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Government, Military and Veterans Affairs Committee  
December 07, 2012

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[LR486 LR496 LR502 LR512 LR561]

The Committee on Government, Military and Veterans Affairs met at 9:30 a.m. on Friday, December 7, 2012, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR486, LR502, LR496, LR512, and LR561. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Kate Sullivan; and Norm Wallman. Senators absent: Charlie Janssen; Russ Karpisek; Les Seiler; and Rich Pahls.

SENATOR AVERY: Good morning and welcome to the interim hearings before the Government, Military and Veterans Affairs Committee. We'll be taking testimony this morning on three legislative resolutions. I think you could call today the "Senator Heath Mello Day," (laughter) since four...at least three...this morning is the Senator Mello morning. We will start in the order that these are posted. And before we do that, though, I've got a few things that I need to tell you. I want to introduce the members of the committee who are here. Starting on my right, Senator Scott Price from Bellevue, who is the Vice Chair of the committee; and on my immediate right is the legal counsel for the committee, Christy Abraham. I am Bill Avery from here in Lincoln and Chair of the committee. And on my immediate left is Senator Kate Sullivan from Cedar Rapids. Soon to join us will be Senator Wallman from Beatrice, or Cortland, I guess, specifically. And the other members of the committee are otherwise obligated today, and some of them may appear later but we're not sure about that, so we are going to proceed anyway. We have an intern, Amara Meyer from Grant, Nebraska. That's Amara there. She is standing next the committee clerk, Sherry Shaffer; and we are ready to start. No, we're not either. (Laughter) This is...we are going to discuss legislative resolutions so we're not going to take pro and con comments. It doesn't matter if you are pro or con, you can appear and testify in any order you wish. The sign-in sheets at the entrance, the beige sheet, please fill it out if you're planning to testify. Print your name very clearly for the record and who you are representing; and if you're representing yourself, put "self." This testifier's sheet goes to the clerk when you appear before us. Be sure to spell your

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name before you begin your oral testimony so that we can get it clearly entered into the record. The introducer of each resolution will start with opening statements. There is, of course, no specific order to the testimony except that there is an order to the resolutions that we will take up, as previously stated. If you have copies of your testimony for the committee, we would like to have those submitted to the clerk. If you have any exhibits that you would like for the committee to look at and examine, please give those to the clerk as well. We will have at least one PowerPoint presentation. Mr. Auditor, are you going to have a PowerPoint?

MIKE FOLEY: No, that's Treasurer Stenberg, I believe, is going to do that.

SENATOR AVERY: Okay. So that is kind of a departure from a regular hearing but we do that in these interim studies. Please turn off your cell phones or put them on silent or vibrate so that you don't disturb the proceedings. And with that, I am going to start now with Senator Mello on LR486. Welcome.

SENATOR MELLO: (Exhibits 1-4) Good morning, Chairman Avery, members of the Government, Military and Veterans Affairs Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. As the committee may remember, last session I introduced LB923, which would have adopted the Nebraska Buy American Act. While the Buy American concept and the legislation generated significant discussion on its own, many Nebraskans who contacted my office about the proposed legislation asked why it was so broadly focused on American-made goods and not more narrowly focused on Nebraska-made goods and services. Regardless of which approach is taken, the goal of these Buy American and Buy Nebraskan policies is to ensure that our state tax dollars are used in an efficient manner that helps create jobs in our state. My intent in introducing LR486 is to examine these procurement policies, as well as the procurement process in general. Currently, 46 states have some type of resident bidder preference, either in statute or in the rules and regulations governing their procurement offices. These preferences vary widely from

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affirmative preferences that give a certain dollar amount or percentage preference to in-state companies, to simply awarding bids to in-state companies in the event of a tie. In addition, 36 states, have what is known as a reciprocal resident bidder statute, which gives preference to in-state companies in the event that they are bidding against companies from states which provide preferences to companies from their own state. The state currently awards tie bids to resident bidders and gives a preference to in-state vendors that employ blind and visually impaired Nebraskans. We also have a reciprocal resident bidder statute that dates back to 1967. Although based off information from the Department of Administrative Services, that was received for my office a little less than an hour ago, DAS is currently interpreting the definition of resident bidder statute so that the reciprocal preference is never triggered. This is potentially problematic, as, according to the statute, any contracts entered into without compliance with the reciprocal resident bidder preferences is to be considered null and void. The committee should have received copies of the correspondence between my office and the Department of Administrative Services regarding Nebraska's resident bidder statute. While we have initial disagreements with DAS's interpretation of the statute, my office intends to follow up with this committee's legal counsel and DAS to further explore their interpretation. Among those contacting my office during last year's debate on LB923, was John Dunn, whose Omaha-based company lost out on a potential contract with the Game and Parks Commission by just \$20. Unfortunately, this situation is a perfect example of how our current procurement process does a great disservice to Nebraska businesses. If we had even a modest resident bidder preference in place, then instead of sending out thousands of dollars to out-of-state companies, those dollars could have been given to a Nebraska company with Nebraska employees who in turn pay Nebraska taxes and spend their money in our local economies. The committee should have received a copy of a report from one or more of the recent efforts to adopt an in-state procurement preference from another state: former Republican Governor Mitch Daniels' Buy Indiana Initiative. As part of that initiative, the state of Indiana began tracking the percentage of procurement dollars being spent with in-state companies, again something that our state is currently not doing based on the correspondence from

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the Department of Administrative Services. My office is currently working on legislation modeled after the Buy Indiana Initiative as well as legislation that would require the Department of Administrative Services to begin tracking the percentage of procurement dollars being spent with in-state companies as opposed to out-of-state companies. One issue that has come up since the introduction of LR486 has been the audit of the Department of Administrative Services Materiel Division released by the State Auditor's Office in August. The audit was highly critical of the Materiel Division which handles the bidding and awarding of hundreds of millions of dollars in state contracts each year, citing evidence of questionable bidding practices, inadequate recordkeeping, and erroneous accounting. State Auditor Foley will be joining us this morning to share his office's findings; and I'm hopeful that this hearing will help the committee identify any potential statutory changes which may need to be addressed, the issues raised by the Auditor's report. Finally, I would be remiss if I did not mention the ongoing legal action of the DAS's decision to award our state employee health contract to UnitedHealthcare, an out-of-state company, after 27 years with the Omaha-based Blue Cross Blue Shield. While ultimately the allegations against the department in the contract dispute will need to be resolved in a court of law, I think it's important to recognize the impact that just one state contract can have not only on our state budget but on our state's economy as well. The difference between the services being performed by Nebraska companies using Nebraska workers versus those same services being done out-of-state, or even out of the country, for that matter, can be significant. Moving forward, I hope that these are issues the committee will keep in mind as we begin the process of reforming our state's procurement process. Thank you for your time and I'd be happy to answer any questions you may have. [LR486]

SENATOR AVERY: Thank you, Senator. Questions from the committee? Well, I guess I'll have to ask questions. (Laughter) Are you at all concerned about...if we were to adopt a Buy Nebraska policy--I think that's really what you're talking about; it's not strictly Buy America but Buy Nebraska. I we were to do that, are you concerned about the increased costs to the state? [LR486]

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SENATOR MELLO: I'm not, Senator Avery. And the reason why is, we've done our research and I think the reports we gave the committee has shown what a variety of other states are currently doing. And the best model that we have been able to identify was the Indiana model that was initiated by, now, former Governor Mitch Daniels, in which it didn't cost the state any more money. It simply changed the way they looked at their procurement process. And I think the first process looks at the transparency components. Ultimately, we're working on two pieces of legislation now, one modeled after their Buy Indiana Initiative, but the other one looking purely at the transparency component to initially be able to see how many of our contracts currently are being awarded to in-state companies versus out-of-state companies. The underlying issue ultimately is we want to make sure that we follow the lowest responsible bidder statute, as well, which I think can be done even by giving a preference to in-state companies and in-state contractors. It's simply a matter ultimately of looking and evaluating, one, our own statute which in conversations with my legislative staff, our resident bidder statute hasn't been updated since 1967. And some of the dialogue in conversation you've seen with my office and the Department of Administrative Services can kind of lead one to believe that regardless if this committee feels that it's in the best state policy to try to give preference to in-state companies when awarding contracts, at least the issue in regards to revisiting that specific statute is warranted; only if not the fact that obviously a variety of other states have changed their policies, in theory, with which our resident bidder statute is partially based on. But ultimately it was originally passed and put in statutes in 1967, which as I've stated and the report shows, most other states have updated theirs or made dramatic changes since that point in time. [LR486]

SENATOR AVERY: One of the criticisms of Buy America, Buy Nebraska, or Buy Indiana policies, is that you trigger a tit-for-tat situation where you get in competition then with neighboring states, where if we're not going to buy anything from Iowa, then they're going to take action to not buy anything from Nebraska. And, ultimately, everybody loses because maybe Iowa has a better product at a lower price, or maybe

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we have a better product at a lower price, then they don't buy from us, we don't buy from them, and both states are harmed by that. What is your reaction to that argument?  
[LR486]

SENATOR MELLO: Well, I would argue to some extent if that was the case and ultimately all 50 states would have some kind of "Buy their individual state preference" right now on the books, if it was purely, I would say, a bidding war amongst out-of-state companies versus in-state companies. Some states have been able to find a way ultimately to award more of their percentage of their state contracts to in-state businesses. I don't see the reality of...even if this committee chose to move forward with a concept of trying to give preference to in-state companies, I don't see all state contracts in the future going to a Nebraska-based company. Ultimately, there are situations where, as I laid out in my testimony--and last year I briefly mentioned it when I brought LB923 in front of the committee--there are those individual cases right now that currently are happening in the case where you have a \$20 bid difference between an in-state Nebraska company and a company that was based, I believe, out of Georgia, where that \$20 difference, so to speak, was miniscule in comparison to the ultimate economic impact it would have of hiring an additional 10-15 more employees in Nebraska to carry out that state contract, in comparison to sending that to the state of Georgia where that other company, who was awarded the contract, is currently based. I think those are the instances that we're trying to get at; that we know that there are small businesses in Nebraska that want to compete for state contracts, and one way or another, just aren't feeling they have the fair shot at being able to ultimately meet, so to speak, some of the requirements and/or are just losing out on these contracts purely based on nickels and dimes in regards to their bid. Now, ultimately, I think all of us want to see the lowest responsible bid that the state takes. But, ultimately, we have to have a conversation, I think, in regards to what is that lowest responsible bid if we're going to see a significant economic impact by directing portions of our state contracts to these Nebraska small businesses, that has a much bigger economic impact through taxes that are paid as well as services that are rendered in our state, in comparison to seeing

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those be sent out of state. [LR486]

SENATOR AVERY: Let's talk about that \$20 example you gave, because if it's \$20 on an aggregate purchase, that is miniscule; but if it's \$20 on a large purchase where you have a \$20 difference on each item in that package of purchases, that could be really significant. What kind of deal are we talking about? [LR486]

SENATOR MELLO: Well, I think, Senator Avery, I think once again you take it at an...I think you look at it as a case-by-case situation. I mean, I think your example is a perfect example in the sense of if it's an overall contract that lost out by \$20, that's obviously significantly different than a contract that the service that was rendered, which may be rendered 2,000 times, lost out by \$20 per time the service was rendered. That's a significantly different, I think, example. Ultimately, I think...and by all means, I think the Indiana example is, I think, a very, I think, common sense. And I would almost say it's a fairly conservative approach to trying to find a way, once again, to understand that we're trying to look out for the taxpayer's interest in regards to when the state does choose to contract out services, that we want to make sure the state is paying the best price it can for those services and goods. Ultimately, we know, though, that there are businesses that may be able to provide sometimes a better deal because of their business model, and/or just maybe the proximity of where they're located in regards to where the service is rendered. If, for an example, you have a state HHS office out in Broken Bow that's trying to get a contract out of service, one would think that maybe being able to get a contract provider based out of maybe Lexington, would be a little bit more cost-effective instead of getting a contractor based out of Camden, New Jersey. Those are the kinds of issues, I think, that sometimes we have a tendency to only look at one aspect of our statute in regards to the lowest responsible bidder without taking into consideration that ultimate definition. And, ultimately, partially, it's a management decision. I think at the end of the day, I think we all understand that the legislative branch and the executive branch have two different roles in this process, by the legislative branch providing a policy framework for which DAS and other state agencies may choose to do their

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procurement. We're not ultimately mandating them; and I don't think, if you look at the Buy Indiana Initiative, it's not ultimately mandating them that they have to choose Nebraska businesses. It's simply trying to provide Nebraska businesses, one, I would say, a leg up in regards to their ability to try to apply and ultimately get awarded these contracts, because the underlying premise is that we will see a bigger economic impact through tax revenue into our state, as well as job creation, by awarding these businesses locally and in Nebraska in comparison to companies outside of Nebraska, who, by the way, may be also providing those services by outsourcing them overseas. That's another issue, that ultimately the department was unable to find out for us in our request, was whether or not the services that are being contracted out are even being performed in the United States in comparison to being performed overseas; which I think the public has a right to know in regards to sometimes where those services are being rendered, if they're being rendered in the United States or outside the United States. [LR486]

SENATOR AVERY: So you would argue that we could do a better job of tracking our procurement decisions and contracts so that we know how much we're buying from Nebraska and how much we're not? [LR486]

SENATOR MELLO: I think that's kind of the foundational aspect, I would say, of some of the research we provided the committee today, and it's ultimately, I think, looking, I think, at the legislation, the legislative process through the pragmatic lens. I think that is probably the first and foremost policy area we need to probably explore is the transparency components and the tracking systems in regards to how our state tracks and discloses our state contracts in regards to where those services and goods are being purchased and/or rendered. That's something that currently is, and through the correspondence I have provided the committee, is not being done now; and I would think that would be the first probably commonsense proposal that I would urge the committee to possibly consider next session maybe even before the committee would consider any policy changes that would give preference to in-state companies. [LR486]



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SENATOR AVERY: I think the committee would welcome that kind of legislation. If you have any ideas along those lines, you might want to work on that. Any other? Senator Sullivan. [LR486]

SENATOR SULLIVAN: Thank you, Senator Avery. Thank you, Senator Mello. You mentioned that the resident bidder statutes have not been updated since 19...what...67? [LR486]

SENATOR MELLO: 1967. [LR486]

SENATOR SULLIVAN: But did I understand you correctly that you also feel that even the current statutes aren't really being followed quite as they...could you expound on that a little bit more? [LR486]

SENATOR MELLO: If I could draw your attention, Senator Sullivan, to, first, this packet of letters, and then there's one individual letter that we received this morning prior to the hearing from the Department of Administrative Services as kind of the last communication that they gave. In regards to...and a follow-up to Senator Avery's recent question, to first establish whether or not the state was even purchasing American-made goods or Nebraska-made goods or services, we had to ask them whether or not they were tracking any of the contracts. Ultimately, they provided a communication, as you can see, the first communication from the department, that they do not track any of that information. In our further research, in regards to the resident bidder statute, ultimately it raised the issue in our minds of whether or not if the state is currently not tracking any of its contracts in the sense of whether or not it's going to an in-state company or an out-of-state company, whether or not they're actually even following the resident bidder statute, which we felt clearly lays out that there is a preference to be given to resident bidders. And I think our interpretation, at least my interpretation, would be resident bidder would be a Nebraska bidder, a company, or a

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bidder that is residence-based in Nebraska, that they would give a reciprocal agreement based on what other states have in regards to their reciprocal resident bidder statutes, which one of the reports I gave you, there's 36 other states that have a similar statute as Nebraska of that resident bidder statute. The communication that we received this morning, obviously, is they have a legal interpretation that essentially allows them never to have to implement the resident bidder statute because they do not believe a resident bidder statute is the same as a Nebraska bidder. And I would say that they selectively take a piece of the resident bidder statute in regards to their definition. It's something that...once again, I'm not an attorney, so I want to make sure I'm being very clear. It's purely my nonlegal interpretation of reading the correspondence in the statutes. That's why my office is going to follow up with your legal counsel afterwards, as well as the department's, to find out how did they get their interpretation knowing that they didn't incorporate the entire statute, just a section of the statute that they feel would necessitate that they never have to use this given statute. So I think it's a...once again, I think this committee full well knows that I've had interpretation disagreements with the Department of Administrative Services on numerous issues over the last four years. This one I think, no doubt, though, warrants, I think, significant conversation; because, in theory, failure to follow the statute would essentially necessitate any contract the state has entered into to be null and void. And I think that, simply because their interpretation, they're interpreting a section of the statute that would allow them not to have to essentially issue any preference to resident bidders, and ultimately, taking, I think, almost a selective interpretation of the resident bidder of what that definition is, without looking at the other components that are also part of the statute, raises red flags to me. And I hope would be, by looking at the correspondence, and ultimately the legal counsel in my office can provide more of the...obviously the entire statute and not just the selective portions that they use. I think reading, I think, a very layman's interpretation of it, kind of comes to the same conclusion I did, which is, they're leaving out some residency requirements that's also a part of the resident bidder statute; and ultimately, the way it was drafted and the portions of it prior to their citation really emphasizes that they're trying to give preference to, I think, resident bidders in

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Nebraska, not simply any company that is allowed to do business in Nebraska. But once again, that's my own nonlegal interpretation at this point. I think it's something that definitely warrants more conversation and more dialogue between this committee, the legal counsel, my office, and DAS moving forward. [LR486]

SENATOR SULLIVAN: Thank you. [LR486]

SENATOR AVERY: Senator Price. [LR486]

SENATOR PRICE: Thank you, Chairman Avery. Senator Mello, thank you. You understand and know my endearment for acquisitions. Knowing all that, I see that we're talking about a couple of different things here. We're talking about, in general, the process of acquisitions and the clarity of understanding what's actually transpiring. But my question goes to, has the performance of awarded contracts caused harm to the state? Have we had nonperformance regardless of where they come from, that you know of? So are we being harmed other than the economic impact by the current application of their acquisition policies? [LR486]

SENATOR MELLO: You know, that's a great question, Senator Price; and to some extent I think partially the request that I think our office and Senator Avery's office had in regards to having the State Auditor provide an overview of his recent audit of the Department of Administrative Services Materiel Division may be able to shed a little bit more light than I can. I think the best response I could give with being anecdotal, and purely anecdotal at this point, is purchasing paper, so to speak, as an example. If we buy a ream of paper from a company based out of, let's say, Wisconsin, in comparison to buying a ream of paper out of a company from Nebraska, I don't know if the state ultimately would be harmed in the sense if they're buying a very similar product, but paying, so to speak, maybe a tenth of a cent more...or a tenth of a cent less to the Wisconsin company in comparison to the Nebraska company. I don't see any, I think, harm is done to the state in situations where you're purchasing very similar goods or

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standardized goods. It's just simply coming from a different contractor. The economic impact, though, I think is...I think we shouldn't diminish, I think, the importance of the economic impact. Primarily, as we're trying to ultimately ensure that we have an opportunity ultimately to assist, I would say, the small businesses, and even larger businesses in Nebraska, for that matter, who have an opportunity to grow their business based on the ability to apply for a government contract the way anyone else would be able to apply for. I think that economic impact ultimately has a bigger...I argue, at least, and I think my policy perspective is that economic impact has a larger role to play simply than just looking at, you know, like I say, the miniscule differences between an in-state contractor and an out-of-state contractor. And to some extent I think your underlying question also hits on whether or not that economic impact really is something that rises to the, maybe, importance of whether or not it saves taxpayers' money. As I stated earlier, obviously, I think that's an important issue for all of us. Obviously, we want to see the lowest responsible bidder be able to be brought forward. But in the bill I brought last year, for an example, part of that is the process that you mentioned, the acquisition. If, for example, we gave the lowest or the last possible bid to a Nebraska company in comparison to out-of-state companies, that's purely a process question. In the sense of giving that Nebraska company the one last shot at the bid to see if there's any way they can provide a lower bid than any of the other out-of-state companies, that, in theory, is a preference given to a Nebraska company. They may not be able to meet that lowest bid. But giving them that preference ultimately provides an ability for us as a state to not only save more tax dollars but ultimately to make sure those tax dollars are going to businesses and corporations in our state that has that ability to play, I think, a larger economic impact in regards to our overall state economy, while still, I think, accomplishing that underlying lowest responsible bidder kind of, I think, underlying statute that's in our state statutes today. [LR486]

SENATOR PRICE: My point to the question was, if I'm creating a gradient...a measuring tool, if on financial impact, the cost, if that's equal in harm, if it costs more for one way or the other, I mean we have to make sure that it's applied uniformly across the policy. So,

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thank you. [LR486]

SENATOR AVERY: I would like one more question, if you will. I note that you wrote a letter to the Department of Administrative Services on October 12, with five very specific questions, and you got a response. You asked for the response by October 29 and you got the response on October 29. But each response has language in it that there is no statutory requirement for DAS to do what it is you're asking about. So, what's your reaction to that? Are we really in need of some...do we need to make our statutory requirements more robust or more specific? Were you satisfied with the response or not? [LR486]

SENATOR MELLO: Well, that's a great question, Senator Avery. And I think all of us who have introduced pieces of legislation over our terms in office no doubt have had pieces of legislation that's come back with a fiscal note from a state agency that we've all questioned; that ultimately all of us have, I think, sometimes a healthy skepticism in regards to how state agencies come to their own determination of what a piece of legislation will ultimately cost the state. Last year, when I introduced LB923, the Buy American bill, ultimately the Department of Administrative Services came in opposition saying that it was going to cost 10 percent more on every contract the state would enter into if this policy was passed. Any time any agency comes in and kind of, I would say, provides a blanket response of, that regardless of the legislation it's going to cost a certain amount of money for everything that may involve or touch this policy area, I get concerned and I get skeptical. So, the initial letter was ultimately in regards to trying to, I think, ferret out a little bit of how the Department of Administrative Services came to their conclusion that all contracts were going to be increased by 10 percent. I think if you look at the correspondence, ultimately, they were unable to answer the questions we asked in the sense of, if they don't track contracts in regards to going in-state or out-of-state or American-made or not American-made, how would they know if every contract was going to be increased by 10 percent. That was ultimately what we were looking out for in the sense of realizing that our skepticism of how they came about their

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opposition and how they came about their fiscal note, I think lays out that, ultimately, if they don't track any of the contracts, they don't track where the goods and services are made and where they're performed, how could they come to a determination that every single contract was going to cost 10 percent more. Ultimately, I think they can't. And at the end of the day I think it brings to light their credibility in regards to whether or not they're ultimately credible in the sense of when they put forward, I think, a fiscal note of saying this is what it's going to cost regardless, when they don't have the data or the tracking system or the transparency measures in place to be able to provide that data to back that fiscal note up. So that was essentially what we were looking for. And ultimately, they ultimately provided the answers that we kind of felt that we knew we were going to get, which they don't track any of the information; thus, it's tough for them to be able to provide, I think, a real fiscal picture of what contracts would be affected and ultimately what the costs would be on those affected contracts if there's no tracking system in place. That, ultimately, led us to whether or not they ultimately are following the existing resident bidder statute, since they don't track anything now; so, ultimately, if they don't track any of their contracting practices now for in-state or out-of-state bidders, how is it that they could ultimately follow the other statute; and which, I think, will be the ongoing conversation between this committee and your committee counsel, my office, and the Department of Administrative Services. [LR486]

SENATOR AVERY: Just speaking for myself, I think that's a good place to start. Thank you. [LR486]

SENATOR MELLO: Thank you. [LR486]

SENATOR AVERY: I think, Mr. Auditor, you are next. Let me just, by way of information, explain that we are going to concentrate on the three Mello resolutions this morning, and we'll adjourn after we finish LR496, and then we will reconvene at 1:30 for the remaining work that we have to do today. And we'll stay until we finish, so keep that in mind. (Laugh) Welcome, sir. [LR486]

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MIKE FOLEY: (Exhibit 5) I got the hint, Senator. (Laughter) Thank you very much, Mr. Chairman and members of the committee. Good morning. For the record, my name is Mike Foley, F-o-l-e-y, and I'm the Nebraska State Auditor. I appreciate your invitation to appear today to offer some thoughts on LR486 which addresses the current procurement practices of the Nebraska Department of Administrative Services and other agencies. I'm happy to speak to that issue, as my office has done a great deal of work in that area. The audit and oversight environment that exists in state government today is an extremely important matter, and it directly relates and is relevant to the work of your committee and to the specific resolution before us. By way of a few examples, let me illustrate how I see the current audit and oversight environment in Nebraska state government. Earlier this year, I decided to conduct an audit of the Legislative Council, a \$17 million agency of state government that had not been audited by my office in a number of years. It was time to get caught up. I assigned a small team of auditors to the task, and they worked closely with Legislative Council staff members Janice Satra and Diane Nickolite. You should know that I'm very proud of my auditors. They're highly educated; they're talented; they're exceedingly thorough and meticulous in their work. My audit team poured over practically every aspect of the \$17 million financial operations of the Legislative Council. They looked at travel expenses, payroll, procurements and contract usage, fixed assets, senators' per diem reimbursements, lobbyist registration fees, etcetera. We looked at just about everything. Throughout the course of that audit, every document we requested to see was provided. Every financial transaction that required a word of explanation was made in a professional and a prompt manner. There was no whining. There was no pushback, no evasion, and no stalling tactics. At the conclusion of our work the auditors and I sat down with Patrick O'Donnell, Janice Satra, Diane Nickolite, and we reviewed the draft audit report. We offered a few recommendations which were well-received and we published our report. That's the way the auditing process is supposed to work, and that's the way the process usually works, but not always. In 2010, the state of Nebraska entered into a contract to procure a software product called OnBase. Over the past two years Nebraska taxpayers

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have paid about \$5.5 million for that software. And under the terms of the contract, the eventual total cost is going to be about \$8 million. The OnBase software is now being used by about 20 agencies of state government. OnBase is an electronic document storage and retrieval product that acts in many respects as an ancillary or support system to the state's computerized accounting system. In some agencies, OnBase is actually an integral part of the accounting system, as payments are actually processed through this software. Thousands of state employees now have access to the records housed within OnBase. For some of those employees it's very limited access. For others, it's a very broad access, depending on what the permissions have been allowed to them by their agencies. This access gives state employees rights at their desktop to a vast database of records housed within the system and they can visualize tens of thousands of state government records on-line, including many of the relevant records routinely needed by my auditors. For me and my staff, having such access could make a world of difference in our effectiveness as auditors. I've circulated to you a very brief statute, Section 84-305, which clearly says that the Auditor of Public Accounts shall have access to all records of any public entity, in whatever form or mode the records may be. In other words, it doesn't matter if the records sought by the Auditor are paper records or electronic records. If the Auditor asks for them, the records must be provided. A number of months ago I contacted the Department of Roads and requested a log-in ID in order to view their OnBase records. Within a day, I was issued an ID password and now I can literally sit at my desk in the State Capitol and I can instantly retrieve and examine thousands of relevant Department of Roads records that would otherwise take weeks for agency personnel to dig out and retrieve. For example, I can look at all the invoices submitted by hundreds of Department of Roads contractors. I can examine those records and look for duplicate invoices, or for other factors which may provide evidence of a potential problem. I can also see who else within state government, particularly within the Department of Roads, is also looking or processing those invoices. And I can watch that process unfold as the invoice makes its way through the payment chain. Let's move on now to the Department of Health and Human Services, an agency that makes extensive use of OnBase. In two separate meetings with HHS



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officials, I was told directly that I would not be granted access to their OnBase system. I asked for a directory of all the HHS employees who have access to OnBase. That directory, when printed out, single-spaced, typed, runs 351 pages. Now, admittedly, most of those employees have only very limited access; but that's not always true. Some of them have very broad access to all the records within HHS. But the State Auditor can't have access? That doesn't work for me. When I escalated my request to the attention of CEO Kerry Winterer, I was told, no problem, we'll get you the access. But the stalling and the game playing continued; and ultimately I waited over a third of a year before HHS finally relented and granted me access to the department's records. When an agency director successfully keeps the State Auditor waiting a third of a year to get access to accounting records, he has successfully impaired an audit. I'm now experiencing the exact same problem with the Department of Labor. More than 60 days ago I made a written request for an access ID from that agency. The Commissioner of Labor, Cathy Lang, has sent me a variety of e-mails and other letters and communications, and said, oh, yes, we'll get you that access. But after more than 60 days, I still don't have it. This problem has become so severe that I've now requested a meeting with the Governor, and that meeting is scheduled to take place next Tuesday. Now it's important to bear in mind that the Department of Health and Human Services, which made me wait more than a third of a year, and the Department of Labor, which has still not granted me the access, are two very large agencies that are not exactly models of success in government operation. In fact, it's fair to say that these two are clearly the most troubled agencies in all of Nebraska state government, and both of these agencies have been sanctioned by the federal government in recent times for improper handling of federal funds that has cost Nebraska taxpayers many millions of dollars. The directors of these agencies would do well to address their many deficiencies and end these childish games of trying to see how miserable and difficult they can make the audit environment. When the agencies of state government refuse to comply with auditor requests for records, the entire audit process is compromised, and the accuracy in the resulting audit reports is compromised and jeopardized. We simply can't have strong contract procurement, implementation, and oversight practices in this

