

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

Education Committee
March 02, 2009

[LB21 LB397 LB399 LB440]

The Committee on Education met at 1:30 p.m. on Monday, March 2, 2009, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB440, LB21, LB399, and LB397. Senators present: Greg Adams, Chairperson; Gwen Howard, Vice Chairperson; Brad Ashford; Bill Avery; Abbie Cornett; Robert Giese; Ken Haar; and Kate Sullivan. Senators absent: None.

SENATOR HOWARD: We should probably get started. Chairman Adams is presenting a bill this afternoon, and so for the meantime, I will be your acting committee chairperson. Just a few reminders. If you can turn off your cell phones because when those ring, they're really distracting. We're going to use a light system so everyone will have a fair amount of time to present. Tammy, can you think of anything else we need to...we'll have some more senators in here soon. Just to begin with: Senator Ashford, Senator Giese, Senator Cornett, Tammy Barry, our legal consultant--our very capable legal consultant--our Chairman. I'm Senator Howard from District 9 in Omaha. Over on this end, our research analyst, and here is our Senator Haar. Very good. Bill Avery. And this is Kate Sullivan when she gets here. Let's see. Three minutes? Three minutes, that sounds good. All right, the light system will be activated here pretty soon. Everybody will get three minutes to discuss and if Senator Council is ready to begin, that would be wonderful. Senator Council has LB440. Any time you're ready. [LB440]

SENATOR COUNCIL: Thank you, Senator Howard, members of the Education Committee. My name is Brenda Council, C-o-u-n-c-i-l. I am the senator representing the 11th Legislative District out of Omaha, and I appear before you this afternoon to introduce LB440. LB440 is intended to amend the Student Diversity Scholarship Program Act. As many of you may know, the Student Diversity Scholarship Program Act is commonly referred to as the Davis-Chambers Scholarship, was created by the Legislature back in the mid-1980s. Under the law, the Legislature annually appropriates a sum to be used in coordination with private donations for the purposes of achieving the Legislature's stated intent to attain greater diversity in the student bodies of the university system, the state colleges, and the community colleges in the state of Nebraska. As the act is currently written, it makes reference to racial, ethnic, and cultural diversity. In view of the recent passage of Amendment 424 to the Nebraska State Constitution barring any preferences on the basis of race or sex or ethnicity, the intent of LB440 is to amend the Student Diversity Scholarship Program Act to bring it into conformance with current federal and state law. And if you review LB440, that's exactly what it does. It removes any references to racial, ethnic, or culture, and it also states that the criteria for awarding the scholarship will be in conformance with federal and state law. The intent, again, of this legislation is to enable this scholarship program to continue to operate with regard to the way it is established. The state's funds are used in coordination with private donations. Those funds are deposited into a fund, and it's basically the interest from the state's contribution that is used in connection and in

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

Education Committee
March 02, 2009

coordination with the private donations to provide the scholarships. There are others who are scheduled to testify this afternoon in support of a bill representing both the university system, the state college system, and the community college system who can speak specifically to the number of students who have benefitted from this scholarship program. I firmly believe that with the amendments that are being proposed to LB440, it brings this act into conformance with and in compliance with the constitution as amended by 424. And with that, I would close and urge the committee's favorable consideration of LB440 and answer any questions you may have. [LB440]

SENATOR HOWARD: Thank you, Senator Council. Do we have any questions? Yes. [LB440]

SENATOR HAAR: Thank you. And this is just a question of absolute opinion here. How are we going to maintain diversity in terms of the scholarship in light of Initiative 424? [LB440]

SENATOR COUNCIL: Well, I think probably a better person to respond to that may be one of the representatives from the university because in terms of the criteria that would be established that would be in conformance with federal and state law, you would be basically, I would imagine, looking at underrepresentation in terms of providing the level of diversity that I suspect that, Senator Haar, that you and I both believe needs to exist with regard to our postsecondary education system. [LB440]

SENATOR HAAR: Okay. Thank you. [LB440]

SENATOR HOWARD: Do we have any other questions? Thank you, Senator. And I want to mention that we've been joined by Kate Sullivan and Bill Avery. Thank you, Senators. Proponents. [LB440]

RON WITHEM: Senator Howard, members of the Education Committee, I am Ron Withem, representing the University of Nebraska. That's R-o-n W-i-t-h-e-m. I'm pleased to support Senator Council's LB440. As Senator Council indicated, this was passed--originally passed when Dick Davis, an Omaha businessman, came to this committee when it was under far less able leadership than it is today, I might add, back when I was chairing the committee, in other words--where he proposed contributing some private money to be matched by state money to provide scholarships for underrepresented minorities. Sometime down the road after that was passed, the Supreme Court of the United States ruled that you cannot use race as a sole determining factor for award of scholarships. So the law was changed, I believe it was back in 2000, to make this a diversity scholarship to promote various types of diversity. Most recently, the citizens of Nebraska enacted Initiative 424 which bars using race or ethnicity as factors in giving out preferences to individuals. The current language of the scholarship indicates that the scholarship will be awarded to promote diversity--to

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

Education Committee
March 02, 2009

promote racial, cultural, and ethnic diversity. So in order to keep the bill as close to its original intention as we can and still make it comply with the constitution of the state, we are proposing that the words racial, cultural, and ethnic be stricken from the bill so that we're just promoting diversity. And that the diversity that is promoted will have to be that that is consistent with state and federal law. The committee that gives the awards then will operate under those guidelines. And if I could anticipate Senator Haar's question or the one that he addressed to Senator Council anyway, we could look at other types of diversity that are not barred by the constitution--economic diversity, for instance, geographic diversity is a possibility. A first time college attendee in a family would be another possibility. Knowledge of and experience with other cultures would be another type of diversity we could use. The law will no longer, if this passes in its current form, the law will no longer state what diversity the committee will use, but the committee that makes this determination will be charged with the responsibility of making sure that their standards are consistent with state and federal law, specifically the Constitutional Amendment 424. So with that, and we also, I'll be followed by another University of Nebraska individual who administers the diversity scholarship at this point so she'll be able to talk about some of the experiences with the scholarship itself. With that, I would respond to any questions. [LB440]

SENATOR HOWARD: Thank you, do we have questions? It looks like you did a good job. [LB440]

RON WITHEM: Thank you. Either that or I didn't. One or the other. Thank you. [LB440]

SENATOR HOWARD: Welcome. [LB440]

AMBER HUNTER: Hello. Good afternoon, my name is Amber Hunter, and I'm representing the University of Nebraska-Lincoln as well as the University of Nebraska system. And I work in the office of admissions, I'm the associate director of admissions there as well as in the Vice Chancellor's Student Affairs Office as the director of the Nebraska College Preparatory Academy. But as it pertains to this situation, I work with Dr. Davis and the rest of the committee to award the Student Diversity Scholarship, and so I wanted to be able to share with you all how we plan on awarding this scholarship with the new changes. As Ron mentioned, we'll really be kind of broadening the terminology or what we're looking at when it comes to diversity. In addition to looking at academics and looking at need which were the two most important factors when we were considering this scholarship, we're also going to be looking at if a student is first from their family to go to college. We'll be looking at economically disadvantaged, if they're coming from a high-need area or a high-need neighborhood too. If the neighborhoods, there's lots of research out there about different neighborhoods and the college going rates based on neighborhoods. We'll also be looking at if they're coming from an educationally disadvantaged school. The Nebraska Coordinating Commission offers lots of information about schools and how, how much they're producing high

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

Education Committee
March 02, 2009

school graduates. So we'll be looking at information like that, as well as, you know, there are lots of students out there who give us information about instances that they've overcome in their lifetime, so if there's different obstacles and things that they've overcome. What we'll be doing is asking essay questions that will hopefully allow us to get the answers from these questions that can help us to expand on the academics and the need that we get from the FAFSA to be able to get a broader sense of the diversity. And then what our committees will be looking at is just what type of diversity they'll bring to our campus. I mean, we really value the idea of having different knowledges and experiences on our campus. We think it's great to have, you know, students in the classroom that are from rural Nebraska, urban Nebraska, and from all across, you know, the country and from the world and we think that really just provides a balance and it provides our students the education they need to move forward when they leave the university. So those are some of the things that we're going to be looking at. We're kind of following this as we worked with our Board of Regents, the University of Nebraska Board of Regents kind of let a statement out in January of 2008 that really reaffirmed diversity on our campus. And so we hope that with the language that hopefully you guys will approve, that it will help us to continue that diversity as we move forward. So at this point, I want to just again, hopefully, you know that we are in...we really would like for this to pass through for LB440 and answer any questions you might have. [LB440]

SENATOR HOWARD: Thank you. Thank you. It sounds like you are going to take this and make it into an opportunity rather than a disadvantage. [LB440]

AMBER HUNTER: That's what we hope to do. [LB440]

SENATOR HOWARD: Good. Our Chairman Adams has returned, and so if you want to take this over again, that will be great. [LB440]

SENATOR ADAMS: Thank you, Senator Howard. Are there questions for this testifier? Senator Haar. [LB440]

SENATOR HAAR: Thank you. I'm on record as being against 424 so. What, what has been the experience of other states in, that have passed this similar initiative to continue the, you know, getting more diversity in the schools and so on? [LB440]

AMBER HUNTER: Yeah, that's a really great question. In other states, they've seen a pretty much immediate drop in...when you're specifically talking about ethnic diversity, they're seeing pretty much an immediate drop. However, we hope that by focusing on some of these other types of issues, we hope to be able to maintain both our ethnic diversity and you know, just be able to award to scholars who need support to go on to school through this. So you know, we're not exactly sure, Nebraska is not as diverse especially as California or some of those other states that it's passed in. So really this is

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

Education Committee
March 02, 2009

just kind of a...this is something that we're working through, and we'll have to see how it goes over the next couple of years. [LB440]

SENATOR HAAR: Well, I wish you the best of luck. Thank you. [LB440]

SENATOR ADAMS: Senator Sullivan. [LB440]

SENATOR SULLIVAN: Thank you, Senator Adams. Could you give me a little background as far as how the program has operated up until now. Have you had more applicants than you've had scholarships? And what sort of diversity you've had in the people or the students who have been funded for scholarships? [LB440]

AMBER HUNTER: Yeah, that's a great question. Yes, we always have more applicants than we do the number of awards that we give out. It's pretty selective. It's always been pretty selective. Typically, students have really, really high need as well as their academics are pretty stand out. For the University of Nebraska-Lincoln directly, like last year we had about 100 applications and we awarded about four students at Lincoln directly. So that goes to show you how competitive the program is to begin with. When we changed the criteria back in, I think it was 2006, 2007, to meet the Supreme Court decision, we did receive a little bit more applications because it broadened up who could apply for the program. So we did see more applications. However, when you really kind of get down into the student's life experiences and their knowledge of a diverse community, it still...it made it even more competitive. We think that opening it up even more, it will make the process more...more competitive for our students, but, you know, we'll try to do our best to maintain the diversity. And we will maintain and comply with federal and state law. [LB440]

SENATOR SULLIVAN: Okay, thank you. [LB440]

SENATOR ADAMS: Senator Haar. [LB440]

SENATOR HAAR: Thank you. Do you know about how much money goes into this each year? [LB440]

AMBER HUNTER: It's...the awarding or how many scholars or how much principle there is? [LB440]

SENATOR HAAR: How much in terms of the scholarships, in terms of awarding? [LB440]

AMBER HUNTER: It's about \$150,000 that we award in the University of Nebraska system. So that includes new awards as well as students who are already in the program, too. So that kind of gives you a variety of all of the awards. [LB440]

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

Education Committee
March 02, 2009

SENATOR HAAR: And then about how many students are? [LB440]

AMBER HUNTER: I think that right now we have...I'm not, let me, can I get back with you on that? And I can give you some exact numbers on that, on exactly how many. [LB440]

SENATOR HAAR: Good, sure. [LB440]

SENATOR ADAMS: Are there other questions for this testifier? Seeing none, thank you ma'am. [LB440]

AMBER HUNTER: Okay, thank you. [LB440]

SENATOR ADAMS: Next proponent. [LB440]

RANDY SCHMAILZL: Good afternoon. Randy Schmailzl, S-c-h-m-a-i-l-z-l, interim president, Metro Community College. I'm here to support Senator Council's LB440. In terms of how this affects Metro and its students, a number of years ago when the Davis-Chambers Scholarship first started, it started out as a bachelor's degree program. And then it...consideration was given to the community colleges to donate money into the University of Nebraska Foundation that would assist in establishing money directed towards this program. And Metro has participated in this program over the years. Most recently, last year, five Metro students received scholarships from Metro Community College that would go to UNL, UNO, or UNK. We represent the most diverse higher ed institution in the state of Nebraska, and I won't cover the ground that Mr. Withem and Ms. Hunter covered, because it all brings you up to speed on the need for this program. And the question on applicants versus money, if you desire to place more money in this program, it would be well received. Metro always has an abundance of students that apply for this program, and we're limited to about five students per year. Now the rest of the community colleges in Nebraska also participate in this program by placing money in the UNL Foundation. So it also allows us, if the students are not able to receive a scholarship through this program, we're able to work with a student and hopefully receive, you know, they can receive scholarship monies through our other programs. So we're in full support of this program through the Metro Community College administration. Thank you. [LB440]

SENATOR ADAMS: Thank you, Randy. Senator Haar. [LB440]

SENATOR HAAR: Thank you. Since you brought up, we could put more money into it, where does the money come from in the first place, do you know? [LB440]

RANDY SCHMAILZL: I'm going to have to defer that question. I can tell you that I think

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

Education Committee
March 02, 2009

it was from the state Legislature and private support and then the University of Nebraska also put money in it, and so it was a leverage situation to leverage state higher ed money and private money. I know for Metro, we placed money from our foundation which is privately raised money, into the University of Nebraska Foundation and then that's matched with state money that establishes the scholarship trust for our program. So I'm going to assume it's the same, Senator Haar. [LB440]

SENATOR HAAR: Thank you very much. [LB440]

SENATOR ADAMS: Other questions? Senator Sullivan. [LB440]

SENATOR SULLIVAN: Thank you. So in other words, the link between Metro and the University of Nebraska is that the student goes to Metro for two years and then goes on to the university, is that correct? [LB440]

RANDY SCHMAILZL: Yes. Any of the three university campuses. Or they can go on to the state college also. [LB440]

SENATOR SULLIVAN: Okay. [LB440]

SENATOR ADAMS: Other questions? So Randy, I think maybe Senator Sullivan's question answered mine. I was just going to ask you statistically what direction in terms of major fields do you see your recipients there at Metro? Apparently, it is a four-year transition? [LB440]

RANDY SCHMAILZL: A number of our students start off just in the academic transfer program where they're getting all their gen ed requirements taken, making sure they're college ready and then they'll transfer into the general programs at the university system and then have to reapply for education. We've had a number of students that have entered into the field of education. Started with some basic education courses at Metro and then transferred to UNO in the College of Education. And I know the other area has been business, that a number of our students transferred to the business side. [LB440]

SENATOR ADAMS: Are they allowed, under the scholarship, to go into a vocational program? [LB440]

