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Government, Military and Veterans Affairs Committee
March 11, 2009

[LB575 LB623 LB645 LB674]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, March 11, 2009, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB575, LB623, LB674, and LB645. 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: I want to welcome all of you to the Government, Military and Veterans Affairs Committee hearing. We will be hearing today four bills, LB575, LB623, LB674, and LB645 in that order. This is the agenda posted outside the room. I will start by introducing the committee. It's the "Bob and Bill" show today or at least for now. Senator Pahls has a bill before another committee. Senator Janssen is just late. (Laughter) We have here Senator Bob Giese from...Giese, I'm sorry, from South Sioux City, and Senator Pirsch will be here in a few minutes; he's the Vice Chair from Omaha. Christy Abraham on my right who is legal counsel. I'm Bill Avery, Chair of the committee. And soon Senator Karpisek from Wilber will be here; Senator Sullivan from Cedar Rapids; and Senator Price--I think I've got them out of order--Senator Price from Bellevue. And on the very end down there is Sherry Shaffer who is the committee clerk. We have two pages: Nick Bussey from Lincoln and Courtney Lyons from Plattsmouth, and they will be available to you if you have some handouts you want distributed. They'll be happy to take them and make sure they're distributed. If you are planning to testify, we ask that you fill out this form. They're available at the tables at each entrance. Please print legibly so that the clerk can read it. When you do testify, we ask that you identify yourself and spell your name clearly for the record. If you wish to be recorded for or against a bill but do not plan to testify, please fill out this form that is also available at each entrance. We have a long day today. I'm going to ask you to keep your comments three to five minutes so that everybody will get a chance to be heard. We do plan an Executive Session after this and we need time for that, so we don't want to delay too long. Please turn off your cell phones or put them on vibrate or silent so that you don't disturb our proceedings. The introducers go first, followed by proponents, opponents, and neutral testifiers. We will start with Senator Rogert on LB575. Senator Rogert, welcome. [LB575]

SENATOR ROGERT: Good afternoon, Mr. Chairman, a few members of the committee. My name is Senator Kent Rogert. I represent the 16th Legislative District. I'm here today to introduce LB575. I am a strong supporter of the right of the public to petition their government through the initiative and referendum process. It is our second house. But what was conceived as a mechanism for citizens to voluntarily petition their government has morphed into a process that can be tainted with money, fraud, and questionable motives. Over the past few years I have been increasingly skeptical of the professional petitions companies and circulators that have descended upon Nebraska's citizens. Just

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last year, I was approached by a circulator in my own place of business that was circulating the ban on affirmative action. She was there without my consent or the consent of anyone in my office and she quite literally knew very little about the bill she was circulating. Unfortunately, I found there is very little that the public can do to get any branch of government in Nebraska to enforce our petitions with the way our laws are written today. This is why I bring today LB575 for your consideration. Very simple LB575 would protect the integrity of the petition process and our statutes and constitution by preventing further the fraudulent accumulation of signatures. LB575 would give the Nebraska State Patrol exclusive jurisdiction to investigate potential violations of the petition process by a circulator, sponsor, or signer. Additionally, if the Attorney General find probable cause to prosecute the circulator for the violation of our petition laws and the Secretary of State shall issue a cease-and-desist order suspending the circulator. Additionally, any signatures gathered by the circulator shall be disqualified by the Secretary of State, Election Commissioner, or county clerk. The Attorney General shall have the exclusive prosecutorial power over these violations. And in my conversations with Attorney General Jon Bruning, he has expressed his support of this bill and its goals. In fact, I spoke with him last evening and he has also suggested that the committee may consider adding his office to the investigatory process along with the State Patrol. Finally, LB575 provides for a timely resolution of lawsuits challenging whether a petition should be placed on a ballot or not. In 2008, a lawsuit challenging fraudulent behavior by circulators of the affirmative action petition was not ruled on until nearly three months after the election. Under LB575, a lawsuit under 32-1412 must be heard within 10 days of filing and decided upon within 15 days. Senators, I respect the right of the public to petition our government. What I do not respect is paid circulators from out of state being allowed to circulate petitions without any regard for our laws or any consequence for breaking such laws. We must protect our constitution, and I believe that LB575 sends a clear message to circulators that we will not tolerate illegal behavior. And I'm just going to read a couple of skiffs from some pieces that I have seen. You guys have enough to read, but if you want copies of this I can surely provide them for you. I have a memo from Dave Shively, the Lancaster County Election Commissioner that he wrote to Nebraska Civil Rights Initiative Petition Verification Group. And in it he says below: Based on my office's limited authority to set forth above, and he mentions the statutes, coupled with the fact that I find no statutory authority providing for such a hearing, I have concluded that I should deny your request for hearing at this time. So I have a couple of other pieces that say just basically that. Some election county officials have found violations in petitions and the process, yet they've had no way to necessarily get those things brought to a hearing. So with that, I have some people coming behind me to testify, and I'll answer any questions that I can right now. [LB575]

SENATOR AVERY: I'd like to start by asking you, right now, who has the authority to investigate? [LB575]

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SENATOR ROBERT: Well, that relies a little bit for question. I believe the Secretary of State's Office does that. [LB575]

SENATOR AVERY: And you would shift that authority to the State Patrol? [LB575]

SENATOR ROBERT: Yeah. I believe they have more capacity to do so. [LB575]

SENATOR AVERY: You've identified a problem. I mean, there's no doubt about it. [LB575]

SENATOR ROBERT: Yeah. [LB575]

SENATOR AVERY: I agree with you. And you may remember I had a constitutional amendment last year... [LB575]

SENATOR ROBERT: Um-hum [LB575]

SENATOR AVERY: ...to try to do something about that. Questions here from Senator Pirsch. [LB575]

SENATOR PIRSCH: Thank you, Senator Robert. Is this law based upon any existing statute? Some of the concepts, were they borrowed from existing statutes in other jurisdictions? [LB575]

SENATOR ROBERT: There is some language in here. There are several states that have noticed that there are gaps in their statutes as well, and that's where we got this type of... [LB575]

SENATOR PIRSCH: Let me be more clear with this specific provision so you don't have to guess what I'm talking about. With respect to Secretary of State issuing a cease-and-desist order, does that occur in other situations as well currently or would that be a new kind of concept for this state? [LB575]

SENATOR ROBERT: It would be a new concept for the state of Nebraska. [LB575]

SENATOR PIRSCH: Is that used in other jurisdictions? [LB575]

SENATOR ROBERT: I don't know about that for sure. [LB575]

SENATOR PIRSCH: Maybe I'll ask... [LB575]

SENATOR ROBERT: It's been used in other states. [LB575]

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SENATOR PIRSCH: Okay. It is. [LB575]

SENATOR ROBERT: Um-hum. [LB575]

SENATOR PIRSCH: Okay. And then the exclusive prosecutorial power of the Attorney General, was there, you know, situations in the past where there was a kind of confusion or a mixed pot of prosecutors that kind of blended to a bad outcome? If so, can you touch upon that just briefly? [LB575]

SENATOR ROBERT: Well, I believe that the process runs through the elections division of the Secretary of State's Office. And to no fault of their own, it's just there's a lack of prosecutorial power given to them. And so basically it needs to be taken to a court to be heard. The court system has the ability to delay those hearings based on, you know, case load or I suppose any other thing that might sit in there. But as I mentioned in my opening--you came in late--the affirmative action petition that came upon last year, there was a court...it was taken to court and it didn't get heard until three months after the election. So it seems to me that if there's questions brought up about the legality of the process in August or July when we're trying to verify signatures, to have six months go by before we hear whether it was done properly or not doesn't make sense to me. [LB575]

SENATOR PIRSCH: Is it a time line? You want to have it sorted out before the election is what you're saying so that... [LB575]

SENATOR ROBERT: I do and I'd like, if the Secretary of State and the Attorney General finds that they have a valuable claim, to halt the signature gaining process while they're trying to decide whether they're doing it right or wrong. [LB575]

SENATOR PIRSCH: Okay. And so in this particular case it was the Secretary of State's Office that kind of investigated the alleged breeches of election law. In that case, is that what you mean in your instance? [LB575]

SENATOR ROBERT: I believe they...I don't know that they'd conduct investigations or whether they just sort out the facts that's brought to them from either side. [LB575]

SENATOR PIRSCH: Ultimately though, I mean, wouldn't it be the...I mean, under the current paradigm if we don't do this, does the Attorney General have any jurisdiction should he want to? [LB575]

SENATOR ROBERT: Not given our current statutes the way they're written according to their office. [LB575]

SENATOR PIRSCH: Okay. So it devolves upon the county attorneys of the various

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counties. So incidents that occur in Dodge County would be Dodge County, Douglas County... [LB575]

SENATOR ROBERT: I believe that it was brought to the Attorney General's Office and they basically said, well, statutorily we should refer it back to the counties of where the violations occur. And I think county attorneys kind of take it upon...they look at it and go, this seems like a state issue not a county issue. So I think there is a bit of a confusion and no direct line for provisions. [LB575]

SENATOR PIRSCH: Okay. And then is there in either Nebraska law currently or in other states, other jurisdictions perhaps that this is borrowed from the provision that says the court shall place it and advance the court docket and heard within ten days after the suit is filed. That kind of an expedited type of a requirement, you know, I think it's utilized in certain circumstances within the juvenile court system. Are there other...and perhaps this is a question for attorneys that I'm sure will follow you in speaking about this. So maybe I'll hold that question (inaudible)... [LB575]

SENATOR ROBERT: Yeah. And I can't necessarily answer specifically to that. I imagine the bar is here. They did question the fact whether we could hear it quite that quickly. Our court system might not be able to move quite that fast, and we'd be willing to work on a little language there if we need to. [LB575]

SENATOR PIRSCH: Yeah. I mean, it's the question, does that affect some fundamental constitutional...and I'd be interested in hearing some comments upon that by (inaudible) attorneys. [LB575]

SENATOR ROBERT: Yeah. And I don't think it does, but I think that's kind of the whole point of the bill is that there is a time factor that's involved in this type of a situation. [LB575]

SENATOR PIRSCH: Sure, sure. Thank you. [LB575]

SENATOR ROBERT: Um-hum. [LB575]

SENATOR AVERY: Senator Price. [LB575]

SENATOR PRICE: Mr. Chairman, Thank you. Senator Rogert, in looking this over agree that we have a tangled web of processes out there now. I'd like to call your attention, if you don't mind, to page 3, line 17 and 21 where we go to paragraph 7 and 8. In paragraph 7 on line 19 we talk about when we're subject to a cease-and-desist order. [LB575]

SENATOR ROBERT: Um-hum. [LB575]

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SENATOR PRICE: And then in paragraph 8 it says, "convicted of violating." But in both cases you can't accept the signatures. And I would hope that would be somewhat clarified if not by you, someone following you. In one case we're saying someone who's subject to one, and the other we're saying someone's who is convicted. And then I'm concerned about...and I'm not sure with all petitions circulations, I mean I've signed a few in my day, there are few people involved if you're like at a public event or something. [LB575]

SENATOR ROBERT: Um-hum. [LB575]

SENATOR PRICE: Does each circulator, are they required to only...that only one circulator can gather signatures on one form? Why I'm concerned is if you had 15 signatures on a form by someone who's abided by all the rules either subject to a cease-and-desist order or convicted of one... [LB575]

SENATOR ROBERT: Um-hum. [LB575]

SENATOR PRICE: ...and then they get two signatures on that, we've invalidated all the signatures on that form and we've denied some citizens of their voice. So it seems convoluted. [LB575]

SENATOR ROBERT: Well, I think that if you've ever signed one of these, there's a date on it of which you sign. And so whenever the cease-and-desist order would come in, all those following that date would be disqualified and those prior to would be okay. Do you follow? [LB575]

SENATOR PRICE: I follow that. But, again,... [LB575]

SENATOR ROBERT: If we need to clarify that we can. [LB575]

SENATOR PRICE: ...if there are multiple people handling the actual document, you know, whether it's a team of people out there... [LB575]

SENATOR ROBERT: Sure. [LB575]

SENATOR PRICE: ...you maybe only have one person who is subjected to these limitations. [LB575]

SENATOR ROBERT: Right. [LB575]

SENATOR PRICE: But anybody's is thrown out then because one person touched that document, then we've thrown out everything. So we may have disenfranchised...

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[LB575]

SENATOR ROBERT: Sure. [LB575]

SENATOR PRICE: ...people who have abided by all the rules. [LB575]

SENATOR ROBERT: Sure. [LB575]

SENATOR PRICE: I'm just very concerned that we haven't dealt with that here. So just wanted you to know. [LB575]

SENATOR ROBERT: We can definitely work on that. [LB575]

SENATOR PRICE: Okay. Great. Thank you. [LB575]

SENATOR AVERY: Senator Pirsch. [LB575]

SENATOR PIRSCH: I guess and perhaps this is what Senator Price is alluding to that if the way the language reads in subsection (5) on page 3, "If the Attorney General determines there is probable cause to prosecute a violation," which I interpreted as one possible violation with the word "a"... [LB575]

SENATOR ROBERT: Okay. [LB575]

SENATOR PIRSCH: "...violation regarding the circulation of an initiative or referendum petition based on the investigation of the Nebraska State Patrol, then the Secretary of State shall issue a cease-and-desist order." Would that mean that if there was a violation, and with the word "violation" regarding the circulation of initiative, could that...I mean, there's many different ways...some are more of a de minimis and some are very grave. This would seem to suggest with the solitary incident that is of a kind of a de minimis nature, then in all cases the petition shall be...the Secretary of State shall issue a cease-and-desist order suspending the circulation of the petition. So it's one strike and you're out, right, even if it's a de minimis? [LB575]

SENATOR ROBERT: Well, I think I would say, yes. [LB575]

SENATOR PIRSCH: Okay. [LB575]

SENATOR ROBERT: I think that if the Attorney General realizes that it's a...but you've also got to remember if they determine it's probable cause to prosecute if it was a de minimis type of a violation I think that they may not come to say, well, we're not going to prosecute on the fact that you didn't sign your name to the pages on there. But if it's one that they want to prosecute on in terms of...I mean, it's the intention is for collection of

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illegal signatures or doing the process illegally. [LB575]

SENATOR PIRSCH: There's a certain amount of prosecutorial discretion you're saying that the Attorney General will exercise that will ensure a good outcome then. [LB575]

SENATOR ROBERT: I think it'd have to be worth their while. [LB575]

SENATOR PIRSCH: I see. Thank you. [LB575]

SENATOR AVERY: Anymore questions from the committee? Seeing none, do you plan to stay for closing? [LB575]

SENATOR ROBERT: I'll stick around for a while and pay attention. [LB575]

SENATOR AVERY: Okay. We'll now move to proponent testimony. Anyone wish to support this legislation? Mr. Kramer, welcome. [LB575]

DAVID KRAMER: (Exhibit 1) Mr. Chairman. Mr. Chairman, members of the committee, good afternoon. My name is David Kramer, K-r-a-m-e-r, 1700 Farnam, 15th floor, Omaha, Nebraska, speaking today in support of LB575. I want to be clear that I'm here speaking today in my capacity as a private citizen of the state of Nebraska who's been involved in both sides of the initiative petition and petition process. I would like to begin by stating that I'm a very strong proponent of the initiative and referendum process. In the nearly 20 years of being actively involved in Nebraska politics, I've found that the vast majority of those participating in the initiative and referendum process respect the laws of our state. However, there are those who do not respect the laws of our state, and I believe that we are in need of a mechanism which clearly defines how to investigate and address the actions of those individuals, particularly while the petition process is ongoing. As you may be aware, during the last election cycle I was involved in opposing one of the initiative petitions. As we gathered evidence of what we believed to be illegal activity on the part of individual circulators, we discovered that there's no defined mechanism by which those actions could be challenged and investigated during the petition gathering process. As we reviewed the relevant statutes, we were struck by the fact that given the changes that were made to the initiative and referendum process two years ago, it now appears that such evidence must be submitted on a county-by-county basis to the election commissioners and county clerks, and that the decision of whether to investigate any wrongdoing rests with each respective county attorney. We submitted complaints to the Secretary of State, to the Attorney General, and to each of the 93 counties. Regardless of any difference of opinion over the quality of the evidence that was presented in these complaints, the fact remained that we received a response from only a handful of counties. One county, Lancaster, and you heard Senator Robert quote briefly from that reply, specifically responded to each of the items raised in our complaint. Several counties replied indicating that they believed they

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had no authority and that we should raise our concerns with the Secretary of State. In addition, there was some dispute as we interacted with the various counties whether or not illegal conduct by circulators should invalidate the signatures that were gathered illegally or whether or not they should simply result in criminal charges being levied against the individual circulator. The vast majorities of the counties that we filed our complaints with never responded, so we have no idea what became of those specific complaints. In light of the fact that, in my experience, the most prolific circulators tend to work multiple counties, I strongly support the concept of creating a mechanism for investigating complaints which is administered at the state level rather than at the county level. Involving the Attorney General, the Secretary of State, and the State Patrol makes tremendous sense and would eliminate the potential for 93 different standards of review. It would also streamline the process to allow for relatively quick determination of potential problem areas. I would also like to note my support for the provisions of this bill which set forth the time line for adjudication of litigation in these types of matters. I believe that both sides of any of these issues would appreciate quick resolution of any such matters. On a related note, you may be aware that the Lancaster County District Court recently held that petition circulators are not required to read the entire object statement to potential signers despite the fact that they attest under oath to having done so on the bottom of each petition sheet and that despite the fact that the Secretary of State's Office has taken the position that they must do so. I would like to encourage the committee to consider amending LB575 to include language which makes it clear that petition circulators are required to read the object statement to each potential signer. The decision of the Lancaster County District Court has the practical effect of allowing each circulator to determine what portion, if any, of the object statement they wish to share with potential signers. I would note that the object statement is drafted by the proponents of the petition themselves and, as such, should not be viewed as overly burdensome. I would like to thank the committee for allowing me to testify today and I'm happy to answer any questions you might have. And specifically I'd be happy to answer some of the questions that were raised of Senator Rogert in terms of from a practical experience that I've had working both sides of this issue. So thank you. [LB575]

