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Education Committee
March 06, 2007

[LB520 LB650 LB651 LB654 LR12CA]

The Committee on Education met at 1:30 p.m. on Tuesday, March 6, 2007, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR12CA, LB520, LB650, LB651, and LB654. Senators present: Ron Raikes, Chairperson; Gail Kopplin, Vice Chairperson; Greg Adams; Brad Ashford; Bill Avery; Carroll Burling; Gwen Howard; and Joel Johnson. Senators absent: None.

SENATOR RAIKES: Good afternoon and welcome to this hearing of the Education Committee of the Nebraska Legislature. This would be, I believe, the penultimate hearing in the first session of the One Hundredth Legislature. That really sounded fancy, I thought. We have one constitutional amendment and four bills to hear this afternoon. They will be heard in the order listed on the sheet posted outside the hearing room. We will adopt our usual procedures, I think. Given the people I see out there, we can put a five-minute limit on testimony, although don't feel obligated to use every second; if it works out that way, fine. After the introduction, proponent, opponent, neutral testimony, followed by a close. Please, as you begin your testimony, tell us your name and also spell your last name for our transcriber. Our committee is, actually our committee legal counsel is Tammy Barry, who will appear over there maybe eventually; we have Senator Brad Ashford from Omaha; Senator Gwen Howard also from Omaha; Senator Carroll Burling from Kenesaw; our research analyst is Matt Blomstedt; I am Ron Raikes, District 25; our committee's Vice Chair is Senator Gail Kopplin from Gretna; Senator Greg Adams is from York; Senator Joel Johnson is from Kearney; Senator Bill Avery is from Lincoln; and Kris Valentin is our committee clerk. Please disable your cell phones, and once you do that we are ready to go, and we will begin this afternoon then with LR12CA and Senator Fischer. Welcome.

SENATOR FISCHER: Good afternoon, Senator Raikes and members of the Education Committee. For the record, my name is Deb Fischer, F-i-s-c-h-e-r, and I am the senator representing the 43rd District in the Nebraska Unicameral. I appear before you today to introduce LR12CA. This constitutional amendment proposal asks the people of Nebraska to reaffirm the Legislature's intent that the Board of Educational Lands and Funds become a more responsive manager of the school trust portfolio. In 1996, the Legislature passed LB1205 declaring that the Board of Educational Lands and Funds should develop a plan for the sale of enough educational lands by January 1, 2008, to result in one-fourth of the value of the school trust permanent portfolio being invested by the board in real property located within the state of Nebraska, and the remaining three-fourths of the value of the school trust permanent portfolio being invested by the state investment officer. Eleven years have passed since the Legislature declared this to be the policy of the state, and the board has been reluctant to achieve this policy. There has been some progress in the last two years, but the board is well short of the 25 percent in land goal called for in Sections 72-201.01. The most recent report from the board states that as of June 30, 2006, the K-12 school trust portfolio was 56.6

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

percent land and 43.4 percent stocks and bonds. Barring enormous progress in the next ten months, the board will be far out of compliance with the Legislature's intentions in 1996. LR12CA would ask the voters of Nebraska to reaffirm the Legislature's intent in 1996. While by statute the board has asked to achieve this goal in 2008, my constitutional amendment proposal would give the board until January 1, 2012. There has been a historical reluctance of the board to implement the Legislature's request due to the board's assertion of fiduciary duty. While I appreciate the board's concerns for fiduciary duty, it is my opinion that the board has a fiduciary duty to respect the wishes of the people through their elected representatives in the Legislature to implement state policy. It is my hope that by providing the voters with the chance to reaffirm the Legislature's intent in 1996, the board will be crystal clear on its fiduciary duty to the citizens of this state. We are providing the board another four years to accomplish their instructions, to eliminate any excuses that the task cannot be performed. Many states in the country have moved away from low-return land rental strategies and taken advantage of higher performing assets to grow their states' school trust portfolios. Over the long term, a diversified portfolio with a collection of different financial tools will provide higher returns. The return on land has been consistent, but consistently low: 4 to 6 percent historically. The performance of the investment officer's general endowment fund has a much higher upside. In 1997, the return was 22 percent. There are years of negative performance, but the historical average is very good. I think it is time for Nebraska to move in the direction of higher returns. I think it is also in our state's interest to have the ownership of land in the private sector whenever appropriate. There are willing and able buyers for this land, and I think it is wholly appropriate that we further the ownership of state land in the hands of responsible private landowners. LR12CA will permit the voters of Nebraska to determine our state's policy regarding the investment strategy of our educational lands and funds. Thank you, Senator. [LR12CA]

SENATOR RAIKES: Thank you, Senator. Questions for Senator Fischer? Senator Burling has one. [LR12CA]

SENATOR BURLING: Thank you, Senator Fischer. If the board hasn't come through with the wishes of the Legislature, what about the constitutional amendment? Do you think they would respond to it better? [LR12CA]

SENATOR FISCHER: I believe they would, Senator Burling. Many times I have heard board members say that they have a constitutional responsibility, and it is their fiduciary responsibility that they manage these lands and their portfolio in order to get the greatest return. They feel that they cannot sell those lands because they would be in jeopardy of not performing that fiduciary responsibility. That is why I came to you with a constitutional amendment, because they could no longer use the Constitution of the State of Nebraska as an excuse in not selling the land as they were required to do in 1996 under LB1205. [LR12CA]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

SENATOR BURLING: Thank you. [LR12CA]

SENATOR RAIKES: Senator Avery. [LR12CA]

SENATOR AVERY: These monies could be invested in the stock market in a kind of prudent investor strategy? [LR12CA]

SENATOR FISCHER: Correct. [LR12CA]

SENATOR AVERY: So it wouldn't be restricted to the safest possible investments. [LR12CA]

SENATOR FISCHER: It would be with the state investment officer, who now makes investments with other funds for the state. [LR12CA]

SENATOR AVERY: I know a lot of public endowment money is restricted by the constitution written in 1875 that limits how that money can be invested. Would this not be in that category of public endowment money? [LR12CA]

SENATOR FISCHER: I don't know, Senator, if it would or not, because it would be under the state investment officer, so you would have to look at how those funds are controlled. [LR12CA]

SENATOR AVERY: Well, if it is governed by the constitutional provisions of 1875, that is like putting money under your mattress. At that time, that was probably not a bad strategy, but today it is not. [LR12CA]

SENATOR FISCHER: I doubt then if the constitution of 1875 applies to the state investment officer, because in 1997 the return was 22 percent. [LR12CA]

SENATOR AVERY: Then obviously it is not controlled by that provision. Thank you. [LR12CA]

SENATOR RAIKES: Senator Johnson. [LR12CA]

SENATOR JOHNSON: Well, just a little comment. I certainly have interest in what you are trying to do here. I sit on a few different boards and so on. And about five years ago I was on one board, and we looked back and the investment return was virtually none. And so we changed there and actually divided it so we had two competing firms to see what they could do, and it was just amazingly better since that period of time. So I think we certainly ought to look into something like this. Whether this is the best vehicle or not, I don't know, but I think you are on the right trail. [LR12CA]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

SENATOR FISCHER: Thank you. [LR12CA]

SENATOR RAIKES: Senator, if you look at the last few years, if you talk about operating farmland or ranchland, I think it may well be that the return is very low. But if you include in that the speculative gain in the value, maybe it isn't so low. What I am suggesting to you is that when you count the total return on ag land, either farm or ranch, as compared to stocks and bonds, there certainly are periods when the stocks and bonds do better, but there are probably periods where it is the other way. [LR12CA]

SENATOR FISCHER: I guess my response to that, Senator Raikes, would be I don't believe that the Board of Educational Lands and Funds is in the development business, and I don't believe they should be in the business of land speculation. There are a number of instances that I think this committee needs to look at on what has happened and how land is being offered for sale by the board, how the price is set, how that is determined. If you look at the plan that was issued by the Board of Educational Lands and Funds in November of 1996 in response to LB1205, I think that would provide interesting background for the committee. But I believe that this is an issue that should be addressed. Perhaps a constitutional amendment is not the way to go about it. But when the responses I have received have been that their fiduciary responsibility and their constitutional responsibility is that they shouldn't be selling this land even though the Legislature passed a law in 1996 saying that they needed to get down to 25 percent, then I question the board and I question the Legislature in letting this continue. [LR12CA]

SENATOR RAIKES: Okay. I guess one other comment following Senator Avery's was I take it you would think that if the board sold the land and the money were invested other places, one of those other places couldn't be land. [LR12CA]

SENATOR FISCHER: Correct. [LR12CA]

SENATOR RAIKES: Okay, I don't see any other questions. And you do hope to stick around? [LR12CA]

SENATOR FISCHER: I hope to be here. In Transportation we do have an Exec Session scheduled, but I hope to be here for closing. If I leave, my apologies, but I will have to waive closing. Thank you. [LR12CA]

SENATOR RAIKES: Okay. Thank you, Senator. Proponent testimony for LR12CA. Pete, welcome. [LR12CA]

PETE McClymont: Mr. Chairman, members of the committee, my name is Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I am the vice president of legislative affairs for Nebraska Cattlemen, and I won't use all my five minutes. We have two policies in favor

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

of what this constitutional amendment would do if approved by the voters. We have in our policy for gradual sale. Obviously when we are at 56 percent and the target was supposed to be 25 percent, that is probably a little more than gradual. So basically a lot of our ranchers that are members believe in this, and so I am here to support this, and I would be happy to answer any questions if you have any. [LR12CA]

SENATOR RAIKES: Okay. Thank you. Questions? Senator Kopplin has one. [LR12CA]

SENATOR KOPPLIN: On the reaching the 25 percent that was supposed to have been sold or whatever, would it be fair to say that part of the problem was the gains made in the value of that land was going more rapidly than they could get down to the 25 percent of the...are you following me? [LR12CA]

PETE McCLYMONT: That could be the case, but seeing how this has been in place since '96, I don't know if that could be legitimate or not, because in doing my homework for this committee, one of the things I found out, the average piece of Sandhills property is worth anywhere from \$250 to \$300 for ranching purposes. So if we see the ripple effect in ethanol and that transcends into the ranching, some of the ranching properties right now could be worth \$650, so obviously that is more than double. But from '96 to today, I don't know if you can say growth in land values would be such that would have allowed for this to go slower than what most people would have thought. [LR12CA]

