don't know if

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anybody knows. But I do know there was a briefing that we had in this room about a month ago with some representatives from the Lincoln Public Schools and they indicated they're spending about \$4 million on energy for their buildings at the present time. So I think that conservatively we can say that the state must spend and the other political subdivisions if we said that \$50 million, I'm guessing that's probably low. There's probably...the state and other political subdivisions probably spend more than \$50 million on energy throughout the state just to heat and cool buildings. There are a bunch of standard industry parameters that are out there that indicate that 20 percent to 30 percent savings in energy costs are feasible. Well, if we use the number of \$50 million that means that we could be saving \$10 million to \$15 million a year on energy costs every year. And this is a savings that would accrue every year. It wouldn't just be a first year savings. It would accrue over time. And as energy costs go up, the benefit would increase. And I guess one of the things that I want to emphasize is that if there was a state agency that was out there that was wasting \$15 million, I know there would be a public outcry to do something about it. The public would be saying, why aren't you dealing with this? Why aren't you saving...there's money there that you could be saving. And that's where we're coming from. We're saying, in addition to the environmental benefits which we totaling agree and that's actually the core of our beliefs, but what we need to do in addition to that is a benefit for taxpayers. It's a benefit for the people of the state. So let me run through some ideas that we think would be a good basis for a public policy. First of all, it's important to figure out where you're at. If you want to get somewhere you need to figure out, you need to know where are we today. And so we think that starting out with energy audits of current buildings is a very important first step. And this isn't something where we need to reinvent the wheel. The public utilities do this on a regular basis and they've got the ability to do it. The energy office knows how to do it. I think that a coordinated effort, if we came up with a plan for energy audits throughout the state to determine how much energy is being used and where energy savings could be developed, that's an important first step. But the next thing that needs to happen, and I know there were some energy audits that were done during the nineties, a lot of those studies just go...if a study is done and it just goes and sits on a

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shelf somewhere, that doesn't do anybody any good. So what we need to decide is, what's the target? What kind of energy or cost reductions are we looking at? How can these energy or cost reductions be achieved? What's the life cycle cost versus the up-front cost for energy measures? How can we fund efficiency programs and what kind of...what is an acceptable payback period for efficiency upgrades? One of the things we need to think about is a funding source for this kind of a program. During the '90s there was a school weatherization program that was created through oil overcharges. And that fund was, the money would go out in the form of loans to school districts and they would pay that money back. Some of it's still being paid back, although I think the amount is very small now. But over a period of years, they did weatherization. Mostly, it was changing windows and things like that. But during the mid to late nineties, the conclusion was reached that, well, we've done all the weatherization that we can do and what we need to do now is, we need to do technology. And, of course, technology is important but the funding was taken away and used for technology purposes in the form of grants and then, and the money has dissipated. What I would suggest would be taking some funds, and I know that the current budget surplus is something that everyone is going to be asking some money for, and I recall hearing Senator Avery say just a week ago that this shouldn't be used for any sort of one-time expenditure. But I do believe that this is the kind of thing, this would not be a one-time expenditure. This would be money that would be invested in the infrastructure of the state and it would be money that would be paid back. It wouldn't be money that would...so it wouldn't be money that would be laid out and dissipated through that expenditure. So that would be one suggestion, would be to create a loan fund. Possibly, we need to have incentives for local political subdivisions to do this kind of work. The Lincoln Public Schools has already, and I'm a big champion of the Lincoln Public Schools having been on their board during the '90s, but the Lincoln Public Schools is already in a process of making all of their buildings energy efficient. They're putting in geothermal heat pumps throughout the district. They're doing windows. They're doing insulation. In some cases, they're putting in new roofs. Well, if somebody's already made the investment, they should be rewarded for doing that. And if somebody is willing to make that kind of

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investment, then it shouldn't be a matter of...I know that oftentimes when people become more efficient the response of government is to say, well, you're more efficient, you don't need the money. And I think instead, we should be saying you're more efficient so here's a reward for being more efficient. So I think we need to have incentives. I also think that there could be low interest loans and there could be incentives for private lenders to make these kind of loans as well. So there's a number of areas that I think are very important. Let me just talk just a little bit, the previous speakers spoke about some of the benefits of energy efficient buildings. One benefit that I didn't hear was the idea that people in energy efficient buildings are more productive and do better. There's one study that I've read that indicates that students in energy efficient buildings do up to 20 percent better on average than comparable students in buildings that lack those same sorts of standards. And then the final thing I wanted to talk about is, it creates an economic stimulus by making an investment. There would be purchase of materials. There would be hiring of people to do this work. It would provide opportunities in a time when our construction industry is sort of lagging, it would provide some opportunities for construction people to go to work. There are a couple of things that I also wanted to comment. I do agree that we need to do more about, the water is a very important issues, maintenance of lawns. There's lots of money that gets spent on maintaining lawns. And green buildings, sustainable building standards consider that as well. I have not seen the letter from the energy office. I'm a little concerned about the idea of waiting. Because every year that we wait, that's another year that benefits are lost to the environment. It's another year that millions of dollars are not saved or if we want to look at it another way, it's another year that millions of dollars are wasted. So I would encourage the committee to think strongly about taking action as soon as possible. Although as I indicated, it shouldn't be knee-jerk action. It should be action that's based upon a solid basis. In conclusion, investment and energy efficient buildings is a way of preserving our investment in our state in our communities in a way that will save money for our taxpayers while helping to protect our vital resources. I would be glad to answer questions. [LR285]

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SENATOR ROBERT: Senator Pahls. [LR285]

SENATOR PAHLS: Ken, I just have a...you believe right now we're probably, the state pretty inefficient in our buildings, I mean, just as a gut level? [LR285]

KEN WINSTON: I would guess I wouldn't say that we're inefficient. I would say that we could be a lot more efficient. And I mean, I guess, if you want to put it that way, I mean if you wanted to find having the capability of being more efficient as being inefficient, then I guess I'd say yes. [LR285]

SENATOR PAHLS: I'm just curious. If in our state's system if there's a place, let's say for example, we can't use this building, but in the State Office Building, can they set their own thermostats or is it controlled by master... [LR285]

KEN WINSTON: I don't know. I don't know how that works but I do know that controls are a big part of making things more efficient and it's my understanding that somebody's going to talk about that. [LR285]

SENATOR PAHLS: Okay. Well, that would be good. So I'll ask a couple of questions that will maybe help the person coming up. [LR285]

KEN WINSTON: Yeah, I mean, their lighting systems would go on when you walk into the room, they turn off when the room is unoccupied. Heating systems that can be set so that it's not circulating air when there's nobody in the room but begins to warm up the room before people begin to occupy it. So there's lots of ways through time use of lighting and heating systems that can make them much more efficient. [LR285]

SENATOR PAHLS: Because I worked for a Governor before I came here and the building, I couldn't even control the heat or the air conditioning in my building. It was controlled by someplace, long ways away. I would call up and say, this room is too

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warm, then they could change it. So those are out there. But one thing that troubled me a little bit in your...because I think this is how we sometimes get in trouble, and maybe I misinterpreted it, but when you said 20 percent, the students achievement improved 20 percent because of heating it. To me, just by hearing that that has to be almost impossible to increase by 20 percent. I mean, when somebody tosses those type of figures at me, I become a little bit suspect. I mean, in some of our schools that are underperforming, then we just have to make sure the energy is better and we're going to shoot up 20...you know, I just have a hard time with that. [LR285]

KEN WINSTON: And I appreciate that, and I know since you were an educator, I certainly respect your judgment. I think the...I mean, and I didn't do the study so I'm just quoting a study that somebody else did. But I think the idea was...here's an example. A lot of older schools don't have air conditioning and the heating systems are such that, like you said, you couldn't control the heat, so you would be in your schoolroom and it was a day when it was 90 degrees out and how would you expect your students be able to concentrate. I mean, we wouldn't expect employees of the state to work in that kind of environment. So that's one aspect. And then another aspect, it's just the idea of, like I said, if you can't control the...if you've got a stuffy room and the buildings, and the windows are sealed or maybe there aren't any windows, the kids are going to be logy and restless and have a harder time concentrating. But that's the idea. Now as to whether you get that kind of actual improvement in test scores, I don't know where that came from. I'd be glad to run down that information. [LR285]

SENATOR PAHLS: I do realize a child needs to be well, I mean, needs to have food and needs to be in a pleasant atmosphere. That, I would go with you. I'm just saying when you say 20, that just throws to be out of whack. Thank you. [LR285]

KEN WINSTON: You bet. [LR285]

SENATOR ROBERT: Further questions? Senator Avery. [LR285]

