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Government, Military and Veterans Affairs Committee
January 29, 2009

[LB66 LB126 LB322]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, January 29, 2009, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB126, LB322, and LB66. Senators present: Bill Avery, Chairperson; Pete Pirsch, Vice Chairperson; Robert Giese; Charlie Janssen; Russ Karpisek; Rich Pahls; Scott Price; and Kate Sullivan. Senators absent: None. []

SENATOR AVERY: My name is Bill Avery, I want to welcome you to the Government, Military and Veterans Affairs Committee hearing on this day of January 29. The order of business will be to take up LB126 first, LB322 second, and LB66 will be last. Members of the committee: I'd like to introduce them starting with my extreme right here is Senator Rich Pahls from Omaha; he is sitting next to Senator Charlie Janssen from Fremont, Nebraska; and next to Senator Janssen is Senator Robert Giese from South Sioux City; next to him is Senator Pete Pirsch from Omaha and Vice Chair of the committee. To my immediate right was Christy Abraham who is the legal counsel to the committee. Senator Karpisek--I never actually get to introduce him, do I? Because he is usually a little bit late--Senator Karpisek will be here in a few minutes. He is from Wilber and sitting next to him is Senator Scott Price from Bellevue; and next to him is Senator Kate Sullivan from Cedar Rapids. Sherry Shaffer is the committee clerk. We have two pages and they will help you if you have anything to distribute to the committee: Nick Bussey from Lincoln and Courtney Lyons from Plattsmouth. A few words about our procedures. The bills will be taken up in the order that I just read. I believe that is the order posted outside the door. There are sign-in sheets for those who wish to testify. We ask that you fill out this sheet here, print clearly, and give that to the committee clerk before you testify. If you wish to be recorded for or against a bill, but you are not planning to testify; there is a form to fill out, and these are all at the entrances, both north and south; excuse me, east and west. And if you want to record your presence for or against a bill, that's the way you do that, and you don't need to turn those into the clerk. We'll pick those up at the end of the hearing. The introducers will be permitted to make initial statements followed by an opportunity for those who support the legislation to testify. That will be followed by opponents and then those who testify in the neutral position. Closing remarks are, of course, reserved to the introducer only. I'm going to ask you to turn off your cell phones or put them on vibrate so as not to disturb the proceedings. And we don't have a lot of people here yet; that may change as we go through the hearing. But I'm going to request that you not be repetitive, pay close attention to testimony that precedes you so that you don't simply add repetitive testimony. And keep your remarks as close to five minutes as possible. And everybody should expect some questions from the committee. If you have any handouts, you will need 12 copies so that everybody gets a copy, and staff will have a copy. And give those to the pages, and the pages will distribute them. And since I am up first, I am going to turn the Chair over to the Vice Chair, Senator Pete Pirsch. []

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SENATOR PIRSCH: Thank you, Chairman Avery, and we're going to hear testimony on LB126 first. The sponsor of that is Chairman Avery, so whenever you're ready Chairman, just take it away. []

SENATOR AVERY: (Exhibit 1) Thank you, Senator Pirsch. For the record, my name is Bill Avery. Spelled A-v-e-r-y. I represent District 28. The bill that I am bringing before you now is LB126. This is a bill that would require additional financial disclosure for constitutional officers. The underlying rationale is quite simple. I believe--and many others agree with me--that constitutional officers should devote full time to their elected positions. The salaries of constitutional officers were recently increased to make it possible for those officers to serve full time with adequate compensation. They are compensated for full-time work. If a constitutional officer decides to have additional employment outside his or her elected position, I am proposing that they disclose. The public deserves to have detailed information regarding the employment, how much time is spent on outside employment, and what the compensation is. So LB126 requires candidates and officers serving as Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer or Attorney General to file a financial disclosure report every year. And the filing should include the full name of the candidate or officer, the office for which he or she is a candidate or which he or she holds, the dollar amount of any salary or wages received on a calendar year basis, the full name and address of each person from whom the individual receives salary or wages, and an estimate of the amount of time spent in a calendar year in return for these wages and salaries. A civil fine is imposed if any person fails to file the proper disclosure report with the Nebraska Political Accountability and Disclosure Commission. The disclosure required in LB126 is in addition to a statement of financial interest that officeholders already have to file. There are differences between the two statements. Right now, in the filing of a statement of financial interest, the requirement is to report any income in value of \$1,000 or more. There is no requirement to specify the exact amount of additional income. The disclosure required in LB126 requires the specific dollar amount to be identified. I have an amendment already, and would the page please come and distribute? This amendment came about in consultation with Mr. Frank Daley of the Accountability and Disclosure Commission. And this clarifies when the disclosure form needs to be filed. It is my intention that the form be filed when a candidate files for office and on April 1 of every year thereafter when the person remains a candidate or an officeholder. The reason why this amendment is, I think, appropriate is that the April 1 due date coincides with the due date for the statement of financial interest. There's no need to put the officeholders through additional hoops beyond the statement of financial interest. That...if you look at the fiscal note, is not an expensive bill; \$150 I think is the estimate. With that, I will stop and take any questions you might wish to ask. [LB126]

SENATOR PIRSCH: Thank you very much, Chairman. Senator Karpisek, by the way, joins us now at this point in time. Are there any questions here for Chairman Avery.

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Senator Pahls. [LB126]

SENATOR PAHLS: Thank you, Senator Pirsch. Senator Avery, just a little history here. We've had in the past...have had a hard time even increasing the salaries--if it had not been for Senator Chambers' pursuing that--their salaries would not be where they're at right now...of these constitutional officers. And this is not a question to test you because I should know it myself, for example, do you know what the Governor makes? [LB126]

SENATOR AVERY: I think it's \$85,000. [LB126]

SENATOR PAHLS: I think it...well, let's say it's \$85,000...I think it may be a little bit more. But let's say that it is. [LB126]

SENATOR AVERY: Maybe it was raised to \$85,000. [LB126]

SENATOR PAHLS: Yeah, and that's... [LB126]

SENATOR AVERY: It's more than we make. [LB126]

SENATOR PAHLS: Okay. Would you be, if you would want to make sure that no outside employment or if they are employed outside is made very clear, are you...should we up the salary, right now, of these officers? Would you be for that? [LB126]

SENATOR AVERY: Well, I think the salaries are probably adequate. The last raise, I believe was two years ago, and it raised Nebraska's salaries for constitutional officers to a competitive level with other states. [LB126]

SENATOR PAHLS: Right. [LB126]

SENATOR AVERY: And I believe one of the arguments made at the time was that with this increase in pay, then constitutional officers ought to be able to devote full time to positions that we voters expect are full time. And I'll be honest with you, Senator, that the reason for this is, has to do with an instance where one of our constitutional officers was holding an additional job--and I don't know if he still does, but may--outside in involving amounts of time and money that he was unwilling to divulge to the public. [LB126]

SENATOR PAHLS: Right. I understand that, but I'm also, maybe part of that could be because of the salary being what it is. To be honest--because I feel I can say this because this was my past life--I dare say the superintendent of the Lincoln schools makes double if not more than what the Governor makes and probably these other constitutional officers. I mean, I'm a little bit concerned that we, maybe we ought to take a look at their salaries also. Maybe that might eliminate it. I'm just asking for your...

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[LB126]

SENATOR AVERY: Well, you might remember, last year, I brought a bill to this committee that would have barred any outside employment. [LB126]

SENATOR PAHLS: Yes. [LB126]

SENATOR AVERY: And that is not what I'm doing now. [LB126]

SENATOR PAHLS: Okay. [LB126]

SENATOR AVERY: If they want to hold outside employment, fine. If they want to do that, however, then I think the public has a right to know, and let the public decide if it's okay. The public can decide if it's okay. If the candidate discloses that they intend to continue outside employment if elected to the office, let the voters decide if that's all right. If the candidate already or an officeholder who was already in office and holding outside employment then wants to run for reelection, then that information is public and people can find out. [LB126]

SENATOR PAHLS: Thank you, Senator. [LB126]

SENATOR PIRSCH: Very good. Any other? Senator Price. [LB126]

SENATOR PRICE: Senator Pirsch, thank you very much. Senator Avery, I have a question. Are we tying pay to hours worked here? [LB126]

SENATOR AVERY: Oh, well, salaries, of course, are not tied to hours worked. Salaries, however, at the level we're talking about, constitutional officers, salaries are tied to what we assume to be full-time work. [LB126]

SENATOR PRICE: So then they're exempt or do we put them in, they're in an exempt status? [LB126]

SENATOR AVERY: Exempt from? [LB126]

SENATOR PRICE: From fairly (inaudible) so in other words, if you're an exempt personnel, you can't charge overtime, you can't do this; whereas if you were a nonexempt. [LB126]

SENATOR AVERY: Right. [LB126]

SENATOR PRICE: So we're saying then, okay. Does our constitution require a full 40 hours a week? [LB126]

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SENATOR AVERY: The constitution does not have wording that requires that, no. But what I am suggesting is that the public has an expectation, and they have a right to that expectation. That expectation is that if we elect you to a full-time position, we expect full-time employment. [LB126]

SENATOR PRICE: Okay, and finally, would this information be released to anybody once we go to the NADC Web site and say, hey, I can tell exactly who pays you, exactly how much you get paid? [LB126]

SENATOR AVERY: And how many hours you work. [LB126]

SENATOR PRICE: Yeah, that would be releasable to the total public, it wouldn't be held at all. [LB126]

SENATOR AVERY: Yes. If the press chose to do that, yes. Or if you, if someone wanted to go and ask for those records, they could have them, public record. [LB126]

SENATOR PRICE: Is that the current thing we do for any other elected offices? [LB126]

SENATOR AVERY: All of us have to file financial interest statements meaning...but the, when you file your financial interest statement, all you have to do is say I have income in excess of \$1,000 and this is where it comes from. [LB126]

SENATOR PRICE: And that's available on-line as readily as this new information? [LB126]

SENATOR AVERY: I'm not sure if it's available on-line. I think we're doing a better job of making a lot of this information available on-line. But Mr. Daley, I think, will testify in a few minutes, and he can answer that better than I can. My experience with the on-line operation for the accountability and disclosure of records is not very good. It's not user friendly. [LB126]

SENATOR PRICE: Okay, thank you. [LB126]

SENATOR AVERY: But I think it might be possible to get it on-line. But you can certainly get it in person. [LB126]

SENATOR PIRSCH: Are there any other questions for the Chairman? Senator Giese. [LB126]

SENATOR GIESE: Thank you, Senator Pirsch. Senator Avery, so there would be no limits on what a person could make in an outside position, just full disclosure is all we're

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looking for. The end... [LB126]

SENATOR AVERY: My original objective was to bar that outside employment all together, and that did not have a lot of support last year. And I offered then a compromise to just require full disclosure, but I think that idea got lost in the rush to get the session ended. It was a short session. And um, I decided to come back with a more carefully thought out and better drafted full disclosure bill this year. [LB126]

SENATOR GIESE: Thank you. [LB126]

SENATOR AVERY: The whole point here is, and for me, I happen to believe the public has a right to know what we're doing and where our money comes from, within reason. I mean, the general financial statement that we all file tells us something. But if you are employed outside, it seems to me that, and you are spending a fair amount of time out of the office in order to fulfill the obligations of that employment, voters have a right to know that. And let the voters decide whether or not it matters, and if they say it doesn't matter, return that person to office or elect that person to office, fine. But the information is there. [LB126]

SENATOR PIRSCH: Senator Janssen has a question. [LB126]

SENATOR JANSSEN: Thank you Chairman. Senator Avery, I guess I'm sitting here wondering if this is necessary. If the person in your bill can go out and make whatever, say it's \$100,000, the question is...say I was elected Treasurer and I had this, if I'm doing the job I was elected to do, which was Treasurer, and I'm functioning in that position, what's the difference if I'm selling insurance on the side? And I know what you're saying, the people have a right to know and that's true, and I think in this specific case, the people did know. And I would think any opponent that would run against somebody would make that, the public... [LB126]

