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Government, Military and Veterans Affairs Committee
January 19, 2012

[LB754 LB755 LB758 LB775]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, January 19, 2012, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a hearing on LB775, LB754, LB755, and LB758. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Charlie Janssen; Rich Pahls; Les Seiler; Kate Sullivan; and Norm Wallman. Senators absent: Russ Karpisek. [LB775]

SENATOR AVERY: Good afternoon. I want to welcome you to the Government, Military and Veterans Affairs Committee. My name is Bill Avery, Chair of the committee, and I am going to introduce the members who are present first, then we'll talk a little bit about the order of the day and procedures. This time, I'm going to start as I always do with Senator Pahls. You thought I was going to reverse the order? Senator Pahls is from Millard. And seated next to him is our newest member of the Legislature and a new member of this committee, Senator Les Seiler from Hastings. And next to him is Senator Charlie Janssen from Fremont. And seated next to him is our Vice Chair, Senator Scott Price from Bellevue. To my immediate right is Christy Abraham, who is the legal counsel for the committee. Senator Karpisek from Wilber will not be here today. He has a sick father. And next to him is Kate Sullivan. She will be here later on. She's from Cedar Rapids. And then Norm Wallman from Cortland is the last senator here. And then on the end is Sherry Shaffer, who is the committee clerk. The bills that we will take up today are posted outside the room and we will take them up in the order listed: LB775 by Senator Brasch, and then there are three of my bills that we will discuss. If you are planning to testify for or against any of these bills, we ask that you fill out a form that is available at each entrance. These forms call for certain information. We want you to print that clearly so the clerk can have accurate information. And if you are here and wish to be recorded for or against any of these bills but do not wish to testify, there is another form, slightly lighter in color. We ask you to sign that as well. If you have any material that you'd like to distribute to the committee, we need 12 copies. And if you do not have those copies, you can give them to the page and the page will get you copies. Our page is Catherine Larsen from Omaha. Where are you, Catherine? She stepped out? All right. When you take the chair at the table, we will ask you to spell your name--state your name and spell it very clearly for the record. We will be using the lights system. You have a total of five minutes for your testimony, so when the green light comes on, that means that you have four minutes before the amber light comes on. That's one minute and you should be winding down your testimony by then. And when the red light comes on, you have to end your testimony. And please, please do help us observe that system because it does allow us to give everybody a fair chance to speak and allows us to get through the bills in a timely manner. If you have a cell phone or pagers or any electronic devices that make noise, please silence them, and that way everybody will not be...nobody will be disturbed. Please listen to the testimony given before you get up here so that you do not repeat what has already been said and that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

way, we can be more efficient in how we do business here. All right, with that, I will call Senator Brasch forward to talk to us about LB775. Welcome, Senator Brasch. We miss you already. [LB775]

SENATOR BRASCH: Well, I miss you, too, but...however...okay, good afternoon, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. I am Lydia Brasch, L-y-d-i-a B-r-a-s-c-h, and I represent District 16 in the Legislature. I am before you today as introducer of LB775, a bill brought to me by State Auditor Foley. LB775 allows the State Auditor to disclose audit working papers to local, state, and federal law enforcement for the purposes of a criminal investigation. Currently, the Auditor is limited only to being able to share these working papers with a county attorney or the Attorney General, as well as the Legislative Audit Performance Committee. These audit working papers are documents and evidence that support the Auditor's conclusion or findings in the course of an audit, and the ability to share these working papers with law enforcement is important to criminal investigations conducted by these agencies. The other component in LB775 also grants access of the audit working papers to an independent contractor whose services are utilized by the Auditor to assist with a particularly unusual or complex audit. This allows the Auditor to seek outside assistance if considered necessary, and the independent contractor would be subject to the very same penalties as the Auditor and his or her employees if they breach the confidentiality of the audit working papers. Auditor Foley will be following me with more detailed explanation of the application and practices of the aspects of LB775. I am happy to answer your questions. [LB775]

SENATOR AVERY: Thank you. Questions from the committee? No? I don't think this has ever happened. (Laughter) We don't have any questions. [LB775]

SENATOR BRASCH: I...wonderful. Thank you. Thank you very much. [LB775]

SENATOR AVERY: You're going to stay around to close? [LB775]

SENATOR BRASCH: I will more than likely waive closing, but I'd like to stay a little, thank you. [LB775]

SENATOR AVERY: Okay, all right. All right, we'll move to proponent testimony. Good afternoon. [LB775]

MIKE FOLEY: Good afternoon, Senator Avery and members of the Government, Military and Veterans Affairs Committee. For the record, my name is Mike Foley, that's F-o-l-e-y, and I am the Nebraska Auditor of Public Accounts. I appreciate this opportunity to testify in support of LB775 and first of all, Senator Avery, thank you very much for scheduling the bill so early in the session. It's always helpful to a bill, so thank you for doing that. Thank you also to Senator Lydia Brasch for introducing the bill at my

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

request. I really appreciate that as well. This is one of those bills that gets introduced with the thought that surely nobody would find a problem with this and of course, you never know. I've been around here long enough to know that there are surprises sometimes, but I truly think and believe that this is strictly a minor housekeeping technical revision kind of a bill and that's what intended here and nothing more. The first issue addressed in the bill relates to the confidentiality of audit working papers. This is the...this is last year's audit of Saunders County. It's one of 100 or so audit reports that we published last year. It's maybe 55 pages in length. But supporting the findings in this audit report are the audit working papers, which in many instances may be literally boxes and boxes of additional documentation. Those audit working papers are confidential and they should be, because in some cases, there's proprietary information included in the audit working papers that the Auditor gets to see but the public necessarily would not get to see because it's not a public record. But whether or not we're talking about Saunders County or Otoe County, Buffalo County, State Historical Society, Wyuka Cemetery, Nebraska Department of Military or the Child Advocacy Center in Grand Island, the common thread in all of those reports that I just mentioned and many more is that the report, when it was published, contained strong evidence of financial impropriety that might rise to the level of criminal misconduct. When we put those reports out, law enforcement needs to take the next step. I can only report what I find. I can't...obviously, I can't prosecute anyone. So the law enforcement community steps in at that point and takes it from there. They need to see not only the report, they need to see all those working papers. Current law says I can give the working papers to a county attorney or the Attorney General, but what about State Patrol? What about the FBI? Because we do a lot of auditing of federal funds. What about local prosecutors? That's the problem we're trying to address. And the bill just makes clear we can give our audit working papers to any level of law enforcement--local, state, federal--when they're needing those papers in the course of their official duties. The other issue that's addressed in the bill is this whole question of: What about contractors who work with my office? And at the present time, there are no contractors. It's just myself and the employees. But over the history of this office, on occasion we will engage the services of a contractor. The law restricts me and my employees from disseminating working paper information, but it's silent on the question of what about a contractor who might be working with the office. The bill simply makes clear even the contractor...in addition to myself and the employees, the contractors also cannot disclose the audit working paper materials. So that's all the bill is. It makes two very minor technical housekeeping corrections to the current statute. And with that, I'll close and take any questions, if there are any. Thank you. [LB775]

SENATOR AVERY: Let me ask you about--and thank you, by the way, for your testimony--... [LB775]

MIKE FOLEY: Sure. [LB775]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

SENATOR AVERY: ...a 1999 Attorney General Opinion that said that you could not share these working papers with the State Patrol. That's quite a long time ago. Why was nothing done before now? [LB775]

MIKE FOLEY: Well, we could... [LB775]

SENATOR AVERY: Or have you tried? [LB775]

MIKE FOLEY: Well, here's the truth of the matter. If this bill goes nowhere, I can get my job done because I can work with county attorneys, I can work with the Attorney General, I can work with the agency that's subject to the audit. We can find a way of legally getting the working papers to the State Patrol or FBI, whatever it might be. This is kind of a streamlining of the process. [LB775]

SENATOR AVERY: So it's mostly technical, right? [LB775]

MIKE FOLEY: It is, it is. [LB775]

SENATOR AVERY: Yeah, okay. Questions from the committee? Senator Sullivan. [LB775]

SENATOR SULLIVAN: Thank you, Senator Avery. But just what you said then, Mr. Foley, gives me pause to think okay, particularly in the case of a contractor, what might potentially be an unintended consequence, I guess, of expanding this? [LB775]

MIKE FOLEY: It could be the improper dissemination of social security numbers that we would see as we're looking at documents. It might be sensitive personnel files that we would see that the public would never have access to. It could be Medicaid files with healthcare information. There's a whole panoply of things that are exclusions to the public records statute... [LB775]

SENATOR SULLIVAN: Um-hum. [LB775]

MIKE FOLEY: ...that we would...my office could still see those documents, but the public couldn't get those documents because they're protected. [LB775]

SENATOR SULLIVAN: Um-hum. [LB775]

MIKE FOLEY: And we want to make sure that a contractor who might be working with my office also could not disseminate those kinds of materials. [LB775]

SENATOR SULLIVAN: And then with respect to making the working papers available to law enforcement, are those papers made available at a certain point in the investigation

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 19, 2012

after a crime has been discovered? After charges have been made? Or what is...?
[LB775]

MIKE FOLEY: It might be; it might be done as we're working on the audit. [LB775]

SENATOR SULLIVAN: There's no definition of at what point they make those then?
[LB775]

MIKE FOLEY: No. No, because the audit working papers are developed as the audit is being conducted. [LB775]

SENATOR SULLIVAN: Um-hum. [LB775]

MIKE FOLEY: So then you build your file as you go. And then when you wrap up the audit, you finalize your working papers, and there's a filing system and so forth, and then they're...they remain sealed. [LB775]

SENATOR SULLIVAN: Okay, thank you. [LB775]

SENATOR AVERY: Senator Price. [LB775]

SENATOR PRICE: Senator, thank you. Mr. Foley, thank you for your testimony today.
[LB775]

MIKE FOLEY: Sure. [LB775]