RANDY SCHMAILZL: Yes. [LB440]

SENATOR ADAMS They could. [LB440]

RANDY SCHMAILZL: Any program at Metro, they can take. [LB440]

SENATOR ADAMS: Not likely, it doesn't sound like, based on the academic standards

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

Education Committee
March 02, 2009

that are required for the applicants and those kinds of things, but it is possible. [LB440]

RANDY SCHMAILZL: It is possible. [LB440]

SENATOR ADAMS: Okay. Are there other questions for Randy? Thank you, Randy. Next proponent. [LB440]

NANCY INTERMILL: (Exhibit 1) Senator Adams and members of the committee, I am Nancy Intermill, I-n-t-e-r-m-i-l-l, and I'm here today representing the board of directors of the Nebraska League of Women Voters. I'm here to speak in favor of LB440. The League of Women Voters has historically advocated for equality of opportunity for all persons. The League believes government shares the responsibility to provide equality of opportunity for education, and the League supports the efforts of government to increase educational opportunities of disadvantaged groups through compensatory programs like the Student Diversity Scholarship fund. Employment opportunities in modern, technological societies are closely related to education. Equal access to education leads to equal opportunities in the work force, and a strong work force strengthens Nebraska's economic future. LB440 will redefine the parameters of the Student Diversity Scholarship Program to allow this important educational scholarship program to continue, so we urge the committee to send this bill to the floor for full debate. May I answer any questions for you? [LB440]

SENATOR ADAMS: Thank you, Nancy. Are there questions for this testifier? I guess not. Thank you, Nancy. [LB440]

NANCY INTERMILL: Thank you very much. [LB440]

SENATOR ADAMS: Next proponent. Any other proponents to the bill? Is there any opponent testimony? [LB440]

MARC SCHNIEDERJANS: My name is Marc Schniederjans. I have the pleasure to serve as the treasurer and proponent of the Nebraska Civil Rights Initiative, Initiative 424. For everybody's information, Initiative 424 ended the use of preferences based on race, gender... [LB440]

SENATOR ADAMS: Excuse me, Marc, could I interrupt you for just a minute? Could you spell your last name for the record please. [LB440]

MARC SCHNIEDERJANS: Sure. Oh, I'm sorry. It is S-c-h-n-i-e-d-e-r-j-a-n-s. The Initiative 424 ended the use of preferences based on race, gender, national origin, ethnicity, or color in public education, public contracting, and public employment. The proposed Constitutional Amendment was widely popular with the public and received nearly 58 percent of the vote during the 2008 general election. LB440 seeks to

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

Education Committee
March 02, 2009

undermine the State Constitution and Initiative 424. While proponents of LB440 claim the bill's intent is to harmonize and clarify the Student Diversity Scholarship Program with the state and federal Constitution, this amendment does anything but clarify the law. By striking the adverb words: racially, ethnically, and culturally, and leaving only the adjective diverse, the amendment leaves the definition of diversity to the whim of admissions officials and scholarship administrators. LB440 leaves administrators wondering, does diversity include marital status, veteran status, geographic, parental status, past employment, if a student grew up in a home with two parents, or if a student was adopted. If clarity is the desired outcome of LB440, the bill would specifically outline and define what exactly constitutes diversity in the mind of the Unicameral. After all, diversity is a nebulous term that means different things to different people. For many of us, the term diversity is a code word for showing preferences based on race and ethnicity. Throughout the campaign, opponents used Initiative...opponents of Initiative 424 frequently used the term diversity to define programs that gave preferential treatment to people based on skin color. In my view, LB440 would only serve to undercut the intent of Initiative 424. I don't want what LB440 suggests, a commitment to an amorphous term like diversity. I don't think the Nebraskans who voted for Initiative 424 want it either. If the Legislature is serious about harmonizing Nebraska laws to bring them into compliance with Section 30, Article I of the Nebraska Constitution, which was enacted by the citizens in the 2008 election as Initiative 424, the Unicameral should end, I repeat, the Unicameral should end the Student Diversity Scholarship Program, and send the related funds to the general scholarship fund for distribution to deserving students of all backgrounds. I think from the prior testimony, you can see that different people are going to define diversity in different ways. I don't want an administrator who may just be a college student him or herself, to make a decision that somebody should get a scholarship or not based on what they do in a simple essay. It should be based on ability and on merit. That's the kind of educational system I grew up in, and I'm willing to bet it's the one that most of you grew up in. That's my testimony. Thank you. [LB440]

SENATOR ADAMS: Thank you, sir. Are there questions for this testifier? I'm curious about something. So the word diversity is too broad? [LB440]

MARC SCHNIEDERJANS: It is not defined. [LB440]

SENATOR ADAMS: Is not defined. So we start to define it, and in so doing, don't we get right back in a position of being even more categorical? [LB440]

MARC SCHNIEDERJANS: When you, when you asked the senator about representation or about how are we going to, you know, allocate the scholarship funds, the statement was basically, well, we'll look at underrepresentation. Well, what is that but race? You have to come up with a definition of diversity. You can't leave it up to the minds of the people who are doing the evaluations. I can tell you that the University of

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

Education Committee
March 02, 2009

Nebraska does that, Lincoln. [LB440]

SENATOR ADAMS: Could it be something other than race? Underrepresentation?
Could it be poverty? [LB440]

MARC SCHNIEDERJANS: That's not covered in the legislative bill. If you want to make,
financial need has long been, yes. [LB440]

SENATOR ADAMS: But wouldn't the word, excuse me, sir. Excuse me, sir. Wouldn't the
word diversity be more all-inclusive then? Which is what you're suggesting. [LB440]

MARC SCHNIEDERJANS: The bill, LB440, is suggesting clarity. That's its intent and
purpose. When you use a word, an amorphous term like diversity, it broadens it to
individual interpretation. And what I'm suggesting is that the Unicameral should make a
very clear definition of what it feels the term diversity should include. If they did that, and
if it complied with the law, there would be no problem. Everybody would know. Even the
administrators in schools would know how to apply. [LB440]

SENATOR ADAMS: However we administer any kind of scholarship, somebody wins,
somebody loses. Would you agree? [LB440]

MARC SCHNIEDERJANS: Oh, totally. [LB440]

SENATOR ADAMS: A decision had to be made... [LB440]

MARC SCHNIEDERJANS: Absolutely. [LB440]

SENATOR ADAMS: ...on some kind of criteria. [LB440]

MARC SCHNIEDERJANS: On some kind of criteria. But why not make it ability, rather
than a person's skin color? [LB440]

SENATOR ADAMS: But you keep coming back to race. Diversity doesn't have to be
race. [LB440]

MARC SCHNIEDERJANS: Then let that be stated in the...by the Unicameral. [LB440]

SENATOR ADAMS: Any other questions for this testifier? Senator Avery. [LB440]

SENATOR AVERY: When you hear the word diversity, do you automatically think race?
[LB440]

MARC SCHNIEDERJANS: Yes. [LB440]

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

Education Committee
March 02, 2009

SENATOR AVERY: You do? [LB440]

MARC SCHNIEDERJANS: I do. It has been applied too many times over the course of my life in that context. [LB440]

SENATOR AVERY: When you hear the word demagoguery, what do you think? [LB440]

MARC SCHNIEDERJANS: Well, I don't, I'm not in, I'm not a political science person. I really wouldn't care to even define the term. [LB440]

SENATOR AVERY: How about appealing to people's prejudices and passions and fears to gain political advantage? [LB440]

MARC SCHNIEDERJANS: I think the current administration at the federal level is doing a good job of that. [LB440]

SENATOR ADAMS: Are there other questions? Seeing none, thank you. [LB440]

MARC SCHNIEDERJANS: Thank you. [LB440]

SENATOR ADAMS: Are there other opponents to the bill? Could you hand in your registration, please. Thank you. [LB440]

GERARD HARBISON: My name is Gerard Harbison. That's H-a-r-b-i-s-o-n. I'm happy to have the opportunity to address this committee. I've been a chemistry professor at the university for the last 17 years. But I'm here representing only myself. I can tell you, start off with a short story, we had to...to actually answer Senator Adams' questions about the use of the word diversity. About four years ago, I received a letter from my colleagues at the Chemistry Department of the University of Puerto Rico in Mayaguez, and it was a letter basically promoting their program and that's fine. And they were urging us to hire chemistry majors from that program and they said...as graduate students. And they said, proudly, that the University of Puerto Rico has the most diverse student body in the United States since it's 98 percent Hispanic. And that's an example of how the word diversity has been abused. Diversity used to mean variety. And it was something that we wanted in universities. It was something, you know, it made sense to have students from diverse, from different backgrounds, from different socioeconomic classes, students who grew up speaking different languages and so on. These were the kind of students that a good university would try to attract. The trouble is that it has been taken over and it's been abused. And as this example I've given you shows that basically, very often now, people, when they say diversity mean just members of this group or that group or that group, defined by race or ethnicity or gender in some cases. This statute and I did look up its legislative history, when it started off in the 1980s, it

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

Education Committee
March 02, 2009

was called the Minority Scholarship Program. And it quite explicitly was here...it was here to serve black, American Indian, and Hispanic students. Now it's been modified several times as we've heard in order to essentially make the language consonant with Supreme Court decisions. But it's not clear to me that the program itself has ever really been intended; it's never intended to be broadened to include that. Diversity was used in the statutes in 2001. It was used in 2007. It's used in 2009. Diversity as it was used then is no different...the word is the same as it was used previously. I think in, and in the year 2000, it meant black, American Indian, and Hispanic students. If you want to really make it diverse, then spell out what the word diversity means. We've had a list...it's funny, the list of kinds of diversity that I came up with are almost identical to the ones that former Speaker Withem gave when he came here. Spell them out. That way nobody's under any doubts about what diversity means, and nobody will be tempted to use this as a proxy for anything else. [LB440]

SENATOR ADAMS: All right. Are there questions for this testifier? Senator Haar.
[LB440]

SENATOR HAAR: Thank you. Well, would variety, do you like that word better? [LB440]

GERARD HARBISON: It's, yeah, sure. [LB440]

SENATOR HAAR: Because I'm...listening to Miss Hunter, I think she was talking about variety, because in my mind I don't automatically equate diversity to race, I just don't.
[LB440]

GERARD HARBISON: But as you've seen, some people do. I mean, how could you describe a group that is 98 percent Hispanic as diverse except by saying that diverse means a member of a specific group. Obviously they're not very diverse. They're actually ethnically quite homogenous. But it is being used in that context. [LB440]

SENATOR HAAR: By some people. Yeah. [LB440]

GERARD HARBISON: By some people. So that would then say the word is very ambiguous, wouldn't it. [LB440]

SENATOR HAAR: Maybe I have a broader view of that word because I was a chemistry major. I don't know. (Laughs) [LB440]

GERARD HARBISON: Well, congratulations. It's nice to have some people, it's nice that some people can make something out of it. [LB440]

SENATOR ADAMS: Are there other questions here for this testifier? Thank you, sir.
[LB440]

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

Education Committee
March 02, 2009

GERARD HARBISON: Thank you. [LB440]

SENATOR ADAMS: Other opponents? Opponents? Neutral testimony? [LB440]

ERNIE CHAMBERS: Senator Adams and members of the committee, my name is Ernie Chambers. I'm here as a common citizen. I'm from Omaha, Nebraska. And I'm speaking as one in a neutral capacity, because we learned in the Legislature what you learn in the legal profession, that you have to position yourself to address the opponents to an idea that you favor. When you have a situation such as in America, where white men have all of the advantages, their advantages have been institutionalized, then they can say we don't want any law that makes reference to anything other than what they call ability. But they have always determined who has the ability. They have defined ability. They have managed to make sure that they always maintain control over everything that is of value. The Constitution of Nebraska is rapidly becoming a document which is designed to trumpet to the world what a racist, narrow-minded, intolerant place this is. When these people come along who are white and have had a favored existence all of their life, have benefitted from white male affirmative action all of their life--even the term grandfather refers to white males who couldn't cut the mustard and in order that they did not have to meet qualifications--they were allowed to slip in under the wire and not meet those qualifications. You never hear of grandmothering. In this particular instance, where they talked about employment, nonwhite people make up such an infinitesimally small percentage of the overall population of this state that to suggest that those few people are going to deprive white people of jobs is preposterous. The constitution was amended, I believe, to demonstrate that white people always have, always intend to maintain absolute and total dominance over anybody who is not white. When you look at the anti-immigration legislation, especially doing away with the opportunity for Latino children to go to the university, 28 students have been magnified, blown out of all proportion, and created the appearance that white students are not going to be allowed to go to school because of this. They cannot show where black people have competed in an unfair way against white people with reference to anything. When it comes to athletics, they come out and recruit black children. None of these people who are opposed to what they call diversity have condemned the university for having black football players, black track stars, black basketball players, because what they do redounds to the benefit of a white-run university. I know my time is going to run out, but I had to get those things in. I believe in education when it really serves the function of education. But when it's used as a dodge for creating a system of discrimination, then it is not education, it is miseducation and oppression. And I see that my time is up, and I always play by the rules. But if you have any questions, I would answer them. [LB440]

SENATOR ADAMS: Thank you, Senator Chambers. I'm going to call you Senator if that's all right? [LB440]

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

Education Committee
March 02, 2009

ERNIE CHAMBERS: Habits are hard to break. [LB440]

SENATOR ADAMS: I know it. I know, a good habit. Are there questions for Senator Chambers? Yes, Senator Avery. [LB440]

SENATOR AVERY: If you don't mind explaining again why you're testifying in a neutral capacity? [LB440]

ERNIE CHAMBERS: Because I wanted to hear what the opponents...I knew there would be some people opposing this kind of legislation because they pop up all the time in different names, different guises, but after being in the Legislature 38 years, I know which bills will bring them out. Had I testified in favor of it, I could not follow them and counteract the kind of, what I consider poison, that they spew. There is no definition of racial, there's no definition of cultural, there's no definition of ethnic, and if you would question the people who were up here as to what cultural means, they couldn't tell you. All the words that are used in this realm are not defined anywhere. What the federal law talks about is certain protected classes of people because history and tradition has shown that practices and policies are put in place that damage and discriminate against these groups. So when one of these groups is involved and the Supreme Court of the United States is reviewing a program that impacts on them, the court says there's going to be very close minute scrutiny to make sure that the program does not discriminate. It can discriminate on its face or it can have a discriminatory effect. The courts know the dodges that are used by the racists to dress what they are going to do in language that sounds neutral. They might call something a Civil Rights Initiative when the purpose is to destroy civil rights. In the 38 years I was in the Legislature, there were programs that I fought for that benefitted white people. It may come as a shock to some of you youngsters that many years ago, Nebraska's pension plan required female employees to pay the same percentages into the plan, but they got a smaller payout as women. The argument by the white men was that women live longer, so they'll wind up taking more out of the fund. So it took a black man to have that provision abolished. And here was one of the arguments I gave. Are you going to tell me that a white woman, because they were the ones who was an employee of Nebraska, and now is on a pension, goes to the store with a white man who is on a pension, and the white man is charged 50 cents for a loaf of bread, will the woman be charged 25 cents? In other words, if she has to pay the same amount for all the goods and services that the men will have to pay, they should not get a lesser payout. This state has never been fair. It has always been discriminatory. The two men who testified, if they studied the history of this state, would know that when they first made application to join the union, they were turned down because the Legislature refused to put in a guarantee of the rights of all people and that there would be no discrimination based on race. It happened that Andrew Johnson, a pro-slavery person, was President at that time. And he was the one who had to send back and deny the application of Nebraska. So under federal compulsion, and that

