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Government, Military and Veterans Affairs Committee
March 05, 2009

[LB363 LB486 LB509]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, March 5, 2009, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB363, LB486, and LB509. 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. S []

SENATOR AVERY: Welcome to the Government, Military and Veterans Affairs Committee. My name is Bill Avery. I will introduce the members of the committee starting with Senator Pahls from Omaha on the end down here; Senator Janssen is not here yet--he is from Fremont and he will be joining us later; just arriving is Senator Robert Giese from South Sioux City; he is sitting next to Senator Pete Pirsch from Omaha who is also Vice Chair of the committee; and next to me is Christy Abraham, legal counsel. Senator Karpisek will be joining us later--he is from Wilber; Senator Scott Price from Bellevue; he is next to Senator Kate Sullivan from Cedar Rapids; and on the end there is Sherry Shaffer who is committee clerk. We have two pages today--Kim from Lincoln and Nick Bussey from Lincoln. They will be available to help you. If you have some handouts, please give them to the pages and they will distribute them to us. We will follow the order of the agenda posted on the door beginning with LB363. Followed by LB486 and last will be LB509. A couple of items before we start. If you have your cell phones with you, please turn them off or put them on silent. We would ask you if you are testifying to fill out a form that is available at the entrances. It looks like this. Please print and give a copy to the clerk when you testify. If you wish to be recorded for or against a particular bill, but do not wish to testify, please sign this sheet and leave it at the entrance, and we will collect them. I will ask you to keep your remarks to about three minutes so that we can finish and get out today and enjoy this nice weather. With that, we'll start with LB363. [LB363]

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SENATOR PIRSCH: Chairman, you are the sponsor of LB363. So whenever you are ready. [LB363]

SENATOR AVERY: Good afternoon, members of the Government and Military Affairs Committee, my name is Bill Avery, A-v-e-r-y, and I represent District 28. I am introducing LB363 today at the request of the Secretary of State. This bill prohibits political committees from paying for postage for a person to request to return a ballot by mail as well as paying for transportation to and from the polls for prospective voters. This prohibition is added to other expenditure restrictions on committees already in current statute and will be part of the reporting requirements to the Accountability and Disclosure Commission. This is going to be short testimony. I would defer any questions you might have on the reasons for this and the specifics of it to others who will follow me. With that, I will stop. [LB363]

SENATOR PIRSCH: Very good. Are there any questions based on that opening? Seeing none, we'll move to the first proponent of LB363. Good afternoon, Secretary. Welcome. [LB363]

JOHN GALE: Mr. Vice Chairman, thank you. Members of the committee, I'm John Gale, G-a-l-e, Secretary of State of the state of Nebraska and Chief Election Officer. I want to first express my appreciation to Senator Avery for introducing the bill on our behalf so that we have an opportunity to bring it to you and to have a hearing and to raise what we think is a pretty significant issue in terms of the bright line between campaigning and election administration. Essentially, this issue has been developing over a period of time and has finally reached a point where we have become seriously concerned about it in terms of best practices which is something I think every secretary of state, every election administrator in the country is very, very sensitive about these days and that's how to maintain that bright line so that every campaign, whether it's a candidate or it's a political party or it's a special interest group, has an opportunity to get into the arena and make every effort to present their candidates in the best light, present their issues, and

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delineate why they're better for the public and for the citizens than the other side. And that's all good; that's all part of the political process and the freedom of speech and assembly and part of what makes democracy work. But we've always had a bright line between where campaigning ends and where election administration begins. And we addressed one of those issues here earlier this year when we were talking about, oh, how many feet are you allowed to have political signage, if it be 200 feet, 100 feet, 10 feet, no feet, doesn't matter. People can be accosted as they walk in the door to a polling site, is that okay or you can have campaign signs within the polling site, is that okay? Where is that line? Well, in Nebraska, it's been 200 feet. It's kind of a zone of sanctity that when citizens are coming to vote, they have pretty much made their mind; they may have their voter guide with them, but they don't want to be hassled. They don't want to be marketed while they're parking their car, trying to go into a polling site, and do their duty as a citizen. And so that issue is the same issue. This issue comes up because of a statute passed by this Legislature. It's been on the books for some time, and it's a bribery statute. It's the only statute in Nebraska that addresses this issue. And it says that it can constitute bribery if a financial incentive is given by a third person to a citizen to vote. And I have, in fact, issued, a couple of years ago, a written opinion to the Nebraska Republican Party; they should be very, very careful about providing postage on requests for absentee ballots because you are providing a financial incentive. You're paying the postage for that request for absentee ballot. I don't have any problem with those slates being sent out. But when the postage is prepaid, that's a point, once a citizen decides they want to engage in the political process of electing, it should be their responsibility to pay the postage. Otherwise the party, the candidate, the special interest group is providing a financial incentive. Now, they wouldn't do it if they didn't think there was some reward, some return, some accomplishment to provide the funding--some of it goes to 50 cents per card, to provide that. So we do not, in my office, enforce criminal law. That's a criminal law, it's a bribery statute, I don't have any authority to interpret it, it hasn't been persecuted by county courts or by, or county attorneys or by the attorney general. So it's a very vague thing. We think, under best practices, that offering transportation whether it's by car by bus or by rental car or any other form of providing

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transportation to citizens who want to go to the polls is a financial incentive. Also, whenever you send out these slate cards or absentee ballot request cards with prepaid postage, we also think that that crosses the line. And you know, it does sound idealistic, I understand, but at the same time, it's critically important that citizens feel that when they are entering the zone of casting the ballot, of participating that at that point, that there should not be any incentives being offered to them. Now certainly campaigns have the right to continue to mail information to them. It's public information when people file their request for an absentee ballot. The political parties on both sides get that information the next day. They know exactly who has requested an absentee ballot, and they flood those people with information. No problem with that because it's still within the realm of freedom of speech and campaigning. But it's when you get to the financial side that we think this should be prohibited. Now, you can look at it a lot of different ways. You can say, well, that's one way, prohibit it. Under accountability you can also say well, let's prohibit it for everybody except political parties because they represent a broad range of people, a broad spectrum of opinion, and they're representing not just one candidate or one special interest group, maybe that's okay. Or maybe you want to say well, they should disclose specific categories, disclose how much they spend on transportation and how much they spend on postage. There's a lot of different ways to look at it. Our theory is the best way is just to prohibit it under the Accountability and Disclosure laws. Thank you. [LB363]

SENATOR PIRSCH: Thank you very much, Mr. Secretary. Are there any questions based on that testimony? Seeing none, thank you very much. [LB363]

JOHN GALE: Thank you, Mr. Vice Chairman. [LB363]

SENATOR PIRSCH: We'll move on to the next proponent of LB363. Are there any other proponents of LB363? Seeing none, we'll move on to opponents then here to testify against LB363. Good afternoon. [LB363]

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KEN MASS: Good afternoon, Senator Pirsch, members of the committee, my name is Ken Mass. The last name is M-a-s-s. I represent the AFL-CIO. I am here in opposition to this. I think, somehow I think we play in this, but I'm not so sure. And that's why I'm testifying opposing to it. Talking about postage and transportation. We in the AFL-CIO educate our membership through sending out membership notices. We send out absentee ballot requests to our membership. And they fill them out and they send them back in to their respective county. And if we're talking about postage, paying for the postage to send out the absentee ballot, we do that. But it's in education to our membership. And the purpose of that is we'd like to see all of our membership, 100 percent vote absentee. Because we don't know where in the heck we're going to be on election day. Second of all, the transportation portion of it; we have always, and I don't know how far we go back, offered anybody, anybody a ride to the polls. If people cannot get there, we put our number out, call our number. We have volunteers that take the day off and offer their services, and their car, their personal car, to take people to the polls. So if that is a concern, we're guilty. But I don't think we are, to the point where volunteers are doing it. People are calling our office or organizations and offering free rides. We do not...we do not know how the people voted, the citizen voted, but we do take them to the polls and we take them back home. Where we picked them up and we'll go from there. So if we are guilty of that, we're guilty I guess, but we don't think so. So I guess that's my testimony and if there's any comments or questions, feel free to ask them to me. [LB363]

SENATOR PIRSCH: Thank you very much. Are there any questions based on that testimony? Okay, thank you very much. Seeing none, we'll move on to are there any other opponents of LB363? Seeing none, are there any here to testify in a neutral capacity for LB363? Chairman Avery, you're to close. Chairman will waive closing. We will move on to the next bill to be heard today, LB486. [LB363]

SENATOR KARPISSEK: Good afternoon, Senator Avery and members of the Government Committee. My name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k and I