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toxic audit environment. As a result, my ability to discharge the constitutional duties of my office have been effectively blocked. That's not just an affront to me as State Auditor, it's also an affront to you because many of you contact my office and request information and you must rely on accurate financial information as you make policy decisions to guide our state. Let me now move on to a discussion of some recent audits that further illuminate more specific problems we've identified in the contract procurement and oversight areas. Earlier this year, my office published an audit report on the Materiel Division of the Department of Administrative Services. The Materiel Division handles the bidding and awarding of hundreds of millions of dollars of state contracts. We actually worked on this audit off and on over a period of a year or more, and did so in-between other audit assignments. At the inception of that audit, the audit team selected a sample of contracts to be examined, and we informed DAS that we wanted to see all--I underscore the word "all"--DAS file materials related to the bidding and the awarding of those contracts, including the evaluators' scorecards. Despite state law requiring the retention of such documentation, DAS personnel routinely do not maintain such documentation. For example, the auditors sought to look at the evaluator's scorecard for a \$13.8 million contract to a firm called Modern Methods for photocopying equipment. The evaluator's scorecards were not provided to my auditors by DAS, but one of my auditors found those scorecards in a file laying on the desk of a DAS employee who should have given that file to us. Curiously, the scores on the newly discovered scorecards did not match the published scores on the DAS Web site, apparently indicating that the wrong bidder had been awarded the contract. DAS personnel steadfastly maintained that the contract was properly awarded, but discrepancies in the supporting documentation raised doubts. The audit team found widespread problems with the manner in which DAS recorded basic contract information into the state's computerized accounting system. The auditors tested two dozen contracts and found that in almost every instance some of the basic contract information was wrong. The problems included incorrect contract start dates, incorrect ending dates, contract and amendments and extensions not recorded in the system, and dollar estimates of contract expenditures wildly off the mark. For example, a \$3.6

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million contract with the Omaha paper company was entered into the system as having total expenditures anticipated at being \$10.8 million with no reasonable explanation of the disparity. The auditors also found a \$9 million contract for asphaltic road oil, which is awarded after DAS received only two bids despite state law requiring three bids. State law does have a provision for awarding contracts in these situations, but that state law and DAS policies were ignored. The Nebraska state accounting system provides for a vital contract monitoring technique known as the contract usage report, which tracks all state government contracts to ensure that the vendors are not paid more than what is specified by the terms of the contract. However, DAS does not properly implement or monitor the contract usage report, and the auditors identified over \$15 million in actual payments made to vendors in excess of the dollars actually shown as having been paid according to the contract usage report. The Materiel Division of DAS is largely funded by fees assessed on other state agencies. The auditors found millions of dollars of errors and discrepancies in the manner in which DAS charges those fees, resulting in some state agencies paying too much and other state agencies paying too little. These errors resulted in excessive fees being collected by DAS, which distorted the budgeting process for other state agencies. The audit report also discloses accounting errors made by DAS for employees who terminated their state government service. Four former DAS employees from the Materiel Division were overpaid at the time of their termination, with one of these receiving a paycheck after termination which he did not earn. Other overpayments included unearned holiday pay, unearned retirement contributions, and unearned health insurance premiums. DAS did not recover the overpayments. In addition to concerns associated with the contract bidding and awarding process, my audits have also shed light on contract oversight issues, which in the overall scheme of things may be of even greater significance to the taxpayers. For example, the state of Nebraska purchases about \$3 million of office supplies every year under an exclusive buying contract with Office Depot. All of our office supplies are purchased from one company on the theory that our purchasing power can be leveraged into lower prices. In 2008, after learning about other states having problems with Office Depot, I decided to audit our contract with that company. What we found was

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that as each monthly invoice was presented to DAS, there was virtually no oversight and no review of those invoices. They were simply rubber-stamped and paid. And our audits show that due to this lack of oversight there were many, many instances of the state overpaying for goods that we were buying from Office Depot, prices that simply didn't match the bids that they had submitted. All of this was allowed to occur because nobody in DAS was watching. Now, in fairness, I must add that after the issuance of that audit in 2008, we informed DAS we were going to come back after a period of time and look again. We've now done that and they've cleaned it up considerably. There are still some problems but nothing like what we had seen a few years ago. So they've made some progress in that area and I do want to acknowledge that. Another example of deficient contract oversight came to our attention just within a couple of weeks ago, and it relates to a DAS contract to a company called Shredding Solutions. This company has a contract to gather up all of our recycled paper. They shred the paper, as some of it contains confidential information, and then they sell the shredded paper. There's actually a market for this stuff. (Laugh) But under that contract the state is supposed to receive a check each month from Shredding Solutions for our portion of the sales proceeds when they sell the shredded material. Well, in July of this year, the check from Shredding Solutions didn't arrive. August, September, October, November, no check. Someone contacted me and tipped me off. I contacted DAS and they got on it and a few days ago Shredding Solutions remitted a catch-up payment to the state in excess of \$25,000. How long would that have gone on if that alert citizen hadn't contacted me? We may never know. My office encountered another serious procurement problem while auditing the state health insurance program. In May of 2007, after a formal bidding process, DAS awarded a contract to a company called Aon Consulting to provide actuarial and other consulting services for the insurance program. The initial cost of that contract was approximately a quarter of a million dollars, and it was scheduled to end in 2008. But after a year and a half, the contract should have been renegotiated. There should have been a new bidding process and a new RFP. However, none of that occurred. Instead, the same contract was extended. Actually there have been now 13 extensions and amendments to that contract, a contract which

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started out at a quarter of a million dollars is now up to \$1.5 million and growing, more than five times the original agreement, without any more bidding. After being amended so many times, the resulting contract, today's contract, bears little resemblance to the original contract. This series of informal amendments proved to be a clever way of circumventing the public bidding process. Worse yet, the state denied itself the opportunity of searching for other vendors who could possibly provide the needed work more efficiently and at a better price. I also want to speak very briefly to the concept of sourcing government contracts with a preference to Nebraska companies, which is obviously a portion of what the interim study resolution seeks to explore. For a number of years the state has been in a contractual arrangement with a company called Nebraska Interactive. Nebraska Interactive is a Nebraska corporation and its 10-12 employees live and work in Nebraska. This company built and maintains the state's Web site, including the functions that control millions of dollars of transactions that occur on-line as people engage in on-line government transactions and services. The sale of drivers license records, birth certificates, various permits, professional license renewals and so forth are now done routinely on-line; and as citizens engage on those on-line purchases, they pay a convenience fee or a processing fee to do that. In general, per the terms of our contract with Nebraska Interactive, about 90 percent of the revenue generated by the collection of the convenience fees goes to Nebraska Interactive and 10 percent comes to the state. However, what's generally not understood is that Nebraska Interactive is a wholly owned subsidiary of a Kansas corporation called NICUSA. Over the past two years, Nebraska Interactive has paid about \$4.3 million in dividends and fees to its Kansas parent corporation while only paying about \$450,000 to the state of Nebraska. My point in mentioning all of this is simply to observe that although the state's Web site is hosted and maintained by a local Nebraska company, the reality is that most of the money from the convenience fees ends up in Kansas. As you can see, the procurement process for the state of Nebraska is in need of some serious examination, and I applaud Senator Mello and the members of this committee for taking on that difficult but very important task. Regardless of whatever recommendations this interim study may produce, I encourage the committee to please

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remember the importance of aggressive financial auditing in protecting and furthering a sound procurement process that will serve the best interests of the citizens of our state. Thank you very much, Senators. [LR486]

SENATOR AVERY: Thank you. I want to start first, if my colleagues will indulge me. I want to ask you this, and I want to refer here to the statute you mentioned, 84-305, where "The Auditor of Public Accounts shall have access to all records." It's very clear. But it also indicates that "unless the auditor's access to the records is specifically prohibited or limited by federal or state law." [LR486]

MIKE FOLEY: Correct. [LR486]

SENATOR AVERY: In those instances you talked about, did you encounter any instance where the records were specifically prohibited or limited? [LR486]

MIKE FOLEY: They were restricted from my access but there was not a state... [LR486]

SENATOR AVERY: Not by state law or federal. [LR486]

MIKE FOLEY: But not by state law. They could not point to a state law, and say, hey, Foley, we'd love to give it to you but we've got this statute over here that stops us from doing that. That never happened. [LR486]

SENATOR AVERY: Yeah. Now we had a conversation, I believe last year, about legislation that would require the release of public records within a certain timespan. [LR486]

MIKE FOLEY: Yes. [LR486]

SENATOR AVERY: I forget what happened to that, but that appears to be something of

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interest to you for apparently good reason. [LR486]

MIKE FOLEY: That bill died an unhappy death, unfortunately. (Laughter) [LR486]

SENATOR AVERY: That often happens. [LR486]

MIKE FOLEY: But the issue is still very relevant. You know, it's interesting, Senator, if a citizen on the street asked for a copy of a contract from DAS, they'd get it in four days per statute. If the Auditor asks for that same contract, he'll get it when the spirit moves DAS. That's not right. That's just not right. [LR486]

SENATOR AVERY: Um...and maybe I shouldn't say this, but what kind of spirit do you think moves DAS? (Laughter) [LR486]

MIKE FOLEY: They have their good days and their bad days. (Laughter) [LR486]

SENATOR AVERY: Senator Price. [LR486]

SENATOR PRICE: Thank you, Chairman Avery. Thank you, Mr. Auditor, for coming forward and providing testimony and shedding light on some challenges we have. And following up with Senator Avery's question about things that might come up against the release of information, where does HIPAA play? I mean, I would suspect that if you're dealing with medical records, and I'm not trying to make excuses... [LR486]

MIKE FOLEY: No, that's an excellent... [LR486]

SENATOR PRICE: ...I want to make sure we clarify, HIPAA would...I'm sure there are statutory guides that say what your burden is when that information is provided to you. [LR486]

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MIKE FOLEY: Yes. [LR486]

SENATOR PRICE: But HIPAA may, again, being as expansive a law that it is, may give cause for a delay. Would you not agree? [LR486]

MIKE FOLEY: Well, I wouldn't agree with the delay. But you're right, you're right on target with the question of HIPAA, because there's a very important federal statute that does govern state government operation and the handling of confidential medical records. My office...if you read HIPAA, what you'll see very clearly within the language of HIPAA is that there is a specific exclusion allowing auditors access to HIPAA-protected records, and that's of necessity. HIPAA-protected records include medical billing records. Somebody has to audit those records. If you didn't have an exclusion to allow auditors to do that, then there couldn't be any auditing of medical records. So we operate under the HIPAA exclusion. That does not in any way make those records public records that the man on the street could have access to, but it does allow the auditors to visualize protected records, and we do that every day. [LR486]

SENATOR PRICE: Okay. So then the follow-up to that is, were any statutory limits provided to you by the agency, DAS, for not providing in a timely manner, like other agencies seem to be able to do, why they wouldn't provide it? So, did they just tell you, no, go stuff it; or did they give you back and, let's say, this is why? [LR486]

MIKE FOLEY: Right. A year or so ago we were doing an audit of the state employees health insurance program. It's a quarter-billion dollar program. The costs are wildly in excess of other states and so forth, so we wanted to do a good thorough audit of that program. We came to the Legislature and I asked for permission to do a performance audit, as opposed to a financial audit, of that program, and the Legislature's Performance Audit Committee unanimously granted me that authority. That was about the first time in anyone's memory that the Legislature has allowed the State Auditor to



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do a performance audit. Anyway, we were then, in a short period of time in doing that audit, we ran into the HIPAA question because we needed to see billing records, not medical records, but billing records so we could find out why is the state paying so much for health insurance. We had to study the bills. And we ran into the HIPAA question and we talked about the HIPAA exclusion and so forth, and we just couldn't get DAS to budge on that. Finally, I sat down with the Governor and with Carlos Castillo and so forth, and we worked out an arrangement where we could get a redacted file from Blue Cross, then our provider, so we could study those billing records. We also received many other files which were not protected; in other words, were not redacted. So we had a mix of files that we worked with in doing that audit. Some of them had names redacted, others did not. But all those records are sealed and protected and there's been no improper disclosure of information. [LR486]

SENATOR PRICE: But they gave you a reason why they weren't providing them at a time when... [LR486]

MIKE FOLEY: Yes, but it wasn't a valid reason. You can't just say HIPAA, HIPAA, HIPAA and expect to stop the Auditor. You've got to read HIPAA and understand that there's an exclusion within HIPAA that gives the Auditor access to the records. [LR486]

SENATOR PRICE: But how about access to the database, the records database?  
[LR486]

MIKE FOLEY: Well, and that's the problem we're having right now where I had to wait a third of a year to get the HHS records. And they never once cited a statutory prohibition to my access to the records. [LR486]

SENATOR PRICE: So they just... [LR486]

MIKE FOLEY: In fact, they said, we agree; under the statute you do have rights to those

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records and we're going to get you those records; just be patient. And I was patient. I tried to be cooperative with them. But a third of a year is more than being patient; that's excessive. [LR486]

SENATOR PRICE: Thank you. [LR486]

SENATOR AVERY: Do you ever get charged for these records? [LR486]

MIKE FOLEY: We ran into that too, Senator, last year in doing this health insurance audit. There was a data file that Blue Cross prepared for us. They were ready to hand it...it was on a disk. They were ready to hand it over to me, and DAS said, no, you've got to pay for those records. I said, what are you talking about, pay for the...? We don't pay for records. We have...under statute we have access to all records. And Blue Cross was willing to provide that without cost under provision of the contract that allowed them a certain leeway in giving those records to us. And DAS was insistent that we pay for those records. Finally, they backed off of that because they knew they had no legal footing to make that demand on us. [LR486]

SENATOR AVERY: We're dealing with that issue right now. This committee will have a bill next session to deal with the using cost estimates in order to block access to public records. Because a lot of requesters are required to pay,... [LR486]

MIKE FOLEY: Yes. [LR486]

SENATOR AVERY: ...not only for the copying costs, but maybe pay for the cost of reviewing the records before you get the records. [LR486]

MIKE FOLEY: Yes. Yes, you're right. Under the public records statute there is a specific provision regarding charging the citizen for the cost of getting the records pulled together. There's no such provision in my statutes, though. [LR486]

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SENATOR AVERY: You spoke mostly about DAS. Do you have other problems with other agencies, perhaps outside the executive branch? [LR486]

MIKE FOLEY: You know, we do 100 audits a year, Senator, and 95 out of 100 go like clockwork, no problems. But there are certain agencies that are just more difficult to work with: DAS, Labor, Health and Human Services, University of Nebraska, State College System. They... [LR486]

SENATOR AVERY: I thought you had had some problems with the university. [LR486]

MIKE FOLEY: We've have had issues, definitely. [LR486]

SENATOR AVERY: Yeah. So this is broader than just... [LR486]

MIKE FOLEY: It's not just a DAS issue, no. [LR486]

SENATOR AVERY: Yeah. Senator Sullivan. [LR486]

SENATOR SULLIVAN: Thank you, Senator Avery. Thank you, Mr. Foley. When your audits uncover deficiencies, what's the process then of an agency needing to address those and what sort of time line and consequences? [LR486]

MIKE FOLEY: Great question. When we find an issue we think needs to be called to the attention of the agency--a deficiency, if you will--first of all, before that deficiency is ever published, we put it in a draft report and we sit down with the agency and we walk through the draft report and we say, okay, folks, this is what we found; this is what we think a problem is. Now before we say that publicly, we want you to see it. And if we're wrong, if there's something we didn't understand, if there's another document we didn't look at, let's talk about it. And sometimes they're right, they found something that we

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didn't know about, or they understand a statute differently. And we revise our report before we publish it. But once that published report goes out the door, the burden is on them to take up the question. We make recommendations, but I don't have enforcement authority and there's no time frame. Many reports...in fact, this DAS report that I was speaking of earlier, we were simply reporting on deficiencies we reported on four or five years earlier on the prior audit, because they say, thanks very much, Mr. Foley, we'll see you next time around. [LR486]

SENATOR SULLIVAN: Where does the enforcement authority lie? [LR486]

MIKE FOLEY: It lies with the executive branch of government, and I don't...the Auditor does not have enforcement authority over agencies. I can make recommendations but that's all I could. [LR486]

SENATOR SULLIVAN: In your experience thus far, has that enforcement authority ever been exercised on the base of your audit results? [LR486]

MIKE FOLEY: Oh, very definitely, very definitely; more often than not, in fact. I don't want to paint a distorted picture here. More often than not, the agencies will take those recommendations to heart and the executive branch will insist that the problems get cleaned up. But there are other instances where the agencies just take the attitude: thanks very much, we'll take your concerns under advisement. [LR486]

SENATOR SULLIVAN: Are there any other, other than your office, doing an audit of an agency? Is there any other form other than the agency head doing their own checks and balances? Is there any other...? [LR486]

MIKE FOLEY: Well, many agencies, of course, receive federal funds, and there are federal audit teams that come in from time to time and we coordinate with those federal auditors. And also you've got, of course, your Legislative Performance Audit Committee

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as well. [LR486]

SENATOR SULLIVAN: When you talk about the procurement rules and regs in statutes that we currently have needing to be changed, what specifically do you think needs to be changed about them? [LR486]

MIKE FOLEY: Well, good question. And I really didn't focus on that in my testimony but I'd be happy to work with legal counsel, with my counsel, and so forth. We do have some ideas in that area. One thing that I would think ought to be a subject of concern or a subject of a future bill, would be to look at this whole question of, to what extent can an agency of government simply amend a contract to make that contract do something different than what was originally intended because we see a lot of that where a contract is let for a very specific concrete purpose, but then, through a series of amendments, it morphs into something very different at a much higher dollar figure without going through another bidding process. I think maybe the statutes in that area need to be tightened up. Also this whole contract usage report issue is very, very important. There's a serious deficiency there with DAS and I think maybe some legislative work could be done in that area. So we've got some ideas and we'd be happy to share those with the counsel. [LR486]

SENATOR SULLIVAN: Thank you. [LR486]

SENATOR AVERY: And some time limits, perhaps, on how long they can delay reporting? [LR486]

MIKE FOLEY: We've certainly got some ideas in that area, Senator. (Laughter) [LR486]

SENATOR AVERY: Any other questions? Thank you very much, sir. [LR486]

MIKE FOLEY: Thank you, Senators. [LR486]

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SENATOR AVERY: Anyone else wish to address LR486? [LR486]

BO BOTELHO: (Exhibit 6) Good morning, my name is Bo Botelho. First name is spelled B-o, last name is spelled B-o-t-e-l-h-o. I am legal counsel and legislative liaison for the Department of Administrative Services. I want to thank Senator Mello for introducing this interim study. I also want to thank the committee for giving me an opportunity to speak. The State Purchasing Bureau manages all commodity contracts statewide and at \$50,000 or above, either bid service contracts on the agencies' behalf, other agencies as well as DAS, or reviews those proposed bids prior to being released, although there are some exceptions, some statutory exceptions to those bid requirements. Currently, purchasing is handling in excess of 600 active contracts, and over the last 17 months has processed over 3,500 purchase orders, prereviewed over 20 RFPs for other agencies, and is currently developing and bidding approximately 20 additional RFPs. As you might imagine, those numbers change daily and this is all being accomplished by a staff of 15 individuals. To respond to Senator Mello's introductory remarks, I would like to point out that the current state law does not allow for a Nebraska preference. The statute refers only to a resident bidder, and that law defines a resident bidder as any person, partnership, foreign or domestic, limited liability company, association, or foreign or domestic corporation authorized to engage in business in the state of Nebraska. The linchpin of the statute is essentially any business that's authorized to engage in business in the state of Nebraska, not where that business is located. It's a resident bidder if it's authorized to engage in business, and we interpret that as registration with the Secretary of State. They provide the certificate to authorization for business in the state. And the statute says, foreign or domestic, limited liability company, foreign or domestic corporation. Foreign means outside of the state. It is not a Nebraska business or Nebraska company. It is merely one that's authorized to do business here. And the preference is triggered when you have a resident bidder doing business in the state...well, you would have a state contract comes up. You have a resident bidder who is authorized to do business here and a nonresident bidder bidding

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on the same contract. The resident bidder has to also be doing business in the state of the nonresident bidder. That state has to give a preference to its home state companies or businesses. The resident bidder has to be disadvantaged by that nonresident bidder's state law. Then the statute triggers a preference equivalent to the preference that would be given by that nonresident bidder's state preference to itself. So, I mean, that's how the statute works and it is an old statute. It was developed in 1967. It is a reciprocal statute. It is not reciprocal for Nebraska business versus every other business. It's reciprocal for resident bidders versus nonresident bidders. The agency opposes preferences due to the fact that they limit competition, tend to drive up cost to the taxpayers, disrupt market conditions, and potentially impedes Nebraska companies doing business in other states. Our agency's view is that we operate in a global marketplace and that a fair and open competition is good for the taxpayers in general. I know Senator Mello brought up ongoing litigation, Blue Cross Blue Shield. There is no ongoing litigation. That case was awarded to the state months ago. It's been resolved. It was decided in favor of the state of Nebraska. Senator Mello also addressed a previous fiscal note in the last session regarding his Buy America bill. His bill allowed for a 10 percent variance in order to trigger that preference. So the 10 percent increase that we put forth in our fiscal note was in response to his bill. If you are going to allow a 10 percent variance to window for the preference to be invoked, then that's your increase. That's your potential increase. You can increase the cost to the state up to 10 percent, and we just simply devised our fiscal note around his own bill. So that's where that 10 percent number came from. You've also heard Auditor Foley speak about his audit conducted in the Materiel Division and the State Purchasing Bureau. We appreciate the considerable amount of state resources the Auditor devoted to this effort, and more importantly, the areas of improvement the Auditor identified. The agency takes all audits seriously and this one was no exception. Since the audit has been issued, we have thoroughly reviewed it, made improvements to how we conduct business, and are in the process of making further improvements such as a peer review system, a quality insurance program, completely restructuring our filing system, and we also have revised or are in the process of revising all our standard operating procedures for our buyers.

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There are some points we simply disagree with the Auditor, including his assertion that we were uncooperative and withheld information from him and his staff. We complied with all requests for information and were more than reasonable in our efforts to accommodate, participate, and facilitate the completion of this extensive audit, which as he stated, lasted in excess of a year. We gave his office virtually unlimited access to our staff, system, and files. The Auditor goes on to state that the contracts' amounts were entered incorrectly in the system. We believe that is simply incorrect. Those amounts were entered correctly in the system and we were able to demonstrate that to the Auditor's staff. I think it's important to point out that DAS awarded all bids appropriately. All bids were awarded in compliance with state statute. I would also point out that no improprieties were identified and no intentional wrongdoing was noted in the audit. I want to assure you that the State Purchasing Bureau operates in accordance with state statute and will continue to do so. I'm happy to answer any questions you may have. [LR486]

SENATOR AVERY: The Auditor made a comment about the practice in DAS of kind of renegotiating contracts without an open bidding process. And what starts out as a contract that costs, say, \$5 million, once the contract has been modified it becomes \$7 billion, or \$7 million, and then you modify it again and it becomes \$10 million. What's going on here? I mean, you guys can't do that under current law. And you're a well-trained lawyer. You went to a great law school. [LR486]

BO BOTELHO: That's a fact. Contracts can be amended. You may have a service contract that you bid out and you may have five different services you're looking for. You may enter into the contract...and you have a bid, you have multiple bids from multiple vendors for all five services. You may enter into a contract with one of those vendors. You may only invoke or use or sign the initial contract for three of those five services. You still have bids for the other two. That contract can later be amended to bring on those additional services, which were, in fact, bid but were not part of the initial cost of the contract, because at the time the agency says, we don't need this, or if you're



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developing it... [LR486]

SENATOR AVERY: And that's what we're talking about here in all these cases?  
[LR486]

BO BOTELHO: I'm not sure what each case the Auditor was talking about. I do know that when we do amend contracts, you cannot amend the contract beyond the scope of the original contract. And so that is one way you can start off with a contract with a certain dollar amount, amend it, and add services to it. [LR486]

SENATOR AVERY: You also made the statement that your department has complied with all the Auditor's requests. My question is, have you done so in a timely manner?  
[LR486]

BO BOTELHO: We believe we have, Senator. [LR486]

SENATOR AVERY: Three months is timely? [LR486]

BO BOTELHO: I'm not sure where the three-months' window is coming from. [LR486]

SENATOR AVERY: Sixty days, is that timely? [LR486]

BO BOTELHO: I know there was some instances in this audit, due to our files not being kept as organized as they should have been, there was information not in those files. We had to go get it. The Auditor talks about evaluation and scorecards. Those were being maintained in the agencies and not centrally with us. So when he went to those files, that information was not there. We had to go to the agencies to get them. We've now fixed that problem. Those scorecards are maintained by us. We've restructured our entire file system to make our files a lot more easy to look at. Part of our peer review system is to make sure all the information that the Auditor likes to see is, in fact, in that

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file so that we don't have to go and look for it. So, hopefully, he'll get his information a lot faster. I mean, we were trying to make it as condense and as convenient as possible. So some of that time delay was simply because we were not as organized as we should have been, but we weren't hiding information. [LR486]

SENATOR AVERY: I appreciate your candor on that, but what about the access to the OnBase data system? [LR486]

BO BOTELHO: Senator, I'm not sure what that system is, to be honest with you. I don't think that was an issue with DAS. I'm not even sure if we use that system. We had the state accounting system. He talked about Health and Human Services, so I really can't speak to that particular issue. [LR486]

SENATOR AVERY: What would be your reaction, and maybe you can't speak to this because it involves the whole department, but suppose the committee proposes legislation that would say you have to provide records requested by the Auditor within ten days. Public records requests from the public have to be met within four days. So, say, we give you six more days. What do you think would be the department's reaction to that? [LR486]

BO BOTELHO: Well, I can't speak to the department's reaction until we see the bill, but I can tell you, we try to get the Auditor the information as quickly as we can. [LR486]

SENATOR AVERY: It didn't sound that way. I'm sorry, it didn't. [LR486]

BO BOTELHO: I understand. And we're addressing those issues to make it... [LR486]

SENATOR AVERY: I'm not trying to be hard on you. [LR486]

BO BOTELHO: No, I understand. We were slow in getting that, but that wasn't because

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we're trying to hide this stuff from the Auditor. We're fixing an issue by increasing our organization and making ourselves more efficient, and hopefully that will address those issues. [LR486]

SENATOR AVERY: He was having similar problems, though, elsewhere with Labor and with HHS; so, you know, it seems to me that there's a systemic problem here, not just DAS. [LR486]

BO BOTELHO: I can't speak on behalf of Labor. [LR486]

SENATOR AVERY: I know. I know you can't. Senator Price. [LR486]

SENATOR PRICE: Thank you, Senator Avery. Thank you for coming forward and testifying. I've got a couple questions. The first is, in an acquisition process, obviously when we're looking at most responsible bidder, one of the constituent decisions to address is risk: Are they a responsible bidder? And you assign or ascribe risk to a proposal. How does the agency deal with that risk component if they don't know the origin of the product in the bid? Because we heard testimony that they've asked for where is it coming from, what is the origin, and they're not being told what the origin is; so how can you ascribe risk and satisfy that risk in the assessment of a proposal? [LR486]

BO BOTELHO: We look at the vendor itself. A lot of your RFPs have what they call a corporate study of a corporate structure. And so you look at the stability of the vendor, and you provide points for each vendor according to the viability of the company. We do not look at where the products that they're selling are made, if that's what's your question. We look at the company. Is this company a reputable company? Can this company get the job done? What's the financial numbers behind this company? What's their track record? [LR486]

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SENATOR PRICE: Sure. And I understand that's a component of it. But if I want widget A from a company, I'll look at that company for all the stability you talked about, but I would also hope that you're looking at the past performance of their ability to perform widget A goods and services. And in the process of looking at widget A, if you're doing a market survey and you look at it, one of the components would be, how well have they met that; and in doing so, you should have inherently the information about the widget, where it was produced, how the performance has been. And I know at the federal level when you have DFARS and other things like that where you can go back and look at contract performance on widget A. So there should be some body of knowledge to say if I want this widget, how they performed on that. That's my question, because I'm trying to draw...because it sounds like you're saying we do that other part and then we accept the bidder's pamphlets on their information. If a bidder, who just sends in a pamphlet that says this is my mean time between critical failure rate on this widget, you just accept it and you're not researching the validity of that. So you're accepting the bidder's statements. [LR486]