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

Education Committee
March 02, 2009

compulsion was, if you don't change your law to make sure that nondiscriminatory language is put in your constitution, you cannot join the Union. White people who are not in the deep south or the border states, like to think of the north and the west and the so-called Midwest as being different from the south. Those of us who are the victims know that address a racist geographically as you will, a racist is a racist still and you find it in their laws, in their constitutions, and you don't have to go very far back in the history of Omaha to find what they called restrictive covenants where people who were not white could not live in certain parts of Omaha. They could not own property there. They could not lease property there, and the only way they could live in a house is if they were a maid or a domestic for white people. That was during my lifetime. So when I hear these people come up here and talk the trash, and that's what I call it, and they have lived a favored existence, have a favored existence right now, then it is somewhat off-putting to me to say the least, and I'm trying to be diplomatic. The new senators don't know me. And in the language of diplomacy, if a diplomat says yes, it means maybe. If a diplomat says maybe, it means no. If a diplomat says no, that person is no diplomat. But I think I can make my meanings clear. [LB440]

SENATOR ADAMS: Senator Sullivan. [LB440]

SENATOR SULLIVAN: Thank you. Senator Chambers, in light of the constitutional amendment that we passed, is it reasonable to expect that we probably wouldn't pass an equal rights amendment in this state? [LB440]

ERNIE CHAMBERS : Yes, we tried, and when I was the chairperson of a committee, and we couldn't get it done. And Phyllis Schlafly and people that I had never heard, swooped down on the Legislature. We were having it in the Warner Chamber and they were all up in the balconies, and for the life of me, I could not help seeing a comparison between a buzzard's roost and those people. But here's what I'm looking at. If this were a fair country, we wouldn't even need to talk about an equal rights amendment which would say that women are entitled to the same rights without discrimination that white men have always had. But that's the way it is. And to give you an idea of how strongly I feel about this, let's say that we have a nation or a territory inhabited by wolves and rabbits. The wolves outnumber the rabbits more than ten to one, but the wolves have to...they're going to put in a law to make sure that the rabbits don't take power from them. The rabbits already hold the subservient position. They're preyed upon by the wolves. But because the wolves have the numbers, they say we need to pass laws to protect we wolves, us wolves from the rabbits. And that's the way I see it. When you back people into a corner where the place where there should be education, you find discrimination, where doors are constantly closed, a student of history would realize that people are not going to tolerate that kind of situation forever. A change must come, and in this country, white people are not going to be the numerical majority. And if those nonwhite groups become the majority and would put in place against the white people the same laws that the white people have put against them, the white people would be

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

Education Committee
March 02, 2009

saying, that's unfair, you shouldn't do it. You shouldn't do it. They need to think beyond the ends of their nose. When they don't want Latino people to have jobs, there are older and older white people living in Nebraska, fewer and fewer working people. As these younger groups, who are discriminated against and made to feel that they're not welcome, realize that it's their money that is providing the care for these old white people, then when they get the numbers to get political power, then they may decide to get even with these old white people and structure pensions, Social Security, and other things to hit these old white people who have created so much animosity, hostility, and hatred. And that's what I've confronted all my life. I never had a black teacher. Education, the place where it's given, has always been a depressing, hostile environment for me; at Lothrop Elementary School, at Technical High School, at Creighton undergraduate school, at Creighton Law School. And I never flunked an exam, I never flunked a course, and once I got to Creighton University, I stopped attending classes. I would go to a few. I went to a few in law school. White people's academia has never been difficult for me...ever. I didn't need to attend classes to learn what they taught. So when I see them trying to create the impression that they are superior, and the only way they can do it is restrict opportunities to those who are weak, to those who are vulnerable, to those who are voiceless, it really shows how inferior, at least morally that they are. The university should be, in fact, a place where different ideas, different groups, all types of people are welcome. There is not a global economy. The communication system that exists now with the Internet embraces people throughout the globe, and our children who come up through a narrow-minded bigoted system like you find in Nebraska are not going to make it anywhere. They're protected here, the white children, they're given the advantages. They don't have to compete. Then when they get away from Nebraska, they can't make it. [LB440]

SENATOR ADAMS: Other questions for Senator Chambers. Senator Cornett, did you have a question? Let me ask one more. [LB440]

ERNIE CHAMBERS: Um-hum. [LB440]

SENATOR ADAMS: This word diversity. You're on the new Metro Learning Community Coordinating Council, and one of your charges, as you're well aware, is to develop a diversity plan. When you hear that word diversity for the Metro area, developing a diversity plan, what, what do you see? [LB440]

ERNIE CHAMBERS: I'll be frank, the word, words like that don't conjure anything in my mind, because I see racism wherever black people come into contact with white people, there's going to be discrimination. To this day, I will go in a store, I will be at the counter first, a white person will come after me and the clerk will go to the white person. That happens now. And you know what I just say, let's be fair. I was here first. Then they apologize. Neither person was blind, neither the clerk, nor the white person who was going to be served before me. But when you call their hand on it, then they pretend that

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

Education Committee
March 02, 2009

they didn't know. So when time comes for us, on that council, to address this issue, my views are going to be that anything which does not redound to the benefit of the students who currently are disadvantaged, who are two to two-and-a-half years behind the white students, I don't care about that program. I want something that is going to address the specific needs of these children. And if they're black children, Latino children, and poor white children, I will say who they are so that we have the benchmarks and know which populations we're targeting. Those are the ones I want to help. I don't need to help these white men who are here. They've got everything anyway. They don't have to be competent. They don't have to prove anything, just be white. And that's all that they need. And it's why I have such contempt for their positions and such contempt for white men who are so cowardly, who are so fearful of competition, who destroyed the financial system worldwide? White men. Who brought down the banking system? White men. Who were the mortgage lenders? Who were those who create and benefit from derivatives? White men. They have destroyed everything they have touched, everything. And I'm saying we should look only at the facts and those things that can be established even in the daily newspapers, not what I'm saying. And then we will see that they have been favored. They've been given their way, and when given their way, they have destroyed everything they've touched, and it's continuing. And the only way a black man got elected to be president, he didn't run as a black person's candidate. But there are white people who will say we are so sick of what these white men have done, we're willing to try anything. And my analogy is if you're drowning and I'm the devil himself, and I pull out a sword that has two edges and each edge is as sharp as a razor, and I say take it or leave it. To leave it is certain death. To take it might result in death, but it might save you. So you grit your teeth and you grab it. And that's what America did when they elected Obama. So we don't have any delusions. There is no postracial society now. Look what's happening when we're talking here about a little program that might spend \$150,000 a year to benefit some students who obviously do not have the opportunities to be on a level playing field. And it brings out the white men with favored positions to criticize that, to attack that. What they would say if they were really not hypocrites is that we want to say that Nebraska universities should be in place for white people, of, by, and for white people. That's what we want, and we're going to oppose anything other than that. But they're going to have people like me to contend with. When I was in the Legislature, I manifested restraint, which now that I'm not representing a district, allows me greater leeway to function in the way that I ordinarily do. While I was in the Legislature, I never would have grabbed somebody in the collar and taken him out and shaken him and popped him in the nose. Senators don't behave like that. Plain citizens might. [LB440]

SENATOR ADAMS: Are there other questions for Senator Chambers? Seeing none, thank you, sir. [LB440]

ERNIE CHAMBERS: Thank you for the opportunity, and may the force be with you. [LB440]

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

Education Committee
March 02, 2009

SENATOR ADAMS: Is there other neutral testimony? Seeing none, Senator Council to close. [LB440]

SENATOR COUNCIL: Thank you, Senator Adams. Briefly, I want to convey to this committee that the purpose of LB440, despite what the opponents may say, is to harmonize the language of the existing scholarship program act with the current state of the Constitution of the State of Nebraska. Because quite frankly, members of the committee, we didn't have to go in and delete the reference to racial, ethnic, or cultural to mandate that the administration of this scholarship program be consistent with the constitution as it currently exists. The act currently states that. It specifically says: awards shall be consistent with the intent stated in the act and with the Constitutions and Laws of the United States and the State of Nebraska. So regardless of whether those terms remained in the act or not, this scholarship program has to be administered in accordance with the Constitution of the United States. Again, the purpose of introducing LB440 was to make it clear that this act was in harmony with the constitution. And it is rather disheartening, members of the committee, to sit back and listen to individuals where we're talking about this act that was designed to provide educational opportunities for young people in the state of Nebraska, young people who grew up in the state of Nebraska, educated in our K-12 system to provide them opportunities to attend our university, our state colleges, and our community colleges, to hear individuals--educated individuals, purportedly highly educated individuals--sit before this committee and say when they hear the word diversity, all they can think of is race. When they hear the word underrepresentation, all they can think of is race; that in my mind further, I guess, magnifies the need for us to continue this program, if for no other reason than to provide the level of diversity to help educate individuals like the opponents, to broaden their understanding of the world that we live in. Because I was sitting there and I quite frankly, when the question was asked, what do you think of when you think of underrepresented? I think of urban kids applying to the School of Agriculture. Highly underrepresented in the College of Agriculture are youngsters from urban backgrounds. I think of a lot of opportunities, a lot of programs where individuals who you don't normally consider pursuing those types of coursework have an opportunity to do so. That's all the intent of this act is designed to provide for. The Legislature set that as its intent, to make sure that our state colleges, our university, and our community colleges represent the diversity of this state, and I urge the committee to advance LB440. Thank you. [LB440]

SENATOR ADAMS: Thank you, Senator Council. Are there any final questions for Senator Council? Seeing none, thank you. That will conclude the hearing on LB440. And we will move on to LB21. Senator Harms is here. Go right ahead Senator Harms, whenever you're ready. [LB440 LB21]

SENATOR HARMS: My name is John, J-o-h-n, middle initial N, Harms, H-a-r-m-s. I

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

Education Committee
March 02, 2009

represent the 48th Legislature District. Senator Adams and colleagues, thank you for giving me the opportunity today to come and visit with you about LB21. LB21 would increase the pool of students to be considered for aid under the Nebraska Financial Aid Program. Currently, students must be eligible to receive a federal Pell Grant in order to be considered for the Nebraska Financial Aid Program. Students who qualify for the Pell Grant come from families with an income of less than \$40,000 probably or less. These students are eligible for a lot of other aid, institutional aid, federal supplemental educational opportunity grant, foundations, all kinds of different scholarships that are designed specifically for needy students. Students who do not qualify for the Pell Grant actually have limited opportunities to get any kind of financial assistance. Students who just miss the Pell Grant eligibility are primarily from what we call the lower middle class family--families making between \$40,000 and \$55,000. And what the financial aid administrators in our higher educational institutions are telling us that these are the students who today are at risk. These are the students today who don't qualify for hardly anything. And if you continue to review the economy that we're in today, this gap is going to become larger and larger and larger in the future. So what LB21 does would allow the non-Pell Grant eligible students to be considered for the state financial aid program. It does not remove the Pell Grant qualified students from being considered, it just simply gives the financial administrators a little more flexibility in helping other students. Roughly looking at this bill, adjusting the eligibility guidelines will allow a family of four who makes a...who has an income of between \$40,000 and maybe \$55,000 just to be considered for such a grant. The financial aid administrators would do the same, just as they do today with the Pell Grant recipients. They would submit it to the Coordinating Commission; the commission would go through the same processes. All it does is give us flexibility of increasing that amount. LB21 would also change the name of the Nebraska Scholarship Act to the Nebraska State Grant Program Act. And when you talk to financial aid administrators, they will tell you there's a quite a difference between their definition between scholarship and grant, and they want to make sure that people understand that a scholarship is specifically designed for kids who might be in music, might be in art, could be in athletics, for performances, could be vocational technical fields. A grant is a much broader term, more consistent with similar types of aid, such as the Pell Grant, more designed for students who have a financial difficulty in attending a college. So I would, Senator Adams, I would really urge you to support LB21. I think it's an important bill. I think we'll find that it's...will be very helpful in the future for students, and Senator Adams, I would tell you, I will be unable to close today. I have another hearing, and I think they may be waiting for me, so. I would be happy to answer any questions or I know that Coordinating Commission staff will be following me, I think, for testimony. They might be able to answer them, so. [LB21]

SENATOR ADAMS: All right. Are there any questions right now for Senator Harms before he's got to leave? [LB21]

JOHN HARMS: Oh, you are very kind and gracious. [LB21]

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

Education Committee
March 02, 2009

SENATOR ADAMS: Thank you. [LB21]

SENATOR HARMS: I'm going to go now. [LB21]

SENATOR ADAMS: Okay. The first proponent. [LB21]

MARSHALL HILL: (Exhibit 2) My associate director is very happy that I've just finished in Appropriations and am back here so that I get to do this instead of she. My name is Marshall Hill, M-a-r-s-h-a-l-l H-i-l-l, executive director of the Coordinating Commission. Senator Harms covered the key points of LB21 very, very well. Just a couple of things I would like to reemphasize. One is this does not, would not direct the financial aid counselors to provide funds previously provided to Pell-eligible students to non-Pell-eligible students, but it provides them the opportunity to do that to a modest amount if circumstances warrant. And the second, the second point I would like to make, I think I have forgotten. So I'll just respond to any questions that you might have. [LB21]

SENATOR ADAMS: Are there questions? Senator Haar. [LB21]

SENATOR HAAR: Thank you. Thanks for the handout. We see \$12.4 million a year, is that all federal money or is some of that state money? [LB21]

MARSHALL HILL: No, sir. That is the total amount of funds that we in Nebraska have that are appropriated to the Coordinating Commission to provide for need-based financial aid. About 60 percent of that comes from General Funds and 40 percent of that comes--roughly 40 percent, I think 43 percent--so it would be 57 percent coming from General Funds, 43 percent comes to us from lottery proceeds. [LB21]

SENATOR HAAR: So, okay, so none of that is actually federal money? [LB21]

MARSHALL HILL: No, sir. No. [LB21]

SENATOR HAAR: Okay. Thanks. [LB21]

SENATOR ADAMS: Other questions? I guess not, Marshall. Thank you. [LB21]

MARSHALL HILL: Okay. [LB21]

SENATOR ADAMS: Other proponents? As soon as you're ready. [LB21]

KRISTIN PETERSEN: (Exhibit 3) Good afternoon, Senator Adams, my name is Kristin Petersen, K-r-i-s-t-i-n, Petersen, P-e-t-e-r-s-e-n. I am vice chancellor for Employee