SENATOR AVERY: We might get a test on it. [LB126]

SENATOR JANSSEN: That they would definitely let them know about this. So then I almost think we're putting out something out that's already being done. [LB126]

SENATOR AVERY: Well, no, it's not. We don't know, in the case to which you refer, we don't know how much employment there is, how many hours out of the office. I mean, and that really might be pertinent. [LB126]

SENATOR JANSSEN: My question there is he's going to tell you, he or she is going to tell you how many hours they worked outside of the office? But the point is, this person was elected to a constitutional office to do that job. If they're doing that job, I don't see what, how many hours they're spending outside of, you know, the hours, as long as

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they're functioning in the job that they were elected to do, and doing that, I'm just not grasping. [LB126]

SENATOR AVERY: And then I guess the question...the question then becomes how do you evaluate, how do you judge whether or not they're doing the job they were elected to do. And that is something I think voters must decide. And voters need to have the information, full information, in order to make an informed judgment on that. [LB126]

SENATOR JANSSEN: Thank you. [LB126]

SENATOR PIRSCH: Senator Price. [LB126]

SENATOR PRICE: Senator Pirsch, thank you. I'm glad to hear the testimony because it did trigger my mind. Is the question the amount of income they're earning or the number of hours they're working outside of an exempt job. So in other words, if it was exempt, you could make a person work every hour of every day, that's within the purview, right? So what we're saying here is more about the hours worked, you know, I mean, if you say you're working a 40 hour work week, some people would say that's full time. Sometimes you would say 60 hours if you run a company or something like that, you could work 70 hours. So there's hours, it seems to me more the hours than it is the actual compensation that seems to be the point of your bill. [LB126]

SENATOR AVERY: I would agree that the amount of time out of the office in order to earn the wages and salary is more important. [LB126]

SENATOR PRICE: But you're in the office all the time because it's exempt, technically speaking. [LB126]

SENATOR AVERY: You may not be. You might be out, as Senator Janssen suggested, selling insurance. [LB126]

SENATOR PRICE: Okay, thank you. [LB126]

SENATOR AVERY: When the voters expect you to be on the job. And the voters hired you to do that job. [LB126]

SENATOR PRICE: Okay, so, but that would be a...would that be prescribed as if the voter is sitting there saying, I expect this constitutional officer to be on the job site from 6:00 in the morning until 6:00 at night. If they were to sell insurance at eight o'clock at night, does it matter? If he does it during that, maybe that 12-hour period, that would probably be more... [LB126]

SENATOR AVERY: I'd say, let the voters make up their mind about that. [LB126]

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SENATOR PRICE: Okay, thank you. [LB126]

SENATOR PIRSCH: Are there any other questions. Yes, Senator Pahls. [LB126]

SENATOR PAHLS: Just a little side bar. I know where you're going with this, and I respect that. It's too bad we don't have the same attitude at the national level with all the billions of dollars that we are giving away and not having any way of tracking, where this is a relatively small amount. I mean, I understand where you're going with this, but this is just allowing me to say that... [LB126]

SENATOR AVERY: You mean the stimulus money? [LB126]

SENATOR PAHLS: Well, the preached stimulus money. The money that was literally given to the banks to do what they did, and we don't even know where it's going. So and the voters have very little say in that matter. But I do understand. It just gave me an opportunity to express myself. [LB126]

SENATOR AVERY: But I'm pretty sure that there are rules at the national level that covered this kind of outside employment. [LB126]

SENATOR PAHLS: Yes, I was just side barring a little bit. Just giving you time to. [LB126]

SENATOR PIRSCH: Very good. Any other questions of Chairman? Very good. Thank you very much. We'll now turn to proponents of LB126. Are there any proponents here today of LB126 that care to testify. Seeing none, we'll move to opponents. Are there any opponents here of LB126 that would care to testify? Seeing none, are there any individuals who would care to testify in a neutral capacity here today on LB126? Good. [LB126]

FRANK DALEY: Good afternoon, Vice Chairman Pirsch and members of the Government, Military and Veterans Affairs Committee. My name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Nebraska Accountability and Disclosure Commission, and I'm appearing in a neutral capacity as to LB126 and actually just for the purpose of answering questions. Senator Price had a question as to whether or not we currently post the statements of financial interest on-line. We do not. We may some day, but it's just not on our list of priorities at the moment. Certainly, if there was some direction from the Legislature that these financial disclosure statements should or should not be posted, we could certainly do that very easily. So having responded to that question, I have nothing else, unless you have other questions. [LB126]

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SENATOR PIRSCH: Very good. Are there any questions for Chairman Daley. Yes, Senator Price. [LB126]

SENATOR PRICE: Yes, sir. Mr. Daley, thank you very much. To my question about do we require the same level of fidelity of information for any other offices currently? [LB126]

FRANK DALEY: As far as the statements of financial interest that you and I now file, no, I mean, they are what they are. We don't require a listing of amounts that are received or time spent. LB126 is unique in that it applies some extra standards to specific officeholders. [LB126]

SENATOR PRICE: Are you aware of this being done in other states to this extent? [LB126]

FRANK DALEY: Other states and the federal level have filings which are similar to our statements of financial interest. Different jurisdictions have different level of details. By way of example, if you are a federal officeholder in the U.S. Congress, U.S. Senate, you are required to file something which is similar to a statement of financial interest in which you not only list the source of income, but you indicate the range of income. In other words, there are categories: \$0-\$50,000; \$51,000-\$100,000; so there's some indication. And it may very well be that other states require detail as far as the amounts that are earned. But Nebraska does not currently. [LB126]

SENATOR PRICE: Thank you. [LB126]

SENATOR PIRSCH: Good. Any other questions for Director Daley. Senator Sullivan. [LB126]

SENATOR SULLIVAN: Thank you, Senator Pirsch. Mr. Daley, this information that we're talking about possibly having the officers file would be, of course, available to the public. [LB126]

FRANK DALEY: It would. [LB126]

SENATOR SULLIVAN: Historically, do you get a lot of requests for this type of information and if so, from whom. [LB126]

FRANK DALEY: The answer is yes, we get requests for this type of information. It usually follows a scandal or a controversy. The joke in our office is that if we see a state agency in a negative capacity in the news in the morning, we start pulling out the statements of financial interest because the press will be in in the afternoon to see them. But typically we see them from people that are interested in elections, people that

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are interested in specific issues where they're concerned about conflicts of interest and situations such as that. [LB126]

SENATOR PIRSCH: Any other questions for Director Daley? Seeing none, thank you very much for coming down and testifying. [LB126]

FRANK DALEY: Thank you very much. [LB126]

SENATOR PIRSCH: And we'll see if Chairman Avery wants to close on this bill? [LB126]

SENATOR AVERY: I actually will not close, but I, if you have any more questions of me, I'd be happy to take them. [LB126]

SENATOR PIRSCH: (Exhibits 2, 3) Are there are any follow-up questions with Chairman Avery at this point in time? Very good. Thank you, Chairman Avery. At this point in time, I will have read into the record a letter from the American Civil Liberties Union dated January 29, 2009, from Laurel Marsh, the executive director, in support of LB126. And also a letter to be read into the record in support of LB126 from Shawn Renner for the firm Cline, Williams, Wright, Johnson & Oldfather, dated January 28, 2009. [LB126]

SENATOR AVERY: I believe, Mr. Vice Chair, that that second letter is a representative of a group called Media something. [LB322]

SENATOR PIRSCH: Oh, I'm sorry. You are quite correct. It's Media of Nebraska, Inc., a nonprofit corporation. [LB126]

SENATOR AVERY: Right. [LB126]

SENATOR PIRSCH: Very good. Thank you for clarifying that. Any further close, Chairman? Very good. We'll move on at this point in time to LB322. Chairman Avery, again, you're the sponsor, so whenever you're ready to proceed. [LB322]

SENATOR AVERY: I assure you there will be other people appearing before this committee in future weeks. I am here today, by the way, my name is Bill Avery, A-v-e-r-y. I represent District 28. I am here to introduce LB322 which was brought to me by the Governor. This is a bill that we tried, we worked on last year, and we didn't get it out of committee. It is a somewhat different bill this year. It prohibits an official or employee in the executive branch from engaging in nepotism, and from acting as a supervisor to his or her family member. While there is a good cause for a family member to supervise or hire another family member, this can occur where there may be good cause, then the head of the agency might grant an exception to this general

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prohibition. The executive branch employee or official who becomes a supervisor to his or her family member other than by nepotism will notify the head of the agency within seven days of becoming aware of the situation. Any person violating these provisions will be subject to disciplinary action in addition to other penalties authorized under the Nebraska Political Accountability and Disclosure Act. There are no criminal penalties associated with violating these provisions. A family member is defined in the law, in this bill, as an individual who is the spouse, a child, parent, brother, sister, grandchild or grandparent by blood, marriage or adoption of an official or employee. In current law, an immediate family member is defined as a child residing in the household. This is a key point. Now I'll talk about a case that occurred a couple of years ago in a minute, but the current law is that a child or a spouse or individual claimed by an individual or an individual spouse as a dependent would have to reside in the household for there to be a conflict under nepotism. This bill, LB322, expands and clarifies the list of people who are considered immediate family members to more closely reflect what most people consider family. With LB322, the laws regarding nepotism and supervision of family members are clarified and streamlined, so it will be easier for officials and employees in the executive branch to understand what the prohibitions are. The bill also provides that the Legislature intends the legislative and the judicial branch of state government to implement policies regarding nepotism and supervision of a family member. We are not requiring that. It is my understanding that both these branches already have antinepotism policies in place. And we didn't want to get into a separation of powers issue with the judiciary. If I may refer to one of the motivations for this dates back to a case in June of 2007, when the Auditor discovered that five daughters of five different managers in the Department of Labor had been hired to fill temporary summer jobs. And these persons were hired for clerical work, and it apparently was not competitive hiring, but preferential hiring. Some of them received wages higher than others in similar positions. Some of them, even though they were working part time, got paid more than some full-time employees. It led the state auditor at the time to say that antinepotism laws in Nebraska were pathetic. I don't know if I'd go that far, but certainly, they are inadequate, and that's why this bill is being proposed. An antinepotism law ought to cover family members whether they reside in your household or not. And that was essentially the gap that the Governor was hoping to close with this bill. With that, I will stop and take any questions. [LB322]

SENATOR PIRSCH: Thank you, Chairman. Are there any questions for Chairman Avery? I have just a couple of clarifications, Chairman. With respect to, I guess there was a couple of exceptions to this that, with respect, and I guess in light of a separations of powers issue that I think developed with respect to a prior nepotism bill that I had introduced last year. And this would specifically then not attempt to reach branches other than the executive department, the legislative branch and the judicial branch. Is the University, how would that fit into that...into those three segments? [LB322]

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SENATOR AVERY: Yeah, I remember you worked very hard with the University last year. The University has some special needs sometimes to hire a couple maybe, or the University sometimes will be out to hire a hotshot researcher and oftentimes in the academic world, the one spouse is also an academic and you don't want to, you can't get that person to come to the University of Nebraska if you don't find employment for the spouse. And I believe we worked it out last year so the University was satisfied with that. [LB322]

SENATOR PIRSCH: Okay. And with that, perhaps under the exception too, there is a way, a mechanism to, if there is a good cause, a written exception to that bill. [LB322]

SENATOR AVERY: Good cause, right. The University was okay with that language. [LB322]

SENATOR PIRSCH: Very good. Very good. And but... [LB322]

SENATOR AVERY: But it also prohibits direct supervision. So the spouse could not directly supervise the spouse. [LB322]