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represent the 32nd Legislative District. Last year I introduced a bill which would have required political subdivisions to simply file a notice with the Secretary of State stating who was the official with whom notices and claims should be filed for a particular political subdivision. In dealing with the bill, I found that in a number of cases, the public does not even know that a particular entity is a political subdivision or another government entity. I believe that the public has a right to know when an entity which it is dealing with is a unit of government. This is particularly important when an individual's rights are impacted by whether or not the individual knows that a governmental entity is involved. An example of this is an individual who is harmed through the negligence of a political subdivision. Under the political subdivision's tort claims act, the citizen must file his or her claim within one year or the claim is lost. If the claim was against a person in the private sector, the citizen would have four years in which to file his or her claim. However, if a citizen does not know that a political subdivision is involved, it is very easy for him or her to lose his or her claim. LB486 would address the issue by requiring the state, the University of Nebraska and political subdivisions to include in their official names terminology that would clearly identify them as units of government. The goal of my bill is not to require any government entity to incur large expense by changing all of its signage or changing its name. Rather my goal is to require small changes that give the public some ability to know that the entity is, in fact, owned by the public. The language of the bill can be amended to make that more clear. My hope is that the hearing would focus on the issue of whether and to what extent the public has a right to know when the entity with which the public is dealing is, in fact, a government unit. There will also be an amendment from the testifiers behind me, I think, also saying that government should not be competing against private business, and I'm sure the testifier will allude to that, but kind of another piece of this puzzle. But the long and short is, if you don't know who it is you've been harmed by, you don't know who to sue or who to give the documents to. And if you wait over the year and it's a political subdivision, your case is dismissed. Last year, the bill, I'm sure, went to Judiciary and we had requested that the Secretary of State form the list. Well, there's a huge number of these governmental agencies, from fire districts to weed boards, that some are private, some

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are governmental agencies, so it was a long extensive list. And then the problem was, who does it fall on? Does it fall on the Secretary of State to find all these people or do they have to get ahold of the Secretary of State? A little bit like, Senator Avery, when you were trying to find people on those boards and commissions that we got rid of some. It was just hard to find them and I don't even remember the number of them now, but it was, I think, over 1,000--1,700. So this is the way we're going at it, and I know in the bill that it says, talking about name changes, those sort of things. Again that's not the...that's really not the thrust of this. Just to make on letterhead, somewhere, if they're a governmental subdivision or if they are not. Thank you. [LB486]

SENATOR AVERY: Would you be willing to offer an example, a concrete example of the problem you're trying to resolve? [LB486]

SENATOR KARPISEK: Maybe a fire department, a rural fire board, that maybe someone, one of their fire trucks has a wreck and someone is injured. The person files claim maybe with the city of Lincoln or the Lincoln Fire Department It gets put on someone's desk. They don't do anything about it because they don't know what they're supposed to do with it. Maybe the person has waited near that one-year window. Time elapses; it's gone. Or they think that it's a personal private person but it's actually a political subdivision, so the one-year window is gone and they try to file later. Those are a couple of the issues. [LB486]

SENATOR AVERY: Questions from the committee? You put us to sleep, Senator. [LB486]

SENATOR KARPISEK: (Laugh) I'm fairly good at that. [LB486]

SENATOR AVERY: Seeing none, thank you for your testimony. [LB486]

SENATOR KARPISEK: Thank you. [LB486]

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SENATOR AVERY: Any proponents of LB486? [LB486]

DOUGLAS DEKKER: (Exhibit 1) Good afternoon. My name is Douglas Dekker. The last name is D-e-k-k-e-r and I'm from Norfolk, Nebraska, and I'm here to speak in favor of this particular bill. Senator Avery, I believe I can give you another concrete example in reference to this bill. In December 2002, my wife and son, who was 11 eleven years old at the time, were involved in a motor vehicle accident in Norfolk. They were rear-ended by a vehicle and my wife and son were both taken by ambulance to the hospital where my son, thankfully, suffered minor injuries and was treated and released from the hospital with no lasting effects. My wife, on the other hand, received a back injury and she was rear-ended and pushed into another car in front of her, causing over \$8,000 damage to the vehicle, giving you an idea of how extensive this accident was. She was, again, treated at the hospital, and as a result of this accident she has suffered lifelong back injury, back pain that will never get better. The gentleman driving the car and is employed by Municipal Energy Agency of Nebraska and the vehicle was registered to them. If you were to look at the license plates on that particular vehicle, you would see that it had the typical three-letter, three-number configuration of private passenger cars within the state that are from the three larger counties in Nebraska. We did not want to appear that were attempting to take any money from anybody or appear sue-happy or anything like that, so we contacted the Municipal Energy Agency, advising them of the accident and what had happened and that we felt that they were at fault, and asked them who we needed to contact in regards to getting our vehicle fixed and taking care of our medical bills. I spoke with a lady by the name of Chris Dibbern who later I found out was the counsel for their particular agency. She referred me to their insurance company and assured me that their insurance company would take care of any problems that we had or any bills that we had. It was...it appeared to be their fault for the accident. I had numerous contacts with the insurance company over the next 18 months, and after about that length of time realized that my wife would never get better; that she would always suffer back pain and always have to have some sort of medication or something

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to help control that pain. She also suffers from some depression issues in regards to this and also is taking medication because of that. These are bills that will be ongoing for the rest of our lives. When I contacted the attorney about 18 months into it and advised him what had happened, he had spoke of the four-year time limit to file a claim against someone. As he did his research, he found that Municipal Energy Agency of Nebraska is a political subdivision, and that claims to them would fall underneath the Political Subdivisions Tort Claims Act. I had made contact within a week to that particular agency by phone, explaining our situation, and they indeed paid for my car to get fixed, but we had not had them pay any medical bills yet because the claim...the injuries were not final. As he researched the law, he found that we should have made written claim. We did not and that is our own fault, but we had no idea, in looking at the license plates, the registration, anything about this particular vehicle in this particular accident that would have told us that this agency was a political subdivision and that we would fall underneath different rules than when a private citizen is involved in an accident. Our medical bills exceeded \$25,000 initially, and our...that was the limit of our insurance company. From that time on, our regular health insurance has been taking on the burden of this particular incident along with the copays that we have to pay. Over the last year, which is the most recent numbers I have, we paid over \$6,000 in medical bills and pharmacy bills between myself and my insurance company; about \$1,000 of it coming out of my own pocket. And I anticipate that those bills will never end. I support this bill. I feel that if we would have known initially that this was some sort of political subdivision, that we would have been more aware of what we needed to do and that we would have filed claim within the year and that we would not be facing the financial hardships that we are facing now. Thank you. [LB486]

SENATOR AVERY: Where would you have this notice or this wordage placed in your situation? Would it be on the vehicle? [LB486]

DOUGLAS DEKKER: I think something in the registration. You know, if it would have said something along the lines of "Municipal Energy Agency of Nebraska, a political

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subdivision" or something along those lines, it would have given some idea. Or if there's some possibility of requiring political subdivisions to have license plates like other city entities or government entities. If you look at a fire truck, using it as a example, or a police car or a maintenance vehicle, they all say "city government" on there, right on the plate itself. So maybe even a separate license plate issue showing that it is a political subdivision might have assisted there also. [LB486]

SENATOR AVERY: Questions from the committee? Seeing none...oop. [LB486]

SENATOR PAHLS: I just have one. Thank you, Senator. On the accident report, it did not indicate at all, other than just the individual's name? [LB486]

DOUGLAS DEKKER: The accident report had the individual's name as the driver and then the registration shows who the registered owner was, which was Municipal Energy Agency of Nebraska. [LB486]

SENATOR PAHLS: Thank you. [LB486]

SENATOR AVERY: Any additional questions? Thank you, Mr. Dekker. [LB486]

DOUGLAS DEKKER: Thank you. [LB486]

SENATOR AVERY: Any more proponents for LB486? [LB486]

CHRISTOPHER WELSH: Good afternoon, Chairman, members of the committee. My name is Christopher Welsh, W-e-l-s-h, and I'm from Omaha and I'm speaking on behalf of NATA. I am an attorney in Omaha... [LB486]

SENATOR AVERY: Would you explain NATA? [LB486]

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CHRISTOPHER WELSH: Yes. The Nebraska Association of Trial Attorneys. [LB486]

SENATOR AVERY: Thank you. [LB486]