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

Education Committee
March 02, 2009

Relations and general counsel for the Nebraska State College System. I am appearing today on behalf of Chancellor Stan Carpenter who is in his appropriation hearing right now. And I just provided copies of my testimony for the record. The Nebraska State College System is testifying in support of LB21. Our understanding is, as Senator Harms mentioned earlier, is that the bill does not make any changes to the formula, whereby the Coordinating Commission distributes the funds. However, LB21 does allow us additional flexibility so that our financial aid directors have the opportunity to provide awards to students who are just over Pell eligibility. The Nebraska State College estimates that this additional group for our three colleges in Chadron, Peru, and Wayne--we should have about 502 students who would fall under that category. And I will be glad to answer any questions if I am able. [LB21]

SENATOR ADAMS: All right. Thank you. Are there questions? I guess not. Thank you. [LB21]

KRISTIN PETERSEN: Thank you so much. [LB21]

SENATOR ADAMS: Next proponent. Proponents? All right, then we'll move to opponents to the bill. Are there any? Anyone who wishes to speak in opposition. Is there neutral testimony? [LB21]

RON WITHEM: Senator Adams, members of the Education Committee, my name is Ron Withem, R-o-n W-i-t-h-e-m, representing the University of Nebraska. Here in, very honestly, in neutral position on this issue because we see great benefit from the bill, but we also see a concern. I understand that this is a proposal that the Commission has worked on with a number of the financial aid advisors from around the state who have correctly identified that there is a need to give more resources to--I'm going to use the term, the barely needy--those that don't qualify now, but definitely do have needs. And that's what this bill does and we commend that. The problem as I understand the original concern, the original desire by those working on this, was to come forward with a new proposal that would have its independent funding going with it. We would be here wholeheartedly supporting such a measure if that were the case. Because of the current financial circumstances, definitely we understand the current financial circumstances; probably understand them even better this time tomorrow when we're across the hallway for our agency hearing, that there aren't a lot of resources for new programs. But the effect of LB21 right now would be that this group of non-Pell-eligible students would be funded by taking funds that would otherwise go to Pell students today. And the Pell students are the neediest of the needy, and for that reason, we would ask that if a measure like this were moving forward, that you consider some way, some way of funding it. So thank you, Senator Adams. [LB21]

SENATOR ADAMS: Thank you. Senator Haar. [LB21]

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

Education Committee
March 02, 2009

SENATOR HAAR: Thank you. Educate me a little bit. Who is eligible for Pell Grants right now? [LB21]

RON WITHEM: It is income-based and I don't work in that area, so I don't...I'm sure that I see Mr. Morrow here from the Coordinating Commission who could probably provide all of that information. And Mr. O'Neill is more well-versed in it than I am; perhaps he will share that with you when he gets up here. [LB21]

SENATOR ADAMS: Are there other questions for Mr. Withem? [LB21]

RON WITHEM: Thank you very much. [LB21]

SENATOR ADAMS: Thank you. Any more neutral? [LB21]

TIP O'NEILL: Senator Adams, members of the Education Committee, I'm Tip O'Neill. I'm the president of the Association of Independent Colleges and Universities in Nebraska. For the first of my many forays to the witness chair, I guess, in the next day or two. From our perspective, we think if you're going to change the students who are eligible for the program--which is what this does--you really ought to also factor those students into the allocation formula and that's what this bill doesn't do. We have no problems with the changes that are made. We have always been strong proponents of giving financial aid officers significant flexibility in determining which students to award aid to on the campus level, because they are in a much better situation to determine which students are truly needy, vis-a-vis the other students. And that, this bill does that by increasing the number of students who would be eligible for the program, you really do give more flexibility to the financial aid director at the campus. But if you're doing that, we would also think that it would be appropriate to also include those students in the funding formula for the determination of allocation to the respective campuses. And so that's why we're neutral. We're not against it, we just don't think it probably goes far enough from our perspective. I'd be happy to answer any of your questions. [LB21]

SENATOR ADAMS: Are there questions for Mr. O'Neill? Senator Haar. [LB21]

SENATOR HAAR: Can you answer the Pell Grant question? [LB21]

TIP O'NEILL: Not as well as some of the other people who are in the audience, but I'll give it my best. The Pell Grant formula takes what is known as an expected family contribution to the price of the particular college or university although it's not really tuition sensitive to any great extent. And if you, if the expected family contribution is not high enough to meet the cost of attendance at the school, then you are, you may be eligible for aid from the federal government through the Pell Grant program. Now, the Pell Grant is part of the stimulus package. The increase in the Pell Grant is part of the stimulus package and it is my understanding that the maximum Pell Grant will increase

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

Education Committee
March 02, 2009

to about \$5,350 for next fall. So, but it's basically a federal, a federal formula that allocates resources to needy students. [LB21]

SENATOR ADAMS: Other questions? Thank you, Tip. [LB21]

TIP O'NEILL: Thank you, Senator. [LB21]

SENATOR ADAMS: Is there other neutral testimony? If not, Senator Harms has waived closing, so that will end the hearing on LB21. And we will open the hearing on LB399, Senator Lautenbaugh. [LB21 LB399]

SENATOR LAUTENBAUGH: Thank you, Chairman Adams and members of the Education Committee. I believe this is my first outing in front of your committee. So it's good to be here. My name is Scott Lautenbaugh, and I'm the introducer of LB399, a bill that would make five major changes to the Nebraska Scholarship Program Act. The Nebraska Scholarship Program was created by the Legislature in 2003. Three existing programs were repealed at that time. The sector allocations for student aid changed dramatically when the NSP was established. The purpose of LB399 is to make changes in student aid allocations that more clearly reflect, we believe, the intent of the Legislature in how student state aid dollars should be distributed. The first change would allow a student attending an independent college or university to be deemed a resident student if he or she demonstrated an attempt to remain in the state after graduation. This change will allow those students to be counted and receive awards if they intend to remain in Nebraska after they graduate. The second change would increase the maximum award from 25 percent of the UNL tuition and fees to 50 percent of the UNL tuition and fees. This will allow financial aid officers more discretion in determining the amount of the award. They are in the best position to determine the need of individual students. The third change would require institutions that participate in the programs to have provided at least as much institutional aid cumulatively to all students as they receive from the state and allocations from the NSP. The reason for this would be if higher education is about educating students, the institution should show a financial commitment from their own resources to the students they educate. The fourth change would expand eligibility to include all students eligible to receive student financial assistance from federal Title IV programs. The reason is that Pell Grants have steadily increased and for the next academic year will be about \$5,350. Many times students who have real financial need don't receive grants. This will expand eligibility for the program to include these students. The fifth and final change would change the allocation formula to reflect state appropriations that allow public institutions to charge less in tuition than nonpublics. The reason for this: prior programs did not cap student cost of attendance for purposes of allocation of financial aid dollars. By capping the cost of attendance at UNL tuition and fees, publics receive more dollars and privates receive less. Even though this cap is less than prior programs, it is justifiable from a policy standpoint. I would be happy to take any questions you might have on this bill,

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

Education Committee
March 02, 2009

although I will caution you that this is not one of my areas of expertise to the extent I have any, and there are witnesses who are following me who are more well-versed in this area than I, certainly. [LB399]

SENATOR ADAMS: Okay, thank you, Senator Lautenbaugh. Are there questions for the Senator? Well, it looks like you're going to get off easy. Are you going to stay around to close or are you going to waive? [LB399]

SENATOR LAUTENBAUGH: I'll stay. [LB399]

SENATOR ADAMS: Okay. First proponent. [LB399]

JANET PHILIPP: Good afternoon, Chairman Adams and members of the Education Committee, my name is Janet Phillip, J-a-n-e-t P-h-i-l-i-p-p. Now, I am the president of Dana College in Blair. I am appearing before you to support LB399 which would change provisions relating to the allocation of funds in the Nebraska Scholarship Program. Dana is a four-year liberal arts college of the Evangelical Lutheran Church in America. Danish Lutheran immigrants established the college in 1884, and although Dana is a Lutheran College, the majority of students are not Lutheran, providing diversity and exposure to different cultures, ideas and beliefs. We are particularly proud of our academic programs with a nearly 100 percent success rate of students being accepted into health professions, graduate programs such as medicine, physical therapy, pharmacy, and others. And Blair has become a hub for sustainable energy businesses such as Cargill's Novozymes which is going to produce cellulosic ethanol and North Star Enterprises which will build wind towers. In conjunction with a visit by the Crown Prince of Denmark on March 24, Dana will host a regional conference on sustainable enterprises. At Dana, nearly...90 percent of our students are dependent students and are generally between 18 and 22 years of age. About half of those students come from families with incomes of less than \$60,000. More than 90 percent of our students apply for financial aid and one-third of our students receive the Pell Grant. Eighty-six percent of our graduates have debt when they graduate with an average debt of just more than \$17,000. Dana was severely impacted when the three college grant programs were eliminated in 2003 and replaced with the Nebraska Scholarship Program. In fiscal 2001-2002, Dana College received about \$225,000 from the three grant programs, but just three years later, our allocation was slightly more than \$60,000. The change in allocation formula, because of the elimination of these programs, had a dramatic and negative impact on our ability to provide grant aid to our students. We support LB399 because we believe that the changes proposed will change some of the unintended and unforeseen consequences that occurred with the passage of the Nebraska Scholarship Program. The bill, as introduced, will allow us to count our needy, nonresident students and that's about 20 percent, about 20 percent of our students are nonresident, not all needy...for determining the institutional allocation for these scholarship dollars. The change in the maximum grant will give our financial aid directors more discretion in

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

Education Committee
March 02, 2009

allocation of grants at our campuses. The allowance of a number closer to the actual cost of attendance for students in a determination of institutional allocations will provide a modicum of equity in the awarding of grants to students at nonpublic colleges. The state of Nebraska and local taxpayers provide \$688 million...provided in this current year to both public...to the public colleges and students in the independent colleges receive \$2.5 million in student aid. We award 41 percent of the bachelor's and advanced degrees in Nebraska through private colleges. We award more than one-half of the degrees in healthcare. The collective fiscal impact of our colleges and universities in Nebraska is estimated at \$1.4 billion. Our students and their families make great sacrifices to attend college. We provide them with a quality education. Please recognize that all colleges and universities in Nebraska, both public and private, are integral to our state's capacity to meet higher education objections. I would ask your support of LB399. [LB399]

SENATOR ADAMS: Thank you. Are there questions? Senator Avery. [LB399]

SENATOR AVERY: Thank you, Mr. Chair. The question that comes to mind every time this issue comes up is why should state taxpayer dollars be used to subsidize students who go to private schools? Will you address that? [LB399]

JANET PHILIPP: Students...well, in my opinion, students are offered a choice. They're offered a choice of fine colleges in the state system or the private system. And I believe that the state has some obligation to help students who want to attend a private college to be able to do that along with the scholarship money that the private college provides. There are a variety of reasons that students want to go to a smaller college and oftentimes the publics are those colleges. Small class sizes, the opportunity to participate; 80 percent of the students who come to Dana College participate in sports or music or theater. They can't do that if they go to a large institution, a large state institution. So it's an...I believe that it's an opportunity for the state to help provide some measure of support for students who, so that students can have a choice. [LB399]

SENATOR AVERY: Well, I'm not questioning that you do a good job and you have good programs and the students do sometimes choose to attend private schools for those reasons. But my question is more philosophical about the proper use of taxpayer dollars; whether or not it's an appropriate use of taxpayer dollars to subsidize private colleges in this form. [LB399]

JANET PHILIPP: And my position personally is that yes, that is...that is an appropriate use of some taxpayer dollars to allow students to have that choice of a public or private institution. [LB399]

SENATOR AVERY: But one could counter that argument by saying that if you make the choice to go to a private school, then you ought, in doing so, forego any opportunity for

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

Education Committee
March 02, 2009

state tax dollars to assist you in that choice. [LB399]

JANET PHILIPP: Well, that may be true, but just as the state provides tax breaks for, to bring in companies to provide a service and provide economic development that we might not otherwise have and Blair was just, is host to a new one of those companies, Novozymes. Private college, private higher education, as you heard me say, provides almost half of the degrees in education and in healthcare, promoting the healthcare professions and so on. So private colleges produce graduates that the state institutions cannot currently. [LB399]

SENATOR AVERY: You could take that same argument and apply it to for-profit schools, too, couldn't you? [LB399]

JANET PHILIPP: But we're not in it to make a profit. [LB399]

SENATOR AVERY: I know. I know, but there are schools that are for-profit, and I know this bill does not cover them, but you could make the argument that this scholarship program ought to cover them, too; if we use your logic. [LB399]

JANET PHILIPP: I just have...I just believe that because we're not trying to make a profit; we're trying to educate the students as a nonprofit. [LB399]

SENATOR AVERY: I know, but there are schools that do; the University of Phoenix for example. [LB399]

JANET PHILIPP: That is correct. [LB399]

SENATOR AVERY: But you could take your argument for defending this legislation and supporting this legislation; you could take that same argument and apply it to for-profits. [LB399]

JANET PHILIPP: No comment. [LB399]

SENATOR ADAMS: Senator Howard. [LB399]

SENATOR HOWARD: Thank you, Mr. Chairman. As a graduate of Midland College, we're always glad to see Dana is doing well--our arch rival. [LB399]

JANET PHILIPP: Yes, yes. [LB399]

SENATOR HOWARD: Don't you agree that the individuals that attend your school, their parents are paying into the system. They're taxpayers just as much as anybody else, and as long as we have the philosophy of the dollars following the student, I see no

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

Education Committee
March 02, 2009

reason that we should exclude private colleges from the funding that we give the students of the state. But it's just a counter-argument to the debate. [LB399]

SENATOR ADAMS: Other questions? Senator Haar. [LB399]

SENATOR HAAR: Thank you. In here it says if the student demonstrates an intention to remain in Nebraska. How do you, do they have to sign something, or how do you determine...I'm sorry, this is from... [LB399]

JANET PHILIPP: Sure, I understand. I'm going to let Mr. O'Neill answer that question. [LB399]

SENATOR HAAR: Okay, that's fine. Thank you. [LB399]

JANET PHILIPP: Sure. [LB399]

SENATOR ADAMS: Other questions? Seeing none, thank you. [LB399]

JANET PHILIPP: Thank you. [LB399]

SENATOR ADAMS: Next proponent. [LB399]

TIP O'NEILL: (Exhibit 4) Senator Adams, members of the committee, I am Tip O'Neill. That's O-'-N-e-i-l-i. I am the president of the Association of Independent Colleges and Universities in Nebraska. I probably should get the blame for drafting this legislation along with the bill that's going to be heard next, and the bill that will be heard tomorrow. So I'm the one to blame and my reason for drafting several options in terms of student financial aid for students in Nebraska relates to what I believe was a funding formula that did not necessarily do what the Legislature intended when it passed the Nebraska Scholarship Program in 2003 and repealed the three grant programs that we had at that time. In terms of the materials that I have provided you, I think, first of all, it's just some explanatory material on who we are; the 14 colleges and universities that I represent. We're privately controlled, we're not-for-profit, we're regionally accredited. We have a higher percentage, for example, of minority students than in the University of Nebraska and state college system. We actually award more degrees to African-American students than the university and state colleges combined. We employ 4,800 people. We award 41 percent of the bachelor's degrees, and we do it with three-tenths of 1 percent of the state resources for higher education which, you know, we're proud of, although we're not very proud of the three-tenths of 1 percent. And in 2001 and 2002, when, at the high-water mark, I guess, for student aid, for students attending independent colleges and universities, we received about \$3.9 million for our students which was about seven-tenths of 1 percent of the money expended for higher education in Nebraska at the time. Because of the changes in that program, we got as low as \$1.8