SENATOR PIRSCH: Very good. Are there any questions for Mr. Kramer? Senator Price. [LB575]

SENATOR PRICE: Senator Pirsch, thank you. Mr. Kramer, thank you for coming and testifying today. My question because I don't have very much experience, are we in the practice of telling the court when they're supposed to make decisions by? Is that standard practice? [LB575]

DAVID KRAMER: Well, it depends on the area of law. There is throughout... [LB575]

SENATOR PRICE: In this area of law? [LB575]

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DAVID KRAMER: In this area it depends. In some states they require...because of the fact that there are elections involved and because of the fact that in some instances courts have ruled that the election may moot out...including the Nebraska Supreme Court on some occasions depending on the individual facts, may moot out the lawsuit. Legislatures across the United States have implemented time lines to provide for expedited appeal process. And in fact, within this arena Nebraska already does provide for a relatively narrow window within which to get your appeal filed once the certification has occurred by the Secretary of State's Office, and a very narrow appeal window from the district court to the Supreme Court in order to encourage an expedited process. So I think it's something that we've done here in Nebraska and something that is done in other states. [LB575]

SENATOR PRICE: Okay. Thank you. [LB575]

SENATOR PIRSCH: Very good. And could you just elaborate a little bit more? Right now the certification of the Secretary of State of which you spoke with deals with what then? I mean, how does that mechanism work currently under Nebraska... [LB575]

DAVID KRAMER: Under Nebraska law, the constitution requires the date certain by which the signatures must be submitted based on when the election is. And the Secretary of State's Office has a fixed number of days from the submission of those signatures to either certify or not certify it. Once the certification happens and a group were to challenge it, immediately upon getting a decision I believe there's a ten-day window within which to appeal. And in this instance we have direct appeal to the Nebraska Supreme Court, bypassing the Court of Appeals in an effort to expedite that process given the fact that normally you're operating from September 10, 11, 12 or so for certification with an election in early November. [LB575]

SENATOR PIRSCH: But that, even under this existing paradigm, doesn't help to...like in your particular instance it let the matter unresolved until a point in time after the election. [LB575]

DAVID KRAMER: Yeah. And in fact, the vast majority of the cases today in this arena result in decisions being made by the court or the court mooting out the case after the election occurs because in this particular case it was not a district court opinion until nearly 90 days after the election. Once that opinion came down, there were ten days within which to appeal it to the Nebraska Supreme Court and ultimately that was not appealed. [LB575]

SENATOR PIRSCH: Okay. And do you think the ten-day time period would...I mean, are you fine with that? Are you comfortable with that as far as it would pass constitutional muster as far as due process and those other constitutional safeguards? Is that...I understood that that must be heard within ten days after the suit is filed. Do

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you feel comfortable that that would be held to be constitutional, that expedite of a process or do you think that it would be a long...as Senator Rogert said, it would perhaps look at the time and if you have concerns with that? [LB575]

DAVID KRAMER: Well, Senator, as you know, in our business there usually is many different opinions about the constitutionality of something as there are lawyers opining. [LB575]

SENATOR PIRSCH: Yeah. [LB575]

DAVID KRAMER: And I'm no judge, but I think that the courts have okayed very narrow time frames for adjudication of legislative restrictions on time frames. I think the ten day here...and I was not involved in the drafting of this legislation, I think that given the fact that usually you're operating from a September to a first week in November time frame, the ten-day frame here makes sense because it gives you an opportunity to get it to the Supreme Court. The other thing I would note, in the litigation in which we were involved last fall which was a fairly complex case and actually took nearly five days of trial, the parties often would have the ability I think to stipulate that that time line, if it's going to take them a bit longer to get ready, that they would stimulate to the extension of that time line. So I think there are some mechanisms to address it if the folks felt that it was too short. The critical part of it there though is unlike so many other things that we deal with you're looking at a 60-day window from the time the certification comes...and a little bit less than 60 days to the election itself. And I think I can speak for the folks on the other side of this one particular issue we've been focused on that they would have been thrilled to have a decision prior to the election too. So I don't think it's something that prejudices one party or another. [LB575]

SENATOR PIRSCH: Very good. Thanks. Are there any other questions? Thank you, Mr. Kramer. [LB575]

DAVID KRAMER: If I may, could I address one of the questions that was raised a short while ago with Mr. Rogert? [LB575]

SENATOR PIRSCH: Sure, if you wanted to. [LB575]

DAVID KRAMER: There was some question about...two questions. First of all, Senator Price, with respect to an individual sheet of signatures, the statute requires that the person who gathered the signature sign that sheet. And in fact one of the issues we raised as an illegal...under current law in Nebraska as an illegal activity is that multiple people were gathering signatures onto one sheet, and then a single person was attesting that they had gathered them all when indeed they had not. So going to your concern about multiple people touching it and invalidating some signatures that were validly collected, and others that were not validly collected, that should not be an issue

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because under current law a single circulator must sign and attest to a single sheet. A correlation to that with respect to LB775 (sic), I think subsection (5) does not require that there is a cease-and-desist with respect to the entire circulation, but rather that the individual circulator who has deemed to have been found probable cause of engaging in illegal activity that that individual circulator must cease and desist their activity. And it doesn't go to the broader...doesn't stop the whole petition process in its tracks, only that individual circulator who is engaged in the inappropriate or illegal activity. [LB575]

SENATOR PIRSCH: Very good. I do appreciate that. And any other questions based on it? Seeing none, thank you for testifying. [LB575]

DAVID KRAMER: Thank you. [LB575]

SENATOR PIRSCH: We will move to our next proponent. [LB575]

BRIAN MIKKELSEN: (Exhibit 2) Senator Pirsch, members of the Government Committee, my name is Brian Mikkelsen, B-r-i-a-n M-i-k-k-e-l-s-e-n. I am the director of political action for the 28,000 members of the Nebraska State Education Association. And if you're a follower of Nebraska politics, just the fact that David Kramer and I are on the same side on a bill should tell you that it's a pretty good bill. But I am here in support of LB575. During the past two elections cycles I've played an active role in opposition to initiative petitions including Measure 423, which was the cap on state spending and Measure 426 to end equal opportunity in Nebraska. Additionally, in the past 20 years I've participated as a proponent on the side of a number of petitions as well. I've seen this process from both the side of a proponent and an opponent. I believe without a doubt that our petition process in Nebraska, like that of many other states, has been hijacked by unscrupulous, out-of-state petition companies and circulators that are motivated by money alone. They don't care about the process, they don't care about our laws, they don't care about the state or our citizens. There are few in the state that have worked as closely with these circulators as I have over the past few years, and I believe to my core that this process is fraught with fraud, profiteering, and illegal behavior without a doubt. Specifically, I've witnessed and been made aware of from others of repeated occurrences of circulators: Outright lying about the elements of a petition, in fact in your packet that I've provided is a KETV news story where actually Carol Kloss has on tape a circulator basically telling a signer that this would end discrimination...outright lying about the petition; harassing women until they sign a petition, this committee was provided information a couple of years back about someone who was stalked by a circulator after signing; filling out portions of the petition; confronting, physically confronting people who disagree with them; circulating another circulators' petition, we're seeing this a lot right now where circulators will get together, they'll circulate all day long, they'll put it all under one circulators' name because that's how they get their bonus is they turn in more signatures; offering prizes and bribes for people to sign the petition; telling people they can sign the petition for their spouse; and

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having petitions circulated by children. In the past two years, we've confirmed and publicly reported--and you have those articles that I'll point out later--incidents where a second-degree murderer who had served time in Florida was circulating a petition in Nebraska; where circulators combined their signatures together under one name to get a bonus; where circulators forged signatures; and where the spouse of the owner of the circulation company that was hired to do the circulation, her spouse had signatures tossed out by a county clerk because he was telling spouses that they could sign. So if we don't have enough quality control over this process where the spouse of the owner of the company that's hired to circulate the petitions isn't following the law and is telling spouses that they can sign the name of their spouse on a petition to change our constitution, we've got a problem. The unfortunate problem is that under the current system there's no clear manner in which the state of Nebraska or local officials investigate and prosecute blatant petition fraud prior to submitting the signatures. Each instance above has been provided to the Secretary of State's Office in hopes that they would investigate the blatant violation of our laws. Unfortunately such investigations rarely occur, and I don't think that is because there's real strong statutory authority for that or resources to do that, and outrageous behavior continues. In the packet you have news stories over the past two years outlining public accounts of petition fraud. Additionally, you have a CD containing two news accounts of petition fraud and overly aggressive behavior by paid circulators. Specifically I want to just draw your attention to a couple of the articles, those are on the right-hand side of your packet. The first is the CD of the news stories from KETV. The second articles are the...the first one is dealing with the wheel-of-fortune aspect that was actually investigated in 2006 by the Attorney General's Office where allegedly signers were allowed to spin a wheel of fortune for a prize if they gave a signature. The second one deals with an article where Secretary of State John Gale was approached by someone who he said was 15 years of age and hired to circulate a petition. The third one is an article from the Lincoln JournalStar where on the day of submission of the state spending limit petition a circulator was arrested for hitting or having a confrontation with an opponent. It was found out that that circulator had served time in prison in Florida. The third one deals with the information that the opponents to the end equal opportunity petition provided the state related to numerous aspects, video, audio, affidavit support on petition fraud that was currently going on asking for some sort of, you know, investigation of that. And then the fourth one is an article related to a petition circulator who the Lancaster County Election Commissioner found to have been forging signatures on the petition. So that just gives you some background on some of the, you know, information that's out there has been provided on these. The NSEA is supportive of a fair and open and above board petition process that respects our constitution and our laws. And while the petitions that have been brought to the state in recent years have been of a conservative nature, please know that this is not just an ideological issue. There are numbers of liberal issues making their way to the ballot in many states, including: Humane treatment of livestock, which has passed in California in 2008; tax increases dealing with declining revenue; relaxation of drug laws. The art or business of putting petitions on the ballot is not

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ideological. The fraudulent way in which this is done is not left wing, right wing, republican, democrat or whatever. It's all across the board, all of these issues, and it's not just overspending issues or ending affirmative action issues. There's other things that are headed to the ballot in states all across the country that we're going to have to deal with. So regardless of the issue and who's bringing it, we should do everything to make sure the process is respected and our laws are followed. We would urge you to support LB575 to provide a reasonable mechanism to ensure that the integrity of the petition process is respected while the petition is going on. We can't wait until after the signatures have been turned in, the circulators have gone on to another state. In most cases, they can't be deposed, they can't be found. The people already vote on the ballot and then the...you know, and then the court basically says, look, the people voted on this, we're not going to overturn the will of the people. The fact that we're not investigating this process while it goes on when we know it's occurring is a tremendous problem and harmful to the protection of our constitution. With that, I'd be willing to answer any questions on this issue. [LB575]

SENATOR PIRSCH: Very good. Thank you. Are there any questions for Mr. Mikkelsen? Seeing none, I thank you for coming in this afternoon. We'll move on to the next proponent of LB575. Good afternoon, Ms. Rex. [LB575]

LYNN REX: Good afternoon. Senator Pirsch, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We're here today in strong support of this measure. This needs to occur and I hope the Legislature will pass this bill this year. I personally have been approached by individuals to sign petitions at various Fourth of July events in the last few years. When I would ask them: Well, so what does this petition do? And of course I knew what the petition did, but I asked them. They would give me some reason which has nothing to do with what the petition actually was about. I attended a function for one of my nephews when they were playing softball and baseball out at a park in Lincoln, Nebraska, and, in fact, they had tables set up telling people, sign here and lower your property taxes. It had nothing to do with that issue, but people were signing up. So these are the kinds of things that happen. And I'm guessing that Brian Mikkelsen has also provided you a copy of some tape in a HyVee story I believe it was in Omaha, Nebraska, where this woman was trying...taking a small child trying to get to her car, and this individual was literally chasing her down, sign it, sign it, sign it. And when she went to grab the handle of her car, he put his hand on that. Those are the kinds of things that are happening across the state of Nebraska. When law enforcement officials showed up in several municipalities at the request of retail operations, these individuals would scatter, literally scatter. So I think one of the more profound examples was a very bright, young African-American man who was circulating the affirmative action petition. And one of my staff members at the League of Nebraska Municipalities approached him and said, do you understand what this affirmative action petition would do? He said, well, yes. This is equality into the law. Well, of course it was not that. So that maybe...that was a spin on

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it, but that's not what it was. And in fact he set his petitions down and walked away when he realized what it was because he'd never read it. This needs to happen. We hope the Legislature will advance this bill this year. It's important. There will be initiatives coming forward, initiatives that may impact the Legislature itself, as was the case with 423 and other measures. This is vital to our...when your amending the constitution, it is important. And Nebraska has been identified as one of those states where we are an easy mark. And for my colleagues in other states, basically with the National League of Cities, indicated that their states as well have been identified as easy marks. And so they're trying to cleanup their statutes and make them tighter and provide some kind of an operational way in which they can stop basically fraudulent circulators. I'd be happy to respond to any questions, and I thank Senator Rogert for introducing this measure. [LB575]

SENATOR PIRSCH: Very good. Are there any...Senator Sullivan, you have a question. [LB575]

SENATOR SULLIVAN: Thank you, Senator Pirsch. Ms. Rex, does this do enough to intervene at the right time to stop some of these things from happening that you just talked about? [LB575]

LYNN REX: Well, it's better than what we have now. We think this is a strong bill. We think it's a good bill. Some of the things that we would like to be able to do we're not able to do because of other constitutional issues. For example, there are certain rights that folks have on public property, certain rights that individuals have in terms of circulating petitions in certain locations. We had a situation that occurred in Grand Island, Nebraska, where the only way you could get to the library, and they were under construction, was to go through a very narrow way, and you could not do it without getting past...I mean, you literally had to come up right face-to-face with these folks as they were putting these petitions in your face. People feel threatened and intimidated. They were complaining to the librarian. They were complaining to others. And there's very little that basically the police can do in those situations. But, Senator, the short answer is that this is a strong bill. It's what we think we can get accomplished this year, and we look forward to working with you to do that if you're willing to help us. And I would, again, suggest that there have been recall efforts suggested for state senators. That would be a disaster for you, quite frankly, as it has been for others on the local level. Although, it is intended to be rarely used. When you look at the kinds of issues that you face, whether it is death penalty, I don't care which side you're on, abortion issues, which side you're on, pro-life, pro-choice, it doesn't matter. You deal with issues up here everyday where you're going to have people that are opposed to you on the other side. And basically I would submit to you that, that kind of discussion, those kinds of initiative petitions can happen in Nebraska like they've happened in other states. We need to protect our constitution. This is a constitution for people in the state of Nebraska. We're not supposed to just be here as an easy mark for someone to come in,

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make a boatload of money in a short period of time, and then fly out and we can't find them and there's no way to prosecute anybody. So we certainly hope that you'll work with us to help get this accomplished this year, and I appreciate your time this afternoon. [LB575]

SENATOR PIRSCH: Thank you. Any other questions? Seeing none, thank you very much for coming down and testifying. [LB575]

LYNN REX: Thank you very much. [LB575]

SENATOR PIRSCH: Are there any other proponents of LB575? Good afternoon. [LB575]

EVA SOHL: Good afternoon. Hello, Senator Pirsch and members of the committee. My name is Eva Sohl, Sohl is spelled S-o-h-l, and I just wanted to come today and testify as a citizen who is involved in the petition processes as well last year. I got involved with Nebraskans United last January with the number of local community organizations in Lincoln and Omaha, and soon we developed some chapters on student campuses known as Students United for Nebraska. We started last spring trying to educate people and producing materials about the petition knowing that it was deceptive in its name, Nebraska Civil Rights Initiative, and that people weren't sure what it meant when it said that it was an affirmative action bill. I worked in the summer with Nebraskans United witnessing numerous counts of fraud conducted by petition circulators. And it was just very frustrating for us and speaking with citizens who had been approached by petitioners who were misleading about what the intent of the petition was, who were told that they could sign for spouses. Some of the examples have already been stated. By the end, there were other petitions that were circulating throughout the state and throughout counties. So petitioners were circulating multiple petitions at that time. As a person in the field working on this issue, you know, we witnessed all of these instances of inconsistencies and fraud and we just had no where to turn. We were trying to collect the evidence as well as we could, and it wasn't until after the period that all of the signatures had been conducted that we could really start to take some legal action on this issue, which was frustrating for us and for citizens who were confused about where to turn to in the process. Did they go to their county? Did they go to the state? And at times we had a difficult time trying to navigate them to the correct channels. So we just...I wanted to come today and say that I'm in support of LB575 because anything that can provide some clarity and consistency in this petition process is crucial. So I'll end there, and are there any questions for me? [LB575]

SENATOR PIRSCH: Very good. Thank you. Are there any questions for this testifier? Thank you. [LB575]

EVA SOHL: Thanks. [LB575]

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SENATOR PIRSCH: Seeing none, we will move onto the next proponent, next testifier in favor of LB575. Seeing none, we will move on to opponents, those testifying in opposition to LB575 if there are any. [LB575]

MIKE GROENE: I'm Mike Groene from North Platte, Nebraska. [LB575]

SENATOR PIRSCH: Could you spell your name for the record? [LB575]

MIKE GROENE: G-r-o-e-n-e. [LB575]

SENATOR PIRSCH: Thank you. [LB575]