SENATOR KOPPLIN: Okay. Thank you. [LR12CA]

SENATOR RAIKES: Any other questions? Thank you, Pete. Any other proponents, LR12CA? Are there opponents? Herb. [LR12CA]

HERB SCHIMEK: Mr. Chairman, I am Herb Schimek, H-e-r-b S-c-h-i-m-e-k. I represent the Nebraska State Education Association. We have had a long-standing position against the sale of school lands. As you know, when this state was created, about 2.9 million acres of land were given to the state by the federal government for the purpose of educating the children. This was to be held in trust for the children of the state Nebraska. By 1900, half of that has been stolen or sold to people in the state of Nebraska. Now if you go back and look at the history of this, it practically was stolen. The land sales were very, very small in number as far as the amount of money that was brought in. That money was put into a trust which didn't bring back hardly any money at all to the children of the state of Nebraska. It wasn't until Jim Exon made it a campaign issue in the 1960s that they stopped the sale of school land, and if you remember, there was a court case and the former Chief Justice of the Nebraska Supreme Court, Norm Krivosha, was the person who brought that suit. Basically, this land has been chiseled away constantly. Now I know that you might make more money one year with stock investments, but land doesn't go down 700 points in a week, as we have just experienced with the stock market. So it might be something to think about. We are

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

against putting this into the constitution. We don't think it should be in the constitution. It is in statute at the present time, and you might want to look at what a fiduciary means. It means they should get the most results that they possibly can. So therefore, we have this long-standing position against the sale of school lands, and keep the trust for the children of the state Nebraska. Any questions? [LR12CA]

SENATOR RAIKES: Thank you, Herb. Questions? Thank you. Any other opponents, LR12CA? Is there neutral testimony? Jay. [LR12CA]

JAY GILDERSLEEVE: (Exhibit 1) Good afternoon, Chairman Raikes, members of the committee. My name is Jay Gildersleeve, J-a-y G-i-l-d-e-r-s-l-e-e-v-e. I am general counsel and chief operating officer for the Board of Educational Lands and Funds, appearing here today in a neutral capacity, primarily to answer your questions. If I could, I am going to dive into some of the questions, I think, that have been raised here, see if we can clear up some of those things. First of all, the statute that has been referred to is 72-201.01. That is the statute that required the board to create a plan for the sale of school lands. The last sentence reads, "In no case shall the plan or any part of it be executed if such execution violates the fiduciary duties of the board." That is what your statute says. Now that is absent from the constitutional amendment, of course, but that is the last sentence of the statute. Now in terms of the approach that the board has taken over the last ten years, and of course I was here ten years ago when LB1205 was passed. I testified in front of this committee at that time, and among other things my testimony touched on the following subjects that you know historically, and I think we have mentioned that here today. Historically, the choices for the school trust were land or bonds, and by bonds it was usually government bonds, and as between the two, the land was the big winner. No question about that. In the time period from inception until about 1980 or so, those were the choices, and if you have those two choices, you always pick the equity over the bonds, and the land, in the long run, was the big winner. And nobody, of course, at the end, let's say of the Second World War, invested in things like S&P 500 index funds. They didn't exist. The S&P 500 exists, but index funds did not exist. No one had those kinds of tools available. But I did testify ten years ago in front of this committee that even though land was the strongest option that the school trust had available in history, if stocks had been a choice a portfolio of half stock/half land since the Second World War would have been stronger than land itself. That would have been the single strongest portfolio that would have been available and may well be the single strongest one going forward into the future. That again would be roughly half land and half stock, but by stock we don't mean you go buy everything in Enron. We mean something like a broad-based index fund. Anyway, the situation today and the situation since the statute was passed ten years ago was basically this, the funds are invested by the Investment Council, and the Investment Council projects a long-term rate of return from the permanent school trust fund of 8 percent. Now this is projection, not reality, but it is based on the following: first of all it is based on 10 percent from stock, and that is the long-term projection industry standard that you get from almost everybody anywhere

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

on earth today, 10 percent in the stock market long-term. Of that, only about 2 percent is distributable income. That is the dividend rate today out of the S&P 500. The other 8 percent is appreciation. Then the other half is invested in bonds. The Investment Council projects 6 percent for bonds long-term. Now you can't get that today in bonds, but they projected long-term. And so if half is in stock earning 10, and the other half is in bonds earning 6, the average is 8, and that is how you get the long-term projection that the Investment Council makes, and they make this not only for the permanent school trust fund, but they make it for the retirement funds that they are managing. Now as far as land is concerned, if anyone has or can find any projections for agricultural land long-term of less than 10 percent, we would like to know about it. I will say that again, if anybody has any reputable projections, you can go to national people, you can go to Hartford, Prudential, you can go to Farmers National, any kind of professional organizations that have knowledge in the industry that project less than 10 percent for land long-term, we would like to know about it. I have been here for over 25 years. The lowest I have ever seen by anybody that appeared to be competent was 9.5 percent long-term. Let's assume, for the moment, the land is 10, since that seems to be the general consensus. Now out of that 10, we pay real estate taxes. The taxes are actually imposed on our lessees, but we agree voluntarily to step up and pay them. We collect them with the rent, and we pay taxes in the same manner as if the land was on the private sector. You also have land management costs that are paid out of that. But even after you pay those things, the long-term projection for land is still 8.2, that is higher than the fund. Now that doesn't mean that every piece of land will beat the fund. It means that some pieces of land are better than the fund and some are not, you see. And we perceive our job in terms of trying to implement this statute is to sort through the land and try to select those parcels that we believe ought to be sold where the fund can do better, and try to sell those and get that money over to the Investment Council to be invested. We have a thing that is called the priority land sale list. It is posted on the web site, over, I don't even know what counties, it is probably 1,000 parcels on there today, over \$100 million listed. They are all preapproved for sale, prepriced. If you want them, if you hold the lease, you can surrender the lease and buy it. If the lease expires, you can let us know that you want to do that and we will offer it then and you can buy it. They are preapproved for sale, prepriced and we review those approvals and prices at least annually. The problem is though, and one of the things that was touched on a little bit ago, ten years ago when I sat in this chair, the value of the school trust land was \$338 million. Today, the land is worth \$525 million, and we have sold off \$50 million worth since that time. So it went from \$338 million to \$525 million. That is \$200 million worth of appreciation, plus \$50 million of land sales, and in that time the land spun off more than \$200 million of income distributed to the public schools. So \$338 million of land, ten years, over \$200 million of income, \$200 million of appreciation, and \$50 million of land sales. That \$50 million is over in the permanent fund. So there is a problem, of course, with the...back ten years ago when this thing was adopted, the stock market was going like gang busters, and all of a sudden the stocks went in the tank and the land jumped up, and of course, that obviously alters these percentages as

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

you go along. It is a moving target, in other words. So the only other thing I guess I want to mention, I want to take your questions, but there is a reference in the amendment here to 2012. We are neutral here simply because we think it is the people's constitution. If the people want to vote on this thing, that is fine. If they want to adopt the thing, that is fine. The difference between the constitutional provision and the statutory provision is there is no reference in the constitutional provision in this CA to fiduciary duty. But that sentence is in the statute, "In no case shall the plan or any part of it be executed if such execution violates the fiduciary duties of the board," and we have viewed that as a mandate for us to go through the land portfolio, select the, if you like, the lower half, I am going to generalize here, select that part of the portfolio that we believe the fund can outperform, sell that part of the portfolio, get that money over to the fund, and keep the part of the portfolio that appears to outperform the fund. That is what we believe is the mandate, and that is what we have been trying to do, and, again, when you have a situation where the thing you are sending money over to drops, and you will remember we had some substantial drops, and the thing that you are selling jumps up, well, you are probably not going to reach any certain percentage. But anyway that is what has been happening, and the good news is that your school trust is almost to reach \$1 billion. The land, as I mentioned, has a value today of about \$525 million, actually probably higher than that, and the fund is about \$425 million the last I checked. Now there was some upward movement after that, and then after that, again, the Chinese sold, so you see it moves around, right. But in round figures, \$950 million total, and within a year or two we expect the land to keep going up, the land by itself may take this thing over \$1 billion in another year or two. And that is a good thing for the public schools and school kids of the state. So let me try to field your questions. [LR12CA]

SENATOR RAIKES: Okay. Thank you, Jay. Questions for Jay? Let me ask you one that is probably off this topic, as I understand it there is a recent increase in the funds available for apportionment. [LR12CA]

JAY GILDERSLEEVE: Yes. [LR12CA]

SENATOR RAIKES: And can you tell me about that? [LR12CA]

JAY GILDERSLEEVE: Sure. What happened is this. We have, as a matter of fact, we brought some biennial reports. Should I hand those out because we have enough for everybody? [LR12CA]

SENATOR RAIKES: Yeah. They will get them. [LR12CA]

JAY GILDERSLEEVE: We mail these to the offices of every senator, of course, in January, but if we hand it out then you can all look at what I am going to talk about here for a minute. Now if you will turn in this book, when you have it, to pages 8 and 9. First on page 8, on the left hand side, what we do in this report is the top half of page 8 is the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

income that was generated, it is biennial, so it is over a two-year period. Our organization reports biennially simply because that is history. This is the sixty-fifth biennial report, so that is 130 years. That is quite a bit of tradition. We have kept that up because that is something we inherited from the past. So these are two-year figures. The top half of page 8 shows the income generated by the school trust that was distributed over the two-year period, and that income, I am looking at a photocopy of the page here, but I believe that income is \$76,900,000 and change. Everybody found that? Okay. All right. Now right above the total you see a thing that says accumulated interest on the principal deposited in the OIP, it is \$8.2 million. That is the number we are going to be talking about here, and that, Senator Raikes, is a number you are in reference to. That is the jump up in the income. If you would look at our reports from two years ago, four years ago, six years ago, you will not see that. That line is new. It is this time only, and hopefully we will never see it again. Now on the next page we published the balances of the fund, and the permanent school trust fund is the one that I referred to as being \$425 million. Now this you see is clear back in June 30, 2006. Almost \$400 million is the fund that is listed first there, \$397 million. And the others are permanent university trust funds, and under that you see a paragraph talks about since our sixty-fourth biennial report, which would be one report before that, two years before, the auditor of public accounts determined that the information of the permanent fund balances had been unreported by \$65 million and that it was on deposit in the short-term investment pool, which is called the OIP, and you can read the rest of it for yourself. So here is basically what happened. The state of Nebraska operates a double-entry bookkeeping system, and when any money comes in for deposit it goes first into what is now called the OIP, the operating investment pool, but we used to call it years ago the short-term pool. The idea is a check shouldn't sit in your drawer, you ought to get the money to work. So no matter where the money is going, it is deposited initially into the OIP or the short-term pool, and then the computer just tracks it, how much is yours, how much is yours, and what funds it is supposed to go to. Now we report, because the statute asks us to, we report in our biennial reports the percentage, the fund balances and land balances and the percentage of each, and you will see that is right down there. The land was 56 percent and the stocks 43 percent. When the auditors did our audit the last time and checked the number we had published, they, of course, have access to everything that is in the state computer system. We, like all agencies, can't see everything, but the auditors can see everything, and when they looked they saw \$65 million or \$70 million sitting in the short-term pool tagged for the permanent school trust fund. And, of course, that is not something we could see but it is something that they saw, and so they undertook an investigation to figure out what had happened. And basically what had happened is this. Over the last six or seven years, every dollar that was supposed to go into the permanent school trust fund and supposed to be invested by the Nebraska Investment Council never got invested. What happened is everything, if it was land sale proceeds, which is something we would generate, we would take it to the treasurer's office. We would deposit it. It would code permanent fund land sale, or if it is royalty from oil and gas, it would code permanent fund royalty. If the state treasurer operating