CHRISTOPHER WELSH: And I'd like to give some examples to the committee. I just went, yesterday, to "auditors.state of Nebraska." Summit Hills Apartments; you would think that is a privately owned apartment complex. In fact, it's Allen Housing Authority. If somebody got injured, fell because of a defective sidewalk or because the maintenance of the parking lot, they didn't remove the ice and put the salt down, any time they'd go into a lawyer most people will say you have four years to do something, Mr. and Mrs. Client, but in reality they have a year to put them on notice because they are not a private entity. There's lots of airports, Bloomfield airport, Curtis airport, Minden airport, Pender airport, are all...the name itself indicates they might be private but, in fact, they are a political subdivision. It happens all the time in the area where somebody gets hurt, where the wrongdoer is a political subdivision, whether it's an employee of the political subdivision or it's the political subdivision itself. People come into see lawyers and the first thing they say, you were in an accident, you have four years to do something. That's what they assume. But, in reality, when you're dealing with a political subdivision, you have a year. You go into a hospital. Most hospitals do not identify that they're owned by the county. You don't know. Gordon Memorial Hospital, Gordon, Nebraska, you have no idea. It doesn't say Gordon Memorial Hospital District. There are doctors that are employees of the hospital that fall under the Political Subdivision Act that actually practice outside in different clinics outside of the hospital. The public has a right to know who they're dealing with. And asking the political subdivisions to identify...and alls we're asking here is if they put something on their Web site, put something on the bill. People print their bills off, off the computer. It would be nothing to identify that we're a political subdivision. Put something on the medical records. You know, when you're dealing with the University of Nebraska Medical Center, you've got Clarkson Hospital, you've got University Hospital. It is a nightmare from a practitioner's standpoint as to who you're dealing with. There are different rules that apply to the different hospitals.

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And it happens all the time where somebody out in rural Nebraska goes in to see their small-town attorney and says I got hurt at this hospital or I got hurt in this accident, and they tell them what the general idea of the statute of limitations is, and then they learn they're out of luck; they didn't put the political subdivision on notice and then that claim is barred. This is a good bill. It's not going to require much from the political subdivisions to identify who they are. That's all we want. We think the public needs to know who they're dealing with. Are there any questions? [LB486]

SENATOR AVERY: Wouldn't it be better to harmonize the law so that you have a four-year wait to file a claim for public entities as well as private? [LB486]

CHRISTOPHER WELSH: That's been tried and I don't think that that's going to change. What happens is, with this notice requirement sometimes you don't know who you're dealing with, and so sometimes you have to sue and sue everybody under the sun, and then let the course of the lawsuit ferret things out. By identifying who you're dealing with, it makes things a lot easier. You know who the defendant is, you know what rules apply. And we're not here asking to change the claim period from one year to two years or longer. We're just asking the political subdivisions to identify who they are so we know who we're dealing with; we know what time frame the requirements that we must follow under the law. [LB486]

SENATOR AVERY: One would think, though, if you've hired a lawyer, that lawyer would be well trained and able to figure this out, wouldn't you? [LB486]

CHRISTOPHER WELSH: One would think, but I can tell you that there are...we have listservs like all different types of professions do, and it's a common theme: Does anybody know if this hospital, if this defendant is a political subdivision, because we can't find the answer because they don't identify who they are. [LB486]

SENATOR AVERY: Questions from the committee? Senator Hansen...Senator

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Janssen, excuse me. [LB486]

SENATOR JANSSEN: Hansen, Janssen. [LB486]

SENATOR AVERY: Janssen, Hansen. (Laugh) [LB486]

SENATOR JANSSEN: Thanks, Senator Avery. I'm sorry, I missed your name. [LB486]

CHRISTOPHER WELSH: Chris Welsh. [LB486]

SENATOR JANSSEN: Welsh. Okay, Mr. Welsh. I'm from Fremont and I can tell you they had no problem figuring out it was a political subdivision over there. We had several suits brought against the Fremont Area Medical Center, which is a county-owned facility. They had a very significant breakout there, and so it wasn't so much of an issue with them, but I'm wondering, as I'm listening to this, it almost sounds like it's the attorney assistants act to help attorneys better understand or make sure that they don't mess up by not filing suit in time or who to file suit against. That's what I'm kind of hearing, and I'm not saying that's a bad thing but that's what I think I'm hearing here, is that...or is it more of a public (inaudible)? [LB486]

CHRISTOPHER WELSH: Well, I would agree with you. I think it's more of both. The public has a right to know who they're dealing with, when they're dealing with a private entity or whether it's an entity that's being paid by their taxpayer dollars. But at the same point, you know, the Fremont situation, that was well known and it wasn't that hard to figure that out. [LB486]

SENATOR JANSSEN: Certainly. Certainly [LB486]

CHRISTOPHER WELSH: But when you're dealing with other entities...and I can...would you consider, Senator, that Parkview Manor, does that tell you that it's a political

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subdivision? [LB486]

SENATOR JANSSEN: No. And Mr....oh, actually you're not supposed to probably be asking me questions but I'll throw it the other way around, you know. And Mr. Dekker brought up a good point when he gave his testimony, and in that case that's not real clear to me, but I almost wonder would it make it easier just to make it a year across the board and harmonize it that way for all suits so the attorneys would have a better understanding of...? [LB486]

CHRISTOPHER WELSH: Well, I think that there's various reasons why there's a notice requirement and in different types of cases what the statute of limitations is. And we're not here asking to change the amount of time or what the statute of limitation is for various suits; we're just here simply, when you have a situation like Annie Jeffrey Memorial Health Center. That certainly makes you believe that it's a private hospital, but in fact it's a political subdivision. Or Husker Homes, that's under Ansley Housing Authority. You don't know and the public should have a right to know. [LB486]

SENATOR JANSSEN: Okay. Thank you, Mr. Welsh. [LB486]

CHRISTOPHER WELSH: Thank you. [LB486]

SENATOR AVERY: Senator Price. [LB486]

SENATOR PRICE: Senator Avery, thank you. Mr. Welsh. It sounds like, aside from what we've heard here, there's a written notice requirement. [LB486]

CHRISTOPHER WELSH: Correct. [LB486]

SENATOR PRICE: This written notice requirement, is that a final document or can that be an introductory document that just initiates notification that, hey, there's an issue

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here between the two parties? I'm not an attorney so I'm just wondering. [LB486]

CHRISTOPHER WELSH: The law requires you to put the political subdivision on notice within one year of the date of the alleged negligence. If you fail to comply with providing them with written notice pursuant to the statute, your claim will be forever barred. [LB486]

SENATOR PRICE: No, no, I don't have a problem with that. It's a (inaudible)...does written notice mean you have to have everything tied up and ready to go to submit it, or does written notice mean, hey, this person, this client is going to pursue action and then they'll be more documents coming after this? I mean, just start the clock by putting a written document. That's what I'm asking...I heard Mr. Dekker say, and quite to his character, where he said, hey, we just made a phone call; we didn't write, you know. But if it had been in writing, that would have been sufficient notice? [LB486]

CHRISTOPHER WELSH: Correct. You're required to put them on written notice pursuant to the statute, and then they can either deny the claim... [LB486]

SENATOR PRICE: Now do you have to put a written notice in regardless, whether it's a private or public...within...like in the other one, within four years? [LB486]

CHRISTOPHER WELSH: Private, if you're suing a private hospital versus a political subdivision, the political subdivision, if you're suing them for malpractice, you have to put them on notice within a year and then you have two years from the date of the negligent act to bring your claim to file suit. If you're talking about a private hospital, you have to file suit within two years. If you're talking about something that's not malpractice, maybe you were in their parking lot and fell, with the private hospital you have four years to file suit, but with the political subdivision you still have to put them on notice within a year. [LB486]

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SENATOR PRICE: I'm just trying to get to the heart of the written notice is what I'm asking. If someone were to say, hey, we've got an issue, we want to put them on written notice, you do that when they reply back to you, you would have an understanding of whether or not it was a...what type of entity it was. And I didn't know if written notice was required for the two scenarios you put forward in the private agency. In other words, I think what, like Senator Avery said, you know, you would think most attorneys would know and would be able to, hey, let's just get the ball rolling and kick something out the door and put written notice up while we go do the rest of our fact finding, and then we still have...but we've covered our bases. That's why I'm asking the question. [LB486]

CHRISTOPHER WELSH: Well, I don't think most attorneys know because it's very...the whole political subdivision, it's a very complex area of the law when you're dealing with...usually you're dealing in a situation where it may be a malpractice or it's something that's serious litigation that most common practitioners don't deal with. And a lot of times you have a client that doesn't come in to see you until after a year has passed or they may have gone to see their local attorney and said, well, you know, when you get better come back and see me, type of thing. They don't realize that the clock starts ticking right then and there and you've got a year to put them on notice, or they...because they think that something like Annie Jeffrey Memorial Health Center is not a political subdivision. There's nothing that says it's a political subdivision or it's a district or a county hospital or something. [LB486]