MIKE GROENE: I hope I can keep my paper straight here. I represent the Western Nebraska Taxpayers Association. First, I'd like to read the state constitution about the right to initiative, "The first power reserved by the people is the initiative whereby laws may be enacted and constitutional amendments adopted by the people independently of the Legislature." There's no mention of petitioners in there. It's about the people. That's all it's about. I'd like to read one other comment from a lawsuit brought when the Unicameral passed a law that said only a resident of a county could gather petitions in that county. It went to the State Supreme Court in 1992. Here's what the State Supreme Court said, "A law which unnecessarily obstructs or impedes operation of the initiative and referendum process is unconstitutional." You folks aren't supposed to interfere with our right of the initiative. A couple of comments to Senator Rogert. I've heard this before that this was some kind of mom and apple pie operation gathering of volunteers and people going around getting initiatives signed. George Norris, when he created this institution, he paid college students a nickel a signature. We've been paying for them from the beginning. George Norris was a very honorable man and a person well respected in this state. He didn't think paying somebody was wrong. Also, Mr. Kramer, Mrs. Dix (sic), and the fellow from the NSEA made a lot of allegations. Those were all allegations. None of them were proven factual, none of them were proven true through the court system. All of those allegations taken to the Secretary of State, I've talked to Mr. Erickson, they were unsubstantial. They took pictures of petitions laying on trash cans and claimed they were unattended and people were signing them. Can't you lay down a petition while you go get something to eat or a pop? All of those were taken to the court system. Mr. Kramer forgot to tell you that it was all thrown out. So when a court says...throws them out, what does that say? The allegations are false. Isn't that how a court system works? They keep repeating them to Mrs. Dix (sic) and the NSEA fellow about these foreigners from out of state. Don't you remember passing LB39 last year? That's not going to happen. This law, LB575, has nothing to do what they were talking about. You passed LB39 last year and it said you've got to be a resident of the state to gather petitions. And by the way, Mrs. Schimek, who introduced that law kept quoting Oklahoma's law that said that you had to be a resident of the state. Guess what

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happened three months ago, folks? Tenth Circuit Court of Appeals threw that law out and said it violates the First and Fourteenth Amendments. I have, as a citizen of the United States, the right to associate with who I want to. And if I want to cross the state line to help somebody else in a political fight, then I have a right to do that. And I'm sure LB39 will cost the state a lawsuit and you will lose also because I have the right to associate with folks. Imagine in 1960s in Alabama and Mississippi, if those states passed laws that said a northern, a person from another state, could not come across our state lines and help in a civil rights situation, that you could not gather, you could not picket, petition, you could not get a right to protest unless you were a state citizen. That's no different than what this Unicameral did with LB39. It took my rights away to associate, but there will be a lawsuit. As far as...it's what I said here. There's no mention of a petitioner in the state constitution. All a petitioner is, folks, is the conduit for me as a citizen to sign a petition. That's all he is. I don't care if he's a drunk, an ex-convict. And in this country we give people second chances. I don't care who he is. I don't care if she's a 15-year-old girl. That is my opportunity to sign that petition. And I don't care who they are. When I hear about a petition and I want to sign it, I want to be able to find it. And when you restrict or obstruct my access to that petition by putting restrictions on who can petition and throwing signatures out, you have obstructed my right to sign a petition. The equal rights amendment, folks. Remember, it's about the people voting. They voted for it 60-some percent. I wasn't involved in that petition. I was involved in 423 as a sponsor, but I've seen...I don't see anything coming out of this committee to try to help people access to petitions. It's always restrict, restrict, restrict. And then who's it coming from? League of Municipalities and the public unions, people how have great access to you folks to influence legislation. The average person doesn't. They have the petition process. And you continue...Unicameral continues to bring forth bills to restrict my access. I consider it an insult of my intellect that I don't know what I'm signing. It's an insult to the wisdom of the average Nebraskan that he doesn't know what he is signing when that petition is put in front of him. Are we that inept? But anyway, I'll go on to the law itself. I got the wrong thing here. Bear with me. LB575. I called the Secretary of State's Office and asked them this question: The Secretary of State, the Attorney General, and the Department of Labor may share information pertinent to any employment relationship. I said, what information? I said, do you have the right to go into a free enterprise and demand their pay records in advance of a complaint to find out how they're paying somebody? He said, no. I said, so a formal complaint has to come from a petitioner that he isn't being paid right by the hour or he's been paid per signature, and then you investigate. He said, yes. I said, and then if there's a problem you will do something, right? Yeah. So the mechanism is in there. What information is he sharing with the State Patrol? Doesn't say. Nebraska State Patrol should have exclusive jurisdiction. That scares me. I don't want the colonel of the State Patrol judge and jury, bad enough that he arrests you. And desire or suspend the circulation of the petition by the person alleged to have committed the violation. We are stopping and desisting people from taking part in their government by allegations. All those allegations those folks told you about were allegations. They were thrown out. In this

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last one, the judge threw them out. So we're going to stop people from circulating by allegations. You got very strong union in NSEA. They got people out there all over. They throw all sorts of accusations. And they keep repeating the one about the murderer from Florida passing around our petition 423 in '06. He didn't have our petition. That was the last day of the gathering. We had already our number. We called off everybody, told them we weren't paying anybody. It was the very last day. He didn't even have our petition on his...he was still gathering the gambling one. But they keep repeating that falsehood. Allegations, folks. That's all it is. We're going to run a government by allegations and take people's rights away by allegations. That's what they're talking about here. And here it says, any signature...Mr. Rogert probably didn't read his bill, any signature of the initiative or referendum petition which is circulated or submitted by for a signature verification by a person who is convicted of a violation, a cease-and-desist order under this section of...or who is convicted of a violation of the provision of this section shall be rejected. It says, any signature. So me as an individual citizen is looking for a petition to sign and I will sign it, this guy allegedly then has broke the rule. I know all about it. I'm well versed in the law. My signature is thrown out. I don't know about it. Nobody informs me that my signature is no good. It's been thrown out. Nobody contacts me and say you got to find another petition to sign. They threw it out because of one allegation. The guy might have done it right every other signature, but he might have got tired that day, got filmed and said something wrong. They throw out my signature. It's no good anymore. You took my right away. You're not supposed to obstruct my right of the initiative. You just did. [LB575]

SENATOR AVERY: Sir, I've been told you've been up here about ten minutes now. [LB575]

MIKE GROENE: I don't know. I don't know. [LB575]

SENATOR AVERY: Yeah. We try to limit testimony to five minutes. [LB575]

MIKE GROENE: Did you on Kramer? [LB575]

SENATOR AVERY: I left. I had another hearing. [LB575]

MIKE GROENE: I think he did, but that's okay. No, but I've said what I wanted to say. [LB575]

SENATOR AVERY: Could you summarize? [LB575]

MIKE GROENE: Yeah. Folks, let's start doing something that helps people get people involved. Let's pass a law that says we have petitions at the county clerk's office that anybody who wants to sign a petition can go in the county clerk's office, it can be verified right there and sign it. Let's make it easier for people to sign a petition, not

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harder. Let's pass a law that says we go back to 10 percent of the people who voted in the last Governor's election instead of 10 percent of electorates. Since that might have been okay until "Motor Voter" came along. Then you've got people signing up as electorates and never have ever planned to vote, but we got to go out and get 10 percent of those folks. So I would like to work with somebody on this committee about getting some legislation next year that makes it easier. We got to have faith in the people. Once it's on the ballot, that's what it's all about. That where the argument and the debate is. These folks want to restrict the people's right to get to the ballot, and that's what wrong. It's absolutely wrong. [LB575]

SENATOR AVERY: Thank you for your testimony. Do you want to stay for questions? [LB575]

MIKE GROENE: Yeah. Yeah, sure. [LB575]

SENATOR AVERY: Are there any questions from the committee? You got off easy. (Laugh) Thank you. [LB575]

MIKE GROENE: Thanks. [LB575]

SENATOR AVERY: Anymore opponent testimony? Anyone wish to testify in a neutral position? Mr. Erickson. [LB575]

NEAL ERICKSON: Senator Avery, members of the committee, my name is Neal Erickson, N-e-a-l E-r-i-c-k-s-o-n. I'm deputy Secretary of State for Elections here on behalf of Secretary of State John Gale testifying in opposition to LB575. And the reason for the opposition is in reading through the bill there are just a number of things in there that quite honestly don't make sense to us. I think some of them have been touched on either through questions or through some of the previous testimony. For example, on page 2, subsection (3) it talks about the Secretary of State, Department of Labor, and the Attorney General sharing information to insure the compensation paid for circulating petitions in compliance with sub (3)(e), (f), and (g) of 32-630, Now, I am assuming what this section wants to do is last year we passed LB39 that said you could not be paid by the signature. Unfortunately, you know, without speaking for the Department of Labor and Attorney General, we don't receive any information about how circulators are paid. So we would have no information to share. In addition, when you start looking at subdivisions (3)(e), (f), and (g) of 32-630, they really don't relate to LB39. As a matter of fact, sub (3)(e) actually goes to the signer of a petition and prohibits them from receiving anything of value for signing a petition. Subsection (4) or, excuse me, sub (4) on that page in terms of having the State Patrol investigate, we certainly have no problem with. It does centralize. We've used the State Patrol to investigate certain petition-related activities in the past, and don't have a problem with that. In sub (5) it talks about if the Attorney General determines there is probable cause that Secretary of State shall issue

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a cease-and-desist order. Well, understand that probable cause is a different standard from being adjudicated guilty of something. And so it's...I wonder if maybe that's maybe overstating the cause. And the example I might use would be we do receive complaints, and sometimes we see them in the form of an affidavit. Somebody could swear on an affidavit on several circulators. And I don't know if the Attorney General would find that probable cause, but if he did you could take those circulators out of the ball game by issuing the cease-and-desist order. They may subsequently be found not guilty of any of those things, but they have been taken out of the petition game during that circulation period. And I'm not sure that's necessarily an appropriate response. Sub (6) gives Attorney General exclusive prosecutorial power. I don't think that's necessarily a problem. I think Senator Pirsch had asked earlier. I think it's a case right now where the Attorney General probably has concurrent jurisdiction with the county attorneys. Typically what we do when we discover fraud, usually within the verification process, a county will find a signature that they believe is fraudulent, it is forwarded to their county attorney. Now, this does occasionally create some problems. And an example I would use is one, I believe it would have been from 2004, where there was a signature that we believe had been forged. In fact, there was substantial evidence to show it had been forged. It was a Hastings address, but the circulator had had it notarized in Grand Island in Hall County. And there was some debate between the Adams County Attorney and the Hall County Attorney as to which had jurisdiction over it. Was certainly you could have charged a person with false swearing when they had it notarized, which would have occurred in Hall County or it could have also been when the forgery actually occurred which appeared to be in Hastings. And so they do have those kind of disputes. And exclusive jurisdiction for the Attorney General, you know, I think if they're willing to do that I certainly think we would have no problem with that. I would note in there it says, "shall prosecute all violations of this section to the fullest extent of the law," that would seem to kind of impair his ability or his power of prosecutorial discretion, but that's the way the bill reads. Senator Price, I think, pointed out what I see as a conflict between sub (7) and sub (8) in that section where they both do the same thing, but one talks about being convicted of a cease-and-desist order, as another one in sub (7) talks about just being subject to a cease-and-desist order. And I think part of the problem there is we're getting a couple of things confused and I think the testimony here has done that as well. There are kind of two processes that are wrapped up in the verifying a petition. We verify petitions to make sure that the people who signed them are registered voters. And people can challenge...you know, somebody can challenge as to whether or not that is the case, enough registered voters signed this petition. That's more of a civil-type action. Then you also have things that might be considered criminal in nature, where somebody forges a signature, items like that. Mr. Kramer talked about a lot of evidence that was presented to the county clerks. It was presented at a stage where they were verifying the petitions, and they were looking at that was there evidence here that would cause these signatures to be thrown out, not as to whether a person had committed a criminal violation or not. And I think sub (7) and sub (8) kind of confuse those two because one says you're subject to a cease-and-desist, sub (8) then

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goes on then to talk of being convicted of violating a cease-and-desist order. I find that interesting because it doesn't establish a crime for violating a cease-and-desist order. So I think that one is probably going to be kind of tough to enforce. A lot was made of the time frame in terms of the way the courts deal with this. And I understand the frustration the opponents to the affirmative action petition had in terms of a relatively late decision by the Lancaster District Court as to whether their case had merit or not. We get sued on practically every petition that gets filed, one way or the other, one side or another. The court does have the ability to move rather quickly when they deem it necessary. When they deem it necessary generally in what we call a mandamus situation where we have refused to put the issue on the ballot. They believe they have enough signatures. They think they're entitled to be on the ballot. They want to be on that ballot in November. The courts will try and expedite that as much as possible. Sometimes that's not possible and the court has said, well, you do have a remedy in terms of being put on at the next election, the following election. The reverse situation where we have put it on the ballot and somebody is arguing that it shouldn't be on it, the courts will generally take more time with that because they have the ability to do so. What they can do after the fact is invalidate the vote, and they've done that before. They did that with the term limits petition in 1992. They said this issue should have never been on the ballot, therefore it did not pass and it has no affect. So it kind of depends what situation you're in as to the need for the court to expedite these items. If it's something that's already on the ballot that people are going to vote on it, the court does have a remedy of invalidating it later on. Now it's very difficult for us to...for the court to come in, say, a week before the election and say, hey, you got to put this on. That causes a problem for us, and we've had that situation I want to say in I believe it was 2004 where we had made a determination with a keno petition that it did not violate the being on the ballot more than once in a three-year period. The Supreme Court took that up quickly, they were very cognizant of the deadlines we had to have in terms of when the ballots had to be prepared, etcetera, and did get a decision within that time frame, so. I believe there are a couple of other questions that were mentioned. One thing that a testifier brought up that I think I believe Secretary of State would be fully in favor of, this most recent petition in Lancaster County Court, the current law states when you sign the circulator's affidavit it says that you stated to each signer the object of the petition as printed on the petition. The court that made the interpretation that stated did not necessarily mean read. And that is something that we'd always interpreted that meant read the petition, the object statement of the petition to each signer. The court said that that was actually the reading of it was not necessary, it could be phrased in other ways. And I think Mr. Kramer suggested that might be a possible change that might be appropriate is to change that stated to read. And I think it might have some impact on getting the object statement read as the Legislature passed that about ten years ago. With that, I'd answer any questions you might have. [LB575]

SENATOR AVERY: Thank you, Mr. Erickson. Any questions from the committee members? Senator Sullivan. [LB575]

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SENATOR SULLIVAN: Thank you, Senator Avery. From listening to your comments I get the impression that you think there probably are some things that do need to be changed about the process and improved. [LB575]

NEAL ERICKSON: Well, the number of things...one thing to keep in mind, and we've had what we thought were great ideas tossed out by the courts, is the Legislature is limited in its power to address the initiative process to the extent it can pass laws that facilitate the process. They cannot do things that make it more difficult or hinder the process. There are things out there, believe me, circulators are not angels or not all circulators are angels, but not all of them are devils either. We will have people out there on both sides of the issue that do things, as Secretary Gale once said, are just beyond good common sense. Yeah, if we lived in a perfect world we could probably...that good common sense and common courtesy would probably suffice. We don't and sometimes some provisions are necessary. I look at things like reading the object statement, which I think was put in in 1995. The purpose behind that was to make sure that each signer was informed of the specific reason that was put on that petition by the sponsors prior to signing. I think that was a good change. As of the result of the Lancaster District Court decision, it appears that is not necessarily...or it is not necessary that it actually be read word for word. I have been approached by petitions where...you know, this one child abuse or this will stop senators from taking bribes, and you point out that that's just simply not true. But those circulators do have some free speech rights. They can sell those things as they want, but what the Legislature did, you know, 12 years ago was say, okay, you can say whatever you want to, but one thing you have to do is you have to give this object statement to inform that signer or that potential signer. And I think that was a good change. [LB575]

SENATOR SULLIVAN: Okay. [LB575]

SENATOR AVERY: Anymore questions? Senator Pahls. [LB575]

SENATOR PAHLS: Well, don't you think what we are doing today is an example of how the process works? Let's say that we as a Legislature overstep our boundaries or put some law out there, the courts get involved, we review, there's a constant conflict resolution. That's how I view this. I may really want to promote something and a testifier here that was earlier said, you're trying to stop my rights. Well, if I am, the courts are going to...and this may get old but that's why we're all about. I mean, this is going to happen. I don't see us as...maybe it appears that we're trying to...and maybe in some cases that does happen, but I think it's... [LB575]

NEAL ERICKSON: And I don't disagree with you. You know, one thing about this process is it has become a process where there is a lot of money involved. And sometimes with the actual enactment of some of these provisions, for example

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gambling, there's a lot of money that may flow from it. That sometimes makes people do some things that they maybe ordinarily wouldn't do otherwise. In addition, it also makes every issue out there ripe for lawsuits because it is a relatively economical way addressing some of these issues. If you're going to spend \$30,000 on a lawsuit or able to get something from being on the ballot, that saves you \$300,000 or \$400,000 in advertising costs that you would have spent fighting it at the ballot box. So it's just kind of the nature of the beast. We come to expect to be sued on practically every issue. It's just the way it works. [LB575]

SENATOR PAHLS: Well, let me ask you this: With your background, do you see a lot of money coming in from not only within the state but outside the state coming in fighting these issues? [LB575]

NEAL ERICKSON: It varies. You know, you'll have some that, you know, maybe funded substantially from instate, but you'll see other ones that are funded substantially out of state. It just kind of depends on the nature of the issue. [LB575]

SENATOR PAHLS: Okay. Okay. Thank you. [LB575]

SENATOR AVERY: Anymore questions? Seeing none, thank you. [LB575]

NEAL ERICKSON: Thank you. [LB575]

SENATOR AVERY: Let the record show this was opponent testimony, not neutral. I had moved to neutral testimony, Neal. I should ask again, are there others who wish to speak in opposition to this bill, LB575? All right. Now we move to neutral testimony. Anyone wish to speak in a neutral position? [LB575]

WILLIAM MUELLER: Mr. Chairman, members of the committee, I am Bill Mueller, M-u-e-l-l-e-r. I appear here today in a neutral position on LB575. I am here today representing the Nebraska State Bar Association. Our concern has been talked about by the committee, and that is on page 5 of the bill, lines 1 through 8. And this is the change in the bill that would require the district court to hold the hearing on a petition matter within ten days after the suit is filed and would further require that the court shall issue a decision within 15 days after the matter is submitted. As you would be aware if you sat in the Judiciary Committee, there are many situations where litigants want their cases expedited, be it a custody situation, a visitation of children situations. I believe that we currently expedite workers' compensation cases and there may be some expediting process with juvenile matters. We are concerned about putting this kind of deadline on the court. I think that Mr. Erickson described it well. The courts are accommodating as much as they can be at deciding these matters. To say that this hearing would be held within ten days is a very short period of time. This is generally an evidentiary hearing where there will be witnesses, there will be exhibits. Significant