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SENATOR AVERY: When you said that I had made a comment about the cash reserve, did you say that I did not think the cash reserve should be used for one-time expenditures? [LR285]

KEN WINSTON: That was my perception. [LR285]

SENATOR AVERY: That was wrong. What I said was the opposite of that, that if we used the cash reserve, it should only be used for one-time expenditures and not for ongoing commitments. [LR285]

KEN WINSTON: And this would not be an ongoing commitment. [LR285]

SENATOR AVERY: No, I just wanted to clarify that. [LR285]

KEN WINSTON: Okay. Well, thank you for clarifying that. [LR285]

SENATOR ROBERT: Further questions? Seeing none, thank you Mr. Winston. [LR285]

KEN WINSTON: And I believe that Peter Hind and Patrick Leahy will follow me. They're going to talk about green buildings, so. [LR285]

SENATOR ROBERT: Welcome. [LR285]

PETER HIND: (Exhibit 2) Good morning. I have some handouts. I'm not sure exactly how I do that. My name is Peter Hind, H-i-n-d. I live at 5140 Valley Road in Lincoln. I'm an architect and a professor at the University of Nebraska College of Architecture. I'm also on the Chris Beutler's Mayor's Environmental Task Force for the city of Lincoln, on the buildings committee, and I also serve as a volunteer and a member on the AIA committee on the environment and I'm here representing the AIA chapter, the Lincoln

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chapter in Nebraska. As a member of the AIA, I also volunteer with a program called the DAT process. It's called...there's a RUDAT and SDAT. The SDAT stands for Sustainable Design Assessment Team and the RUDAT stands for the Regional and Urban Design Assessment Team. I only had five copies, I'm sorry. If someone could make copies, that would be great. The AIA program is...been in existence for 40 years, the design assistance team program. And what the program does is it goes around to various communities and performs voluntary objective reviews of what various places are doing. I'm bringing this up because I've completed an SDAT, which is the Sustainable Design Assessment Team, for Culver City, California, which is a very small city but within a very large city we call L.A. And I was just there last week again and they're actually implementing some of the strategies that we talked about. Two weeks ago I did another design assistance team. I was the chair of that group in Staten Island, a 71 or so square mile island, but also within the city of New York City. It's a place that has the longest commute in the country within the city boundary. It takes about an hour and a half to go about seven miles on three modes of transportation. I'm bringing this sort of background up to talk about some of the things that I've seen nationally and some international movements that are happening. New York is certainly leading the way in applying some of these things, but you can also find some failures in everywhere you go as well, where things aren't jiving. I'm going to talk a little bit later about the national outlook and the national actions that are happening with the USGBC that Professor Wentz talked about, but we are already behind. We are...if we enact this now and make...if we take action now, we're going to be 32 on the list of states that are proposing some official resolution that we're doing and you can see that in some of the material that I've given you under LEED. With me is Patrick Leahy from HDR in Omaha, also a practicing architect, and he's going to talk about a specific example in some other initiatives across the country. At the University of Nebraska, you heard from Professor Wentz. I was also hired with focus in sustainability. There's others, Sharon Kuska, Dr. Sharon Kuska, who is doing a lot of work with a very important part of this discussion that hasn't always been talked about. And that's...and it's very important for the state because it's about existing building stock. And her research and her work with

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deconstruction and material reuse is very important. Also, Tim Hemsath is leading the way. He's the president of the USGBC. He couldn't be here today. The local chapter of the USGBC, he's actually presenting another paper this year. We've been pretty busy around the country, but Tim has been very influential in getting the word out and getting people to take action. Also Cecil Steward, Dean Emeritus with the Joslyn Institute, is an international leader on this subject and is someone whose voice is very important. I'd like to start, if you want to turn to the second page in the following three or four pages in what I gave you, a very short story about Greensburg, Kansas. You may or may not know about Greensburg, but a few years ago Greensburg, Kansas, got erased. The physical part of Greensburg, Kansas, got erased in about 11 minutes from an EF-5 tornado that was two miles wide. The town is also two miles wide. That's a sad story and a lot of lives were changed for a long time, but the important part of the story is what happened after that. Within four days, BNIM, a very good planning and design firm, were on site ready to start master planning. They were sent by the state to take action in Greensburg. Greensburg did a lot of public work together, a lot of consensus work. They had 100 percent agreement on the direction for their town. They are building now using a lot of the strategy the USGBC has for LEED. They have adopted all of their city buildings will be LEED platinum, all of them. The important part is, for me, not the necessarily, the very beautiful buildings they're doing, the master planning, and while that's all good, the important part to me is the policy shift. People when they first talked about it said...and I'm not here by the way to push a political agenda or to debate whether or not global warming is real or not, I think the research can testify to a lot of that. But I think what's important in Greensburg is looking at it as a very small but important model for policy. And what they have done there, and you can go to all the information, what they've done there is they have a collective policy that has shaped the vision and not the other way around. So I encourage you to look at Greensburg on sort of a micro scale and how maybe it could be blown up, so to speak, for the...a much larger scale for a state like Nebraska. Looking quickly at the...there's a little tab. I'm sorry, it's a little bit directed from analog issues with a pen, but there's a tab in your handout that talks about the national look. And you can see there what's going on and

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this is from the USGBC Web site. Forty-four states are working on this. Thirty-two state governments have made specific resolution on, affecting buildings and the performance of those buildings. Additionally, the GSA has been a huge leader for the USGBC and LEED. All GSA buildings, all of them have to be LEED certified. I think it's silver. I know that all they target every building to be silver and even the space that they lease for their offices needs to be at that level. And what's important about that, is that's a development issue. And it's an issue for designers, architects, engineers and building owners. If they can see a benefit, a tenant like the GSA, like the state, that are requiring this, all of a sudden we're going to have huge acceptance of this and we're not going to start to talk about it in a discussion or a debate on first cost versus long-term cost. First cost, you know, as a homeowner I want to put the best things in my house and, of course, the next thing people say is, well, can I sell it, am I going to make my money back. You know with the state, this building's been around for a long, long time. The state is here for a very long time and first costs, while they're important, the long-term costs are obviously a critical part of this. And that's really where the discussion needs to shift and that's what the GSA has understood. And the impact the GSA has had is also very, very critical in terms of the buildings that they use. If you go now to the LEED part, I'll skip over most of the LEED discussion because I think Professor Wentz did a really great job of talking about that. But I want to talk...if you go, if you sort of flip through, there's sort of a grainy vend diagram there about productivity and worker productivity and Ken was just talking about that. I want to expand a little bit on what Ken was talking about. Not only do we learn better, and I can speak a little bit more specifically about the learning part. The study that was done was about mostly about day lighting. There was a push, I think, in the early '70s to actually not let people, not let students have daylight. Very controlled environment, have it static all the time. What was done was, the study was done day-lit schools versus non-day-lit schools and what happens in a day-lit school is people actually get a very aware with natural environments and so they have an awareness of what's going on outside. They also can look out a window and rest their eyes from the work that they're doing. So it's a very real study and the numbers are that high. And we can get you that study if you would like. Not only do we learn better

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but we also heal better. There's a study that was done, I believe it was in Sweden or Switzerland, and again I can get any specifics that you're looking for. There was a surgery hospital that was U-shaped, but it was slightly...one of the U-legs was elongated and they were the recovery rooms. Some of the recovery rooms looked into the internal courtyard, some of the recovery rooms looked out to nature to a long view. They did a study in that hospital and the people that looked into the internal courtyard, and this is just recovery from surgery, you know, seven, eight days, the people that had the long view consistently into nature and a faraway view, a much more pleasing view, if you will, if you can clarify that, they healed two to three days quicker than the people that had the short view into the courtyard. People said, this can't be. They did this study again and it proved to be right again. So it is measurable and it is quantifiable. Next I'll just talk about briefly some of the initiatives that are happening in Nebraska starting specifically with the city of Lincoln. The former mayor of Lincoln started the task force and Mayor Beutler took it on and its grown, its grown in focus. We have focus on buildings, green infrastructure, transportation, education and others. And each committee is specifically looking at...and not everything has been accepted or made public or been accepted, you know, by City Council, but I'm here just to tell you a little bit about the work that we're doing here, and the recommendations that we're looking at. Let me back up. What we decided very early on was that we have to find a baseline and I would recommend this to the state as well, and I think it goes to the question, you know, at the office building can I control my temperature, you know, what kind of light bulbs are we using, what kind of carpet, what kind of paint, how are we repaving roads, etcetera, etcetera. I don't think you can make those judgments, make those decisions and changes without finding what the baseline is. So the biggest question we had as a task force was to come up with, where are we now? And this was huge. We thought...a lot of people said you'll never be able to do it. It will be very difficult. But you'll see on this page in the documents that I gave you, it's page 16 in that small report, I'm sorry, the pagination got a little strange, but it's an excel spreadsheet. And what we did was, every city building actually gave us a measure. We developed this excel spreadsheet, every city building told us how much gas they used, how much water they used, how much electricity they

