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Government, Military and Veterans Affairs Committee
November 04, 2011

[LR224 LR230 LR244 LR245 LR267 LR307]

The Committee on Government, Military and Veterans Affairs met at 9:30 a.m. on Friday, November 4, 2011, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR244, LR224, LR267, LR230, LR245, and LR307. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Lydia Brasch; Charlie Janssen; Russ Karpisek; Rich Pahls; Kate Sullivan; and Norm Wallman. [LR244]

SENATOR AVERY: (Recorder malfunction) ...Committee to examine issues within the jurisdiction of the Government, Military and Veterans Affairs Committee and I'm going to ask Frank Daley from the Accountability and Disclosure Commission to come forward and to get us started on this issue. [LR244]

FRANK DALEY: (Exhibit 1) Good morning, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. My name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Nebraska Accountability and Disclosure Commission. I'm here today at the Committee's invitation to brief you on the status of the Campaign Finance Limitation Act in light of a recent U.S. Supreme Court case. In June of this year, the U.S. Supreme Court issued a decision in the case of Arizona Free Enterprise Club's Freedom Club PAC vs. Bennett, the Secretary of State of the state of Arizona. In that decision, the Court found that part of Arizona's public campaign financing law was unconstitutional. Under Arizona law, a candidate decides to participate in their public funding program or not and a candidate who participates in the public funding program, once he meets certain qualifications, receives a lump sum of money for use in his or her campaign. Thereafter, if the participating candidate's nonparticipating opponent spends beyond a certain statutorily specified amount, the participating candidate is eligible for another sum of money in addition to the original lump sum. There is also a provision by which, if there are third party independent expenditures being made in the race which either support the nonparticipating

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candidate or oppose the participating candidate, there is an additional sum of money which can be given to the participating candidate. So if you're in the program, you meet certain qualifications, you get a chunk of money. If your opponent spends beyond a certain amount, you get another chunk of money. If there are third party expenditures being made against you or in favor of your opponent, you can get another chunk of money. It was these secondary chunks of money which the U.S. Supreme Court essentially found to be unconstitutional, not the original lump sum, and the basis of the concern was the First Amendment. That is, there was concern that the speech of the nonparticipating candidate or the third party would be chilled because they would hesitate to make further expenditures out of concern that their expenditures could trigger additional funds to the participating candidate. So in other words, it was a First Amendment question and the concern was these triggering mechanisms by which the activities of certain people triggered funds to someone else. Now, in Nebraska, a candidate does not receive public funds unless he or she is a participating candidate--an abiding candidate, agrees to abide by spending limits, and the nonabiding candidate spends more than a voluntary spending limit. Or, the nonabiding candidate spends 40 percent of an estimate of expenditures which is beyond the spending limit. Now I know this gets a little hypertechnical in detail, but the point is that, under Nebraska's law, an abiding candidate does not get public funds unless the activities of the nonabiding candidate trigger the public funds. So we have a triggering mechanism in the Campaign Finance Limitation Act. Given this situation and given the Supreme Court's decision in June, the Nebraska Accountability and Disclosure Commission sought an Attorney General's opinion as to the constitutionality of the CFLA in light of the Arizona case, and a copy of our letter requesting an opinion is in a packet which I believe you received earlier this morning. In August of this year, the Attorney General's office issued Attorney General Opinion 11003 which essentially took the position that, in light of the Arizona case, the CFLA would likely be found to be unconstitutional. In reliance upon the Attorney General's opinion, and pursuant to the provisions of Section 84-215 of the state statutes, the Commission adopted a Resolution, essentially taking the position that it would not administer in force or implement the Campaign Finance

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Limitation Act in the 2012 elections. And again, a copy of our Resolution is in your packet. Also pursuant to Section 84-215 of the state statutes, since the Commission decided it would not administer this Act, the Attorney General's office commenced litigation to test the constitutionality of the Campaign Finance Limitation Act and it did this by filing a lawsuit under the heading of State of Nebraska XRL Jon Bruning, Attorney General of the State of Nebraska vs. John A. Gale, Secretary of the State of Nebraska. This litigation is now pending before the Nebraska Supreme Court. As I stated, because of this U.S. Supreme Court decision and because of the Attorney General's opinion, the Commission is not now enforcing the CFLA,. So, it is not requiring affidavits to abide by the spending limit, it is not requiring affidavits not to abide by the spending limits, it's not requiring that estimates of expenditures be filed, and we're trying to make as clear as we can that we do not intend to distribute any public funds in connection with the 2012 elections. We have notified all known candidates in writing of this fact and a copy of our notice is also included in your packet. For those that like the idea of disclosure, for those that like the idea of publicly funded campaigns, there is somewhat of a silver lining in the U.S. Supreme Court's decision. And that is, first of all, that the concept of disclaimers--that is, identifying the source of campaign ads--has been upheld. The idea of disclosing those who are contributing to campaigns has been upheld. The idea of the regulation of electioneering activity has been upheld. And, in fact, even the concept of the public funding of campaign has been specifically upheld by the Supreme Court in both the Arizona case and in a separate U.S. Supreme Court case known as Citizens United, so most of those concepts are still considered perfectly constitutional. What the U.S. Supreme Court has done is focused on this triggering mechanism and so I guess we will stay tuned and see what the Nebraska Supreme Court has to say about the matter. Thank you for the opportunity to be with you today. [LR244]

SENATOR AVERY: Thank you, Mr. Daley. Let me ask...begin the questioning by asking you if you would mind to explain to the Committee the severability issue that was also in the opinion of the Attorney General. [LR244]

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FRANK DALEY: Certainly. There are two things built into the Campaign Finance Limitation Act: one is the public funding aspect; the other is the aspect known as the "aggregate contribution limits." You may recall that when you ran your campaigns, you could receive up to 50 percent of the voluntary spending limits in contributions from businesses, PACs, political parties, corporations, unions, or other types of entities. Thereafter, you could only receive contributions from real live human beings. And in fact, during this past legislative session, a bill was passed which changed that from 75 percent to 25 percent. We kind of took the position in our request for an Attorney General's opinion that we thought that the aggregate contribution limits were still viable because the Supreme Court did not address anything with regard to contribution limits, but we wanted a real reading from the Attorney General's office as to whether those were likely to stand. The Attorney General's opinion said that the concept itself could probably stand. However, they were so intertwined in our statute with the rest of the Campaign Finance Limitation Act that it didn't believe they could stand on their own. That is, there was not enough structure there that it was severable from the rest of the CFLA, so just as we are not enforcing the campaign finance portions of the CFLA, we're not enforcing the aggregate contribution limits, either. [LR244]

SENATOR AVERY: So now, let me see if I get this. The Supreme Court did not rule on the aggregate limits on special interest contributions. [LR244]

FRANK DALEY: That's correct. The U.S. Supreme Court did not rule on those. [LR244]

SENATOR AVERY: But there have been rulings in the past by the Supreme Court that these kinds of limits on PAC contributions and nonindividual contributions are...these limits are constitutional? [LR244]

FRANK DALEY: Since the 1970's, in the Buckley case, the U.S. Supreme Court has consistently upheld the concept of limiting contributions from different types of entities to campaigns, so I have no doubt that a properly drafted provision that is separate from

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the current CFLA could withstand scrutiny. [LR244]

SENATOR AVERY: Okay. Questions from the Committee? Senator Karpisek. [LR244]

SENATOR KARPISEK: Thank you, Senator Avery. Thank you, Mr. Daley. So, that money that had been used, what happens with that now? [LR244]

FRANK DALEY: Well, currently it's just there because we don't know that the CFLA is unconstitutional, though we suspect it might be and I think that's what's going to happen is that the Nebraska Supreme Court is going to tell us yes or no. Assuming that the Nebraska Supreme Court says the CFLA is constitutional, then we will continue to administer and enforce the CFLA and use the money as mandated by statute. If the Nebraska Supreme Court were to say that the CFLA is not constitutional, then ultimately it would be up to the Legislature to make a decision. If there were some successor public financing program, that could be a source of funding that program. But otherwise, because the money goes into that program as a matter of statute, it would be up to the Legislature to make a decision on that. [LR244]

SENATOR KARPISEK: That's...excuse me, mainly fines and... [LR244]

FRANK DALEY: Correct. The Campaign Finance Limitation Act Cash Fund was originally funded with \$50,000 from the General Fund. Thereafter, it has consisted of late filing fees, civil penalties paid by committees, lobbyists--things of that nature--, by tax check-offs, by individual Nebraska taxpayers and interest and occasional donations. [LR244]

SENATOR KARPISEK: Very good. Thank you. Thank you, Senator Avery. [LR244]

SENATOR AVERY: Senator Price. [LR244]

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SENATOR PRICE: Thank you, Senator Avery. Thank you, Mr. Daley. Making mud clearer is always helpful. I want to make sure I understand. We've talked about the triggering, we've talked about the severability, but does this also mean there's actually no limit in spending, also? So if a candidate can raise...an unlimited amount of money from any number of sources? [LR244]

FRANK DALEY: Correct. [LR244]

SENATOR PRICE: Okay, thank you. [LR244]

SENATOR AVERY: Any more questions? Senator Pahls. [LR244]

SENATOR PAHLS: Okay. Now, all the current people who are running for office now, they know that. Is...am I to understand that? [LR244]

FRANK DALEY: The answer is hopefully. We've made every effort to alert them to the fact. To the extent that people are coming into the system to run for these races, we're telling them specifically. To the extent that people have committees for any of these CFLA offices, they've been notified of that. [LR244]

SENATOR PAHLS: Okay, so they are aware this is possible. And just another thing: are you a concrete sequential thinker? Because of all the data that you're putting forth to us is, it's...I mean, it's so well defined. I'm just trying to think what kind of a thinker you are, because... (Laugh) You know, that's just an open-ended question. [LR244]

SENATOR AVERY: He's a lawyer. [LR244]

FRANK DALEY: No, no. In answer to your question, I don't know that my children find me terribly boring. (Laugh) [LR244]

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SENATOR PAHLS: Thank you. [LR244]

SENATOR AVERY: They do, believe me. Any other questions? Thank you. Thank you. [LR244]

FRANK DALEY: Thank you very much. [LR244]

SENATOR AVERY: Now we...let me explain our procedures now. We will take testimony from anyone here who wishes to speak on this issue and we're not going to take them in any particular order. First up, first heard. We will ask you, however, to take the beige sheet of paper, here, and fill it out with the requested information if you plan to speak. Print your name for the record and when you appear here, please state your name clearly and spell it for the clerk. This is a little bit different from how we do it in regular hearings, but this is an interim study and not a formal hearing on a bill. Also, I'm going to ask you if you have cell phones to turn them off. That includes members of the Committee and includes me. I sometimes forget to do that. I'm not going to ask you to do more than that. So, now we'll open it up for anyone who wishes to speak on this issue, for or against. Frank, you put them to sleep. (Laugh) [LR244]

SENATOR PAHLS: I'd rather think you did such a thrilling job there are no questions. [LR244]

SENATOR AVERY: All right, then, I am going to take the stand here and talk about another issue related to the overall question raised in this LR244 about examining issues within the jurisdiction of this Committee. [LR244]

SENATOR PAHLS: Chairman Avery, proceed. [LR244]

SENATOR AVERY: Thank you. My name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28 here in Lincoln. I'm going to talk to you about an issue that this Committee

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has taken up before: the issue of conflicts of interest. This summer, Speaker Flood called me and asked if Christy and I would visit with him on the issue of conflicts of interest. He had been researching the issue, especially as it relates to the Legislature. What the origin of this was a question that was asked of the Speaker by, I believe, a reporter and the reporter wanted to know why local elected officials are required to abstain from voting when it has been determined that they have a conflict of interest, but state senators are not so restricted or required to abstain from voting on those issues where they have a conflict of interest. So, this sparked the interest of the Speaker and he looked into it. Let me give you a little bit of history here. Legislators have a potential conflict of interest--this is stated in current statute--have a potential conflict of interest when they are required to take action on an issue that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business that is distinguishable from the effects of the action on the public generally or a broad segment of the public. That is to say that you have a conflict of interest if there is a financial benefit or a detriment...a financial detriment to you or a member of your family from an issue taken up by the Legislature. The senator is then required to file a statement of the potential conflict of interest and to deliver that to the Speaker of the Legislature and to the Accountability and Disclosure Commission. In 2009, many of you will remember that this Committee studied the issue along with other issues relating to the Nebraska Accountability and Disclosure Commission, because we had not had a thorough discussion of the Commission and its responsibilities for many, many years. In the report of that interim study, this Committee decided that the current law of allowing senators to vote, even when there was a conflict of interest present, was appropriate because we are a citizen Legislature and it is very difficult for us to...if we are required to also have employment outside the Legislature, as most of us are, it is very difficult for us to separate some of what we do there with some of the issues that we take up here. For example, a farmer voting on farm issues--it creates a difficult situation. If that's your livelihood, does that mean then you abstain from voting on all farm-related issues? So, we discussed this at length and the argument that seemed to carry the day during that discussion was that senators have an obligation to represent their entire district, all the

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interests in their district, and it is not fair for the entire district to be unrepresented on an issue. If that is an issue that a senator has a conflict, it's not fair to the constituents who are unrelated to that issue not to be represented. The report did not recommend a change in how senators' conflicts of interest would be handled. However, we did recommend increased transparency of the conflict of interest filings. So you will probably remember that in 2010 we recommended the adoption of a rule requiring senators with potential conflicts of interest, when they file those statements, that the statements would appear in the Legislative Journal. That would provide a little bit more transparency because it was felt that...by many people, that once these were filed with the Speaker's office and the Accountability and Disclosure Commission, that they were forgotten. Nobody ever paid any attention to them. Nobody ever saw them. So, we thought putting them in the Legislative Journal was an appropriate way to bring more transparency to those statements. Speaker Flood, in his research, came up with an interesting idea: he proposes that the Accountability and Disclosure Commission review each potential conflict of interest statement filed by a senator to determine whether it meets the statutory definition of conflict of interest. The Commission will file their opinion within a reasonable amount of time with the Clerk of the Legislature and the Speaker of the Legislature. The opinion of the Commission will then be printed into the Legislative Journal. Under this proposal, a senator will be able to vote on an issue, even if the Commission determines that a conflict of interest does, in fact, exist. So, the proposal doesn't change the senator's ability to vote on the issue and to continue to represent all of their constituents. It may be, of course, the decision of the senator not to vote on a particular issue, based upon their own determination of how they should behave. This proposal, of course, will require a statutory change, not just a rule change as we did in 2010, because it places obligations on another state agency--that is to say the Accountability and Disclosure Commission. Senator Flood asked me if I would present this to you for further discussion and it is my intent that if you are so inclined to endorse this, to present a bill on this for next year. So, with that I will end and take any questions that you have. [LR244]

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SENATOR PRICE: Thank you, Senator Avery. Are there any questions? Senator Pahls. [LR244]

SENATOR PAHLS: I find the idea intriguing because I think probably if we look at that there would be a lot of conflicts. Let's say we have, what, eight or nine attorneys in the Legislature. There may be a number of bills, come right down to it, they couldn't vote on simply because it could affect their future livelihood. I mean, if we really get down to the nitty-gritty... [LR244]

SENATOR AVERY: Well, if we were refusing to allow them to vote, then. This does not do that. [LR244]

SENATOR PAHLS: But, I mean, they're really going to have to be on top of it. Let's say if I'm an attorney who--since I'm not I can say this--I mean, I have a number of different clients that I serve. I could actually be probably saying, gee I can't...I should make sure that I'm clear on this. This is going to affect my future, etcetera, etcetera, etcetera. You know, I mean, that's...I see his thinking on this, but also let's pick on the Speaker for a little bit. Now we know he owns radio stations up in the city of Norfolk. Norfolk grows, his business will increase. He wanted a new road up there. Should he, I mean, should he make sure that the new four-lane highway that he wants up there? I mean, I don't...I'm having a little bit of trouble saying to what... [LR244]

SENATOR AVERY: That exists now. [LR244]

SENATOR PAHLS: I know, but I'm...but do you think everybody does that? [LR244]

SENATOR AVERY: I think that...my own personal view is that we are not as sensitive to potential conflicts of interest in this body as we ought to be. [LR244]

SENATOR PAHLS: So you're trying to say that we should be...in other words, if I...and

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I'll speak on everybody else except myself, of course. But if I happen to be the Speaker and I know that I have property up in Norfolk and if I can get a four-lane highway going from there, from Sioux City to Norfolk, the city's going to grow. [LR244]

SENATOR AVERY: All right. If you stand to gain financially from that issue, then you would be required to file a potential conflict of interest statement. Then, the Accountability and Disclosure Commission would study the issue and they would come back with an opinion. My guess is the opinion would be yes, you have a conflict. Now then, you...then you decide whether that means you can't vote on that issue or you can. [LR244]

SENATOR PAHLS: So... [LR244]

SENATOR AVERY: But it would be public. It would be a clear, transparent statement in the Legislative Journal. [LR244]

SENATOR PAHLS: Okay. And I understand where you're coming and maybe it'd make everything clearer. And I'll put something that we're dealing with right now like in the pipeline. That could affect a number of senators--not politically, but... [LR244]

SENATOR AVERY: People who own land where the pipeline might go. [LR244]

SENATOR PAHLS: Okay. Okay, I see. I see what you're going for. Thank you. [LR244]

SENATOR AVERY: Yeah, and the idea here is not to prevent senators from performing their obligation and their duty to vote on issues, but is to say if you are likely to gain financially or some member of your immediate family is likely to gain financially or to lose financially from such a decision, that's a conflict and...or a potential conflict. You file the statement, then the Accountability and Disclosure Commission looks into it. They issue an opinion. Now that's putting a lot of work on Mr. Daley's office and it's also going

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to require us to file our conflicts of interest statements early enough so they have time to do the research. They come back with their opinion, yes or no, then all of that gets published in the Journal and you can still vote. But, at least there is plenty of knowledge or information out there for the public to pass judgment. [LR244]

SENATOR PAHLS: Thank you. I appreciate it. [LR244]