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amounts of time can be involved with that hearing. Additionally, the parties have to prepare for that hearing. So if the first notice that you got of this matter was within that ten-day period, that is a very short period of time. To require that a judge issue the opinion within 15 days is basically saying to him or her, once you hear that matter you practically can't do much else for the next 15 days but work on this case. Courts, unfortunately or fortunately, are not sitting there waiting for matters to come to them. Judges have things scheduled. If they don't have things scheduled in their courtrooms, they are deciding matters that have already been submitted to them. Our preference here is to retain the current language that does require that such suits shall be advanced on the court docket and heard by the court as quickly as possible. We think that gives discretion where it belongs, and that's to the court. I'd be happy to answer any questions of the committee may have. [LB575]

SENATOR AVERY: Mr. Mueller, can you see any value in having these cases expedited in the courts? [LB575]

WILLIAM MUELLER: Oh, certainly, certainly, and they are now, they are now. [LB575]

SENATOR AVERY: They are? [LB575]

WILLIAM MUELLER: Absolutely. When one of these is filed, they will go to Lancaster County, and judges attend to those very quickly. [LB575]

SENATOR AVERY: Any questions from the committee members? Seeing none, thank you for your testimony. [LB575]

WILLIAM MUELLER: Mr. Chairman, as you know there have been requests in the past for additional judges in Lancaster County at the district court level and there is actually a bill on General File, LB669, that would... [LB575]

SENATOR AVERY: (Laugh) That does not come before this committee. [LB575]

WILLIAM MUELLER: That did not come through this committee. Thank you. [LB575]

SENATOR AVERY: Anymore neutral testimony? [LB575]

MICHAEL KELSEY: Good afternoon, Senator Avery, members of the committee. My name is Michael Kelsey, it's M-i-c-h-a-e-l K-e-l-s-e-y. I'm the executive vice president of the Nebraska Cattlemen and here to testify in a neutral capacity on LB575. Let me start out by saying our board voted to monitor this bill extremely close, and after much of the testimony today we felt compelled to come before you and to testify neutrally. I would also like to thank Senator Rogert. We've had good conversations with him and his office, and we believe that his intent is extremely pure and his motive in what he's trying

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to do to improve the process of the petition, the petition process. We use the petition process very much in our own industry both on a state level as well as a federal level. A specific example of that would be our beef checkoff system. And there's two different components of that checkoff system that use the petition process. So we're extremely supportive of it and want it to be very open and very thorough in what it does to allow beef producers to voice their opinion in that process. At the same time, our industry has been a victim of the petition process and what we believe is used in a very unfair manner. Now, that may not necessarily be the process itself. It may go more towards those that are using it. And we believe that's what Senator Rogert may be trying to do with this bill is to not necessarily modify the process of petition or the process of citizens to petition, but making sure that those citizens have the appropriate motive and, more precisely, the appropriate way to do it. In other words, it's justifiable, it's ethical, it's moral, and all those...it's sacred in all those types of things. What we would ask is, is would we allow a foreign country to come in and petition our own national government for laws enacted upon our citizens? Well, I think most of us may say, no. And yet we allow foreign or out-of-state folks to come into Nebraska, so just a question for us all to ponder. The second thing, we also hear that the petition process is the second house, and that brings up some questions in our mind. First of all, other states have the exact same petition process that we do, and they have a two-house system. So either they're wrong (laugh) because they have two houses in the petition process...of course, we're not wrong, but at the same time we have some differences there. So what we would ask and we scratch our head is, is the petition process truly the second house? If it is, it doesn't follow the government model that we hold to in this country because what are the checks and balances? The first house has no authority, if you will, to check and balance the second house, in this case, the petition process. And you have that in a legislative body of another state or even our federal government--the house of the Senate and the House of Representatives have a check and balance within their own system. We don't have that with the petition process. So we ask the question then, is the petition process really the second house? It's not consistent with our checks and balances system in that case. Again, we want to be at that the table when it comes to this issue. That's why we're here to testify in a neutral position. We appreciate what Senator Rogert has proposed, and we would simply ask if his idea is pure in that the intent is to better the petition process, then by all means we should support it. If his intent or his idea erodes, then we shouldn't support it. So that is the debate that you all get to have maybe in Executive Session this afternoon, Senator Avery, but at least some time. And we would encourage you to have that debate and consider having it in an open manner. I'd be happy to answer any questions if I could. [LB575]

SENATOR AVERY: Do you have an opinion on whether this erodes or improves?
[LB575]

MICHAEL KELSEY: Well, you're going to make me be either proponent-neutral or (laughter) opponent...very good question. In our opinion as we've looked at this bill, it

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looks like what Senator Rogert is trying to do is make sure that the petition process is pure and follows its intent. If that's the case, and we believe it is, then we think it's worthy of support. [LB575]

SENATOR AVERY: Okay. Thank you. Senator Pahls. [LB575]

SENATOR PAHLS: Have you ever sat down and I'm going to say the other side to see whether they think things are pure? I really have actually liked what you've said today. The checks and balances, we're supposed to have those. And we need to make sure that we have legitimate checks and balances on the petition. But, you know, for some reason it just never occurred to me. I mean, I've heard it. So possibly if both sides, those of the petitioners and those who want to make things "correct," that probably should be something that there ought to be some type of meeting of the minds. [LB575]

MICHAEL KELSEY: Senator Pahls, I couldn't agree with you more. The problem that we've run into is, is so often when you sit down to have this discussion it's centered around one particular petition that either failed or succeeded. And so my emotions run very high... [LB575]

SENATOR PAHLS: Right.. [LB575]

MICHAEL KELSEY: ...and so it's difficult for me to...and when I say me, both parties involved to have a good open discussion about the petition process itself. [LB575]

SENATOR PAHLS: Yeah. [LB575]

MICHAEL KELSEY: And so great question. No, we've not had any success in sitting down to have those discussions. [LB575]

SENATOR PAHLS: So we need to do it without an issue being involved so that... [LB575]

MICHAEL KELSEY: Yes. [LB575]

SENATOR PAHLS: ...either you or I are not so wrapped up in that issue that we can't really see beyond you or I sort of messing around with the other person's idea. [LB575]

MICHAEL KELSEY: That's how we would feel. Yes, sir. [LB575]

SENATOR PAHLS: Okay. Thank you. Thank you. [LB575]

SENATOR AVERY: Anymore questions from the committee? Seeing none, thank you, Mr. Kelsey. [LB575]

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MICHAEL KELSEY: Thank you. [LB575]

SENATOR AVERY: Any other neutral testimony? All right. Senator Rogert, you are recognized to close. [LB575]

SENATOR ROBERT: Thank you. I appreciate your patience. I have a few comments I would like to make. You're darn right this is a constitutional issue. This does not stop or hinder the petition process whatsoever. The question was brought we aren't supposed to interfere. I say, people aren't supposed to break the law. And this bill is an indication of what we should do to people that break the law in the petition process. You know, it also was said it's about the people voting. And I believe it is about the people voting. And having 15-year-olds circulate petitions, they can't vote. People coming into our state circulating petitions, they can't vote here. Also saying that this is coming out of public unions and the universities, sure, that's part of it. Mr. Kramer is a well-known attorney and representative of the Republican Party that ran for U.S. Senate. I don't believe he's a member of public union in any means. This one kind of has always made me kind of smile when folks come and talk about the petition process and us trying to hinder it. Probably the most successful petition group is the antipetition group of Gambling With the Good Life headed by Pat Loontjer. They have very successfully stopped all the gambling initiatives with no money and no paper signature. They have an army of grass-roots people and they make constant allegations to this body that there are violations on every petition that has been circulated in this state. And as soon as I stop hearing hundreds of complaints each year, I'll stop worrying about it. So far that hasn't happened. In 2006, there were several of those petitions being circulated, I think six or seven of them. And I remember going to the College World Series and seeing tables set up around the parking lots, all the petitions just laid out in a pile. Nobody is reading them, the object statements. Nobody has taken claim to any one of them. Just people...they're just gathering people over there and getting them to sign. Whatever they were, they didn't care. They just knew how much they got paid for every signature they got. So I say if you want to lay a petition down and walk away, then people aren't going to sign it then you better hang onto it. Much of this language in this bill has been tested in courts in different states and it stood up. Some of this language has been tried to make it more flowing with our statutes and we'd be happy to have suggestions from the Secretary of State's Office or others to maybe clean some of that language up. I believe there's been a couple of questions about enforceability. There's not penalty listed in result of a violation. Usually that falls back to a Class III misdemeanor if it's not listed. And I believe that the Secretary of State's Office wants to avoid lawsuits for themselves and they want to remain just a neutral facilitator in the process. I say that's fine. That's what this bill helps out with. It puts somebody in charge of taking care of it. The reason nobody is investigating these allegations is because there is no investigatory process that's clear in our statutes, and that's what this bill does. I'd be happy to answer any questions. [LB575]

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SENATOR AVERY: Anymore questions from the committee? Senator Price. [LB575]

SENATOR PRICE: Senator Avery, thank you. Senator Rogert, thank you, again, for bringing this forward. One thing that comes out through all of this, and it's a statement first, so I'll ask you for an opinion, is we're really working hard to protect the people in the petition process. But also comes to mind protecting the process from people who would want to impact it. So there have been times when we have petitions out, and then you hear a blocker is coming in, people impeding the ability of people to sign, and this legislation doesn't seem to address protecting the petition process. Is it your intent that this protects the petition process? [LB575]

SENATOR ROGERT: I would say that if the petition process was followed in a correct and legal manner that those folks that we call blockers wouldn't be necessary. I mean, I agree that a lot of those come upon because of the activities that are done outside of the realm of what we want to do here. This doesn't address that other side of it necessarily. But in my opinion that other side would go away to an extent if the process was followed correctly. I was very disappointed to have this lady come into my office in Tekamah and had the petition last summer that was circulating, I was in the back, I had a few people up front that were just in...they work for me or they were in visiting, and I heard them and I sat there and I listened for a minute. This lady didn't read one word of the object statement. She didn't explain to any true extent what they were signing. She gave her opinion of what would happen if this went through and tried to get people to sign it. That's when I hopped up, ran out front, and promptly removed her from my office because I was just completely unhappy that...I said, if you guys want to sign it, that's your own business, but you have no idea what you are signing. So that is what this is about. [LB575]

SENATOR PRICE: Okay. I understand that, but I am concerned by a comment where it says, we'll do something to impede it because we don't like the way you're operating it. But understood. Thank you. [LB575]

SENATOR ROGERT: Okay. Um-hum. [LB575]

SENATOR AVERY: Anymore questions? Thank you, Senator Rogert. [LB575]

SENATOR ROGERT: Thank you. [LB575]

SENATOR AVERY: (Exhibits 3, 4) That ends the hearing on...I have two letters of support here, one from the Nebraska Farm Bureau Federation, and one from one of my constituents, Nick Swiercek. They are read into the record. That ends the hearing on LB575. We'll now move to LB623, Senator Haar. [LB575 LB623]

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SENATOR HAAR: (Exhibits 1, 2, 3) Senator Avery and members of the committee, good to see you. Well, we have just experienced an election for President of the United States by the swing states of America and my vote didn't count. And the reason for this bill is...frankly the reason was we had heard kind of rumors that maybe another bill would come up that would take Nebraska back to winners take all, so we introduced this bill. But as I'm getting into this I find it really very interesting and very challenging. So in the next few minutes I'd like to talk to a little bit about what the U.S. Constitution says about elections, the President, the shortcomings of the current system, and then how the National Popular Vote would work. And then show you some polling that's been taken about how Nebraskans feel about presidential elections. So I'd like to start with the constitution, and just happen to have one in my pocket. What's so amazing always is this little document is the Constitution of the United States. Article II Section 1: The executive power shall be vested in a President of the United States. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows. And this is what's important, and this was a learning for me. "Each state shall appoint, in such manner as the Legislature thereof may direct." And that's really interesting that the U.S. Constitution leaves the method for electing the electors entirely up to each state. For example, we now just take it for granted that we all get to vote for...you know, and then we all get to vote for the president and then electors go to Washington and make the election happen. But these features that we now experience were not part of the original constitution nor were they installed by any subsequent federal constitution amendment. Instead, all the features currently were established by state laws that were enacted over a period of decades on a state-by-state basis. The winner-take-all rule was used by only three states when the founding fathers went back to their states to organize the nation's first presidential election in 1789. Today, it's used by 48 of the 50 states. A federal amendment, constitutional amendment, was not required nor used to enact the winner-take-all rule in these 48 states. The 48 states simply used the power that the founding fathers gave them to enact this particular model for awarding their electoral votes on a state-by-state basis. The states may change their decision concerning the winner-take-all rule at any time by enacting a different state law. Only half the states participating in the nation's first presidential election gave voters a voice in presidential elections, whereas no state Legislature has chosen the states' presidential electors since 1876, couldn't get by with it anymore. A federal constitutional amendment was not required nor used to confer the presidential vote on the people. States simply enacted state laws implementing this concept. As you know, Maine and Nebraska have a little bit different variation where it goes...the electoral votes go by congressional district instead of winner takes all. The U.S. Supreme Court has repeatedly characterized the authority of the states over the manner of awarding their electoral votes as plenary and exclusive. In short, there's nothing in the U.S. Constitution that needs to be changed in order to implement nationwide popular vote of the president. This change can be accomplished in the same manner as the current system was originally adopted, mainly the states using their exclusive and plenary power to decide the manner of awarding their electoral votes.

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This is all kind of new to me. I've just taken my ability to...you know, to vote in the presidential election for granted. The shortcomings of the current system: There are several shortcomings, all stemming from the winner-take-all rule. Because of the state-by-state winner-take-all rule, a candidate can win the presidency without winning the most popular votes nationwide. In fact, the second-place candidate was elected four times in the history of this country in 2000, 1888, 1876, and 1824. And in this system a shift of just a handful of votes can put a second-place candidate into first place. For example, a shift of just 60,000 votes in Ohio in 2004 would have given Kerry a majority of the electoral votes despite Bush's 3.5 million vote lead in the National Popular Vote. A switch of fewer than 22,000 votes in 2004 in New Mexico, Nevada, and Iowa would have wiped out President Bush's majority in the electoral college. And the other thing, and I think here's where I experience it, is that voters in two-thirds of the states are effectively disenfranchised in presidential elections because they do not live in closely divided battleground states. Under the winner-take-all rule, presidential candidates have no reason to poll, visit, advertise, organize, or campaign in states that they cannot possibly win or lose. In 2008, for example, candidates concentrated over two-thirds of their campaign visits and ad money in just six states, and 98 percent of the resources in just 15 states. This means that voters in two-thirds of the states are ignored in presidential elections. And, again, both of these are caused by the winner-take-all rule not mentioned in the U.S. Constitution. It's not a federal law. It was not the choice of the founding fathers and was used by only three states in the nation's first presidential election. The winner-take-all rule exists only in state laws. States have the power to change these laws at their will. Well, here's how the National Popular Vote system would work: Under the state legislation proposed by the National Popular Vote, the popular vote counts from all 50 states and the District of Columbia would be added together to obtain a national grand total. Then, state election officials in all states participating would award their electoral votes to the presidential candidate who receives the largest number of votes. Now, this would be done by an interstate compact, and these are legal instruments allowed by the constitution, and it would be an agreement that would go into affect by the states and the states could not back out on that after July of the year before the election. So it would be the states agreeing again. A majority of the...the states with the majority if the electoral votes agreeing that whoever got the most popular votes, that's where their electoral votes would go. That's how it would work. And then I have a letter here that shows how Nebraskans feel, and I'd like to get this passed out. In fact, I have another one here as well. The second, the thicker one contains the notes I've been talking from so far. And I need one of those for myself, the one with the poll numbers on it. [LB623]

SENATOR AVERY: Senator Haar? [LB623]

SENATOR HAAR: Yes. [LB623]

SENATOR AVERY: Can we... [LB623]

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SENATOR HAAR: We'll make it short. Okay. We'll keep it...I'll just give you this to look at. And as you'll notice from this document, polling was done in Nebraska as in many other states. And it's interesting that a clear majority of Nebraskans favor the electoral college...that don't believe that the current electoral college system makes much sense. Then finally, and I'll wind up my part of the testimony here, I've got a bunch of questions that you might have to ask about the National Popular Vote. And they come out of this book. This is kind of the Bible of the National Popular Vote. And then if you could hand these out. And these are the myths about the National Popular Vote plan, and as you get these, the ones that interest me the most are the myths about small states...the small states would be disadvantaged, the small states oppose a National Popular Vote, and so on. I would suggest that this would be the good kind of questions to ask the next testifier who can go into some of those questions. I would really encourage you to advance this. I think it would be a lively floor discussion. (Laughter) So thank you so much. [LB623]

SENATOR AVERY: Something we never have. [LB623]

SENATOR HAAR: That's what we need right now, isn't it? [LB623]

SENATOR AVERY: Any questions from the committee for Senator Haar? You must have answered everything. [LB623]

SENATOR HAAR: I don't think so. (Laugh) But, again, I would ask you to take advantage of our next testifier and ask some of these questions that are the tough questions about the national vote. Thank you so much. [LB623]

SENATOR AVERY: Thank you. Are you going to stay for closing? [LB623]

SENATOR HAAR: Yes. Yup. [LB623]

SENATOR AVERY: Okay. Proponent testimony. Welcome. [LB623]

DAN JOHNSON-WEINBERGER: Thank you, Mr. Chairman. Ladies and gentlemen of the committee, it's an honor to be here. My name is Dan Johnson-Weinberger, J-o-h-n-s-o-n-W-e-i-n-b-e-r-g-e-r. I'm an attorney from Chicago. I'm an adjunct law professor at John Marshall Law School where I teach a seminar on election law. I'm a lobbyist in Illinois, and this is my first time in the Unicameral. After having discussed it with some of my legislative friends in Illinois, one of whom has been filing a Unicameral bill every session, says, we've got to follow Nebraska. So I called him from the Rotunda and he was thrilled that I was in the "Unicam." [LB623]

SENATOR AVERY: It works. [LB623]