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used over periods of time. Now it's very repetitive and it's a lot of information but what that allowed us to do was, for example, go into the list of fire stations, building types, the building typology, and say, okay, let's look at fire stations. And there was one that reduced their water consumption by 100,000 gallons in a year. I don't know exactly why that is but it allowed us to go in and say, why is that so? We also for the Education Committee, they put out sort of a challenge to all city employees and one of the...this is sort of related but unrelated fire story was, they clean out their water trucks and previously they just dumped it into the gutter, the water was gone and never used again. Someone had the idea, what we could do is actually take that water and reuse it either for other things or take it out, do what we need to do for the servicing and actually put it back in without wasting the water. So again, what the baseline does is it allows you to look at where you are and evaluate where to go and not just do it from a list of...you know, the USGBC, LEED, we can talk a lot about that. It is a way to look at things and it is a system for coming up with sustainable buildings or high performance buildings but you can't do it in a vacuum. You have to know where that is and I would encourage the state...that's why I think speed is important. But come up with what the baseline is. And then Patrick Leahy from HDR is going to come up and talk but I just want to end by talking about, you know, do we get it or what the impact is. And I think the international scene, following up on some of the questions earlier, in Stuttgart you can't build a public building without a green roof. Greenland is completely off of Middle Eastern oil and they're using geothermal. They decided this a long, long time ago and it's very effective for them. In Germany you can't build a building without outdoor air as a major component of the building so there are models outside of this. On the other side of it, there are cities in China that people pay a third of their income for water to come to their house that they still boil in order to consume. So there is a huge global issue that we have to tackle and I agree it's not our job to solve all the problems of the globe. But as Amory Lovins at the Rocky Mountain Institute said, if we do one good thing, think of the other twenty things that it might come out of that and we can see a lot of examples of why that is. A vegetative roof, yeah it looks good, but we have to go beyond the looking good. Not only does it look good, if we can see it, but it also reduces the temperature of

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that roof on a hot summer day. A black roof might be 250-300 degrees. In the summertime that vegetative roof is air temperature if not cooler because of the evaporation that happens. Secondly, if you look at the next part of it, the ability for that green roof to hold a significant rain event and reduce the amount of water going into the storm sewer, now we're talking about public infrastructure, public money, and the ability to evaporate that back. Thirdly, if we look at heat island effect in an urban core, a city will be five to seven degrees warmer than a rural counterpart or a rural same area. If we start looking at green roofs, we can actually reduce that heat island effect that happens within our cities. And Lincoln is pretty great in terms of trees and the greenery we have but also if you look at the aerial views, there's a lot of black surface there as well. We can reduce the entire need so if I cool my building, it's going to cool that building and the next building and the next building and the next building. So finally... [LR285]

SENATOR AGUILAR: Are we getting close to a wrap up here? [LR285]

PETER HIND: I am going to wrap up right now. Finally, sustainability isn't something we just lay on top of something. We have to look at it holistically throughout everything that we do, and that's the main message that I have for today. Any questions? [LR285]

SENATOR AGUILAR: Thank you. Questions? Seeing none, thank you. [LR285]

PETER HIND: Thank you. [LR285]

PATRICK LEAHY: Thank you, senators. [LR285]

SENATOR AGUILAR: Before you get started, how many testifiers do we have left in the room? Thank you. I see two. [LR285]

PATRICK LEAHY: Okay. Thank you, senators, my name is Patrick Leahy, last name is spelled L-e-a-h-y, address is 16528 Spring Circle, Omaha, Nebraska. I'm an architect

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and a member of AIA Nebraska. I'm actually representing AIA Nebraska today. I'm a member of NCARB, the National Council of Registration Board, a LEED accredited professional. I'm also an elected member of Board of Governors of Metropolitan Community College and that's where I'm going to share with you a case study of what we done up there. I work for HDR as project principal and project manager, and lastly, I'm a constituent member of Rich Pahls district. (Laughter) [LR285]

SENATOR AGUILAR: We won't hold that against you. [LR285]

SENATOR PAHLS: I know exactly where he lives. (Laughter) [LR285]

PATRICK LEAHY: Well, what I wanted to share with you today is, we went and put together all the policies that have been done in the country on sustainable design. And there's about 163 different cities, U.S. agencies and states that have enacted something. And so I also did the search to see what else has been done in the state on the USGBC Web site and there's only been one in the state and it happens to be one that I help initiate at the community college when I was chair of the board and chair of the building sites committee in 2002. And there's a copy of it in that packet. I also have another copy if you want to look at it. And it's fairly short and basically says after July 1, 2002, well, LEED's required at least certification and after seeing what everybody else has been doing over the last six years, we ought to up that to silver. It's the only policy currently in the state, while there are 31 states that have a state level policy so we're...it's perfect timing. You could say we're a little late but we're right over on the downside of the bell curve. Over half of the states already have a policy where they're using some kind of independent third-party certification to measure the success of...on a standard system of measurement. The case study, and it's actually in your packet labeled case study, creatively enough. The page before it shows a picture of the building. That page is what I want to talk about. We measured what a base under base codes what energy, what the energy cost would be plus what, against what we designed it to, under this policy they had to get at least basic certification, they saved

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this year \$36,000. If you calculate that over a 20-year life, straight line, no escalation, it's over a half a million dollars. And your first question I thought you'd ask, so I provided it, was, that the investment on the energy systems for variable frequency drives and sensors for lighting so they come on when people are in the room, that entire investment over the standard of base equipment was \$60,000. So it's a very small savings up-front capital, which everybody says our capital budgets are tight. But operationally, we're getting that return on investment in two years. And if you escalate that up, next year OPPD is going to change our rates in Omaha for commercial property which were under 11 percent. And if it's at least 4 percent after that, I calculate it up to be close to \$1.4 million over the twenty-some years, twenty years we're operating the facility. And that information was provided by BVH, the architect, and their engineer at Alvines. They did the cost comparison for me. The green building basic certification doesn't have to cost more. Because good design doesn't necessarily cost more money. It's selecting the right materials and arranging the materials and building elements in the most efficiently and putting them in the right place. The relatively...to use a comparison, were building Hummers that aren't necessarily the most efficient, building cars we can build right now. And you can actually get most of these SUVs at a bargain right now because of how much fuel they use and we should be building more like a Prius or something more efficiently. The other thing I wanted to hit on was, I've been to Alaska, Point Barrow, Alaska, we're designing a hospital up there. And it is getting warmer up there, because they have a...their warm month when the top six inches of the perm frost freezes, is more than a month now. It's closer to six or seven weeks so I thought that was just important to let you...remind you that energy and water stewardship in the environment is important. Energy sources are getting expensive and the supplies are not unlimited. I also have in there a McKinney office building. You can read it but it shows the return on investment in the short period of time that they recoup their additional costs. And they, I believe, they have achieved a silver rating, no actually it was a platinum rating and a seven and a half year payback on that. In just a...the next step, you know, I would think you would want to look at is, okay, what are some good policies to look at. Thirty-one states have policies. Colorado, Indiana, Oklahoma, and

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South Dakota were the closest states I found to us. And the state of Colorado actually states it so they don't have to measure it, look at each building. They say 25 percent or more in state funds. They want it to be to a high performance green building standard. The new law requires the state architect to select some independent third-party certification programming such as LEED. And then they should be able to recoup their decreased, recoup the cost for any investment within 15 years. That's what they used for measure and it was just for state buildings. They also did it for existing buildings. Their first one that they did in 2005, this latest one was in 2007. In Indiana they require all new state buildings to be LEED silver, EPA energy star or equivalent under ANSI accredited rating system and all renovations of buildings the same. And if it's a state owned building you can do it with policy, but you should look at it to do it also for publicly financed buildings and with some kind of incentive. The energy savings alone should be an incentive for most owners to want to do it unless they're a developer who is going to turn the property in the first few years. Oklahoma, they have the standard base on any buildings over 10,000 square feet and in the South Dakota, any new construction or major renovation of state owned buildings that are at least \$500,000 and greater than 5,000 square feet. And you may want to say, this may not include small buildings that don't have any people in them. They're just storing either materials or equipment, so. That's it. Just wanted to give you a little bit of real world, what I'm seeing out there. [LR285]