SENATOR PRICE: Senator Avery, to pick up and make sure I understand with a level of clarity: what I hear from the last part of what you said is about timing with the burden that there would be and making a declaratory statement. And when I look at them I get...I would be concerned about a sense of paralysis setting in because we have people who go through different committees based on their background, their professional understanding. So, I'll have agricultural people on the Ag Committee, bankers on Banking, educators on Education, not always 100 percent. So, there could be, like, the moment a bill gets dropped they say, well, I'd better get in the pipeline to get a determination because of the number, because there would be so many potential for conflict. As I understand right now, if I have a conflict, I go and I talk to Mr. Daley and Mr. Daley gives me a read on it. He goes ah, probably better you should go through this and then I file. When we talk about it and you talk about citizen legislature, we're talking farmers, attorneys, bankers, teachers--so, you know, a lot of potential conflict there. But it comes down to really just...the change you're looking for is an increased focus by the public on what those conflicts are because we could still vote, we could still do what we need to do regardless, but that is going to be up there like a scarlet letter: you have a conflict for this issue if you're a veteran. So, if you vote on a veteran's issue, then you'd have a conflict and be very boldly understood and known... [LR244]

SENATOR AVERY: Let me interrupt there, if you don't mind just a minute. If you are a veteran, not all veteran's issues would cause a conflict. If you stand to gain financially... [LR244]

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SENATOR PRICE: Understood. Understood. But that will get...great segue. It's a degree. I mean, right now I don't know that there's anything written that says what is a gain or a loss. Is it, you know, it's a perception. It's an interpretation. Sometimes it's probably very direct, but a lot of times in asking these questions I find there's a degree of how much benefit...I hope that Mr. Daley has an opportunity to come and talk to this if he chooses. But, it will become, actually, for his office, a degree. There's no statutory understanding of, that I know of, of what is...constitute...if my son is going to benefit or lose from something and then he's at a college, at a job somewhere, you know, I just want to make sure that we don't end up adding complexity to it for Mr. Daley's job in making these determinations. [LR244]

SENATOR AVERY: Well, this would add complexity to his job. It would make it more difficult for his office to make timely opinions. He has, however, been consulted and he's expressed his knowledge of and awareness that this would be an additional burden on his office, but a willingness to do the work anyway. Let me give you an example of the kind of conflict of interest involving veterans: let's say you are a retired military person, as you are, and you receive a pension and the legislature has before it and we probably will before you leave here, a bill to exempt your retirement...military retired pay from state taxes. We've had that bill before. That would be a direct financial benefit to you. You should file, and I would advise you to file, a conflict of interest statement. Mr. Daley would then look at that situation and I would presume would come back with an opinion that says yes, you do have a conflict. You could still vote on it, but it would be published in the Legislative Journal. [LR244]

SENATOR PRICE: And you don't think that would have any negative impact? Because, like, if I have 40,000 veterans... [LR244]

SENATOR AVERY: No, because I would expect you to do the right thing, Senator. I think you would say no, I'm not going to vote on that bill. [LR244]

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SENATOR PRICE: But if you have 40,000 constituents out of your 60...or if you have 30,000 out of your 37,000 veterans, that comes down to that citizen legislature question you had. What we don't want to do is have to say, citizens, pick someone who doesn't represent anything you all do because that person will never be in conflict for anything you feel is important for your district. I mean, we understand that's the conundrum we're in... [LR244]

SENATOR AVERY: Yeah, it's a judgment call that each individual will have to make. [LR244]

SENATOR PRICE: All right. Well, thank you very much for helping. [LR244]

SENATOR AVERY: But you and I have talked about it. [LR244]

SENATOR PRICE: Oh, absolutely. Senator Sullivan. [LR244]

SENATOR SULLIVAN: Thank you, Senator Price, and thank you, Senator Avery. So essentially...well, first of all, how long have the current statutes regarding conflict of interest for senators been on the books? Do you have any idea? [LR244]

SENATOR AVERY: I really don't know, but I think it's been a long time. [LR244]

SENATOR SULLIVAN: Do we have any history of or evidence where a senator has decided he or she has a conflict of interest and not voted on an issue? [LR244]

SENATOR AVERY: Oh, yes. Yes. I didn't vote on an issue just last session and it didn't involve any financial benefit to me. It involved...an issue in which my wife was...would have been involved, but it was not a financial benefit or financial detriment. But there was enough of a question there in my mind that I did not vote. [LR244]

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SENATOR SULLIVAN: Prior to that, had you filed a conflict of interest? [LR244]

SENATOR AVERY: Yes. [LR244]

SENATOR SULLIVAN: And was there any mechanism or did you go public, so to speak, and... [LR244]

SENATOR AVERY: No. [LR244]

SENATOR SULLIVAN: Okay, okay. [LR244]

SENATOR AVERY: But it was there in the Journal if anybody wanted to look at it. [LR244]

SENATOR SULLIVAN: Do you expect that...because what this boils down to is simply that there will be a second item listed in the Legislative Journal that shows the decision of the Accountability and Disclosure Commission. That will be the significant change. But do you anticipate that there would be more conflicts of interest statements filed by senators because of this? [LR244]

SENATOR AVERY: I don't think that this would...well, if it raises awareness on potential conflicts it might have an effect on the number filed. But we have, I think, a pretty good number filed every year already. But there have been instances in the past, in past legislatures, where senators actually had direct financial interest in an issue and filed their statement and didn't...voted anyway. And I'm not going to name names, but that's happened pretty blatantly. [LR244]

SENATOR SULLIVAN: You know the...so in other words, the statute guides the senator in determining whether or not to file, but there is no oversight, so to speak, as to whether or not that senator does. [LR244]

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SENATOR AVERY: It is...it's up to the senator to make the judgment and then it's up to voters to evaluate and decide whether they made the right decision. [LR244]

SENATOR SULLIVAN: Okay. Thank you. [LR244]

SENATOR AVERY: But voters can't make those judgments until they have the information and what we're asking for here would just be a little bit more information. [LR244]

SENATOR SULLIVAN: What you're asking...what we...what the voter gets is another opinion. [LR244]

SENATOR AVERY: Yeah. So, I say that I have a potential conflict here. The A&D Commission looks at it and says well, you know, maybe you don't really and so you don't have much of an issue or you do. That's more information for the public. [LR244]

SENATOR SULLIVAN: And aside from Speaker Flood's request and then the request that came to him from the media, have there been other entities that have called attention to this as an area of concern? [LR244]

SENATOR AVERY: Yes. [LR244]

SENATOR SULLIVAN: Who might they... [LR244]

SENATOR AVERY: That's why we discussed this in 2009. It came to us from the public. [LR244]

SENATOR SULLIVAN: Okay, thank you. [LR244]

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SENATOR AVERY: Um-hum. [LR244]

SENATOR PRICE: Senator Brasch. [LR244]

SENATOR BRASCH: Thank you, Senator Avery. This is really interesting here, because I believe I am of the school, as it says on our Capitol, here, on the..."the watchfulness of the citizen is the salvation of the state"--you know, the transparency. When you mentioned that Senator Price, as a retired veteran, I would think he would also want to be an advocate of veterans and to stand back and not be able to vote in good conscience does not seem like the right thing to do because then he is not acting on his advocacy, his...as a farmer, I am on the Ag Committee. You brought that up as an example earlier. I'm also an advocate of farming. The other is, you know, I'm an advocate of growing the economy, which at the same time does not increase our taxes, which keeps more money in our pockets. Is that self-interest? I just think that seems so broad and I think our citizens do the vetting--at the end of the day, our conscience. But, if history shows that senators need another layer of government, then I don't think most of us will object to it, but it's... [LR244]

SENATOR AVERY: I would really... [LR244]

SENATOR BRASCH: ...a sign of the times. [LR244]

SENATOR AVERY: Yeah, I would really just reiterate that this would not in any way prevent anyone from continuing to vote on the issues. It just adds another piece of information for the public. It's a little bit more transparency than what we now have which, as you stated, is an important part of how we do business here. [LR244]

SENATOR BRASCH: Right. Thank you. [LR244]

SENATOR PRICE: Senator Karpisek. [LR244]

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SENATOR KARPISEK: Thank you, Senator Price, and thank you, Senator Avery. This is interesting. Could we, at the beginning of the year, just file a blanket "this is what I do." Because sometimes, as we said, bills pop up on the floor that we're probably not really even aware of. I appreciate where we're going with this, but I think we're all having trouble with how it's going to work. [LR244]

SENATOR AVERY: I think that Mr. Daley's office is the one that's going to be...(laugh)...hit with a lot of very, very quick...the need for the quick turnaround with their opinions because I...that has happened to me. In fact, the case that I've just discussed with Senator Sullivan. The bill came up. I was not expecting it and I looked at it and I said whoa, this has at least a potential conflict for me because of my wife's employment. It wasn't a financial benefit or detriment, but it made me feel uncomfortable. So, I quickly went to work on getting a conflict filed, and I...you've raised an interesting and important point. If we had this in place, then Mr. Daley's office would have been called upon to quickly come up with an opinion. [LR244]

SENATOR KARPISEK: Well, I think there's definite different levels of scrutiny. On General Affairs Committee, I had a member that had gambling ties and everyone that came there pointed that out. However, you go to the Banking Committee: there's a bunch of bankers sitting there; I never heard that. So, it seems to be a different level of what is okay and what isn't. And just on a final note, I think you have a lot of conflicts on my bills, so...(laughter)...you should probably cease and desist... [LR244]

SENATOR AVERY: ...abstain completely. (Laugh) [LR244]

SENATOR PRICE: Okay, we're going to take control back. Thank you, Senator Karpisek. I believe Senator Pahls wants to defend his integrity. Senator Pahls. [LR244]

SENATOR PAHLS: Thank you. Again, I'm not talking about me, so it's so easy. I know

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we have at least probably 20, I'm going to call, "small business people" in this. It seems like any legislation that would help them out, actually, on the sales tax reduction or some type of exemptions. I know they could still vote on it, but it's...you're just asking for the A&D...be more clear that you're going to vote on this bill because it will help them out. [LR244]

SENATOR AVERY: It's asking for another step in defining what the conflict is and a little bit more transparency. [LR244]

SENATOR PAHLS: But if I have a corporation and we're going to reduce taxes, then I need to write out, say, okay, since I have this...belong to this corporation, I should... [LR244]

SENATOR AVERY: I think there are going to be a lot of instances where senators will think they might have a potential conflict and the A&D Commission is going to say you really don't and that's a good example, I think, because it's too distant. [LR244]

SENATOR PAHLS: Okay. [LR244]

SENATOR AVERY: There is a separation there, you know. Yeah, ultimately I might somehow have a small benefit, you know, if the taxes...the tax rates are changed and I'm in the business of selling that item, but it's a...I guess the standard here would be reasonable... [LR244]

SENATOR PAHLS: Okay. [LR244]

SENATOR AVERY: ...and I can't imagine that the Commission would draw the line so tight that nobody could walk it. [LR244]

SENATOR PAHLS: Okay. But let's say we're going to do...I'm a farmer now. I just raised

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my status here. And property tax--I want a reduction in the property tax. Well, that's going to affect a number of state senators and if they had to vote on that...I mean, I just think we could just...maybe I'm making more of a... [LR244]

SENATOR AVERY: Well, they can vote. [LR244]

SENATOR PAHLS: I know they can vote, but it seems like I'm going to confession before I have sinned. (Laughter) [LR244]

SENATOR AVERY: That's a good one. I like that. I like your metaphor. [LR244]

SENATOR PAHLS: This is an interim study... [LR244]

SENATOR PRICE: Okay. We've worked it all in. Senator Sullivan. [LR244]

SENATOR SULLIVAN: Thank you, Senator Price. And Senator Avery, I wonder if you have an opinion on why there is a difference between the fact that there is more limitation on county officials, of local officials filing conflicts of interest and not being able to vote as to oppose...other than the fact that we are a citizen legislature. Could it possibly be that the decisions that those local officials make do more directly impact them? [LR244]

SENATOR AVERY: That, I believe, you've put your finger on it. I think there is a closer connection... [LR244]

SENATOR SULLIVAN: Um-hum. [LR244]

SENATOR AVERY: ...between what, let's say, a city council or a county board will do that might have a direct link to a benefit that one of those office holders might have. City Council here in Lincoln--if you have a conflict of interest and it's stated, it's clear, you

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don't vote. [LR244]

SENATOR SULLIVAN: Right. [LR244]

SENATOR AVERY: And what we're trying to do is maybe tighten up a little bit the rules that we have without tying our hands or putting ourselves in the straitjacket so we can't act. [LR244]

SENATOR PRICE: Thank you, Senator Sullivan. Are there any further questions? See no further questions. Thank you, Senator Avery. [LR244]

SENATOR AVERY: Thank you. [LR244]

SENATOR PRICE: Is there anybody who would like to testify? Thank you. [LR244]

FRANK DALEY: Again, my name is Frank Daley, D-a-l-e-y, at the Accountability and Disclosure Commission, and I just want to address a few points and maybe add a little bit of clarity on a couple things. First of all, the law on conflicts of interest first came into effect in 1977 and the original version of the law treated members of the Legislature the same as county board members. If you had a conflict of interest, you were required to abstain from participating or voting on the matter. That lasted two years. (Laughter) The more cynical among us say that the Legislature concluded what? Huh? We did what to us? But, at any rate, the law was changed in about '79 to what it is now and that is you need to disclose conflicts of interest, but you are not required to abstain from participating or voting. By the way, the law now is that you are currently required to file a potential conflict of interest statement if you have a potential conflict of interest and we will acknowledge that we received it, advise you to be sure to file a copy with the Speaker, but we do not provide any analysis or advice since you can participate and vote regardless. It might be interesting for you to know that we did a review of conflict of interest statements filed by senators over approximately the past two years and in most

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cases where we could determine the issue based upon the filing, the senator did not have a conflict of interest. And so if we had issued an opinion, we would have said, no, you don't have a conflict, you can participate or vote. And then there were several others in which there simply wasn't enough information there for us to be able to tell or it would have required some research that we weren't really inclined to do at that point. In no case did we actually see that a senator did have a conflict of interest, based upon the filings the last several years. The other thing which may be useful for you to know is the standard that we use. There has to be a financial benefit or detriment to the senator, a member of his or her immediate family or a business with which he or she is associated, and that benefit or detriment must be reasonably foreseeable. And it's not considered reasonably foreseeable if it's remote, speculative, contingent, or uncertain. So, it's just something that may happen someday--there may be a benefit someday if several other things fall into place. That's remote, speculative, contingent, or uncertain and we wouldn't say that we can detect a financial benefit or detriment there. The other aspect is that the benefit or detriment must be distinguishable from that experienced by the general public or a broad segment of it. So certainly you as a body can do things that would have a financial effect on virtually every citizen in Nebraska, including yourselves, and those would not be considered conflict of interest. Or if it affected every landholder in Nebraska, well, that's probably a broad segment of the Nebraska public and so probably would not be a conflict of interest. But, at any rate, the only real, I suppose, administrative problem I see here is whereas you have a city council or county board and they have a meeting weekly or every other week and they have an agenda that's published in advance and you pretty much know they're going to take up things on an agenda. That provides a little lead time for responding to conflicts of interest, whereas the Legislature operates in a very, very compressed atmosphere where you don't quite know when things are going to come up and that presents a certain amount of challenges. However, what is being asked of us if this were to go forward is essentially doing for members of the Legislature that which we do for many other elected officials around the state, be they city council members, school board members, county board members, all state employees out in the executive branch of state

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government, etcetera, etcetera. So, I just wanted to respond to some questions and some issues. [LR244]

SENATOR PRICE: Thank you, Mr. Daley. I want to just add real quick before we get in conversation, then. It seems that we're overreporting now, that there would be no effective change of the ability of the senator to vote and that we just...what happens is we're just creating another point of notification that's already there, because there's already a public record of a senator filed a conflict of interest statement, correct? [LR244]

FRANK DALEY: That could be. My concern is that there are a lot of members of the body that are not filing them when they should. [LR244]

SENATOR PRICE: Okay. Thank you. Senator Pahls. [LR244]

SENATOR PAHLS: You did alleviate some of my concerns because, like, say on property tax: if it were just my property, then that would be a conflict. But if it's going to be over the overall state, it would not be a conflict. [LR244]

FRANK DALEY: Correct. [LR244]

SENATOR PAHLS: So I would think that would minimize the number of conflicts that I would have. [LR244]

FRANK DALEY: Potentially correct, yes. [LR244]

SENATOR PAHLS: I mean, but I'm just trying to think because most of the voting that we do are...have far-reaching, you know, fingers, instead of just basically...I mean, I'm sure it could be something that I would vote for that it would help me out, personally, I'm trying to figure. But you have eliminated some of my needs by saying that if it involves a

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lot of people that chances are...okay, thank you. [LR244]

SENATOR PRICE: Senator Brasch. [LR244]

SENATOR BRASCH: Thank you. I was clearer, now I'm starting to get it. All right, now, conflicts of interest--on Ag Committee, as a farmer, is that a conflict of interest or is that my qualification? Is it a banker's qualification to be on a Banking Committee? Is it your field of expertise or is it a liability? [LR244]

FRANK DALEY: You raise the age-old question in the area of conflicts of interest: Do we create a system that muzzles the people that are most knowledgeable in an area? I suspect the answer is not. At least...and I'm not talking about the Legislature, necessarily, but in other areas. Most things that deal with agriculture have a general effect. Most things that deal with the legal profession have a very, very general effect. You know, I suppose that if there were a law that affected attorneys that practice a certain type of patent law and there were only two of them in the state and one was in the Legislature, that's pretty focused and you might say that that might be a conflict of interest. On the other hand, if you are talking about one of the rules of evidence that every attorney uses when he or she walks into court, you would suspect not. Or something dealing with civil procedure, probably not--just the same thing. While I don't want to globally say anything dealing with agriculture would never affect a senator who happens to be a farmer, it would seem to me that the more general in nature the law is, the less likely it is to be a conflict of interest. And I think we always have to be able to articulate. If we say you have a conflict of interest, here's where you would have the financial benefit or detriment. It has to be something other than vague and ethereal. [LR244]