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DAN JOHNSON-WEINBERGER: (Laugh) I will pass that along. I wanted to share one bit of trivia before going into my testimony. I learned about voting rights at the University of Chicago Law School, and my professor was President Barack Obama. So on this topic you could say it's from the President to you. I want to congratulate the state of Nebraska as well on this particular topic because this state, along with Maine, has shown the nation that the state Legislature has the power to shape how electoral college votes are allocated. And this year in particular because of the Unicameral's actions in 1992 showed the country and indeed the world that by changing the way the state allocates your electoral votes, you can get more attention from the presidential candidates. I understand my former professor, Obama, made at least one and maybe two appearances in Omaha, Vice Presidential candidate Palin appeared as well. And the Second Congressional District was a real hotbed of activity this time. Not so in the First and the Third Congressional District. But in the Second Congressional District because you made the wise decision to move away from the statewide winner-take-all rule and instead have an opportunity that if the political calculus happen to change in one presidential cycle that a congressional district happened to be close, candidates would come in, invest their time, their energy, their resources, but most importantly they would care what the voters of that congressional district thought because to win the votes of the Second Congressional District of Nebraska became crucial to both candidates. And that meant the people of the Second Congressional District became crucial to how President Obama or Senator McCain could have shaped a national consensus and win the election. That was a smart move. Only, you know, you and Maine have done that. And for the first time in the twentieth or the twenty-first century it worked in that it wasn't a statewide winner-take-all allocation. It actually worked where one vote went...you know, there's actually a split allocation of electoral votes. So that concept that by choosing a smarter method of allocating your states electoral votes, which is, as you know, exclusively under your control, you can get more attention from the presidential candidates and thus shape their policy. That's the concept behind this legislation. The bill is now law in four states--Illinois, and I'm proud to say we were the first state to introduce this bill three years ago, so it's a relatively new movement, Maryland, Hawaii, and New Jersey--introduced in about 20 others and passed a bunch of chambers, hasn't passed both chambers in 2009 yet. But the idea is this: What if Nebraska made the independent judgment that the candidate who earns the popular vote in the nation, that's the candidate who ought to be the president. If Nebraska made that independent judgment, that we want to see is a candidate that treats every voter in the entire nation equally. Whether they're in the city of Chicago as I happen to live or in northwest Nebraska, both of those votes are equally important. And whoever can rack up the most votes around the entire country, suburban, urban, or rural, that candidates forged the consensus and ought to get our states' electoral votes. That's something Nebraska could do. Now, no state would want to do that on their own. Right? You wouldn't want to say we're going to give our states' votes to the winner of the National Popular Vote, you know, no matter what happens because it sort of makes you less

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relevant. Right? No one would bother with Nebraska. But if Nebraska joined with 20 or 30 other states all of whom said, we're willing to give our states' electoral votes not to the winner of the statewide popular vote, not to the winner of each congressional district, but rather we'll take our states' electoral votes and give them to whoever gets the most votes in the whole country. If enough other states agree to do the exact same thing so that when you add up all the states that are willing to do that, we have a majority of the electoral college. If that's what Nebraska wanted to do and join with 20 or 25 other states to do it, then that's how within the current constitutional structure of an electoral college we could elect the president who wins the National Popular Vote. I'm going to go over it one more time because it's a bit of a...it's a tricky concept at first. Illinois, Maryland, Hawaii, and New Jersey have made this law on the books. And what it says now: Until enough states join with these four states, nothing changes. The four states use the statewide winner-take-all rule. So in 2008, even though this law was on the books, Illinois' votes all went to Obama. But if enough other states join with those four states, then all of them would say, once you pass that magic 270 threshold, right, just what you need to do...McCain needs to put 270 votes together to win, right, and Obama needed to put 270 votes together to win. Well, if these states put 270 votes together, that's what it takes to win the electoral college, right? And if those states, whatever they happen to be, each say we're going to join with this same interstate compact which is an agreement among the states to cast all of our votes for the winner of the National Popular Vote, then we'd have a National Popular Vote to elect the president. The main benefit of that besides no more feeling of the wrong person won, whichever party, second-place candidate wins, some people feel that there's something wrong about that, that's not the real benefit as I see it. The real benefit is that if you live in the First Congressional District or the Third Congressional District in Nebraska, you and I had the same experience in 2008 because in Chicago the only time any presidential candidate ever came is when Barack came home. Right? There were no rallies. Nobody knocked on our doors, just like no one knocked on your doors if you were in the Third Congressional District because our electoral votes just weren't up for grabs. And in National Popular Vote just like in a statewide election, every vote matters whether you're in a swing area or a safely red or a safely blue area, every vote matters. And so the incentive if it's a National Popular Vote just like a statewide popular vote, just like a mayoral race, every single person you want to pull them out and get them voting for your candidate because turnout matters. Even in the darkest blue or the darkest red area where now because of the statewide winner-take-all rule or the congressional district rule, if you're in a safe district or Nebraska is a safe red state, you know, what's the point? It's run by 65 percent or 75 percent. You don't get anymore electoral votes for it, so there's no reason for turnout. There's no reason for engagement. In the Second Congressional District, there's every reason in the world because 2,000, 3,000 votes you win something, you get the vote. That concept that more votes gets you an electoral result is what happens with every statewide race if it's close. And with a National Popular Vote it's the same concept that every voter, Hawaii, Alaska, Idaho, Massachusetts, as blue or as red as you want, they all count the same. So that's the

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thrust of it. I'd like to spend a minute, if I may, on the Philadelphia Convention because there's a conception that somehow the winner-take-all rule must be what the founding fathers had in mind in Philadelphia. Actually had the chance to read a lot of the debates, really dig into it. It's fascinating. In fact, a National Popular Vote almost was part of the constitution. It lost by a 6 to 5 vote in Philadelphia. They voted by state delegations during the convention. The southern states refused to do it. They refused to have a National Popular Vote. There were more voters in the north than the south, and the south population was, you know, beefed up by slaves. Of course, they didn't vote. And so that was really sort of the...why we didn't get a National Popular Vote in the Philadelphia Convention. But they left it...as Senator Haar said, they left it entirely to the state legislatures to decide. And one of the things they originally thought it would be a deliberative body, that the electors would meet, they'd be the wisest men of the state, and they would decide sort of independently who would be because George Washington was the model, you know, that somebody like him would emerge naturally. Well, that never happened. So the concept of an electoral college which is not deliberative, right, essentially the rubber stamp for what the people voted on, that was never contemplated or discussed in Philadelphia. It was a natural consequence of the politics of having two parties. The way we do elections now, the way we run presidential elections was never contemplated by the founding fathers. So I do believe that...you know, I tip my hat to the Unicameral Legislature in 1992 for really...you know, the only one since Maine in 1969 to say we want to do this differently in order to engage more people and prove it's our decision to make as a state. And this is a relatively recent movement, in closing, is the latest way that I believe is superior because it doesn't rely as the current system does on happening to have a close congressional district. With a National Popular Vote, it doesn't matter whether the district is close or the state is the battleground because every voter in the state is permanently just as important as any voter anywhere else. [LB623]

SENATOR AVERY: Thank you, sir. [LB623]

DAN JOHNSON-WEINBERGER: Thank you. [LB623]

SENATOR AVERY: I have a question. [LB623]

DAN JOHNSON-WEINBERGER: Yes. [LB623]

SENATOR AVERY: You have four states. [LB623]

DAN JOHNSON-WEINBERGER: Yes. [LB623]

SENATOR AVERY: How many electoral votes do those states represent? I could find out, but... [LB623]

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DAN JOHNSON-WEINBERGER: 50. [LB623]

SENATOR AVERY: 50. So you have over 120... [LB623]

DAN JOHNSON-WEINBERGER: Nineteen...yes. [LB623]

SENATOR AVERY: ...more to go. [LB623]

DAN JOHNSON-WEINBERGER: Yes, we're 19 percent of the way there. [LB623]

SENATOR AVERY: No, you'd need 270, so you really have more than that. Why not take Nebraska/Maine model... [LB623]

DAN JOHNSON-WEINBERGER: Um-hum. [LB623]

SENATOR AVERY: ...and why not take that nationwide... [LB623]

DAN JOHNSON-WEINBERGER: Yup. [LB623]

SENATOR AVERY: ...rather than this because what you do with this one is that you ignore the vote in your own state and you vote the national trend, and are you not in a sense saying your vote surely don't count, we're going to go the other way? I mean, let's say that Nebraska is going to vote Republican... [LB623]

DAN JOHNSON-WEINBERGER: Um-hum. [LB623]

SENATOR AVERY: ...and the country goes with the Democrat,... [LB623]

DAN JOHNSON-WEINBERGER: Um-hum. [LB623]

SENATOR AVERY: ...and then Nebraska electors would be bound in this compact to vote with the national candidate, right? How do you explain that to the voters in Nebraska? [LB623]

DAN JOHNSON-WEINBERGER: Well, Mr. Chairman, I understand you're also a professor. [LB623]

SENATOR AVERY: I was. [LB623]

DAN JOHNSON-WEINBERGER: That's right. (Laugh) So Professor Chairman, it's an excellent question. There are two questions that I heard you ask. The first...the second had to do with, what happens if Nebraska statewide votes red and, say, in 2008 the country votes blue. You know, in 2004 it's not as much of a concern Nebraska votes

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red, the country voted red, so not a real concern. But this time, say, ignoring the Second Congressional District for a while, fair, so let's assume that Nebraska and the statewide winner-take-all rule for everything, how do you justify that Nebraska would vote blue if 60 percent of the people voted red? Well, the idea is if Nebraska made a judgment ahead of time, we want the National Popular Vote to be more important, but of course Nebraska's votes are part of the National Popular Vote. So you wouldn't ignore Nebraska, you would say Nebraska is part of the entire National Popular Vote. If ahead of time everyone said, well, you know, that's what our judgment is going to be that that's where we want Nebraska's votes to go, I think there wouldn't be much of an uprising among the citizens who mostly aren't aware of the electoral college, and when they become aware of it find it often in odd distortion. They often feel that when I vote for president...on election night when I see there were 55 million people that voted for John McCain, I was one of them. And if McCain lost and Obama won and I voted for McCain, well, as long as my vote was part of McCain that's okay for me. I suspect that's how most voters feel. There are certainly some that feel...you know, there were some bumper stickers...a 1984, don't blame me, I voted for Mondale, right, only in Minnesota. (Laugh) But they said...but that was it. But they didn't say, don't blame me, Minnesota voted for Mondale. It said, don't blame me because I voted for Mondale. And so I think the concern that Nebraska would then vote for the winner of the National Popular Vote even if Nebraska went a different way, I think most voters feel a more personal attachment to their vote. To your first question, why not export the Nebraska/Maine model? Well, the benefit of the Nebraska model is it's superior to the statewide winner-take-all rule. If you didn't make that move in 1992, Sarah Palin and Joe Biden and Barack Obama would not have come to Omaha clearly. There would be no reason because Nebraska was red in 2008 and it wouldn't have mattered if he won the Second Congressional District, there wouldn't have been a reward. So you're a step ahead of the game by having an incentive for people to come to your district, to one of your districts. Well, the downside is it relies on having a competitive congressional district which may or may not occur one year. So if Nebraska happened to be like Florida or Ohio which happens to be a battleground state, the statewide winner-take-all rule would be working pretty well because people would be flooding the entire state. If Nebraska were Iowa and happened to be closely competitive in this time, well then you'd be one of the winners of the statewide winner-take-all lottery, as we like to think of it, because you'd get all the attention. And thus public policy would shift around what you care about. But because Nebraska is not in two of the three congressional districts are safe and not a battleground or a swing district, they don't get the attention and they're not central and crucial to how you get elected a president. And so those voters just don't matter as much. [LB623]

SENATOR AVERY: Any questions from the committee? Senator Price. [LB623]

SENATOR PRICE: Thank you, Senator Avery. Sir, just to elaborate perhaps on what Senator Avery was saying. What I'm hearing is if we go on National Popular Vote,

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Florida, California, and New York, highly densely populated states become the place that gets all the lottery winners, and the lower populated states wouldn't see hide nor hare of anybody because it would become mind over matter; they wouldn't mind because we wouldn't matter anymore. [LB623]

DAN JOHNSON-WEINBERGER: (Laugh) That's cute. [LB623]

SENATOR PRICE: All right. So that that you were talking about that may have happened in the First and Third District would become the reality for all of the central states that don't have the population centers, because it's not too hard to do the math when you add up all of the border states... [LB623]

DAN JOHNSON-WEINBERGER: Um-hum. [LB623]

SENATOR PRICE: ...we wouldn't be anywhere in the picture anymore. [LB623]

DAN JOHNSON-WEINBERGER: Well, I appreciate the concern. I think there is a widespread feeling that somehow the cities must have a majority of the population and that the urban centers would dominate if we had a National Popular Vote. I'd raise a couple of points, and I appreciate the question. The first is there are 3 million people that live in the city of Chicago, and there's just shy of 2 million people as I understand that live in the state of Nebraska. Right? Chicago is our third biggest city. So already if you think if I'm a strategist should I only focus on the city of Chicago or can I get almost as many votes in the state of Nebraska? If you add up the populations of the top five biggest cities in the country, New York, Los Angeles, Chicago, Houston, and Philadelphia, it's about 6 percent of the population of the country. You know, it's a lot, but it's not dominant. You know, there's 10 million people in New York, there's 4 million in L.A., there's 3 million in Chicago, there's about 2.5 million in Houston, and there's 2 million in Philadelphia. There's 300 million people in the country. So rural areas, you know, they're not dense, there's a lot of people that just happen to be spread out. But those numbers, and I think the strategist of the 2004 Bush/Cheney campaign understood this better than almost anybody, there's a lot of votes in rural America. You know, you just got to amp it up. And so while if you look at, you know, one city block, there's a ton of people there. But the number of people in the city, you know, all combined aren't as much as there are in suburbs and exurban and rural communities around the country. Finally, and I've never worked on a statewide Nebraska campaign, but I would imagine that even though the population center is in Omaha in, you know, a quarter of a million of people here in Lincoln, I'd imagine a lot of statewide campaigns are run and a lot of activity and energy is focused on the rural parts of Nebraska. If that's true, then it stands to reason the same is true if you do a National Popular Vote. I can tell you from experience in Illinois there's a lot of activity that happens down state, as we call it. And the city gets its attention and so do the suburbs, but all of the agriculture areas and the rural areas in downstate Illinois, that's where a lot of elections

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are won and lost. [LB623]

SENATOR AVERY: Anymore questions? Thank you, Mr. Johnson-Weinberger. You're part of a national organization, right? [LB623]

DAN JOHNSON-WEINBERGER: That's right. There is a national group that's...it's based out of California, and I had worked with them in Illinois. And then when I found about this opportunity to come to the "Unicam," I pounced (laugh). [LB623]

SENATOR AVERY: Well, thank you for taking the time to visit our state. [LB623]

DAN JOHNSON-WEINBERGER: My pleasure. I really appreciate the time. [LB623]

SENATOR AVERY: Stick around, the weather gets better (laughter) eventually. Any other proponent testimony? Any opponent testimony? Mr. Erickson. [LB623]

NEAL ERICKSON: (Exhibit 4) Chairman Avery, members of the committee, once again for the record, Neal Erickson, deputy Secretary of State for Elections here on behalf of Secretary of State John Gale. And I do have a letter from him on this matter. The top one is the original, so. A few items just from the testimony, I think, Senator Haar has left. I would like to assure him that, yes, his vote did count. He may not have liked the outcome, but his vote was counted. So I'd like to make that clear for the record to begin with. You know, Secretary Gale and I have discussed this bill and we've talked about the winner-take-all system. We get questions every cycle, every presidential cycle about our system that uses a congressional district base. And I've read the materials on the National Popular Vote. And, you know, you had talked about our system, why not our system. You know, there's some interesting aspects out there. In 1796, Virginia used a split, a district-type system for allocating its electoral votes. And it cost Thomas Jefferson the election in 1796 because the state of Virginia did not go totally for Thomas Jefferson, and he lost to John Adams. I'm not here to fend the winner-take-all system. You know, I'm not here necessarily to fend the electoral college system. But it is something that is in our constitution at this point in time. And what this compact does is find a way around the traditional approach to amending our constitution. You know, and if so be it, eliminating the electoral college by using a compact system that allows it to remain intact within our constitution. We've amended the constitution with regard to the electoral college before the Twelfth Amendment, changed the way those electors voted. Instead of having two people, voting for two people for president of which one had to be a nonresident of their home state, we went to voting for one for president and one for vice president. Senator Exon introduced a constitutional amendment in 1992 regarding electoral college. And, you know, contrary to, you know, what the previous speaker might have said, Secretary Gale feels that it would impact smaller states. You know, the three criteria that the National Popular Vote movement pushes and evaluates every election system by is that: Does it make each state competitive; does it reflect the

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popular vote; and does it make every vote equal? We've heard a lot about making each state competitive, that we go to a national vote system, everybody is equal, we're going to see people flock here. Well, we should have seen that with our congressional district as well, we did see it in the 2008 cycle. In the 2000 cycle, we did not receive any presidential candidates, neither Gore nor Bush showed up. We did not see any vice presidential candidates in Nebraska, Lieberman nor Cheney showed up. We did not see president's wives. Tipper or Laura never showed up. What we got, we got vice president's wives, and it just kind of happens to be kind of the pecking order. Where campaigns choose to allocate their resources is something that they decide. It's not something necessarily that we change a system and everybody is going to be getting direct mail. The previous speaker talked about Chicago. Yeah, maybe it only has 3 million people. We look at the Omaha metro area that is growing larger and larger. But there's other factors that go into it, media costs, how many people are you going...what bang are you going to get for your buck that's expended? You know, we saw President Obama spend a great deal of money in the Second Congressional District this time. Was it because that that electoral vote was absolutely necessary to his election? It turned out not to be. At one point in time there was some people that thought it might be, and that's why those resources were spent there. You've got Secretary Gale's letter, and I think that explains the position on it. You know, I think the position overall would be if we feel there's a problem with the electoral college--and maybe that's true, maybe the national vote is, you know, something that the people want--let's go through the process that we're supposed to go through. And that is amend the constitution, change it, rather than using kind of this back door compact idea that doesn't really solve the problem. It still allows the electoral college to remain within the constitution. With that, I'd be happy to answer any questions you might have. [LB623]

SENATOR AVERY: Do you think the electoral college is inherently nondemocratic? [LB623]

NEAL ERICKSON: Nondemocratic in the sense...if you're speaking nondemocratic in the sense that each person has an individual voice in it, no it's not. But then again truly representative government is not, a republican system is not either. [LB623]

SENATOR AVERY: Questions from the committee? Seeing none, thank you. [LB623]

NEAL ERICKSON: Thank you. [LB623]

SENATOR AVERY: (See also Exhibit 5) Any additional opponent testimony? Any neutral testimony? Senator Haar has left. Tom? All right. He waives closing. That ends the hearing on LB623. And we'll now move to LB674. Can somebody find Senator Nantkes for us? Nick, see if you can find her? [LB623]

NICK BUSSEY: She's on her way, Senator.

