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Government, Military and Veterans Affairs Committee
January 26, 2011

[LB139 LB150 LB230 LB266 LB444 CONFIRMATION]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, January 26, 2011, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB139, LB150, LB230, LB266, LB444, and gubernatorial appointments. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Lydia Brasch; Charlie Janssen; Russ Karpisek; Rich Pahls; Paul Schumacher; and Kate Sullivan. Senators absent: None. []

SENATOR AVERY: (Recorder malfunction) Government, Military and Veterans Affairs Committee. My name is Bill Avery; I represent District 28 here in Lincoln. We have a lot of work to do today, so I want to get started by first introducing all the members of the committee, starting at my right over here, my extreme right. Senator Rich Pahls from Millard. He is seated next to Senator Lydia Brasch from Bancroft, one of our new senators. Senator Janssen from Fremont will be joining us in a few minutes. Next to Senator Janssen is Senator Scott Price from Bellevue; he is Vice Chair of the committee, and he will be getting a lot of work today, because I have three bills outside this room; so you may not be seeing a whole lot of me but a lot of him, which is true anyway when we stand... []

SENATOR PRICE: Easy. []

SENATOR AVERY: ...side by side--you see more of him than you do of me. []

SENATOR PRICE: Easy. []

SENATOR AVERY: The...next to me on my right is Christy Abraham, who is the legal counsel for the committee. And Senator Russ Karpisek, who sits here, will be with us in a few minutes; he represents the Wilber area. Senator Kate Sullivan from Cedar Rapids, next to him. And last, there, is one of our new senators, from Columbus, Senator Paul Schumacher. Our committee clerk is Sherry Shaffer. When you--if you wish to testify, we have a form for you to fill out. Copies of this form are available at each door. Please print clearly. And when you come to the table, please give a copy of this to Sherry, the clerk, and she will enter it all into the record. We are--we also have, for those of you who wish to be recorded for or against any of the bills that we will take up today but do not wish to testify, there is a form also at each door for you to fill out. It is self-explanatory; you simply put your name and address, the bill number, and check whether you support or oppose that particular bill. We have two pages--or we used to have two pages. Where is Kyle? []

CLERK: He's coming back. []

SENATOR AVERY: He will be back. Kyle Johnson from Sutton and Danielle Henery

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from Battle Creek. If you have any exhibits you would like for us to look at, please have a minimum of 12 copies so that everybody has a copy and the staff have copies. I'm going to ask you, too--since this is a public hearing, we want to be able to hear what's going on--so I'm going to ask you to keep your conversation at a absolute minimum and your telephones turned off. If you can put it on silent and it's not disruptive to people around you, then that would be okay as well. And we try to keep ours off; I always have to remind myself at this point every time, because mine wants to make noise even on vibrate. I don't know why it does that. So I'd appreciate your cooperation in that. We will be using the light system. The green light means you have four minutes; and when it changes to amber, you have one more minute to finish your comments; and red, you should be finished. If you're color-blind, they go from left to right; and as the lights change, if you can't tell what color it is, you know that you...it's like a stoplight: it's green; it's amber; it's red. So try to help us on that. We are very welcoming in this committee. We believe passionately in the public hearing process, so we want you to have an opportunity to say your piece on any and all of these bills. We do ask you, though, please, try not to repeat testimony that has been previously given. Even if you have already prepared your remarks, pay attention to what is being said prior to taking the seat at the table and try not to repeat previous points that have been made. I think that's all I have for now. We do want to hear from you; we welcome you in this committee. Before we start, let me say that we'll take up the bills as they appear on the agenda posted outside the room. That means we'll start with Senator Lautenbaugh's LB139 and move on through to LB444, which is mine; so you may not see me until my bill is up--again. Before we do that, we do have a guest with us today, Mr. Samuel Seever, who is a nominee for the State Personnel Board. So we're going to first have a short hearing on his nomination. Mr. Seever, come forward. Welcome to the Government Committee. []

SAMUEL F. SEEVER: (Exhibit 1) Thank you, Mr. Chairman. [CONFIRMATION]

SENATOR AVERY: Would you state your name and spell it carefully for the record. [CONFIRMATION]

SAMUEL F. SEEVER: My name is Samuel, S-a-m-u-e-l, F. Seever, S-e-e-v-e-r. [CONFIRMATION]

SENATOR AVERY: I guess I can start the proceedings--since I am chair, I always get that privilege--and just ask you to briefly summarize your career and your--this is a reappointment, as I understand it--and your previous service on the Personnel Board and why you wish to go back. [CONFIRMATION]

SAMUEL F. SEEVER: Thank you, Mr. Chairman, members of the committee. For the last about 30 years I have worked as a lawyer, as legal counsel and vice president for a company that used to be called Harris Laboratories, was then called MDS Pharma

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Services, and is now operated under the name Celerion as of about ten months ago. I was--I am a native of Superior, Nebraska. I graduated from Nebraska Wesleyan and the University of Nebraska College of Law. I was appointed to the State Personnel Board in 1995 to fill an unexpired term and have been reappointed twice since then. I have served as chair of the Personnel Board for the last number of years. I have enjoyed my service. During my professional career I spent a lot of time dealing with employment-related issues and have enjoyed using that background in deliberations on the Personnel Board. It's been a varied board, and I've enjoyed the people I've met and the service I've given. And I would be happy, if it's the pleasure of this committee and the Legislature, to continue for another term. [CONFIRMATION]

SENATOR AVERY: Thank you, sir. And thank you for your willingness to serve. Since '95--that's a long time. [CONFIRMATION]

SAMUEL F. SEEVER: It is--seems like yesterday. [CONFIRMATION]

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

SENATOR SULLIVAN: I do, Senator. [CONFIRMATION]

SENATOR AVERY: Senator Sullivan. [CONFIRMATION]

SENATOR SULLIVAN: Thank you, Senator Avery. Thank you, Mr. Seever, for your willingness to serve. I have to admit, though, I'm not very familiar with the role of the members of this board. Can you sort of give me a brief synopsis? [CONFIRMATION]

SAMUEL F. SEEVER: Well, for the majority of employees of the state of Nebraska, the State Personnel Board hears appeals, what are known as third-step appeals--personnel actions--from demotion to suspension to termination. Those go first to the immediate supervisor, then to the head of the agency, and then they're sent to the Personnel Board. For probably the last 15 or 16 years...it used to be that the Personnel Board heard all those hearings themselves, but about that long ago we came up with a system of hearing officers who now hear those grievances. And then the State Personnel Board meets to look at the decision of the hearing officer and decide whether to uphold or deny the recommendations of that hearing officer. And the appeal from the ruling of the State Personnel Board is to the district court. []

SENATOR SULLIVAN: Thank you. [CONFIRMATION]

SENATOR AVERY: Any additional questions? I don't see any. Thank you very much, sir, for your testimony. [CONFIRMATION]

SAMUEL F. SEEVER: Thank you... [CONFIRMATION]

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SENATOR AVERY: We'll be... [CONFIRMATION]

SAMUEL F. SEEVER: ...Mr. Chairman, members of the committee. Thank you.
[CONFIRMATION]

SENATOR AVERY: ...we will make a recommendation today. All right, we'll now move to LB139 on the agenda, Senator Lautenbaugh. Welcome, sir. [CONFIRMATION]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman and members of the committee. It's like coming home to my old committee here... [LB139]

SENATOR AVERY: It is. [LB139]

SENATOR LAUTENBAUGH: ...of a couple years ago. LB139--I think I can say without fear of contradiction that all these people are not here to talk about it. It's a very straightforward thing, and I will be brief, as there is more germane and informative testimony to follow, I think. This was brought at the suggestion of the Lancaster County Sheriff. I believe he'll be here to testify, as well as one of the county commissioners, a Brent Smoyer, and they will explain the reason for this and why it's important. Really, it makes two major changes to the County Purchasing Act: it allows for counties to sell surplus motor vehicles, which is currently prohibited by the act; and it increases the value of other property that can be sold from less than \$500 to less than \$2,500. I look at this as one of those rare occasions where we get to do something for the counties rather than to the counties. And I think this will be a big help to their bottom lines. I will stick around and answer any questions--I will stick around and close, I should say, and answer any questions at that point. But I think both the sheriff and the commissioner can shed some light on what this will mean for Lancaster and, by extension, other counties as well. [LB139]

SENATOR AVERY: So should I not ask for questions at this point? [LB139]

SENATOR LAUTENBAUGH: You're the Chairman, sir. You can ask for whatever you want. [LB139]

SENATOR AVERY: (Laugh) [LB139]

SENATOR LAUTENBAUGH: I may not answer them, but you can ask for them. (Laugh) [LB139]

SENATOR AVERY: Are there any questions that we must ask now? I don't see any. We'll do it later. [LB139]

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SENATOR LAUTENBAUGH: Thank you, sir. [LB139]

SENATOR AVERY: Additional proponent testimony. [LB139]

BRENT SMOYER: Afternoon, Chairman... [LB139]

SENATOR AVERY: Welcome, Mr. Smoyer. [LB139]

BRENT SMOYER: ...members of the committee. My name is Brent Smoyer, B-r-e-n-t S-m-o-y-e-r. I'm a Lancaster County Commissioner from District 5. I just wanted to provide some brief testimony kind of leading up here--as Senator Lautenbaugh said, here to represent the counties, here to look out for the counties. This was initially suggested to me by Sheriff Terry Wagner of Lancaster County as an opportunity to possibly, I guess, mitigate some of the issues we're having right now with the budget. It was brought to me that there are various options for selling surplus property--most especially police cruisers, which I know the sheriff and the chief deputy will be testifying on here shortly--that would provide, basically, another revenue source for the county. Would it be a massive windfall? No. But it would be an opportunity to, hopefully, take some pressure off of the county agencies by allowing them the opportunity to sell. Now, of course, with the act--or with the change to the County Purchasing Act that we're looking at, it really doesn't cost anything to the state, wonderfully. And it really doesn't cost anything to the counties, other than the opportunity to get involved with these auction sites, to get involved with cross-jurisdictional sales, basically, and give us the opportunity to get rid of surplus property that we've got sitting and taking up space, doing no good for the county, when it could be, well, used for other counties, used for other opportunities. I know, in the case of a used cruiser in Lancaster County--and this is just my assumption, of course, the sheriff can specify further--but Barney Fife in "Mayberry R.F.D." would be more than happy to have a used Lancaster County cruiser, I'm going to bet, because it's got to be newer and better than what he has. That's pretty much the extent of what I'm looking at. All we're asking is for the Legislature here to just alter the County Purchasing Act to allow county boards the flexibility and the freedom to allow these sales, allow these auction involvements, and maybe take a little bit of pressure off of the counties this budget cycle and every budget cycle. Because I know right now, actually as we speak, in Revenue, they're looking at cutting state aid to counties completely, which is going to hurt, I'm not going to lie to you. It's going to be a little painful. And, again, this bill will not necessarily solve all our problems, but if it can give us some breathing room, if it can give us some opportunities, give us some flexibility, then we just ask that you forward it to the floor. And I suppose if you have any questions, comments, or insults, I'm more than happy to take them. [LB139]

SENATOR AVERY: No insults. We don't do that. We try to be respectful. [LB139]

BRENT SMOYER: Please. [LB139]

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SENATOR AVERY: The current situation is that if you have a piece of property sitting in a lot somewhere, valued at, say, \$3,000, you have to let it sit until it devalues down to \$500 before you can dispose of it? [LB139]

BRENT SMOYER: That's my understanding. That's--and again, that would be a more specific question for the sheriff, because he is the one with most of the property sitting there. I know, for example, they've mentioned light bars that have been stripped from cars, for sale. I will tell you this, the...in order to get property down that low or get property to the case where it can be sold at auction or can be given away, it really must be torn apart, torn down, destroyed in many ways. For example, police cruisers: you've got to strip every piece of equipment; you've got to change the seats out, because they, you know, if they've got the large, uncomfortable plastic seats in the back--things like that. I know I've spoken to used car dealers who said that they cannot get anything for used cruisers. And yet you see them out and about. Whereas if, from my understanding, if we leave the equipment intact, if we are able to sell to licensed police entities, you know, from Lancaster County Sheriff to, say, Hall County Sheriff, there would be a significant increase in value. Now, as far as the adjustment of the numbers, it is my understanding that the numbers for the County Purchasing Act, as far as the limits, have not been adjusted for at least a decade, if not more. [LB139]

SENATOR AVERY: Probably longer. [LB139]

BRENT SMOYER: Probably longer. Like I said, this is just going back a little ways. And so I think part of it has to do with inflation, and part of it just has to do simply with flexibility. But, yes, a lot of it is they're sitting there getting devalued or they need to be used up and recycled so much that they're devalued to virtually nothing... [LB139]

SENATOR AVERY: Um-hum. [LB139]

BRENT SMOYER: ...and nothing can be gained from them. [LB139]

SENATOR AVERY: So you wind up with a junkyard... [LB139]

BRENT SMOYER: Pretty much. [LB139]

SENATOR AVERY: ...and no way to dispose of it. [LB139]

BRENT SMOYER: Pretty much. Actually, if you go down, oh, kind of where they take care of the cruisers, I know there's a lot of parts and stuff lying around. And that's, to me, kind of an eyesore, but... [LB139]

SENATOR AVERY: Right. [LB139]

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BRENT SMOYER: ...if there's something we can do with it, I think we should. [LB139]

SENATOR AVERY: Questions from the committee? Senator Price. [LB139]

SENATOR PRICE: Chairman Avery, thank you. Just real quick, then, I wanted to make sure we're clear, then, because we heard some other bills that this could have impact on. And that is, it could apply to IT equipment. [LB139]

BRENT SMOYER: Yes. [LB139]

SENATOR PRICE: Thank you. [LB139]

BRENT SMOYER: Yes. [LB139]

SENATOR AVERY: Senator Janssen. [LB139]

SENATOR JANSSEN: Thank you, Chairman Avery. Commissioner Smoyer, are there other areas--I think Senator Price just talked about it--but are there other areas that you've seen with your vast experience on the commission that we could utilize in this? (Laughter) [LB139]

BRENT SMOYER: There are, actually. Just yesterday at a county board meeting I was speaking with the county engineer, Don Thomas--I was also speaking with the county assessor--and there are other avenues, there are other options that can be used for auction or for sale. Old computers, old equipment--I know the county engineer has numerous bits of old equipment. I mean, he gave me a list, and I can't even remember half of what he told me. And among them include also vehicles that could be resold. And I just think this is an opportunity that the county has to make the most of what we've got--a garage sale, so to speak. I mean, everybody could use a little extra cash in hand from a garage sale. In this case it's the county's version, I suppose would be the way to put it. [LB139]

SENATOR JANSSEN: So at present, as this...and I think you're correct in the way it has to value down. [LB139]

BRENT SMOYER: Sure. Sure. [LB139]

SENATOR JANSSEN: At present could you, or will this bill help us to, sell it both privately and/or to another jurisdiction, another county? [LB139]

BRENT SMOYER: It is my understanding that items, at least with what we've done with the bill, that items that are not specifically related to law enforcement could be sold

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privately. But law enforcement items must remain within the law enforcement community. We can't have people driving around with cherries just because they feel like them. But from my understanding, it is--at least in how we've crafted the bill--is that generic items like computers, chairs, desks, etcetera, could all be sold to private individuals and used appropriately. And then, of course, the police-related items would be kept very tight, a very tight rein on, as far as who they're sold to and where they're sold. [LB139]

SENATOR JANSSEN: Thank you. [LB139]

SENATOR AVERY: Senator Pahls. [LB139]

SENATOR PAHLS: Thank you. Commissioner, what...I'm a little bit curious, we have gotten to the point now that we're almost looking at couches for money. Are you telling me your county is becoming that strapped? [LB139]

BRENT SMOYER: We are--fortunately, right now we are balanced. We are balanced, and, ideally, if everything turns out as it should with the midyear budget and things like that, we should be fine. But we're awful close; we're awful close. I think every county across Nebraska is awful close, Senator. I mean, I know I've spoken with some folks in Douglas County, and they...I guess there's nothing wrong, in my opinion, with trying to create just a little more breathing room. And, I mean, even if the money raised is only \$100,000 or \$200,000, it's still more than we had. I know right now Lancaster County--we're looking at the need for a new computer system for financials--I'm sorry, the server. It's over a decade old; they don't service the parts anymore. It would cost us dearly to take care of it, and it would also cost us dearly if it went down. And so we're scrimping and trying to find the \$80,000 to buy a new unit. And so this would create kind of the breathing room. If we could save the \$100,000, then that would give us some room. [LB139]

SENATOR PAHLS: Thank you. Thank you. [LB139]

BRENT SMOYER: Thank you. [LB139]

SENATOR AVERY: Anyone else? I see no more questions. [LB139]

BRENT SMOYER: All right. [LB139]

SENATOR AVERY: Thank you, Commissioner. [LB139]

BRENT SMOYER: Thank you very much. [LB139]

SENATOR AVERY: Any other proponent testimony? Welcome, Major. [LB139]

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WILLIAM JARRETT: (Exhibit 1) Oh-ooh. Thank you, sir. I'm chief deputy; this is our designation in the state of Nebraska if we're a chief deputy sheriff. So--but I appreciate that. [LB139]

SENATOR AVERY: It looks like major to me. [LB139]

WILLIAM JARRETT: It is. (Laugh) I get called that often. Chairman, board members, I'm William Jarrett; I'm with the Lancaster County Sheriff's Office. As I said, I'm chief deputy here in Lancaster County, and I just want to thank Commissioner Smoyer for using the term "cherries." I even haven't heard that for numbers of years. So he kind of took me back in my nostalgia in being in law enforcement for 35 years. So... [LB139]

SENATOR AVERY: So what's the term now? Bubbles? [LB139]

WILLIAM JARRETT: Visibars... [LB139]

SENATOR AVERY: Visibars. (Laugh) [LB139]

WILLIAM JARRETT: ...light bars, those types of things. So the cherries have definitely gone out. But thanks, Brent. [LB139]

SENATOR PRICE: Could you spell your name for the record for us? [LB139]

WILLIAM JARRETT: Last name is J-a-r-r-e-t-t... [LB139]

SENATOR PRICE: Thank you, sir. [LB139]

WILLIAM JARRETT: ...and first name is Bill. Thank you. I'll just give you a real brief history of how this all happened, is: being strapped for budget, I'm always looking for ways of increasing our budget, our revenue flow, and those types of things. And going in, I was doing some research on--some of the handouts I gave you--on on-line law enforcement equipment and being able to sell that equipment. And one of my ideas was to be able to sell law enforcement vehicles--ours, retired, with some of the equipment left on it--and to be able to put those on specific law enforcement on-line auctions that reach across the country. Some auctions that are strictly law enforcement--you have to be registered law enforcement. And it can only be law enforcement equipment, which is--obviously, there's some sensitive equipment that is at the end of its useful life that we do not want to put out on sale to the general public, i.e., radios, light bars, and those types of things that we basically store or we end up--years and years of sitting there--we end up trading them for nothing for new equipment, usually is what happens to them. The...on the radio aspects, usually they go out of service, and they're really nothing more to us than boat anchors, basically, because they change the megahertz and they

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change the--700-800 megahertz to the--those types of things. So they become obsolete for us, where other agencies across the country could use those. In researching this, I came across a term that said "mobile equipment"--unable to sell mobile equipment. I had no idea what that meant, so I met with our county attorney, and I said: Do you have an idea of what this means, "mobile equipment"? And he didn't have any idea as well. But in doing the research, we found out that "mobile equipment" means, pretty basically, anything with wheels on it--whether you could push it, start it, or any other manner; it becomes a mobile equipment that we as a law enforcement agency cannot sell. And so, subsequently, that takes out of the equation being able to sell a used law enforcement-equipped cruiser to other law enforcement agencies or to be able to put that on a national auction line to be able to recoup some money back out of that vehicle. Numerous agencies across the country are already doing this--and Minnesota does it; Missouri does it. They put their auction--when they're done, they put them on their law enforcement auction sites, and then they're able to sell them to other agencies. And that's pretty straightforward of how this occurred and where this came from and the research that I put into this. And I've given the board quite a few printouts here. And the statute is exactly what it says: it's to revise and to allow "the sale of mobile equipment as surplus personal property, to increase the monetary restriction on the sale of surplus property, and to repeal the original sections." And that's pretty much it in a nutshell. [LB139]

SENATOR AVERY: Thank you. Questions from the committee? Senator Price. [LB139]

SENATOR PRICE: Senator Avery, thank you very much. Sir, a question comes to mind: What is the cost, if you can put on a number, of all the storage areas? So we allow this to happen, you're moving items, so your footprint for storage becomes smaller. What type of savings do you see because you have a smaller footprint in storage? [LB139]

WILLIAM JARRETT: Well, I think for us to be able to move items continually through, obviously we won't have to have a large storage area for those vehicles. We can continually move those vehicles on and sell them as they become available. When we switch out vehicles, we don't switch out 12 vehicles all in one week. It takes us a year to switch out 8 to 10 vehicles. So as that vehicle would become available, we would be able to put that vehicle up for auction instead of having to store that vehicle for six months, eight months, ten months, whatever it may be. And then, if you go out to our garage right now, there's probably no less than 10 or 12 vehicles that are sitting there in a line that are just taking up storage space. [LB139]

SENATOR PRICE: Okay, great. And then the other question I had would deal with--Commissioner had told us that--before, Smoyer--that you could put it on a national database. But would it be possible to ensure that it was offered to Nebraska customers before we put it out to a national--like a right of first refusal, whatever the right term is there? [LB139]

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WILLIAM JARRETT: We certainly can do that. We can set up a site specifically, through Lancaster County Sheriff's Office, if we so desired, that would be available to all the other sheriffs or police agencies throughout the state of Nebraska. [LB139]

SENATOR PRICE: First, though, I mean. [LB139]

WILLIAM JARRETT: First, sure. [LB139]

SENATOR PRICE: Okay, great. [LB139]

WILLIAM JARRETT: Yeah. Yeah. [LB139]

SENATOR PRICE: Thank you very much, sir. [LB139]

WILLIAM JARRETT: We're just looking for revenue, and I think this would be an easy way for us to generate additional revenue without any additional cost. [LB139]

SENATOR AVERY: Any more questions? Senator Schumacher. [LB139]

SENATOR SCHUMACHER: Thank you, Senator Avery. The language before us deals with just simply striking from this act the definition of "mobile equipment," which doesn't reference police cars, sheriffs' cars; it's just any type of vehicles and utility trailers and those kind of things. And then it increases the sale limit to \$2,500 from what looks to be \$500. Is it--am I correct in my understanding that currently if the county roads department has a truck that's old, it can't sell it? [LB139]

WILLIAM JARRETT: No, there is another statute that provides for the sale of that, on an annual sale. So they do have--we do hold an annual sale. Although we as law enforcement, the only time that we participate--because of the sensitive equipment that we have and we won't put it out there for the general public--the only time that we would participate in that is if one of our vehicles had gone to, say, the county health department, and then they had--and we already had stripped it out, taken all the decals, taken all the radio equipment, taken everything out of it--and then that vehicle, on an annual basis, when they're done with it, which would--approximately 200,000 miles on it at that point--then it would be sold for basically scrap. [LB139]

SENATOR SCHUMACHER: In that law, is there any provision that they could sell it to another--the county roads department could sell it to another county roads department at anything other than the annual sale? [LB139]

WILLIAM JARRETT: No. I think it has to go, in that provision, I believe, and correct me wrong--if I'm--I believe it has to go to that annual sale. [LB139]

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SENATOR SCHUMACHER: So the object of this particular change, then, is basically to allow you to put your things on the market, presumably over the Internet... [LB139]

WILLIAM JARRETT: Um-hum. [LB139]

SENATOR SCHUMACHER: ...to other departments... [LB139]

WILLIAM JARRETT: Um-hum. [LB139]

SENATOR SCHUMACHER: ...and without having to strip them down. [LB139]

WILLIAM JARRETT: Correct. And to sell other law enforcement-sensitive equipment. And I have supplied--or there's several groups of law enforcement Web sites that...PoliceOne.com is a law enforcement Web site that you would register and sell police equipment on. PropertyRoom.com is a law enforcement Web site that you could list your property on, and they reach 1,800 agencies across the country where sensitive equipment is available to purchase. [LB139]

SENATOR SCHUMACHER: Well, what bothers me is, you know, we're talking about sensitive equipment and law enforcement equipment, and of the changes that I see in--I think I got the right one--LB139, it doesn't mention anything about law enforcement equipment, sensitive equipment, authorization to sell over the Internet. None of that is in the changes that I have at least. This just talks about that you can now sell mobile equipment, which is--or the county can now sell mobile equipment, which is any kind of vehicle or trailer, and they can use this procedure if it's less than \$2,500 instead of \$500. I don't see anything about law enforcement in here. [LB139]

WILLIAM JARRETT: Well, with the approval of the county board and the county purchasing agent, we would be allowed to do that. This is the first step in getting us to be able to sell the vehicles equipped. But with the county board's approval and with the purchasing agent's approval, then we are able to do that. [LB139]

SENATOR SCHUMACHER: You know, maybe I can discuss this afterwards, but it appears to me this has nothing to do with law enforcement; this has to do with all county vehicles. Nothing to do with stripping them down, sensitive equipment, selling only to other law enforcement officers. None of that's in these changes; maybe it's elsewhere in the law, but it's--I don't see it here. [LB139]

SENATOR AVERY: Is it possible that your particular situation is not covered specifically in any other part of law, that you would have to be--you'd have to come under the "mobile" portion? [LB139]

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WILLIAM JARRETT: Correct. [LB139]

SENATOR AVERY: Yeah. Okay. [LB139]

WILLIAM JARRETT: Yes. We have to have the "mobile" portion to be able to achieve the goal that we're after. [LB139]

SENATOR AVERY: Yeah. Any other questions? Senator Pahls. [LB139]

SENATOR PAHLS: Thank you. It seems to me, if this is a flaw that we have discovered, or you have discovered, that a amendment could be made to correct that, to clarify, if that's the issue. [LB139]

SENATOR AVERY: Yes. Bills seldom leave this committee without amendments. (Laughter) All right. See... [LB139]

SENATOR SCHUMACHER: Senator Avery. [LB139]

SENATOR AVERY: ...are there...oh, you have more questions? [LB139]

SENATOR SCHUMACHER: One follow-up question. Thank you, Senator Avery. Do you need any specific authorization to be able to sell these to interstate--on the Internet, fully equipped? Do you need something from us, or do you think you need something from us that we might want to add in here, if it isn't here already? [LB139]

WILLIAM JARRETT: I can confer with Commissioner Smoyer and make sure that, if it needs to be massaged, that we can do that, if that's okay. [LB139]

SENATOR SCHUMACHER: No further questions. [LB139]

SENATOR AVERY: Okay. See no more questions. Thank you for your testimony. [LB139]

WILLIAM JARRETT: Thank you. [LB139]

SENATOR AVERY: Any other proponent testimony? Good afternoon. Welcome. []

BETH BAZYN FERRELL: Thank you. Afternoon, Chairman Avery, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm appearing in support of the bill on behalf of the Nebraska Association of County Officials. In the interest of time, I won't talk about the background of the purchasing act and those things you've already heard. I would just like to make two comments. One, we believe that this bill would add some clarification to the County Purchasing Act.