SENATOR PRICE: Understood, and like you said, if the...with the...if they don't wait...if they wait too long, even if we pass a law it's not going to help you any, so...you know, if the private citizen doesn't go seek help. But I understand and thank you very much for the answer. [LB486]

CHRISTOPHER WELSH: Thank you. [LB486]

SENATOR AVERY: Senator Giese. [LB486]

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SENATOR GIESE: Thank you, Chairman Avery. So is that then the reason why they don't list that on there, exactly what you're talking about? [LB486]

CHRISTOPHER WELSH: Well, that's certainly may be a reason. And alls we're asking, to identify who they are. If somebody comes into my office, I have PC,LLO after my name. It's required by the law so people know what kind of entity they're dealing with. And we're just asking that all political subdivisions identify who they are. [LB486]

SENATOR AVERY: Senator Pirsch. [LB486]

SENATOR PIRSCH: I'll ask you...I appreciate your testimony here. Is...typically, when there's a missing of a deadline, is that...in your typical case, and I don't know if there such a thing as a typical case, but is it, what, the accident occurs, is it the public who feels that they have time and so they don't...they kind of tarry before getting to the attorney, or is this something where they usually, within a few weeks, get in touch with the attorney and the attorney that is under the impression, in learning with just the name of this entity which you would posit in certain cases are misleading so the attorney feels that they have more time? Is it...so it is more of the public that is being confused or the attorneys who are being confused, or does it matter? [LB486]

CHRISTOPHER WELSH: I don't think it matters. I think there's confusion of the lawyers and confusion among the people of Nebraska. [LB486]

SENATOR PIRSCH: Okay. Thank you. [LB486]

CHRISTOPHER WELSH: Thank you. [LB486]

SENATOR AVERY: Senator Pahls. [LB486]

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SENATOR PAHLS: I personally have no empathy for the attorneys because I'm figuring if you don't know it, you're in the wrong profession. But I am concerned about the person who has the injury; that person, I am. But the thing, the part that concerns me, because the public doesn't understand this and apparently a lot of the attorneys, which I question, don't understand this, I mean I think you're really pushing it when you're telling me attorneys don't get it. I mean, if they don't get it, that scares me, something this simple. I am concerned about the individual over here who is being, quote, maybe wronged. So you can see where I'm coming from on there. But let's say that I happened to be on an SID board, which I served for awhile, and for some reason I am the public and I did not inform you by my Web site or by the information out there, then I'm basically in trouble then, am I not? If an SID did not come forth and prove somehow to you, the attorney, that I did try to let the people know that this was a piece of government, then I would be at fault. [LB486]

CHRISTOPHER WELSH: Well, I'm not sure how you would be at fault. [LB486]

SENATOR PAHLS: Not me personally, but the SID or whatever, the private...not the private but the hospital or whatever that's... [LB486]

CHRISTOPHER WELSH: Well, I don't think...the hospital in that particular scenario, if they don't identify who they are, then if the...if the person who wants to bring a claim against them, they're just out of luck. [LB486]

SENATOR PAHLS: I know, but you want us to have the hospital somewhere let the people know that they, but some insignia or something, that they basically have a year to hit you up, is my understanding. [LB486]

CHRISTOPHER WELSH: No. The notice requirement is by statute and that's up to the lawyer to figure out. Alls we want this bill to be is for the political subdivisions to identify that that's what they are. [LB486]

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SENATOR PAHLS: Right, and I understand that, but let's say I happen to be a political subdivision and I...my attorney has not advised me that I need to put that on, then I'm at fault if something does--not me personally--but that subdivision would be at fault then, because they for some reason did not have that notification that I happened to be some...that you need to sue within a year, or within notice I should say. I mean, you're throwing that back at me, at the government. [LB486]

CHRISTOPHER WELSH: Well, I don't think that the bill talks about what would the penalty be or the ramification if the political subdivision, if this bill passed, if they didn't identify that they are, what would happen to them. [LB486]

SENATOR PAHLS: Well, I'm assuming as an attorney you're not going to let that thing slide. You'd use that in the case, saying, hey, they didn't let people know, so etcetera, etcetera. I mean, I would assume. [LB486]

CHRISTOPHER WELSH: Well, the argument would be made, Senators, that the notice requirement, that the client...if the notice requirement wasn't met under the statute, that they didn't have to comply with the statute because the political subdivision did not identify that they were a political subdivision under this bill. [LB486]

SENATOR PAHLS: So that would give them, what, like four years then, or forever and a day? [LB486]

CHRISTOPHER WELSH: No. It wouldn't give them four years or...it depends on the type of case. If you're talking about a case against the hospital for malpractice, it would be two years. If you're talking about somebody falling in the hospital parking lot, it would be four years. And the hospital, the political subdivision in your scenario, would still have all their defenses that they could use in any other type of case under the law. They just wouldn't be able to use the affirmative defense that you did not comply with the

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notice requirement under the statute. [LB486]

SENATOR PAHLS: I'm just concerned that for some reason some subdivision did not fulfill the requirement if this law passed, and then their back is going to be up against the wall. [LB486]

CHRISTOPHER WELSH: Well, I don't think...I don't think their back would be up against the wall because they haven't given up any of the defenses in the case itself. You're just talking about the issue of whether or not the claimant filed a notice requirement. [LB486]

SENATOR PAHLS: Right. Within a one-year period. Okay. [LB486]

CHRISTOPHER WELSH: Just because you comply with the notice requirement doesn't mean that you win your case. You still have to prove your case... [LB486]

SENATOR PAHLS: That's why I'd hire a good attorney. Thank you. [LB486]

CHRISTOPHER WELSH: You're welcome. [LB486]

SENATOR AVERY: Any more questions? Senator Sullivan. [LB486]

SENATOR SULLIVAN: Thank you, Senator Avery. How do envision that this identification be done? [LB486]

CHRISTOPHER WELSH: Well, I think quite simply. On all bills, hospital, any billing, on their Web sites. Just something that says that they're a political subdivision. We're not looking here to try to have the political subdivisions incur a vast amount of expenses to do this, and maybe that's something that needs to be discussed in how this would be implemented. We're just asking that they identify that they are a political subdivision; nothing more. [LB486]

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SENATOR AVERY: Senator Price. [LB486]

SENATOR PRICE: Senator Avery, thank you. Mr. Welsh, once again, in your exchange with Senator Pahls I was taking a note and I thought I might have missed something. If a political subdivision, for whatever it fails to notify the public that they are a political subdivision, and therefore the deadline for one year is missed, are you suggesting that that would no longer be necessary...that they would no longer fall under the one year? They would roll over to the two- or the four-year? [LB486]

CHRISTOPHER WELSH: I'm not suggesting that at all because I don't think that's what the bill says. Alls this bill is addressing is that the political subdivisions should identify that that's what they are. [LB486]

SENATOR PRICE: So then what's the motivation, if nothing changes, to say I'm a political subdivision? [LB486]

CHRISTOPHER WELSH: It just puts the public on notice that they're dealing with a government entity. [LB486]

SENATOR PRICE: But again, if there's no ramifications from it and nothing changes and nothing is affected, there's no...there's a zero-sum gain there, unless, of course, we're going to go and sue the subdivision for not properly identifying themselves, and they've exposed themselves in that manner, as Senator Pahls said. That's my point, is if nothing changes, if none of the thresholds change, if...then there's a zero-sum gain. [LB486]

CHRISTOPHER WELSH: Well, but I think it is a gain to the public because they then are aware who they're dealing with. [LB486]

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SENATOR PRICE: Okay. [LB486]

SENATOR AVERY: Senator Pirsch. [LB486]

SENATOR PIRSCH: Well, I appreciate Senator Sullivan's question because I think that is one thing that I'm not sure I've wrapped my arms around yet with respect to this particular language in the green copy on page 2, line 14 and 15. And just simply the concept "shall include as a part of"...that it says "any entity created...to the Interlocal Cooperation Act or Joint Public Agency Act,"--local government, essentially--"shall include as part of its official name the words political subdivision, a government entity, or other similar words...." So one facet would be just kind of following Senator Sullivan's fleshing out just exactly how that would look in terms of...you had mentioned on bills, billing, and Web site, but I take it there might be more documents that you would suggest would be appropriate. But you don't...I mean, at some point in time there's some important things like that but perhaps there's some more trivial type of things. Every time you mentioned the word, you know, Sutton Fire House in the letter...Sutton Fire House, a government entity or...you know...and the question is, where on that...how far does it go? Is letterhead enough? And so that's one question I'd have with respect to the green copy, is knowing just exactly...and you had mentioned bills, billing, and Web site. You know, how far then down the line that would apply to...that's one kind of a thing that I wanted maybe you to comment on. Secondly, with respect to then if you are one of those governmental entities, would it not be better for you to just, and more clear to the public, to just say a unit of government as opposed to it says or similar words such as, and you start out with state, village, city, county, public school district, or other words that clearly identify the entities. You know, government. I think the problem...the reason for the putting forward of this bill is that you might...what might seem clear, like fire district, Johnson Fire District, you know, to one person that might seem like that's a clear indication of a governmental entity whereas to another person that might not be very helpful at all, and so maybe...maybe it would be wise to just use, in every case, a unit of government? Is that...? [LB486]