BO BOTELHO: Well, if you are purchasing widgets, and the agency, who we rely on their subject matter...I mean, if they want widgets, they need to tell what kind of widgets. They set specifications for those widgets which set your parameters of what this widget needs to be. And as long as the widget meets the technical parameters that the agency...it meets their requirements, it can do everything they need to do with their widget, and the company is a reputable company and a reputable vendor, then that's the specifications we have in our system to get you where I think you're trying to go, to make sure the widget can do what it's supposed to do, make sure the widget meets all the specifications, and the company can fulfill the contract. [LR486]

SENATOR PRICE: Okay, because we had a legislation prior asking for total cost of ownership and life cycle costs, and that became a burden. We could not accept the bidders' specifications. So I understand we did some work out of session to address some of that, but...so that kind of deals with my question about what Senator Mello said

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we weren't able to go back and find out about some of the product, where it's coming, goods or services. The next one, and you talked about it in your opening--if you don't mind, Senator Avery--you talked and you spent a good amount of time talking about the extent of DAS's efforts in acquisitions right now, current contracts, contracts in the pipeline, and you talked about your manpower. And then we talked about recordkeeping and things of that nature. Is it a lack of training, a lack of people? Because obviously, if we're not recording things, if we're not able to access things, you talked about the level of effort going on in DAS--and I'm just using DAS because that's what you spoke to; I can't speak to the other agencies--is that...do we not have enough people, do we not have the right training, (inaudible) us for some fairly significant lapses. [LR486]

BO BOTELHO: I think we can get better, a lot better, with the staff that we have. And we're working on doing that. I can't tell you that we need more people because I don't know. [LR486]

SENATOR PRICE: Because I want to be able to make sure that we address the root cause, and heaping more requirements on you for reporting only makes more work with less people, so we want to make sure that we address all of it. [LR486]

BO BOTELHO: And we're looking at that, Senator. [LR486]

SENATOR PRICE: Thank you very much. [LR486]

SENATOR AVERY: Thank you, Senator Price. Senator Sullivan. [LR486]

SENATOR SULLIVAN: Thank you, Senator Avery. Thank you for your testimony. When you talk about improving your operating procedures and doing peer review, who are your peers that are reviewing? [LR486]

BO BOTELHO: The peer review system will be...you have your buyers and you have

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your senior buyers. The senior buyers will be conducting the peer reviews to the file. So they will be going through these files periodically, making sure that the files are complete. We've also developed checklists for the files. I mean, which tells the buyer everything that needs to be in this file and it creates a time line for that file. So, the senior buyers will be reviewing these files to make sure that the checklists were done correctly, and that the material that should be in the file is, in fact, in that file. [LR486]

SENATOR SULLIVAN: Okay. So, it's internal. [LR486]

BO BOTELHO: It is, Senator. [LR486]

SENATOR SULLIVAN: Okay. Regarding the resident bidder definition and the fact that those statutes have not been revisited in quite a long time, is it maybe a misunderstanding about the definition of a resident bidder, and maybe it's not really, in its current definition, speaking to what Senator Mello is trying to achieve. Because you're saying, and perhaps we mistakenly assume that a resident bidder is a business that does actually reside in Nebraska, but that's not really the true definition. [LR486]

BO BOTELHO: The statute says foreign or domestic. So clearly the statute isn't referring to necessarily a business that's located in Nebraska. It's referring to...and I think the statute is clear. I don't think the statute says necessarily what Senator Mello wants it to say,... [LR486]

SENATOR SULLIVAN: Exactly. [LR486]

BO BOTELHO: ...but I think the statute is clear that the resident bidder is any bidder or any business that's authorized to engage in business in the state of Nebraska, regardless of where their physical location may be, and that as Auditor Foley pointed out, you can have a business that may be here in Nebraska but it's not truly a Nebraska corporation. I mean, it's wholly owned by a foreign corporation, so. [LR486]

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SENATOR SULLIVAN: But perhaps in the end, in revisiting the statute and redefining some...or giving some new definitions, that may be one of the things that needs to be looked at. [LR486]

BO BOTELHO: And that's the prerogative that the Legislature has, Senator. [LR486]

SENATOR SULLIVAN: What about this whole issue of tracking that there's apparently no statutory responsibility to do that. Are you doing any sort of tracking? [LR486]

BO BOTELHO: All our contracts are tracked. What we're saying is, we don't track where each...every widget you buy, we don't track where that widget was made. Our contracts are tracked with the contract...you know, your deliverables, all that's tracked, but we don't track the origin of the products. This product was made in Nebraska, this product, this steel was poured in Iowa. We don't track that information. Our contracts are tracked. The origin of the products isn't tracked, where they were made. We don't track that information. [LR486]

SENATOR SULLIVAN: Thank you. [LR486]

SENATOR AVERY: Thank you, Senator. Senator Price. [LR486]

SENATOR PRICE: Thank you. On that issue that if the state of Nebraska were doing business with a company--we'll go foreign, and understand the definition there--and that company was using child labor, there's no way you would know it because you don't track that? [LR486]

BO BOTELHO: We don't track the child labor? [LR486]

SENATOR PRICE: I know in a federal contract, if you're going to work on a federal

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contract, and that's where my experience is, you can't do business with a company that's on a list that the federal government has that it is known to use child labor and stuff like that. [LR486]

BO BOTELHO: Correct. Prohibited companies, yes. [LR486]

SENATOR PRICE: That's right, prohibited. Okay, so you could have...does the state have that same provision in this contract or we just don't track that? We don't check to see if a foreign company, for whatever...I just used an extreme... [LR486]

BO BOTELHO: When you enter into a contract in the state of Nebraska you have to agree by labor laws. So that would...unless, of course, you had this company that was hiding things from the federal government and the state of Nebraska, but they have to agree to comply by federal labor standards. [LR486]

SENATOR PRICE: So you have the standard clauses that you have that they have... [LR486]

BO BOTELHO: Correct. [LR486]

SENATOR PRICE: Okay. Thank you. [LR486]

SENATOR AVERY: I don't see any more questions. Thank you, Mr. Botelho. [LR486]

BO BOTELHO: Thank you, Senator Avery. [LR486]

SENATOR AVERY: Anyone else wish to address LR486? Okay, seeing none, Senator Mello, do you want to say more? [LR486]

SENATOR MELLO: Quick close and then we can start on the next one. [LR486]



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SENATOR AVERY: All right. [LR486]

SENATOR MELLO: Just being cognizant of time. Thank you, Chairman Avery, members of the committee. You know, I do appreciate the Department of Administrative Services and Mr. Botelho coming in and providing their feedback. The one thing, though, that you obviously did hear, and I think there was questioning both from Senator Sullivan and Senator Price, which is, they do not track, ultimately, services. The question that was just asked is, we do not track. The department just said on the record, we do not track where goods come from. They also, in the letter and correspondence I gave you, do not track services. It's one thing to have a database of where all the contracts are, but they're not ultimately providing any information in regards to where those contracts are being carried out from. Just because a company may be based in Georgia, that doesn't mean they're not contracting those services out to a company in India, so to speak. Those are the issues that ultimately the transparency and accountability component and the tracking system issue, I think warrants, I think, much more attention, I think, initially than any of the preference. But ultimately at the end of the day their underlying issue still, with the correspondence they gave, is that the Department of Administrative Services generally just doesn't agree with any preferences whatsoever, even though we have existing preferences in the books which is questionable whether or not they're, ultimately, I think, carrying through those statutes, both in regards to whether or not there's a tie between a Nebraska company and an out-of-state company as well as giving preferences to companies that hire blind and visually impaired Nebraskans. That ultimately is preferences already in our state statute that they did not address that ultimately I'd question whether or not they're carrying it through because their general philosophy is they don't believe in preferences. That's a separate issue that, no doubt, that my office will probably follow up with them on, as well as with the committee counsel on. I appreciate more than anything else Auditor Foley taking time out of his day to provide a little bit more feedback on the report that his office did in regards to DAS and the Materiel Division. He's provided, I think, if you read

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through the audit, there are multiple options that I think this committee can ultimately consider. And it would be my hope to work with the committee moving forward to explore that state procurement process outside of not just the transparency and tracking and preference issues, but an overall exploration of reforming the state procurement process. So, thank you, Chairman Avery. [LR486]

SENATOR AVERY: Thank you. Let me say here, it is my desire and expectation that we will finish the next two resolutions before noon or by noon. So just keep that in mind. I know that the Treasurer is here and we're going to give him about 30 minutes to make his presentation. But the other people who are speaking, try to keep it as brief as possible and still make your points so we can move then this afternoon to other issues that are going to be just as time-consuming. All right, Senator Mello, go forward on LR502. [LR486]

SENATOR MELLO: (Exhibit 1) Good morning, Chairman Avery, members of the Government, Military, and Veterans Affairs Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. In 2009, the Legislature passed LB16 which adopted the Taxpayer Transparency Act. The bill required the State Treasurer's Office to develop a searchable, publicly available Web site detailing state tax receipts and expenditures, including the identity, principal location, and the amount of funds received or expended; the funding or expending state agency; the budget program source; and the amount, date, purpose, and recipient of disbursed funds. The goal of LR502 was to examine the implementation and effectiveness of the Taxpayer Transparency Act and to consider whether changes should be made to the act to make more information available to the public, or whether local government data should be included on the state Web site. For example, my office drafted a bill in 2011, which ultimately we did not introduce, but which would have expanded the Taxpayer Transparency Act to require that copies of state contracts be available on the Web site. Unfortunately, some of the state agencies do not have contracts already available on-line or in the PDF format. And the legislation, according

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to the Fiscal Office and the Department of Administrative Services, in conversations, would have generated a substantial fiscal note. The current transparency Web site, which can be found at [NebraskaSpending.gov](http://NebraskaSpending.gov), has undergone a number of changes under Treasurer Don Stenberg and has seen its overall grade jump from a D to a B in the latest ratings released by the U.S. Public Interest Research Group. Despite these improvements, however, the [NebraskaSpending.gov](http://NebraskaSpending.gov) Web site still lacks full information on many state contracts, state grant applications, and local government operations. I've invited Treasurer Stenberg to join us this morning to give us an update on his work with regards to [NebraskaSpending.gov](http://NebraskaSpending.gov), and to share any recommendations he may have on how the Legislature can help make this additional information available to the public through this important tool. My office also has reached out to the League of Municipalities, the Nebraska Association of County Officials, and the Nebraska Power Association. Some of these organizations will be joining us to testify briefly today, while others will be sending in written testimony to be included in the record. In addition to the Taxpayer Transparency Act and local transparency issues, I had hoped to address the subject of government data formatting as part of this study. Earlier this interim, I was fortunate enough to participate in a competition called Hack Omaha, a daylong competition where computer programmers, developers, designers, and others work together to take publicly available data sets and transform them into some kind of usable Web site or on-line application to be used by the general public. Too often, information that the public wants is available, but it's not available in a very useful format. Unfortunately due to time constraints, my office was unable to gather what I felt was the necessary information to explore these formatting issues today in front of this committee. So more than likely I will be exploring this issue next year in a separate interim study. Thank you for your time and I would be happy to answer any questions you may have. [LR502]

SENATOR AVERY: Any questions? I don't see any questions. Thank you, Senator Mello. [LR502]

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SENATOR MELLO: Okay. [LR502]

SENATOR AVERY: Would the State Treasurer now like to come up. And I believe you were going to do a PowerPoint presentation. [LR502]

DON STENBERG: We're going to do a demonstration, yes, Senator. [LR502]

SENATOR AVERY: Okay, all right. [LR502]

DON STENBERG: (Exhibit 2) That will be ready in just a moment. For the record my name is Don Stenberg, Nebraska State Treasurer. And I want to thank Senator Mello for bringing this resolution forward. We met a few months ago, had a great discussion, and I think some of the things that I like to see, some of the improvements I'd like to see in this [NebraskaSpending.gov](http://NebraskaSpending.gov) Web site are the same improvements that he would like to see; so I look forward to working with him and the members of the committee on doing that. I want to thank Senator Mello for noting that we did raise our grade--and I'm going to talk here for a minute until we're set up--from a D to a B. And my staff has some news releases that we released last March that described some of the changes that we made that led to this increase. When I took office, Nebraska's Web site was rated a D; basically, the same grading system we used to have in schools. I don't know what they do now, but A, B, C, D, F. Nebraska was a D at the time I took office. We raised it to a C the first year, and to a B last year. And we continue to work to make improvements. And some of those improvements, particularly with regard to contracts that Senator Mello mentioned, will probably need legislation in order to be implemented. I'm not going to bring forward that legislation, but if Senator Mello or another member of the Legislature would, I'd be happy to work with them and support that effort. [LR502]

\_\_\_\_\_: You're ready. [LR502]

DON STENBERG: Do you want to get us on the state spending Web site? [LR502]

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SENATOR SULLIVAN: I wonder where that is, I'd like to go there. (Laugh) [LR502]

SENATOR AVERY: That doesn't look like Nebraska's, Mr. Treasurer. [LR502]

DON STENBERG: No, no, that...that doesn't. I wouldn't mind being there though.  
[LR502]

SENATOR AVERY: It looks like Oregon. [LR502]

DON STENBERG: What I'd like to do is...and I'll try and get this done in 15 or 20 minutes, unless there are questions, which I'd be happy to take, but it may slow us down a little bit. Just give you a little bit of an overview of what's available on the Web site now, and then talk about a couple of areas that I'd like to see improved. The current year fiscal budget is just an overview of the current year fiscal budget. We have the fund types--obviously, this is the 30,000-foot view of the state budget. The various sources of appropriations: general, cash, construction, federal; and then just the budget for each agency for the current fiscal year, in this case; and the sources of those funds in general terms. This little chart is interesting. If you move your mouse over it, it will show you, and again in very broad terms, where Nebraska funds are being spent. You can see Health and Human Services is over \$3 billion of the over \$7 billion budget; the Department of Education, \$1.4 billion--a lot of that is state aid to education, I'm sure; Department of Roads, \$674 billion; University of Nebraska gets over a half-billion dollars of state revenue. So that's kind of the big picture aspect. An area where there's a lot of very detailed information is the fiscal year expenditures area. And you can choose the fiscal year. This is something that we have improved since I took office. Previously, you only had for the preceding fiscal year; but if you were in the current fiscal year, you couldn't search for expenditures being made during that current fiscal year. We've now improved that so that you can, although we don't have complete information for the current fiscal year, for example. One example would be the state employees' salaries

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are available on the annual but not on the monthly. And there's some other information. And I've met with the new accounting director at DAS and we had a great conversation. He's going to work with us so that we can bring our monthly current fiscal year information up to the same standard that we have and the same availability of information that we have for full fiscal years. I'm just going to go through a couple of examples to give you an idea of some of the information that's available, and we'll look at the most recently completed fiscal year. And I thought you might be interested in looking at the Legislative Council. So these are by payment date. You can see, since it was the previous fiscal year, July of '11, and the early payments there were made for dues and subscriptions and so forth. And then we have your committee counsel's net pay. I told her, I said, I thought she ought to ask for a raise. (Laughter) The thing about these numbers for state employees, and not just her, but everyone, this is the net pay; so that's what the paycheck is, because this is like a checkbook ledger. And so Social Security, federal-state income tax, health insurance premiums if you participate, are all taken out before you get to the net pay figure. There's a lot of things you can do. Let's say you wanted to see every expenditure over \$100,000. You could type that in there and get a showing of just everything that was over \$100,000. And I know that Christy is a good sport so I'm going to use her here. Let's see what all she's been paid here. [LR502]

CHRISTY ABRAHAM: I'm anxious too. [LR502]

DON STENBERG: Yeah. And I'm a real slow typer, so, you know, I have to...let's see, am I getting it right? Spell it right? And as you can see, she got her paycheck, but no travel. Nose to the grindstone right here in the Capitol. (Laughter) Now let's say you wanted to look at...and I'm just going to get rid of this here. Let's say you wanted to find out what a big Nebraska company might have been paid during the fiscal year. And the one I'm going to pick, because I know they've got some expenditures, is Hawkins Construction. There's a reason I have an assistant who does this for me. And so you can see I've set it for 100 per page and there's 7 pages, so they've received over 600

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payments of various sizes. Some of these are actually credits here, and smaller. But let's say, well, I'm just interested in the really, really big stuff; I want to see every payment that they got over \$100,000. And so you would type that in here on the "Floor" and that would give you a showing of all the payments to that particular company of over \$100,000 in that fiscal year. [LR502]

SENATOR AVERY: But you don't have contracts on here, right? Is that... [LR502]

DON STENBERG: We're coming to contracts. We don't have nearly the kind of contract information I would like to see. [LR502]

SENATOR AVERY: Yeah. [LR502]

DON STENBERG: And I definitely intend to get...to show you exactly what we do have and tell you what I think I would like to see in addition to that. But I thought it might be helpful to get a full picture of some of the breadth of information that is available. And why we are...I would say we're one of the leading states; we're not at the A level, but we do have a very good Web site. I want to do just one more; here, a different fiscal year, because I need to have a little fun with Senator Mello. And I'm going to go to, again, the Legislative Council for...this would be the current fiscal year, and this would be the spending in the current fiscal year. And this is one of the improvements we relatively recently made, and here is some spending and senator reimbursements. And so I was interested in what Senator Mello has been up to, so we'll see what's he's been doing. (Laughter) And there's the expenditures that he's had. And again, pay isn't on here. As I mentioned, we hope to get an upgrade so that net pay is available, as well. Although we all know what your relatively small pay is. [LR502]

SENATOR PRICE: It might not be worth your money to do it. (Laughter) [LR502]

DON STENBERG: I might not. So, now in terms of local...we do have some state and

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local information. And my philosophy has been, don't reinvent the wheel and don't duplicate what somebody else is doing. So the local information that we have actually takes you to the State Auditor's Web site who has that information. And so this is a nice little thing; but, frankly, you can click anywhere and it will take you to the State Auditor's Web site. And then there are various budgets: county budgets, municipal budgets, school district budgets, and what you call is general budgets, and the learning community gets its own. And I'll just...as an example, since we're in Lincoln we'll do the Lincoln school district real quick here. For the current fiscal year...and I'm going to select all the information available. And again, this is the State Auditor's Web site. We just link to it, so it's set up the way he does it. And so this is what information the Auditor has available. It's helpful to a degree. You don't have near the detail of information that I just demonstrated to you on our fiscal year. But this is what, by law, is required to be submitted to the State Auditor and he makes that available through his Web site on-line. We also have...and there's...I'm not going to show it to you, but there's property tax information. That's through the state Department of Revenue. The counties are required to report a certain amount of tax base and tax levies, and so on, and that's available there. That takes you to the Revenue Web site that has that. We also have...sometimes called tax incentives or tax expenditures, and this links to the Department of Revenue Web site. They maintain that on-line, and so they've got quite a bit of information. The most recent year they have would be the 2010-2011. And as you can see, they've got the various types of incentive programs that are available. And I'm going to pick LB775, because that's been around a long time and there's more information. And, for example, under that heading you can see what companies have applied under LB775; where the project is located; the planned investment; the planned employment; and the year that the agreement was entered into. And depending upon how deep you want to go, there's other information available, too, on that Web site. And that brings us to...well, two upgrades that I want to do, one of which is contracts. Let me mention this one first. We just put this up very recently, and that's grants and incentives. And we haven't had that really at all up to this point. I had a real good meeting recently with the director of Economic Development who is also interested in making more information available,



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and then we will link to that Web site. What we do have right now is a link to the American Recovery and Reinvestment Act. I believe that's on the Governor's Web site. That was the act the Congress passed as part of the economic recovery. And then the Department of Economic Development does have information of certain things on community block grants, who got them, and so forth and so on. And so there were links for those. But there's a lot of programs that are not available on-line, and my hope is that working with the director of Economic Development by summer we'll have pretty much all of that available. I don't see any need for legislation in order to accomplish that purpose on our behalf. Contracts is a different situation. And let me show you what we do have, and more importantly, what we don't. And again, what you can do, you can search two ways. You can search vendors, and so if I went here....well, there's a list of all the vendors. And so if I went down here I could come to Hawkins Construction Company and click on that and it would show me all the active contracts that Hawkins Construction has, for example. That's one way to search it. Another way you can search it is through agencies. So if you want to know, for example, what the Legislative Council has for contracts, you can click on that, and that would be the active contracts. And what we have: the contract ID number, which is somewhat important; the agency; end date; who the vendor is; and a very brief description of the services. Now, if you read this, it says, "You may search for copies of contracts on the Department of Administrative Services Web site by clicking here," which is a very accurate statement. You can search for them, but you're not going to find most of them. (Laughter) But we'll go there. Now this is their site. Again, this is something they operate and not something that the Treasurer does. They don't have nearly the search capability that we do. For example, you can't search by the agency that you might be interested in; you can't search by dollar amounts. So if you just wanted to see every state contract over a million dollars, you couldn't find that on this Web site. What you could do is take the contract number from the page that I showed you earlier. So we might take this contract number and see what happens. And that is...54148. And so you submit query. And it'll tell you this, there are no contracts listed for your search. Now, the reason for that is that many of the state's contracts are not housed at DAS; they're housed in the agency

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itself. Basically, all the contracts that weren't handled entirely by DAS are in the possession of each various agency that did the contract. And so that's why that particular one does not show up here. Now, this is a listing of all the contracts that DAS does have in its possession; at least, that's...and again, I'm telling you my understanding. The bureaucracy, sometimes it's hard to get to the bottom of everything. So, this is the best of my understanding of how these things work. These are aligned... [LR502]

SENATOR AVERY: Most bureaucracies are Byzantine. [LR502]

DON STENBERG: They are, aren't they, yes. I want to point out a couple of things: one, the contract numbers. Under Enterprise One, the state accounting system, every contract of every agency gets assigned a contract number. And that's basically...the computer does that; it's basically automated. But what I'd point out here, just taking the first two here, so here's contract 10123; the next contract available is almost 500 contracts later. And my understanding is, the main reason that so many contracts aren't even listed on here is that if the agency does them, they get a number, but they don't get posted on the DAS Web site because DAS doesn't have copies of those contracts. Now, unfortunately, even when you have these here, they're not necessarily all that helpful. And I'm going to pick this one, this office furniture, Indiana Chair Frame company. You click this and you get the helpful notice that if you want to see a copy of this contract, you know, make a public records request, blah, blah, blah. So that's what you get there. Then we'll look at the movable wall system. And this is one that is there, sort of, and you'll see what I mean. It does have the contract award. And that has some helpful information in it. But what is not here is a copy of the contract. What is not here, if there was an RFP, and on this one I don't know if there was, but generally speaking, if there was an RFP, that's not here. If there were contract amendments, they may or may not be here. So that's what we have. And what I would like to do or would like to see happen some day would be for all the contracts, except those that by law are defined as not public records--and as the committee knows, there's a public records law that

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basically says all records are available except, and then there are statutory exceptions for security, trade secrets, and so on and so forth. What I'd like to do is see all the contracts the state has, except those that are not public records as currently defined, available. And to me probably the most effective way to do that would be legislation that requires two basic things. One, that each agency provide in an electronic form a copy of their contracts to DAS so that there's a centralized location for all those contracts. And then a second part of the legislation, it would require DAS to put those contracts available on its Web site, searchable by vendor, searchable by agency, searchable by dollar amount, and any other information the Legislature might think would be a useful search term. And frankly, in terms of contracts, I don't think that it's possible for the Treasurer's Office to move forward on any contract improvements on the Web site in the absence of legislation because the contracts are spread out all over state government. Some agencies will be helpful, some will not. And we still don't have a centralized place to put them, which very logically is the Department of Administration Services. So Senator Mello and I talked about that. He came to my office; I think already had the same idea. And so I was very happy to see him, and I guess he was fairly happy to see me. And I'd encourage the committee to look at this and take some action if they think it's appropriate. [LR502]

SENATOR AVERY: This is impressive. I want to know, what did the...the PIRG that did the report gave you a rating. What was it that they found deficient that caused Texas to outscore us? We're tired of that, you know. [LR502]

DON STENBERG: Yeah. There's a number of issues. Yeah. Well, of course, they spent lots more money on theirs too, Senator. So that's...but the two major areas, there's a number of...you can get a point here and a point there. But the two major areas are the ones that I mentioned and that we've been focusing on. One is the grants and incentives. And I think we've made progress there, and like I say, I think by next summer we'll have that pretty well taken care of, with the help and support of the director of Economic Development. We had a great meeting and she is very interested

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in working with us on that. The other is contracts. And that's where we have a major weakness. We lost a lot of points by not having the contracts available on our Web site. [LR502]

SENATOR AVERY: Eighty-three is not a bad score. [LR502]

DON STENBERG: It's not bad, but we can do better. [LR502]

SENATOR AVERY: Senator Price. [LR502]

SENATOR PRICE: Thank you, Senator Avery. Real quick, sir, when we look at...and we talk about contracts, you know, you have the face of a contract and then you have the body of a contract with all the sections, and then you have your contract line items. So you want the entire contract to include line items also? [LR502]

DON STENBERG: Well I would...I mean, you know, if this was 20 years ago, that's an awful lot of paper; and I don't know if it would be practical. But, you know, today you can do it electronically. And so the storage space is very, very minor. And I know talking to Senator Mello, some agencies seem to think this would be very expensive. I'm having trouble understanding why. I think virtually every state agency, I'd be surprised if there was one that didn't, has a computer printer, and almost all of those scan documents these days. I've got a hundred-dollar one at home that I bought a couple years ago at, I don't remember, one of the office supply stores, and it scans documents. And I can't imagine every agency doesn't have probably a printer that scans documents. So all they would...so there's really no cost. They scan...they enter into a new contract, they sign it, they run it through their scanner, and e-mail it to DAS, or however, or enter it directly on the Web site, however the technicians set it up, and you're done. There's really no expense at all. The only expense I could see might be some programming expense one time to get all that up and running. Although, as... [LR502]

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SENATOR AVERY: Maybe the explanation is bureaucracy. [LR502]

DON STENBERG: Yes. [LR502]

SENATOR PRICE: I would submit those contracts are generated in an electronic format to begin with, so (inaudible) you need to print them out because I don't think anybody is sitting there typing up a contract line by line and filling out blocks of answers. [LR502]

DON STENBERG: Yeah, I think you're right; I think most of them are electronic already. [LR502]

SENATOR PRICE: Now to talk more directly though, to the line items on the contract. In the state and in the finances, do we separate our monies by program type, like acquisition money? So in the federal government there are different types or pots of money, (inaudible) of one money one check. We...in the federal level, they isolate those funds, and say you can only use certain funds for certain purposes. So then when you pay up a contract, you have an expansive contract, some are for the goods and some are for the people. Do we do that at the state at all? [LR502]

DON STENBERG: Well, the...I don't know that I can answer that entirely, because that's a little outside of ...that's probably a question better asked to the DAS accounting folks than us. But I know that, for example, if...and we have this in our office, and I think a number of agencies do if they have both state and federal funds. Within the accounting system, if there's an employee who spends half of his or her time working under...doing something that's federally funded and the other half of his or her time doing something that's under the state General Fund, that gets put into the state accounting system and the money is handled that way; and there's an accounting record, of course, of that, and then the employees keep track of their time in order to satisfy the federal auditors that they spent this time on federal money and this time on state money. [LR502]

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SENATOR PRICE: All right, thank you. [LR502]

SENATOR AVERY: Senator Sullivan, you had a question. [LR502]

SENATOR SULLIVAN: Thank you. Yes, just a couple. Thanks, Senator Avery. And thank you, Mr. Stenberg. I think your information you provided us showed that there's been a steady increase in the number of hits, is that true? [LR502]

DON STENBERG: There has, and we mentioned that in the news release. It's still...my sense is though that a large percentage of the general public probably does not know this Web site exists. [LR502]

SENATOR SULLIVAN: And I don't suppose you have any indication of the type of user who uses, who... [LR502]

DON STENBERG: No, we really don't. We track the number of hits; but, no, I don't really know. [LR502]

SENATOR SULLIVAN: Right. So in the "Contact Us" section, you didn't show that to us, but aside from "this is how you contact our office," is there any opportunity for a user to provide any feedback? [LR502]

DON STENBERG: Yes, there is. In fact, we've encouraged that, but we get very little. And that's the "Contact Us," and if you want to send a message, you know, "I'd like to see this on the...," or this complaint, you type this in. [LR502]

SENATOR SULLIVAN: Yeah, okay. [LR502]

DON STENBERG: Basically, this turns it into an e-mail that comes to our office. I think in the time I've been Treasurer, we've maybe gotten two of those. [LR502]

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SENATOR SULLIVAN: Oh really? [LR502]

DON STENBERG: Yeah, yeah. Very, very seldom that people have done that. [LR502]