SENATOR PIRSCH: Oh, I see. Okay. What about in situations where say one individual spouse is the head of a department and not acting in a direct supervisory role. Say in the pyramid of an agency or a department, the spouse is at the top, a director or something of that sort. And then not the next level layered down, but several layers down, perhaps the spouse is looked at being employed in that capacity. Would that be, you know, there's a definition of supervisor here. It says, supervisor means an individual having authority and interest in the state to hire, transfer, suspend, layoff, recall, promote, discharge, incentive reward, or discipline. I suppose technically from the highest reaches you could have that authority. Is that, or is that, do you mean that in an ordinary sense of the term. Just for clarification? [LB322]

SENATOR AVERY: Yeah, I...my response to that would be that if someone is at the very top of the agency, there may not be a direct line of supervision, but ultimately everybody answers to the head of the department. And I believe it would be in the interest of that director not to have anyone in that department who is directly linked to him by family. By marriage or by blood. [LB322]

SENATOR PIRSCH: Okay, so in the chain of leadership. [LB322]

SENATOR AVERY: Yeah, one could make the case, and I believe make a very persuasive case that ultimately everybody answers to the director. So that's a supervisory role. [LB322]

SENATOR PIRSCH: I see. Very good. I don't have any other questions. Are there any

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other other...Senator Price. [LB322]

SENATOR PRICE: Senator Pirsch, thank you. Senator Avery, am I to understand, how many employees are at Health and Human Services? [LB322]

SENATOR AVERY: Thousands. [LB322]

SENATOR PRICE: And you would say that no one in the family in a department of thousands could be related in this way? I mean, many times don't doctors have children who follow in their steps as doctors and attorneys have children who follow as attorneys. So are we to say out of thousands of people, you couldn't get a job in HHS if your parent or your...someone like that was the director? [LB322]

SENATOR AVERY: I am going to ask that you ask, that you direct that question to Jeremy who is probably going to follow me, representing the Governor's office. [LB322]

SENATOR PRICE: Okay. [LB322]

SENATOR AVERY: My interpretation would be that if you're at the top of the agency, then ultimately you are responsible to supervise everybody. Now it might be that another interpretation would be it has to be direct. [LB322]

SENATOR PRICE: Okay. And then just quickly...is this language consistent throughout the statutes? [LB322]

SENATOR AVERY: Throughout what? [LB322]

SENATOR PRICE: Is this language consistent throughout the statutes for a definition of nepotism and how we treat it throughout the statutes? [LB322]

SENATOR AVERY: I would hope so. That was my expectation when we took it to the bill drafters. [LB322]

SENATOR PRICE: Okay, thank you. [LB322]

SENATOR PIRSCH: Any other questions? [LB322]

SENATOR SULLIVAN: Yes. [LB322]

SENATOR PIRSCH: Oh, Senator Sullivan. [LB322]

SENATOR SULLIVAN: Thank you, Senator Pirsch. Senator Avery, just for my clarification, you said in your summary that the legislative and judicial branches

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currently have policies regarding nepotism. But they don't have policies regarding supervision. Is that, because you were saying in the bill, then, that it is the intent that the legislative branch and the judicial branch develop and implement internal policies prohibiting nepotism and supervision? [LB322]

SENATOR AVERY: I think the legislative rules on nepotism are stricter than direct supervision or even indirect supervision. [LB322]

SENATOR SULLIVAN: So I guess I'm just wondering why that... [LB322]

SENATOR AVERY: For example, my son cannot, who is 17, cannot serve as a page. I mean, I don't supervise the pages, but I think that it's pretty...the public ought to expect that if I tried to get my son hired as a page, I could probably get it done. And that gives him an advantage over others. I think that's the part of nepotism that we have in our policies that's appropriate. And I'm not sure that this bill would go that far, although it...the nepotism does, and the definition in this bill does include using your influence to get a family member hired. Um, but I'll ask you to direct the question to Jeremy as to whether that requires direct supervision as Senator Price was asking. [LB322]

SENATOR SULLIVAN: Okay, and then also, who would, who is ultimately the watchdog for this? [LB322]

SENATOR AVERY: The Accountability and Disclosure Commission would be ultimately responsible. They would hear all complaints. [LB322]

SENATOR SULLIVAN: Oh, they'd hear a complaint, but who...so in other words, who makes sure that. [LB322]

SENATOR AVERY: Oh, your coworkers; your coworkers are the watchdogs; wouldn't you think? [LB322]

SENATOR SULLIVAN: Well, yes, the State Auditor too. [LB322]

SENATOR AVERY: And the State Auditor, too. [LB322]

SENATOR SULLIVAN: Okay. [LB322]

SENATOR AVERY: But in my, you know, in cases where this has happened, it's been coworkers that, they reveal the problem. You know, for who knows what their motives might be. It could be good government motives, it could be that the relative is treated better, paid better, allowed to take off early, and come in late. Things like that. [LB322]

SENATOR SULLIVAN: Okay, thank you. [LB322]

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SENATOR PIRSCH: Very good. Any other questions? Thank you very much, Chairman. We will now ask for any proponents of LB322 to come forward and testify. Director Castillo. Welcome. [LB322]

CARLOS CASTILLO: Good afternoon. Good afternoon, Senator Pirsch and members of the Government, Military and Veterans Affairs Committee. My name is Carlos Castillo, C-a-s-t-i-l-l-o. I'm the director of the Department of Administrative Services and appearing today in support of LB322. LB322 clarifies that nepotism in a supervisory or relationships of family members in state government are prohibited for all employees in the executive branch of state government. The bill is the result of a large working group and public discussion on this topic during the 2008 legislative session. The bill eliminates the two current--but separate--prohibitions against nepotism: one for state employees and one for directors of state agencies, in favor of one act which is applicable to all and is easier to understand and follow. The bill clarifies the definition of family members so it is no longer limited to family members residing in the same household, but is the more common definition of family member regardless of home location. Also the bill eliminates the criminal penalty for violation of the act, but retains the civil penalties under the Nebraska Political Accountability and Disclosure Act and any formal disciplinary action by the agency head. Finally, the bill allows for the head of an agency to grant an exception to the nepotism and supervisory provisions upon written showing of good cause which shall be filed with the Accountability and Disclosure Commission and considered a public record. This exception is in response to limited labor pools in remote areas of the state. If no exception exists, we would have workforce shortages in some of our facilities, especially 24-hour facilities. While we want to prohibit nepotism, we also want to continue to encourage good people to work for the state. We believe this bill is important and urge your support. I would be happy to answer any questions you might have. [LB322]

SENATOR PIRSCH: Thank you very much, Director Castillo. Are there any questions? Senator Price. [LB322]

SENATOR PRICE: Thank you very much, Senator Pirsch. Mr. Castillo, approximately how many employees work for...under the executive branch? [LB322]

CARLOS CASTILLO: Oh, about 15,000. [LB322]

SENATOR PRICE: So 15,000. So a grandparent anywhere in the director line there; you'd have to show good cause such as an inability to find other employees and such, is that what you're saying? [LB322]

CARLOS CASTILLO: No, there is an exception. That's why we built in the exception so that if, for some reason, that would exist, the agency has the ability to provide an

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exception to that employee at the discretion of the agency head. So that there's somebody in the chain of command who is making a decision, yes, is this appropriate or is it not. So in the case of HHS, like you used earlier, the director of HHS has a recently graduated son or daughter that's now a doctor who's going to go work for HHS--maybe in a different town, but obviously in the chain of command structure someplace--as long as there was...the appropriate exception guidelines were followed in the bill, then that could be appropriate. [LB322]

SENATOR PRICE: And this good cause statement would be justified by the agency head, would not need to be adjudicated, ratified or otherwise agreed to by any other agency? [LB322]

CARLOS CASTILLO: No, it would have to be filed with the Accountability and Disclosure Commission and would become a public record. Yeah, at the end of the day, I mean, the agency head is responsible for making good or bad decisions based on their agency. [LB322]

SENATOR PRICE: All right. Thank you. [LB322]

SENATOR PIRSCH: Any other questions? I just have one quick one. Now, should we not move to enact this nepotism proposal, there is a default, there is currently in law...a nepotism law in place that covers executive department employees, correct? [LB322]

CARLOS CASTILLO: Yes, there is. [LB322]

SENATOR PIRSCH: And that has in past years now, just for my...the newer colleagues here; that has proven to be problematic, is that correct? [LB322]

CARLOS CASTILLO: It is. And there are two different statutes that govern...one governs directors currently and another governs other state employees, and that leads to some confusion because it's different for those two folks, so this is an attempt to consolidate those and to take confusion out. And as Senator Avery alluded to earlier, I believe that under the old definition, if you are residing in the household, then that is considered nepotism. So if you have a grown, you know, a grown child who is related to you, but lives outside of your household, then that would not be nepotism under the current statute. So it leads to a lot of confusion as you can probably imagine. [LB322]

SENATOR PIRSCH: Okay. Thank you. Did you have another follow up, Senator Price? [LB322]

SENATOR PRICE: Just real quick, just so we understand the magnitude. Could you dare say, say how many people in the family work in Health and Human Services? [LB322]

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CARLOS CASTILLO: No, but I can tell you that in, you know, obviously in smaller communities, oftentimes people are related to one another just because of the geographic nature of the work location. So it's not uncommon for people to be related to one another in an agency. [LB322]

SENATOR PRICE: Would this be retroactive then? Would everybody who is currently in it or would it be any new employees going forth or would we have to go back and find everybody in the family tree working? [LB322]

CARLOS CASTILLO: No, but again, there would have to be a...once you become, the bill says once you become aware that nepotism has...is occurring, that that has to, you have seven days from the date of notification--the day that you become aware--to then go through that exception procedure to the agency head to grant an exception, to make a judgment in essence of whether or not it's appropriate. So once the bill would be enacted into law, it would go into effect and would apply to all state government. [LB322]

SENATOR PRICE: So to make sure then, it would be from Accountability and Disclosure that you would get your notification of the situation and then you would have seven days, seven working days from that time? [LB322]

CARLOS CASTILLO: You would simply file the exception with Accountability and Disclosure. [LB322]

SENATOR PRICE: But the notification would come from Accountability and Disclosure? [LB322]

CARLOS CASTILLO: That would have to...that would happen internally. That all, that process is all generated internally. So if an employee gets hired, like we said earlier in HHS, I now am a doctor, my dad is the director of HHS, I have to self-disclose, and then it works it way through the process that way. [LB322]

SENATOR PRICE: I was just concerned in case there were internal politics. We know that doesn't ever happen. But someone says I gave, I already told them seven days ago, now they're in violation; they've broken a law and maybe that seven days didn't exist, so how do we ensure that those seven days were provided and can show that chain? [LB322]

CARLOS CASTILLO: Yeah, I would suggest that that, at the end of the day, that that's the agency's responsibility, to have those procedures and practices in place to be doing those things. [LB322]

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SENATOR PRICE: Okay, thank you. [LB322]

SENATOR PIRSCH: Very good. Any other questions? And just a quick follow up. Here it says a head of an agency may, upon a written showing of good cause, grant an exception. Is that the head of an agency is who it's left up to? Is that broad enough to encompass all those employees within, you know, the 15,000 employees or should it read differently than head of an agency or a department or something. Or is that language okay? [LB322]

CARLOS CASTILLO: No, I think we feel completely comfortable with that. [LB322]

SENATOR PIRSCH: Okay, very good. That's all. [LB322]

CARLOS CASTILLO: Thank you. [LB322]

SENATOR PIRSCH: Any other proponents of LB322? Proponent? Okay, very good. Director Daley, whenever you are ready. [LB322]