SENATOR BRASCH: Okay. Thank you. [LR244]

SENATOR SULLIVAN: Thank you, Senator Price. Thank you, Mr. Daley. I need to

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clarify something. Maybe I misunderstood you. Did I hear you say that you personally think there are instances where senators should be filing conflicts of interest and they are not? [LR244]

FRANK DALEY: Yes. [LR244]

SENATOR SULLIVAN: Is that a...do you see that often? [LR244]

FRANK DALEY: I would...let me clarify a little bit. Given the number of issues that pass through the Legislature and given the wide variety of professions, backgrounds, and occupations of the members of the Legislature, the number of conflict of interest statements we get from members of the Legislature seems low. [LR244]

SENATOR SULLIVAN: So is...when we, and I know Senator Avery mentioned that maybe it's a matter of awareness. Maybe awareness needs to be raised on the part of the senators. [LR244]

FRANK DALEY: Could be, could be. Those are the types of things that are addressed, first of all, in the new member orientation. We talk about that. Those are the types of things that are addressed in the ethics sessions that we do for staff and every several years we do an ethics session for members of the Legislature and staff, so that's how we get to that. On the other hand, I know that just as we don't monitor county boards to see if someone has a conflict of interest and they're not filing, we don't really monitor the Legislature for that purpose, either. [LR244]

SENATOR SULLIVAN: Thank you. [LR244]

SENATOR AVERY: Senator Karpisek. [LR244]

SENATOR KARPISEK: Thank you, Senator Avery. Thank you, Mr. Daley, and it is hard

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on a city council that maybe has four members. Someone has to abstain and you're down to three, it's pretty hard, maybe, to get your things passed. Have you figured at all what this would cost your department to try to do this? [LR244]

FRANK DALEY: No. [LR244]

SENATOR KARPISEK: Do you think it would take another person? [LR244]

FRANK DALEY: Because...in order to evaluate, we would have to really know how many additional statements we were going to get and how quickly we had to respond. So, my initial thought is we...if something like this were to come into effect, we would try to do it with the personnel that we have now. [LR244]

SENATOR KARPISEK: Sure. [LR244]

FRANK DALEY: And see how successful we are. [LR244]

SENATOR KARPISEK: And I agree with you. I think that maybe I've been guilty of not filing when I should have because, you know, maybe it just didn't even dawn on me that oh, boy, in hindsight maybe I should have filed. Was it or wasn't it? But probably, maybe I should have. The other thing that I worry about a little bit, and I wouldn't worry about it with you, but maybe your successor. I don't want this to turn into something like an Attorney General's Opinion. That has become a great way to hold up a bill. We're going to ask an AG's Opinion and the AG doesn't get the Opinion back at all. And I don't want to have another game that we can play like that, so. [LR244]

FRANK DALEY: Understood. [LR244]

SENATOR KARPISEK: And again, you look at the current personnel: not concerned at all. But who's next down the line? But thank you. It's very interesting. Thank you,

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Senator Avery. [LR244]

SENATOR AVERY: Senator Price. [LR244]

SENATOR PRICE: Senator Avery, thank you. Mr. Daley, so when we talk about the broad application--and I didn't get all the three terms you said in the second part of your definition of benefit, you know--but what if it's within a subgroup? You write up attorneys. If it applied to all attorneys, then you wouldn't say it's a personal gain. It's in their normal business. So, to be specific, we're talking again about veterans and we're talking about a tax benefit of some sort or some type of financial gain where I would gain, but every other veteran would gain. Is it a conflict? [LR244]

FRANK DALEY: The level of analysis would be to determine whether or not veterans within the state of Nebraska constitute a broad segment of the general public. If the answer to that is yes, then it would not be a conflict of interest. If the answer to that is no, then it would be a conflict of interest. [LR244]

SENATOR PRICE: Would that be in...pardon me. Would that be a numbers thing? If veterans only comprise 2 percent of the public, then...you see, I think there will be other opportunities--not to include veterans--for people to say, well, we only comprise...orthodontists only comprise so much of all. But if it affects every orthodontist...I think I'm thinking of the closed class and if so, special legislation. As long as it applies to everybody, it's a (inaudible). But if it's something--because we do have those unique areas--just wondered so we have a place to start so people know I'm really going to make sure I focus on my statement filings. So, this is just a percentage number or we don't really know? [LR244]

FRANK DALEY: The statute doesn't say. I mean, we have a number of advisory opinions out there which we've examined those sorts of things and, you know, I'm not sure I can give you a good answer on that. [LR244]

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SENATOR PRICE: Oh, but it's a good benchmark. It helped me out. Thank you so much. [LR244]

SENATOR AVERY: Any other questions from the committee? Don't see any. Thank you, Mr. Daley. [LR244]

FRANK DALEY: Thank you very much. [LR244]

SENATOR AVERY: Anyone else wish to address this issue? Okay. We will then end the discussion of LR244 and...now we'll move to LR224 and invite Senator Mello to come forward and educate us. Welcome, sir. [LR244]

SENATOR MELLO: Good morning, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. My name is Heath Mello, M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. In 1997, the Nebraska Legislature passed legislation that allows state agencies in most political subdivisions to enter in to what are referred to in Section 66-1062 through 66-1066 as "energy financing contracts." Also known as "energy savings performance contracts," EFCs allow a state agency or political subdivision to contract with an energy service company, an ESCO, to make energy efficiency improvements to their property that are then paid for using the resulting energy savings. Depending on the scope of the improvements being made, contracts are typically structured so that the energy savings will pay for the cost of the improvements over a 7-10 year period. Unfortunately, based on the information gathered by my office and the Legislative Research Office, the EFC mechanism currently in statute has not been used by state agencies and has rarely been used by political subdivisions for whom it is primarily intended. In the case of state agencies, most state buildings are managed through the Department of Administrative Services. Based on discussions with DAS last December, the agency does not utilize EFCs and instead has chosen to rely solely on the Task Force for Building Renewal, also known

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as the LB309 Task Force. Similarly, when contacted by the Legislative Research Office last year, facility managers at several campuses of the University of Nebraska system confirmed that they do not use EFCs, instead choosing to finance energy projects internally. I've invited representatives of the various political subdivisions to testify this morning, although based on communications that my office has had with these organizations leading up to the hearing, I believe the story will be the same for those bodies as well. Simply put, EFCs are a simple, cost-effective way to fund energy efficiency improvements that are not being used to their full potential by both state and local governments. While there are a variety of valid reasons that state agencies and political subdivisions might choose not to utilize EFCs, I believe that the primary reason is that the existing statutory language presents a significant barrier to government entities that might consider this funding mechanism. Working together with Senator Ken Haar's office and attorneys who specialize in school finance, my office has begun working on legislation to update the EFC statutes, a copy of which has been distributed to committee members. Essentially, this draft proposal replaces the existing requirements for EFCs in statute...in 66-1064, with requirements that mirror the language in the design-build statutes in Chapter 13. In addition, the draft eliminates some duplicate requirements and also provides government entities with the flexibility to include some limited, nonenergy savings repairs as part of the EFC process. I'd be happy to answer any questions you may have. Otherwise, I would love to turn things over to representatives of the various political subdivisions who have joined us today, who might be able to shed further light on the reasons on why EFCs are not being widely used at this time. [LR224]

SENATOR AVERY: Thank you, Senator Mello. Questions from the committee? Yes, Senator Sullivan. [LR224]

SENATOR SULLIVAN: Thank you, Senator Avery. Thank you, Senator Mello. So, I assume that we're going to hear from the people why there is a problem in the current statute that does not enable them to use this? [LR224]

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SENATOR MELLO: Yes, well, why that they feel that the current statute limits their ability to utilize this. [LR224]

SENATOR SULLIVAN: Limits their...are we going to hear from the LB309 Task Force? [LR224]

SENATOR MELLO: I do not believe the LB309 Task Force will be here today. They may, I...we did not invite them, though. [LR224]

SENATOR SULLIVAN: Okay, have you talked to them about this? [LR224]

SENATOR MELLO: We talked to them last year, actually, about the energy financing contracts in regards to why it's not...requesting information of whether or not state agencies utilize it, which DAS replied back that they do not utilize it because they utilize the LB309 Task Force instead for their energy conservation projects. [LR224]

SENATOR SULLIVAN: Okay. So then did you actually talk with members of the LB309 Task Force or did you just talk to DAS? [LR224]

SENATOR MELLO: I've...we met with the LB309 Task Force director last December in regards to energy financing contracts and just...they prefer utilizing the existing financing mechanism that's in the LB309 Task Force to finance energy conservation projects and that was their response to me of... [LR224]

SENATOR SULLIVAN: I see. [LR224]

SENATOR MELLO: It's not that they're opposed to the EFCs, it's just that they prefer to utilize LB309 because it's the process that they feel is more...better for their state agencies. [LR224]

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SENATOR SULLIVAN: Um-hum. Okay. Thank you. [LR224]

SENATOR AVERY: Any other questions? Senator Price. [LR224]

SENATOR PRICE: Thank you, Senator Avery. Thank you, Senator Mello. So, we have two processes that the state agencies can use now. One of them seemed to be cumbersome, we'll hear about. But what's the delta between the two? How much...what makes one a better by measurement than another? [LR224]

SENATOR MELLO: That's a good question and I think it's tough to say that one would be better than the other because I...our LB309 Task Force is a very good model in regards to building renewal, energy conservation, and other projects. A bill I brought for this committee last year, which we opened up the LB309 Task Force, more in statutory requirements, to allow energy audits to be part of the LB309 process, which it's a very...it's a widely recognized national model that other state governments are encouraged to follow. The difference, though, is EFCs, the energy financing contracts, were primarily intended to focus on political subdivisions, but they included state agencies as well. So, it's another option for state agencies if they choose not to or if they get a project that's, say, not financed through the LB309 Task Force, that they have another financing option if they want to do an energy savings contract to upgrade physical property they may have. I don't believe, personally, that for state agencies...I'm not a director of one, so you would have to speak with them in regards to do they see one process better than the other. I think history shows, in conversations with the LB309 Task Force director in DAS, that they prefer to use the LB309 Task Force instead of the EFCs, but our hope would be exploring changing the language so that it would be more flexible for state agencies and political subdivisions to utilize EFCs--that that may be another financing mechanism for the state to utilize. [LR224]

SENATOR PRICE: I appreciate that, but I'm looking for a concrete something. Someone

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else who's coming up, maybe, can address this. But there's a 5 percent savings on it. You know, if I could tie the reason why one is going to provide more, then we have more reason, more impetus for change to do it. In this constrained economy, both for the public and private, 5 percent is a big number. But if we can't articulate a difference, then I'd like to know that, too. [LR224]

SENATOR MELLO: I think once again, and maybe I should for clarification purposes--I don't think--once again, this is not a cost issue, so to speak. It's more of which financing route would an agency choose to utilize? An internal financing route through the LB309 Task Force, which is funded primarily through agencies, essentially agencies' budgets have been financing that process for years. Or EFCs, which is essentially contracting out your energy efficiency improvements, but realizing the financing and the cost of it is only paid for by the energy savings that you return. So, it's not that the state or a political subdivision, so to speak, is paying out of pocket for these costs in the sense that they're building in the contracts to pay back the cost of this contract through the energy savings they have over usually a 7-10 year period. [LR224]

SENATOR PRICE: All right. Thank you. [LR224]

SENATOR AVERY: Any other questions? Don't see any, thank you very much. [LR224]

SENATOR MELLO: Thank you. [LR224]

SENATOR AVERY: Anyone else wish to address this question contained in LR224? Please come forward. State your name. [LR224]

STEVE TRUEBNER: Good morning, Mr. Chairman, how are you? Members of the committee, my name is Steve Truebner. That's spelled T-r-u-e-b-n-e-r. I represent Johnson Controls. We are an energy services company, as stated in the LR224--one of the contractors that performs these energy finance contracts. Here in Nebraska, we

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have over 85 employees. Part of our team, our service, and our systems group work very closely with the state of Nebraska as well as several of the political subdivisions that we're discussing today. I was asked and invited to come and try and answer some questions, specifically, perhaps, about the process and maybe the delta, perhaps the difference in the different types of ways to address these facilities. I would, before taking questions if there are any, just like to leave a couple facts with you. Energy finance contracts have also been an excellent economic development stimulator. We are essentially doing construction using existing energy budgets. So you're, as I say, you're already paying for this, although that 20 or 30 percent inefficiency is going to the utility company each year. And then energy finance contract: that's being reinvested over 10 or 15 years and injected into these energy improvements for your facilities. That is actually creating jobs. And Johnson Controls as a local contractor, there is a wide range of different energy conservation measures that are put in place into these projects, and we are using local contractors to implement those. So, if there's something out at Scottsbluff, we're going to be using contractors in that area, for example. Secondly, I would add, and I have had a little experience with Nebraska DAS and the LB309 Task Force, I put together these energy finance contracts with state governments exclusively all over the West. The DAS and the LB309 Task Force is an excellent organization and they do a terrific job and I think, in fact, in Governing magazine, they're ranked one of the better organizations in terms of facilities management. They're able to extract a certain amount of money from the state Legislature each year and use that wisely. An energy finance contract would be another tool in their toolbox, so to speak, and one of the benefits that comes with an energy finance contract are holistic energy improvements for a facilities or campus. So I believe in the LB309 Task Force they would have an identified deferred maintenance issue that they are going to address: new boilers in a DHS facility, for example. An energy finance contract, engineers would come in. We would look at everything from within that facility and try and bundle the savings from lighting, from water conservation, from building controls, from dozens of other measures, to try and help offset the cost of those boilers, which we've been very, very successful doing this. So this is an excellent means to use those energy savings to

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replace some of that needed capital equipment which might otherwise come out of the LB309 Task Force in hard dollars and that might allow that LB309 Task Force to do more with their money, so to speak. [LR224]

SENATOR AVERY: Thank you. Questions? Senator Sullivan. [LR224]

SENATOR SULLIVAN: Thank you, Senator Avery. Thank you for your comments. Can you be a little more specific as to give an example of a project that you've taken on with an EFC? And also, in that, how long is the payback, in terms of energy savings, to pay for the retrofitting that project has done? [LR224]

STEVE TRUEBNER: Sure. It's a customized project, but I would say the industry average is 15 years or less. [LR224]

SENATOR SULLIVAN: Okay. [LR224]

STEVE TRUEBNER: And the idea is that you'll have lower payback measures, such as lighting and water conservation that may pay back in 3-5 years, but they would be bundled to offset a measure such as a new chiller that might have failed and be needed to be replaced or a boiler, which are more expensive, capital-intensive measure that might pay back over 40 years. But, bundled together, you come up with an average 15-year payback. [LR224]

SENATOR SULLIVAN: Without giving name or location, can you give me a specific example of a project here in Nebraska that you've done? [LR224]

STEVE TRUEBNER: Not in the state of Nebraska. [LR224]

SENATOR SULLIVAN: Oh, okay. [LR224]

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STEVE TRUEBNER: I've been doing performance contracting in neighboring states for many years and can give you some overall numbers in those states, if you would like, or an example in another state. Nebraska has, as I said, has had success with their procurement model using the LB309 Task Force--essentially using allocated funds to pay for project components. An energy performance contract would allow them to address those facilities more holistically. [LR224]

SENATOR SULLIVAN: Thank you. [LR224]

SENATOR AVERY: Senator Price. [LR224]

SENATOR PRICE: Senator Avery, thank you. Thank you, sir, for coming today. [LR224]

STEVE TRUEBNER: Senator. [LR224]

SENATOR PRICE: My concern, and I dealt with a little bit with LEED... [LR224]

STEVE TRUEBNER: Yes. [LR224]

SENATOR PRICE: LEED certifications... [LR224]

STEVE TRUEBNER: Yes. [LR224]

SENATOR PRICE: ...and I've seen buildings that go and get LEED certified gold and it's all real good for about the first two months and then people get tired of waterless urinals and they get tired of central coffeepot locations, etcetera. They get tired, they don't like the native grasses, and they end up going out and rolling out some Bermuda grass out front--things like that. So my question is, what percentage of the projected savings are dependent on the human interaction there? I mean, if I put a thermostat and I set my thermostat, that's really good. But, when my kids go by and jack that thing up to 75

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because they're cold in the morning, I've just lost my savings in 10 minutes for one day. So my question is, how much of the projected costs are actually realized because you've been able to circumvent the human interaction to it? [LR224]

STEVE TRUEBNER: Excellent question, Senator. Thank you for asking that. The answer is actually zero--that the guaranteed energy savings are really based on the equipment retrofits more than it is the actual operations of the facility. And really, the glue that is...holds these energy finance contracts together and enables them to be financed for that exact reason that a bank might say well, boy, if we loan you \$5 million and you say the guaranteed energy savings are going to be there, but there are people changing thermostats or changing out water issues, it's a measurement and verification process that is also part of the project, which, following the retrofits and under your contract with your energy service provider, that there is a measurement and verification. There are performance assurance engineers that measure that baseline: where you were before the project began and where you are after that project has completed. We work under an international protocol that is accepted around the United States, the Department of Energy, and individual state governments that addresses those measurement verifications, so that we are able to ensure that those savings are going to be there to make the payment. [LR224]

SENATOR PRICE: Great, and then just sort of as a follow-up, then: do you suspect that the low cost of our energy sources here in Nebraska would cause that savings schedule to be prolonged? I mean, in a state or someplace where you're paying greater energy costs--like anywhere in New England--I make a little bit of savings, I'm saving money in a hurry. [LR224]

STEVE TRUEBNER: Correct. [LR224]

SENATOR PRICE: I come here and I don't pay a lot per unit of energy, my savings won't be quite as quick. Obviously the LB309 deals with this now, but in this EFC world,

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I would think that may be more of a critical... [LR224]