SENATOR AVERY: Everybody is happy with the Web site. [LR502]

DON STENBERG: Well, I...no. Well, I don't know if it's that. I think a lot of...I think most Nebraskans, a very large percentage of Nebraskans are not aware that this resource is available. You know, we take every opportunity to try and make people aware of that, but we do what we can. But if you have constituent questions about they wanted to know detailed answers, that's certainly one good place to suggest they could find them. [LR502]

SENATOR SULLIVAN: Thank you. [LR502]

SENATOR AVERY: Well, thank you very much for that interesting presentation. [LR502]

DON STENBERG: You're most welcome. [LR502]

SENATOR AVERY: We appreciate you coming in and doing that. [LR502]

DON STENBERG: You bet. Glad to do it. Thank you. [LR502]

SENATOR AVERY: Anyone else wish to address LR502? Senator Mello, do you have more to say? You don't. All right, we'll close then the hearing on LR502 and we'll now go to LR496. Senator Mello, the last act in your play. (Laugh) [LR502 LR496]

SENATOR MELLO: Always the finale. [LR496]

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SENATOR AVERY: And we have 30 minutes. (Laugh) [LR496]

SENATOR MELLO: (Exhibit 1) Cognizant of time. Still good morning, Chairman Avery, members of the Government, Military and Veterans Affairs Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. As the committee may remember, last session I introduced LB1013 which would have made a handful of changes to the Administrative Procedures Act, otherwise known as the APA. These changes were designed to address actions by mostly code agencies that we felt potentially violate the act. These actions, more or less, fell into two general categories: the first, policy changes which should have been made through the APA instead being made by some type of informal guideline such as provider bulletins in the Department of Health and Human Services; and the second was enforcing rules and regulations prior to the completion of the require promulgation procedures under the APA. As introduced, LB1013 would have made three primary changes to the APA. First, the bill would have greatly expanded the definition of the rule or regulation to include a greater percentage of agency actions under the APA promulgation process. Second, it would have prohibited the enforcement of a rule or regulation, unless that rule or regulation had completed the promulgation process under the APA. Finally, it would have provided for the awarding of attorneys' fees in cases where a rule or regulation is declared invalid because it was adopted without compliance with statutory procedures. At last year's hearing, the overwhelming response from state agencies, both code and noncode, was that the change to the definition of rule and regulation cast too wide of a net and that it essentially forces agencies to follow the APA promulgation procedures to take virtually any action affecting the public. Following the hearing, I met with Frank Daley, the executive director of the Nebraska Accountability and Disclosure Commission, as well as a number of other noncode agencies to discuss this language, as well as garner feedback as to how the Legislature could address the concerns that prompted LB1013 without overly burdening smaller agencies and commissions. I'm pleased to say that a handful of agencies have sent letters to the committee with their suggestions in that regard, and I believe several may be here to testify today or provide



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written testimony. One issue that was brought to my attention as part of my research for today's hearing, is the fact that three separate executive branch offices--the Secretary of State, the Attorney General, and the Governor--publish guidelines for agencies to use when complying with the APA. The committee should have just received a document entitled "My recent APA journey" which also includes copies of each of the three sets of guidelines. These materials document that for agencies which rarely utilize the rules and regulations process, the multiple sets of guidelines can be confusing at best and appear to actually conflict with each other at times. Additionally, several of the guidelines completely ignore the APA requirement that evidence of the hearing notice and a draft copy of proposed rules be sent to the Legislature's Executive Board. While a solution to this issue could be found by simply getting the interested parties together to rewrite joint guidelines, the committee may want to entertain statutory language requiring that such guidelines be published. One issue that was briefly discussed during the hearing last year on LB1013, that I believe is worth revisiting, is the issue of legislative oversight in the APA process. From 1978 to 1986, the Legislature actually had a special committee called the Administrative Rules and Regulations Review Committee. This committee was empowered to field complaints on rules and regulations, suspend any rule and regulation that was thought to exceed the statutory authority or the intent of the Legislature, and introduce legislation invalidating rules or regulations. Ultimately, the committee was eliminated due to concerns with constitutional separation of powers issues; but legislation to create a scaled-down version of the committee was introduced by former Senator Pat Bourne in 2001, and by myself in 2011. There is a process in current statute that allows individuals who feel aggrieved by a particular rule or regulation to file a complaint with the Executive Board, although this procedure has rarely been utilized. Given the recent attempt by some state agencies to skirt the APA process, I believe it is time to seriously consider expanding the complaint process by either reestablishing a legislative committee to review rules and regulations, or by creating a separate watchdog entity or empower a separate entity to monitor the rules and regulations process on behalf of the public. Thank you for your time and I would be happy to answer any questions you may have.

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[LR496]

SENATOR AVERY: Thank you, Senator. Are you aware of the proposed legislation from the Accountability and Disclosure Commission? [LR496]

SENATOR MELLO: I'm not, no. [LR496]

SENATOR AVERY: (Exhibit 7) You're not. Okay. There is a letter here from Frank Daley, the executive director of the commission, in which he is suggesting a fairly modest change in Statute 84-908 that would read, "No agency shall promulgate, enforce or attempt to enforce any rule or regulation or proposed rule or regulation until the requirements of paragraph (1) of this section have been completed." You know, if you get a chance to look at that. [LR496]

SENATOR MELLO: I...that's the letter...actually, that was...that area actually was in last year's legislation specific to LB1013. It was one of the parts of the bill we put forward in front of this committee that we had some, I think... [LR496]

SENATOR AVERY: So you were supportive of the amendment. [LR496]

SENATOR MELLO: Yes, absolutely. [LR496]

SENATOR AVERY: Okay. Questions from the committee? Senator Sullivan. [LR496]

SENATOR SULLIVAN: Thank you. Senator Mello, I don't think in your remarks, or maybe it's already...what about a time line for rules and regs being promulgated from the time that a statute is enacted? [LR496]

SENATOR MELLO: That's a great question, Senator Sullivan. Actually, when I introduced LB617, back in 2011, that would have created this legislative administrative

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rules and regulations committee, ultimately in working with Speaker Flood and with Senator Harms as the Chair of the Performance Audit Committee, we took LB617 and reformed it to kind of fit exactly the issue and policy area you're discussing where that was part of...the thought is, while there was concern about the constitutionality of creating a separate legislative committee to oversee and be able to, I would say, intersect certain rules and regulations that they felt violated our legislative intent. Ultimately, what we now require through LB617 is that state agencies need to provide an annual report to the Legislature in regards to their actual promulgation of rules and regulations within a one-year period. So we put a year time frame on any new or existing rule and regulation that needs to be promulgated to be, ultimately, promulgated within a year's period. And if it's not, the agency needs to provide the Legislature comment and feedback to the Executive Board, and ultimately, to all of us to explain why they were unable to promulgate that rule within a year's period. And ultimately, if there's changes that need to be made in the statute, for them to actually promulgate the rule moving forward. So, if anything, I thought we made a fairly...a valiant effort to at least provide more transparency in regards to...in as well, I would say, kind of put some time constraints on state agencies in regards to these promulgation of rule and regs. Ultimately, I think moving forward, and I briefly (inaudible) talked about it at the end of my testimony, in part because we had been waiting for a meeting with Marshall Lux in the Ombudsman Office that's part of the Legislative Council. We more than likely are going to be providing the committee a piece of legislation next year that will look to seek to expand our legislative Ombudsman's Office duties in regards to being able to take complaints on rules and regulations. While they may not be able, ultimately, to play the same intersecting role that the legislative committee had done in years past, it's something that we have approached the Ombudsman's Office with and it's an idea that they believe is a worthwhile idea to consider moving forward. [LR496]

SENATOR SULLIVAN: Thank you. [LR496]

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

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to address LR496? Well, we're going to get to go to lunch. No? Welcome, sir. [LR496]

JON WILBECK: (Exhibit 2) Good morning. Chairman Avery, members of the committee, good morning. My name is Jon Wilbeck, W-i-l-b-e-c-k. I am the executive director of the Nebraska Board of Engineers and Architects. And thank you for the opportunity to speak with you today. The board is opposed to the concept behind LB1013. The board needs to, and is obligated to serve the people of Nebraska promptly and efficiently. The passage of a bill similar to LB1013 would significantly restrict the board's responsiveness, slow down its licensing and examination procedures, and hamper its ability to answer questions and evaluate concerns brought to the board by not only licensed architects and professional engineers but by any concerned citizen. Based on LB1013's testimony given to this committee on February 23 of last year, it is the board's view that the bill attempts to solve a problem that only one agency is having by imposing unneeded restrictions on all state agencies, including many already fully compliant with the APA. The board has always promulgated rules and regulations when required in accordance with the APA, including holding a public hearing and submitting rules and regulations to the Governor, Secretary of State, the Executive Board of the Legislative Council, and the Attorney General for approval. Our agency has also been a pioneer in utilizing negotiated rulemaking processes and has used negotiated rulemaking as the basis for all formal rulemaking conducted since 2007. Negotiated rulemaking helps to identify controversial issues and work out solutions to them as they relate to potential rules and regs. The board regulates the practices of engineering and architecture in Nebraska through enforcement of the Engineers and Architects Regulations Act. It licenses architects and professional engineers by making sure that applicants meet the board's education, experience, and examination requirements. But the board is oftentimes faced with unusual or unique situations in evaluating licensing and examination applications, is asked questions regarding the E&A Act as it applies to the practices of engineering and architecture, and must respond to general inquiries from licensees, potential applicants and other interested persons. The board interprets the E&A Act and its rules as they apply to these matters, and then establish policies that

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memorialize the board's interpretations to apply to similar cases. These board policies provide guidance and assistance to the public, and the board takes care to ensure that its policies are in accordance with the authorizing statutes. It is the board's usual operating procedure that these policies are reviewed, compiled, and incorporated into regular and periodic rules and regulations updates to ensure that the public has had that opportunity to address the board as to their impact. If the board were required to go through the rulemaking process for these policies, it would lose its ability to respond timely to examination and license applications, to provide efficient guidance to those regulated in complying with the law, and increase our expenditures due to the need for more public hearings, publishing notices, and other costs. The board does not enforce rules and regulations prior to the adoption via the APA process. Finally, the board believes that the current APA contains sufficient provisions to ensure that agency rules and regulations are lawful and to also prevent untimely promulgation. Before any additional legislation on this issue is introduced, it may be worth the time to inquire if any parties aggrieved due to APA noncompliance had used or had considered using the remedies present in the APA before introduction of LB1013. That concludes my statement and I'd be happy to answer any questions that you have. [LR496]

SENATOR AVERY: Thank you. Any questions? Would you give me just an example of how this would be more than inconvenient? Because if it's just inconvenient to you,... [LR496]

JON WILBECK: Um-hum. [LR496]

SENATOR AVERY: ...I'm not impressed with that. [LR496]

JON WILBECK: Of course. [LR496]

SENATOR AVERY: But if there's an example you could give us, a concrete example of how this would really be a difficulty for you beyond the inconvenience, I'd like to hear it.

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[LR496]

JON WILBECK: Well, it does, you know...first of all, thank you for the question, Senator Avery. It does come back to the issue of timely government which I think our board sees as a very important part of what they do is responding to application requests and other questions. They want to respond to those in a timely manner. And to be hesitant in any way is, you know, we want to make sure the answer we give is in accordance with the rule, but we also want to provide it timely. Another aspect of it, it could potentially have an impact on commerce. Let's say an engineering firm is applying for licensure to our board for a job. Some of their qualifications are kind of out of the ordinary, the ordinary circumstances having to do with where they got their degree from. There may be no discipline of their examination. You know, those types of things we have to...maybe if it's not clearly addressed in our rules and our statutes, the board has to make a determination: Okay, how do we proceed? In the meantime, while the board is looking at that application, they may be, potentially, missing out on a project in Nebraska that they are the best engineering firm to do or they are the best architecture firm to do. So maybe that answers your question. That's an impact that it could have. [LR496]

SENATOR AVERY: I'll accept it. Senator Wallman. [LR496]

JON WILBECK: Yes. [LR496]

SENATOR WALLMAN: Thank you, Senator Avery. Yeah, thanks for coming. [LR496]

JON WILBECK: Sure. [LR496]

SENATOR WALLMAN: And in regards to this disciplinary action amongst yourselves, you know, the architects and engineers, is that very often done? Is there inept firms? [LR496]

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JON WILBECK: It is often done. Each board...the board meets about 11, 10 times per year, and at each board meeting there is at least one or two, if not more, compliance cases in front of the board. [LR496]

SENATOR WALLMAN: Thank you. [LR496]

SENATOR AVERY: Any other questions? I don't see any. Thank you very much for coming. [LR496]

JON WILBECK: Okay, thank you very much. [LR496]

SENATOR AVERY: Anyone else wish to address this? Senator Schmit, welcome. [LR496]

LORAN SCHMIT: (Exhibit 3) Thank you, Mr. Chairman. Good morning, Senator Avery and Chairman of the Government Committee and Veterans Affairs, and members of the committee. My name is Loran Schmit, executive director of the Association of Nebraska Ethanol Producers. I appreciate very much this opportunity to testify on an issue which is of significant importance not only to the ethanol industry, but directly or indirectly to every citizen of the state. [LR496]

SENATOR AVERY: Would you mind spelling your name for us. [LR496]

LORAN SCHMIT: My name, yes, is Loran, L-o-r-a-n, Schmit, S-c-h-m-i-t. That's the Luxembourg version, Senator; it does not have the "d" in it. (Laughter) I want to thank the committee and Senator Mello for this resolution. It's been my experience over several years of observation from several different vantage points that the performance of state agencies is directly proportional to the amount of oversight provided by both the executive and the legislative branch. And the theory that government works on its own without that sort of supervision is not factual. During the past year as candidates for

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every elected position from the courthouse to the White House campaigned for election or reelection, most of the candidates spoke in support of two ideas which would encourage business, reduce the federal debt, and reduce unemployment. It seems that there was a general consensus among candidates that business, industry, and agriculture suffered from overregulation to the extent that such regulation increased the cost of doing business, discouraged new business ventures, and made no positive contribution to the economy. We were also informed by many candidates that the way to "grow the economy" was to reduce regulation, eliminate red tape, and encourage new investments which would create new jobs. It all sounded very good and I'm sure most candidates were well intended. Unfortunately, now that elections are over and the rhetoric has decreased, the possibility that rules and regulations will become less burdensome are very slim. We all recognize the need for the adoption of rules and regulations to implement statutes enacted by the Legislature and the Congress. What is not necessary is for the regulatory bodies to attempt by rules and regulations to micromanage every aspect of business, industry, and agriculture. We can all cite instances of overregulation by the federal government. There is little this committee can do about that. The committee can, however, have an impact upon rules and regulations proposed and adopted by Nebraska regulatory agencies. The Nebraska ethanol industry works with many regulatory agencies. We have tried to build a good relationship with those agencies and have enjoyed some success. It is easy to criticize the federal government for excessive regulation. I do not believe it is the federal government's responsibility to dictate what food is served to our students in school cafeterias, the type of light bulbs we can purchase, or the amount of water necessary to successfully flush a toilet. I doubt there are many experts in those areas in the Congress. Most elected persons at the state level insist that state rules and regulations should not be more stringent than the federal requirements. It has been our experience that a state regulatory agency in their attempt to clarify vague federal regulatory language have added detail to the rule to aid in the interpretation of the rule which, in fact, makes the state rule more stringent than the federal requirements. It is our belief that being prescriptive in the implementation and interpretation of its rules, the



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regulations should establish the basic requirements and leave some flexibility for the compliance option that works best for that particular facility. I believe this is the basic difference of opinion between the ethanol industry and at least one of the regulatory agencies with which we work on a regular basis. We believe that it might be necessary to modify current procedures to allow amendments to a proposed rule rather than the current yes or no voting system. That will require discussion with the Office of the Attorney General who must approve any rule adopted by the agency. At the present time, the Attorney General has taken the position that any amendment adopted to a proposed rule would not properly meet the requirement of a 30-day public notice, and therefore, it cannot be approved by his office. This reinforces our belief that the agency should meet with stakeholders and thoroughly review and agree upon any new rule prior to final drafting. The Association of Nebraska Ethanol Producers is considering the introduction of such legislation during the 2013 legislative session. The public hearing is held for the purpose of gathering input from the public. The premise is that the public has the opportunity to comment and make suggestions as to how to improve the rule. Once a rule is proposed for public hearing, there is very little opportunity to change the rule prior to the public hearing. If the public has the opportunity to provide comments prior to the drafting of the rule, and if the agency agrees with those comments, it would also eliminate the problem that prevents the Attorney General from approving an amended rule. I want to thank Chairman Avery, members of the committee for recognizing that a problem of excessive regulation does exist and for giving the ethanol industry the opportunity to comment. We will be in contact with the committee members as we proceed to address the problem. I will be glad to answer any questions. [LR496]

SENATOR AVERY: Thank you, Senator. Questions from the committee? You answered them all. (Laughter) [LR496]

LORAN SCHMIT: Thank you, Senator. Thank you. It's good to be here. [LR496]

SENATOR AVERY: Anyone else? Mr. Hansen, welcome. [LR496]

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TOPHER HANSEN: (Exhibit 4) Thank you, Chairman. Chairman Avery, and members of the committee, my name is Topher Hansen, that's T-o-p-h-e-r H-a-n-s-e-n. I am here today representing the 46 member organizations consisting of consumer organizations, providers, hospitals, and clinics all across Nebraska that are members of the Nebraska Association of Behavioral Health Organizations, also know as NABHO. I'm here today to speak to the issues of rules and regulations and policies being made by state agencies that is outside the APA process. In the past two to three years, NABHO has experienced a sharp increase in the number of provider bulletins being sent. However, since this bill was introduced, we have seen a drop-off in those provider bulletins and they now are more likely to serve their intended purpose than they were prior to the introduction of this legislation. Their original purpose was to guide and clarify, to be a minor tune-up on what is a rule, reg, or policy. The bulletins were originally designed to announce procedural changes related to billing procedures, modifications to medical necessity criteria for covered services, or changing requirements for prior authorization of services. In the past several years, the use of provider bulletins by the Department of Health and Human Services, and specifically the division of Medicaid, has become increasingly popular. In 2007, 32 provider bulletins were distributed. By 2010, 65 bulletins were sent out, changing very important components that required extensive time and money to implement, and almost always restricting access to healthcare. Many changes require providers to make very quick changes in their procedural and/or administrative procedures, and most of the changes between 2007 and 2010 limited access to services to low-income Nebraskans. In other cases, e-mails have gone out noting new regulations that would be scheduled for a hearing, but that the rules implementing the changes would be in effect immediately; that is to say, the hearing on the rules was taking place subsequent to the rule going into effect. This type of notification often leaves out the parties who would have the most at stake, who would be interested in the change; and thus, necessary input is excluded. There is no process, no accountability, and no transparency in this method of rulemaking. Without public input per the Administrative Procedures Act, ramifications of changes on Nebraska

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citizens are not heard and the consequences can be devastating. NABHO contends that many of these decisions made in reducing access to low-income children and youth in the Medicaid system, many that are state wards, have led to the critical problems that the Legislature now must face in the child welfare system. Some of the decisions made since 2007 would go so far as being major policy issues that should be debated by the Nebraska Legislature, not made by a division in the Department of Health and Human Services. NABHO encourages this committee to take a hard look at how changes are made currently in all departments, particularly those through announcements, bulletins, and so-called guidelines. In our experience, the Department of Health and Human Services has become careless in not only ensuring that the APA is followed, but have developed an alternative system of implementing new rules that did not exist before. Please consider these past activities of HHS today as we move forward toward ensuring that the APA is followed and that the major policy decisions are made appropriately with citizen input. And I would add that I thank Senator Mello for introducing this and pursuing this. It's been quite an important issue for the organizations that are a part of NABHO. Thank you very much. I'm available for questions. [LR496]

SENATOR AVERY: Thank you. Questions? I think we're all getting hungry. [LR496]

TOPHER HANSEN: Yes, me too. [LR496]

SENATOR AVERY: Thank you. [LR496]

TOPHER HANSEN: Thanks. [LR496]

SENATOR AVERY: Anyone else? Welcome, sir. [LR496]

ROBERT McEWEN: (Exhibit 5) Thank you. Chairman Avery and members of...let me spell my name first. My name is Robert McEwen, or Robbie McEwen, R-o-b-e-r-t M-c-E-w-e-n. And I'd like to thank you, Chairman Avery, and the rest of the members of

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the Government, Military and Veterans Affairs Committee, on behalf of Nebraska Appleseed Center for Law in the Public Interest. I'm here to testify about some of the issues Nebraska Appleseed has seen surrounding the adoption and promulgation of rules and regulations. I'm going to brief here. The previous testifier did a fantastic job describing some of the issues with provider bulletins. So I have two specific examples in my written testimony that is being passed around. I'm going to skip that in this testimony and largely focus on one instance that Nebraska Appleseed has become familiar with, with the promulgation of rules and regulations; and specifically that is Chapter 32 of Title 471 of the Medicaid regulations. In our experience, it began in March of 2011, and DHHS began to disperse and issue draft regulations that made significant changes to Chapter 32 of Title 471. These regulations did not follow the required Administrative Procedures Act process and should not have carried the force of law or had any effect. Some providers started to comply with these rules and regulations. And in November 2011, the draft regulations were officially proposed after several months of providers complying with these draft regulations with no hearing or public comment, only to have the official rulemaking process terminated on those regulations a couple of months after that. So currently, the department is proposing further changes to Chapter 32 pursuant to the Administrative Procedures Act. And in short, this process has been unclear at best, and unlawful under the APA at worst. In response to some of the issues that we've seen, we propose that an Office of Administrative Rule Review be created to oversee the APA rulemaking mechanism. The office would be charged with reviewing actions by administrative agencies either through its own initiative or a request from the public. The office would issue a determination of whether the action taken by the agency constitutes a rule and should be required to follow the APA process. Such a determination would not necessarily nullify or trump an action, but it would indicate the office's opinion of the action and would provide a mechanism for keeping administrative agencies accountable. In conclusion, we would like to thank the committee for taking the time to study this issue and we urge the committee to consider the aforementioned mechanisms to provide some needed oversight and clarity in the rulemaking process. If there are any questions, I will do my best to answer them at this point. [LR496]

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SENATOR AVERY: Thank you, sir. Do you remember, I read a proposed legislation from the Accountability and Disclosure Commission? Do you think that address adequately the issue that's raised here? [LR496]

ROBERT McEWEN: If you could read it again, I was...I had the cite. It was 84-908. [LR496]

SENATOR AVERY: It would be adding a new sentence to the section of law, 84-908, "No agency shall promulgate, enforce or attempt to enforce any rule or regulation or proposed rule or regulation until the requirements of paragraph (1)" of the proceeding, "of this section has been completed." [LR496]

ROBERT McEWEN: I think it would certainly help. But I think some of the issue will be how that department or that agency is defining what a rule or regulation is. If they take a narrow view of what a rule or regulation is, then they may not necessarily be subject to that in their own view; so I think having added accountability and oversight would help keep the agencies honest, in other words. Whether they are rules or regulations or whether they should be subject to the act, I think that's the accountability that we're looking for. [LR496]

SENATOR AVERY: Well, it's pretty...I think Section 1 of the 84-908 is pretty clear. [LR496]

ROBERT McEWEN: I do too. [LR496]

SENATOR SULLIVAN: All that Section 2 would do is say...not only is it clear, but you must abide by it first. (Laugh) Any other questions? Senator Sullivan. [LR496]

ROBERT McEWEN: I agree, it is clear in my view as well. [LR496]

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SENATOR SULLIVAN: But isn't what's lacking then the consequences? Because, obviously, right now the statutes aren't in some situations being followed right now. [LR496]

ROBERT McEWEN: That's correct. So there really are no practical consequences. Somebody can use a private action to challenge actions under the APA because they're not valid procedures. Unlike the federal APA, we don't have attorneys' fees. I'm not advocating that we put that in here, but that's one incentive that the federal APA has that our state does not. So private attorneys are not necessarily incentivized to take those actions up here. [LR496]

SENATOR SULLIVAN: Thank you. [LR496]

SENATOR AVERY: Sorry, for that sidebar but...we're identifying some problems here in the way government operates that need to be fixed; and one is making sure that the laws the Legislature passes are, in fact, enforced and followed. [LR496]

SENATOR SULLIVAN: A novel idea, isn't it? [LR496]

SENATOR AVERY: And we don't have a police unit, you know, here in our Legislature. Any other questions for our speaker? Thank you very much, sir. [LR496]

ROBERT McEWEN: Thank you. [LR496]

SENATOR AVERY: Anyone else with to testify on LR496? Seeing none, Senator Mello. [LR496]

SENATOR MELLO: A quick closing. [LR496]

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SENATOR AVERY: One last salvo here. [LR496]

SENATOR MELLO: Thank you, Chairman Avery. And just a bit of clarification. I appreciate the testimony from Mr. Wilbeck. I think the component in which he talked about which causes concern for his small agency is the area that I mentioned in my testimony that we would not be pursuing next year which is changing the definition of rule and regulation, knowing that that causes concern for not just small agencies but every agency in regards to what, ultimately, is a rule and regulation, what is that definition. We are not looking to make changes to that after what I felt last year was, maybe, casting too wide of a net that would incorporate the day-to-day operations and management of state agencies. But something that was just mentioned, part of the bill beyond what you received is in a letter from the Accountability and Disclosure Commission which suggests making changes, which was part of our bill last year, of not being able to implement draft rules and regulations until they've been signed by the Governor. The other component of the bill last year was an incentive, actually, to try to encourage private action against agencies who are violating the APA which was providing a reimbursement of attorneys' fees in successful challenges to APA to draft rules and regulations that did not follow the APA process. That was something that last year's testimony we did not hear any general opposition to that component, as well, as it provides a watchdog component over state agencies so they know that there is a way for a private entity, a private attorney, or organization to legally challenge their implementation of the APA. And as I mentioned in my testimony, and I just heard it from the testimony from Nebraska Appleseed, I don't know of and I don't believe that the likelihood is of creating an entirely new office or new commission, so to speak, maybe not being the best...the best way to describe it is I don't think that's going to be the best course of action, so to speak, as a fiscal matter for the state. But as I mentioned in my questioning from our answer to Senator Sullivan, we have been in conversation with the Legislative Ombudsman's Office which is part of the Legislative Council in regards to trying to see if we can expand their duties that would be able to accept and take complaints from private citizens and organizations in regards to the APA process and

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serve as a mediator and investigator on behalf of the public into this process so that there is an actual advocate for the public in regards to trying to ensure that agencies are supposed to be following the rules that are set up that ultimately they are, and ultimately the Legislative Ombudsman's Office can provide feedback to that agency on behalf of the public, as well as provide the public research and information in regards to whether or not it may be in their best advantageous role to actually sue the agency per the incentive issue that was discussed by Appleseed; and that was originally part of our bill last year. So, with that I'd be happy to take any other questions from the committee. [LR496]

SENATOR AVERY: Would you also consider that expanding the Legislative Performance Audit Committee and its scope of its activity might be approached. [LR496]

SENATOR MELLO: Absolutely, Senator Avery. I think that was...I mean, that was...last year, the LB617, the revisions of that bill was done by Senator Harms and by the director of the Legislative Performance Audit Committee based on a performance audit that was done on rules and regulations. So I know it's an issue the committee...as a member of the committee, as the Vice Chair of the committee, I know that it is something we've done before. I think moving forward it's an appropriate mechanism for the Legislature to consider providing some authority to in regards to exploring the rules and regulations process in determining whether or not we're overburdening, have overburdened some rules and regulations, and/or if agencies are following the appropriate APA process. [LR496]

SENATOR AVERY: Any other questions from the committee? I don't see any. Thank you. [LR496]

SENATOR MELLO: Thank you. I'll see you this afternoon. [LR496]



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SENATOR AVERY: Thank you very much. Let me just say that this...we will recess now until 1:30, at which time we will take up LR512 and LR561. Thank you all for attending. (See also Exhibit 6) [LR496]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Friday, December 7, 2012, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR512 and LR561. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; and Norm Wallman. Senators absent: Charlie Janssen, Russ Karpisek, Rich Pahls, Les Seiler, and Kate Sullivan.