FRANK DALEY: Thank you very much, Vice Chairman Pirsch, and members of the Government, Military and Veterans Affairs Committee. Again, my name is Frank Daley, D-a-l-e-y, executive director of the Accountability and Disclosure Commission, and I'm appearing today in favor of LB322. The reason the Commission supports LB322 is that it preserves the state's current antinepotism statute, but it solves some of the problems that currently exist in the statute as it exists today. The current Nebraska law prohibits an official or employee in the executive branch of state government from hiring, recommending the hiring of, or supervising the hiring of an immediate family member. Problem number one comes in with the definition of immediate family member. It is very narrow. It includes the spouse, a child living in the household, or someone that's claimed as a dependent for federal income tax purposes. So it does not include your adult children. It does not include your parents or your siblings or your grandparents. And I think sort of the commonsense we have is that those are family members that ought to be covered under an antinepotism statute, but they currently are not. So under the bill, what happens is there is a new definition created for a term called family member. And the term family member would include your children--whether they live in your household or not--your spouse, your siblings, your grandparents, your grandchildren, your parents, folks of that nature, and people that are related to you in a similar way by blood or marriage. So that expands the definition of who is covered by the antinepotism law. The second problem that is solved by this particular bill is that it resolves an issue which quite frankly is a trap for public officials and public employees. The current law prohibits the supervision of an immediate family member. That is someone in the line of authority who is a family member. The problem there is that you can have a family member...you can be a supervisor of sorts, but not being a hiring employee, you're not the person in charge of hiring, you make no hiring decisions;

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someone else does the hiring and you simply supervise whoever, someone above you selects to work in your department or within your division of something of that nature. So it can put supervisors in an unwieldy position because they can be assigned an employee who is a family member, but yet they have no say in the hiring, and there's no process for them to deal with that situation. They theoretically have violated the law by doing nothing, just simply by being the supervisor. LB322 corrects that. It provides that if an employee or an official in the executive branch of state government finds that they are the supervisor of a family member, there is a process that they need to follow. And if they follow that process which is essentially to notify the agency head of the situation, the supervisor is off the hook because they have done what the law has required. And they have required...they have essentially created a situation where the agency director needs to make a decision as to whether or not we need to reassign someone or we need to see if there's a good cause exception. So I think what it does is it takes state employees out of this trap that currently exists for them. The agency director, as I said, may either decide that I'm going to reassign people so that supervisory situation doesn't exist or he or she can determine that there's good cause to continue the situation, set those reasons in writing and file that with the Nebraska Accountability and Disclosure Commission. Two points I'd like to make in response to comments that I've heard from members of the committee. Number one, the University of Nebraska. The University's system is somewhat unique, and there's always this pushing and pulling as to whether it's part of the executive branch or not part of the executive branch. I guess if you have a thought as to whether the University should or should not be included, you might want to make that clear somewhere in this process. The second thing is Senator Price mentioned the situation with Health and Human Services. If the director...someone is the director and their son or daughter becomes a doctor, and they want to work for Health and Human Services, how would this bill affect that. Well, under current law; that situation could not exist now. You may notice in Section 4, I believe it is, of the bill; there is some stricken language and that's language that applies to the heads of code agencies and it essentially provides that a family member can't work in the same agency as...they can't work for a family member who is the head of the agency. So this bill gets rid of that, and he puts all agencies in the executive branch essentially on the same footing. So that's kind of what LB322 does. I appreciate the opportunity to testify before the committee today, and I appreciate the fact that Senator Avery has brought this bill to clarify the current situation. [LB322]

SENATOR PIRSCH: Thank you. Are there any questions in regards to that testimony? Just to clarify then, Director. On page 6 in this stricken language, you're saying right now there is a strict prohibition if you are the head of a department, the strict prohibition is you cannot have a family member employed anywhere within that department no matter what, if you have no kind of direct supervisory, no hiring, no line of authority over that specific position. So this actually wouldn't be more intrusive? This could be less intrusive, it allows for... [LB322]

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FRANK DALEY: That's correct. [LB322]

SENATOR PIRSCH: In certain situations, you could be the head of a department and a family member could perhaps work there as long as the conditions were such that you're not supervising directly or without an exception. [LB322]

FRANK DALEY: You'd have to find a good cause exception in order to make that work. And maybe to put things in perspective...our current nepotism law is not all that great. But it is actually a significant change from, I think, just over eight years ago when the statute actually said that state employees may hire, may employ or may supervise immediate family members. So this...there seems to have been a trend on the part of the Legislature to move from saying nepotism is actually okay by statute to moving to a situation where nepotism is not. The current statute, I think, was the first legislative attempt to say nepotism is not okay on the state level. And LB322 is an attempt to now, on the basis of experience, modify things a little bit and tighten things up. [LB322]

SENATOR PIRSCH: Very good. Any other questions? Okay, great. [LB322]

FRANK DALEY: Thank you very much. [LB322]

SENATOR PIRSCH: Thank you very much, Director. Are there any other proponents of LB322? [LB322]

RON WITHEM: Yes, Mr. Chairman, members of the Government Committee, my name is Ron Withem, R-o-n, W-i-t-h-e-m, with the University of Nebraska. We are supportive of LB322 as it is written this year. One of the reasons I thought it important that we testify, a year ago when a similar proposal was brought before the committee, we did express a number of concerns, primarily about the reporting requirements that were in the bill at that time. The members of the administration heard our concerns this year when they had the bill introduced, drafted, and they addressed those concerns. And I thought it important that we indicate that we appreciate their listening to us, and we are supportive of the bill. [LB322]

SENATOR PIRSCH: Thank you very much, Mr. Withem. Are there any questions for Mr. Withem? Okay, seeing none, thank you very much. [LB322]

RON WITHEM: Thank you. [LB322]

SENATOR PIRSCH: Are there any other proponents of LB322? Okay, seeing none, we will move on then to opponents. Are there any opponents of LB322? No. Okay, we'll move on. Any individuals here to testify in a neutral capacity with respect to LB322. Seeing none, Chairman Avery, would you like to close? He'll waive closing, and we will conclude then the hearing on LB322. Are there any letters to read into that? We'll move

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on to LB66, and I'll cede the chair back to Chairman Avery. [LB322]

SENATOR AVERY: Thank you, Senator Pirsch. We are ready to open on LB66. Welcome Senator Rogert. Welcome back, I should say. [LB66]

SENATOR ROGERT: (Exhibits 1, 2) Good afternoon, Chairman Avery and the members of the illustrious Government, Military and Veterans Affairs Committee. Passing out a few items, I will address them in my opening, and we can go to them if you so choose. My name is Senator Kent Rogert, and I represent the 16th Legislative District. I'm here today to introduce to you LB66, a bill that raises the limit on certain contributions and gifts in the Nebraska Political Accountability and Disclosure Act from \$50 to \$100 in the bill copy. Currently, a committee is not allowed to give any one person items over \$50 a year. For example, a committee could be Kent Rogert for Legislature, and the committee may purchase football tickets which may cost \$52 each. A candidate cannot give these away unless the recipient gives my committee back \$2 in exchange. It also is required that every contribution over \$50 needs to be a check. An example of a problem with this is that many people may come to a fund-raiser and want to donate a \$100 bill; they can't do that. We must send it back and ask for a check or divide it into two contributions. There is also a limit on \$50 for gifts to elected officials and their immediate families. I'd like to point out that very little thing costs \$50 anymore including a round of golf, and that hasn't been changed in 20 years. In changing the limits from \$50 to \$100, we are merely trying to improve the political campaign process with a little more commonsense, ease, and efficiency as well as to update the statutes to be in accordance with the current spending amounts for campaigns in Nebraska. On that note, I would like to introduce to you the amendment to LB66, and that is AM45. The reason I didn't have the bill in this is we just didn't have it ready at bill introduction, and we've been working on it ever since, and we finally got it done. AM45--I don't know where Frank is, he probably would like one--addresses the Nebraska Accountability and Disclosure Act and eliminates Class II and Class III misdemeanors as penalties that could require three to six months imprisonment or jail time for violation of the Act. It is my opinion that if I make a mistake on a report, my treasurer should not go to prison; nor should I, if he makes a mistake on a report. Not to say that that would happen, but it could under the current statutes. It also increases the limits on campaign spending for all offices. For the Governor, from \$297,000 to \$5,000,000; for the State Treasurer, Secretary of State, Attorney General, and Auditor of Public Accounts, from \$209,000 to \$1,000,000. The Board of Regents, from \$100,000 to \$1,000,000; and a candidate for the Legislature, from \$89,000 to \$250,000. AM45 also eliminates the requirements on candidates needing to file a second affidavit with the commission when his or her expenditures equal or exceed 40 percent of the spending limitation for the general election period, and eliminates the requirement that in the primary election, no candidate should be entitled to receive more than three times the amount of the spending limitation for the primary election period. I also believe it eliminates the amount or the requirement that under the spending limit, it must be split 50-50 between

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the primary and the general. It also extends the length of time for a business or corporation or out-of-state contributor to file a contribution report from within 10 days after the end of the calendar month in which the contribution or expenditure has been made, to 30. The example that this could be a problem is if you get a...if you give a contribution as a business or corporation towards the end of the month, you may have to file that within a couple of days because it says: towards the end of the month. AM45 also raises the limit from \$50 to \$100 on certain gifts and contributions as is drafted in LB66, and it also raises the \$100 limit for candidates and lobbyists to \$250, eliminating the prohibition on travel and lodging gifts for officials and their immediate family, and prohibition of hiring immediate family members which is covered under Section 49-1499. And with that, Mr. Chairman, I'd like to...I'd open it up for any discussion and any questions. I included with the amendment a simple summary sheet that should get you right to every little change that has been made in there. And I'll answer any questions you may have. [LB66]

SENATOR AVERY: Thank you, Senator Rogert. Let me ask you, would you characterize this amendment as a new bill? [LB66]

SENATOR ROBERT: It's an expansion of the first. Yeah, there's a lot more stuff that we worked on and we just didn't, like I said, it's done, it's not new--same section--just a major expansion of the original bill. [LB66]

SENATOR AVERY: So the committee staff did not see this in advance, right? [LB66]

SENATOR ROBERT: We just got it yesterday, yes. [LB66]

SENATOR AVERY: And this is a summary of the key changes that you're proposing in the amendment? [LB66]

SENATOR ROBERT: That the amendment makes, yes. [LB66]

SENATOR AVERY: Well, I guess the first question is what problem are you trying to fix? [LB66]

SENATOR ROBERT: Well, lots of them. I think, first of all, that the criminal provisions in the statutes now are unnecessary. There are many places for fines, and there are provisions for civil penalties. If someone thinks they were wronged, they have the ability to sue, and you can bring charges up on anybody in that type of events. Just because you misreport it, I don't think that that's reason to get a criminal record. It still leaves in the possibility and you can prove this very easily that if you willfully or "knowfully" misreport, you still can be prosecuted under the full extent of the law. And it also does not remove any requirement for disclosure. All disclosures must be made in 100 percent. A lot of the other things I'm trying to fix is bring things from a 1987 dollar figure

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to a 2009 dollar figure; putting things up and looking toward the future because if we don't go to it to address it again for 20 years, we'll be...well, we're already behind it, where we're at. We just want to move it up to a spot that will hold us in place for a while. [LB66]

SENATOR AVERY: Would you agree with the characterization that this is a dilution of the current law? [LB66]

SENATOR ROBERT: I don't know that...sure, it's a dilution. There's a lot of removing of language. I think it's making the law more sensible. [LB66]

SENATOR AVERY: I haven't had a chance to, of course, read this extensive amendment, but one more question. Did I hear you say that the spending limit for legislative races would be raised to \$250,000? [LB66]

SENATOR ROBERT: Yes. [LB66]

SENATOR AVERY: How did you arrive at that number? [LB66]

SENATOR ROBERT: Looking at top dollars spent in races and the quick incline of dollars spent over the past five years, I see more and more dollars going into...with term limits, I think there will be highly contested races every, at least, eight years in most districts and every four years in some others. And many, many more are not abiding by the spending limits because they know they can't get there with what they're going to need to do. And so I took it up to a number that I thought would be definitely, you know, if you're going to spend that much, then I think it's possible to do that. [LB66]

SENATOR AVERY: And are you aware of what the current limit is? It was just raised, I believe. [LB66]

SENATOR ROBERT: It was just raised to \$89,000, I believe. [LB66]