SENATOR PRICE: The question...if I understood what you were saying right now, you can do the job now and that law enforcement is not encumbered in the process of doing their portion after an audit. If the law enforcement need, an Attorney General can do it, a county attorney, so the process is there. The question I have is: Is there a level that the county attorney would...or someone else. Let's say State Patrol want to do it. You see, you could get it to them, but would they have to have like a probable cause? And I'm not a lawyer, didn't sleep at a Holiday Inn Jr. or anything like that. But is it really the case that if we give the working papers and you...then right now, a fellow wants to go on a witch hunt, they'd have access to all this information. They could just dig and dig and dig and dig. They don't have to have a reason? They could just...if they come to you and say I want the working papers and I'm the State Patrol and you'd...they'd be able just grab the working papers? They don't have to have any level of...? [LB775]

MIKE FOLEY: Well, it's...no, it's...the bill says it's within the course of the agency's official duties, so... [LB775]

SENATOR PRICE: But that's a rather broad term is what I'm trying to say. The question

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

I have is we have a process in place now and I'm wondering if that process was put in place to make sure we didn't get--I don't want to say superfluous--requests. We just heard something yesterday where there is a policy where they didn't want to have people making requests because it was burdensome on the organization if they're always, you know, chasing their tails to fulfill a document request, right? So right now, if an audit is done and there's the findings and then says well, we want to dig a little deeper, they have a very prescribed process to get to those working papers. They can still get to them, but my question within that is: Do they have to meet a minimum level? Like probable cause (inaudible) think someone's been embezzling, right? Or they wanted to look at that, so they try to do the forensic background data, they just...they have to go somewhere to make that request and someone has to sort of say yes or no. So, they obviously have a filter or some bar they have to reach. And if we put this in place, that won't be there anymore because they'd have to make the request, you don't have to fulfill it, and there's no vetting of the request? [LB775]

MIKE FOLEY: Well, they would have to make a showing that they are needing my audit working papers in the course of their official duties and I think that's...that would satisfy me in terms of the people that I've interacted with at the State Patrol in particular because it's...I've never had any difficulties with them making frivolous requests. [LB775]

SENATOR PRICE: Right, so you just said that you would then have the authority to go ahead and release the working papers. It wouldn't go anywhere else. Where would they go now to get the authority? Let me ask that question. If someone wanted to go right now and said I want it... [LB775]

MIKE FOLEY: Well, it would be...it would really be more a burden for me... [LB775]

SENATOR PRICE: Okay. [LB775]

MIKE FOLEY: ...because I would need to coordinate with other law enforcement--county attorney, Attorney General and so forth. It wouldn't really be a burden so much for them. It just kind of streamlines the process for me to get the information to them when they call me, as they do from time to time, say hey, I just heard about your report on such and so, we want to pursue that. Can't we...can you meet with us and tell us more about what you've found and show us more of what you've found? And I just want to kind of streamline that process and get them the information. [LB775]

SENATOR PRICE: All right. Thank you. [LB775]

MIKE FOLEY: Yeah. [LB775]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

SENATOR AVERY: Senator Janssen. [LB775]

SENATOR JANSSEN: Thank you, Chairman Avery. Auditor Foley, thank you. I'm kind of going along the same lines that Senator Price was going along. I just want some clarification. I'll just use, you know, "XYZ" school board or...maybe not school board... [LB775]

MIKE FOLEY: Sure. [LB775]

SENATOR JANSSEN: ...and really, pick your public place where there's a treasurer or clerk, a city. [LB775]

MIKE FOLEY: Sure. [LB775]

SENATOR JANSSEN: Small towns, small town gossip, small town police officers, we think, you know, Jane Smith is stealing from the clerk's office. We think so. You come in, you just...you're doing your audit. You just initiate the audit and you're going through it, you're developing your working papers, it's a work in progress. At that point, local police officer comes in: I would like to have the working papers now. And under this new law, that would allow you to release them right now and maybe...I can't speak for this "XYZ" police officer. Maybe he's a little bit overzealous, maybe they don't like each other, I don't know. I know how small towns work, however. Well, we want to file criminal charges right now on this clerk because of what we've found so far, even before you've finished your audit. Is that possible under this bill, the way it's written now? [LB775]

MIKE FOLEY: Well, they could do that now, anyway. They could...if they are that overly zealous, they could file criminal charges at any point. I wouldn't have anything to say about that. [LB775]

SENATOR JANSSEN: But wouldn't they be using your working papers as additional documentation of that? They just think that. [LB775]

MIKE FOLEY: But they would... [LB775]

SENATOR JANSSEN: They haven't done their own investigation. They're utilizing your working papers. At present, now, could they come in? Get "XYZ" town and say Auditor Foley, I want to get your working papers. I know you're not done yet. [LB775]

MIKE FOLEY: Well, the process now would be to work with the county attorney or the Attorney General because...or with the agency that's subject to the audit. The agency subject to the audit always has access to their working papers, so they...we could give the working papers to the agency and they in turn could release them. I can't, but they

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

could, if it were a document that wasn't protected under the public records statute.
[LB775]

SENATOR JANSSEN: I'm just trying to find the need... [LB775]

MIKE FOLEY: Yeah. [LB775]

SENATOR JANSSEN: ...the need for this type of legislation. And what--I think Senator Brasch may have touched on it in her opening--but what is the penalty for disclosing that information that's sensitive? Do you...would you happen to know? [LB775]

MIKE FOLEY: There is a penalty and I think it's...I think it's a misdemeanor, a \$500 fine, I believe. [LB775]

SENATOR BRASCH: Impeachment and court costs. [LB775]

SENATOR JANSSEN: So that's for the... [LB775]

SENATOR BRASCH: A misdemeanor. [LB775]

SENATOR JANSSEN: So a police officer that would get that information and use it for something other than...and that's probably the same for anything that they would do outside of that, so. [LB775]

MIKE FOLEY: Yeah. [LB775]

SENATOR JANSSEN: Okay. Okay, I'm still mulling this over, I guess, so I appreciate you showing up. Thank you, Auditor Foley. [LB775]

MIKE FOLEY: Sure, sure. Thank you. Thank you, Senator. [LB775]

SENATOR AVERY: Senator Seiler? [LB775]

SENATOR SEILER: Mr. Foley, would...I understand you've processed...you do a report. You went in, you did the audit, you do a final report, you have your working papers, you believe there's criminality. You would probably discover that before anybody else, right? Because you're doing the audit. [LB775]

MIKE FOLEY: Usually, but sometimes people come to us with information as well that... [LB775]

SENATOR SEILER: Okay, but assuming, then, that you just discover it, then you would turn it over to the county attorney? In today's practice, before this bill. [LB775]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 19, 2012

MIKE FOLEY: Or it would...yes. [LB775]

SENATOR SEILER: What do you turn over? Just the report? Or do you turn it all over to...? [LB775]

MIKE FOLEY: Initially just the report, then we would suggest that we meet and discuss further what we know about the case. [LB775]

SENATOR SEILER: Okay, and then you'd bring your working papers to that meeting? [LB775]

MIKE FOLEY: Yes. [LB775]

SENATOR SEILER: And he has access to them at that point? [LB775]

MIKE FOLEY: Yes. [LB775]

SENATOR SEILER: So we're really...the only case we're talking about is the one that generates from the police officer's investigation while you're doing... [LB775]

MIKE FOLEY: I think the most widely-used application of this statute would be the State Patrol. [LB775]

SENATOR SEILER: Okay, State Patrol has some informer tell them that there's a problem in the clerk's office. You're happy to do...just finished your report. This bill would cure that problem where the State Patrol comes to you, not that you're going to the county attorney and saying I've heard a rumor that there's a problem in the audit, can you verify that? And you say yes, we have the same problem. This bill would allow you to turn the papers over to that State Patrolman. Is that correct? [LB775]

MIKE FOLEY: That is correct. [LB775]

SENATOR SEILER: And that's the only difference between the way of going through the county attorney or the Attorney General's office and... [LB775]

MIKE FOLEY: It's a streamline, yeah. [LB775]

SENATOR SEILER: Okay, thank you. [LB775]

SENATOR AVERY: Let me ask you, is there anything in this bill that would require law enforcement officers to keep those papers confidential or could they release them to the public? [LB775]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 19, 2012

MIKE FOLEY: Well, they would be subject to whatever statutes already govern their offices regarding release of audit or criminal evidence and so forth. I don't touch their statutes. [LB775]

SENATOR AVERY: So it's possible, then...yeah. [LB775]

MIKE FOLEY: This just regulates...the bill regulates the way that I disseminate information. It doesn't... [LB775]

SENATOR AVERY: So it's possible then that State Patrol, if you turned over the working papers to them, they could possibly in a newspaper interview reveal some of the information that is contained there. [LB775]

MIKE FOLEY: Well, no more so than they could today with whatever evidence they would have on any case. [LB775]

SENATOR AVERY: Uh-huh. [LB775]

MIKE FOLEY: They would be governed by whatever statutes there are already in place for prosecutors. [LB775]

SENATOR AVERY: Does that give you any concern at all? [LB775]

MIKE FOLEY: No. [LB775]

SENATOR AVERY: No? Okay. Any other questions? Thank you, Auditor. [LB775]

MIKE FOLEY: All right, thank you very much, Senators. [LB775]

SENATOR AVERY: Any other proponent testimony on LB775? All right, any opponent testimony? Anyone wish to testify in a neutral position? Okay, Senator Brasch, do you wish to close? You'll waive closing. All right, that ends the hearing on LB775. We'll now move to LB754 and I will turn the chair over to Senator Price. [LB775]

SENATOR PRICE: Welcome, Senator Avery. You are clear to open. [LB754]