SENATOR AVERY: We will reconvene this session of the Government, Military and Veterans Affairs Committee. We are the same who were here this morning, so I'm not going to ask for introductions again. I will tell you, though, Senator Sullivan will probably not be back this afternoon because she had other business, urgent business somewhere else. We spent the morning on three legislative resolutions from Senator Mello, so it was the Mello morning, and we took a recess for lunch and we now will come back to LR512 and LR561. Let me briefly explain the procedure. We'll do LR512 first. This is a resolution that we always introduce at the end of every session to give the committee the opportunity to examine any issues that come under the jurisdiction of this committee and we almost always have something to talk about under this resolution. Today we have been asked to cover two topics, but that doesn't mean that we're limited to those two topics. If there's a third topic or something that you want to talk about after we've completed the first two, you're certainly welcome to come forward and do that. The first one that we will take up deals with public records. Just a little background: Recently a number of concerns have been raised about what public entities are charging for public records. The current law allows public entities to charge a fee which shall not exceed the actual cost of making the copies available. A number of citizens and members of the press have reported charges that are in the hundreds of dollars, and the suggestion has been raised that this is an impediment to, or it has at least a chilling effect on access to public records. So we want to talk about that. We've also

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been asked by Senator Mello again--Senator Mello is very active today--to talk about precinct closures in Douglas County under the authority of LB449 which we passed last year. And that bill, you may recall, included a number of changes in election law, but the one that's the most pertinent to our discussion this afternoon was the authority to enlarge voting precinct size. So let's start with the public records issue and invite people to come forward. Alan Peterson. Welcome, sir.

ALAN PETERSON: Thank you, Senator Avery. I am Alan Peterson. Do I spell it like we usually do? A-l-a-n P-e-t-e-r-s-o-n. I'm here today in behalf of a client, the American Civil Liberties Union Nebraska, which is the local affiliate of that group, to talk about a problem that has appeared and apparently grown a bit in regard to people's rights to take a look at the records which the government keeps. We call them public records, because really they're the public's. There are plenty of exceptions...and I don't know, close to a dozen and a half to two dozen exceptions of stuff that the public, including the press, the ACLU, or anybody else, is not entitled to look at if the governmental body wants to exercise its power to withhold those. We're not here to complain about those at all. The concern that has arisen and which we hope will be addressed legislatively is that the correct idea that the public body ought to be able to charge something to a public requestor of records for the copies that they're obtained, we think that provision is okay but with some qualifications. The present law permits only to charge for actual cost to the public body. That's the bill that the people will get when they receive their public records; and they're usually warned about the cost in advance, by the way, when they make the request. Current law permits including in that cost something for the time of the custodian to dig them out, take a look at them, make sure they comply with the request, and turn them over. But that's supposed to be actual cost to the furnisher. Now the agencies, let's say a county or a city or a school district, is really the custodian. And they have employees; we understand that. Most of those folks are salaried, although they may well be able to get overtime if they work overtime, under Nebraska or federal law. What has been happening is that, in the view of a number of folks that have talked to us, the charges that have been estimated for the records that are requested have

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been enormous, in the hundreds, even in the thousands of dollars. Sometimes that might be justified as an actual cost to the public body that's furnishing them. But what's been going on is included in those estimates of cost are a prorated portion of the salary of the clerk or custodian, the individual person, even though that person isn't paid any more. And unfortunately, also, if the public body wants to, it can submit the records to an attorney, its attorney, or it can even hire an attorney to see whether there's some excuse or ground or exemption whereby it can withhold the records. And it has the discretion to do that. It can do that. We think two things ought to be addressed. Number one, actual cost really means there's an added cost to the public body for doing this part of its duty. I mean all the governmental clerks and bodies, they pay a salary which is paid by taxes. The taxpayers already pay it, in other words. They already pay those salaries. So we think it should be interpreted this way, and legislation probably ought to make it clear. Yeah, you can charge for the added costs to, say, the city or county if it has to pay overtime, if it has to hire a room, if it has to rent equipment or something, you can charge that to the requestor. But if you don't really have an incremental or added cost, let's not be charging the public for something it's already paid for through its taxes. We think the incremental or added cost really means that, so we are suggesting and we've been working with counsel and others on trying to come up with a bill that everybody can agree on that makes clear that added cost really means added cost. Number two, and this is the only other...this is my list--one, two. Number two, it is up to the public body to decide whether it wants to give those records out or not under the exceptions to public records law. And as I said, it's getting close to two dozen of them, plus there's some others in statutes, other statutes. And it can withhold those; it doesn't have to. And if it wants to inform its discretion so it makes a good decision on whether to hand them out or not, that's fine. But that's its cost. That's something it's doing for itself. That's not for the benefit of the requestor. Something like 18 states across our country...everybody has got a public records law. Ours is one of the better ones, I think. But in some 18 states, they expressly, either by a court decision or by the statutes, say you can't charge for your attorney to review the records to see if there's an excuse or an exemption; that's your cost because that's a governmental purpose. I'm not critical of it,

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but you can't add that on to the proposed bill. What's been going on is people ask for records on something important to them and they get an estimate that says, yeah, we'll give you these records. I've seen estimates that say \$10,000 or \$2,000 or several hundred dollars. And I'm not going to make accusations. I think, personal opinion, that in some cases, not all but in some cases, the purpose is to make them go away, to make the requestor go away. Newspapers, news media in general, and private citizens, ACLU that I represent, we need records sometimes to check into an issue, and when we're presented a bill that includes hundreds of dollars of lawyer time, which was what really balloons these estimates, the problem is most citizens and others don't have the bucks to do that to see what the government is doing. So we would have this committee. First, we would assume such a bill would come to this committee, and we're working on some language with others to, number one, really make added cost the measure of what you can charge, not just the fact you're already paying a salary to the clerk; and number two, you can't charge for your lawyer to look them over to try to find a way to withhold them. It could be--and I'll just throw this in and then I'll be done--there could be an exceptional case, maybe 1 or 2 percent or something of the requests that really are intended or would have the effect of disrupting the office, the clerk's office; take three or four days to fulfill the request or even more, maybe a month in some of these huge requests. There might be an appropriate drafting of some language for those exceptional cases because that may be too much of a burden to put on the agency just in terms of do they have the person power to do it and how much will it really cost; will it disrupt the office, in other words. Some such language might be kind of an exception that ought to be considered. Now I haven't drafted that, some others may work on that, and I think that's a possibility so that this isn't too harsh a change. But those are what we're looking at. There's a real need. We can, if we get to a committee hearing on this, we can bring in the examples of what's going on. We have had a few public bodies' representatives say, hey, the estimate of high cost is how we sort out who really means they want the records or not; we use this in part to keep those requests down. We think that's inappropriate public records law. It's a constitutional right, it's a state statutory right, and it's being gutted here and there. So we want that stopped. Thank you. [LR512]

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SENATOR AVERY: Thank you. Just to underscore the last point you made: I heard a public official representing a very important, large public entity in the state say, "That's the only thing I have; that is, the high cost of reviewing these records and providing them, that's all I have." Now it occurred to me, "What do you mean, that's all you have, all you have to deny records to the public; is that your objective?" So are you running into this? [LR512]

ALAN PETERSON: Yeah, and current law provides that the custodian can say, hey, we think the way you've worded this request is huge; what do you really want? And narrow it down and reduce the cost. Now that's appropriate. But using the cost as a weapon to bat away public records requestors, that's bad news for our state. [LR512]

SENATOR AVERY: And do you want to give a defense of why we need open records? [LR512]

ALAN PETERSON: Yeah. In this country, the government works for us. This is a state with not very many scandals in local or state government. One reason, personal opinion, is we've had a strong public records law forever that says everything is a public record unless there's some exception. So people can monitor their government, not just Mike Foley in the Auditor's Office but John Q. Citizen, Joe Six-Pack as they call them sometime. They can look and see if their representatives, their salaried or elected people are doing what they're supposed to be or, worst case, are they abusing their office in some way. And the tracks may be there but only in the public records. In a democracy, and I'm so proud of Nebraska for having generally clean government, that's how we keep it that way, in part--we make it open. [LR512]

SENATOR AVERY: And that's how you find out who's breaking the rules. [LR512]

ALAN PETERSON: Well said. [LR512]

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SENATOR AVERY: Yeah. [LR512]

ALAN PETERSON: That's not enough words. I couldn't charge much for a short sentence like that. (Laughter) Thank you, Senator. [LR512]

SENATOR AVERY: Questions from the committee? Senator Price. [LR512]

SENATOR PRICE: More of a statement, but maybe you can... [LR512]

ALAN PETERSON: Yeah. [LR512]

SENATOR PRICE: ...add a comment here. I had a constituent come to me in this interim who received roughly a dozen documents and was charged \$600 for them. [LR512]

ALAN PETERSON: Yep. [LR512]

SENATOR PRICE: And it was for attorneys' fees. And that's just ludicrous for a dozen documents. It was, you know, going through e-mails. [LR512]

ALAN PETERSON: Yeah. [LR512]

SENATOR PRICE: They went through a large volume of e-mails... [LR512]

ALAN PETERSON: Right. [LR512]

SENATOR PRICE: ...to look for something. [LR512]

ALAN PETERSON: Yeah. [LR512]

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SENATOR PRICE: Six hundred dollars, Joe Six-Pack,... [LR512]

ALAN PETERSON: Yeah. [LR512]

SENATOR PRICE: ...just a little bit over a dozen documents. So I'm... [LR512]

ALAN PETERSON: That's exactly what I'm talking. [LR512]

SENATOR PRICE: And it was the billing part of the attorney. [LR512]

ALAN PETERSON: Yeah. [LR512]

SENATOR PRICE: But what was interesting, it was the attorney's office, off-site. There was administrative help. [LR512]

SENATOR AVERY: Yeah, and... [LR512]

ALAN PETERSON: I'd just mention our law forever, for, I don't know, 80 years or so, has said the public can look at the records for free. So why should that be the case, which is the case in most states, and yet if they ask for three or six or so copies, oh, well, we got to have our attorneys review it and you're going to pay for that. Come on! Not fair. Thanks, Senator. [LR512]

SENATOR AVERY: And that's still the language of the law now, that you can look at them for free. [LR512]

ALAN PETERSON: Yes. [LR512]

SENATOR AVERY: Right, in the office. [LR512]

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ALAN PETERSON: Not only look at them; you can take your camera and make a copy of each page... [LR512]

SENATOR AVERY: Yeah. [LR512]

ALAN PETERSON: ...with your little.....I can't use them but your little phone camera. Yeah, that's free. So this is really an inconsistent deal. And we wouldn't complain if there weren't some abuses going on, but there are. [LR512]

SENATOR AVERY: Okay. Thank you. Any other questions? [LR512]

ALAN PETERSON: Thank you very much, gentlemen. [LR512]

SENATOR AVERY: Thank you, Mr. Peterson. The next person who wishes to address this issue. [LR512]

SHAWN RENNER: Good afternoon, members of the committee, Chairman Avery. My name is Shawn Renner. I'm a lawyer with the Cline Williams law firm here in Lincoln. I appear today on behalf of Media of Nebraska, Inc. That's a nonprofit corporation that appears regularly before this committee that is comprised of the press and broadcast news media in the state, of all sizes. And I'm here today to support the concepts that Mr. Peterson just explained. I don't know what sort of bill exactly will come out of the exercise, but my clients agree that there's an issue here that needs to be addressed, and particularly from the news media standpoint. My clients are relatively sophisticated consumers generally of public records and, as a general rule, they know how to negotiate with government agencies if they get a high offer or a high quote on what records will cost. Our concern really is as much consistency as anything else and what...I operate a hot line for both the Broadcasters Association and the Press Association where individual stations or newspapers can call with legal issues and get



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quick advice. Most of those people operate on deadlines. So I see a smattering of these sorts of issues across the state, just through that sort of work, and it has become relatively clear to me that there's very little consistency in how public agencies go about figuring costs for records. Mr. Peterson identified some specific aspects of it that can lead to trouble. As a general rule, I think it would be fair to say that the news media has been able to generally come to terms with public bodies in terms of what it's actually looking for, what's involved in searches, and what the costs will be. I did want to describe one situation for you that happened recently that I think demonstrates some of the need for some clarity in the law in this area. The Beatrice Daily Sun is the daily newspaper down in Beatrice in Gage County. Gage County, the county commissioners, when you look at the county's Web site for contact information, it lists each of the five county commissioners and provides their own personal e-mail addresses as the contact for those county commissioners. Gage County had a medical director that oversaw the several public hospitals located within the county, and that medical director resigned, without a whole lot of previous notice or discussion, last spring. And as part of its reporting on the resignation of the medical director, the Beatrice Daily Sun sent a public records request to the county clerk saying we would like to see the e-mail correspondence between the county commissioners and the medical director. They had made a previous records request and got the official resignation letter and that sort of thing, and they had asked for the e-mail correspondence because the commissioners had listed their personal e-mail accounts as the contact information. The initial response came back from the county: Well, those are private e-mail accounts; those can't be public records because they belong to the computers of the users and they're...it's such and such at yahoo.com or at gmail.com; it's not a government e-mail address so you can't have them. Interesting issue and one that is going to be of more importance as we go forward and everything becomes electronic but not germane to today's discussion. We had a discussion with the Attorney General. The Attorney General ruled that to the extent that private e-mail accounts are being used to conduct government business, that the e-mails that relate to that government business are public records and he required the county to respond to the request and to find the e-mails that related to the

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resignation of the medical director. At that point, the Beatrice Sun got a letter from the county that said, well, that's going to take some time and it's going to take some effort and we are going to charge you for the time of the county commissioners in going through their in-boxes in their personal e-mail to extract whatever e-mails might relate to the medical director and your request. And there was no estimate, no indication of what that cost would be. So I wrote back to the county and I said, I understand you want to charge for that, I'm not entirely sure that's appropriate but tell us what you're talking about, what are we looking at for costs and the Beatrice Sun can make a decision about whether to follow through or not. And the answer came back, we're going to charge you \$20 an hour for each of the five commissioners' time for the time that it takes them to go through their in-box, extract out any e-mails that they think might be responsive, and then we're going to charge you \$40 an hour for the time of the county attorney to review all those e-mails to determine if they are, in fact, responsive and if there's any reason that the county ought to withhold them from you. I made some noise about that not being appropriate under the statute. But it was important to the newspaper, so we said go ahead and do that. The county did it. It turned out that there were, I think, four or five e-mails, none of them particularly flamboyant. It didn't result in a news story. There was no big news there, but it was part of the process of gathering that. And when the documents were actually produced at a county commissioner meeting, the county attorney, and then unfortunately some members of the county commission, took the time to berate the reporter for making the public records request because all he was trying to do was dig up some dirt on the county. I think that response is wrong, for a variety of reasons. It's not terribly germane to the cost issue today, but I don't think that any person in the public ought to be berated for asking to see something they're legally entitled to see, particularly when that's their job as a reporter. My concern and the reason I point this out for the committee is this: The county attorney pulled those numbers out of the air. There isn't any law anywhere that says county commissioners' time to look at their own personal e-mail in-boxes is worth \$20 a hour, and \$40 an hour is a number he pulled out of the air to charge for his own time, which he is being compensated on a salary basis for. It's not like he was not being paid to do this work.

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He's getting paid by the county to do whatever it is the county asks its lawyer to do. And he just chose \$40 a hour, which isn't an exorbitant rate for a lawyer but a made-up number nonetheless. And my concern and the reason, again, I'm pointing this out is this is being made up as it goes along, and that's not fair to anyone, particularly when the government is in the driver's seat and is able to say we have something you want, we'll let you look at it but we're going to tell you what we're going to charge you and we're just going to pick numbers out of the air, and you will pay those or else you won't get the records. That seems to me to be a wrongheaded approach. And that's one example. I don't want to make a bigger deal of it than it is. Actually, the county ended up waiving the charges at the meeting. After they told the reporter what a terrible person he was for asking for records, they said, we're so disgusted, get out of here, we won't charge you anything for it. (Laughter) So in terms of actual cost, the cost was nothing to my client. So maybe that's a happy ending. It was a strange way of getting there, is my concern. And I think it highlights some issues that need to be addressed. [LR512]

SENATOR AVERY: Thank you. I wonder if there's going to be anybody here to give the other side of the story. Do I see any hands out there? Okay. All right. All right. Questions from the committee? [LR512]

SHAWN RENNER: Thank you for your time. [LR512]

SENATOR AVERY: Thank you. Thank you very much. Senator Lautenbaugh. [LR512]

SENATOR LAUTENBAUGH: Is it going to trouble you if I end up testifying twice?  
[LR512]

SENATOR AVERY: It's going to cost...well, no, we're going to charge you. (Laughter)  
[LR512]

SENATOR PRICE: Be careful. He charges back. [LR512]

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SENATOR LAUTENBAUGH: This is kind of fortuitous that I was here because this is not why I'm here, on this particular topic, but I can provide information on it certainly. And I do know and I do worry about the possible effect of the functioning on government offices and related agencies if, say, for example, someone decided to be particularly abusive and harass with records requests. I can understand how there has to be some sort of a balance between what we need to know and what everyone has a right to know. And, say, someone had a vendetta against some public official and just started harassing and harassing and harassing and making allegations and checks and whatnot, I can see where that would be a problem. So we certainly need to retain some protection somehow for that. But I also had an experience this year with a records request. I had a bill this year that would have changed the disposition of some of the funds that now go to the Commission on Public Advocacy, to let Douglas County retain their contribution because they don't use the commission. And in the process of resisting that bill, my close friends at the State Bar Association were handing out numbers out in the lobby that somehow on this case the commission saved this county hundreds of thousands of dollars, on this case it was hundreds of thousands of dollars. So I sent, after the session was over, a request for information to the Commission on Public Advocacy, saying I want to know where these numbers come from, where the grants come from, what all you're talking about. And I received a bill for \$1,600 for my request, as a member of the Legislature yet. (Laughter) I still don't have the records. So when my friend Mr. Peterson points out that there's the potential for abuse here and the possibility that abuse is going on and maybe some people do send out bills in the hopes that you'll just go away, I think that's entirely possible that that does happen in reality. And this bill charges me for 24 hours of retrieving and copying the records at \$26 an hour, so that wouldn't be a lawyer probably but it was certainly a well-paid staffer who may or may not have been there anyway--I won't know because I don't have the records--and then another \$1,000 for the copies. So, yes, this is obviously something we need to address. Who knows, it may come up again next session. But I really do think I want the answers to where those amazing numbers came from, and I've been

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answered with another amazing number. So this is definitely something we do need to address. [LR512]

SENATOR AVERY: Well, thank you. You actually testified on both sides. [LR512]

SENATOR LAUTENBAUGH: I told you I could be the...yeah. [LR512]

SENATOR AVERY: (Laughter) No, wait, wait, don't go away. [LR512]

SENATOR LAUTENBAUGH: Oh, I'm sorry. I didn't imagine you'd have any questions after that but... [LR512]

SENATOR AVERY: Well, actually we have had a meeting and we're getting pushback from some of the public entities. And they're making the point, your first point, that... [LR512]

SENATOR LAUTENBAUGH: Yeah, it's a real danger. [LR512]

SENATOR AVERY: Yeah, I think there are instances where people use public records requests to harass, to maybe have vendettas against certain public officials or agencies. And we have to figure out a way to protect agencies from that but at the same time the public's right to know and without those exorbitant costs. That's a pretty hefty bill there. I'm sure you have the money to pay for it though. [LR512]

SENATOR LAUTENBAUGH: Well, and I'm still making 12 grand a year, unfortunately, so...despite my best efforts. (Laughter) So you know, it is what it is, but... [LR512]

SENATOR AVERY: Well, I look forward to having your help when we bring that bill to the floor. [LR512]

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SENATOR LAUTENBAUGH: I'm always helpful, Senator. You know that. [LR512]

SENATOR AVERY: Any questions for Senator Lautenbaugh? Thank you. Anyone else wish to address the issue of public records? All right, thank you for appearing, both of you, and all three of you actually. Now we will go to the second topic under LR512 and that will be precinct closures in Douglas County. And since Senator Mello requested that we take this up, we'll invite him to the table first. [LR512]

SENATOR MELLO: Well, good afternoon, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. Again, my name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. I'd like to thank the committee for allowing me the opportunity to use today's hearing, the LR512 hearing, to discuss the polling place closures in Douglas County during the 2012 primary and general elections as it relates to LB449. As state senators, we have a duty to represent our constituents, obviously, in a variety of ways. We help them navigate state and federal bureaucracies, we seek their input when we consider how to vote on legislation, and we even introduce bills and interim studies on their behalf. We also have a duty to admit when we make a mistake and when a vote we take is not in the best interest of those of whom we have the honor to represent. I believe that I made a mistake in 2011 by not asking questions about, and ultimately voting for, the amended version of LB449. While the bill contained a number of commonsense election reforms, one component of the legislation went largely unnoticed, both in the committee hearing and during the floor debate. That provision, which I believe must be revisited by the Legislature in light of recent events, was to amend Section 32-903 to allow election commissioners to create larger precincts, increasing the maximum precinct size from 1,000 voters in the last election to 1,750 voters who voted in the last election. While the change in LB449 provided election commissioners with the flexibility to draw larger precincts, this legislation did not, and I repeat, did not mandate larger precincts. Even with the newfound flexibility in LB449, no other county in the state of Nebraska chose to dramatically alter their precinct lines prior to the 2012 elections like Douglas County did.

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These changes that were made prior to the 2012 primary election caused great confusion for many Douglas County voters and had a disproportionate impact on minority and low-income communities in the eastern Omaha area in which I represent. Just prior to the 2012 primary election, Douglas County Election Commissioner David Phipps began sending voter information cards to Douglas County voters with their new precinct and polling place information. The new precinct boundaries, which resulted in the closure of nearly half of the polling places in Douglas County, were drawn without any input from Douglas County voters who would be affected. The results were fairly predictable. Voters who were accustomed to voting at the same location at every election for decades were suddenly forced to travel longer distances to unfamiliar buildings. Elderly residents of the Omaha Housing Authority Towers, who had previously voted in their building's lobby, were told that their polling place was now miles away and there was no convenient transportation available for them. Ultimately, public pressure led to the creation of a community advisory committee by Commissioner Phipps, and a small number of polling places that had been closed during the primary election were reopened in time for the general election. Despite these reopenings, there was significant voter confusion during the general election as well with voters who hadn't voted in the primary experiencing the same confusion as their counterparts had months earlier with many voters whose polling place had already been moved once for the primary being moved against just a few months later. Just prior to the general election an article was published in the Omaha Reader about the races on the ballot and the potential effect the polling place closures could have on their races, as a result due to LB449. While the full extent of the research that went into the Omaha Reader story is still coming to light, I believe that even with the slightest suggestion from the media that LB449 may have disenfranchised voters warrants thoughtful inquiry by this committee, even if no further action beyond this hearing is taken. While there are some who may choose to label my act of requesting this committee to reexamine the history of LB449 as, quote unquote, partisan, that characterization does a great disservice to the significant policy role that our nonpartisan Legislature has to play. We as a body have a responsibility to listen and respond when there is a public outcry. I think I can

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assure you that there has been a public outcry, not just from my legislative district but in all of eastern Douglas County and as well as parts of far western Douglas County. We owe it to the citizens of Douglas County not to only reexamine the changes made in LB449 that allowed for, what I believe, the mass closure of polling places but also examine what I believe is a lack of transparency and accountability in our current system of appointing election commissioners. As the committee is no doubt aware, 90 of Nebraska's 93 county elections are run by the county clerk, although counties with populations between 20,000 and 100,000 have the option of creating a position of an election commissioner as an office appointed by their county board. Only counties with populations over 100,000--Douglas, Lancaster, and Sarpy Counties--have their elections run by an election commissioner who is appointed by the Governor. The problem with this system, which the recent polling place debacle I believe clearly demonstrates, is that election commissioners in these three counties are accountable only to one person: the Governor who appoints them. By statute, only the Governor can remove an election commissioner. And unlike virtually every other gubernatorial appointment, the Legislature does not have to confirm or reconfirm appointed election commissioners. Last week our colleague, Senator Steve Lathrop from District 12, announced his intention to introduce legislation in January that would either transfer the election duties in these three counties to the county clerk or allow the county board to appoint the election commissioner instead of the Governor. Either option, as well as I think the policy option of making the election commissioner an elected position, would provide for increased accountability and transparency, and I believe would be an improvement over the current system. Even if the Legislature and this committee ultimately opts to keep our current system more or less in place, there are several simple policy changes that I believe could help prevent similar conflicts in the future. First, change the appointment process so that all election commissioners appointed by the Governor must have a legislative hearing and be confirmed by the Legislature every two years. Second, codify the community advisory committee process that was created by Commissioner David Phipps so that even if the election commissioner is not directly accountable to local voters, he or she has a permanent structure built into their office to



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solicit feedback from the public. And finally and most importantly, we have to open up to the public the process by which all election officials draw precinct lines. While many of the statutes that govern the drawing of political boundaries following redistricting provide for a notice and a public hearing, the process of drawing new precinct lines is done entirely behind closed doors, which, as we can see, provides ample opportunity for drastic changes to be made both to precinct lines and polling locations without any public feedback. Again, I'd like to thank Senator Avery and the Government Committee for allowing me the opportunity to discuss these issues today and the committee members for their patience during all of today's hearings. With that, I thank you for your time and would be happy to answer any questions you may have. [LR512]

SENATOR AVERY: Let me start by asking you if you know the reason why these three election commissioners--Douglas, Sarpy, and Lancaster--are appointed and no others are? What's the history on that? [LR512]

SENATOR MELLO: My understanding from the history we've been able to gather, which it's a little tough because it was done such a long time ago, it was done in the early twentieth century, I believe somewhere around the 1905 to 1909 area, and I could be incorrect of the actual date. But there was massive voter fraud going on in Douglas County, in which ultimately there was instances reported by the media of polling boxes or ballot boxes that were being thrown into the Missouri River, which caused great concern, obviously, for the electorate as well as those who were running for office. Ultimately, the Legislature decided to make a change at that point to allow the election commissioners of larger counties to be appointed by the Governor and so that they wouldn't be appointed by the county board at that point in time. Now over a number of years obviously those statutes have changed, but that was the original concept of why the Legislature chose to have election commissioners be appointed by the Governor instead of being elected or being appointed by the county board. [LR512]

SENATOR AVERY: What would be your reaction to a bill that would establish a process

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for realignment of voting precincts that would include a public notice, a public hearing? I think you suggested that might be something you would support. [LR512]

SENATOR MELLO: Senator Avery, I think any reforms--and frankly, I think this issue is in need of dire reforms that open up the process to the public more--is needed. And now whether or not that is, as I mentioned before in my testimony, a permanent committee that's established by...if the Legislature decided to move forward of keeping the appointed election commissioners by the Governor, I think opening up that process, that appointment process, first, to the public through a legislative hearing is, first and foremost, vital; that it's unique in our research that almost no other gubernatorial appointment, particularly at this level, doesn't have a legislative hearing and/or a vote on their appointment nor on their reconfirmation. It's simply a matter of the Governor deciding to send a letter saying you're reconfirmed, with no general public input whatsoever. The creation of a commission or some kind of way to evaluate or requiring more public input, public hearings regarding precinct changes or a redrawing of political precincts and polling locations, I believe that probably after what we have seen in the Douglas County area is something that is probably at the top of any reform agenda in the sense that there is a public hearing and notice made when districts are changed. But ultimately, when we leave and give the power, essentially, in statute to one individual and one individual only to make their lone recommendation to create precincts, draw them, as well as determine polling locations, I think that warrants concern, at least concern from my point of view, that the public is not fully engaged of being able to provide what we would think collectively provides more information and maybe more helpful information to that election commissioner or that election commission in regards to maybe more appropriate polling locations. Ultimately, as a state senator that represents almost 38,000 individuals, I don't know everything that's going on in every precinct or in every single neighborhood in my district at every moment in time. I have to assume that one election commissioner in charge of all of Douglas County may not also know the best polling location for every area in Douglas County from their own personal experience. And it would only serve the county and the

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voters more to give them that opportunity to be able to publicly weigh in and give their feedback of good polling location sites. There may be an ADA site that the election commissioner or his office or her office may not know about that would be a good...maybe a better location to be able to provide more centrally located within an area, as well as provide, I would think, more ease of voting for those voters. So I'm open to any ideas. I gave the committee I think today three I think real legitimate policy options that we could consider that, regardless of what happens in regards to the appointment process or change thereof of the election commissioner, three things that we could codify in statute that provides accountability and transparency over the appointed election commissioner process. [LR512]

SENATOR AVERY: Do you know how many precincts were closed in Douglas County?  
[LR512]

SENATOR MELLO: I'm sure there will be people who...I'm sure there will be people who can testify at probably much greater depth in regards to the research that they've done in regards to the actual closures. By all media accounts, you know, actually I did have an editorial here, actually Douglas County's original plan reduced the number in Douglas County from 352 voting sites to 186, in comparison to the second largest county in the state, Lancaster County, who reduced their polling locations from 223 to 198. [LR512]

SENATOR AVERY: Do you remember any discussion of why LB449 was used in this manner to reduce the number of voting places? [LR512]

