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Transcriber's Office

Government, Military and Veterans Affairs Committee
February 09, 2012

[LB944 LB1014 LB1025 LB1157]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 9, 2012, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1014, LB944, LB1157, and LB1025. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Charlie Janssen; Russ Karpisek; Les Seiler; Kate Sullivan; and Norm Wallman. Senators absent: Rich Pahls.

SENATOR AVERY: (Recorder malfunction) ...to the hearing of the Government, Military and Veterans Affairs Committee. My name is Bill Avery. I represent District 28 here in the south central Lincoln and I am Chair of this committee. Before we get started, I have a few procedures that I would like to go over with you. And before I do that, I'm going to introduce members of the committee because they are arriving. Starting on the right, Senator Rich Pahls, representing Millard, is going to be a little bit late today; he informed us of that. Seated next to him is Senator Les Seiler, our new member from Hastings. Next to him is Charlie Janssen, who will arrive later, from Fremont; and seated next to him is Senator Scott Price, the Vice Chair of the committee, from Bellevue. To my right is Christy Abraham, the legal counsel of the committee; and to my left is Senator Russ Karpisek from Wilber. Welcome back, Senator.

SENATOR KARPISEK: Thank you.

SENATOR AVERY: And seated next to him is Senator Kate Sullivan from Cedar Rapids. Norm Wallman is the last one there, from Cortland; and seated at the very end is Sherry Shaffer, who is the committee clerk. If you are planning to testify, we ask you to fill out this form. It is available at each entrance; there's a table at each entrance to the room. Please print your...the requested information clearly so that we have a clear record of who you are, what bill you're testifying on, and what your position is. Then you give this to the clerk, and it becomes part of her records. If you do not wish to testify but you would like to be recorded for or against any of these bills, there is a second form that also is available at the entrance to each...at each door, and all you have to do is print your name and the requested information--bill number, support or opposed--and this becomes part of our record if you do not wish to testify. A few other rules and procedures. We will be using the lights system. This is a five-minute lights system. The green light means you have four minutes to get your testimony underway; and then when the amber light comes on, you should be about finished--that's a one-minute light--and then when the red light comes on, we want you to be finished. We believe that five minutes are enough time for people to get said what needs to be said. After all, we have five minute limits on what we can say upstairs, so we're used to that. The order of business is as posted outside the door, starting with LB1014; and then following that will be LB944, followed by LB1157 and LB1025. If you have any electronic equipment with you that makes noise or is likely to make noise, please turn it off or silence it in some

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way so as not to disturb our proceedings. If you have material you'd like for the committee to view--documents or supporting evidence for your testimony--you will need 12 copies. If you do not have 12 copies, the page, Catherine Larsen, from Omaha, will help you get the required number of copies. You give that to the clerk, and they will be distributed to the committee. If you have written copy of your testimony, we'd like to see that and it will be handled the same way. Now I have to leave and go to Natural Resources to introduce another bill, so I am going to turn this over to the Vice Chair, Senator Scott Price, but I will be back. Senator Price?

SENATOR PRICE: Thank you, Senator Avery. Well, we'll move on now to open on LB1014. Welcome.

JULIA HOLMQUIST: (Exhibit 1) Thank you, Senator Price, members of the Government Committee. My name, for the record, is Julia Holmquist, J-u-l-i-a H-o-l-m-q-u-i-s-t, here today to introduce LB1014 on behalf of Senator Conrad, who is currently on maternity leave. Senator Conrad asked that I share this short message with you today. I introduce this legislation this session for the following straightforward reasons. The Nebraska Department of Roads is one of our largest and most important state agencies. It has been at least 14 years, if not longer, since a comprehensive performance audit has been conducted on this agency by our Legislature. Repeated requests for this audit have not been acted upon by Legislative Performance Audit in the past due to a lack of interest and resources. Thus, I considered other alternatives to accomplish this activity, to ensure maximum efficiency and transparency for the Nebraska taxpayers in relation to our infrastructure investments. I worked on this legislation and consulted with the Auditor of Public Accounts and his staff and would like to thank them for their technical assistance with this legislation. LB1014 is timely, as next year there will be an infusion of considerable taxpayer dollars into the Department of Roads, based upon the adoption of LB84 last session. Thus, it is more important than ever that we have a baseline of good information and data available so policymakers and citizens can objectively evaluate how these additional resources will be utilized. In order to achieve these objectives, I also pursued a request for the same to the Legislative Performance Audit Committee in late 2011. I am happy to report that this report and this legislation has accomplished its objective. I am grateful that the Performance Audit Committee has finally agreed to pursue this endeavor. These efforts have generated support from a variety of sources, including a recent Omaha World-Herald editorial, which I have had the page pass around to you. In conclusion, this legislation is no longer necessary, but indeed its introduction was a catalyst for this important development. I encourage you and others who may have an interest in this issue to visit the members of the Legislative Performance Audit Committee. Thank you for your time. [LB1014]

SENATOR PRICE: Thank you, Ms. Holmquist. And with that, we'll move on now...we're going to go ahead and have the full hearing on this today? [LB1014]

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JULIA HOLMQUIST: I'll waive closing, and we haven't organized any testimony, so. [LB1014]

SENATOR PRICE: Okay. [LB1014]

JULIA HOLMQUIST: Okay? [LB1014]

SENATOR PRICE: Thank you very much. [LB1014]

JULIA HOLMQUIST: Thank you. [LB1014]

SENATOR PRICE: (Exhibits 2-3) So to go through it though, are there any proponents? Opponents? Neutral? That closes the hearing today on...or right before I read in two letters here. We have a letter of opposition, and this comes from the Audit Committee; and we have another one in neutral capacity from the Auditor of Public Accounts. And with that, we will actually close the hearing on LB1014 and move on to LB944, Senator McCoy. Welcome. [LB1014]