SENATOR AVERY: \$89,000? [LB66]

SENATOR ROBERT: Yeah, it was \$77,000, and I think it went up to \$89,000 for this coming cycle. [LB66]

SENATOR AVERY: For the next election cycle? The one that we just entered? [LB66]

SENATOR ROBERT: The one that we just entered. Also, if you will note, none of this will take effect in any of the current election cycles. It would have a delay to it. [LB66]

SENATOR AVERY: So you would like to raise the limit from \$89,000 to \$250,000. A

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pretty hefty increase, wouldn't you agree? [LB66]

SENATOR ROBERT: Well, I think that if folks...all that's doing is raising it to the point, that's before anybody gets any public funds. It is a hefty increase, but once again, I'm looking to change it to where we're, into a logical figure for yesterday; tomorrow, we're already out of, it's obsolete. So this is a section we're going to address and make changes to once every 20 years, I'm going to get ahead of the ball game and get it to a spot that will be somewhere that we'll be looking at very noticeably in the coming future. [LB66]

SENATOR AVERY: Would you agree that the whole purpose behind the Campaign Finance Limitation Act was to reduce the influence of money in politics? [LB66]

SENATOR ROBERT: Not necessarily. I think it was to make sure that everybody had fair contributions amongst people and that everything is disclosed to the public. [LB66]

SENATOR AVERY: The prohibition on contributions from nonindividuals beyond a certain amount; right now, it's at half the spending limit. [LB66]

SENATOR ROBERT: Yes. [LB66]

SENATOR AVERY: It doesn't matter whether you abide by the spending limit or not, you still cannot accept more than half of the spending limit from nonindividuals meaning lobbyists, basically. [LB66]

SENATOR ROBERT: Yes. [LB66]

SENATOR AVERY: Would you classify that as an attempt to reduce or control or restrict the influence of money in campaigns? [LB66]

SENATOR ROBERT: Um, that very well could, I think it...yes. And maybe even agenda based. That would prohibit those with a certain amount of money and a certain type of agenda, regardless of what it may be, from getting a whole bunch of money from one...one "majorly" wealthy organization to be able to get funded. And we actually didn't...we didn't take that portion of it out. [LB66]

SENATOR AVERY: Would you think though that it might be in the public interest to restrict how much special interest money we can accept in our campaigns? [LB66]

SENATOR ROBERT: I think it's more in the public interest to fully disclose exactly what you are getting and when you're getting it, and at that point, people can make a decision based on that. [LB66]

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SENATOR AVERY: Do you think there ought to be, in the interest of good policy, a restriction on how much an individual Political Action Committee might be able to give? Currently, there is no limit. I mean, any PAC can give you any amount of money they want. It could cover the entire limit under the current law. [LB66]

SENATOR ROBERT: Correct. [LB66]

SENATOR AVERY: Half of \$89,000? [LB66]

SENATOR ROBERT: Once again, I believe that full disclosure is the best policy, as long as...it's very much up to an opponent of a candidate and very possible to make note with everything he says that one person is getting all their money from one organization and that...if that's the will of the people at that point, then that's the way it goes. [LB66]

SENATOR AVERY: Let me...I'm not going to ask you but just one more question for now. Back to the gift limit, you want to raise it from \$50 currently, right, to \$100? [LB66]

SENATOR ROBERT: Um-hum. Yes, I think actually the bill calls it to...the bill copy has \$100 and the amendment takes it to \$250, yeah. [LB66]

SENATOR AVERY: So that's a 150 percent increase? [LB66]

SENATOR ROBERT: Yeah. [LB66]

SENATOR AVERY: Is that to cover inflation or? [LB66]

SENATOR ROBERT: Absolutely. [LB66]

SENATOR AVERY: Absolutely. [LB66]

SENATOR ROBERT: Inflation and future inflation. [LB66]

SENATOR AVERY: Then what kind of gifts would not be covered up to that level? I mean, \$250, I don't think I've ever received a gift since I've been here, I've never accepted one at that level. [LB66]

SENATOR ROBERT: No, I take that back. The contribution limit went up to \$250, but I believe in the...let me look here. [LB66]

SENATOR AVERY: The gift limit? [LB66]

SENATOR ROBERT: I think that still goes to \$100. No, it does go to \$250. That's

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correct. [LB66]

SENATOR AVERY: Yeah, that's one of the problems with getting an amendment of this complexity and size dropped on us at the hearing. [LB66]

SENATOR ROBERT: Yep, yeah, it does take it to \$250, yeah. [LB66]

SENATOR AVERY: What kind of gifts would one want to accept that would, that would not be disclosable at \$250? [LB66]

SENATOR ROBERT: It would be fully disclosable. They would have to be disclosed. There just would be not, there just would be no prohibition. [LB66]

SENATOR AVERY: Well, I think the way it works now is that you disclose everything over \$50. [LB66]

SENATOR ROBERT: No. You actually, well, some of those things, you actually, you can't accept more than \$50 from a committee as a candidate per month. [LB66]

SENATOR AVERY: Well, maybe I don't know the law. But it was my understanding that we had a reportable limit of up to \$50, you didn't have to report it as a gift. And that covered food and beverages consumed on the premises at the time. It is my understanding though that anything above that was reportable to A and D, Accountability and Disclosure record would show that you received a thousand dollar...say you took football tickets from the University. [LB66]

SENATOR ROBERT: Right. [LB66]

SENATOR AVERY: That's worth about 800 and some dollars for two tickets. [LB66]

SENATOR ROBERT: Right. [LB66]

SENATOR AVERY: That would be reportable as a gift. [LB66]

SENATOR ROBERT: Right. Yes. [LB66]

SENATOR AVERY: Okay, so what kinds of gifts then under what you're proposing would not be reportable? I mean obviously gifts under \$100. But what kind of gifts would that be? Do you have... [LB66]

SENATOR ROBERT: We took out the limitation on travel. Say I want to go to a policy summit somewhere, I think, I do think that in the future that the state will be looking to limit things that we, for example, travel to across the country. And not necessarily the

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state, but the Legislative Council will be looking to curb some of those dollars that get spent. Currently, we are not able to allow somebody else to pay for us to go to those, even though it may be of our vast interest to go to some sort of conference that would help us do our job better. And right now, we can't accept travel expenses from outside committees. [LB66]

SENATOR AVERY: I think that you can. I think ALEC, for example, can give you a travel scholarship in the thousands and all you have to do is report it. [LB66]

SENATOR ROBERT: That's an educational scholarship. I could be wrong in my interpretation, but I was under the, they're not a PAC? We couldn't accept it from a Political Action Committee. [LB66]

SENATOR AVERY: I will stop there and let other people ask questions. Questions from the committee? Senator Karpisek. [LB66]

SENATOR KARPISEK: Thank you, Senator Avery. Senator Robert, what you're just trying to get at is everything would be disclosed? [LB66]

SENATOR ROBERT: Yes. [LB66]

SENATOR KARPISEK: And by doing that, you're saying let's raise some of these things so you can get more than a \$50 bill at a fund-raiser. [LB66]

SENATOR ROBERT: Yes. [LB66]

SENATOR KARPISEK: And on top of that, to maybe try to curb some of the state's cost. If we want to go to, I don't know, something in Washington, D.C. that would be good for us or we feel rather than having the state pay for it, we take it out of our campaign fund. [LB66]

SENATOR ROBERT: Can I give you an example? [LB66]

SENATOR KARPISEK: Yes, please. [LB66]

SENATOR ROBERT: I'm glad you brought that up. The Omaha Chamber of Commerce, for example, takes an annual trip to Washington, D.C. to meet their delegation and they invite some of us from the Omaha, Lincoln, Eastern Nebraska area. Anybody is welcome to go along. It's great to be able to go out and go with your business community leaders and meet your delegation and talk with them in the room about how things will affect us in the state, how things will affect them as residents and business leaders in the state with our delegations. That's about a \$2,500 trip if you bring, if it's you and a staffer or you and your spouse. That's extremely cost-prohibitive

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from a guy who makes \$12,000 a year. This would allow, if the Omaha Chamber wanted us to go along, they could pay for it. And it would be yes, fully disclosed. [LB66]

SENATOR KARPISEK: Okay, thank you, Senator Rogert. Thank you, Senator Avery. [LB66]

SENATOR AVERY: Any other questions? Senator Janssen. [LB66]

SENATOR JANSSEN: I can attest, thank you, Mr. Chairman, Senator Rogert. I can attest to the difficulty in finding and retaining a treasurer to work on a campaign, from my own experiences. When you decide to run for office, you get this thing that you've never heard of called CFLA, and you read through that and you're supposed to be an expert in it, and then you've got to talk somebody else to be an expert in it, and then it has criminal provisions in it. My treasurer does a great job, and I say that so it can be written into the record because I'm afraid to give him a gift because I'll break the law. So that's the reason I say that. But would you say, and listening to you and the Chairman speak back and forth, it just seems to me that where the confusion happens and we've got senators who have been here for awhile that aren't clear on all the provisions that are enacted on this. But it seems like the part where we're really not clear or we're not sure of amounts and gifts and whatnot is really on the, if you will, on the accountability side. It's not on the disclosure side. And you're saying with your bill, if we disclose everything, we don't have to worry about the \$50 gift or afraid to get my treasurer a gift or even in one case, going through our orientation, I found it interesting that one of our colleagues in the new class of senators is getting married. And he will have to disclose gifts from family members. And that's, that's very confusing. I also find it confusing that my mom lives outside the state and she gives me money and maybe I'll save this for Director Daley, but that counts as nonindividual money because it comes from outside the state and counts against my cap, which I exceeded. So would you say this is more just opening up it to disclosure and actually more friendly to the public? [LB66]

SENATOR ROBERT: Yeah, I would agree with most of...most everything you just mentioned. And my dialogue with Senator Avery does illustrate that there seems to always be confusion from both sides which often leads to a misreporting or a "misaccountability" of what's going on which could lead to a fine. Most of the time the commission and Mr. Daley's staff works very well in alleviating problems and giving warnings, but on occasion, there are folks that get fined, and I think a lot of times it's just pure confusion and lack of understanding of what's going on. This takes a lot of that confusion out. It takes none of the disclosure out and makes it so you don't have to go to jail if you do not understand what's going on. [LB66]

SENATOR JANSSEN: Thank you, Senator Rogert. [LB66]

SENATOR AVERY: Any other questions? Senator Giese. [LB66]

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SENATOR GIESE: Thank you, Senator Avery. Senator Rogert, just one question, one statement and one question. I just find it hard to believe that we could spend \$250,000 on a campaign for a \$12,000 a year job. I just find that amazing that, that statement. But I guess my question is on the contributions, it just says that they would increase the amount allowed for anonymous contributions and I apologize, I don't know what that figure is, so can you tell me what that is or what that would be. [LB66]

SENATOR ROBERT: That would be if you, that takes it from, if you've got a basket at a fund-raiser to pay for the food, it increases, if somebody puts a hundred dollar bill in there, you really don't know what to do with that. You can't today accept that. You have to send it back to whoever gave it to you, and so that you can report it correctly. And either split it up into \$50 or have them write to me a check. And I'll address your first statement. It does seem insane that we could spend that much on a \$12,000 a year job, but I don't have the numbers for this most previous election cycle in which you were elected. But I know that some of my colleagues in the year that I got elected spent half that already. And I assume that it will continue to go up from there. I see these races throughout term limits becoming extremely heated and "contentive" and money will continue to drive it. And independent expenditures will happen regardless of whether these things are here. This actually encourages, in my opinion, spending through the campaign committees rather than independently which gives us a little more accountability in the end. [LB66]

SENATOR GIESE: Thank you. [LB66]

SENATOR AVERY: Additional questions? I have another one. [LB66]

SENATOR ROBERT: No way! [LB66]

SENATOR AVERY: What happens to anonymous contributions under \$100 under your amendment? And this is your bill, right? [LB66]