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

the unclaimed property system had deposits--and you will notice that they have substantial deposits, they are second only behind land sales--the state treasurer would again deposit it code permanent fund unclaimed property. Somebody from a court might code permanent fund and it might be a fine, a penalty, a forfeiture. Oil and gas severance tax goes into the fund. It is deposited directly by the Department of Revenue. They would code it permanent fund severance tax. So all this money got deposited, but the folks at the Investment Council never came and picked it up and deployed it into the stocks and bonds. Now it is not lost, it just set there. And so the auditors found it and by the time they had found it, it had accumulated over the years to some \$65 million of money coded to the permanent fund that had never been deployed, and of course that money is invested in short-term interest document, so it has earnings. And so over the years earnings had accumulated. So it is like compound interest, you see. Right. And it is not put out in stocks and bonds, it is solely in interest, so you have accumulated interest as well. And by the time the auditors found it, it was \$65 million of principal and almost \$6 million being accumulated income. And after the auditors found it, then they got a hold of us and the Investment Council and, you know, Department of Administrative Service, which actually runs the computer system, of course, and actually does a lot of these things, the treasurer's office and said, you know, we have got to get this fixed folks, and everybody got together, and to fix it is really pretty simple. The problem from the Investment Council's perspective is the investment officer that was here in '96 had left, a new investment officer had come in, and she has now left and another one has come in. The state treasurer's office had turned over, and just lots of changes, and nobody picked up the money. Now the money wasn't lost. Once it was determined how much was there, it was finally transferred, the principal was finally transferred into the permanent school trust fund in about December of the last year. So that is how long it took to get everything straightened out. By the time it was transferred, it was almost \$90 million transferred into the permanent school trust fund. And that is included now, and this \$397 million is also included in the current value of the \$425 million I mentioned a little bit ago. But that \$90 million was put out in stocks and bonds, as I told you a minute ago, and by that time the accumulated income was \$8.2 million, and that again is the income that all of this money had earned, it had just been compounded into the short-term pool, and of course that is income and it is supposed to go into what is called the temporary school fund, which is the holding account for annual income, and to be distributed from there to the schools. The Department of Administrative Services, of course, maintains the computer records. They went back, all the way back as far as their records would generate, ten years or more, satisfied themselves that this was the correct number, and they then took it out of the OIP and deposited into the temporary school fund, and then from there, of course, it was distributed to the schools. Now the effect of that is that in one year, distributions jumped up \$8.2 million above what would be historically normal, and the next year of, course it, will drop back down. Now theoretically, the state aid to education statutes will counterbalance that. I don't know, but you would assume, in other words, that the trust income goes up, sales and income tax assistance to education may go down, and vice

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

versa. But in any event, that is what happened. It is one of those things that... [LR12CA]

SENATOR RAIKES: You didn't notice in your office that the money wasn't in the...?
[LR12CA]

JAY GILDERSLEEVE: No. [LR12CA]

SENATOR RAIKES: ...and there is not a procedure whereby that would be made clear to you? [LR12CA]

JAY GILDERSLEEVE: Well, you see now the Investment Council, of course, publishes reports. When we wanted to know the fund balances, we would just check with the Investment Council or we would actually get their computer printouts, which they give us the printouts, showing what the fund balances were. The fund balances match what was published in their annual report, see. So now at the time that this happened, again, if you go back into history here, this is just about the time that the stock market tanked, so the school trust fund which had a book value of let's say \$300 million dropped down to \$250 million, and then it starts coming back to \$300 million, and in that time we had no way of knowing because this happened gradually. So this \$65 million would have represented maybe \$10 million or \$15 million per year, Senator Raikes... [LR12CA]

SENATOR RAIKES: Wouldn't you be thinking about putting in place some sort of a mechanism where you would be able to notice this? [LR12CA]

JAY GILDERSLEEVE: Well certainly. It is the kind of thing that never should happen. The situation is this. Of the stuff that goes into the permanent fund, only approximately half of it run through our office; that would be land sales and royalties. Severance tax comes from the Department of Revenue. Unclaimed property comes from the state treasurer's office. I mean we get this kind of a Keystone Kops, and I don't mean to...but just listen to how silly this sounds. Here you have the state treasurer who runs the unclaimed property system, that is the system that they publish the stuff in paper when they get the free advertising. They know they run the program. They are the second largest depositor of the money, state treasurer is making the deposit into the permanent school fund. The state treasurer is the only permanent member of the Investment Council. The state treasurer is not investing the money because the state treasurer doesn't tell the state treasurer that the state treasurer made the deposit. See, I mean it sounds like a zoo. But in reality the problem is that the computer system is actually run by Administrative Services, see, and they are the ones that set up the system, and so as we code it in, we code...everybody coded the stuff correctly. The state treasurer coded it correctly, the Investment Council, Department of Revenue with severance tax, everything was correctly coded. The mess-up, if you want to call it one, is simply that ten years ago when we were going through all this business writing the statutes and all that stuff, the investment officer at that time, those folks perfectly well knew that, well,

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Transcriber's Office

Education Committee
March 06, 2007

there is money coming into the permanent fund all the time, and every month or every two months or however often we got to go get the money out of what is called the short-term pool and go deploy it however we are going to deploy it. Well, Rex left. Carol Kontor came in, and Carol didn't know. Now how did she not know? I don't know. I mean Rex didn't tell her. I don't know how she doesn't know. So she is the new investment officer, and maybe some of Rex's people left, I don't know that, at the time he left. And basically in all the time that Carol was the investment officer, nobody went and picked up any of the money. And now, of course, she is gone, and Dave who is here now, just arrived about the first of this year, inherited this situation. But it is simply a matter that you just simply have to know if you are the manager of the fund that there is money coming in, and some of it comes from us, some of it comes from revenue, some of it comes from the state treasurer who is the only permanent member of the Investment Council. They just got to know the money is coming in. It is presumably a one-time problem, presumably it won't happen again. Now whether the permanent school fund actually lost anything in this time period is questionable. First of all, the principal was never lost. It did acquire accumulated income during this time. This is also the time period in which the stock market tanked. So it had been in stock, you know, it dropped and then came back, but net during this period, the stock market had very little net gain. So you could certainly make an argument, even though it was serendipitous, you could certainly make an argument that the school trust didn't lose very much. But if it didn't, it is just dumb luck. It just happened to be at time where short-term interest may be every bit as good as the stock market because the stock market is going into the tank at that moment. But presumably it won't happen again. Part of the problem, again Senator Raikes, it seems ridiculous, but when Administrative Services set up this computer system, there are safeguards so that I can't see, you can't see, we can't see the things that are out there. This is called the NIS, the Nebraska Information System. When they first set it up it was completely transparent. Anybody could see anything. You couldn't access it, you couldn't get the money, but you could see things. But they found out, somebody pointed out to them, well, that means you can get Mary's travel voucher and you can see that she is just about to go on some business trip and she is registered at this hotel and she has prepaid the plane ticket and somebody could be there waiting for her because they can see it on the computer. So now they put safeguards limiting what people can see. Now one of our recommendations as a consequence of this, and if you happen to read the audit report of our office, I wrote that response, one of our recommendations to this is that the school trust funds ought to be transparent. The permanent school trust fund ought to be where anybody can see it. I don't mean you can get the money now, because you don't spend, you don't pay travel vouchers out of that thing. It is a permanent, 100 percent permanent trust fund for education. [LR12CA]

SENATOR RAIKES: So this is a recommendation. This isn't necessarily something that is going to happen. [LR12CA]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

JAY GILDERSLEEVE: No. [LR12CA]

SENATOR RAIKES: So what you are telling me is that we would hope that this wouldn't happen again, but it might. [LR12CA]

JAY GILDERSLEEVE: It might. But I would hope it wouldn't. I would think somebody over in the investment office has made a note that we have just got to go pick this stuff up. The new investment officer, Dave, and one of his staff people came over to our office in January, and we had a nice long chat about it. And they are just simply going to make sure they have plenty of...because amazing as it seems, they couldn't access the short-term pool and see what money was in that pool that was coded to the permanent school trust fund. So here you have the people who are supposed to invest the money and they can't look in the computer system and see if there is any money there, and we couldn't see it, in other words, because it doesn't have read-only access. Now, I think once they realized that this is a fund that has deposits on a regular basis, I mean royalties come in every month, for goodness sakes. Land sales may be intermittent and unclaimed property may be once a year, but oil and gas royalties come every month. Once you understand that the money is there every month, you presumably just task somebody to go pick it up. [LR12CA]

SENATOR RAIKES: Senator Kopplin has a question for you. [LR12CA]

SENATOR KOPPLIN: Wouldn't this make a wonderful argument to leave school lands in school lands? [LR12CA]

JAY GILDERSLEEVE: Of course. But I didn't want to make it. I don't want to make it. A part of the problem is that you can't lose the land. [LR12CA]