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CHRISTOPHER WELSH: I think that would be great, Senator. But as far as...you're talking about how would you change it, how far does this go? I think it's to a Web site, the billing...that's a start. I mean, if the government entity wants to put it on everything that they have and change their logo, I guess they're free to do that. We're just asking that they identify themselves so the public, when they get a bill or if they get some sort of a document or if they want to go to their Web site, they know who they're dealing with. [LB486]

SENATOR PIRSCH: But you would say...but would you posit there's more than...how do I, if I am one of these governmental entities, know that I've got to do this, that, and the other, but not this, that, and the other? How...I know that you suggest maybe take out the language "include as part of its official name" or words, put in the word...put in "must list on all bills, billing, and Web site?" But the question is, are there other...? I mean, how far is, if I'm an entity and I'm trying to do the right thing, you know, but I would attach it to...how would I know I have to include it on this but not on the other? I mean, should we put on specific kind of language like bills, billing, and Web site, or leave it general and hope that what the intention of the person who's bringing forward the bill is understood by all? It might not be interpreted uniformly. [LB486]

CHRISTOPHER WELSH: Well, I agree with you. I think that it's something that it probably needs to be more specific than general as to what the government entity, how they should identify...whether it's just on their billing, it's just on their Web site, is it on their letterhead. I think that it needs to be specific as opposed to general in order, if in fact, this bill passes and is signed into law, that the political subdivisions know how to comply with it. [LB486]

SENATOR PIRSCH: Thank you. [LB486]

SENATOR AVERY: Seeing no more questions, thank you, Mr. Welsh. [LB486]

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CHRISTOPHER WELSH: Thank you. [LB486]

SENATOR AVERY: Any more proponent testimony? [LB486]

JOHN LINDSAY: Thank you, Senator Avery, members of the committee. My name is John Lindsay, L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of the Nebraska Association of Trial Attorneys, just here to answer a couple of questions I think tied together everything I think Senator Pahls, Senator Janssen, Senator Price, Senator Avery's question. Part of this is because of the way that our committee system operates here. There are two separate acts that we're dealing with. This bill is simply a requirement to identify an entity as a unit of government. The example that Mr. Welsh was using was an example under the Political Subdivisions Tort Claims Act. That act would be within the jurisdiction of the Judiciary Committee. It exists regardless. The Political Subdivisions Tort Claims Act treats government differently than the private sector. It gives some advantages to political subdivisions in how they're treated in a tort situation. One of those advantages is a shorter statute of limitations, which is a two-year statute, whereas in the private sector they'd be facing a four-year statute of limitations. An additional protection is before you even get to the two-year statute, there's an additional requirement that you file a claim with the political subdivision that says--and it's specified in statute, Senator Price, some of the question you had--about what has to be in there. Is it just a notice saying we have a claim? That wouldn't satisfy it. It has to be enough so that the political subdivision has the opportunity to investigate that claim to determine what is it that you want, what is your demand, how much were you damaged, how bad was your...I think in Mr. Dekker or Becker--my almost 50-year-old ears didn't quite pick up the difference--but in his case, the question is how badly was your vehicle damaged? Those kinds of things you have to be able to submit to it, so that Political Subdivisions Tort Claims Act would set forth what those requirements are. A little history: We did try the route, Senator Avery, you mentioned going to...why not go to four years for everybody, and Senator Janssen you went the opposite direction and said

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why not go to one year for everybody? We've tried the going to two years route, from one year to two years. In fact, there's a bill over in committee right now that...to be perfectly blunt, don't have the political steam to get it done so trying to get that change, it's probably not going to happen. We've tried that route actually for several years. Haven't been able to go that direction. We've tried other methods. We've tried the private sector, right now, if you want to operate under what's called a fictitious name or a trade name, if I wanted to go out and start business calling myself whatever store and that was not my corporate name, I would be required under the trade name act to just file with the county clerk, saying here's my trade name; and again, just letting the public know this is who it is. We tried to do that a few years ago. Say, if the government is operating out in the private sector, competing in the private sector, file under the trade name act; just say who you are. Tried that; couldn't get that done. Tried to say, okay, just tell us who your official is that we would have to serve...the public would have to serve any notices on. Tried to get that done. And we have some...and the League of Municipalities and others did negotiate in good faith on that, but ran into some issues with another agency on trying to get just a listing of who the...file who your court clerk is...or excuse me, your clerk of your board is. Couldn't get that done. This one, frankly, the issue is not as significant to lawyers, Senator Pahls, as it first started, because of an advantage that Mr. Welsh mentioned. We have a listserv--the electronic age changes things--and we have a listserv that just everybody gets an e-mail on that listserv and you ask a question, hey, does anybody know who Community Hospital is? Is it a political subdivision? Is it a whatever? Somebody may have had dealings with that in the past. Eventually most of those names are going to get out there and somebody is going to be able to answer that on that listserv. So it's...if there's the inability to access that, eventually that's going to get resolved for lawyers. Not for Mr. Dekker. It's not going to happen because he doesn't have access to that. The public has a right to know, and yes, unfortunately trial lawyers are part of the public and so they would know too. But it is the public who would benefit. I think there's...I suspect there's businesses out there who are competing against government who don't know that they're competing against government. And it really comes down to a policy decision for this committee: Should

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the public know or not? And that's really what it comes down to. Somebody asked about...Senator Price you asked about enforcement. There's not enforcement put in the bill and I think that's for a reason. I think the assumption is, and I think accurately, government, if they were required by this Legislature to do something, they would do it. They...I think if the Legislature said to political subdivisions, do this, they'd just do. I mean, I don't know that we have to include a whole bunch of enforcement provisions. But that's what I think the policy decision is, is that it comes down to just a question of does the public have a right to know or not. [LB486]

SENATOR AVERY: Thank you. Any questions? Senator Price. [LB486]

SENATOR PRICE: Senator Avery, thank you. Mr. Lindsay, thank you. So I was just doodling over here and I said Inc., LLC, and PSD, you know, public subdivision...political subdivision. That would say you have a name and somewhere on your document it would be a PSD, public subdivision? [LB486]

JOHN LINDSAY: Anything...I mean, that's an option and I don't know that there's any tie to any...I mean, it's obvious Senator Karpisek's bill, from our perspective we wouldn't have any...if Senator Karpisek is okay. And again, it's not...I don't think the goal is to require big changes in signage and we've got to repaint all our cars with a new name and logo or anything like that. But there's things that can be done, like including that type of thing, maybe if you're laser-printing out a bill that you're sending out to a patient or if you are ordering a new car in the future, just getting it stuck on there, I don't think there's any...there's no intent to cause a great deal of expense to government. I don't think anybody likes that. But it's just letting, somehow with some kind of initials or something to say, hey, you're on notice, there's something out there. [LB486]

SENATOR PRICE: Thank you. [LB486]

SENATOR AVERY: Any other questions? Senator Janssen. [LB486]

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SENATOR JANSSEN: Just a comment. You kind of made mention of, Senator Avery talked about four years, making them both four years, and I said making them one year and said there probably wasn't political steam for that. Well, in the event we could get the political steam to get it both to one year on that and then we wouldn't have to worry about this next year, so if...maybe I'll offer myself up for next year's bill if you want to bring that to me. [LB486]

JOHN LINDSAY: I'm sure that would generate interest. (Laughter) And... [LB486]

SENATOR JANSSEN: Thank you. [LB486]

JOHN LINDSAY: You bet. [LB486]

SENATOR AVERY: I see no more questions. Thank you. [LB486]

JOHN LINDSAY: Thank you. [LB486]

SENATOR AVERY: Any more proponents? Any opponents? [LB486]