SENATOR AVERY: Thank you, Senator Price. My name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28. I'm here to introduce to you something that you have already actually seen before. This is LB754. It deals with the electioneering communication. You may remember that I introduced a bill last year, LB606, that addresses the same issue of electioneering communication. That bill passed General File and then stumbled on Select File and did not get approval, so it is the practice of the Speaker not to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

reschedule bills that fail to advance from Select File. So, I am bringing back an amended version. I worked with many of the groups that expressed concerns about the bill and concerns about whether it would apply to some of their activities and if so, how. I have incorporated all of the suggestions made to me last year into this new bill. That includes concerns raised about voter guides by right to life groups and communications by membership groups. Like my previous bill, LB754 requires any person who makes an electioneering communication in the amount of more than \$250 to file a report of such communication with the Nebraska Accountability and Disclosure Commission. This is a reporting bill. It is not a restriction on activity, it's not a restriction on speech. These reported requirements are similar to those who make an independent expenditure. The bill defines electioneering communication to mean any communication that refers to a clearly-identified candidate, is publicly distributed in the 30 days before an election, and is directed to the electorate of the office sought by the clearly-identified candidate. Now, electioneering communication in this bill does not include a contribution or expenditure. It does not include a communication by media. It does not include a candidate debate. It does not include a communication while the Legislature is in session about a specific bill. It does not include a voter guide. It does not include a communication by a membership organization to the organization's members. Those are some of the issues that were raised between General File and Select File last session. This bill clarifies that a communication by a membership organization includes when a member has submitted an e-mail or a written letter indicating an intent to be a member or the member has paid dues to the organization. There was some questions raised last year about how this would affect membership organizations. How do you go about establishing membership and how would it apply? So it clarifies that issue. The definition of voter guide has also been clarified to mean: a document of the responses of candidates to a survey or a questionnaire if all known candidates seeking election to the same office are given the opportunity to respond, and whether or not they respond, but at least given the opportunity; all responses received by the deadline are included in the document; and the document does not express support or opposition to any candidate. That's a voter guide. Again, voter guides and communications by a membership organization to its members are not included in the definition of electioneering communications and do not need to be reported as such under this bill. The recent Supreme Court cases that have looked at electioneering communications have consistently upheld that reporter requirements for these types of expenditures are constitutional, so we're not dealing with an unconstitutional issue here. We are, in fact, clearly within the established rules approved by the Supreme Court. For example, in 2010, the U.S. Supreme Court ruled in Citizens United v. FEC that corporations and labor organizations are allowed to make independent expenditures and to fund electioneering communications. The ruling did not affect the reporting requirements for independent expenditures or reporting requirements for electioneering communications. This is a reporting bill and it is only a reporting bill. I would urge your adoption or advancement. Thank you. [LB754]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 19, 2012

SENATOR PRICE: Thank you, Senator Avery. Well, real quick, seeing how the topper of the day has been robocalls, would a \$200...would a \$300 robocall fall in this, under this jurisdiction, for reporting to the...for electioneering? [LB754]

SENATOR AVERY: It would qualify as electioneering communication if...the only thing that would have to reported would be the contributions or expenditures of \$250 or more. Some of those robocalls can be very cheap. [LB754]

SENATOR PRICE: Okay, thank you. Are there questions from the committee? Seeing none, I guess we're then having a clean sweep here for now. [LB754]

SENATOR AVERY: All right. [LB754]

SENATOR PRICE: We'll move right on to the proponents for LB754. Welcome, Mr. Daley. [LB754]

FRANK DALEY: Thank you very much, Vice Chairman Price 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 to express the Commission's support of LB754, and I think maybe what I'll do is I'll kind of put this in the context of what happens in real life and how this fits into the constitutional scheme of things. The bill defines the term "electioneering communication" and requires the reporting of money spent for electioneering communications. So it defines electioneering communication as a communication which refers to a clearly-identified candidate, is publicly distributed in the 30 days prior to an election in which the candidate named is a candidate, and it's directed to the electorate of the office sought by the clearly-identified candidate. That is, it's directed at the people that are going to vote in that particular election. So one of the questions that often occurs is: Well, how is this different from what's reported now? And it's this. Currently, candidates, committees, corporations, unions, and other types of entities must report expenditures, and the term "expenditure" is defined as something which is made in support of or opposition to the nomination or election of a candidate. An electioneering communication is sometimes referred to as an "issue ad" in that it doesn't mention that the person is a candidate, it doesn't mention that there's an election coming up, it doesn't sort of ask someone to vote for or vote against this particular candidate. What it does is it often focuses perhaps on an issue or the voting record of the candidate or something of that nature. And obviously, many of these types of things tend to either be very laudatory of the candidate or tend to trash the candidate. That's why these things are often called issue ads. It focuses on something which is not part of the campaign, but maybe is some of the things that they've done while they're in public office. The reason that there's an attempt to capture these is that very often it's very clear that the purpose of these is to affect the election. They occur right before the election. Sometimes the issues that they raise are things which occurred two or three

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

years ago, so they're not even current issues. But, it's...the point of it all is to portray the candidate in either a positive light or a negative light for the purpose of affecting how the voters react. Now, the U.S. Supreme Court has regularly taken the position that these types of electioneering communications do not fall within the definition of an expenditure. That is because they don't talk about candidates, they don't exhort the public to vote yes or vote no or vote for or vote against, but they probably fall outside the usual definitions that the Federal Election Commission has and the Accountability Commission has on expenditures which are currently reportable. When Congress passed the Bipartisan Campaign Reform Act, often referred to as BCRA or the McCain-Feingold Bill, it included some provisions on the reporting of electioneering communications, and some of those provisions were challenged. In fact, all of BCRA was challenged in the case of McConnell v. Federal Election Commission. Most of BCRA was upheld by the U.S. Supreme Court, and the concept of requiring the reporting of electioneering communications was also upheld by the U.S. Supreme Court. Subsequent U.S. Supreme Court cases have continued that thought that you can require the reporting of electioneering communications as long as you define electioneering communications with sufficient narrowness that it really is something which is affecting an election. This bill requires corporations, unions, industry trade professional associations and others to report money spent on electioneering communications in the same way that they report expenditures. So, if a corporation makes a contribution to a candidate or makes an independent expenditure supporting a candidate, that expenditure is reported on a B7 form ten days after the end of the calendar month in which the expenditure is made. Under this bill, if a corporation made an electioneering communication, it would report that use of funds in the same way as it would report an expenditure, so there wouldn't be any difference. There are other types of entities that could potentially make electioneering communications as well, and those folks would report those the same way that they report independent expenditures. This is a bill which is not aimed at any particular point of view. It's pretty clear that electioneering expenses, electioneering communications across the country emanate from many different points of view. This is a bill, really, that requires a minimal amount of reporting by those who are engaged in activity which appears calculated to affect the decisions of the voters in our elections. So LB754 expresses a very, very simple concept and that is if you're going to spend money in connection with Nebraska elections, you have to report it. Thanks for the opportunity to testify today. I appreciate it. [LB754]

SENATOR PRICE: Thank you, Mr. Daley. Are there any questions from the committee? Senator Janssen. [LB754]

SENATOR JANSSEN: You mentioned that these ads can bring up something that happened three years ago about a candidate--issue ads. [LB754]

FRANK DALEY: Um-hum. [LB754]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 19, 2012

SENATOR JANSSEN: But in reality, isn't that part of the election? [LB754]

FRANK DALEY: Yes. [LB754]

SENATOR JANSSEN: Your record is always electable. [LB754]

FRANK DALEY: Yes. [LB754]

SENATOR JANSSEN: So that probably has no relevancy to this bill. The bill would be just saying who. I could still bring up that...I'll just pick an example at random. Senator Avery had a bad bill three years ago and I could still bring that up and... [LB754]

FRANK DALEY: Yes. [LB754]

SENATOR JANSSEN: But this bill says now I have to say that, you know, whoever, "XYZ," paid for by "XYZ," and then I...well, I do that anyway. But I have to file with you? [LB754]

FRANK DALEY: Your observation is correct and it proves the point. If someone's bringing up something that happened several years ago right before an election, they're doing it for the purpose of affecting an election. So when you're running for office, your record during the prior three or four years is up for discussion by the voters. It's not as if the issue is being brought up because it's a current issue and we want people to contact you to let you know how they feel about the issue because you're going to be voting on it next month. It's being brought up to from the point of affecting the elections. So the point of bringing that dynamic up is to show that these really are intended to affect elections, not affect some current event that you're going to vote on. [LB754]

SENATOR JANSSEN: So if it were a current event, I wouldn't need to report? If it was a bill that was going through the Legislature right now and it's an election year, I... [LB754]

FRANK DALEY: If it is an...one of the exceptions to the definition of electioneering is if it's a communication involving a matter which is currently before the Legislature, then it's not considered an electioneering expense. It could be an expenditure if it's saying, "and vote for or against Senator Janssen." It would fall under the other reported categories. But, the idea is to balance between those that are trying to affect elections and those that are trying to address current issues that are currently before the Legislature or a public body or something of that nature, where they don't care who wins the election, they want to have their say about what's going on before a government body. [LB754]

SENATOR JANSSEN: Couldn't I...and if you close, you could answer this question as

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

well. But couldn't I get around that? Couldn't I run an ad--not that I'm going to--but an ad for a current issue, but I would mention a member that maybe put a bill forward,... [LB754]

FRANK DALEY: Um-hum. [LB754]

SENATOR JANSSEN: ...Senator...what, I wouldn't say Smith, but we have one. But, "Senator Whoever" put a bill forward and it was just absolutely insanely crazy and this...they're up for election, but it's about this issue. [LB754]

FRANK DALEY: Uh-huh. [LB754]

SENATOR JANSSEN: And I really want you to vote against this and I mention this person's name. This is the senator that put this forward, this is the government we have. I mean, I can get around that. So are you going to find yourself in the position of combing through all of these--I used to put them in a five-gallon bucket--the attack ads against me and the ones that were for me, but one bucket was bigger than the other and I'm not going to tell you which one. But, there's a way around that. [LB754]

FRANK DALEY: Um-hum. [LB754]

SENATOR JANSSEN: So, is your board now going to be tasked with trying to figure out what is and what isn't and who should or should not have reported? I just see this becoming a huge... [LB754]

FRANK DALEY: We do that now because people are saying oh, that's not an expenditure. I'm not supporting or opposing a candidate, so this is not reportable. So what this does is it makes this big window through which people can escape reporting a little bit smaller. Not to say that the window is completely closed, but it does make it a little bit harder to get through that window. [LB754]

SENATOR JANSSEN: I've always found we get better sharpshooters when we make that window a little bit smaller, so I've always questioned the need for it. Thank you. [LB754]

SENATOR PRICE: Thank you, Senator Janssen. Are there any other questions from the committee? Seeing none, thank you for your testimony, sir. [LB754]

FRANK DALEY: Thank you very much. [LB754]