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SENATOR AVERY: Okay. (Recorder malfunction)...LB674. One, two, three, four. I may have to leave because I have to appear before Appropriations. In which case I'll pass off to Senator Pahls. Senator Nantkes, we have been waiting. (Laughter)

SENATOR NANTKES: I'm sorry. It's a long walk from Appropriations in three-inch heels. (Laughter)

SENATOR PRICE: I'll take your word on that.

SENATOR AVERY: Welcome.

SENATOR NANTKES: Good afternoon, Chairman Avery, members of the committee. My name is Senator Danielle Nantkes, that's D-a-n-i-e-l-l-e Nantkes, N-a-n-t-k-e-s, representing north Lincoln's "Fighting 46th" Legislative District. I'm here today to introduce LB674. LB674 was brought to me by the University of Nebraska, and would establish the legal requirements for an internal auditing system. It would prohibit nonpublic information from being disclosed as a result of the audit, and would provide that working papers would not be public information. This would allow confidentiality for employees or others to openly discuss issues with the internal auditor. Public records included in the audit would remain public records. There is an amendment that has been drafted by the university to clarify this legislation. The effect of the amendment would do three things: It would (a) reiterate that public documents would remain public, (b) add an auditor, adds the Auditor of Public Accounts to the list of those who can review, (c) adopt state of Nebraska whistle-blower policies, and makes the internal auditor as one of the people that can receive such information in privacy. Ultimately the purpose of this bill is very simple. It's to make it easier for persons who see taxpayer dollars being wasted to tell somebody about it without the threat that their identity would become public--basic whistle-blower protections that we're all familiar with. A couple of things to remember: This legislation would allow the internal auditor of the university the exact same kind of protection currently afforded under Nebraska law to the Auditor of Public Accounts and to our own Legislative Performance Audit Committee. So these are not new concepts, but rather would provide parity for the university system. There are those who will follow me today who can explain more fully the reasoning behind the bill and also if you have any questions about the legislation or the amendment that I talked about in my opening. I'm eager to work with the committee and those who have thoughts on how to improve and move this bill forward. And with that, I'd be happy to answer any questions. [LB674]

SENATOR AVERY: Thank you. I may start, if you don't mind. [LB674]

SENATOR NANTKES: Sure, sure. [LB674]

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SENATOR AVERY: I have discussed the amendment with Mr. Withem. [LB674]

SENATOR NANTKES: Great. As usual, you've done your homework. [LB674]

SENATOR AVERY: Well, maybe not enough of it. Is it your opinion that the amendment deals adequately with the questions raised by these faculty senate and in the Lincoln JournalStar editorial? [LB674]

SENATOR NANTKES: Well, I think that, you know, the good news is in how we conduct our business and the legislative processes that through the media and a variety of other venues people who are interested in these bills have a way to weigh in with their support, opposition, or concerns. I think the university has been proactive in drafting legislation to allay those potential concerns. It's definitely a great step forward in how we look at this bill. I think that unfortunately as things do spring up in the media that sometimes misinformation can get the best of the media and the public. And that really if you look at the language of the bill and its very clearly stated intent that, again, it's really about parity and protection for whistle-blowers who are operating within the university system and concepts that are very, very familiar to us. So there really is not an insidious intent involved here, and anybody who would try and say that there is may be reading too far into things. [LB674]

SENATOR AVERY: Thank you. Any questions from the committee? [LB674]

SENATOR SULLIVAN: Senator Avery. [LB674]

SENATOR AVERY: Senator Sullivan. [LB674]

SENATOR SULLIVAN: Thank you very much. Well, I'll admit that I'm probably not as familiar as I should be with whistle-blower concepts, and I'm trying to figure out the responsibilities, duties, parameters of a chief auditor. But, okay, if someone discovers fraud in the process,... [LB674]

SENATOR NANTKES: Um-hum. [LB674]

SENATOR SULLIVAN: ...then they disclose it, then they essentially according to this bill they're committing a crime. Is that right? [LB674]

SENATOR NANTKES: Well, I think that...and let me be clear, Senator Sullivan, I don't pretend to be an expert in terms of auditing. I'm a brand new member of those legislators Performance Audit Committee. And so I've been learning a lot about these statutes as well, and I know that there are representatives available from the university who will follow behind me who can talk specifically about how their process exists now and how it would be impacted by this legislation. So I'm probably going to defer to them

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not to be evasive, but just so that you have the most accurate answer that you can have. [LB674]

SENATOR SULLIVAN: Okay. That's fine. Thank you. [LB674]

SENATOR AVERY: Any other questions? Seeing none, thank you. Are you going to stay around? [LB674]

SENATOR NANTKES: I will. [LB674]

SENATOR AVERY: You will. Okay. Good. Proponent testimony. Mr. Withem. [LB674]

RON WITHEM: (Exhibits 1, 2) And I have some handouts for the committee members, and this would be the testimony. Senator Avery, members of the Government Committee, my name is Ron Withem, R-o-n W-i-t-h-e-m. I'm the registered lobbyist for the University of Nebraska here to present LB674. And I will be talking about the general philosophy behind the bill. And we have Mike Justus with us here today who is the internal auditor for the university who I think can respond to specific questions like the one that Senator Sullivan raised. Senator Avery, members of the Government Committee, the passage of LB674 will improve our existing audit process and help the university become more accountable for our use of taxpayer funds. I want to thank Senator Nantkes for assistance in addressing this issue, as well as the committee for its attention and concern to these matters. The university takes seriously its obligation to spend tax dollars wisely and to be open about how it is done. The Board of Regents has adopted a strategic framework that clearly sets out priorities, and one of them is efficient and effective use of funds. Part of our efforts to assure accountability for the use of public funds has been the development of a much stronger internal audit function. The State Auditor has his responsibilities for auditing state agencies and we are accountable to that office. However, we also have our own obligation as a very large state agency with a \$1.8 billion budget to have a robust internal audit function. A few years ago, we created a new Board of Regents audit committee to do what private corporation audit committees do: Make sure we have an environment of good controls and best practices for the university. Also, President Milliken hired the first university director of audit who now has enlarged the auditing staff. Our current audit director, who you will be hearing from shortly, was the chief professional in a former State Auditor John Breslow's office. So we have the built in understanding of the importance of both roles, the role of the State Auditor and the role of the internal audit function. We feel good about the progress we're making, and LB674 is designed to provide the university's audit function with the tools needed to implement best practices and operate effectively. The purpose of LB674 is simple. I think I mentioned to Senator Avery today that this bill, there really is less to it than has been made so far; there's less here than meets the eye, perhaps. First, it requires that all final audit reports done by the internal auditor are to be maintained as a public record. Second, LB674 prohibits nonpublic information from being disclosed as a

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result of the audit and provides that the working papers supporting an audit are not public information. This provides confidentiality for employees or others to openly discuss issues with internal audit. Public records included in the working papers will remain public records. And I think this was a concern people had originally. There was a fear that what some bad players may do is simply declare a document part of an internal audit and keep it from the public or public view. That is not the intent, and if you adopt the amendment that will not be the reality. If a record is public today, under public record statutes, it will remain public even if it is part of the information used by the internal auditor. Finally, LB674 would establish criminal sanctions to ensure that confidential records reviewed by the internal audit remain confidential. In setting up the structure for the university's internal audit practices, the drafters of LB674 borrowed the statutory language directly from the existing statute relative to the State Auditor. If there are concerns about some of the language of the bill, we are amenable to discussing potential amendments, but in doing so, we would recommend addressing similar concerns in the Auditor of Public Accounts statutes. Since the introduction of LB674, there have been a considerable number of questions raised. As Senator Nantkes indicated, we have an amendment for your consideration. We believe the amendment addresses most, if not all, of the concerns we have heard. First, we are clarifying that the public nature of any record that is part of an audit does not change. For example, our auditor may be doing a review of spending in a department. In doing so, he may be reviewing a number of records such as receipts, invoices, vouchers, memos, etcetera. Under current law, these documents are public and subject to disclosure upon request. This bill does not intend to change this. It only affects the new notes and other papers the auditor creates during an investigation. This, again, is the same as with any audit done by the State Auditor. In addition, the amendment also states that the State Auditor also has access to our internal auditor's working papers, and it also includes language assuring employee whistle-blower protection against retaliation. We have been and continue to be willing to address concerns about the bill, and think the amendment does so while also pointing out the similarity of LB674 to existing law for the State Auditor and legislative audits. In closing, LB674 is intended to shore up a robust audit function at the university as an additional, not a substitute, tool of accountability. Mike Justus, as I indicated, will be testifying today. If you have any specific questions, feel free to ask him. If you have generalized policy questions, I would try to respond to those. [LB674]

SENATOR AVERY: I have one. [LB674]

RON WITHEM: Very good. [LB674]

SENATOR AVERY: Thank you for your testimony. What exactly are we trying to fix here? What's broken? [LB674]

RON WITHEM: I don't know if anything is particularly broken. We just want to ensure that it's not, and if there are things that are broken, we want to have a system in place to

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address those. [LB674]

SENATOR AVERY: And the current system does not? [LB674]

RON WITHEM: Current system does not have an internal audit function available and we don't currently assure employees anonymity when they're dealing with internal people. And with a \$1.8 billion budget with the number of employees we have there's always the possibility that there will be mistakes made, that the possibility that there will be bad actors. And if there are bad actors, people behaving improperly, we want to get to the bottom of that and have a system set up for individuals to report what they suspect to be improper behavior. [LB674]

SENATOR AVERY: Any questions from the committee? [LB674]

SENATOR PRICE: Yes. [LB674]

SENATOR AVERY: Senator Price. [LB674]

SENATOR PRICE: Mr. Chairman, thank you. Mr. Withem, thank you very much, sir. Two questions. First off, just a point of clarification. We talk about an internal auditing system, we're talking about a process not a IT system or that includes that so we'd have to buy more software, hardware, and things or is this just a process? [LB674]

RON WITHEM: Right now as I understand it and, again, Mike can correct me when he comes up if I misspeak, but it consists of a committee of the Board of Regents that sets up the policy, and I believe there are two employees that function in this area. [LB674]

SENATOR PRICE: Great. And secondly, when we talk about a public record remaining public, and I see that here in the amendment, in this situation where someone would come up and make a request for a public document that's currently being reviewed by this audit, would that record be unavailable to the public then at that time? [LB674]

RON WITHEM: My understanding it would not be. If the public record is a public record, then it is public. And there is a statute I think that this committee deals with from time to time indicating what records are public, which are not, the right of a citizen to request, the time period in which the public entity has to respond. So that would...I do not believe that it being a part of the auditing process would affect the public nature of the document at that point. [LB674]

SENATOR PRICE: Right. To make sure it's always available and not like in a box in another room and unavailable. Great. Thank you. [LB674]

RON WITHEM: We do have copy machines in the university, so we could... [LB674]

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SENATOR PRICE: That's good. [LB674]

RON WITHEM: We could make that available to them, I believe. [LB674]

SENATOR PRICE: Thank you. [LB674]

SENATOR AVERY: Anymore questions? Seeing none, thank you, Mr. Withem. [LB674]

RON WITHEM: Thank you very much. [LB674]

SENATOR AVERY: Additional proponent testimony. Excuse me, I have to go to another hearing. Senator Pahls will take over for me. [LB674]

SENATOR PAHLS: The floor is yours. [LB674]

MIKE JUSTUS: Good afternoon, Senator Pahls and members of the Government Committee. My name is Mike Justus, M-i-k-e J-u-s-t-u-s. I am the director of the internal audit for the University of Nebraska, and I am here to testify in favor of LB674. This bill strengthens our existing internal audit function by providing protection to employees under the whistle-blower act and by requiring that the work papers supporting our audits are not public information. This makes it much more likely that an employee will talk with us freely during an audit. In my past life, I have worked for a big four accounting firm, been the deputy State Auditor, and for a short while, the DAS accounting administrator. My primary purpose in appearing here today is to answer any technical questions you may have. The university takes seriously its responsibility to manage taxpayer money as efficiently and effectively as do I. This is just another tool to help us do that. One thing I've been asked to do is try and describe a little bit of what are we talking about here. What is this working paper thing that we're trying to make not public? In years past you may have seen your auditor come out and he'd have a three-fold yellow sheet of paper that he would attach if we were doing an audit of travel perhaps. Your travel reimbursement, you put your number of miles traveled and your rate and how much you're getting reimbursed and maybe a meal. And we'd attach that to the work paper. Those travel reimbursements are public documents. This bill would not change that. Those are still public documents. If somebody came to look for that just because I was doing an audit, they can still see them, they can have that document. No change. What we would like to make private are the notes that I would...notes and tests that I would do with those documents. For example, we might say: Did they use the right rate, yes or no? Did they calculate the reimbursement correctly? Miles times rate, yeah, it's right. Did the employee sign it? Did their supervisor sign it? Did somebody recalculate the rate and document that they did that? Those sort of tests would be documented on the work paper. That's part of my working papers. Another part might be notes. The clerk takes the document from the employee and actually recalculates it and walk through the

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description of the process that happens that she actually documents. Then once she's done with it, what she or he do with that document, passes it onto the supervisor for their...to actually sign the document. So there's a variety of tests and notes about how the process works that would be there. And then ultimately there's probably a conclusion on they met the objectives of our test was to make sure that we paid the people the right amount when we were all done. So that's what we're trying to protect is those tests and the notes that you would have. Now, most of those notes probably aren't anything that would be a big issue with anybody or a concern. But when you do have a situation where you have an employee who would come and say: You know, boy, I think this guy over here is stealing us blind. And then they go and give you two pages of notes about how they're stealing and what they're stealing and when they did it. Those are the kinds of things that we would want to make sure that (a) the employee is protected, and that there wouldn't be any retributions under the whistle-blower act. But also that that information wouldn't be disclosed to somebody who'd come in and try to look at our work papers. That's a very brief overview, and I'd be glad to answer any questions. [LB674]

SENATOR PAHLS: Senator Sullivan. [LB674]

SENATOR SULLIVAN: Thank you, Senator Pahls. Okay. I understand the difference between the public and the private information. [LB674]

MIKE JUSTUS: Okay. [LB674]

SENATOR SULLIVAN: But then they go the next step, if in the process of the review of that information you discover that there's fraud and that person that discovers that discloses that, is that person guilty of a crime? [LB674]

MIKE JUSTUS: No, no. The whistle-blower act, in fact, would protect them from being prosecuted for anything, for even disclosing the fact that it may have been a crime. If they disclose something to us and there was a fraud, it would very likely or I don't know why it wouldn't come out in our report. All of our reports would be public information and it would stay public information forever. That report is a public document. If you're asking if they report a fraud and we didn't report it in the document for whatever reason, would one of our auditors be punished if they disclose that to the press? [LB674]

SENATOR SULLIVAN: Um-hum. [LB674]

MIKE JUSTUS: Perhaps if they disclose it to the press, but there are other options available to them. The county attorney or Attorney General have a right to know that information and they can talk to them. They could probably go to the Ombudsman Office and report it too. That's one of the people in the whistle-blower act. There would be documents in the work papers that would report that fraud that the clerk had reported

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to us. There would notes there that would be in the work papers that, for example, a State Auditor could come in and look at after the fact and we'd still see that, that note would still be there. So there are a lot of options available there. [LB674]

SENATOR SULLIVAN: But there is some potential liability there... [LB674]

MIKE JUSTUS: Yes. [LB674]

SENATOR SULLIVAN: ...for the person that's disclosing that. [LB674]

MIKE JUSTUS: Not for the person disclosing. I don't see anywhere that the person disclosing the information would ever be at risk if this bill was passed. This gives them the protection so that they can report the information without being at risk. [LB674]

SENATOR SULLIVAN: Okay. [LB674]

SENATOR PAHLS: Senator Price. [LB674]

SENATOR PRICE: Senator Pahls, thank you. Sir, so am I to understand are work documents now protected or are those private...are they public records? [LB674]

MIKE JUSTUS: Right now the internal auditor's work papers are not protected. [LB674]

SENATOR PRICE: And so they are public documents? [LB674]

MIKE JUSTUS: They are public documents. [LB674]

SENATOR PRICE: So we would be denying the public something. [LB674]

MIKE JUSTUS: Yes. [LB674]

SENATOR PRICE: And is there the sophistication within a work document structure to capture whistle-blower-sensitive information in a section that could then be sequestered or redacted before being made public? [LB674]

MIKE JUSTUS: Probably not very easily. Again, every situation is going to be different. [LB674]

SENATOR PRICE: Sure. [LB674]

MIKE JUSTUS: But for example if you had a fraud where somebody was taking inventory and moving cash around, that's not going to happen in one section of the work papers. It going to happen in multiple places. You're probably going to do a variety of

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tests to make sure that what you've been told is correct. So you're going to have notes in a number of places. Could it be redacted? Probably it could, yes. The piece that would make me nervous is if you attached the penalty for disclosing information, and if somebody missed redacting something, then they're subject to the penalty. So that could be a little bit problematic, especially if you were having somebody that wanted to look at the work papers three years down the road, there might not even be anybody there who did the audit. And so a staff person would go through and redact not being familiar with the audit even and still be subject of the penalty of disclosing information. So that could actually be problematic. [LB674]

SENATOR PRICE: Okay. Thank you. [LB674]

SENATOR PAHLS: Any questions? Let me use your expertise here, this is a little bit off the subject. If I work for in the university system and is there a program set up if I could save the university system some money that you would incentivize me by giving me a percentage of it? Is that in the system right now? [LB674]