JOHN BONAIUTO: Senator Avery, members of the committee, good afternoon. My name is John Bonaiuto, J-o-h-n B-o-n-a-i-u-t-o. I'm the executive director of the Nebraska School Boards Association and I'm a registered lobbyist appearing in opposition to this bill. And my opposition really in no way should be taken to minimize the proponents' testimony. I recognize that you're exploring a solution to a possible problem and I also appreciate Senator Karpisek's willingness and openness to look at amendments. My opposition obviously was to the green copy as presented because the way that reads I could envision a lot of change in what my members, which are public schools, might have to do to identify themselves as a political subdivision. However, I think we don't try to hide. People understand that we are who we are. Lincoln Public

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Schools or South Sioux City Public Schools or Millard Public Schools, Fremont Public Schools--I won't name everybody around the table. However we do have a few districts that do throw you a curve: Westside Community Schools doesn't have public school in its name. But our vehicles are clearly marked. It says tax-exempt school district and on the registration it names who owns the vehicle. But, you know, I really think that for us it is a straightforward situation. And as you do explore a solution here, we would appreciate you considering just eliminating public schools and educational service units from whatever you think is necessary to have political subdivisions do to identify themselves. With that, I'd conclude my testimony. [LB486]

SENATOR AVERY: Senator Pahls. [LB486]

SENATOR PAHLS: Thank you, Senator Avery. Then it appears to me you don't want to be selfish and just remove school; then you would remove city and county? [LB486]

JOHN BONAIUTO: You know, it... [LB486]

SENATOR PAHLS: Let's just get the ones that may cause confusion? [LB486]

JOHN BONAIUTO: Yes. Yes. And I think...yes. I...that...as I listened to the testimony, if there is a name of a political subdivision that's not straightforward, and clearly in the case that the proponent was talking about, that was not a clear understandable situation. But with cities, counties, public schools, I think we're pretty..., [LB486]

SENATOR PAHLS: Anything that would not be considered the typical--and I've got to be careful with the word typical--but unit of government, then you would have no problem with that organization or subdivision or government... [LB486]

JOHN BONAIUTO: Exactly. And there are, I'm sure, confusing situations that are out there. But for most of the main political subdivisions, for us it's pretty straightforward and

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I think cities and counties would be the same. Now there may be examples that I can't think of where...in higher education there may be some other types of situations. But I think that would be a good way to handle it. [LB486]

SENATOR PAHLS: Thank you. [LB486]

SENATOR AVERY: Any more questions? Seeing none, thank you for your testimony. [LB486]

JOHN BONAIUTO: Thank you very much. [LB486]

SENATOR AVERY: Any more opponents? [LB486]

JACK CHELOHA: Good afternoon, Senator Avery, members of the committee. My name is Jack Cheloha. That first name is J-a-c-k, second name is spelled, or last name is C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha, which is a political subdivision. So as we looked at this bill we only looked at it from the city of Omaha's point of view and we sympathize with the proponents, you know, quandary, if you will, in terms of trying to get their notice filed when they do have a claim. Most of the time, in the city of Omaha, you know, I don't know many claims we get filed against the city a year, whether it's 100 or 200, but what one of our trial lawyers that defends the city did tell me though, is roughly out 200 that are filed there's really only maybe 1 or so that gets tossed out due to a time concern. A lot of times, in terms of identifying a building or a structure or a park, you know, I mean we're more than happy to tell somebody if they ask, oh yes, that's a city park or that's a city-owned recreation facility or whatever. And so we try to work with people to at least get their claims heard and looked at in a fair manner. So...and as the previous opponent pointed out, a lot of times, at least with us, the city, there isn't really concern as to knowing within our municipality who owns that structure. However though, I did want to point out that sometimes, as you look at this bill, we do like to name structures for famous individuals that probably have proceeded

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us in our lives here on earth. You know, we may name a park after an individual or we may name a building or rec center or a library after an individual. And another fact of that I did want you to consider, too, is sometimes in order to save our taxpayers' money or to make it financially feasible to build a structure we may actually try to do ourself a naming rights to something. And so then if we pass something like that, we had a concern, well, does this affect future contracts and the ability to save taxpayer money down the road? The prime example I'll give you on the that is the Qwest Center in Omaha, the multi-square-foot convention center and arena. I mean, we sold the rights and earned a substantial fee from Qwest telecommunications firm to help pay for that. So I'm sympathetic once again to the cause. I think there's some political entities that may be tougher to identify, political subdivision entities that may be tougher to identify than others. Some of the other notes that I made about the bill were this: Yes, there is no penalty in there for compliance or noncompliance, but then it becomes a question, if you don't comply or if you inadvertently did not comply, what happens to it? What happens if it goes before a judge and one side says, well gosh, we didn't know this was a political subdivision, or the state...you know, what's our remedy? And then we leave it up to a judge and sometimes you may like the result, sometimes you may not. So we just had a number of concerns with the bill. You know, as I looked at it...it's only a two-section bill. The first section seems to make great sense, etcetera; however, the second part was just a little too complex and we weren't sure what new requirements we may or may not have. And for those reasons I had to...felt obligated, if you will, to come up and be an opponent today for the city of Omaha. I'll try and answer any questions you might have. [LB486]

SENATOR AVERY: Any questions from the committee? Seeing none, thank you for your testimony. [LB486]

JACK CHELOHA: Thank you. [LB486]

SENATOR AVERY: Additional opponents? [LB486]

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BRUCE RIEKER: (Exhibit 2) Chairman Avery, members of the committee, my name is Bruce Rieker. It's R-i-e-k-e-r. I'm vice president of advocacy for the Nebraska Hospital Association, and on behalf of our 85 members and the 41,000 people that they employ, we oppose LB486. What is being distributed to you is a letter from one of our CEOs, Dan Griess, at the Box Butte Hospital, General Hospital out in Alliance, and that is probably one of...we've identified...we have 39 hospitals out of our 85 members that are in some way, shape, or form a political subdivision. We have community-controlled hospitals; we have county-controlled; we have hospital districts. But as we went through the names of those hospitals, depending on how would identify those or what could be interpreted by community, county, those sorts of terms, it became questionable for us as to which ones would have complied with this proposal and which ones wouldn't. We think we have 16 that would probably be affected by this. What you have before you is if we take this to a literal sense as to what all our hospitals would have to do to comply with the law to make sure whomever was seeking to sue us or file a claim against us, if it's a business deal, if it's an engagement or an activity with the state, an interlocal agreement with the county, a health clinic, you can go through that, the hundreds of lists are of forms that we would have to change, all the way from CMS to the IRS, and on our billing statements, those sorts of things. It would be very costly for us to do this. One, I wanted to come before you and give you a list of all of the things we think we would have to change to comply with this particular law, all adding to the cost of healthcare. You know, that's one more cost that would be incurred by us. As far as the discussions go, so far what I've listened to I wish Senator Janssen was in here because we would be the first one to the table to help him draft and support a one-year statute of limitations across the board. As an attorney, I try...I practiced law for 4-5 years before I went into the public policy arena. I'm well aware of what the statute of limitations are and what the importance of those are, and I was well aware 20 years ago that there were different statute of limitations. We have a statute of repose for healthcare. We have a statute of limitations for political subdivisions. Very quickly what I would say to anyone whose attorney missed a statute of limitations, is that they should have hired

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competent legal counsel. If we're supposed to put something on our Web site that says if you want to file a claim for us, here are the things--or against us--here's what you've got to do. I mean, that's...maybe that's what we need to do for them. But as far as claiming that this is a complicated area as far as the statute of limitations goes, I would submit to you that the healthcare providers in our hospitals provide service in a lot more complicated areas rather than whether or not a statute of limitations is met or missed. However, they are held to a higher standard. If our physicians or healthcare providers, whomever they are, are working in an area where there's not trained to practice medicine, they shouldn't be in that business either. And so as we go through credentialing, privileging, there are many things that we go through to ensure the public's safety. And this one is simply...it is something that we're just against. So with that, I could go through several other things. Okay, Senator Janssen is gone. I found it interesting in the earlier testimony when he said, well, Fremont Hospital. Fremont Community Medical Center got sued, their hospital. No where in there does it say that it's a county hospital. But it was recognized by the gentleman who testified ahead of me that that was a different case because everyone knew that that was a political subdivision. However, it is...I don't know how long ago, I think it was 15-16 years ago they changed the name from the Dodge County Hospital to the Fremont Area Medical Center. But it seems to me that they pick and choose as to when it works and when it doesn't for their purposes. And for all those foregoing reasons I request on behalf of our hospitals that you oppose LB486. [LB486]

SENATOR AVERY: Thank you, Mr. Rieker. Any questions? Seeing none, thank you for your testimony. Any other opponent testimony? Anyone wish to testify in a neutral position? Thank you. Go ahead. [LB486]