SENATOR ROBERT: Correct. They get reported just as a \$50 one would today. [LB66]

SENATOR AVERY: Anonymous contributions? The way it reads now, you have to report cash contributions. If it shows up in a basket at a fund-raiser, you don't know where it came from, you have to report it as an anonymous cash contribution? [LB66]

SENATOR ROBERT: Right. [LB66]

SENATOR AVERY: If you find a hundred dollar bill in there, you really have to scramble to find out who it came from so you can report it by source. And sometimes you can't. [LB66]

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SENATOR ROBERT: Sometimes you can't, but what you do is you have to, you have to assign it to somebody or you have to say, or you have to break it into two fifties. It encourages a lie, in fact. So rather than do that, let's make it so it's your...you can comply. [LB66]

SENATOR AVERY: Could somebody contribute a hundred dollars over and over and over and over again, in cash, without revealing who they are under this? [LB66]

SENATOR ROBERT: That is a question for Mr. Daley. There's one of those compiling, confusion questions that I'm not sure. [LB66]

SENATOR AVERY: I have to admit to you, Senator, that despite my familiarity with the CFLA, I had trouble sometimes understanding it and my campaign staff, we went round and round on this. I finally found a very good treasurer who knows it. My wife worked on it and you know, we made errors, but here's one thing I learned is that the A and D Commission is not out to trap you. I never found that. [LB66]

SENATOR ROBERT: And I don't say they are, I agree with you. [LB66]

SENATOR AVERY: They always work with you. And so that leads me to my last question is that do you know of anybody who has been charged with criminal violation of this act? [LB66]

SENATOR ROBERT: I do not. [LB66]

SENATOR AVERY: But you said a couple of times that one of the things you were trying to correct was the criminality issue. [LB66]

SENATOR ROBERT: Yes. I fully agree. I think it, yeah, it took me a couple of guys and my current treasurer has since required me, he's my treasurer, but we've hired somebody to do it, because of the criminal portions of it. [LB66]

SENATOR AVERY: I hired somebody because my wife said, I won't do it again. [LB66]

SENATOR ROBERT: Yeah, and that's what we get. And I don't think, you know, I think we should have to do everything possible to show the public what we're doing, but it shouldn't be that hard and we shouldn't have to spend days going over this to figure out what the heck we're doing, so that we don't do something wrong and get in trouble. And you know, that's, I think this cleans things up nicely. [LB66]

SENATOR AVERY: I am a little bit troubled by the fact that you brought us an amendment that is so extensive and basically substitutes a new bill for what we held a

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hearing on, and there are people here who want to testify on LB66, but that's not what we're talking about anymore really. [LB66]

SENATOR ROBERT: Well, I, once again, I wish I had it sooner, but it's been really busy; it's early in the session, and that sometimes is the case. [LB66]

SENATOR AVERY: Any more questions from the committee? Senator Pahls. [LB66]

SENATOR PAHLS: I have a question, and I understand handing it in this late, but I can assure you, this happens in the past on the floor on major legislation, when we did the learning communities, sometimes amendments would be handed to us, and we would be expected to make major decisions and we did it. So even though I do realize this is quite extensive, this is not at all like some of the past things that have happened on the floor. I grant you that. There were major decisions made. After lunch, somebody would bring in an amendment, and if somebody was not on top of it, you didn't know what was going on. So I, again, I think this is a late date but the learning community is a prime example. [LB66]

SENATOR ROBERT: A prime example or the state aid, the TEEOSA formula the last year where every 20 minutes we got a new 17 page green copy that had hundreds of millions of dollars of different decisions in it, and we had to make those. And this doesn't do that. This really is just an expansion, and I apologize, and I'll be more than willing to work with Christy and whoever to go through and talk about it as we move forward. [LB66]

SENATOR AVERY: Any more questions for the committee? Thank you, Senator Rogert. Are you going to stay to close? [LB66]

SENATOR ROBERT: Yes, probably. There's several hours of hearing. [LB66]

SENATOR AVERY: We will now move to proponent testimony. How many people plan to testify in support of this? No one wishes to testify in support of your bill, Senator Rogert. I've been there, I've been there many times, believe me. (Laughter) [LB66]

SENATOR ROBERT: You've had that. [LB66]

SENATOR AVERY: We will move now to opponents. Anyone wish to oppose this? Welcome, state your name. [LB66]

JACK GOULD: (Exhibit 3) Senator Avery, members of the committee, my name is Jack Gould. That's G-o-u-l-d, and I'm here representing Common Cause Nebraska. Before I go into my testimony, I would also raise a question about the amendment, and I know you all have copies of it; the public doesn't. And I think if, with the extent of the

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amendment, we would almost like to have another public hearing just on the amendment because there are things in there that shock me, and I guess I am a proponent of the Campaign Finance Act, so I just raise that question. If there are a lot of things that came up in the amendment that I have no real knowledge of other than what I heard. I'm going to read; usually I just testify. But I wrote out my testimony in this situation because there are a lot of technical questions. And there are some things that I hope maybe you can follow along, and that may help you raise some questions at the end. LB66 simply sends the wrong message. At a time when Washington and many states are reducing and eliminating special interest gifts to officeholders, this bill would increase the number of gifts and the value of those gifts. It would also make cash contributions to political campaigns less visible and untraceable. Under the current rules, lobbyists may provide unlimited food and beverages as well as a \$50 gift each month to any state officeholder. Public officials do not have to report any gifts unless they exceed \$100. The lobbyists do not have to disclose who the recipients of the gifts are, only the total amount given to all officials at the end of each quarter. Public officials only report single gifts that exceed \$100 in their statement of financial interests filed on April 1 of each year. There are examples of lobbying firms giving \$50 per month for two consecutive years to a single public official. Under the current law, only the individual lobbyists know who is getting the gift and the full value of the gift. Raising the gift limit to \$100 makes it possible for lobbyists to give as much as \$1,200 a year. I don't think this is, you know, actually improving disclosure. This is actually going in the other direction. Our campaign disclosure laws require all candidates to disclose contributions over \$250. These contributions are on-line for the public to see. Contributions under \$250 and over \$50 must be recorded by the campaign treasurer and made available for auditing purposes if requested. Contributions under \$50 are recorded as cash received, but no identifying records are required. Cash contributions under \$50 are untraceable. LB66 would raise the untraceable cash contribution limit to \$100. Currently, the expected contribution at most breakfast fund-raisers is \$100 at the door. These contributions are primarily from lobbyists, and they would be untraceable even if audited. In 2008, a year that required only a 60 day session, principals, the people who hire lobbyists, spent \$12,092,884.01 on lobbying state government. Lobbyists reported spending \$171,960.15 on entertainment. Principals reported spending \$252,234.63 on entertainment. Because there are no records on food and beverage expenses, we only know that they are part of the \$12 million figure. A survey of the National Convention of State Legislatures' Web site would show that most states are moving away from more lobbying gifts and toward more disclosure of campaign contributions. LB66 does just the opposite. [LB66]

SENATOR AVERY: Are there any questions for Mr. Gould from the committee? Seeing none, thank you. Oh, who? You, I'm sorry, Senator Karpisek. [LB66]

SENATOR KARPISEK: Thank you, Senator Avery. Mr. Gould, thank you for your testimony. But I think that Senator Rogert did just say it has more disclosure, and I

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believe it does, so. [LB66]

JACK GOULD: Well, if you take the \$50 limit that we have right now, anything over \$50 is disclosed. Obviously, if we raise it to \$100, everything under \$100 will not be disclosed. [LB66]

SENATOR KARPISEK: No, it will. Everything will be disclosed. [LB66]

JACK GOULD: I...you're going to disclose every dollar then from beginning to end. [LB66]

SENATOR KARPISEK: That's what I understood when I asked Senator Rogert is what he said. [LB66]

JACK GOULD: My understanding of the bill that was the original bill, that that was not the case. Now, I haven't seen all the amendments, but my understanding of the original bill... [LB66]

SENATOR KARPISEK: Well, I'd like to get off all the amendments, too, because I put things into bill drafters, too, and I know that it doesn't always work. So I don't think that this is some sort of a conspiracy theory to throw something new at us. But I do think it is more disclosure, and Senator Rogert said so. Also the \$12 million, was that a national number? [LB66]

JACK GOULD: No, no. That's completely compilable by the Accountability and Disclosure Commission, but it's a total of all the principals reports which is showing how much they spend each year on hiring lobbyists and entertainment figures, all those kinds of things. And that total is \$12 million. Now I believe, on the long session, I believe it was \$14 million, but don't hold me to that. [LB66]

SENATOR KARPISEK: But there's nothing to say that that whole \$12 million was spent on senators, by any means. [LB66]

JACK GOULD: It's on lobbying the state government. It would go everything from the Public Service Commission to the senators to the executive officers. It's all, it's the whole package. [LB66]

SENATOR KARPISEK: Well, I know a lot of the things we go to...there's a, I mean, ballrooms full of people, NRDs was just one recently. Farm Bureau. So I don't know, but I would assume that all of that is included in that so. [LB66]

JACK GOULD: It actually, it even includes country club memberships. It includes tickets to the Lied Center. It includes golf outings. It includes tickets to practically everything

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that goes on in the state. So I mean, it's comprehensive. [LB66]

SENATOR KARPISEK: I guess my one try-to-be-funny comment is maybe I'm missing out on a lot of stuff. [LB66]

JACK GOULD: Well, you know, I hope you're not because I think this is really a serious bill. And I think it, from a public perspective, gift giving from special interests, not from the public. I mean, you're paid by the public. You're not paid much, and I don't like your salary. I think it's, I think you should be getting \$30,000 a year. [LB66]

SENATOR KARPISEK: Well, thank you. [LB66]

JACK GOULD: But at the same time, I think that gifts from special interests, no matter who these special interests is or any, we are always as people, affected by gift giving, and there's a feeling of gratitude, a feeling that you..perhaps someone can gain access by providing meals and so forth to you. And I think as elected officials you have to be tremendously on guard about Greeks bearing gifts. [LB66]

SENATOR KARPISEK: Thank you. Thank you, Senator Avery. [LB66]

SENATOR AVERY: Thank you, Senator Karpisek. Any others? Senator Pahls. [LB66]

SENATOR PAHLS: Would you feel comfortable if there's full disclosure, I mean, everything laid out. Would that, would that alleviate some of your concerns? If I received \$50 or whatever and it was reported out so the public would know the kind of money that I have been getting. [LB66]

JACK GOULD: You know, I will always support full disclosure. But you know, even now, with the statements of financial interest, you know, they're not on-line, so when I go up to look at statements of financial interest, I have to go up and pull the paper documents on every...any and every person. They're not on-line and the public doesn't get access, and the public, many don't even know where the Accountability and Disclosure office is. So a lot of the gifts, and I know you were saying, you don't know about the gifts. A lot of those gifts are invisible gifts. I mean, the Governor has 36 pages of gifts that he puts out every year. [LB66]

SENATOR PAHLS: Okay, let me ask you know, just for a clarification. What is a gift in your idea, just to make sure that we're...give an example of a gift that I might receive. [LB66]

JACK GOULD: Well, the most...probably the most common gift are gifts to, you know, athletic events, gifts to Qwest Center activities, golf outings. But then, again, we also get into the food and beverages. [LB66]

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SENATOR PAHLS: Other than food and beverages, because everybody understands that; you know, but the \$50 gifts, I have to be honest with you, I would be very easily, glad to disclose whatever I get because there ain't much there. [LB66]

JACK GOULD: Well, I think that's part of the problem. I mean, you don't know what other people are getting at this point. I mean, and that's, I think there are a lot of senators who feel, you know, feel very concerned. I, you know, I'm not getting anything and I'm not... [LB66]

SENATOR PAHLS: Well, no, in fact, I tell people I could really go for a cup of coffee because I'm getting too fat. [LB66]