MIKE JUSTUS: I don't think there's a university process specifically, but if I remember right, there's a state statute that sets that up that they could be rewarded if they could identify a process. [LB674]

SENATOR PAHLS: That's for the university or for the state? [LB674]

MIKE JUSTUS: I think it applies to all state agencies. Again, I'm not... [LB674]

SENATOR PAHLS: Well, the only reason I'm questioning that is I did a couple of years ago help move that incentive package up, but I couldn't get the university to get too excited about it. So that's why I was wondering. This is just information gathering thing for me. [LB674]

MIKE JUSTUS: Yeah. [LB674]

SENATOR PAHLS: I thought if there were that incentive...because I think it's great because I did see on some of the people did save the state some money because they said, well, if we do this. I'm not talking about minor items,... [LB674]

MIKE JUSTUS: Yeah. [LB674]

SENATOR PAHLS: ...but major things, they get a percentage which is a pretty nice...and that's the only reason I didn't know whether that would cross your desk. [LB674]

MIKE JUSTUS: Yeah. I don't remember the statute specifically. [LB674]

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SENATOR PAHLS: Okay, then that's... [LB674]

MIKE JUSTUS: But I'd be glad to get a look into it and find out. [LB674]

SENATOR PAHLS: Okay, okay, okay. I would appreciate that. Seeing no...we thank you for your testimony. [LB674]

MIKE JUSTUS: You're welcome [LB674]

SENATOR PAHLS: Anymore proponents? Any opponents? [LB674]

JACK GOULD: (Exhibit 3) Senator Pahls, members of the committee, my name is Jack Gould, that's G-o-u-l-d, and I'm here representing Common Cause Nebraska. I'm going to read my testimony and then I may have a few comments at the end. Common Cause Nebraska is not in opposition to the concept of an internal audit, but we are concerned about how the audit is used and what is defined as working papers. If an audit is directed at a specific departments or budgets rather than a comprehensive study of the university program, it can create a distorted picture that may or may not represent the larger view. The working papers of independent auditors are considered confidential and protected by law. If the definition of a working paper is liberally interpreted, it could include what others might call a public record. We oppose LB674 because the University of Nebraska has not been forthcoming in the past with requests for public documents and because it has, at times, attempted to circumvent the law. From 1998 through 2002, Common Cause attempted to track the University of Nebraska lobbying money. We requested information regarding tickets to athletic events, tickets to the Lied Center, passes to the Cook Center, special dinners for state officials, and golf outings. We were often told that the lists of participants we requested did not exist and the university was not required to create such lists. It was only after extensive correspondence, many phone calls, involvements of the press, and the threat of legal action that we were able to gather this information. I've attached a copy of an Associated Press story from February 24, 2002, that questioned lobbying practices by the University of Nebraska and the University of Nebraska Foundation. The article mentions a complaint filed by Common Cause Nebraska and a \$700,000 discretionary fund given by the foundation every year to the university to spend "as it wishes." When Common Cause asked for an accounting of the \$700,000, we were sent a copy of the entire university budget. I took the budget to a professional auditor and asked if we had any chance of finding the discretionary funds. The answer was, no. In 2004, the university presidential search committee circumvented the open meetings laws by holding secret meetings in Kansas City to avoid public scrutiny. In the years that followed, the university supported legislation that dramatically limited public access to information about candidates for administrative offices. Last year while economic conditions declined, university administrators requested regent approval of raises for

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themselves amounting to as much as 19 percent. The bulk of funding would come from the foundation dollars to save tax dollars. During the brief presentation, there was no mention of the huge benefits already being provided by the foundation. Benefits of well over \$100,000 per administrator were not even discussed. Although the University of Nebraska is a public institution, it refuses to give a full accounting of how foundation funds are used. Deferred compensation, expense accounts, housing allowances, supplemental retirement, automobiles, country club memberships, travel for spouses, lawn care, snow removal, housekeepers, and then again that \$700,000 discretionary fund all flow from the foundation, but there may be more. Independent audits could result in even less visibility. That \$700,000 discretionary fund is something that we asked for an accounting of and didn't get. If you read through the article, quotes from the university as well as from the foundation, it would indicate that the process is one in which the university asked the foundation for checks, and that the discretionary fund probably exists within the foundation and not within the University of Nebraska. Internal audits that might deal with those checks that flow back and forth could consider those checks as being working papers, information that would not be given to the public. Our concern is that this working relationship between the foundation and the university needs to be exposed. This is a public entity and the public has a right to know all sources of revenue. Once the money leaves the private foundation and comes to the university, it should be completely visible. And we're concerned that that isn't happening and that an internal audit isn't necessarily going to make that more visible but rather make it harder to find. [LB674]

SENATOR PAHLS: I have a question. Your concern is not necessarily with the tax dollar that we give to the university. You're concerned about the foundation. Is that your major...am I to pick up from what you're telling me it's the foundation relationship with the university, not necessarily the tax dollar that we appropriate? [LB674]

JACK GOULD: Well, I think it's all interrelated. I mean, you have to look at the university has a tremendous number of programs to finance. And so they have really three major sources of funds. I mean, they have tax dollars, they have tuition money which they're raising, and they have foundation funds. If you don't get a complete view of the whole flow of funds, then you really don't know how the money is going. In other words, you know, if you come down and say I'm going to use money for tax dollars to cover this, but I can always go to the foundation and get this money to cover that. It's not a clear picture. And unless, you know, we get a full view of how this process goes, then I don't know how we can even approve tax dollars or even approve the increase in tuitions. [LB674]

SENATOR PAHLS: And you're telling me past practices are leading you to tell me that future practices will be in question also. [LB674]

JACK GOULD: I'm saying that an internal audit could end up being a way of hiding

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information in working papers. I don't know that we'll have contact to the working papers. [LB674]

SENATOR PAHLS: Senator Giese. [LB674]

SENATOR GIESE: Thank you, Senator Pahls. Mr. Gould, first sentence of your last paragraph in your testimony, just a question, it says, "Although the University of Nebraska is a public institution, it refuses to give full accounting of how foundation funds are being used." Does that mean that...but they're doing everything that they have to, all the information that they have to is disclosed. They're not doing anything illegal. They're doing everything they have to do. Is that a fair statement? [LB674]

JACK GOULD: I don't think so. I mean, I think...and I've talked with some folks in Accountability and Disclosure and other areas, I think the general feeling is that when money leaves a private foundation, it becomes public. In other words, you can't have a private organization raising money on the side and providing secret money to an institution. It's a public institution and all the employees of that are public servants. Therefore, when the money leaves the private foundation...I don't care who gave them money, we don't care about the secrecy involved in protecting contributors, but the second that money leaves the foundation it should be accountable, it should be accountable to you so that everyone knows where that money goes and how it's used. [LB674]

SENATOR GIESE: Thank you. [LB674]

SENATOR PAHLS: Senator Price. [LB674]

SENATOR PRICE: Senator Pahls, thank you. Mr. Gould, would it be...just to polish the rock, (laugh) wouldn't it be more accurate to say once the money is received by the university? [LB674]

JACK GOULD: Yes. [LB674]

SENATOR PRICE: Thank you. [LB674]

JACK GOULD: That's fine. [LB674]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. [LB674]

JACK GOULD: Thank you. [LB674]

SENATOR PAHLS: Anymore opponents? I see...how many more opponents? We have two, there are two opponents. Anybody in the neutral? Okay. Please. [LB674]

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GERARD HARBISON: (Exhibit 4) My name is Gerard Harbison, H-a-r-b-i-s-o-n. I'm appearing as a member of UNL faculty senate. I don't represent the senate, but I wish to draw the committee's attention to the fact that UNL faculty senate adopted last Tuesday week a resolution which I drafted. We drafted it unanimously or at least without any opposition which urges the Legislature to reject LB674 in its present form. I can read our resolution if you want. I don't know if you've already got a copy of it. [LB674]

SENATOR PAHLS: How long is it? [LB674]

GERARD HARBISON: It's one page, less than a page. [LB674]

SENATOR PAHLS: Okay. If we could get a copy of it, you don't have to read it if you'd give us your general impression. [LB674]

GERARD HARBISON: All right. Let me just give you the inclusion. The faculty senate of the University of Nebraska-Lincoln urges the Legislature to reject LB674 in its present form, and encourages the University of Nebraska and Senator Nantkes, the sponsor, to resubmit a bill which restricts freedom of information as little as possible consistent with federal and other state statutes, privacy, and the protection of whistle-blowers and proprietary information. That we voted on. Therefore, I can honestly say that's on behalf of the senate. Everything else I have to say I say as a private citizen. There are a couple of questions I think this committee ought to ask. The first is that when we...we talked about audits and the proponents have talked of audits entirely in terms of financial audits. I think it really needs to be established that the scope of this bill is restricted to financial audits. We do audits all the time. We do safety audits. We do audits for compliance with various other statutes. Some of the working materials of those audits are of considerable concern to the public, I think. In other words, you can write a final report, but in reading that final report I don't know what to credit and what to...what not to credit until I know how you actually...what methods you actually used to draw up that final report. In other words, the spreadsheet. If, for example, we were to audit something I know about, safety in my department, I could write a report of half a page saying everything is fine, we've done all the appropriate things, and so on. But somebody who wanted to really find out if I'm being completely forthcoming might want to say: Well, let me see the inventory of chemicals you have. Let me see where they're stored. Let me see how they're stored. If I collect all that information into a spreadsheet and say that spreadsheet is working papers, then you can't do that. Now, you could admittedly go around all the labs in my department and collect all the information for yourself, but that would be an immense amount of work. So I think there are well-established cases where the working papers of an audit are considerable public concern and I think the public ought to have access to those. Now, as I said, that's...I'm saying that as a private citizen. However, the senate basically has expressed an explicit interest in the protection of whistle-blowers. And if there's narrowly drafted legislation to

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protect such, I don't think that we would object to that. One final thing, this was basically...we read about this in the newspaper. One would have thought that the university, when it was drafting such legislation, would have asked for the opinions of the stakeholders--that is, the faculty of the university...but not just the faculty, the staff and the students. We basically were presented with this as essentially as a done deal and it was presented to the...we read about it...I read about it first on the Legislature's Web site. I think the process of coming up with something that would restrict information in the university ought to be something that the faculty, staff, and the students of the university might have something to say about. That's all. [LB674]

SENATOR PAHLS: Any questions? Let me ask you one question. As a faculty rep, do the universities or university usually include you in a lot of decision making process or do they just say, this is what it is? [LB674]

GERARD HARBISON: I can't speak as a faculty rep. Let me speak as a member of the faculty senate and faculty member. I think if you ask most of the faculty senators they would say we are not included in governance to the extent that we would like to be. But I think we honestly have some positive things to contribute. I think very often it's my perception as an individual faculty senator that, in fact, a lot gets done top down at the university that...where things would actually work better if there were a little bit more input from the faculty. [LB674]

SENATOR PAHLS: Okay. Because you think this group is probably a highly qualified group of individuals, would you say that? [LB674]

GERARD HARBISON: Sure. I mean, I can give you one example. There was a purchase of some stuff where it was done about ten years ago. That turned out I think most people would known it was a very ill-advised purchase. I found out about it by accident. One of my colleagues independently found out about it by accident. We went along to the Board of Regents. We said, you know, don't buy this stuff. We know people who use it. We think it's a really bad idea. It won't do what you think it wants to do. Basically the regents actually tabled the purchase. Then the then president of the university said it was intolerable that faculty should be able to turn up and disrupt university functions like this. And they came back, took it off the table, and bought the software. And I think it was...in retrospect, it was a mistake. So I think, yeah, there is expertise and I think we could be asked (inaudible), and we simply weren't asked about this. We weren't...as I said, this was a surprise to all of us. [LB674]

SENATOR PAHLS: Okay. Well, thank you for your testimony. [LB674]

GERARD HARBISON: Thank you. [LB674]

MIKE FOLEY: (Exhibit 5) Thank you, Senator Pahls and members of the committee. For

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the record, my name is Mike Foley. I'm the Nebraska State Auditor testifying today in opposition to the language in the green copy of LB674. I've had the opportunity to discuss this legislation and exchanged an e-mail on this on a number of occasions with Senator Nantkes and with key officials at the University of Nebraska. I applaud and share their interest in further developing the internal audit function at the university. In fact, as part of my most recent audit of the university I made specific recommendations to them on the improvement of their internal audit system. The simple truth, however, is that no legislation is needed for the university or any other agency of state government to engage in internal auditing. They're free to do so today under existing state law and they should. I wish to make clear that my opposition today relates to the green copy of the bill, and from my discussion with Senator Nantkes and university officials, I'm well aware that they're willing to amend that bill. Yesterday, my office drafted a proposed amendment to LB674, a copy of which has been provided to you. And as with all drafts, perhaps some fine tuning is needed. But I believe that this draft is an excellent start toward constructing a state law in a manner that enhances the public interest while protecting those who step forward and provide information to auditors on a confidential basis. The amendment that I've circulated to you removes the language in the green copy of the bill that seems to be the source of the great controversy. The amendment clarifies that internal audit work papers are public records and, therefore, available to the press or the public as would not be the case under the green copy of the bill. Under the green copy of the bill, release of the internal audit work papers to a citizen would be a criminal offense. Access to public records is at the heart of what this debate is really all about today. If you believe the public should continue to have access to public records of state government agencies on the same terms as they enjoy those rights today, I think you'll prefer the language that I'm offering to you. If you believe the public should now be restricted from access to certain public records that they have access to today, then you'll prefer the green copy of the bill. In the final analysis, the University of Nebraska is an agency of state government. Although the university is not our largest state agency, it is certainly an important one. It's an agency that is of great interest to the people of our state, an agency that's trying to address public concerns about openness and transparency. The people of Nebraska are taxed to subsidize the university. The annual state appropriation of the university is now in the range of a half billion dollars in General Funds per year, not to mention the hundreds of millions in tuition and other revenues. The citizens of our state who supply those funds deserve a full accounting of how their hard-earned money is being spent. Unfortunately, the green copy of the bill runs directly counter to the concepts of openness and transparency and attempts to restrict public access to information that they may seek. The amendment before you assures citizens that they shall continue to have access to public records. I've heard the argument that the green copy of the bill only seeks to mimic the statutory language that governs my office regarding confidentiality of work papers. But those who make that argument fail to recognize the key distinction between an independent external auditor versus the role of an internal auditor. Internal auditors by definition are not independent. They are employees. External auditors must be independent by

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standards and if they're not, they cannot conduct the audit. An external auditor does not have an incentive to bury away embarrassing findings in its confidential work papers, but an internal auditor may have such an incentive and may even be directed to do so. And I should add that I have enormous respect for Mike Justus who is the current internal auditor at the University of Nebraska. But he would be the first to tell you he is not independent of the university, he is an employee of the university. Therefore, it is imperative that work papers of internal auditors remain public record. However, there are instances when a person, perhaps at the university or elsewhere, may wish to provide information to the university's internal auditor on a confidential basis. That happens in my office all the time. In such instances, it's important that the university's internal auditor have the ability to follow up and investigate the information provided, while at the same time protecting the confidentiality of his source. The amendment that I brought to you provides that immediate legal protection. In summary, it bears repeating that no legislation is needed to enable the University of Nebraska or any other agency of state government, or local government for that matter, to engage in internal auditing. The internal auditing is good practice. It ought to be encouraged and there's nothing in current law that restricts it. If the committee decides to move legislation in this area, I hope you will do so in a way that maximizes citizen access to public records while at the same time protecting the identity of those who wish to provide information to internal auditors on a confidential basis. Thank you very much, Senator Pahls, and members. [LB674]

SENATOR PAHLS: (Exhibits 6, 7) Any questions? Seeing none, thank you for your testimony. [LB674]

MIKE FOLEY: Thank you. [LB674]

SENATOR PAHLS: Anymore? I'm reading into the record Media of Nebraska in opposition and the ACLU is in opposition of this bill. That concludes the hearing on LB674. [LB674]

SENATOR PRICE: No closing perhaps? [LB674]

SENATOR PAHLS: What's that? [LB674]

SENATOR PRICE: Senator Nantkes would perhaps like to close. [LB674]

SENATOR PAHLS: Oh, I'm sorry, Senator. I didn't see you sitting over there. [LB674]

SENATOR NANTKES: That's okay. [LB674]

SENATOR PAHLS: Yes I did. I just thought I could get by with it. (Laughter) [LB674]

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SENATOR NANTKES: Thank you, members of the committee, for your kind attention and consideration and thoughtful questions this afternoon. I am so pleased that each of the people that testified today, rather whether listed as opponents or proponents, really at the heart of the matter support a strong internal auditing system within the university. There's the common ground that we can all agree on. In order to ensure that we have a structure that works, I think we have known models in the Auditor of Public Accounts Office and in the Legislative Performance Audit Committee's jurisdictional purview and structure seeks to do the same for the university. I wanted to address a couple of issues that were brought up, though, during the hearing today. Mr. Gould mentioned an ongoing concern that he and his organization may have concerning the relationship of the university foundation to the university system. Those issues are far beyond the scope and purview of this legislation that is before you. So please don't be confused by those issues. Mr. Harbison brought up some concerns or frustrations he had as a member of the faculty senate in terms of his ability to interact or impact the university system as a whole from the context of that position. Again, those issues are really far beyond the scope of the legislation before you, so please don't be confused. Finally, in regards to your question, Senator Pahls, about this system and the legislation that you worked on to encourage whistle-blowers to come forward and to provide an incentive. It's my understanding after visiting with members from the university that because they're not considered part of the personnel system and like other state agencies that they didn't get involved in that legislation because it really wasn't of specific relevance to them because of their classification as a separate and distinct agency. But I think overall the very objectives that you sought to achieve under that legislation are really very similar to what's being put forward in this bill. I know that former senator now Auditor Mike Foley has provided the committee with a potential amendment as well to improve the legislation. And I'd ask that the committee consider that very, very carefully. There are components within that amendment that are contained within another bill pending before this Legislature, LB660, which has been referenced to the Judiciary Committee. It has yet to have a public hearing. And so just in terms of process and jurisdiction, I think that it would behoove this committee to take a very, very cautious approach in just blanketly adopting those kinds of components of another bill into this bill. I'm happy to work with Judiciary Committee if that bill is advanced to see if there is a way to work, but I think that we should let the Judiciary Committee probably look at some of those issues rather than...for them a public hearing rather than just folding them into the context of this legislation. So I wanted to just be responsive to a couple of those concerns. Senator Price, just finally in regards to what is now considered a public document, what would always be considered a public document, I think that all of us want to be very protective of the public's right to know, particularly in terms of how their taxpayer dollars are being utilized. But the scope of this bill is even more broad than that. I think that we should always error on the side of keeping things public. But sometimes in the law there are specific reasons that we do exempt things from public notice for a higher public policy purpose. That's why there's a specific exemption for the working paper of the public Auditor's Office. There is an exemption of public record for

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the Legislative Performance Audit function. So, again, it's just really a parity in regards to how those two operations operate rather than a distinct difference. Thank you. [LB674]

SENATOR PAHLS: Any questions? Senator Price. [LB674]

SENATOR NANTKES: Okay. [LB674]

SENATOR PRICE: Senator Pahls, thank you. Senator Nantkes, just to clarify. [LB674]

SENATOR NANTKES: Yes. [LB674]

SENATOR PRICE: Are you saying there's currently a statute exemption for working papers? [LB674]

SENATOR NANTKES: That's right, yes, afforded to the Auditor of Public Accounts and to the Legislative Performance Audit Committee. When they conduct audits, their working papers, it's my understanding, are specifically exempted, not considered public records. [LB674]

SENATOR PRICE: Thank you. [LB674]

SENATOR NANTKES: You're welcome. [LB674]

SENATOR PAHLS: Senator Nantkes? [LB674]

SENATOR NANTKES: Yes. [LB674]

SENATOR PAHLS: Am I glad you did not let me close this without your closing (laugh) because you did...you have cleared up several issues. I appreciate that. [LB674]

SENATOR NANTKES: Good. Thank you. Thank you. Welcome back. [LB674]

SENATOR AVERY: I was just in your committee. [LB674]

SENATOR NANTKES: (Laugh) A vice versa kind of thing. [LB674]

SENATOR PAHLS: That does close the hearing. Thank you, again, LB674. Now we're ready for...Senator Avery, we are ready now for LB645. [LB674]

SENATOR AVERY: Thank you, Senator Pahls. We will now move to LB645, Senator Mello. Welcome. This your first time here?