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

Education Committee
March 02, 2009

million in '06-07. We're at about \$2.5 million now even though the Legislature and the Appropriations Committee and Education Committee have basically doubled the amount of money that's gone to student aid in the state. And so I guess since I've got the yellow light on, I'm going to have plenty of opportunities to speak to you. So I'd be happy to answer any questions you might have. [LB399]

SENATOR ADAMS: Questions? Senator Haar. [LB399]

SENATOR HAAR: Thank you. To follow up on Senator Avery's question, do you...would you favor expanding this to for-profit, for example... [LB399]

TIP O'NEILL: For-profits are already included. In fact, one of the unintended consequences, in my opinion, was that Kaplan University students receive more money from the Nebraska Scholarship Program than students at Creighton, Nebraska Wesleyan, Hastings, and Concordia combined. I don't think that was the Legislature's intention when they passed that bill. So they're already in. [LB399]

SENATOR HAAR: How did that slip through or was it...what language excludes you, but includes them? [LB399]

TIP O'NEILL: Well, it changed the allocation formula basically to a Pell Grant. It was a Pell Grant formula before, but it capped, it capped the costs in terms of the allocation. You know, when we were going through, I think, Senator Nordquist's aide is going to talk a little bit about the history of the Nebraska grant programs when he introduces the bill that's up after this one. But at...I started working for the independent colleges in 1989, and we were the only sector that was going to the Appropriations Committee asking for student aid. The university, the community colleges, the state colleges basically said, you know, we want the aid direct. We would just as soon it not go through the need-based analysis before we get it. And so we ended up with one of the three programs that just serves students who attend at independent colleges and universities and that's how we ended up getting a high percentage of the student aid dollars. It still wasn't, we never did get the 1 percent of the total money that went...was appropriated for higher education, but we got the, I guess, seven-tenths of 1 percent. So and then the Legislature made a determination that they thought a formula change was the thing to do. We opposed it, but eventually it passed in 2003. Then our allocations went down; the allocations particularly for the University of Nebraska and the for-profit institutions went up. It was primarily because of the formula change. [LB399]

SENATOR ADAMS: Senator Avery. [LB399]

SENATOR AVERY: Mr. O'Neill, you seem to imply that this aid money ought not to go to for-profit colleges, but you seem to think it's okay for private; would you explain why? [LB399]

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

Education Committee
March 02, 2009

TIP O'NEILL: Well, first of all, nonprofit institution, I don't mean to imply that the students attending for-profit institutions shouldn't get any money. I think that the formula may have over-rewarded them, but I would never, never say that. I would say though that there is a significant difference between institutions in terms of how they're organized on a not-for-profit and a for-profit basis. I mean, our assets are dedicated to greater public purposes, just as the public sector assets are. If you're talking about aid to Nebraska residents, it's one thing. But I mean, students from out-of-state who get tuition waivers, for example, at the University of Nebraska, received in the amount of tuition waivers, in '07-08 not including graduate assistance, a little more than \$26 million which is ten times as much money as Nebraska resident students received in the independent colleges and universities. So I would just say that we're performing a service to the state. We're...because of our institutions, the state doesn't have to build additional infrastructure. I mean, we provide money for services provided by nonprofit hospitals. There's no difference in the control of a nonprofit hospital than there is in a nonprofit college any more than there's a difference in control of a public hospital versus a public college or university. [LB399]

SENATOR AVERY: But wouldn't you agree that private colleges...you talk a lot about the higher public purpose, but isn't it also true that private schools pursue a rather narrow purpose which is often the advancement of a particular religious point of view? [LB399]

TIP O'NEILL: I would say that that's not really the case. I mean, there are exceptions obviously. There are, I don't know, 1,500 different private colleges across the United States and some are more, more religious than others. But I would say that there is not a...even though there's a historical relationship with a lot of institutions; for example, Doane College was started by a congregational church and I think it's the second oldest college in Nebraska, the 1860s. There is not necessarily a very close relationship now between Doane College and the Churches of Christ. So. [LB399]

SENATOR AVERY: It is true that many private schools started out closely associated with a church or a denomination and over time they've... [LB399]

TIP O'NEILL: Absolutely, yeah, 13 of 14 that I represent. Bellevue University was the only one that started out as a...actually, the Bellevue Chamber of Commerce started that as a way to provide educational opportunities to servicemen at Offutt Air Force Base. So that is the only one that does not at least have a historic relationship with a religion. [LB399]

SENATOR AVERY: But the governance structure and to some extent, funding of these schools, is still often tied closely to a church? [LB399]

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

Education Committee
March 02, 2009

TIP O'NEILL : Well, not necessarily. No, I would not say closely. I mean, President Philipp probably is in a better position to answer that question than I am. But some...Union College, for example, has a fairly close relationship with the Seventh Day Adventist Church. Concordia University has a fairly close relationship with the Missouri Synod Church. But in terms of the Hastings College relationship with the Presbyterian Church, the Doane College relationship with the Congregationalists, the Nebraska Wesleyan University relationship with the Methodist Conference; it probably, even though there's a relationship, I wouldn't necessarily call it a control relationship. [LB399]

SENATOR AVERY: I suppose it would be a waste of our time for me to ask you the philosophical question I asked the previous testifier about the justification for using tax dollars to subsidize private schools? [LB399]

TIP O'NEILL: Well, I, first of all, it's not a subsidy for the private schools. If you look at the Supreme Court case, for example, Lenstrom v. Thone, in 1982, it said the primary beneficiary is the student. And that's who I would say is the primary beneficiary. You're talking about a student who is making a choice perhaps because it's a unique program, perhaps because he or she is place-bound, perhaps because it has an educational setting that's going to be best suited for that particular student. Some students who are not going to be successful at the University of Nebraska-Lincoln may be successful at Nebraska Wesleyan or Union College because of the size. And we really ought to have resources that best fit the student, in my opinion. Because we don't have the same situation in higher education that we have in K-12. Not every student in higher education has a constitutional right to receive a free education. I mean, that's not the case. Even though the University of Nebraska is a constitutionally established entity, there's no requirement that that education be free. So I guess my response to that is you would want to use your resources in the most efficient manner possible and if that means providing some money to a student to attend a not-for-profit privately controlled institution, then that makes the most sense. [LB399]

SENATOR AVERY: You talked about the private schools being left out, didn't you, in your testimony? [LB399]

TIP O'NEILL: Did I, okay. Left out...I? [LB399]

SENATOR AVERY: I'm curious too about what you mean by that because when I look at these numbers, they don't look left out or maybe I misunderstood you. [LB399]

TIP O'NEILL: I don't recall how I may have used the term left out, do you? Okay. [LB399]

SENATOR AVERY: Okay, I may have misunderstood you. I'll stop there. [LB399]

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

Education Committee
March 02, 2009

SENATOR ADAMS: Senator Haar. [LB399]

SENATOR HAAR: Thank you. I asked the question earlier and they said probably you could answer this. A student demonstrates an intention to remain in Nebraska. Is that a written commitment or? [LB399]

TIP O'NEILL: I assume that the Coordinating Commission would have to do that by rule or regulation of terms, but I would guess an affidavit of some sort saying my intention is to stay in Nebraska and teach here, work here, be a nurse here, yes. [LB399]

SENATOR HAAR: Okay. Is that same required of people going to UNL, for example, do you know? [LB399]

TIP O'NEILL: No, I don't, you know, it's kind of interesting when we're talking about the level of support for resident students attending private college universities, I mean, we do \$26 million in tuition waivers at the University of Nebraska system, and I don't know that there's any, that requirement for that. Most of those waivers are...negate the difference between nonresident and resident tuition, but not any...I mean, there's no requirement that I'm aware of for a student who comes in from Missouri and gets a tuition waiver so they're paying resident tuition to have to sign any sort of document saying he or she is going to stay here. [LB399]

SENATOR HAAR: Okay. Let's see, my other question. So you had mentioned earlier, part of this is I'm a new person and I don't understand all the formulas that we use all over the place. Is there actually a formula that, you know, numbers get plugged into and then each person gets their amount? [LB399]

TIP O'NEILL: Absolutely. It is an allocation to the institution and then the institution financial aid director sends a list in, as I understand, to the Coordinating Commission, and they approve the list of recipients and, but the allocation is determined pursuant to formula, yes. [LB399]

SENATOR HAAR: Okay. So would it...is this kind of...this thing of, you know, saying you're going to remain in Nebraska, is that kind of a band-aid when the formula itself should be changed? [LB399]

TIP O'NEILL: It certainly is an attempt from a drafting standpoint, yes, it was an attempt to change some of what we consider to be the most difficult parts of the new formula back to the way it was before, yes. [LB399]

SENATOR HAAR: Okay. Because we get involved in changing formulas all the time, so. [LB399]

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

Education Committee
March 02, 2009

TIP O'NEILL: Sure. I understand. [LB399]

SENATOR HAAR: Thank you. [LB399]

TIP O'NEILL: Thank you, Senator. [LB399]

SENATOR ADAMS: Senator Howard. [LB399]

SENATOR HOWARD: Thank you, Mr. Chairman. You know, when you sign an agreement you intend to stay in Nebraska, that sounds good and maybe intend to stay in Nebraska when you start out, but what would make that binding? Would there be a payback requirement? [LB399]

TIP O'NEILL: No. There wouldn't be. [LB399]

SENATOR HOWARD: So it's just goodwill. [LB399]

TIP O'NEILL: Right. [LB399]

SENATOR HOWARD: Because we hear all the time about teachers who leave Nebraska and go...you-name-it, so. Okay, thanks. [LB399]

TIP O'NEILL: Right [LB399]

SENATOR ADAMS: Other questions? Tip, then as I look at this bill and you correct me if I'm wrong and as a matter of clarification for me as well as the committee, there's five components to this. But would you consider the first component redefining resident student as most critical to you in this issue? [LB399]

TIP O'NEILL: Yes, that is correct, Senator. [LB399]

SENATOR ADAMS: And the essence of that would mean that currently nonresident students are not calculated into the allocation formula, is that right? [LB399]

TIP O'NEILL: That is correct. That is correct. [LB399]

SENATOR ADAMS: So this would be a way of saying well, they are a resident if they promise to be. [LB399]

TIP O'NEILL: Right. [LB399]

SENATOR ADAMS: And therefore would figure into the allocation formula? [LB399]

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

Education Committee
March 02, 2009

TIP O'NEILL: That is correct. Even though they may...they would not be able to receive the award, they would figure into the allocation formula. [LB399]

SENATOR ADAMS: Right. They wouldn't be able to get the money, but it would... [LB399]

TIP O'NEILL: Right. [LB399]

SENATOR ADAMS: It would show a greater need in effect for the private colleges if they could be counted. [LB399]

TIP O'NEILL: Yeah, at a particular institution. You know, it would not have, it might have a negative effect on an institution such as Nebraska Wesleyan that had a high percentage of resident students. I mean, Nebraska Wesleyan has the highest percentage of resident students of any college in the state. [LB399]

SENATOR ADAMS: Okay. Other questions? Yes, Senator Haar. [LB399]

SENATOR HAAR: Just one more follow up then. Just having been on the campaign trail where in a different context you'll probably know what I'm talking about, people were saying I pay, you know, here we have nonresidents getting resident tuition. Are we going to hear the same thing on this, I wonder? [LB399]

TIP O'NEILL: Well, that's already the case. I mean, I think we're, we've seen, you know, tuition waivers increase significantly in the public sector institutions and of course, almost half of those in the University of Nebraska system go to nonresidents so. [LB399]

SENATOR HAAR: Can you tell me, again, for my education, a little bit more about the nonresident tuition waivers, how people get those now? [LB399]

TIP O'NEILL: Well, it might be more helpful to hear from, I think, the financial aid director at the University of Nebraska-Lincoln is going to talk about that probably in opposing at least one of these bills. But it...my understanding in terms of the way it works is that tuition is set at, in the public sector, there's a level they set tuition for resident students which is a subsidized number and then they set tuition for a nonresident which theoretically, at least, should collect the full cost of the provision of the education. And then the tuition waiver may be the difference between that full cost number for a nonresident and the amount that he or she would pay if he or she were a resident student. [LB399]

SENATOR HAAR: Thank you. [LB399]

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

Education Committee
March 02, 2009

TIP O'NEILL: Um-hum. [LB399]

SENATOR ADAMS: Any other questions for Tip? Thank you, Tip. [LB399]

TIP O'NEILL: Thank you, Senator. [LB399]

SENATOR ADAMS: Next proponent. If there are no other proponents, we will hear opponent testimony. [LB399]

MARY SOMMERS: Good afternoon, I'm Mary Sommers. I'm the director of student financial aid at the University of Nebraska at Kearney. And I'm happy to be here today to express some serious concerns that we have at the University of Nebraska about LB399. There's three things in particular we want to address. The first is the residency issue that's been discussed already by my colleagues. At the University of Nebraska, we pretty strictly define who is a resident for tuition purposes, and I'd be happy to address some of the questions that you brought up about waivers for nonresidents. But I guess my biggest concern is what I'm seeing happen right now as my students are applying for aid and as their applications are hitting my system, and I'm looking at what kind of eligibility are they demonstrating, based upon what's happening in the economy. We are anticipating greater need by Nebraska resident students because of the economy, just in Kearney. I'm sure you're aware of the layoffs that have occurred in my community, my neighbors. So with need increasing and with the serious lack of resources that you're going to have to deal with in the appropriations process, it seems to me that I'm creating a whole other category of eligible students for the Nebraska State Grant is problematic at this time. The second issue I would like to address would be the provision of this bill as it's proposed that would make any Title IV eligible student eligible for a Nebraska State Grant. Now let me define Title IV eligibility in financial aid speak and maybe try to help it make sense to you all. Any student who fills out the free application for federal student aid and meets all the requirements as Congress has defined Title IV eligible, would be eligible to receive a Nebraska State Grant under this provision, which means that, to be blunt, you could be Warren Buffet's son, complete the FAFSA and under this provision qualify for a Nebraska State Grant. Again, as its defined in the bill right now. I don't believe that's the intent of the Nebraska State Grant Program. And lastly, I would just say that there was a reason back in 2003 that the allocation formula was modified. And that's because the data, we felt, very clearly indicated that Pell Grant eligible students chose in large part the public universities, state colleges, and the community colleges in the state of Nebraska. And the allocation formula at that time was not serving the real needs of the neediest students in the state of Nebraska. And I guess I would just urge you to be cautious as you examine the data regarding where do the neediest students opt to enroll in the state of Nebraska. The intent of the State Grant Program, of course, is to help empower the neediest students to go to college in the state. Thank you. [LB399]

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

Education Committee
March 02, 2009

SENATOR ADAMS: Thank you. Are there questions for this testifier? Senator Haar. [LB399]