SENATOR KOPPLIN: That is what I am saying. [LR12CA]

JAY GILDERSLEEVE: That is exactly right. [LR12CA]

SENATOR ASHFORD: It is harder to lose the land. [LR12CA]

JAY GILDERSLEEVE: I mean I guess you could forget you own it, but you can't actually lose it. I have taken a lot of your time. [LR12CA]

SENATOR RAIKES: Okay. Thank you. [LR12CA]

JAY GILDERSLEEVE: Anything else? Okay. Thank you. [LR12CA]

SENATOR RAIKES: Any other neutral testimony? Senator Fischer, you are up. [LR12CA]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

SENATOR FISCHER: Thank you, Senator Raikes, members of the committee. I am speechless, almost. [LR12CA]

SENATOR RAIKES: That one you are going to have to sell. We are not going to believe that one. [LR12CA]

SENATOR FISCHER: Okay. I guess my first question would be, who is in charge at the Board of Educational Lands and Funds? They haven't had an executive director for a number of years. I don't know why that is. I would think that the board and general counsel could be able to find that information and keep tabs on it since the Board of Educational Lands and Funds has been in existence for any number of years. Those would be some questions I would ask. I am not trying to take funds away from the school children in this state. That is not the purpose of this. Mr. Schimek said that the NSEA has a long-standing position to be against the sale of school lands. I respect that, but a bill was passed in 1996, LB1205, that authorized that we look at selling those school lands and get the holdings down to 25 percent of the portfolio. That was to be accomplished by 2008. It hasn't happened. That is the discussion here. We had a statute passed. This isn't something new that we need to sell our school lands down to 25 percent. The decision was made in 1996. It hasn't been done. Yes, we have had a number of acres sold, especially in the eastern part of the state. That is probably why I get very determined when it comes to this issue because my legislative district has hundreds of thousands of school land acres. Cherry County alone has over 200,000. Yes, we receive property taxes from it. I suppose that, yes, you can say that the Board of Educational Lands and Funds are the ones paying those property taxes, but they are also charging more for the leases in order to do so. They are also charging more for those leases to private property owners who are already paying property taxes in order to pay those property taxes to the county. I looked at different ways in going about this and how to get this discussion happening on why this law in 1996 is being ignored by the majority of people down here. I thought we needed to have the Legislative Performance Audit Committee do an audit so we could start having some questions answered. I looked at introducing a bill to move the Board of Educational Lands and Funds, their office, to be in the center of where the school lands are in this state. That would put them either in Mullen or Hyannis. My reasoning there could be that they could be better able to manage those lands if they were nearer to them. I thought about maybe we should just turn this all over to the Investment Council and have them handle everything. When I was thinking about the audit, I thought how much money goes for the Board of Educational Lands and Funds and their operations. We always hear the argument that this money is for the school children in the state. So how much money goes to the Board of Educational Lands and Funds for their office and their employees, and not just the employees here in Lincoln, but their employees throughout the state? Shouldn't we look at that if we are serious about all this investment going for the school children in the state? But it boiled down to that a law was passed in 1996, LB1205. I

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

have suggested to you that you read the board's plan that they came up with in November of that year. I don't think the intent of that law is being followed, and I would urge you to consider this constitutional amendment as a way to have that law followed. Thank you. [LR12CA]

SENATOR RAIKES: Thank you, Senator. Questions for Senator Fischer? You mentioned the cost of managing these lands via the lands and funds operation versus hiring it out or something. Did you actually do some investigation on that so you have a comparison? [LR12CA]

SENATOR FISCHER: I think we might have something in the folder here, but I can try and get that to you. [LR12CA]

SENATOR RAIKES: Okay. [LR12CA]

SENATOR FISCHER: Since we have been working at this for a couple of years [LR12CA]

SENATOR RAIKES: Okay, appreciate that. Anything else? Senator Avery. [LR12CA]

SENATOR AVERY: Any comments on why you gave up on the other alternatives you mentioned and chose this one? [LR12CA]

SENATOR FISCHER: I try to be a reasonable person, Senator Avery. [LR12CA]

SENATOR AVERY: I am glad you told me that because I was...(laughter). [LR12CA]

SENATOR FISCHER: I just want to clarify that. Yes, a bill to move the office to Mullen or Hyannis, that would of probably gotten some press. That is not my objective here. I put in a request to the Legislative Performance Audit Committee this fall and spoke with Senator Schimek in January to see if they would possibly have the time to look into that, and she felt that they had too many requests and they wouldn't be able to, which is why, then, I dropped this bill in late. Those are the reasons. [LR12CA]

SENATOR AVERY: Have you thought about going to the auditor of public accounts? [LR12CA]

SENATOR FISCHER: I would like to keep the discussion here in the Legislature where I believe it belongs. [LR12CA]

SENATOR AVERY: I agree. Thank you. [LR12CA]

SENATOR RAIKES: Thank you, Senator Fischer. [LR12CA]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

SENATOR FISCHER: Thank you. [LR12CA]

SENATOR RAIKES: That will close our hearing on LR12CA and we will move to LB520. Senator Howard. Fire away, Senator. [LR12CA]

SENATOR HOWARD: (Exhibit 2) Senator Raikes and members of the Education Committee, I am Senator Gwen Howard and I represent District 9. I am pleased to be here today to introduce LB520, which would create the Early Childhood Legislative Study Group. The purpose of this study group is to conduct an in-depth review of all current available early childhood programs and how these programs are financially supported. The study group would also investigate what kind of state investment would be needed to finance universal preschool for every child in Nebraska. In addition to looking at how to finance a universal preschool program, the study group will look at how to coordinate private, for-profit, and nonprofit early childhood programs with public school programs. Another area which is very important to me is that the study group will look into the licensure and the certification standards for early childhood teachers. As you know, I believe we need to have highly qualified teachers in our early childhood classrooms who are treated like the professionals that they are. I do not need to tell the members of this committee how important early childhood education has become in recent years. As the Education Committee continues to invest more into early childhood education, I think that it is very important that we have as much information available to us to guide us in our decisions. I believe the study group can do just that. While Nebraska in recent years has targeted early childhood funds toward at-risk children, research shows that universal preschool for all children has much larger benefits. The National Institute for Early Education Research has provided me with some interesting findings. The lowest rate of preschool attendance in this country is among families with incomes of \$40,000-\$50,000 a year. The primary reason is the high cost of private preschools. The highest number of students who fail in school and actually drop out of school are also from middle-class families. Universal preschool programs have been shown to have a bigger impact on low-income children because they are with other kids from other socioeconomic backgrounds. All socioeconomic groups show gains in academic achievement with universal preschool that minority and low-income students have shown even bigger gains. Oklahoma has had a universal preschool program for several years, with over 95 percent of four-year-olds enrolled. Several other state legislatures are currently looking at similar programs. I know this Education Committee takes very seriously the need for quality early childhood education programs in this state. I believe we can make more informed decisions by passing LB520 and creating this study group, and I have got some people who will be coming after me who can answer more detailed questions about the study group and its makeup and etcetera. [LB520]

SENATOR RAIKES: Thank you, Senator. Questions? Let me ask you, you mentioned

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

universal early childhood, and Nebraska's approach has very much been targeted, and targeted actually to the groups you mentioned that seemed to have gained the most. Does it seem wise to you that we would switch from that to a universal program?
[LB520]

SENATOR HOWARD: Well, I completely understand what you are saying and have worked with you on bringing up the children that need this service the most. But especially in looking in the issue of all-day kindergarten, I was frequently reminded that we need to really address the needs of the middle-class child, as well as the, if you want to call them, the underprivileged child. I think the study could give us information on that, see if that is well worth pursuing. [LB520]

SENATOR RAIKES: Okay. Thank you, Senator. We will go to proponents, LB520. Welcome. [LB520]

MARCIA CORR: (Exhibits 3 and 4) Thank you. Good afternoon, Senator Raikes and members of the committee. My name is Marcia Corr, M-a-r-c-i-a, Corr is C-o-r-r, and I am here on behalf of the State Board of Education and the Department of Education in support of LB520. I want to begin by thanking both Senator Howard and Senator Raikes for your commitment and the leadership that you have shown in early childhood to this point, and I think that has helped us to be in a place now to become really serious about early childhood. Senator Raikes's commitment helped to lay the groundwork to bring Nebraska to this point. His introduction in 2005 of LB577 to put early childhood into the state aid formula allows for those four-year-olds who will attend kindergarten in the following year to be counted. That also has generated interest among schools to have an opportunity for all of those children before they start to school. We had additional funding also in 2005, and at this point we are serving about 1,500 children with those dollars. Right now, we will have the first of those programs roll over to state aid. The programs are required to either have been a grant program for at least three years or to have been approved for three years before rolling over to state aid. That means for '07-08, when those first programs roll over, we will have some funds freed up to do additional grants. We are holding administrator workshops across the state, and we had 100 folks attend the first workshop. We had over 60 at the second. We have a couple we have had to reschedule, and so we have three remaining workshops and we have at least 130 registered for those, and they are saying what are we going to do? Is it worth applying for a grant when so many school districts are interested? So we know that Nebraska is in a place where we really need to address this. We did put some money in our budget request for this year and it's not looking real promising right now, but we really know that there is a high need for that. The legislative study that is proposed by Senator Howard will provide a next step that will help give information to fully inform legislators about making decisions to finance early childhood education in Nebraska. The early childhood grant program as you said, Senator Raikes, does target at-risk four-year-olds at this time. That was made a priority with that most recent legislation. In

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

targeting those at-risk four-year-olds, we do really encourage a mix of children that matches the demographics of their community through partnerships with other entities within that community. We both want a mix of three- and four-year-olds, as well as a mix of demographics. The early childhood education endowment is just getting under way. That will provide grants for programs and services for children birth to age three. So we are really in a situation right now where we are finding that we still need that certainly for the four-year-olds, and we don't have anything that is targeted right now at three-year-olds. It is only those that are in those mixes with the three and fours. When we think about a legislative study, think about the timing of that. It really is a match with where we have so much commitment by our State Board of Education and the Department of Education right now. The studies are supportive of that commitment. The Board of Education has recently completed a policy study and you have prior to today received this in your offices. I know. I brought the executive summary along with me so you can see that this study that not only was a review of all the research studies across the country that gathered national data but also has Nebraska data in it, and then we also have the policy forums that were held across the state. We had well over 400 folks who participated in those, so the commitment is there. Also, the Governor pointed ECICC committees, the Early Childhood Interagency Coordinating Council, and the Health and Human Services together for kids and family initiatives have implemented a number of studies and have been gathering data. So we do have an increased amount of Nebraska data that could help to inform that study. We know the research studies are clear that the investment in early childhood to academic, social, and economic benefits and we have a return on every dollar invested that will reap \$7 to \$17 in return. The early years are a critical time for learning and development for young children. We have a good start in Nebraska. We have some infrastructure in place and it's time for us to carefully consider how we really are going to finance the investment in early childhood education. The Department of Education is willing to help and provide assistance in the study in any way that we can, and I would be happy to answer any questions. [LB520]