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When you look at the bill, in section 23-3115--we get a number of calls from county officials who are hoping that they can take that term "other than mobile equipment" and use it--twist it around and modify it so that they have clear authority to be able to sell mobile equipment. The way that the statute is written right now, it's not really clear. So that would be one thing we would be in support of--that change to the bill. The second thing I'd just like to make you aware of; this is an issue of budgets for county officials. Just this morning I took a call from a county who was looking at borrowing money to buy two police cruisers, to total \$40,000. So if there's a way to be able to get some of this equipment made available to other counties, it would be very helpful. I'd be happy to try to answer questions. [LB139]

SENATOR AVERY: Thank you. Any questions? Senator Karpisek. [LB139]

SENATOR KARPISEK: Thank you, Senator Avery. Maybe--I don't know who would take this question, but are cities different? I know we're under the counties here. [LB139]

BETH BAZYN FERRELL: Yes. This would be specific to the County Purchasing Act. The cities would have their own separate bidding, purchasing statutes. [LB139]

SENATOR KARPISEK: And you don't probably know exactly what those are. [LB139]

BETH BAZYN FERRELL: I am not familiar with those, no. [LB139]

SENATOR KARPISEK: Okay. That's fine. Because I know, talking to Senator Lautenbaugh earlier on the floor, I said, well, I know that the city of Wilber had sold a car to another town; and, I don't know, maybe we weren't supposed to. But anyway (laughter). And if so, then that did not happen. And (laughter) just curious, because if cities are doing it, then, obviously, what would be the difference? In my opinion. [LB139]

BETH BAZYN FERRELL: And they are separate sets of statutes. [LB139]

SENATOR KARPISEK: And I understand that; I was just wondering how different they are in the statute. Thank you. Thank you, Senator Avery. [LB139]

SENATOR AVERY: Senator Schumacher. [LB139]

SENATOR SCHUMACHER: Senator Avery, thank you. Are a lot of these vehicles now--are they traded in? I mean, is that how they're disposed of? [LB139]

BETH BAZYN FERRELL: It kind of depends on the county. Some of them, as you've heard, just essentially have to sit, because there's not a process to sell them. Other counties are getting rid of them, but the statute is not really clearly specific that that can be done. [LB139]

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SENATOR SCHUMACHER: I don't have anything further. [LB139]

SENATOR AVERY: Any more questions from the committee? Seeing none, thank you for your testimony. Anybody else wish to testify in support? All right, we'll move to opponents. Anyone wish to testify in opposition to LB139? Anyone wish to testify in a neutral position? Seeing none, Senator Lautenbaugh, you are welcome to close. [LB139]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman, members of the committee. I don't know that I've ever had a bill come here where I did not have opposition following me. So this is a new experience. [LB139]

SENATOR AVERY: That will come later. [LB139]

SENATOR LAUTENBAUGH: Oh, it'll come, certainly. To address Senator Pahl's point, I don't know, the counties are all in varying positions regarding money and their wherewithal to meet their current obligations. But even if we were in the best possible times, if there's a more efficient way to dispose of assets that they're otherwise wasting, we should be doing it. This just happens to coincide with not the best economic times; but if it makes sense, it makes sense. Senator Schumacher, I'd be happy to look at your concerns and try to figure out if it's just a semantics thing or, you know, we didn't explain clearly why we're striking the section. I think that section is the one that--this has been read to include police vehicles, which is why we are trying to amend it, so that the sheriff's office and others, by implication, can do what we've described. The goal here, of course, would be to give greater flexibility to the county officials, as they are their assets. And there's a point at which we do have to trust them to be able to manage them, which would include disposing of them properly and capturing the revenue from that. And that's what we're all about here with this bill. I'd be happy to work with anybody on the committee if we do have to amend it in any way to clear up anything. But I do--I would like to get this out on the floor, because I think it would make a difference for our county officials and taxpayers. [LB139]

SENATOR AVERY: Thank you. I don't see any more...yes, there is one more question. Senator Janssen. [LB139]

SENATOR JANSSEN: Thank you, Chairman Avery. Just for clarification, because Senator Schumacher actually got me a little confused there. So what we're doing here is we're going to remove this. Let's just say: Commissioner Smoyer says, hey, we need to do this auction stuff going on right now; and they come and they say, well, we can't, because the statute says "mobile," and that's interpreted to mean police. Has nothing to do with, on our statutes, with auctions, police cars, law enforcement; that doesn't specifically say that. But if that's removed, then the county board or commission can

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say, we're going to do auctions; now we can do it, because this is out of the state statutes; it's not barring us anymore. [LB139]

SENATOR LAUTENBAUGH: I believe that's correct, yes. [LB139]

SENATOR JANSSEN: Sorry. Probably didn't explain that, but... [LB139]

SENATOR LAUTENBAUGH: You did as well as anyone. And I believe that's correct, yes. [LB139]

SENATOR JANSSEN: Thank you. [LB139]

SENATOR AVERY: Senator Schumacher. [LB139]

SENATOR SCHUMACHER: Thank you, Senator Avery. I--just from looking at the general powers of the county: each county shall have the power "to sell, convey, exchange, or lease any real or personal estate owned by the county in such manner and upon such terms and conditions as may be deemed" to be in the best interest of the county. That's a general power granted to the counties. Now, as I read this, trying to keep this in context, the difference seems to be that this particular section under the purchasing act says that the county board, or purchasing agent with the county board's approval, "may authorize a county official." So is the difference that we're dealing with here: the county board can take care of selling anything it wants to sell, but they can't create a middleman of an official or an employee to sell mobile equipment? Is that what this is attempting to do? [LB139]

SENATOR LAUTENBAUGH: Not really. I think the difference is that the language regarding "mobile equipment" has been interpreted to tie their hands regarding that general conference of authority, if you will. [LB139]

SENATOR SCHUMACHER: Okay. [LB139]

SENATOR AVERY: Okay. I see no more questions. [LB139]

SENATOR LAUTENBAUGH: Thank you all. [LB139]

SENATOR AVERY: Thank you very much. That ends the hearing on LB139. We'll now proceed to LB150. Senator Lathrop, welcome to the Government, Military and Veterans Affairs Committee. [LB139]

SENATOR LATHROP: (Exhibits 1 and 2) Good afternoon, Chairman Avery and members of the Government Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I represent District 12 in Ralston and Omaha area. I'm here today to introduce LB150.

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Currently state statute 84-1411 requires public bodies to provide advance "notice of the time and place" of each public meeting "by a method designated" by that particular body. The notice of that meeting is then provided to members of the body and the general public. The notice contains the actual agenda of the upcoming meeting or a statement that the agenda is readily available for the "public inspection at the principal office of the public body." LB150 simply provides that in the case of public meetings held by state government bodies, notice would also be provided on the official Nebraska government Web site. This would apply to any state agency, state board, state commission, state council, or state committee who holds public meetings. At the present time, nebraska.gov maintains a public meeting calendar. I've provided you with a copy of the calendar found on the Web site. While on the Web site the user can select a link that provides them with additional information on that particular meeting. I've also provided you with an example of this regarding a meeting of the Public Employees Retirement Board. I assume you got this--I'm reading it and I'm wondering if I should have brought something I didn't; I'll get it to you, though. By passing LB150, one-stop shopping would be created for public meetings of state bodies. It provides for additional transparency in how state government operates and would create another avenue for members of the public to become more involved in their government. And the other comment I'd make is that this is not intended to replace print notice but to be--to augment that or to supplement that with notice on nebraska.gov. Kind of a good-government thing. And I'll answer any questions you have. [LB150]

SENATOR AVERY: Thank you. Questions from the committee? Senator Schumacher. [LB150]

SENATOR SCHUMACHER: Thank you, Senator Avery. Now, this just requires that it be put on the official Nebraska government Web site. Web sites are big things, and stuff can be buried very easily somewhere on them. Should we also be requiring, if we're--want to make this visible, Nebraska Online or whoever the state's provider is to have a prominent link that can't be taken off or hidden in a--or lost in a redesign of the Web site, on the front page of nebraska.gov? [LB150]

SENATOR LATHROP: I think the important thing is, is that if you're going to have a hearing, at least the calendar at nebraska.gov, which is, if I understand correctly, in a conspicuous place--it's not buried in there somewhere where you can't find it--that nebraska.gov would at least place people on notice that you need to go look for more information on a hearing that the Government Committee is going to have, for example. And people can find their--I think people can find the information. I don't know if we want to set out in statute exactly what the person who maintains the Web site has to do. But as long as the committee gets the information on nebraska.gov... [LB150]

SENATOR SCHUMACHER: Well, most of these agencies have a site on nebraska.gov. Would it suffice, then, for them to not put it on the calendar at nebraska.gov but put it on

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their little page on--under nebraska.gov? Would that meet what you're--would satisfy what you're asking for here? In other words, the Department of Motor Vehicles has nebraska.gov, slash, motor vehicle department; and they went on their page and put it on page 3. Would that...? I mean, I'm just trying to build a little record here as to what would satisfy this requirement. [LB150]

SENATOR LATHROP: What I'm after...yeah, and the answer is I haven't--I couldn't tell you exactly how they operate that or what exactly that Web site even looks like. [LB150]

SENATOR SCHUMACHER: So probably that's something the committee should look at, then, to see... [LB150]

SENATOR LATHROP: Yeah, I would think so. [LB150]

SENATOR SCHUMACHER: I don't have anything further. [LB150]

SENATOR PRICE: Senator Sullivan. [LB150]

SENATOR SULLIVAN: Thank you, Senator Price. Thank you, Senator Lathrop. Just to clarify--so, then, with your addition to this legislation you're saying it needs to be posted on the government Web site in addition to whatever other means the public body determines to give notice of their meeting. Is that correct? [LB150]

SENATOR LATHROP: Exactly. I'm not trying to do away with print notice in the local paper, which is common. [LB150]

SENATOR SULLIVAN: And that's typically how a public body--what means they use to announce their meetings. [LB150]

SENATOR LATHROP: Yes, exactly. And in Omaha we have something called The Daily Record. A lot of businesspeople get it; almost every lawyer gets it. It has the legal notices and notices of hearing and notices of incorporation and things like that. I'm not suggesting that this would take the place of that but only be an addition. [LB150]

SENATOR SULLIVAN: Okay. Thank you. [LB150]

SENATOR PRICE: Senator Schumacher. [LB150]

SENATOR SCHUMACHER: Yes, Senator Price, thank you. Now, when you publish a notice of public meeting in a newspaper, the clerk usually gets back a little affidavit saying, yeah, it was published in the newspaper. How is a public agency going to prove that it was published on the Web page? Are we going to ask Nebraska Online to certify something, or one of their officers, or how? [LB150]

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SENATOR LATHROP: Here's...I'm not trying to create a situation where...if you fail to properly publish notice of something, generally, then, what you might do at that hearing might be subject to some kind of a collateral attack, I would expect, although I don't practice in that area, but I would expect that's the case. I'm not trying to create that same situation with this. I'm just trying to direct these agencies also. So this--if you didn't, it wouldn't affect the legality of the hearing, I wouldn't expect. That's not my intent. It's not a substitute for the legal notice; it's to supplement it. So I don't think this would have the effect of if you fail to provide something on nebraska.gov that it had the effect of drawing into question what takes place at that...the legal notice is still going to be the print notice. [LB150]

SENATOR SCHUMACHER: Should we maybe say that there so it doesn't--in the bill. Would that be a good addition for the committee to make? [LB150]

SENATOR LATHROP: Well, if the committee feels like it is, I certainly wouldn't argue with you. [LB150]

SENATOR PRICE: Senator Karpisek. [LB150]

SENATOR KARPISEK: Thank you, Senator Price. Senator Lathrop, do you know, does anybody do this now? Do they...? [LB150]

SENATOR LATHROP: I think it's done, Senator Karpisek, I think it's done kind of hit and miss. And this actually came to my attention from somebody down in Fiscal Office who looks at nebraska.gov and missed a hearing because not everybody is putting the information on there. [LB150]

SENATOR KARPISEK: But some do. This would just say they... [LB150]

SENATOR LATHROP: Yes, that's my understanding. [LB150]

SENATOR KARPISEK: That's--and that's what I thought. And so this isn't like some--something that's never been done before. [LB150]

SENATOR LATHROP: Oh, no, no, no. We're not going to have to reinvent the wheel... [LB150]

SENATOR KARPISEK: Correct. [LB150]

SENATOR LATHROP: ...to do this. [LB150]

SENATOR KARPISEK: Thank you, Senator Lathrop. [LB150]

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SENATOR PRICE: Senator Pahls. [LB150]

SENATOR PAHLS: Okay, as you leave, I'm thinking you're looking for consistency. You're looking for an addition or a supplement; you're not looking for replacement. [LB150]

SENATOR LATHROP: Precisely. [LB150]

SENATOR PAHLS: Okay. Thank you. [LB150]

SENATOR PRICE: Thank you, Senator Pahls. Senator Lathrop, I'd just add one part to this discussion, and that is what Senator Schumacher said. If we put all these notices on a calendar, with the breadth and depth of government activities, that calendar could become quite cumbersome. So, I mean, just, I don't know what your thoughts are on that--to say again what he was saying: to suffice that that was on that agency's Web page versus a centralized one, because there's a lot going on. [LB150]

SENATOR LATHROP: I would leave that to the good judgment of the Government Committee. [LB150]

SENATOR PRICE: All right, thank you. Are there...? Now we're going to have a lot of letters read into the record here. And Senator Brasch, please... [LB150]

SENATOR BRASCH: (Exhibit 3) Okay. I just wanted to add one thing, Senator Lathrop, is you had stressed and it also is written here that the word is "also." And Senator Schumacher's concern about which Web site--each Web site could have what's known as a hot link to the other, automatically guiding people to many places to access these notices, you know. But--and Senator Price had mentioned that I do have dozens of letters here from as far as Benkelman, Lincoln, West Point, Nebraska, you know, across the state--people who are engaged and concerned through reading their printed newspapers of notices, who are active citizens, who have concerns that these notices may ultimately be disregarded in the newspapers. They're encouraging everyone to, please, keep them in the newspapers. And that is for LB150, LB230, LB266, LB444. So this is a group of letters... [LB150]

SENATOR LATHROP: Right. [LB150]

SENATOR BRASCH: ...they don't want read individually but submitted as a group into record respectfully. [LB150]

SENATOR LATHROP: And I can appreciate the concern of the print--the newspaper industry and the newspaper press and their interest in maintaining the standard of

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having print notice. And I'm not...there might be another bill after me; frankly, I haven't read it, but I understood that a bill after mine was going to suggest that this be a replacement. I wouldn't go that far. I would say that it should be a supplement to the print. And that's why I've said "also" and not "instead of." [LB150]

SENATOR BRASCH: And I do understand that. [LB150]

SENATOR LATHROP: Okay. [LB150]

SENATOR BRASCH: Thank you, Senator. [LB150]

SENATOR LATHROP: Sure. [LB150]

SENATOR PRICE: (Exhibit 4) And Senator Lathrop, I'm going to also read into the record that we have 11 letters of opposition. We have one each from Merrel Martin, Richard Parman, Kelly Raichart, Rita Jones, Anthony Ham, John McDonald--Dundy County Hospital Board of Trustees; James D. Owens; John Sennett; and Justin Lucas. So there we met that obligation. Are there any further questions for Senator Lathrop? Seeing none--will you be staying around for close? [LB150]

SENATOR LATHROP: Sure. [LB150]

SENATOR PRICE: All right. Thank you. [LB150]

SENATOR LATHROP: I'll see how you guys work here. [LB150]

SENATOR PRICE: Okay. Are there any proponents for LB150? Please approach, then, if you're a proponent. Come on forward, sir. [LB150]

RICHARD HEDRICK: Oh. Only one, huh? [LB150]

SENATOR PRICE: Oh-oh. Please state your name and spell it for us, okay, sir? [LB150]

RICHARD HEDRICK: I am Richard Hedrick, H-e-d-r-i-c-k. I am for all information out. I started in computer experience with a VIC-20, Web at the university. It was something for information from one person to another. I never could quite figure out what was going on. Being a liberal, and me in open government, I believe that when a town like Waverly has a Web site, they should be included in this bill--or any other information that could be given out. The more information we get, there's not going to be anything hiding from us. Any other questions? [LB150]

SENATOR PRICE: Thank you, Mr. Hedrick. Are there any questions from the committee? Seeing none, again thank you for your testimony, sir. [LB150]

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RICHARD HEDRICK: Okay, thanks. [LB150]

SENATOR PRICE: Do we have any other proponents? Opponents? Anybody wishing to testify in the neutral? [LB150]

SHAWN RENNER: Senator Price, Government Committee, thanks for holding hearings today. My name is Shawn Renner, S-h-a-w-n R-e-n-n-e-r. I'm a lawyer with the Cline Williams law firm here in Lincoln. I'm a registered lobbyist for an organization named Media of Nebraska, Inc. I'll be testifying on several bills today, so for those of you new to the committee, I'll explain the nature of my client so that you understand that, and I'll save you the repetition throughout the various bills. Media of Nebraska, Inc. is a nonprofit corporation; it is comprised of pretty much all the members of the print and broadcast news media in the state. The constituent components are the Press Association, the Broadcasters Association, the Omaha World-Herald, the Lincoln Journal Star, the Nebraska Daily Publishers Association, and the Nebraska Weekly Publishers Association. The organization acts through a steering committee. Each of those constituents has one or more representatives on the steering committee. Our primary objective is legislative in nature. The group doesn't litigate; it doesn't involve itself in other ways but does participate in the legislative process on behalf of the news media of this state. I appear today in a neutral position on LB150 and will also do the same with regard to LB444. I agree with Senator Lathrop's assessment that the language he's drafted adds an additional layer of notice for state entities, and my organization supports that general goal. My steering committee did ask me to convey concerns to you, though, and I think some of those have already been expressed, and I think I'll convey similar concerns with regard to LB444: that, particularly in a time when budgets may be a little bit tight, we resist the temptation to go to the cheapest or least expensive means of providing notice. I don't think Senator Lathrop's bill does that; again, I view it as an additional layer of notice. And this comment isn't directed specifically at this bill but more as a...you're going to see several bills throughout this session where there will be apparently some effort to move to Internet-based notice. Media of Nebraska, as an organization, doesn't take positions on issues with regard to whether or not it's good financially for the news organizations. It truly is access-based First Amendment concerns, those sorts of things. The way our open meetings statute works, in terms of meeting notice, as Senator Lathrop indicated, it requires each public body to determine for itself what the most appropriate way to provide notice of its meetings is. It has to be reasonable, advance, publicized notice. Many organizations do that through newspapers, and I think that's particularly true in smaller communities and smaller public bodies. And I think that's probably, in those instances, the most effective way of communicating when a meeting is going to be held, what the nature of the meeting will be, and what's going to happen at the meeting. All those things are important to a democracy, so that people can participate in their government. The only concern we express with regard to these particular bills, LB150 and LB444, is that we

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not allow--we as a government--not allow cost concerns to drive all aspects of meeting notice. Each public body should make an assessment of the appropriate way that it can best provide reasonable notice to its constituents. And in many instances, that will be in the local newspaper. It may not necessarily be; that's for each body to make its decision on. For state organizations, adding an additional layer available on the state Web site makes perfectly good sense and is consistent with my organization's goals. So I'm testifying neutrally here, with, I guess, a little bit of a general caveat as we head towards the future. With that, I'd be happy to answer any questions if anybody has any. [LB150]

SENATOR PRICE: Thank you very much, Mr. Renner, for your testimony. Are there any questions from...? Yes, Senator Sullivan. [LB150]

SENATOR SULLIVAN: Thank you, Senator Price. Thank you, Mr. Renner, for your comments. Would you say that in this whole mix of technology moving into the information age that we're going to--and in terms of how people access information, the younger generation is probably using technology a lot more than the more traditional ways. So are we going to have to sort of--not necessarily with respect to this legislation but going forward--really kind of rethink how we want to make public information accessible to all our citizens? [LB150]

SHAWN RENNER: I believe that's a fair debate to have, and it ought to be an ongoing debate, Senator Sullivan. And I think you probably are correct that the younger generation is more tech-savvy than perhaps some people of my age or older. And what's reasonable has to be reasonable across the spectrum of constituents for any given public body. So I certainly don't mean to suggest that we ought to ever say we're locked in stone about how public notice ought to be given, but the goal of any public notice ought to be just that: to provide as much notice as possible to everybody in the community. And my sense is, if you went to solely Internet-based notice, that would not be effective in many portions of the state--perhaps in all the state, I don't know. Again, I don't think Senator Lathrop's bill raises any of these issues directly. It clearly provides an additional layer of notice, in addition to whatever the public body has determined for itself to be reasonable. And in that sense, it's good. But it's an issue that's going to confront you over the years here, I suspect. [LB150]