SENATOR PRICE: Are there any other proponents? Mr. Gould. [LB754]

JACK GOULD: (Exhibit 1) Senator Price, members of the committee, my name is Jack

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

Gould, that's G-o-u-l-d, and I represent Common Cause Nebraska. We testified last year in support of Senator Avery's bill and I'm back again citing, really, a specific example. And the reason I use the example is because this type of electioneering is relatively new to Nebraska and it created a bit of a problem for Common Cause, because we consider it part of our responsibility to try to look into the types of ads that are being used, often against some of you, regardless of your political affiliation. But it was unique. I mean, we found that Americans for Prosperity was not registered as an independent committee, it wasn't registered as a political action committee, it wasn't affiliated with any political party. But, it had run a considerable number of ads that we felt were politically oriented. And so, in the search to try to find them, we eventually looked into corporations and we found that Americans for Prosperity had filed as a corporation and this was a new wrinkle for us. The problem was because they were not identified as any other political action group, they were able to evade all the disclosure laws, and so we were in a situation where they were not...we couldn't find out how much money they were spending, we couldn't find out very much of anything except that they were a Virginia-based corporation. The only rules governing corporations is the fact that a corporation involved in political activity has to report their political expenditures 10 days after the month in which the election takes place, so we did go back and try to find out if Americans for Prosperity did that and they didn't. So we did have file...we did inquire with Accountability and Disclosure as to why they didn't file. And it turned out that legally they had filed some documents saying that they did not have to record any expenditures because they were in the process of educating and not in the process of political activity. So that raises some red flags about, you know, what is political activity and what isn't. And I think that Senator Avery's bill is particularly good at trying to define that and give people a measuring stick and give the public an opportunity to take a look at this new entity. I think it's also important, particularly after the Citizens United decision, where we have a whole different view of corporations and what they're allowed to do. And in a situation where individuals are relatively small when it comes to a corporation who is now considered an individual, it would appear that corporations are able to speak louder and more often--because of their resources--than individuals. And so it becomes important that anybody that registers as a corporation needs to be visible and that the public has a right to know who they are, has a right to know where their money is coming from, and has a right to hold them accountable for the kind of actions that they're undertaking. Thank you. [LB754]

SENATOR PRICE: Thank you, Mr. Gould. Are there any questions from the committee?
Senator Janssen. [LB754]

SENATOR JANSSEN: Thanks, Mr. Gould, Vice Chair. Five-hundred-one(c)(3), did you...I think under...pretty sure under IRS regulations, if you show up at their office, they have to disclose their donors if you ask for that list. [LB754]

JACK GOULD: I'm not sure. [LB754]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

SENATOR JANSSEN: I think they do, in which case we wouldn't need this bill. All you have to do is show up. [LB754]

JACK GOULD: The rules about...we are both a 501(c)(3) and a 501(c)(4), and we have to very carefully separate what we consider to be educational and what we consider to be political. And our donors, people who donate to our organization, have to specify specifically if it's going to the education fund or if it's going to the political action fund. So I'm not real clear on what, you know, what that requirement is, but I know they require us to be very careful about how our money is used. [LB754]

SENATOR JANSSEN: Yeah, I'd see that the 501(c)(3) is...and we've got organizations right now going around that won't disclose publicly. But if you show up at their door, their office, and ask for it, they have to give it to you. If they don't, then you can go to the IRS and the IRS will send a letter that says you have to disclose that. [LB754]

JACK GOULD: Well, I don't think that has applied to Americans for Prosperity because there were efforts to--at the national level--to try to gain access to some of that information, and I'm relatively sure that that information was refused. But I, I know I'm under oath, here, but I... [LB754]

SENATOR JANSSEN: You're not really under oath. [LB754]

JACK GOULD: ...but I just wanted to be sure you understand. [LB754]

SENATOR JANSSEN: He's not really under oath. [LB754]

JACK GOULD: I don't know for sure, so. [LB754]

SENATOR JANSSEN: Okay, did you know if anybody actually showed up at their office and asked to see who their donor list was? [LB754]

JACK GOULD: I have never gone there myself. I don't know...I mean, perhaps Senator Avery or Mr. Daley could clarify some of that, but I just am not in a position to be able to answer you. [LB754]

SENATOR JANSSEN: Are you in a position to answer why the organization--is it Common Cause? Why don't they...why are they formed under two different entities? Explain. [LB754]

JACK GOULD: Because we do get involved with political activity. I mean, we're here testifying on bills and we feel that that part of our activity is political, so we feel we have to separate that and finance it separately than if we come in and tried to educate. And

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

that's where we run into some conflicts with Americans for Prosperity, because they say they are purely an educational entity; they're not involved in politics. [LB754]

SENATOR JANSSEN: So which side do you pay for with your 501(c)(3) and then the other side? [LB754]

JACK GOULD: Well, if we were to...it's difficult for our organization in Nebraska because we're all volunteers. But ultimately, any information...if we put out a newsletter that could be paid for by our...and when we put out our newsletter, it could be paid for with educational dollars. But if we come down here and testify...now, I don't charge them anything for being here, so I can't tell you that I get...I don't get paid anything and I don't get charged...I don't charge anything to Common Cause. Even my travel back and forth from home I don't charge to the organization. But if I did, that would be political activity and therefore I would file it under the 501(c)(4) category. [LB754]

SENATOR JANSSEN: Five-hundred-one (c)(4), and then that you wouldn't have to disclose who's...? [LB754]

JACK GOULD: I would have to...I mean, I'd file my reports and you can certainly look at them if you wanted to. [LB754]

SENATOR JANSSEN: Like before an election, though? [LB754]

JACK GOULD: If I was involved in electioneering, I would. We don't really get involved on electioneering. We do testify in support of bills, but not in support of candidates or political parties. [LB754]

SENATOR JANSSEN: I know. You still haven't given my donation that you promised me three years ago. I'm kidding about that. [LB754]

JACK GOULD: Okay. [LB754]

SENATOR JANSSEN: But...no, I'm just trying to follow, you know, a little bit of where we're going with this... [LB754]

JACK GOULD: Yeah, right. [LB754]

SENATOR JANSSEN: ...and what the, I guess, the public purpose of this bill is overall. And I'm curious, would you be willing to disclose the top contributors of your organization? [LB754]

JACK GOULD: I would, sure. [LB754]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

SENATOR JANSSEN: Go ahead. [LB754]

JACK GOULD: Well, I don't have a list in front of me. [LB754]

SENATOR JANSSEN: But you have to have a pretty good idea. You've...leading this up for... [LB754]

JACK GOULD: We have about 400 members that contribute to our organization and I don't have a list in front of me, so I'm not going to start singling out one individual over another. But if you'd like to see it, I would be glad to give it to you. [LB754]

SENATOR JANSSEN: I would, yes. Thank you, and you could send it to my office--that would be great--or hand it to me. I'd appreciate it. [LB754]

JACK GOULD: Okay. [LB754]

SENATOR JANSSEN: Okay, thank you. [LB754]

SENATOR PRICE: Thank you, Senator Janssen. Are there any other questions from the committee? Seeing none, thanks for your testimony today, Mr. Gould. [LB754]

JACK GOULD: Um-hum. [LB754]

SENATOR PRICE: (Exhibit 2) Are there any further proponents for LB754? Proponents? Would anybody like to testify in opposition? Are there any neutral testifiers? I'd like...for this moment, I'd like to read into the record a letter we have received from Julie Schmit-Albin, the executive director of Nebraska Right to Life, so that will be read into the record. And with that, Senator Avery, would you like to close? [LB754]

SENATOR AVERY: Thank you, Senator Price. I'm glad to hear Senator Janssen inquire about the public purpose of this law because--or this proposal--because I think we ought to always be asking ourselves what is...what public purpose does any particular bill that we're considering have? Does it contribute to some public purpose? This one is all about transparency. It's about holding political groups accountable. It's not an aggressive bill. It does not restrict what they can do in any way or what they can say in any way. It simply says if you are going to engage in electioneering communication in the state of Nebraska, you have to let us know when you reach \$250 or more in expenditures. That's all. And that is minimal, but it gives us an opportunity as citizens to know who is participating, what they're spending, and that is consistent with a whole bevy of laws that we have in this state and other states have as well. Openness and accountability is one of the great virtues of this institution and I think that anything we can do to advance openness and accountability in our political system, we should jump

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

at those opportunities. Thank you. [LB754]

SENATOR PRICE: Thank you, Senator Avery. Are there any questions, comments, or queries? Senator Janssen. [LB754]

SENATOR JANSSEN: I know you're probably going to be sitting there anyway to open for your next bill, so. [LB754]

SENATOR AVERY: Yeah. [LB754]

SENATOR JANSSEN: But the one thing that didn't come to me right away when you were opening, but can you just give me a quick recap of who is and isn't? Just in relation to whether or not you...with certain organizations, whether you paid to belong to that or if it's sent to you for free. Was there...you had mentioned that. [LB754]

SENATOR AVERY: Yeah, there were some questions raised about whether or not this would apply to communications with a membership organization and we clarified that in this version of the bill. We had it...had an amendment actually on Select File to LB606 last year that clarified that as well. We've incorporated it in here because we did not intend...and don't think that the original bill actually restricted communications with the membership organizations. But, we wanted to make it explicit because there were some concerns raised, but if you're communicating with...say you have a membership organization that you charge dues. Well, that's obviously...those are your members and you can communicate with them. You don't have to report the cost of that. [LB754]

SENATOR JANSSEN: So if I'm in an organization--I've been using this today--"XYZ" corporation that you just signed up on-line to belong to this group. You didn't have to pay for it or anything, you don't have a charter. [LB754]

SENATOR AVERY: Um-hum. [LB754]

SENATOR JANSSEN: It's just, I don't know. We just have--I don't know--a common interest. [LB754]

SENATOR PAHLS: A Facebook page. [LB754]

SENATOR JANSSEN: Yeah. Yeah, Facebook; yeah, there you go. [LB754]

SENATOR AVERY: Yeah. [LB754]

SENATOR JANSSEN: Then I'm not paying anything. That would...would that follow that? [LB754]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