STEVE TRUEBNER: You're absolutely right. Putting together energy finance contracts in Hawaii or Connecticut are much easier than Nebraska, for example, because of that low cost per energy unit that you have here in this state, although rising. The finance period, there are several different levers that a customer could move. They could include some energy escalation into their payback scenario. They could include, as the legislation currently reads, some operational savings to help that. So what the process is, is it's very owner direct. This is a project that is customized by your agency or by your political subdivision to make sure that if they're going to go forward in this process, then their goal is a 15-year payback that we work in these sort of bite-size steps to make sure that we can provide you a project that's going to meet your facility needs and get around those financial parameters. But yes, the low cost of energy makes it a challenge in Nebraska, so we try and take advantage of--as a customer and as a team--escalation and operational costs for savings. [LR224]

SENATOR PRICE: Thank you. [LR224]

SENATOR AVERY: Let me make one announcement, here. We're going to have to recess in about five minutes in order to go upstairs to convene this session. So, I'm going to ask your forbearance, because we'll probably only recess until about 11:15. But we'll continue the questioning up until maybe two or three minutes to 11. Senator Sullivan. [LR224]

SENATOR SULLIVAN: Thank you, Senator Avery, and thank you for your comments. But once again, you said we have, here in Nebraska, low-cost energy, but you also made the comment that it's increasing. Do you have any basis for that and do you have any information about how much and why? [LR224]

STEVE TRUEBNER: Well, I would defer that question to the local utilities and to discuss

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that, but certainly there's trending data and, if necessary, I'd be more than happy to collect that and provide it to Senator Mello. [LR224]

SENATOR SULLIVAN: Thank you. [LR224]

SENATOR AVERY: Now, let me ask this question, and I hope it's not too long a question and I hope your answer is not too long. Currently, no state agency in Nebraska has any EFC, correct? [LR224]

STEVE TRUEBNER: To my knowledge, no. [LR224]

SENATOR AVERY: Okay. The Department of Administrative Services, I presume, would be the department that would negotiate these contracts and sign them. They say that there are three reasons why: one, the interest rates are higher for EFCs; number two, the equipment that you require with EFCs are equipment that is not necessarily the best equipment; and number three, that you need big contracts, you need big projects, and that most of the ones that we offer would be smaller and not very profitable for you. Could you answer those, or address those three concerns? [LR224]

STEVE TRUEBNER: Absolutely. First, interest rates--interest rates for a state government entity, for example, Colorado. I'm doing two projects right now. The interest rates on a 15-year loan for performance contract or a finance contract are less than 3 percent, which I feel is...they are as competitive, as low as they have ever been. From an equipment standpoint, it is up to the customer to choose and direct us what type of equipment that we want. Because we are guaranteeing the energy performance and hence the performance of the equipment, we are looking to build into the project the best equipment for this...for the project and for that particular facility. So, there is a direct relationship to the equipment that's going in and what the customer would like to be installed. They have full control over that. And big projects? I would say it is tricky to find financing for projects that are less than \$1 million at this point. Not impossible, but

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typically, a state agency, for example a Colorado correctional facility financed over 15 years would be an average of a \$5 million injection of facility capital into that facility, paid for by guaranteed energy savings. We find a lot of municipalities in the West average about \$1.5 million to \$2.5 million projects. [LR224]

SENATOR AVERY: Thank you. [LR224]

STEVE TRUEBNER: Yes, sir. [LR224]

SENATOR AVERY: Very succinct. All right, I don't think we have time now for more questions. I would ask you to stay if you can. We're going to recess until, you think 15 minutes after we...11:15. I invite all of you to remain here or to take a break and come back. We will reconvene here at 11:15. Thank you. [LR224]

STEVE TRUEBNER: Yes, sir. Thank you very much. [LR224]

BREAK

SENATOR AVERY: We're going to reconvene. Sorry the recess took a little bit longer than we had anticipated. I am hopeful that the remaining members of the committee will be coming in shortly. We were in the midst of a discussion of LR224 and Mr. Truebner, you were at the table. Would you please come back and if you would like to elaborate a bit more in the question that I had asked you about the three objections that DAS has to see these EFCs, then I would appreciate you doing that. [LR224]

STEVE TRUEBNER: Sure. Thank you, Mr. Chairman. Just to summarize those maybe three objections presented were high interest rates, low performing or not great equipment, and size of the projects. And just repeating those answers, interest rates are at an all-time low, 10-year deals being in the neighborhood of 2.6 percent and 15-year deals being under 3 percent interest rate--lower than the cost of inflation. Equipment,

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this is...these are all customized projects and the agencies or the political subdivisions are able to dictate what kind of equipment they'd like in there. We try and maximize the energy savings and the overall performance of the equipment--give that public entity a hardy boiler, for example, that's going to last a very long time, but something that they're familiar with from a maintenance and operations standpoint. And they might say we are not interested in this type. We've had a bad experience. The same goes for subcontractors, too, that the agency...there is a sort of internal bidding process--bid by invitation--but the entity itself really gets to select those subcontractors. So, they're able to work with the contractors that have done quality work for them in the past. It's not a low bid process. Then finally would be the size of the projects and I would leave you with the point that projects under \$1 million can be difficult, but not impossible, to find public financing for or private financing for. [LR224]

SENATOR AVERY: Any questions? Additional questions for Mr. Truebner? Don't see any. Thank you very much for your patience and for your sharing that information with us. [LR224]

STEVE TRUEBNER: Thank you very much, Mr. Chairman. I'm happy to come back and report and answer any questions at any time. [LR224]

SENATOR AVERY: Thank you. [LR224]

STEVE TRUEBNER: Thank you. [LR224]

SENATOR AVERY: Anyone else wish to speak on LR224? Welcome. [LR224]

KRISTI WAMSTAD-EVANS: (Exhibits 1 and 2) Thank you. My name is Kristi Wamstad-Evans, K-r-i-s-t-i. Wamstad-Evans, W-a-m-s-t-a-d, dash Evans, E-v-a-n-s. I'm the sustainability coordinator for the city of Omaha and I came to speak today because just last September we passed...our city council approved a contract for an energy

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performance work within our city. It's a contract that my office, through the Planning Department, will be managing. We started this process back in August of 2010. We went through kind of an RFQ--request for qualifications--from several energy performance contracting firms, selected a firm, and then moved forward in January with approving a contract for that firm to do industrial grade energy audits of 25 facilities throughout the city: community facilities, community centers, libraries, police stations, fire departments, etcetera, as well as our wastewater treatment plant and our traffic systems engineering. They took several months for them to kind of develop this, including detailed engineering calculations--which they're very critical, I think, in creating any contract that's an energy performance contract--and then brought that back to our group, including our facility managers with the city. And then we kind of began the process of negotiating what were the energy measures that we wanted to apply to our facilities and what was the right balance between the cost of the work and the energy savings that would be received. So, I've gained a great deal of experience over the past year in how energy performance contracting works, how to work with the piece of Nebraska legislation that's being discussed here today, including the value, I think, in revising that...the legislation to allow more of a design-build model, especially since most...the information, the detailed level of information that you require from an energy service company does involve a significant cost on their part to create that. And using a design-build process where you have a request for qualifications, you allow the contracting for a breakage fee for doing the engineering studies for the IGA. And then having a third party engineer review it after that work has been created would be a more streamlined process for something that would include performance contracting. In the case of our contract, it is actually...we're completely funding it through a grant that we have from the Department of Energy. It was a direct formula grant for the Energy Efficiency and Conservation Block Grant Program. We have a little over...well, actually \$2.14 million invested in this energy performance contract, and we intend to have the work completed by next July. And then through my office, as well and in cooperation with our facility managers and also with the performance contract company, we'll be doing the measurement and verification and tracking of whether or not this is a

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successful strategy for our city, in terms...you know, in the opinions of our finance department, our facility managers and is it actually achieving the energy savings that we hope to achieve. So with that, I'll take any questions. [LR224]

SENATOR AVERY: I'm going to start out, if you don't mind, by asking you to refer to this chart that you passed out. [LR224]

KRISTI WAMSTAD-EVANS: Yes. [LR224]

SENATOR AVERY: Sorry, for those in the audience who don't have a copy. [LR224]

KRISTI WAMSTAD-EVANS: It's colorful. [LR224]

SENATOR AVERY: But explain to me what you mean by escalation here. [LR224]

KRISTI WAMSTAD-EVANS: That is the assumption that the energy costs are going to increase. So, it's basically modeling. In the case that the energy escalation would be zero, that means that it's just going to be the same rate as when we initially made the investments in these measures, so they stayed at zero. In our case, for the \$2.14 million that we invested, if we were just looking at the cost of energy, it would take 17.5 years to pay back. That doesn't include operational and maintenance savings. If the escalation rate was 3 percent, which is more along the lines of what NREL--the National Renewable Energy Laboratory--they set escalation rates for different areas of the country for performance contracting and I think they have a 3.5 percent for the Omaha area. But we would have been allowed to include this 3 percent energy escalation rate and actually contracted additional work above the \$2.14 million with the assumption that we would be seeing at least that 3 percent energy savings. But we took a very conservative approach and just chose to invest the \$2.14 million more to experiment, to see whether or not this performance contracting would work for us before we had the confidence that the 3 percent energy escalation would really kind of equate to the

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savings that we wanted to see. To let you know, we're actually experiencing a 7 percent energy escalation right now, just this year... [LR224]

SENATOR AVERY: Um-hum. [LR224]

KRISTI WAMSTAD-EVANS: ...that our energy rates are going to go up 7 percent and if that trend would continue, then we would actually be looking at a six-year payback, just on the energy savings, not on the operational maintenance savings. [LR224]

SENATOR AVERY: That's pretty impressive. [LR224]

KRISTI WAMSTAD-EVANS: It would be, and, yeah... [LR224]

SENATOR AVERY: Yeah. Any questions from the committee? Senator Sullivan.
[LR224]

SENATOR SULLIVAN: Thank you, Senator Avery. Just a...thank you, by the way, for this overview. Just a clarification: is the grant that you've received covering the whole cost of the project? [LR224]

KRISTI WAMSTAD-EVANS: Yes, it is, except for the measurement and verification that would equate to about \$25,000 a year for the next 10 years. And that would be taken out of these savings and contributions from each of these departments that are involved in the project. [LR224]

SENATOR SULLIVAN: Okay, but then over and above that, that goes right to your bottom line in terms of savings. [LR224]

KRISTI WAMSTAD-EVANS: Yes. Yes, and it provides us...I mean, the idea of keeping it to the \$2.14 million was also to explore...is this something...because we have 400-plus

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facilities in the city of Omaha. This is only looking at 25 of those facilities and focusing specifically on lighting, programmable thermostats, occupancy sensors, a few rooftop units, but mainly very safe decisions in terms of your energy savings. But this is going to give us an opportunity to say: does this performance contracting work for us? And if so, could we move into a Phase 2 that would include a variety of other things--additional buildings, ball fields, other things where we would start operating based on the savings or based on bonding, receiver financing. [LR224]

SENATOR SULLIVAN: So the selection of those 25 facilities was based more on the safe approaches as opposed to priority of need? [LR224]

KRISTI WAMSTAD-EVANS: It was priority of need and there was priority of areas where there was 24-hour operation, so some of the police stations, the fire stations, things like that. But we also wanted to get a good cross-section of various buildings across the city, so we have community centers and libraries as well. So there was a good distribution to see how performance contracting would work in each of those. And also, for the city, we have cost centers, so each of the departments are responsible for their own budgets. So it's also an opportunity for many of our department directors to see what kind of energy savings could be realized if they directed more funds towards the energy improvements. [LR224]

SENATOR SULLIVAN: Now this company that you've hired, where are they from? [LR224]

KRISTI WAMSTAD-EVANS: Siemens? This group, specifically, is based out of Kansas City. [LR224]

SENATOR SULLIVAN: Have you started the construction work already? [LR224]

KRISTI WAMSTAD-EVANS: We kicked off our project in October and they're doing

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mobilization right now. They should begin with many of the lighting upgrades later on this month. By the grant conditions or the grant requirements, it's a stimulus funded grant, and so we have to complete all work by July of next year, so we're moving very quickly. Siemens feels very strongly that they can do that because we've spent a year, basically, developing it and they already have many of the contractors in place and they understand our terms and conditions. [LR224]

SENATOR SULLIVAN: Are those contractors local? [LR224]

KRISTI WAMSTAD-EVANS: Most of them are, yes. We also have a requirement, since we have a Tier One/Tier Two emerging small business, kind of--what's the word for it--directive within our city: that 10 percent of the actual contracted value would be towards Tier One/Tier Two businesses. [LR224]

SENATOR SULLIVAN: Thank you. [LR224]

KRISTI WAMSTAD-EVANS: Um-hum. [LR224]

SENATOR AVERY: Senator Pahls. [LR224]

SENATOR PAHLS: Yes. I think...isn't Siemens actually German? [LR224]

KRISTI WAMSTAD-EVANS: Their parent company, yes. [LR224]

SENATOR PAHLS: A parent company in Germany? [LR224]

KRISTI WAMSTAD-EVANS: They're global, though. They're international. [LR224]

SENATOR PAHLS: Right. We have one right, actually, an office in my district. Okay, I see we have a grant. [LR224]

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KRISTI WAMSTAD-EVANS: Yes. [LR224]

SENATOR PAHLS: Now, all the money has been obtained... [LR224]

KRISTI WAMSTAD-EVANS: Yes. [LR224]

SENATOR PAHLS: ...because are you afraid some of these things will not...okay, so we have...you have received the money is what you're telling me. [LR224]

KRISTI WAMSTAD-EVANS: Yes. We have actually...we received a grant for over \$4.3 million for the city that the Department of Energy specifically called out that we're doing...needs to be applied towards energy efficiency and conservation projects. So this represents about half of our total direct formula grant that the city received. [LR224]

SENATOR PAHLS: Okay. Okay. [LR224]

KRISTI WAMSTAD-EVANS: The rest of the funds have been used for other energy efficiency projects in the city. [LR224]

SENATOR PAHLS: Okay. Okay, so there's no chance of--if the federal government does do some of their rethinking--that this would be a callback? [LR224]

KRISTI WAMSTAD-EVANS: It's been completely obligated... [LR224]

SENATOR PAHLS: Okay, okay. [LR224]

KRISTI WAMSTAD-EVANS: ...especially through city council when they approved the contract. [LR224]

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SENATOR PAHLS: Okay, thank you. [LR224]

SENATOR AVERY: Senator Price. [LR224]

SENATOR PRICE: Thank you, Senator Avery. Thank you, ma'am. Just to help me understand: If we've got grant money, there's no payback. We're not paying someone back. I mean, this is a...we're modeling something as if I had drawn...made a capital outlay of \$2 million. [LR224]

KRISTI WAMSTAD-EVANS: Right. Right. We're experimenting. We're demonstrating the efficacy of an energy performance contracting model because it's something I think, based on feedback from our facility managers in the past, performance contracting has been a concern for them and this is probably going back to the '80s time period. And so there's long memory of having bad experiences with performance contracting. [LR224]

SENATOR PRICE: Well, you have service level agreements within that performance-based contracting, correct? [LR224]

KRISTI WAMSTAD-EVANS: We don't actually...yes, we do, in terms of the measurement and verification process. Everything...Siemens covers the materials and quality for a year and then it goes back and reverts back to that actual product. We also have facility managers who are taking on the responsibility of the operations and maintenance based on the approved schedule and the training from Siemens. [LR224]

SENATOR PRICE: All right. Thank you. [LR224]

KRISTI WAMSTAD-EVANS: Um-hum. [LR224]

SENATOR AVERY: Senator Wallman. [LR224]

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SENATOR WALLMAN: Thank you, Chairman Avery. Now, I used to deal with some of this at schools and stuff and did they give you a figure of what you could save, guaranteed figure as a...did they want the whole thing? Run the facilities, you know, through their computers--temperature, everything? [LR224]

KRISTI WAMSTAD-EVANS: Yes. [LR224]

SENATOR WALLMAN: They're going to do everything? [LR224]

KRISTI WAMSTAD-EVANS: Well, what we've done...the measurement and verification process...I'm going to make sure I understand the question, but the measurement and verification process calculates what the energy savings will be based on the stipulated energy achieved from those component pieces. We do have something built into our contract that requires set points in terms of the thermostats. So if a customer, you know, for the question that came up before as far as usage of those facilities, we do have certain limitations that we've built in as far as the set point for our thermostat. They're not as concerned, though, as in terms of like the additional computers and things like that because they can base it more on the HVACs equipment that's been... [LR224]

SENATOR WALLMAN: So you'll get special electric rates for load management, then, too, do you think? [LR224]

KRISTI WAMSTAD-EVANS: Have not, yeah, no. [LR224]

SENATOR WALLMAN: Okay. Thank you. [LR224]

KRISTI WAMSTAD-EVANS: Thank you. [LR224]

SENATOR AVERY: Another question from Senator Price. [LR224]

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SENATOR PRICE: Thank you, Senator Avery. Thank you, Senator Wallman, because you sparked a question I had and I don't know if you know the answer. Does the city buy its utility power at a--whatever we're talking about here--the energy in blocks and then therefore get a point break if you use X amount of energy or anything like that or do you use real-time metering or how does that work? I'm just...just as a point of interest, again, here, of how if we start saving a lot of energy, which is a good thing... [LR224]

KRISTI WAMSTAD-EVANS: Um-hum. Right. [LR224]

SENATOR PRICE: ...then you're buying less, how does that affect your contract (inaudible) power for that? [LR224]

KRISTI WAMSTAD-EVANS: As far as I understand, and I'm not an expert in that area... [LR224]

SENATOR PRICE: Okay. [LR224]

KRISTI WAMSTAD-EVANS: ...what I know is that we receive bills just like a resident might receive bills from OPPD and from MUD and then we pay it based on that usage. Buildings are metered and so we actually have the metered usage for those buildings. Traffic signals and streetlights are not. Those are at the block rate or a flat rate, so just...it depends on which rate. But right now we pay per usage. We don't pay them in negotiation with a block rate. [LR224]

SENATOR PRICE: Okay, great. Thanks. [LR224]

SENATOR AVERY: Any other questions? Thank you. [LR224]

KRISTI WAMSTAD-EVANS: Thank you. [LR224]