SENATOR SULLIVAN: Thank you. [LB150]

SENATOR PRICE: Thank you. Questions? Senator Brasch. [LB150]

SENATOR BRASCH: Just wanted to--thank you, Senator Price--I wanted to add to the analogy that you're bringing up here about not knowing about what the future holds. A gentleman, entrepreneur, in Wayne, Nebraska, 30 or so years ago, maybe longer: Rod Tompkins. He invested and wanted to sell ATM machines. And they said people will never buy into an ATM machine; they want to go to their bank. Well, we have banks; the

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lobbies are full. And we have ATM machines. I highly doubt that our printed newspaper will ever become an endangered species. People will want their papers at their doors. I...that's just my comment. [LB150]

SHAWN RENNER: I agree with you, Senator Brasch. And I think--I can't give you current numbers--I know that, oh, about 10 or 15 years ago, the last time I saw numbers, Nebraska had more weekly newspapers per capita than any state in the country. We have a long and, I think, very good and proud tradition of local service to local communities by local newspapers. And I fully expect that to continue and fully hope it will continue as well. [LB150]

SENATOR BRASCH: Thank you, Mr. Renner. Thank you, Senator Price. [LB150]

SENATOR PRICE: Senator Schumacher. [LB150]

SENATOR SCHUMACHER: Thank you, Senator Price. Thinking along the lines of adequate notice and transparency, this particular bill apparently deals with notice of meetings. [LB150]

SHAWN RENNER: Correct. [LB150]

SENATOR SCHUMACHER: In the typical print notice of meetings, it says there's going to be a meeting at such and such a location at such and such a time, and if you want to know what's going to go on there, see the clerk if--agenda is kept up to date at the clerk's office. Do you think it would be appropriate to require in the published notice of meetings the detail of the agenda--the address on the Web of the detailed agenda, to be required in that notice, so people would not have to trot down to the clerk's office to see the agenda, but, in fact, you know, if they really were interested and really wanted to check it out, it would be at this place? [LB150]

SHAWN RENNER: In my view, any additional notice that any government body gives of what it's doing is good. And in that sense, I'm sure my organization would not have any problem with the sort of idea that you're expressing there, Senator Schumacher. The open meetings law has been in existence since the mid-1970s. The provision that we're dealing with here, the opening provision that says how you give notice of meetings, has been roughly the same throughout that period of time. And it certainly allows for public bodies to publish their agendas or to provide notice of their agendas along with the meeting notice. That's one of the two options. How public bodies do that, really, varies across the state, and it varies in part due to the size and the nature of the public body. We have everything from boards of trustees of villages where there's 150 people that live to county boards of counties with half a million people in them--or nearly half a million people. And I think the open meetings statutes recognize that what has to be done is for each body to make an assessment of what's reasonable notice in its context

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and to make that assessment in good faith. It can always be challenged in court if somebody believes the notice is not reasonable. So Media of Nebraska, I'm sure, would be supportive of any legislation that would require that the actual meeting notice contain the agenda, which is what you're suggesting. The statute has not up to now contained that provision. It allows bodies to do that; it doesn't require them to do that. [LB150]

SENATOR SCHUMACHER: Thank you. Nothing further. [LB150]

SENATOR AVERY: Any additional questions? Thank you, Mr. Renner. [LB150]

SHAWN RENNER: Thank you for your time and attention. [LB150]

SENATOR AVERY: We are still on neutral testimony. Anyone else wish to testify in a neutral position on LB150? Seeing none, Senator Lathrop, you're recognized to close. [LB150]

SENATOR LATHROP: Just briefly--I have to make a confession that I haven't looked at this Web site before, and so while they were testifying, I got on my BlackBerry and I got onto the nebraska.gov Web site. And you now have a picture, which--or a handout--which I hadn't been able to hand out when I started. And it really is pretty slick and simple. And it gives you a link to the information you need or would want to know about the hearing--what's the agenda, what are they going to take up, where the hearing is, when the hearing is. And I think using this as a supplement to the notice that we'd otherwise be providing of a public hearing can only be an improvement to government. So I encourage you to move it, and if you see fit to amend it somehow, I guess I'll work my way through that too. [LB150]

SENATOR AVERY: You want us to move it around in committee or you want us to move it out? [LB150]

SENATOR LATHROP: I want it out on the floor. But don't shotgun it. [LB150]

SENATOR AVERY: (Laugh) Any more questions for Senator Lathrop? Thank you. [LB150]

SENATOR LATHROP: Okay. Thank you. [LB150]

SENATOR AVERY: That ends the hearing on LB150. And we will now move to...you have my agenda there? We'll now move to LB230. Welcome, Senator Sullivan. [LB150]

SENATOR SULLIVAN: (Exhibits 1 and 2) Good afternoon, colleagues. This is my first time before you. [LB230]

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SENATOR AVERY: Oh. May I interrupt for a second? [LB230]

SENATOR SULLIVAN: Yes. [LB230]

SENATOR AVERY: Senator Brasch, did you get an opportunity to distribute...? [LB230]

SENATOR BRASCH: Yes. [LB230]

SENATOR AVERY: Okay. [LB230]

SENATOR BRASCH: Yes. Thank you. [LB230]

SENATOR AVERY: That's all been done. [LB230]

SENATOR BRASCH: It went to the clerk. [LB230]

SENATOR AVERY: Thank you, Vice Chairman. Okay. I'm sorry. [LB230]

SENATOR SULLIVAN: Thank you. Good afternoon, Senator Avery and members of the Government, Military and Veterans Affairs Committee. I'm Senator Kate Sullivan, K-a-t-e S-u-l-l-i-v-a-n, representing the 41st Legislative District in central Nebraska. This bill, LB230, addresses the very important issue of protection of information relating to public utilities. Public utilities are among the many public entities in Nebraska subject to the requirements of the public records act. These public entities operate their business in a transparent environment. And the public may access the overwhelming majority of their documents and records under the public records act with only limited exceptions. For many years, a person wanting to view or obtain a copy of a public document would go to the business office of the entity and ask for a copy of the document, or they might send a request via regular mail. As technology has advanced, e-mail has become the most convenient and common method to request public records. The prolific use of this technology has allowed public records requests to actually come from anywhere in the world. Events such as 9/11 have made it abundantly clear there are individuals and groups looking for opportunities to do serious harm to our country. Crippling or tampering with the state's electric, gas, or water infrastructure would cause serious harm to the health and safety of Nebraska's citizens and to our state's economy. Terrorists seek to destroy, incapacitate, or exploit critical infrastructure and key resources across the United States to threaten national security, cause mass casualties, and weaken the economy. America's open and technologically complex society includes a wide array of critical infrastructure and key resources that are potential targets for terrorism, such as the electric grid and drinking water infrastructure, these resources that provide some of the most essential services to our society. Nationwide, the majority of these facilities are owned and operated by both the private sector and state and local governments. In Nebraska, the majority of these facilities are

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publicly owned and operated. This is critical infrastructure so vital that its incapacitation, exploitation, or destruction through terrorist attack could have a debilitating effect on the security and economic well-being of the state and the country. Under LB230, our state's public electric, gas, and water utilities will be allowed to withhold information pertaining to public utility infrastructure specifications, design drawings, and maps. The public will continue to have access to information regarding a public utility's plans to expend money to build new facilities such as a power plant, electrical substation, transmission lines, drinking water facility, or office building. Public utilities use a transparent process for these activities: All public board meetings are required by law to be noticed; the public may attend any board meeting; and all projects are discussed at these and other public meetings. LB230 also allows public utilities to withhold customer use information. Currently there is a right to withhold payment and credit information, but there is no specific exception for customer use information. Customer use information is a privacy expectation for customers. Public utilities believe that customer use information is confidential and customers should have the right to protect or divulge such data as they deem appropriate. Nebraska has a unique public electric utility system that is primarily provided by public power districts, rural public power districts, and municipalities, which are all public entities. In addition, municipalities also operate water and natural gas systems. The Metropolitan Utilities District provides the residents of Omaha with natural gas and water. Nebraska's public utilities provide Nebraskans with low rate, exceptional reliability, and open governance. Unlike private utilities, which are not subject to the public records act and are not compelled to provide information related to their businesses, critical infrastructure, and key resources, public utilities are subject to the public records act. Public utilities understand and recognize the public's right to transparent government, but they also believe the public's right to know must be balanced by the need to protect critical infrastructure and key resources so vital to the security of our citizens and the economy of the state. Although we should not proclaim that changing this law will keep the nefarious interests at bay, enacting the sensible changes of LB230 is a crucial step in mitigating potential harm. I actually have letters of support from Lieutenant Governor Rick Sheehy and Greg MacLean, director of Lincoln's Public Works and Utilities Department, and I'd like to share those with you right now, if the pages could come forward. So in closing, LB230 would allow public utilities to withhold information concerning public utility infrastructure specifications, design drawings, maps, and customer use information only. These simple and reasonable exceptions to Nebraska's public records act are intended to protect Nebraska's publicly owned and operated utilities and its citizens. I'd also like you to know that LB230 is a work in progress, as Mr. McClure will later tell you when he presents his testimony. I'm going to answer questions if I can. If I can't, there are also experts that will follow me in support of the bill. They can directly address the security and compliance issues caused by the current law and how LB230 will help resolve those problems. I thank you for your time, and I encourage you to advance LB230 to General File. [LB230]

SENATOR AVERY: Thank you, Senator. If you don't mind, I'll start... [LB230]

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SENATOR SULLIVAN: Sure. [LB230]

SENATOR AVERY: ...with the questions. Do you see this in any way eroding our public records laws and restricting access of the public to these records? [LB230]

SENATOR SULLIVAN: I don't in any way. I hope that my testimony has underscored that. And I think the critical thing here--just as technology has sort of changed the name of the game in some respects, 9/11 created a whole different environment. And I think what we're trying to do here is say that we're concerned about the safety and security of our citizens--and by making the designs and maps and details of utility infrastructure that could fall in the wrong hands--could jeopardize that safety and security. [LB230]

SENATOR AVERY: And you don't see this as the camel's nose under the tent that might open up other opportunities to make exceptions to certain records? [LB230]

SENATOR SULLIVAN: I can't predict what others might come up with. I'm hoping that the way that we have crafted this legislation is narrowly enough, specific enough that--not to allow interpretation in wider circumstances. [LB230]

SENATOR AVERY: All right. One more question. Could you explain in some more detail why customer use information would be restricted? [LB230]

SENATOR SULLIVAN: Well, it's one thing when you talk about customer personal information, and that's already covered. But when we talk about customer information with respect to public utilities, we might be talking about such things as how much electricity they use, how much water they use. And particularly in terms of business-to-business relationships, that might jeopardize the relationship that the public entity has with, maybe, a competitor. So I guess that's where we're saying that, you know, we're expanding, if you will, the type of customer-related information that would be private. [LB230]

SENATOR AVERY: Aren't there some businesses that routinely ask for these records and use it for marketing purposes? [LB230]

SENATOR SULLIVAN: Yes. [LB230]

SENATOR AVERY: These are for-profit organizations... [LB230]

SENATOR SULLIVAN: Exactly. [LB230]

SENATOR AVERY: ...that do that. [LB230]

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SENATOR SULLIVAN: Exactly. Um-hum. [LB230]

SENATOR AVERY: Questions from the committee? Senator Price. [LB230]

SENATOR PRICE: Senator Avery, thank you. Senator Sullivan, I appreciate you bringing this legislation forward and spearheading it. And I wanted to make sure that we have flushed it out to where we've said that the intent of the legislation is to ensure that those asking for information have a need to know. It's not necessary to say that they're going to automatically be denied; we're just saying that, please, tell us that you need a reason to know where these critical infrastructure items are located--and establish a chain of understanding and respect for what information is given out. I mean, it's my understanding that we have foreign countries routinely making requests to our utilities for documentation and that...it's hard to understand why that might be happening, that you're asking for where our gas lines and power plants and transmissions are and you're, you know, on the other side of the globe. [LB230]

SENATOR SULLIVAN: Well, you're absolutely right. And in some cases, particularly as I mentioned with technology and e-mails, we have no idea where that request is coming from and from whom it's coming from and really no way of identifying it. [LB230]

SENATOR PRICE: Again, I appreciate what you're doing here. Thank you. [LB230]

SENATOR AVERY: Any other questions? Don't see any. Are you going to stay around to close? [LB230]

SENATOR SULLIVAN: Absolutely. Thank you. [LB230]

SENATOR AVERY: Other proponent testimony? Good afternoon. Welcome. [LB230]

JOHN McCLURE: Good afternoon, Chairman Avery, members of the committee. My name is John McClure, J-o-h-n M-c-C-l-u-r-e. I'm the interim president and CEO of Nebraska Public Power District, and we want to thank Senator Sullivan for her sponsorship of this important legislation. The electric industry is comprised of three functional components: generation, which is the production of the electricity; transmission, which is the bulk delivery system of that produced electricity; and finally distribution, which is where customer delivery actually occurs. Each component is vital to the reliable delivery of electricity. I would also point out that our industry is unique among all others in that we have to instantaneously match the production of electricity with the demand out there. And the network that accomplishes that is an extensive, sophisticated network of control and monitoring equipment to balance the generation and the loads at all times. I'm here today to discuss growing conflicts between federal regulatory reliability requirements, privacy considerations, and provisions of the Nebraska public records act. Since the horrific events of 9/11, federal authorities have

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been increasingly concerned about potential threats to critical infrastructure industries including essential services such as electricity, natural gas, and water. The security concerns of the federal regulators and the potential threats to these industries do not differentiate between private and public entities. The majority of the electric utility operations in the nation--this was mentioned earlier--are provided by private entities, who are not subject to public records acts requirements. While arguments can be made that sensitive information about our facilities can currently be protected under the act, the ability to withhold certain records is subject to interpretation. More specific language, such as that provided by LB230, provides greater clarity and reduces the risk of disputes and litigation. The public records act and the Nebraska Supreme Court cases interpreting the act provide that requirements to disclose records are broadly construed and rights to withhold records are narrowly construed. NPPD approached media representatives late last year to discuss these proposed changes. LB230 as drafted may not be the perfect solution. However, we are committed to discussing potential amendments that accomplish our primary objective, which is to better protect the security of utility infrastructure. We met again last night with Media of Nebraska and believe there's a commitment from both sides to consider modified language that can meet the needs of all parties. Under the existing law, exceptions which allow a public entity to withhold records relating to security are narrowly focused on security plans themselves and are silent on the assets that are being protected. It is equally important to protect from disclosure detailed public utility information such as design drawings, specifications, and certain maps, which provide the blueprint for attacking public utility infrastructure. The disclosure of detailed information about utility infrastructure jeopardizes security and reliability of the electric system. A second objective in LB230 involves customer use information. While some may interpret the current law to protect customer use information, the narrow interpretation of exceptions leads us to question whether the privacy right of the customer would be protected. Another concern is that release of usage information could adversely impact public utility business models by putting third parties between utilities and our customers without the consent of either the customer or the utility. I would be happy to address any questions you may have.
[LB230]

SENATOR AVERY: Perfect timing. Thank you. Questions from the committee? Senator Schumacher. [LB230]

SENATOR SCHUMACHER: Thank you, Senator Avery. Mr. McClure, would it be fair to describe this proposal as closely akin to number (3) under the exceptions that are already in the act: "trade secrets, academic and scientific research work which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose"?
[LB230]

JOHN McCLURE: Well, there may be some similarities, but our primary concern here is

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security of the system. And so that is really our focus, and we think it's differentiated from (3). We don't believe that for the types of detailed documents that we're talking about, that there would be a general public interest in those documents or even an understanding of what's in those. We are seriously concerned, though, about the risk if they get in the wrong hands. [LB230]

SENATOR SCHUMACHER: And because you're a public entity subject to these kind of rules and not Southern Company or Con Edison, Nebraskans are somewhat more exposed than people in other states. [LB230]

JOHN McCLURE: One could argue that. In fact, I would draw the committee's attention to a GAO report that was just issued this month dealing with electricity grid modernization and concerns about cyber security. They speak specifically about some of the unique aspects of Nebraska, because we are a consumer-owned-utility state. And I would recommend you take a look at this report. [LB230]

SENATOR SCHUMACHER: I have nothing. [LB230]

SENATOR AVERY: Any more questions? Thank you, Mr. McClure. [LB230]

JOHN McCLURE: Thank you. [LB230]

SENATOR AVERY: Any other proponent testimony? Welcome. [LB230]

BILL FLYNT: (Exhibit 3) Thank you, sir. [LB230]

SENATOR AVERY: State your name and spell it for the record. [LB230]

BILL FLYNT: Well, good afternoon, Chairman Avery and members of the committee. My name is Dr. Bill Flynt, B-i-l-l F-l-y-n-t, and thank you for the opportunity to testify in support of LB230. My testimony today is based on decades of analysis of infrastructure attacks supporting contingency operations of the U.S. military targeting critical infrastructures globally and in two major conflicts. Critical infrastructures--such as the bulk electric power system, consisting of power plants, transmission lines, and substations that route and supply power; natural gas; water; telecommunications; financial systems; and others--underpin our society and economy. The security and integrity of critical infrastructures are essential to public safety, business, and the general welfare. These systems are complex and interdependent, with tightly integrated processes. A failure of a critical infrastructure, especially the bulk electric power system, can cascade through multiple infrastructures across geographic regions. Ensuring the security of these vital systems entails, among other activities, protecting sensitive information regarding their vulnerabilities. Access to sensitive information facilitates the attack of infrastructure. Examples of such sensitive information include infrastructure

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specifications, design drawings, and system maps and typologies, all of which support attacks by a broad spectrum of threats including hackers, lone-wolf domestic terrorists, and even hostile foreign governments, to mention only a few. These threats are indisputably real and active, with examples frequently reported in the media. Adversaries follow known steps: target selection, planning and surveillance, execution of the attack, and finally exploitation of the effects. Denying adversaries sensitive information, as LB230 proposes, hampers threats in their target selection, effective planning, and attacks. This in turn reduces the probability of an attack's success. Every complex system has vulnerabilities. Information regarding the design and specifications of a system, including the locations of its critical nodes and interfaces, tells adversaries what they need to know to cause harm and disrupt or deny that system. An essential component of an effective strategy to protect infrastructures is to deny the threats sensitive information regarding the vulnerabilities, specifications, and design of vital systems. Obvious examples of information that should be protected include security and vulnerability assessments, security procedures, critical asset design, and other categories of information that detail specifics regarding the system's processes. Adversaries must be denied access to the information required to effectively plan their attacks. Thank you for this opportunity to share my thoughts as a former military planner and targeteer regarding how you can better protect Nebraska's critical infrastructures by better protecting sensitive information regarding these complex and often fragile systems. [LB230]

SENATOR AVERY: Thank you. Well, you are Dr. Flynt, but you're also Colonel Flynt. [LB230]

BILL FLYNT: Yes, sir. [LB230]

SENATOR AVERY: Colonel Dr. Flynt, okay. [LB230]

BILL FLYNT: Or Bill. [LB230]

SENATOR AVERY: (Laugh) I see that while you were in the Army, that one of your responsibilities was to, what appears to me, to find vulnerabilities in foreign infrastructure in order to advise the U.S. military on where they may want to, for better word, strike. Am I right? [LB230]

BILL FLYNT: Yes, sir. You're right--both offensively and defensively. As one of my last assignments, I was the founder and director of--before 9/11--the Homeland Infrastructure Security Threats Office, which is a component of the Foreign Military Studies Office based out of Fort Monroe, Virginia. [LB230]

SENATOR AVERY: And you have experience with the General Command and Staff College down in Fort Leavenworth. [LB230]

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BILL FLYNT: Yes, sir. There's a follow-on program after the resident year at the college for a select number--about 40--people to be trained in strategic targeting. And I was privileged to attend that targeting and planning course. [LB230]

SENATOR AVERY: I take note of the fact that you chose the right professional academic career for your Ph.D. Any questions from the committee? Seeing none, thank you for your testimony. [LB230]

BILL FLYNT: Thank you, sir. [LB230]

SENATOR AVERY: More proponent. Welcome, sir. [LB230]

TOM RICHARDS: (Exhibit 4) Thank you. Chairman Avery, members of the committee, my name is Tom Richards, T-o-m R-i-c-h-a-r-d-s; I'm the manager of governmental and community relations for the Omaha Public Power District. I'm here testifying in support of LB230. OPPD shares the concerns expressed by Mr. McClure in his testimony. Since 9/11, our security initiatives have hardened many of the ways OPPD does business. We own a nuclear facility which employs numerous security forces. Power generation and transmission infrastructure and information technology infrastructure is being protected in a much more security-conscious way since 9/11. Mr. McClure's comments about if we were in another state with private electric suppliers is very true. We would not be having this conversation, for example, if we were in Iowa and they were owners of generation and transmission, because they're privately held. Last night I had the opportunity to have a phone conversation with Weysan Dun; he's the special agent in charge of Nebraska and Iowa's FBI offices. Mr. Dun expressed to me his interest and stressed that protection of critical infrastructure from people meaning to do harm to our citizens is of the utmost importance to the FBI--and, as well, supported by Senator Sullivan's comments earlier. Lastly, I'd like to give you an example of a customer of OPPD. There are two ways I like to make this example. I see the editor of our hometown paper sitting behind me. And last week we worked with the press to do a couple of stories about a transmission and substation siting that we were going to do in southeast Sarpy County. We worked with the paper, and we let them know where these facilities were being proposed and kind of laid out some schematics about, you know, letting the public know where we were going to put these facilities. That's a really exceptional way to site facilities, so that the public knows, you know, when we're buying land what's going on. And the paper was very supportive and very helpful. In fact, yesterday we had probably 100 local citizens come in and give us more input on where those facilities are going. That's one way that the story can unfold. Here's another customer that OPPD serves. OPPD serves the home of Strategic Command. It also serves Offutt Air Force Base. Strategic Command is in control of the United States nuclear arsenal; it's in charge of its cyber security; and it's in charge of Space Command. We are the owners of the facilities inside of STRATCOM, Offutt Air Force Base, and the surrounding area. I can just give

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you an example that on 9/11 there was a lot of interest, as it surrounded the base, where the substations were, where the facilities are, and how the lines go into the base. Because when my wife called me to say that there were a lot of fighters flying around and that the president's plane wasn't far behind, it gave us insight to our first real look at hardened security in the electric utility business. So you can see if we were asked for those records, particularly as they pertain to Offutt, what a difficult situation we might be put in. So with that, I'd stop my testimony and I'd entertain any questions that you might have. [LB230]

SENATOR AVERY: Thank you, sir. Questions from the committee? Senator Schumacher. [LB230]

SENATOR SCHUMACHER: Couple of questions. I would take it that OPPD, NPPD, and all the large-generation utilities use a lot of the same technology and design. I mean, you don't invent the wheel new for each place. [LB230]

TOM RICHARDS: Our customers are significantly different, but a lot of the equipment that we use is very much the same. [LB230]

SENATOR SCHUMACHER: So if somebody were to get some information out of you about a particular design or a particular way of doing things--and you not be the target, but it may assist them in targeting something on the East Coast or someplace like that. [LB230]

TOM RICHARDS: Could be a description of some other facility and the equipment that they're using to do it. [LB230]

SENATOR SCHUMACHER: Then a second question. I take it that most utilities have service agreements and transmission agreements with other utilities along a big grid of electrical distribution. [LB230]

TOM RICHARDS: In OPPD's case, that's true. [LB230]

SENATOR SCHUMACHER: Okay. And in that case, do you have any contractual exposure in the event you would--or somebody would argue or the people that you deal with, the other utilities, that you negligently released information that caused them--or that caused you to go down and impacted them? [LB230]