GARY KRUMLAND: Senator Avery, members of the committee, my name is Gary Krumland, spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities. We're appearing in a neutral today because we don't have a problem with the concept; we just, I guess some of the concerns have been brought out before, just maybe ask for

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some clarification and some more direction on how to specifically comply. There's been other bills introduced, generally gone to the Judiciary Committee in the past, that I think Mr. Lindsay mentioned, registering trade names and things. The concern that we always had is we have no problem calling something the city of Lincoln but then does Bennett Martin Library or Pioneer Park also need to be changed? So there's some clarification in that area. The other area that I think does cause confusion is the interlocal cooperation agreements. There are several procedures in Nebraska that allow governments to join together to do various governmental functions, and the state has actually encouraged that through the lid laws, the levy limits, those sorts of things. And they generally...if a separate entity is created, they do call themselves by a different name. And sometimes that may be where there's confusion but I guess they're not really cities, they're not county school districts, but they do work with municipalities or things like that, so sometimes they take a name like an agency, you know, municipal. And if there is going to be you need some direction for that, I guess it would need to be some time for those type of entities to comply, change all of the paperwork, everything else they have. Or if the alternative is like was suggested, somehow give notice on the Web sites or those sorts of things, that might be an alternative. But I guess I just...we were not opposed to the concept; just the specifics of how it, the actual entities comply, would be the concern, so. I'd be happy to answer any questions. [LB486]

SENATOR PIRSCH: Sure, and thank you for your testimony. Are there any questions for Mr. Krumland? Seeing none, thank you very much. Are there any other individuals here to testify in a neutral capacity here today? Seeing none, kar, you are set to close. [LB486]

SENATOR KARPISEK: Thank you, Senator Pirsch. I appreciate the committee's thoughtfulness. Again, this bill does not...we don't want to create a bunch of havoc. And I realize that the entities such as the University of Nebraska or the city of Lincoln, Lincoln Public Schools, are self-explanatory. Some, as Mr. Welsh explained, are...they're hard to know. They may not have a Web site. I don't even...again I think

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there was something like 1,700 of them. I mean, it could be the Saline County Weed Board, and is it a public subdivision or is it not? So that's the whole issue. I don't know the language couldn't hardly say, well, if it's evident in the name. Well, who is the one to decide? We all know the university is the university. Do we know what some housing authority is? Again, there's been numerous ways that this has been tried. I thank the committee for trying to come up with ways, kind of thinking on its fee today. I do think that there is a problem. I don't know that it's a huge problem. But as we heard from the one testifier, it was a definite problem for him. Sometimes injuries like that don't present themselves for over a year or you think you're going to get better. You don't want to sue. You don't want to do that, but once you find out you're just not getting better, what do you do? So as Mr. Rieker said, they're not even sure how many of their hospitals would have to comply. They think 16. So again, this...I would be more than happy to try to think of a different way. And as Senator Lindsay said, they've tried it numerous ways, different committees. I'd be more than happy to sit down, even over the interim. We've tried that this interim, to do some things. This is kind of the way we went. I think when they were talking about a park, I think Pahls's Park was probably what the reference was there, so I don't know...you know, who knows what that would be. Probably somewhere in the... [LB486]

SENATOR PAHLS: Be gentle. [LB486]

SENATOR KARPISEK: ...in the sanitation system somewhere. (Laughter) Anyway, it's good to be Thursday afternoon and I appreciate your listening and trying to help. Are there any questions? [LB486]

SENATOR PIRSCH: Senator Pahls. [LB486]

SENATOR PAHLS: Thank you, Senator Pirsch. Well, in all sincerity, I'm trying to find some solutions. Now I could see like let's say in a car accident, on the police report they could actually have a box, government agency. Or a developmental subdivision. I mean,

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if most of the issues are dealing with traffic, that could be very...simply by just having it on the traffic report or the police... [LB486]

SENATOR KARPISEK: It could be, but, you know, some of it may be, too, if you're...I don't know, if you're hunting somewhere, open public ground. Do you know, is it the NRD's, is it the state's? You'd break your leg. There's just other ways that you can be there. Not if you're not supposed to be there, of course, you probably...well, I don't know, you might still be able to sue. I don't know. [LB486]

SENATOR PAHLS: You probably would be. Thank you. [LB486]

SENATOR KARPISEK: Thank you. [LB486]

SENATOR PIRSCH: Very good. Any other questions? Seeing none, that will conclude our hearing on LB486, and we will proceed to LB509. I am the sponsor of that. Senator Pahls, if you'd take the Chair? [LB486]

SENATOR PAHLS: Yes, I will take the Chair. And again, Senator Pirsch, we are ready for you. It looks we...the crowd is thinning out, Senator. The floor is yours, Senator. [LB486]

SENATOR PIRSCH: Thank you, Senator Pahls, members of the Government, Military and Veterans Affairs Committee. I'm State Senator Pete Pirsch, representing Legislative District 4; also the sponsor of LB509. LB509 redefines the election period in Section 32-1603 of the Reissue of Revised Statutes of Nebraska. This proposal also redefines the election period in Section 49-1455 of the 2008 Revised Statutes Cumulative Supplement. This in relation to campaign statements. Currently, the election period means that which begins January 1 of the calendar year preceding the last election in which the candidate was seeking an elected office. LB509 changes that period such that it begins on the first day of the year following the election year the office was last

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subject to election. And just to kind of give a brief comment about what the sum and substance, then, of this would be, is as I...you know, my...originally elected in 2006 and so I'm starting my third year of my...this session marks the third year of my service. And in this third year of my service, as of January 1, I, according to the current paradigm of our election laws, enter back into my election period. And so the election period doesn't extend the entirety of the four years of my service but rather...it doesn't operate in four-year cycles but just the two years immediately essentially preceding your election, and ending at the, I believe, the end of that, the year in which you run for reelection, and so. The effect of that is, and as we operate under NADC law, we have certain requirements or when you come to agreeing to abide by campaign limitations...and under...during that election period. During last year, I was not subject to any because it was my, quote, unquote, election period, and the year before was not my election period and so I was not limited in the amount I could raise or spend. This year, as of January 1, I am. Kind of, I think, an unintended consequence of this is, you know, as an incumbent I think we kind of share unique advantages already going forward, but I think the current state of the law is, I think, unintentionally compounds that advantage insofar as we are able to spend then, for our upcoming election, monies in an unlimited amount that are not subject to that cap, if you will, that we can spend for items that we can use during our election period: signs, benches, whatever, virtually unlimited. And so I think that it does...it puts people sometimes in an unfair, and I don't think this was intentional, but I think it puts incumbents unintentionally in an unfair advantage as they sail into the election period, you know, versus challengers who may arise and challenge me this coming year. They don't have, generally, that opportunity. They are capped at a limit and they must operate and buy whatever they're going to purchase for their campaign within that limit. However, me, anticipating that upcoming election, I can, during last year and the year before that, make those purchases, and that does not legally count towards the cap. And so it is a question of fairness here that is raised, and so that's the sum and substance of my...of this bill. It would lengthen the campaign, what we term the campaign election cycle, and change it just from the two years immediately preceding and make it for all four years. There are certain exceptions that are...that don't count

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towards the cap, and so we can continue to utilize those, as well. They're not thought of as campaign expenditure-related...related to the campaign expenditure. And so there will be, I believe, testifiers here after me who kind of expound upon the bills' facets and can answer your questions if you have any others, so. [LB509]

SENATOR PAHLS: Any questions for the good senator? Well, let me ask, Senator. [LB509]

SENATOR PIRSCH: Sure. [LB509]

SENATOR PAHLS: You're not going to have anybody run against you anyway, so that shouldn't be an issue, right? [LB509]

SENATOR PIRSCH: Well, I...you know, I...you always want to be prepared. [LB509]

SENATOR PAHLS: I understand that. [LB509]

SENATOR PIRSCH: I think that's the thing is, you know, I...you know, you kind of look at it two ways. From a personal perspective, you know, you always enjoy not having to work and whatnot, and to campaign, because it is a brutal experience. When you look at the big picture, you know, we're in a democracy and you want to...you don't want to discourage people from coming forward with their ideas and their thoughts and giving, you know, we're the marketplace of ideas here in the Legislature and so we don't want to put people at unfair disadvantage if they feel like coming forward and doing that, so. [LB509]

SENATOR PAHLS: Senator Janssen. [LB509]

SENATOR JANSSEN: Thank you, Mr. Chairman. Senator Pirsch, I wasn't going to ask you a question; I was going to wait for the director to come up but I'm being summoned