SENATOR McCOY: Thank you, Vice Chairman Price and members of the committee. For the record, I am Beau McCoy, B-e-a-u M-c-C-o-y, and I represent the 39th District here in the Legislature. And I'm here before you this afternoon to introduce LB944, which prohibits campaigns from paying elected officials for personal or intellectual services. Personal services may include campaign managers, consultants, or fund-raisers. It would be important to address a question that I've gotten on this legislation. You know, what if an elected official owns a t-shirt shop or a sign shop or something along those lines? And this legislation is not intended to prohibit that at all. That's merely for what is defined in statute as personal services. LB944 is needed, I believe, to close a current loophole in state law that allows an elected official to financially profit through another candidate's campaign. The potential for abuse, I believe, is enormous. Currently, an elected official who is looking to make money off of their position as an elected official could sign on to be a consultant or an employee of a campaign, then approach lobbyists and interest groups to donate to the campaign. This money could then be funneled back to that very same elected official. I believe it's important to remember that elected officials decide the fate of legislation or city ordinances, supported or opposed by the same lobbyists and interest groups who they solicited for a donation. And I found myself asking, as we put together this piece of legislation, what if an elected official would try to--would attempt to, I mean, or could--sell their vote to the lobbyists or special interest groups? It just creates a whole host of potential issues. And what if the elected official would say they could do everything in their power to go against the lobbyist or interest group if they were to not donate to a campaign? It just creates, again, a host of potential problems that I believe just really needs to be closed in statute. You'll see that there is a small, \$1,300 fiscal note that Nebraska Accountability and Disclosure Commission has put together to

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republish some publications if this legislation were to move forward, and I certainly hope that it does. You know, I think that whether it's from a school board member at the local level, a city, village, or city council or a village board, clear up through members of the Legislature or all the way up to our constitutional officers, including the Governor, I really believe that Nebraskans expect elected officials to operate to the highest level of integrity. And I think this legislation just clearly puts in statute that we believe that also and that we understand that the citizens of our state expect that from us no matter what the elected position and including what they do outside their official duties as elected officials. Clearly, we are a citizen Legislature, but in the 75 years of our Unicameral and its success, I think we recognize that no matter what we do outside of here in the Legislature, we do conduct ourselves--or should--to the best of our abilities and above reproach. And with that, I would close and take any questions if there are any. [LB944]

SENATOR PRICE: Thank you, Senator McCoy. Are there questions from the committee? Yes, Senator Karpisek. [LB944]

SENATOR KARPISEK: Thank you, Senator Price. Thank you, Senator McCoy. I agree with you. I'm just wondering, okay, so I couldn't hire you to run my campaign for Legislature? [LB944]

SENATOR McCOY: Well, as I understand and how, you know, we wrote this, put together, Senator Karpisek, how this would work, this isn't to preclude anyone from writing a check to support a candidate or endorsing another candidate. This would merely be in the instances of...you've outlined it. If by hire you would mean to actually pay someone? Yes, and that is what is intended. It wouldn't prohibit any one of us as members of the Legislature or any other elected official or again, whether it be school board or city council or whatnot, from helping another candidate. But to actually profit from it in a management or a consultant role? Yes, it would prohibit that. [LB944]

SENATOR KARPISEK: Do you think it's too broad if it would be also like a school board member wouldn't be able...you wouldn't be able to hire them to manage your campaign? [LB944]

SENATOR McCOY: I do not, and let me tell you why. You know, all of us--or, I shouldn't say all of us. Many of us have had, before we became elected officials, probably had some sort of involvement in the political process in some way, whether that would be in an activist role, in a volunteer role with other political campaigns or endeavors, or fund-raising. But likely we all have been involved in the political process at some level or another, usually in support of some other elected official. But I believe, as we've talked about this legislation, that when we cross that invisible line and our name is on a ballot and we become an elected official, we've left the ranks of being activist, and we've now become elected officials, and as such we're held to what I believe to be a higher standard. Whether that's fair or not, I believe it's just a reality--if not in our state,

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everywhere in the country--and so I believe it's just as important at the local level. I think there's just as big of an opportunity, maybe at a smaller scale, for problems and abuse as there would be at the highest levels in our state. [LB944]

SENATOR KARPISEK: Very good. Thank you, Senator McCoy; and thank you, Senator Price. [LB944]

SENATOR PRICE: Thank you. Are there...Senator Janssen. [LB944]

SENATOR JANSSEN: Thank you, Vice Chair Price. Senator McCoy, kind of building a little bit on the...what Senator Karpisek was saying. Is there...now would this stop, let's just say, a state legislator from helping out and profiting from a national election? Whether it's out of this state or not, if they have a company that does this consulting-type work and they want to sign on to the, I don't know, "Elect Smith From Missouri," Senate candidate, would that affect them, then? [LB944]

SENATOR McCOY: Well, I don't really know how, Senator Janssen, that we could address that in state statutes. I don't know if there would be a way to address that, and I personally would find that just to be as much of a problem, potentially. I don't know if it would be just as much of a problem here in our state for a potential for abuse, but I don't know in state statute how we could get at that. I don't believe that LB944 addresses such a situation or that it could. Do I find it to be potentially as problematic? Possibly, but I don't think there's any way to address that in legislation that I'm aware of. [LB944]

SENATOR JANSSEN: Okay. And even if I--not me--but if you've worked for a company that engaged in campaigns and I was an employee of that company because, as you know, we have to have other jobs down here. I'm an employee of that company; in a roundabout way, I'm still profiting from the election of somebody else. Would that be...? I'm looking for unintended consequences here. [LB944]