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SENATOR AVERY: Appreciate that. Anyone else wish to speak on LR224? Senator Mello, would you like to say anything other...all right. That completes the hearing on LR224. We'll now move to LR267, which is also Senator Mello's interim study resolution to examine issues relating to regulatory flexibility policies. Welcome again, Senator Mello. [LR224]

SENATOR MELLO: (Exhibit 1) Good afternoon--well, morning, I should still say. Chairman Avery, members of the Government, Military and Veterans Affairs Committee, my name is Heath Mello, M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. LR267 is designed to look at regulatory flexibility policies, which has been a topic of legislation in the Business and Labor Committee the last two years. This past session, I introduced LB288, which would adopt the Small Business Regulatory Flexibility Act and it was a revised version of a bill from 2010: LB709. Ultimately, both bills are the product of model legislation that was developed by the U.S. Small Business Administration Office of Advocacy and has been promoted by the American Legislative Exchange Council, ALEC. Currently, Nebraska is one of just six states which does not have some form of regulatory flexibility, either by statute or by Executive Order. The goal of the Small Business Regulatory Flexibility Act is simple: lessen the detrimental impact of governmental regulations on small businesses. There are more than 160,000 small businesses in Nebraska accounting for more than 96.7 percent of employers in the state and generating more than \$7.6 billion in annual revenue for our state's economy. As some of you may recall, during the 2010 session, LB709 was advanced to the floor, but failed to advance on General File. In the process of drafting LB288 last year, my office worked extensively with the Legislative Fiscal Office to address the fiscal note from LB709 and fuse provisions of this bill with the existing procedures in the Administrative Procedures Act. The remaining legislation--which I strongly contend should not have a fiscal note--does the following: (1) it requires that state agencies provide electronic notice of any proposed rule and regulation that may have an adverse effect--impact, I'm sorry--on small businesses; (2) requires state agencies to take into

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account any public comment from small businesses to propose rules or regulations and consider less burdensome alternatives; (3) it provides for a judicial review of agency compliance with rule-making procedures. LB288 does not include a number of the provisions that were in LB709 which would have created a fiscal note. For example, LB709 would have required agencies to do periodic review of all rules and regulations. LB288 does not. LB709 would have required a lot of paper notices. LB288 requires on-line notices, which is something that most agencies already are doing. LB709 did not provide a definition of "adverse economic impact" to reduce frivolous lawsuits. LB288 does. Quite frankly, the only way I potentially see any fiscal impact to state agencies with the changes that we made in LB288 is if an agency doesn't follow the provisions of the bill and subjects itself to judicial review. Unfortunately, when my office received the fiscal note on LB288 last session, it appears that some state agencies chose not to read this year's bill and instead assumed it was the identical to the last year's bill. I'd like to thank Chairman Avery for working with my office to request that those agencies who did submit fiscal notes provide the committee with information materials used to develop their fiscal note, and I look forward to reviewing some of that information. As I've already stated, 44 of 50 states already have some form of small business regulatory flexibility in place and Nebraska is just one of 6 states that does not. Even as Nebraska continues to lag behind our neighbors in implementing this policy, other states are looking at new ideas that could help further reduce the impact of government regulations on businesses. For example, the concept of a regulatory improvement commission has been recently proposed at the federal level. My office has begun the process of drafting legislation that would create such a commission at the state level. Regulatory improvement commissions, similar to the BRAC commissions used to evaluate military base closures, are independent commissions tasked with the job of periodically reviewing agency regulations with the goal of eliminating, consolidating, or simplifying outdated regulations. This type of periodic review has actually been the hallmark of some of the most successful small business regulatory flexibility policies in other states, although I did choose to leave the review out of LB288 because of agency fiscal notes on similar provisions in LB709. At the end of the day, the nonpartisan approach

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envisioned by LB288 is only the beginning if we want to help create a business-friendly regulatory environment in our state. I'm hopeful that our discussion today will help us move forward with that legislation and that we as a body will not let the desire of some state agencies to stick to the status quo impede efforts to reform our rules and regulations process. To end, while I'd be remiss to not thank the committee for hearing this interim study, even though this bill currently resides in the Business and Labor Committee, in years past, our research has shown this bill was previously introduced by Senator Paul Hartnett of Bellevue area back in the late '90s, which the bill normally, when he introduced it, came to the Government, Military and Veterans Affairs Committee, which is why this LR267 was referenced to this committee as well. So with that, thank you, Chairman Avery. I'd be happy to answer any questions you may have. [LR267]

SENATOR AVERY: (Exhibits 2 and 3) Thank you. Before I forget about it, let me just read into the record a letter from John Munn, the director of the Department of Banking and Finance, essentially restating their position that this would require additional expenditures and staff for the department. And another letter from the Department of Revenue, signed by Doug Ewald which makes a similar statement about the additional costs, which confirms what you said about the fiscal note. Questions from the committee? Senator Price. [LR267]

SENATOR PRICE: Senator Avery, thank you. Senator Mello, thank you. Two points: first one is what is your definition that you use in here for small business? [LR267]

SENATOR MELLO: Small business is any...we use the federal definition, which is a business of 500 employees or less. [LR267]

SENATOR PRICE: Or \$20 million a year? How do you normally...it goes anywhere between (inaudible) [LR267]

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SENATOR MELLO: I believe we use 500 employees or less is the definition we use in LB288. [LR267]

SENATOR PRICE: So 500 or less, okay. All right just know that there's a content...just a comment is I find it kind of ironic that we're going to create a committee to make government smaller, just an oversight committee to make government smaller. That's an interesting approach, but thank you. [LR267]

SENATOR MELLO: I'd be remiss to not comment, to say that task forces and ad hoc commissions have been created multiple times in our state government as well as at the federal level with the sole purpose of accomplishing this specific goal. The best example is the BRAC commissions, obviously--which has government created committee, actually--to reduce the size of military bases across the United States, which I know you're very familiar with, which has proven to be very successful in taking politics out of whatever very difficult decisions when you reduce federal installations, which I would probably be willing to argue that when you reduce or look to streamline or eliminate or consolidate regulations, you might see a very similar political environment in which an independent commission would be very helpful. [LR267]

SENATOR AVERY: I see here in our staff notes that the Nebraska Chamber of Commerce actually testified in a neutral capacity. Do you remember that testimony? Could you explain why? Because this sounds like something they would be enthusiastically in support of. [LR267]

SENATOR MELLO: I do. And the conversation and the reason the Nebraska Chamber of Commerce testified in neutral is purely because of the limitation to small businesses. Even though 96.7 percent of all businesses in Nebraska qualify as small businesses under our definition--using the federal definition of small business--the State Chamber felt that this act should apply to all businesses in Nebraska in regards to regulatory flexibility, not just businesses with 500 or fewer employees. [LR267]

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SENATOR AVERY: Thank you. [LR267]

SENATOR MELLO: So they were supportive of the concept, just they wanted a change to encompass it all. [LR267]

SENATOR AVERY: Broader. Yeah. Senator Sullivan. [LR267]

SENATOR SULLIVAN: Thank you, Senator Avery. Thank you, Senator Mello. In your research for all of this, is there any evidence that there is a--it almost goes without saying--a periodic review of rules and regulations that are put in place to see if they are relevant in today's environment? Apparently there is not a mechanism for currently doing that. [LR267]

SENATOR MELLO: Our research showed that the process, and part of the change that we made to LB288 in comparison to LB709, was that was a point of contention with some of the supporters of the original bill was that it would require periodic reviews because those are currently not done. A review of a rule and regulation only occurs when that statute that affects that rule and regulation is changed, adopted and essentially changed, by us, the Legislature, by adopting new legislation that would change the part of the statute or act which then requires the agency to review that rule and regulation. A number of acts we do not touch or change on a yearly basis or biennial basis, which means a significant number of rules and regulations are not reviewed or updated or revised unless there's a need to, which is started by the legislative process. That process, in theory, that was part of the contention with the original bill of LB709, was that state agencies said it would cost a significant amount of money for them to periodically review their rules and regulations without being prompted to by the Legislature. We understand that to try to make this...once again, the whole intention of LB288 was to start the process of encouraging, essentially, agencies to take in consideration the adverse economic impact on small businesses, knowing that we

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won't change every statute every year, but the thought being is that a good number of statutes do get changed every legislative session with bills that get adopted. Thus, agencies will be looking to have to revise rules and regulations on an annual basis but just...they won't be able to do all of them. And the hope would be that this would be, essentially, the pilot effort first. Then as we would move forward, we could hopefully work with the executive branch to encourage them to review--periodically review--those rules and regulations on their own without having the Legislature mandate them to do that. [LR267]

SENATOR SULLIVAN: This commission concept that you talked about possibly drafting some legislation, is this functioning in other states? [LR267]

SENATOR MELLO: It's actually...to some extent it's not in...as a commission they've done it in task forces and in ad hoc, I would say, ad hoc commissions, similar to kind of, I would say, the possibility of us...the way we've done select committees, such as the BSD Select Committee, the Child Welfare, or the Children's Behavioral Health Oversight Selected Committee. Things of that nature other states have done, currently. The federal government, though, is kind of taking it a step further of looking at it from a variety of regulatory aspects, not just looking at rules and regulations. It's a concept that it seems ripe for Nebraska. And depending upon how LB288--which I think is the first good step that we could take to looking at regulatory flexibility--the regulatory improvement commission concept takes a much broader approach, it takes a much more intensive approach, and it would probably come from a legislative-driven proposal instead of an executive branch-driven proposal, which LB288 is more driven towards the executive branch. [LR267]

SENATOR SULLIVAN: Thank you. [LR267]

SENATOR AVERY: Any more questions? Senator Pahls. [LR267]

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SENATOR PAHLS: Thank you, Chairman. So my...just generally, you think we should review things on a regular basis. [LR267]

SENATOR MELLO: Generally, I think it's wise for policymakers to review existing policies on a regular basis, yes. [LR267]

SENATOR PAHLS: Okay. So then, let's think tax exemptions. Should they be reviewed on a regular basis? You do not need to answer that. (Laughter) Well, you say, you know, if the shoe fits, we ought to wear it all the time. [LR267]

SENATOR MELLO: You know, in candidness, Senator Pahls, I think that argument of reviewing our tax system on a regular basis is something that we should strive to do. I wouldn't limit it to sales tax exemptions. I think it's wise for us to look at our entire tax system on a regular basis to see what works, what doesn't, and how we can be more competitive while maintaining a fair and balanced tax system that benefits all Nebraskans. You know, I think that's the same way we're looking at it in regards to rules and regulations. [LR267]

SENATOR PAHLS: I appreciate your open-mindedness. Thank you. [LR267]

SENATOR AVERY: Any more questions? Don't see any. Thank you, Senator. [LR267]

SENATOR MELLO: Thank you. [LR267]

SENATOR AVERY: Anyone here who wishes to speak on this issue? We only have a few more minutes before we're going to break for lunch, but I'd be willing to take one person and it doesn't matter to us who it is. So, guys, work it out. Welcome. [LR267]

MIKE LINDER: Thank you. Good morning, Senator Avery, members of the committee. My name is Mike Linder. I am the director of the Nebraska Department of Environmental

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Quality. I'm here to testify on LR267, an interim study to examine regulatory flexibility policies as proposed in LB288 from the 2011 Legislative Session. I testified on the bill then before the Business and Labor Committee, and I've been asked to provide this committee with similar information. The regulations that NDEQ administers are among the most complicated that individuals and businesses face. Many of NDEQ's regulations reflect the fact that the majority of our programs in air quality, water quality, and waste management are derived from federal statutes. In order for a state like Nebraska to administer federal programs of this type, the U.S. EPA must assure in its delegation that the state regulation is at least as stringent as its federal counterpart. LB288 was an attempt, is an attempt to engage small businesses so they not only have the ability to provide input into crafting regulations, but also to look for room for flexibility in the application of those regulations once adopted. This is a practice the DEQ, the NDEQ currently utilizes informally, with the further step of helping educate small businesses on regulations actually...after they actually go into effect. Our current practice on regulatory development is to attempt to identify potentially impacted stakeholders, including small businesses. As soon as we have a draft or outline of a regulation, we circulate that information to get input. We try to at least identify all the issues of concern long before we enter into a formal rule-making process, which starts by issuing the 30-day notice of public hearing. Again, after the regulation is in effect, we try to do as much outreach as possible to get an understanding of that rule's requirements. We feel much, much better about a regulation that is understood, because the chances of success of the regulation increase greatly when someone knows what they're actually supposed to do. As I previously noted, most of our regulations do have a tie to federal regulation, which hampers our ability in some cases to provide flexibility of the type envisioned in Section 4 of LB288. My reading of that section is that it does not give us any new authority to provide these types of flexibility, but rather asks us to consider them to the extent we can in a federal regulatory setting. A further comment on the analysis provided for or called for in Section 3 is that we may need to do some additional work to evaluate and publish the potential adverse economic impact for some rules. Currently, the requirement is for a fiscal impact statement and, to the extent this goes beyond that, we

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have included a small fiscal note in the bill last year to be able to retain expertise to assist with this evaluation. Since several titles or regulations are amended by us annually, regularly, the department estimates, for the purposes of the fiscal note, that an analysis would need to be conducted an average of three sets--and that's just an estimate--three sets of regulations annual and we estimated that that's probably expertise that we would contract for with economists. And we estimated that cost would be somewhere around \$6,000 for that type of analysis times three, an average of maybe three regulations, which was our \$18,000 fiscal note last year. One comment: the definition of small business in Section 2, subparagraph 5 is noticeably broader than similar laws that we've noticed in other states and as I understand it, the definition would take in the vast majority of Nebraska businesses. As to LB288, I see nothing in the bill that ventures too far from our current practice, really. I would have a mild concern that our...Nebraska's Administrative Procedures Act is getting very...getting more and more complicated in that which adds to the lead time for us to prepare for the rule-making process. That LB288 amendments in and of themselves are not overly burdensome, but incrementally add to an already fairly lengthy empiric process. That concludes my testimony. I'd be happy to attempt to answer any questions. [LR267]

SENATOR AVERY: Let me start. You indicated that it might add additional work and that...and lengthen the process. Would the payoff be greater than the burden that you identified? [LR267]

MIKE LINDER: Yeah, it's so hard to know. And that was...I mean, that's only...that's kind of a comment in general about the Nebraska Administrative Procedures Act. It takes us...and it's a little bit different for my agency. We have a rule-making, a rule-hearing body--the Environmental Quality Council--that meets only four times a year. So in order for us to prepare, for example, we have a December 1 council meeting. We would have started working on those six sets of regulations probably about a year ago, you know, to get it to the drafting stage, to the input and stakeholder input stage, to the point where they're ready to take to the hearing. It's really a pretty lengthy process now and so that

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was kind of...that was, I guess, more of a general comment. But this would add this step on some of our regulations on that fiscal impact, which...or the adverse economic impact for some stakeholders, which is a little bit different than what we...is kind of an add-on to what we currently do under the Procedures Act. [LR267]

SENATOR AVERY: Thank you. Any questions from the committee? Don't see any. [LR267]

MIKE LINDER: Okay. [LR267]

SENATOR AVERY: Thank you very much for coming. [LR267]

MIKE LINDER: Thank you. Well, if you do have questions later on, you should let me know. [LR267]

SENATOR AVERY: Well, that's good timing, because everybody's hungry and I'm going to ask those of you who are...John and others who are here to testify on this LR267, if you will come back at 1:30, we'll give you all the time you need. We are recessed until 1:30. Thank you very much. [LR267]

BREAK:

SENATOR AVERY: Thank you for your forbearance while we took a nice, long, hour-and-a-half lunch break. I did that especially for Senator Sullivan. (Laughter) [LR267]

SENATOR SULLIVAN: He's right. [LR267]

SENATOR AVERY: We are still discussing LR267, an interim study to examine issues relating to regulatory flexibility policies. We interrupted that broadcast to go to lunch and

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now we're going to resume and I think we have other people who wish to speak, so please come forward. Welcome, sir. [LR267]

DOUG EWALD: Yes, Chairman Avery, members of the Government, Military and Veterans Affairs Committee, my name is Doug Ewald, that's D-o-u-g E-w-a-l-d, tax commissioner for the Nebraska Department of Revenue. I appear before you today to provide some background information on several fiscal notes related to the Small Business Regulatory Flexibility Act, specifically LB709, introduced in the 2010 Legislative Session and LB288, introduced in the 2011 Session. The difference between LB709 and LB288 resulted in a significant difference in the two fiscal notes. I've distributed a letter which highlights those differences. I think, Senator Avery, you read that in that we had received a letter--kind of the methodology that we went through to put those two fiscal notes together. But to summarize, LB709 applied to all existing and proposed department regulations and administrative actions. LB709 also required either written or electronic notice to most businesses in Nebraska. In contrast, LB288 focused only on proposed regulations and administrative actions and only required electronic notice when available. As a result, the cost varied widely based on staff, printing, mailing costs with each associated bill. With that, I'd be more than happy to answer any questions you might have. [LR267]

SENATOR AVERY: Thank you, Mr. Ewald. Questions for the director? Everybody's so tired and sleepy after lunch...(laughter)...you might actually get away. You have a question? [LR267]

SENATOR PRICE: Yes, I do. [LR267]

SENATOR AVERY: You are recognized. [LR267]

SENATOR PRICE: Thank you, Chairman Avery. Thank you, Mr. Ewald. The question comes about some of the other topics that the committee has handled where we talk

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about posting in a newspaper for circulation notices and we want...people want to do posting electronically, but we couldn't do posting electronically because not everywhere is that available for public notice. So my question then became, as I read this, is do you see that there's going to be a blend of where you can't make that electronic notification? I mean, I don't know if we're dealing with the same statutory drivers, and therefore the outcome being the same: you can't do it electronically. [LR267]