JACK GOULD: Well, you know, Iowa has a rule, a cup of coffee is all you can get. But there is, the state...states vary radically on their gift legislation. We're pretty liberal. And I think this bill, you know, is going to make us among one of the most liberal in terms of gifts. And even if you disclose the gifts, it becomes a question of propriety. I mean, you are the representatives of the public. And whenever you accept a gift from somebody who represents a special interest, regardless of what it is, you know, you must think first about the public. Would the public want you to accept a gift from Cox Cable? Would they want you to accept a gift from AT&T when they're complaining about their phone bill? You know. [LB66]

SENATOR PAHLS: Well, I thank you for your answer. Thank you very much. [LB66]

SENATOR AVERY: Just a minute. Anybody else wish to ask a question? Senator Janssen. [LB66]

SENATOR JANSSEN: I have a quick, just a clarification and then, first off, just so everybody knows, I did get a jar of honey yesterday on my desk. I don't know if that's correct to report that or not. [LB66]

JACK GOULD: It's sweet, yes. [LB66]

SENATOR JANSSEN: Yes, it was very sweet. The \$12 million in the lobbying, in that whole number, would you know, does that include annual salaries of these paid lobbyists? [LB66]

JACK GOULD: It does. [LB66]

SENATOR JANSSEN: And so that wouldn't, just by saying just 60 days? [LB66]

JACK GOULD: And I say that is the lump sum. I mean, four of our five largest lobbying

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firms made over a million dollars during that same six-month cycle, during that year, they made over a million dollars lobbying you folks; well, lobbying the state government. [LB66]

SENATOR JANSSEN: Okay. I just wanted to clarify, because that, when that number comes out, it really doesn't matter if it's 60 or 90 days. At least as far as a lot of fixed costs are already involved in there, because they're going to have a lobbyist and it may be a national organization that also lobbies Iowa and other states as well. And Senator Karpisek brought up a great point that we go to a lot of these functions, and I'm new down here and I'm attesting to three buffets a day right now. So it's tough, but um, a lot of times you don't even know who it is. It's every, it seems like every night. But in that number though, I can only imagine the amount of money it costs to feed that room of people. So a lot of times it is also their own organization that is also there. And there's several hundred people there. It's not just 49 or so state senators. So that would be included in that whole number as well, right? [LB66]

JACK GOULD: Food and beverages are exempt. And Frank Daley may... Frank Daley, I think, is going to testify. But my understanding is that it would probably show up in the \$12 million figure, but unless we come up with some better laws, you know, we can't separate the food and beverages from anything else. It's all lumped together. And as I said, what's the value of a country club membership. How do we, if that's not going to be, you know, we've got to look at all of the gifts and decide. [LB66]

SENATOR JANSSEN: Okay, thank you, Mr. Gould. Thank you, Chairman Avery. [LB66]

SENATOR AVERY: Before you leave, are you familiar with what happened in North Carolina in the last couple of years? [LB66]

JACK GOULD: I can't cite every page, but Common Cause was very much involved in that, and it was a concern about the gift giving. [LB66]

SENATOR AVERY: Yeah, they had rules very similar to what is being proposed here. Quite generous and they had disclosure laws, but you know, basically didn't have many limits of what you could accept. And the speaker, I think, took a \$500,000 gift. He wound up in federal prison. [LB66]

JACK GOULD: I think you're right. [LB66]

SENATOR AVERY: He wound up in federal prison, and now North Carolina has some of the toughest laws in the whole country. Would you think that that might be a reaction to what happened with those lax laws or very generous rules that didn't require much? [LB66]

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JACK GOULD: I think that's been the example...there are other examples of the same sort of thing where when the rules get too lax. Yeah, when we talk about disclosure, I really think it's important that you have to know about cross-referencing disclosure. If you have a gift given by somebody and you report it, that's fine. But you need the party that gives the gift to report it, so that Accountability and Disclosure or whatever commission is examining it, can see who gave it and that there is a cross-checking. And if you don't have a cross-checking and someone says, well, I don't think that's a gift, I don't want to report it. Then the public doesn't know about it. So one of the things that you see in a lot of this kind of legislation is the need, whatever you do, to make sure that the donors of the gifts are filing reports as well as the recipients of the gifts. [LB66]

SENATOR AVERY: Would you agree that perceptions are just as important here as reality? The perception that we create for the public in the amount of gifts we receive, and what we report and don't report? [LB66]

JACK GOULD: You know, perception is a huge part of it all. And I think the public gets concerned. I mean, this is something that is in the national press all the time, gift giving. You know, what's going on in Washington? And the public is rightly concerned, and the perception of raising a gift limit; allowing more gifts does not fly well with the public. [LB66]

SENATOR AVERY: I don't have any more questions. Anyone else? Thank you for your testimony. We are still on the opponents. Anyone else wish to testify? [LB66]

FRANK DALEY: Thank you, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. Again, my name is Frank Daley, D-a-l-e-y. I'm the executive director of the Nebraska Accountability and Disclosure Commission and former treasurer of Committees for Legislative Candidates. So I know the types of things that you and your treasurers go through. I sometimes think that I got the job with the Commission because I filled out the forms mostly right. I'm here today to express the Commission's opposition to LB66. And I have not had much of an opportunity to read the amendment, but I will react to some of the things that I have gathered from the testimony of Senator Rogert. But the main thing I want to focus on in the main bill is the requirement with regard to currency and with regard to keeping records on campaign contributions. Under current law, there is a general requirement that campaign contributions be made by written instrument: that is a check, a money order, or the documentation that might come with a credit card transaction. And there's a good reason for that: it helps to put some integrity into the system because money going into the campaign finance system becomes traceable. If a campaign is audited for any reason or there's an issue or an enforcement action of some sort, certainly good records are one of the things that help to determine what has occurred. And money going into the account and a check and traceable to a person, those are the types of things that help to ensure that campaign disclosure reports are correct and accurate or at least as

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close as possible. One of the exceptions to the requirement to receive campaign contributions only by written instruments is the \$50 cash contribution that we've been talking about. And as Senator Rogert mentioned, part of the rationale for that exception is that many candidates, particularly when they're first getting started in running campaigns, will have very low-key fund-raisers where people are invited, maybe there's a jar at the door and people put in what they want or maybe there's a pass the hat collection. And so there was some thought that there ought to be some sort of exception for very, very small contributions because it's awfully hard under those circumstances to keep track of them. However, at \$50, I don't think we are typically talking about a lot. Usually a candidate doesn't have many of those types of fund-raising events after they get up and rolling. When you get to \$100, what you're essentially doing is doubling the amount of currency that goes into the system or creating a situation where the amount of currency going into the system is double; and that's problematic enough as it is because there's no written instrument, and it becomes untraceable. The second problem is that under the bill as initially introduced, there is no provision for disclosing where that money came from. The exemption that the treasurer does not have to keep track of the name of the contributor, the address of the contributor, or the date of the contribution would still apply. So the Commission, as a matter of policy, does worry when more undisclosed cash gets into the system. I mean, obviously our focus is on gathering information about money coming into the system, and being spent by candidates, and making that information available to the press and public. And under that particular provision of the bill, at least as the bill was introduced, that doesn't happen. Let me try and touch upon a couple of other things that were mentioned that are involved in the amendment to the extent that they may shed some light. I know that Senator Rogert is very concerned about the erosion of different values. For example, under the Campaign Finance Limitation Act, if it was \$89,000, what's it going to be several years from now. Does the Legislature have to keep coming back and adjusting that. Actually in 2006, the Legislature did an overhaul of the Campaign Finance Limitation Act, and one of the things it did was it set new limits for campaigns, and then indexed them for inflation. So there is now an obligation for the Commission every four years to use a formula provided by the Legislature to adjust the amounts of the limits for the different candidates in the different offices. So by way of example for the 2010 election, the limit will be \$92,000 for members of the Legislature as opposed to \$89,000. And that will continue to increase theoretically if there's inflation in that area. Another thing I'll mention, there was some talk about travel expenses and how they can be done. The Legislature has wrestled with this over and over throughout the years. Whether or not...how it should be paid for, whether it's better to have outside interests pay for travel or whether it's better to have campaign funds or state funds. And so the current state of the law is this: If the travel is to be paid from a source which is not a principal, not a lobbyist, or not done on behalf of a principal or a lobbyist, there is no limit on the amount of travel expenses that that outside entity can provide to a state senator. There's no \$50 limit or any other sort of limit. The limit is on lobbyists, principals of lobbyists, and those acting on behalf of either. And I suspect the rationale is that those would be the

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interests that deal with the Legislature on a regular basis, and there's some concern that that's the area where there's most likely to be some form of corruption because their interests, there's so much interaction between what goes on in the Legislature and the interests of the lobbying corps. There was an amendment to state law a number of years ago also to make travel easier for members of the Legislature. Again, it was in a time when finances were somewhat difficult, the state was being very cautious about using its money to have people in state government travel, and so an exception that was made was that members of the Legislature or actually all officeholders may use campaign funds to travel in connection with state business. And they can use their campaign funds for those sorts of expenses. So that's a possibility as well under current law. In response to one of Senator Janssen's questions, you expressed some concern about contribution from a relative who lived outside...out of the state and how that affected things. Actually, if it's a contribution from an individual, it does not count against your CFLA cap. It may not be used for qualifying for public funds, but it doesn't count against your cap. And let's see, what else here. There were some questions about how anonymous contributions are currently handled. Right now, if a candidate receives a contribution of more than \$50 and does not know the source, it's considered an anonymous contribution. And state statute has specific provisions as to what needs to be done. That anonymous contribution needs to be donated to a charity, and a receipt needs to be secured from the charity showing what transpired, and that's simply reported on the campaign statement. So hopefully I've answered most of the questions I can recall that you've raised. But thank you very much for the opportunity to testify. [LB66]

SENATOR AVERY: Questions from the committee. Senator Pahls. [LB66]

SENATOR PAHLS: Yeah, just for...this is some information that I need to clarify. We were told \$12 million was basically the package that was spent by the lobbyists; approximately numbers, were we not? [LB66]

FRANK DALEY: I believe that's what Mr. Gould said, correct. [LB66]

SENATOR PAHLS: Right, and I'm just going to use those numbers. Okay, now if I am from the outside looking in and say gee, the senators got \$12 million; the question I want to know is, last...and I'll just use a very concrete, a bill that I was pushing through the Legislature last year. There were three lobbyists and just for...three of them get, I think, each were paid approximately \$40,000 to stop that bill. Would that be, that 120, and there are two others who were on the side. So a total of five lobbyists were paid to stop one bill: viatical life insurance. Now would that amount of money that they were paid to stop this bill, would that be part of that \$12 million. [LB66]

FRANK DALEY: A qualified yes. And the answer is it kind of depends. Let us say it's a full-time employee of, for example, a company or an organization. That portion of their

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salary which is attributable to lobbying activity would be part of that \$12 million. And in some cases, it could be all of that salary. And in some cases, it might be a portion of their salary. [LB66]

SENATOR PAHLS: Right. But what I'm saying is though these are professional lobbyists sitting up there on the...so just out of that \$12 million...I mean, to stop one bill. And to be honest with you, none of that money went to any senator. But if you see \$12 million, it sounds like we're really getting a lot of money passed to us on the side, and that is actually, a lot of times, to stop what we're trying to do. [LB66]

FRANK DALEY: Sure, I understand. On the other hand, what you can do, based upon our Web site and the information we have in our database, you can develop information as to what amount of money was spent entertaining members of the Legislature per year, which I think would be a much smaller amount, by the way. There are certain categories built into the lobbying reports which help you break out bits and pieces. [LB66]

SENATOR PAHLS: All right, yeah. But again, a lot of those lobby dollars are for that lobbyist, that's their money that they're getting. [LB66]

FRANK DALEY: It could be their compensation that's being reported that would be part of that \$12 million. You would be absolutely correct on that. [LB66]