SENATOR McCOY: Yeah. I don't believe though that the section of statute that this applies to, Senator Janssen, that I don't believe that...I think it's pretty clearly defined. What we're talking about here are campaign committees that are filed with Nebraska Accountability and Disclosure Commission. So to the degree that you're speaking of, I don't know how this would affect such a situation. [LB944]

SENATOR JANSSEN: Could I circumvent this legislation? I'm in business with my brother, but...and I trust him most times, but I could say, hey, brother, go set up this company, I'll give you all the advice on how to do it, and still do it? I'm just still...my, I guess, intellectual property that...and I'm...maybe I'm profiting, maybe I'm not, but I guess that would be kind of a way around it? [LB944]

SENATOR McCOY: Well, this LB944, Senator Janssen, I believe addresses the actual

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physical transfer of funds. And so again, an advisory role that's an unpaid advisory role, I would dare say we probably have all given advice to folks that come along behind us in the area of public service. I think that's a very different beast altogether, in my view, and so I don't think that there would be a way to circumvent this because this is fairly, as you can see, a fairly short piece of legislation that really deals with the actual transfer of money between a candidate committee for personal services and an elected official. [LB944]

SENATOR JANSSEN: Right, so if you remove it one step, it would probably really not matter with this bill then. It... [LB944]

SENATOR McCOY: I don't know that this bill would address that, nor do I see how you could necessarily address such a situation as you're describing. [LB944]

SENATOR JANSSEN: Yeah, I'm just saying if "McCoy for Legislature" writes a check to, whatever, Common Cause, and then Common Cause decides to pay me, that could be a way around it. [LB944]

SENATOR McCOY: I don't know whether it would be a way around it or not, Senator Janssen. I guess I couldn't anticipate that sort of a hypothetical situation, and perhaps there's something to that; I don't really know. [LB944]

SENATOR JANSSEN: Thank you. [LB944]

SENATOR PRICE: Any other questions? Senator McCoy, I would just ask...you know, we were reading here some of the advice given and things. How do you perceive this affecting the First Amendment right to political free speech in that if you're a campaign...you're campaigning, and now I've been told who I can't spend my money on? You know, as a candidate, you're being told I can't go hire somebody. [LB944]

SENATOR McCOY: Well... [LB944]

SENATOR PRICE: Do you feel...I mean...? [LB944]

SENATOR McCOY: Pardon me. The statute already talks about personal services as being determined as an attorney or a CPA, and you can see that in the green copy--a lawyer or an accountant--so I think really this just extends to...along those very same lines and just clearly defines that we're also talking about an elected official. [LB944]

SENATOR PRICE: So you're adding to the list. [LB944]

SENATOR McCOY: In my belief, yes. [LB944]

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SENATOR PRICE: All right, thank you. Any other questions? Seeing none, thank you very much, Senator McCoy. With that, we'll move on to proponents for LB944. Are there proponents? Seeing none, we'll move on to opponents. Are there any opponents to LB944? Would anybody like to testify in the neutral? Senator McCoy, would you like to close? Senator McCoy waives closing, and that will end and close the hearing on LB944. And we will move on to LB1157, Senator Larson. We're going to stand by while Senator Larson makes it to his hearing. [LB944]

BREAK

SENATOR PRICE: Senator Larson, welcome to your hearing on LB1157. [LB1157]

SENATOR LARSON: Excuse me, Senator Price and members of the Government Committee. I didn't realize the other bills were going to go so fast, so I was in the... [LB1157]

SENATOR PRICE: Neither did we. [LB1157]

SENATOR LARSON: What? [LB1157]

SENATOR PRICE: Neither did we. [LB1157]

SENATOR JANSSEN: Join the club. [LB1157]

SENATOR LARSON: (Exhibit 1) ...and didn't realize that and was in the middle of a Judiciary hearing where we're talking about parental control of children, so awful interesting, so excuse me. I am Senator Tyson Larson, T-y-s-o-n L-a-r-s-o-n, representing District 40, which includes northeast and north central Nebraska and today, I am introducing LB1157. LB1157 makes a small change in the Accountability and Disclosure Act by striking statute 49-1463.01(c), which is one of the grounds for reduction or waiver of late filing fees and interests. Currently, there are four grounds for a reduction of waiver...waiver of fees for late filings with the Accountability and Disclosure Commission: (a) the circumstances indicate no intent to file; (b) the person has not been required to pay late filing fee for two years prior to the time the filing fee was due--excuse me; (c) less than \$5,000 was raised, received, or expended; or (d) a reduction or waiver would not frustrate the purposes of the Nebraska Political Accountability and Disclosure Act. LB1157 strikes the requirement that \$5,000 was raised, received, or expended during the reporting period. Waivers of late filing fees are fairly common, mostly based upon either that the person had a late filing within the past two years or that more than \$5,000 was reported. However, this \$5,000 seems fairly arbitrary. If a committee files, having raised \$4,999, they would be eligible for a waiver; but if the filing reflects only a couple of dollars more, they would not. This bill would give more discretion to the commission to determine if the late filing fees are necessary in a