SENATOR AGUILAR: Thank you. I have one quick question. Now, you said you were in Alaska? [LR285]

PATRICK LEAHY: Yes. [LR285]

SENATOR AGUILAR: Did you get to meet Joe, the plumber? (Laughter) [LR285]

PATRICK LEAHY: What's that? [LR285]

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SENATOR AGUILAR: Did you get to meet Joe, the plumber? [LR285]

PATRICK LEAHY: No, I did not meet Joe, the plumber. (Laughter) [LR285]

SENATOR AGUILAR: Further questions? [LR285]

SENATOR PAHLS: I have one. [LR285]

SENATOR AGUILAR: Sure. Rich. [LR285]

SENATOR PAHLS: Why would I not want to do what you're proposing? What would be the argument? [LR285]

PATRICK LEAHY: Well, it's interesting. The only argument I could see out there is that LEED cost money. And if you want to get it certified... [LR285]

SENATOR PAHLS: Initially. [LR285]

PATRICK LEAHY: Initially. You got to pay a report fee to get it certified, okay. And then, there's...you have to pay a fee for some LEED accredit professional, to develop, or engineer or architect to develop the backup material. One way to get around that also too, is say, we want to meet the standards. We don't care less if you actually get the certification but we want you to go through and still do that design. The only other thing I can find, because I was present of AIA Omaha for a number of years ago and I was on the board for a long time, had lots of architects from across the country, and most architects aren't really and engineers aren't opposed to it, it's just good design. We've been trying to do the best design all along. We just want this as an incentive to help our clients, the owners. But I could see a developer who says, I'm only going to own this building for three or five years and then I'm going to turn it. I don't care about operation equipment. I don't care how much the energy costs, that's my owner. I think it's...this is

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a role the state senators can do is take care of those owners and take care of our use of resources for the life of these buildings. [LR285]

SENATOR PAHLS: But government should not have that issue, though. [LR285]

PATRICK LEAHY: What's that? [LR285]

SENATOR PAHLS: The government is not going to turn their buildings around, so... [LR285]

PATRICK LEAHY: No, no, you're going to keep your buildings for, hopefully, for a long, long time. You're building them to last, you know, 20, 30, 50 years or more. This building has been around, it's going to go to 100 pretty soon. [LR285]

SENATOR PAHLS: Thank you. [LR285]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LR285]

PATRICK LEAHY: Thank you. [LR285]

SENATOR AGUILAR: Next testifier. You got to be quick. (Laugh) [LR285]

STEVE TRUEBNER: (Exhibit 3) Good morning. My name is Steve Truebner. For the record that's spelled T-r-u-e-b-n-e-r. I represent Johnson Controls this morning. I work specifically in our state government solutions division. I work specifically in energy solutions for state government agencies here in Nebraska, Colorado, Montana, Wyoming as well. I do have some prepared testimony, but I'm going to really get away from that in the interest of time and topic. And really to start with, I thank you for your interest in patience as well. What I want to do, instead of sort of going through what I had planned, is really jump to what I sense may be the larger question, which is--how

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do we pay for this? And there is a saying, actually, and to an extent it's true. But when you hear green, hold onto your wallet. And what we do is something that has been doing...going on across the country and it is self-funded energy projects, otherwise known as energy performance contracts. This is a law that is in place here in the state of Nebraska. Senator Aguilar did some important work to that law, and this committee, last year to make some key adjustments to that so that rural schools districts, municipalities could get a bit more involved in these programs. But here today, talking about state government facilities we ask the question, is there room for improvement? Our experience says, yes, there is, typically 20 or 30 percent. Now, that being said, the state of Nebraska and its building services are consistently ranked among the best in the country in terms of infrastructure management, this by the Pew Center on the States, governing magazines, and that's certainly because of the talented people at DAS. It's the consistent funding for the 309 Task Force and it's smart capital planning. Our industry uses this budget-neutral self-funded energy project process to determine what's the potential for energy savings. And what we do is capture those energy savings, those calculated energy savings. They're backed by a contractual guarantee held by Johnson Controls that those savings will be adequate to fund the energy efficiency upgrades. And through those measures that are bundled and financed over 10, 15 year, some less than 10, some more than 15, which state government agencies typically fall within that window to develop a project--an energy efficiency project that will save state government agencies 20 to 30 percent in energy and pay for itself. And when I'm talking about these particular energy conservation measures, I'm not just referring to windows and weather-stripping. It really is what we're talking about here today--major renovations. And again, that process that we go through starts with an energy audit. Now there's a difference between some of the baseline studies that have been brought up here today and the type of audit that we do. If the state is interested in an energy study to tell them there's potential, well, there's a way to go forward and do that. That's not really the Johnson Controls business model. Our goal is to achieve those energy efficient, achieve those savings. So what we do is conduct the energy audit directly with the owner of the facility. And that energy audit, as well as all the upgrades and the

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contractor commission, for example, are all rolled into the finance package. So the upgrades, from soup to nuts, are done at no new cost to the state. There's a diagram in front of you if...to help sort of understand a little bit. I think I've covered it. And I certainly will answer your questions to clarify this. And certainly in the interest of time, I want to keep moving. But I'm just going to highlight, very quickly, some other states, Big 12 states, if you will. And I should say that I am a Colorado resident from...a Colorado State graduate. So, I think, that's always important to note here in the Cornhusker state. But the state of Colorado, over the last five years, has saved...has reinvested over \$50 million into their state facilities, just executive agencies. Kansas has been doing this model for a long time. They've saved or they've injected over \$110 million across high ed and state agencies. Texas, obviously, everything is a little bit bigger in Texas. But they've used...Johnson Controls is not the only company that does this. There are a lot of good outfits out there that do it, Texas is using nine of them, Missouri is using eight of them to spread that work around to achieve those energy savings in the fastest possible format. Of course, it's qualifications on who you use. And on the backside of that I list some of these projects that have been successful in other states, and they're not just by Johnson Controls. There are other competitors that have done some very nice work. And this is something that can certainly be applicable based on our state law, and the interest going down this path toward high performance buildings that it would be logical to not only look toward the future and how we construct and design these...design and construct these buildings but also taking care of our existing assets, especially if it's at no new cost of the taxpayer. [LR285]

SENATOR AGUILAR: Thank you. We appreciate your testimony efficiency. (Laugh.)
Questions of Mr. Truebner? Seeing none, thank you. [LR285]

STEVE TRUEBNER: Thank you. [LR285]

SENATOR AGUILAR: I think we have one last testifier. Welcome. [LR285]

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JOHN EASTER: (Exhibit 4) Thank you, Mr. Chairman and members of the committee. My name is John Easter. That's E-a-s-t-e-r, like the holiday. And I'm with the American Chemistry Council, with the Midwestern office, that's located at 107 East 5th Street in Des Moines, Iowa. Our headquarters is actually in Washington, D.C. And American Chemistry Council represents the leading companies engaged in the business of chemistry. We are pleased to be here today and believe that it's commendable that this commendable that this committee is looking into building standards and energy efficiency of buildings. We endorse the practice of conserving resources and energy efficiency and minimizing environmental health impacts of buildings. Nearly 35 percent of energy is used by commercial and public buildings. We would recommend that if the state should move forward with a standard, an energy efficiency standard, that the ASHRAE 90.1.2004 plus 30 percent be the standard that the state should use. Precedent for that is the United States Department of Energy, last December, actually established regulations that require new federal buildings to achieve this standard. Environmental considerations and energy efficiency should become a part of the building design and purchasing criteria, along with product safety, price, performance and availability. Energy efficiency and environmental performance should be evaluated using a systems approach. We heard many of these things today. I think probably the fundamental point I'd like to make is that again if the state chooses to move forward with an energy efficiency standard that the ASHRAE standard be the standard and that rating systems be encouraged, not mandated, and be flexible. There's LEED, Green Globes, ENERGY STAR and others so that those can be used as tools to help reach the standard ASHRAE. And really, that's the essence of our message to you. I know you're under the time frame, so I will just conclude with those comments. And I do have handouts, too, here, so... [LR285]

SENATOR AGUILAR: Thank you. Questions? Senator Pahls. [LR285]

SENATOR PAHLS: Just one simple one. I heard LEED, of course, and then ENERGY STAR. How many...and I don't even know the word I'm searching for. LEED, ENERGY

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STAR, what...how many more, approximately? [LR285]

JOHN EASTER: Well, the point that...the ones I know of are Green Globes. Those are private eco-rating systems. And, you know, there could be others that come into play. And so we would recommend that it be up to the design team of the building, either a new building or rehab, to choose what's appropriate for that building rather than mandate a rating system by the...whether it's the state or a local government. So... [LR285]