DOUG EWALD: Yeah, great question, Senator, because we know from a print format, we no longer have a statewide newspaper anymore. The Omaha World-Herald will tell you that. When it comes to electronic notice, what does that mean? Is that on-line? We put all of our regulations and everything out there...what were proposed...on-line at our Department of Revenue Web site today and anyone can go out there and we have...we use a little program called GovDelivery. It's a program that the state has, the CIO's office has bought for the entire state and you as a citizen can go out there, anyone can go out there and select or check, hey, I want to receive any update the Department of Revenue puts to their Web site as it relates to income tax, sales tax, rules, regulations, anything along those lines. So every time we would publish something out there or change it, we would...you would automatically get a notice from the Department of Revenue that say...with a link saying hey, there's something new out here from that standpoint. So we have that feature available but it's...the key to this is it's only if you go out there and subscribe to that service. We've published...we have used this in our education sessions and really tried to advertise a lot. We have a lot of people in our...a lot of our practitioners in the CPA community that are out there have subscribed to things. But to get the small business universe out there--which is quite significant, obviously--that under this bill that over 90 percent of our businesses are defined as small business under the \$500...500-employee threshold. So it's a tough question from that standpoint. What is...is it on-line or is it electronic? I think that's two different things sitting out there--means of communication, I think--whether they're coming to us or whether we're pushing something to them. [LR267]

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SENATOR PRICE: Thank you. [LR267]

SENATOR AVERY: Any more questions? I stand corrected. I referred to you as Mr. Director. You are tax commissioner. [LR267]

DOUG EWALD: That's all right. [LR267]

SENATOR AVERY: I don't see any...oh, you have one, Senator Wallman. [LR267]

SENATOR WALLMAN: Thank you, Chairman Avery. Thanks for being here, Commissioner. [LR267]

DOUG EWALD: You bet. [LR267]

SENATOR WALLMAN: In regards to this latest thing on...you're dealing also with taxes on liquor or is that something else? [LR267]

DOUG EWALD: Taxes on liquor? [LR267]

SENATOR WALLMAN: Yeah. [LR267]

DOUG EWALD: That's the Liquor Control Commission. [LR267]

SENATOR WALLMAN: Okay. [LR267]

DOUG EWALD: That would not be me. Thank you. [LR267]

SENATOR WALLMAN: Yeah. [LR267]

SENATOR AVERY: Any other questions or comments? Thank you, Mr. Ewald. [LR267]

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DOUG EWALD: Very good. Thank you. [LR267]

SENATOR AVERY: Thank you for coming. [LR267]

SENATOR PRICE: The longest six-minute wait you ever had. (Laughter) [LR267]

SENATOR AVERY: Next testifier. John Albin. [LR267]

JOHN ALBIN: Good afternoon, Senator Avery and members of the Committee. As Senator Avery has already noted for the record, my name is John Albin. It's spelled A-I-b-i-n and I am general counsel for the Nebraska Department of Labor and I'm appearing here today on behalf of the department. By way of historical background, LB288 is the fourth iteration of this particular proposal, beginning with Senator Harms' LB1274 in 2004, Senator Erdman's LB1107 in 2006, Senator White's LB709 in 2010, and now Senator Mello's LB288. The letter inviting the department to appear today asked the department to explain why the fiscal note for LB288 is not significantly less than the fiscal note for LB709. First of all, it's important to remember that nearly all Nebraska employers are small employers as defined in this act. Of the roughly 49,000 employers in Nebraska, over 48,000 have less than 500 employees and are a small business within the meaning of LB288. Consequently, for all practical purposes, LB288 applies to all Nebraska employers, and any requirements of an agency in the bill applies 48,000 times. LB288 is less expensive than its predecessor, LB709, and the department took those reduced costs into consideration in preparing the LB288 fiscal note. Specifically, LB288 reduced postage costs and did not contain the requirement that the department...or requirement for the establishment of the Regulatory Oversight Committee within the Department of Labor, as did LB709. LB288, nonetheless, presents a significant financial cost issue for the department. LB288, like its three predecessors, is not limited in scope to rules and regulations adopted pursuant to the Administrative Procedure Act. In addition to those rules adopted pursuant to the APA, LB288 expands

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its definitions of rules and regulations to include, "any standard issued by the agency." That's in Section 2, subsection 2. On its face, standard issued by the agency could apply to standards issued by the department's unemployment insurance program for wage audits or changes and posting requirements for noticing permits. Even if the scope of the introducer's intent is much narrower than that, it's not reflected in the language of the bill and will only be determined by the courts. From personal experience I can assure you that small businesses take a very expansive view of what constitutes governmental action that "negatively affects his or her ability to maintain or promote the growth of the small business." What the District Court for Lancaster County will determine I cannot predict, but that is the court where it will be resolved. LB288 calls for an economic review and analysis of the department activities well beyond that presently provided for under the Administrative Procedure Act. As the committee knows, the department is funded almost entirely from federal grants that will only pay for activities required under the terms of the federal grant. The dyke of economic review and analysis required under LB288 is not required under any federal grant that the department receives. Nor is the department relieved of its obligations under LB288 as to its unemployment and employment service programs because the administration of those programs is federally funded. For example, even though a state...a conforming state unemployment program is required under the Federal Unemployment Tax Act for employers to receive tax credits, the United States Department of Labor considers a state unemployment program to be voluntary on the part of the state because there is no federal mandate that the state have an unemployment program--only a severe penalty to its employers if it does not. Is this existing Section 84-907.09 already requires an agency proposing to adopt, amend, or repeal a regulation to establish an estimated quantification of the fiscal impact on regulated persons. Since LB288 is an addition to the existing requirements of the APA, the department can only presume that LB288 contemplates a much more involved economic analysis than is presently provided as to rules and regulations adopted under the APA, not to mention those agency standards that must now be first determined as to what they are and then analyzed under LB288. The potentially sweeping scope of the reviews required under LB288 makes it

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impossible to assert in the exact cost of the agency with any certainty. The fiscal note submitted reflects how the department interprets LB288 as filed. I'd be happy to answer any questions. [LR267]

SENATOR AVERY: Thank you. Thank you for your testimony. Any questions from the committee? Senator Sullivan. [LR267]

SENATOR SULLIVAN: Thank you, Senator Avery. Thank you for your comments. Do I understand you correctly that there is already, in your case with the department, a certain amount of review and oversight of rules and regulations? [LR267]

JOHN ALBIN: Any rules and regulations that we promulgate, adopt, repeal, or amend have to go through an economic analysis now. [LR267]

SENATOR SULLIVAN: Do you ever go back and look at them? [LR267]

JOHN ALBIN: We do on occasion review them. Back, I think it was last during the Nelson administration, we were required to go through them every few years to look for ones that were obsolete. We do that as a matter of normal course, just in our review of the agency regulations. We've got quite a few sitting over in the Attorney General's office right now that we've gone through to update because of changes in the statutory structure. So it's a regular process with us and I presume it probably is with most agencies. [LR267]

SENATOR SULLIVAN: Thank you. [LR267]

SENATOR AVERY: Any other questions? Senator Price. [LR267]

SENATOR PRICE: Thank you, Senator Avery. Sir, in listening to everything so far, one of the questions I have in mind is, from your perspective, what is an example of a rule

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that has been, if relaxed, that has been asked for by small businesses? So, what are small businesses clamoring for to be relaxed to enable them to get bigger? I mean, what is your experience with that one? [LR267]

JOHN ALBIN: We're not getting that sort of request within our agency. I mean obviously, when we do tax audits for our unemployment tax program, employers don't like to provide all of the information that's required, but under our federal guidelines, we are required to do a certain number of audits every year in any circumstance. We're not hearing a lot of that from our perspective. [LR267]

SENATOR PRICE: And then the follow on to that, then, is what you just said was within your statement. Many of your directives are from the federal viewpoint. You know, they're telling you what you have to do, federal guidelines, but we can't make them any looser. We can always tighten them, is my understanding, but we don't make federal guidelines looser. So, would there be a chance that doing this would put us in opposition to what the federal government's requiring? [LR267]

JOHN ALBIN: Well, in terms of our unemployment program, which is probably the most highly regulated in terms of the feds, again, they consider it voluntary, even though I can tell you it's really not. But they consider it voluntary because, as far as they're concerned, employers could all pay 6.2 percent of the first \$7,000 in taxes on every employee and they'd be just fine and happy with that. Instead, because we have a conforming program, they pay 0.8 percent. But in order to continue to be a conforming program, there are a number of standards that we're required to do. I think the number, if I remember right, is 2 percent of all employers have to be audited every year. Now if our internal standard, we decided, because of misclassification issues and that, we wanted to bump it up for 4 percent--to 4 percent, that I guess would fall within this standard and we'd have to do an economic analysis of it. I'm not real sure from the language of the bill that that's the case. But in any event, if we drop below the 2 percent, eventually we could lose our conformity approval by the U.S. Department of Labor, and

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then that ends up costing the Nebraska employers if we go below that 2 percent.
[LR267]

SENATOR PRICE: Okay. Thank you, sir. [LR267]

SENATOR AVERY: Senator Pahls. [LR267]

SENATOR PAHLS: What I'm picking up from your conversation is you say you have a regular process already in place and you also mentioned in your testimony that there were a number of senators over the last several years that have promoted some concept that's similar to what's in front of us now. Well, why are senators doing that, then? What are we doing "that's the mystery" or something? [LR267]

JOHN ALBIN: I'm just not sure that it looks like to me it's a bill that fits a small state like Nebraska well because we have so many small employers to begin with and it's never gotten a lot of traction because, like I said, there's 48,000 small employers and if you're dealing with...if you're trying to take into consideration small employers, you're covering everybody anyway. So, I don't know. I mean, it's the same questions, you know, there's 44 states that have it, I guess, and well, there's 49 states that have bicameral partisan legislatures, so, I mean, just because everybody else is doing it, or most everybody else is doing, doesn't mean it's the answer to your question. [LR267]

SENATOR PAHLS: And I understand what you're coming from, the place where you're coming from, but there are...this has never been a hot button for me, but apparently there are...there have been at least four senators that this has been a hot button for. Apparently, they're taking...they're not investigating it enough is what I'm saying. That's what I'm interpreting. They're coming up with legislation that is not needed is what I'm hearing from you. I know it's your opinion, but it's... [LR267]

JOHN ALBIN: That would be my personal opinion. I mean, you feel this...you know, I

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don't know enough about this particular...who's pushing this to say that this one falls in it, but I've seen it in other programs, such as professional employer organizations and that sort of thing where they will have model legislation and they'll want to see it adopted in every state and so the organization pushes for it in every state even though in some of the states it's a pretty small corner of the world, and I call it check mark legislation. I'm not sure that's fair, but I call it check mark. You know that is...they want to go through their 50 states and get everybody to conform. Whether this is one of those, I don't know. We're not getting a great hue and cry in our agency that we're mistreating small employers. I mean, with the tax rates went up a couple years back, we got a lot of complaints from all employers, but it wasn't just the small ones I can assure you.
[LR267]

SENATOR PAHLS: Okay, so, what you're telling me that this is a template that's being laid on the state of Nebraska and that's one thing we ought to be looking at this--okay, everybody else is doing it so we should be doing it. And I understand there's model legislation out there all over the world, but you feel like your department right now, you'd say, hey, we could be investigating...there's no need for any change at all. I mean, I shouldn't say...that's being a little bit dramatic, but we're running a good shop and we're doing and our customer, your customer is not beating down your door because you believe that the things are happening is, they're being done the way they should be.
[LR267]

JOHN ALBIN: The issues that we see as an agency are not issues that I feel would be addressed by this bill. [LR267]

SENATOR PAHLS: Okay. [LR267]

JOHN ALBIN: I mean, you get complaints on employer audits, you get complaints on determination of claims, you get complaints about who's eligible for our training program or who's gotten what services for work. But they're not small employers feeling singled

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out or it's a special burden on them because they're a small employer. They often are because there's 48,000 of them, small employers, who feel that burden of government just in general and I don't want to downplay that, but it's not one where it's something that we've come in and imposed and said you've got to do this and it's a disproportionate issue for the small employer. [LR267]

SENATOR PAHLS: Okay. Thank you. [LR267]

SENATOR AVERY: Thank you, Senator. Senator Wallman. [LR267]

SENATOR WALLMAN: Thank you, Chairman Avery, and thanks for being here. Of that 2 percent you investigate, you said roughly. Is that, what, right? [LR267]

JOHN ALBIN: Two percent, I believe, is the audit standard of all employers for every year. [LR267]

SENATOR WALLMAN: And of that percentages, how much is found that they're not in compliance? [LR267]

JOHN ALBIN: Oh, there's a significant amount. I mean, it's...most of the cases, fortunately, are not gross violations, but there will be cases where there's, you know, we picked up, you know, some misclassified workers in that process--a significant number of them for that matter. You know, by and large, Nebraska employers are like the rest of Nebraskans: they abide by the rules. There can be miscalculations and that, you know. We find a significant number of Nebraska employers who overreported because they forgot there was a wage cap at \$9,000, so. [LR267]

SENATOR WALLMAN: Thanks. [LR267]

SENATOR AVERY: Thank you. Any other questions? I don't see any. Thank you.

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[LR267]

JOHN ALBIN: Thank you. [LR267]

SENATOR AVERY: Anyone else wish to address the issues involved in LR267? Okay, I do not see any. That will close the hearing on LR267 and we will now move to LR230: Senator Brasch's interim study to examine issues relating to the development and implementation of a biobased product program for government procurement. A lot of alliteration there. (Laugh) [LR267]

SENATOR PRICE: Especially after the carbohydrate-rich lunch. [LR230]

SENATOR AVERY: Welcome, Senator Brasch. [LR230]

SENATOR BRASCH: Thank you, and good afternoon, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. Thank you for your attention to LR230 today and LB691 currently in committee. During this interim, the Nebraska Department of Administrative Services, the Soybean Association, and I have looked more closely at LB691 and the idea of developing and implementing a biobased purchasing program within the state of Nebraska. Together I believe we have created a sound beginning for a model for a biobased purchasing program for the state of Nebraska without legislation for the time being. My interest in seeing such a program come to pass in this agricultural-driven state has grown even greater. I believe it is nothing short of a duty for our state to lead the way in innovation and purchasing of biobased products, many of which are products created from the very crops grown here in Nebraska. It makes good sense to continue supporting our agriculture sector. To give you some background, this summer the Soybean Association held a biobased symposium to inform and educate about biobased product usage and its availability. Following the symposium, we met with DAS to further discuss the prospects of implementing such a program. Additionally, a conference call was held with the

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Soybean Association, Nebraska DAS, Iowa DAS, Ohio DAS, a representative from the University of Nebraska Business and Finance Division, the Iowa State University Extension Division, and our committee counsel, Christy. This allowed for a very open dialogue. Today, DAS has offered a thoughtful and practical process to make a biobased products readily available within their procurement process with a few administrative changes and no additional costs. We appreciate their time and effort spent researching and crafting this initiative that raises awareness about biobased products that are available. We will follow up with great interest on the biobased products purchased during the next several months. Additionally, you will hear from the Soybean Association. We are prepared to assist the department with resources and other information that will be beneficial in enhancing that process and further promoting their biobased products procurement. It is also my hope that the University and other state institutions will also prioritize the purchase of biobased products. Quite frankly, Nebraska should be leading this charge. As an agriculture state, the benefits are numerous and significant, with potential to develop even more biobased products as the markets expand. Thank you again to DAS and the Soybean Association and to this committee for your diligence. I look forward to further developing the biobased procurement legislation. Thank you, and I'd be happy to answer your questions. [LR230]

SENATOR AVERY: Thank you, Senator. I just want to applaud you for sticking to your guns. This is an important program and I know you got blind-sided by a heavy fiscal note last session, but you did the right thing to give the departments an opportunity to show that they can do this without being told to, but it's the right thing. [LR230]

SENATOR BRASCH: Thank you. Thank you, Chairman. [LR230]

SENATOR AVERY: Any questions from the committee? Senator Sullivan. [LR230]

SENATOR SULLIVAN: Thank you, Senator Avery, and thank you, Senator Brasch. So do I understand you, not only do you see there's no need for legislation, but there will be

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no additional cost to the agencies if they go this route? [LR230]

SENATOR BRASCH: That is in a written statement by DAS. Their statement reads, "Administrative Services believes that biobased products could be more readily available within the procurement process with a few administrative changes at no additional cost to the state." So at this time, they attach several supporting documents on how, as they're procuring products, how they will take consideration for any biobased products. It is our hope that it can systematically develop into a best practice for procurement and we do believe that legislation should be forthcoming after they have an opportunity. Perhaps not, but Nebraska is an agricultural state. We should be supportive as legislators in ensuring that procurement is giving biobased products preference. [LR230]

SENATOR SULLIVAN: You mentioned Iowa in your testimony. [LR230]

SENATOR BRASCH: Um-hum. Yes. [LR230]

SENATOR SULLIVAN: Does Iowa have legislation to that effect? [LR230]

SENATOR BRASCH: Iowa does have legislation. However, it is under a recycling act. How it was explained...because of their budget cuts, the person that they had designated to seek out candidates of biobased products, that person has since resigned and they have not refilled the position. They did have a person in that specific area. At this point, they do have...you know, Ohio is what we based our model legislation after. Ohio is implementing and working with the program. Iowa is following suit. At our summer symposium, which Christy also attended, Iowa showcased, through their university, their efforts on how they were very diligent and very progressive in utilizing biobased products. But as far as having it now actively enforced, monitored, tracked in Iowa, they're not doing that while this position is empty. [LR230]

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SENATOR SULLIVAN: Are we going to hear from DAS today? [LR230]

SENATOR BRASCH: Well, if they're not behind me, then probably not. They came in yesterday. We met with Carlos and their staff and we discussed this very openly. They've been very cooperative. You know, we're assured that this is going to be a part of their best practices. We did say that we would like to monitor this--you know, short of saying we'll watch each other. But they will also...they were good to work with and they were right there at the table all along the way--in conference calls, in research. And just from reading that first sentence earlier, that seems very promising to me, that's...you know, maybe we won't have a bill this session, but I would like to see that as they work on making it part of best practice that we could also both agree that they could do it with administrative changes, not additional staff, and that it would not cost...you know, the fiscal note was quite large. [LR230]

SENATOR SULLIVAN: And I presume the person from the Soybean Association will be talking about the kinds of products that the state might be using. [LR230]

SENATOR BRASCH: Yes. Yes. [LR230]

SENATOR SULLIVAN: Okay. Very good. Thank you. [LR230]