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given situation. Often, for smaller committees such as those for special elections or school bond issues or for first-time candidates, the paperwork can be complicated or unfamiliar, resulting in late filings. The commission should have the ability to grant waiver to groups regardless of the amount reported. The other three requirements all focus on bad actors, i.e., those who have filed late in the past or had no intention of filing on time. The ground that I propose to strike does not in any way demonstrate this behavior, and I believe it is unnecessary. Thank you for your time and consideration, and I will welcome any questions you have. And I actually...this was brought to me by a constituent--or a group of constituents--on a school bond issue where they...essentially, they had every intention of filing on time, they had raised just over the \$5,000 limit--actually, about \$50 over the \$5,000 limit--and they were following the B-1 form. And I'll show you the B-1 form; I have the B-1 form, or at least the front page of the B-1 form. And NADC has on there...it's geared towards us, or candidates. It has the primary election and general election, and it says you have to file within 30 days of the primary--after the primary--and 70 days after the general, but it has nothing geared towards these school bonds or special elections, and a certain committee was under the...operated and under...the commission had sent them a letter. But, as I said, a lot of these committees aren't overfamiliar with the laws, or a lot of the people that are heading these committees are doing other things besides running for political office. This isn't something they live and breathe like we do. And they had a late filing fee; it would have fallen within the 70 days, but it fell outside the 30, and they ended up get a late filing fee. And even though they had raised--I think--just over \$100 over the \$5,000 limit, they are going to have a much larger late fee than that, and I think this is something that...it's been raised. I think it's...and I may be wrong, but I think the Legislature has raised this amount from...a few times up to \$5,000, and I just think, you know, they are by no means a bad actor. This is something that, you know, I think should be up to the, you know, up to the commission instead of a...just an arbitrary number set up there because had they been at \$4,999, they could have received it. But now, because of \$100 extra, they're going to have to pay a \$500 late filing fee, which I don't think is right. But it's up for you guys to decide, and I'd be happy to take any questions. [LB1157]

SENATOR PRICE: Thank you, Senator Larson. Are there questions from the committee? Senator Sullivan. [LB1157]

SENATOR SULLIVAN: Thank you, Senator Price. Thank you, Senator Larson. Did you say the filing fee was...or the late fee was \$500? [LB1157]

SENATOR LARSON: I think it's actually going to be a little more than that in the end. Is the primary 30 days or 40 days after...of the B-1, it says right there on the B-1. [LB1157]

SENATOR SEILER: My number is 40. [LB1157]

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SENATOR LARSON: It's 40? Forty days after? So I think that...and the general is 70 days. I think they'd filed on day...or it would have been like 65 or something, so I think it turned out being like seven-hundred and...and it's \$25 for each day, so it's actually...it ends up being...it ended up being close to \$750 or something like that. But they had every intention of filing when they read the B-1. And I'm not making excuses for them. I think the commission sent them a letter saying, you know, here are your dates, but the head of the committee was busy, I mean, had another job, was busy with everything else and got caught up and was reading the B-1 form and sent the B-1 form within the...within what they thought the 70 days was. [LB1157]

SENATOR SULLIVAN: Um-hum. [LB1157]

SENATOR LARSON: ...and that's...and maybe...and, you know, I feel...and this is just something that would give the commission a little more discretion because, I mean, those small committees, it's hard. I mean, they look at the B-1 form and they download it, they have every intention of following the law in looking at the B-1. And, you know, maybe they should have called the commission and anything else; we can make excuses on both sides. [LB1157]

SENATOR SULLIVAN: Is it fair to say that maybe that should be indicated on the form itself? [LB1157]

SENATOR LARSON: And I think that would be a huge thing because the B-1 is directed at us, people that are running for office, people that... [LB1157]

SENATOR SULLIVAN: Um-hum. [LB1157]

SENATOR LARSON: Oh, I mean, we have a primary election and we have a general election and we know when to file, but these special elections, whether they be, you know, recall of school board members, we know that those can cost a lot of money, that raise over \$5,000. Or school bond elections, which are very big for the rural communities in terms of building new schools or consolidating or a number of other things, those will raise more than \$5,000. And they download the B-1 to fill out their form, and they're like, well, this was, you know, this was the final election, this was the only election. It would have been...it was easy for them to assume that they are under the general election deadlines,... [LB1157]

SENATOR SULLIVAN: Um-hum. [LB1157]

SENATOR LARSON: ...and they filed within the general election time. And then they get a late filing cost of \$750 because they raised five hundred and...I think it was \$5,100-some dollars. They get a \$750 late filing fee because they raised \$100 over the \$5,000 limit. I think this is just something...and if you guys want to up the limit to

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something else, that's fine. I just...I feel like that it's unfair...or make sure that the Accountability and Disclosure discloses for special elections and stuff like that... [LB1157]

SENATOR SULLIVAN: Um-hum, um-hum. [LB1157]

SENATOR LARSON: ...because, as the B-1 shows, it doesn't in any way cater to or at least to even help those committees, and to me that's a problem. [LB1157]

SENATOR SULLIVAN: Okay, thank you. [LB1157]

SENATOR PRICE: Thank you, Senator Sullivan. Senator Seiler? [LB1157]

SENATOR SEILER: Senator Price, thank you. Senator Larson, if you made that same argument you just made under section D, wouldn't the commission have authority to reduce that \$700 down to a period of... [LB1157]

SENATOR LARSON: The commission does have...I mean, right now... [LB1157]

SENATOR SEILER: ...or even waive it, according to paragraph D. [LB1157]

SENATOR LARSON: Yeah, they can't. Right now, essentially what the one committee is going through is they're going to...they have to file a request for a hearing with Accountability and Disclosure, and the Accountability and Disclosure board will eventually determine if they...it can still get waived, possibly. [LB1157]

SENATOR SEILER: Okay, I just... [LB1157]

SENATOR LARSON: Essentially, I'm trying to say...I'm here because it was brought and to try to, you know...again, the head of the committee now has to come in, take a day off of work, come in and try to...or, you know, have their case heard in front of the Accountability and Disclosure. And this is really...again this about the small committees. I'm not asking about it for us; I mean, it's our job and we should, you know, us as state senators...and Accountability and Disclosure should hold us to that, you know, that standard. You know, we know when our filing dates are. It's, you know, it's the everyday people that are actually trying to follow the law that now they have to take an extra day off work to come in when this could just be taken care of with Accountability and Disclosure at their discretion. If there was intent--you know, the amount filed and all of that--I think it's something that could be taken care of a lot earlier. [LB1157]

SENATOR SEILER: Thank you, Senator. [LB1157]

SENATOR PRICE: Thank you, Senator Seiler. Any other comments? Questions?