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out of here again. Some questions I had (inaudible) I get the gist that you're expanding the period, some comments I wanted to make, and possibly--I watched this from my office--but the...some of that money sometimes, I guess when I was running, I thought, boy if I win it's good that I have this cycle afterwards that I can kind of maybe retire some of my debt, if you will. That's one of the things. And also aren't we at a little bit of a...being in the office, we incur some expenses that we are allowed to use campaign funds for, such as, you know,...and maybe it's not such a big deal in Omaha, I don't know, but I get invited to several different fund-raisers where it would be good to see the senator at this fund-raiser or whatnot, or church event or something, and make a donation of 50 bucks to the Boy Scouts or something along those lines. And so I think there is something there for that, and maybe that's...I guess that's just a statement more than anything. [LB509]

SENATOR PIRSCH: Sure. And there are...there is an exception. Probably the testifier that testifies after me, Frank Daley from the NADC, can with more preciseness touch upon the current law which does allow for certain exceptions that touch upon rules that we play just in our senatorial capacity that are excluded and not counted towards the cap, and would continue to be not counted towards the cap. They pertain to election and they pertain to use serving in office, and therefore are not counted in the equation, and so. But with respect to certain...you know, I'm putting this proposal forward and with the idea that, you know, identifying this concern and would be happy to work with the body towards, you know, if you have any questions or concerns about how this may have unintended consequences. [LB509]

SENATOR JANSSEN: Perfect. I just want to make sure I'm prepared to accept Common Cause's donation when it comes my way here. (Laughter) Thank you. [LB509]

SENATOR PAHLS: Senator, are you going to stick around for closing? [LB509]

SENATOR PIRSCH: I will probably waive closing...but yeah. [LB509]

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SENATOR PAHLS: Okay. I was just (inaudible) for this Friday...it's Friday afternoon, right? [LB509]

SENATOR SULLIVAN: It's Thursday. [LB509]

SENATOR PAHLS: Oh, glad to know. You see, I'm already home. Thank you. Now we're ready for the proponents. [LB509]

FRANK DALEY: Senator Pahls and members of the committee, my name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Accountability and Disclosure Commission, and I'm here to express the commission's support of LB505 (sic-LB509.) I think even though this is a simple bill, you can't really understand it unless you understand the problem that it's intended to address, and so let me do that. As Senator Pirsch said, if you were elected in 2006 and you are next up for election in 2010, under current law your election period, your new election period began January 1 of this year. And so if you're up for reelection in 2010, somewhere at the beginning of January you've filed your affidavit to abide by the spending limits or you filed your affidavit not to abide by the spending limits. And so the money you spend between January 1 and December 31, 2010, if you're abiding candidate, counts toward the spending limit. Or if you're a nonabiding candidate, money you've been spending since January 1, with certain exceptions, counts toward the trigger of public funds to your opponent. So that's the framework they're working in. Let me kind of explain, with that framework, what the issue is. What we've been finding is that we have had candidates who have entered into contracts for goods and services in advance of the election period, but the goods and services would be provided during the election period and the payment for the goods and services would be provided during the election period. Now, under current law, the expenditure occurs when you incur the obligation to pay; not specifically when you write the check. And so theoretically those expenditures occurred outside the election period, and so therefore they are not counted toward the spending limit; they are not counted

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toward the amount of money that triggers public funds to your opponent. Maybe if I illustrate it a little bit more it becomes a bit more clear. Let us say, by way of example, that I was elected to the Legislature in 2006--fat chance, I know, but we're pretending here--which means that my election period for 2010 began on January 1 of this year. In December of 2008, I enter into a contract with ABC Consultants. And by the terms of the contract, I agree that I will pay them \$50,000 and then, in turn, will provide me with campaign consulting, they will design and mail brochures, they will produce radio ads, they will buy radio spots, but they're not going to charge me anything extra for that. Those are all included within the \$50,000 price. And by the terms of the contract, they will provide those goods and services during the election year, and I will pay them monthly beginning January 1, 2010. So what I have done is I have managed to spend \$50,000 in connection with my election but it doesn't count toward the spending limit and it doesn't count toward the trigger which may trigger public funds to my opponent. Currently, that practice is perfectly legal. I do not criticize anyone who is sharp enough to figure out that that's a strategy approach that can be taken to maximize the amount of money that can be spent. However, noting the trend I think it does show that there's a gap in the way that the Campaign Finance Limitation Act works, and so therefore this is a way to address it. And the way that this bill works, if this bill were in effect in 2006, the last day of my election period in 2006 would have been December 31, 2006. The first day of the election period for my 2010 election would have been January 1, 2007. So therefore any of the expenditures that I make fall into one election period or another. That's pretty much the way it would work. Now I know, Senator Janssen, I'm sorry he left, but he did have a question: Well, what about all of these things that we do as elected officials that we occasionally do out of campaign funds? And actually, in current law, there are some exceptions to expenditures that don't count against the spending limits and don't count against the amounts that trigger public funds, and to be honest with you, I've always been kind of surprised that more or you didn't make use of it. Under current law, there's a concept called--and you're probably hearing it here for the first time, so--under current law there's a concept called unrestricted funds. And unrestricted funds include gifts of acknowledgment, including flowers, charitable

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contributions, and certain gifts to individuals. They include funds for conference fees, meals, lodging and travel by the officeholder, his or her staff, when involved in activities related to the duties of his or her public office. Under current law, if you make those expenditures even during the election period, if you put them on a separate schedule, which is another government form that we're proud to have, those don't count against the spending limits and those don't count against the funds that would trigger public funds to your opponent. That's current law. So those would still remain in place. So that's what the bill does. It expands the election period so that expenditures, no one is trying to get an advantage by entering into big contracts in advance of the election period; expenditures fall into one election period of another. That's the sum and substance, and I do thank Senator Pirsch for bringing this bill. [LB509]

SENATOR PAHLS: Senator Price. [LB509]

SENATOR PRICE: Senator Pahls, thank you. Again, I'd like to ask Mr. Daley, okay so we understand our expenditures. But this other part of the campaign is the raising of money? And then, but...so all funds raised though go against your cap. [LB509]

FRANK DALEY: That's correct. [LB509]

SENATOR PRICE: So you could effectively be cutting your own legs out from under you by doing those other actions, supporting those other charities, doing those other functions. If it was a finite pool of money, at least here in Nebraska. Not at the federal level; they print all they need. But so it would play against you, then, so you could see that that would...that could harm a campaign in that they're expending their funds because they have a ceiling on what they raise. So perhaps what we would have to do is, if we heard some of the other bills, say let's not have a ceiling or a different ceiling if we were to go over four years. [LB509]

FRANK DALEY: Perhaps. [LB509]

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SENATOR PRICE: Okay. [LB509]

FRANK DALEY: Perhaps. [LB509]

SENATOR PRICE: Thank you. [LB509]

SENATOR PAHLS: Any other questions? Seeing none, thank you for your testimony. [LB509]

FRANK DALEY: Thank you, Senator. [LB509]

SENATOR PAHLS: Proponents? Good afternoon. The floor is yours. [LB509]

JACK GOULD: Good afternoon. Senator Pahls, members of the committee, my name is Jack Gould. I represent Common Cause Nebraska. That's G-o-u-l-d. And I just want to make a couple things clear. We have never and will never make a contribution to Senator Janssen's campaign. (Laughter) I just want that cleared up--or anybody else's. However, if I was going to give a campaign contribution to anybody, I would probably select Senator Pirsch for this bill. We didn't have anything to do with asking him to bring this or to...we were very surprised when we saw it but very appreciative. Because I think he has recognized a problem within the system and has made a real noble effort to try to close it, and I want to thank him for that. Really, other than putting us on record in support of this bill, that's really all I have to testify. [LB509]

SENATOR PAHLS: Okay. Seeing no...oop, I do see a hand up over there. Senator Karpisek. [LB509]

SENATOR KARPISEK: I'm a little ornery, Senator Pahls. Could I write a check from my campaign to Senator Janssen's and just put Common Cause on the bottom? (Laughter)

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[LB509]

JACK GOULD: You probably could but we wouldn't like it very much. (Laughter) [LB509]

SENATOR KARPISEK: Well, thank you even more. (Laughter) Thank you, Mr. Gould.
[LB509]

JACK GOULD: Okay. Thank you. [LB509]

SENATOR PAHLS: Thank you. Appreciate it. Any more proponents? Opponents?
Neutral? Senator? [LB509]

SENATOR PIRSCH: I'm going to waive. [LB509]

SENATOR PAHLS: Senator has waived. That closes the hearing on LB509 by Senator
Pirsch. Thank you. [LB509]