SENATOR PAHLS: Just to make sure the standards are there. [LR285]

JOHN EASTER: The standard, we would say that...the ASHRAE 90.1.2004 plus 30 percent would be the ideal standard for energy efficiency. And we believe that it could...would be done, because of the energy efficiency at little extra cost to the building. [LR285]

SENATOR PAHLS: Okay. Okay, thank you. [LR285]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LR285]

JOHN EASTER: Thank you. [LR285]

SENATOR AGUILAR: I guess we have one more testifier slipping in. [LR285]

RON WITHEM: (Exhibit 5) I'm sorry, Senator. I'll be as brief as I can. I'm Ron Withem, W-i-t-h-e-m, representing University of Nebraska. University of Nebraska maintains a vast majority of the buildings owned by the state. Our facilities director, Becky Koller, was going to be here to share with you our practice. She had to leave. I have a copy of our "Sustainable Design Policy." The message I was instructed to leave with you is that we do design to LEED standards. And if the committee moves forward on legislation

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that will impact on us we'd like to be involved in it and promise you we'll be as helpful as we can. So thank you very much. [LR285]

SENATOR AGUILAR: Thank you. Senator Pahls has a question for you. [LR285]

SENATOR PAHLS: Yeah, I have a question. You're saying right now the university system has the standards that we've been talking about. [LR285]

RON WITHEM: Given the fact that there are so many varying degrees in the standards discussed today, I wouldn't...we design to LEED standards. We don't necessarily go through the certification process because that's an additional expense. But it is our policy to design to the LEED standard, specifically at which level, I will have to get back to you on that. [LR285]

SENATOR PAHLS: And then to go through an audit would not be a big deal then for the University of Nebraska. [LR285]

RON WITHEM: If you're talking about an official audit where you pay a contractor from the outside to come in and do an external audit, that might...there might be some expense associated with that. Constantly we're looking at ways in which we can reduce energy. Yesterday we sponsored a little seminar for some Big 12 government relations people who were in town. I was able to hear from the facilities director at UNL all the things that they're doing to reduce energy usage. I think we need to do a better job of letting the senators know what it is we are doing. [LR285]

SENATOR PAHLS: But by listening to your testimony, you're telling me the university system has the majority of the government buildings in the state of Nebraska. [LR285]

RON WITHEM: When we did...when we came to the Legislature, two or three years ago, getting support for a renovation package we did an analysis of the...I think it's the

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replacement value of the state buildings. And we were far and away...had far and away the majority of those buildings. [LR285]

SENATOR PAHLS: Okay. So if we can find out if you're doing an official, quote, I'm using the word "job", then half the battle is done. [LR285]

RON WITHEM: Well, and we have to...keep in mind we have buildings all...the new buildings we're designing we design to LEED standards. Keep in mind we have century old buildings also that we're doing our level best, for instance, the message about the sensors in the room. My office has those sensors. It's always a little embarrassing when I haven't moved for ten minutes and the electricity goes off in the room. (Laughter) But we do a lot of those type of things. [LR285]

SENATOR PAHLS: Then an external audit coming in and just randomly selecting those buildings that are, quote, what we classify new might be a way to help eliminate or show a need that we are... [LR285]

RON WITHEM: I just don't know if the external audit is the preferable way to do this or not. I would have to be a lot more up to speed on where that (inaudible). [LR285]

SENATOR PAHLS: And I understand that. But what's happening on the national level. I'm not really...almost anybody, unless they have somebody on the outside evaluating them, I'm speaking at the national level, what's happening to us financially and to the housing area. I'm almost suspect if we don't have outside people taking a look at us in all areas. [LR285]

RON WITHEM: Let me offer to do this, let's get you together with our facilities people so you can get a sense of what it is we're doing. And if you think there's additional things that need to take place, you know, let us know. [LR285]

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SENATOR PAHLS: I'm not expert, I guarantee you. [LR285]

RON WITHEM: Nor am I, obviously. [LR285]

SENATOR PAHLS: Okay. Thank you. [LR285]

SENATOR AGUILAR: Ron, if you're still around after the hearing, I want to visit with you about one of the buildings you're in the process of constructing. [LR285]

RON WITHEM: Okay, we'll do that. [LR285]

SENATOR AGUILAR: (Exhibits 6-8) Thank you. Any other questions? Thank you. And I'm not going to close. So that closes the hearing on LR285. Anybody need a break? [LR285 LR368]

SENATOR ROBERT: Senator Schimek. Okay. We're going to continue. Senator Schimek, are you ready to open? We're ready. [LR368]

SENATOR SCHIMEK: (Exhibits 1 and 2) Thank you. Good morning, members of the Government, Military and Veterans Affairs Committee. For the record, my name is DiAnna Schimek, the 27th Legislative District. And I am here to introduce LR368. And to give you a little bit of background on this issue, it was last year, I think, when Larry Bradley, who is a doctoral student at the University of Nebraska, and the Nebraska Indian Commission came to me about the issues examines by this study. Their concern was that paleontological resources could be dispossessed from Native American lands without cooperation from or notification to the tribes themselves. In other words, under the current state law there is a possibility that paleontological resources might be taken without consulting the landowner who is either a member of a tribe or a citizen. As you may suspect, these resources are of high importance and can be worth a great deal of money. For instance, if you think about Tyrannosaurus Sue, who's the dinosaur fossil on

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display at the Science Museum in Chicago, you see that it can be a very huge resource. Meetings were held with a number of interested parties on paleontological resources and landowner rights, including students of paleontology, the Nebraska Commission on Indian Affairs and representatives from the Nebraska Historical Society. It was thought that perhaps there was a way for the state of Nebraska to ensure that the potential sensitivity on this topic be considered and a way to encourage cooperation between the tribes and those who seek paleontological resources. I don't stumble over that word too badly, do I. (Laugh) Several months ago, it was brought to my attention that a non-Native constituent of Senator Harms was concerned about these resources being taken from his private property. And so the focus of this report and the legislation that I'm going to propose to you, the focus of it has evolved from tribal only to all landowners would be affected by this bill. And my staff and I worked, as I said, with the commission and Larry Bradley. And I do have a new draft for you. You have one in your packet and I would like to have these new ones distributed. There is really one change only in the new draft. And it's on the first paragraph and the paleontological resource is more clearly defined in the new copy where it says it "means any fossil remain, trace, or imprint of an organism preserved in or on the earth's crust that is of paleontological interest and that provides information about the history of life on earth." That's the new definition. And your...I think the other one was not nearly as precise or as clear. So, I guess, that's all I have to say. I do have a letter from a gentleman at Creighton University who is very supportive of this approach that is taken in this draft. And as you all know, of course, I won't be here to introduce a bill like this. I do know that another Senator at least showed some interest last year, but he was unable to be with us at the beginning of the legislative session and that was Senator Harms. So I'd just like your consideration of this issue. It does follow the, I guess, the imprint of the bill that we passed back in...I believe it was 1989, in which we were actually a leader in seeing that the remains of tribal members and artifacts that were also in graves were given back to the tribes if they were in the possession of Nebraska. So with that, Mr. Chairman,...

[LR368]

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SENATOR AGUILAR: Thank you, Senator Schimek. Are there questions for the Senator? [LR368]

SENATOR PAHLS: I just have one. Senator, would you...I can't remember this. What does a Class III misdemeanor do for me? This is not a test, I just can't... [LR368]

SENATOR SCHIMEK: No, I know. You know, I think I looked that up not too long ago because I was thinking too. Legal counsel probably knows. But I'm thinking it's a \$500 fine. But I may be wrong. [LR368]

SENATOR PAHLS: So basically a \$500 fine, is that... [LR368]

SENATOR SCHIMEK: That's...I think that's correct. Okay. And maybe that's not stiff enough, maybe, considering... [LR368]

SENATOR PAHLS: Okay, okay. I was just curious. What would you do if I really found something significant like a new "rex" out there or something like that? [LR368]

SENATOR SCHIMEK: Right, that's a good point. [LR368]

SENATOR PAHLS: I was just curious. Thank you. [LR368]

SENATOR AGUILAR: Further questions? Senator Karpisek. [LR368]

SENATOR KARPISEK: Thank you, Senator Aguilar. Senator Schimek, just a quick question on not including human skeletal remains. Is that because that's covered in a... [LR368]

SENATOR SCHIMEK: Yes, that's already...that's what we did back in 19...I think it was '89. And then the federal government has also passed legislation. And that's what this

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NAGPRA is that's referenced in Michael Kelly's letter. That's the national federal legislation. [LR368]

SENATOR KARPISEK: Okay, thank you. [LR368]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LR368]