TOM RICHARDS: I think that that's part of what Mr. McClure was bringing forward, as far as some of the regulatory responsibilities that we have as we're connected to the national grid. If you're asking, do we have liability? Probably so. [LB230]

SENATOR SCHUMACHER: So if one of these releases caused problems, it could cost

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the ratepayers money. [LB230]

TOM RICHARDS: It could. And even greater than that, it could compromise their security. [LB230]

SENATOR SCHUMACHER: I have no further questions. [LB230]

SENATOR AVERY: Any other questions from the committee? Thank you for your testimony. [LB230]

TOM RICHARDS: Thank you. [LB230]

SENATOR AVERY: Additional proponent testimony. Good afternoon. [LB230]

KRISTEN GOTTSCHALK: Good afternoon, Senator Avery and members of the Government Committee. My name is Kristen Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k. I'm the government relations director and registered lobbyist for the Nebraska rural electric systems. We have 35 distribution systems, and we're a little bit different than the previous testifiers: we only distribute electricity; we don't generate electricity. And in a lot of ways we have a very exposed system of infrastructure. Somebody wants to see where the power lines are, well, you can look up and you can see where the power lines are. For those lines that are buried, you can call the One-Call System; those lines will be marked for you under the One-Call Notification System. Substations--again, they're exposed as well. So what does this actually protect? In our situation, as we look at our distribution systems, we also build things into those systems, such as redundancies, so if we have a failure in one part of the system, we can route power to another part of the system. Releasing information with respect to how the grid and how our distribution systems are actually aligned and the redundancies carried within does create some significant security risk, because you can highlight or high-point those areas where we are most vulnerable. So we do feel very strongly in support of LB230. Now, does this mean when we build a new distribution line that we can withhold that information? Absolutely not, we wouldn't do that. You know, that's a public-need information and do feel very strongly about that. Now, customer information, customer usage information: I think we've always taken the position that the customer usage information belongs to that consumer. It belongs to us and the result--when we provide them a bill. But divulging that information should be at the discretion of the customer and not us, based on a public records request. Since it's always nice to follow people who have a lot of experience in this area, I don't need to reiterate any of the other security issues, but I will emphasize that we do very strongly support LB230. Be happy to take any questions. [LB230]

SENATOR AVERY: Thank you. Questions from the committee? Senator Schumacher. [LB230]

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SENATOR SCHUMACHER: Thank you, Senator Avery. Customer use information is--that's more than just what wattage is used; do you have...? [LB230]

KRISTEN GOTTSCHALK: Well, you know, a good example of that--it used to be is just how much energy they use. When we were back in simpler times, we gauged how much energy they used, billed them based on that. But as technology increases--we have smart-grid technologies, we go through load control--we actually have more information than just simply how many kilowatts of energy we're delivering to them. [LB230]

SENATOR SCHUMACHER: You may have information, then--or, if you don't have it now within your technical capacity, shortly to have--as to when electric usage jumps during the time of the day. [LB230]

KRISTEN GOTTSCHALK: Absolutely. [LB230]

SENATOR SCHUMACHER: So if you have my customer information and you saw the electric usage jump every day at 6:45, you would have a pretty good hunch that's when I got home from work. [LB230]

KRISTEN GOTTSCHALK: That's the potential, yes, absolutely. [LB230]

SENATOR SCHUMACHER: So if you wanted to go steal my dog, you could--you know you'd have to do it before 6:45. [LB230]

KRISTEN GOTTSCHALK: And, actually, the technology is here now, that we do have that kind of information. [LB230]

SENATOR SCHUMACHER: And that's what you mean by customer use information. [LB230]

KRISTEN GOTTSCHALK: Yes. [LB230]

SENATOR SCHUMACHER: No further questions. [LB230]

SENATOR AVERY: Senator Karpisek. [LB230]

SENATOR KARPISEK: Thank you, Senator Avery. Ms. Gottschalk, you hit on one important part about the customer being able to release it. How would that work? Would they just have to call you to say, it's okay to let...? [LB230]

KRISTEN GOTTSCHALK: Well, I guess at this stage of the game, we prefer not to be in

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the business of just simply being available to release customer usage information. However, if a customer wants to release that information, I suppose they could provide a contact to us, telling us that they would like that information released to a third party. [LB230]

SENATOR KARPISEK: Wonderful. [LB230]

KRISTEN GOTTSCHALK: Um-hum. [LB230]

SENATOR KARPISEK: Thank you. [LB230]

KRISTEN GOTTSCHALK: We wouldn't withhold that if the customer... [LB230]

SENATOR KARPISEK: I guess I just wanted to hit on the customer being able to do that if they so desired. Thank you. Thank you, Senator Avery. [LB230]

SENATOR AVERY: Any other questions? Seeing none, thank you for your testimony. [LB230]

KRISTEN GOTTSCHALK: Thank you. [LB230]

SENATOR AVERY: We're still on proponent testimony. How many others wish to testify in support of this? Just two. Okay. Three? [LB230]

SENATOR PRICE: Do we hear four? Four? [LB230]

SENATOR AVERY: Okay, watch the lights, folks. [LB230]

DAN CROUCHLEY: Senator Avery, members of the committee, my name is Dan Crouchley, D-a-n C-r-o-u-c-h-l-e-y. I'm a senior vice president and general counsel of Metropolitan Utilities District in Omaha. MUD is the water and gas utility, so let's shift from electricity to water and gas a little bit. We provide that service to 210,000 people in Douglas, Sarpy, and Washington County. MUD is also a political subdivision subject to the public records. This bill--the subsection (8) of that--exceptions--this bill only broadens that a little bit, as has been very well testified to by other people. I'd just like to make a couple of comments. Since 9/11, we've suddenly developed quite a relationship with the Homeland Security Department, starting out with security assessments and then requirements to better our security and so on. MUD has got three water treatment plants and a liquid natural gas plant in Omaha. We have spent around \$2 million in additional security for those facilities. We feel like we're being pulled in two different ways. Under the Homeland Security we're being told, increase our security and make everything more secure. With regard to the open records act, that dynamic suggested that certain aspects of that have to remain open. That's what this bill addresses. I'll point

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out that I do have an example of a request; I don't think anybody has come up with a request. We had a request...our Platte West facility was completed about three years ago; it provides 100 million gallons of water per day. And when it was being built, we had a request to see the design plans by a--actually, it ends up to be an interested citizen, but it was an opponent of the plant. Reading this, my opinion was that we had to provide it. We did provide it. He didn't show up to look at it. So I wondered if he was just checking to see whether we would try to withhold it. But, in any event, we've been asked to do this, and you do suddenly feel a little uneasy when you're actually handing them the design plans of a new plant. That's why I think that it would be appropriate that this addition be made. I would point out that I've--there are discussions with Media of Nebraska, and we have no desire to make this broader than necessary. We'd be happy to deal with them to make it--focus it in if it seems to be too broad. We understand their concerns. We think this is a reasonable extension and a limited extension, and we hope that the committee supports it. [LB230]

SENATOR AVERY: Thank you, sir. [LB230]

DAN CROUCHLEY: Be happy to answer questions. [LB230]

SENATOR AVERY: Any questions from the committee? I don't see any. Thank you. [LB230]

DAN CROUCHLEY: Thank you. [LB230]

SENATOR AVERY: Additional proponents. Good afternoon. [LB230]

GARY KRUMLAND: Good afternoon, Senator Avery, members of the committee. My name is Gary Krumland--it's K-r-u-m-l-a-n-d--representing the League of Nebraska Municipalities in support of LB230. You've heard from the electric industry and from MUD. Cities provide electric, natural gas, water, sewer all across the state; they provide all sorts of utilities. And on their own initiative and through the encouragement of both the state and federal government, they are getting more and more concerned about security. We think a clarification of the public records law will help them protect those areas that need to be protected to help with the security. And I won't repeat what other people have said, but if the...would request that the committee look at this issue, advance it. If we need to clarify the language to tighten it up to make sure it just applies to that...we're not intending to expand it other than just to protect the security of these utility infrastructure. Be happy to answer any questions. [LB230]

SENATOR AVERY: Thank you. Questions from the committee? Don't see any. More proponents? Welcome. [LB230]

GARY MADER: Afternoon, Mr. Chairman, members of the committee. My name is Gary

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Mader, G-a-r-y M-a-d-e-r. I'm utilities director for the city of Grand Island. In Grand Island, the city operates the water, wastewater, and electric utilities; and the natural gas utility is privately operated. Again, to keep things short, I don't want to reiterate what has already been spoken but simply to express the city of Grand Island's support for infrastructure protection. We have not had a lot of problems, but I would like to relay an odd phone call I got about three years ago. And that was one from...we're used to fielding questions from our citizenry. Our citizenry very often calls: What about that pothole? What about this pipe? Why is the water running in this ditch? Those kinds of things. So our first inclination is simply to provide whatever information we have. But this particular phone call was routed to me, and the question from the individual, whose number was blocked on my security caller ID, was: Do you have maps of the regional natural gas system? And my response was: Yes, we do; what's your purpose, and what's your name? And at that point the individual hung up. And that's been one of those odd things, that, you know, there are people out there poking, probing, trying to get information. I have no idea what the source of that call was, why that information was being requested. But it's one that often comes in my mind as we discuss improved security around our basic and critical infrastructure. And so at this point I think it is important that utilities be able to use good judgment in withholding critical information in order to prevent the information simply being made available to anyone that wants it. With that, I would be glad to answer any questions. [LB230]

SENATOR AVERY: Thank you, Mr. Mader. Questions from the committee? I don't see any. Thank you. Any more proponent testimony? Any opponent testimony? I see Mr. Renner is moving. [LB230]

SHAWN RENNER: For good or ill, you people will be used to me by the end of the day. (Laughter) [LB230]

SENATOR AVERY: I think so. [LB230]

SHAWN RENNER: Apologize for that. Shawn Renner, S-h-a-w-n R-e-n-n-e-r, appearing again on behalf of Media of Nebraska, Inc. I...as Mr. McClure mentioned, NPPD came to my organization in advance of the session with the idea for the bill. We discussed with NPPD representatives their concerns, looked at an initial draft of the bill, made some comments on that. At my request, NPPD made some changes to the initial draft. This was prior to the time that I'd had a chance to discuss the issues with the steering committee that governs my organization. The requests were based on my knowledge of what the media generally tends to think is appropriate and not. We've now had a chance to look at the bill. As Mr. McClure indicated, we met last night with a number of representatives of NPPD, including those who have spoke to you here today, including the security consultant. And I agree with Mr. McClure's assessment that both sides are going to continue to work to try to reach agreement on language that both satisfies the security concerns that the utilities have voiced to you and some concerns of more how

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do we govern ourselves that I'm going to mention to you in the next few minutes. I want to make it very clear that no member of the news media suggests in any way that we ought to have physical facilities for utilities that are vulnerable to terrorist attack or anything else. I'm not here to argue today that the security concerns that have been voiced are immaterial or don't matter or are nonexistent. I do think that, at least from what we heard today, they may be, perhaps, somewhat alarmist. We've heard one example of a specific written request made, today, for infrastructure information. That was what Mr. Crouchley mentioned, and it turned out that was a concerned constituent. The previous testifiers are correct: Nebraska is a public power state; it's the only public power state in the country. They take a different lesson from that than my clients, the news media, do, though. The owners of our utilities in Nebraska are not NPPD, are not MUD, are not OPPD. The owners of our utilities in Nebraska are the citizens--the ratepayers, the taxpayers. And part of the reason that public utilities as well as every other governmental entity in the state is subject to our public records statute is the basic belief, I believe to be correct, that the owners of our government and the owners of our public utilities ought to have access to information that allow them to make informed decisions about how that government and how those utilities work. The question that this bill presents is, how do we reach that balance? And, again, I think we will continue working with NPPD and others to try to strike what we think is an appropriate balance. I'll give you one specific example of why I think the current language is too broad. And this came up at our meeting last night, as a matter of fact. I brought along to the meeting the front page of the South Sioux City Star--a newspaper up in South Sioux City, Nebraska--from last week. It's a weekly newspaper; it comes out once a week--one of the small-town newspapers we talked about. On the front page was a map provided by NPPD that listed where a new electric transmission route would be put through town. That's important information to citizens of South Sioux City; they want to know if it's going through their property, what the route is, what impact that will have on the rates they're going to pay, how it will relate to the service they receive from the public utilities. Under the bill that's before you today, LB230, that would be a record that public utilities could withhold from public inspection. The answer from the utility side is: Of course, we wouldn't do that; that's information we want out in the public; we need to get people to buy into our new projects; we want them to know what's going on; we want them to be good owners of our utilities. And that's fine and good. The public records statutes, though, are a commitment from the state government about what information our government has to make available to us. It doesn't rely on the good graces of the government to give us that information. It doesn't rely on someone within NPPD or OPPD deciding that you're a good enough person to have the information but you're not, for example. It goes out to the public generally and not to my clients just the news media. We happen to be one of the primary consumers of that information, and we view ourselves as a conduit to provide that. But our law is very clear. It doesn't apply to the news media. Our public records statutes apply to the public generally, and those are concerned citizens, just as Mr. Crouchley indicated. I don't want to minimize the security concerns; they appear to be valid. I think we can come to some arrangement with them.

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And I'll tell you that we are continuing to work with NPPD on language that will be more acceptable to us. This language is simply too broad--if it would allow a public utility to withhold every map in its possession, which it does, when you read it. It doesn't tie it to security; it doesn't say if the map has good stuff in it or bad stuff in it; it's doesn't say if a terrorist could use the map. It says maps can be withheld, including those electric transmission maps. Now, would they do it? I don't know. Probably not. There's no mileage in it for them. But this law is set up so that it puts a minimum barrier between citizen access and the government. If I could indulge just 30 seconds more--I apologize for going too long; I'm playing against about a dozen, though, so at least we'll use up less time on my side. The customer usage information is not a security concern. They didn't address it as a security concern; nobody said that was here as a security concern. I don't believe it is. There may well be legitimate public information need for some customer usage information. For example, this covers water utilities. Particularly in the western part of the state, we've been in a drought for a number of years. It might be an entirely legitimate public question whether a particular business or a series of businesses is using more than their fair-share use of water in the area. And the only way you can get that information, unless those private businesses give it to you voluntarily, is go to the governmental source, which, again, is owned by the citizens of this state; and that's the people who make the request and get access to the information. I've overspent my time; I appreciate your indulgence. I'd be happy to answer any questions that I can. [LB230]

SENATOR PRICE: Thank you very much, Mr. Renner. Do we have questions from the committee? Well, I'll make a comment, because you brought up the term "alarmist" on the one phone call. I have two personal experiences; one was in West Germany in 1985 at Rhein-Main Air Base, where someone parked a car full of high explosives that was shaped to blow a hole in the ground to cause damage to a steam-pipe system on the air base, which would then cause explosions in all the dormitories at a certain time of day to catch our airmen in the showers, in between shift change. Because they parked the car one slot over, they missed. These things happen. And I would talk to a case at a water treatment place in Australia, where it wasn't a terrorist, it was a disgruntled employee who had access to the systems and sat there with a laptop and a wireless and held some valves open that put out 20,000 gallons of raw sewage into clean water. That was only a couple years ago, and that was an attack on the SCADA system. So I think "alarmist"...you know, we have to be careful. And I understand what you said, and I appreciate what you just said between the balance of public need, public record, and security. But I want to be sure and want to be, you know, painfully clear that there are concerns and there are people out there who would do us harm, whether they be here in our state or elsewhere. And many of the utilities and things that go through our state--we're blessed, because we are the crossroads for the United States and many utilities. So that makes this even more critical in nature. So I just wanted to provide that to you, not as a means of chastisement or otherwise, just to make sure that sticks to the tape also as we talk about this publicly. So I appreciate it. Are there any other

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questions? Senator Schumacher. [LB230]

SENATOR SCHUMACHER: Thank you, Senator Price. Our particular public power utilities--while they are public, they have no power to tax and in that respect are different from government. And we own our share, or our ownership is in the public. But if I was a shareholder of Southern Company and I had stock in Southern Company, I can't go in there and ask them for their design information. And the public utility--isn't that somewhat different than government? And isn't our--the fact that we choose to own that utility, in this rather weird way that we do in Nebraska, a lot--that ownership a lot like ownership of stock in a private company? Shouldn't our rights kind of be defined in the--in a gray area between government on one hand and private on the other, as a quasi-public theoretical situation? [LB230]

SHAWN RENNER: I think that's probably true, Senator Schumacher. And I'm certainly no expert on how we got to where we are today with public utilities in Nebraska; we're the only state that does it this way. It goes back to the George Norris days; we've had it for a number of decades. And it's part of the rural electrification process that happened back in the '30s and '40s, I believe. And so there are a wide variety of policy concerns that originated in our system that may or may not still obtain today; I don't know how those play into it. I agree with you that NPPD is not the same as the city of Lincoln or the state of Nebraska. It is an entity that provides a specific sort of service to the citizens of the state. It obtains some advantages, I believe, from being public in nature, and we do exercise more of an ownership in it, a direct sort, than, for example, a single shareholder of Consolidated Edison would. For example, I can vote for my director on NPPD's board. And each of four years or six years, whatever the terms are, I can exercise, you can exercise your right--we all can--to decide if the governance of that organization is what we want. And that's, in theory, I suppose, exists in the private realm as well; as a shareholder, I've got a vote. It's a little bit different when you go to a public election process, though; and the rules that obtain, I think, are a little bit different too. So I'm not sure that the analogy applies directly that this is more like a private entity or not. And for good or ill, it's what we've got. And for good or ill also, all governmental entities, whether they're utilities or the city of Lincoln or the county of Lancaster or the state of Nebraska, are subject to the state's public records statutes. And that is certainly different. My clients' concern on this bill is that the security concerns be tied to security. And they're not right now. If you read subsection (8) of the public records statute--the amendment that's being proposed by NPPD--every other aspect of it is tied to security in some way. It allows them to withhold, for example, the security assessments that the consultant mentioned; that's specifically allowed in there. The language in this stuff is--it matters. That's what the statutes do, is define what our rights and responsibilities are. And this bill says flatly, public utilities in Nebraska can withhold maps--doesn't matter whether they tell you any information that needs to be secured, doesn't matter whether they tell you where an electric line will go, doesn't matter whether they tell you where NPPD's home office is located. It says maps can be withheld from the public. That's too

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broad. And that's my client's concern. We need to work on making sure that the security concerns being voiced are taken care of but that they don't go further than they have to. And, again, my--Media of Nebraska has sat down with NPPD twice now. I've committed to speak with Mr. McClure this next week; we'll attempt to come up with language that satisfies both sides of the equation. [LB230]

SENATOR SCHUMACHER: Thank you. [LB230]

SENATOR PRICE: Thank you, Senator Schumacher. Senator Brasch. [LB230]

SENATOR BRASCH: Just one more comment on security, mapping. Today, through Google mapping, you can take a look at somebody living in another part of the world fairly easily. But--so that's not a concern. On your concern, not only Germany, but last summer I met with several county extension agencies, and in Nebraska we are a major leader in food supply, be it livestock, crops. Not only can they see when to steal our pets, they can see when we're watering our cattle or our crops. So we are very wise to be guarded, aware, and prepared. And I think that's what Senator Price was mentioning, that things can happen through utilities or information. But it does...and I agree with and compliment Senator Sullivan on the importance of this bill here. [LB230]

SHAWN RENNER: And I apparently haven't made myself very clear; I tend not to do that on occasion, I'm sorry about that. The news media has no interest in having unsecure facilities and no interest whatsoever in doing anything that would cause harm to any of those facilities either. Our concern is that an exception to the public records statute be drawn as narrowly as possible so that it does not embrace matters that are not security concerns. And our concern is that this current version of the bill does that. [LB230]

SENATOR BRASCH: Okay. [LB230]

SENATOR PRICE: All right, great. Senator Pahls, please. [LB230]

SENATOR PAHLS: You know, we've been talking up and down on this, and I went right...you're saying it's too broad, you're looking for a narrow--is it that simple? [LB230]

SHAWN RENNER: It is. [LB230]

SENATOR PAHLS: It's that simple. [LB230]

SHAWN RENNER: Yeah. [LB230]

SENATOR PAHLS: We have to look at this bill. If it's too broad, we need to take a look at it and say, how can we make it work? [LB230]

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SHAWN RENNER: And I've committed to NPPD to work with them towards that end. [LB230]

SENATOR PAHLS: Okay, it seems like we're trying to resolve this, as I believe. I mean, that's what's happening. [LB230]

SHAWN RENNER: Yeah. [LB230]

SENATOR PAHLS: It seems like we're doing a lot of talking around, and I think we ought to come up and say: Hey, it's been pointed out to us; we're willing to work; will you look at something a little more narrow? And there does seem to be some agreement to this concept which you're going after. You think you can make the--a match. You're thinking in... [LB230]

SHAWN RENNER: We're certainly going to work towards that direction. [LB230]

SENATOR PAHLS: Okay. [LB230]

SHAWN RENNER: We've been meeting... [LB230]

SENATOR PAHLS: That's all I need to know. [LB230]

SHAWN RENNER: ...and we'll continue to meet. [LB230]

SENATOR PAHLS: Thank you. [LB230]

SENATOR PRICE: Thank you, Senator Pahls. Senator Schumacher. [LB230]

SENATOR SCHUMACHER: Just one quick...thank you, Senator Price. One quick question. If we just would go ahead with the language that we have now, NPPD, OPPD, all these public utilities would probably know that if they were unreasonable in withholding information, you guys would be back here next year, and we'd know exactly how to craft the exception. And therefore, you know, they're held on a pretty tight chain to use this tool in a position where they can justify it if they ever were called before a committee like this or a court and explain why you did it. [LB230]

SHAWN RENNER: Perhaps, Senator. And I'll tell you that in the context of the news media accessing government information, we don't have any complaints about the public utilities in this state. We've gotten good cooperation along the way with them. And I think they would tell you that they have a good working relationship with the news media, as well. This, to my mind, isn't about do we trust each other, because that's really where you're going at--that--do we trust them to give the information that's

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appropriate, that sort of thing. The statute sets up what can be withheld. And my only concern on behalf of the news media is that we not make that any broader than it need be to satisfy their security concerns, so that as much information that isn't security related can be available as possible. [LB230]

SENATOR SCHUMACHER: Isn't it a lot more than trust, though? I mean, if they misbehave, you're back here, and we're not happy. And, you know--and it's better to be secure and fix a problem later than let a cat out of the bag now because we were too restrictive. [LB230]

SHAWN RENNER: If this is a cat that's going out of the bag, it's been out for some time. You know, this--the public records statute has been around since the mid-'70s; the security exception we're dealing with has been around for more than 15 years. And so it's not a problem that arose today. Certainly since 9/11, ten years ago, security concerns are greater than they were before, and my clients aren't arguing that that's not the case or that we shouldn't pay attention to them. Again, I think what we need to do is focus on what is actually needed for security and make sure that the language is appropriate to those concerns, addresses them, and doesn't go further than it has to. [LB230]

SENATOR SCHUMACHER: Maybe we should have done this a few years ago. [LB230]

SHAWN RENNER: Perhaps. [LB230]

SENATOR SCHUMACHER: I have no further questions. [LB230]

SENATOR PRICE: Thank you, Senator Schumacher. Seeing no further questions, thank you for your testimony, sir. [LB230]

SHAWN RENNER: Thank you, committee. [LB230]

SENATOR PRICE: Do we have any further opponents to LB230? Do we have anybody who would wish to testify in the neutral? Seeing none, Senator Sullivan. [LB230]

SENATOR SULLIVAN: Thank you very much, committee. I will be brief. LB230 is a bill that intends to address both real and potential threats to our state's public utility infrastructures. It was also clear in the testimony that you heard, we've got some federal security requirements here. And in the report that I think is going to be available to you, it highlights, in fact, Nebraska as being unique because of its public structure to utilities and could possibly be even more vulnerable and highlighted in that report. Clearly, we're trying to seek a balance. We're well aware and we certainly appreciate and respect the public's right to know. But I think it's safe to say that even citizens would not be in opposition to reasonable restrictions when we're talking about their safety and