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Seeing none, thank you very much, Senator Larson. [LB1157]

SENATOR LARSON: Thank you, Senator Price. [LB1157]

SENATOR PRICE: Will you be staying for closing? [LB1157]

SENATOR LARSON: I'll stay. I don't know if I'll actually close; it depends. [LB1157]

SENATOR PRICE: All right, thank you. We will now take the first proponent on LB1157. Any proponents? Any opponents on LB1157? Welcome, sir. [LB1157]

JACK GOULD: Senator Price, members of the committee, my name is Jack Gould, that's G-o-u-l-d, and I am here representing Common Cause. I just wanted to say that I attend practically all of the Accountability and Disclosure Commission meetings, just as an observer. And I must say over the years--too many years, actually--I've found them to be extremely fair, and they do waive the rules at times when there are good reasons. And I think that in this case, if it's brought before the commission, we don't know what they'll decide. But I think, you know, the senator's plea here is a good one, but it ought to be made to the commission itself. And I think that the bill is dealing with all cases that come up with this \$5,000 limit, and if you start to change the limit, you know, you have a question of where do you stop. I mean, this has been regulated at several times. I think we've got a limit that is reasonable, and I think it's...it would be wrong to begin to change it again, so I think that's all we have to say. [LB1157]

SENATOR PRICE: Thank you, Mr. Gould. Are there any questions? Senator Karpisek. [LB1157]

SENATOR KARPISEK: Thank you, Senator Price. Thank you, Mr. Gould. You said that it's been adjusted over the years. Do you know...? [LB1157]

JACK GOULD: I can't tell you when. I don't think Frank is here; he'd be the guy to talk about that. [LB1157]

SENATOR KARPISEK: But it has been? [LB1157]

JACK GOULD: It has been. [LB1157]

SENATOR KARPISEK: So it's kept up with inflation, if you will? [LB1157]

JACK GOULD: I think so. [LB1157]

SENATOR KARPISEK: Okay, thank you. [LB1157]

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JACK GOULD: Yeah. [LB1157]

SENATOR PRICE: Thank you, Senator. Senator Sullivan? [LB1157]

SENATOR SULLIVAN: Thank you, Senator Price. Thank you, Jack. As you said, you have observed a lot of these hearings. [LB1157]

JACK GOULD: Yes. [LB1157]

SENATOR SULLIVAN: And Senator Larson said something about, well, you know, somebody in rural Nebraska has to take a day off of work to come in. Do they ever have a hearing where the people don't have to actually physically be there or can state their case in writing or any other way? Or do they have to actually come before the board? [LB1157]

JACK GOULD: I think there have been cases where they've submitted information in writing to the commission. [LB1157]

SENATOR SULLIVAN: Okay, um-hum. [LB1157]

JACK GOULD: In most cases, though, if there's a substantial amount of money involved, they...the people come in person, and Frank, I think, encourages them to come and testify. [LB1157]

SENATOR SULLIVAN: Okay, thank you. [LB1157]

SENATOR PRICE: Thank you, Senator Sullivan. Senator Janssen? [LB1157]

SENATOR JANSSEN: Thank you, Vice Chair Price. Mr. Gould, thanks for coming. [LB1157]

JACK GOULD: Yes. [LB1157]

SENATOR JANSSEN: And also thank you for getting me that list that I asked for earlier this session. [LB1157]

JACK GOULD: Oh, since you bring it up, did the Americans for Prosperity provide their list? [LB1157]

SENATOR JANSSEN: I didn't ask them. [LB1157]

JACK GOULD: Oh, okay. Just checking. (Laughter) [LB1157]

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SENATOR JANSSEN: I can at the next meet. [LB1157]

SENATOR KARPISEK: Maybe I will...maybe I'll do that. [LB1157]

SENATOR JANSSEN: You had mentioned, in your opposition...would that change at all if this were for school board or like smaller-type initiative elections? [LB1157]

JACK GOULD: I think it applies to every...I think that... [LB1157]

SENATOR JANSSEN: If it only applied, though, more narrowly? [LB1157]

JACK GOULD: Well then, you've got to get into deciding, you know, what you're going to exempt. [LB1157]

SENATOR JANSSEN: Right. [LB1157]

JACK GOULD: I mean, and that gets into a great debate as to what group is worthy, you know, and what group isn't. I know that the letter...and I know the senator has already brought this up, but, I mean, there is a letter that goes out, there is a schedule that goes out to the committee. I mean, it's not like people aren't notified. And people do make mistakes and I...the senator has said this. When you go before the commission, they generally are very kind, and they are not out to get people. If there is good reason for failure to report, they generally waive it, at least the first time. Now if you get people who do it two or three times, then they start to get to... [LB1157]

SENATOR JANSSEN: I mean, I get that; it's kind of for the bad players. So I certainly understand what you're saying, and I also, I guess, empathize with those small towns that... [LB1157]

JACK GOULD: Yeah, I do, too. [LB1157]