SENATOR SCHIMEK: Thank you. I know there's at least one other person here to testify. I don't... [LR368]

SENATOR AGUILAR: Let's just find out. How many people do we have to testify on this? I see four. [LR368]

SENATOR SCHIMEK: Oh, well, good, I guess. (Laugh) Thank you. [LR368]

SENATOR AGUILAR: Do you expect to close, Senator? [LR368]

SENATOR SCHIMEK: No, I don't expect to close. [LR368]

SENATOR AGUILAR: Thank you. Welcome. [LR368]

LAWRENCE BRADLEY: Hello. My name is Lawrence Bradley, L-a-w-r-e-n-c-e middle initial W, and B-r-a-d-l-e-y my last name. I live at 6068 Country Club Oaks Place, Omaha, Nebraska 68152. I want to thank the Government, Military and Veterans Affairs Committee for listening to me. I want to thank Senator Schimek for introducing LR368 and certainly the executive director of the Nebraska Commission of Indian Affairs. LR368 has been brought about, I would say, mostly because of my doctoral research. I'm a doctor, Ph.D. student at the University of Nebraska in the Geography Department. And recent articles in the Nature Magazine, one of the most premier, scientific magazines in the world, has stated their eyes are on the state of Nebraska and what

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they may do on this decision for LR368. Nebraska can be the first state and Nebraska can do something great for paleontology, for science, for Native Americans. Just as Nebraska was the first state, and some shining examples--Standing Bear v. General Crook to acknowledge that Native Americans should enjoy basic civil rights, the 1989 law to protect human remains that led to NAGPRA act at the federal level, the state of Nebraska should strongly consider LR368 to be the first state, perhaps at the state level to protect fossils within our borders. I also want to say that I'm on the Environmental Quality Council. I was appointed by Governor Dave Heineman, nominated by Senator Preister, and the Legislature voted 39 to 0 to affirm my appointment. I'm the minority populations representative. So along with that, one of the issues, to bring you up to speed, on one of the issues that prompted LR368 and why I brought this to Judy of the Nebraska Commission on Indian Affairs, happened to do with a pelosaur collected by the University of Nebraska State Museum and the Nebraska Department of Roads, in 2003, from the Santee Sioux Reservation. The Santee Sioux tribal government was not consulted whatsoever about the plans to excavate the pelosaur. Previously from that, in the fall of 2002 I had talked with the university officials about their plans to excavate the pelosaur. And I was told that I would be included in that dig, so I took that at face value. I waited around, waited around for them to get ahold of me to show me how you do the permit process, how you approach the tribe, how you consult with the tribe and such and that never materialized. And one day in May, on the front page of the Omaha World-Herald, they show that they were conducting a dig on a highway just north of Center, Nebraska within the borders of the Santee Sioux Reservation. I did ask the officials if Santee Sioux students could participate in the dig. I was told no and cited safety reasons because the sight was on a highway roadway...right of way. I took that at face value. But later on, on the Web site by the University of Nebraska State Museum, it depicted non-Native American students participating hands-on, plaster all over their hands, in the dig. So in my opinion this was blatant discrimination of the Santee Sioux students from paleo-resources on their own reservation. As this...as I've conducted more research for my doctoral research, the University of Nebraska did open its doors to me to go in and conduct and look to see what other fossils they may have collected

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from the reservation. It was found that during the 1970s and 1980s on Santee Hill there were numerous fossils collected by the University of Nebraska State Museum and the Nebraska Department of Roads. And according to the tribe they had no knowledge of a consultation that that was going to take place. Now it happens through this highway salvage paleontology program, I do want to just give you an example of some of the federal acts that should have been noted when they did this or followed. There may have been federal acts violated when University of Nebraska State Museum and Nebraska Department of Roads collected vertebrate fossils from the Santee Reservation. For example, the National Historic Preservation Act, enacted in 1966, requires all federal agencies to determine whether their activities shall have impact on historic properties eligible or potentially eligible for the National Registry of Historic Places. Just by the university and the Nebraska Department of Roads collecting from Santee Hill, just the name Santee Hill denotes that it may be a historic preservation place: the Native American Graves Repatriation Act protects human remains or cultural objects on public or tribal lands; the National Environmental Policy Act, enacted 1969 to determine if there was an impact on the environment or cultural environment; the Archeological Resource Protection Act of 1979 requires federal agencies to consult with tribes over proposed work concerning cultural sacred areas, this can be vision questing sites, important plants, animals, birds, fish and their habitats, trails and roads, camping areas, places where important events took place and monumental geological or geomorphological features including mountains, hills and unusual formations. Again, just the name Santee Hill denotes that someone should have filled out the paperwork and consulted with the tribe and consulted with the federal government. But what we see here, and this is just some of the examples, what we see is that state agencies are going onto tribal lands and collecting fossils, in my opinion, perhaps maybe dispossessing fossils from the tribes and not consulting with the tribes and violating, possibly violating federal acts. So this comes back to where Nebraska could possibly be the first state, the first state to stand up and do something to help. And as Senator Schimek said, as we debated and we argued and we talked and we thought not just something for Native Americans but to include all citizens in the state of Nebraska. Just

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a couple more things, please. You know, just a little bit of background on the collection methods of people within the state of Nebraska. There was a "Morrison" Skinner who was an...University of Nebraska awarded "Morrison" Skinner the Alumni With Distinction and an honorary doctorate of science. "Morrison" Skinner has ties with the University of Nebraska. But in the 1950s and '60s he used to go around the Pine Ridge Union Reservation and collect fossils for the American Museum of Natural History. I have documentation that...from an ex-student of his, named Emory (phonetic), in a book published, and I have page and citation, that "Morrison" Skinner would drive on the Pine Ridge Reservation in a government green pickup truck. So he would buy a pickup truck that would possibly simulate an official government green pickup truck, simulate official status and collected many fossils all over the Pine Ridge Reservation and shipped them to the American Museum of Natural History. There's somewhat of perhaps a paradigm or a methodology of collection or perhaps a treatment or a cavalier attitude towards Native Americans that...maybe that the paleontologist currently or from "Morrison" Skinner in the '50s and '60s up until now have disregarded the feelings or the insensitivity of this issue towards Native Americans and the paleontological resources on the reservation. I want to say for this LR368 we have some endorsements. And the endorsements come from the Society of Vertebrate Paleontology Executive Committee, which is the most premier professional paleontology committee in the world. Even the Nebraska paleontologists belong to that committee. I am a member of the Society of Vertebrate Paleontology Government Affairs Committee. And so they see that...most generally look in favor of LR368 and that they currently have a bill going through Congress at the federal level, the Paleontological Resources Protection Act. And it has enjoyed nonpartisan support. Adrian Smith, Congressman Adrian Smith of Nebraska helped vote that particular protection...Paleontological Resource Protection Act out of the Natural Resources Committee and it passed with no "no" votes. So I do want to see that I have kept open channels with the University of Nebraska paleontologist, President Milliken and regents and let them know that they've been invited to work with us for the language of LR368. And if they have any revisions or anything, you know, would love to sit down and talk with them and bring this before you. I do want to say that, you know,

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that it's...for the Native Americans and have their paleontological resources they should be able to view those and should be able to consult and work with people and create educational pipelines and scholarships and what have you. And so with that, I open the floor for any questions. [LR368]

SENATOR AGUILAR: Questions? Seeing none, thank you. [LR368]

LAWRENCE BRADLEY: Thank you. [LR368]

SENATOR AGUILAR: Welcome. [LR368]

ROBERT HUNT: My name is Robert Hunt. I'm a professor of geosciences at the University of Nebraska. I'm the curator in charge of the vertebrate paleontology division at the university and I'm a past chair of the Government Affairs Committee of the Society of Vertebrate Paleontology that Larry Bradley just referred to. I came here to support this bill this morning. I'm enthusiastic about parts of it. But Larry did present some comments here about the vertebrate paleontology program and the university that I was very surprised at. So I think I should speak to those first. And I'll try to be very brief about that. He mentioned that a fossil reptile, called a pelosaur, was collected by the university in 2003 from the area of the Santee Reservation and that the university did not ask permission for this. Turns out the fossils at Santee Hill and the pelosaur that Larry is speaking about are on the road right of way, the highway roads right of way. And the paleontology division at the university has a contract arrangement with the Department of Roads to salvage significant vertebrate fossils that are found throughout the state on highways. That's actually mandated by state law. I brought with me resolution, actually state law 39-1363, which I'll read to you very briefly. It's on the preservation of historical, archeological, and paleontological remains. It says, and I quote, "To more effectually preserve the historical, archeological, and paleontological remains of the state, the Department of Roads is authorized to enter into agreements with the appropriate agencies of the state charged with preserving historical,