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security. You can also see that LB230 is a work in progress; we are actively seeking to narrow the focus in a manner that accomplishes our security goals while allowing public access to most information. So, in closing, I'd just like to emphasize again that all the parties involved, on both sides, are willing to work to find that middle ground. I intend to keep you informed on our progress so that, hopefully, we can move this bill to the floor in a timely manner. So thank you very much. [LB230]

SENATOR PRICE: Thank you very much, Senator Sullivan. Are there any questions from the committee? Seeing no questions, you're free to open on LB266. [LB230]

SENATOR SULLIVAN: All right. I'll stay right here. Good afternoon again, Vice Chair Price and members of the committee. I'm Senator Kate Sullivan, K-a-t-e S-u-l-l-i-v-a-n, representing Legislative District 41 in central Nebraska. I'm here today to introduce LB266, which clarifies the Legislature's intent concerning performance evaluations of nonelected employees. A superintendent is an employee of a local board of education or school board. One of the most important duties of a school board is to evaluate a superintendent's job performance. Currently this evaluation must take place in a public meeting. Under current law there are only two reasons to go into closed session: one, to protect the public's interest; and two, to prevent the needless injury to the reputation of an individual. Section 84-1410 confuses the issue, because it addresses the evaluation of employees in closed session but only to protect the reputation of the employee. Performance evaluations of all other school district employees are not conducted in public, nor are the evaluations made public afterward. Performance evaluations of employees of other public entities are not conducted in public, nor are the evaluations made public afterward. LB266 amends section 84-1410(1)(d) to read, I quote: Evaluation of the job performance of a nonelected official or employee if such person has not requested a public meeting. It removes the reference to preventing needless injury to the reputation of a person. With this change, the decision about whether to go into closed session for the evaluation of an employee could be made using the same criteria as any other motion to go into a closed session, that being, one, protection of the public interest or prevention of needless injury to the reputation of an individual. It is in the public's best interest for school boards to conduct effective evaluations of their superintendents. The entire system of school employment is based upon evaluations: principals evaluating teachers, superintendents evaluating principals, and school boards evaluating superintendents. Of the many performance evaluations taking place each year in a school system, just one takes place in public, and it is no doubt the most important performance evaluation of them all. If the superintendent's performance evaluation is not conducted effectively, it can impact the entire school district. Conducting a performance evaluation of the superintendent in a public meeting is not the best way. Negative comments or calls for improvement by the board may undermine the superintendent's authority with his or her staff, as well as his or her credibility with the community. Public scrutiny may discourage board members from conducting a thorough and direct evaluation of their employee and actually quell constructive criticism

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of job performance. Failure to conduct an effective evaluation of the superintendent may have a harmful effect on the quality of school district leadership. LB266 does not drastically change the law, but rather it provides clarification and guidance to political subdivisions to allow them to determine how to evaluate their employees. I'll certainly answer any questions if I can. If I can't, there are knowledgeable and experienced educators that will follow me in support of this bill. They can directly address the problems that have been caused by the current law and identify for you how LB266 will help resolve those problems. I thank you. [LB266]

SENATOR PRICE: Thank you, Senator Sullivan. Are there any questions from the committee? Seeing...yes, Senator Pahls. [LB266]

SENATOR PAHLS: Senator Sullivan, you are a former board member. [LB266]

SENATOR SULLIVAN: Yes, I am. [LB266]

SENATOR PAHLS: As a board member, you could fire a superintendent. [LB266]

SENATOR SULLIVAN: Um-hum. [LB266]

SENATOR PAHLS: As a board member, could you fire a principal? [LB266]

SENATOR SULLIVAN: No. [LB266]

SENATOR PAHLS: So there is a difference how the superintendent is treated and the--everybody else under that. [LB266]

SENATOR SULLIVAN: Absolutely. [LB266]

SENATOR PAHLS: Okay. Thank you. [LB266]

SENATOR SULLIVAN: And the law is unclear; we're just providing clarification... [LB266]

SENATOR PAHLS: Okay. [LB266]

SENATOR SULLIVAN: ...then it gives that board the flexibility. [LB266]

SENATOR PRICE: Thank you, Senator Pahls. Any further...Senator Schumacher. [LB266]

SENATOR SCHUMACHER: Thank you, Senator Price. Is this just intended--this change--to deal with schools and school boards? Or does this affect all town meetings,

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county board meetings and the open meetings records in those too? [LB266]

SENATOR SULLIVAN: Nonelected public officials. So it could, actually, carry across to a position like a city manager. [LB266]

SENATOR PRICE: Thank you. Seeing no further questions--I take it you'll be out in the audience. First proponent, please. Before we start, how many proponents do we have for this? Thank you. Opponents? Great, thank you very much. [LB266]

JOHN SPATZ: Oh, good. Hi. My name is John Spatz; it's spelled, believe it or not, S-p-a-t-z. And thank you very much, Senator Avery. And thank you to Senator Sullivan for introducing this. And she hit many of the points I was planning on addressing. And I'm glad you asked the question you did, because we really are stressing that this is a clarification of the law. And it stems upon an A.G.'s letter that he'd written last spring, where there was a situation where there was an evaluation and there was some question whether they should have gone into closed session. And the board came out and it was a favorable evaluation, and there was a concern about them going into closed session. The only argument made in defense was that, well, they went in there to protect the reputation of the superintendent. And the question was asked of the board: Was anything negative said about the superintendent? And they said, well, no. Well, then, if everything was positive, they weren't really going in there to protect the reputation of the superintendent. But we strongly believe the law currently allows evaluations to protect the public interest. And we think it's very important that boards have the ability to do this in closed session to protect the public interest. The school board association--and I don't know if I mentioned this, but I'm here representing the Nebraska Association of School Boards--but the school board association has made a very, very strong attempt over the last few years to get boards to do a better job evaluating the superintendent. And we think they're doing a better job. One of the things that we always hear from newly elected school board members is: Well, we've got a problem with this third-grade teacher or the curriculum in the--the math curriculum in high school or something like that. And one of the concerns that we have is that school board members, as you said, can't address an issue with a teacher. The only option they have is dealing with the superintendent's evaluation. That's their only method of effectuating change at the teacher level. Now, in Nebraska we've got a very efficient system, believe it or not, whereby tenured teachers have a due process right, where if the administration recommends a termination they get a hearing before the board. So the board has to remain completely neutral from all teacher issues and principal issues, for that matter. The only person they can deal with is the superintendent. So to effectuate any change throughout the district, it has to be done through the superintendent. Now, at the risk of Shawn Renner and the media association throwing something at me, our position, I don't think, is that much different from the press association. We've made great efforts over the last few years to get boards to do a better job doing things in open. I started with the school board association in 2003, and I

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remember at the time I was getting many calls from school districts where they were going into closed sessions for reasons that I don't think were appropriate. I think we've made great strides in getting school boards to do things in the open. And we're going to continue to do that, because our position is we're going to try to train boards to do things appropriately. And if you're doing things ethically and appropriately, we want them to be in the open. We want people to see that. But the most important thing a school board does is evaluate the superintendent. You could be lousy at practically everything else you do; if you do effective, articulate evaluations of the superintendent, you're going to have a successful district. And, thankfully, the administrators organization and superintendents, for the most part, have embraced this. We've been going around saying: You school boards, you have to do a better job evaluating superintendents. And the superintendents are fine with that. They said: Yes, give us the guidance; give us the information that we need to be a successful superintendent in this district. An analogy that I want to use is that at the end of this--and this may be a poor analogy, so I apologize in advance--but at the end of this hearing today, it would be equivalent if the legal counsel, Christy, does a wonderful job for the committee--I know she does--but saying: Okay, now we're going to do the job evaluation of legal counsel--now, with all of us watching. Could you do an effective evaluation? Would you be willing to say: Senator Brasch, how do you feel about the legal counsel on goal number one; has she done a good job, or hasn't she done a good job? Would you be able to do that evaluation as effectively as you would behind closed doors? And a part of me has a hard time arguing for doing more behind closed doors, because we really have worked hard to get boards to do more in open. But we think it's absolutely critical to give boards the tools to do this in closed session. The educational community is going to be pretty wrapped up in a variety of issues this year at the Legislature, between state aid and the C.I.R. and a bunch of other things. But I truly believe if school boards get the ability to do this, this could be one of the best things for the educational community that we could do as a state--is it will turn us loose to make sure we're doing a better job making sure that school boards and superintendents are more accountable. And I see my red light is out, so I'd be pleased to take any questions. [LB266]

SENATOR AVERY: Thank you, Mr. Spatz. We know--and I know that you agree--that the open meetings laws that we have now... [LB266]

JOHN SPATZ: Um-hum. [LB266]

SENATOR AVERY: ...have a important public purpose. [LB266]

JOHN SPATZ: You bet. [LB266]

SENATOR AVERY: And I have attended some of your meetings and your workshop on open meetings. You guys do a very good job of training your school board members and superintendents in how to abide by the open meetings law. What I'm struggling with

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with this bill is to see what compelling public purpose is behind this. I can understand that your school boards want it. That's not enough. I mean, I want to know what--how does this contribute to improving transparency in this state? [LB266]

JOHN SPATZ: Well, first of all, I really want to stress that we believe this is a clarification, because we've had some school attorneys and some people associated with other political subdivisions saying: Well, what's the problem? They didn't understand that...they believe that you can currently go into closed session for the protection of the public interest, which I would agree with. What we're asking for here would clarify that that's the Legislature's intent. So I think the public purpose is, we've seen recently superintendents getting very large retirement packages, let's say, as they've retired. I think school boards have got to do a better job of the evaluation process, of contract analysis. It's very critical that they are doing a better job evaluating whether the superintendent is doing his or her job. And unfortunately, because we're all human, we don't do as well in front of a crowd, when people are watching. So I think there is a very compelling public interest reason for protecting school districts in general. And I'm sure it applies equally as well to city managers, because I know they have a very important position as well. But I think there is a very compelling reason that the superintendent, as a nonelected employee, have his or her evaluation done in closed session. [LB266]

SENATOR AVERY: And I'm sure you're convinced that you get a better evaluation, more honest and more information. [LB266]

JOHN SPATZ: Absolutely. [LB266]

SENATOR AVERY: Yes. [LB266]

JOHN SPATZ: Absolutely. And, really, like I've said, we've bent over backwards to get school boards to do more in open session. And are they perfect? No. We still got work to do; we'll never be perfect. But we feel like we've done a much, much better job over the last few years. And like I said, Shawn may throw something at me, but I--our position doesn't differ a lot from the media and press association. We want the public to see us--how good a job we're doing; we really do. [LB266]

SENATOR AVERY: You might be the only organization with an actual booklet... [LB266]

JOHN SPATZ: That's right. [LB266]

SENATOR AVERY: ...on how to abide... [LB266]

JOHN SPATZ: I've got it right here. [LB266]

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SENATOR AVERY: Yeah. [LB266]

JOHN SPATZ: I'd be happy to get it to any senator who'd like one. But... [LB266]

SENATOR AVERY: It's very good. [LB266]

JOHN SPATZ: But, you know, one thing I'd like to mention, too, is, if you're--I'm sure you're familiar with this. But the most famous--and I forgot to mention--the open meetings law case is probably the Grein case, where they addressed a board who went into closed session to protect somebody's reputation; and they said it was inappropriate. And they said anyone believing that it was more salutary to spare the low bidder embarrassment over an honest mistake ignores that some people often draw the most cruel conclusions from sinister silence--right out of our Supreme Court language. And what they're saying is, with that sinister silence, is if we were to do the legal counsel's evaluation in open session and said: Okay, you've done well on goal one, two, and three; but goal four, we're going to ask everyone to leave for the protection of her reputation. And I apologize, Christy, for bringing you into this, but it's the only analogy I could think of. People will leave here...and what the Supreme Court was saying was that when people leave, they're going to think, well, what's the problem here? They may draw much worse conclusions about the individual than the reality of it. And that's something that I struggle with, is, if school boards say, okay, we need to go into closed session to discuss something that's damaging to the reputation, how damaging does it need to be for us to go into closed session? Because the public will often think whatever it is is probably much worse than the reality. So we probably do harm to superintendents by going into closed session to protect their reputation. But at the end of the day, I hope I emphasize strongly enough that we're trying to clarify this, because many school lawyers and many people with other political subdivisions believe that you can go into closed session for evaluations to protect the public interest. And this is just stemming from the A.G.'s office, and we hope to get clarification from the A.G.'s office with this really minor technical change. [LB266]

SENATOR AVERY: Senator Pahls. [LB266]

SENATOR PAHLS: Yes. Really curious about the school board, because yesterday I was in front of the Education Committee trying to convince them that I think the budget is so complicated that they may need help. But it was--the point was driven home that the board of education is more powerful or more knowledgeable than I would give them credit for. So I think they ought to be more knowledgeable, or credit, to be able to take a superintendent, in most cases who's paid very well, who knows going into that job that this is one of the things that he or she has to live with. So there's not much empathy or sympathy for that. Because I--at one time I worked for a very progressive school district; and I thought it was very interesting, as a building-level administrator at that time, parents were randomly selected, without my knowledge or anybody's knowledge,

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mailed a survey. That stuff was tabulated, and that was presented in a public thing. The teachers evaluated the administrator, and that--not necessarily the administrator but certain aspects of the building, which could all go back to leadership. And that was published. And I could live with it, because I figured it was a, you know, a part of life. And if you're compared with a--maybe a dozen to 20 other buildings side by side, that's just part of doing business in education. So I would think a superintendent would be willing to show their leadership or lack of, be able to handle that. I mean, that's part of leadership. [LB266]

JOHN SPATZ: Right. Well, and, I'm glad you brought that up. Because if you look at the law--and 84-1410--it identifies four different things where the Legislature has said: you may go into closed session for strategy sessions, deployment of security personnel, investigative proceedings, and evaluation of job performance to protect the reputation. But with...we teach our boards that if you are going to address any one of these four items, you still need to evaluate it under the two criteria of protection of the public interest or the protection of the reputation. This doesn't give you a blank check to go into closed session for any one of these four; you still have to justify it under those two criteria. All we're saying is, for (d), instead of the one criteria give it the two criteria like everything else has; everything else--every other reason why you may go into closed session, you can do it for one of two reasons. And we're just saying, treat it like you would everything else. [LB266]

SENATOR PAHLS: So you're saying you are so concerned about the superintendent; that's your major goal. [LB266]

JOHN SPATZ: No. No, I'm not terribly concerned about the superintendent. I'm concerned about the effectiveness of the district, about educational policy, about school board members doing their job and giving them this tool, if they feel like it's in the public's best interest to do this and do it effectively. I, you know, I hate to say this, I'm not terribly concerned about the superintendent and his or her reputation; I'm concerned about how effectively school board members are doing their job. [LB266]

SENATOR PAHLS: Okay. Okay. [LB266]

JOHN SPATZ: Thank you for that question. [LB266]

SENATOR AVERY: Doesn't the law currently allow a closed session...let's say it's a performance evaluation and that performance evaluation might cause grave injury to the person's reputation; you could still go into... [LB266]

JOHN SPATZ: Absolutely. Yes. [LB266]

SENATOR AVERY: ...to private session. [LB266]

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JOHN SPATZ: I would argue, and many school attorneys would argue, and many people from other political subdivisions believe that under the current law we have the ability to go into closed session to protect the public's interest. And we thought that up until an A.G.'s letter last spring, where it made it look like the only reason to do an evaluation was to protect the public interest. We still believe that under current law it's possible to do it for the protection of the public interest. We're just concerned that we don't want to advise our school districts, if they would be sued and the A.G.'s office would come down and say that you can't do this, that they would have to litigate this, and a court may have to litigate this. I'm just saying if the Legislature would clarify this, make the evaluation have the same criteria as everything else, that it would make it much easier for us to do our jobs better. [LB266]

SENATOR AVERY: Better? [LB266]

JOHN SPATZ: Better. Yes, we're working hard... [LB266]

SENATOR AVERY: Easier, I get. Better, I'm not sure. [LB266]

JOHN SPATZ: We're trying to make sure the boards are doing a better job evaluating their superintendents. And we--and I can't stress that enough, because we've noticed a problem where boards are trying to do things that aren't in their power to do, and--a lot of times dealing with principals or teachers--and it's not appropriate for them to be dealing with those issues. The only thing they should be doing is evaluating the superintendent and creating expectations and goals and objectives for that superintendent. [LB266]

SENATOR AVERY: Senator Schumacher. [LB266]

SENATOR SCHUMACHER: Thank you, Senator Avery. As I listen to the testimony and look at the language here, there seems to be a substantial difference between what was and what is now. And do you read this as the old language, the stricken language, enables a closed session when the reputation of a non-employee person might be at stake? And we're taking this--this is a big change there. [LB266]

JOHN SPATZ: You lost me a little bit there. [LB266]

SENATOR SCHUMACHER: Okay. It said: "Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person." [LB266]

JOHN SPATZ: Um-hum. [LB266]

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SENATOR SCHUMACHER: Now, the two persons don't necessarily have to be the same person... [LB266]

JOHN SPATZ: Right. [LB266]

SENATOR SCHUMACHER: ...in the old language. [LB266]

JOHN SPATZ: Um-hum. [LB266]

SENATOR SCHUMACHER: And so the interest there might be a member of the public... [LB266]

JOHN SPATZ: Right. [LB266]

SENATOR SCHUMACHER: ...whose reputation might be... [LB266]

JOHN SPATZ: Okay. Okay. [LB266]

SENATOR SCHUMACHER: ...injured in the evaluation of a employee--or of a job, whereas the new language takes protecting the member of the public out of the picture and restricts it only to job performance of a nonelected official or employee--two different things. [LB266]

JOHN SPATZ: Right. Well, I would assert if there was discussion with a board and somebody else was implicated whose reputation was harmed, you still should, and I think would have a duty to, do that in closed session, because by eliminating--by striking this language doesn't mean you can't or shouldn't go into closed session to protect the reputation of an individual. What it's doing is saying you can do it for the protection of the reputation of an individual or the protection of the public interest--one or the other. That doesn't change that. [LB266]

SENATOR SCHUMACHER: Well, you strike the language about the person and the--here. [LB266]

JOHN SPATZ: But it's, well, yeah, because you can go into closed session, not here, but you can go into closed session for those two reasons. So you could still go into closed session to protect the reputation of an individual. And that's located... [LB266]

SENATOR SCHUMACHER: Okay. [LB266]

JOHN SPATZ: ...in number (1) up above: "Any public body may hold a closed session" with a majority of voting members "if a closed session is clearly necessary for the protection of the public interest" or "the prevention of needless injury to the reputation of

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an individual." [LB266]

SENATOR SCHUMACHER: Okay. I see where it's covered in another section. [LB266]

JOHN SPATZ: Yep. So then we're coming down here and just saying, give us the same criteria as up here. I hope...I'm sorry, I'm not terribly clear all the time. That was a good question; I appreciate it. [LB266]

SENATOR SCHUMACHER: I should have read the top paragraph before the bottom one. [LB266]

JOHN SPATZ: Well, if you would have, I'd have been very impressed. (Laugh) [LB266]

SENATOR AVERY: Senator Pahls. [LB266]

SENATOR PAHLS: So you're telling me that if we do nothing, there's a possibility that this could end up in court... [LB266]

JOHN SPATZ: Yeah. [LB266]

SENATOR PAHLS: ...for clarification. [LB266]

JOHN SPATZ: Yeah. Right. Right. [LB266]

SENATOR PAHLS: I'm surprised you guys don't go that direction. [LB266]

JOHN SPATZ: Well, somebody may. And I know many attorneys out there are saying: We don't have anything to worry about; we're fine, because the current law...as an association, our job--we've really focused on training boards to do a better job of evaluating. And we don't want to be in a position where if we're saying you need to do x, y, and z, you need to hold that superintendent accountable, you need to hold their feet to the fire, you need to think about whether you're going to give them a 1 percent raise or a 8 percent raise, depending on the performance, etcetera, etcetera. And we don't want to be in a position where we advise them to go into closed session, the A.G.'s office comes in and slaps them down, and they get sued before a court--where I think they could win. But I would prefer to do it in this manner. If the Legislature's intent is to allow evaluations, I'd rather have it clarified here than to go through with that and create a lot of expense for--needless expense for a school district and risk that whole process. [LB266]

SENATOR PAHLS: But it'd be a one-time shot. And you'd get it clarified for sure. [LB266]

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JOHN SPATZ: Well, that's true, but I don't want to put any...which school district should I say out there, you should be the test case for this, and have them expend money? [LB266]

SENATOR PAHLS: Well, the one who doesn't believe they're doing their job or they can't do it; you know, then they can be the test case. [LB266]

JOHN SPATZ: Well, I don't want one of my districts to have to be a test case. I figure it'd be cheaper and easier to have the Legislature make this small change. And keep in mind, the school district would still have to show that it's in the public's best interest. It's not a blank check. And we could have--I think we could have developed language that would have been--made it easier to go into closed session. We're saying treat evaluations the way you'd treat anything else. This is pretty conservative language with respect to the evaluation. It's not a blank check. The school board still needs to say, we're doing this to protect the public's interest, and be able to articulate that. [LB266]

SENATOR AVERY: I don't see any more questions. Thank you very much. [LB266]

JOHN SPATZ: Thank you very much. And you know how much I enjoy talking about open meetings law in front of the committee, so I appreciate it. (Laugh) [LB266]

SENATOR AVERY: Any other proponent testimony? [LB266]

KATHY DANEK: (Exhibit 1) Good afternoon, Senator Avery and members of the committee. I am Kathy Danek; that's K-a-t-h-y D-a-n-e-k. I currently serve as the president of Lincoln Public Schools Board of Education, but I've also served as the past president of the Nebraska Association of School Boards and five years as a director on that board of the Nebraska Association of School Boards. The Lincoln Board of Education has a long history of operating in open and transparent fashion. Our policies and practices reflect that intent. We not only welcome the press and the community but also televise every meeting and podcast each meeting. We have repeat viewings after each and every meeting for weeks following the scheduled meeting. Representation from the press is even allowed at our subcommittee meetings, and that is done by board policy. But we're here today to support the clarification of the Open Meetings Act as proposed in LB266, which would allow boards to engage in a comprehensive evaluation of their superintendent, a nonelected employee, in an executive session. You see, comprehensive evaluations ensure strong working relationships. And they do protect the public interest. They provide valuable feedback to guide the work of the school district. A high-quality, candid evaluation with a two-way conversation on performances is needed to accurately assess anyone's performance. In the case of the superintendent of schools, they are the only employee directly evaluated by boards of education. And that evaluation is required by law. All other employees, because they are not directly evaluated by a public body, only have their performance discussed

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publicly if they so request. They go to great lengths to protect the public interest in this process. The appraisal process and the instrument must be adopted by a board of education in an open session, and a copy must then be submitted to the Nebraska Department of Education for approval. Candid discussions must be done to ensure quality evaluations. Under current statute, a board can go into a closed session for the evaluation of job performance of an individual. But the recent Attorney General's decision, as highlighted by Mr. Spatz, in essence states that you can only go into a closed session to discuss negative issues that would prevent needless injury to reputation. There's confusion between the law and reality. Many boards believe that the ruling and the current statutory language empower them to go into executive session. Except for negative matters, our board and legal counsel are not quite so sure. How would you know a person is going to say something that is perceived to be negative by the individual before they open their mouth and utter the words? Is the negative statement a perception of the employee being evaluated or the person making the statement? And how do board members, in performing their due diligence during the evaluation process, ask pointed questions, make directive statements, and get clarification? There could be a perception under the current ruling that just going into an executive session implies something negative must be occurring. Is that the atmosphere needed to serve the public interest in doing a comprehensive evaluation? In closing, we believe the evaluation of our superintendent is one of the most important jobs done by a board of education. In meeting the mandated responsibility, it is imperative that the boards of education have the opportunity for frank and direct discussion, without guessing who might say what, how what might be perceived, and without the confusion of moving in and out of executive session to conduct a quality evaluation. The correction in the statute proposed in LB266 will protect the public interest by strengthening the evaluation process. And I continue--or ask that you accept my remarks and open up to questions. [LB266]