SENATOR RAIKES: Okay. Thank you, Marcia. Questions for Marcia? There was a study done I think in 2005? [LB520]

MARCIA CORR: Yes, and this is the report, the executive summary. Then the full report looks like this. This study was really looking at what are the priorities and the recommendations across the state related to early childhood, and this was looking at early childhood defined as birth through grade three or through age eight. So what you find in the study and in this executive summary, if you look at the center of that you have the priorities and recommendations there around access to services and programs about what those practices look like in those programs, what we need to have high-quality programs. And we do have a definite commitment to partnerships in Nebraska. That is what we do. We really want to be working within the communities to build those partnerships, recommendation priority around financing and around community support. [LB520]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

SENATOR RAIKES: So let me ask you, the proposed study would update that one or would fill some hole left in that or what? [LB520]

MARCIA CORR: I think what we see in the study that has been completed, that it says we really need to do something. This is a priority. We know that it's a sound investment. What this study did not address is how do we do it. How do we generate the dollars and the interest and the public commitment to actually achieve all of the recommendations within that study. [LB520]

SENATOR RAIKES: Okay, and by your testimony you said the current funding falls far short of meeting the need to provide early childhood programs for at-risk children. So would you turn then to universal early childhood? [LB520]

MARCIA CORR: I think it would be part of a study to look to see what would best meet the needs within the state of Nebraska, particularly with our commitment to partnership. What does universal preschool mean, because it does mean something different in different states. Some states call it universal pre-K when they reach all of their at-risk targeted children. In some states it's available to all. Our direction in Nebraska has been to be sure that there is access in all communities across the state and all districts, and that it be a combination of partnering between public and private entities. [LB520]

SENATOR RAIKES: Okay. Don't see any other questions. Thank you, Marcia. Any other proponents for LB520? [LB520]

JAY SEARS: (Exhibit 5) Senator Raikes, members of the Education Committee, I am having passed to you written testimony. I will just do a couple of highlights. NSEA supports... [LB520]

SENATOR RAIKES: You have got to remind us who you are though. [LB520]

JAY SEARS: Oh, it seems like I have been here all night. I am Jay Sears, S-e-a-r-s. I represent the Nebraska State Education Association, and NSEA is in support of this study committee, and we see that as an opportunity to fill in the gaps. We have lots of data, lots of information, a number of studies out there. We have support, public and private, for at-risk preschools, but we don't have a good handle on what is happening across the state and what access there is for every child to have an opportunity for preschool, and so we look to the Education Committee to put this one out on the floor and get it passed in the Legislature so we can do the study to make good public policy. So that is why I am here. [LB520]

SENATOR RAIKES: Okay. Thank you, Jay. Questions? Don't see any, thanks again. Any other proponents, LB520? Mark, welcome. [LB520]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

MARK WHITEHEAD: Thank you. Chairman Raikes and members of the Education Committee. For the record my name is Mark Whitehead, it is W-h-i-t-e-h-e-a-d. I am the president of Whitehead Oil Company. I am also the vice president of the Girl Scouts Homestead Council, something which much to the amusement of many of my friends makes me a Girl Scout. I get involved in a great number of civic opportunities and I am involved with this one on this board of directors principally among other reasons because I have got two daughters who are both Girl Scouts and my wife who likewise is a Girl Scout leader. So as you might have imagined, I am here to testify on behalf of the Nebraska Girl Scout Legislative Network. The five Girl Scout Councils of the state of Nebraska support LB520, and its intent is to create an early childhood legislative study group. In our state there are approximately 20,000 Girl Scouts between the ages of 5 and 18, and nearly 9,000 adult members of the Girl Scout movement. Thirteen percent of all girls ages 5-18 are members of the Girl Scouts, and the mission of Girl Scouting is to build girls of courage, confidence, and character which make the world a better place. The Girl Scout movement advocates quality opportunities for youth to build skills and knowledge necessary to become successful adults. Girl Scouting focuses on programming for girls once they turn 5 and typically have begun kindergarten. Having said that, Girl Scouts does partner with Head Start nationally and in several locations in the state of Nebraska providing programming for four-year-olds in the Head Start program. We support LB520 because we believe that early childhood education is not only an effective tool for youth and their families but it is also a worthwhile investment in the communities too. I know that this committee has reviewed the benefits demonstrated by research that clearly indicates the childhood education programs foster physical, social, and language development. Children that participate are generally ready to start kindergarten and experience greater success in the school, and it also gives parents an opportunity to become involved more with school system at an earlier age, and likewise, the communities in which they live. Girl Scouts believes that it is important that all children within the state have access to early childhood education. We also believe that the first step is an in-depth review in the current efforts and the financial protection of the investment necessary to make early childhood available to every child in our state. So I urge your support of LB520. Thank you very much. [LB520]

SENATOR RAIKES: Thank you, Mark. Questions? While you are here you want to say anything about ethanol or gas tax or road funding? [LB520]

MARK WHITEHEAD: Well, this is one of my few opportunities not to talk about ethanol or leaking underground storage tanks or any number of variety of issues on the plants. [LB520]

SENATOR RAIKES: Well, thank you for your work with the Girls Scouts and thanks for being here. [LB520]

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Transcriber's Office

Education Committee
March 06, 2007

MARK WHITEHEAD: Thank you. [LB520]

SENATOR RAIKES: Any other testimony in support of LB520? Is there any opposition? Neutral testimony? Senator Howard. [LB520]

SENATOR HOWARD: You asked about ethanol and I was thinking cookies. I am just going to do the briefest of testimonies. Last year when I was working on my priority bill which was all-day kindergarten, I was contacted by a radio station who asked me if I didn't believe the all-day kindergarten program would just be a way to provide free day care to middle-class families. And that comment really started me thinking about what we assume middle-class families can do for their children and how the responsibility or the assumption that we make as to how advanced these children can be based on their parents' financial ability. This study would provide information on that and would reflect to see if those assumptions have any basis for accuracy or in fact we need to look at being more, if you will, universal in our approach to early childhood and early childhood opportunities. So thank you. [LB520]

SENATOR RAIKES: Thank you, Senator. Questions? I don't see any. Thank you again. That will close our hearing on LB520, and we will move to LB650 and our able legal counsel. [LB520]

TAMMY BARRY: Good afternoon, members of the committee. I am Tammy Barry and I am the legal counsel for the Education Committee, and I am here to introduce LB650 on behalf of Senator Raikes as chair of the Education Committee. LB650 is what I would call a trailer bill to the technical bill which will be heard next. There were two issues that had not been previously heard by the Education Committee that may have been just a little bit more than technical, so they were separated out into a separate bill which is LB650. The first issue would allow early childhood education programs that are new, to allow students to participate if they are age-eligible for kindergarten but not yet enrolled in kindergarten. And this opportunity would be available for the first two years of the program, and that would allow programs that are just starting to give opportunities to students that would not have had those opportunities because no program was available. The other change would be to allow the Department of Education to set up statewide regional networks for children with disabilities, and the Department of Education currently has a network for deaf and hard of hearing students that was started with the closure of the School for the Deaf. And I believe that there is also a statewide regional network system being established for children with autism, and I believe that there are federal grants involved in that program. I would be happy to answer any questions, but I think the people from the Department of Education would be more qualified. [LB650]

SENATOR RAIKES: Oh, you undersell yourself there. Okay. First proponent. Marcia. [LB650]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

MARCIA CORR: (Exhibit 6) Well, here I am again. Marcia Corr, M-a-r-c-i-a, Corr is C-o-r-r, from the Department of Education, and on this piece of legislation I am also offering the testimony on behalf of the State Board of Education and the Department of Education in support of LB650. The Nebraska Statute 1101 provides a definition of the early childhood education program, and in that definition it identifies that the program serves children from birth to kindergarten entrance age. The proposed legislation, Section 1 of that, that addresses the early childhood, does not change that definition. It makes an exception to that definition by allowing any new early childhood program established by a school board or an ESU after August 1, 2007, and only during the first two years of operation to enroll children who meet the age requirement to be enrolled in kindergarten. In communities where there are young at-risk children who do not have access to an early childhood program prior to the time that a school district starts a program, we have had administrators, quite a number of administrators, express concerns that the law does not allow them to make a decision in the cases where they and the parents believe the child would benefit from a year's experience in the pre-kindergarten program prior to entering kindergarten. LB650 is really the department's compromise, but wanting to be responsive to the concern of those administrators to give them flexibility to the schools when they are first starting a program. The State Board of Education members also requested when they were taking a look at this bill that my testimony on their behalf include their concern that while they do support LB650, this does create some inequity for those districts who already have an early childhood program who wish they too could have that opportunity to enroll kindergarten age-eligible children in their program. In general, we have had a long-standing history within the department of not supporting the red shirting or delayed entry into kindergarten for kindergarten age-eligible children. The kindergarten is an entitlement for young children, and that while they are not required or mandated to attend kindergarten, they do have a right to kindergarten at age five. However, the State Board of Education and department recognize the reality of the concerns expressed by school administrators, and LB650 is our compromise to allow that only during that first two years. So that gives an opportunity for them to get the program established and in place and to get that first group of children, at least in those exceptional cases that they determine would benefit from that prior year of experience. We really think that once programs are really established, this issue itself will diminish because more and more children, and hopefully all children, will have access to an early childhood program. I would be happy to answer questions. [LB650]

SENATOR RAIKES: Thank you, Marcia. Questions? You are not going to comment on the networking? [LB650]

MARCIA CORR: No. Actually Brian Halstead from the department is going to speak on the Section 2 of that. [LB650]