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archeological, and paleontological remains" and "to have these agencies remove and preserve such remains disturbed or to be disturbed by highway construction and to use" these "highway funds, where appropriate." So throughout the state the University of Nebraska and our division, when called upon, will go to a site, salvage important fossil remains, bring them to the university, go through the conservation process and then we are the repository for those remains in the state. This also applies to the Santee site that he was speaking about, which has a very important volcanic ash bed. I think many of you may be aware of the importance of volcanic ash in this state from the new state park up in northeastern Nebraska, Ashfall State Park. Actually, the state of Nebraska and the rocks of Nebraska are filled with volcanic ash from volcanos that were active in Nevada and Utah and throughout the western United States. The vertebrate paleontology program at the university conserves fossils for the last 40 million years of growth history. And we are the outstanding institution in the Great Plains for that charge. Our collections are second to none, except for the American Museum of Natural History in New York, which is our sister institution in that sense. This last 40 million years of our history then produces volcanic ashes within the rocks here which can be dated. And that's how we derived the chronology in this state in terms of how old something is when it's found. There's an important volcanic ash in the road cut at Santee Hill and there are fossils found around it--the fossils of small rodents and rabbits, nothing like dinosaurs whatsoever. And so because of the ash and also at the pelosaur site, since these are Roads Department areas, why that's why we go in there and conserve those sites. The director of the State Museum was in contact with the tribal chairman of the Santee Reservation as I understand it. I've been told that myself and apparently then went through a negotiation and found out that this was acceptable to the Santee Tribe. The other interesting thing is that Morris Skinner was mentioned. His name actually is Morris Skinner. He was born and raised in Ainsworth, Nebraska. He was one of my teachers at the American Museum of Natural History. He did indeed work on the Pine Ridge Reservation in the 1950s and 1960s. He hired Lakota Indians to work with him who were grateful to have those positions. And his fossils were taken to the American Museum of Natural History and form an important part of the record of the geological

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history of the southern part of South Dakota. The gentleman named Emory (phonetic), that Larry Bradley mentioned, is now the curator of paleontology at the Smithsonian Institution who I was in graduate school with and would tell you, if he were here today, that Morris Skinner is one of the great scientists of the state of Nebraska. He received a doctorate from the university just a few years ago for all the work that he'd done. So I again will say I came here to support this bill. And I'm going to tell you in as brief a statement as I can why I support the bill. But we have not, as an institution at the university, made inroads on Indian lands. In fact, we look forward to programs with the tribes in the state that could benefit young Native Americans who come to the university and take our courses and participate in our program. I'll try to be very brief about my position. I do not speak for the Society of Vertebrate Paleontology or for the university. I give you my personal opinion as a professional paleontologist. This record that we have in the state of Nebraska is outstanding. The reason we have a whole division of paleontology here is because the resources of fossils in this state are just second to none. The last 40 million years of earth history are documented in Nebraska better than anywhere else in the United States. And when said the sister institution was the American Museum of Natural History, they have to come to Nebraska to get our resources. That's how this thing works. Where we've got a problem now is that paleontological resources throughout the United States are endangered. If you've looked at eBay recently you see dinosaurs and other types of fossils for sale on eBay. They're going to Japan, they're going to wealthy collectors in Germany, they're going to people in California who have no idea what these resources are. So there is an endangered situation here. Fortunately, we don't have a problem such as Senator Schimek just mentioned about the dinosaur Sue. Nebraska was entirely under water during the period of time that dinosaurs walked this earth. So there are actually two dinosaur fossils at the museum, at the university, from Nebraska. One, a chunk of a leg bone and the other a single tooth, that's all we've got. So there's no danger on Indian lands of ever finding a dinosaur that would produce millions of dollars in revenue like Sue. So you might think I was going to say that I'm not supporting protection of resources on Indian lands. And it's the exact reverse of that position I'm taking. We

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should have some sort of a bill, like is proposed here under LR368, to protect fossil resources on the tribal lands in Nebraska. The interesting situation is that tribal lands in Nebraska are not a great geographic area, fairly small. The Winnebago, Omaha Reservation, the Ponca Reservation and the tiny little Sac and Fox Reservation, down in the southeast corner of the state, very, very small amount of land area, as you probably already know. And then a paleontologist can look at those areas and he can see that the types of fossils that come from those areas will depend on the rocks that are exposed at the surface of those reservations. There are not very likely a high amount of productivity to come out of fossils on Indian lands in this state but it will happen occasionally. And so that seems to the professionals, such as myself, that that's justification to have LR368, if it's phrased in the right way and if it's carried out in conjunction with university paleontologists. So what's the vehicle for this? Right now in front of the United States Congress, proposed in the 110th Congress as Senate Resolution 546 and House Resolution 2416 is a bill called the Paleontology Resource Protection Act. This act is the key to protect fossil resources in the United States on federal lands, and it's endorsed by the Society of Vertebrate Paleontology that Larry Bradley was speaking about. It's a good bill. And it will protect these resources on federal lands throughout the country. We could take that bill and by working with a committee from the university and with the other interested parties here in the room, I think, we could develop LR368 into an act that would protect not only fossil resources on Native American lands but fossil resources throughout the state. And now I'd like to close my testimony by just mentioning a few points in the actual LR368 that we think may need a little modifications. First of all in Section 1, if you have a copy of this that Senator Schimek passed out, it says the "paleontological resources" or "any fossil remain, trace, or imprint of an organism preserved in...the earth's crust that is of paleontological interest", well unfortunately, 80 percent of the rocks in the state of Nebraska have some sort of trace of fossils. So you would have a situation here, if you used that exact phrase, that you could hardly pick up a rock sample on a person's land without coming under the provisions of this proposed law. And that's because fossil plant material, a plant root, any type of material that's created by an animal burrowing in

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a rock would come under that definition. What you want here in Section 1 is to protect the fossils that have the greatest commercial value and where the inroads are going to be made by these commercial agencies that are coming into the state and taking out our fossils and selling them. So what you want to restrict that to is to vertebrate fossils, the fossils of back-boned animals--fish, amphibians, reptiles, birds and mammals and, of course, that includes humans as well. There's a little modification in that section then that I suggest that might be worthwhile. In Section 2, the problem with Section 2, if you read down into it, is that destroying a paleo-resource, a "paleontological resource on such property without written notification of such purpose to the landowner...written permission by the landowner permitting such activity." That would be a significant impediment for a professional during the field seasons when we're out in the state because many times it's impossible to get the landowners. You may need the lessees permission. You may need to get the permission of someone in another state before you can actually carry on this work. Verbal permission there we do routinely at the present time. Verbal permission is a good way to meet the rancher, it's a good way to meet the farmer, you get to know his family. You get to be part of the community. And it diminishes this formalization that this written aspect in Section 2 would create. Now that doesn't mean that we're against protecting the resource for the private individual. And I can document that statement by saying if we go to 2(b) we endorse the 2(b) paragraph. "No person shall intentionally appropriate, excavate, injure, or destroy any paleontological resource on public or private property without prior written notification of such intent to the landowner and prior written permission by the landowner permitting such activity." In other words, if you find a valuable paleontological resource scientifically or economically and you go to the landowner and say, can I have verbal permission to look in your land, to study the geology, to work on well resources for you as part of my work as a paleontologist and geologist? But I found a rhinoceros, like the ones found in northeast Nebraska, it's very valuable scientifically. Can I excavate this and I will give you a written document that says, yes. I will provide a written statement that I want to excavate this and that it will go to a museum or to a university. So where the written aspect would be best would be under 2(b). Finally, under 2(c), "Any person

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violating this subsection is guilty of a Class III misdemeanor." Penalties are very well documented in the Paleontological Resource Preservation Act before the United States Congress right now. You, if you wish, could transfer those penalties into this legislative resolution and you'd have a more effective penalty clause here than is actually indicated by this misdemeanor. Why is that? Commercial firms have come into Nebraska, they have come into South Dakota. They have been taken to court, they've been fined something akin to \$500, but they make so much money in the fossil resources they pay the fine and go right back out and dig up something else again. So you need penalties that are of the equivalence of what's in the Paleontological Resource Protection Act. In essence, that's what I have to say. I want to tell you that you should be very proud of the University of Nebraska and the vertebrate paleontology program. The people who work there, the technicians that I work with every day are on an average of 30 and 35 years in their various trades and professions at the university, and they're a remarkable group of people. They want to see paleontological resources protected and they would like to work with the folks in the room here to affect this in LR368. So thank you very much.
[LR368]