SENATOR JANSSEN: ...because I have several that get together on these things and really don't understand the complexity of the NADC, but... [LB1157]

JACK GOULD: The best thing is to encourage them to call Accountability and Disclosure. If there's any question, they'll take time to explain. [LB1157]

SENATOR JANSSEN: Yeah, and I know they will. Thank you. [LB1157]

JACK GOULD: Thank you. [LB1157]

SENATOR PRICE: Thank you, Senator Janssen. Are there any other questions from the committee? Seeing none, thank you for your testimony, sir. [LB1157]

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JACK GOULD: Thank you. [LB1157]

SENATOR PRICE: (Exhibit 2) Are there any other individuals who would like to testify in opposition to LB1157? Anybody who'd like to testify in the neutral? Any neutral testimony? Seeing none, I will read into the record a letter from the Nebraska Accountability and Disclosure Commission that opposes LB1157. And with that, we will move on to closing. Senator Larson? [LB1157]

SENATOR LARSON: Thank you, Senator Price and Senator Janssen and Sullivan, for asking very good questions, I think. And Frank does...in the case that I'm...he encouraged them to come, and they will have to take a day off of work and come in and...which is tough. And what we have to remember and what LB1157 does is it...we're not...and Senator Janssen asked the question, can we carve out certain statutes? I mean, I think the commission itself has a very real...they handle enough of these cases. We're...LB1157 gives them the discretion. They will see this is the, you know, the Albion school bond committee or the O'Neill school bond committee that raised \$5,184 or whatever and filed within...and can call and say, you know, we have the...we filed within the 70 days; that's what your B-1 says; this is what we thought it was. And the commission...the head of the commission--in this case, Frank--can say, yeah, that...they don't need to have to take a day off of work. They don't need to come down and testify in front of us because this is probably what's going to happen. Now would I advocate that for either, you know, myself, who filed something late, or Senator Price or Senator Seiler or Senator Janssen? No. At that point, you know, I think the commission will make their...sorry to bring you guys up, but they--the commission--would make a responsible decision and say, you know, that the board needs to decide on this stuff. I think with...putting it in the discretion of the commission is very important because they handle enough of these. They understand, you know, we're here, we deal with the campaign laws, we understand it, we should know what's going on. It's the small committees that have trouble. It's the, you know, the "Save Scribner Schools" or whatever else that don't understand or that have these problems and I think needs to be addressed, and I'd be happy to answer any other questions. [LB1157]

SENATOR PRICE: All right, thank you, Senator Larson. Other questions from the committee? Seeing none. [LB1157]

SENATOR LARSON: Thank you, guys. [LB1157]

SENATOR PRICE: That will close our hearing on LB1157, and we will wait for a moment as Senator Avery returns from his introduction to perhaps introduce LB1025. [LB1157]

SENATOR JANSSEN: I'll introduce it for him. [LB1157]

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SENATOR KARPISEK: Yeah, me, too. [LB1157]

SENATOR LARSON: Thank you. [LB1157]

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SENATOR PRICE: Welcome, Senator Avery, to open up on LB1025. [LB1025]

SENATOR AVERY: Thank you, Senator Price. I am bringing this bill...oh, my name is Bill Avery, B-i-l-l A-v-e-r-y, District 28 here in Lincoln. I am bringing this bill because of my ongoing concern over the amount of contributions members of the Public Service Commission receive from the industries they regulate. The PSC consists of five elected commissioners. They are responsible for regulating telecommunications, taxis and limousines, grain warehouse storage, railroad safety, private water companies, construction of mobile homes, and more recently, pipelines. That's important and that's one of the major reasons why I decided to bring this bill this year. I introduced a similar bill in 2007 that did not get out of committee. I'm even more concerned about these contributions now that the agency is expanding its regulatory authority to pipelines. The pipeline industry is large, it is very wealthy and they will have deep pockets, and they have a history of using their money to influence public policy. LB1025 prohibits any candidate for or any member of the Public Service Commission from accepting a gift or contribution from: (1) a person who is engaged in a business that applies to and receives its authority to conduct business in Nebraska and is subject to the oversight of the commission; or (2) an officer, director, partner, or member of such a business. So it would cover individuals, officers, and it would cover the corporation/business itself. As elected commissioners, it's important that these commissioners be perceived to be serving the public interest--the public interest, not the interest of the industries they regulate--and I'm concerned that if we don't do something about the business of raising most of your money from the industry that public confidence will be undermined. It is now the case that about 90 percent of the campaign funds raised by members of the commission originate either directly or indirectly from the industries regulated by the commission--about 90 percent. Now let me be clear. This bill is not directed at any particular member or past member. I have not even done a search of the filings of the...with the A&D Commission to see who gets what. I have only looked to the extent so that I could get the overall amount, and it's about 90 percent. I'm concerned that the...this relationship is too cozy and that it creates an appearance of impropriety, and that, as you know, can be serious as a corrosive influence on public confidence in government. Some opponents of this bill will raise First Amendment concerns about prohibiting contributions to the commission. When courts consider the constitutionality of contribution regulations, they apply heightened scrutiny not strict scrutiny. That's legal jargon, but heightened scrutiny is a standard that is not quite as severe as strict scrutiny. Even though contribution bans do implicate the First Amendment, a statute