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Transcriber's Office

Education Committee
March 06, 2007

SENATOR RAIKES: Oh, okay. All right. Any questions? Don't see any. Thank you, Marcia. [LB650]

BRIAN HALSTEAD: Good afternoon, Senator Raikes, members of the Education Committee. For the record, my name is Brian Halstead, that is B-r-i-a-n H-a-l-s-t-e-a-d. I am with the Nebraska Department of Education. We are here in support of LB650 and my role today is to deal with the remaining sections of LB650, and I think legal counsel did a pretty good job describing the overview of what these sections deal with. As she was commenting on it, it occurred to me that only she and I are the ones left here today when there was a Nebraska School for the Deaf. That was closed in 1996, and as part of doing that, the department set up regional networks for deaf and hard of hearing, and those have proven to be valuable in addressing the needs of children who have hearing impairments who are deaf. We have also since that time been dealing with autism and we have also helped in setting up regional networks to work with parents, to work with schools to provide services addressing those needs. However, when we look to the statutes, we could find nothing that specifically said the department had the authority to do the regional networks that we had been doing. As such, that is the only reason for Sections 2-5 in this bill is to clarify what we have been doing. I would be more than happy to answer any questions you might have on that subject. [LB650]

SENATOR RAIKES: Thank you, Brian. Questions? So what does a regional network do? [LB650]

BRIAN HALSTEAD: It can do several things. For the deaf and hard of hearing, it brings together children, families, schools. You need in the deaf community a critical mass in order to address some of that. If you are just the only child in a school district who is deaf, you need to be around other students who have that. You also need to be involved in other activities. I know that we have set up several regional ones. I think the Lincoln Public Schools right now is our contact point in this part of the state on that, and that was one of the things when we were addressing closing the School for the Deaf, there needs to be a critical mass of those students so they can in fact get together, they can organize services. In that sense we coordinate, more than anything else, between school districts, between parents and other providers. So it is more of a sharing of services and coordinating activities. That is why there is a distinction. With the statutes here, it is not a school. You aren't, quote, admitted to a regional network because your school district provides you with your special ed services if you are deaf or hard of hearing. But we do regionalize and provide services to address those students. [LB650]

SENATOR RAIKES: Wouldn't ESUs do this sort of thing? [LB650]

BRIAN HALSTEAD: And some of them are, in fact, part of the regional networks in that regard. But the reality is the ESU boundaries don't necessarily match where the critical mass of students are. So in the sense of under special education and with the School

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

for the Deaf and all of that, this was one of the ways in which we transitioned. They do provide a role and some of them do provide some of the services as part of the regional networks. [LB650]

SENATOR RAIKES: Senator Kopplin has a question. [LB650]

SENATOR KOPPLIN: Yes, I do. How did you know that? [LB650]

SENATOR RAIKES: I could tell by your lean. [LB650]

SENATOR KOPPLIN: Do you have any idea how many Nebraska school districts contract with Iowa School for the Deaf? [LB650]

BRIAN HALSTEAD: I don't know that. I can certainly get you that information. There aren't that many anymore, but I can certainly find out for you and make sure you have got the numbers who might be contracting. I believe there may only be one student left from the Nebraska School for the Deaf who is still getting services at Iowa School for the Deaf. We were getting down close to...it's been ten years, and believe it or not, we may have finally gotten to the point where there are no students left. But I can get you that number, Senator. [LB650]

SENATOR KOPPLIN: Thank you. [LB650]

SENATOR RAIKES: Does it cost anything to run these regional networks? [LB650]

BRIAN HALSTEAD: Oh, there is some cost to it. Some of that is paid for out of federal funding. Some of it is from the state funding. If you remember the budget that the department has, there was a separate appropriation for the School for the Deaf. That funding has transitioned over to doing some of the regional networking and funding to school districts for the deaf. So in that sense there was a separate...and it is still, I believe, in our budget, that funding for the deaf regional networks. [LB650]

SENATOR RAIKES: Okay. I don't see any other questions. Thank you, Brian. Virgil. [LB650]

VIRGIL HORNE: Senator Raikes, members of the committee, my name is Virgil Horne, V-i-r-g-i-l H-o-r-n-e. Lincoln does have a regional hearing impaired program and also the autism services. One example, I think, in response to Senator Raikes's question, from personal experience my grandson was not speaking well as a three-year-old. The pediatrician referred him to the school district because we had hearing testing equipment because of the numbers of people that we have that wouldn't be found in a normal setting like that. And they have the ability to test to see whether the, I never say this right but the little bones in the interior ear are functioning or if it's just a matter of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

having liquid between the eardrum and those interior bones and stuff of that nature. So there are advantages in having it as a regional center because it does provide some of the kind of services that an individual school district would not be able to afford to provide that kind of service. I quite frankly cannot tell you a great deal about the autism service that we are doing because to my knowledge it is somewhat new compared to some of the other things we have been doing, and I need to say this and it is not a reflection on previous legislation that has been introduced but it is a reality of the world. Many of these hearing impaired programs that the Lincoln Public Schools has with other school districts are interlocal agreements, so that that would make a difference if that is not available. It would create a problem. Thank you. [LB650]

SENATOR RAIKES: Thank you. They got the attendant budget exceptions I assume (laughter). [LB650]

VIRGIL HORNE: Nothing was implied. Just a matter of fact. [LB650]

SENATOR RAIKES: Any other proponents? Jay. [LB650]

JAY SEARS: (Exhibit 7) Senator Raikes, I will see if I can get it right this time and read my first paragraph. I am Jay Sears. I am the program director for instructional advocacy with the Nebraska State Education Association. NSEA is here to support LB650. We support both sections. We think it's important that children and their parents have an opportunity for preschool experience, and just because a district starts a new program doesn't mean that they should be left out of that process. And so we look at Section 1 of the bill to allow for those gaps in the implementation of new preschool programs. And then we also support Sections 2-5 to give the flexibility to the department to establish regional special ed consortia or ability to provide services through the regional areas or networks. We think it's a good policy. It gives flexibility and it might even be efficient and effective use of resources. So we are here to support it. [LB650]

SENATOR RAIKES: And if it were, you wouldn't oppose it for that reason. [LB650]

JAY SEARS: Nah. [LB650]

SENATOR RAIKES: Oh, okay, good. Any questions for Jay? Thank you. [LB650]

JAY SEARS: Thank you. [LB650]

SENATOR RAIKES: Any other proponents, LB650? Opponents? Neutral? Tammy, would you like to close? [LB650]

TAMMY BARRY: No. [LB650]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

SENATOR RAIKES: Okay. That will close the hearing on LB650 and we will move now to LB651. Okay. And I have been training Tammy in dynamic humorous speaking, so we will see how she does here. [LB650]

TAMMY BARRY: This is the day I just don't like every year. This is Tammy Barry and I am here to introduce LB651 on behalf of Senator Raikes. I am the Education Committee's legal counsel. LB651 is the Department of Education's technical bill for this year, and to give a flavor for the kinds of things that are in the technical bill, there is a public hearing requirement that would be eliminated for itemized estimates with regard to environmental hazards, accessibility barrier elimination, and some other issues that are like that. It would also allow State Board of Education members to be candidates for state offices. It would reduce the time that a district would be allowed to contract out all of its students, from three years to two years. And it would require districts to provide a transportation allowance if students were more than three miles from the pickup point for the busing services. The bill does touch on several other areas with some minor revisions or clarifications. Some of those areas are exempt schools, student transportation, residency, option enrollment, student records, school district reporting requirements, school board meetings, budget exceptions, and appeal information for special education students. There are two big groups of sections that are outright repealed. One of them deals with the Nebraska Equal Opportunity for Displaced Homemakers Act, and the other group of sections deals with the Diagnostic Resource Center in Cozad. The Diagnostic Resource Center in Cozad has been closed for some time; I am sure Brian will be able to tell you exactly how long. And then there is another piece of the bill that I would recommend taking out before the committee would advance it, and those dealt with teacher certification fees. Those provisions were adopted earlier this session with LB150 that was introduced by Senator Adams. I would also suggest that with the repeal of LB126 there are some changes in the option sections that should be reversed. And then there were some removal of oath requirements that needed to be made more uniform. There is also another change that I would suggest. The Catholic Conference has come in several times with a comma that needs to be moved in Section 79-1601, and we did not get that put into the green copy and so I would recommend that change as well. If there are any questions... [LB651]

SENATOR RAIKES: Okay. Thank you. Any questions for Tammy? Oh, good. Senator Avery has got one. [LB651]

SENATOR AVERY: Yeah. I am not so sure these are all technical. I am just on the first page and I see here that a substantive change would allow State Board of Education members to be candidates for state office. I think that is unconstitutional because the constitution bars anyone from serving in two branches of government at the same time. [LB651]

TAMMY BARRY : That is true, but the constitutional requirement does not say you

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

cannot run for office while holding another office. [LB651]

SENATOR AVERY: So if they were elected to another office they would have to resign. [LB651]

TAMMY BARRY: Yes, they would. [LB651]

SENATOR AVERY: Does that need to be specified? [LB651]

TAMMY BARRY: No. It is a constitutional requirement so it would not need to be specified. [LB651]

SENATOR AVERY: I am going to read this more carefully. [LB651]

TAMMY BARRY: Please do. [LB651]

SENATOR AVERY: But I won't do it now. [LB651]

SENATOR RAIKES: You need a life (laughter). Although I must tell you that our experience in introducing technical bills is not altogether uneventful. [LB651]

SENATOR AVERY: Yeah. I would think so. I always get a little nervous when people say this is technical and therefore noncontroversial. [LB651]

SENATOR RAIKES: Senator Howard. [LB651]

SENATOR HOWARD: Thank you, Chairman Raikes. Tammy, just a quick question regarding the transportation allowance, I am with Senator Avery, I am just on the first page, this says for parents of students who live more than three miles from the pickup point for transportation provided by the school. Is there an age limit in the...does this include high school kids too, all ages would be eligible for this? [LB651]

TAMMY BARRY : It would be students who are eligible for free transportation. [LB651]

SENATOR HOWARD: So age is not a factor then? [LB651]

TAMMY BARRY : Age is a factor depending on what class of school district you are in. [LB651]

SENATOR HOWARD: But that doesn't need to be more specific or is that... [LB651]

TAMMY BARRY: I will check that in the bill, but I believe that it was specified in the bill that it was students eligible for free transportation. [LB651]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