SENATOR AVERY: Thank you, Ms. Danek. Any questions from the committee?
[LB266]

KATHY DANEK: I would note that we have just finished an evaluation, trying to do this very delicate dance. And we did do a public statement. But I had board members extremely nervous about making statements prior to the board meeting and going into closed session. And I think that if we really want a good job of evaluating our superintendent, that we must have an opportunity where board members can ask a question about an event or a situation that they can get a direct answer. I think the other thing you have to remember is in Lincoln, as I can speak, everything our superintendent does is pretty high profile. If you want to know how much evaluation we get, just call a snow day in Lincoln, Nebraska. I assure you, I had a ton of e-mails on that particular decision. I think that what you need to do is balance that perception from the public with my job as a board member to make sure that I can ask the questions needed to ensure high-quality evaluations of the superintendent and the success of all of our children in

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our school system. Thank you. [LB266]

SENATOR AVERY: Thank you. More proponent testimony. How many other proponent testimonies? How about opponents? Okay. [LB266]

GARY KRUMLAND: Senator Avery... [LB266]

SENATOR AVERY: Welcome. [LB266]

GARY KRUMLAND: ...members of the committee, my name is Gary Krumland, K-r-u-m-l-a-n-d. I'm representing the League of Nebraska Municipalities. I just want to, basically, come up and clarify--I know there's questions about city administrators and city managers and would this apply to them. There is a law in Nebraska that creates a form of city government called city manager system. It's a little different than the normal, where you elect the mayor, elect the council, and they hire a city administrator. City manager system--you elect five council members; you don't elect a mayor separately; the president of the council becomes the mayor. They hire a city manager, and the city manager in those cities appoints all the other officials and hires the employees of that city. So whereas the mayor, who's separately elected in the mayor-council form of government, makes the appointments and the hires, there is a situation in Nebraska where a city manager would be directly under the city council as a whole and would be evaluated by the city council in those situations. So there is a situation in Nebraska where this would apply similar to a school superintendent. So... [LB266]

SENATOR AVERY: Yeah. Okay. Thank you for that clarification. [LB266]

GARY KRUMLAND: Um-hum. [LB266]

SENATOR AVERY: Any questions for Mr. Krumland? Seeing none, thank you. Any more proponent testimony? Okay, Mr. Renner and anyone else who wishes to testify in opposition? We have one more? [LB266]

SHAWN RENNER: Thank you, Senator Avery, members of the committee, once again. My name is Shawn Renner, R-e-n-n-e-r. I appear on behalf of Media of Nebraska, Inc. in opposition to this legislation. It is sometimes uncomfortable for elected public officials or members of public bodies to discuss matters of public importance in public. I understand that. And that's always been true. That's not a concern solely of school boards; it's a concern that has been around for a long time and gets voiced occasionally too. The bill does quite a bit more than just deal with superintendents. The language would apply to any employee of any public body located in the state of Nebraska. And I'm not entirely sure what the legal result of it is. I don't agree with Mr. Spatz's analysis of it. As he points out, there are, really, two reasons that a public body can go into closed session. And those are set out in the opening part of what's been printed in the

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bill, actually. Those are: a majority of the voting members can go into--if a majority of voting members of the body find that the closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if the individual hasn't requested a public meeting. Those are the two basic reasons that anybody goes into closed session. The Legislature has then listed examples of things--circumstances, situations--that might fall under one of those two broad outlines. It's still the public body that has to find either public interest or needless injury to the reputation of an individual before it can go into closed session legally. And we trust public bodies to do that, subject to, I guess, second-guessing them later on. Either the Attorney General can enforce the open meetings statutes, or any citizen that believes that a public body has violated the law can bring an action in court. If you have an extreme example--I don't think it's ever happened in Nebraska, at least in the 25 years I've been doing this--violation of the open meetings law is potentially a crime also. But that almost never happens in this state. I'm not aware of anybody being prosecuted for violating the open meetings law, at least in the recent past. I disagree with Mr. Spatz in this respect, I do not believe that the courts in Nebraska would find that it is in the public interest to go into closed session to do a job evaluation, all the time, period. And I think that you--while I don't think there are any cases on that point exactly, the Nebraska Supreme Court--Mr. Spatz mentioned it--the leading case from that group is a case called Grein v. Board of Education. It comes out of the Fremont school district, and it provides a very good example of how a court's view--the commitment to openness that's made in the open meetings statutes. And the Attorney General's Opinion that criticized the Scottsbluff school district--that was the school district that had the opinion that Mr. Spatz referred to that led to this legislation--they quoted extensively from that court case and made it pretty clear that the Attorney General, at least, doesn't believe that it is in the public interest to inherently go into closed session every time you're going to do a job evaluation. It's like any other potentially controversial issue that any public body faces. And the general rule in Nebraska is those discussions take place in open unless you can demonstrate that the public interest...and the public interest is not the comfort of the public body itself; the Grein case makes that very clear. The public interest is the interest of the citizens of this state knowing what their government is doing so that they can participate in government action, make their points of view known to government. And at least with regard to school superintendents and probably city managers, I suspect--the two sorts of jobs that we've discussed specifically here today--those are among the highest paid, most important positions that either of those public bodies has. If you're the city manager in that form of government, you are the contact person between the public and the city council. If you are the superintendent, you are the face of the school district, by and large, to the public out there. And you heard the Lincoln school board president tell you about the comments that were received over snow days--I have no doubt that's true; that rings completely true to me. That's part of being a superintendent. You get paid handsomely--most superintendents in Nebraska in the bigger school districts make well over \$100,000 a year--you get paid handsomely to have very significant, important

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responsibilities to the school district and the education of the children. The law allows you to go into closed session to evaluate those people but only if it's going to cause a needless injury to someone's reputation. If it doesn't cause that, you shouldn't be going to closed session; you ought to do the evaluation in public. And my clients, the news media, believe that the system works just fine. The public records statute was enacted in 1975. Subsection (d) of section 84-1410, the provision that's amended by this bill, has been in place since 1983. There are a dozen or more Attorney General's Opinions defining when it's appropriate to go into closed session, and there have been a number of recent criticisms by the Attorney General of school boards and the way they've gone into closed sessions. We believe--the news media--that the appropriate way to resolve that concern is to do what school boards are supposed to do--that is, protect their constituents, run the school district, and do it in as open and public a way as possible--and for that reason oppose LB266. [LB266]

SENATOR AVERY: Thank you. [LB266]

SHAWN RENNER: Happy to answer questions. [LB266]

SENATOR AVERY: Senator Pahls. [LB266]

SENATOR PAHLS: Just to reinforce the idea--the A.G., basically, has made a lot of opinions, but nobody really has gone to jail or anything because of the open meeting--breaking the law. [LB266]

SHAWN RENNER: I'm confident that no one has gone to jail, at least in the 25 years I've been practicing law, for breaking the law. There have been some lawsuits, civil lawsuits, claiming that there have been violations of the open meetings statutes. Some of those have succeeded; some of them haven't. The consequence of a lawsuit, when you violate the open meetings statute, is that you're forced to go back and redo the action that you did illegally, in public. If you did it in closed session and the court finds that you should not have done it in closed session, you have another meeting, you do it again, you do it in public so the public can see what you're doing. [LB266]

SENATOR PAHLS: Okay. And this is just--is going to allow me to expand on it a little bit. A number of years ago when there became an issue in the metropolitan area--one school--the Omaha school board went to a private, you know, they went to a closed session; they made a decision how they were going to go about taking over all the rest of the schools. I, you know, I made a complaint to the Attorney General. He wrote them a letter back saying, basically, they did wrong. And if I wanted to pursue it, then I would have had to personally hired an attorney or something, if I wanted to go...so they did get a letter saying, yes, they did. And that was it. So... [LB266]

SHAWN RENNER: And that's what happened in the Scottsbluff case, too, that has led

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to this bill. There was a lengthy letter--I can provide copies if the committee wants to see it--that analyzed a complaint made by a newspaper in Scottsbluff about a closed-session meeting of the Scottsbluff school board. And, among a number of other things, the Attorney General said: Since the evaluation of your superintendent was by all accounts completely positive, why did you go back in closed session, away from public view, to conduct that? There wasn't any reason to... [LB266]

SENATOR PAHLS: Okay. [LB266]

SHAWN RENNER: ...is what the Attorney General said. [LB266]

SENATOR PAHLS: And you're also telling me that the past testimony--or previous--that I should think twice before I believe that we're breaking the law. I mean, that... [LB266]

SHAWN RENNER: Specifically, what the Nebraska Supreme Court has said in the Grein case is, really, kind of a default answer. [LB266]

SENATOR PAHLS: Okay. [LB266]

SHAWN RENNER: When the question is, should we go into closed session or not, if there's any doubt about it, don't... [LB266]

SENATOR PAHLS: Okay. [LB266]

SHAWN RENNER: ...is what the Nebraska Supreme Court has said... [LB266]

SENATOR PAHLS: Okay, thank you. [LB266]

SHAWN RENNER: ...and said it as clearly as that. [LB266]

SENATOR PAHLS: Thank you. [LB266]

SENATOR AVERY: Senator Schumacher. [LB266]

SENATOR SCHUMACHER: Thank you, Senator Avery. First of all, I think that probably 25-30 years ago in Schuyler there was a criminal prosecution for the meetings law, as I am remembering back that. The...when you evaluate a superintendent and go over the relationship with the teachers, relationship with students, if that were done in a completely public forum and you were suggesting that the superintendent behave differently, or maybe he's too harsh on the kids for writing graffiti on the bathroom walls, and that kind of encouragement--to modify some of his behavior to make you on the board more satisfied--don't you think that kids could take advantage of that knowledge, that he had gotten chewed out for chewing them out about the graffiti and maybe

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aggravate the situation? I mean, this is a behavioral control situation, and to let all of the secrets out of the bag in the evaluation may not--may be counterproductive. [LB266]

SHAWN RENNER: I suppose it's always possible that conducting government business in public could be counterproductive. It certainly can be uncomfortable, no two ways about that. And one thing the open meetings law says is, the fact that you're uncomfortable talking about it in public is not a reason to talk about it behind closed doors. It's the public's business generally. There are certain instances where we agree, we--the Legislature agrees that it's appropriate, but it's got to be for the public interest, clearly necessary to protect the public interest or clearly necessary to protect reputation of an individual. In the hypothetical that you've offered, Senator, I would argue that it is not likely to create needless injury to the reputation of a superintendent to be told by a school board that we want you to pay more attention to a particular issue or we think that you need to be less harsh on students. I don't think that hurts a superintendent's reputation at all. That's what superintendents are supposed to do, is set broad policy for the school district, filter that down to the principals, who then are in charge of the teachers. And in that position, a public discussion about how the superintendent does the job, I would argue, does more to foster public confidence than if you take it back behind closed doors. If every superintendent evaluation is held behind closed doors, the public knows about its superintendent exactly what the school board will say publicly, probably to the newspaper. They may come out after the closed session and give some speech or some talk, but I think it's beneficial to the public to listen to the evaluation of the highest-paid person in that governmental entity and how he or she is perceived by the school board that does the hiring and the firing and the disciplining. Perhaps it's just a function of a different view of what is in the public interest. I don't think it's a foregone conclusion that a court in Nebraska would find that it is in the public interest to go and do every job evaluation behind closed doors. [LB266]

SENATOR SCHUMACHER: Thank you. I have no further questions. [LB266]

SENATOR AVERY: Any more questions? Senator Brasch. [LB266]

SENATOR BRASCH: Thank you, Chairman. Mr. Renner, Ms. Danek had mentioned her phone ringing about the school snow day. She's on the school board. So the public is holding her accountable for that information to get to the superintendent; that is her role. She is an elected position, and the public goes to her. So if you make...would you be diminishing the role of the school board by saying, you know, we cannot take disciplinary action by just going to the school board and having a closed session? And my thought is if you are putting these people in watch, on guard, accountable for the actions of the school board, wouldn't they be the best people to make the final decision on performance or school accountability or, you know, their operation as a--the man in charge of student performance and the CEO of the schools? [LB266]

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SHAWN RENNER: And they've got that role by statute. [LB266]

SENATOR BRASCH: Right. [LB266]

SHAWN RENNER: They run the school district. [LB266]

SENATOR BRASCH: Right. [LB266]

SHAWN RENNER: They're the people who we elect... [LB266]

SENATOR BRASCH: Right. [LB266]

SHAWN RENNER: ...to do that job for us. [LB266]

SENATOR BRASCH: And the school board is to be holding that seat accountable. [LB266]

SHAWN RENNER: Right. And they are going to evaluate the superintendent, decide whether or not...in Nebraska--I didn't realize this until I read the statutes earlier this morning coming over here--school superintendents are tenured in the same way that schoolteachers are. They are certificated in the same way and have the same tenure system. [LB266]

SENATOR BRASCH: So... [LB266]

SHAWN RENNER: A superintendent has to have a contract of no more than three years, whereas a teacher's contract rolls over year to year to year unless it's terminated by the school board. And there's a hearing process that Mr. Spatz described that's dealt with in a whole separate set of statutes. And a school superintendent, for the due process hearing, has exactly those same rights under those due process statutes as does a certificated teacher. I believe that what we're talking about here is not that due process hearing, because that is governed by a separate set of statutes, but rather an annual evaluation, where the school board says: Do we think the school superintendent is doing the job properly? Can we offer some suggestions that we think would do the job better? Here's the sort of things we want to evaluate you on. The question is, should you do those automatically in closed session? What I heard coming from Mr. Spatz is it is the belief of the NASB that it is in the public interest to evaluate in closed session. And so I think if this bill passes, what you will find is all those evaluations are done in closed session. And they can do it now; they can go into closed session now if they find that someone's reputation will be needlessly harmed if it's done in open session. If they find that, they can go back in closed session, and it's perfectly legal. [LB266]

SENATOR BRASCH: Okay. [LB266]

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SHAWN RENNER: He's going to knock out that portion and say you can go back and do the closed-session evaluation all the time. And the news media believes that's inappropriate. [LB266]

SENATOR BRASCH: Thank you, Mr. Renner. Thank you, Chairman. [LB266]

SENATOR AVERY: Thank you. I don't see any more questions... [LB266]

SENATOR PAHLS: I--I--I... [LB266]

SENATOR AVERY: ...oh--yes, I do see another question. [LB266]

SENATOR PAHLS: I just have...that last statement... [LB266]

SENATOR AVERY: Senator Pahls. [LB266]

SENATOR PAHLS: ...would you run that through one more time? This bill will do what? [LB266]

SHAWN RENNER: It's hard to tell. I mean, there may well be a court fight... [LB266]

SENATOR PAHLS: Yeah. [LB266]

SHAWN RENNER: ...if the bill passes--whether it does or doesn't. [LB266]

SENATOR PAHLS: Yeah. [LB266]

SHAWN RENNER: I can't control court fights. And courts are the ultimate arbiters of what our statutes mean. So I'm making guesses here. But the way I read the bill and the way I understand what's going here: the Scottsbluff school board was criticized for going into closed session, by the Attorney General, to do an evaluation of its superintendent when the evaluation was positive. [LB266]

SENATOR PAHLS: Okay. [LB266]

SHAWN RENNER: And that's what has motivated this bill. What Mr. Spatz has told you is they want to drop from the specific reference to evaluation of job performance of a person the language about prevention of needless injury. [LB266]

SENATOR PAHLS: Okay. [LB266]

SHAWN RENNER: And so I believe it will be the school board association's position

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that it is in the public interest to do these evaluations in closed session, period. [LB266]

SENATOR PAHLS: Period. [LB266]

SHAWN RENNER: Period. I believe so. I think that's what you were being told today, and if I'm wrong, you know, I apologize. [LB266]

SENATOR PAHLS: Thank you. [LB266]

SENATOR AVERY: Thank you. I don't see any more. Thank you, Mr. Renner. [LB266]

SHAWN RENNER: Thank you very much, committee. [LB266]

SENATOR AVERY: Any more opponent testimony? [LB266]

BROOK CURTISS: Afternoon. [LB266]

SENATOR AVERY: Welcome. [LB266]

BROOK CURTISS: I'd hate to let--have the attorneys have all the fun here, so...Brook Curtiss, B-r-o-o-k C-u-r-t-i-s-s, and I'm coming before you this morning as a--or this afternoon...I got here in this morning, but it's this afternoon, already, isn't it? It's amazing how long four minutes can be. Coming before you this morning as a--or this afternoon as a parent. I have one child in a small district in northeast Nebraska; it doesn't really matter which one. In fact, I'm going to use that to illustrate to you how information that could possibly damage a reputation can actually be said without damaging any reputations. I am a member of the news media in that small northeast Nebraska town, and you can find out what it is if you so wish. But I have been privy for nine years to three superintendents, one of which had a divorce a year into his service, and the school board went into closed session to discuss, essentially, from all points that I could tell, his divorce, because by admission of all those school board members he was the best superintendent we've had in ten years. And at the end of that closed session, I...through the nine years that I've been working at the news office, I have never, ever had a superintendent review in open session, ever. I don't know if my town is totally breaking the law or my school board is completely in violation of every law ever possible. I recommend that to them once or twice, and I get shouted down. But I have never seen a review afterward; I have never seen information released afterward; I have never seen anything. So to sit here and listen to Mr. Renner say that that's possible, that is just amazing. But the point that I'm trying to make today would be that in the same way that the school board members are only in charge of the superintendent and have the power to fire or hire the superintendent only--and that only member of the staff--that is also the same way that the public has the only way to control what happens at the school. If the public has a complaint about the superintendent...take, for instance, this

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man that had a divorce. The friends of his wife came to the board in private, one at a time--one board member at a time--and expressed to them that they did not wish that they had a superintendent that had such low moral standards. And the school board, with really no reason otherwise that I could tell or that they would admit to, went into closed session at the end of that meeting and came out and said that they decided not to offer the superintendent a contract. He agreed, and he went to go work at a different school district. So what I'm telling you this afternoon is that you cannot, and I would encourage you to not, pass a law that would allow school districts and school boards...being a manager is tough; that's just the way it is. When you have to correct an employee, that's just the way it is. And by allowing a school board to go into closed session immediately and automatically every time, you are taking away the public's right to know--if you have a crummy superintendent, they have a right to know that. And if--you are essentially saying that the school board at its sole discretion can determine through apathy alone how long they're going to put up with a crummy superintendent. Because if the public knows that the children are not being educated in a reasonable manner, they'll say something, and the superintendent has a better chance to be replaced. Does that seem clear? [LB266]

SENATOR AVERY: Thank you... [LB266]

BROOK CURTISS: Sorry. Thank you. [LB266]

SENATOR AVERY: ...for your testimony. [LB266]

BROOK CURTISS: You're welcome. [LB266]

SENATOR AVERY: Any questions from the committee? I don't see any. Thank you very much, sir. Any other opponent testimony? Anyone wish to testify in a neutral position? Okay, Senator Sullivan, you're next, to close. [LB266]

SENATOR SULLIVAN: Thank you very much, committee. You've heard some interesting and, in some cases, conflicting testimony today. So you, perhaps, have your work cut out for you. I would tell you, though, that if you would like a copy of that Attorney General's Opinion regarding the Scottsbluff situation, we can get you that copy. So I thank you for your attention today. [LB266]

SENATOR AVERY: Thank you. That closes the hearing on LB266. (See also Exhibit 2.) And we will now move to LB444, which is mine. [LB266]

SENATOR PRICE: As we prepare for LB444 testimony, how many people here are in support of LB444? How many in opposition? All right. Again, I would remind all those that are here, please, if you could, we want to hear you, we want to know what you have to say, but if it's been said before, it might be best, in the interest of everybody's time, to

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get everybody through the process, that we keep it to those new elements you can add to the testimony. And with that, Senator Avery, you are free and clear to open on LB444. [LB266]

SENATOR AVERY: Thank you, Senator Price. Let me preface my remarks by saying that if I leave the room after presenting, it is because I have another appointment. I will be back. I'm not trying to avoid the opposition testimony. (Laughter) [LB444]

SENATOR PRICE: Thank you for clarification. [LB444]

SENATOR AVERY: LB444 was brought to me by the Nebraska Association of County Attorneys. The purpose of this bill is to outline for public bodies ways to meet the public notice requirement in the Open Meetings Act. The bill provides that the method of providing notice of public meetings will include, but not limited to, publication in newspapers of general circulation, posting on the public body's Web site, or posting in a public building in the community. The bill retains the current notice provisions that require public bodies to give reasonable advance publicized notice of the time and place of each meeting by a method designated by the public body. The Open Meetings Act doesn't specify how public bodies should give reasonable advance notice. Case law has fleshed out what meets this standard, and the standard that case law has provided us is reasonable notice in a factual--or factually based determination. In other words, courts will consider what is reasonably based on the facts of the situation in any given circumstance. What may be reasonable, for example, in a small village, where you may be able to post it in the--at the courthouse or at a public place, may not be reasonable notice for a state agency, where thousands of people need to be notified and you'd need perhaps multiple sources of reasonable notice. Some public bodies publish in a newspaper; others post on the public buildings; some post on the Web site. I also have heard of some public bodies using broadcast media to meet the notice requirement. Public bodies may use a combination of two or three of these to meet the requirement. The intent of this bill is not to change the basic notice requirement under the Open Meetings Act but simply to provide additional guidance to public bodies on the different ways to achieve reasonable notice. And with that, I would ask you to listen carefully to the proponents of this bill. (Laugh) [LB444]

SENATOR PRICE: Thank you very much, Senator Avery. As always, I'm sure the committee will listen well to all people. Are there any questions from the committee? Seeing no questions, Senator Avery... [LB444]

SENATOR AVERY: Thank you. [LB444]

SENATOR PRICE: ...thank you for the opening. Will the first proponent come forward. [LB444]

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LARRY DIX: Good afternoon, Senators, members of the committee. For the record, my name is Larry Dix, spelled D-i-x. I'm executive director of the Nebraska Association of County Officials, appearing today in support of LB444. We look at this bill, certainly, as a clarification of existing law. And Senator Avery, when he opened, certainly talked about the advance notice, and we're only talking about the notice that we put into publications of a meeting. So we're talking about a very small amount of information that we're talking about putting out there. LB444 identifies three types of notice, and that isn't an all-inclusive list, but those are publications and newspapers of general circulation, posting on a public body's Web site, and posting in a public building. And those are currently--or those are the ways that we intend for our counties to do that, but we also said the list is not all-inclusive. As Senator Avery had mentioned, we also could do it via broadcast media. And I want to stress that from a county government perspective, counties are sort of a creation of the state. And we only have, really, the authorities that the Legislature gives us. And counties are looking to publish on Web sites, on their Web sites. Many counties do it now, but we want a clarification so that we know that meets some of the requirements that are here. And let me give you an example of why this is becoming a problem. A county board in a small county sometimes will meet once a month. So if they're going to get their notification out, they're going to have to get to the publication agency or a newspaper at least a week in advance so that we can sort of time when those publications comes out, because in some of our small counties, we are not--we don't have a daily publication that we can rely on. Most of the times, works fine, not a problem. But in the event something comes up in the course of county business--and maybe something, a piece of equipment, breaks down, and we have to give notice that we're going to talk about what do we do with that piece of equipment. Currently, we may not be able to have that discussion legally, because we can't get the publication into the right circuit; and so it may be a month down the road, and this may be something that we need now. Snowstorms are a great example of that. Snowstorms comes up, sometimes we have a piece of equipment breaks, we need to replace that. So many times those don't reach the level of an emergency. But there are things that we need to talk about, and therefore we want to have the latitude so that we can deal with these types of requirements. And so I've notified you of some situations that come up that simply are beyond our control. We don't know how we can control that. I'm sure that you're going to hear that this bill would force small newspapers, you know, significant financial hardship and things like that. And I certainly appreciate that. But that's not our intent. Our intent is not to harm any of the small newspapers. Our intent in this is so that we have legislative authority so we can post these notices on our Web sites. I think we could have a lengthy discussion about where the world is going as far as how people receive information in today's world. And I'd be happy to have that conversation. But keep in mind, we're only talking about the notification; we're not asking to change the fact of where we publish the minutes or where we publish the claims or any of that. We're simply talking about the minutes (sic). I would also stress to you that I just came from a hearing down the hall that wiped out state aid to counties, eliminated it. And some of the comments in that committee--and the Governor testified