SENATOR MELLO: Well, of course I did my homework that we're expected to do as senators to review this committee's testimony on the legislation, and ultimately the...Senator John Nelson mentioned the original change in LB449, which was to increase the size from 1,000 to 3,000, in his testimony. And ultimately, Commissioner David Phipps testified as well in support of the bill in which he ultimately, after I think I

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prompted a question from you, Senator Avery, in which you mentioned that that was a little high of a number, that was kind of a big jump, he ultimately...his response was the reason for it was because that's the trend of elections, that we have more and more people voting by mail and less people choosing to vote on Election Day at their polling location. And that is what he felt was the need of why we needed to change the 3,000, to increase the 3,000 number. And ultimately, at the end of his testimony, he ultimately said the other added benefit would be for a potential cost savings by doing that. So I don't want to misinterpret anything and obviously is of public record that all of you as the committee, as well as anyone publicly, can review, but ultimately that was the committee testimony from your questioning and his ultimate response. [LR512]

SENATOR AVERY: And Commissioner Phipps did actually restore 27 of those. [LR512]

SENATOR MELLO: He did. He did. And actually, I attended one of the public meetings that were held in south Omaha in regards to looking to reopen a number of polling locations, and he did reopen roughly...he spread them around in parts in the eastern part of the city as well as the western part of the city and opened...I think 27 is the accurate number. [LR512]

SENATOR AVERY: The charge was made that, by a factor of 3 to 5, that the precincts that were closed tended to be poorer neighborhoods, less educated, less income. And do you have any empirical factual information this is true? [LR512]

SENATOR MELLO: You know what, I...you know what, I imagine that there will be other testifiers who actually, I think, worked on the research, I believe. I remember seeing a story by KETV Channel 7, as well as in conjunction with the Omaha Reader. They did a story with Commissioner Phipps, walking him through research that was done that showed the disproportionate impact of the original polling location or precinct changes and its impact it had on senior citizens and those lower-income neighborhoods and individuals in Omaha in regards to potentially a lack of access to public transportation to

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get to their polling location. I don't have that information in front of me right now, Senator Avery, but I no doubt know that there are people who will testify after me who can shed more light on that issue. To that same vein though, I realize that, one, you can't go back in time and change elections, that we can't go back in time and change ultimately any outcomes that may have come from these changes in Douglas County, both in the primary and general election. My hope would be, moving forward, that this committee would reevaluate potentially with the impacts, and I think what you'll hear from other community testimony, not just simply some of the research that we provided, of what would be in the best interest of counties moving forward in regards to this. Once again, there was no other county in the state that chose to dramatically alter their precincts the way Douglas County did, and I think the question that I consistently come back to is, was that the result ultimately that the public wanted? After all of this entire episode took place in the primary and general, did we ultimately see the intended results that we wanted to give election commissioners when we passed LB449? And I would be remiss, as I said in my testimony, I believe I made a mistake, and I think that's part of sometimes our acknowledgement as public officials that we ultimately take votes on issues, we ultimately sometimes do not take votes, or sometimes don't ask the tough questions about legislation that's in front of us. And in hindsight I've expressed this to my constituents as well as others in the Omaha area that I've made a mistake, and I should have asked the questions that I'm raising now in front of this committee back when we passed that legislation. And I think all we can do and all I can ask of this committee--and I know other senators, I know Senator Karpisek, who's not here today, has also expressed significant interest in revisiting election commissioner issues, as well as the precinct polling change issue--that this committee consider, moving forward, reevaluating that policy, and ultimately take into consideration other policy options that myself or other senators may bring forward for your consideration. [LR512]

SENATOR AVERY: Do you know if anybody has examined the election outcomes to see if the changes made to voting sites influenced the outcomes at all? [LR512]

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SENATOR MELLO: Senator Avery, I know that right now I believe the Secretary of State still has not officially certified all the elections, so to speak. And so I think until...I would assume until all the 2012 elections have been certified that there's really...you're kind of...you're limited, I would say, in some respects in regards to what ultimately could or may have been the impact. I know there's going to be some personal examples. We've received personal examples both after the primary and the general of constituents of mine in regards to their individual experience of going to a polling location and have it being the wrong location and ultimately spending a significantly more amount of time to go find their polling location than what they originally considered, and obviously expressing their disdain for what happened and why did it happen and how did this happen. But that may be something that the committee may want to look into after elections are certified, of seeing what may have been the potential impact of those changes due to that piece of legislation that we ultimately passed. [LR512]

SENATOR AVERY: It would be nice to know if, say, turnout was affected... [LR512]

SENATOR MELLO: Yeah. [LR512]

SENATOR AVERY: ...in these more diverse neighborhoods where allegedly there were more closures and realignments. [LR512]

SENATOR MELLO: You know, once again, as I mentioned in my testimony, even if there's nothing done further beyond today by this committee, I have a feeling that this issue ultimately will continue to be researched and evaluated, if not by the Legislature, by I think at least organizations that have an interest in ensuring public and civic participation in our elections. Once again, I think we all know that sometimes we're limited with our resources. You as a committee Chair and your committee counsel and committee staff are limited in the resources that you can do in regards to ultimately doing thorough investigative reports, and I know that. But the reality is there will be

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plenty of people, I think, who will continually show interest and will continually be calling for the Legislature to revisit this issue until we're able, I believe, to find some kind of reform moving forward that we can ensure that an unintended consequence, that I think happened because of the dramatic changes in Douglas County, won't happen again for some other county or in Douglas County again. [LR512]

SENATOR AVERY: Questions from the committee? Thank you. [LR512]

SENATOR MELLO: Thank you. [LR512]

SENATOR AVERY: Anyone else wish to testify on this resolution, LR512, and the issue of closure of precincts? Welcome. [LR512]

MACHAELA CAVANAUGH: Good afternoon. Thank you. My name is Machaela Cavanaugh, M-a-c-h-a-e-l-a C-a-v-a-n-a-u-g-h. I'm a registered voter in Douglas County, Nebraska. On Election Day, I was a volunteer at the poll watching. I was stationed at Our Lady of Guadalupe poll in Omaha from 8:00 a.m. to 12:00 p.m. and the Butler-Gast YMCA poll at 35th and Ames from 3:30 to 8:00 p.m. The following is a recount of my observations and experiences primarily at the Butler-Gast YMCA polling location. The first issue I observed was the requirement of voters to produce their voter ID number prior to casting a provisional ballot. No provisional ballots were being issued until the voter provided their voter ID number. The poll workers had no way to look up voter ID numbers for individuals so they handed a card with the Douglas County Election Commissioner's number and told them to call for their voter ID number. This is the point when I and other poll watchers would intervene to help individuals by calling the Douglas County Election Commissioner number numerous times until the phone was answered. It could take from 5 to 30 minutes to get through to a person. Initially, I thought that the voters were simply needing assistance to figure out their correct polling location. It quickly became clear that they were in fact being told that they had to have a voter ID number in order to cast a provisional ballot. At this point, I contacted the

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Democratic Party to see if we could get the poll workers to allow voters to vote without first requiring their voter ID number. The Nebraska Democratic Party was able to get the Douglas County deputy election commissioner, Lisa Wise, on the phone with the inspector at Butler-Gast YMCA poll to address the voter ID issue. Both the inspector and myself spoke with Ms. Wise about the poll workers, how the poll workers were supposed to handle voters who were not on the voter rolls for that location but were supposed to vote there and, therefore, needed to cast a provisional ballot. By the end of that conversation, the poll workers stopped requiring every person who was not on the voter rolls to acquire their voter ID number prior to casting a provisional ballot. Until that was sorted out, that polling location was turning away voters when they should have been issuing provisional ballots. The inspector at this polling location informed me that this is what she was told to do during her training for Election Day. The next issue that really went hand-in-hand with the provisional ballot problem was the number of voters showing up to the polling location saying that they voted there in the primary but were being told that they were not on the voter rolls. This again led to individuals needing to make repeated calls to the election commissioner's office trying to find out where their new polling location was, and sometimes they were still at this location, they just were no longer on the voter rolls. I was never given an explanation as to why their names would have been expunged from the voter roll. Eventually, I was able to get a laptop on loan from the director of the YMCA to help look up the polling locations and voter ID numbers through the election commissioner's Web site. This led to the next issue, which was the Nebraska Secretary of State's Web site versus the Douglas County Election Commissioner's Web site. There was a woman who came in to vote at the YMCA and she was not on the voter rolls. She asked me to help her figure out where she needed to go. I looked up her location on the Nebraska Secretary of State's Web site. This directed her to another location and there was a volunteer at the YMCA who gave her a ride. Approximately 20 minutes later she returned to the YMCA with the volunteer because she was told at the previous location that she was to vote at the YMCA. When we looked her up again, this time using the Douglas County Election Commissioner's Web site, it gave the YMCA as her polling location. We were never able to figure out



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why she was not on the voter roll to begin with at the YMCA or why the Nebraska Secretary of State's Web site gave conflicting information to the Douglas County Election Commissioner's Web site. The final issue I observed at the YMCA location was the insufficient number of provisional ballots. The polling location was down to four provisional ballots early in the evening, I believe around 4:30 p.m. The poll staff came to me directly and asked if I could get additional provisional ballots for the Butler-Gast YMCA location. They appeared to have no other avenue to get additional provisional ballots for their location. I am unclear as to what they would have done if there was no outside poll watcher there to assist in getting additional provisional ballots. To conclude, I would like to say that all the poll workers were nice and hardworking. They seemed to have the best of intentions. Everything that was done inappropriately I was informed was done because that's how they were trained to handle the issues. The main issues I witnessed were concerning requiring voter ID numbers, voter confusion over polling locations, conflicting information on government Web sites, lack of adequate provisional ballots, and finally, no avenue for poll workers to acquire needed additional provisional ballots. [LR512]

SENATOR AVERY: Thank you. [LR512]

MACHAELA CAVANAUGH: Thank you. [LR512]

SENATOR AVERY: Let me ask you, Ms. Cavanaugh, if you can tell me where this YMCA precinct is located. [LR512]

MACHAELA CAVANAUGH: It's in north Omaha at 35th and Ames. [LR512]

SENATOR AVERY: So that's a poor neighborhood? [LR512]

MACHAELA CAVANAUGH: It's a low-income, predominantly African-American neighborhood. [LR512]

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SENATOR AVERY: And did you...do you talk to other poll watchers? Were your experiences unusual or were they typical or what? [LR512]

MACHAELA CAVANAUGH: I was at Our Lady of Guadalupe in the morning and some of those issues were similar to my experience at Our Lady of Guadalupe. The inspector at that polling location was a veteran polling inspector. She had been volunteering for years and years and years, and she was really good at kind of doing the right thing. They were also not able to give out polling locations but they were not requiring voter ID numbers. And I was informed by the lawyers for the Nebraska Democratic Party that they don't have to give out the polling locations, you have to figure that out yourself, but you're not supposed to require a voter ID number before allowing them to vote. As far as other people, I did talk to other people after the election that were doing poll watching in the north Omaha area that were having the very same problems of the voter ID number and the lack of provisional ballots. Those two issues were predominant in that neighborhood. I don't know about in other neighborhoods. There generally weren't poll watchers in west Omaha to see to compare. [LR512]

SENATOR AVERY: That was going to be my next question. [LR512]

MACHAELA CAVANAUGH: Yeah. [LR512]

SENATOR AVERY: How normal is it to have poll watchers at the polls? I mean I don't think we do much of that here in Lincoln. [LR512]

MACHAELA CAVANAUGH: I think it's... [LR512]

SENATOR AVERY: Is it normal in north Omaha? [LR512]

MACHAELA CAVANAUGH: I think it's fairly common to have poll watchers at the polls,

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especially in neighborhoods where there's a concern that there will be voter suppression, not from this particular issue but outside groups that might be there doing voter intimidation. I know that it's pretty common in lower-income neighborhoods to have poll watchers just to make sure that that sort of thing doesn't happen, even just to make sure that they're abiding by the laws for where the signs are supposed to be and if there's people standing too close, trying to solicit votes. So normally in lower-income neighborhoods it's pretty normal to have poll watchers. [LR512]

SENATOR AVERY: It's not common to be asked to show your voter ID number. I don't even know what mine is... [LR512]

MACHAELA CAVANAUGH: Right. [LR512]

SENATOR AVERY: ...and I've been voting for a long, long time. [LR512]

MACHAELA CAVANAUGH: No, I... [LR512]

SENATOR AVERY: Where do you find that information? [LR512]

MACHAELA CAVANAUGH: You can find it on the election commissioner's Web site. If you look up your voter registration, your voter ID number I believe is on there. Or if you call the number that you couldn't get through on Election Day, they would give it to you. Your voter card, your card that you get in the mail that tells you your polling location, supposedly tells you your correct polling location,... [LR512]

SENATOR AVERY: The number is on that? [LR512]

MACHAELA CAVANAUGH: ...your voter ID number is on there. But you don't need your voter ID number to vote. [LR512]

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SENATOR AVERY: Yeah. [LR512]

MACHAELA CAVANAUGH: You just need you. [LR512]

SENATOR AVERY: So your observation, you were at more than one voting site, was your observation enough to allow you to draw some conclusions about perhaps the effect these obstacles might have had on people's actual voting behavior? [LR512]

MACHAELA CAVANAUGH: Well, my personal observation was that the effect was it was dissuading people from voting and it was making it difficult. Having the low-income neighborhoods, a lot of people voted at Our Lady of Guadalupe or the YMCA during the primary and were now sent to a different location, or their name had been expunged from the roll so they had to fill out a provisional ballot. Oftentimes they were informed that a provisional ballot wouldn't be counted, which is I think sort of true. I think provisional ballots are only counted if there's a recount. I'm not entirely certain about that. But there's a...you know, they were just kind of being dissuaded, in general, from voting. The people working at the polls are from those communities, generally, and they, when I would talk with them and explain to them what they were doing, what effect that was having and how that wasn't what they were supposed to be doing, they usually got upset and modified their behavior as a result, because they wanted to make sure that the people in their community were voting and they wanted to help them. And they would start to work with myself and other poll watchers to make sure that we found out where people were supposed to be going. [LR512]

SENATOR AVERY: And did I hear you say, and correct me if I'm wrong, that one of the poll workers said they were instructed to ask for the poll... [LR512]

MACHAELA CAVANAUGH: Yes. [LR512]

SENATOR AVERY: ...the voter ID number? [LR512]

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MACHAELA CAVANAUGH: Yes. That is what the inspector at the YMCA was instructed to do and that's what the rest of the staff at the YMCA polling location were instructed to do. [LR512]

SENATOR AVERY: And that's not what you found at Guadalupe or not, or did you find the same thing there? [LR512]

MACHAELA CAVANAUGH: At Our Lady of Guadalupe, I didn't...well, I was only allowed to stand so close and they weren't turning people away to get their voter ID number,... [LR512]

SENATOR AVERY: Uh-huh. [LR512]

MACHAELA CAVANAUGH: ...so I can only assume they weren't doing the same thing. They may have been instructed to do that, but they weren't requiring it. [LR512]

SENATOR AVERY: Okay. We have a lot of people here who may have more information about this. We have a former election commissioner back there. I doubt if he wants to speak but we're open to everyone who wishes to talk. Thank you very much. [LR512]

MACHAELA CAVANAUGH: Thank you. [LR512]

SENATOR AVERY: Welcome, sir. [LR512]

WILLIE HAMILTON: Hello. A little bit nervous. [LR512]

SENATOR AVERY: Ah, don't be. [LR512]

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SENATOR PRICE: No worries. [LR512]

WILLIE HAMILTON: My name is Willie Hamilton, W-i-l-l-i-e H-a-m-i-l-t-o-n, and I'm representing two organizations: Black Men United and the NAACP. First of all, do a little backdrop, we worked closely with Dave Phipps once he did the closing of the polls. We were one of the few organizations working with him to try to correct the problem, so I want to give a big hands up to Senator Mello for admitting that there was a mistake made on that. The fact of the matter is, there was confusion from the beginning to the end; so much confusion that the folk was calling off on a continual basis to actually find out where their polling places is. The writing was too small. Some of them who they gave a location, it was not the right location. So the actual day of the voting, I participated as an observer and found two issues. One being, as the lady stated earlier, a lot of folks were asking for their voter ID number, which I don't know my voter ID number so I don't know why were they asking them for their voter ID number in order them to register to vote. But they did ask for their voter ID number. There was a gentleman that lived on 2216 Grant. He walked into Chef Mike's, which is usually his polling location, and they said, no, this is not your polling location; you have to go to the school. I took him to the school; that was not his voter location either. So they said, well, maybe you're supposed to be voting over at Morning Star. So I went over to Morning Star and that was not his location as well. So I called the election commission office for about 15-20 minutes; could never get through to the election commission office. It was only after I called Adam Morfeld's office and they gave us the correct information. His polling place was Girls, Inc. And we went to Girls, Inc., and he was able to vote. The second incident was there was three family members--a mother, a father, and a son living in the same house--and one location was Girls, Inc., and the other two was Urban League. And it doesn't make any sense, if you're living in the same location, why would you go to two separate locations to be able to vote? So those are the two instances I saw as far as wrong information getting out, so much confusion that when we actually went there people were just like where do I vote; you know, is this the right place; this is the wrong place. And there was a lot of folks that were getting very angry regarding the

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whole process. I think a lot of folks ended up leaving because they didn't want to go through all the rigmarole. And the only reason why the gentleman that I took to Chef Mike's voted was that I actually took him to all four locations before he actually got a chance to vote. And the lady who ended up voting at the Urban League and her son, they voted, but her husband just...he was ill. He got tired of, you know, standing around and he basically just walked out. So it did cause major problems and it did impede a lot of folks from actually going to the polls and voting. So keep it short. [LR512]

SENATOR AVERY: Okay. This is...I'm just going to ask you for your opinion because you were an observer. [LR512]

WILLIE HAMILTON: Yes, sir. [LR512]

SENATOR AVERY: And I know that you were not at every polling place so you can't...it can't be a definitive opinion. But how likely do you think it is that when you have changes in people's polling place that it's normal to have confusion where people are going to go to the wrong place? And poll workers, in my opinion, they ought to know where to send you. You ought to have a uniform list and that ought to be accurate. But on the part of the voter, I think there it's normal that you would have some confusion if you voted in one place in the primary and you had been assigned somewhere else for the general. And that's what happened, because there was a realignment for the primary, then another realignment of these precincts for the general. Can you admit that maybe some of this was not a deliberate effort to suppress voting but just normal confusion? [LR512]

WILLIE HAMILTON: It may have been in the beginning, but the fact of the matter is because he did what he did it caused massive confusion, whereas they sent out three cards, three, to different individuals talking about the changes in voter location. I mean one? Maybe. Two? Come on. Three? Ridiculous. And then he actually had to... [LR512]

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SENATOR AVERY: Three cards you said? [LR512]

WILLIE HAMILTON: Three different cards. [LR512]

SENATOR AVERY: Telling them the same thing or different things? [LR512]

WILLIE HAMILTON: Some of them said the same thing and some of them said different. And a lot of folks didn't even receive their voter ID cards. [LR512]

SENATOR AVERY: Okay. Questions from the committee? Thank you, Mr. Hamilton,... [LR512]

WILLIE HAMILTON: Thank you. [LR512]

SENATOR AVERY: ...for your patience. I know you've been here a while. [LR512]

WILLIE HAMILTON: No problem. [LR512]

SENATOR AVERY: Next testifier. Welcome. [LR512]

LINDA DUCKWORTH: Good afternoon. I'm Linda Duckworth, L-i-n-d-a D-u-c-k-w-o-r-t-h. I happen to be president of the League of Women Voters of Nebraska, although I don't know for sure if I'm representing the league today. I'm just letting you know that I was an observer on Election Day and I was an observer not on behalf of the league, and so that's why I said that. I volunteered as an observer on Election Day last month. I observed at two different polling sites in Douglas County. The first one was the Comfort Inn at 72nd and Grover, and the second one was at the Malcolm X Foundation on Evans Street. So I was at the Comfort Inn over the lunch, a couple of hours. I think it was from about 11:00 to 1:30, something like that. And so I introduced myself to the inspector, who's the top person--this was the first time I knew



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that that was the word used--and asked her how things were going and she said things were going well, although, here's what she said, although we have a much larger number of provisional ballots than ever before. I think that's the way she said it. Anyway, she definitely made a point about the much larger number of provisional ballots. And so as I observed, I saw that, as Ms. Cavanaugh mentioned in her testimony, people were being told that they had to have a number, and it was that voter ID number, which was surprising to me and I didn't know to question that because that was the first place I had observed. And so they continued to do that and people would be on...and I thought, you know, the League of Women Voters has worked on the Help America Vote Act. We've helped get information out about that and so on. And it just...there was not much help on the part of the poll workers. And as Ms. Cavanaugh said, I felt like they wanted to help but they didn't have what they needed to do that. And so all they would do is give the telephone number of the election commission, the Douglas County Election Commission, and people would have to find a phone somehow. Most people did have a phone that they could use and try to call, although there were some people who had, you know, limited minutes and that sort of thing, and when you have limited minutes and you're trying to get through. At any rate, I don't know if I saw...out of the...during that time I was there, there were probably at least, I'm trying to remember, there were at least 20 people who were in the situation where they couldn't vote. It seems like it was more than that and I'm sorry I don't have the numbers with me. But they...almost nobody got through. It would ring and it would ring and ring. And I then was able to get ahold of a different number that they could call and so that was how they would find out. They wouldn't get their voter number but they would at least find if there was a different place where they were supposed to be. And so then I observed people actually going through the process of the provisional voting, and I was kind of surprised at what a lengthy process that was, too, to fill out the information and then to actually do the voting. Then that evening I went, I was...I think at, for four hours, at the Malcolm X Foundation, which is on Evans Street. That's in north Omaha. And the inspector there said a similar kind of thing, that things are going well but we have a much larger number of provisional ballots than usual. And I felt that at that...she was a much more

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experienced poll worker or, yeah, poll worker and so things did not seem to be in as much disarray as they had been over at the Comfort Inn. And there was no request for a special voter number, the voter ID number at that one, and yet it took...there again I observed a lot of people with provisional ballots. It seemed like the time...and this is true with both locations, when I was there, there was never a time when there wasn't somebody there who was working on either trying to get a provisional ballot or actually filling all the information out or voting on it, and that was the same case there. One thing that they did, at least they allowed people to use...I think it was actually the Malcolm X Foundation director who was there at the same time who was allowing anyone who wanted to, to use their telephone, their company telephone, to make that phone call to the election commission to try to get through and find out where they were supposed to be. What I don't understand is why we even have the system where you start out with the person's name, because when I have voted in a different state, they...you go up and you...to the poll worker and you want to say your name, first off, but they actually ask you for your address. And so it seems to me that that immediately tells that poll worker if you are in the right place, and so it's all listed by address. You...they turn it around, they show you that, and you sign it or they ask you if you are, you know, Linda Duckworth, for instance, and you say yes and then you sign it, and that's how. So it's a kind of similar thing. But at least if you have the address they can...and then if they have additional information, they can tell you immediately if you're in the right place or the wrong place. And so I can think of all kinds of ways this could be done better and I have a lot...I feel like I have a lot more to learn. But I just wanted to let you know that there were...to me, I kept thinking, you know, to me, I don't know, I'm not even sure what irregularities means necessarily when you talk about voting irregularities, but this looked very irregular to me and it...I know that there were people who were quite disheartened and quite unhappy that they had allotted themselves maybe 45 minutes to go and vote because they had never needed more time than that before, and this was taking longer than that. I think that's everything. [LR512]

SENATOR AVERY: In your observations, did you notice people being turned away or

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people despairing of the length of time and leaving and not voting? [LR512]

LINDA DUCKWORTH: Yes, Senator Avery, I did. And there were people who just said, I just don't have time; I've got to, you know, I've got to get back. And of course, I would sort of follow them out and say, is there any way you can come back later or something like that, or, you know, look it up and then try to go to another place. But yeah. [LR512]

SENATOR AVERY: Any other questions from the committee? Thank you, Ms. Duckworth. [LR512]

LINDA DUCKWORTH: Thank you. [LR512]

SENATOR AVERY: Welcome, Mr. Morfeld. [LR512]

ADAM MORFELD: (Exhibit 1) Good afternoon. Chairman Avery, members of the committee, my name is Adam Morfeld, that's M-o-r-f-e-l-d, and I actually also have testimony from a poll worker that was unable to make it today but wanted me to submit it on his behalf. As I said, my name is Adam Morfeld. I'm the executive director of Nebraskans for Civic Reform, a nonpartisan, nonprofit organization dedicated to voting rights and increased civic engagement among youth in our democracy. Much has been said here today about what has happened in Douglas County in regard to elections. My organization in many ways has been at the forefront of analyzing the impact of the polling place closures in Douglas County. In a recent article, Senator Lautenbaugh has claimed that this is purely a partisan issue. There's nothing further from the truth. And while some have made such a claim and made it a partisan issue, I never have and nor has my organization. What myself and my staff have done, however, is documented one administrative decision after another that has adversely impacted the residents of Douglas County and made those findings and the impact that they've had to Nebraska's public. If this is a definition of partisanship, then so be it. I wish to live in a world grounded in reality and facts, and the reality is that Commissioner Phipps's actions have

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caused hardship for thousands of voters, confused just as many, and on Election Day denied the right to vote provisional to hundreds and perhaps many more voters. This, unfortunately, is the reality that many Douglas County residents have lived with for the past seven months. This is not based on partisanship or demagoguery but, rather, a desire that the administration of our elections be more accountable, transparent, and provide for an accessible democracy for all Nebraskans. Today I will briefly summarize in detail many of the hardships the residents of Douglas County have faced through the 2012 election. The information is based on my active involvement in these issues, beginning in March of 2012, and NCR's nonpartisan election protection program, which consisted of 65 election observers and 15 attorneys on Election Day, on November 6. First, the initial decision to close a third of the polling locations in Douglas County before a major election was done with absolutely no public input whatsoever and it was not made public until the Omaha World-Herald broke the story approximately 60 days before the election. Further, on March 3, 2012, at a Douglas County administrative services meeting, Commissioner Phipps stated that he did not take into account public transportation when closing the polling locations--something he later did with the Secretary of State, I believe, when they reopened some. This is particularly egregious over some particular areas of Omaha that rely heavily on public transportation as a daily means of transportation. This would have been avoided and averted if there had been a minimal level of transparency and accountability to the public. Second, when mailing out the polling place notices to registered voters before the primary election, Commissioner Phipps admitted that he had knowingly sent out notices with wrong information because of a printing error, with the intent of following up with the correct information in a future mailer. This further contributed to the confusion as to where voters were supposed to be on Election Day. Many people received these notices and they think, well, I've already received one, here's just a copy of another one, it must have been a mistake, and they throw it away. We heard that from a lot of individuals. Because they had received it the week before, they thought, well, I've already received it, there's no need to look at this one, I've already got it. And so that caused a lot of confusion among a limited number of voters that this mistake occurred to. And only after

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receiving enormous community pressure, Commissioner Phipps, along with the Secretary of State's Office, approved the reopening of numerous polling locations. This was a positive development, but the initial damage had already been done. The initial mass closing of polling locations before the primary changed much of the registered voters of Douglas County's polling locations, and now many residents' polling locations that they had voted on in the primary was different for the general, causing even more confusion as to where the voters were supposed to report to on Election Day. If the office of the election commissioner was accountable to the public and, thus, much more transparent, much of this confusion and lack of consideration of certain communities' circumstances likely would not have occurred. The location and distance of polling places matter. A recent study by professors from the University of Maryland found that distance imposes the heaviest burden on turnout in suburban precincts. Further, Nebraskans for Civic Reform, along with The Reader, and Omaha weekly publication, did a comprehensive GIS analysis of the impact of the polling place closures and found that the closures disproportionately impacted low-income areas of the city. If you live east of 72nd Street, the percentage increase to your polling place was twice than if you lived west of 72nd Street. If you live in a census tract with a median household income between \$25,000 and \$50,000, the percentage of increase in your distance in your polling location place is three times than if you live in a census tract with a median household income above \$50,000. If you live in a census tract with a minority population exceeding 20 percent, the percentage increase in distance to your polling place is five times than if you live in a census tract with a minority population between 10 and 20 percent. If you live in a census tract where there's less than 10 percent of the population who holds a bachelor's degree, the percentage increase in your distance to your polling place is five times than if you live in a census tract where more than 50 percent of the population holds a bachelor's degree. And I would be more than happy to provide these numbers, analysis, and other information that was used to gather this information. All of our analysis was done using data provided by the county election commissioner's office. On November 6, NCR had nonpartisan election observers at 25 polling locations throughout Douglas County. These observers took detailed notes that documented the