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SENATOR MELLO: Second.

SENATOR AVERY: No, second time.

SENATOR MELLO: Good afternoon, Chairman Avery, members of the Government, Military and Veterans Affairs Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District. I introduced LB645, a bill that would require all state agencies to complete a cost-benefit analysis before entering into a contract of \$50,000 or more. LB645 continues the work regarding state service contracts done by State Senator Jerome Warner and Senator Don Preister over the past 25 years. LB645 is based on LB408 introduced by Senator Preister in 2007. Just like Senators Warner and Preister, the goal of my efforts is not to favor one service delivery system over another, but to operate state government more like a business. In order to accomplish this goal, it is necessary for state agencies to identify and compare costs and benefits before a decision is made to enter into a contract for services or to provide the services using state employees. The cost-benefit analysis requirements in LB645 apply to all proposed contracts for services over \$50,000 if the job functions are being performed or have been performed within the past 12 months by a state employee covered by the classified personnel system or labor contract or if the services are required for new programs that were not in existence within the previous 12 months. There are a number of agencies and services which would be exempt from this requirement. Components of the cost-benefit analysis include: Projected agency cost savings for 12 and 60 months; description of method to adequately assure control and monitoring of contracted services; assessment of feasibility of alternatives; whether there is a public interest in providing services inhouse rather than through a contract; a formal plan of assistance for any displaced employee, which includes agency efforts to place a displaced employee in a vacant agency position or with another state agency; and demonstration that the agency has taken steps in considering alternatives to contracting, including reorganization, reevaluation of service, and of performance. The bill does not require agencies to seek or be granted approval from DAS and/or the Legislature prior to entering into the contract or refrain from entering into the contract even if it would be more cost-effective to conduct the service inhouse. LB645 simply requires state agencies to file a copy of the completed, written cost-benefit analysis with the Legislative Fiscal Office so that the Legislature will have access to all agency cost savings and cost-benefit analysis without having to request such an analysis individually. As a member of the Appropriations Committee, this information would be incredibly helpful to me and to others, especially as we do the budget process and as we see that contracts for services are one of the fastest growing segments of our states' budget. The state contracts for over \$2 billion in services in the biennium. Under the current budget process, neither the administration nor the Legislature can assure Nebraska taxpayers that fiscal costs and benefits have been weighed in decisions regarding the expenditure of tax dollars for the states' contractual services. LB645 is an important step towards providing policymakers critical fiscal information about the

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expenditure of state funds. I'd urge the committee to advance LB645 and would be happy to take any questions. [LB645]

SENATOR AVERY: Thank you, Senator. Senator Pahls. [LB645]

SENATOR PAHLS: I have a question, Senator. Have there been any major revisions in this compared to the past when Senator Preister has brought it? [LB645]

SENATOR MELLO: No. [LB645]

SENATOR PAHLS: Okay. So you're basically bringing...did he tell you why he felt this bill did not move? [LB645]

SENATOR MELLO: In short order, yes. And as you read the fiscal note, the Department of Administrative Services say they are currently already doing this. This bill essentially puts in statute that requires them to do this. It's once again whether or not...and we've had a similar discussion, I believe, in Banking and Insurance which is whether or not someone says they're already doing this compared to requiring someone to do this. And that is my understanding that...and I believe that LB...opponents testifying against this similar to the testimony in years past. But once again this has no cost to the state at all. It's essentially requiring that if they do already do this as they say they do, to give the Legislative Fiscal Office a copy of it so that we as legislators can see what cost-benefit analysis they're currently doing. [LB645]

SENATOR PAHLS: Thank you. [LB645]

SENATOR AVERY: Anymore questions? Senator Sullivan. [LB645]

SENATOR SULLIVAN: Thank you, Senator Avery. Senator Mello, it says in your testimony there are a number of agencies and services which are exempt. [LB645]

SENATOR MELLO: Um-hum. [LB645]

SENATOR SULLIVAN: How is that determined and can you give me an idea of what they are? [LB645]

SENATOR MELLO: I can give you...through the current statute right now, kind of through our competitive bid process, I'll kind of read through some of the agencies that are excluded. Now, on contracts for services subject to the Nebraska Consultants' Competitive Negotiation Act, contracts for services subject to federal law, regulation or policy or state statute under which a state agency is required to use a different selection process or to contract with an identified-contractor, type of contractor, contracts involving state or federal financial assistance passed through a state agency to a

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political subdivision, contracts with direct providers of medical, behavioral or developmental health services, childcare or child welfare services to an individual. Those are just to name a few. These agencies essentially are already excluded from what anything my bill would do. And essentially, as Senator Pahls asked, there will be...I've had a conversation as well with the Governor's Policy Research Office where ultimately this bill I think takes us an unnecessary step not only as a member of the Appropriations Committee of trying to find out exactly where every tax dollar goes, but to shine more light in regards to the transparency of how our government operates. As I said in my testimony, over \$2 billion out of our close to \$7 billion budget goes to service contracts. And right now the current laws don't give the Legislature the appropriate authority in my mind to be able to see those contracts and be able to find out what kind of results we're actually getting from those contracts. And so what my bill does is essentially just dovetail off current existing law and just asking them to show us the contracts to the Legislative Fiscal Office. So it doesn't change contracts at all. It just asks them to show us the cost-benefit analysis that is currently being done by the administration. [LB645]

SENATOR AVERY: Senator Price. [LB645]

SENATOR PRICE: Chairman Avery, thank you. Senator Mello, thank you very much. We did discuss this a little bit before. And this does a lot when you talk about the cost-benefit analysis. And to the intent, the intent here to make sure we don't outsource government jobs? [LB645]

SENATOR MELLO: That's not the intention and as I stated, it's not so much about the delivery system, Senator Price. It's more about exposing or shining light on how that system...how those decisions are made. It's not in no way or another favoring public employees versus private contracts. It's just asking as they make the decisions to share that information with us through a cost-benefit analysis of how they reached that decision. [LB645]

SENATOR PRICE: Okay. And then in the green copy page 9, line 8 where we talk about, justification for entering into the contract for services if, are we saying that we're going to base...again, clearly, are we going to base a decision to award a contract on this cost-benefit analysis? [LB645]

SENATOR MELLO: It's just asked...no, it's solely asking them to show the cost-benefit analysis that they're suggesting they currently already do. [LB645]

SENATOR PRICE: Okay. Then when we go further down there, line 12, paragraph (b): The public's interest in having a particular services performed directly by the state agency outweighs entering into a proposed contract by the state agency, and we go to more costs. That's why I asked those questions. And we get down to line 18, paragraph

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(b) indirect costs. I'm not sure that those indirect overhead costs entail enough of what are indirects or we'll have to have someone look over that in more time. I have some concern that we're not measuring the costs because when we say attributed solely to the work in question, well, oftentimes people are hired, they do more than solely the work in question. So that's where my question. I can hire a plumber to fix a sink, but if I have a government employee, going to do a lot more than that sink. And dividing that employee's task up over time over 20, 30 years be pretty difficult. So I just bring the question to the table of these indirect overheads if this is a bill brought wholly before, has this been visited and are you planning to revisit that section there? [LB645]

SENATOR MELLO: I plan to revisit the issue hopefully over the next four years as I'm a state senator with the administration. I think this is a fairly signature issue for our state to move forward in regards to shining more transparency in regards to how our government spends money, and what kind of contracts our government enters into, and whether or not those contracts are sometimes in the best interests of the public or whether the best interest of taxpayers. So the answer to your question, as I stated earlier, to make government run more like a business what your example just was, was if you want to hire a plumber to fix a sink that we should know exactly what kind of contract and what services we're actually getting with that contract and there's no...and as the administration will say, they currently already do this. They currently already do cost-benefit analysis for service contracts. Simply what I'm requiring or asking in this bill is to show or to publish those contracts or those cost-benefit analysis through the Legislative Fiscal Office so that we can see as legislators how the contract was made or how the cost-benefit analysis was determined. [LB645]

SENATOR PRICE: Thank you. [LB645]

SENATOR AVERY: Senator Pirsch. [LB645]

SENATOR PIRSCH: Thank you. Appreciate that, the concept of making government run more like a business in many instances, I think, is important to look at. Has there been to your knowledge a more comprehensive...this takes a certain pool of government spending service contracts that are currently being provided to outside contractors and whatnot and says, let's look into that pool. Has there ever been a more comprehensive cost-benefit analysis that goes into the totality of government spending, looking at all services provided which may be outside providers, may be government providers and saying, you know, the cost-benefit analysis should be used on both groups and looking at...here's something that's provided by a service provider, it could be provided better, cheaper, better inhouse and vice versa, something that's provided currently by governmental workers that the cost benefit...I mean, I guess that's the...this bill only addresses the one going one way, looking at outside services. Has anything ever looked at a more comprehensive total expenditures? [LB645]

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SENATOR MELLO: That's actually a really good question, Senator Pirsch. As far as my knowledge of the issue, I don't believe there has been, but I think the issue you bring up is trying to bring more enterprise management into government in regards to making government compete against the private industry or private enterprise for the services they currently already do. And I know many other local elected officials, governors and mayors across the country, have done innovative programs like that to try to find cost savings with the current services that their local government entity or political subdivision provides with the hopes of finding cost savings by making them contract or compete against a private enterprise. And I think that is in hopes of finding a more enterprising and innovative government. That's something that could be looked at, and that would be a study I'd recommend your committee, Government, Military and Veterans Affairs, to look at that kind of interim study. [LB645]

SENATOR PIRSCH: Well, I'm new to this committee and so I don't have the background to understand it. [LB645]

SENATOR MELLO: Um-hum. [LB645]

SENATOR PIRSCH: I'm just wondering if that was ever more comprehensive type of... [LB645]

SENATOR MELLO: Not that I'm aware of, but I'd recommend it wouldn't be a bad step to look towards doing an interim study. [LB645]

SENATOR PIRSCH: Thank you. [LB645]

SENATOR AVERY: I'm going to ask you a question. We often hear that we want to make government more like business. [LB645]

SENATOR MELLO: Um-hum. [LB645]

SENATOR AVERY: Do you think that's a good thing? [LB645]

SENATOR MELLO: I think when you use statements of making government more like a business, I think it depends on what kind of business model you're looking at. And I think there are times that government can provide services in a more strategic manner due to the general nature of the government organization or the model of the government or the level of government from a city council or a county, state, or even the federal government. But there are times that government can't provide those services in a very strategic delivery method. And I think it's always probably, at least in my perspective, Chairman Avery, that government should be striving to find innovative ways to remake itself on a continual basis, that particularly with the growing bureaucracy in both state and federal governments, not just in Nebraska but around the

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country, to find ways to make our dollars stretch a little bit further by innovating new ways to examine monies whether it's through the budget process, whether it's through contracts, whether it's through reviewing and sunseting commissions and boards. Those are ideas that I'm a believer and that will help us ultimately make us run more like a business in the long run. [LB645]

SENATOR AVERY: Good answer. I always thought that government and business were very different in that business operates in a command and compliance culture; government is bargaining, compromise, and accommodation, and the two are not all that compatible all the time. [LB645]

SENATOR MELLO: Um-hum. (Laugh) [LB645]

SENATOR AVERY: But that was a good answer. Any other questions? Okay. Thank you. [LB645]

SENATOR MELLO: Thank you. I'm going to have to waive my closing to get back to the Appropriations Committee. [LB645]

SENATOR AVERY: You going to give some money away, right? (Laugh) [LB645]

SENATOR MELLO: Yes. Thank you. [LB645]

SENATOR AVERY: Any proponent testimony? Seeing none, any opponent testimony? [LB645]

LAURA PETERSON: Good afternoon, Senator Avery, members of the Government, Military and Veterans Affairs Committee. My name is Laura Peterson, P-e-t-e-r-s-o-n. I'm general counsel for the Department of Administrative Services. I'm appearing here today in opposition to LB645 which makes changes to the state service contract statutes. As you know, the Legislature passed service contract language in 2003 and we've had a number of bills since that time related to service contracts, including LB902 in 2006, which is very similar to LB645, and LB408 in 2007, which is identical to LB645. For the most part, our position on this bill is that it does eliminate somewhat duplicative provisions of current law, but it is unnecessarily detailed and removes administrative flexibility to respond to changing market conditions and other business necessities. The primary focus of this bill is to require agencies to complete a cost-benefit analysis comparing costs and benefits of using state staff to complete work versus the costs and benefits of purchasing the services that are proposed. Nebraska currently has two provisions of law governing this subject. The first is found in Section 73-301 through 73-307. Section 73-301 requires the DAS director to review and approve or disapprove any contract for personal services when, on the effective date of the contract, the personal services are performed by a permanent state employee and will be replaced

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by the services. The subsequent sections discuss requirements for the agency to request approval, including completing a cost-benefit analysis and providing a plan of assistance to the displaced state employees. There's no dollar threshold in this first requirement for a cost-benefit analysis. It applies now anytime an agency would replace a current employee with a contractor, regardless of the contract amount. The second provision is found in 73-509. This requirement applies to all contracts for services in excess of \$50,000 and in cases where the services are currently performed by or have in the prior 12 months been performed by a state employee. In those cases, the agency has to complete a preprocess published by the Material Division of the Department of Administrative Services. The preprocess is essentially a cost-benefit analysis. LB645 would replace these two current provisions with the requirements of the bill and would expand it from contracts where duties performed by state employees to also include all new programs or programs not being contracted in the prior 12 months. While we would appreciate consolidating the two separate requirements of the current statutes, we think the definition of the bill is...and all the definition of the bill provides in statute is unnecessary. Currently, DAS Material Division is required to develop guidelines for state agencies to use in conducting a cost-benefit analysis. Material Division has done this in cooperation with DAS State Personnel. Material Division would continue to have this duty under the new language. However, the new language is very detailed in identifying the items which must be contained within the guidelines. Many of these items enumerated or similar requirements are currently included in the published guidelines. Therefore, it seems unnecessary to give the divisions discretion to create a process, and then define the process statutorily in such detail there is little discretion or need for action on the division's part, and little flexibility for the division to change the process as times, services, purchased, and contracting procedures change. The bill would also require the division to promulgate rules and regulations, but is unclear what the rules and regulations would define as the guidelines and statutory provisions would already govern all necessary actions. Finally, I want to point out that there are several services where we know we will contract them, and this bill would require each agency to spend time and effort on a cost-benefit analysis even though the outcome is generally guaranteed. These services include things like phone service, insurance brokerage, trash collection, things where the government would not do that with its own state employees. But if we were contracting that as a new service, under this bill we would be required regardless of common knowledge, we would contract it to complete a cost-benefit analysis. And I also want to explain, just clarify a little based on the opening comments, the comment in our fiscal note that says that we're essentially already performing these duties and therefore there's no fiscal impact. That relates specifically to the requirement for the Department of Administrative Services to provide a process for agencies to use to do a cost-benefit analysis. We are already required to provide agencies that process, and under the new bill we would continue to provide them that process that they could use that is not a reflection on the...that there would be no new effort needed by either the department or agencies when they went to contract, and now we're required to complete a cost-benefit analysis where they were not required to do so

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before. Just wanted to clarify that. And with that, that ends my testimony and I'd be happy to answer any questions. [LB645]

SENATOR AVERY: Committee questions? Seeing none, thank you. [LB645]

LAURA PETERSON: Thanks. [LB645]

SENATOR AVERY: Any other opponent testimony? Anyone wish to testify in a neutral position on LB645? Seeing that Senator Mello has left, we will end the hearing on LB645. That ends the hearings for today. We have to ask you to leave because we are going into Exec Session. [LB645]

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Disposition of Bills:

LB575 - Held in committee.

LB623 - Indefinitely postponed.

LB645 - Held in committee.

LB674 - Advanced to General File with amendments.

Chairperson

Committee Clerk