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in that committee--and some of the comments were: if you have an idea of something that would help, bring it forward. This is something that would help county governments. This would help us. We're bringing it forward. And so with that, I would just more than stress, we're not trying to do this to harm any local newspaper. We're trying to do it to meet our legal obligations to provide notice to the public of our meetings. So with that, I'd be happy to answer any questions you would have. [LB444]

SENATOR PRICE: Thank you, Mr. Dix. Questions? Senator Sullivan. [LB444]

SENATOR SULLIVAN: Thank you, Senator Price. Thank you, Larry, for your comments. Can you give us an idea of--working with all your county officials across the state--how do they typically give notice now? In one situation--in one medium? Or do they use several? And how do they handle notice of special meetings? [LB444]

LARRY DIX: Okay. In many of the counties there are not a lot of options. There...on many of the counties, the option of immediate voice, radio, probably isn't a opportunity or a good opportunity. I know we have radio stations that cover the whole state, but that isn't...so a majority of those counties certainly go to the local newspapers. We start to run into some scenarios where, you know, the law says you can use a newspaper of general circulation; in some counties it's hard to determine which newspaper will connect to the most constituents. And we have parts of the state that that runs into a problem. As far as special meetings, emergency meetings, when we are in a county where there simply is no ability to have a notification in a newspaper, about the only thing we can fall back on is posting in public buildings. Now that would be possibly the courthouse, obviously; that would be the--maybe a post office; it could be a school. But I've got to tell you, there isn't a lot of citizens out walking around trying to go into school buildings to see if the county board is going to meet. So that's why we're asking for the authority to also place it on Web sites, because we know that there are a number of people hitting our county Web sites, and we know that a number of counties are getting the requests from their constituents, saying, why don't you put more information up on your Web site? [LB444]

SENATOR SULLIVAN: Thank you. [LB444]

SENATOR PRICE: Thank you. Senator Brasch. [LB444]

SENATOR BRASCH: Senator Price, thank you. Thank you, Mr. Dix. Is it illegal to post that on a county Web site right now? Is that breaking a law? [LB444]

LARRY DIX: I don't think it is illegal at all. The only thing that...you know, typically counties only have the authority to do things legally that the Legislature grants them authority to do. That's, you know, over the course of history, that's sort of how we have always operated as county government. We only have the authority to do things that

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you, really, tell us we can do. [LB444]

SENATOR BRASCH: Are counties already posting meetings on Web sites? I believe... [LB444]

LARRY DIX: They are posting the notice... [LB444]

SENATOR BRASCH: Um-hum. [LB444]

LARRY DIX: ...counties currently are. [LB444]

SENATOR BRASCH: Um-hum. [LB444]

LARRY DIX: And that's why we're asking--we just want to make sure that we're legal. Those counties that are posting on the Web site certainly are meeting all the other publication requirements. They... [LB444]

SENATOR BRASCH: So they still are required to meet... [LB444]

LARRY DIX: Yeah. That determination is made by the county... [LB444]

SENATOR BRASCH: Okay. [LB444]

LARRY DIX: ...of how they want to publish meeting notice. Yes. [LB444]

SENATOR BRASCH: It's on a county... [LB444]

LARRY DIX: Yes. [LB444]

SENATOR BRASCH: Okay. Thank you, Mr. Dix. Thank you, Senator Price. [LB444]

SENATOR PRICE: (Inaudible) Senator Janssen. [LB444]

SENATOR JANSSEN: Thank you, Vice Chair Price. Mr. Dix, I'm just reading through this, and it's not--not very much underlined on this, but I think it does make a significant change. It says methods of providing such notices shall include, but not limited to, "publication in a newspaper of general circulation," which is what it is at present, right? And then "posting on the public body's Web site." So you have--now you would have to do both of those things? [LB444]

LARRY DIX: I don't think so. [LB444]

SENATOR JANSSEN: Under this law? Under this bill? [LB444]

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LARRY DIX: Under this bill? No, I don't think you would have to do both of them. [LB444]

SENATOR JANSSEN: But then it's...okay. I guess I'm reading it wrong. [LB444]

LARRY DIX: They shall include but not limited to. So they... [LB444]

SENATOR JANSSEN: But not limited to. Right. Shall--but when it says "shall include"...okay. I don't get that. But not limited to. So okay. So it does include those two. It says you shall include those two. That means you can do more than that, but you have to put it in newspapers and on the Web site. [LB444]

LARRY DIX: I don't think so. I don't read it that way. And I'll leave that up to the... [LB444]

SENATOR JANSSEN: Okay. [LB444]

LARRY DIX: ...legal counsel, but... [LB444]

SENATOR JANSSEN: Okay. Well, then I'll just move past that. Then it says, "or posting in a public building in the community." [LB444]

LARRY DIX: Um-hum. [LB444]

SENATOR JANSSEN: So you don't--you could just put a posting...tractor breaks down, we need to meet, slap it on the bar pole in the town I grew up in, Nickerson, which I guarantee would get 100 percent of the residents, in that particular community. [LB444]

LARRY DIX: And that's--current law today, that... [LB444]

SENATOR JANSSEN: You can do... [LB444]

LARRY DIX: ...we can do that today. [LB444]

SENATOR JANSSEN: I'm just trying to put this... [LB444]

LARRY DIX: Yeah. [LB444]

SENATOR JANSSEN: ...all together. [LB444]

LARRY DIX: Yeah, we can do that today. [LB444]

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SENATOR JANSSEN: Okay. All right, thanks. [LB444]

SENATOR PRICE: Mr. Dix, so what we're saying here is this is in addition to; it does not replace any current statutory requirements. [LB444]

LARRY DIX: We don't believe it is. I mean, we're asking so that when we post on the county's Web site, it gives us another option to do, so that the Legislature authorizes to do some of the things that we're currently doing today... [LB444]

SENATOR PRICE: Right. [LB444]

LARRY DIX: ...in addition to. [LB444]

SENATOR PRICE: Senator Schumacher. [LB444]

SENATOR SCHUMACHER: Thank you, Senator Price. Well, as I read this--that you could replace the publication in the pulp newspaper with the publication in the Web newspaper. [LB444]

LARRY DIX: I think today, we could just... [LB444]

SENATOR SCHUMACHER: I mean if this language were passed. [LB444]

LARRY DIX: Yeah. And I think today we could make a determination that we only put notice in a public building, and it would meet the letter of the law. [LB444]

SENATOR SCHUMACHER: Okay. So... [LB444]

LARRY DIX: Yeah. [LB444]

SENATOR SCHUMACHER: So to a certain extent, this affirms or establishes that the Web site would satisfy the requirement of posting... [LB444]

LARRY DIX: Yes. [LB444]

SENATOR SCHUMACHER: ...if I'm understanding this right. [LB444]

LARRY DIX: Yes. [LB444]

SENATOR SCHUMACHER: Okay. So, as I understand, the motivation for this is twofold. One, those special situations where there isn't a newspaper available and they got to meet because the tractor is broke. Okay. And this would allow you to go and put it on a Web site in addition to--or throwing a billboard up or a poster... [LB444]

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LARRY DIX: Sure. [LB444]

SENATOR SCHUMACHER: ...in the courthouse or something like that. That's one...and the other is because of the cost. Now, am I correct in thinking that this is the itty-bitty clipping that's in the newspaper that says the county board of such-and-such county is going to meet at the courthouse at such a time and the agenda for the meeting is always current in the clerk's office? [LB444]

LARRY DIX: This is that publicized notice of the time and place of each meeting. So it is:... [LB444]

SENATOR SCHUMACHER: It's a itty-bitty thing. [LB444]

LARRY DIX: ...The Platte County Board shall meet at 10:00 on Tuesday, January such-and-such, in the county courthouse. That's it. [LB444]

SENATOR SCHUMACHER: And that's...what do those things cost? Ten bucks? [LB444]

LARRY DIX: I don't know. I'm sure some of the folks in the press could...I don't know, but, as I started out saying, the only thing we're asking for is the notification. That's a very small amount of information that is put into these. We're only talking--this bill only talks about that notice. That's it. [LB444]

SENATOR SCHUMACHER: Would your needs substantively be met if the change said, "and in the case of an emergency meeting, then the Web page," in addition to one of the other methods? [LB444]

LARRY DIX: I think it would. I don't know that it's always an emergency. I don't know that we would want to limit it just to emergency meetings, because there are other times that things don't rise to the level of emergency but we still need to notify the public that we are going to meet. [LB444]

SENATOR SCHUMACHER: People throughout the history of the state have been kind of accustomed to looking to a spot to see the thing posted or in the newspaper or something. And if we make this change, they may not find it in the accustomed place or as convenient--a notice of, particularly, a special meeting, which--something could be, you know, slipped under the rug. [LB444]

LARRY DIX: Yeah. I...and I want to stress to everybody we're not trying to do this to hide anything. I mean, that is not the intent. We're actually trying to do it to put more notification out. I've got two children that--I don't care how big of an ad I put in the

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newspaper, they're not going to see it. They get their information on one of these devices. And all we're trying to accommodate--we know that in the future, there's more and more of these devices that are going to be called smart devices that people are going to get notification and information on. And there may be even apps someday that says, every time, you know, Burt County has a meeting, I want to be notified on here. But that allows us to move into the future. And I think, you know, that's something that I think we all have to do. The other thing is we constantly get asked by the Legislature: Well, give us some ideas of--can you save some money? Well, we do. And this is one. [LB444]

SENATOR SCHUMACHER: No further questions. [LB444]

SENATOR PRICE: Thank you, Senator Schumacher. Senator Brasch. [LB444]

SENATOR BRASCH: Just one more comment. You had said that because of bad weather, that perhaps a newspaper cannot publish. I've subscribed to a weekly paper for going on 18 years and five weekly papers over 6 months now. And I cannot remember one instance where my paper was not delivered to me. However, because of my occupation, I rely on the Internet, and I've had to drive ten miles each way to the library in town to borrow their Internet because our rural service--tower, weather conditions--could not deliver. So I don't think you can always rely on technology. But in my experience, I've been able to rely on my weekly subscriptions. [LB444]

LARRY DIX: And, Senator Brasch, just so that we're clear, for the record, I don't believe I stated that the paper wasn't published. I had said, due to a snowstorm, that something broke down, we may have had to have a meeting, and we couldn't meet the paper's publication cycle. But I would never have said that... [LB444]

SENATOR BRASCH: Okay. [LB444]

LARRY DIX: ...the paper... [LB444]

SENATOR BRASCH: The meeting. Okay. [LB444]

LARRY DIX: ...couldn't be published because of a snowstorm. [LB444]

SENATOR BRASCH: Thank you for... [LB444]

LARRY DIX: Yes. [LB444]

SENATOR BRASCH: ...the clarification... [LB444]

LARRY DIX: Yes. [LB444]

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SENATOR BRASCH: ...Mr. Dix. [LB444]

SENATOR PRICE: Thank you... [LB444]

LARRY DIX: Thank you. [LB444]

SENATOR PRICE: ...Senator Brasch. Are there any other questions from the committee? See no further (inaudible). Thank you very much... [LB444]

LARRY DIX: Thank you. [LB444]

SENATOR PRICE: ...Mr. Dix. Are there any other proponents? Seeing no proponents, we will move into opponents. Will the first testifier come forward. And while you're coming forward, I will read into the record. We have letters of opposition from Merrel Martin, Richard Parman, Kelly Raichart, Rita Jones, Anthony Ham, John McDonald--from the Dundy County Hospital Board of Trustees, Benkelman, Nebraska; James D. Owens; John Sennett; and Justin Lucas. (Exhibit 1) Please. [LB444]

BROOK CURTISS: (Exhibit 2) Again, my name is Brook Curtiss, B-r-o-o-k C-u-r-t-i-s-s. I'm here today representing The Plainview News, a small newspaper in northeast Nebraska. I have a prepared statement, but I promised my wife I would apologize; this is not my normal appearance. It's our 125th anniversary in Plainview. Normally I won't have a beard, so don't hold that against me, please. Thank you for allowing us the opportunity to be heard on the bill LB444 and LB150. I apologize, I was under the impression they were going to be talked about together, so this is actually in opposition to both; whether that can be taken or not is up to you guys. I appreciate the system of hard work you've put in to make our state a better place. When I purchased The Plainview News in 2004, I wasn't just buying a business, I was buying a legacy. The previous owner had worked at the News for more than 50 years, and most of the staff had more than 25 years under their belt. When I was in high school, Mr. Warneke, the previous owner, was gracious enough to give me a job at minimum wage. Newspaper people are kind of cheap; it was \$5.33 at that point, so I was very thankful to him about that. And I toiled early and late hours with Mr. Warneke to produce a publication worthy of the purpose of newspapers. That purpose has always been, in my mind--as I was taught as I went through college and from Mr. Warneke, who owned a family newspaper--has been to deliver to the citizens of Plainview, Nebraska, a trustworthy, accurate, reliable source of all information necessary to carry out their days as citizens of Plainview. Now, in a small town, that could mean anything from a card club to FFA to who had dinner in whose house on Sunday, but it also includes participating in their democracy by attending public meetings that are referenced in the newspaper. As I understand it, the bill presented today would allow the public notices, primarily a mainstay of newspapers and the print industry for the last 100 years, to be presented in

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public in a digital format, or on the Internet through the use of Web sites. While no one can doubt the Internet's power to connect people, the question that I find myself continually stuck on is the one that poses: What is the wisdom behind using the most temporary, opinion-filled, whim-of-the-moment source to deliver the most important information in our democracy to the people of Nebraska? I have a couple comments scribbled in the side here, so I apologize for going out of order a little bit. But if the Web site avenue was so available to all counties, as you'll hear from my colleagues behind me that raised their hands, it could be done already. In Pierce County, it is being done already. The previous testifier, Mr. Dix, said that he was asking for timing. In our--in my newspaper area anyway, we have plenty of timing, and the people post notices if they need to. If you continue down in the statute, I think you'll read that if--as long as they call...the secretary of said board or organization is supposed to maintain a list of people to notify that there is a meeting. So I have a hard time believing necessarily those arguments that he's presented to you so far. I'm of the age of the generation that grew up with the Internet. I know its power but also its weaknesses. The Internet has become the television joke of the age: You can't always believe what you see on it. Hardly the place for information such as public notices. The Internet has had the better part of ten years to show us what it is capable of and how it works. It is a powerhouse for the public--no one can argue that--instantly delivering the opinions of even the most individual citizens from random locations. However, the entire notion of public notices, the reputation that they have, was built on the reliability and accountability that only newspapers can provide. If careful notice of the Internet is taken, it is easily observable that the majority of any useful information is either charged for or charged by subscription to receive. Government Web sites are currently one of the primary examples of this, with "page," or "access," or "click" charges; I have a bill for those frequently myself. The Internet has its niche, and it does it very well; but for being trustworthy, reliable, efficient, and consistently delivering public notices, the niche belongs and should remain with newspapers. Newspapers fill a niche that simply cannot be replaced, as we provide a permanence that cannot be matched by the Internet. Once you print, it's there forever: it cannot be changed; it cannot be altered; it cannot be updated with a time stamp or any of those kinds of things. Once you have the permanence of print, it is what it is. I deal with that on a daily basis. The, in my opinion, relative pittance that public notices have cost the state could not be better spent in providing your citizens and constituents with, again, the most reliable, trustworthy, time-honored delivery of public notices to date. In fact, if cost is one of your major arguments, I've attached to my testimony a rate sheet that is government-set, to tell how newspapers--how much they can charge. And you'll notice at the top the date it was last changed was 1996. That lack of increase has not been for a desire for newspapers to make more money; it has not been changed because of a fear, a fear just as this one, that eventually someone will come along with a cheaper avenue to deliver these notices, and the public trust will be lost for a savings of, in most budgets, less than one-half of a percent of the government's total expenditures. As a quick example of that, in Pierce County we divide the budget notices' cost by the three newspapers; it's our

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choice. The newspapers made that decision to get the notice to everyone--so just as an example of the willingness that people have, newspapers have to work with the government. Hopefully, my colleagues and I--I'll finish up real quick--hopefully, my colleagues and I can persuade and accurately report to you today that newspapers have been and will continue to be the mainstay of information delivery in the most effective, efficient, trustworthy, valid, time-tested way, a transparency unmatched by the frivolity of the Internet. This bill, while not inherently damaging as presented, and its counterpart, LB150--I relate to these as a gateway drug: it allows a little bit of leeway that will then continue on in perhaps future sessions or to the floor, if it makes it so far, to be amended to cut out newspapers entirely, whether that is the exact purpose or not is up for discussion. I'll leave you with this thought. When print was first invented, it was thought to kill the spoken word of storytelling. When radio was invented, it was thought to kill print. When television was invented, it was thought to kill radio. And when the Internet was invented, it was thought to trump all. Last I checked, we all still enjoy telling stories over coffee, reading stories to our children, listening to the radio in our car, watching television at night, and surfing the Web, to coin a phrase. Each of these supposedly outdated technologies has its role, but public notices is one for newspapers. [LB444]

SENATOR PRICE: Thank you... [LB444]

BROOK CURTISS: Sorry to go so long. [LB444]

SENATOR PRICE: Thank you, Mr. Curtiss. Are there any questions for Mr. Curtiss? Senator Sullivan. [LB444]

SENATOR SULLIVAN: Thank you for your comments. The way the bill is written right now, under current statute, it's up to a public body to decide the method that they're going to use to give notice. [LB444]

BROOK CURTISS: Correct. [LB444]

SENATOR SULLIVAN: If...given this latitude and given the village board in Plainview or--what county is Plainview in? [LB444]

BROOK CURTISS: Pierce. [LB444]

SENATOR SULLIVAN: Pierce County... [LB444]

BROOK CURTISS: Um-hum. [LB444]

SENATOR SULLIVAN: ...do you think they'd opt to change? [LB444]

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BROOK CURTISS: The fear is that they will immediately opt to change, because at current time, the state has been gracious enough to allow counties' Web sites hosted by the state...if you go to pierce.ne.gov or whatever it is, I don't know that the county pays for that directly, and the legal notices essentially become free. And that is the fear of some of my colleagues and myself, is that the free option will begin to outweigh the useful option. In Pierce County we do have Internet, amazingly enough. And it's at the courthouse, and so it can be accessed by a number of people. We just did a study on whether or not we should do a one-to-one computer initiative with our students at the school. And the parents primarily responded with: most of them have a computer. I think newspapers deliver to most. They will deliver to most, more often than not. I just spent an enormous amount of money creating for myself a Web site so that I could offer Internet subscriptions. It's green; it's with the times; it's the thing of the future. And for six months I've advertised it in my newspaper, and I have 15 people that have said they wanted an Internet subscription. But I also have 1,200 that come in every week for their newspaper. [LB444]

SENATOR SULLIVAN: And that being said, do you think that your elected officials recognize that--the importance of a newspaper in, particularly in our rural areas, of getting information to the citizens? [LB444]

BROOK CURTISS: I will give my county commissioners the benefit of the doubt and the clerk the benefit of the doubt and say absolutely that is so. They would probably stick with newspapers regardless. But it's through a...and the clerk has put it to me this way before, she doesn't want to bother with it. They currently publish everything on the Internet, but it's automatically updated. It's--it grabs Word documents for them and things like that, so... [LB444]

SENATOR SULLIVAN: Do I assume correctly that if the local political subdivision opted to change the way that they give notice and eliminated the newspaper, you'd be there testifying adamantly against it at their public meeting? [LB444]

BROOK CURTISS: Most definitely, yeah. Yeah. [LB444]

SENATOR PRICE: Thank you, Senator Sullivan. Senator Schumacher. [LB444]

SENATOR SCHUMACHER: Thank you, Senator Price. Just quickly, the little ad in the--in your paper... [LB444]

BROOK CURTISS: Um-hum. [LB444]

SENATOR SCHUMACHER: ...what does that cost--a public...? [LB444]

BROOK CURTISS: Well, it's, like I said, it's--and you can see it on the list there. It's

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determined by column width and depth and size of type, set by the Legislature in '96. But normally our municipal notices, county notices, things like that, run between \$4 and \$6 a week or a month, whenever they meet. [LB444]

SENATOR SCHUMACHER: And how many entities do you publish this notice for, roughly? [LB444]

BROOK CURTISS: I have a--we have a number of municipal boards: we have the library board, the city council, whenever the pool board would meet, the tree board would meet--they meet during certain parts of the year--the park board meets only during the summer months. Those...then I--we, like I said, we share the cost from the county, so that's a lower rate to begin with, and so we get a third of that paid out from the clerk directly for those public notices. So if it was \$5, we'd get \$1.75 or something like that for running that for them. In Pierce County, we also offer a discounted display advertising rate to the county if they'll run it in all three newspapers. We all take off a couple dollars per column-inch if they'll run a "help wanted" in all three papers, to open it up for equal opportunity to the county. [LB444]

SENATOR SCHUMACHER: So as far as this revenue stream is concerned, it's minimal cost to the county, minimal income to you. [LB444]

BROOK CURTISS: It depends...and some of my colleagues will speak on this too; I don't want to overstep them so they don't get anything to talk about. But they--it depends solely on the newspaper. To me, personally, it is approximately 6 percent to 8 percent of my annual gross income, not to be outweighed by the expenses of that. I mean, there are times where I have to publish an additional page or two to take up that third... [LB444]

SENATOR SCHUMACHER: Now, is that just for these little notices or for your total...? [LB444]

BROOK CURTISS: No, no. That's for the minutes and... [LB444]

SENATOR SCHUMACHER: Everything. Yeah. [LB444]

BROOK CURTISS: I'm sorry. Excuse me. [LB444]

SENATOR SCHUMACHER: I was going to say... [LB444]

BROOK CURTISS: That probably doesn't apply. [LB444]

SENATOR SCHUMACHER: ...you're not making much money. [LB444]

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BROOK CURTISS: No. No, no. Just the meeting notices. No. The meeting notices in my specific newspaper--since I only get a third of the income. And that's something that the newspapers decided to do for the county. No, it wouldn't be much money, in the slightest, so... [LB444]

SENATOR SCHUMACHER: I have no further questions. [LB444]

SENATOR PRICE: Thank you. Any other questions from the committee? Seeing none, thank you... [LB444]

BROOK CURTISS: Thank you. [LB444]

SENATOR PRICE: ...for your testimony, Mr. Curtiss. The next opponent. [LB444]