SENATOR HOWARD: Okay. Thank you. [LB651]

TAMMY BARRY: But I will double-check that. [LB651]

SENATOR RAIKES: I don't see anything else. Thank you, Tammy. Brian, a proponent. [LB651]

BRIAN HALSTEAD: Good afternoon, Senator Raikes, members of the Education Committee. For the record my name is Brian Halstead, B-r-i-a-n H-a-l-s-t-e-a-d. I am with the Nebraska Department of Education here in support of LB651. For Senator Raikes, Kopplin, and Howard this was also primarily LB1194 last session and it was LB579 two sessions ago, which was the one that kind of got hung up on some other things. These are primarily technical changes to the statutes that have been brought to the attention of the department, some of them by school districts, some of them by other legal counsel, some by the association. So I am always a little nervous when someone says it is the department's technical cleanup. It is because we probably are the ones who learn about it as the laws are being implemented. In response to Senator Avery's question, the language that is being struck in that statute you are looking at for the state board members talks about them being able to run for another office. And if you look at Article 7, Section 3, of the Constitution of Nebraska, it sets the qualifications for state board members. That section of the constitution says nothing about them being able to run. So what we are doing is making the statute fit Article 7, Section 3. And I understand how you can quickly read that and think, wait a minute, this is more than that. There are a number of changes that we are making throughout these statutes. Sections 1, 30, 31, 32, all deal with exempt schools and correcting language there. In the first one, in Section 1, that statute was enacted by the Health and Human Services Committee and they used the euphemism homeschool in that statute. Technically, these are schools that elect not to meet accreditation and approval standards, and we are also making the term consistent that it is student because sometimes we say child, sometimes we say student, and we just chose to always use the term student throughout all of those. Some of the other changes that are being made is to clarify language about school buses, what the requirements are and how that is referenced in statute. We are also cleaning up some of the language that deals with the option enrollment program because appeals from denials or rejections of option enrollments come before the State Board of Education. And through several cases and instances there, it needs to be some clarification of what the procedures are, the proper forms that should be used. We also are clarifying, this was brought to us by the school boards association, a statute that primarily deals with Class I school boards about if there isn't a president of the board at the meeting, the people at the meeting elect a new president. That statute isn't specific and some school boards are concerned that if it is a Class II, III, IV or V school district and their board president isn't there, they want to make it clear that the people at the board meeting aren't going to elect a new president. So that was brought to us by

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

the school boards association to make sure it is only those Class I school districts, which currently we have none of, but maybe we will have some in the future depending on where legislation goes this session. I am sure that I can fascinate you with more and more of these changes, but I think I will stop at this point and if you have questions I will try to answer them. [LB651]

SENATOR RAIKES: I noticed a little more zip in your introduction this year, so maybe if we put this aside and let you introduce it again next year you will be even (laughter)... [LB651]

BRIAN HALSTEAD: Senator, I think if you think back last year and the year before, I was appearing usually at about 5:30 for these bills. We have gotten to them by 3:00, so in that sense I am still awake for all of it. So in that regard... [LB651]

SENATOR RAIKES: Senator Kopplin has a question. [LB651]

SENATOR KOPPLIN: Just a curiosity thing: If all school district membership report would be filed with the commissioner instead of being delivered to the department, and the head administrator would no longer be authorized to submit the report. What is the rationale for this? [LB651]

BRIAN HALSTEAD: If you look, I think you are looking at 79-528 is the statute. We are making the language consistent for that report that you will see for the other reports that are mentioned in that statute. Why it was written that way years ago I don't know. We are just using consistent language about the reports being submitted to the commissioner. That, again, is consistency on those. [LB651]

SENATOR RAIKES: Senator Avery and then Senator Johnson. [LB651]

SENATOR AVERY: I am impressed that you could actually refer to these sections without looking at your notes by number and get it right. But that is not why I wanted to ask you a question. [LB651]

BRIAN HALSTEAD: Sure. [LB651]

SENATOR AVERY: I wasn't here these past couple of sections and I would like to know why if this is so technical and, thereby, noncontroversial, why are we still doing on it? Is this a different version? [LB651]

BRIAN HALSTEAD: No. [LB651]

SENATOR AVERY: It is the same one. [LB651]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

BRIAN HALSTEAD: It is the same one. [LB651]

SENATOR AVERY: Did this guy kill it? [LB651]

BRIAN HALSTEAD: No. Actually, two years ago the bill got advanced by this committee, got to General File. If you think back two years ago, and I am sure Senator Raikes will inform you, he was spending a lot of time dealing with LB126 and Class I school districts. [LB651]

SENATOR AVERY: And we don't have those issues this time, right? [LB651]

BRIAN HALSTEAD: I don't know. We will see. Last session LB1024, I think, took a lot of the committee's time and effort, and the reality is if it is a technical change it probably doesn't get the push from people it has to be done. So in that sense that would be my rationale. I will defer to Senator Raikes and Senator Howard and Senator Kopplin who were here the last two years as to the importance or the lack thereof or the reasons for it. [LB651]

SENATOR RAIKES: Senator Johnson. [LB651]

SENATOR JOHNSON: Well, actually Senator Avery and I were talking over here and he was wondering whether he could make this his priority bill this year. [LB651]

BRIAN HALSTEAD: I would suggest since we haven't done the technical changes in two years we would like to get them done to clarify the law, but I don't know whether he needs to use a priority for that. [LB651]

SENATOR AVERY: The truth is I offered him coffee, he said he would rather sleep. [LB651]

BRIAN HALSTEAD: Okay, and I am sure if I talk longer I can put you all to sleep on these, but if there are any other questions I would be more than happy to answer them. [LB651]

SENATOR RAIKES: I don't see any, thank you, Brian. Any other proponents, LB651? Are there opponents? [LB651]

JEREMY MURPHY: Good afternoon, Chairman Raikes, committee members. My name is Jeremy Murphy, M-u-r-p-h-y, and I serve as the associate director for education issues for the Nebraska Catholic Conference. We oppose LB651 based on two concerns, both of which we think are substantive in nature. First of all, if you refer to page 18 of the green bill, on lines 19-21, there is new language in the law appearing on lines 20 and 21 of page 18, specifically the requirement in providing disciplinary

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

material. And any disciplinary material means all, and this mandates that all disciplinary material be provided. Our concern or problem with this requirement is that discipline in a private school, especially a religiously based parochial or denominational school, may well involve a different context than in a public school. It may have and often does have a religious context, in some circumstances a sacramental forum which would not relate to a public school content. For our Catholic schools, there are strong three-way linkage of family, school, and church. Discipline within that linkage may involve doctrinal concepts of sin and reconciliation and matters of conscience, that is a context involving more than the objective act itself. Not all of what might be noted or kept in a parochial or denominational school's files or records concerning a student would be appropriate for providing to a public school. And moreover, we would view such a mandate as being intrusive and not protective of the integrity of the religious base of our schools. We would suggest that you strike the language "disciplinary material" from this new mandate. Presumably, it is based on language found in current law, Nebraska Revised Statutes 79-2104, which is actually set forth in the previous section of the bill in lines 8 and 9 on page 17. However, we would submit to you that 79-2104 only applies to students in public schools. Also, as a practical matter in local situations, there typically is regular communication and conversations between building administrators that typically resolve local issues involving disciplinary records. So school officials are going to be required to provide much more in disciplinary material than it may appear from the language of this bill. We think that portion of it is overbroad. An alternative might be to modify the requirement to require that only a summary of disciplinary material be required to be disclosed in order to provide flexibility that on one hand would protect the integrity of our religiously based disciplinary responses. The other section that we are concerned about is Section 13, and it is paragraph 13 on page 23 of the green copy of the bill, and particularly it is paragraph 13(b). This appears to be a substantive change, also, in that it is giving the Department of Education rule-making authority over the smaller passenger vehicles that it does not currently have under state law. This greatly expands the rule-making authority of the department in giving it jurisdiction over every vehicle carrying ten or fewer passengers, except for exempt schools. And our concern here is that the Department of Education could be given rule-making authority to decide that we might have to immediately dispose of certain vehicles, such as our vans. We do not want to see a situation where passenger vehicles carrying ten or less passengers are suddenly prohibited, and if modifications to school transportation rules are to take place, schools should have some time to phase in changes that might occur. And thank you for hearing our concerns. I would be happy to take any questions if there are any. [LB651]

SENATOR RAIKES: Okay. Thank you. Questions? The first one you mentioned is interesting because without the new language you could presume the old language would include what is proposed in the new language, "records concerning a student...shall be provided," so that means, you know, it is spelled out that it is including academic and any disciplinary material. [LB651]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

JEREMY MURPHY: Correct. [LB651]

SENATOR RAIKES: So let me ask you, would it be good enough just to strike the new language or not? [LB651]

JEREMY MURPHY: I probably wouldn't be able to tell you that without speaking to Jim Cunningham about it, my boss. We don't have any problem with the disclosure of academic records. [LB651]

SENATOR RAIKES: You did suggest a summary of disciplinary. [LB651]

JEREMY MURPHY: Well, that is as an alternative. If the committee decides to strike "and any disciplinary material," that would be our first preference. Our second preference would be to substitute the language "a summary of disciplinary material," instead of any and all of it. I guess it is the any which means all that we are concerned about there. [LB651]

SENATOR RAIKES: If you left out the word "any." [LB651]

JEREMY MURPHY: I think we would still have a problem with that, and I think we would prefer the summary over just striking the word "any," if that is what you are getting at. [LB651]

SENATOR RAIKES: Okay. On the second one, are there not federal requirements regarding transportation of students that this is meant to comply with? [LB651]

JEREMY MURPHY: I believe there are. I don't know a whole lot about that. This is one of those bill that we realized it was set for hearing and that we didn't have a lot of time to talk about it or prepare for. It is really the equipment portion of 13(b) that we are concerned about. We are not as concerned about the operation and maintenance of the vehicles because I think there probably is some federal oversight over that as well. There are a lot of our schools that are still using the vans transporting ten or fewer passengers, and so we are concerned about the fiscal impact that would have on our school boards and governing boards. [LB651]

SENATOR RAIKES: Okay. Senator Avery has a question. [LB651]