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limiting campaign contributions is valid if it satisfies the lesser demand of being closely drawn to match a sufficiently important interest. And I'm quoting here from the U.S. Supreme Court case of McConnell v. FEC, 2003 case. The important interests recognized by the court extend beyond quid pro quo corruption. That is where you give me a contribution, and I do something for you; that's a quid pro quo contribution. So the important interests recognized by the court extend beyond this quid pro quo corruption and includes curbing undue influence on an officeholder's judgment and the appearance of such influence. The courts have upheld this. The bill appears to conform with the constitution requirements laid out by the Supreme Court in McConnell v. FEC, 2003. So it's likely to be constitutional because it serves a sufficiently important state interest in preventing corruption, or the appearance of corruption, by preventing businesses from appearing to buy regulators perceived to be sympathetic to their industry. I want to say that again because I think that's important. It's likely to be constitutional because it serves a sufficiently important state interest in preventing corruption or the appearance of corruption by preventing businesses from appearing to buy regulators perceived to be sympathetic to their industry. Also, the bill is limited to contributions to PSC members and candidates only. It is closely drawn to address a specific concern, and that concern is the influence on the PSC by the same industries it regulates. As I mentioned before, I am not alleging any specific wrongdoing. It is not illegal now. My concern is that the public trust be retained and improved, that the public perceive the fairness and impartiality of the PSC and how it works. I think that needs to be preserved. Now an issue came up in '07 that I'd like to address, and I was quizzed very intensely on how is this different from what we do here. And I will tell you that I understand that what you could say...if you just look at it in a superficial way, you'd say, well, that's no different from what we do. We are not a regulatory body. True, some of what we do in this Legislature has indirect regulatory implications, but that is not what we do. The PSC does that; that is what they do. They regulate. Now I'm asking you, is it appropriate for the commission and the commissioners to get most of their campaign money from the very people and the industries they regulate? That's the issue. You say, all right, you get contributions from lobbyists and various groups, but what we do is more indirect. We are not given a specific regulatory function in the constitution, although it is true that some of the effects of what we do has a regulatory impact. I think that that is a defensible position to distinguish between what we do and what the PSC does, and I am really concerned that we need to do this now, before pipeline regulations get too active and before the activity around pipelines in this state bring the big bucks in from the pipeline companies. I think there is a danger that the perception will be that the pipeline companies own this process and not the voters. Thank you. [LB1025]

SENATOR PRICE: Thank you, Senator Avery. I have a question for you. In looking at this, the PSC only regulates certain industries, correct? [LB1025]

SENATOR AVERY: Yeah,... [LB1025]

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SENATOR PRICE: Oh, what are they? [LB1025]

SENATOR AVERY: ...and I noted which ones they were. [LB1025]

SENATOR PRICE: Oh, okay, so...but the question I have is: Are there other industries that provide overlapping services that are the same? Like if I had a wireless, which I believe would be...fall under the auspices of the PSC, and I had a...some ISP--Internet service provider--you know, they're both providing Internet services, one of them regulated by the PSC. Could not this other group that's not regulated but provides the same service...so now we're saying one more group of people cannot contribute and another can, when they provide the actual same product or service? [LB1025]

SENATOR AVERY: I'm not sure I'm understanding exactly what your thinking is here, but the telecommunication industry is regulated by the PSC, and I don't know where you would get cell service from if you didn't get it from a telecommunication company. [LB1025]

SENATOR PRICE: Well, I meant...or like the Internet. You can get on the Internet without going through a cell company. [LB1025]

SENATOR AVERY: Right, you can; you can get it through Windstream, for example. [LB1025]

SENATOR PRICE: Right, so my point is just to make sure. I don't want to get...I don't want to chase all the cats and dogs here. [LB1025]

SENATOR AVERY: Yeah. [LB1025]

SENATOR PRICE: What I'd like to know is: Is there a challenge here in other entities that are not regulated by the PSC but provide the same type of service? Because through technology, we can get a lot of things from different services that we didn't before. I understand what you're saying about pipelines,... [LB1025]

SENATOR AVERY: Yeah. [LB1025]

SENATOR PRICE: ...but what I'm talking about...the...we're talking everybody now. [LB1025]

SENATOR AVERY: Yeah. [LB1025]

SENATOR PRICE: So I'm...I have a question about that, and hopefully we can hear through testimony... [LB1025]

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SENATOR AVERY: Well, I don't know. I can just tell you that the PSC has a pretty broad authority to regulate some important industries. And there is a reason why they go to those industries and hit them up for campaign contributions: because they know that those industries are vulnerable to that appeal, and the industry is not going to say, no, I'm not going to write you a check. Now you'll hear testimony that I can't give because I don't know the facts. But you will hear testimony about fund-raisers where thousands and thousands of dollars may be raised--\$14,000, \$20,000 at a time--in a fund-raiser at...say at the Nebraska Club, where almost nothing is reported except the total amount. So everybody there wrote a check for under \$250; that's the amount you have...if it's \$250 or higher--or over \$250--you have to report it by contributor. If you can raise \$20,000 in a room at the country club without having to report a single one of those contributors by person, by name, that's a lot of people. And everybody could be writing you a check for \$249, I suppose, and you never know who it is. [LB1025]

SENATOR PRICE: Thank you, Senator Avery. Are there other questions? Senator Seiler. [LB1025]

SENATOR SEILER: Thank you, Senator Price. Senator Avery, I'm wondering if maybe under a different section, there's...this gap is covered, but you are trying to cover gifts or contributions. My question is: What about an employee or a service compensation for a service contract? Would that be covered under here or is there...covered under another section? [LB1025]

SENATOR AVERY: You mean... [LB1025]

SENATOR SEILER: I've got a service contract that's with a provider,... [LB1025]

SENATOR AVERY: Um-hum. [LB1025]

SENATOR SEILER: ...and I'm getting paid for my services, and you're...what you're... [LB1025]

SENATOR AVERY: And you're...hypothetically, you're a member of the PSC,... [LB1025]

SENATOR SEILER: Right. [LB1025]