SENATOR HAAR: Yes. Could you tell me about the waivers for nonresidents? [LB399]

MARY SOMMERS: Um-hm. At my institution and I can only speak to my institution, okay? [LB399]

SENATOR HAAR: Sure, you bet. [LB399]

MARY SOMMERS: The University of Nebraska at Kearney academically qualified students who demonstrate academic excellence, who meet certain academic criteria are awarded a nonresident scholarship that can pay up to the full differential between resident and nonresident tuition. So these are students that can't get Regent's Scholarships, for example, at my school, but may demonstrate the very same academic level of expertise of excellence and so it's a way for us to attract a nonresident student who may not otherwise even take a look at UNK to come and enroll here and of course, we hope maybe stay here. No guarantee of that. But certainly it's a way for us to attract them. We have the capacity at UNK to serve a certain amount of nonresident students. We want to do that. It adds to the diversity of our student population when we have a student enroll from metro Denver, for example, who maybe is living with a student from Mullen. [LB399]

SENATOR HAAR: No problems with the word diversity. [LB399]

MARY SOMMERS: I wasn't going to say that. Wasn't going to go down that road. [LB399]

SENATOR ADAMS: Are there other questions? [LB399]

SENATOR HAAR: Well, just to follow up on that then, having been a math major I kind of think if you're going to mess with a formula, you ought to be straightforward and adjust it. I mean, if the Legislature feels that nonprofit, nonpublic schools are not getting enough money, we ought to adjust the formula instead of kind of adding on a little thing at the end. [LB399]

MARY SOMMERS: Fair enough. Um-hum. We think, our best guess is, under the allocation formula described in this bill that potentially as much, we could lose as much as half of the money that we're currently receiving. And right now, I'm getting about \$900,000 in state grant aid for my Nebraska students. So cutting that in half, it would be a concern. [LB399]

SENATOR ADAMS: Other questions? Thank you. [LB399]

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

Education Committee
March 02, 2009

MARY SOMMERS: Thank you. [LB399]

SENATOR ADAMS: Next opponent. [LB399]

MARSHALL HILL: (Exhibit 5) Good afternoon, Senator Adams, members of the committee, I'm Marshall Hill, Coordinating Commission for Postsecondary Education. I'd like to make a few key points following some of the discussion you have had. I was not here in Nebraska when the changes to the financial aid programs were made, in 2003, but I do understand that the overriding philosophical orientation at that time was to allow the funding to follow the students--eligible students to eligible institutions. And I agree that it was highly unlikely that the Legislature understood what the consequences of that would be. In the materials that we just provided you is a chart showing the financial effect that my good friend Tip O'Neill has referred to. It is certainly true that the funds going to students who attended, who attend the independent colleges and universities have gone down significantly while funds to other sectors have either remained essentially the same or gone up. Frankly our overall point about this bill and the one following and the ones tomorrow, follow a bit on Senator Haar's point that if you are uncomfortable or dissatisfied with the financial ramifications of the policies that you have adopted, we would be more comfortable with looking at the underlying philosophical issues surrounding them rather than minor tweaks to the formula. We are, have some particular concerns about this bill. First, the difficulty of taking into account for allocation purposes a student statement that he or she does intend to stay in Nebraska. They may, in all likelihood, mean that when they say it, but there's no provision to, for return of funds if they did not. And such a provision would be very difficult to administer. The provision expands the pool of eligible students at a time when we have difficulty providing the funds we need to the students currently eligible. In particular, it would allow students from outside the state, non-Nebraska students, as valuable as they are to our institutions, as important as they are to bring in, nevertheless to access a small, small fund for financial aid. There's another point about institutional eligibility which hasn't been discussed at this point, and that's the provision to match funds that an institution would need to provide some matching funds in order to participate in these, in these new changes. The commission has run for you two estimates, and they're on the pages that you have here. The orange page is our estimate of what the financial ramifications would be to LB399 if all institutions were able to meet the matching provision. And you see that by our estimation and I emphasize it's an estimation, the amount of funding going to students at the University of Nebraska campuses would decrease by just over a million dollars. The amount going to students at state colleges would decrease by almost \$200,000. The amount going to students at community colleges would decrease by \$428,000. The increase to independent colleges and universities is roughly \$830,000; and perhaps an unintended consequence, yet again, by our reckoning, the amount of funding going to students at private career schools would likely increase by \$830,000. The other scenario, yes, sir. [LB399]

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

Education Committee
March 02, 2009

SENATOR ADAMS: If you don't mind, Marshall, we've got the red light and I want to be fair to everybody and maybe through questioning we could further get into these, if that's all right. [LB399]

MARSHALL HILL: All right. [LB399]

SENATOR ADAMS: Are there questions for Marshall? Senator Howard. [LB399]

SENATOR HOWARD: Thank you, Mr. Chairman. Marshall, could you explain to us what the yellow sheet refers to? [LB399]

MARSHALL HILL: Yes. As I mentioned...thank you, I appreciate that Senator Howard. And I apologize, I had not noticed the red light. We surveyed the institutions in the state to ask them if they thought they would be able to meet the matching provisions. By removing the ones who would not be able to meet the matching provisions, that's what is generated on the yellow sheet. Now I will say that my professional and personal judgment is that reality would be closer to the orange sheet. Because I believe that if institutions, particularly private career schools saw that by not providing a match, they would lose \$1.3 million in scholarships they would find some ways to make some of that match up. [LB399]

SENATOR ADAMS: Senator Haar. [LB399]

SENATOR HAAR: Thank you. Talk to me a little bit about the match that's required under this program. [LB399]

MARSHALL HILL: It requires that in order to participate as an institution, your institution must make available financial aid support in an amount equal to or greater than the amount of state financial aid funds that your institution would receive. Now there's no requirement, as we understand it, that those funds actually be provided to state financial aid recipients, to needy students, for example. So they could go to any students. [LB399]

SENATOR HAAR: And then my follow-up question would be on the chart that's got the graphs on it, what just surprises me here is that in 2000-2003, the independent colleges got 50 percent, 51 percent of all the money. Do you remember any of the history of...I mean, was that part of the reason it was reduced or? [LB399]

MARSHALL HILL: Well, I think Tip O'Neill could be in a far better place to answer that than I. I wasn't here at the time. I'd certainly trust his representation of why. I think it was because principally of the Pell distribution, distribution of Pell students, perhaps at that time. If I can kind of clarify that Pell point, that every year, every year students who wish

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

Education Committee
March 02, 2009

to seek financial aid fill out the dreaded FAFSA form which you have heard talked about, I'm sure. It's very complex, it's quite difficult. That form attempts to arrive at a number which indicates the student's and the student's family's expected contribution toward their, toward their education. And if it amounts to the Pell dollar amount or less, they will receive a Pell Grant. If it does not, they will not. [LB399]

SENATOR ADAMS: Other questions for Marshall? Go ahead. [LB399]

SENATOR HAAR: Well, and then, and maybe again you wouldn't be the person to answer this, but if we looked at the number of students on, again on the graph, okay, how many...like in 2002-03, 17.7 percent went to the university. I'm just wondering how many students were affected. [LB399]

MARSHALL HILL: Right. Senator Haar, next Monday at about this time, we will be presenting to you our newest financial aid, I mean, newest, our educational progress report and if everything you want to know is in here if you can just remember where to find it. And here I have that. For example, in 2003, Nebraska, the University of Nebraska had 6,327 first-time full-time freshmen. And in 2007, they had about 500 more. The independent colleges and universities in 2003 had 3,600 roughly freshmen, full-time equivalent students. In 2007, they lost about 150 or so. So part of the differential that you are seeing is a decrease in enrollment at the independent colleges and universities overall. [LB399]

SENATOR HAAR: Okay, thank you. [LB399]

MARSHALL HILL: You're welcome. [LB399]

SENATOR ADAMS: Other questions? Marshall, I'm not sure that you're the person that has the answer, but you've got all this data all the time, so I'm going to run it by you anyway. Of these sectors, universities and state colleges down the line, which one might, in your opinion, proportionately serve the larger number of Pell Grant eligible students, poor students? [LB399]

MARSHALL HILL: A very high percentage of the students who attend the career schools are Pell-eligible. And other than that, the numbers are fairly close, among the other sectors. So the largest concentration of Pell-eligible students as a percentage of enrollment is in the career schools. [LB399]

SENATOR ADAMS: So, so explaining part of the allocation to the for-profits could very well be because of the need? [LB399]

MARSHALL HILL: The money follows the students. Yes, sir. And there has been a very significant increase in the enrollments in the for-profit sector institutions. [LB399]

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

Education Committee
March 02, 2009

SENATOR ADAMS: Okay. Senator Howard. [LB399]

SENATOR HOWARD: Thank you, Mr. Chairman. You know, in my experience, it seems like these private career schools which I take to mean those are the for-profit schools? [LB399]

MARSHALL HILL: Yes. That is the current term of art. It changes on us from time to time. [LB399]

SENATOR HOWARD: That's the aka. But in my background in working with students that were going to go to these schools before I came down here was that these schools are pretty aggressive in helping students or insisting that students apply for those grants. I mean, so I think there's a piece of it where the schools themselves are really promoting that as a funding source, possibly more than some of the other schools do. So that's just an observation that I think should be factored into all of this. [LB399]

MARSHALL HILL: I think that's likely to be the case, yes. [LB399]

SENATOR ADAMS: Other questions for Marshall? Senator Avery. [LB399]

SENATOR AVERY: We hear a lot about the money following the student. Would you be willing to share with the committee your particular viewpoint on that. Whether this is good policy or not good policy, because that seems to be the key point. [LB399]

MARSHALL HILL: I will, Senator, and I hope you characterize this as my personal philosophy, not necessarily that of the commission, although we've talked about it a number of times, and I don't believe they would differ from what I'm about to say. A year or two ago, the National Association of Student Financial Aid Administrators surveyed all states: 31 states responded as to whether or not they did or did not provide scholarships to students who attended for-profit institutions, and all but eight did. So current national practice is generally to provide some financial assistance in states to students who do attend for-profit schools. My answer is a little complex because of a number of things. One, their differential ethnic impact. If you look at our various sectors of public education, particularly our private sectors, the community colleges, the university, the state colleges. They tend to average between 5 and 7 percent African-American. Enrollments at the for-profit schools are more than 20 percent African-American. Some people think that at one extreme that means that they are very predacious and do what Senator Howard suggested and are very aggressive in enrolling students in order to get their Pell Grants. At the other extreme, you could make the argument that these are institutions that are looking out for a segment of population that hasn't been terribly well-served or hasn't taken advantage of, depending upon how your point of view is, and is serving them. My personal belief is that it's across the

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

Education Committee
March 02, 2009

board. There is an aggressiveness that happens with the independent sector, sorry, with the for-profit sector, which isn't necessarily to the detriment of the student. The highest graduation rate by sector in this state are the for-profit schools. Now that's not a fair apples and apples comparison because their degree programs are much shorter. And it's easier to get someone through a one-year program than a four-year program. But by, by their eligibility for federal financial aid, they must demonstrate that they are placing their graduates into employment positions related to the fields that they've studied. So my personal belief to summarize is yes, allowing the funds to follow the students to institutions is a good policy idea because we need various types of postsecondary education accessible to all students. My personal opinion would be I wish they would make some different choices than they do. [LB399]

SENATOR ADAMS: Other questions for Marshall? [LB399]

SENATOR AVERY: You mean the student. [LB399]

MARSHALL HILL: I wish some of the students would make some different choices about the schools that they attend, yes. [LB399]

SENATOR ADAMS: Other questions? Thank you, Marshall. Next testifier. Go right ahead. [LB399]

KRISTIN PETERSEN: (Exhibit 6) Good afternoon again, Senator Adams and members of the committee, my name is Kristin Petersen, K-r-i-s-t-i-n P-e-t-e-r-s-e-n. I am vice chancellor for Employee Relations and General Counsel for the Nebraska State College System, and I am here on behalf of Chancellor Carpenter who is testifying in another hearing. I have provided copies of my testimony for today. On behalf of the Nebraska State College System, we are opposed to LB399. This bill would divert significant amounts of funding in the current Nebraska Scholarship Program, taking it away from Nebraska's public higher education sectors and providing it to the private and independent institutions. Under this bill, students at Chadron, Peru, and Wayne State Colleges would receive significantly less in state need-based support. The fiscal note for this bill indicates a loss of \$188,000 to the students in our colleges based only on the definition of the tuition and mandatory fees included in the bill. That number reflects a loss of nearly 20 percent of the current funding that we receive. Other proposed requirements of the bill are difficult to understand and estimate, but they also appear to have the potential to have an even greater loss for need-based funding to the state colleges and to all the sectors in public higher education. Public higher education should be focused on public higher education. While private schools play an important part in college attendance and the choices for students, the very nature of public higher education is based on the public support that is provided to it. In the same regard, institutions in higher public education are held accountable and must follow an entirely different set of requirements including transparency in the conduct of our business. Our

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

Education Committee
March 02, 2009

institution is not unlike some of the private institutions that are advocating for this bill. We are small, we are located in rural Nebraska and our students are often geographically bound. State need-based support for our students in public higher education should not be diminished in support for private and independent schools that are not held to the same level of accountability and transparency and similar to my colleague from the University of Kearney, we hold a high degree of concern that in this economy money would be moved from our institutions. I'd be happy to try to answer any questions the committee might have. [LB399]

SENATOR ADAMS: Are there questions? Senator Giese. [LB399]

SENATOR GIESE: Thank you, Senator Adams. Could you just explain a little bit about the same level of, the private independent schools are not held to the same level of accountability and transparency, can you just explain that? [LB399]

KRISTIN PETERSEN: Some of the items that we consider to be more restrictive for our institutions would be: we have different auditing requirements, different programmatic oversight, program requirements, public record, and again, some of the financial standards that we're held to. [LB399]

SENATOR GIESE: And that's contrary to private? [LB399]

KRISTIN PETERSEN: A different level of accountability for the public funds than what we're required to do, yes. [LB399]

SENATOR GIESE: Okay. [LB399]

SENATOR ADAMS: Other questions? Seeing none, thank you. [LB399]

KRISTIN PETERSEN: Thank you. [LB399]

SENATOR ADAMS: Next opponent. [LB399]

JAMES HARDY: Good afternoon, my name is James Hardy, J-a-m-e-s H-a-r-d-y. I'm here with Nebraska Christian College today. We have a couple of concerns with LB399. I represent a very small private college of a religious nature. We train ministers, missionaries, youth ministers, that's what we do. We tell people we're like Kentucky Fried Chicken, we do one thing and we do it well. But we are a small college. We have 164 students this year. We are 64 years old. Our college was started in 1945 because there was a need that wasn't being met through other universities, other colleges, and I think several of our religious institutions probably became...oh, I thought that you had a question. Okay. And we're concerned with LB399 that a couple of the elements in here might be a problem to us. Number one, the idea that there would need to be