SENATOR AVERY: I have one quick question, going back to page 18 and the "any disciplinary material." Would you please explain to me again what you object to, because as I read it, it would provide at no charge these records upon request to any public or private school. It is not like you are putting them in the newspaper, you know. They are going to school officials who might be receiving a transfer student from, say,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

one of your schools. [LB651]

JEREMY MURPHY: True. I guess there could potentially be privileged material that could be included in some of the disciplinary records, and if it is a Catholic school disclosing it to another Catholic school, I don't know that we have as big a problem with that. It is when the Catholic school disciplinary records are released to a public school which, I don't know, the public school context is a little bit different than how a Catholic school might deal with discipline. But I guess we don't think there is a substantial basis to include that language in there, and I guess it really gets to overbreadth. Part of it is the word "any." I don't know. I guess it is an overbreadth and a vagueness issue to some extent. It might not be the full nature of our objection, but that is a big part of it. [LB651]

SENATOR AVERY: But might not some of this information be needed by this school to which a student is transferring? [LB651]

JEREMY MURPHY: I would think it could be. I don't know exactly how detailed of disciplinary records schools that are taking incoming students would want in a situation like this if you have a transfer. [LB651]

SENATOR AVERY: Well, let's say a student is engaging in sexual harassment and you consider that to be a religious infraction or something of that nature, and you decided this is something you wouldn't want to convey to the next school, say a public school. My view would be that might be very useful information to know, and that the school officials ought to have that. [LB651]

JEREMY MURPHY: Well, and I guess you could potentially have that happen where if something happens and law enforcement is contacted, then it becomes public record to some extent, and then I don't think our concerns are significant. But I don't know. I guess if that language could be refined, that might make our objections to that go away. I think if it were reduced to a summary of disciplinary material, that would certainly place a lesser burden on any school that might be forced to disclose this information. [LB651]

SENATOR AVERY: Let me give you another example. How about, say, you have a case where a student engages in bullying of a person thought to be of a different sexual preference, and you might consider it a religious issue and would want to conceal that from the public school to which the student is transferring. That could be important information for the school officials. [LB651]

JEREMY MURPHY: I understand that. Our schools are dealing with bullying on an independent basis. Some have formal written policies, some do not, so I don't know. Each school might deal with that type of issue differently, and I guess depending on the seriousness of the situation I guess I could see that could be something that might need

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

to be known in order to prevent trouble at whatever the transfer school is. [LB651]

SENATOR AVERY: So perhaps maybe you are drawing the line a little bit too tight here? [LB651]

JEREMY MURPHY: Well, I think if you have serious infraction, and the committee...enough of you have been in teaching and administration that you can probably define what a serious infraction at a school is better than I can. But if you have something serious, I think that would end up in the summary, and certainly any school that is releasing these records, they don't want to do the school that is receiving the transfer student any harm. And so if there are important material things like that they think need to be known, it would presumably be listed in a summary document. [LB651]

SENATOR AVERY: But you wouldn't require it? [LB651]

JEREMY MURPHY: I don't know that I have the answer to that, Senator. I think each diocese in Nebraska might deal with that differently. You might get different responses like that, and I don't want to misrepresent what one diocese might do that another might not. [LB651]

SENATOR AVERY: The language here it says "shall be provided," and you want to exclude "disciplinary material" from that "shall be provided." [LB651]

JEREMY MURPHY: Correct, or to change it to a summary of disciplinary activity. [LB651]

SENATOR AVERY: Okay. [LB651]

SENATOR RAIKES: Senator Adams. [LB651]

SENATOR ADAMS: Give me an example. What would you have in mind? What would a summary disciplinary statement be relative to what you perceive us to be asking for here? [LB651]

JEREMY MURPHY: Well, I think if you have a situation where you have a student that has been suspended for some reason, I think the transfer school would probably want to know that and maybe the length of the suspension and the reason. [LB651]

SENATOR ADAMS: So you would include that. [LB651]

JEREMY MURPHY: I think that would probably be included, yes. I don't know... [LB651]

SENATOR ADAMS: What would you not want to convey? [LB651]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

JEREMY MURPHY: Well, if there are issues that have been dealt with in a sacramental context that are more connected to the Catholic church than to a Catholic school, we don't feel that those should be disclosed. [LB651]

SENATOR ADAMS: Okay. [LB651]

JEREMY MURPHY: For example, if a student discloses something to a priest during the sacrament of reconciliation, that is considered a sacrament by the Catholic church. We don't think that should be...there is a specific privilege dealing with that under the law. We don't think that should be disclosed. And there are some priests that are also teaching in Catholic schools, and so I guess where you draw the line it gets difficult to know. But if something falls into that privileged category, we don't think that should be disclosed. In fact, we don't think the law allows it to be disclosed in that situation. [LB651]

SENATOR RAIKES: Senator Avery has a question. [LB651]

SENATOR AVERY: Well, I am presuming you are speaking about confessionals, right? [LB651]

JEREMY MURPHY: Correct. [LB651]

SENATOR AVERY: If the law now protects what transpires in confession, then that law would trump this, wouldn't you think? [LB651]

JEREMY MURPHY: I think it probably would, yes. [LB651]

SENATOR AVERY: So what sacramental context then are you talking about? I mean I don't want to pressure you too hard, but I would like an example that is a little bit better than the one you gave. [LB651]

JEREMY MURPHY: Well, and I may not be able to provide you with a perfect example, but you can take the golden rule is applied in all kinds of schools. If someone is physically assaulting someone else, that is probably going to result in some kind of disciplinary action from the school. Some of it might be dealt with administratively in the form of suspension or something like that. Some of it might be dealt with more in a context of counseling, that our church believes this is wrong and that you shouldn't do it and remedial steps that can be taken to prevent that from happening in the future. [LB651]

SENATOR AVERY: Well, let's suppose I am school principal, and a student is transferring from your school to mine and that student has been involved in activity you

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Transcriber's Office

Education Committee
March 06, 2007

just described. I would want to know that. I would need to know that. [LB651]

JEREMY MURPHY: Right. [LB651]

SENATOR AVERY: And that is not unique to Catholic schools, and that is not part of a sacramental covenant or any kind of protected, privileged behavior or information. If somebody is fighting with another kid, you expel them and they go to my school, I need to know that. [LB651]

JEREMY MURPHY: Right, and that is why the summary of the disciplinary action if the committee decides to go that direction with this, that might be something where if you spell out that includes expulsions, in-school suspensions, off-site suspensions, and the reasons for that. I think that is something we could probably live with if the committee decided that was best for all schools involved. [LB651]

SENATOR AVERY: I am trying to help you here. [LB651]

JEREMY MURPHY: Right. [LB651]

SENATOR AVERY: You've got help me, because I don't see... [LB651]

SENATOR RAIKES: Why don't we have that help go the following way, why don't you come back to us with some suggested language, maybe a couple of alternatives and we will consider that. [LB651]

JEREMY MURPHY: Okay. All right. That will work. [LB651]

SENATOR RAIKES: Okay. [LB651]

SENATOR AVERY: That might make me happy. [LB651]

SENATOR RAIKES: Okay. Thank you very much. [LB651]

JEREMY MURPHY: Okay. Thank you. [LB651]

SENATOR RAIKES: Any other opponents, LB651? Neutral? And I think we are going to waive the close, so that will close the hearing on LB651. [LB651]

SENATOR KOPPLIN: Okay. We will open the hearing on LB654. Senator Raikes. [LB654]

SENATOR RAIKES: Thank you, Senator Kopplin, members of the committee. Ron Raikes, District 25, here to introduce LB654. LB654 transfers the responsibility for

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Education Committee
March 06, 2007

approving on-the-job training and apprenticeship training, on-the-farm training and flight training programs for veterans from the Department of Veterans of Affairs to the Department of Education. The Department of Veterans Affairs no longer performs these activities and has had an agreement with the private postsecondary career schools and veterans education section of the Nebraska department to perform the duties. Federal funds for this purpose are currently received and expended by the department, so the bill has no fiscal impact. That, I think, is a good explanation. That comes directly from the fiscal note and if you have any questions I will try to answer them, but I have people here. [LB654]

SENATOR KOPPLIN: Questions for Senator Raikes? [LB654]

SENATOR AVERY: You have got supporters for a change. [LB654]

SENATOR KOPPLIN: Okay. Thank you. First proponent. [LB654]

MARGE HAROUFF: (Exhibit 8) You get to sit back there this time. Good afternoon, senators and members of the Education Committee. I am still Marge Harouff. I was the same person yesterday when we were here, that is M-a-r-g-e H-a-r-o-u-f-f. I am still the administrator of adult program services in the Nebraska Department of Education, but today part of my responsibility that causes me to be here is the administration of the private postsecondary career schools in veterans education programs, which are part of the programs that I supervise. We are here to support LB654 because it simply transfers the responsibilities of approving on-the-job training programs, apprenticeship programs and flight training programs from the Nebraska Department of Veterans Affairs to the Nebraska Department of Education. The Department of Veterans Affairs has jurisdiction over the administration and supervision of on-the-job and apprenticeship programs according to Section 80-401.04. They have not been able to perform these duties because they didn't have any resources, and those duties fit very nicely with the duties that we have for veterans education for other program areas. So the Nebraska Department of Education has been performing these duties through a contractual agreement with Veterans Affairs since November 2003. All we are simply doing is asking that the statute be changed so that it reflects the fact that it is a part of our responsibilities rather than that of Veterans Affairs, and I will say to you that Veterans Affairs has been a part of this process. They have had an interagency local agreement, or whatever it's called, with us to do those chores, and so I don't believe that there is any problem on their part as well. I would be happy to answer any questions that you have. [LB654]

SENATOR KOPPLIN: Questions for Ms. Harouff? Seeing none, thank you, Marge. Next proponent. Are there opponents? Neutral testimony? Senator Raikes, would you like to close? [LB654]

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Transcriber's Office

Education Committee
March 06, 2007

SENATOR RAIKES: I would. This does eliminate the need for an interlocal agreement (laughter). [LB654]

SENATOR KOPPLIN: And that will end the hearing on LB654. [LB654]

SENATOR RAIKES: And that ends the hearings for the day. Thank you for being here. [LB654]

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Transcriber's Office

Education Committee
March 06, 2007

Disposition of Bills:

LB520 - Indefinitely postponed.
LB650 - Held in committee.
LB651 - Held in committee.
LB654 - Held in committee.
LR12CA - Indefinitely postponed.

Chairperson

Committee Clerk