SENATOR AGUILAR: Thank you. I found that very interesting. Questions? Senator Pahls. [LR368]

SENATOR PAHLS: I have a question. And I've listened to both individuals and it seems to me I think that...I don't think, I know there's a sincerity on both individuals. There seems to be a disconnection here because I'm hearing that you do this very professionally and I don't...I do not doubt that at all. But when I heard that there was a site that people asked to be involved in and they were not and all of a sudden they see something that other individuals were. I'm assuming those were university students. I just wish that would be cleared up, not with me but with the two of you to see that...
[LR368]

ROBERT HUNT: I think that's the issue. I think Larry Bradley has very good intent in

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trying to move this resolution forward and protect these resources. I think he has mistaken assumed that the university, in excavating those sites, did not want to cooperate with him. I will tell you that the university made a real effort to cooperate in those sites. And I hope and he and the rest of us can get together to produce a (inaudible). [LR368]

SENATOR PAHLS: Okay. That's all I'm asking. I think...because I think we have two groups who are trying to preserve something that needs to be. And that's all (inaudible). Thank you. [LR368]

ROBERT HUNT: Yeah, you're welcome. [LR368]

SENATOR AGUILAR: Further questions? Seeing none, thank you very much. [LR368]

ROBERT HUNT: You're welcome. [LR368]

SENATOR AGUILAR: Next testifier. Welcome. [LR368]

BROOKS JOYNER: Good morning. My name is Brooks Joyner, that's B-r-o-o-k-s J-o-y-n-e-r and I live at 684 North 59th Street in Omaha. I'm the director of the Joslyn Art Museum. I certainly am encouraged and heartened by the testimony of the two previous individuals, both of whom I support, as well as the support for LR368. I want to thank you all for this opportunity to speak to you. I will spend no more than three minutes in my testimony. I think this is absolutely critical legislation however the language of it is formed. It's important to control and protect the precious paleontological resources that are part of Nebraska's ancient geological history, while at the same time guarding the property rights of our state's private and public landowners including Native Americans. For the past eight years, I've been the director of Joslyn Art Museum in Omaha. That does not make me a natural history person nor a paleontologist. But since 1975 I have been the director of museums of art, archeology and natural history in

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Canada and the United States, including the University of Calgary, the Vancouver Art Gallery in British Columbia, the Montgomery Museum in Montgomery, Alabama, and the Gilcrease Museum in Tulsa, Oklahoma. That is my professional experience. I'm actually an art historian, not a paleontologist but I am also a casual collector of paleontological specimens. I have been an amateur paleontologist since I was a teenager in Baltimore, documenting and collecting largely in the Miocene and Eocene deposits that are exposed on the western shoreline of the Chesapeake Bay in Maryland and Virginia. Several of my amateur discoveries are now in the collection of the Smithsonian Museum of Natural History for everyone to enjoy. During the past three decades public fascination with dinosaurs and fossils have accelerated exponentially while much great and careful work has been done by university scientists and curators of our great natural history museums. Fossil and mineral collecting by amateurs and the marketplace for paleontological specimens have exploded with prices soaring on the finest and rarest of specimens. Along with this new marketplace has come the attendant greed, theft, trespassing and sometimes senseless destruction of paleontological resources, the context and interpretation of these objects being lost forever for the sake of profit. LR368 and some of the federal legislation that I've just learned about a moment ago is very much needed and long overdue legislation for Nebraska. It will effectively and fairly create control procedures and monitoring of paleontological resources, protect landowners rights from trespass, define penalties for those who break the law and most importantly it will help to preserve and protect these fossil treasures from exploitation, depletion and destruction. I thank you for allowing me to speak to this issue. And my congratulations to all of you and to the other testifiers today for the advancement of this legislation. Thank you very much. [LR368]

SENATOR AGUILAR: Thank you. Are there questions for Mr. Joyner? Seeing none, thank you. [LR368]

BROOKS JOYNER: Thank you very much. [LR368]

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SENATOR AGUILAR: Next testifier. Welcome, Judi. [LR368]

JUDI GAIASHKIBOS: Thank you very much. Thank you, members of the Government, Military and Veterans Affairs Committee. I am Judi Gaiashkibos. I'll spell that, J-u-d-i G-a-i-a-s-h-k-i-b-o-s. I'm the executive director of the Nebraska Commission on Indian Affairs and I am testifying in that capacity in support of this LR368, introduced by Senator Schimek at the request of Lawrence Bradley and also approved and supported by the members of the Nebraska Commission on Indian Affairs. It's a very complex issue, as you all have heard. And I really appreciate Senator Schimek's work with us and prior to that Senator Harms's work and other members of various entities that met with us. We met with Mr. Smith, the director of the Nebraska State Historical Society, and the previous individuals that testified as well. And I'm here in a capacity to try to bring everybody together in a good way that we can move forward with, hopefully, that this bill will go on into the session after Senator Schimek's no longer being with us. And Senator Aguilar, we will miss you. But we trust that your colleagues here will see the good that can be achieved by this bill. And I think really in essence what the bill would do is it would protect fossils from tribal lands as well as other lands. In the past, there has been some concern that even though the state of Nebraska does have a memorandum of government to government with going back to Governor Ben Nelson, Governor Mike Johanns and now Governor Dave Heineman with our tribes, that perhaps this isn't always implemented at the greatest level. And we believe that this bill, LR368, would give the state the opportunity to protect those fossils and also respect tribes sovereign rights throughout the state of Nebraska and private citizens as well. I really have nothing other to say, except that I appreciate the testimony from the university representatives. And I think that we can maybe make some changes to the language that would satisfy everyone and that would also protect any fossils that could be removed. We want to make sure that if the fossils are removed that they still remain the property of the Santee Sioux Nation or others. And that if they're exhibited anywhere throughout the state that they are labeled as such, that they benefit the tribe, that the value of the fossil is still of value to the tribe and not just to the state of Nebraska. And

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as others have testified, this would give Nebraska an opportunity to be as they were back in 1989, when you had the LR...the legislation for the protection of human remains. That was prior to the federal legislation, the Native American Graves Protection and Repatriation Act. And prior to my being the director of the Indian Commission, I worked for the Ponca Tribe in that capacity. So I'm very familiar with the tragedies and the challenges that we faced in protecting our human remains. So I would like to end my testimony in saying that I, too, support LR368 and hope that the committee will give it good consideration. And I'm open to any questions. [LR368]

SENATOR AGUILAR: Thank you, Judi. Questions? Seeing none, thank you, it's always a pleasure. Senator Schimek has indicated she would like to close now and that's a woman's prerogative. (Laugh) [LR368]

SENATOR SCHIMEK: I thank you, Mr. Chairman. I did say I wasn't going to close. But I did...and I do have the right, Senator Pahls, to change my mind. (Laughter) I just wanted to thank everybody who testified today. I did not know that Doctors Joyner and Hunt were going to be here today. And I...I think they had some very good points to make. The only other thing I wanted to say was that, you know, the committee has heard the testimony. I think the committee understands the issues involved here. And they may, you may even want to take this as a bill yourselves, if that's a possibility. I haven't had a discussion with Senator Harms about it. But he may be willing as well. I just don't want to see it lost in the fray somewhere between, you know, a new committee and new senators and all that kind of thing. So that was the only thing I wanted to say in closing. And thank you very much for your questions. [LR368]

SENATOR AGUILAR: Thank you. Any questions for the Senator? Senator Avery.
[LR368]

SENATOR AVERY: Senator Schimek, the representative from the university had some specific comments to make about certain sections. Do you have any reaction to these?

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For example, in Section 2 the suggestion was made that we might want to drop written notification and allow verbal. [LR368]

SENATOR SCHIMEK: Verbal, I think that's a distinct possibility that everybody could talk about. I get his point that you definitely want written permission if you're going to remove fossils. But if you're going to enter, maybe all it has to be is a verbal permission. At least arguably that could be true. And I think that you all should certainly be open to that possibility. I also thought that the language in the definition is certainly open to discussion as well. [LR368]

SENATOR AVERY: Probably dropping the word "trace". [LR368]

SENATOR SCHIMEK: Yes, yes. [LR368]

SENATOR AVERY: Yeah. That's all I have. [LR368]

SENATOR SCHIMEK: Okay? [LR368]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Senator Schimek. [LR368]

SENATOR SCHIMEK: Thank you very much. [LR368]

SENATOR AGUILAR: And that will close the hearing on LR368. On LR298 is there anyone present that would like to testify on LR298? Seeing none, I would close the hearing for today and invite the committee members to stay put while legal counsel gives us a report on boards and commissions. [LR368 LR298]