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

Education Committee
March 02, 2009

documentary proof supporting an idea of permanent residency. The nature of our institution is that we train up students with the idea that they will, probably half of them, leave the state. If we're training missionaries, they can't do a lot of their work in the state. They'll be going national, international. Many of our students will stay in the state. At least 50 percent of our students come from Nebraska. The other 50 percent come from neighboring states and so our graduates will be going not only in Nebraska but back to other neighboring states. At the current time, it's estimated that we have our 75 of our communities around Nebraska where one of our alumni is either a minister or a youth minister, family counselor. And so we're very intertwined with Nebraska. Last year we received, I believe, \$31,000 in state grant money that was made available to our students. We're a very small fish in a big pond. So that \$31,000 to us is a very, very important factor when it comes to our students, you know, receiving some type of financial assistance. I was glad to hear some explanation for the idea of the documentary proof or permanent residency, but if I was a student and somebody told me, there's a possibility of you getting some state grant money, if you say that you'll stick around after graduation, it'd be pretty easy to say, well, I'm thinking about it more all the time. I don't understand the full impact of this yet. It seems to be a rather open-ended idea. So I'd like to find out, have that be further clarified. I see my red light is on. I'm open for any questions. [LB399]

SENATOR ADAMS: All right. Are there questions for this testifier? I guess not. Thank you, sir, for being here. [LB399]

JAMES HARDY: Thank you. [LB399]

SENATOR ADAMS: Is there other testimony? Senator Lautenbaugh to close. [LB399]

SENATOR LAUTENBAUGH: Thank you, again, Mr. Chairman and members of the committee, for the thoughtful discussion today. Obviously, we're willing to work with the members of the committee to try to get something acceptable out to the floor. Addressing some of the comments earlier regarding the Title IV issues, some of the concerns I think we could address easily with an amendment because some changes in Title IV seem to make this point in the bill moot as I understand it. There was some concern expressed about the religious nature of some of these institutions, and I should point out that these institutions already are receiving aid in some amount. This is about the amount, not about whether or not they should be receiving aid. And while historically, religion is important on some of these campuses, as a Methodist, I graduated from Creighton. I was no better or worse a Methodist when I came out, but I did not have any pressure to be anything other than what I was. My son, a Methodist, attends Dana, a Lutheran College, and is still Methodist. I don't think the religious nature of this is at issue. We are already providing aid for these institutions. This is a policy determination regarding how much and how we treat these institutions. We did hear some testimony from the director of the Coordinating Commission about how this would

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

Education Committee
March 02, 2009

somehow increase the number of eligible students to the detriment of the current pool of eligible institutions or students if you will. I think LB21 does the same thing which they supported. So once again, what is the real concern here? Similarly, I heard that some of the institutions face different accountability and public records requirements than these schools that we're talking about would. I'm not sure how that's relevant to the discussion we're having here today. Once again, these entities are already receiving aid. It's just a matter of how we calculate it and how much and it is a policy decision for all of us to make. Once again, it's a pleasure to be here today. I'm happy to work with the committee on this as it goes forward. [LB399]

SENATOR ADAMS: All right. Thank you, Senator Lautenbaugh. Are there questions for the Senator? Okay. [LB399]

SENATOR LAUTENBAUGH: Thank you. [LB399]

SENATOR ADAMS: Yeah. That closes the hearing on LB399, and we'll move right on to LB397. Senator Nordquist or his representative. [LB399 LB397]

ERIC VAN HORN: Chairman Adams, members of the committee, my name is Eric Van Horn, E-r-i-c V-a-n H-o-r-n, and I'm legislative aide to Senator Jeremy Nordquist who represents District 7 in Omaha. Senator Nordquist regrets not being able to make it today. He is attending his wife's grandmother's funeral in Kansas City. But I know that providing need-based financial aid to Nebraska students is an issue that is very important to him. LB397 seeks to enact two grant programs that benefit students in all higher education sectors: the State Scholarship Award Program and the Scholarship Assistance Program. These programs would replace the current State Grant Program, the Nebraska Scholarship Program. To better understand the need for LB397 as well as LB399 and LB413, I'd like to share a little bit of historical perspective. Nebraska first implemented a need-based grant program when Congress passed the State Student Incentive Grant Program known as SSIG. The program which became known as the Leveraging Educational Assistance Partnership or LEAP in 1998 provided federal matching money for states that set up their own need-based programs. Congress mandated that states include students attending private colleges in the grant program, but Nebraska's Attorney General at the time routinely rejected that provision on the basis that including these students would violate Nebraska's constitutional prohibition on state aid to private schools. However, the Nebraska Supreme Court ruled in Lenstrom v. Thone, in 1982, that such aid would not be unconstitutional because students, not the schools, are the primary beneficiaries of the program. The state finally funded the program for the first time in 1987. Two years later, in 1989, Nebraska enacted the two programs that LB397 seeks to reinstate: the Scholarship Assistance Program or SAP and the State Scholarship Award Program or SSAP. SAP had a formula that favored state schools and SSAP had a formula that favored private schools. The two programs, by law, were to be funded equally. In 1991, the Nebraska Legislature enacted the

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

Education Committee
March 02, 2009

Postsecondary Education Award Program or PEAP. Tomorrow this committee will hear testimony related to the reenactment of that program. PEAP provided support for students with a high level of need wishing to attend nonprofit, privately controlled colleges and universities in Nebraska. Despite the compromise and despite Congress's mandate, the administrators of Nebraska's public colleges and universities were unhappy with the share of grant money allocated to students at Nebraska's private colleges, and they actively worked to alter the system. They were successful in 2003, when SAP, SSAP, and PEAP were eliminated in favor of the Nebraska Scholarship Program. Even though Nebraska's independent colleges were told that they would be held harmless by the new allocation formula, they lost \$700,000 in aid during the first year of the Nebraska Scholarship Program's establishment. The new formula obviously benefits the University of Nebraska campuses and for-profit colleges, while it penalizes independent institutions. In fact, while the total state funding for needs-based scholarship programs has doubled since 2001, aid to students at Nebraska's independent and nonprofit colleges and universities has decreased by 36 percent. Concordia and Creighton Universities and Dana, Union, and York Colleges have all seen the aid to their students slashed by more than 50 percent. Meanwhile, the assistance sent to Nebraska's for-profit schools has increased by 240 percent over that same period of time. Nebraska's independent colleges educate about 22 percent of the students in Nebraska and award about 40 percent of all bachelor's and advanced degrees. These schools have a higher percentage of minority students than in the public sector. For example, they awarded more degrees to African-American students in 2006 than the University of Nebraska and the State College System combined. It is the only sector with an increase in teacher education graduates in the last ten years. It's clear that Nebraska's independent colleges are an indispensable component of Nebraska's postsecondary educational system as well as its economy. LB397 simply seeks to reinstate two programs that treat students at these institutions more fairly than they are treated by the current system. Thank you for your consideration of LB397. We are fortunate to have Ms. Gloria Hennig, the financial aid director at Concordia University, as well as Tip O'Neill here with us today. They will be best able to answer any technical aspects of the bill, but I do, I will do my best to answer any questions that you have at this time. [LB397]

SENATOR ADAMS: That's not what Senator Nordquist said. (Laughter) He said, take it easy on you. Are there questions for the introducer? All right. If not, nice job. We'll move on to the first proponent. [LB397]

GLORIA HENNIG: Chairman Adams and members of the Education Committee, my name is Gloria Hennig. That's G-l-o-r-i-a and the last name H-e-n-n-i-g. I'm the director of financial aid at Concordia University, and I have been in financial aid for 26-plus years, unfortunately. Nine years in the state of New York and 17 years in Nebraska. I came here in 1991. Concordia enrolls students from more than 20 states and 25 foreign countries. The highest percentage of our students come from outside Nebraska, and

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

Education Committee
March 02, 2009

those students bring with them resources from outside the state that benefit our community and our country. With more than 200 employees, we are among the largest employers in Seward County. The main reason for need-based student financial aid is to provide academically qualified students with the resources necessary to attain a college education. I say without qualification that students who attend the college of their choice will have a much better chance of a positive educational experience. We can provide certain support mechanisms at our smaller campus than sold on price. We can provide...our faculty members know our students by name. They know that they are coming to class and our administrative members can provide services almost immediately to a student that who is having problems. Concordia was, I think, disproportionately negatively impacted by the removal of the SSAP or SAP when it was eliminated in 2003. Even though we enroll a high percentage of nonresident students, we were able to count those students in determining the allocation even if they were not receiving a state grant. That allowed us to make higher grants to our resident students and with the current program, we receive about one-third as much money from the state as we received seven years ago. LB397, if reimplemented, I'm sorry, the removal of the financial barriers because of economic, social, and educational goals and through the implementation of the SSAP and SAP programs will be very beneficial to our students. Thank you. [LB397]

SENATOR ADAMS: Thank you, Gloria. Are there questions? I guess not. Thank you, Gloria. Next proponent. [LB397]

TIP O'NEILL: Senator Adams, members of the committee, I'm Tip O'Neill, O-'-N-e-i-I-I, here for my second of third appearances in the next two days before the Education Committee. Actually, I want to talk kind of about the history too. I mean, the policies are one thing, but Nebraska, when Congress passed the SSIG bill back in 1982, Nebraska didn't appropriate any money for six or seven years...didn't appropriate any money to students attending private colleges until the feds came into Nebraska and said, we're going to take away your SSIG money unless you allow students from the independent sector to participate. So we had the program for one year in 1988, or excuse me, in 1987. And then in 1988, Senators of the...Chairs of the Appropriations and Education Committee started negotiating on the allocation because the privates wanted one allocation formula and the publics wanted another one. And interestingly enough, Senator Warner on the Appropriations Committee was negotiating on behalf of publics and of course, I was assisting him because at the time, I was the vice president for college relations at Kearney State. And on the other side of the equation, negotiating for the privates was the Chairman of the Education Committee, Senator Ron Withem, and of course, now we're...I represent private and he represents public. So it just shows that all things come back. And but anyway that's how we ended up with SAP and SSAP. One program had a funding formula that favored the privates, one had the funding formula that favored the publics. We had those programs for a couple of years. And actually what happened is that I came to the Appropriations Committee in 1990 and

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

Education Committee
March 02, 2009

asked for, yeah, in '89 or '90 and asked for additional money for student aid. And one of the representatives actually from the community colleges at the time came in and testified against additional student aid money. That person is no longer here. But Senator Moore and Senator Ashford and I and Senator Lynch sat down and sat geez, I mean, they said, Tip, if you're going to be the only one asking for additional student aid money, you might as well get it. And so that's how the PEAP program got created that was passed in 1991. And ultimately, that's how we ended up with a high percentage of the student aid dollars. We were the only ones that were asking for the money for 10 or 12 years and we started out at \$125,000 in that PEAP program and ended up about \$2.4 million by the time it was repealed. So that's kind of how things happened, and that's why we introduced this bill this time. I'd be happy to answer any questions. [LB397]

SENATOR ADAMS: Are there questions for Tip? Senator Haar. [LB397]

SENATOR HAAR: Well, you didn't see these graphs but this was the one that was handed out, you can take a look at that. [LB397]

TIP O'NEILL: Okay. Sure. [LB397]

SENATOR HAAR: The percentage of yearly state grants... [LB397]

TIP O'NEILL: Oh, I'm familiar with it, yeah. Sure. That's exactly what I was saying. The...we passed PEAP...we had SSAP and SAP which had basically...we were getting about 25 percent of that money. Then we passed PEAP and we were getting 100 percent of that and that's how we ended up with 50 percent is that the PEAP appropriations were, I guess being...there was more money appropriated to PEAP than there was to SAP and SSAP because we were the only ones asking for additional appropriations at the time. The publics were asking for direct appropriations through just the normal General Funds for operations to the sectors. [LB397]

SENATOR HAAR: Well, according to this then, some former testimony said that 22 percent of the kids in college in Nebraska go to independent colleges and now they get 20.4 percent of the yearly state grant allocation. That sounds pretty close. So I'm wondering, isn't that a pretty good balance then? It seems like maybe according to the number of students? [LB397]

TIP O'NEILL: Well, again, you know, in many states...let's talk about a state like Iowa, for example. They have what is called a Tuition Equalization Program, where they actually appropriate the difference between what the tuition the student would pay at University of Iowa versus what the tuition a student pays when they go to a private college. So I mean, we're getting 0 percent of the \$688 million that's appropriated to public higher education through state and local tax dollars. So I guess, you know, we

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

Education Committee
March 02, 2009

didn't think that getting seven-tenths of 1 percent of the total dollars appropriated for higher education was excessive, even though we may have been getting 50 percent of the state need-based grants. [LB397]

SENATOR HAAR: Okay. Thank you. [LB397]

SENATOR ADAMS: Other questions? Thank you, Tip. [LB397]

TIP O'NEILL: Okay. Thank you, Senator. [LB397]

SENATOR ADAMS: Next proponent. Any other proponents to the bill? If not, we'll move to opponent testimony. The first opponent. [LB397]

CRAIG MUNIER: (Exhibit 7) Good afternoon, Chairman Adams and the rest of the Education Committee, my name is Craig Munier, C-r-a-i-g M-u-n-i-e-r and I'm the director of the Office of Scholarships and Financial Aid at the University of Nebraska-Lincoln. Thank you for allowing me the opportunity to speak in opposition to LB397. When I first arrived at the University of Nebraska in May of 1998, I was surprised to learn of the small amount of state grant funds that were available to assist students. I later learned that in addition to having too few dollars in our program, that the available dollars were not being directed to those institutions serving the majority of students from Nebraska most in need of assistance. Further, despite the Legislature's realization that more state grant funds were needed, there seemed to be a reluctance to provide additional funding unless those funds could be more appropriately directed to students. In fiscal year 2003, students at the University of Nebraska system received approximately 26.75 percent of the state grant funds appropriated that year, though we enrolled nearly 33 percent of the state's lowest income Nebraska residents as determined by eligibility for the federal Pell Grant program. We worked very hard with the Nebraska Legislature to reform the State Grant Program awarding state grant funds directly to students. Coinciding with these reforms, the Legislature agreed to increase funding to the Nebraska State Grant program with revenues from state lottery ticket sales. LB397 would undo those reforms and revert back to the state grant distribution process of old where funds were distributed more on the basis of those institutions with the highest cost rather than student's choice of institution to attend. In fact, we estimate that based on this year's state grant allocation, LB397 would reduce state grant funding for students at the University of Nebraska system by more than \$1.5 million. This would come at a time when we are anticipating ever growing numbers of Nebraska residents from low-income and working-poor families enrolling at Nebraska's public colleges, universities, and community colleges. Please keep our state grant funds focused where they will provide the greatest help to the greatest number of students for the greatest good for the state of Nebraska by voting no to LB397. And thank you again for the opportunity to present our opposition to this bill, and I am available to answer questions. [LB397]

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

Education Committee
March 02, 2009

SENATOR ADAMS: Thank you, Craig. Are there questions? Guess not. Thank you, sir. [LB397]

CRAIG MUNIER: Thank you. [LB397]

SENATOR ADAMS: Next opponent. Good afternoon. [LB397]