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extent of voter confusion on Election Day. Our election observers found that, on average, 10 percent of the voters arriving at the polling places arrived to find that they were at the wrong polling location in Douglas County. In some precincts, these numbers were significantly higher, to the tune of 20 and 30 percent of voters arriving and realizing they were at the wrong polling location on Election Day. I would think that these numbers are abnormal, and these numbers were not found in Lancaster and then also in Grand Island, where we also had election observers. Many observers reported that many voters' polling place notification cards contained wrong information that they were able to confirm with their smart phones or using a computer or another number, a 1-800 number that our national organization had given us. This confusion was further enhanced by the inability to get through on the election commissioner's help line because of the high volume of calls and confusion. Finally, many of these confused voters were subsequently and unlawfully denied the right to cast a provisional ballot because election workers had been ordered by their district supervisors to require voter identification numbers before issuing a provisional ballot. Voter identification numbers, as we talked about earlier, is this internal number that the election commissioners and election administrators use to identify voters in their system. After discovering this practice at 6:30 p.m. on Election Day at Evans Tower in north Omaha, I had asked poll workers how many people did not cast provisional ballots because they could not get through to the election commissioner's office to get their voter identification number; and they stated that it was at least 50. When I was trying to resolve the issue and contact the election commissioner's office, which I was only able to do after contacting someone's cell phone within that office, there was at least seven individuals that could not get through the line and could not get their voter identification number and, thus, left the polling location, some of them after trying for 45 minutes. That is at least 57 voters denied the right to cast a provisional ballot at one polling location alone. We later found out that, out of the 25 polling locations that we had election observers, 9 of them required voter identification numbers in order to cast a provisional ballot all day. There were undoubtedly many more polling locations that were also unlawfully requiring such a number, which leads us to reasonably believe that at least hundreds of voters were

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affected and denied the right to vote provisionally, and perhaps more. All this information has been supported by signed affidavits in a formal HAVA complaint that NCR has filed with the Secretary of State. And in January 2013, we will provide all this data and provide a detailed report of what occurred in Douglas County for this committee and the public to review. The bottom line is that responsible, accountable, and transparent election administration matters. It has real-world effects on voters and the representative nature of our democracy. It has an impact on the confidence or lack thereof that voters hold in our democratic system. And what has occurred over the last year in Douglas County stands as a stark example on what happens when our system lacks such accountability and transparency. One of the interesting and startling aspects of our election administration in Nebraska is that the Governor-appointed election commissioners, in counties with populations over 100,000, are accountable to absolutely no one other than the Governor, and the Governor has declined to intervene on specific election matters in this regard. So who is the election commissioner accountable to then? This system provides few incentives for election commissioners to be transparent and accountable to the public they serve, because the public has little to no recourse when dealing with the election commissioner. Again, this is not about partisanship. This is about real problems that have been well documented and have affected real people in Douglas County. I urge this committee to take action next session to bring accountability to the office of the election commissioner in our most populous counties and to ensure accessible and transparent elections for all Nebraskans. I know that my testimony was long and I appreciate your time, but I really did want to emphasize that these are real problems. This is not partisan mudslinging or anything like that. These are real problems that have been confirmed over and over, time and time again over the last seven months. I'd be more than happy to answer any questions. [LR512]

SENATOR AVERY: Thank you, Mr. Morfeld. Let me start by asking you, where did you post your election observers? You said you had 65? [LR512]

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ADAM MORFELD: We had 65. [LR512]

SENATOR AVERY: And you had 15 attorneys. [LR512]

ADAM MORFELD: Yes. [LR512]

SENATOR AVERY: Were these attorneys trained in election law? [LR512]

ADAM MORFELD: They were given an orientation... [LR512]

SENATOR AVERY: Okay. [LR512]

ADAM MORFELD: ...by a national organization called the Lawyers' Committee for Civil Rights. [LR512]

SENATOR AVERY: Where did you have your people posted? [LR512]

ADAM MORFELD: We did it based off our GIS information. We had them posted at various locations, particularly locations where there's voters that often move around a lot, so lower-income areas. We had 30 locations picked out in Omaha; we were actually at 25. And in Lincoln, we had 20 locations, and then in Grand Island we had 3 or 4, I believe. [LR512]

SENATOR AVERY: Oh, so these 65 were not all in Omaha. [LR512]

ADAM MORFELD: Throughout the state. [LR512]

SENATOR AVERY: Okay. [LR512]

ADAM MORFELD: Grand Island, Lincoln, and Omaha. [LR512]



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SENATOR AVERY: All right. Well, that's a fairly large number. [LR512]

ADAM MORFELD: Uh-huh. [LR512]

SENATOR AVERY: I mean you must be doing pretty well with your fund-raising. [LR512]

ADAM MORFELD: We try. [LR512]

SENATOR AVERY: Was it always...were they volunteers? [LR512]

ADAM MORFELD: They were all volunteers,... [LR512]

SENATOR AVERY: All volunteers. [LR512]

ADAM MORFELD: ...so it was a pretty low-budget operation actually. [LR512]

SENATOR AVERY: Oh. I would like to see that data you talked about that you collected. [LR512]

ADAM MORFELD: Absolutely. [LR512]

SENATOR AVERY: Is it in the form of an analysis, a study, or just raw data? [LR512]

ADAM MORFELD: Well, way we have it right now is the poll watchers had detailed election forms that they would fill out as they documented, for instance, the amount of time that people would wait; how many people left, on average; and then, in addition, any other numerous election issues that could happen. So what we've done is we've taken all that data and we've put it in a big spreadsheet and we're about done compiling

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that. So that's something that we're going to release, both the raw data, and then we're also going to, obviously, have an analysis and a report summing up that data. [LR512]

SENATOR AVERY: Yeah. Well, we want to see it. [LR512]

ADAM MORFELD: Absolutely. [LR512]

SENATOR AVERY: Let me ask you also, did you...do you have any evidence or any reason to believe that what you observed had an impact on electoral outcomes? [LR512]

ADAM MORFELD: Well, I mean I think it's hard to know really. The amount of provisional ballots that were actually cast were similar to what was cast in 2008. The problem is, though, is that they were requiring voter identification numbers and a lot of people who would have cast a provisional ballot weren't able to. So I truly believe that at least several hundred people were not able to, and perhaps many more. So it's really hard to predict what kind of impact that has on the outcome. [LR512]

SENATOR AVERY: Yeah. [LR512]

ADAM MORFELD: But I think any time that you have voter confusion, you have people that have the inability to cast a provisional ballot, there very well could be a theoretical impact. [LR512]

SENATOR AVERY: Senator Wallman. [LR512]

SENATOR WALLMAN: Thank you, Senator Avery. Thanks for coming down. [LR512]

ADAM MORFELD: Sir. [LR512]

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SENATOR WALLMAN: First of all, I got a...did you have to pay for any of this information from election commissioners or...? [LR512]

SENATOR AVERY: Talking about public records. (Laugh) [LR512]

ADAM MORFELD: Actually, Commissioner Phipps is very good about getting information to us either at no cost or at a very nominal fee. [LR512]

SENATOR WALLMAN: Yeah. [LR512]

ADAM MORFELD: So he's very good about that. [LR512]

SENATOR WALLMAN: And secondly, do you think we would have had a lot less problems if we'd a had that through the county clerk system, you know, like we do in rural Nebraska? [LR512]

ADAM MORFELD: I think that the benefit of the county clerk system running the elections is that there is accountability to the public. Any time you have accountability to the public, you have to take into consideration the public's needs. And as elected officials, you all know that. There's repercussions for when you vote against an issue that a majority of your constituents are passionate about. The office of the election commissioner doesn't have that pressure. It doesn't have that pressure indirectly from the county board and it doesn't have that pressure directly from the individual voters because they have no recourse. So I can't say for sure, if it was under the county clerk system, if these issues wouldn't have happened. We have not seen these issues to this extent under those systems. [LR512]

SENATOR WALLMAN: I know our area has got a lot...you know, people have to travel a lot further now... [LR512]

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ADAM MORFELD: Yeah. [LR512]

SENATOR WALLMAN: ...and they're not real happy with it. But... [LR512]

ADAM MORFELD: Yeah. [LR512]

SENATOR WALLMAN: ...but thanks for coming. [LR512]

ADAM MORFELD: Thank you, Senator. [LR512]

SENATOR PRICE: Thank you, Senator Wallman. I have a couple questions. And, as you said, since we're trying to ferret out, if you would, the issues and the drivers, in all of this we haven't heard anything about Sarpy County. [LR512]

ADAM MORFELD: Um-hum. [LR512]

SENATOR PRICE: And we didn't have...I guess we didn't have observers in Sarpy County. We didn't have necessarily the reported problems in Sarpy County. But I know as a candidate this year, there was a significant redrawing of the precincts in Sarpy County also. And we have economically depressed, or, as a recent person said, distressed areas also. So we didn't...we haven't heard the magnitude of problems in Sarpy County. So you can keep that filed in the back as you start to do your thing. But... [LR512]

ADAM MORFELD: Yeah. [LR512]

SENATOR PRICE: ...do you suppose that population density magnifies the degree of change? Senator Wallman just said, in a more rural area those areas grew by even larger, and yet there's not a problem. So when we look at it, that growth within the inner cities, if we would, the density issue...but when you get into the real core of the city,

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there's not a lot of people living right there, so it's almost being rural again because of the way it follows...where the density is, that pattern. So it seems to say a lot of the concern is, like, this was a focused effort to suppress rather than a series of decisions: the initial one to increase the size, the resultant confusion, then the change, more resultant confusion, all right, and then the density and the overlay. I don't see that it's a purposeful and intentional voter suppression effort. And when you made the comment to transparency earlier in your testimony, it seemed almost like you said they're not transparent on purpose. And I don't know, I think they operate under the same laws, rules, and procedures that they've always operated under. It's just it was like a perfect storm, if you would, of policy decision meeting other processes that perhaps exacerbated the outcomes. [LR512]

ADAM MORFELD: Um-hum. [LR512]

SENATOR PRICE: I mean, can you talk to that just for a minute? [LR512]

ADAM MORFELD: Yeah, well...and Senator, I'm glad you bring that up. There are a lot of people that I work with that think that this isn't an intentional effort to suppress the vote. I've never come out and said that. I don't have any evidence to support that. I think that the impact of some of these changes had a discriminatory effect, but I've never seen anything that has shown me or any conversation that I've ever had with Commissioner Phipps that he had any discriminatory intent. And so I've never made that claim and my organization has never made that claim. However, we have made the claim, and a claim backed by evidence, that these decisions have had an adverse impact on certain demographics, and I've kind of laid out some of those. Now, I know that we have limited resources as a nonprofit organization. And a lot of the impact that we were seeing and the outcry that we were seeing over election issues were coming out of Omaha, based off these things. And that's why we focused on Omaha. That's not to say that there aren't problems out in Sarpy County. That's not to say that there aren't problems out in other counties with the consolidation. I've met with 46 county clerks

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over the last two years. I've traveled around the state. And budgets are shrinking, obviously, and they've had to close some polling locations. And there has been outcry from certain members in the community when they've closed those polling locations out west because of the hardship it imposes. So I think that there are problems elsewhere. The problems, though, seemed much more acute here in Omaha. And part of that is, I think, that there was really a lack of transparency in trying to redraw the maps and redo the polling locations and close down the polling locations, so. [LR512]

SENATOR PRICE: Right, but there was no prescribed outreach or transparency guidelines already in place, okay, so that's what I'm trying to say. If they operated under the status quo or the business rules: This is how we go about changing precincts; we had hearings, we had testimony; the Legislature did everything by the process it had; it was published; it became law; it took awhile, even after the law was put in place, for anything to happen; the commissioners acted in their normal duties. [LR512]

ADAM MORFELD: Um-hum. [LR512]

SENATOR PRICE: And then when someone realized it came out, but there was no change in policy, that's what I'm trying to get at. [LR512]

ADAM MORFELD: Um-hum. [LR512]

SENATOR PRICE: This perfect storm... [LR512]

ADAM MORFELD: Yeah. [LR512]

SENATOR PRICE: ...where that big a change. And then when you lay that over an area as densely populated as Omaha, it exacerbates it more than it would be in maybe Gage County or McPherson... [LR512]

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ADAM MORFELD: Um-hum. [LR512]

SENATOR PRICE: ...or Custer. [LR512]

ADAM MORFELD: Yeah. No, I agree with you, Senator. I think that there was a perfect storm. And I think that, personally, there needs to be more transparency; there needs to be public hearings or at least public notice that there's going to be decisions made with closing of polling locations, that allow for the public to give feedback about transportation, about, you know, best location, etcetera. But I also want to emphasize, and I think that you'll understand it now, that I have never said that there has been discriminatory intent on Commissioner Phipps's part. I think that some people feel that way and have said that and been very vocal about that, but I don't have any evidence to back that up, and I haven't seen anything like that. But I have seen an adverse impact on certain communities. [LR512]

SENATOR PRICE: All right. Thank you. [LR512]

ADAM MORFELD: Thank you, sir. [LR512]

SENATOR AVERY: I want to ask you...are you finished? [LR512]

SENATOR PRICE: Yes. [LR512]

SENATOR AVERY: Thank you. You may not be at liberty to speak about your complaint with the Secretary of State's Office... [LR512]

ADAM MORFELD: I would be more than happy to. [LR512]

SENATOR AVERY: ...but if you are, I would like to have you talk a little bit about what you're seeking... [LR512]

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ADAM MORFELD: Um-hum. [LR512]

SENATOR AVERY: ...and what kind of complaint you have filed. [LR512]

ADAM MORFELD: So we filed a Help America Vote Act complaint with the Secretary of State's Office, which is a process that's governed by federal law, that the Secretary of State has to have a complaint process. And the complaint that we filed stated that the election commissioner's agents, their district supervisors, their precinct inspectors, were unlawfully requiring voter identification numbers in order to cast a provisional ballot. Now, under federal statute, which state statute also follows fairly closely, the process for giving a provisional ballot is fairly clear, that if the voter shows up and says that they are registered in that precinct and their name is either incorrect or not on the rolls and they give an address and their address is actually located in that precinct, they shall be given a provisional ballot. They shall. It's not a "may" or, you know, "if" or "maybe." [LR512]

SENATOR AVERY: And it will be counted. I know there was some... [LR512]

ADAM MORFELD: Not that it won't...yeah, I mean, it will be looked at. And as long as they're in the right place and they're registered and that's all verified, then it will be counted. And if it's not counted, then they have to give a reason why it wasn't counted. And that's why a voter gets a special number that they can call in and see if their provisional ballot was counted, and if not, why. In a news article, Election Commissioner Phipps actually admitted that that was not supposed to be a practice that was supposed to be taking place, and he said that he only knew of 2 voters that it affected. Well, his poll workers said at least 50 voters had not only been affected but had not voted because they couldn't get that number and they had walked away. During that half hour or 45 minutes that I was at Evans Tower trying to sort this problem out, at least 7 voters were sitting there on their phones trying to, and I saw them walking out because they weren't able to get through. So that's our complaint that we filed with the Secretary of



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State's office, and we still are waiting to hear. [LR512]

SENATOR AVERY: Are you alleging that it was deliberate? [LR512]

ADAM MORFELD: I don't know if it was deliberate. I don't think it was. But even if it wasn't deliberate, it just shows that there obviously needs to be better training, because it's a fairly egregious problem for a district supervisor...and I was told by the precinct inspector that they were told by their district supervisor, who supervises a certain number of precincts, that they were to require a voter identification number before giving out any provisional ballots. And I don't have any evidence to show it was intentional. It very well could have been a training error or a lack of training. In any case, it caused a lot of hardship, and it really exacerbated the problem of voters not really knowing where they were supposed to be. [LR512]

SENATOR AVERY: What is the process? You filed the complaint with the Secretary of State, then the Secretary of State conducts the investigation? [LR512]

ADAM MORFELD: No, what happens is you file a complaint with the Secretary of State; we requested a public hearing, and the Secretary of State must appoint a hearing officer, and then that hearing officer must render a decision within 90 days. [LR512]

SENATOR AVERY: And that's a public hearing? [LR512]

ADAM MORFELD: That's...well, I think there might be some discretion on the Secretary of State's Office as to whether they want to have a public hearing; I'm not quite sure on that. But they do have to have an independent...or a hearing officer, not necessarily independent, I guess, but a hearing officer appointed to adjudicate the claim. [LR512]

SENATOR AVERY: Now what options does the hearing officer have? To dismiss the complaint? Obviously that would be one option. [LR512]

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ADAM MORFELD: Um-hum. They can dismiss the complaint, or they can find that the complaint has merit and make recommendations. Really, I think the Help America Vote Act, as I recall from the history, was, really, to provide a forum to have complaints and limit potential litigation in regard to those complaints. We had found out too late in the day to really take any legal action or to go in and have an emergency restraining order requiring that poll workers not participate in that practice of requiring that number. So by 6:30 it was, you know, you had an hour and a half left until the polls were open, and then you'd have to find a judge. So we decided to bring this issue to light in a public way by filing the complaint, to make sure that it doesn't happen again in the future both in Douglas County and elsewhere. [LR512]

SENATOR AVERY: Perhaps there is a need for commissioners to go through some training too. [LR512]

ADAM MORFELD: That's a possibility. I know that they do some training, but I don't think you can ever have too much training. [LR512]

SENATOR AVERY: Any other questions from the committee? Thank you, Mr. Morfeld. [LR512]

ADAM MORFELD: Thank you very much. [LR512]

SENATOR AVERY: Senator Lautenbaugh, I think it's your turn. [LR512]

SENATOR LAUTENBAUGH: I'll take it. [LR512]

SENATOR AVERY: Welcome. [LR512]

SENATOR LAUTENBAUGH: Good afternoon. I know it's getting late, but there's a lot of

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ground that's been covered and a lot of things that have been said. And I'm a former election commissioner, as all of you are probably tired of hearing if you serve with me in the Legislature. And I have information that's relevant and experience that's relevant to this topic. I would note that the comments today have been very measured and that everyone has tried to avoid, well, casting unnecessary aspersions. Unfortunately, the reason we're here is because of a letter from Senator Mello where he stated: It is clear that Mr. Phipps proceeded with the full intention of causing political chaos in Douglas County. Now we didn't hear that today. But unfortunately that's what's in the written record that brought us all together today. And I wish I could sit here and tell you that that is an aberration in this process, but it's not. What we've seen here is a bizarre vendetta against Mr. Phipps. And you are being presented with allegations, anecdotes, half-truths, distortions, and, often, fabricated things and being asked to do something. We're not clear what it is you're being asked to do, but you're being asked to do something. And then we're all going to be asked to do something as a Legislature. And I finally said this week I'm going to do what I can to put a stop to this and explain what went on here. Let's start with the redistricting, of the precincts, by the way. We've heard a lot about how there needs to be greater transparency in the selecting of the precincts. I hope we're all aware that the precincts only matter on Election Day. And if you think we're going to have public hearings where the public is going to show up to talk about what their precinct is, that's a fantasy. That doesn't happen. The precincts are drawn to be used on Election Day. Every ten years they're redrawn to fit within the legislative districts that we draw. Mr. Phipps came down here in 2011 and testified in favor of increasing the size of precincts. The reason was very clear. More and more people are voting early--not absentee anymore, we call it "early"--and a lot of these precincts were undercrowded on Election Day, to say the least. Now, some things to keep in mind. The bill as proposed said you could have 3,000 voters per precinct. In a compromise with the Secretary of State's Office, this committee and eventually the whole Legislature, because it passed, it was settled on 1,750, one thousand seven hundred fifty, voters per precinct, an increase from 1,000. Now several things come to mind here on this topic. Why was it done? For the very reasons that Mr. Phipps said. What you have to

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understand is, in 2001 when I was election commissioner I redrew the precincts, and my changes were predominantly in east Omaha. And do you want to know why? Because those were the precincts where population had gotten smaller. The precincts out in west, the population had gotten larger, so they were closer to the then 1,000-voter limit. The precincts in eastern Douglas County were ridiculously small, and we had poll workers with nothing to do for most of the day. And when you have 350 precincts, by my math that's about 2,000, 2,200, 2,300 workers to work those 350 precincts. That's a lot of people to train. And if you can decrease the number of precincts, you decrease the number of people you have to draft and you, hopefully, keep people who want to be there, that will do a good job. And that was the motivation here. Now some have said today, "I don't impugn Mr. Phipps's motives." They don't impugn Mr. Phipps's motives on this. But that does not seem to be what Senator Mello said in his letter. And that does not seem to be what people have said publicly, who are now asking you to do something on this. I made my changes focused on eastern Omaha and eastern Douglas County, and that's because that's where the changes needed to be made. This time around, when the size of the precincts...the permissible size was increased, Mr. Phipps made changes. And the growth is in western Douglas County, so it stands to reason that if you increase the number of people who can be in a precinct, if the ones out west are already oversized, they're going to change less than the ones in the east. To that point even, though, the World-Herald did a study on this. And you've heard, we've all heard, because there seemed to be multiple press releases and press conferences on this topic, that somehow this had the effect of depressing turnout in north Omaha. Well, the World-Herald study showed that the increase in distance for north Omaha voters was among the least in the county. So if this was a conscious effort to do that, it failed in north Omaha. That much is certain. Mr. Phipps met with some resistance from some community groups when he redrew these precincts. He met with them and redrew...or reopened some of them, which necessitated redrawing some precincts again. He has now been criticized, you heard it today, how some people got two and three voter cards. Well, when you make him redraw the precincts to satisfy you, you really shouldn't come here and complain: Well, gee, they got a second voter card that was inconsistent. That

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was done to accommodate people. And if Mr. Phipps did anything wrong in this process, in my estimation, it was that he ever reopened any of those precincts, because the difference in eastern Omaha we're talking about is a matter of blocks, not miles, for these voters. And everyone gets a voter card, and if the precinct is too far, you have to...you can vote by mail. Everyone had plenty of notice. The allegation in Mello's letter is that it was done months before the election. Well, that's when you do it, after the census and before the election. That is all proper, and it is all part of what has always been done as far as the timing of this. What we heard today was somehow because there's been coverage of this in the media, that you should really look into this. The problem is, is that it's the people who want you to look into this that are generating the media coverage. There was a press release done about the complaint that Senator Avery was curious about. And it was described as a federal complaint, which makes it sound like it was a lawsuit, not that it was a complaint that the Secretary of State gets to review, it was a federal complaint. And that was about the serial numbers, voters being asked for serial numbers. Well, that was my policy. Back in the day, when we were accommodating provisional voters, the vast majority of provisional voters are people who are at the wrong polling place or moved and failed to reregister. You even heard Mr. Morfeld say they put their observers where people tend to move around more, in their words. And surprisingly they found a lot of provisional ballots in those precincts where people tend to move around more, as he described them. That's where you find the provisional ballots. And the woman who said they were running out of provisional ballots, that's incorrect. There's no such thing as a provisional ballot per se; everybody gets the same ballot. It's an envelope they go in. And if you're running low, you call your district supervisor and they bring you more. That's the long and the short of it. We heard a lot about that serial number and how it was impermissible and somehow a restraint on voting. The point of the serial number, which, by the way, Mr. Phipps doesn't require anymore; that was his change. My policy was much more restrictive, because the point was, if you had that serial number, we knew you had actually called the election office and you were in the right place; there was a measure of comfort in letting you vote conditional at that new polling place. It had nothing to do with voter suppression. It was

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a check to make sure that you had actually called and actually been directed somewhere. And as you can see, to clean it up a bit, you're darned if you do and you're darned if you don't, because we had that policy to make sure people were getting information from the election office. You heard Mr. Hamilton say, well, the poll workers told this guy he had to go to this polling place and that turned out to be wrong, so then he went to this polling place. We don't want that. Mr. Phipps didn't want that. The whole reason for asking people to call the election office is to make sure that the poll workers, who don't have the ability to determine where you're supposed to vote if you're not in their book, don't send you to the wrong place and run you around. And what we've struggled with this year, I think, is that everything has become evidence of some problem that, by gosh, we have to address as a Legislature; this can't go on anymore. I'm here to tell you that much of what you've heard about this topic is utter nonsense. Every time, every Election Day in Douglas County, there are people who show up who are in the wrong polling place because they didn't read their voter cards, which, by the way, 99.9 percent of the people do faithfully get; the ones who don't get one are the ones who registered much later. So there isn't a lot of mystery about where to go if you actually read your voter card. That said, to see people showing up at a polling place, being on the phone, and walking out and not voting provisional just as likely means that they were in the wrong place as it does that they were denied the right to vote. But you have been asked to infer that there was some additional problem on this Election Day because these people, none of whom we heard from today, were turned away, 50 of them in one polling place, if you're to believe it. How do we distinguish between the ones that were just in the wrong place? It might be nice to hear from some of those people. But, as you can see, aside from some people who have been banging the drum on this topic and some of their Election Day observers, we're not really overburdened with a wealth of public testimony from people who were denied, or even infringed upon, in their right to vote. Where was it? Isn't it going to be nice to know, because I'm sure everyone who's up on this topic has checked, that the Secretary of State's Office says there were no greater problems this Election Day than any other; it was an Election Day like any other. Where is the issue? You're being asked to infer it from anecdotes,

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misstatements, and, frankly, often utter nonsense. And in the process of that, someone who, I'll come out and say, has been one of the fairest and least partisan election commissioners we've ever had has been constantly vilified. Constant press releases: Oh, another challenge to this guy because of what happened on Election Day. It doesn't matter that all the challenges seem to come from the same person; it's just another challenge. There's a point at which this has to stop. This is what I was talking about earlier on the other topic when I said there is a danger that someone out there, some group, could get a bee in its bonnet and decide to harass some public official with information requests. There are a lot of ways for a group funded by somebody, but funded well, can decide to harass an elected official or a public official. And, frankly, that's what we've seen go on here. And Senator Mello's letter--and he's gone, but I would say this if he was here--it's despicable, and it's misleading. And so is much of what you've heard, and so is a lot of what's gone on here. And I can't make it any plainer than that. This is a good man who's been vilified for no reason. I'd be happy to answer any questions you might have. [LR512]

SENATOR AVERY: Thank you, Senator. Let me start by asking you about the requirement to provide the voter ID. Do you...would you agree with me that most people don't know what that ID is or where to find it? [LR512]

SENATOR LAUTENBAUGH: I would submit that no one knows what that is. I mean... [LR512]

SENATOR AVERY: Yeah. [LR512]

SENATOR LAUTENBAUGH: ...I certainly don't. How would you? Well, if you have your voter card, you know... [LR512]

SENATOR AVERY: Yeah. [LR512]

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SENATOR LAUTENBAUGH: ...because it's on there. [LR512]

SENATOR AVERY: But... [LR512]

SENATOR LAUTENBAUGH: But we don't require you to bring that to the polls...  
[LR512]

SENATOR AVERY: Right. [LR512]

SENATOR LAUTENBAUGH: ...unfortunately. But if we did, it would be on there.  
Another topic for another time. [LR512]

SENATOR AVERY: (Laugh) [LR512]

SENATOR LAUTENBAUGH: But, again, no one knows it by heart. The point of asking  
people was to make sure that they had actually called the election office and been  
directed to the right place, and the proof was that they had that number. That was  
deemed to be an imperfect approach by, apparently, Mr. Phipps, who discontinued the  
practice. [LR512]

SENATOR AVERY: And it's a policy; it's not a law, right? [LR512]

SENATOR LAUTENBAUGH: Oh, no. No, no, no. No. [LR512]

SENATOR AVERY: It's not part of any statute. [LR512]

SENATOR LAUTENBAUGH: I'm not even sure it's a... [LR512]

SENATOR AVERY: So it was not...that was not a violation of law. [LR512]



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SENATOR LAUTENBAUGH: Well, HAVA didn't exist. The Help America Vote Act I don't think was in effect; I can't remember exactly when it came along. I am not convinced that having people call the election office and provide that number is a violation. But in any event that's not Mr. Phipps's policy; that was my policy. And if there are some inspectors who still...some people serve for years and years and years. If there are some who are still looking for that number, they should stop. But is it a conscious effort, and did it really deny anyone any right? I'll be interested to hear... [LR512]

SENATOR AVERY: Yeah. [LR512]

SENATOR LAUTENBAUGH: ...eventually. [LR512]

SENATOR AVERY: I know that he was operating within the law, LB449, when he realigned and closed some precincts. That was permissible under that law. But now would you agree that perhaps it could have been handled differently and some of these problems may not have developed? Which leads me to ask, did you have these kinds of reactions in 2001 when you went through the same process? [LR512]