SENATOR AVERY: No, that's also addressed in the bill. If you have in any way expressed an interest in being a part of this group--it could be an e-mail communication, it could be a...joining a group on Facebook, I presume, would also be a way to indicate your interest in being a part of that group. And then, so communication to you would not be a reportable expense. [LB754]

SENATOR JANSSEN: Even if I spend over \$250 on it? [LB754]

SENATOR AVERY: Right. [LB754]

SENATOR JANSSEN: That's kind of a way around it. [LB754]

SENATOR AVERY: Well, it's a way to alleviate some of the concerns that were raised in part by Mr. Cunningham, who represents the Catholic Conference. We worked very closely with him in amending LB606 last year, and there was some lingering concern on Select File with LB606 that not all of it...all the issues had been addressed, and 15 people did not vote. Seven people voted against it, including you, twenty people voted for it, 15 did not vote at all, and that was...and it was...I think the uncertainty is what sunk the bill. [LB754]

SENATOR JANSSEN: But that jettison is...my question was I didn't know if you could be getting into some murky water with...I belong to organizations such as the VFW, where sometimes we waive dues for some of our members that can't afford them or whatnot, and so I didn't know. [LB754]

SENATOR AVERY: Yeah. Yeah, but you...I mean, it's clear that you wish to be a member. [LB754]

SENATOR JANSSEN: Right. [LB754]

SENATOR AVERY: And that we're not interfering with that. [LB754]

SENATOR JANSSEN: Okay, thank you. [LB754]

SENATOR PRICE: Senator Avery, in summing it up, to me it seems if you didn't solicit the communications, huh? So I'm just sitting at home and I'm not a member of any group and I got a...I'm sent something, then that, when we start talking about...that's what triggers this should be an electioneering thing. [LB754]

SENATOR AVERY: Well, it's the nature. If it urges you to vote for a candidate or against a candidate and it's...it occurs in a specific time period... [LB754]

SENATOR PRICE: Um-hum. [LB754]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

SENATOR AVERY: ...and can be associated with a campaign for office, then that's an electioneering communication. And if you're engaging in that, that's reportable. [LB754]

SENATOR PRICE: And so... [LB754]

SENATOR AVERY: Not restricted, reportable. [LB754]

SENATOR PRICE: Right. And then finally, in an example we heard with the robocall discussions we've been having these past few days, if I have 25 individuals unaffiliated, each put \$200 into robocalls, it wouldn't be reportable because I didn't meet the threshold if it's about a specific person or target. Say we get 200 people that drop in...or you get 10 people to drop \$200 each in and they go get this robocall done... [LB754]

SENATOR AVERY: Drop it in, but you have to drop it in with an organization who would organize the call and write the script. That would make it an electioneering communication because the money would be bundled. [LB754]

SENATOR PRICE: So at that point, the bundling would count. [LB754]

SENATOR AVERY: Yeah. [LB754]

SENATOR PRICE: Not...but again, it wasn't the individuals, necessarily. It was that bundled money. [LB754]

SENATOR AVERY: If it was strictly an individual organizing a \$200 robocall--which wouldn't cover a whole lot of calls--I guess that would not. [LB754]

SENATOR PRICE: All right. Thank you, Senator Avery. Any other comments? Questions? Well then, that will close the hearing on LB754 and we'll move on to LB755. [LB754]

SENATOR AVERY: Okay, LB755. Do I need to spell my name again, Mr. Chair? [LB755]

SENATOR PRICE: For the record. [LB755]

SENATOR AVERY: For the record, I am Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28. All right, the proposal in LB755 might look familiar to you because we had an interim study this past November in which I presented this proposal at the request of Speaker Mike Flood. It deals with changes to senators filing conflicts of interest. As you know, currently, legislators are allowed to vote on issues after disclosing potential conflicts of interest and those conflicts are filed in, I believe, the...in NADC office, filed also with the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

Clerk and with the Speaker. And just, I think two years ago we managed to get it, an additional disclosure of conflicts of interest statements, by publishing them in the daily record, and that is the extent of our requirements at this time. However, elected officials at the local level are not allowed to vote if the Nebraska Accountability and Disclosure Commission determines that they have a conflict of interest, so your local councilman or your local councilwoman or supervisor--county supervisors--if they have a conflict, they are barred from voting. In response to a 2009 Government Committee report on conflicts of interest, we did change it slightly. I just mentioned that. Legislators have a potential conflict of interest as defined in law when they are required to take action on an issue that may cause financial benefit or detriment to him or her as a member or a member of their immediate family or business. That's the current statement in law about conflicts of interest for us legislators. You are required to file a statement if you have a conflict that might cause financial benefit or detriment or to a member of your immediate family or business. This bill, LB755, requires the Nebraska Accountability and Disclosure Commission to review each conflict of interest statement that is filed to determine whether or not it meets the statutory definition of a conflict of interest. And then, the Commission or a...probably, it would be Mr. Daley, will file their opinion within a reasonable amount of time after receipt of the statement with the Clerk of the Legislature. The Clerk will enter an acknowledgement of the report in the Legislative Journal, so this will be a public announcement or a public notice. Under this bill, a senator will be able to vote on an issue, even if the Commission determines there is a conflict. With this proposal, members of the public, however, will have more information on conflicts, including whether or not the senator really does have a conflict as defined in law. Also, the public will know if the senator decided to vote on the bills in which a real conflict was determined to exist. This is perhaps not a perfect way to deal with the issue of voting in circumstances of conflicts of interest, but it does recognize the fact that we are a citizen Legislature and that many of us have potential conflicts because of the nature of our work and various activities outside this body. And the purpose of this is to provide a little bit more information to both the senators and to the public, to have a little more clarity as to when an actual conflict does exist. That will be the advice we get from the Accountability and Disclosure Commission. They will not say in that opinion you should not vote or you should vote. They will simply say this is in fact a clear conflict of interest. The senator does stand to gain or lose financially, or a member of his family or business. And then they...this provides me as a senator with a little bit more information, advice as to whether I ought to vote anyway or whether I should not. It gives the public a little bit more information. It's not designed to embarrass anybody, it's not designed to limit the ability of a senator to serve their constituents effectively. It is designed to meet what is at perceived to be a need. I think the origin of this was a question that was posed to the Speaker in which he was asked: Why is it you guys vote on...in situations of conflicts of interest and members of the city council can't? And the Speaker says, don't think I have a good answer for that, I'll look into it. And he met with me and we talked about this idea of his and it was the subject of a hearing in November as part of our interim study. So with that, I would ask you to consider advancing this to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

General File. [LB755]

SENATOR PRICE: Thank you, Senator Avery. Questions? Senator Sullivan. [LB755]

SENATOR SULLIVAN: Thank you, Senator Price. Thank you, Senator Avery. I'm still a little perplexed with this bill, though. The one thing that changes will be the opinion issued by the head of the Accountability and Disclosure Commission, is that right? [LB755]

SENATOR AVERY: That's what it does. It does add another element in the chain of events. [LB755]

SENATOR SULLIVAN: Because when a conflict of interest is filed now, it is announced by the Clerk and entered into the Journal, is that right? [LB755]

SENATOR AVERY: It's filed with the Clerk, with the A&D Commission and with the Speaker's office, and it's printed in the Journal. I don't think there's an announcement from the... [LB755]

SENATOR SULLIVAN: Oh, I heard one just the other day. [LB755]

SENATOR AVERY: Hmm...um-hum. [LB755]

SENATOR SULLIVAN: The Clerk announced it, that a conflict of interest had been filed. I don't even know who it was. [LB755]

SENATOR AVERY: Oh, as in the items for the record that...yeah, okay. [LB755]

SENATOR SULLIVAN: Yeah, right, right, right. Uh-huh. [LB755]

SENATOR AVERY: Yeah, so this does add one step more. [LB755]

SENATOR SULLIVAN: An opinion by the NADC. [LB755]

SENATOR AVERY: Right. [LB755]

SENATOR SULLIVAN: And I'm going to ask this same question when Mr. Daley gets up here. But I remember when we had the interim study--or the interim hearing--and the one thing that this legislation won't change is that in his opinion, there were many more conflicts of interest that should be filed that aren't. [LB755]

SENATOR AVERY: Yes. [LB755]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

SENATOR SULLIVAN: So this won't have anything to do with that. [LB755]

SENATOR AVERY: But you know, the more we talk about conflicts of interest, the more aware senators become and the more sensitive they are to looking at their own situation and filing them. The one concern I have with this proposal--and I'll just be honest with you--is--and this happened to me--I didn't think about a conflict of interest until the bill was up on General File and we were starting to debate it and I thought, wait a minute. Well, it turns out I didn't actually have a conflict as defined in law, but I felt like I did because it involved an insurance issue and my wife works for State Farm. And State Farm was in fact actively lobbying on behalf of this bill in the lobby and I felt like I had to abstain and I did, but I quickly got a conflict of interest statement filed. Now, here's the problem. Suppose that happens to me again and I file that thing and it's really last-minute filing. Frank Daley is not going to have time, really, to give an adequate consideration to that conflict of interest statement and come up with an opinion. The task is going to be difficult for him and for his office to conform to the standards that will...and procedures that will be outlined in this law, and he knows that. [LB755]

SENATOR SULLIVAN: And aside from...okay, as you said, the more we talk about it, the level of awareness among the senators will increase. Perhaps there will be more conflicts...conflicts of interest statements filed, but what's the value then of...because a senator then could still go ahead and vote, what is the value of having that opinion rendered? [LB755]

SENATOR AVERY: Because right now, you are making the judgment yourself as to whether you would have a conflict without a second opinion, without any advice from anybody that said maybe your spouse or your staff. This is...this would be an opinion from a professional organization whose job it is to pay attention to these kinds of issues. They have some expertise in that. And it gives you more information to help guide your behavior. [LB755]

SENATOR SULLIVAN: And what does the legislation say once this statement is--or this opinion is--rendered? It's entered into the...it's reported, and so it will be entered into the Legislative Journal. Is it given--a copy of it--to the senator involved as well and an explanation and...? [LB755]

SENATOR AVERY: I would expect you would get a copy of the opinion that's rendered by the office, Frank Daley's office. [LB755]

SENATOR SULLIVAN: Um-hum. [LB755]