SANDRA MUSKOPF: (Exhibits 8 and 9) Chairman Adams and members of the Education Committee, my name is Sandra Muskopf, M-u-s-k-o-p-f. It is my privilege to serve as president of the Omaha campus of Kaplan University. I would like to note that I appear before you today in opposition to LB397 and in the interest of the committee's time, we'd ask our opposition to LB399 also be noted for the record since our testimony would have been nearly identical. We oppose these bills because we are requesting that the state convene a task force to create a State Grant Program that is fair and equitable to all Nebraska residents who attend a resident postsecondary institution in the state. The Kaplan University name is new to Lincoln and Omaha, but we are not a new school to Lincoln or Omaha. We were formerly Hamilton College, and the Lincoln campus originated in 1884 as the Lincoln Business College and then became Lincoln School of Commerce in the 1920s. In Omaha, our campus began in 1891 as the Commercial Extension School of Commerce. Both campuses are highly committed to our respective communities and to the welfare of the state of Nebraska and its citizens. We serve over 1,200 students. By and large, our students are Nebraska residents. They will graduate and they will stay in Nebraska. We employ over 200 professionals on both of our campuses, and we work with almost 1,000 employers who we then can provide them with the workers that they so desperately need. These employers also help shape our curriculum in their fields by serving on our advisory boards. Our two campuses recently invested millions of dollars into our respective communities. In Omaha, we completely renovated an old abandoned Walmart at 103rd and Fort and turned it into a beautiful and state-of-the-art educational facility. Here in Lincoln, of course, we're an integral part of the Antelope Valley development project located here close to the Capitol. And we are also in the middle of turning that into a state-of-the-art educational facility. Our student base is truly an underserved segment of Nebraska's population. By and large, our diverse population is made up of first generation college students, and they generally fall into one of three categories. They are either returning to the work force, and we are thereby meeting their needs and employer's needs. Or they have been unsuccessful in the traditional college and university setting, or they are seeking to improve their skills to advance their careers in their Nebraska residence. To this end, we provide a comprehensive support system to serve and complement these populations. We at Kaplan University stand ready to assist the committee as you determine how to ensure the educational system throughout Nebraska addresses the needs of individual students and Nebraska businesses. We as Nebraskans should be proud of the broad array of educational options available to our students, whether that's

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

Education Committee
March 02, 2009

UN, Creighton, or Kaplan. We commit ourselves here today to work with you to address these needs. Thank you. [LB397]

SENATOR ADAMS: Thank you, Sandra. Are there questions for this testifier? Sandra, I think that the fact that you represent Kaplan, a for-profit, I appreciate your testimony, but can you cut right to the quick for just a moment. The question has been raised here several times. Why should aid support a for-profit institution? [LB397]

SANDRA MUSKOPF: Because it is about the student's choice, it's not about the institution. Our students would not necessarily be able to get into the University of Nebraska or even Metro. The research has shown for a long time that educational attainment and family resources go hand-in-hand. So our students weren't necessarily read to as children. They didn't get the educational skills they needed early. They weren't necessarily successful in high school. Our students may have GEDs, or they may have taken other routes before choosing to go to college. And so now we provide to them small classrooms. We provide to them free tutoring, we provide to them all kinds of resources that a larger institution would not be able to provide. So if we weren't there, our students wouldn't have an option. [LB397]

SENATOR ADAMS: Do you provide developmental courses? [LB397]

SANDRA MUSKOPF: We do, yes. [LB397]

SENATOR ADAMS: Okay. Are there other questions? Senator Howard. [LB397]

SENATOR HOWARD: Thank you, Mr. Chairman. What percentage of your students are Pell Grant recipients? [LB397]

SANDRA MUSKOPF: Sixty-eight percent of our students are Pell Grant with zero EFC meaning those students...their families are not expected to provide any family contribution under the Pell Grant formula. [LB397]

SENATOR HOWARD: So it is...the Pell Grant is your source of funding. [LB397]

SANDRA MUSKOPF: That's correct. [LB397]

SENATOR HOWARD: Okay. What percentage of your students graduate? [LB397]

SANDRA MUSKOPF: We have very high graduation rates. About three-quarters of our students will graduate. Over 90 percent of our students will be gainfully employed in their chosen field within six months of graduation. [LB397]

SENATOR HOWARD: How long is your coursework? [LB397]

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

Education Committee
March 02, 2009

SANDRA MUSKOPF: We offer diplomas, associate's, and bachelor's degrees. Our bachelor degrees are traditional three- to four-year degrees; associate's, two years; then diplomas range depending on the area of the career that they want. [LB397]

SENATOR HOWARD: Thank you. [LB397]

SANDRA MUSKOPF: You're welcome. [LB397]

SENATOR ADAMS: Senator Haar. [LB397]

SENATOR HAAR: Thank you. Do you receive any other state aid besides...this aid that follows the student? [LB397]

SANDRA MUSKOPF: No. [LB397]

SENATOR HAAR: Okay. Because I hear the independent colleges saying that if you just look at the overall aid that they fall short and the University of Nebraska benefits, but the private schools just get the aid that follows the student. [LB397]

SANDRA MUSKOPF: Right. [LB397]

SENATOR HAAR: Okay, thank you. [LB397]

SENATOR ADAMS: Other questions? All right. Thank you, Sandra. [LB397]

SANDRA MUSKOPF: Thank you. [LB397]

SENATOR ADAMS: Other opponents? [LB397]

MARSHALL HILL: (Exhibit 10) I feel like I'm wearing a path there. I'll be very brief. You'll see in the materials we're distributing now are estimates of the allocation differentials that would attain if LB397 were to pass. We estimate funding to students attending the university would decrease by \$1.3 million; would increase at the state colleges by \$181,000; increase at the community colleges by \$750,000; increase at the independent sector institutions by \$900,000; decrease at the private career schools by about \$460,000. One of our concerns about this bill is that concern about spreading eligibility to students who are eligible for any Title IV program. We heard and appreciate Senator Lautenbaugh's comment about possible negotiation on that, and we do believe that that could be worked out. But I'd like to explain that our willingness to accept some modification beyond Pell for LB21 was a willingness to accept an Expected Family Contribution of up to \$6,000. Not an expected, not an elevation up to any unlimited amount. The other point I'd like to bring to your attention, the last point is we've provided

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

Education Committee
March 02, 2009

a chart in our materials to LB21. This might be helpful to you as you look at the way these dollars are flowing from a specific way. We've talked about it in percentages, we've talked about it in absolute dollar amounts. What this chart does is look at the students, the number of students, the number of Pell-eligible students which, after all, are the students that the program is designed to support. And if you notice that the University of Nebraska has 26, almost 27 percent of the eligible, Pell-eligible students that are supported in the Nebraska State Grant Program and they receive about 38 percent of the funds. State colleges have 7.1 percent of the students and get about 7.62 percent of the funds. Community colleges are the real losers here. They have 39 percent of the Pell-eligible students in the program, but only receive 16.39 percent. That's a result of differential tuition charges. Private career schools enroll 12.2 percent of the resident Pell-eligible students, get 17.63 percent of the dollars. Independent colleges and universities enroll 14.4 percent of the students and receive 19.9 percent of the Nebraska State Grant amount awarded. So there are numerous ways to look at this from various points of view. [LB397]

SENATOR ADAMS: Thank you, Marshall. Are there questions? Marshall, why in your second bullet point does the University of Nebraska, oh excuse me. I can see it now, I looked at it this second time. I've answered my own question. [LB397]

MARSHALL HILL: Okay. [LB397]

SENATOR ADAMS: Are there other questions? Yes, Senator Haar. [LB397]

SENATOR HAAR: Thank you. I'm a little confused now. On this graph, you had said that independent colleges get 50.83 percent in 2002-2003. On the blue, the spreadsheet, it shows them getting 27.5 percent of SSAP and SAP funding. [LB397]

MARSHALL HILL: That was, I believe this is the total amount. Correct? This is the total amount allocated through the various programs and the chart that you're looking at, and this is two of the three programs. [LB397]

SENATOR HAAR: So there would be more than just, I see, okay. [LB397]

SENATOR ADAMS: Are there other questions? Thank you, Marshall. Next opponent. [LB397]

MIKE ABDOUCH: Good afternoon, Mr. Chairman and senators, my name is Mike Abdouch, A-b-d-o-u-c-h. I am a former school owner in the private career school. I've been in the business for 33 years, and I'm also here representing various private career schools as well. I've been intimately involved with all of these programs: developing the allocation formulas for all of them, understanding them and things like that. So if you have questions as we go along, please feel free to ask them because I'm confident that

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

Education Committee
March 02, 2009

I can answer those questions. First, I hope we can get past this profit, nonprofit thing. Profit, nonprofit is an accounting function to determine how you recognize your revenues. It has nothing to do with educational quality. In fact, as we heard the commission testify a little bit ago, if you're looking at educational quality and being held accountable for graduation and placement rates, the profit schools are doing the best. In addition, one thing that you want to remember is that the for-profit schools, what they carry on the bottom line is taxable. And we pay taxes just like anybody else, just like any other business. And we're driven to make sure that our educational quality is high because if we don't graduate and place people, we can't start people. So there's the motive there to do well. But beyond that, I want to take this to a level that we really haven't discussed yet, and that's this. The commission does not need the schools in the current allocation to decide where the money goes. They are only using the institutions as a shortcut to figure out where those neediest students are. And then they're using the institutions as a shortcut to get that money to the neediest students. In fact, the schools are agents of the commission in dispersing these funds. They are not recipients of funds. They are part of the giver of the funds. The institutions do not receive a penny. That's really important to realize. Institutions aren't getting this money. It's only following, as we talked about earlier, it's only following where those neediest students go. We talked a long time ago about wouldn't it be nice if we had money for everybody, but we don't. So somehow you have to prioritize who gets the money first in this state. And the decision was with the dollars that we have, the best thing to do was try to address the neediest students first. So the Legislature defined what the neediest student is. The commission could go right to the students and have an application to the students saying apply for these funds. And then they could determine who those neediest students are. If you want to change who gets the money, you have to look at how you define the needy students. Right now, the neediest students are getting the money no matter where they go, and the commission doesn't need the schools. It's a shame that we have a list of things that say which schools are getting what, because the reality is the schools aren't getting a penny. The money is to the students, it's only flowing through the schools. And I want to make sure that I make that point. Thank you. [LB397]

SENATOR ADAMS: Thank you. Questions? Hence then, if, as we discussed earlier...if, and I'll use the word nonprofit or profit... [LB397]

MIKE ABDOUCH: Sure, for clarification. [LB397]

SENATOR ADAMS: ...have a higher number of needs students, then your testimony is the school merely becomes the conduit where the state money is directed to. [LB397]

MIKE ABDOUCH: That's right. That's right. The students and that's another, it's a tricky thing that the commission has to do. The commission has to figure out where this year's needy students are. But they aren't there yet. So what they do is they use last year's history of where were those needy students. They ask each institution, by definition,

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

Education Committee
March 02, 2009

how many of these students did you have last year? And therefore, we will anticipate that that number of needy students or that percentage of needy students will be going to your institution this year. Therefore, we'll set aside some of these funds that will flow through you and you're responsible for us, you're accountable to us to make sure that money flows to those students. And at the end of the day, you have to report back to us, which students got the money, why they got the money, and how much they got. [LB397]

SENATOR ADAMS: Senator Haar. [LB397]

SENATOR HAAR: Thank you. But the nonprofits are arguing that because the university and other state public schools get more, get additional funding, that those students are actually receiving a greater amount of financial aid. [LB397]

MIKE ABDOUCH: You know, the U.S. Department of Education doesn't look at it that way. I guess I would say hey, if you're going to include the private career schools in that same argument, we could make that argument. We're not making that argument. You know, the state has to decide...that's what makes a state school a state school. You have tuition subsidies, but that doesn't reduce the cost of your salary. You have maintenance, you have the building maintenance, you have the yard maintenance, you have all of these other costs of operation that really that tuition subsidy usually ends up going to. So the rest of it may be the true cost of actually educating that student, where an independent college or a private career school does not have those funds. They have to use tuition dollars only to offset those operating expenses, those facility operating expenses, if you will. So I don't know that I would agree that the state, the state students are getting additional money, otherwise, I guess it's a nice thing to think about, but the reality is the cost of education no matter where you go is a lot. It just happens to show up more at an independent college or private career school. [LB397]

SENATOR HAAR: But that is kind of the debate that's going on or not, I suppose. [LB397]

MIKE ABDOUCH: It is. It is. The bottom line is it has nothing to do with schools. It's who are the needy students in this state? Gee, wouldn't it be nice if had lots of money so we can provide money for every student wherever they're going. Each sector of education provides an educational opportunity that none of the other sectors provide. And we could go right down the list. We could look at the University of Nebraska system, the state colleges, the community colleges, the independent colleges, and the private career schools. Each one provides something different. It offers a variety of educational choices to students, and it gives them all an opportunity to choose what best fits them. Then the neediest students, the state is saying through this program, we're going to help you, because we know if we help you now, you'll get jobs, you'll go back to work and you'll be contributing to the tax, to our tax base, rather than be a burden on our tax

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

Education Committee
March 02, 2009

base. So it's an investment that the state is making in these students through this grant program to go to school, no matter where they are. And it's all about the students, all about the students. You just don't know from year to year where it's going to land until you run the numbers. [LB397]

SENATOR HAAR: Thank you. [LB397]

SENATOR ADAMS: Other questions? Thank you, sir. [LB397]

MIKE ABDOUCH: Thank you. [LB397]

SENATOR ADAMS: Is there other testimony? Opponent testimony? Is there any neutral testimony? [LB397]

KRISTIN PETERSEN: (Exhibit 11) Good afternoon. I'll keep my comments brief, I know it's getting late in the afternoon. Again, my name is Kristin Petersen, K-r-i-s-t-i-n, Petersen, P-e-t-e-r-s-e-n. On behalf of the Nebraska State College System, I am here to testify in a neutral capacity to LB397. The state colleges are extremely appreciative of the support that we receive through the existing Nebraska Scholarship Program. This bill would eliminate that program and put in place a new needs-based formula. Under the fiscal note that's been submitted for this bill, we estimate that the impact of the change would be an additional \$181,047 for the Nebraska State College System, assuming, of course, that we have a similar mix of needs-based students in the future. We believe that any increase to the system for needs-based scholarship aid is extremely beneficial. However, we do have a concern when the impact of the change as a whole is a negative to public higher education in Nebraska, and it's because of that negative impact across the board that we're here testifying in a neutral capacity to the bill. I'd be glad to answer any questions. [LB397]

SENATOR ADAMS: Are there any questions? I guess not. Thank you for your testimony. [LB397]

KRISTIN PETERSEN: Thank you. [LB397]

SENATOR ADAMS: Any other neutral testimony? If not, does Senator Nordquist's representative want to close? All right, the Senator waives closing. That will end the hearing on LB397. And I think, committee, that that will end our day. [LB397]

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

Education Committee
March 02, 2009

Disposition of Bills:

LB21 - Held in committee.

LB397 - Held in committee.

LB399 - Held in committee.

LB440 - Placed on General File with amendments.

Chairperson

Committee Clerk