SENATOR AVERY: Any more questions? Senator Price. [LR230]

SENATOR PRICE: Senator Brasch, again, well done and I'd just add as a caveat that we've done other things in the committee here that, you know, when you have legislation and we're able to get it done through changes of rules within DAS, so that process does work well when brought to the forefront, so well done. [LR230]

SENATOR BRASCH: Absolutely. [LR230]

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SENATOR AVERY: We experienced that last year. [LR230]

SENATOR BRASCH: Is that right, yeah. They have been very cooperative and very interested in moving in the same direction. [LR230]

SENATOR AVERY: Any more questions? Senator Pahls. [LR230]

SENATOR PAHLS: Well, I think we ought to get this tough negotiator in on some other bills. (Laugh). Thank you. [LR230]

SENATOR BRASCH: Thank you. [LR230]

SENATOR AVERY: Thank you, Senator Brasch. Good afternoon. [LR230]

LORI LUEBBE: Good afternoon. Good afternoon, Committee, my name is Lori Luebbe, L-o-r-i L-u-e-b-b-e, and I'm the executive director of the Nebraska Soybean Association here in Lincoln and first of all, I want to thank Senator Brasch for moving forward with this legislation. We did come to her kind of in a...the last, in the eleventh hour saying, you know, we need to try putting together a bill to get some biobased purchasing preference to the biobased products. A lot of that was spurred from our counterparts in Ohio's Soybean Association that worked with their state legislature to get a bill passed and a lot of our soybean states are trying to move forward with getting the biobased products out there and giving preference to purchasing them. A lot of times your biobased products are based with your soybean or corn oil and some of the other crops and crops that would grow here in the state, so we look at this for a win-win for our state and for our farmers and also for the utilizers and the users of the products. We don't need to depend on the petroleum oils because we've got homegrown resources here that we can utilize. I guess it was really encouraging when Senator Brasch let me know that the Department of Administrative Services is looking at some procedures to put in place to implement it. I know initially we wanted to come with legislation to make this

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kind of a law so we can really hold them to it and everything. But it was encouraging with some of the comments that she gave me that I think they're going to follow through on this and I think they've got a good framework set in place to go forth and purchase some of these products. I'm not 100 percent positive what some of the products out there that they are currently purchasing, but we did hold a symposium. Our Soybean Checkoff Board, whose main focus is education, research, and promotion--they hosted a symposium this summer and we did showcase some of the products that are out there that can be utilized within the state and university systems. A lot of those products can be everything from cleaners to lubricants to the diesel fuels. I know one individual in Omaha does do a lot of the biobased cleaning products that are out there for the tubs and the tiles and flooring and the hand soaps and everything, so there's products out there and a lot of these products are getting utilized or getting searched out and found through the USDA BioPreferred Web site. So, there are Web sites out there through the USDA BioPreferred program that are available for state agencies and hopefully, within DAS, we can work with them to connect them to the right people if it's within USDA...our national soybean group has a good working relationship with the USDA BioPreferred Program and we'd be at the assistance to help out if there's trying to get together some meetings with them to discuss, you know, hey, how should we look at this? How should we make it happen and everything? Because we have those resources, so we would be willing to be here to help out and kind of carry those conversations forward and hopefully try and get a lot of these biobased products utilized here within our state. I do know there's another product out there is a soy ink toner. I'm not sure cost-wise. I know it's a little more on the higher end cost to do the soy ink toner, and within state purchasing I'm sure they have their regulations set up on how they go about purchasing products if it's higher priced or a comparative price. So, we just want to introduce them to the products that are out there so as more people start to utilize these products, we're hoping those costs will come down and get more comparable to some of our other products they're currently buying. So moving forward, I guess, is what the Soybean Board and the Soybean Association we're going to continue our efforts on trying to get the message out about the biobased products. And I know...I think within the last week,

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your states...or your offices all received one of these little brochures in the mail that talks about the biobased products and what's out there. So if you haven't seen that yet, maybe ask your staffer to take a look at that. But we've got some Web sites on there and we're just going to move forward and continue our efforts and work with Senator Brasch any way we can to carry forward with the biobased products preference. Are there any questions? [LR230]

SENATOR AVERY: Thank you. Questions from the committee? Don't see any. Thank you. [LR230]

SENATOR SULLIVAN: Thank you, Lori. [LR230]

LORI LUEBBE: All right. Thank you. [LR230]

SENATOR AVERY: Anyone else want to comment on LR230? Okay, seeing none. (See also Exhibit 1) I guess it's my turn. We're going to move now to LR245, an interim study resolution introduced by me to examine how technology may be used in elections to make the process more efficient and user-friendly for voters. Senator Price. [LR230]

SENATOR PRICE: Senator Avery. [LR245]

SENATOR AVERY: Thank you. My name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28 here in Lincoln. I want to talk to you a little bit about the use of technology in elections. You know that over the years this committee has heard a number of bills that have looked at using technology in the election process. We heard bills that would use technology for voter registration, for electronic signatures on petitions, and for allowing citizens to vote and register on election day. I think most of us agree that technology will play a greater role in the elections in the future. Just how fast we get there is the question and the extent of which we use that technology is also a question. We are, however, already seeing the beginning of this future. More states are moving to

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paperless voter registration. We have not done that yet, but more states are. This system has been shown to be easier for the voter. It also has been cost-effective and has produced some savings because it eliminates the need for data entry by election workers. It can also reduce costs in other ways. Other states are using voter...senators...remote voting sites where technology allows citizens to vote the correct ballot at a centralized location in their county, such as a shopping mall or a library. We actually have in statute, I believe we put this in statute, that allows counties to do this. We tried it in Lancaster County a few elections ago. It turned into a partisan squabble between the Democrats and Republicans as to where these remote sites would be located. And so the Secretary of State and the local election commissioner kind of backed away from it. I'm urging them to try again. I think that it's something we can do. We can probably do it without fighting each other. The United States government is working on pilot projects to allow military and overseas citizens to vote on-line. We can learn something from that and I think we're going to be watching that very carefully. The idea of everyone voting on-line might be long into the future, but I believe it's coming. We will be doing that eventually. I also believe that technology can be a useful tool in the election process. It can make the process more efficient, it can make it easier and more convenient for the voters to use, as well as increasing the number of people who do vote. And, as I indicated before, it can also help us save some cost. Certainly we as elected officials have to always be careful to ensure that the election process is fair, that it is secure, and not subject to corruption and fraud. We must always make sure that the security and privacy of the vote is protected. Another consideration in looking at technology in elections is, of course, the question of financing. Technology often comes with a heavy price. As you know, right now we are facing a situation soon to come upon us where the funds from the Help America Vote Act will run out, and I think we have about two years before we have to face this issue. This committee will need to make a decision on whether the state will pay for the maintenance of our current election equipment or whether we will pass that cost on to the counties. That's not going to be an easy issue for us. The technology that we're using today is state of the art, but it is expensive to maintain and would certainly be

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expensive to replace. Also in conjunction with that issue of financing, I think we must also understand that technology can allow us to capture some savings. Outlined in the memo in your packet you will find updates on some of the major election and technology issues, an update on electronic voter registration, also an update on on-line voting, on-line and digital petition signatures and election day vote centers. Every year, this committee hears proposals that use technology in the election process. We will continue to debate and discuss these issues. I believe there is great potential here for us if we're willing to take these issues head-on. We can make the voting process easier and more convenient for the citizens. I believe that's a noble objective. Not everybody agrees with that, but I have spent a good part of my last five years in this Legislature trying to make voting easier and I've been criticized for that by some people, but not everybody disagrees with me, and I will keep pressing. With that, I'd be happy to take questions. [LR245]

SENATOR PRICE: Thank you, Senator Avery. Are there any questions? Senator Sullivan. [LR245]

SENATOR SULLIVAN: Thank you, Senator Price. Senator Avery, how does Nebraska compare with...on voter turnout compared, you know...are we... [LR245]

SENATOR AVERY: I think...my understanding of that issue--and it's a very interesting and important question--is that we do very well, especially during elections in presidential election years. It's not uncommon for Nebraska to turn out in excess of 70 percent and certainly in some counties it's really impressive. Nebraska, I think historically during presidential elections, we outperform a lot of the East Coast and West Coast states, but we are part of a group of High Plains states that usually perform well on voter turnout. When you get to off-year elections, those are nonpresidential year elections, the participation goes down because interest goes down. Unless you have a very hot issue in a county or community where people can make a direct connection between their participation and the outcome of that election that might affect them

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directly, those elections often don't have as much interest and therefore turnout is lower. When you get to primaries, the turnout sometimes in Nebraska can be embarrassingly low. But that's true around the country. We know that people turn out to vote when: (1) they understand the connection between the issue and their own personal circumstances; (2) when there is an issue before the voters that involves something over which they feel they have little control, but it's something that may affect them negatively--like the inflation, depression, war issues, things like that--turnout will be higher. We know that turnout also is related to people's income, education, general socioeconomic standing in society. People who have more education are more likely to know what the issues are, more likely to make a connection between those issues and their own personal circumstances, therefore more likely to vote. They're more likely to be involved in campaigns, they're more likely to be involved in political groups and political parties and all of those things affect it. I think Nebraska ought to be happy with the fact that we can take some pride in the level of our turnout. But that does not mean that we cannot improve. [LR245]

SENATOR SULLIVAN: That being said, and for all the reasons that you just mentioned, that they...that people are either inclined or not too inclined to vote, and considering the uniquenesses of Nebraska and its already high voter turnout, what advantage will using more technology...bring more people to the polls, assuming that that's the main reason you'd be doing this? [LR245]

SENATOR AVERY: Well, the advantage is that you expand participation in the Democratic process. If you make it easier, there is a likelihood that people who are less inclined to vote might actually, if it's easier to vote, might do so. [LR245]

SENATOR SULLIVAN: Do we have any basis, statistical basis, for that? [LR245]

SENATOR AVERY: I...there are some studies there. I can't recall them, but there is some counterevidence as well and I can recall the counterevidence. It might undermine

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my argument a bit, but let me tell you this. When we went to Motor Voter, remember that? Where you were asked if you wanted to register to vote when you get your driver's license, there was the feeling that this would improve turnout. Well, it didn't do that. What it did was it made turnout look worse because you had more people eligible to vote and more people registered to vote, but about the same number of people turning out to vote, so the percentage went down. I think, though, that just being registered is not enough. We need to make voting more convenient, and I think if you have satellite voting places, which we can do in the state already, and you are out shopping at SouthPointe or somewhere on election day and you pass a kiosk or a table where you can actually cast a vote and you think, oh gee, today's election day and I'm 10 miles from my voting place, I can vote right here. The chances are probably pretty good that you will vote there, but you may not make it 10 miles back to your voting place. Those are some of the things we can do. [LR245]

SENATOR PRICE: Senator Wallman. [LR245]

SENATOR WALLMAN: Thank you, Senator Price. You know, I'm hesitant on aging population in rural America. Are they going to vote electronically? And question number two, with WikiLeaks and everything, the security thing, you know, I got a man in my district, you know, but he's worried about security on electronic voting. You probably know who it is... [LR245]

SENATOR AVERY: Yeah, you bet I do. [LR245]

SENATOR WALLMAN: ...and his name is Charlie (phonetic). (Laugh) So I have not near as much concern as he does, but I do have some concerns. But number three, I think... [LR245]

SENATOR AVERY: You've got to keep these short because my memory's not that good, Senator. [LR245]

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SENATOR WALLMAN: Okay. And number three, I think one of the reasons we have low voter turnout is because of the hours we can vote. You know, a lot of people now work 10-12 hours a day or two jobs and maybe we ought to have our voting booths from 12:00 to 12:00 at night. But the TV and the monitors and the media, they want that baby at a certain hour so they can get it on the news. So we're making the voting hours for electronic media. [LR245]

SENATOR AVERY: You might want to...I see that we have an election commissioner here and I hope she comes up and testifies, because that would be a good question to ask her. Now let me take the other two. [LR245]

SENATOR WALLMAN: Okay. [LR245]

SENATOR AVERY: The truth is about elderly voters...elderly voters are more likely to vote than any other demographic group and it doesn't matter where you go. And we make it very easy for them to vote because usually you've got voting places right there in the nursing homes, for example. And we have the Get Out the Vote efforts where you'd have vans of people driving them to the polls when they don't live in a place that's that convenient. In fact, you know, having been through two campaigns at least and more, that one of the first things you do in a campaign is you focus on those frequent voters and they're almost always elderly voters. They never pass up a nursing home. Never. Second issue you raised about the security of the vote. I mean, I think that there are some issues there that have to be addressed, but the technology, I think, is such that we can do it. It might require a little extra effort, but I'm not too worried about voter fraud. You know, we are probably going to have a debate in this next Legislature, our next session, about voter ID. It came out of this committee. The premise behind the argument that we need to show photo ID at the polls is that there is widespread fraud in elections in this country. It's not so. There is fraud, but the fraud is in that charge that we have fraud in this country. There is not widespread fraud in this country in elections.

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[LR245]

SENATOR PRICE: Senator Brasch. [LR245]

SENATOR BRASCH: Thank you. Thank you, Chairman Avery. As you know, I do enjoy technology--iPhone, iPad, laptop, desktop, my vehicle--I think it's wonderful. However, I do believe that technology--Internet, on-line--is getting to a wonderful point, but it's not reliable high speed everywhere yet, especially in our rural areas. Our staff, we went...they had a broadband Internet conference here this week. We've met with the PSC, we've met with broadband providers, service providers. The reason we started working on it this summer was we had several university students in our district trying to take on-line summer classes and they can't get reliable service yet--high speed, all the time, an assurance. So, I believe technology's getting there. I do believe we're almost there, but we are not there yet. But when we talk about the need for it? Absolutely. Our schools are wired with fiberoptics. That next generation of voters? They are on-line--moreso than ever. That is the way they will do business, that is the way the world does business now: virtually. We work globally. I believe that we are preparing for the future and it is with us. So as far as Internet fraud or...I know there's firewalls and it's safe, but I'll have to...whoever your constituent is, yesterday I had a tech problem on my computer and I sit back, you know, we called. All of a sudden, without my touching the keyboard, the mouse is moving around, they're click, click, clicking from somewhere for me. So I know that we have permissions here with our technologists and technology to work remote, even on troubleshooting, so...but I believe that all of the assurances, all the security. But the population, you know, it would take a sociologist or someone to, you know, confidently say that yes, the people going to school today are doing homework on-line, you know people are doing testing on-line, we work on-line, we work virtually. So it is a good, solid piece of legislation to consider, but that is going to be essential. If we don't do that, we will have a lost generation of people not knowing what to do with the pencil filling in the blanks, so. [LR245]

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SENATOR AVERY: Right now there is a consensus, I believe, among technicians that we are not ready yet for on-line voting because of the issues involving security. But we will get there and we will become an on-line voting society in our lifetime. Maybe not Charlie's (phonetic), but everyone... [LR245]

SENATOR JANSSEN: You're giving yourself too much credit. (Laugh) [LR245]

SENATOR PRICE: Are there any further questions for Senator Avery? See none. Thank you, Senator Avery. Would anybody wish to speak on this LR245? [LR245]

SENATOR AVERY: There's my election commissioner. [LR245]

DIANE OLMER: I'm kind of afraid to come now. [LR245]

SENATOR PRICE: Don't be. Welcome. [LR245]

DIANE OLMER: Good afternoon, Senators and members of the committee. This is...I'm Diane Olmer, D-i-a-n-e O-l-m-e-r, and I'm the election commissioner for Platte County, Columbus, Nebraska. I'm also representing the election law committee from Nebraska's Association of County Clerks, Election Commissioners and Registers of Deeds. So we kind of thought one of us should be here to kind of see what the committee or the... [LR245]

SENATOR AVERY: To see what I'm up to? [LR245]

DIANE OLMER: ...review came up with. Yeah, see what Senator Avery's up to, and a lot of times it seems like we're here in opposition to Senator Avery. I'm not. I'm not against technology. Some of the things he brought up we probably would have to debate in the laws, but the laws mentioned in this review were about on-line voter registration and the petition signatures, on-line signatures, and we're not opposed to that. I just truthfully

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wanted to be here and make sure that, as Senator Avery mentioned, to remember the financial part of it. The Legislature is always considering lately, for sure the last couple of years, what kind of revenue you have and what you can afford to spend. Please keep that in mind when you decide if you should pass either one of those bills. As Senator Avery mentioned, the Secretary of State's money from the federal government and the HAVA program is drying up, and so top on their lists and ours is who is going to finance the maintenance of our election equipment. We think that should be higher on the list than putting the voter registration on-line or the electronic signatures for petitions. Not that we're opposed to them because I think that truthfully you're talking about making it easier for the voter. A lot of that will make it easier for our office, too. So I kind of would compare it to conducting your own family finances. You kind of usually have to look over things and say this is what we would like. What do we really need and what can we afford? So I just would like you to keep those things in mind. So now, do you have any questions? [LR245]

SENATOR AVERY: We know you'll be watching us, Diane. (Laugh) [LR245]

DIANE OLMER: Okay. [LR245]

SENATOR AVERY: Senator Pahls. [LR245]

SENATOR PAHLS: So I am to interpret that you think that the state has been passing some of its obligations down to the county level when it comes to monies. [LR245]

DIANE OLMER: Well, I'm afraid when it comes to the maintenance of the machines. A lot of times, it seems to me--personal opinion here--that when you can't decide or you can't afford it, then it's just going to be...well, spread it out evenly across the state and it will be the counties' problem. And was it last year, I think, you cut the aid to counties? So, as a county in general, yes, we're getting less from the state. So I don't want more put on our plate. [LR245]

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SENATOR PAHLS: And the monies that you have received in this area in the past have been federal dollars? [LR245]

DIANE OLMER: The HAVA money came to the state of Nebraska and then the state of Nebraska or the Secretary of State's office purchased that equipment and distributed it to the counties. And so right now, technically, the scanner that we use in Platte County in our AutoMARK machines are in my inventory, but they're listed as being still owned by the Secretary of State and when it comes to the maintenance contracts, they negotiate with ES&S and they pay those maintenance contracts. So that's how it works right now. [LR245]