SENATOR AVERY: And you, of course, get the Journal, so you'd have...that notification would be in the Journal as well. [LB755]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

SENATOR SULLIVAN: Do you suppose this has the potential to just erupt into some watchdog reports being issued for...with merit or maybe not with merit? [LB755]

SENATOR AVERY: I think that it will probably unfold much like the change we made two years ago when we started publishing the conflicts of interest statements in the Journal. Not much was made of that, but the information is there in a form that it was not before. More light has been shed on that issue. [LB755]

SENATOR SULLIVAN: Um-hum. [LB755]

SENATOR AVERY: But I don't think anybody got overexcited about it. I do remember in floor debate on one issue, I heard a senator say if we pass this bill, I'm going to make more money. And I went up to him afterwards, I said: Did you file a conflict of interest statement? He went scooting down to his office immediately to file that statement. And you know, it's not a "gotcha" sort of thing. It's just that in order for us to take conflicts of interest more seriously, we have to be aware when these situations arise. And the more we talk about it and the more transparency we have in this process, I think the better the chances are that the many conflicts that may exist that aren't being revealed now will probably reduce. [LB755]

SENATOR SULLIVAN: Thank you. [LB755]

SENATOR PRICE: Thank you, Senator Sullivan. Senator Wallman? [LB755]

SENATOR WALLMAN: Thank you. Yes, Senator Avery, these expertise areas where they try to put us in committees like Ag, maybe, Business and Labor. There's...in Ag, about every doggone thing in there could be a conflict of interest. [LB755]

SENATOR AVERY: I'm going to ask you to bring this up with Mr. Daley; I'm sure he will be able to answer it. But it is my understanding that those broad general categories like agriculture, farming, where almost everything we do has some impact on farming in this body, it would not fall clearly under the statute of conflict of interest or any definition of conflict of interest. It's where you have a more direct connection between an issue and a financial gain or loss for you or a family member or your business. That's the kind of thing that we're talking about with conflicts. In my case, my wife's income was not going to change by this bill. It was not going to lead to a benefit or a detriment to us financially. I felt uncomfortable, though, with the knowledge that her work...her coworkers were in the lobby, lobbying on behalf of this bill, and I was in the body with my...with the ability that would go red or green on it. And I didn't want the appearance to exist that I was unduly influenced by the lobby or by my wife on that issue, so I didn't vote at all. [LB755]

SENATOR WALLMAN: They also lobbied against one of my bills. [LB755]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 19, 2012

SENATOR AVERY: They did. They made a mistake. [LB755]

SENATOR WALLMAN: Thank you. [LB755]

SENATOR PRICE: Thank you, Senator Wallman. Senator Seiler? [LB755]

SENATOR SEILER: Senator Avery, maybe there's a remedy, but I'm a little...coming out of that this...serving as 12 years as the Supreme Court disciplinary review board on conflicts and problems in the justice side. Is there a remedy? Let's assume that a senator knows he's got the final vote, he's going to make \$1 million, and he signs the disclosure. Is there a remedy after that? He makes the \$1 million? [LB755]

SENATOR AVERY: Well, I would say it becomes a campaign issue. [LB755]

SENATOR SEILER: Well, yeah. For \$1 million, to give up a \$12,000 job, that's a no-brainer. I mean, but you don't have this...like the Speaker or the presiding officer that doesn't say you can't vote because you've disclosed that you've got a conflict and... [LB755]

SENATOR AVERY: And that...the light...public exposure and public disclosure is really the remedy. I know it's inadequate, but that's the remedy. [LB755]

SENATOR SEILER: Okay. I didn't know if there were more statutes that covered it. [LB755]

SENATOR AVERY: Yeah, the...you know, let's say I'm a lawyer. I'm not, but let's say I'm a lawyer and I represent the telecommunication industry and there's a bill up and I've had clients that are going to gain and lose and my fees are going to be affected by that. Now, that's a pretty clear conflict. [LB755]

SENATOR SEILER: And you can have the conflict in there, but it would also appear in front of the disciplinary review board and then you won't be a lawyer anymore. [LB755]

SENATOR AVERY: Probably lose, yeah. [LB755]

SENATOR WALLMAN: Yeah. (Laugh) [LB755]

SENATOR SEILER: Okay, there is a remedy there. They clip your tickets. [LB755]

SENATOR AVERY: Well... [LB755]

SENATOR SEILER: But there doesn't seem to be a remedy here. We expose the problem, we bring it to the front, and it stops. [LB755]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

SENATOR AVERY: I didn't know you had that background. We ought to work on tightening up the laws even beyond this. [LB755]

SENATOR SEILER: Well, it seems to me like there ought to be a remedy of some sort. [LB755]

SENATOR AVERY: Yeah. [LB755]

SENATOR SEILER: If it's a no-cause, I mean, what's the problem? [LB755]

SENATOR AVERY: Well, in... [LB755]

SENATOR SEILER: I mean, if...unless you want to get reelected. [LB755]

SENATOR AVERY: Well, in this Legislature...yeah, in this Legislature, we tend to... [LB755]

SENATOR SEILER: Term limits guys would have a field day, wouldn't they? [LB755]

SENATOR AVERY: ...we tend to see accountability as being heavily influenced by public disclosure. [LB755]

SENATOR SEILER: Okay. No, I understand. [LB755]

SENATOR AVERY: Yeah, and... [LB755]

SENATOR SEILER: I'm just a little surprised. [LB755]

SENATOR AVERY: Well, you know, I've searched for remedies with...and I don't really know how to approach it. With your experience, though, I'd be happy to have some conversations with you about that. [LB755]

SENATOR SEILER: Glad to. [LB755]

SENATOR PRICE: Thank you. Are there any other questions? Senator Janssen. [LB755]

SENATOR JANSSEN: Yeah, I think I got this one, Chairman Avery. The public policy here, listening to you, yeah... [LB755]

SENATOR AVERY: Public purpose? [LB755]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

SENATOR JANSSEN: Purpose, policy...public purpose here is what I'm gathering is one, this doesn't really change much. I mean, it just adds a step... [LB755]

SENATOR AVERY: Right. [LB755]

SENATOR JANSSEN: ...to what we do. It...as was just mentioned, there's no recourse on still voting after it's been filed. I'm not certain there's a recourse even if you don't file it, other than getting reelected, I suppose, if that's the major issue. But what you're telling me, though, is awareness, just by talking about it, will make us more conscious of...oh, well, I'm in the staffing industry. I've never filed a conflict. I don't think we've really ever had one for staffing industries. I mean, you could extrapolate out of that or...and say medical staffing or whatnot and maybe I shouldn't be voting on those bills, but that would be a far reach to benefit me. But the driving force behind this--and I hate to even say driving and force because there's really not much to it--is just we're going to talk about it more. And by doing that, we as senators will file more conflicts of interest and be aware of it and maybe at our own choosing, abstain from voting on certain issues. Is that...I kind of got that? Am I close? [LB755]

SENATOR AVERY: You are. [LB755]

SENATOR JANSSEN: So even though...I hate to say your bill does nothing. [LB755]

SENATOR AVERY: Your thinking is improving, Charlie. [LB755]

SENATOR JANSSEN: Oh, it...no. (Laughter) Well, no, it's...it kind of reminds me of voter ID bills to tell you to the truth. (Laughter) Just by actually making people aware of fraud, that it will lessen it, so we actually agree on something. [LB755]

SENATOR AVERY: Finally. [LB755]

SENATOR JANSSEN: I'll look forward to your positive vote. (Laughter) [LB755]

SENATOR PRICE: Thank you, Senator Janssen. [LB755]

SENATOR AVERY: May I respond? [LB755]

SENATOR PRICE: Yes, please, Senator. [LB755]

SENATOR AVERY: I know it wasn't actually a question. I want to give you a better example of a conflict of interest. I'm going to use Senator Price as an example, with your permission, sir. [LB755]

SENATOR PRICE: By all means. [LB755]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

SENATOR JANSSEN: Don't call me "sir." [LB755]

SENATOR AVERY: He is retired Air Force and they...we have, from time to time, had proposals offered to exempt military retired pay from the state income tax. If that gets out of committee and gets on the floor, he would need to file a conflict of interest statement. And the way that would work, then, is that will be recorded in the journal and would then go to A&D Commission. Mr. Daley, somebody on his staff would render an opinion and that opinion would be yes, Senator Price, you have a conflict on this bill. Then it would be up to him to decide whether to vote or not to vote. I trust his judgment and his sound values to the degree that I believe he would say I can't vote on this. Now you've got another problem, and this is what...when you get into these issues of accountability, all kinds of problems come up. What about all the retired officers and the enlisted men in his district? They then become unrepresented on that issue and it really matters to them, so there is a real dilemma there. [LB755]

SENATOR JANSSEN: Okay. Since you are kind of answering back to me, another dilemma on that is...you know, you'd better talk to...Accountability and Disclosure is going to be very busy when or if a sweeping tax reduction bill comes to the floor of the Legislature. And I'd presume we're all...49 of us pay state taxes, so we all had a benefit from that, so it should be zero... [LB755]

SENATOR AVERY: I wish you would save that question for Mr. Daley, because I'd really like to know how he would answer that. [LB755]

SENATOR JANSSEN: Forty-nine present, 49 not voting with a conflict of interest. [LB755]

SENATOR PRICE: Thank you, Senator Janssen. I think what we'll hear from Mr. Daley is this is statewide and everybody's benefitting equally from it, then you're not getting an unequal and undue benefit, then you would not have a conflict. I'm sure he'll articulate that better. The one question I would...statement, Senator Avery, is in talking about this, what we would see is right now, everybody...all conflicts of interest are reported and are recorded. You'd have this added step of someone in confirmation of that. So now what you would have is you'd have...if what we've heard in previous years' testimony, you have, let's say 60 percent of all conflicts of interest that are submitted by senators are found to be of no merit, not a conflict of interest, so we clutter with this. We think we're doing something wrong, so I want to admit to what it's...I think may be wrong, but it turns out it's not wrong. So therefore, when you get one to come back says yeah, it actually is a conflict--we're not saying wrong or right, but it's a conflict--so there is that added focus on oh yeah, by the way, you thought you did have a conflict and we agree, you do have a conflict. So I do believe there is, even with that added focus. Would you agree that's a...? [LB755]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