SENATOR PAHLS: Okay. Okay. Thank you. [LB66]

SENATOR AVERY: Any more questions from the committee? I have one, Mr. Daley, and you may not want to answer this; and if you don't, I understand. But I believe one of the provisions in this amendment would be to raise the spending limit for candidates who run for Board of Regents to a million dollars. And then would raise the spending limit for candidates for Legislature to \$250,000. Are you allowed to express opinions on this in your position? [LB66]

FRANK DALEY: Well, I am appearing in a representative capacity, and so I think I need to stick to that capacity if I may. [LB66]

SENATOR AVERY: As I recall, a million dollars would be just about twice as much as anybody has ever spent to run for regent. [LB66]

FRANK DALEY: Other than the last race, in which I haven't looked at the final figures, I think prior to 2008, the most spending was somewhere in the area of \$200,000; or excuse me, \$300,000. [LB66]

SENATOR AVERY: Yeah, which is still a lot of money for a position that pays nothing

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but expenses, I would think. That's an editorial comment on my part. Do you recall what the most was, the most amount of money spent by a candidate for the Legislature, say in the last election cycle? [LB66]

FRANK DALEY: I'm not sure I can because those reports are just coming in. [LB66]

SENATOR AVERY: Are they? [LB66]

FRANK DALEY: Yes. [LB66]

SENATOR AVERY: Well, prior to that? Say the 2006 election? [LB66]

FRANK DALEY: I can provide you with that information, but I hate to speculate if I don't really know. [LB66]

SENATOR AVERY: Okay, I think that my recollection is that they...some of them got into the \$100,000 or \$150,000, but I don't know that any got up to \$250,000. So what I'm suggesting is that maybe some of these limits being proposed here are not limits at all, but disembowel what we now have in the CFLA. [LB66]

FRANK DALEY: Well, certainly if the concern is inflation, an approach would be to do something such as the Legislature has already done. Number one, as a matter of public policy, pick a figure that's appropriate, and then provide a formula by which that amount would be indexed to some sort of inflation measurement. [LB66]

SENATOR AVERY: I recall when I ran, I think the limit was \$74,000, and now it's \$92,000 when I'm up next. [LB66]

FRANK DALEY: Correct. [LB66]

SENATOR AVERY: And you know, I mean, I have plenty to spend money on. I had a little bit of trouble raising the \$74,000. (Laughter) Anyone else? Senator Price. [LB66]

SENATOR PRICE: Mr. Chairman, thank you. Director Daley, just on that one note, and not right now, but if you have the time and latitude, following the current index that you have, would you be able to tell us when we would reach any of these thresholds? How far would that be? Within 20 years? [LB66]

FRANK DALEY: I'm not sure. [LB66]

SENATOR PRICE: You said in the next election cycle, it goes up to...it will go from \$89,000 to \$92,000. [LB66]

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FRANK DALEY: Correct. [LB66]

SENATOR PRICE: And in 20 years, using that index, where would we be is what I'm asking you. [LB66]

FRANK DALEY: Well, since it's based upon one of the Consumer Price Index measurements... [LB66]

SENATOR PRICE: If you had a linear growth pattern like that, I mean, if we're getting \$2,000 or \$3,000 a year change in 20 years, that would be about \$40,000 or \$50,000; that would take us to about \$175,000 on the limit. I'm just trying to work with it. [LB66]

FRANK DALEY: And I'm not sure I can project that way because I just don't have a sense of what the rate of inflation will be, etcetera, etcetera. [LB66]

SENATOR PRICE: Neither does the stock market. [LB66]

SENATOR AVERY: So the current law uses the Consumer Price Index? [LB66]

FRANK DALEY: It uses one segment of the Consumer Price Index which is specified by statute. That's correct. [LB66]

SENATOR AVERY: Senator Giese. [LB66]

SENATOR GIESE: Thank you, Senator Avery. Mr. Daley, can you tell me what are the...how many...what's the percentage of campaigns that are audited, and then what are the biggest mistakes that are made? Where do you see the biggest problem in this area? [LB66]

FRANK DALEY: As far as the biggest mistakes, they are probably simple math, number one. Number two, most mistakes that I see with campaigns are a direct result of bad recordkeeping. So with bad records, it's difficult to file good reports. [LB66]

SENATOR GIESE: And how many were audited? Or a percentage, if you have it. [LB66]

FRANK DALEY: If I were to speculate on a percentage, I would say probably about 2 percent, 3 percent, something of that nature. [LB66]

SENATOR GIESE: Thank you. [LB66]

SENATOR AVERY: There are a couple of provisions in this amendment that would remove criminal penalties. And I asked this question earlier; perhaps you can answer it.

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Other than the Hergert case, have we had any examples where people were actually charged with criminal violations which would involve willfully and knowingly violating these provisions under the CFLA? [LB66]

FRANK DALEY: Under the CFLA, no. Under the Accountability and Disclosure Act, there have been several over the past 30 years. I don't believe any of them involved the campaign disclosure laws. They have dealt with the ethics laws that are within the Accountability and Disclosure Act. So for example, using government resources for personal purposes, there have been some criminal convictions under that provision. [LB66]

SENATOR AVERY: Um-hum. Do you, in your recollection, in your long history with the agency or the commission, do you know of any instances where treasurers have been fined heavily for misfilings, mistakes made in filings? [LB66]

FRANK DALEY: If you're talking about criminally, no, I am not aware of any that have occurred in the past 22 years, which is how long I've been with the Commission. There certainly have been situations in which campaigns have been assessed late filing fees. And there certainly have been situations in which campaigns or treasurers have been assessed civil penalties after an evidentiary hearing. And those are usually for things such as an absolute failure to make the filings that are required, as opposed to a late filing or something of that nature. [LB66]

SENATOR AVERY: So your agency is not out there looking for opportunities to throw us in jail or to throw our treasurers in jail or to hit us with heavy fines. My experience is that you give us plenty of opportunities to get it right. [LB66]

FRANK DALEY: Well, I would describe ourselves this way. While we do have the obligation to administer the law, and we do have the authority to enforce the law; our focus really is, as our name implies, on disclosure. We consider ourselves to be in the information business where we gather up information and make it available to the press and public. And it's not to play gotcha. And so if informally...by informal means, we can ensure that that information is gathered and presented to the public, I think we've accomplished the main part of our mission. [LB66]

SENATOR AVERY: Would you...can you recall when your Commission was established? Wasn't it sometime in the Exxon administration, in the '70s? [LB66]

FRANK DALEY: The bill establishing the Commission was passed in 1976, and the Commission started to function in 1977. [LB66]

SENATOR AVERY: Any more questions. Senator Sullivan. [LB66]

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SENATOR SULLIVAN: Thank you, Senator Avery. Mr. Daley, a couple of references have been made to the fact that the information is available in your office to the public, but not on-line. How do you feel about...I assume that's the lack of resources on the part of your department from getting that information up on-line, and is that something that's...something that needs to be addressed? [LB66]

FRANK DALEY: Exactly. Currently, what we have on-line are all campaign filings. So candidates' campaign statements, PAC statements, political party statements, filings by unions and corporations that deal with campaigns. In the near future--we hope by 2010--we're going to have the ability to have candidates file electronically just as PACs now have the ability to file electronically and corporations and unions have the ability to file electronically. We're in that stage of development. Our ultimate plan is to get more on-line. Statements of financial interest are one of the things that we think, ultimately, we want to get on-line. However, those are not really things which are amenable to data entry, and so--it would seem to me--the best of all worlds would be to put those on-line once they can be completed on-line and filed electronically. And that's after we get the candidates up and running electronically. So while there are probably other methods to get them there, it's...I guess we have to look at the amount of money we have and the resources and the personnel and pick what's most important. [LB66]

SENATOR SULLIVAN: Okay. [LB66]

SENATOR AVERY: Any more questions? Seeing none, thank you, Mr. Daley. [LB66]

FRANK DALEY: Thank you one and all. [LB66]

SENATOR AVERY: We're still on the opponents to LB66. Do we have anyone else who wishes to testify? Seeing none, we will move to neutral testimony. Anyone wish to testify in a neutral position? Seeing none, that ends the hearing on LB66. [LB66]

SENATOR ROBERT: Can I close? [LB66]

SENATOR AVERY: Oh, I'm sorry, Senator. You wore me down. (Laughter) Senator Robert will close. [LB66]

SENATOR ROBERT: No problem. Okay. I just was making some notes and, you know, we are here for discussion purposes in these hearings, and that's why we bring bills. And these are thoughts and ideas from a collection of folks, not just myself. That's why it took me longer to get the amendment to everybody, and I didn't get it to you ahead of time. Every time I had an idea, I got three more from somebody else, and so it kept compiling, and it took us a little longer to put it together than I wished. So I want to make a couple of comments on perceptions. And a couple of the words that I hear all the time when we talk about how a political organization or a committee or a candidate or an

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officeholder conducts themselves in the public's eye. And you always hear the thing about special interests. And \$12 million is a whole bunch of money to spend on lobbying senators in Nebraska or the government, excuse me. And when you think of special interests, I think it is too often put into our minds that special interest is something bad. Here's some special interest groups that I speak to on a daily basis that I'm pretty sure all of my constituents are parts of. We have the cattlemen; the farm bureau; the optometrists; three organizations for insurance people; vets; realtors; teachers union; school boards; school administrators; grocers; the Sierra Club; and Common Cause...all special interest. All things of which people in our district are members of. Most of them have full staffs that are employed by the membership fees. They hire government liaisons and they all hire--and a lot of them hire lobbyists--and they conduct these lunches where they bring their members down to meet with us. And they have meetings where they meet with us, and they talk about their bills that they have interest on. And that is special interest. And the perception often, when you hear the word special interest is that's a bad thing. And I think it comes from folks that say they spent \$12 million lobbying the government. And you...and Senator Pahls points out a great deal...they spent \$160,000 on one bill. And they probably spend eight of that million dollars paying out their lobbyists to do whatever it is they do for their salaries and their business they do. Some of that money is contributions. A lot of that contribution comes through the business organizations themselves that are members which have different requirements to report than a lobbyist or a political action committee. First National Bank, for example, could write me 14 \$250 checks throughout my campaign and never report any of them. If they write me one \$251 check though, they have to report that. I have to report every single one of those checks. You know, there are...Mr. Daley mentioned right at the end there that there have been civil action taken against folks in this process in the past, and we don't remove that with this collection of ideas. We do take the criminal portions out. We've never used them. Why do we have them there? Mr. Daley and his staff have been there to yes, not go after people in a criminal manner. They're not always going to be there. Who's to say what happens next? Mr. Daley's successor could be a hard-nosed who decides that every single one of these is punishable by...to the full extent of the law, and we're going to do it. And that makes me nervous that we have the ability to do that. I think I heard many times throughout the testimony there in the opposition that disclosure, disclosure, disclosure, disclosure. Campaign Finance Limitation Act and the Accountability and Disclosure Act are huge pieces of legislation. They're very confusing. And if we disclosed every single bit of what we did, I think we'd be in a lot better shape. I think there's a bill out there to repeal both of these, and just go with full disclosure. We've had that in this committee before, and we'll talk about it into the future. I think by pulling some of the ideas in this amendment out, if you don't like them all, you have the full ability to put some of these things into the amendment, and strike some others. That is your prerogative. But I encourage you to consider the things that are in here very heavily, and think about the troubles and confusions as you went through your elections recently or will be going through as we come up to them. And think about what is good government and what is ridiculous. So

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with that, I will entertain any final questions, and conclude there. [LB66]

SENATOR AVERY: Any more questions? Seeing none, thank you, Senator. I'm sorry I was trying to keep you from closing. That was an error, inadvertent. All right. Now that closes the hearing on LB66, and the hearings for today. Thank you all for coming.
[LB66]

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Disposition of Bills:

LB66 - Held in committee.

LB126 - Held in committee.

LB322 - Placed on General File.

Chairperson

Committee Clerk