SENATOR AVERY: ...and you have a service contract with a provider,... [LB1025]

SENATOR SEILER: Right. [LB1025]

SENATOR AVERY: ...with an industry you regulate. I think that would probably...I don't know if it would be illegal, but it would certainly be inappropriate. [LB1025]

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SENATOR SEILER: Well, I'm wondering if it's covered under something else because I see a hole in yours, and I'll take you to a perfect example. Hundred...it's been a long time ago. Kansas and Nebraska used to be regulated by the city councils in their distribution system. They would have their employees run for the city council; that was ruled not a conflict. [LB1025]

SENATOR AVERY: Yeah, well...you know, my answer to that is what is not... [LB1025]

SENATOR SEILER: Well, all I'm trying to do...is saying, is there a gap in what you're doing? [LB1025]

SENATOR AVERY: And I'm...yeah, it's possible; it could be. [LB1025]

SENATOR SEILER: Okay. [LB1025]

SENATOR AVERY: But what is not illegal is not always right; you know that. [LB1025]

SENATOR SEILER: No, I'm not arguing that with you. [LB1025]

SENATOR AVERY: Yeah, yeah. [LB1025]

SENATOR SEILER: I'm just wondering if you had a miss there,... [LB1025]

SENATOR AVERY: ...if there's a gap there. [LB1025]

SENATOR SEILER: ...and there's a gap where it's covered under another statute. [LB1025]

SENATOR AVERY: Yeah, we'd...I'd be willing to look that up and talk to you about it again. [LB1025]

SENATOR SEILER: Thank you. [LB1025]

SENATOR PRICE: Thank you, Senator Seiler. Anybody else? Senator Wallman. [LB1025]

SENATOR WALLMAN: Thank you, Vice Chair Price. Thank you, Senator Avery. I read this over a few times, and I think the basic idea is pretty good. Do you have any penalties on this if you abuse this thing? [LB1025]

SENATOR AVERY: The penalties are a part of the A&D Commission's statutes because they'd have to make reports and I presume that...I'd have to look, but I think

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that it...that those penalties would be covered in A&D statutes. [LB1025]

SENATOR WALLMAN: Okay, thanks. [LB1025]

SENATOR PRICE: Thank you, Senator Wallman. Are there any other questions from the committee? Seeing none, thank you, Senator Avery. We will move now to proponents for LB1025. Proponents? Welcome, Mr. Gould, or welcome back. Welcome. [LB1025]

JACK GOULD: (Exhibit 1) Thank you. Senator Price, thank you. Senator Price, members of the committee, my name is Jack Gould, that's G-o-u-l-d, and I'm here representing Common Cause Nebraska. Senator Avery has done a good job of explaining, I think, the problems. He brought up the fact that the pipelines are...add a whole new dimension to this, another area of seriousness. I think the figure that Senator Avery gave, that 90 percent of the campaign money for commissioners comes from the utilities or the individuals related to those utilities, is conservative. I mean, our study of this issue would say that it probably is a great deal higher than that, but that is a good, conservative figure. Money coming in from the corporations themselves is easily identified. The individual contributions, which come in from...in amounts over \$250--they come in from related individuals, and I say CEOs of companies, vice presidents, directors, a wide range of people who have an interest in these issues--that money is a little harder to track. If you look at the charts that I have provided for you--I took the 2010 election not because commissioners Vap and Johnson are doing anything that anybody else doesn't do; I just used that because that's the most recent election that you can follow all the way through over a six-year period--there are two commissioners up for election now, but we won't get a look at their entire campaign until January of next year. So these two races begin in six years prior to the election itself. And as you go through, you have to follow the individual contributions as well as the corporate contributions, and these are totals on the charts showing how much came in over a six-year period to the individuals. You can see in the case of Commissioner Vap, he raised about \$21,301.45; Commissioner Johnson, \$15,564, all of that coming in, as I said, over a six-year period. The cycle itself is 18 months, so this is money that is raised, many times well prior to the election cycle itself, so it does provide somewhat of a disadvantage to people trying to run against the commissioners. I think that as you go through that, you'll kind of be surprised at the number of individual donors. As Senator Avery pointed out, this money is visible. When you get into the fund-raisers that are held, you begin to see an invisible amount of money, and this is money that has come in denominations under \$250. It can amount to large amounts. There was one case of an election commissioner raising as much as \$19,000 in one evening. On that evening, there were only two donations that could be tracked. One was for \$1,000, and the other was for \$500. All of the rest of the money came in, in denominations under \$250--untraceable. I think it's interesting, too, to look at Vap and Johnson's campaigns and the fact that when Vap ran, he had five opponents in the primary. None of them

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were able to raise \$5,000, so they did not go beyond the primary; they dropped out. He ran unopposed in the general election. In the case of Johnson, he had two opponents. One of them raised \$6,900, but of that sum, \$6,100 was his own money. The \$800 that followed couldn't be tracked. I think it's a question of fairness; I think it's also a question of public confidence. I think it's something that this committee has direct responsibility for overseeing what's going on, and I think it's becoming a very important issue for the committee to deal with. I think my time is up. Thank you. [LB1025]

SENATOR PRICE: Thank you, Mr. Gould. Are there questions from the committee? Seeing none, thank you for your testimony, sir. [LB1025]

JACK GOULD: Thank you. [LB1025]

SENATOR PRICE: Do we have any other...or any further proponents? Do we have any opponents to the bill? Would anybody like to testify in the neutral to LB1025? Seeing none, Senator Avery, would you like to close on LB1025? Senator Avery waives closing, and that will end the hearing on LB1025 and for today. Thank you for participating in your government. [LB1025]