SENATOR PAHLS: Through federal...apparently through... [LR245]

DIANE OLMER: With that HAVA money, yes, that federal money. [LR245]

SENATOR PAHLS: ...and logic tells me with the trillions of dollars that we're indebted at the federal level, probably we'll not see a lot of those monies coming to the states in the future. [LR245]

DIANE OLMER: Yes, that is a fact. The HAVA money is, well, from what I've heard from the Secretary of State's office, it's drying up. Already, we have enough to get us through the 2012, as far as taking care of maintenance on our machines, through that election year. But after that, then it's up to who's going to pay for the maintenance on that equipment. [LR245]

SENATOR PAHLS: So we should be taking a look at this as something...what we need instead of something what we want. [LR245]

DIANE OLMER: Well, that's, there again, my opinion. I think so, yes. [LR245]

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SENATOR PAHLS: Okay. Thank you. [LR245]

DIANE OLMER: Um-hum. [LR245]

SENATOR AVERY: Senator Janssen. Oh, and by the way, welcome to the session.
[LR245]

SENATOR JANSSEN: Thank you, Chairman Avery. Welcome, Senator Wallman.
Thanks for being here today and generally, I am actually, almost universally I agree with
opposing Senator Avery on his bills, but... (Laugh) ...so I can appreciate that, but...
[LR245]

SENATOR AVERY: He specializes in it. [LR245]

SENATOR JANSSEN: With Platte County, you talked about reducing the county aid.
Are you guys at your...you guys, folks in Platte County, are you at your max levy right
now? [LR245]

DIANE OLMER: You know, and that is...I'm not real knowledgeable on that. So I didn't
come with that kind of information so I really can't answer that question. [LR245]

SENATOR JANSSEN: That's just something that I've been considering. I'm from Dodge
County and, while we did reduce that, I'm a big believer in local control, which most
people are and so is Dodge County. And they actually lowered their levy in spite of the
reduction in... [LR245]

DIANE OLMER: And the reason I don't know a lot of that is I am the election
commissioner and I'm not the clerk, where in Dodge County Fred is both, and so he'd
have that just right on hand, so I'm kind of at a loss there. [LR245]

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SENATOR JANSSEN: So I've just been kind of wondering how...I'm very proud of Dodge County for the fact that they actually lowered their levy in a time where county aid was taken away from them, to overcome that. [LR245]

DIANE OLMER: Right. [LR245]

SENATOR JANSSEN: Just a question I had, but maybe I could ask Arnie (phonetic) if he's still up around there somewhere. [LR245]

DIANE OLMER: Sure. Okay. [LR245]

SENATOR JANSSEN: Thank you. [LR245]

SENATOR AVERY: Senator Sullivan. [LR245]

SENATOR SULLIVAN: Thank you, Senator Avery. Thank you. Help me a little bit on understanding what kind of equipment we're talking about in each county. You mentioned the scanners that actually... [LR245]

DIANE OLMER: The scanner is the machine that we actually run the ballots through to count... [LR245]

SENATOR SULLIVAN: Every single ballot. [LR245]

DIANE OLMER: ...and in Nebraska we have counties that use scanners, central scanners... [LR245]

SENATOR SULLIVAN: Uh-huh. [LR245]

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DIANE OLMER: ...which is what Platte County does. And then there are also counties that have M100s, which is a machine--and it's usually in a smaller county--where when you leave the polling place, your ballot gets put into this machine and it's actually read there and then a card comes out which is combined with the other results in your precincts and that's how they do their scanning of ballots. So there's two different kinds of equipment for scanning ballots in Nebraska. And then also at each polling place we have to have an AutoMARK machine which is a machine that has to be reprogrammed just like the scanner does every election and it's to be used by people with disabilities. So say I come into a polling place and I have a vision disability, the old-fashioned way was my husband's going to help me, which you can still do or I need two poll workers to help me, which you can still do. But now they could opt to use this machine and they would get a ballot like everybody else. The ballot goes into the machine and then there's a screen which brings the ballot up, but if I have a vision problem, what does that do me any good? You're wearing earphones and you can touch on the screen, but you can also use a touch pad and get through with telling the machine how you want to vote your ballot. When you get done, you press a button. It actually marks your choices and then spits the ballot back out at you and your ballot goes into a sleeve into the box like everybody else's. So you, for this one time, got to vote in secret without anybody else knowing how you voted. So that's the whole purpose. If I vote with my husband or with two poll workers, somebody else got to know. So the whole purpose is that you, like everybody else, gets to vote in secret. [LR245]

SENATOR SULLIVAN: Is that being led by ADA--American with Disabilities Act?
[LR245]

DIANE OLMER: Yes. Yes, it's been... [LR245]

SENATOR SULLIVAN: So counties don't even have a choice. [LR245]

DIANE OLMER: Right. [LR245]

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SENATOR SULLIVAN: They have to...whether it gets used or not. [LR245]

DIANE OLMER: Definitely, and in... [LR245]

SENATOR SULLIVAN: ...and every polling place? [LR245]

DIANE OLMER: At each polling place, yes, and it doesn't get used as much as the money spent on it, would be just my opinion. [LR245]

SENATOR SULLIVAN: Exactly. Exactly. Yeah. [LR245]

DIANE OLMER: So it's very expensive, but...and that part, the county's already paying for the reprogramming of it for each election, but right now, the state with the HAVA money is paying for the maintenance of it for the year. So that's the new part that might be either shuffled on to us or... [LR245]

SENATOR SULLIVAN: Um-hum. [LR245]

DIANE OLMER: ...it's not going to come from the federal government anymore, the way it sounds. [LR245]

SENATOR SULLIVAN: Thank you. [LR245]

SENATOR AVERY: Any more questions? You're right. That is the issue we're going to be facing in two years: whether or not HAVA money is going to be available. My guess is not.... [LR245]

DIANE OLMER: Yeah. [LR245]

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SENATOR AVERY: ...and then whether or not the state is going to have the resources to keep from passing that on to you. [LR245]

DIANE OLMER: Right. [LR245]

SENATOR AVERY: And this committee has a lot of wise people on it and we'll figure it out. [LR245]

DIANE OLMER: Good deal. I have no doubts, then. Thanks for having me. [LR245]

SENATOR AVERY: Thank you. [LR245]

LARRY DIX: Good afternoon, Senator Avery, members of the committee. For the record, my name is Larry Dix. I'm executive director of the Nebraska Association of County Officials, appearing today really to see if there are any questions and talk a little bit about technology. And many of you that have heard me testify for a number of years, my background's technology and about 10 years ago I spent a good number of years in Texas working for an election company and so I'm very in tune to security and on-line voting and things that we have seen over the years and touchscreen voting and all of those things. I'm certainly a proponent of technology as long as we balance out the cost of the technology with what we're really trying to accomplish at the end of the day. And I think earlier we had heard an example of the AutoMARKs and I know in some counties, you know, we have to have those in every polling location. But occasionally, we'll have counties say we went through an election, nobody used them. And while we understand we've got to have the ability for anyone disabled to vote, there's significant cost to having those in all those precincts. So when we look at that technology, and that is a new technology, we need to balance that out. One of the things that NACO's going to be bringing forward, and if anyone on the committee wishes to carry the bill for us this year, it's a very, very minor bill. It talks a little bit about technology in the fact that right now, when we run an election, at the end of the night...the canvassing at the end of the

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night--not necessarily the end of the night--but throughout the next couple days the Canvassing Board meets and they actually go through a process of taking information off of a computer printout and reentering it over here in a book for the historical preservation of the record. And we're going to be bringing forth an idea to see if we could simply take the computer printout, have the proper initials on it, and let that become the historical record, as opposed to looking at the possibility of an error of reentry of data. And so there are some folks that say, well, I think we can do it today and others say, well, I'm not so sure, but we are statutorily...we as counties typically have to have authority to do something before we can do it. So that's a little bill that I know we'll be bringing forward to the committee this year, so if anyone has an interest in that, you know, this is a great opportunity to get everybody here at one point in time and say who wants to carry that bill. So with that, I'll close and I'll be happy to answer any questions anybody has. [LR245]

SENATOR AVERY: (Exhibit 3 re LR230) Thank you, Mr. Dix. Any questions? No questions. Thank you. Let me make a correction here. I failed to read into the record testimony on LR230 from the American Chemistry Council. They submitted testimony that essentially is the same that they submitted last year on LB691. Anyone else wish to address the issues relating to LR245? All right. Thank you very much. That ends the hearing on LR245 and now we'll move to LR307, an interim study introduced by Senator Schilz to examine the process of decreasing the number of county commissioners--not controversial at all. (Laughter) [LR245]

SENATOR PRICE: At least it's not like daylight savings time... (Laughter) ...oh which, by the way... [LR307]

SENATOR AVERY: Welcome. Welcome, Senator Schilz. [LR307]

SENATOR SCHILZ: (Exhibit 1) Thank you, Senator Avery, and good afternoon to members of the Government, Military and Veterans Affairs Committee. My name is Ken

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Schilz, K-e-n S-c-h-i-l-z, and I represent Legislative District 47. I bring LR307 to you on behalf of a constituent and former commissioner from Keith County. LR307 seeks to find a clear process if a county seeks to reduce their number of commissioners. Hopefully, through this process we'll provide a transparent process that both the Secretary of State and the county can refer to when reducing the numbers of county commissioners. Currently, Nebraska state law provides a process for increasing the number of county commissioners and it also allows for decreasing the number of county commissioners. However, there is no real distinct process in place to do so, and I have a letter at this time from former commissioner Cliff Welsh from the Brule area that I would like to read for the record and I have a copy of that for everyone as well. Thank you. This one says: Dear Senator Schilz, I am requesting on behalf of myself and many other concerned Keith County residents that you and the Legislature provide in statute clear guidance for how the county can reduce the number of commissioners by vote. As you know, several years ago the statute was changed to allow counties to increase the number of commissioners. This outlined how the districts would be adjusted to provide equal population and district boundaries. The problem as I see it, if a county would vote to return to less commissioners, elected on a two-year rotation, nothing in statute explains how you would downsize to equal population districts prior to election, allowing candidates up for reelection to know which district they would represent. As I understand it, now if by vote, the county would downsize it would go to court for a judge to possibly sort it out. Thank you for your interest and assistance. Respectfully, Cliff Welsh, Former Commissioner and Former President of NACO. And at that point I'd be more than happy to answer any questions. I think it's one of those things that should be pretty straightforward, should be pretty cut and dried. We just need to think about, okay, if you're going to do this and you're going to reduce, when should that happen so that the election can take place and be orderly instead of maybe throwing it all into the mix and saying, well, you guys figure it out. So that's where at. I think that Larry Dix is here and he will get up to testify as well, so, I'd be more than happy to try to answer any questions. [LR307]

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SENATOR AVERY: Thank you. Wouldn't it be easier just to consolidate county governments? (Laughter) [LR307]

SENATOR SCHILZ: I guess that depends on what side you're on, huh? Haven't we tried that before? [LR307]

SENATOR AVERY: We've talked about it in this... [LR307]

SENATOR SULLIVAN: That's what this discussion's all about... [LR307]

SENATOR SCHILZ: Senator Pahls (inaudible). Maybe that's the guy to ask that question, huh? [LR307]

SENATOR AVERY: We'll get to him in a minute. Senator Wallman. [LR307]

SENATOR WALLMAN: Thank you, Senator Avery. Thank you, Senator Schilz for coming. [LR307]

SENATOR SCHILZ: Sure. [LR307]

SENATOR WALLMAN: I'm one of the blue counties and it's been discussed, but by petition drive. Could you do it by petition drive now or not? [LR307]

SENATOR SCHILZ: I think that's the way it works now, yeah. [LR307]

SENATOR WALLMAN: And that's a tough job. They wanted me to do it, so. And also to consolidate counties. You know, some of them are...but I'm not touching that one. (Laughter) Thank you. [LR307]

SENATOR SCHILZ: Yeah, no problem. Thank you. [LR307]

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SENATOR AVERY: He's going to lay off you. I don't see any more questions, Senator.
[LR307]

SENATOR SCHILZ: Wow, that's easy. Thank you, folks. Well, it's not daylight, you're right, it's not daylight savings, so much easier. Thank you so much. [LR307]

SENATOR AVERY: Welcome, Mr. Dix. [LR307]

LARRY DIX: (Exhibits 2 and 3) Good afternoon, Senator Avery, members of the committee. My name is Larry Dix. I'm executive director of the Nebraska Association of County Officials and here to visit just a little bit about going from five to three commissioners or super--not supervisors--county board members. I'm going to be handing out a map for you that graphically sort of depicts the state so you can see how many counties have three-member boards, how many counties have five-member boards, and how many counties have seven-member boards. And then there's another item that's being handed out that you can read it at any point in time. It's called the Norfolk Daily News Blog. Madison County recently had a conversation about going from three to five--not five to three, but three to five and I was interviewed by the paper just talking about, sort of, some of the pros and cons of all those and so that's included in those articles and they did a nice job of, you know, reflecting what I thought were the pros and the cons. I also would tell you that recent history...in 2010, Howard County...let me back up a little bit. In the late '90s, Howard County voted to go from three county board members to five county board members. In 2010, it was put back on the ballot to go from five county board members to three and that passed. And so Howard County right now is in the process of doing just that: going from five back down to three. And the process that's going on in Howard County is that, as we set here today, we will roll into the 2012 election and at that point in time there will be two county board members whose term...whose four-year term...they'll be at the end of their four-year term. So in 2012 in Howard County, they will not have an election for county board members. In

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2014, then, the other three county board members' four-year term will expire and at that point in time, one of those will run for a two-year term and the other two will run for a four-year term, so then that gets them back on the rotation of having every four years someone running every four years but every two years, having the opportunity for somebody on that board to be up for election. Now...and Senator Schilz and I have had a conversation about this--that worked well this time in Howard County because the two board member...two out of the three were up at the wrong time. If it was reversed, and three out of the two were up at the wrong time, then there would be some confusion as to which one of those ended up running. There would have to be redistricting, really, at that point in time. So it gets a little confusing. For Howard County I think it worked out pretty well because the stars sort of aligned. When I talked to the Howard County clerk and said, well, have you done your redistricting at this point in time? They really haven't because they really don't need to do that to take from a five-member district down to a three until, really, two years from now because that's when the next election will be held that has a two-year term and two four-year terms. So it's...nothing's, I don't think, over the years even going from three to five and all those, it always creates a little bit of angst and confusion on how you draw the lines and redistrict. But it's something that, over the years, the counties have just worked their way through because there's been a number of counties that have gone through that process. And of course Keith County, the county that Senator Schilz was mentioning, in 1998 they went through the process of going from three to five, so we see that from time to time and you'll see on this list the numbers that are three, five, and seven. Typically, your seven-member counties are ones that are still township form of government. That's typical, so. But with that, I'd be happy to try to answer any questions or clarify the process and I would rest assured we'll be happy to work with Senator Schilz and the committee if the committee feels there needs to be clarification in that language. [LR307]

SENATOR AVERY: Thank you. Senator Wallman. [LR307]

SENATOR WALLMAN: Thank you, Chairman Avery, and thanks for being here, Larry.

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Those...I live in a township county. Is any of those in the state that went to five or do states have a... [LR307]

LARRY DIX: As long as they're a township county... [LR307]

SENATOR WALLMAN: So seven? [LR307]

LARRY DIX: ...they have to stay at seven. They... [LR307]

SENATOR WALLMAN: Yeah. [LR307]

LARRY DIX: They do. At the time that they make a choice to end their township form of government, then they have some options, but as long as they're still a township form, they have to have seven members. [LR307]

SENATOR WALLMAN: Thank you. [LR307]

SENATOR AVERY: Any other questions? Senator Karpisek. [LR307]

SENATOR KARPISEK: Thank you, Senator Avery. What's the main driving force why they would want to go down? [LR307]

LARRY DIX: As many years as I've been here, I've never seen anyone until the Howard County go three to five. And so I talked to a number of--a couple of the Howard County board members and said what was the sentiment of the community when they were talking about this. What was presented was there could be some cost savings and that cost savings comes by the way of if you have--and we'll just use this as an example--say you have five county board members that get paid \$10,000 a year and you go to three, you can save the \$20,000. Along with that, possibly some retirement benefits and other benefits. The downside of that is, from the Howard County Board, is

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that now you're down to three members sitting on more committees than what they were before and then the number of people that you represent all of a sudden has become larger. And so I would tell you and I visited with Senator Schilz, our office--and I get calls from senators' offices more times than not on the three-member boards where people think there's a violation of the open meetings law because I have two county board members who happen to be standing side to side on a football sideline and somebody comes up and asks them about a culvert and all of a sudden we're in an open meetings violation. Whereas a five-member board, typically we don't get the calls on that. But that was how it was explained. [LR307]

SENATOR KARPISEK: I was guessing that it's a cost savings and I guess the other way to go about that is to lower their salaries or not raise their salaries. I think...I don't know what the counties pay out west, but around here they make a lot more money than sitting at this table. So I guess that's just a thought of mine is if it's the cost savings, that they could look at... [LR307]

LARRY DIX: I think that, you know, at the end of the day it's always a vote of the people within the county, which I think it always should be. But at the end of the day you have to weigh out the dollar cost savings--is it really worth \$20,000 to have less people represent the people within the county? [LR307]

SENATOR KARPISEK: And again they could say, hey, let's all take a pay cut and do the same thing. [LR307]

LARRY DIX: They could do the exact same thing. They could take the five \$10,000 that, you know, they could divide it either way, up or down and... [LR307]

SENATOR KARPISEK: I'll bet that won't happen, though. [LR307]

LARRY DIX: ...and do the same thing. [LR307]

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SENATOR KARPISEK: All right. Thank you, Mr. Dix. [LR307]

SENATOR AVERY: Any other questions? I don't see any. Thank you, Mr. Dix. Any other individuals who wish to address LR307? Okay. Thank you very much for your attendance and your patience. That ends the hearing today and I'm going to ask the committee to stay around for a brief executive session on the gubernatorial nominations. [LR307]