JOHN EDGECOMBE: (Exhibit 3) I am John Edgecombe, E-d-g-e-c-o-m-b-e, from Geneva, Nebraska, and I am in the 32nd Legislative District. I'd like to keep my comments very brief, because it's been a long afternoon. And I come to you--I serve on the board of the National Newspaper Association, where I represent Nebraska, Iowa, Missouri, and Kansas newspapers. But I'm here specifically today to represent our Nebraska publications. I guess the worry and concerns that newspapers are dead and dying--I think some of the numbers that we have, particularly, don't really quite show those as being a dying industry, particularly in Nebraska. In August and October of 2010, the National Newspaper Association, which I serve on, conducted a survey, and they did that on small publications. And many, many, many of the newspapers in Nebraska certainly would fall underneath that category. And a couple of the findings which I think were pretty interesting is that the average reader has subscribed for 26 years. And another one was: Do you think government should be required to publish public notices in newspapers? Seventy-five percent of those responded by saying, yes; 17 percent, no; and 8 percent, not sure. These findings at the national level are about the same in Nebraska. The Nebraska Press Association conducted their last survey: there were 63 percent of the Nebraskans responded to saying that they read public notices. Legals in Nebraska newspapers are read by their loyal subscribers. The latest survey indicated that 45.8 percent often read the legal newspapers and public notices in their local papers. And then I think that the thing about the number of papers--and in November, I think, would be when this figure would be: there are 637,000 newspaper subscribers in Nebraska. That's a fairly significant number. It does not include counter sales--like the World-Herald sells 20,000 more over the counter. So there are still people reading the newspapers in Nebraska. And they're turning to newspapers for their legal notices. Basically, I think that Nebraska newspapers have the responsibility of watchdogs of the state and local governments, and people in Nebraska expect to read those public notices in Nebraska newspapers. And that's really all I have to say. I...short and sweet. And if there's anybody that has any questions... [LB444]

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SENATOR AVERY: Thank you, Mr. Edgecombe. [LB444]

JOHN EDGECOMBE: Thank you. [LB444]

SENATOR AVERY: Wait, we might have questions. [LB444]

JOHN EDGECOMBE: Okay. [LB444]

SENATOR AVERY: Any questions from the committee? Think we're just about worn out. [LB444]

JOHN EDGECOMBE: Yeah. [LB444]

SENATOR AVERY: Thank you. We're on opponent testimony. How many more people do we have that want to testify in opposition? Let me offer you an alternative, (laughter) because we have events that are--have already commenced in other places that we--where we need to be right away. If--unless you have something to add to the testimony that has not yet been said or unless you have a absolute, overwhelming compulsion to testify, there is the option of signing the sheet at the door, at the table there, one on each end of the room, where you can register your opposition for or against this bill, and your name and address. And that will be a part of the record. Just thought you might want to know that. Thank you. Now, proceed. [LB444]

DEB McCASLIN: (Exhibit 4) My name is Deb McCaslin; it's M-c-C-a-s-l-i-n. I'm the publisher of the Custer County Chief, located in the heart of Nebraska. I'm a little guy. I've got a little, small weekly out there. I do cover a large county. I have a circulation of just short of 4,000 papers. And what I really want to talk about and enter into record is the importance of the legal notices in the newspaper and what the value that it brings to our constituencies. A legal is--it...when we publish a legal in a newspaper, we have to provide an affidavit at the end that says it was fair and it was published as it was given to us. A legal printed in a newspaper shows up everywhere. And a paper is something that comes to you; it's information that comes to your doorstep. It's in every barbershop; it's in every car shop; it's in every law office; it's in the dentist's office and the doctor's office. When you go out for information on the Internet, that's information you have to go out and seek, and you have to know where to find it. In a newspaper you know where to find the legals. I believe that as--if I were an elected official, I would want the public to have the faith that all of my actions in their behalf were out in the open and that sequestering any kind of legal, whether it's a small, little minutes...and you asked how much a legal notice costs; in my newspaper it costs \$4.62--just thought I'd throw that in. But I would want to have that information on the public. I would want to have my constituents to know and have the faith in me that everything I was doing was out in the open, that how I was going to spend their tax dollars was out in the open, and that every meeting that we're going to hold was out in the open. I believe--I strongly agree that this

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is maybe just the first step that we need to guard against a little bit. There may be a time to come when it all is going to be on the Internet, but today is not the day. I'd like to add a point to ponder. The U.S. Census estimates that Internet connectivity is at 55 percent. It serves a wonderful purpose. I do enjoy the Internet immensely. But it simply cannot do what our newspapers can do when it comes to the publication of legals. Monday morning I had a staff meeting with my office. I have 18 employees. I asked them: How many of you in the last calendar year--I'm not talking the last week--the last calendar year have been on a government Web site? Four hands went up; one of them was my sports editor, who says: Does that include the NSAA Web site? I said, no. My compositor says: Does that include Game and Parks, because I wanted to know when the next season began? And I said: Well, yeah, it does; that's government. There are only two people that in the last calendar year had been on a government Web site. One was my managing editor; the other person was myself. And this is at a newspaper. I find that fact very scary. Out in central Nebraska, the newspaper is the thing that covers what we do. It's the source that people go to; it brings comfort to them; it's something...I don't know, I could go on forever, because I'm very passionate about this. But I have colleagues that are far more articulate about this subject than I am. [LB444]

SENATOR AVERY: Your passion is obvious. [LB444]

DEB McCASLIN: Oh, I did want to bring up one other point. (Laughter) I have one that's just totally interesting. You know, the department of the treasury publishes on the Internet site every year unclaimed properties. Every year I get a letter from them that says, will you please print an article in your newspaper telling people to go to our Web site on unclaimed properties, where they can get money back, because nobody is logging on? Now, if nobody goes on to a Web site in order to find out that the government owes them money, do you really think they're going to go out to seek out the information they need? Thank you. Oh, questions? [LB444]

SENATOR AVERY: Yes, thank you, Ms. McCaslin. Questions from the committee? I think you stunned us. (Laughter) [LB444]

DEB McCASLIN: You should thank me for not reading the four-five pages I gave you. [LB444]

GENE TYSON: Senator Avery... [LB444]

SENATOR AVERY: Welcome, sir. [LB444]

GENE TYSON: ...members of the committee, I'll be very brief, because I used to sit where Senator Schumacher is sitting now. And after 5:00 my attention had gone down to about 1 degree above zero. [LB444]

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SENATOR AVERY: What is your name? And spell it. [LB444]

GENE TYSON: Gene Tyson. [LB444]

SENATOR AVERY: Oh, yes. [LB444]

GENE TYSON: And I live in Norfolk, Nebraska. [LB444]

SENATOR AVERY: You look so much younger. (Laughter) [LB444]

GENE TYSON: I used to look very, very old, and then I left the Legislature. And every day...(laughter). But I would just--like I say, I'll keep it very brief; I had a lot more to offer, but...I think that this, if you allow an open reading of the first three--yeah--first three lines of 84-1411, it's covered. And I think this--the three lines that you're going to add in here have already been taken care of by: method designated by every public body and recorded in its minutes. They don't have to react; they can act ahead of time. That's all. [LB444]

SENATOR AVERY: That's all. Questions? That was brief. For a... [LB444]

GENE TYSON: Oh, I... [LB444]

SENATOR AVERY: ...former politician, you...that's odd. [LB444]

GENE TYSON: Former politician. That's... [LB444]

SENATOR AVERY: I said "former." (Laugh) No more...? Well, it's good to see you again. [LB444]

GENE TYSON: Thank you. [LB444]

SENATOR AVERY: Yeah. [LB444]

GENE TYSON: This is the second time I've been here since I left. [LB444]

SENATOR AVERY: Well, we're honored. Thank you. [LB444]

GENE TYSON: Thank you. [LB444]

SENATOR PRICE: You're recovering yet. [LB444]

GENE TYSON: Pardon? [LB444]

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SENATOR PRICE: You're recovering yet. [LB444]

GENE TYSON: Yes, I'm recovering. [LB444]

SENATOR AVERY: You're in recovery. [LB444]

SENATOR PRICE: Never mind. It's a lot funnier at 6:00 rather than, you know, 2:00. [LB444]

SENATOR AVERY: Welcome. [LB444]

DARRAN FOWLER: (Exhibit 5) Thank you. I guess I'll say, good evening, Mr. Chairman and other members of the Government, Military and Veterans Affairs Committee. My name is Darran Fowler. I'm publisher of the Hastings Tribune. However, as president of the Nebraska Press Association, I appear before you here today on behalf of Marcia Hora of Stapleton, who is editor/manager of four weekly newspapers in western Nebraska. Before I explain why Marcia could not be here today to testify, I first want to thank each of you for your time, your public service, your careful attention to matters and issues that affect all Nebraskans in various ways. I know you carry a heavy load, so I admire all the work you do on behalf of this great state. Second, Marcia is not here today because today is the day she publishes her newspapers. She operates a small shop; so she, too, carries a heavy load. And I can only admire how hard she must work to get those newspapers to the post office each Wednesday, where she can expect to find people waiting in line, at the post office, for her to deliver the newspaper there. It's because of that loyalty and dedication to serving her readers that she regretfully cannot be here today. And so as president, I'm here to offer this statement. And these are her remarks. She wrote: I would like to address my concerns on LB150, introduced by Senator Lathrop, and LB444, introduced by Senator Avery. The major concern I have on these bills is the restriction placed on constituents on their right to be informed on what is going on in their local community government and taxing entities. The Stapleton Enterprise-McPherson County News, Tryon, is published weekly and is the legal newspaper for these counties. Pay attention: Logan County does not have a Web site, nor does McPherson County. The village of Stapleton and the village of Grady, also in Logan County, do not have Web sites. The Logan County Library does not have a computer or Internet access. She says: We also publish the Thomas County Herald, which is the legal newspaper for Thomas County, at Thedford. Thomas County does have a Web site, but the village of Thedford and the village of Seneca do not. And I know we're just strictly talking about--no, we're not talking about counties, we're talking about all notices of meetings. The Arnold Sentinel is a weekly publication that we publish in Custer County. It is not the legal newspaper for the county, but it is for the village of Arnold. Arnold does have a maintained Web site that is updated by the Arnold Economic Development Corporation. These counties and villages have a large percentage of people over the age of 60. It would be discriminatory to deny access to

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local government happenings to this age group. This generation of people are the ones who turn out at the polls to vote, and they are most interested in what is going on in their local government. According to a recent survey, 40 percent of Americans have never visited a government Web site. I am certain that in the counties that we serve, that percentage would be much higher. I feel this is a good representation of the entire 43rd District as well as much of rural Nebraska. And I'll just end it there, because the rest would be sort of repetitive. [LB444]

SENATOR AVERY: Thank you very much, sir. You are aware that this, LB444, does not require that these notices be published on a Web site. [LB444]

DARRAN FOWLER: I don't know if that's... [LB444]

SENATOR AVERY: It simply--it provides that option. [LB444]

DARRAN FOWLER: Yeah. [LB444]

SENATOR AVERY: Yeah. [LB444]

DARRAN FOWLER: And what's preventing that from that being the case now? What...they can do it now, right? [LB444]

SENATOR AVERY: If you don't have--if a county doesn't have a Web site, then nothing changes. I mean--and even if they do have a Web site, they may choose not to use it for that. [LB444]

DARRAN FOWLER: And we all need to be aware that if this is the start of something else, that there are a lot of communities being underserved because there is a lack of Internet across the state of Nebraska, in rural Nebraska. [LB444]

SENATOR AVERY: But...never mind. Okay. Any questions from the committee? Thank you very much, sir. Any more opponent testimony? [LB444]

_____: Oh, my God. (Laughter) [LB444]

SENATOR _____: Come on down. [LB444]

SENATOR AVERY: You been sitting too long? [LB444]

SENATOR PRICE: Our chairs are much more comfortable. [LB444]

SENATOR AVERY: Welcome, sir. [LB444]

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JASON FREDERICK: (Exhibit 6) Thank you very much. My name is Jason Frederick; it's J-a-s-o-n F-r-e-d-e-r-i-c-k. With my wife--we own the--own and publish three southwest Nebraska weekly newspapers: The Benkelman Post, The Hitchcock County News, and The Hayes Center Times-Republican. I'm a 1997 graduate of the University of Nebraska-Lincoln; I have a bachelor of science degree in meteorology and climatology and a bachelor of journalism degree in broadcasting. In 2003 my wife and I--we essentially came home; we went home. I worked for National Public Radio, Voice of America, you know--and we wanted to go home to our small towns. And, you know, you talk about this--Senator Schumacher, we talked about that little ad; but, you know, I'm going to stray a little bit from what I wrote here. This isn't so much about that little ad as it is, what is the next step? You know, where is this going to go? We see it in other states. This is about what's going to happen when they want--the NACO wants this little ad--and they're talking this meeting announcement. The next step is where do the minutes go--we're going to publish our minutes in the Internet; we're going to put everything on there. And maybe that's the direction it's going. But I think right now I want to stress that if legal notices are moved from newspapers and put on the Web, you know, my grandmother, my mother-in-law, my aunt, and many others--they don't have computers; they're not even on the Internet, you know. And you'll be taking away these citizens' rights and abilities to stay informed about what's going on in the government systems and what their elected representatives are doing. If this bill is amended when it gets to the floor to just take newspapers out, what--where does that leave us? You leave these--you leave an entire group of people in western Nebraska...we're talking--in central Nebraska there is a study--a 2010 Nebraska Public Service Commission study indicated 56 percent of central Nebraska residents have broadband Internet. That's 44 percent that don't. Are you going to completely count these people out? You're going to send the message to them that they don't really count unless, you know, unless they get a computer. You know, you're going to lose that transparency with this entire group of citizens. You know, I can appreciate the financial situation that the state of Nebraska is battling, and, you know, I just don't think that changing the law regarding the posting of public notices and other legal matters on the Internet is prudent and responsible. And the simple fact is, is that rural areas--they're just a large segment that this is not--they're not going to have access to it. I'll give an example. In my area, the Dundy County Clerk is--where The Benkelman Post is the official newspaper--he still types his meeting minutes on the same typewriter he used 25 years ago. He types his public notices; he walks them down to the newspaper; he gives them to us; we reset the type. You know, notices posted on to some Internet site--you know, you can't even match the permanency, the reliability of the printed word. You know, once a public notice is in print, it can't be altered, hacked, or manipulated. A public notice printed in a newspaper can become a legal record, a document that government officials rely on for satisfying legal questions and challenges. Two examples. The former Keith County Attorney Blake Edwards was arrested by the Nebraska State Patrol yesterday morning for felony embezzlement. His defense attorney, you know, the state's attorneys--they're undoubtedly going to include the newspaper affidavits from meetings and other legal

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notices as part of that case. At The Hitchcock County News office in Trenton, you know, we're in the process of--we've been called up to look up all legal publication information pertaining to a 2005 issue with Dr. Drain; he's a plumbing company. He's in a trademark violation lawsuit; he needs all those legal publications. And we go back for him, find the papers, get them for him. That's authentication--the actual newspaper and not a printout from a computer. That's black-and-white proof. Senator Avery has been quoted as saying: The state is not here to subsidize rural newspapers. So I ask you, Senator Avery: Do you think this is going to be a free service the state will provide? I can say with confidence that the local government entities I serve don't want to have anything to do with dealing with publicizing of their own legals. Who from the state will make sure that the rural villages, school boards, and counties make sure the right legals get posted at the right time? I can't tell you the number of times that we've had to call city and county clerks, reminding them that they have to print those meeting announcements and minutes within that required legal time frame. They call us; we call them back to make sure everything is done correctly. All of the schools, counties, villages, and city boards give us a list of their meeting dates for the entire year; we make sure they're publicized at the right time. That's for tree boards, the planning commissions, the zoning boards, the CRA boards, the cemetery boards, the fire boards; and the list goes on. We make sure they're all legal. Who from the state is going to do that for the thousands of villages and the accompanying boards in the state? And is all that going to--is it, I mean, is that going to save the state money? I don't think so, you know. I just think there's too many questions and potential problems that could arise by moving legals to the Internet. Our society--we're just not there yet. You don't have the answers to all the questions. I don't think you really understand the complexities that exist in making sure that the publishing laws are met in rural Nebraska for those boards and entities that exist in rural Nebraska. I just think that the Internet doesn't have all the answers, and I--as some of you might think it does at this point. [LB444]

SENATOR AVERY: I want to thank you for coming in. You live in Benkelman? [LB444]

JASON FREDERICK: I live in Trenton, actually. [LB444]

SENATOR AVERY: Trenton. [LB444]

JASON FREDERICK: Yeah. [LB444]

SENATOR AVERY: That's a long ways from here. [LB444]

JASON FREDERICK: [LB444]

SENATOR AVERY: Yeah. [LB444]

JASON FREDERICK: Well, you know... [LB444]

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SENATOR AVERY: And we appreciate... [LB444]

JASON FREDERICK: This came up--we learned about this, actually, at our newspapers last Thursday. And, basically, it's my wife and I, and we have three other full-time people, one at each site. But, I mean, I think I had--I had two hours of sleep last night and three hours of sleep the night before and two hours of sleep the night (laugh)... [LB444]

SENATOR AVERY: Sounds like what we do all the time. (Laughter) [LB444]

JASON FREDERICK: And it's--it, I mean--it's... [LB444]

SENATOR JANSSEN: Quit bragging about getting three hours. (Laughter) [LB444]

JASON FREDERICK: Well, you need to be commended for being this--because public service is an extremely honorable thing to do. [LB444]

SENATOR AVERY: Well, we are sensitive to the fact that you came a long distance for this testimony. We appreciate it, and we...all of you who come long distances and short distances--we appreciate what you do. And we're not insensitive to the problems that these bills raise. That's true. And it hasn't been voted out of committee yet, so... [LB444]

JASON FREDERICK: Well, then, I appreciate the opportunity to have an--just to be able to sit down and let you know we're out there, so... [LB444]

SENATOR AVERY: Yeah. And thank you for going to UNL. [LB444]

JASON FREDERICK: You're welcome. (Laughter) [LB444]

SENATOR SULLIVAN: Thank you very much. [LB444]

SENATOR PRICE: And thank you for being a weather guy; we need to stick together. [LB444]

JASON FREDERICK: Well, you know, you know, I had to get out of weather because I was right all the time. And if you're a weather guy, you just, you know, they get paid to be wrong, so (laughter)... [LB444]

SENATOR PRICE: Which is why I'm here. (Laughter) Great training ground. [LB444]

SENATOR AVERY: All right. Any other opposition testimony? Welcome. [LB444]

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LARRY KING: (Exhibit 7) Mr. Chairman, members of the committee, thank you. I will try to be very brief. My name is Larry King; I'm the vice president of news for the Omaha World-Herald Company, which is the World-Herald, 6 other dailies, 11 weeklies across the state of Nebraska. I just want to make a couple very quick points. [LB444]

SENATOR AVERY: Did you say "King," K-i-n-g? [LB444]

LARRY KING: King, K-i-n-g. [LB444]

SENATOR AVERY: Okay. [LB444]

LARRY KING: I think newspapers are the best source of information on local news all across the state, from Omaha to our smallest paper in Hemingford. And I think that's true of all my peers here. And I think it is imperative for the Legislature, which sets all kinds of standards, to provide standards for what is the best source of information and public notices--it is a newspaper, even for young people. The BlackBerrys that I am too reliant upon and everything else is just a vehicle. People who are interested in local news from their local communities need and should go to the best source, and that is their local newspaper. I think the bill as written provides options on what local governments can do, where they can post their notices. There's an "or" in there that is very confusing on where they can do it. Where should the general public go to find their notices from the very many public bodies in their communities? Do they have to look at all of them? Are they going to be in one place one time and one place another? There are also various options all throughout your statutes--our statutes--that require publication in a newspaper of general circulation. And I guess my final thought is, is that newspapers are an independent entity, separate from government, that provide a watchdog role and, more importantly, provide a mechanism for the citizenry to be a watchdog of their own government, independent from governmental agencies. And I just believe that the newspaper is the best source for that information and the most credible and the most likely place for people to find that information, not on a governmental Web site that may be good, but I don't think we all go there for fun and entertainment. [LB444]

SENATOR AVERY: Well, you have a pretty good Web site at the World-Herald. [LB444]

LARRY KING: Well, thank you. [LB444]

SENATOR AVERY: We read it all the time--my office. (Laughter) [LB444]

LARRY KING: I appreciate that. [LB444]

SENATOR AVERY: Thank you, Mr. King. [LB444]

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LARRY KING: Thank you. If there's any questions... [LB444]

SENATOR AVERY: Just for the record, I edited my college newspaper and married a journalist, so I'm not hostile to journalists and journalism and newspapers. [LB444]

LARRY KING: I don't perceive that a bit. [LB444]

SENATOR AVERY: Any questions from the committee? [LB444]

LARRY KING: Thank you. [LB444]

SENATOR SCHUMACHER: Another quick question... [LB444]

SENATOR AVERY: Yes. [LB444]

SENATOR SCHUMACHER: ...Senator Avery. [LB444]

SENATOR AVERY: Senator Schumacher. [LB444]

SENATOR SCHUMACHER: Thank you. How do you respond to the--Senator Tyson's point that this already is all contained in the first three--or in the first sentence in that--in the existing law? [LB444]

LARRY KING: I think the existing law is fine. And I think all throughout our statutes the existing law is the best way for our citizens to be informed. I don't--I don't really understand the reason for this legislation, and I think it's confusing. And the options on where governmental entities can post adds confusion and doesn't help the public find information; it would scatter it in a number of different places. [LB444]

SENATOR SCHUMACHER: Thank you. [LB444]

SENATOR AVERY: Any other questions? Don't see any. Thank you. [LB444]

LARRY KING: Thank you. [LB444]

SENATOR AVERY: Any more opposition testimony? I'm wondering, did we have any--did we ever have any pro testimony? I had to leave. One? Okay. [LB444]

BARRY RICHARDS: Well, I'm glad to be here, and I'll try to keep it brief to you. My name is Barry Richards. I'm from Hayes Center, and the big weather guy that was up here brought me down here today. And normally I'm...I just wanted you guys to know that I don't own a paper. I'm good friends with Jason, but only because he lets me be. That's--it's...I farm and I ranch, and I like to stick my nose in other people's business, but

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I'm wrapped up enough that I--lots of times other people stick their nose in my business. And I just want to bring the human side to it. When I'm sitting on the tractor wondering...I mean my day goes by what I read in the paper. If the paper tells me that something is going on, an event at school, an event in the school board, an event in town, an event down at the nearest big town, McCook--I live to read the paper, and then I dictate my week--it dictates to me my week. And I know we're not here debating whether it's going to be the demise of the newspapers; I just want to tell you on a personal--as personal as I know how to be that I'm a computer illiterate. I'm not uneducated; I just don't choose to pass my time on the computer. And I know that I'm in the minority and probably more so every day. But I've never seen the law that tells me that it's a bad thing to just be a reader and be good at what you do and attend to your business. And I just--I think everybody here is a little bit amazed where new laws come from. And I'm amazed that my whole county is not down here just--you know...not exactly stepping around in the tulips. I mean, they--when they come down, they're usually pretty mad, and, anyway, maybe it's a good thing they stayed home. But the (laughter) it's just, you know, we want something done with--I know you're supposed to stick to the subject--but we want something done with property taxes. We want to run our own school. We want, you know, we want self-discipline; we want self-accountability. And that's what we want you to give us, is the ability for us to just be us and run the county and not the other way around. And not to be mean, not to be unsociable or anything else, it's just...I was proud. I was hearing that there was going to be 1,000-plus bills introduced this legislative session, and I don't know what it was, but it was substantially below that. I'm proud of you guys. I'm--I've been here before, but I really don't know any of you folks; I know you don't know me, and--but it is a privilege to be here, and I just wanted to bring that personal note down, that it's not just newspaper guys; it's--I think I speak for the whole county, even if they're not down here. [LB444]

SENATOR AVERY: Thank you. [LB444]

BARRY RICHARDS: And I just... [LB444]

SENATOR AVERY: Could--would you spell your name for the record? We never got that. [LB444]

BARRY RICHARDS: B-a-r-r-y and then Richards, R-i-c-h-a-r-d-s. [LB444]

SENATOR AVERY: Well, we know that the vast majority of Nebraskans are hard-working people who play by the rules. And I think you're one of them. [LB444]

BARRY RICHARDS: Thank you very much. [LB444]

SENATOR AVERY: Thank you. Anyone else wish to speak in opposition? Any neutral testimony? Okay, Senator Avery chooses not to close on that. (Laughter) [LB444]

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SENATOR PRICE: Senator Avery waives. [LB444]

SENATOR AVERY: And that ends the hearing on LB444. Thank you all for coming. And we are finished except for one item of exec business; I want to do the confirmation. [LB444]