SENATOR LAUTENBAUGH: Well, understand, when I did it in 2001, to take your questions in reverse order, I was still bound by the 1,000-voter limit. So I did not make changes throughout the county. I made changes where the precincts were small, and combined precincts. And that was in east Omaha. And I don't recall any outcry whatsoever. We sent out the voter cards, and people read their cards and went to vote. Mr. Phipps faced a different challenge in that with the increase in early voting and the change in the law that we made, it was proper to make changes countywide. And he did make changes countywide and did exactly what I did, sent out the voter cards. And there was a different result this time. And maybe it's the different environment we're in; maybe it's who noticed; maybe I just sent the cards and didn't say anything to anyone. I don't think the difference is transparency, because I think you'll be hard-pressed to find a lot of people who really care where their precinct is, because they tend to remember

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that they go there twice a year, at best, and it comes and it goes. We're in an urban area; we're talking about a difference of blocks, not miles, here. It just is not that significant to the vast majority of people, I would submit to you. [LR512]

SENATOR AVERY: I would raise one issue, and that is Mr. Phipps did not reopen precincts until after the Secretary of State intervened, isn't that correct? [LR512]

SENATOR LAUTENBAUGH: Well, I think he didn't reopen them until the summer, and, honestly, I don't think the Secretary of State has the right to tell him to do that. [LR512]

SENATOR AVERY: Well, I don't know if he did. I'm just saying he did intervene, though, and have a conversation... [LR512]

SENATOR LAUTENBAUGH: Well, he did speak up and suggest it. But I don't know if that was the factor that caused him to do it or it was the community input. Again it is the old adage of no good deed goes unpunished, because now we're hearing complaints that people got a second voter card with a different place on it for the general. Well, that happened. If I had to fault any mistake of Mr. Phipps's, I would say that he never should have reopened any of them, because there was no problem to address. [LR512]

SENATOR AVERY: Committee. Senator Price. [LR512]

SENATOR PRICE: Thank you, Senator Avery. Senator Lautenbaugh, as an election commissioner, is there any duty on the part of the election commissioner when drawing these precincts, that when they--I'm not sure if they use voting blocks as the smallest level by which they draw these by; I know when we were doing our redistricting, voting blocks seemed to be the smallest subdivision--but that when they're drawing it, that they put that polling place in the geographic center of a precinct? Or is the polling place sometimes off-center? [LR512]

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SENATOR LAUTENBAUGH: I'm really glad you asked that, because I did not touch on that. But that is an important point, especially in an urban area. There are certain places that aren't suitable to be polling places. And because we're in a densely urban area, there are some precincts that don't have facilities within them that are suitable to be polling places and/or are willing to be polling places, because, other than the public schools, we can't make anyone be a polling place. So the one incident that's been repeated over and over was a retirement tower in, I think, off Cuming Street, if I remember right, Benson Tower, but I could be wrong on the address, where it was a polling place, just not for that residence anymore...for that tower anymore. Well, the same thing happened, and I think in the same place, when I was election commissioner, because the precinct next door didn't have anyplace that was suitable and the tower didn't have room to have two polling places. Now, things to keep in mind on this oft-repeated charge that this is somehow some sort of fault of Phipps or something he did wrong: not every high-rise is a polling place. There are people who live in retirement high-rises who have to go somewhere else to vote. You don't have a right to have your retirement tower be a polling place. And while the people in this one tower said, well, gee, we don't understand why another polling place is in our lobby, it's because you can't fit two in the lobby of that retirement tower. So that polling place was moved somewhere else in the precinct. But, no, if you're asking, do they have to be in the center of the precinct, no, they don't even have to physically be in the precinct; you just do the best you can with what you have. [LR512]

SENATOR PRICE: Well, I appreciate that, because I know when it changed for myself, I've now voted at four different polling places in my time there in Sarpy County, and... [LR512]

SENATOR AVERY: Four different times? [LR512]

SENATOR PRICE: No, more than four different times, but four different locations, that, you know, of course, you look it up and you go...and I had wondered about that. But

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then when I see a farmer's field that stretched for a few hundred acres one way and then an industrial complex, there was a fire training department in another way and an OPPD yard area in another area, oh, well, I guess I have to drive over a few hills to get to it, when before I could go around a corner. And I just...I think that's an important thing to say, is that urban area, within the city, is sparsely populated in places and abandoned warehouses in others, and so you kind of have your hands tied, is what I'm trying to say. And we, the Legislature, directed the election commissioners, or allowed them, to go to the larger one for their...we didn't tell them they had to go, which leads me to the point, do all of the...in practice, try to get to their limit, to their threshold? Like, it went to 1,750 from 1,000. Is it then, okay, now we try to get there, or do...just kind of as you want to do it? Maybe you just pick 1,250 because that works better for you. I mean, I'm trying to understand the practice. [LR512]

SENATOR LAUTENBAUGH: Well, my practice was, I can't speak for Commissioner Phipps on this, but my practice was to maximize the size of the precincts for the very same reason that I discussed earlier. When I first started, I think we had 378 precincts, well, round it to 400. That's 2,400-2,500 workers per election to train. And Nebraska is one of the few states that can draft, which is a convenience, but it also means you have some people that don't want to be there. So if you can minimize the number of precincts you have, you can, hopefully, maximize the number of people who don't mind working it and, hopefully, are repeat workers and, hopefully, have greater experience and need lesser training. But it's never going to work perfectly. And every time you move a polling place farther from someone, you move it closer to someone else, by definition. And every Election Day I used to get complaints about that. I mean, one gentleman was upset he had to cross 680 after I redo the precinct, because he never had to cross 680 before. And I finally reminded him that you only have to do it twice this year and then again in two years, and he said, oh, yeah, you're right, okay, whatever. So it's never going to be perfect for everyone. This time is unique, though, and I feel like there's been an effort to make it appear more imperfect than it ever has been. And I don't think, when you talk to the people actually involved or the Secretary of State's Office, which has no

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ax to grind, that you're going to find that there was any sort of a sea change or increase in problems this time despite a very dramatic and, I think, much needed change in the organization of the precincts. [LR512]

SENATOR PRICE: Thank you. [LR512]

SENATOR LAUTENBAUGH: I hope I answered your question in whatever I just said there. [LR512]

SENATOR AVERY: Do you have any more questions? [LR512]

SENATOR PRICE: No. [LR512]

SENATOR AVERY: I don't have any and Senator Wallman left. (Laugh) So we want to thank you for your testimony. [LR512]

SENATOR LAUTENBAUGH: Thank you all. [LR512]

SENATOR AVERY: Anyone else wish to testify on LR512? This does not have to...you don't have to be concerned about any of the two topics we've already discussed; it could be a new subject under the scope of the jurisdiction of this committee. All right. That ends the hearing on LR512. And we will now move to LR561. And I apologize to you, Senator Harms, for making you wait so long. [LR512 LR561]

SENATOR HARMS: That's fine. (Exhibit 1) [LR561]

SENATOR AVERY: But since you didn't volunteer to go first...(laugh). Welcome, sir. [LR561]

SENATOR HARMS: Thank you. My name is John N. Harms, H-a-r-m-s, and I represent

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the 48th Legislative District. I think because, Senator, of the lateness of the day, I don't know, I admire you for being on a Friday and December 7, would you just like for me to give you the testimony and have it read in? Because this testimony is only just about making sure that we are looking at long-range planning and the differences between what can happen to you and what can't happen to you. And I know, if Commissioner Lang would like to do the same, you could speed the process up. I'm just wanting to clarify the record of why I pulled that information and that bill, so...or I can walk you through the testimony. So what would you like? I mean... [LR561]

SENATOR AVERY: I don't think we need to, I mean, there appears not to be any planned legislation. [LR561]

SENATOR HARMS: No. And I was just wanting to make sure that the record is clear of why this has happened. So I'd be happy to give this to you, and have you just... [LR561]

SENATOR AVERY: Okay. [LR561]

SENATOR HARMS: ...read in for as a matter of record. [LR561]

SENATOR AVERY: I would provide a little bit more information. The counsel for the committee and I met with the Governor, and we talked about the merger between Economic Development and the Labor Department. And the conclusion we came to was that there was some reason to allow the cooperation that's going on right now under Director Lang, and let that work, because it seems like it's working pretty well and we may not need legislation...we may not need it to merge these two. [LR561]

SENATOR HARMS: Right. And I have no criticism of Commissioner Lang. It was just that I wanted to make sure that she was protected and the planning had been done. And after we looked at the whole bill and began to study it a little bit, and when this study came out it pretty much spelled out where some of the difficulties are, and there

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are places where it just has failed. But I think in the structure, the way that we're looking at it today, I think it could be a lot...it probably will be successful the way that they're approaching it; I don't think they're integrating it. And if there isn't going to be any legislation brought forward, this was just to clear the record. I don't know if Commissioner Lang would agree to that or not, but I think that would be an easier way for you on a Friday since we know that I'm not really objecting to anything, I'm just wanting to clear the record and making sure that people understand what's taken place here. So what do you think? [LR561]

CATHERINE LANG: Oh, I (inaudible) out some testimony (inaudible). [LR561]

SENATOR HARMS: Then if we're going to go in that direction, do you want me then...I will go ahead and walk through this whole thing. [LR561]

SENATOR AVERY: Okay. Yeah. [LR561]

SENATOR HARMS: Is that what you want to do? [LR561]

SENATOR AVERY: That's fine with us. [LR561]

SENATOR HARMS: And that would be good for me. First of all, thank you very much for giving me the opportunity to be here. And I'll make this as short as possible. This is in regard to LR561, which was an interim review to examine the feasibility of actually merging the Department of Economic Development and the Department of Labor. Senator Mello and I actually introduced LB971 on behalf of the Governor, and that was preceding this legislative session of 2012. The purpose of this legislation was simply to consolidate the Department of Economic Development and the Department of Labor at the time. And the legislation that was presented to you was drafted by the Governor's policy staff; it was 393 pages, great reading. And it made just some of the necessary changes in the title and pertinent mechanisms or mechanical things in order to make

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this merger go through. However, it was really evident after Senator Mello and I got a chance to really see this bill and began to study it that there had been really no long-range planning done at all. And I was pretty much concerned about that after we discovered this. After the hearing on LB971, which we brought before you, I was then given a report, a detailed report, from the Seedco Policy Center, which I've handed out to you. It's entitled "A Tale of Two Systems: Linking Economic Development and Workforce Development." And it really lays it out very nicely. "Seedco is a national nonprofit intermediary that works with local partners to create economic opportunities for disadvantaged job seekers, low-wage workers, and neighborhood entrepreneurs." And their "policy research offers a practitioner's perspective on workforce and economic development policy implementation, presenting a pragmatic assessment of the opportunities and obstacles inherent in developing programs and accomplishing systemic reform." And what I found are some examples cited in the "Tale of Two Systems" to be very informative "initiatives aimed at linking economic development and workforce development that have emerged across the country, offering governments the opportunity to boost their economic competitiveness and increase their workers' skills simultaneously." These efforts, as they found, have achieved various degrees of success, and many of the programs have limited results that were even tangible outcomes that worked well in this process. This study used an in-depth analysis on three states; one was Pennsylvania, North Carolina, and the other was Illinois. And this report details opportunities and also cautions against pitfalls that you can find by encountering and attempting to bring two complementary programs together. And they are two very different types of systems. After reviewing this document, it became very clear to me, after I had already presented it to you, that if this legislation were to be debated in the Chamber and approved by a vote, I believe we would have very well created a system that would have caused our commissioner to fail. And I just object to that very strongly. I think we would have put the commissioner in a position that would not have been appropriate for this great state or for the commissioner. So the absence of long-range planning as well as the mission element of a consultant to assist appropriately establishing this merger created major concerns for me, in my estimation,



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about whether or not this legislation could even be successful. So I have given you this copy, and you can basically read it all yourself. But what it does, it lays out very nicely the problems that states have had in implementing a merger of this magnitude. It also identified ways to get around some of those issues so that you could at least have possibly an attempt at making this thing be successful. After a careful review of these two systems, it's clear that these are two systems that clash. There are distinct differences between economic development and workforce development historically, in their mission and in their goals. Understanding how those two roles do not fit together is as important as seeing how they do to make sure an economic development and workforce development program will succeed. "Workforce development has historically sought to help disadvantaged individuals to compete in a labor market. Job-training programs prepare people for employment and job-matching programs act as a search and referral system for both, which are ultimately intended to enhance the individual economic and social prospects through employment." On the other hand, "economic development, on the other hand, has traditionally focused on attracting, supporting, and growing businesses to bring jobs, tax dollars, leadership, philanthropy, and all the other civic benefits that come with a thriving regional or local economy." So you could briefly say that, when you look at this, with any kind of long-range plan, without any kind of organizational chart, without bringing in any kind of consultants, I really, honestly do not believe that we could have merged these two successfully, of a total merger. So then you have to ask yourself, what is the definition of "merging"? And that means something different to everyone. I discussed this with the senators on the floor in regard to LB971 and whether they would really support it or not. And I only had 8 senators that committed to me, out of the 49, that said, yeah, we can support this. But all the rest of my senators that I...oh, not my senators, the rest of my colleagues that I spoke to said, you know, John, we just don't know enough about this; do you have a long-range plan? I said, no. Do you have an organizational chart? I don't have one. Have you had any greater discussion in regard to consultants or just the planning process? My answer was, no, we don't have. And they said, well, we're concerned and probably will not support this. And the reason for that is that they did not want to see our workforce

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development and economic development in the state that Health and Human Services were in regard to privatization. So after that discussion, I simply decided that I'm not going to pursue this legislation any further. And a comprehensive debate without a mission statement, without a goal, or without strategic planning for the cultural and administrative management of the two systems in Nebraska meant to me that I thought we would fail. This committee conducted a thorough public hearing on LB971, and we did the best to give you the truth as we knew it at the time. But I decided that once we had a better understanding about what had taken place, that I couldn't pursue this any further. And I spoke with Senator Avery, spoke with Speaker Flood, Senator Mello and made it very clear that I really felt like, you know what, maybe this is something we probably shouldn't do, and I can either pull the bill or I can...if it comes forward, I would pull it. Or if it doesn't come forward it would even be better for us and for the Governor and for everyone else involved. And so that's basically what this is about. I can give you a whole lot of examples. I'm prepared to walk you through about 15-20 minutes, and I'm not going to do that. But that's what the intent of this is about. It was that I was more concerned for our commissioner. And I didn't want to see that happen. I think she's bright, she's articulate, and I believe it would have been a great opportunity, but I think it would have been a tough process to go through. Now I do think you can do it very well by leaving her as the commissioner; put someone in charge of economic development, someone in charge of labor; you got it. You don't have to merge them. Over time, that would take place, probably. But if you laid out a strategic plan, you laid it out so people understood it, and if you brought a consultant in ahead of this whole process, the commissioner could have been the cheerleader about all these things and didn't have to get bound down and intertwined with all of those issues and all the politics. So I just wanted that record clarified. And as I said, I'm not going to walk you through everything that I'm prepared to do, and because of the lateness of the day. I respect that; I've been on the other side of the table in Appropriations, and I know what that's like late on Friday afternoon in December. So I would be happy to answer any questions you have; and any things you would like to have clarified, I'd be very happy to do that. [LR561]

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SENATOR AVERY: Thank you. [LR561]

SENATOR HARMS: This is a short version. [LR561]

SENATOR AVERY: Well, it appears that the director, or Commissioner Lang, is kind of in that functional equivalent of what you just suggested since she is director of both Economic Development and the Department of Labor. Am I right about that? [LR561]

SENATOR HARMS: Yeah. And I think that's a great way to go. I think that the pitfalls have been, in these other states that have gone this direction, when they try to integrate them in and force that merger, and it just didn't work. And a lot of people found that Labor is so much larger than the Department of Economic Development, people felt like they were overtaken by the Labor Department, and there was no fairness and equal opportunity. Well, this, the way it's set up now, would prevent that, I think. And I'd be happy to hear what... [LR561]

SENATOR AVERY: You have two different cultures. [LR561]

SENATOR HARMS: That's absolutely right. [LR561]

SENATOR AVERY: And it's really difficult to get them to work together. I haven't had a chance to do much more than scan this document you gave us, but did these three states succeed? [LR561]

SENATOR HARMS: No, they haven't. Just parts of it have. For example, Pennsylvania, it took four governors, and with the fourth governor they finally made a little progress. That tells you the battle that took place. [LR561]

SENATOR AVERY: Hmm. [LR561]

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SENATOR HARMS: In Chicago...or in Illinois, what they've found is that...well, in all three states, when people have made these changes, they weren't really basically driven by financing; it was driven because they had special issues and problems they had to resolve. And by bringing this department together, they could do that. I think our intent originally was we could save money. Chicago saved about \$20 million to start with but have made very little progress in this process, and it's created a lot of animosity. And it's hurt...my understanding is it's really hurt the people who were working in the labor department and economic development. And the one biggest concern that I had, this is a place that we cannot get bogged down in this great state. Labor and economic development, you cannot get that in a turmoil, because that's the driving machine in this great state of Nebraska. And that was what my concern was, that I was about to step us through something that we might not do well, and I just don't want to do that. I don't want to be a part of that. And then I wouldn't want to put Commissioner Lang through that. I understand management very, very well, and I also know when you can fail and when you can't. And this would have been a tough process if we would have actually merged it completely together. So... [LR561]

SENATOR AVERY: And you were facing, as I recall, opposition from outside the Chamber. [LR561]

SENATOR HARMS: Well, I didn't have hardly anyone outside of the Chamber. I think the State Chamber of Commerce was not in favor of it. And I think the stockholders really wanted input. Now you notice we don't have many people here. And the reason for that is I did not go out and recruit people to come in here and support anything. [LR561]

SENATOR AVERY: Um-hum. [LR561]

SENATOR HARMS: I mean, I could have filled this up. But I did not want to do that to you. And I didn't want to be a part of it. I just wanted to get it for a matter of record, to

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understand that this wasn't against the Governor or against Commissioner Lang's ability. It was just that I thought we were placing people in a position to fail, and I don't want to do that. Any other questions? [LR561]

SENATOR AVERY: I don't see any. [LR561]

SENATOR HARMS: Well, I thank you, and I... [LR561]

SENATOR AVERY: Thank you for your patience. [LR561]

SENATOR HARMS: Well, yeah. And I said I'd give you a short version, and that's it. Thank you very much. [LR561]

SENATOR AVERY: (Laugh) [LR561]

CATHERINE LANG: I'll shorten mine. [LR561]

SENATOR HARMS: Okay. [LR561]

CATHERINE LANG: (Exhibit 2) Good afternoon... [LR561]

SENATOR AVERY: Welcome. [LR561]

CATHERINE LANG: ...Chairman Avery and members of the Government, Military and Veterans Affairs Committee. My name is Catherine Lang, Catherine with a C, Lang, L-a-n-g, and I am the director of the Nebraska Department of Economic Development and the Commissioner of Labor for the Nebraska Department of Labor. And I'm here today regarding LR561. You have heard a summary of the history of LB971. I think Senator Harms did an excellent job of presenting it. The Governor did make that proposal; Senator Harms and Senator Mello sponsored it. And the proposal was to have

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a structural merger of the departments of Economic Development and Labor. This bill was not debated by the Nebraska Legislature. During the summer, the departments of Economic Development and Labor funded a study to look at the concept of the merger of the two agencies. Because of our past relationship with Battelle, we engaged their services in this study because we know that they have experience with economic development, we know that they have experience with labor, we know that they had experience in other states, and we know that they have a deep knowledge of the state of Nebraska. I am presenting to you today the PowerPoint presentation provided by Battelle. And then I am going to provide a brief update on the department's recent progress and my own thoughts about where we should go from here. It is my opinion after this study and the work that each agency has done over the last year that enhanced cooperation between the departments can be accomplished without pursuing a structural merger at this time. There are many elements of each of these agencies that can work closely together through collaboration with one another and produce significantly greater benefits for the state of Nebraska. I want to state on the record that I thank the staff members of the Department of Economic Development and the Department of Labor for all the work that they are doing right now to work together. Each of these agencies has risen to the challenge of thinking about how can we include Labor in this conversation, how can we include Economic Development in this conversation. If we accomplish nothing more than that, we have accomplished a great success for our state. Over the past year each agency has evaluated its knowledge and understanding of the other agencies. The staff members have worked together when it is beneficial to do so. There are areas of great collaboration. One of them is in the area of research. The Department of Labor has a tremendous amount of information regarding labor market information. And that information can be leveraged through the Department of Economic Development, especially as we go through recruitment efforts. Because if it isn't the first question they ask, it's the second question they ask: Where will we get our talented workforce if we come to Nebraska? By bringing those two pieces together, we are meeting the needs and addressing the questions that these businesses have. In particular, I'm very pleased to tell you that we have hired a new

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research administrator at the Department of Economic Development; that position has been vacant for almost a year. Dave Dearmont has come to us from the Department of Revenue and will be spearheading the work not only that he will do in the Department of Economic Development but working very closely with Phil Baker and others at the Department of Labor to put that information together for our state. As well, our agencies have worked together in working with our business community in any effort necessary to find talent for our businesses. In particular I want to highlight one program that we've been working on across the state with the cooperation and the branding by the U.S. Chamber of Commerce called "Hire Our Heroes." We've held a number of those events, and we have a number of those events scheduled for the rest of the year, and we're ready to start on Year 2 as we come around to April. But I want to tell you that the efforts made by the Department of Economic Development staff to do outreach to the business community to support those hiring fairs coupled with the efforts made by the Department of Labor staff to find our veterans and bring them to those hiring fairs, show them the jobs that are available in Nebraska, has been a great success. In fact, I will tell you that Hire Our Heroes thinks Nebraska is the best state to work with, I just want to say that. And so those are some areas where these two agencies have really come together, worked together, and they're areas where success can be made. Are there areas where the agencies don't necessarily touch each other directly? Yes. But are they thinking about each other? Yes. And that's very, very important. One of the other areas I want to highlight is in the cluster development area. The Department of Economic Development is staffing to develop support for those targeted industries that from a state perspective we find are important. And we are then coupling that effort of a Department of Economic Development staff member with a Department of Labor staff member to strengthen and support our targeted industries in Nebraska. We will be pursuing legislation to transfer the safety inspection programs of the Department of Labor safety division; this is the conveyance inspections, the amusement rides inspections, the boiler inspections, and then the consulting program of OSHA 21(d). We are proposing that those be transferred to the State Fire Marshal. I believe that moving these programs out of the Department of Labor will help the department to focus more

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specifically on workforce development. I also believe that it makes sense for these programs to be the responsibility of the State Fire Marshal, who already specializes in protecting Nebraska citizens from unsafe conditions in a variety of public and private locations. My staff and I have met with the Fire Marshal and his staff to discuss the issues of transfer, and I believe that we will be prepared, if the Legislature adopts the legislation to do this, that we will be able to make a smooth transition of those programs. So with that, I would be happy to answer any questions you might have. And if...after you've had a chance to review the Battelle study, please let me know if there's any questions that you have. The Battelle study was helpful to us; it highlighted some deficiencies and some issues that I can tell you right now, we're addressing those because they were brought to our attention. And so we're working within both agencies to address some of the issues that were of a concern especially to the external stakeholders who were interviewed by Battelle. Thank you. [LR561]

SENATOR AVERY: Those safety inspections, I believe that we had that in our committee amendment to the bill last year. [LR561]

CATHERINE LANG: Yes, sir. [LR561]

SENATOR AVERY: So there is support for that in the committee, or at least if the committee doesn't change too much. Let me ask you, though, you had mentioned elevator inspections? [LR561]

CATHERINE LANG: Oh, conveyances. I'm sorry, conveyances include elevators... [LR561]

SENATOR AVERY: Okay. That includes elevators... [LR561]

CATHERINE LANG: ...and escalators and any of those human-moving machines, like those in the...we have some at the zoo that has that tram. So those are all considered



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conveyances. [LR561]

SENATOR AVERY: Senator Price has a question. [LR561]

SENATOR PRICE: Thank you, Chairman Avery. And thank you, Commissioner Lang. I just want to attest, I've been to one of those "hire your veterans" outreach programs, in Omaha, and I'd be interested if afterwards you could get back with maybe some numbers of jobs that were found? [LR561]

CATHERINE LANG: Um-hum. [LR561]

SENATOR PRICE: And the number that were open. Because I think that we have a lot of them open, and we just don't...matching them up is tough. And if you can come back with anything like that, that would be awesome to see those numbers. [LR561]

CATHERINE LANG: And we'd be happy to. We do know the jobs that were available, because Hire Our Heroes requires that the business must have jobs available or they are not allowed to be at the hiring fair. Also, we've had some anecdotal information...like, for example, the one at Alliance, there were 9 matches made in Alliance, and that was with 31 job seekers. That's amazing. I mean, really, that is phenomenal. The rest of that information is actually a little difficult to get. What happens is, employers and job seekers leave the job fair, matches are made much later, and the last thing they want to do is provide information back to us about the fact that they made matches. However, I will say that Hire Our Heroes, the U.S. Chamber, is doing the best it can to try and get that information, and they are reporting it to us after the job fair. So we do have some information about that. I'd be happy to provide it. [LR561]

SENATOR PRICE: Because it would be great to know what a standard...if 9 out of 30 is a wonderful number... [LR561]

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CATHERINE LANG: Yeah. [LR561]

SENATOR PRICE: ...I think it's important that people know that. I think the public needs to understand, because the perception is, from some of the people who go there, that they don't know what a good number is... [LR561]

CATHERINE LANG: Yeah. [LR561]

SENATOR PRICE: ...so then they get disheartened. And we get to Round 2 and your participation rates fall down on both sides, the vendors and... [LR561]

CATHERINE LANG: Um-hum. [LR561]

SENATOR PRICE: ...and those job seekers. And they don't realize, no, you're doing really well. [LR561]

CATHERINE LANG: Yeah. [LR561]

SENATOR PRICE: So we need to have a standard that we can measure against, I think. [LR561]

CATHERINE LANG: That would be great; we'll try and get that for you. [LR561]

SENATOR PRICE: Great. Thanks. [LR561]

CATHERINE LANG: Yes. [LR561]

SENATOR AVERY: Any other questions? I don't see any. Thank you. [LR561]

CATHERINE LANG: Thank you very much. [LR561]

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SENATOR AVERY: Another testifier. [LR561]

JASON ESSER: Good afternoon, Senators. My name is Jason Esser, J-a-s-o-n E-s-s-e-r. I'm here today representing the Nebraska Economic Developers board of directors. Last February the board of directors of NEDA testified in opposition to LB971, obviously the proposed merger between DED and DOL. Today I'm here to tell you that we appreciate all that the Legislature did to recognize the need for those two departments to work together better. And we, as NEDA, are ready to move forward and work with Director Lang and the Governor to move Nebraska forward on economic development and workforce issues. So we're ready to do what we can, and we just wanted to be part of the official record to put our support into the new effort. [LR561]

SENATOR AVERY: We thank you for your willingness to cooperate. [LR561]

JASON ESSER: Thank you. [LR561]

SENATOR AVERY: Any questions from the committee? Don't see any. Thank you, Mr. Esser. Mr. Kelley, are you last? [LR561]

SEAN KELLEY: I think so. [LR561]

SENATOR AVERY: So that's why you stayed all day. [LR561]

SEAN KELLEY: That's right. That's right. [LR561]

SENATOR AVERY: (Laugh) [LR561]

SEAN KELLEY: I want to close, you know. Good afternoon, Chairman Avery, and members of the Government, Military and Veterans Affairs Committee. My name is

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Sean Kelley, appearing today on behalf of the Elevator Industry Work Force Preservation Fund, which is an organization primarily organized to provide public safety in elevator conveyance safety throughout the country. I'd like to thank Senators Mello and Harms and Commissioner Lang for all their hard work. We came into the fold when the conveyance safety was going to be merged and brought over to the Fire Marshal, and we would support that going forward. However, I would just like to mention we are strong advocates for the Conveyance Safety Act and continue to advocate to keep those and enhance public safety for the general public of Nebraska that rides up and down conveyances every day. So with that, I'd be happy to answer any questions. [LR561]

SENATOR AVERY: So we can have confidence every time we get on an elevator and we see Catherine Lang's signature up there on that card,... [LR561]

SEAN KELLEY: That's right... [LR561]

SENATOR AVERY: ...we have confidence. [LR561]

SEAN KELLEY: ...and make sure the inspection is current. [LR561]

SENATOR AVERY: Okay. [LR561]

SEAN KELLEY: I know I do every time. [LR561]

SENATOR AVERY: All right. I just wanted to make sure. (Laughter) We don't have any questions. [LR561]

SEAN KELLEY: Great. Thank you. [LR561]

SENATOR AVERY: Thank you. [LR561]

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SEAN KELLEY: You're welcome. [LR561]

SENATOR AVERY: Anyone else wish to speak? [LR561]

SENATOR PRICE: Or hold your peace. [LR561]

SENATOR AVERY: John, you don't want to speak? Okay. With that, we will end the session on LR-something, and we are finished for the day. Thank you all for coming. Thanks, John. [LR561]