SENATOR AVERY: That's a plus because you...this process would help educate us on what is in fact a conflict and what is not. [LB755]

SENATOR PRICE: Then my unfortunate feeling, though, is when people see too many false positives, if you would, or false negatives--whichever way you want to look at that--they'll just stop doing them because then they don't...if I don't report it, it can't be a conflict because it's not in there. But we'll see as time prevails. So thank you very much, Senator Avery. [LB755]

SENATOR AVERY: Thank you. [LB755]

SENATOR PRICE: We will now move on to proponents for LB755. Welcome back, Mr. Gould. [LB755]

JACK GOULD: Senator Price, members of the committee, my name is Jack Gould, G-o-u-l-d, and I'm here representing Common Cause. And I wanted to beat Frank Daley up here because I know he's going to have all the final answers that you're asking. But, I did want to address Senator Sullivan's statement because we are one of those watchdog groups that does raise the question of conflict of interest and we have a history of doing that. In my opinion, I think this may put us out of business on the issue, because I think it's always been a question. And you've raised the question as well, you know, what about the farmer who is here representing a largely agricultural constituency who would benefit from the bill financially, as you've pointed out. And yet, he's in a position: How do I vote, because I'm going to benefit from it? And when we've hassled...you know, we've tried to deal with this many times within our own organization as to what's the guideline. And generally, we've come up with the conclusion that if the majority of the constituents are farmers, then therefore, he has responsibility to represent his constituents. On the other hand, if it's a minority group within there, let's say grocers, or if there's a lawyer with a client, in those situations, you know, there is a more direct benefit for the individual and therefore, he does have a conflict of interest. Now, we're not lawyers and I know that Frank Daley is, so he'll probably...if you come to a situation in the future and this bill passes, you're going to get a legal opinion as to whether there is a conflict there or isn't, and that should pretty well put us out of business. That's my point and I just wanted to make that clear. And I think, as Senator Avery has pointed out, I mean, this isn't asking really for a great deal more and it should be helpful to senators because they, at that point, really have a measuring stick to decide should I cast the vote or not. And it really comes down to a moral decision. I mean, are you...what is your conviction on this issue? And if you feel that it's not appropriate and you don't vote, I think you...you know, you're entitled to that. On the other hand, if you choose that you should vote, you're still entitled to that. It doesn't take the vote away from you, it simply gives you a legal argument as to whether you should or shouldn't. Thank you. [LB755]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

SENATOR PRICE: Thank you, Mr. Gould. Are there any questions from the committee? Seeing none, thank you. [LB755]

JACK GOULD: Thank you. [LB755]

SENATOR PRICE: Our next proponent? Mr. Daley. [LB755]

FRANK DALEY: Vice Chairman Price and members of the Government, Military and Veterans Affairs Committee, again, my name is Frank Daley, D-a-l-e-y, representing the Nebraska Accountability and Disclosure Commission in support of LB755. Under LB755, upon receipt of a potential conflict of interest statement from a member of the Legislature, the Commission would be required to make a determination of whether there is or is not a conflict of interest, and that decision would be reported to the Clerk of the Legislature. Under current law, if the Commission receives a potential conflict of interest from a public official or a public employee other than a member of the Legislature, what occurs is we review the statement and the facts and determine whether or not the person does indeed have a potential...or does indeed have a conflict of interest. If the answer is no, he or she does not, then they're sent a letter advising they do not have a conflict of interest and they may discuss, participate, or vote on the matter as they see fit. On the other hand, if we determine that there is a conflict of interest, we send a letter to the filer indicating that he or she does have a conflict of interest and that the person should abstain from participating or voting on the matter in which they have a conflict. Currently, under...when a potential conflict of interest statement is received from a member of the Legislature, the Commission doesn't have the authority to tell the member not to vote or not to participate. And so what occurs is we simply send a letter to the filer acknowledging receipt of the conflict of interest statement and file a copy with the Clerk of the Legislature and the matter becomes a public record. LB755 wouldn't change our ability to instruct members of the Legislature to vote or not to vote. That wouldn't be the case at all. You could still vote or not vote as you saw fit. We would simply be making a determination as to whether there is actually a conflict of interest. Now, there were a few questions that were asked during the course of Senator Avery's testimony, and so I'd like to kind of address those, if I may. First of all, Senator Seiler, what's the remedy for the person who discloses yes, I will benefit if this bill passes, I'm going to make \$1 million, I'm going to vote anyway? You're right, the remedy is sort of inadequate. The remedy lies at the ballot box in that the electorate hopefully will decide that this is not the person we want representing us. But it's imperfect, obviously. Another question...issue that's been discussed is well, what good does all of this do, actually? And this goes to the remedy issue. There have been a number of times over the years where the Legislature has required the reporting of certain types of situations. They couldn't tell if there was a problem or not, and so it required some form of reporting so that over a course of years, they could determine if there is a problem which required further action, or no problem. It seems to me that if

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

there are continual reports of conflicts of interest and there are actually conflicts of interest, that gives the Legislature the ability to look at some raw data and decide do we need to do things differently. Because right now, you don't really have that ability because you're not getting determinations as to whether there are conflicts or not. So this could help you--sometime in the future--formulate a remedy if you thought there was something that required a remedy. Senator Janssen asked: Well, what's going to happen when we reduce an income tax rate or raise an income tax rate and there are 49 senators filing conflict of interest statements, 49 present and not voting? Well, I think the answer is to look at the definition of a conflict of interest. You have a potential conflict of interest if you in your official capacity are faced with taking an official action or making an official decision which could result in a financial benefit or a financial detriment to you, a member of your immediate family, or a business with which you are associated. However, the provision goes on to state that this only applies if the benefit or detriment is distinguishable from that experience by the general public or a broad segment of it. So, it would seem to me when you are going to decrease a tax rate, that affects the general public or a broad segment of it. Therefore, you don't have a conflict of interest. And obviously, some of the questions become a little bit more sticky as the group gets smaller and smaller in trying to determine whether or not that's the general public or a broad segment of it. However, that's what the Accountability Commission does now with reference to local public officials and local public employees and certain state officials that are not members of the Legislature. Understand that even now, you have an obligation to file potential conflict of interest statements if you have one. That obligation exists under law right now. Even now, if you intend to vote as...if you do have a conflict of interest, you're required to describe, on your conflict of interest statement, why it is you do intend to vote if you do have a conflict of interest. Now, one of the examples was Senator Price and military retirees, if there were a bill to exempt that from taxes. No. Senator Price under those circumstances may state yes, I have a conflict of interest, this could very well benefit me. However, there are a significant number of military retirees in my district and I think it's important that I represent them in a way that I think benefits them. Therefore, I intend to vote. I would think that for the most part, constituents would think that's appropriate. Or, my all-time favorite was former Senator Coordson who always said well, you know, I'm a farmer. I come from a farm district. I am represent...I was sent here by farmers to represent farm issues, and if I can't vote on farm issues, I can't think of a reason for me to be here. And, I mean, those are the types of things I think that you would describe on a potential conflict of interest statement as to why you would vote, even if you would have a conflict of interest, because it benefits your constituents, it's important to your constituents, as opposed to a situation where perhaps this is only going to benefit one company and you own the company, so you're the only beneficiary. That might be a different situation. Understand also that sometimes, these potential conflict of interest statements serve as a shield to the public official. On the local level, a lot of public officials will file these potential conflict of interest statements when they know they really don't have a conflict of interest, but for some reason, there's a segment of the public that believes they do and there's a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 19, 2012

controversial event and they're worried because, you know, their second cousin twice removed is going to be a contractor if this bid is awarded and that's a conflict of interest. A lot of them will file these things just for the purpose of ensuring that they have something from the Accountability and Disclosure Commission that says you don't have a conflict of interest and you may vote and you may participate as you see fit. And that sometimes takes the steam out of some allegations which may come up at a public meeting. So, that's pretty much what I've got to tell you on the issue. The commission supports this bill because really, it puts members of the Legislature a little bit closer to how other public officials and public employees are treated and creates a little bit more of a public record on conflicts of interest and maybe down the road makes you decide things are good the way they are, we don't need to change a thing, or maybe we're seeing something that we think we need to change. So thanks for the opportunity to talk today, I appreciate it. [LB755]

SENATOR PRICE: Thank you, Mr. Daley. Any questions from the committee? Senator Sullivan. [LB755]

SENATOR SULLIVAN: Thank you, Senator Price, and thank you, Mr. Daley. Okay, just a clarification, first of all. So, any conflict of interest statement that is filed by an elected official, does it flow through your office? [LB755]

FRANK DALEY: Yes. [LB755]

SENATOR SULLIVAN: And so those that then need to abstain from voting, you render an opinion and make your recommendation back to them, is that right? [LB755]

FRANK DALEY: It's more than a recommendation. They have to take such steps as we direct to remove themselves from the conflict. [LB755]

SENATOR SULLIVAN: Okay, all right. [LB755]

FRANK DALEY: So we tell them they should not vote or participate. [LB755]

SENATOR SULLIVAN: Okay, and as I stated when Senator Avery was talking, I remember your comment in the summer where you indicated that you felt there were more conflicts of interest statements that should be filed by senators than are. How did you arrive at that opinion? [LB755]

FRANK DALEY: Sort of intuitively, as opposed to by any sort of empirical data. I look at a county board and I see how many times I get a conflict of interest statement from a county board. And they deal with, you know, kind of a narrower group of things. The Legislature is a larger body with people from more diverse backgrounds and the Legislature deals with a wide variety of subjects, and so it seems to me that there are

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

probably more occasions in which members of the Legislature have conflicts of interest than we see reflected by the statements. Now, I've got to tell you that the Accountability and Disclosure Commission isn't analyzing bills and analyzing votes and analyzing statements of financial interest to make those determinations, but I also have to tell you that the members of the Legislature are kind of vulnerable right now, because you do file these statements of financial interest which disclose your sources of income and things of that nature. The public does watch what you do, they can look at the legislation, and, you know, certainly if a member of the public thinks that a member of the Legislature should have filed a conflict of interest statement and didn't, they can file a complaint with our office. [LB755]

SENATOR SULLIVAN: Do you often have senators asking for advice from you if they should? [LB755]

FRANK DALEY: Yes, yes. [LB755]

SENATOR SULLIVAN: Okay, and then I don't remember very clearly on my orientation. I know you talked to us. Is that covered quite specifically in the orientation for new senators? [LB755]

FRANK DALEY: Yes. [LB755]

SENATOR SULLIVAN: Okay, all right. Thank you. [LB755]

SENATOR PRICE: Thank you, Senator Sullivan. Are there any other questions? Seeing none, thank you very much, Mr. Daley. [LB755]

FRANK DALEY: Thank you very much. [LB755]

SENATOR PRICE: Are there any further proponents for the bill? Proponents? We'll move now to opponents. Are there any opponents? Would anybody like to testify in the neutral? Seeing none. Senator Avery? Senator Avery waives closing and that will close the hearing on LB755 and we will move on to LB758. Welcome. [LB755]

SENATOR AVERY: I am the same Bill Avery that was here before, B-i-l-l A-v-e-r-y, representing District 28. I bring to you LB758. This bill is the result of an audit that was conducted last year by the Auditor of Public Accounts. The audit was of the Nebraska Lottery. The Auditor is required to annually audit the Lottery. In the management letter to the Lottery, the Auditor recommended that "all Department of Revenue employees, especially the Lottery personnel, refrain from accepting gifts, including meals and admission to events, from Lottery vendors and other contractors." The Auditor was concerned about the amount of money spent by Lottery vendors on Lottery employees for meals and admission to events. Currently, state law prohibits the director of the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

Lottery Division or any employee of the Lottery Division from receiving gifts from any entity contracting with the state to supply equipment for use by the Lottery Division. Similarly, under current law, no person or organization contracting to supply equipment for use by the Division or a Lottery game retailer is allowed to give the Tax Commissioner, the director of the Lottery Division, or any employee of the Division any gifts. The definition of gift excludes food and beverage provided for immediate consumption and admission to a facility or event. LB758 removes these two exceptions to the definition of gift and thereby prohibits those gifts. There is a second part of the bill that deals with state officials and employees being given tickets to events to a state-sponsored or state-owned facility or a state-sponsored event given by an agency, political subdivision, or college. In most cases, we're dealing here with the University of Nebraska athletic events. In a separate report, the Auditor of Public Accounts raised concern over state employees being given tickets to University of Nebraska athletic events. The Auditor pointed out that agencies of state government are spending over \$1 million in government funds each year buying advertising on the Husker Sports Network and that these agency individuals are receiving tickets to the University of Nebraska athletic events as incentives. The Auditor concludes that over the past three years, over 2,500 tickets to University of Nebraska athletic events, tailgate party passes, and tickets to away games have been given to state agencies as incentives for advertising on the Husker Sports Network. This creates an unsavory image, potentially a perception that state employees are being influenced by these gifts to spend more government money on ads on the Husker Sports Network. So LB758 eliminates the language allowing state officials and employees and their immediate families to accept admission to state-owned facilities or a state-sponsored industry or event given by an agency, a political subdivision, or postsecondary educational institution, regardless of value. It's this...I don't know if the Auditor is behind me or not, but I hope he is because this is an issue that...I didn't raise this...concerns about the way we do business in the state. I would point out that December 4, 2011, there was an editorial in the Lincoln Journal Star that endorsed doing something about this and pointing out that the Auditor thinks that the record shows excessive socializing between vendors and employees that creates the appearance of a conflict of interest and should undermine public trust in the Lottery. And I think the second part of the bill that deals with incentives to spend state money on the Husker Sports Network falls into that same category. So with that, I would ask you to advance this to General File. [LB758]

SENATOR PRICE: Thank you, Senator Avery. Are there any questions from the committee? Well, I just have one, Senator Avery, in when you say the state employees. If a senator were to bring along a staff member to a luncheon, then that would be...they couldn't attend a luncheon, right? [LB758]

SENATOR AVERY: They're not technically state employees. They're employees of the Legislature. [LB758]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 19, 2012

SENATOR PRICE: All right, great. Thank you. Any other questions? Seeing none. Thank you. [LB758]

SENATOR AVERY: Oh, thank you. [LB758]

SENATOR PRICE: We'll move on to proponents for LB758. Welcome. [LB758]

JACK GOULD: Senator Price, members of the committee, my name is Jack Gould. That's G-o-u-l-d. I'm here representing Common Cause Nebraska and I'll be very brief. I just think that, you know, we have always had concerns about the use of football tickets. I think we've been on the record with that. This is a...this ultimately adds continuity to the law. It simply just says the \$50 limit is a reasonable limit and those gifts would be prohibited over that amount. And so I feel the fact that there's some consistency to the law is something that is of real value and we appreciate what Senator Avery is doing. [LB758]

SENATOR PRICE: Thank you, Mr. Gould. Any questions? Seeing none. Thank you. [LB758]

JACK GOULD: Thank you. [LB758]

SENATOR PRICE: Any other proponents? Are there any opponents for LB758? Would anybody like...oh, here we go. [LB758]

RON WITHEM: Did you call for neutral? [LB758]

SENATOR PRICE: I'm about ready to. [LB758]

RON WITHEM: Okay. [LB758]

SENATOR PRICE: Are there anybody wishing to testify neutral? (Laughter) You threw me. [LB758]

RON WITHEM: I am. I need to get my hearing improved, I think. My wife keeps telling me that. Senator Price, members of the Government Committee, my name is Ron Withem. I am the registered lobbyist for the University of Nebraska. That's R-o-n W-i-t-h-e-m. I am testifying in a neutral capacity on LB758. This bill, as we...first of all, the first section of the bill which deals with...I believe it's the Department of Revenue statute, so we have absolutely no opinion on that. The main impact of the bill on us is the bill, if it were to pass, it would...it appears it would place a ban on what is our current practice of providing free access season passes to football games and any other event where there would be admission. I suppose Lied events, occasionally, there are those. We would not be allowed to do...make those available to members of the Legislature or

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 19, 2012

of the executive branch of state government. Our current practice is, as you all know, to let you know that if you're interested in accessing admission to Memorial Stadium on Saturday afternoons and evenings in the fall, we will make available to you a season pass. Usually, that comes in a letter from the Chancellor's Office, UNL Chancellor's Office, and then you have the option of not having any access to the tickets, taking access to the tickets but paying the face value of those tickets to us, or accepting them on a free basis. We tried to find the history of this practice. It's been the case ever since I've been with the University, which is almost 15 years now. It was that practice when I was in the Legislature, which was almost 15 years before then. Michelle Waite--who is with the Chancellor's Office and is here to provide me with the answers when I don't know the answers to your questions here in a few minutes--visited with some people that have been around the University for a long time and she...some of these people thought it went back to the '50s or maybe even the '40s, this particular practice. It's really up to you with this particular bill, whether you want to continue this practice. I don't think there have been any particular problems with this over the years, but it's up to you if you want to continue that practice. If you do, we will continue it. If you prefer not to, if you agree with the import of the bill, that's fine with us also. So it really is your decision. The one specific concern that we have, though, is with the drafting of the bill, and I visited a little with committee counsel about this today. It appears as though it's not just members of the Legislature, but probably members of our own Board of Regents with who this would apply to. The bill refers to officials in the executive branch of state government and the court has ruled in the Conway case that the University of Nebraska...that officials within higher ed are part of the executive branch of state government. It would probably even ban the officials at the University, such as President Milliken and Chancellor Perlman, from attending those events without having to buy their own tickets to it. And it seems like that might be just a little bit of a stretch, not allowing members of the governing board or the officials of the University to attend those events. So if this bill does move forward, we would appreciate an opportunity to visit with you about some corrective language. With that, I'll be happy to respond to any...attempt to respond to any questions you might have. [LB758]

SENATOR PRICE: Thank you, Mr. Withem. Are there any questions from the committee? Seeing none. [LB758]

RON WITHEM: Okay, thank you very much. [LB758]

SENATOR PRICE: Thank you. Would anybody else like to testify in neutral capacity? Seeing not. Senator Avery, would you like to close? [LB758]

SENATOR AVERY: Actually, I had planned to waive closing, but something that Mr. Withem said requires me to speak additionally. I can tell you that my intent was not to shake that hornet's nest of football tickets to senators. That was not what I was trying to get at. I was under the impression--I may be wrong on this because I was looking at

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Government, Military and Veterans Affairs Committee
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Christy to see if I could get a signal--I was under the impression that we were talking about state employees and that that was not directed at the Legislature. And further, I don't know how you could say that nonpaid regents are employees of the state. And if there is need to amend this, change the language to exempt officials of the University from any restrictions perceived or otherwise, we can do that. But that's something we can talk about in Executive Session. [LB758]

SENATOR PRICE: Thank you, Senator Avery. Senator Sullivan? [LB758]

SENATOR SULLIVAN: Thank you, Senator Price, and thank you, Senator Avery. It's probably unfortunate that Auditor Foley isn't here, because I'm kind of searching for... [LB758]

SENATOR AVERY: I intend to call him when I leave here... [LB758]

SENATOR SULLIVAN: Uh-huh. [LB758]

SENATOR AVERY: ...and find out why he's not here, because this bill was brought to me by him. [LB758]

SENATOR SULLIVAN: And, you know, we've got the letter from the Grocery Association that said that something like this is problematic and that some of these people are actually, in fact, doing their job by... [LB758]

SENATOR AVERY: Yeah, I think they ought to read the bills before they jump in to oppose them. [LB758]

SENATOR SULLIVAN: Um-hum. [LB758]

SENATOR AVERY: They've done this before on other bills. [LB758]

SENATOR SULLIVAN: Okay, okay. [LB758]

SENATOR AVERY: Read them carefully, and then decide if you really have a problem with it. [LB758]

SENATOR SULLIVAN: Okay. [LB758]

SENATOR PRICE: (Exhibit 1) Thank you, Senator Sullivan. Any other questions? Well, that would be that. Let's read into the record that we do have a letter from the Grocery Industry Association and...as opposition to LB758. And with that, we will close the hearing on LB758 and I believe that closes today's activities. Thank you for participating in your Legislature. [LB758]